

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 6

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FILED

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Shirley A. Thompson
CLERK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT,)
PETITIONER,)
)
)
VS.)
)
)
E.K.MCDANIEL,)
RESPONDENT,)
_____ /

CASE NO.

C52190
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PETITIONERS BRIEF IN
SUPPORT OF THE PETITION
FOR WRIT OF HABEAS CORPUS

COMES NOW, The Petitioner, Joel Burkett Pro Per in the above intitled matter and respectfully submits This Brief in Support of the Petition for Writ of Habeas corpus. This Petition is made, and based upon, N.R.S.34.500(2)(8).The attached memorandum of points and authorities, as well as any and all papers on file herein.

Dated this 30th day of August 2004,

Respectfully Submitted
By: *Joel Burkett*
Joel Burkett Pro per

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF THE CASE

On May 4th, 1981, a jury found Joel Burkett (Hereafter Petitioner) guilty of the crimes of Robbery with the use of a deadly weapon, Count I; First degree kidnapping with the use of a deadly weapon; Count II; Sexual assault, Count III; and Sexual assault, Count IV. On June 2nd, 1981 The court sentenced Petitioner to serve the following terms of imprisonment:

Count I= fifteen(15) years imprisonment for Robbery, and a consecutive fifteen(15) years of imprisonment for the use of a deadly weapon;

Count II= Life with the possibility of Parole for First degree kidnapping, and a consecutive term of Life with the possibility of Parole for the use of a deadly weapon, Count two(II) was to run consecutive to Count one(I);

Count III= Life with the possibility of Parole for Sexual assault;

Count IV= Life with the possibility of Parole for Sexual assault. Counts III and IV were ordered to run consecutive to each other and concurrent to the sentences imposed in Count II.

STATEMENT OF FACTS

II.

On August 26th, 2004 Petitioner was to appear before the Psychological Review Panel Pursuant to N.R.S.213.1214, Petitioner refused to appear.

Petitioner was to appear before the Nevada Parole Board in October, 2004. However, The Nevada Parole Board is without any authority to grant Petitioner a Parole Pursuant to N.R.S.213.1214;N.R.S.213.1099. Petitioner contend that this is a violation of the sentence imposed in his judgment of conviction, In violation of the Fourteenth(14) Amendment of the UNITED STATES CONSTITUTION "DUE PROCESS".

POINTS AND AUTHORITIES

III.

There can be no question that at the time the court imposed a sentence on Petitioner of Life with the possibility of Parole for the crime of first degree kidnapping with the use of a deadly weapon, The court had the authority to inforce The Possibility of Parole under former N.R.S.200.375, Which stated in part:"No person convicted of sexual assault MAY be Paroled unless....."

Likewise, The Nevada Parole Board had the authority to grant Petitioner a Parole under former N.R.S.200.375.

After the passage of N.R.S.213.1214, This court,nor the Nevada Parole Board has the authority to inforce the possibility of Parole granted in Petitioners Judgment of conviction.

N.R.S.213.1214,States in part:'The Board SHALL NOT release on Parole a prisoner convicted....'(Subsection one(1)).

The UNITED STATES SUPREME COURT Held in,SANDIN V. CONNER, 115 S.ct

2293(1995)'We recognize that states may under certain circumstances create liberty insterests which are protected by the Due Process Clause....But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force'

The Nevada Board of Parole commissioners impowered under N.R.S.213.108 are the only persons within Nevada That can grant Parole to a Person convicted of a crime. They no longer have that authority pursuant to N.R.S.231.1214(1) Nor does this court have the authority to order a Parole hearing to Petitioner with any possibility of parole in light of N.R.S.213.1214(1). This clearly Violates the terms of Petitioners Judgment of conviction in which the Possibility of Parole is part of the term of imprisonment imposed by the court. Petitioner respectfully submits that his sentence has been violated in that the Nevada Parole Board has no authority to grant Parole,Moreover, This court is without authority to issue an order for Petitioner to be given a Parole hearing wherein the possibility of parole exist pursuant to N.R.S.213.1214(1) Petitioner is intitled to be discharged.

While it is true; 'as long as the degree of confinement to which the prisoner is subjected... is within the sentence imposed upon him...the Due Process Clause does not itself subject an inmates treatment by Prison authorities to judicial oversight'.

KENTUCKY DEPT.OF CORRECTIONS V. THOMPSON, 109 S.ct 1909(1989). It necessarily follows, Where as here, the degree of confinement is not within the sentence imposed, In that Petitioner was not sentenced to life without the possibility of Parole, Due Process attaches, indeed, "Freedom from bodily restraint has always been at the core of the liberty Protected by the Due Process Clause from arbutrary governmental action" YOUNGBERG V. REMEO, 102 S.ct 2252(1982); FOUCHA V. LOUISIANA, 112 S.ct 1780(1992). The court in, VITEK V. JONES, 100 S.ct 1254(1980) Found that the Due Process Clause itself confers a liberty interest in certain situations irrespective of State regulations, At the heart of VITKE, (supra) The court concluded that an "imate criminal conviction and sentence do not authorize the State to classify him as mentally ill"(citing NEAL V. SHIMODA, 131 F.3d 828(9thcir.1997) Likewise, Petitioners Judgment of conviction does not authorize the State to deny him the possibility of Parole and the only Persons authorized to grant Parole in Nevada is the Nevada Parole Board. The United States Supreme court has made clear that "Prison officials may not punish an inmate beyond the terms of his confinement set by the court, "HEWITT V. HELMS, 103 S.ct 864-869(1983). Moreover, "The Due Process Clause Protects against restraints or conditions of confinement that exceed the sentence in an unexpected manner" SANDIN, (supra) Here, Petitioners sentences have been exceeded in an unexpected manner,

in that the passage of N.R.S.213.1214 has taken all authority away from the Nevada Parole Board to grant Parole. Petitioner is mindful that the word SHALL within a Statute works to make it mandatory, see, PLANKINTON V. FIFTH JUD. DIST COURT, ETC, 572 P.2d 525 (Nev.1977). The Nevada Parole Board having no authority to grant petitioner a Parole, It necessarily follows that the possibility of Parole granted in Petitioners Judgment of conviction doesn't exist. Petitioner submits that the terms of his sentences have been exceeded, and that he is now being held in violation of the fourteenth amendment of the U.S. Constitution "Due Process".

CONCLUSION

Petitioner respectfully submits that because the Nevada Parole Board is without authority to grant Petitioner a Parole, or even the possibility of a Parole, He is intitled to release from counts two(2) of his Judgment of conviction, where as here the court is without authority to inforce the sentence that it imposed upon Petitioner in 1981.

Dated this 30th day of August 2004

Respectfully Submitted,



Joel Burkett Pro per

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2004. Served a true and correct copy of the foregoing BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS TO:

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DISTRICT COURT
CLARK COUNTY, NEVADA

2004 SEP -2 P 4:43

Shirley B. Slaughter
CLERK

JOEL BURKETT,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: C52190

Dept No: 12

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on 09/01/04. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's calendar on the 19th day of October, 200 4, at the hour of 9:15 o'clock A. M. for further proceedings.

Nicholas J. Smith
District Court Judge 9.1.04

HEARING REQUIRED
DATE: 10/19/04
TIME: 9:15 AM

156
JOEL BURKETT#16111
P.O.BOX 1989
ELY, NEVADA 89301
Pro Per Petitioner

FILED

SEP 16 7 47 AM '04

Shirley A. Hays
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9-28-04

JOEL BURKETT,)
PETITIONER,)
VS.)
STATE OF NEVADA)
RESPONDENT,)

Case No: C52190
Dept No: 12

MOTION TO APPEAR

COMES NOW, Petitioner Joel Burkett, Pro per in the above intitled
matter and respectfully seeks this court to issue an order to
have petitioner appear at the October 19th 2004, Hearing.

Dated this 13th day of SEPTEMBER 2004,

Respectfully Submitted.

Joel Burkett
JOE BURKETT PRO PER

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COUNTY CLERK

ARGUMENT

This court issued an order on September 1st 2004, in which this court gave the Respondents 45 days to file an answer or otherwise respond to the petition in accordance with NRS 34.360:34.830. It further ordered that this matter be placed on the courts calendar for the 19th day of October 2004.

Joel Burkett(hereafter"petition") is appearing Pro per in these proceedings and is imprisoned in the Ely State Prison, in Ely, Nevada, as such petitioner respectfully request that the court issue the order submitted herewith and attached hereto, Directing the Respondents to assure that petitioner is brought before this court to make a personal appearance at the October 19th hearing.

Dated this 13th day of SEPTEMBER 2004,

Respectfully Submitted,


JOEL BURKETT PRO PER

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2004, did
serve a true and correct copy of the foregoing MOTION TO APPEAR
by placing it in the mail, postage, prepaid, To:

District Attorney
Stewart Bell
200 South Thrid St#701
Las Vegas, Nevada 89155
Attorney for Respondent


Joel Burkett Pro Per

157
ORIGINAL

1 RSPN
2 BRIAN SANDOVAL
3 Attorney General
4 By: D. GREG WHICKER
5 Deputy Attorney General
6 Criminal Justice Division
7 Nevada Bar Number 8307
8 555 E Washington Avenue #3900
9 Las Vegas, Nevada 89101
10 (702) 486-3420
11 Facsimile: (702) 486-3768
12 Attorneys for Respondents

Shirley L. Pangione

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FILED

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 * * *

11 JOEL BURKETT,

12 Petitioner,

13 v.

14 E.K. McDANIEL, et al.

15 Respondents.

Case No. C52190
Dept. No. XII

**STATE'S RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS.**

16
17 Respondents, through legal counsel, BRIAN SANDOVAL, Nevada Attorney General,
18 by Deputy Attorney General D. Greg Whicker, hereby file their Response to Joel Burkett's
19 (Burkett) Petition for a Writ of Habeas Corpus. This Response is based upon the pleadings
20 and papers on file herein, the following memorandum of points and authorities, and the
21 attached exhibits.
22

23 DATED this 12th day of October, 2004.

BRIAN SANDOVAL
Attorney General

24
25 By: *D. Greg Whicker*
26 D. GREG WHICKER
27 Deputy Attorney General
28

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CLARK COUNTY

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MEMORANDUM OF POINTS AND AUTHORITIES

As a preliminary matter, Respondents expressly deny each and every factual allegation contained in Burkett's Petition save and except those expressly found to exist by a Nevada court of competent jurisdiction.

I.

PROCEDURAL HISTORY

Based upon Burkett's Petition, it appears that he was convicted of one count of Robbery with use of a Deadly Weapon, one count of Kidnapping with use of a Deadly Weapon, and two counts of sexual assault.

II.

LEGAL ARGUMENT

BURKETT'S FOURTEENTH AMENDMENT RIGHTS HAVE NOT BEEN VIOLATED

Burkett contends that he was denied his right to due process by Respondents, in violation of the Fourteenth Amendment to the United States Constitution. Burkett's Petition is wholly incredulous and is nothing more than a half-baked attempt to insult the court's intelligence by trying to convince it to release him from a valid judgment of conviction.

Burkett claims this violation has occurred because, as he puts it, "At the time of his parole hearing the Nevada Parole Board had no authority to issue a parole. The possibility of parole granted in his judgment of conviction does not exist." See PWHC, p. 5. Burkett claims the Nevada legislature changed the language of the applicable parole statutes between the time he was convicted and the time he first became eligible for parole. Burkett argues that the earlier statute, as contained in NRS 200.375, provided, "The Board *may* not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of . . ." (Emphasis added). He continues to argue that the legislature then instituted the language contained in NRS 213.1214, which states, "The Board **SHALL NOT** release on

1 parole a prisoner. . ." See Petitioner's Brief in Support of Petition for Writ of Habeas Corpus,
2 p. 4. (Emphasis added by Petitioner). Curiously, however, Burkett completely fails to
3 complete the sentence, which states, "The board shall not release on parole a prisoner
4 convicted of an offense listed in subsection 5 **unless** a panel consisting of . . ." NRS
5 213.1214(1) (emphasis added) (the statute then goes on to list the people that must compose
6 the panel). Despite Burkett's incredulous argument to the contrary, the Board still has the
7 authority to grant him parole, whether the Board chooses to do so is another matter.

8
9 Even more interesting is the fact that Burkett completely fails to mention the fact that
10 he has already been paroled from one of his sentences to a consecutive sentence. See
11 Exhibit 1. Burkett further fails to mention the fact that he is to appear before the Parole Board
12 on October 13, 2004, for a hearing regarding his potential parole on February 1, 2005. See
13 Exhibit 2. Accordingly, Burkett's claims are belied by the record. See Hargrove v. State, 100
14 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding claims which are belied or repelled by the
15 record are not sufficient to grant relief). Clearly, Burkett knows, or should know, that the
16 Parole Board has the authority to parole him if it so chooses. The fact that he may not be
17 released from prison is irrelevant, he was given consecutive sentences. As an operation of
18 law, he must serve each of those sentences before he is eligible for a full release. Burkett's
19 attempt to persuade this Court to foray into the province of the Parole Board is inappropriate;
20 accordingly, the Court should deny the instant Petition.

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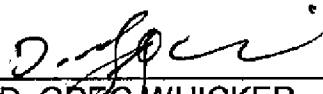
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CONCLUSION

As Burkett's Petition is nothing more than a sham, and because his claims are belied by the record and applicable statutes, the instant Petition should be denied.

DATED this 12th day of October, 2004.

BRIAN SANDOVAL
Attorney General

By: 
D. GREG WHICKER
Deputy Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that I am an employee of the Office of the Attorney General and that on the 12th day of October, 2004, I served a true and accurate copy of the foregoing

State's Response to Petition for Writ of Habeas Corpus by mailing via United States mail,

first class, postage prepaid, to:

Joel Burkett #16111
Ely State Prison
P. O. Box 1989
Ely, Nevada 89301

Lair Matthews

An Employee of the
Office of the Attorney General



Nevada Department of Corrections -- Inmate Detail Record

The information provided through this process is raw data. As the information is raw data, the department makes no war. associated with its use. For example, the department makes no guarantee that the raw data is free of input errors. Further, the department cannot provide a judgment as to the reliability or validity of this raw data when used in models, studies, or re. outside of its own control. The information on this website should not be used as an "official" record by any law en

Identification and Demographics			
Inmate Name:	BURKETT, JOEL	NDOC ID:	16111
Gender:	Male	Ethnicity:	White/Caucasian
DOB:	07/05/1961	Approximate Age:	43
Height:	6' 2"	Weight:	184 lbs
Build:	Large	Complex:	Fair
Hair Color:	Blond	Eye Color:	Blue
Alias(es):	1) HAIRE, RAYMOND		

No Photo /
The Department does not maintain of most inmates. such as in the ever a digital photo may

Sentencing

Click on any heading below for a description and more information.

Offense	Sentence Level	Sentence Name	Min Sentence	Max Sentence	Parole Eligibility	Mandatory Review
KIDNAPPING I	2A	ACTIVE		999	02-01-2005	CS SEN
SEXUAL ASSAULT	2B	CCNC		999	CC SENT	CC SEN
ROBBERY, UDW	1	PAROLED		30	PAROLED	PAROLE
SEXUAL ASSAULT	3A	PENDING		999	PENDING	PENDIN
USE OF DEADLY WEAPON ENHANCEMENT	3B	PENDING		999	PENDING	PENDIN

Custody

County of Commitment:	Clark	Commitment Code:	New Commitment
Offense Group:	Sex Offense	On Parole Agenda?	CONFIRMED ON PAROLE AGEN LOCATION: ESP DATE: OCT 2
Current Institution:	Ely State Prison	Custody Level:	Maximum Custody

Click here for visiting information.

**NEVADA BOARD OF PAROLE COMMISSIONERS AGENDA FOR OCTOBER
HELD AT**

**Ely State Prison (ESP)
4569 N. State Rt. 490, Ely, NV 89301 (775) 289-6097**

The Nevada Board of Parole Commissioners will consider releasing eligible inmates to the community or to a consecutive sentence. Inmates scheduled to be seen at these hearings are housed at the indicated locations.

The board may close portions of hearings to accept confidential information as provided in NRS 213.130(8), and to deliberate in private following a public hearing pursuant to NRS 213.130(5). The board will accept public comments from applicable victims during a public hearing pursuant to NRS 213.130(4). When hearings are conducted via video conference, visitors may attend at any location specified for that date.

Final action will be taken by a majority of the board upon ratification within 14 days from the end of each month's agendas or as soon as practicable thereafter. Agendas are subject to change and inmates may be removed from an agenda without notice. The Board reserves the right to take items in a different order to accomplish business in the most efficient manner. The Board may continue the hearing on an inmate to a later date on the agenda at the discretion of the panel.

AGENDAS POSTED AT THE FOLLOWING LOCATIONS IN CARSON CITY:

Attorney General's Office, 100 N. Carson
Parole Board Office, 1445 Hot Springs Road, Suite 109-B

Library, 900 N. Roop St.

AGENDAS POSTED AT THE FOLLOWING LOCATIONS IN LAS VEGAS:

Attorney General's Office, Sawyer Building, 555 E. Washington Ave.
Bradley Building, 2501 E. Sahara Ave.

Clark County Court House, 200 S. Third St.

Parole/Probation Office, 215 E. Bonanza Rd.

Parole Board Office, 2601 E. Sahara Ave.

Main Library/Reference Section, 833 N. Las Vegas Blvd.

OCT. 13, 2004 900AM (1 OF 1)

Ely State Prison (ESP) 4569 N. State Rt. 490, Ely, NV 89301 (775) 289-6097

**VIDEO CONFERENCE TO PAROLE BOARD OFFICE LAS VEGAS 2601 E.
SAHARA, LAS VEGAS, NV 89104**

PAR 016111 BURKETT, JOEL	ESP	PAR 062221 LIENBEE, ROBERT H	ESP
PAR 043687 SPITZNOGLE, KENNETH C	ESP	PAR 068840 HILL, ALVIN C	ESP
PAR 044100 CHARDEE, JAMES B	ESP	MPR 074708 ACOSTA, LUIS M	ESP
PAR 045498 DUARTE, PAUL	ESP	PAR 076245 MEDINA, JUAN A	ESP
PAR 046936 MCGERVEY, CLEUS	ESP	PAR 080797 PULVER, WAYNE C	ESP
PAR 049103 VALLEZ, MANNY C	ESP	PAR 080964 WOODS, HOWARD M	ESP
RPO 050696 RAYSOR, ANTHONY E	ESP	PAR 081342 AMELA, LOUIS A	ESP

158.
JOEL BURKETT#16111
P.O.BOX1989
Ely,NV89301

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Shirley S. Longprune
CLERK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT,	)	Case No:C52190
PETITIONER,	)	Dept.No:12
)	
VS.	)	<u>PETITIONERS REPLY TO THE STATES</u>
	)	<u>RESPONSE TO PETITION FOR WRIT</u>
E.K.McDANIEL,et al.	)	<u>OF HABEAS CORPUS</u>
RESPONDENTS,)	

COMES NOW, Joel Burkett, Pro per Petitioner in the above intitled matter and respectfully submits his reply to the States response to the Petition for writ of habeas corpus. This reply is based upon the pleadings and papers on file herein, The attached memorandum of points and authorities.

Dated this 19th day of OCTOBER 2004,

Respectfully Submitted
By: *Joel Burkett*
JOEL BURKETT Pro per

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COUNTY CLERK

1.

S11

MEMORANDUM OF POINTS AND AUTHORITIES

Respondents would lead this court to believe that because petitioner CAN APPEAR before the Parole Board, that it infact has the authority to issue a Parole, this is simply a lie.

Pursuant to NRS 213.1214 petitioner having been denied certifcation by the panel, the Parole Board has no authority to grant Parole and this clearly violates the terms of petitioners Judgment of conviction.

Petitioner cannot be held beyond the term of imprisonment set by the court, see McNEIL V. DIRECTOR, PATUXENT INSTITUTION, 92 S.ct 2083 (1972). McNeil was convicted of two assaults and sentenced to five years imprisonment. instead of committing him to prison, the sentencing court referred him to the Patuxent Institution for examination, to determine whether he should be committed to that institution for an indeterminate term under Maryland's defective Delinquency Law.

What Nevada has done by the passage of NRS 213.1214, Is to bypass seeking an ex parte order and to just hold petitioner forever untill at witch time he can pass the panel, Then, and only then, would the Parole Board have the authority to grant petitioner a Parole. There is no question that the words SHALL NOT within a Statute works to make it mandatory, see, PLANKINTON V. FIFTH JUD. DIST COURT, ECT, 572 P.2nd 525 (Nev.1977). If the Parole Board has no authority to grant Parole, the possibility of Parole granted within Petitioners Judgment of conviction doesn't exist. and for Counsel for the Respondents to suggest otherwise is silly and he should know better.

Likewise, Respondents would mislead this court by claiming that petitioner has once been given a Parole so therefore the Parole Board has the authority to issue a Parole. What they have failed to inform this court of, is that Petitioner was Paroled off of his Robbery conviction and did not need to be certified by the Panel under NRS 213.1214 to receive a Parole.

Respondents also claim that the Petitioner is trying to get this court to invade the province of the Parole Board is without merit. I'm seeking for this court to enforce the sentence that was handed down to me 24 years ago, and the fact of the matter is that the court cannot do so.

NRS 213.1214 is clear and states that the Parole Board cannot release on Parole any person convicted of an offense listed under subsection (5) without that person being certified by the Panel first.

Therefore the possibility of Parole granted within Petitioners sentence doesn't exist.

There is nothing unconstitutional about NRS 213.1214 if the sentence imposed by the court is a determinate term, however, this court cannot sentence petitioner to a sentence that it can't enforce and this court cannot order petitioner a Parole hearing wherein the Possibility of Parole exist, because without certification by the panel under NRS 213.1214, The Parole Board couldn't issue a Parole if it wanted to.

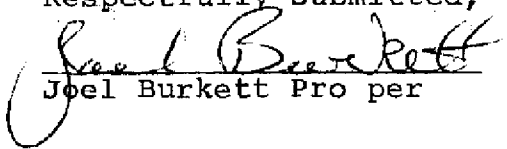
Petitioners sentence is, and has been violated, in violation of the fourteenth amendment of the U.S. constitution (due process).

CONCLUSION

Because the Nevada Parole Board has no authority to grant a Parole to Petitioner and Because this court cannot issue an order directing the Parole Board to give petitioner a hearing wherein the possibility of Parole is infact a possibility,petitioner is intitlled to release.

Dated this 19th day of October, 2004

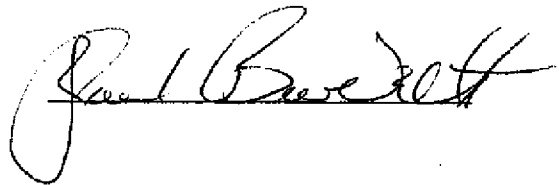
Respectfully Submitted,


Joel Burkett Pro per

CERTIFICATE OF SERVICE

I do hereby certify that I am the Por per Petitioner in the above intitlled matter and that on this 19th day of October, 2004, I did serve a true and correct copy of the foregoing PETITIONER REPLY TO THE STATES RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS BY MAILING Via United States mail, frist class, postage prepaid, to:

D.Greg Whicker
Deputy Attorney General
555 E Washington Avenue #3900
Las Vegas, Nevada 89101

A handwritten signature in cursive script, appearing to read "Paul B. Burt", written over a horizontal line.

5.

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OCT 25 2004

FILED

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Shirley E. Rungione
CLERK

FFCL
BRIAN SANDOVAL
Attorney General
By: D. GREG WHICKER
Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 8307
555 E Washington Avenue #3900
Las Vegas, Nevada 89101
(702) 486-3420
Facsimile: (702) 486-3768
Attorneys for Respondents

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,

Petitioner,

v.

E.K. McDANIEL, et. al.,

Respondents.

Case No: C52190

Dept No: XII

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

Hearing date: 10/19/04

Hearing time: 9:00 a.m.

The above-entitled Court conducted a hearing on the Petition for a Writ of Habeas Corpus filed on behalf of Joel Burkett (Burkett), dated and filed on August 30, 2004, and hereby issues this order finally disposing of said petition pursuant to NRS 34.830. Burkett was not present being an inmate in the custody of the Nevada Department of Corrections, nor was he represented by counsel. The Respondents were represented by Deputy Attorney General D. Greg Whicker. Upon reviewing the Petition, the State's Response and the pleadings and papers on file herein, the Court makes the follow findings of fact and conclusions of law:

///

///

FINDINGS OF FACT

1. Burkett is an inmate in the custody of the Nevada Department of Corrections.
2. Burkett's conviction resulted in multiple consecutive sentences, each of which must be served before Burkett is eligible for a full release from the Nevada Department of Corrections.
3. Burkett may be paroled at the discretion of the Nevada Parole Board.
4. Burkett's claims are belied by the record in this case.

CONCLUSIONS OF LAW

1. NRS 213.1214(1) provides that the Parole Board shall not release a prisoner on parole unless a panel consisting of specified individuals certifies that the inmate is suitable for parole.
2. NRS 213.10705 provides that parole is an act of grace on the part of the State and that no person has a right to parole.
3. The United States Supreme Court has held that an inmate's expectation that a lawfully imposed sentence will be commuted is no more substantial than his expectation that he may be transferred to another facility. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 465 (1981).
4. Claims which are belied or repelled by the record are not sufficient to grant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

IT IS THEREFORE ORDERED, based upon the above findings of fact and conclusions of law, that Joel Burkett's Petition for a Writ of Habeas Corpus is **DENIED**.

DATED this 27th day of October, 2004.


DISTRICT COURT JUDGE

SUBMITTED BY:

BRIAN SANDOVAL
Attorney General

By: 
D. GREG WHICKER
Deputy Attorney General

Dated this 25th day of October, 2004.

FILED

Nov 9 4 14 PM '04

Shirley B. Parraguirre
CLERK

NOED

District Court

Clark County, Nevada

JOEL BURKETT

Petitioner,

vs

THE STATE OF NEVADA,

Respondent.

Case No. C52190

Dept. No. XII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on November 1, 2004, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on November 9, 2004.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: *Norreta Caldwell*
Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 9 day of November, 2004, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division

☐ The United States mail addressed as follows:

Joel Burkett 16111
PO Box 1989
Ely, NV 89301

Norreta Caldwell
Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

S11

ORIGINAL

OCT 25 2004

FFCL
BRIAN SANDOVAL
Attorney General
By: D. GREG WHICKER
Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 8307
555 E Washington Avenue #3900
Las Vegas, Nevada 89101
(702) 486-3420
Facsimile: (702) 486-3768
Attorneys for Respondents

FILED

Nov 1 4 50 PM '04

Shirley B. Pangione
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,
Petitioner,

v.

E.K. McDANIEL, et. al.,
Respondents.

Case No: C52190
Dept No: XII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

Hearing date: 10/19/04
Hearing time: 9:00 a.m.

The above-entitled Court conducted a hearing on the Petition for a Writ of Habeas Corpus filed on behalf of Joel Burkett (Burkett), dated and filed on August 30, 2004, and hereby issues this order finally disposing of said petition pursuant to NRS 34.830. Burkett was not present being an inmate in the custody of the Nevada Department of Corrections, nor was he represented by counsel. The Respondents were represented by Deputy Attorney General D. Greg Whicker. Upon reviewing the Petition, the State's Response and the pleadings and papers on file herein, the Court makes the follow findings of fact and conclusions of law:

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FINDINGS OF FACT

1. Burkett is an inmate in the custody of the Nevada Department of Corrections.
2. Burkett's conviction resulted in multiple consecutive sentences, each of which must be served before Burkett is eligible for a full release from the Nevada Department of Corrections.
3. Burkett may be paroled at the discretion of the Nevada Parole Board.
4. Burkett's claims are belied by the record in this case.

CONCLUSIONS OF LAW

1. NRS 213.1214(1) provides that the Parole Board shall not release a prisoner on parole unless a panel consisting of specified individuals certifies that the inmate is suitable for parole.
2. NRS 213.10705 provides that parole is an act of grace on the part of the State and that no person has a right to parole.
3. The United States Supreme Court has held that an inmate's expectation that a lawfully imposed sentence will be commuted is no more substantial than his expectation that he may be transferred to another facility. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 465 (1981).
4. Claims which are belied or repelled by the record are not sufficient to grant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

IT IS THEREFORE ORDERED, based upon the above findings of fact and conclusions of law, that Joel Burkett's Petition for a Writ of Habeas Corpus is **DENIED**.

DATED this 27 day of October, 2004.


DISTRICT COURT JUDGE

SUBMITTED BY:

BRIAN SANDOVAL
Attorney General

By: 

D. GREG WHICKER
Deputy Attorney General

Dated this 25 day of October, 2004.

161
Case No.

C52190

Dept. No.

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FILED

May 13 11 35 AM '05

Shirley A. [unclear]
CLERK

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

JOEL BURKETT

Petitioner,

v.

E. K. MCDANIEL

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED

MAY 13 2005

COUNTY CLERK

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812

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, WHITEPINE COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

3. Date of judgment of conviction: MAY 4TH, 1981

4. Case number: C52190

5. (a) Length of sentence: 30 YEARS, 4 LIFE TERMS

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No XX

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: ROBBERY/DEADLY WEAPON, FIRST DEGREE KIDNAPPING/DEADLY, SEXUAL ASSAULT(2) COUNTS

8. What was your plea? (check one):

(a) Not guilty XX (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury XX (b) Judge without a jury _____

11. Did you testify at the trial? Yes XX No _____

12. Did you appeal from the judgment of conviction? Yes XX No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT

(b) Case number or citation: DOCKET NO. 13600 April 21, 1983

(c) Result: denied

(d) Date of result: APRIL 21, 1983

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not. N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes XXXX No

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: FIRST JUDICIAL DISTRICT COURT

(2) Nature of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes XXX No

(5) Result: DENIED

(6) Date of result: DO NOT HAVE

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: DO NOT HAVE

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: EIGHTH JUDICIAL DISTRICT COURT

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: VIOLATION OF SENTENCE

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No XXX

(5) Result: DENIED

(6) Date of result: DO NOT HAVE

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: DO NOT HAVE

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes XXX No

Citation or date of decision: DO NOT HAVE

(2) Second petition, application or motion? Yes XXXX No

Citation or date of decision: DO NOT HAVE

(3) Third or subsequent petitions, applications or motions? Yes XXXX No

Citation or date of decision: DO NOT HAVE

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in No. 's 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) GROUND ONE, ISSUE NOT AVAILABLE

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ISSUE NOT AVAILABLE UNTIL ~~SEPTEMBER~~ JUNE 2004

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes XX No

If yes, state what court and case number: UNITED STATES DISTRICT COURT,
CASE NO: CV-N-04-0241- LRH-VPC

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE AT THIS TIME

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No XXX

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: UNCONSTITUTIONAL SENTENCES
IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS
OF THE U.S. CONSTITUTION

Supporting FACTS (Tell your story briefly without citing cases or law.): SEE SUPPORTING
FACTS ATTACHED HERETO

(b) Ground Two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground Three:

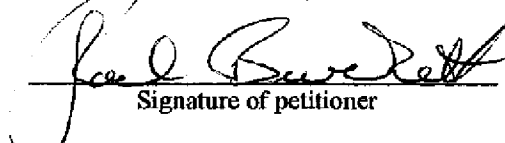
Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 10 day of the month of may, of the year 2005


Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

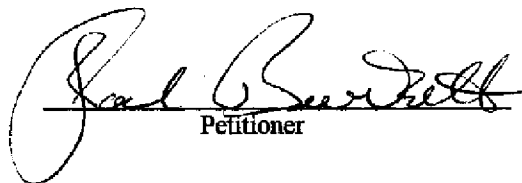
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETI, hereby certify pursuant to N.R.C.P. 5(b), that on this 10 day of the month of MAY, of the year 2005 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

E.K. McDANIEL
Respondent prison or jail official

P.O. Box 1789
ELY, NV 89301
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

DO NOT HAVE
District Attorney of County of Conviction

Address

Joel Burketi
Signature of Petitioner

SUPPORTING FACTS

PETITIONER'S JURY WAS INSTRUCTED:

" IF THE ATTORNEYS STIPULATE OR AGREE TO THE EXISTENCE OF A FACT YOU MUST ACCEPT THE STIPULATION AS EVIDENCE AND REGARD THE FACT AS PROVED" (PETITIONER'S JURY INSTRUCTION: 20, STATED IN PART).

AT THE TRIAL OF PETITIONER BOTH THE PROSECUTOR AND TRIAL COUNSEL STIPULATED TO PETITIONER'S GUILT AS TO THE CRIMES CHARGED, EFFECTIVELY PENDING PETITIONER GUILTY.

PETITIONER CONTENTS IN LIGHT OF THE UNITED STATES SUPREME COURT'S RULING IN, BLAKELY V. WASHINGTON, 124 S.Ct 2531 (2004) THAT HIS SENTENCES ARE UNCONSTITUTIONAL IN THAT THE JURY DID NOT MAKE A FINDING OF ALL THE FACTS AS TO THE SENTENCES IMPOSED BY THE COURT.

IN LIGHT OF THE ABOVE JURY INSTRUCTIONS AND TRIAL COUNSEL'S STIPULATIONS, SET FORTH BELOW PETITIONER'S SENTENCES CAN NOT STAND.

THE JURY WAS DENIED THE OPPORTUNITY TO MAKE A FINDING OF THE FACTS TO THE CRIMES OF SEXUAL ASSAULT, ASSAULT AND FIRST DEGREE KIDNAPPING FOR "THE PURPOSE OF COMMITTING SEXUAL ASSAULT" WHEN TRIM COUNSEL STATED:

"WHAT COULD YOU FIND FIND HIM GUILTY OF, THESE FOUR COUNTS, THAT LEAVES ONE COUNT... THAT HE HAD SEXUAL INTERCOURSE WITH HER AGAINST HER WILL, BY FORCE OR FEAR, A SEXUAL ASSAULT, MORE REFINED WAY FOR RAPE. ALL RIGHT, AND THERE WAS EVIDENCE OF THAT TAKING THE BEST EVIDENTS, BECAUSE SHE AGREED IT WASN'T WITH HER CONSENT" (T.T. Pg 476)

"THAT'S EVIDENCE OF RAPE"
(T.T. Pg 477)

"YOU COULD COME BACK WITH A VERDICT OF GUILTY OF SEXUAL ASSAULT" (T.T. Pg 477)

"ONLY ONE CRIME YOU CAN
FIND HIM GUILTY OF, THATS
SEXUAL ASSAULT, ONE COUNT
OF HAVING SEXUAL INTERCOURSE
WITH TINA CAGE. BECAUSE
TO FIND HIM GUILTY OF
THE REST YOU HAVE TO
FIND BEYOND A REASONABLE
DOUBT" (T.T. Pg. 479)

THE PROSECUTOR IN CLOSING ARGUMENTS
STIPULATED TO ALL THE ELEMENTS OF THE
CRIMES CHARGED WHEN IN SUPPORT OF
THE ALLEGED VICTIMS TESTIMONY HE
TOLD THE JURY; "I STIPULATE THATS
WHAT HAPPEN" (T.T. Pg.) (NOTE: PETITIONER
DOESNT HAVE ACCESS TO HIS TRIAL TRANSCRIPTS)
PETITIONER RESPECTFULLY SUBMITS THAT THE
6TH AND 14TH AMENDMENTS OF THE U.S.
CONSTITUTION MANDATES THAT THE JURY
MAKE THE FINDINGS OF ALL ELEMENTS OF
THE CRIMES CHARGED AND WITHOUT SUCH
FINDINGS PETITIONERS SENTENCES ARE
UNCONSTITUTIONAL.

DATED THIS 10 DAY OF MAY 2005

RESPECTFULLY SUBMITTED;

Joe L. Burrell

RELIEF Sought

WHEREFORE, THE PETITIONER JOEL BURKE
REQUEST THE FOLLOWING RELIEF;

1. GRANT THE PETITION FOR WRIT OF HABEAS CORPUS;
2. ISSUE AN ORDER TO SET ASIDE HIS UNCONSTITUTIONAL SENTENCES;
3. GRANT WHATEVER RELIEF THIS COURT FINDS IS PROPER.

DATED THIS 10 DAY OF MAY 2005

RESPECTFULLY SUBMITTED;

Paul Burkett

1 PPOW

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 JOEL BURKETT

6 Petitioner,

7 vs.

8 EK MCDANIEL

Respondent,

Case No: C52190

Dept No: 12

9 **ORDER FOR PETITION FOR**
10 **WRIT OF HABEAS CORPUS**

11 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
12 May 13, 2005. The Court has reviewed the petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

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20 Calendar on the 5th day of July, 200 5, at the hour of

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22 9 o'clock 15 a.m./p.m. for further proceedings.

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District Court Judge

5/18/05

312

Shirley Chanagan
CLERK

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **H. LEON SIMON**
6 **Deputy District Attorney**
7 **Nevada Bar #000411**
8 **200 South Third Street**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 455-4711**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **JOEL BURKETT,**
14 **#0609533**

15 **Defendant.**

CASE NO: C52190

DEPT NO: XII

16 **STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR**
17 **WRIT OF HABEAS CORPUS (POST-CONVICTION)**

18 **DATE OF HEARING: July 5, 2005**
19 **TIME OF HEARING: 9:15 AM**

20 **COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through**
21 **H. LEON SIMON, Deputy District Attorney, and hereby submits the attached Points and**
22 **Authorities in Opposition to Defendant's Petition For Writ Of Habeas Corpus (Post-**
23 **Conviction).**

24 **This opposition is made and based upon all the papers and pleadings on file herein,**
25 **the attached points and authorities in support hereof, and oral argument at the time of**
26 **hearing, if deemed necessary by this Honorable Court.**

27 **///**

28 **///**

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by
4 Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime
5 (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use of Deadly
6 Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual
7 Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual Assault (Felony - NRS
8 200.364, 200.366).

9 Defendant was convicted by a jury on May 4, 1981. The original Judgment of
10 Conviction was filed on July 29, 1981, however, an Amended Judgment of Conviction was
11 filed on February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for
12 Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of
13 a Crime, to be served consecutively; as to Count II, Life with Possibility of Parole and an
14 additional term of Life with Possibility of Parole for Use of a Deadly Weapon in
15 Commission of a Crime, to be served consecutively, Count II to be served consecutive to
16 Count I; as to Count III, Life with Possibility of Parole; as to Count IV, Life with the
17 Possibility of Parole, Count IV to be served consecutive to Count III; Counts III and IV to be
18 served concurrent to the sentences imposed in Counts II.

19 Defendant appealed his judgment of conviction and the Supreme Court of Nevada
20 filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed on
21 May 16, 1983. Defendant then filed a petition for writ of habeas corpus on February 2, 1994,
22 which was granted in part and denied in part. Defendant filed a second petition for writ of
23 habeas corpus on June 7, 1999. Defendant's petition was denied on August 12, 1999.
24 Defendant appealed the denial, and it was affirmed by the Nevada Supreme Court.

25 Defendant filed a third petition for writ of habeas corpus on November 19, 2001. On
26 February 14, 2002, Defendant's petition was denied. Soon thereafter, Defendant filed an
27 appeal to the Nevada Supreme Court challenging the district court's order denying the
28 petition he filed on February 14, 2002.

1 On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
2 remand. In this order the Nevada Supreme Court's remand was limited for further
3 proceedings on the issue of whether Defendant was denied any rights or protections relating
4 to certification available to Nevada prisoners. On May 14, 2003, the district court denied
5 Burkett's claim on remand.

6 On February 19, 2003, Defendant filed a fourth petition for writ of habeas corpus.
7 The district court denied the petition and the Defendant again appealed to the Supreme
8 Court. The Nevada Supreme Court affirmed.

9 On September 1, 2004, Defendant filed a fifth petition for writ of habeas corpus. The
10 petition was denied on October 19, 2004. Defendant now files his sixth petition for writ of
11 habeas corpus.

12 ARGUMENT

13 I.

14 **THE DEFENDANT'S PETITION FOR HABEAS CORPUS** 15 **SHOULD BE DENIED BECAUSE IT HAS BEEN FILED** **BEYOND THE ONE YEAR TIME REQUIREMENT OF** **NRS 34.726**

16 The Nevada Supreme Court issued Remittitur from the direct appeal on May 16,
17 1983. However, the provisions of NRS 34.726(1) became effective on January 1, 1993,
18 providing a one year time limit to file habeas corpus petitions. The Ninth Circuit has held
19 under similar statutes providing a time limit for habeas corpus petitions that where a
20 petitioner's conviction became final before the statute was enacted the time limitation begins
21 to run from the effective date of the statute. *United States v. Valdez*, 195 F.3d 544, 546 (9th
22 Cir. 1999) (holding one year statute of limitations under AEDPA began tolling from
23 effective date of statute); *see also United States v. Lomax*, 86 F.Supp.2d 1035 (D. Or. 2000)
24 (holding petitioner had one year from effective date of AEDPA to file timely motions where
25 conviction was prior to enactment of statute). This Court held no differently in *Pellegrini*:
26 "for purposes of determining the timeliness of these successive petitions pursuant to NRS
27 34.726, assuming the laches bar does not apply, it is both reasonable and fair to allow
28 petitioners one year from the effective date of the amendment to file any successive habeas

1 petitions." 34 P.3d 519 at 529. Therefore, because Remittitur issued before the effective
2 date of NRS 34.726, the statutory time limit to file a petition for post conviction relief would
3 have commenced on January 1, 1993, and expired on December 31, 1993. Defendant did
4 not file the present petition until May 13, 2005, long after the one year deadline of January 1,
5 1994. Therefore, Defendant's petition is barred and should be dismissed.

6 The statute clearly states that the burden of overcoming applicability of the time bar is
7 on the petitioner. An examination of the instant petition reveals that the Defendant has failed
8 to provide any reason for the untimeliness of the petition. In fact, the Defendant has failed to
9 even cite to any reason that might constitute "good cause." The Nevada Supreme Court has
10 previously defined good cause as "an impediment external to the defense which prevented
11 [the petitioner] from complying with the state procedural rules." *Crump v. Warden*, 113
12 Nev. 293, 934 P.2d 247, 252 (1997); *see also Colley v. State*, 105 Nev. 235, 236, 773 p.2d
13 1229, 1230 (1989), *quoting State v. Estencion*, 625 P.2d 1040, 1042 (Haw. 1981)("Good
14 cause" under NRS 34.726 "means a substantial reason; one that affords a legal excuse.").
15 The lack of the assistance of counsel when preparing a petition and even the failure of trial
16 counsel to forward a copy of the file to a petitioner has been found to *not* constitute good
17 cause. *See Phelps v. Director Nevada Department of Prisons*, 104 Nev. 656, 660, 764 P.2d
18 1303 (1988); *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995). Clearly, NRS 34.726 bars
19 review of the instant petition because the Defendant has failed to provide any justification
20 for the violation that would constitute "an impediment external to the defense which
21 prevented [the petitioner] from complying with the state procedural rules." *Crump v.*
22 *Warden*, 113 Nev. 293, 934 P.2d 247, 252 (1997).

23 The Nevada Supreme Court has justified the one year rule with regard to the filing of
24 post-conviction petitions in *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989) when it
25 upheld the district court's dismissal of a petition based on NRS 34.726. The Court reasoned
26 that:

27 At some point, we must give finality to criminal cases. *Darnell*
28 *v. State*, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982). Should
we allow Colley's post-conviction relief proceeding to go
forward we would encourage offenders to file groundless

1 petitions for federal habeas corpus relief, secure in the
2 knowledge that a petition for post-conviction relief remained
3 indefinitely available to them. This situation would prejudice
4 both the accused and the State since the interest of both the
petitioner and the government are best served if post-conviction
claims are raised while the evidence is still fresh. (citations
omitted).

5 *Id.* The Court also noted that the District Court's denial of the defendant's petition based on
6 its lack of timeliness was necessary "for the orderly administration of justice." *Id.*

7 In addition, dismissal of the instant petition will not prejudice the Defendant. The
8 Defendant has no legal basis to challenge the conviction. A finding of prejudice is required
9 to avoid the time bar of NRS 34.726. In regard to this requirement the Nevada Supreme
Court has held:

10 [R]equiring prejudice to excuse the filing of untimely petitions
11 helps to ensure that claims are raised before evidence is lost or
12 memories fade. Without such limitations on the availability of
13 post-conviction remedies, prisoners could petition for relief in
14 perpetuity and thus abuse post-conviction remedies. In addition,
meritless, successive and untimely petitions clog the court
system and undermine the finality of convictions. A showing of
prejudice is thus essential to prevent the filing of successive and
merit less petitions for post-conviction relief.

15 *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944 (1994). The Defendant's petition should
16 be summarily denied due to its untimeliness under NRS 34.726 and the principles enunciated
17 in *Colley* and *Lozada*. In addition, the Defendant is unable to provide either good cause or
18 prejudice so as to avoid application of the statute. The Defendant has offered no evidence of
19 either lack of fault or undue prejudice so as to avoid application of the statute. As such the
20 petition should be dismissed as time barred.

21 II.

22 DEFENDANT'S PETITION IS SUCCESSIVE AND SHOULD BE DISMISSED

23 Defendant's instant petition should be dismissed pursuant to NRS 34.810 as it is
24 successive. Pertinent portions of NRS 34.810 state:

25 2. A second or successive petition must be dismissed if the judge
26 or justice determines that it fails to allege new or different
27 grounds for relief and that the prior determination was on the
merits or, if new and different grounds are alleged, the judge or
justice finds that the failure of the Defendant to assert those
grounds in a prior petition constituted an abuse of the writ.

28 3. Pursuant to subsections 1 and 2, the petitioner has the burden
of pleading and proving specific facts that demonstrate:

- 1 (a) Good cause for the petitioner's failure to present the claim or
2 for presenting the claim again; and
3 (b) Actual prejudice to the petitioner.

4 Defendant filed a previous Petition for Writ of Habeas Corpus (Post-Conviction) on
5 five different occasions as outlined in the statement of the case. Consequently, the instant
6 petition filed on May 13, 2005, is a successive petition. To avoid the procedural default
7 under NRS 34.810, Defendant has the burden of pleading and proving specific facts that
8 demonstrate both good cause for his failure to present his claim in earlier proceedings and
9 actual prejudice. NRS 34.810(3); *Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710,
10 715-16 (1993); *Phelps v. Director*, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

11 In order to show good cause, Defendant has the burden of demonstrating that there
12 was an impediment external to the defense which prevented him from complying with the
13 state procedural default rules. *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946
14 (1994). Good cause for the delay is defined as "a substantial reason; one that affords a legal
15 excuse." *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). In order to
16 establish prejudice, a petitioner must demonstrate that the alleged errors worked to his actual
17 and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 959, 860 P.2d 710, 716
18 (1993). Defendant has failed to make such a showing of either good cause or prejudice in
19 his petition. Therefore, Defendant's petition should be dismissed pursuant to NRS 34.810.

20 **III.**
21 **DEFENDANT'S SENTENCE DOES NOT VIOLATE THE**
22 **CONSTITUTION**

23 Defendant argues that at his trial, both the prosecutor and trial counsel stipulated to
24 his guilt as to the crime charged, effectively pleading him guilty. He states that because of
25 this, his sentence cannot stand. However, this claim is belied by the record and Defendant's
26 sentence is therefore constitutional.¹

27 ¹ For his position, Defendant cites only *Blakely v. Washington*, 124 S. Ct. 2531 (2004). In that case, the defendant pled
28 guilty to kidnapping his wife. The facts in his plea permitted him to be sentenced to 53 months under Washington law.
However, the judge sentenced him to 90 months, because he found deliberate cruelty, which under Washington law
allowed him to depart from the standard sentence. The court held that the facts supporting deliberate cruelty were not
admitted by the defendant nor *found by the jury*. Because of this, the enhanced sentence violated the defendant's right to
a trial by jury. This case is not applicable to the Defendant's case, as he did not receive any sentence outside the

1 Defendant cites to his trial transcript,² where he claims his defense counsel stated
2 "what could you find him guilty of, these four counts, that leaves one count...that he had
3 sexual intercourse with her against her will, by force or fear, a sexual assault, more refined
4 way for rape. All right, and there was evidence of that taking the best events, because she
5 agreed it wasn't with her consent. That's evidence of rape. You could come back with a
6 verdict of guilty of sexual assault. Only one crime you can find him guilty of, that's sexual
7 assault. One count of having sexual intercourse with Tina Cage because to find him guilty
8 of the rest you have to find beyond a reasonable doubt [sic]."

9 In *People v. Bolin*, 18 Cal 4th 297 (1998), the defense counsel, during closing
10 argument, acknowledged some culpability of the defendant in a double homicide. *Id.* at 334.
11 The court held that "given the overwhelming evidence of defendant's guilt, including the
12 testimony of two eyewitnesses, the concession appears to be a reasonable trial tactic by
13 which counsel could urge the jury to return verdicts on the lesser included offenses..." *Id.* at
14 335. Likewise, in Defendant's case, it may have been a trial tactic for defense counsel to
15 concede there was enough evidence to convict Defendant of a sexual assault in hopes of
16 proving that the Defendant did not commit the other crimes charged. Because this was a
17 reasonable trial tactic, the Defendant's conviction is constitutional and must stand.

18 Further, Defendant claims that the prosecutor stipulated to all the elements of the
19 crimes charged in his closing argument. However, he is unable to cite to any improper
20 comments by the prosecutor. Indeed, it is the prosecutor's duty to argue Defendant's guilt
21 during the closing argument, and there is no evidence that the prosecutor did so improperly.
22 Defendant's conviction must stand.

23 ///

24 ///

25
26 statutory maximum as it was at the time he was convicted, and further the Defendant had a jury trial wherein the jury
determined all the facts.

27 ² Although Defendant cites to his trial transcript, he states that he does not have access to said transcript. Therefore, it is
28 unknown whether his quotations are accurate, or whether they are merely his memory of the trial from over 24 years
ago.

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CONCLUSION

For the foregoing reasons, the State respectfully requests this Court deny Defendant's petition.

DATED this 6th day of June, 2005.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/BECKY GOETTSCH for
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 7th day of June, 2005, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JOEL BURKETT, #16111
ELY STATE PRISON
POST OFFICE BOX 1989
ELY, NV 89301-7989

D. McDonald
Secretary for the District Attorney's
Office

HLS/AD/ddm

FILED

JOEL BURKETT #16111

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P.O. BOX 1983

Shirley L. Higgins
CLERK

ELY, NV 89301

DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT,
PETITIONER

CASE NO: 052190

DEPT NO: XII

VS.

THE STATE OF NEVADA,

RESPONDANT'S

PETITIONERS OPPOSITION TO THE
STATES RESPONSE AND MOTION TO DISMISS

COMES NOW, JOEL BURKETT PRO SE IN THE
ABOVE INTITLED MATTER AND HEREBY SUBMITS
THE ATTACHED POINTS AND AUTHORITIES IN
OPPOSITION TO RESPONDANTS RESPONSE AND
MOTION TO DISMISS THE PETITION FOR WRIT
OF HABEAS CORPUS (POST CONVICTION) THIS
MOTIONS IS MADE AND BASED UPON ALL PAPERS,
PENDING FILED HEREIN AND ATTACHED POINTS
AND AUTHORITIES.

COUNTY CLERK

JUN 15 2005

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POINTS AND AUTHORITIES

ARGUMENT

I.

RESPONDENTS RELY UPON N.R.S. 34, 726 IS SIMPLY WITHOUT MERIT, AND N.R.S. 34, 810 IN PELLEGRINI V. STATE 34 P.3D 519 (WV 2001) THE COURT HELD, "TO OVERCOME THE PROCEDURAL BARS OF N.R.S. 34, 726 AND N.R.S. 34, 810 ... PELLEGRINI HAD THE BURDEN OF DEMONSTRATING GOOD CAUSE FOR DELAY IN BRINGING HIS NEW CLAIMS OR FOR PRESENTING THE SAME CLAIMS AGAIN AND ACTUAL PREJUDICE," THE COURT WENT ON TO SAY THAT TO SHOW GOOD CAUSE PETITIONER MUST DEMONSTRATE THAT AN IMPEDIMENT EXTERNAL TO THE DEFENSE PREVENTED HIM FROM RAISING HIS CLAIM EARLIER AND THAT SUCH A SHOWING MIGHT BE DEMONSTRATED BY A SHOWING "THAT THE FACTUAL OR LEGAL BASIS FOR A CLAIM WAS NOT REASONABLY AVAILABLE" ID AT 537.

PETITIONER RESPECTFULLY SUBMITS THAT THE "LEGAL BASIS" OF HIS CLAIM WAS NOT REASONABLY AVAILABLE PRIOR

TO THE UNITED STATES SUPREME COURTS
RULING IN, BLAKEY V. WASHINGTON 124
S. CT 2531 (2004)

MOREOVER, "ACTUAL PREJUDICE" EXIST
WHEREAS HERE, PETITIONER HAS BEEN DENIED
HIS CONSTITUTIONAL RIGHT TO TRIAL BY
JURY IN VIOLATION OF THE SIXTH AMENDMENT,
SUCH ERROR IS NOT AMENABLE TO
HARMLESS ERROR ANALYSIS, SULLIVAN V.
LOUISIANA, 113 S. CT 2078 (1993)

2.

PETITIONERS SENTENCES
DO VIOLATE THE U.S. CONSTITUTION

RESPONDANT'S CLAIM ITS LEGAL FOR TRIAL
COUNSEL TO STIPULATE HIS CLIENTS GUILT
AND THAT THE PROSECUTOR INDEED, HAS
A DUTY TO DO SO.

THIS ARGUMENT MIGHT WELL BE TRUE
IN ANOTHER

3.

CASE. HOWEVER, WHEREAS HERE, THE JURY WAS INSTRUCTED;

"IF THE ATTORNEY'S STIPULATE OR AGREE TO THE EXISTENCE OF A FACT YOU MUST ACCEPT THE STIPULATION AS EVIDENCE AND REGARD THE FACT AS PROVED" (PETITIONERS JURY INSTRUCTION: 20, STATED IN PART)

SUCH STIPULATION BY EITHER TRIAL COUNSEL OR THE PROSECUTOR BECOMES A GUILTY PLEA AND THE UNITED STATES SUPREME COURT HAS LONG HELD THAT

"A DEFENDANT MUST ALWAYS MAKE THE ULTIMATE DECISION AS TO PLEADING GUILTY, WAIVING A JURY TRIAL..." JONES V. BARNES, 103 S.Ct. 3308 (1983)

MOREOVER, PETITIONER HAS NOT WAIVED HIS CONSTITUTIONAL RIGHTS AND SUCH A PLEA IS UNCONSTITUTIONAL, BOYKIN V. ALABAMA, 89 S.Ct. 1709 (1969)

RESPONDANTS ALSO CLAIM THE COURTS RULING IN BLAKELY V. WASHINGTON, 124 S.Ct 2531 (2004) IS NOT APPLICABLE TO PETITIONER IS ALSO WITHOUT MERIT.

PETITIONER IS MINDFUL THAT THE COURT ADHERE "NOT TO MERE OBITER DIETA, BUT RATHER TO THE WELL ESTABLISHED RATIONALE UPON WHICH THE COURT BASED THE RESULTS OF ITS EARLIER DECISIONS, WHEN AN OPINION ISSUES FOR THE COURT, IT IS NOT ONLY THE RESULT BUT ALSO THOSE PORTIONS OF THE OPINION NECESSARY TO THAT RESULT BY WHICH WE ARE BOUND" TYLER V. CAIN, 121 S.Ct ID AT 2489 (2001) IN BLAKELY (SUPRA) THE COURT BASED ITS RATIONALE UPON THE FACT THAT THE COURTS COULD NOT IMPOSE A SENTENCE IN VIOLATION OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION.

PETITIONER SUBMITS THAT IS JUST WHAT THE COURT HAS DONE WHEREAS HERE, HE HAS NOT PLEAD GUILTY NOR HAS THE CRIMES BEEN SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT.

3.

BLAKELY V. WASHINGTON
APPLIES RETROACTIVELY

THE CONSTITUTIONAL RIGHT TO TRIAL BY JURY IN BLAKELY V. WASHINGTON, 124 S. CT 2531 (2004) HAS BEEN MADE RETROACTIVE BY THE UNITED STATES SUPREME COURT, IN TYLER V. CAIN, 121 S. CT 2478 (2001). JUSTICE BREYER OBSERVED THAT THE UNITED STATES SUPREME COURT CAN MAKE A RULE RETROACTIVE OVER THE COURSE OF TWO CASES, JUSTICE THOMAS, DELIVERING THE OPINION OF THE COURT AGREED AND STATED; "WITH THE RIGHT COMBINATION OF HOLDINGS, THE COURT COULD DO THIS" TYLER (SUPRA) 121 S. CT ID AT 2484.

PETITIONER RESPECTFULLY SUBMITS THAT APPENDI V. NEW JERSEY 120 S. CT 2348 (2000) IS CASE ONE (1) AND THAT BLAKELY V. WASHINGTON, 124 S. CT 2531 (2004) IS CASE TWO (2) AND THE DENIAL OF THE SIXTH AMENDMENT RIGHT TO TRIAL BY JURY FOUND THEREIN IS FULLY RETROACTIVE.

6.

SUBJECT-MATTER JURISDICTION

PETITIONER SUBMITS THAT THE ISSUE RAISED HEREIN AS TO BEING SENTENCED IN VIOLATION OF THE SIXTH AMENDMENT RIGHT TO TRIAL BY JURY IS AN ISSUE OF SUBJECT-MATTER JURISDICTION AND CAN NEVER BE COLLATERAL.

PETITIONER CONTENDS THAT THE COURT IS ONE OF JURISDICTION AND THAT IT LACKS AUTHORITY TO IMPOSE A SENTENCE IN VIOLATION OF THE SIXTH AMENDMENT RIGHT TO TRIAL BY JURY.

IN BLAKEY V. WASHINGTON, 12 N. S. C. 2531 (2004) THE COURT HELD THAT

"THE JUDGES AUTHORITY TO SENTENCE DERIVES WHOLLY FROM THE DAYS 'Verdict' IS AT 2539 AND 'A SENTENCING JUDGE EXCEEDS HIS PROPER AUTHORITY WHEN HE IMPOSES PUNISHMENT THAT THE JURY VERDICT ALONE DOES NOT ALLOW, AS THE JURY HAS NOT FOUND ALL THE FACTS

WHICH THE LAW MAKES ESSENTIAL
TO THE PUNISHMENT" BLAKELY (SUPRA)

PETITIONER SUBMITS THAT IN LIGHT
OF JURY INSTRUCTION 20, TRIAL COUNSEL
AND THE PROSECUTOR'S STIPULATIONS
THE JURY HAS NOT FOUND ALL THE
FACTS WHICH THE LAW MAKES
ESSENTIAL TO HIS PUNISHMENT.
AND "BECAUSE SUBJECT MATTER
JURISDICTION INVOLVES A COURTS POWER
TO HEAR A CASE, IT CAN NEVER
BE FORFEITED OR WAIVED"

U.S. V. COTTON, 122 S. CT 1781 (2002)
LIKEWISE, "SUBJECT MATTER JURISDICTION
IS NOT WAIVABLE" COLWELL V. STATE,
59 P.3D 463 (W.V. 2002)

PETITIONER RESPECTFULLY SUBMITS THAT
THE SIXTH AMENDMENT RIGHT TO
TRIAL BY JURY FOUND IN BLAKELY,
(SUPRA) GOES TO THE VERY CORE
OF THE COURTS AUTHORITY TO
PUNISH AT ALL AND IS THEREFORE
AN ISSUE OF SUBJECT MATTER
JURISDICTION.

CONCLUSION

FOR THE REASONS SET FORTH HEREIN
PETITIONER RESPECTFULLY REQUEST THE
COURT DENY RESPONDENTS MOTION TO
DISMISS THE PETITION FOR WRIT OF
HABEAS CORPUS (POST CONVICTION).

DATED THIS 13TH DAY OF JUNE, 2005

RESPECTFULLY SUBMITTED,

by Joel Burkett Prose
JOEL BURKETT PROSE

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND
FORGOING, WAS MADE THIS 13TH DAY OF JUNE, 2005
BY DEPOSITING A COPY IN THE U.S. MAIL POSTAGE
PRE-PAID TO:

H. LEON SIMON

DEPUTY DISTRICT ATTORNEY

200 S. THIRD ST STE 701

P.O. Box 552212

LAS VEGAS, NV

89155-2212

Joel Burkett Prose
JOEL BURKETT PROSE

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Shirley A. [Signature]
CLERK

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 WILLIAM KEPHART
6 Chief Deputy District Attorney
7 Nevada Bar #3649
8 200 South Third Street
9 Las Vegas, Nevada 89155-2212
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 Joel Burkett,
12 #0609533

13 Defendant.

CASE NO: C52190

DEPT NO: XII

14 FINDINGS OF FACT, CONCLUSIONS OF
15 LAW AND ORDER

16 DATE OF HEARING: July 5, 2005
17 TIME OF HEARING: 9:15 A.M.

18 THIS CAUSE having come on for hearing before the Honorable Michelle Leavitt,
19 District Judge, on the 5 day of July, 2005, the Petitioner not being present, Proceeding In
20 Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney,
21 by and through WILLIAM KEPHART, Chief Deputy District Attorney, and the Court
22 having considered the matter, including briefs, transcripts, arguments of counsel, and
23 documents on file herein, now therefore, the Court makes the following findings of fact and
24 conclusions of law:

25 FINDINGS OF FACT

26 1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by
27 Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime
28 (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use of Deadly

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1 Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual
2 Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual Assault (Felony - NRS
3 200.364, 200.366).

4 2. Defendant was convicted by a jury on May 4, 1981. The original Judgment of
5 Conviction was filed on July 29, 1981, however, an Amended Judgment of Conviction was
6 filed on February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for
7 Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of
8 a Crime, to be served consecutively; as to Count II, Life with Possibility of Parole and an
9 additional term of Life with Possibility of Parole for Use of a Deadly Weapon in
10 Commission of a Crime, to be served consecutively, Count II to be served consecutive to
11 Count I; as to Count III, Life with Possibility of Parole; as to Count IV, Life with the
12 Possibility of Parole, Count IV to be served consecutive to Count III; Counts III and IV to be
13 served concurrent to the sentences imposed in Counts II.

14 3. Defendant appealed his judgment of conviction and the Supreme Court of
15 Nevada filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed
16 on May 16, 1983. Defendant then filed a petition for writ of habeas corpus on February 2,
17 1994, which was granted in part and denied in part. Defendant filed a second petition for
18 writ of habeas corpus on June 7, 1999. Defendant's petition was denied on August 12, 1999.
19 Defendant appealed the denial, and it was affirmed by the Nevada Supreme Court.

20 4. Defendant filed a third petition for writ of habeas corpus on November 19,
21 2001. On February 14, 2002, Defendant's petition was denied. Soon thereafter, Defendant
22 filed an appeal to the Nevada Supreme Court challenging the district court's order denying
23 the petition he filed on February 14, 2002.

24 5. On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
25 remand. In this order the Nevada Supreme Court's remand was limited for further
26 proceedings on the issue of whether Defendant was denied any rights or protections relating
27 to certification available to Nevada prisoners. On May 14, 2003, the district court denied
28 Defendant's claim on remand.

6. On February 19, 2003, Defendant filed a fourth petition for writ of habeas corpus. The district court denied the petition and the Defendant again appealed to the Supreme Court. The Nevada Supreme Court affirmed.

7. On September 1, 2004, Defendant filed a fifth petition for writ of habeas corpus. The petition was denied on October 19, 2004.

8. On May 20, 2005, Defendant filed a sixth petition for writ of habeas corpus. The State filed an opposition on June 6, 2005. The Court heard arguments on Defendant's petition on July 5, 2005.

9. The Court finds the petition is time barred.

10. The Court finds Defendant has not established good cause to overcome the time bar.

11. The Court finds the petition is successive.

12. The Court finds there is no good cause why Defendant did not raise these issues in an earlier petition.

13. The Court finds there will be no prejudice to Defendant if the petition is denied.

CONCLUSIONS OF LAW

14. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, *within 1 year after the supreme court issues its remittitur*. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

- a) that the delay is not the fault of the petitioner; and
- b) that dismissal of the petition as untimely will unduly prejudice the petitioner.

See NRS 34.726 (Emphasis added).

15. The statute clearly states that the burden of overcoming applicability of the time bar is on the petitioner. The Nevada Supreme Court has previously defined good cause as "an impediment external to the defense which prevented [the petitioner] from complying with the state procedural rules." *Crump v. Warden*, 113 Nev. 293, 934 P.2d 247, 252 (1997); see also *Colley v. State*, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), quoting *State v.*

1 *Estencion*, 625 P.2d 1040, 1042 (Haw. 1981)(“Good cause” under NRS 34.726 “means a
2 substantial reason; one that affords a legal excuse.”).

3 16. The Nevada Supreme Court has justified the one year rule with regard to the
4 filing of post-conviction petitions in *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989)
5 when it upheld the district court’s dismissal of a petition based on NRS 34.726. The Court
6 reasoned that:

7 At some point, we must give finality to criminal cases. *Darnell*
8 *v. State*, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982). Should
9 we allow Colley’s post-conviction relief proceeding to go
10 forward we would encourage offenders to file groundless
11 petitions for federal habeas corpus relief, secure in the
12 knowledge that a petition for post-conviction relief remained
indefinitely available to them. This situation would prejudice
both the accused and the State since the interest of both the
petitioner and the government are best served if post-conviction
claims are raised while the evidence is still fresh. (citations
omitted).

13 *Id.* The Court also noted that the District Court’s denial of the defendant’s petition based on
14 its lack of timeliness was necessary “for the orderly administration of justice.” *Id.*

15 17. A finding of prejudice is required to avoid the time bar of NRS 34.726. In
16 regard to this requirement the Nevada Supreme Court has held:

17 [R]equiring prejudice to excuse the filing of untimely petitions
18 helps to ensure that claims are raised before evidence is lost or
19 memories fade. Without such limitations on the availability of
20 post-conviction remedies, prisoners could petition for relief in
perpetuity and thus abuse post-conviction remedies. In addition,
meritless, successive and untimely petitions clog the court
system and undermine the finality of convictions. A showing of
prejudice is thus essential to prevent the filing of successive and
merit less petitions for post-conviction relief.

21 *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944 (1994).

22 18. Pertinent portions of NRS 34.810 state:

23 2. A second or successive petition must be dismissed if the judge
24 or justice determines that it fails to allege new or different
25 grounds for relief and that the prior determination was on the
merits or, if new and different grounds are alleged, the judge or
justice finds that the failure of the Defendant to assert those
grounds in a prior petition constituted an abuse of the writ.

26 3. Pursuant to subsections 1 and 2, the petitioner has the burden
of pleading and proving specific facts that demonstrate:

- 27 (a) Good cause for the petitioner’s failure to present the claim or
28 for presenting the claim again; and
(b) Actual prejudice to the petitioner.

19. To avoid the procedural default under NRS 34.810, Defendant has the burden

1 of pleading and proving specific facts that demonstrate both good cause for his failure to
2 present his claim in earlier proceedings and actual prejudice. NRS 34.810(3); *Hogan v.*
3 *Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); *Phelps v. Director*, 104 Nev.
4 656, 659, 764 P.2d 1303, 1305 (1988).

5 20. In order to show good cause, Defendant has the burden of demonstrating that
6 there was an impediment external to the defense which prevented him from complying with
7 the state procedural default rules. *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946
8 (1994). Good cause for the delay is defined as "a substantial reason; one that affords a legal
9 excuse." *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). In order to
10 establish prejudice, a petitioner must demonstrate that the alleged errors worked to his actual
11 and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 959, 860 P.2d 710, 716
12 (1993).

13 ORDER

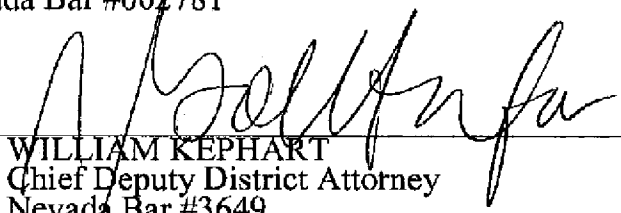
14 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
15 Relief shall be, and it is, hereby dismissed.

16 DATED this 21 day of July, 2005.

17 
18 DISTRICT JUDGE
19 

20 DAVID ROGER
21 DISTRICT ATTORNEY
22 Nevada Bar #002781

23 BY

24 
25 WILLIAM KEPHART
26 Chief Deputy District Attorney
27 Nevada Bar #3649
28

HLS/AD/ddm

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FILED

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

JUL 26 2 58 PM '05

Shirley B. Parraguirre
CLERK

5 JOEL BURKETT,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: C52190
Dept No: XII

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on July 25, 2005, the court entered a decision or order in this matter, a true
12 and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on July 26, 2005.

16 SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

17 By: *Robin J. Mills*

18 Robin J. Mills, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 26 day of July 2005, I placed a copy of this Notice of Entry of Decision and
21 Order in:

22 The bin(s) located in the Office of the County Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division

- 24 ☒ The United States mail addressed as follows:
25 Joel Burkett # 16111
26 P.O. Box 1983
Ely, NV 89301

27 *Robin J. Mills*
28 Robin J. Mills, Deputy Clerk

ORIGINAL

FILED

2005 JUL 25 A 9:09

Shelly [Signature]
CLERK

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **WILLIAM KEPHART**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #3649**
8 **200 South Third Street**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 455-4711**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **Joel Burkett,**
16 **#0609533**

17 **Defendant.**

CASE NO: C52190

DEPT NO: XII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: July 5, 2005

TIME OF HEARING: 9:15 A.M.

18 **THIS CAUSE** having come on for hearing before the Honorable Michelle Leavitt,
19 **District Judge,** on the 5 day of July, 2005, the Petitioner not being present, Proceeding In
20 **Forma Pauperis,** the Respondent being represented by **DAVID ROGER,** District Attorney,
21 **by and through WILLIAM KEPHART,** Chief Deputy District Attorney, and the Court
22 **having considered the matter,** including briefs, transcripts, arguments of counsel, and
23 **documents on file herein,** now therefore, the Court makes the following findings of fact and
24 **conclusions of law:**

FINDINGS OF FACT

25 **1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by**
26 **Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime**
27 **(Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use of Deadly**
28

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COUNTY CLERK

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JUL 25 2005

1 Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual
2 Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual Assault (Felony - NRS
3 200.364, 200.366).

4 2. Defendant was convicted by a jury on May 4, 1981. The original Judgment of
5 Conviction was filed on July 29, 1981, however, an Amended Judgment of Conviction was
6 filed on February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for
7 Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of
8 a Crime, to be served consecutively; as to Count II, Life with Possibility of Parole and an
9 additional term of Life with Possibility of Parole for Use of a Deadly Weapon in
10 Commission of a Crime, to be served consecutively, Count II to be served consecutive to
11 Count I; as to Count III, Life with Possibility of Parole; as to Count IV, Life with the
12 Possibility of Parole, Count IV to be served consecutive to Count III; Counts III and IV to be
13 served concurrent to the sentences imposed in Counts II.

14 3. Defendant appealed his judgment of conviction and the Supreme Court of
15 Nevada filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed
16 on May 16, 1983. Defendant then filed a petition for writ of habeas corpus on February 2,
17 1994, which was granted in part and denied in part. Defendant filed a second petition for
18 writ of habeas corpus on June 7, 1999. Defendant's petition was denied on August 12, 1999.
19 Defendant appealed the denial, and it was affirmed by the Nevada Supreme Court.

20 4. Defendant filed a third petition for writ of habeas corpus on November 19,
21 2001. On February 14, 2002, Defendant's petition was denied. Soon thereafter, Defendant
22 filed an appeal to the Nevada Supreme Court challenging the district court's order denying
23 the petition he filed on February 14, 2002.

24 5. On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
25 remand. In this order the Nevada Supreme Court's remand was limited for further
26 proceedings on the issue of whether Defendant was denied any rights or protections relating
27 to certification available to Nevada prisoners. On May 14, 2003, the district court denied
28 Defendant's claim on remand.

1 6. On February 19, 2003, Defendant filed a fourth petition for writ of habeas
2 corpus. The district court denied the petition and the Defendant again appealed to the
3 Supreme Court. The Nevada Supreme Court affirmed.

4 7. On September 1, 2004, Defendant filed a fifth petition for writ of habeas
5 corpus. The petition was denied on October 19, 2004.

6 8. On May 20, 2005, Defendant filed a sixth petition for writ of habeas corpus.
7 The State filed an opposition on June 6, 2005. The Court heard arguments on Defendant's
8 petition on July 5, 2005.

9 9. The Court finds the petition is time barred.

10 10. The Court finds Defendant has not established good cause to overcome the
11 time bar.

12 11. The Court finds the petition is successive.

13 12. The Court finds there is no good cause why Defendant did not raise these
14 issues in an earlier petition.

15 13. The Court finds there will be no prejudice to Defendant if the petition is
16 denied.

17 CONCLUSIONS OF LAW

18 14. Unless there is good cause shown for delay, a petition that
19 challenges the validity of a judgment or sentence must be filed
20 within 1 year after entry of the judgment of conviction or, if an
21 appeal has been taken from the judgment, *within 1 year after the*
22 *supreme court issues its remittitur*. For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:
a) that the delay is not the fault of the petitioner; and
b) that dismissal of the petition as untimely will unduly prejudice
the petitioner.

23 *See NRS 34.726 (Emphasis added).*

24 15. The statute clearly states that the burden of overcoming applicability of the
25 time bar is on the petitioner. The Nevada Supreme Court has previously defined good cause
26 as "an impediment external to the defense which prevented [the petitioner] from complying
27 with the state procedural rules." *Crump v. Warden*, 113 Nev. 293, 934 P.2d 247, 252 (1997);
28 *see also Colley v. State*, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), *quoting State v.*

1 *Estencion*, 625 P.2d 1040, 1042 (Haw. 1981)("Good cause" under NRS 34.726 "means a
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3 16. The Nevada Supreme Court has justified the one year rule with regard to the
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5 when it upheld the district court's dismissal of a petition based on NRS 34.726. The Court
6 reasoned that:

7 At some point, we must give finality to criminal cases. *Darnell*
8 *v. State*, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982). Should
9 we allow Colley's post-conviction relief proceeding to go
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indefinitely available to them. This situation would prejudice
both the accused and the State since the interest of both the
petitioner and the government are best served if post-conviction
claims are raised while the evidence is still fresh. (citations
omitted).

13 *Id.* The Court also noted that the District Court's denial of the defendant's petition based on
14 its lack of timeliness was necessary "for the orderly administration of justice." *Id.*

15 17. A finding of prejudice is required to avoid the time bar of NRS 34.726. In
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18 helps to ensure that claims are raised before evidence is lost or
19 memories fade. Without such limitations on the availability of
20 post-conviction remedies, prisoners could petition for relief in
perpetuity and thus abuse post-conviction remedies. In addition,
meritless, successive and untimely petitions clog the court
system and undermine the finality of convictions. A showing of
prejudice is thus essential to prevent the filing of successive and
merit less petitions for post-conviction relief.

21 *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d 944 (1994).

22 18. Pertinent portions of NRS 34.810 state:

23 2. A second or successive petition must be dismissed if the judge
24 or justice determines that it fails to allege new or different
25 grounds for relief and that the prior determination was on the
merits or, if new and different grounds are alleged, the judge or
justice finds that the failure of the Defendant to assert those
grounds in a prior petition constituted an abuse of the writ.

26 3. Pursuant to subsections 1 and 2, the petitioner has the burden
of pleading and proving specific facts that demonstrate:

- 27 (a) Good cause for the petitioner's failure to present the claim or
for presenting the claim again; and
28 (b) Actual prejudice to the petitioner.

19. To avoid the procedural default under NRS 34.810, Defendant has the burden

1 of pleading and proving specific facts that demonstrate both good cause for his failure to
2 present his claim in earlier proceedings and actual prejudice. NRS 34.810(3); *Hogan v.*
3 *Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); *Phelps v. Director*, 104 Nev.
4 656, 659, 764 P.2d 1303, 1305 (1988).

5 20. In order to show good cause, Defendant has the burden of demonstrating that
6 there was an impediment external to the defense which prevented him from complying with
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8 (1994). Good cause for the delay is defined as "a substantial reason; one that affords a legal
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11 and substantial disadvantage. *Hogan v. Warden*, 109 Nev. 952, 959, 860 P.2d 710, 716
12 (1993).

13 ORDER

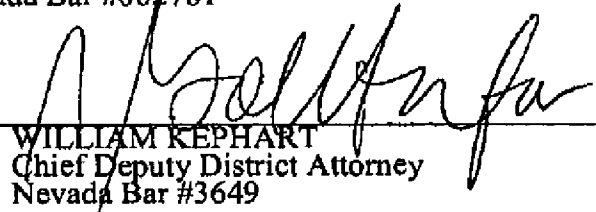
14 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
15 Relief shall be, and it is, hereby dismissed.

16 DATED this 21 day of July, 2005.

17 
18 DISTRICT JUDGE
19 

20 DAVID ROGER
21 DISTRICT ATTORNEY
22 Nevada Bar #007781

23 BY

24 
25 WILLIAM KEPHART
26 Chief Deputy District Attorney
27 Nevada Bar #3649
28

HLS/AD/ddm

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Joel Burkett #16111
P.O.Box 1989
Ely, NV 89301

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FILED

AUG 9 2 19 PM '05

Shirley L. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

Joel Burkett,
Petitioner

Case No: C52190
Dept. No: 12

VS.

THE STATE OF NEVADA
RESPONDANTS

NOTICE OF APPEAL

Comes now, Joel Burkett Pro Se in the above entitled matter and does hereby give notice that he intends to seek an appeal to the Nevada Supreme Court for the denial of the above entitled Petition for writ of Habeas Corpus (Post-Conviction) by this Court on the 25th day of July 2005.

Dated this 4th day of August 2005.

Respectfully Submitted,

By: *Joel Burkett*
Joel Burkett Pro Se

MAILED 11 AM '05

CLERK'S OFFICE

CLERK'S OFFICE

S11

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 4th day of August 2005, by depositing a copy in the U.S. mail postage pre-paid to:

H. Leon Simon
Deputy District Attorney
200 S. Third St. STE 701
P.O.Box 552212
Las Vegas, NV 89155-2212


Joel Burkett Pro Se

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4 *Shirley B. Rasmussen*
5 CLERK

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12 JOEL BURKETT,

13 Defendant(s),

) Case No: C52190

) Dept No: XII

14 CASE APPEAL STATEMENT

15 1. Appellant(s): JOEL BURKETT

16 2. Judge: MICHELLE LEAVITT

17 3. All Parties, District Court:

18 Plaintiff, THE STATE OF NEVADA

19 Defendant(s), JOEL BURKETT

20 4. All Parties, Appeal:

21 Appellant(s), JOEL BURKETT

22 Respondent, THE STATE OF NEVADA

23 5. Appellate Counsel:

24 *Appellant/Proper Person*
25 Joel Burkett #16111
26 P.O. Box 1989
27 Ely, NV 89301

Respondent
David Roger, District Attorney
200 S. 3rd St.
Las Vegas NV 89101
(702) 455-4711

1 6. District Court Attorney, N/A

2 7. On Appeal, N/A

3 8. Forma Pauperis, Granted

4 9. Date Commenced in District Court: 01/16/81

5 Dated This 10 day of August 2005.

6 Shirley B. Parraguirre, Clark County Clerk

7
8 By:



9 Robin J. Mills, Deputy Clerk
10 200 South Third Street
11 PO Box 551601
12 Las Vegas, Nevada 89155-1601
13 (702) 455-4409
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IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 45769

2005 DEC 16 1 A 10:48

District Court Case No. C52190

Shirley B. Paragon
CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 15th day of November, 2005.

IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 13th day of December, 2005.

Janette M. Bloom, Supreme Court Clerk

By: *J. Richards*
Chief Deputy Clerk

RECEIVED

DEC 15 2005

COUNTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45769

FILED

NOV 15 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On July 29, 1981, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of first degree kidnapping with the use of a deadly weapon, and two counts of sexual assault. The district court sentenced appellant to serve a period totaling two consecutive terms of life in the Nevada State Prison with the possibility of parole and fixed terms totaling thirty years. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on May 10, 1983.

On August 21, 1986, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition. This court dismissed appellant's subsequent appeal.²

¹Burkett v. State, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983).

²Burkett v. Warden, Docket No. 19446 (Order Dismissing Appeal, November 21, 1989).

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SUPREME COURT
OF
NEVADA

(O) 1947A

05-22405

On February 2, 1994, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant alleged that there was a discrepancy between the district court's oral pronouncement of his sentence and the written judgment of conviction. On February 28, 1994, the district court corrected the error and filed an amended judgment of conviction.

On June 7, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 18, 1999, the district court denied appellant's petition. This court affirmed the order of the district court.³

On November 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On February 14, 2002, the district court denied appellant's petition. On appeal, this court reversed and remanded the case to the district court on the sole issue of whether appellant was denied certification pursuant to NRS 213.1214 only because he was housed outside of Nevada and not under observation by a Nevada institution.⁴ On May 14, 2003, the district court denied appellant's claim on remand.

On February 19, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

³Burkett v. State, Docket No. 34767 (Order of Affirmance, July 10, 2001).

⁴Burkett v. State, Docket No. 39400 (Order of Reversal and Remand, February 6, 2003).

May 15, 2003, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.⁵

On September 1, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 1, 2004, the district court denied the petition. No appeal was taken.

On May 13, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 25, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than twenty-two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁶ Moreover, appellant's petition was successive.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

Appellant argued that his sentences were unconstitutional because the jury was denied the opportunity to make a finding on the charges of sexual assault and first degree kidnapping due to an alleged

⁵Burkett v. State, Docket No. 41504 (Order of Affirmance, March 5, 2004).

⁶See NRS 34.726(1).

⁷See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁸See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

stipulation by his trial counsel and the State to the facts of the crimes of sexual assault and first degree kidnapping. In an attempt to excuse his procedural defects, appellant argued that he could not have raised this claim until the United States Supreme Court decided Blakely v. Washington.⁹

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause. The holding in Blakely is inapposite, and therefore, it does not provide good cause for appellant's extremely tardy filing.¹⁰ The district court imposed sentences within the ranges permitted by the jury's verdicts.¹¹ Appellant's claim of ineffective assistance of counsel was reasonably available to appellant to raise within the statutory time limit.¹² Therefore, we affirm the order of the district court.

⁹542 U.S. 296 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant).


¹⁰See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


¹¹1967 Nev. Stat., ch. 211, § 59, at 470-71 (NRS 200.380); 1977 Nev. Stat., ch. 598, § 3, at 1626-27 (NRS 200.366); 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (NRS 200.320).

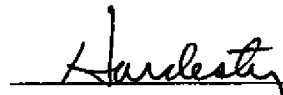
¹²See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (holding that all claims reasonably available within the one year deadline must be raised in a timely petition).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁴


Becker, C.J.


Gibbons, J.


Hardesty, J.

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 45769

District Court Case No. C52190

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: December 13, 2005

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Michelle Leavitt, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Joel Burkett

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on 12-15-05.

NORRETA CALDWELL
Deputy County Clerk

05-23309

Casc No. C052190

Dept. No. XII

4
FILED

JUL 07 2011

John A. Blum
CLERK OF COURT

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

JOEL BURKETT
Petitioner,

v.

WARDEN, ELY STATE PRISON
Respondent.

81C052190
PWIC
Petition for Writ of Habeas Corpus
1509419



**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED

JUL 07 2011

CLERK OF THE COURT

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Ely State Prison, White Pine
County, Nevada

2. Name and location of court which entered the judgment of conviction under attack: Eighth Judicial District Court, Clark County, Nevada

3. Date of judgment of conviction: 1981

4. Case number: 652190

5. (a) Length of sentence: TWO FIFTEEN YEAR TERMS AND FOUR
LIFE TERMS WITH PAROLE

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No ☒

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: ROBBERY w/WEAPON;
FIRST DEGREE KIDNAPPING w/WEAPON, SEXUAL ASSAULT

8. What was your plea? (check one):

(a) Not guilty ☒ (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒ (b) Judge without a jury _____

11. Did you testify at the trial? Yes ☒ No _____

12. Did you appeal from the judgment of conviction? Yes ☒ No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT

(b) Case number or citation: DO NOT HAVE

(c) Result: DENIED

(d) Date of result: 1983

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: _____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 1ST JUDICIAL DISTRICT COURT

(2) Nature of proceeding: WRIT OF HABEAS CORPUS

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result: DENIED

(6) Date of result: AUG 5, 1988

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: OPINION

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A

(2) Nature of proceeding: _____

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

GROUND ONE AND TWO, NEW ISSUES, NO TREATMENT OF SENTENCES AND FALSIFYING PAROLE REPORTS, ALSO NEW 3, 4

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

YES, BOTH ISSUES ARE NEW TO THE TREATMENT OF SENTENCES BY PRISON AND PAROLE BOARD AND FALSIFYING PAROLE REPORTS ALSO NEW 3, 4.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☒

If yes, state what court and case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully, summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: DENIAL OF DUE PROCESS AND EX POST FACTO
U.S. CONST. 1, 9, C13 (EX POST FACTO) U.S. CONST. AMEND XIV (DUE PROCESS)
NEV. CONST. ART 1, 5 (EX POST FACTO) NEVADA CONST. ART 1, 8 C15 (DUE PROCESS)

Supporting FACTS (Tell your story briefly without citing cases or law.): THE NEVADA DEPARTMENT OF CORRECTIONS AND PAROLE BOARD ARE MISCALCULATING MY GOOD TIME CREDITS AND SENTENCES FOR PAROLE ELIGIBILITY. THEY ARE APPLYING NEW LAWS RETROACTIVELY TO MY DETRIMENT.
SEE FILED HEREFORTH WITH MOTION IN SUPPORT OF PETITIONS FOR WRIT OF HABEAS CORPUS

(b) Ground Two: DENIAL OF (DUE PROCESS) U.S. CONST. AMEND XIV;
NEV. CONST. ART 1, 8, C15 (DUE PROCESS)

Supporting FACTS (Tell your story briefly without citing cases or law.): THE NEV. DEPARTMENT OF PRISONS IS FAIRIFYING BURKETT'S PAROLE REPORTS CLAIMING A VIOLENT DISCIPLINARY HISTORY; PRIOR CONVICTIONS; GANG MEMBERSHIP; REPEATED ESCAPES/ATTEMPTS FROM PRISON WITH VIOLENCE, ALL IN EFFORT TO RAISE A HIGHER PAROLE RISK FACTOR SCORE SO BURKETT WILL BE DENIED PAROLE.

(c) Ground Three: DENIAL OF DUE PROCESS, U.S. CONST. AMEND XIV;
NEV. CONST. ART. 1, 8 C15

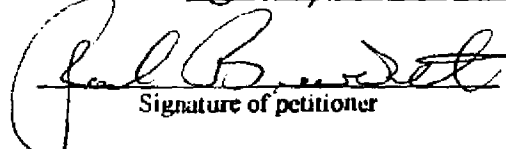
Supporting FACTS (Tell your story briefly without citing cases or law.): BURKETT WAS PLACED ON H.R.P. STATUS (HIGH RISK POTENTIAL) UPON HIS RETURN TO NEV. IN 2000. NO AUTHORITY EXISTED PRIOR TO 2003 TO PLACE ANY INMATE ON H.R.P. BURKETT HAS REMAINED ON H.R.P. SINCE HIS RETURN AND ITS BEING USED TO DENY PAROLE. MOREOVER THE REASON FOR HIS PLACEMENT ON H.R.P. IS A LIE.

(d) Ground Four: DENIAL OF DUE PROCESS, U.S. CONST. AMEND XIV;
NEV. CONST. ART. 1, 8 C15

Supporting FACTS (Tell your story briefly without citing cases or law.): CORRECTIONAL OFFICIALS ISSUING FALSE MISCONDUCT REPORTS IN RETALIATION FOR BURKETT HAVING WENT TO THE ATTORNEY GENERAL ON REPRESENT E.K. MCDANIEL

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 5th day of the month of July of the year 2011.


Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof: that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

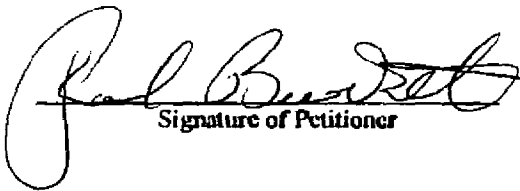
CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to N.R.C.P. 5(b), that on this 5th day of the month of July, of the year 2011 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

WARDEN, ELIXSTATE PRISON
Respondent prison or jail official
P.O. Box 1989
ELY, NV 89301
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

CLARK COUNTY D.A.
District Attorney of County of Conviction
200 S. THIRD ST
LAS VEGAS, NV 89155
Address

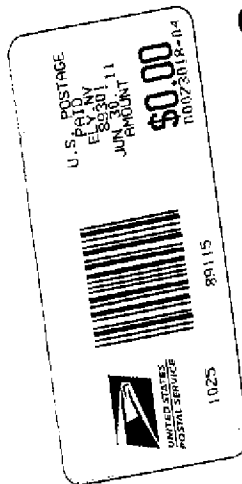
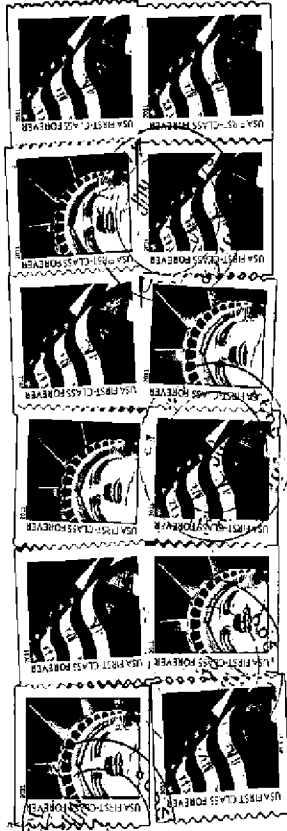

Signature of Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: PETITION FOR WRIT OF HABEAS
Corpus Post Conviction, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 5, DAY OF, July, 2011.

SIGNATURE: Joe L. Burkett

INMATE NAME PRINTED: JOEL BURKETT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301



Box 1611

Box 1489

EN 81501

UNIT
Visit
Label

JOEL BURKETT #16111

P.O. Box 1989

Ely NV 89301

FILED

JUL 07 2011

CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT
FOR THE STATE OF NEVADA, COUNTY OF CLARK,

JOEL BURKETT,

CASE NO.

052190

PETITIONER

XII

VS.

NOTICE TO THE COURT

WARDEN, ELY STATE PRISON,

RESPONDENT,

81C052190
NOTC
Notice
1509464



JOEL BURKETT, PRO SE PETITIONER IN THE ABOVE
ENTITLED MATTER, DOES HEREBY GIVE NOTICE
THAT IN HIS MOTION IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS, HE IS UNABLE TO
ARGUE GROUND TWO OF THE PETITION, "FAISIFYING
PAROLE BOARD REPORTS" AS THE RESPONDENT
REFUSES TO PROVIDE BURKETT WITH COPIES
OF HIS PAROLE REPORTS.

DATED THIS 5TH DAY OF JULY, 2011.

RECEIVED

JUL 07 2011

CLERK OF THE COURT

RESPECTFULLY SUBMITTED,

JOEL BURKETT PRO SE

3

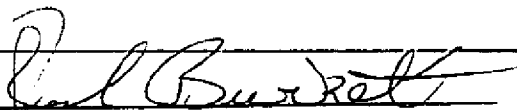
CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(b) THAT
I AM THE PETITIONER IN THE FOREGOING "NOTICE TO
THE COURT" AND THAT ON THIS 5TH DAY OF JULY 2011,
I DID SERVE A TRUE AND CORRECT COPY OF
THE ABOVE MENTIONED DOCUMENT, BY GIVING IT TO
A PRISON OFFICIAL AT THE ELY STATE PRISON
TO DEPOSIT IN THE U.S. MAIL, POSTAGE PREPAID,
AND ADDRESSED AS FOLLOWS;

WARDEN, ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY GENERAL
HEROES MEMORIAL BUILDING
100 NORTH CARSON STREET
CARSON CITY, NV 89710-4212

CLARK COUNTY D.A.
200 S. THIRD ST.
LAS VEGAS, NV
89155


JOEL BURKETT PRO SE

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: NOTICE TO THE COURT

_____, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 5, DAY OF, July, 2011.

SIGNATURE: Joe Burkett

INMATE NAME PRINTED: JOE BURKETT
INMATE NUMBER: 1611
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

JOEL BURKETT #16111

P.O. BOX 1989

ELY, NV 89301

FILED

JUL 07 2011

Shirley
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT
COURT, CLARK COUNTY, NEVADA

JOEL BURKETT

PETITIONER,

VS.

WARDEN, ELY STATE PRISON

RESPONDENT

CASE NO: C052190

XII

MOTION IN SUPPORT OF
PETITION FOR WRIT OF

HABEAS CORPUS

81C052190
MOT
Motion
1509476



COMES NOW, JOEL BURKETT, PRO SE PETITIONER
IN THE ABOVE ENTITLED MATTER WITH
HIS MOTION IN SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS. THIS MOTION IS MADE AND
BASED UPON THE ATTACHED MEMORANDUM
AND POINTS OF AUTHORITY, AS WELL AS
ALL PLEADINGS, DOCUMENTS AND PAPERS ON
FILE HEREIN.

DATED THIS 5TH DAY OF JULY 2011,

RECEIVED

JUL 07 2011

CLERK OF THE COURT

RESPECTFULLY SUBMITTED,

Joel Burkett
PRO SE PETITIONER

MEMORANDUM AND POINTS OF AUTHORITY

STATEMENT OF SENTENCE

JOEL BURKETT, (HEREAFTER BURKETT) WAS SENTENCED TO THE FOLLOWING TERMS OF IMPRISONMENT;

COUNT I, FIFTEEN YEARS FOR ROBBERY AND AN ADDITIONAL FIFTEEN YEARS FOR USE OF A DEADLY WEAPON, TO BE SERVED CONSECUTIVELY;

COUNT II, LIFE WITH THE POSSIBILITY OF PAROLE FOR FIRST DEGREE KIDNAPPING AND AN ADDITIONAL LIFE TERM WITH THE POSSIBILITY OF PAROLE FOR THE USE OF A DEADLY WEAPON, TO BE SERVED CONSECUTIVELY, COUNT II IS TO BE SERVED CONSECUTIVELY TO COUNT I;

COUNT III, LIFE WITH THE POSSIBILITY OF PAROLE;

COUNT IV, LIFE WITH THE POSSIBILITY OF PAROLE;

COUNT III AND IV TO BE SERVED CONSECUTIVELY TO EACH OTHER BUT CONCURRENT TO THE SENTENCES IMPOSED IN COUNT II.

DUE PROCESS AND EX POST FACTO
VIOLATION

IN BIEFEATH V. WARDEN, 593 P.2d 51 (NEV. 1979);
DIRECTOR, PRISONS V. BIEFEATH, 621 P.2d 1113 (NEV. 1981)
THE NEVADA SUPREME COURT HELD: "THAT A
SENTENCE FOR A PRIMARY OFFENSE
AND THE ENHANCEMENT SENTENCE FOR
THE USE OF A DEADLY WEAPON IN THE
COMMISSION OF THE PRIMARY OFFENSE
SHOULD BE TREATED AS A SINGLE
SENTENCE FOR PURPOSES OF COMPUTING
GOOD TIME CREDITS AND PAROLE
ELIGIBILITY."

THE COURT REAFFIRMED ITS HOLDING IN,
KREIDEL V. STATE, 678 P.2d 1157 (NEV. 1984)

BURKEIT WAS SENTENCED ON JUNE 2ND, 1981.
THEREFORE, BIEFEATH I, BIEFEATH II, AND
KREIDEL (SUPRA) ARE CONTROLLING FOR THE
PURPOSES OF COMPUTING GOOD TIME CREDITS
AND PAROLE ELIGIBILITY. SEE STEVENS V.
WARDEN, 969 P.2d 945 (NEV. 1998).
THE NEVADA DEPARTMENT OF PRISONS AND
THE NEVADA STATE PAROLE BOARD

ARE TREATING BURKETT'S PRIMARY AND ENHANCEMENT SENTENCES IN COUNT 1 (1ST DEGREE KIDNAPING AND USE OF A DEAD WEAPON) AS SEPARATE TERMS PURSUANT TO THE COURTS HOLDING IN, NEVADA DEPARTMENT OF PRISONS V. BOWEN, 103 NEV, 477, 745 P.2D 697 (NEV 1987) BURKETT CONTENTS THAT APPLYING THE BOWEN (SUPRA) DECISION TO HIM IS DETRIMENTAL AND VIOLATES JUDICIAL EX POST FACTO PROHIBITION AND DUE PROCESS, THE NEVADA SUPREME COURT HELD IN, STEVENS V. WARDEN, 969 P.2D 945 (NEV 1998)

THAT "TO FAIL WITHIN THE EX POST FACTO PROHIBITION, A LAW MUST BE RETROSPECTIVE... AND IT MUST DISADVANTAGE THE OFFENDER BY ALTERING THE DEFINITION OF CRIMINAL CONDUCT OR INCREASING THE PUNISHMENT")

BOWEN (SUPRA) WAS MADE RETROACTIVELY BOWEN (I.D. AT FOOTNOTE 4.)

BURKETT RECEIVED A PAROLE FROM COUNT I, IN 1998, TO HIS CONSECUTIVE LIFE TERMS IN COUNT II, TO DATE HE HAS SERVED 13 YEARS TOWARD COUNT II. AND PURSUANT TO BIEFATH I, BIEFATH II AND KREIDEL (SUPRA) THOSE LIFE TERMS MUST BE TREATED AS A SINGLE (10) TEN TO LIFE TERM FOR THE PURPOSES OF COMPUTING GOOD TIME CREDITS AND PAROLE ELIGIBILITY. THUS, IF BURKETT WERE TO RECEIVE A PAROLE AT HIS NEXT HEARING, HE COULD ONLY BE PAROLED TO THE STREET HOWEVER, BY THE PRISONS TREATING THE TWO LIFE TERMS SEPARATE PURSUANT TO BOWEN (SUPRA) HE CAN ONLY PAROLE FROM THE FIRST DEGREE KIDNAPPING TO HIS CONSECUTIVE LIFE TERM FOR THE USE OF A DEADLY WEAPON. MOREOVER, UNDER BOWEN (SUPRA) BURKETT WILL LOSE ALL OF HIS GOOD TIME CREDITS. TO DATE HE IS RECEIVING GOOD TIME CREDITS, AT THE RATE OF 12 1/2 PER MONTH

N.R.S. 209.443 SETS FORTH THE FORMULA FOR COMPUTING GOOD TIME CREDITS FOR OFFENDERS SENTENCED AFTER JUNE 30, 1969 AND CRIMES COMMITTED BEFORE JULY 1ST, 1985, AND PROVIDES THAT GOOD TIME CREDITS ARE ACCRUED AS FOLLOWS:

2 MONTHS FOR EACH OF THE FIRST 2 YEARS (I.E., 5 DAYS PER MONTH);

4 MONTHS FOR EACH OF THE NEXT 2 YEARS (I.E., 10 DAYS PER MONTH);

AND 5 MONTHS FOR EACH OF THE REMAINING YEARS OF THE TERM (I.E., 12 1/2 DAYS PER MONTH).

SHOULD BURKETT BE FORCED TO PAROLE TO THE ENHANCEMENT IN COUNTY II AND START ANEW HE WILL LOSE GOOD TIME CREDITS THUS, REFLECTING LESS TIME SERVED TOWARD HIS SENTENCES.

BURKETT RESPECTFULLY SUBMITS THAT BOWEN (SUPRA) IS BEING APPLIED RETROACTUALLY TO HIS DETRIMENT AND IS THEREFORE, VIOLATING THE JUDICIAL EX POST FACTO PROHIBITION AND DUE PROCESS PURSUANT TO, STEVENS V. WARDEN, 969 P.2D 945 (NEV. 1998)

CONCLUSION

THERE CAN BE NO QUESTION THAT
BOWEN (SUPRA) IS WORKING TO THE
DETIMENT OF BURKETT AND THEREFORE,
THE WRIT OF HABEAS CORPUS MUST
ISSUE.

DATED THIS 5TH DAY OF JULY 2011,

RESPECTFULLY SUBMITTED,

Paul Beaudett
JOEL BURKETT PRO SE

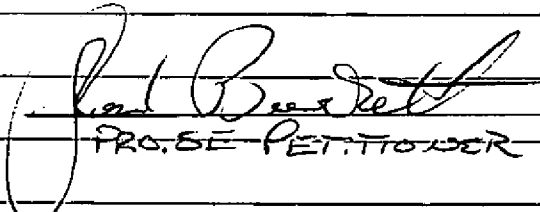
CERTIFICATE OF SERVICE

I, JOEL BURKETT, HEREBY CERTIFY PURSUANT
TO N.R.C.P. 5(b), THAT ON THIS 5TH
DAY OF JULY 2011 I MAILED A TRUE
AND CORRECT COPY OF THE FOREGOING
"MOTION IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS ADDRESS TO:

WARDEN ELY STATE PRISON
P.O. Box 1989 ELY, NV 89301

CLARK COUNTY DISTRICT ATTORNEY
200 S. THIRD STREET
LAS VEGAS, NV 89155

ATTORNEY GENERAL
HEROES MEMORIAL BUILDING
100 NORTH CARSON ST
CARSON CITY, NV, 89710-4717


PRO SE PETITIONER

Case No. CD52190

Dept. No. XII

RCUD INBANK 11 MAY 13

FILED

JUL 07 2011

John L. Blum
CLERK OF COURT

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

IN THE MATTER OF,

FINANCIAL CERTIFICATE

Name JOEL BURKETT # 16111
Prison Number
Joel Burkett # 16111
Signature Prison Number

On a Motion to Proceed
In Forma Pauperis

81C052190
CATF
Certificate
1609488



I hereby certify that the Petitioner/Applicant herein has the sum of
\$ 627.03 on account to his credit at the institution (Ely State
Prison) where he is confined. I further certify that the Petitioner/Applicant likewise has the following
securities to his credit according to the records of said institution (Ely State Prison):

\$ 200.00 in savings

Dated this 13th day of May, 2011

By: *John L. Blum* AA II
Nevada Department of Corrections
Inmate Services Accountant
Authorized Officer of Institution

RECEIVED
FILED
JUL 07 2011
CLERK OF THE COURT
John L. Blum
CLERK OF COURT

Case No. C052190

Dept. No. XII

88
FILED
JUL 07 2011
Debra L. Harrison
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF _____

81C062190
MPFP
Motion for Leave to Proceed in Forma Pau
1508497



JOEL BURKETT
Petitioner,

v.

WARDENLY STATE PRISONS
Respondent.

**MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

COMES NOW, the Petitioner,, in propria persona, pursuant to N.R.S. 12.015, and respectfully moves this Honorable Court for an Order granting Petitioner leave to proceed in the above-entitled action in forma pauperis, without requiring Petitioner to pay or provide security for the payment of costs of prosecuting this action.

This motion is made and based upon the attached affidavit and certificate.

Dated this 5 day of July, 2011.

Respectfully submitted,

Joel Burkett
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to N.R.C.P.

5(b), that on this 5 day of July, of the year 2001, I mailed a true and correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis;

WARDEN STATE PRISON
Name

CLARK COUNTY DA
Name

ATTORNEY GENERAL
Name

PO BOX 1889
ELY, NV
89301
Address

200 S. THIRD ST
LAS VEGAS, NV
89155
Address

HERNANDEZ BUILDING
1000 N. CAHILL ST
CARSON CITY, NV 89701-4717
Address

Joel Burkett
Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: NOTICE TO PROCEED IN FORMA
CAUTION, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 5, DAY OF, July, 2011.

SIGNATURE: Joel Burdett

INMATE NAME PRINTED: JOEL BURDETT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

Case No. _____

Dept. No. _____

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

JOEL BURKETT
Petitioner,

v.

WARDEN STATE PRISON
Respondent.

**AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS**

I, JOEL BURKETT being first duly sworn, depose and say that I am the
Petitioner in the above-entitled case; that in support of my motion to proceed without being required to
prepay fees, cost or give security therefor, I state that because of my poverty I am unable to pay the costs of
said proceeding or to give security therefor; that I believe I am entitled to relief.

I do ☒ do not _____ request an attorney be appointed to represent me.

I further swear that the responses which I have made to the questions and instructions below
relating to my ability to pay the cost of prosecuting the proceeding are true.

1. Are you presently employed? Yes _____ No ☒

a. If the answer is yes, state the amount of your salary or wages per month and give the
name and address of your employer.

EMPLOYER

EMPLOYER

Salary or Wage per month

Salary or Wage per month

b. If the answer is no, state the date of your last employment and the amount of the
salary or wages per month which you received.

None
Date of last Employment

Date of last Employment

Salary or Wage per month

- a. **Business, profession or form of self-employment?**

Yes _____ No

- Yes No /

- Yes _____ No

- Yes No

- Yes _____ No ✓

Mattler
Source of Income

Source of Income

10000 L.R. Ministry
Amount Received (in the past year)

Amount Received (in the past year)

- a. If the answer is yes, state the total value of the items owned.

SAVINGS ACCOUNT		
Item	Item	Item

2000
Total Value Total Value Total Value

- a. If the answer is yes, describe the property and state its approximate value.

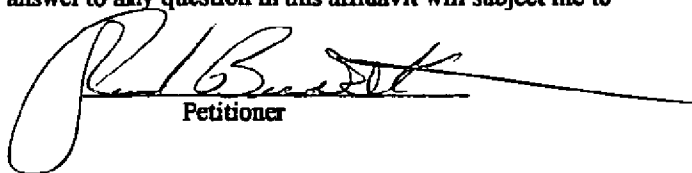
Property	Property	Property
----------	----------	----------

<u>Approximate value</u>	<u>Approximate value</u>	<u>Approximate value</u>
--------------------------	--------------------------	--------------------------

5. List the persons who are dependent upon you for support and state your relationship to those Persons, and indicate how much you contribute towards their support.

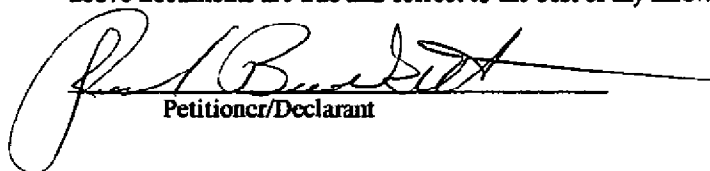
<u>None</u> Person	_____ Person	_____ Person
_____ Relationship	_____ Relationship	_____ Relationship
_____ Contribution	_____ Contribution	_____ Contribution

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.


Petitioner

EXECUTION OF INSTRUMENT BY PRISONER

Pursuant to N.R.S. 208.165, I hereby declare under the penalty of perjury that the contents of the above documents are true and correct to the best of my knowledge.


Petitioner/Declarant

ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this ____ day of _____, 200__.

District Judge

Case No. LD52190
Dept. No. XII

FILED
JUL 07 2011
John L. ...
CLERK OF COURT

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

81C052190
MAPA
Motion for Appointment of Attorney
1609504



JOEL BURKETT
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-VS-

WARDEN STATE PRISON
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, JOEL BURKETT, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner JOEL BURKETT, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

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JUL 07 2011
CLERK OF THE COURT

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

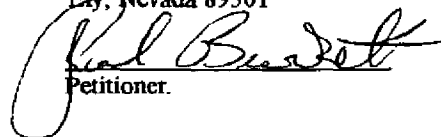
In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief, (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 5 day of July, 2011.

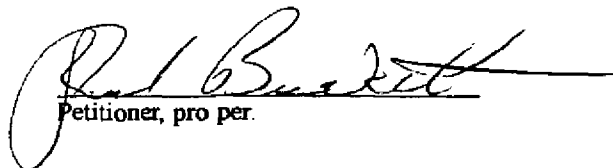
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301


Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 5th day of July, 2011.


Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to N.R.C.P.

5(b), that on this 5 day of July, of the year 2006, I mailed a true and correct copy of the foregoing

; Motion for the Appointment of Counsel; and Request for

Evidentiary Hearing, addressed to:

WARDEN ELY STATE PRISON
Name

CLARK COUNTY D.A.
Name

ATTORNEY GENERAL
Name

P.O. Box 1989
ELY NV
89301
Address

200 S. THIRD ST
LAS VEGAS NV
89155
Address

AGGREGATE BUILDING
1000 S. CARSON ST
CARSON NV 89101-4717
Address

Joel Burkett
Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: MOTION FOR COUNSEL AND REQUEST
FOR EVIDENTIARY HEARING, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 5, DAY OF July, 2011.

SIGNATURE: 

INMATE NAME PRINTED: JOEL BURKETT

INMATE NUMBER: 16111

ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

Case No. _____

Dept. No. _____

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

JOEL BURKETT
Petitioner,

-VS-

WARDEN, STATE PRISON
Respondents.

ORDER APPOINTING COUNSEL

Petitioner, JOEL BURKETT, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this _____ day of _____, 200__.

Submitted by:

DISTRICT COURT JUDGE

Petitioner, In Proper Person

88

PPOW

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

AUG 24 4 13 PM '11

Joel Burkett,
Petitioner,

vs.

Warden, Elystate Prison,
Respondent,

Case No: C052190
Dept No: XII

[Signature]
CLERK OF THE COURT

HEARING DATE
ALREADY ENTERED

IN ODYSSEY
ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on July 7, 2011. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 30th day of September, 2011, at the hour of

8:30 o'clock for further proceedings.

Dated: JUL 14 2011

81C052190
OPWH
Order for Petition for Writ of Habeas Corpus
1583280



[Signature]
District Judge

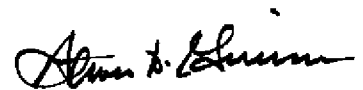
8/22/11

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AUG 24 2011

RECEIVED
JUL 12 2011

DEPARTMENT 12

CLERK OF THE COURT



CLERK OF THE COURT

MDSM
CATHERINE CORTEZ MASTO
Attorney General
JAMIE J. RESCH
Senior Deputy Attorney General
Nevada Bar No. 7154
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3783
F: (702) 486-2377
E-mail: jresch@ag.nv.gov
Attorneys for Plaintiff THE STATE OF NEVADA

DISTRICT COURT

CLARK COUNTY, NEVADA

JOEL BURKETT,	)	Case No.: C052190
)	
Petitioner,	)	Dept. No.: XII
)	
v.	)	Date of Hearing: October 25, 2011
	)	Time of Hearing: 8:30 a.m.
WARDEN, ELY STATE PRISON,)	
)	
Respondent.)	

STATE'S MOTION TO DISMISS

COMES NOW, The State of Nevada, by and through CATHERINE CORTEZ MASTO, Attorney General and Jamie J. Resch, Senior Deputy Attorney General, and request this Court dismiss the pending proceeding without prejudice. Nevada law is clear that a post-conviction petition which challenges computation of time must be brought in the county of incarceration.

This Motion is made and based upon all the papers and pleadings on file herein, the points and authorities submitted herewith, the affidavits and exhibits attached hereto and any such oral argument as required by this court at the time this matter is presented.

DATED this 21st day of October, 2011.

By: /s/ Jamie J. Resch
JAMIE J. RESCH
Senior Deputy Attorney General

NOTICE OF MOTION

TO: Joel Burkett, Petitioner:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above captioned Motion on for hearing before this Honorable Court on the 25th day of October, 2011, at 8:30 a.m. of said day, or as soon thereafter as counsel will be heard.

DATED this 21st day of October 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Jamie J. Resch
JAMIE J. RESCH
Senior Deputy Attorney General
Bureau of Criminal Justice
(702) 486-3420

1 **POINTS AND AUTHORITIES**

2 I.

3 **PROCEDURAL BACKGROUND**

4 In 1981, Petitioner was sentenced to various life sentences arising from various
5 kidnapping, robbery and sexual assault convictions. On July 7, 2011, nearly thirty years
6 later, Petitioner filed the instant Petition for Writ of Habeas Corpus challenging the
7 computation of Petitioner's good time credits. The petition alleges that Petitioner is
8 currently incarcerated at Ely State Prison in White Pine County, Nevada.

9 II.

10 **ARGUMENT**

11 Nevada law is clear. NRS 34.738 states as follows:

- 12 1. A petition that challenges the validity of a conviction or sentence
13 must be filed with the clerk of the district court for the county in
14 which the conviction occurred. *Any other petition must be filed
with the clerk of the district court for the county in which the
petitioner is incarcerated.*

15 NRS 34.738 (Emphasis Added).

16 A Post-Conviction Petition for Writ of Habeas Corpus can only challenge the validity
17 of the conviction or sentence, or, the time served under such a sentence. NRS 34.724.
18 Accordingly, NRS 34.738 requires that a petition challenging computation of time must be
19 brought in the county of incarceration. Petitioner challenges computation of time
20 concerning his sentence, and alleges he is incarcerated in White Pine County.

21 Pursuant to NRS 34.738, this Court lacks jurisdiction over the instant petition. NRS
22 34.738(2) contains the solution: The petition "must be transferred by the clerk of that court
23 to the clerk of the district court for the appropriate county."

24 ///

25 ///

26 ///

27 ///

28 ///

III.

CONCLUSION

It is respectfully requested this Court dismiss the pending petition without prejudice, and order the Clerk of the Court to transfer the same to the Clerk of White Pine County, Nevada (Seventh Judicial District).

DATED this 21st day of October, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ Jamie J. Resch
JAMIE J. RESCH
Senior Deputy Attorney General
Bureau of Criminal Justice
(702) 486-3420

CERTIFICATE OF SERVICE

I hereby certify that, on the 21st day of October, 2011, service of the **STATE'S MOTION TO DISMISS** was made this date by depositing a true and correct copy of the same for mailing, first class mail, at Las Vegas, Nevada, or via facsimile, addressed follows:

Joel Burkett, #16111
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

/s/ Jennifer Ross
An employee of the Office of the Attorney General

Alvin D. Lamm

CLERK OF THE COURT

ORDR
CATHERINE CORTEZ MASTO
Attorney General
JAMIE J. RESCH
Senior Deputy Attorney General
Nevada Bar No. 7154
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3783
F: (702) 486-2377
E-mail: jresch@ag.nv.gov
Attorneys for Plaintiff THE STATE OF NEVADA

DISTRICT COURT

CLARK COUNTY, NEVADA

JOEL BURKETT,
Petitioner,
vs.
WARDEN, ELY STATE PRISON,
Respondents.

CASE NO.: C052190

DEPT. NO.: XII

Date of Hearing: October 25, 2011
Time of Hearing: 8:30 a.m.

ORDER GRANTING STATE'S MOTION TO DISMISS AND ORDER DIRECTING CLERK OF
COURT TO TRANSFER PETITION FOR WRIT OF HABEAS CORPUS TO SEVENTH
JUDICIAL DISTRICT

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT,
District Court Judge, on the 25th day of October, 2011, the Petitioner not being present, and
Respondents having been represented by CATHERINE CORTEZ MASTO, Attorney General,
by and through Jamie J. Resch, Senior Deputy Attorney General, and the Court having duly
considered the State's Motion to Dismiss, including all pleadings and documents on file
herein:

///

///

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///

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NOV 15 2011

DEPT. CLERK

IT IS HEREBY ORDERED that the State's Motion to Dismiss is **GRANTED**, and;

IT IS FURTHER ORDERED the Clerk of Court is directed to immediately transfer the Petition for Writ of Habeas Corpus (Good Time Credits) filed herein on July 7, 2011 to the Clerk of Court, Seventh Judicial District (White Pine County) for further proceedings in that jurisdiction.

DATED this 8 day of November, 2011.

HONORABLE DISTRICT COURT JUDGE

Submitted By:

CATHERINE CORTEZ MASTO
Attorney General

By: JAMIE J. RESCH
Senior Deputy Attorney General
Bureau of Criminal Justice

Case No. C052190

Dept. No. XII

FILED

JUN 14 2013

Alvin L. Johnson
CLERK OF COURT

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

81C052190
PWHC
Petition for Writ of Habeas Corpus
2605767



JOEL BURKE
Petitioner.

v.

RENE BAKER, WARDEN
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

CLERK OF THE COURT

JUN 13 2013

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(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, WHITE PINE COUNTY, NEVADA

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA

3. Date of judgment of conviction: 1981

4. Case number: C52190

5. (a) Length of sentence: 2 FIFTEEN YEAR TERMS AND 4 LIFE TERMS WITH PAROLE

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No ✓

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: ROBBERY W/WEAPON; 1ST DEGREE KIDNAPING W/WEAPON; SEXUAL ASSAULT

8. What was your plea? (check one):

(a) Not guilty ✓ (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: _____

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ✓ (b) Judge without a jury _____

11. Did you testify at the trial? Yes ✓ No _____

12. Did you appeal from the judgment of conviction? Yes ✓ No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT

(b) Case number or citation: DO NOT HAVE

(c) Result: DENIED

(d) Date of result: 1983
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: _____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 1st Judicial District Court

(2) Nature of proceeding: WRIT OF HABEAS CORPUS

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result: DENIED

(6) Date of result: AUG 5TH 1988

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: NSA

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☒ No ☐

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ☐ No ☐

Citation or date of decision: NSA

(2) Second petition, application or motion? Yes ☐ No ☐

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes ☐ No ☐

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)
NSA

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in No. 's 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

GROUND ONE. NEW VIOLATION NOT PRESENT AT PRIOR PROCEEDINGS.

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

THE ISSUE COULD NOT HAVE BEEN RAISED PRIOR TO THE TERMS OF THE SENTENCES BEING VIOLATED.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☐ No ☒

If yes, state what court and case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: DENIAL OF DUE PROCESS, VIOLATION
OF U.S. CONST. FOURTEENTH AMEND; NEW CONST.
ART. 1, 8 CIV. PROCESS

Supporting FACTS (Tell your story briefly without citing cases or law.):

SEE SUPPORTING FACTS ATTACHED
HEREIN.

(b) Ground Two:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground Three:

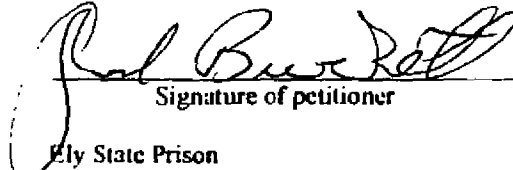
Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Four:

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 12 day of the month of June of the year 2013.



Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

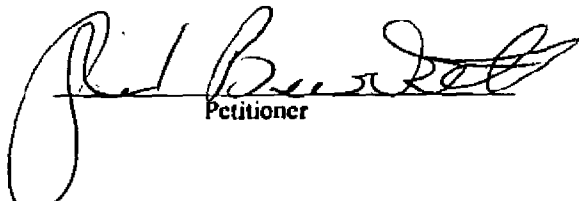
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.



Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKE, hereby certify pursuant to N.R.C.P. 5(b), that on this 12 day of the month of June, of the year 2011 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:


KEWE BAKER
Respondent prison or jail official

P.O. Box 1488
Ely, NV
Address

**Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717**

District Attorney of County of Conviction

Address


Signature of Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: PETITIONER FOR WRIT OF
Habeas, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 12, DAY OF, June, 20 .

SIGNATURE: Joel Burkett

INMATE NAME PRINTED JOEL BURKETT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

SUPPORTING FACTS

1.
2. PETITIONER CONTENDS THAT HIS SENTENCES
3. OF LIFE WITH THE POSSIBILITY OF
4. PAROLE HAS BECOME UNCONSTITUTIONAL
5. IN VIOLATION OF THE FOURTEENTH
6. AMENDMENT OF THE UNITED STATES
7. CONSTITUTION.
8. IN, JOEL BURKETT VS. WARDEN, ELY STATE PRISON
9. CASE NO. HC-1111019 FILED IN THE SEVENTH
10. JUDICIAL DISTRICT COURT OF THE STATE OF
11. NEVADA, PETITIONER CLAIMED THAT
12. THE POSSIBILITY OF PAROLE GRANTED
13. IN HIS JUDGEMENT OF CONVICTIONS
14. WAS BEING VIOLATED IN THAT;
15. (1) THE NEVADA DEPARTMENT OF PRISONS
16. (NDOC) IS ACTING TO FALSIFY PAROLE
17. REPORTS;
18. (2) UNLAWFULLY PLACED PETITIONER ON
19. HIGH RISK POTENTIAL STATUS; AND
20. (3) THE PRISON IS ISSUING MISCONDUCT
21. REPORTS FALSLY.
22. IN WHICH ALL OF THE ABOVE IS BEING
23. USED TO DENY PAROLE.
24. THE PETITION WAS DISMISSED IN PART
25. STATING "A WRIT MAY NOT BE EMPLOYED
26. TO CHALLENGE CONDITIONS OF
27. CONFINEMENT, DISCIPLINARY PROCEDURES,
28. TRANSFERS OR OTHER PRISON-RELATED

(1)

1. HARSHIP, CITING NRS. 34.720 (2011);
2. NRS. 34.726(1) (2011); GRIFFIN V. STATE
3. 137 P.2D 1169 (2006); BOWEN V. WARDEN OF
4. THE NEW STATE PRISON, 688 P.2D 250 (1984);
5. (SEE ALSO, ROBERT LEE MCCOWELL V. THE
6. STATE OF NEVADA, 212 P.3D 307 (2009))
7. PETITIONER AGREES WITH THE SEVENTH
8. JUDICIAL DISTRICT COURT AND IN LIGHT
9. OF NEVADA LAWS THE POSSIBILITY OF
10. PAROLE GRANTED IN HIS JUDGMENT OF
11. CONVICTION CAN NOT BE ENFORCED
12. UNDER NEVADA LAW. IT HAS THEREFORE,
13. BECOME UNCONSTITUTIONAL AND
14. VIOLATES DUE PROCESS. PETITIONER
15. CONTENTS THAT ANYTHING THAT
16. EFFECTS THE POSSIBILITY OF PAROLE
17. MUST MEET DUE PROCESS STANDARDS
18. AND BE ENFORCEABLE UNDER NEVADA
19. LAWS (IF) THE "POSSIBILITY OF PAROLE"
20. IS PART OF THE JUDGMENT OF
21. CONVICTION.

22.
23. FOR THE REASONS SET FORTH ABOVE
24. PETITIONER CONTENTS THAT HIS
25. SENTENCES OF "LIFE WITH THE
26. POSSIBILITY OF PAROLE"

1. GRANTED IN HIS JUDGMENT OF CONVICTIONS
2. ARE UNCONSTITUTIONAL AND VIOLATE
3. DUE PROCESS, IN THAT THE POSSIBILITY
4. OF PAROLE IS UNENFORCEABLE
5. UNDER NEVADA LAW.

6.

7.

8.

RELIEF SOUGHT

9.

10. PETITIONER RESPECTFULLY REQUEST
11. THE COURT ISSUE THE PETITION
12. FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
13. AND ISSUE AN ORDER TO
14. RELEASE PETITIONER FROM HIS
15. UNCONSTITUTIONAL CONFINEMENT
16. AND/OR TO RE-SENTENCE
17. PETITIONER TO A DETERMINANT
18. TERM OF IMPRISONMENT
19. WHEREIN, THE POSSIBILITY OF PAROLE
20. IS NOT PART OF THE JUDGMENT
21. OF CONVICTION.

22.

23. DATED THIS 12 DAY OF JUNE 2011

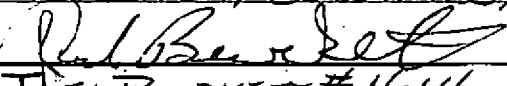
24.

25.

26.

27.

28.

RESPECTFULLY SUBMITTED,

JOE I. BURKETT #16111
P.O. BOX 1989
ELY, NV 89301-1989
(3)

ppow

7

Case No. C052190
Dept. No. XVI

FILED
JUN 14 2013
John L. Blum
CLERK OF COURT

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

81C052190
MPFP
Motion for Leave to Proceed In Forma Pau
2605770



JOEL BURKETT
Petitioner,

v.

RENE BAKER WARREN
Respondent.

**MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

COMES NOW, the Petitioner,, in propria persona, pursuant to N.R.S. 12.015, and respectfully moves this Honorable Court for an Order granting Petitioner leave to proceed in the above-entitled action in forma pauperis, without requiring Petitioner to pay or provide security for the payment of costs of prosecuting this action.

This motion is made and based upon the attached affidavit and certificate.

Dated this 17 day of June, 20 13

Respectfully submitted,

Joel Burkett
Petitioner

RECEIVED
JUN 13 2013
CLERK OF THE COURT

3

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKE, hereby certify pursuant to N.R.C.P.

5(b), that on this 12 day of June, of the year 20 13 I mailed a true and correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis;

ATTORNEY GENERAL
Name

Name

Name

100 N. CARSON ST
CARSON CITY NV
89701-4717
Address

Address

Address


Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 12 DAY OF, JUNE, 2013

SIGNATURE: Paul Burkett

INMATE NAME PRINTED: JOSE BURKETT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

7 p.p.m.

9

Case No. C052190
Dept. No. XII

FILED
JUN 14 2013
John L. Blum
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

81C052190
AFFD
Affidavit in Support
2605781



JOEL BURKEET
Petitioner,

v.

RENE BAKER
Respondent.

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS

I, JOEL BURKEET being first duly sworn, depose and say that I am the
Petitioner in the above-entitled case; that in support of my motion to proceed without being required to
prepay fees, cost or give security therefor, I state that because of my poverty I am unable to pay the costs of
said proceeding or to give security therefor; that I believe I am entitled to relief.

I do ☒ do not ☐ request an attorney be appointed to represent me.

I further swear that the responses which I have made to the questions and instructions below
relating to my ability to pay the cost of prosecuting the proceeding are true.

1. Are you presently employed? Yes ☐ No ☒

a. If the answer is yes, state the amount of your salary or wages per month and give the
name and address of your employer.

_____ EMPLOYER	_____ EMPLOYER
_____ Salary or Wage per month	_____ Salary or Wage per month

b. If the answer is no, state the date of your last employment and the amount of the
salary or wages per month which you received.

<u>1988</u> Date of last Employment	_____ Date of last Employment
--	----------------------------------

13

125.00 PER MONTH
Salary or Wage per month

Salary or Wage per month

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes _____ No ☒

b. Rent payments, interest or dividends?

Yes _____ No ☒

c. Pensions, annuities or life insurance payments?

Yes _____ No ☒

d. Gifts or inheritances?

Yes ☒ No _____

e. Any other sources?

Yes _____ No ☒

If the answer to any of the above is "Yes" describe each source of money and state the amount received from each during the past twelve months:

MOTHER
Source of Income

Source of Income

ABOUT 1,200
Amount Received (in the past year)

Amount Received (in the past year)

3. Do you own any cash or checking or savings account? Yes _____ No ☒

a. If the answer is yes, state the total value of the items owned.

Item

Item

Item

Total Value

Total Value

Total Value

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value.

Property

Property

Property

Approximate value

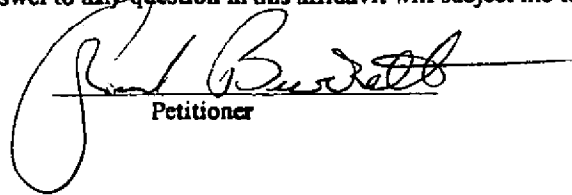
Approximate value

Approximate value

5. List the persons who are dependent upon you for support and state your relationship to those Persons, and indicate how much you contribute towards their support. None

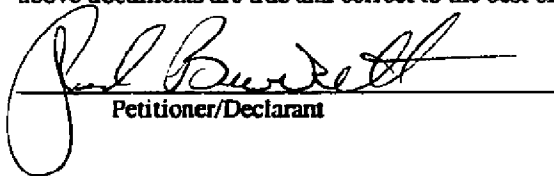
Person	Person	Person
Relationship	Relationship	Relationship
Contribution	Contribution	Contribution

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.


Petitioner

EXECUTION OF INSTRUMENT BY PRISONER

Pursuant to N.R.S. 208.165, I hereby declare under the penalty of perjury that the contents of the above documents are true and correct to the best of my knowledge.


Petitioner/Declarant

ORDER

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this ____ day of _____, 20 ____

District Judge

Case No. C052190
Dept. No. XII

9
FILED
JUN 14 2013
Alvin L. Williams
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

JOEL BURKETT
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-VS-

KEVE BAKER WARREN
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, JOEL BURKETT, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner JOEL BURKETT, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.



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JUN 13 2013
CLERK OF THE COURT

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 12 day of June, 20 13

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Paul Burdett #16111
Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 12th day of June, 20 13

Paul Burdett
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to N.R.C.P.

5(b), that on this 15 day of June, of the year 20 13, I mailed a true and correct copy of the foregoing, MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST FOR EVIDENTIARY HEARING, to the following:

ATTORNEY GENERAL
Name

Name

Name

100 N. CARSON ST
CARSON CITY, NV
89701-4717
Address

Address

Address

Joel Burkett
Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: MOTION FOR APPOINTMENT OF
COUNSEL, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 12 DAY OF, June, 2013

SIGNATURE: Joel Burdett

INMATE NAME PRINTED: JOEL BURDETT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1982, ELY, NV 89301

JOEL BURKE 16111

6-12-13

P.O. Box 1989

ELY, NV 89301-1989

Sub: Filing

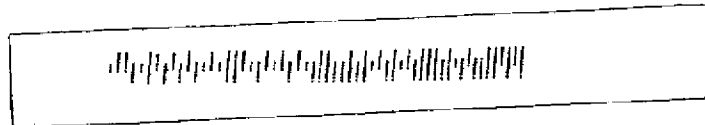
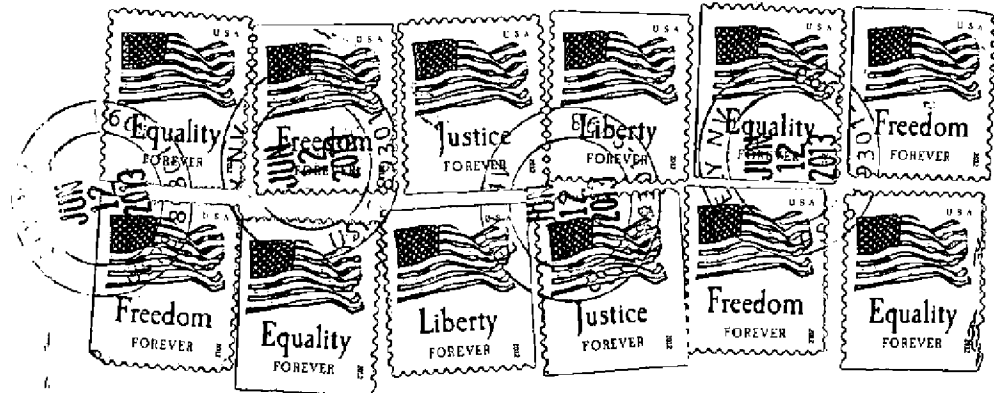
DEAR CLERK

PLEASE FIND ENCLOSED FOR FILING:
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS,
MOTION FOR APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY HEARING, AND
FINANCIAL CERTIFICATE WITH TWO COPIES
THEREOF.

THANK YOU

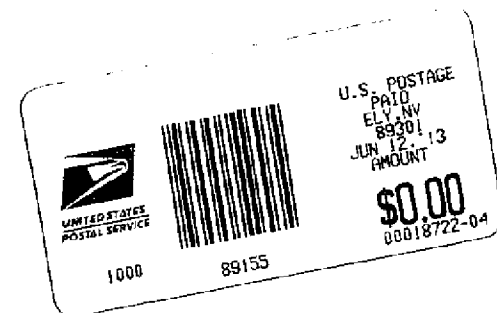
Sincerely,
Joel Burke

JOEL BURKE 16111
P.O. Box 1989
ELY, NV
89301-1989



CLERK OF COURT
200 LEWIS AVE
3RD Floor
LAS VEGAS, NV

89155



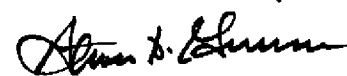
CONFIDENTIAL Legal Mail

C/O A. M. D. Smith
6/11/13

ELY STATE PRISON

JUN 11 2013

US



CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

JOEL BURKETT,

Petitioner,

vs.

THE STATE OF NEVADA

Respondent

Case No.: C052190

DEPT. No.: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Defendant") by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.380, 193.165); Count 2, FIRST DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366).

2. On May 4, 1981, the jury found the Defendant guilty of Count 1, ROBBERY WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL ASSAULT.

3. On June 2, 1981, Defendant was sentenced to serve a term in the Nevada State Prison as follows: Count 1, Fifteen years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively; Count 2, Life with Possibility of Parole and an additional term of Life with the Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively. Count 2 is to be served consecutive to Count 1; Count 3, Life with Possibility of Parole; and Count 4, Life with Possibility of Parole. Counts 3 and 4 to be served concurrent to the sentences imposed in Counts 1 and 2. Defendant granted credit for time served of 165 days.

4. On June 19, 1981, the Defendant filed Notice of Appeal.

5. On July 29, 1981, the Judgment of Conviction was filed.


MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 6. On April 21, 1983, the Nevada Supreme Court dismissed the Appeal.
3 Remittitur issued on May 10, 1983.

4 7. On February 2, 1994, the Defendant filed a Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 8. On February 28, 1994, the District Court granted in part and denied in
7 part the Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

8 9. On June 7, 1999, the Defendant filed a Second Petition for Writ of
9 Habeas Corpus (Post-Conviction). The State filed its Response on August 4, 1999.

10 10. On August 12, 1999, the District Court denied the Defendant's Petition
11 for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of
12 Law, and Order was filed on August 18, 1999.

13 11. On August 31, 1999, the Defendant filed a Notice of Appeal.

14 12. On July 10, 2001, the Nevada Supreme Court affirmed the judgment
15 of the District Court. Remittitur issued on August 7, 2001.

16 13. On November 19, 2001, the Defendant filed a Third Petition for Writ
17 of Habeas Corpus (Post-Conviction). The State filed its Response on January 23,
18 2002.

19 14. On January 24, 2002, the District Court denied the Defendant's
20 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
21 Conclusions of Law, and Order was filed on February 14, 2002.

22 15. On March 20, 2002, the Defendant filed a Notice of Appeal.

23 16. On February 6, 2003, the Nevada Supreme Court reversed the
24 judgment of the District Court and remanded the matter. Remittitur issued on March
25 4, 2003.

26 17. On February 19, 2003, the Defendant filed a Fourth Petition for Writ
27 of Habeas Corpus (Post-Conviction).

28 18. On April 3, 2003, the Attorney General filed its Response to the
Defendant's Third Petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 1, 2003, the District Court denied the Defendant's Third and
Fourth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order were filed on May 14, 2003 and May 15, 2003
respectively.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 20. On May 27, 2003, the Defendant filed a Notice of Appeal.

3 21. On March 5, 2004, the Nevada Supreme Court affirmed the District
4 Court's denial of the Defendant's Fourth Petition for Writ of Habeas Corpus (Post-
Conviction). Remittitur issued on March 30, 2004.

5 22. On September 1, 2004, the Defendant filed a Fifth Petition for Writ of
6 Habeas Corpus (Post-Conviction). The State filed its Response on October 12, 2004.

7 23. On October 19, 2004, the District Court denied the Defendant's Fifth
8 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order was filed on November 1, 2004.

9 24. On May 13, 2005, the Defendant filed a Sixth Petition for Writ of
10 Habeas Corpus (Post-Conviction). The State filed its Response on June 7, 2005.

11 25. On July 5, 2005, the District Court dismissed the Defendant's Sixth
12 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law and Order was filed on July 25, 2005.

13 26. On August 9, 2005, the Defendant filed a Notice of Appeal.

14 27. On November 15, 2005, the Nevada Supreme Court affirmed the
15 judgment of the District Court. Remittitur issued on December 13, 2005.

16 28. On July 7, 2011, the Defendant filed a Seventh Petition for Writ of
17 Habeas Corpus (Post-Conviction). The State filed a Motion to Dismiss on October 21,
2011.

18 29. On October 25, 2011, the District Court granted the State's Motion to
19 Dismiss and Ordered the clerk of the court to transfer the Petition to the Seventh
Judicial District.

20 30. On June 14, 2013, the Defendant filed the instant Eighth Petition for
21 Writ of Habeas Corpus.

22 CONCLUSIONS OF LAW

23 1. NRS 34.726(1), governing "Limitations on time to file...", requires
24 that a petition for a writ of habeas corpus "must be filed within 1 year after entry of
25 the judgment of conviction or, if an appeal has been taken from the judgment, within
26 1 year after the Supreme Court issues its remittitur." Late-filing of a petition may be
27 excused from procedural default if the Petitioner can establish good cause for delay in
bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1)
"delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely
will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).

28
MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 2. To avoid dismissal the defendant must plead and prove specific facts
3 that demonstrate good cause for his failure to present claims before and actual
4 prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074
(2005).

5 3. In order to demonstrate good cause, a petitioner must show that an
6 impediment external to the defense prevented him or her from complying with the
7 state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503,
506 (2003).

8 4. The court may excuse the failure to show good cause where the
9 prejudice from a failure to consider the claim amounts to a fundamental miscarriage
of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

10 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117
11 Nev. 860, 870, 34 P.3d 519, 526 (2001).

12 6. NRS 34.745(4), governing "Summary dismissal of successive
13 petitions," requires that "if the petition is a second or successive petition challenging
14 the validity of a judgment of conviction or sentence and if it plainly appears from the
15 face of the petition or an amended petition and documents and exhibits that are
16 annexed to it, or from records of the court that the petitioner is not entitled to relief
based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or
justice shall enter an order for its summary dismissal and cause the petitioner to be
notified of the entry of the order."

17 7. NRS 34.810(2), governing "Additional reasons for dismissal of
18 petition," requires that "[a] second or successive petition must be dismissed if the
19 judge or justice determines that it fails to allege new or different grounds for relief
20 and that the prior determination was on the merits or, if new and different grounds are
alleged, the judge or justice finds that the failure of the petitioner to assert those
grounds in a prior petition constituted an abuse of the writ."

21 8. The petitioner has the burden of pleading and proving specific facts
22 that demonstrate both good cause for failing to present a claim or for presenting a
23 claim again and actual prejudice. NRS 34.810(3). *See also State v. Haberstroh*, 119
Nev. 173, 181, 69 P.3d 676, 681 (2003).

24 9. A court must dismiss a habeas petition if it presents claims that either
25 were or could have been presented in an earlier proceeding, unless the court finds
26 both cause for failing to present the claims earlier or for raising them again and actual
27 prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507
(2001).

1
2 10. Unlike initial petitions which certainly require a careful review of the
3 record, successive petitions may be dismissed based solely on the face of the petition.
4 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5 11. Application of the statutory procedural default rules to post-conviction
6 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
7 P.3d 1070, 1074 (2005).

8 12. Meritless, successive and untimely petitions clog the court system and
9 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d
10 944, 950 (1994).

11 13. The Petitioner had one year from May 10, 1983, the date the Nevada
12 Supreme Court issued its remittitur, to file the Petition for Writ of Habeas Corpus
13 (Post-Conviction).

14 14. The Petitioner failed to establish both good cause for the delay in filing
15 the instant post-conviction petition and prejudice to the petitioner.

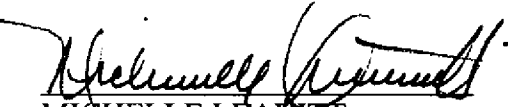
16 15. The petition is successive as the Petitioner filed seven prior petitions.

17 16. The petition neither set forth good cause for the Petitioner's failure to
18 present this claim in the prior petitions nor actual prejudice to the Petitioner.

19 **ORDER**

20 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
21 Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

22 Dated this 9 day of July, 2013.

23 
24 MICHELLE LEAVITT
25 DISTRICT COURT JUDGE
26 DEPARTMENT XII
27 EIGHTH JUDICIAL DISTRICT
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

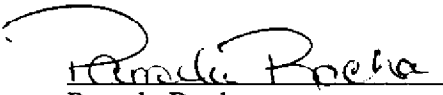
1
2 **CERTIFICATE OF MAILING**

3
4 I hereby certify that on the 10th day of July, 2013, I placed a copy of the
5 Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail,
6 postage prepaid to:

7 Joel Burkett #16111
8 Ely State Prison
9 P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

10 Catherine Cortez Masto
11 Nevada Attorney General
12 555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068

13
14
15
16 
17 Pamela Rocha
18 Judicial Executive Assistant, Dept. XII

19
20 C052190

21 Joel Burkett

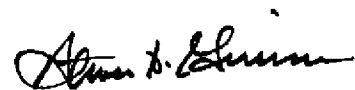
22 vs.

23 The State of Nevada
24
25
26
27
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

NEO



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOEL BURKETT,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 81C052190

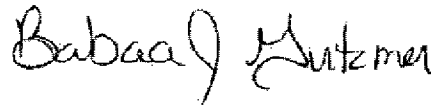
Dept No: XII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER**

PLEASE TAKE NOTICE that on July 10, 2013, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on July 11, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Barbara J. Gutzmer, Deputy Clerk

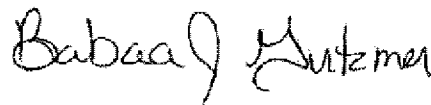
CERTIFICATE OF MAILING

I hereby certify that on this 11 day of July 2013, I placed a copy of this Notice of Entry in:

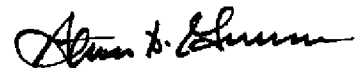
The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Joel Burkett # 16111
P.O. Box 1989
Ely, NV 89301



Barbara J. Gutzmer, Deputy Clerk



CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

JOEL BURKETT,

Petitioner,

vs.

THE STATE OF NEVADA

Respondent

Case No.: C052190

DEPT. No.: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

1. On January 19, 1981, the State of Nevada charged Joel Burkett ("Defendant") by way of Information with Count 1, ROBBERY & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.380, 193.165); Count 2, FIRST DEGREE KIDNAPPING & USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony - NRS 200.310, 193.165); Count 3, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366); and Count 4, SEXUAL ASSAULT (Felony - NRS 200.364, 200.366).

2. On May 4, 1981, the jury found the Defendant guilty of Count 1, ROBBERY WITH USE OF A DEADLY WEAPON; Count 2, FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; Count 3, SEXUAL ASSAULT; and Count 4, SEXUAL ASSAULT.

3. On June 2, 1981, Defendant was sentenced to serve a term in the Nevada State Prison as follows: Count 1, Fifteen years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively; Count 2, Life with Possibility of Parole and an additional term of Life with the Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively. Count 2 is to be served consecutive to Count 1; Count 3, Life with Possibility of Parole; and Count 4, Life with Possibility of Parole. Counts 3 and 4 to be served concurrent to the sentences imposed in Counts 1 and 2. Defendant granted credit for time served of 165 days.

4. On June 19, 1981, the Defendant filed Notice of Appeal.

5. On July 29, 1981, the Judgment of Conviction was filed.


MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 6. On April 21, 1983, the Nevada Supreme Court dismissed the Appeal.
3 Remittitur issued on May 10, 1983.

4 7. On February 2, 1994, the Defendant filed a Petition for Writ of Habeas
5 Corpus (Post-Conviction).

6 8. On February 28, 1994, the District Court granted in part and denied in
7 part the Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

8 9. On June 7, 1999, the Defendant filed a Second Petition for Writ of
9 Habeas Corpus (Post-Conviction). The State filed its Response on August 4, 1999.

10 10. On August 12, 1999, the District Court denied the Defendant's Petition
11 for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of
12 Law, and Order was filed on August 18, 1999.

13 11. On August 31, 1999, the Defendant filed a Notice of Appeal.

14 12. On July 10, 2001, the Nevada Supreme Court affirmed the judgment
15 of the District Court. Remittitur issued on August 7, 2001.

16 13. On November 19, 2001, the Defendant filed a Third Petition for Writ
17 of Habeas Corpus (Post-Conviction). The State filed its Response on January 23,
18 2002.

19 14. On January 24, 2002, the District Court denied the Defendant's
20 Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
21 Conclusions of Law, and Order was filed on February 14, 2002.

22 15. On March 20, 2002, the Defendant filed a Notice of Appeal.

23 16. On February 6, 2003, the Nevada Supreme Court reversed the
24 judgment of the District Court and remanded the matter. Remittitur issued on March
25 4, 2003.

26 17. On February 19, 2003, the Defendant filed a Fourth Petition for Writ
27 of Habeas Corpus (Post-Conviction).

28 18. On April 3, 2003, the Attorney General filed its Response to the
Defendant's Third Petition for Writ of Habeas Corpus (Post-Conviction).

19. On May 1, 2003, the District Court denied the Defendant's Third and
Fourth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact,
Conclusions of Law, and Order were filed on May 14, 2003 and May 15, 2003
respectively.

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

20. On May 27, 2003, the Defendant filed a Notice of Appeal.

21. On March 5, 2004, the Nevada Supreme Court affirmed the District Court's denial of the Defendant's Fourth Petition for Writ of Habeas Corpus (Post-Conviction). Remittitur issued on March 30, 2004.

22. On September 1, 2004, the Defendant filed a Fifth Petition for Writ of Habeas Corpus (Post-Conviction). The State filed its Response on October 12, 2004.

23. On October 19, 2004, the District Court denied the Defendant's Fifth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of Law, and Order was filed on November 1, 2004.

24. On May 13, 2005, the Defendant filed a Sixth Petition for Writ of Habeas Corpus (Post-Conviction). The State filed its Response on June 7, 2005.

25. On July 5, 2005, the District Court dismissed the Defendant's Sixth Petition for Writ of Habeas Corpus (Post-Conviction). The Findings of Fact, Conclusions of Law and Order was filed on July 25, 2005.

26. On August 9, 2005, the Defendant filed a Notice of Appeal.

27. On November 15, 2005, the Nevada Supreme Court affirmed the judgment of the District Court. Remittitur issued on December 13, 2005.

28. On July 7, 2011, the Defendant filed a Seventh Petition for Writ of Habeas Corpus (Post-Conviction). The State filed a Motion to Dismiss on October 21, 2011.

29. On October 25, 2011, the District Court granted the State's Motion to Dismiss and Ordered the clerk of the court to transfer the Petition to the Seventh Judicial District.

30. On June 14, 2013, the Defendant filed the instant Eighth Petition for Writ of Habeas Corpus.

CONCLUSIONS OF LAW

1. NRS 34.726(1), governing "Limitations on time to file..." requires that a petition for a writ of habeas corpus "must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur." Late-filing of a petition may be excused from procedural default if the Petitioner can establish good cause for delay in bringing the claim. *Id.* Good cause for late-filing consists of a showing that: (1) "delay is not the fault of the petitioner"; and (2) "dismissal of the petition as untimely will unduly prejudice the petitioner." *Id.* at (1)(a)-(b).

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 2. To avoid dismissal the defendant must plead and prove specific facts
3 that demonstrate good cause for his failure to present claims before and actual
4 prejudice. *See State v. District Court*, 121 Nev. 225, 232, 112 P.3d 1070, 1074
(2005).

5 3. In order to demonstrate good cause, a petitioner must show that an
6 impediment external to the defense prevented him or her from complying with the
7 state procedural default rules. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503,
506 (2003).

8 4. The court may excuse the failure to show good cause where the
9 prejudice from a failure to consider the claim amounts to a fundamental miscarriage
of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

10 5. NRS 34.726 applies to successive petitions. *Pellegrini v. State*, 117
11 Nev. 860, 870, 34 P.3d 519, 526 (2001).

12 6. NRS 34.745(4), governing "Summary dismissal of successive
13 petitions," requires that "if the petition is a second or successive petition challenging
14 the validity of a judgment of conviction or sentence and if it plainly appears from the
15 face of the petition or an amended petition and documents and exhibits that are
16 annexed to it, or from records of the court that the petitioner is not entitled to relief
based on any of the grounds set forth in subsection 2 of NRS 34.810, the judge or
justice shall enter an order for its summary dismissal and cause the petitioner to be
notified of the entry of the order."

17 7. NRS 34.810(2), governing "Additional reasons for dismissal of
18 petition," requires that "[a] second or successive petition must be dismissed if the
19 judge or justice determines that it fails to allege new or different grounds for relief
20 and that the prior determination was on the merits or, if new and different grounds are
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21 8. The petitioner has the burden of pleading and proving specific facts
22 that demonstrate both good cause for failing to present a claim or for presenting a
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27 prejudice to the petitioner. *Evans v. State*, 117 Nev. 609, 621-622, 28 P.3d 498, 507
(2001).

28
MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

1
2 10. Unlike initial petitions which certainly require a careful review of the
3 record, successive petitions may be dismissed based solely on the face of the petition.
4 *Ford v. Warden*, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

5 11. Application of the statutory procedural default rules to post-conviction
6 habeas petitions is mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 231, 112
7 P.3d 1070, 1074 (2005).

8 12. Meritless, successive and untimely petitions clog the court system and
9 undermine the finality of convictions. *Lozada v. State*, 110 Nev. 349, 358, 871 P.2d
10 944, 950 (1994).

11 13. The Petitioner had one year from May 10, 1983, the date the Nevada
12 Supreme Court issued its remittitur, to file the Petition for Writ of Habeas Corpus
13 (Post-Conviction).

14 14. The Petitioner failed to establish both good cause for the delay in filing
15 the instant post-conviction petition and prejudice to the petitioner.


16 15. The petition is successive as the Petitioner filed seven prior petitions.

17 16. The petition neither set forth good cause for the Petitioner's failure to
18 present this claim in the prior petitions nor actual prejudice to the Petitioner.

19 **ORDER**

20 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
21 Corpus (Post-Conviction) shall be, and it is, hereby DENIED.

22 Dated this 9 day of July, 2013.

23 
24 MICHELLE LEAVITT
25 DISTRICT COURT JUDGE
26 DEPARTMENT XII
27 EIGHTH JUDICIAL DISTRICT
28

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

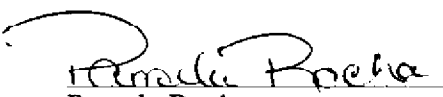
CERTIFICATE OF MAILING

I hereby certify that on the 10th day of July, 2013, I placed a copy of the
Order for Petition for Writ of Habeas Corpus (Post-Conviction) in the U.S. Mail,
postage prepaid to:

Joel Burkett #16111
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Steven B. Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

Catherine Cortez Masto
Nevada Attorney General
555 E. Washington, Suite 3900
Las Vegas, NV 89101-1068


Pamela Rocha
Judicial Executive Assistant, Dept. XII

C052190

Joel Burkett

vs.

The State of Nevada

MICHELLE LEAVITT
DISTRICT JUDGE

DEPARTMENT TWELVE
LAS VEGAS, NEVADA 89155

No. C052190

FILED
Dept. No. 872

JUL 22 12 22 PM '13

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK CLERK: 1ST COURT

JOEL BURKE

Petitioner/Plaintiff,

v.

THE STATE OF NEVADA

Respondent/Defendant.

81C052190

NOTICE OF APPEAL

Notice is hereby given that PETITIONER, Petitioner/Defendant above named,
hereby appeals to the Supreme Court of Nevada from the final judgment/order

ORDER

entered in this action on the 9TH day of JULY, 2013

Dated this 14TH day of JULY, 2013

Paul Buseck
Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

81C052190
NOASC
Notice of Appeal (criminal)
2735754



RECEIVED
JUL 22 2013
CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURDET, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 14th day of July, 2003, I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

STEVEN B. GRIFFIN
200 LEWIS AVE
LAS VEGAS NV
89155

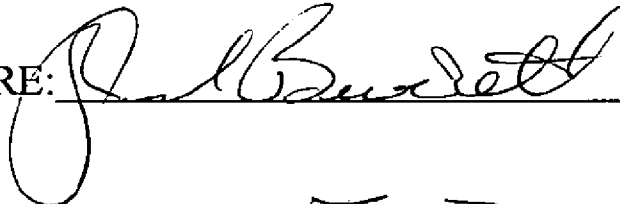
CATHERINE COOPER MASIO
555 E WASHINGTON
SUITE 3900
LAS VEGAS NV
89101-1000

Signature JOEL BURDET
Print Name JOEL BURDET K41
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
THAT IS ENTITLED: NOTICE OF APPEAL

_____, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 14, DAY OF, July, 2013.

SIGNATURE: 

INMATE NAME PRINTED: J. B. BURT
INMATE NUMBER: 16111
ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

JOE BUR
P.O. Box 19
ELY, NV
89301



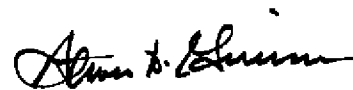
Las Vegas P&DC 89199

FRI 19 JUL 2013 AM

CLERK OF COURT
200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV
89155

ELY STATE PRISON
JUL 17 2013
U2

51-411-2
2013-07-17
2013-07-17



CLERK OF THE COURT

ASTA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

JOEL BURKETT aka RAYMOND HAIRE,

Defendant(s),

Case No: 81C052190
Dept No: XII

CASE APPEAL STATEMENT

1. Appellant(s): Joel Burkett
2. Judge: Michelle Leavitt
3. Appellant(s): Joel Burkett

Counsel:

Joel Burkett #16111
P.O. Box 1989
Ely, NV 89301-1989

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes
6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: Yes, February 28, 1994,
3 August 12, 1999 &
4 January 24, 2001
5 9. Date Commenced in District Court: January 16, 1981
6 10. Brief Description of the Nature of the Action: Criminal
7 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus
8 11. Previous Appeal: Yes
9 Supreme Court Docket Number(s): 13600, 26242, 34767, 39400, 41504, 45769
10 12. Child Custody or Visitation: N/A
11

12 Dated This 23 day of July 2013.

13 Steven D. Grierson, Clerk of the Court

14 
15

16 Heather Ungermann, Deputy Clerk
17 200 Lewis Ave
18 PO Box 551601
19 Las Vegas, Nevada 89155-1601
20 (702) 671-0512
21
22
23
24
25
26
27
28

THE SEALED PORTION
OF THESE MINUTES
WILL FOLLOW VIA
U.S. MAIL.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 20, 2011

81C052190

The State of Nevada vs Joel Burkett

September 20, 2011 8:30 AM

Petition for Writ of Habeas
Corpus

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Louisa Garcia; Denise Trujillo

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

Deft not present, in NDC. Court noted this matter should be handled by the Attorney General's Office as the Deft is raising issues his time is not being calculated by the prison. COURT ORDERED, matter CONTINUED for Attorney General to respond and State to forward motion and notify the Attorney General's office.

NDC

CONTINUED TO: 10/25/11 8:230 A.M.

PRINT DATE: 09/12/2013

Page 20 of 21

Minutes Date: June 02, 1981

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 25, 2011

81C052190

The State of Nevada vs Joel Burkett

October 25, 2011

8:30 AM

All Pending Motions

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Sandra Harrell

RECORDER: Kerry Esparza

REPORTER:

PARTIES**PRESENT:**Resch, Jamie J.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- DEFENDANT'S PRO PER MOTION FOR WRIT OF HABEAS CORPUS...STATE'S MOTION TO DISMISS

Defendant not present, incarcerated at NDC. COURT ORDERED, Writ DISMISSED WITHOUT PREJUDICE, as not filed in the appropriate county. State to prepare Order.

NDC

CLERK'S NOTE: A copy of the above minute order was mailed to Joel Burkett #16111, c/o Ely State Prison, P.O. Box 1989, Ely NV 89301./sjh

PRINT DATE: 09/12/2013

Page 21 of 21

Minutes Date: June 02, 1981

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated August 21, 2013, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises six volumes with pages numbered 1 through 1351.

STATE OF NEVADA,

Plaintiff(s),

vs.

JOEL BURKETT aka RAYMOND HAIRE,

Defendant(s),

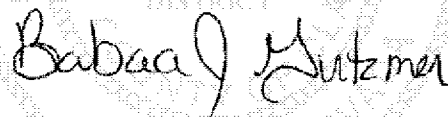
Case No: C052190

Dept No: XII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 12 day of September 2013.

Steven D. Grierson, Clerk of the Court



Barbara J. Gutzmer, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 5

ATTORNEY FOR APPELLANT

JOEL BURKETT # 16111,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 229
2	230 - 460
3	461 - 690
4	691 - 921
5	922 - 1147
6	1148 - 1339

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
5	01/23/2002	"NOTICE"	922 - 923
4	02/02/1994	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	789 - 791
4	06/07/1999	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	812 - 814
4	11/19/2001	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	885 - 887
6	06/14/2013	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	1284 - 1286
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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

JAN 23 5 00 PM '02

Shirley S. Rungius
CLERK

JOEL BURKETT,
PETITIONER

CASE NO: C52190

VS.

DEPT NO: 11

THE STATE OF NEVADA
RESPONDENT

"NOTICE"

JOEL BURKETT PRO SE PETITIONER IN
THE ABOVE ENTITLED MATTER DOES
HEREBY GIVE NOTICE THAT HE HAS
BEEN TRANSFERRED BACK TO NEVADA
ON JAN 16TH 2002 AND IS HOUSED
AT;

JOEL BURKETT 16111
P.O. BOX 1989
ELY, NEVADA, 89301

PETITIONER ALSO WISHED TO INFORM
THE COURT THAT HE HAS NOT
RECEIVED AN ANSWER FROM
RESPONDENTS, WHICH MAY BE DUE
TO THE MOVE BACK TO NEVADA.

RECEIVED
JAN 23 2002
COUNTY CLERK

818

PETITIONER IS UNABLE TO FILE A
REPLY IF AN ANSWER HAS BEEN
FILED, AS HE HASN'T RECEIVED A COPY.

LIKEWISE, PETITIONER WAS UNABLE TO
SERVE RESPONDENT WITH A COPY
OF THIS NOTICE AS HE HASN'T
ACCESS TO A PHOTO COPIER AT
THIS TIME.

DATED THIS 20TH DAY OF JAN,

2002,

RESPECTFULLY

Joel Brevedent

RSPN
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

FILED

JAN 23 10 19 AM '02

Shirley M. Rasmussen
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JOEL BURKETT,
aka Raymond Haire,
#0609533

Defendant.

Case No. C52190
Dept. No. XI

STATE'S RESPONSE TO DEFENDANT'S PROPER PERSON
PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF HEARING: 1-24-02
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
H. LEON SIMON, Deputy District Attorney, and hereby submits the attached Points and
Authorities in Response to Defendant's Proper Person Petition for Writ of Habeas Corpus (Post-
Conviction).

This Response is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

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COUNTY CLERK

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1 Since the same assistant warden of operations was still at the Nevada prison, Defendant was
2 again transferred pursuant to the Interstate Compact Agreement to a prison in Montana. Then
3 on January 16, 2002, Defendant was transferred back to Nevada as a result of him being
4 classified as a management problem.

5 **ARGUMENT**

6 **DEFENDANT'S WRIT OF HABEAS CORPUS**
7 **SHOULD BE DENIED**

8 **I. DEFENDANT'S WRIT IS TIME BARRED**

9 NRS 34.726 states that "unless there is good cause shown for delay, a petition that
10 challenges the validity of a judgment or sentence must be filed within one (1) year after entry
11 of the judgment of conviction or, if an appeal has been taken from the judgment, within one (1)
12 year after the Supreme Court issues its remittitur." This statute bars Defendant's instant petition
13 seeking post-conviction relief because it was filed after the one year deadline for such petitions.
14 Defendant's original Judgment of Conviction was filed on July 29, 1981, and an Amended
15 Judgment of Conviction was filed on February 28, 1994. An Order Dismissing Appeal was filed
16 on April 21, 1983, and the State received the remittitur on May 16, 1983. Defendant did not file
17 the present Petition for Writ of Habeas Corpus until November 19, 2001. Therefore,
18 Defendant's writ must be dismissed as it was filed well after the one year time bar.

19 Furthermore, Defendant has failed to demonstrate good cause existed to excuse the
20 procedural time bars. In addressing the dismissal of a defendant's petition for writ of habeas
21 corpus because it was belatedly filed, the Nevada Supreme Court has previously defined good
22 cause as "an impediment external to the defense which prevented [the petitioner] from
23 complying with the state procedural rules." Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247,
24 252 (1997); *see also* Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), *quoting*
25 State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981)("Good cause" under NRS 34.726 "means
26 a substantial reason; one that affords a legal excuse."). The lack of the assistance of counsel

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1 when preparing a petition and even the failure of trial counsel to forward a copy of the file to a
2 petitioner have been found to *not* constitute good cause. See Phelps v. Director Nevada
3 Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335,
4 890 P.2d 797 (1995).

5 As stated *supra*, Defendant has not provided good cause as to why his claims are not
6 procedurally barred. Defendant alleges that the "issue raised herein could not be raised until
7 Petitioner's first parole date at which time the violation became ripe." Defendant further asserts
8 that he has been incarcerated out of state for all but five months of his sentence at issue
9 (commencing in 1998) and therefore has been without access to Nevada law. Thus, Defendant
10 alleges that he was not aware of the present constitutional violations. Obviously, Defendant's
11 arguments do not rise to the level of being impediments external to the defense which prevented
12 him from complying with the state procedural rules. There is absolutely no reason Defendant
13 could not have discovered the alleged violation previously and the fact that he may have been
14 incarcerated outside of Nevada for all but five months of his sentence at issue cannot be
15 considered sufficient to overcome the procedural bars. Therefore, this Court should dismiss
16 Defendant's Petition for Writ of Habeas Corpus.

17 **II. DEFENDANT'S PETITION IS BARRED BY THE DOCTRINE OF LACHES**

18 The instant petition was filed more than eighteen (18) years after the Nevada Supreme
19 Court issued its remittitur, more than seven (7) years after the filing of the Amended Judgment
20 of Conviction, and more than twenty (20) years after the filing date of the original Judgment of
21 Conviction. Because more than eighteen (18) years have elapsed between the issuance of the
22 remittitur and the filing of this petition, Defendant's petition is barred by laches. NRS 34.800(2)
23 creates a rebuttable presumption of prejudice to the State if "[a] period of five years [elapses]
24 between the filing of a judgment of conviction, an order imposing sentence of imprisonment, or
25 a decision on direct appeal of a judgment of conviction and the filing of a petition challenging
26 the validity of a judgment of conviction" Failure to rebut the presumption of prejudice
27 results in dismissal.

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1 In determining whether laches applies, this court must look at several factors: "(1)
2 whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has
3 arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether
4 circumstances exist that prejudice the State." Hart v. State, 116 Nev. Adv. Op. 66, pp. 4-5, 1
5 P.3d 969, 972 (2000). In the present case, Defendant fails to provide any legitimate excuse for
6 waiting eighteen (18) years to file the present post-conviction relief. Defendant unsuccessfully
7 appealed his judgment of conviction and has previously filed two petitions for post conviction
8 relief. Defendant has had ample opportunity to have his arguments raised in the current petition
9 previously reviewed.

10 NRS 34.800 was enacted to protect the State from having to go back years later to re-
11 prove matters that have become ancient history. There is a rebuttable presumption of prejudice
12 for this very reason and the doctrine of laches must be applied in the instant matter. If courts
13 required evidentiary hearings for long delayed petitions such as in the instant matter, the State
14 would have to call and find long lost witnesses whose once vivid recollections have faded and
15 re-gather evidence that in many cases has been lost or destroyed because of the lengthy passage
16 of time. Therefore, this Court should summarily deny the instant petition according to the
17 doctrine of laches pursuant to NRS 34.800, as the delay of over eighteen years in filing is
18 unexcused. Therefore, the State affirmatively pleads laches.

19 **III. DEFENDANT HAS FILED SUCCESSIVE PETITIONS**

20 NRS 34.810(2) provides as follows:

21 A second or successive petition must be dismissed if the judge or
22 justice determines that it fails to allege new or different grounds for
23 relief and that the prior determination was on the merits or, if new
24 and different grounds are alleged, the judge or justice finds that the
failure of the petitioner to assert those grounds in a prior petition
constituted an abuse of the writ.

25 In the present petition, Defendant alleges a due process violation under the 14th
26 Amendment of the United States Constitution because he has been denied the possibility of
27 parole contrary to his sentence. Defendant alleges that because he has been incarcerated out of
28 State for all but five months of his sentence at issue, it has been impossible for a Nevada

1 psychiatrist to certify him, after observation, while he has been confined in an institution of the
2 Department of Prisons. Defendant alleges that since he has been incarcerated out of state, the
3 parole panel has had no authority to certify him. Defendant's prior petitions for post conviction
4 relief alleged: that there was a discrepancy between the orally stated sentence by the trial court
5 and the original Judgment of Conviction; an ex post facto violation because he was entitled to
6 the law in effect at the time of his conviction and the State was required to treat Count II of his
7 sentence as one continuous term for the purpose of good time credits and parole eligibility; and
8 that he was never given a parole hearing in 1997 thus his parole granted in 1998 should be
9 counted from 1997. The District Court subsequently accepted Defendant's argument with regard
10 to the discrepancy between the oral sentence and the original Judgment of Conviction, however,
11 denied Defendant's other arguments contained in his petitions. Therefore, pursuant to 34.810(2),
12 the present petition should be dismissed because Defendant's present claims could have been
13 raised previously. Furthermore, to the extent the claims in the prior petitions and those in the
14 present petition overlap, this Court should dismiss the present petition because it fails to allege
15 new grounds for relief.

16 This is Defendant's third petition for post-conviction relief. Defendant has failed to
17 establish good cause for filing successive petitions nor has he established that he has suffered
18 any actual prejudice as required by NRS 34.810(3) *See Lozada v. State*, 110 Nev. 349, 358, 871
19 P.2d 944 (1994). There is absolutely no legal defect in the fact that Defendant was housed out
20 of state for portions of his sentence. Defendant was legitimately removed from Nevada as a
21 result of his own actions and has suffered no adverse consequences or legal implications from
22 such. Moreover, Defendant is now incarcerated back in Nevada. Thus, Defendant's instant
23 petition constitutes an abuse of writ. Therefore, this Court should dismiss Defendant's current
24 petition.

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1 CONCLUSION

2 Based upon the foregoing, the State respectfully requests that Defendant's Petition for
3 Writ of Habeas Corpus be denied. However, should this court decide not to summarily dismiss
4 Defendant's Petition, the State reserves the right to file a supplemental response addressing the
5 merits of Defendant's Petition.

6 DATED this 22 day of January, 2002.

7 Respectfully submitted,

8 STEWART L. BELL
9 DISTRICT ATTORNEY
Nevada Bar #000477

10
11 BY H. Leon Simon
12 H. LEON SIMON
13 Deputy District Attorney
14 Nevada Bar #000411
15
16
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18
19

20 CERTIFICATE OF MAILING

21 I hereby certify that service of the above and foregoing, was made this 23rd day of
22 January, 2002, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 JOEL T. BURKETT, #2002346
24 700 Conley Lake Rd.
Deer Lodge, MT 59722

25
26 BY [Signature]
27 Secretary for the District Attorney's Office
28

FILED

NEVADA DISTRICT COURT

FEB 13 10 45 AM '02

CLARK COUNTY

CLERK

JOEL T. BURKETT

CASE No: C52190

PETITIONER,

DEPT No: 11

VS.

2-26-02

THE STATE OF NEVADA

MOTION FOR LEAVE OF

RESPONDENT,

THE COURT TO AMEND

PETITION FOR WRIT OF

HABEAS CORPUS

COMES NOW, JOEL T. BURKETT, PRO SE IN
THE ABOVE ENTITLED MATTER RESPECTFULLY
SEEKING LEAVE OF THE COURT TO FILE
A AMEND PETITION FOR WRIT OF
HABEAS CORPUS SUBMITTED HERE WITH,
THIS MOTION IS MADE AND BASED
UPON THE FOLLOWING FACT.

(16)

COUNTY CLERK

FEB 13 2002

RECEIVED

CMC

\$15

1.

PETITIONER CAUSED TO BE FILED THE ABOVE ENTITLED PETITION FOR WRIT OF HABEAS CORPUS ON NOVEMBER 19TH 2001, AT WHICH TIME PETITIONER WAS HOUSED OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTION COMPACT. IN THE PETITION AT QUESTION 18, THE COURT WAS INFORMED THAT PETITIONER HAD NO ACCESS TO NEVADA LAW. AS SUCH PETITIONER HAS FAILED TO RAISE A CONSTITUTIONAL ISSUE OF DOUBLE JEOPARDY ON HIS SENTENCES. ALTHOUGH IT IS AT THE DISCRETION OF THE COURT TO GRANT OR DENY A MOTION FOR LEAVE OF THE COURT TO AMEND A PETITION FOR WRIT OF HABEAS CORPUS, THE COURT SHOULD ALLOW PETITIONER TO DO SO WHEREAS- HERE HE HAD NO ACCESS TO NEVADA LAW AT THE TIME THE FIRST PETITION WAS FILED.

DATED THIS 10TH DAY OF
FEBRUARY 2002

RESPECTFULLY SUBMITTED,
Jack T. Brewer
PRO SE PETITION

PROOF OF SERVICE

I, JOEL T. BURKETT DO HEREBY
CERTIFY THAT I DID MAIL A TRUE
AND CORRECT COPY OF THE ABOVE
MOTION FOR LEAVE TO AMEND THE
PETITION FOR WRIT OF HABEAS CORPUS
TO RESPONDENT ON THIS 10TH DAY OF
FEBRUARY 2002

Joel T. Burkett
PROSE PETITIONER

at

NEVADA DISTRICT COURT

FILED

CLARK COUNTY

FEB 13 10:56 AM '02

Shirley A. Burroughs
CLERK

JOEL T. BURKETT

CASE NO: C52190

PETITIONER

DEPT NO: 11

VS.

THE STATE OF NEVADA

RESPONDENT

NOTICE

2-26-02

PRO SE, PETITIONER, JOEL T. BURKETT
WISHES TO INFORM THE COURT THAT
HE WAS UNABLE TO MAKE COPIES
AS HE WAS INFORMED THAT HAND
WRITTEN PAGES WILL NOT BE
COPIED, AS CARBON PAPER IS SOLD
ON CANTEEN. I HAVE NO CARBON
PAPER AT THIS TIME, BUT WILL
TRY TO BUY SOME SOON, ONCE AGAIN
RESPONDENT COULDN'T BE SERVED.

RESPECTFULLY

Joel Burkett

DATED THIS 10TH DAY OF
FEBRUARY 2002

515

RECEIVED

FEB 17 2002

COUNTY CLERK

FILED

NEVADA DISTRICT COURT

CLARK COUNTY

FEB 13 10 56 AM '02

Shirley A. Higgins
CLERK

JOEL T. BURKETT | CASE No: C52190

PETITIONER | DEPT. No: 11

VS.

2-26-02

SUPPLEMENTAL ARGUMENT
THE STATE OF NEVADA | IN SUPPORT OF AMENDED
RESPONDENT, PETITION FOR WRIT OF
HABEAS CORPUS

COMES NOW, JOEL T. BURKETT, PRO SE
PETITIONER IN THE ABOVE ENTITLED MATTER
RESPECTFULLY SUBMITTING A SUPPLEMENTAL
ARGUMENT IN SUPPORT OF THE AMENDED
PETITION FOR WRIT OF HABEAS CORPUS.

ARGUMENT

GROUND ONE: IN THE INTEREST OF BRIEFNESS
PETITIONER INCORPORATES HEREIN by
REFERING THERETO THE ORIGINAL "ARGUMENT
IN SUPPORT OF THE PETITION FOR WRIT
OF HABEAS CORPUS FILED NOV 19TH 2001.
IN SUPPORT OF GROUND ONE OF THE
PETITION.

515

Ground THREE:

Ground Two: IN COUNT ONE PETITIONER WAS FOUND GUILTY AND SENTENCE TO (15) FIFTEEN YEARS FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF A ROBBERY PURSUANT TO N.R.S. 193.165. LIKEWISE, PETITIONER WAS FOUND GUILTY AND SENTENCE TO LIFE WITH THE POSSIBILITY OF PAROLE IN COUNT TWO FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF FIRST DEGREE KIDNAPPING.

AT TRIAL IT WAS THE STATE'S CONTENTION THAT THE VICTIM WAS KIDNAPED AT KNIFE POINT BY A CODEFENDENT AND HELD IN A CAR WHILE PETITIONER STAYED BACK IN THE STORE ALONE TO TAKE THE MONEY, SEE (TRIAL TRANSCRIPT) T.T. Pg 440, IN 28-32; T.T. Pg 441 IN, 1-12. THUS THE STATE ARGUED THE USE OF THE WEAPON WAS AT THE SAME TIME AND PLACE FOR BOTH THE ROBBERY, AND KIDNAPPING.

THE NEVADA SUPREME COURT IN, RABY V. STATE 544 P.2D 895 (1976) HELD THAT, "THE USE OF A DEADLY

WEAPON IN THE COMMISSION OF A CRIME IS NOT A SEPARATE CRIMINAL OFFENCE" THE COURT WENT ON TO ANNUL FIVE OF RABY'S CONVICTIONS FOR THE USE OF A FIREARM. THE COURT IN, NEVADA DEPT. OF PRISONS V. BOWEN, 745 P.2d 697 (NEV 1987) REAFFIRMED ITS HOLDING IN, RABY (SUPRA)

THERE IS NO QUESTION THAT BY FINDING PETITIONER GUILTY AND SENTENCING HIM FOR THE USE OF A DEADLY WEAPON IN BOTH COUNT ONE, ROBBERY, AND COUNT TWO KIDNAPPING, PETITIONER HAS BEEN TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE. RABY (SUPRA)

THE UNITED STATES SUPREME COURT IN, JONES V. THOMAS, 491 U.S. 371 (1989) ADDRESS THE CONSTITUTIONAL QUESTION AS TO WHAT REMEDY IS REQUIRED TO CURE THE ADMITTED DOUBLE JEOPARDY VIOLATION IN THE MULTIPLE PUNISHMENTS CONTEXT. AS IN, THOMAS (SUPRA) PETITIONER WAS SENTENCE TO (15) FIFTEEN YEARS, AND A LIFE TERM.

THE COURT IN THOMAS (SUPRA) DISMISSED THE (15) FIFTEEN YEAR TERM CREDITING THE TIME ALREADY SERVED AGAINST THE LIFE SENTENCE LEFT STANDING.

PETITIONER SEEKS THE SAME HERE, AND CONTENTS THAT TO DO OTHERWISE WOULD AMOUNT TO A DENIAL OF DUE PROCESS IN VIOLATION OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION. WHERE AS HERE, PETITIONER WAS DENIED A CHANCE TO EVERY PAROLE FROM THE 15 YEAR TERM FOR THE USE OF THE WEAPON IN COUNT ONE DUE TO A MISTAKE IN PETITIONER'S JUDGEMENT OF CONVICTION, THE NEVADA DEPT. OF PRISON'S RAN ALL OF PETITIONER'S SENTENCE'S TOGETHER. AND IN 1985 PETITIONER WAS TRANSFERRED INTO THE CALIFORNIA STATE PRISON, FOLSOM, IN 1986 PETITIONER WAS RETURN TO NEVADA, IN 1987 PETITIONER WAS AGAIN TRANSFERRED, THIS TIME INTO THE FEDERAL PRISON SYSTEM, THAT SAME YEAR A PAROLE HEARING WAS HELD FOR PETITIONER WHILE HE WAS IN THE FEDERAL SYSTEM,

BECAUSE PETITIONER WAS OUT OF STATE PAROLE COULD NOT BE GRANTED PURSUANT TO N.R.S. 213.1214, AGAIN IN 1991, WHILE STILL IN THE FEDERAL SYSTEM A PAROLE HEARING WAS HELD, AND AGAIN PAROLE COULD NOT BE GRANTED PURSUANT TO N.R.S. 213.1214.

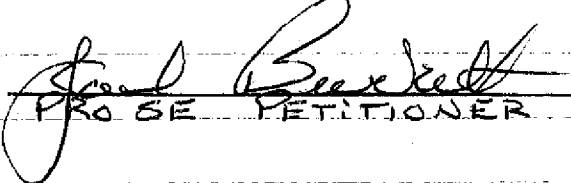
IN 1993, PETITIONER WAS RETURN TO NEVADA, A FEW MONTHS LATER PETITIONER WAS FOR THE FIRST TIME TAKEN BEFORE THE PANEL PURSUANT TO N.R.S. 213.1214 AND THE PANEL INFORMED HIM THAT THEY COULD NOT PASS HIM, AS HE HAD BEEN OUT OF STATE AND JUST RETURN. PAROLE WAS AGAIN DENIED PURSUANT TO N.R.S. 213.1099 AND N.R.S. 213.1214.

FOR (15) YEARS PETITIONER WAS DENIED A CHANCE TO PAROLE, CLEARLY PURSUANT TO SANDIN V. CONNER, 115 S. CT. 2300 (1995) "THE DUE PROCESS CLAUSE PROTECTS AGAINST RESTRAINTS OR CONDITIONS OF CONFINEMENT THAT EXCEED THE SENTENCE IN

AN UNEXPECTED MANNER" PETITIONER
CONTENDS, THAT BECAUSE HE WAS
DENIED ANY CHANCE TO PAROLE FROM
COUNT ONE FOR 15 YEARS THE ONLY
JUST COURSE TO PROCEED IS TO
CREDIT THAT TIME OVER TO COUNTS
TWO (2) AND FOUR (4) AS THE COURT
DONE IN JONES V. THOMAS, 491 U.S. 371
(1989).

PETITIONER RESPECTFULLY SUBMITS THAT
DO TO THE DENIAL OF ANY FORM OF
DUE PROCESS HE HAS BEEN DENIED
A CHANCE TO PAROLE FOR (22) YEARS
AND IS ENTITLED TO RELIEF.

DATED THIS 10TH DAY OF FEBRUARY 2002

RESPECTFULLY SUBMITTED

PRO SE PETITIONER

PROOF OF SERVICE

I, JOEL T. BURKETT, do HEREBY CERTIFY
THAT I did MAIL A TRUE AND
CORRECT COPY OF THE ABOVE
MOTION TO RESPONDENT ON THIS 10th
DAY OF FEBRUARY 2002

Joel Burkett
PRO SE PETITIONER

Case No. C52190

Dept. No. 11

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOEL T. BURKEIT,

Petitioner,

v.

E.K. McDaniel,

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
5 sentence. Failure to allege specific facts rather than just
6 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
9 conviction or sentence, the original and one copy must be filed
10 with the clerk of the district court for the county in which
11 the conviction occurred. Petitions raising any other claims
12 must be filed with the clerk of the district court for the
13 county in which you are incarcerated. One copy must be mailed
to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18 ELY STATE PRISON

19 2. Name and location of court which entered the judgment
20 of conviction under attack: EIGHTH JUDICIAL

21 DISTRICT COURT CLARK COUNTY

22 3. Date of judgment of conviction: JAN. 20, 1981

23 4. Case number: C52190

24 5. (a) Length of sentence: SEE ORIGINAL PETITION

25 (b) If sentence is death, state any date upon which
26 execution is scheduled: _____

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No ✓. If "yes," list crime, case number and
2 sentence being served at this time: _____
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: SEE ORIGINAL PETITION: FILED
7 Nov 1974 2001

8 8. What was your plea? (check one)

9 (a) Not guilty ✓

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury ✓

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes ✓ No _____

23 12. Did you appeal from the judgment of conviction?

24 Yes ✓ No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: SEE ORIGINAL PETITION

27 (b) Case number or citation: 13600
28

1 (c) Result:

denied

2 (d) Date of Result:

April 21 1983

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did
5 not: _____
6 _____

7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes ☒ No _____.

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: SEE ORIGINAL PETITION

14 (2) Nature of proceeding: SEE ORIGINAL

15 PETITION

16
17 (3) Grounds raised: SEE ORIGINAL PETITION
18 _____
19 _____

20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes ☒ No _____

22 (5) Result: denied

23 (6) Date of Result: Aug. 5 1988

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: 76-01306H
26 _____
27 _____
28 _____

1 (b) As to any second petition, application or motion,
2 give the same information:

3 (1) Name of Court: EIGHTH JUDICIAL DISTRICT

4 (2) Nature of proceeding: HABEAS CORPUS

5 (3) Grounds raised: MISTAKE IN SENTENCING

6 (4) Did you receive an evidentiary hearing on
7 your petition, application or motion? Yes _____ No ✓

8 (5) Result: GRANTED

9 (6) Date of Result: FEB 28, 1994

10 (7) If known, citations or any written opinion or
11 date of orders entered pursuant to each result: FEB 28

12 1994

13 (c) As to any third or subsequent additional
14 applications or motions, give the same information as above,
15 list them on a separate sheet and attach.

16 (d) Did you appeal to the highest state or federal
17 court having jurisdiction, the result or action taken on any
18 petition, application or motion?

19 (1) First petition, application or motion?

20 Yes _____ No _____

21 Citation or date of decision: SEE ORIGINAL PETITION

22 (2) Second petition, application or motion?

23 Yes _____ No _____

24 Citation or date of decision: SEE ORIGINAL PETITION

25 (3) Third or subsequent petitions, applications .
26 or motions? Yes _____ No _____

27 Citation or date of decision: SEE ORIGINAL PETITION

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)

7 N/A

8
9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: _____

14 NONE

15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)

22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may
2 be included on paper which is 8 1/2 by 11 inches attached to
3 the petition. Your response may not exceed five handwritten or
4 typewritten pages in length.)

5 SEE ATTACHED HERETO QUESTION # 18

6 19. Are you filing this petition more than 1 year
7 following the filing of the judgment of conviction or the
8 filing of a decision on direct appeal? If so, state briefly
9 the reasons for the delay. (You must relate specific facts in
10 response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition.
12 Your response may not exceed five handwritten or typewritten
13 pages in length.)

14 SEE ATTACHED HERETO QUESTION # 19

15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under
17 attack? Yes _____ No ✓.

18 If yes, state what court and the case number: _____
19 _____

20 21. Give the name of each attorney who represented you in
21 the proceeding resulting in your conviction and on direct
22 appeal: DO NOT HAVE AT THIS TIME
23 _____

24 22. Do you have any future sentences to serve after you
25 complete the sentence imposed by the judgment under attack?

26 Yes _____ No ✓. If yes, specify where and
27 when it is to be served, if you know: _____
28 _____

949

1 EXECUTED at ELY STATE PRISON on the 10th day
2 of FEBRUARY, 2023.

3
4 James T. Bueckelt
Signature of Petitioner
5 # 16111
6 P.O. Box 1989
Address
7 ELY, NEV, 89301

8 _____
Signature of Attorney (if any)

9 _____
10 Attorney for Petitioner

11 _____
12 Address

13
14 VERIFICATION

15 Under penalty of perjury, the undersigned declares that he
16 is the petitioner named in the foregoing petition and knows the
17 contents thereof; that the pleading is true of his own
18 knowledge, except as to those matters stated on information and
19 belief, and as to such matters he believes them to be true.

20 James T. Bueckelt
21 Signature of Petitioner
22 _____
23 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL T. BURKETT, hereby certify pursuant
to N.R.C.P. 5(b), that on the 10th day of FEBRUARY,
2002, I mailed a true and correct copy of the foregoing
PETITION FOR WRIT OF HABEAS CORPUS addressed to:

E.K. McDaniel
Respondent prison or jail official

P.O. Box 1989
Address

ELY, NEV. 89301

Nevada Attorney General
100 N Carson St
Carson City NV 89701-4717

REX BELL
District Attorney of County of Conviction

200 South 3rd St / Las Vegas NEV
Address 89101

JOEL T. BURKETT
Signature of Petitioner

PETITIONER CONTENDS THE SAME REASONS AS UNDER GROUND TWO.

GROUND THREE:

PETITIONER CONTENDS THAT THE ISSUE RAISED IN GROUND TWO WAS NEVER RAISED IN ANY OTHER PROCEEDINGS AND THIS WAS DUE TO THE DENIAL OF ACCESS TO NEVADA LAW AS PETITIONER HAS BEEN HOUSED OUT OF STATE MOST OF HIS SENTENCE. LIKEWISE MOST OF PETITIONER'S LEGAL PAPERS HAVE BEEN LOST DUE TO BEING TRANSFERRED ALL OVER BY RESIDENT.

GROUND TWO, QUESTION 18.

INCORPORATES HEREIN THE ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS QUESTION 18.

QUESTION 18: AS TO GROUND ONE, PETITIONER

QUESTION 18.

QUESTION # 19

GROUND ONE:

AS TO GROUND ONE PETITIONER
INCORPORATES THE ORIGINAL PETITION
FOR WRIT OF HABEAS CORPUS FOR
QUESTION 19.

GROUND TWO: QUESTION 19;

PETITIONER CONTENTS THE LOSS OF
HIS LEGAL PAPERS AND THE DENIAL
OF ACCESS TO NEVADA LAW FOR
ANY DELAY IN FILING ANY SOONER.
LIKEWISE, PETITIONER WILL CLAIM
A FUNDAMENTAL MISCARRIAGE OF
JUSTICE SHOULD THE DELAY
BECOME AN ISSUE.

GROUND THREE:

PETITIONER CONTENTS THE SAME REASONS
UNDER GROUND TWO APPLY TO
GROUND THREE.

SUPPORTING FACTS

GROUND ONE: IN THE INTEREST OF BRIEFNESS PETITIONER INCORPORATES HEREIN BY REFERRING TO THE ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND ITS SUPPORTING FACTS TO SUPPORT GROUND ONE.

GROUND TWO: IN COUNT ONE PETITIONER WAS FOUND GUILTY FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF A ROBBERY, AND SENTENCE TO (15) FIFTEEN YEARS.

IN COUNT TWO (2) PETITIONER WAS AGAIN FOUND GUILTY OF THE USE OF A DEADLY WEAPON IN THE COMMISSION OF FIRST DEGREE KIDNAPPING AND SENTENCED TO LIFE WITH THE POSSIBILITY OF PAROLE.

AT TRIAL THE STATE CONTENDED THAT THE VICTIM WAS KIDNAPED AT KNIFE POINT BY A CODEFENDANT AND HELD IN A CAR WHILE PETITIONER REMAINED IN THE STORE.

ALONE TAKING THE MONEY, (TRIAL
TRANSCRIPT) T.T. Pg 440, IN 28-32;
T.T. Pg 441 IN. 1-12,

THE STATE ARGUED THE USE OF
THE WEAPON WAS AT THE SAME
TIME AND PLACE FOR BOTH THE
ROBBERY, AND KIDNAPPING.

PETITIONER CONTENTS THAT BY SENTENCING
HIM TO (15) YEARS FOR THE WEAPON
IN THE ROBBERY, AND AGAIN TO
LIFE WITH THE POSSIBILITY OF PAROLE
FOR ITS USES IN THE KIDNAPPING
VIOLATES STATE LAW, AND THE
FIFTH AMENDMENT TO THE U.S.
CONSTITUTION DOUBLE JEOPARDY.

GROUND THREE:

PETITIONER CONTENTS THAT HIS
SENTENCE UNDER ~~GROUND ONE~~ COUNT ONE
WAS VIOLATED PURSUANT TO THE
FOURTEENTH AMENDMENT OF THE
UNITED STATES CONSTITUTION,
"DUE PROCESS".

BECAUSE OF A MISTAKE IN PETITIONERS
JUDGMENT OF CONVICTION COUNT ONE
TWO, AND THREE, FOUR WHERE
RAN TOGETHER BY THE NEVADA
DEPARTMENT OF PRISONS. THIS
MISTAKE WAS NOT CORRECTED UNTIL
1994. FOR 15 YEARS PETITIONER
WAS DENIED A CHANCE TO PAROLE
LIKE ALL OTHER NEVADA PRISONERS
BECAUSE PETITIONER WAS HOUSED OUT
OF STATE AND COULD NOT BE
PAROLE PURSUANT TO N.R.S. 213.1099,
N.R.S. 213.1214.

DATED THIS 10TH DAY OF FEBRUARY 2002

RESPECTFULLY SUBMITTED

Joel Beckett

RELIEF Sought

PETITIONER, JOEL T. BURKETT RESPECTFULLY
REQUEST THE COURT TO GRANT THE
FOLLOWING RELIEF;

(1) ISSUE AN ORDER DISMISSING THE
SENTENCES IN COUNT TWO (2) AND
COUNT THREE (3);

(2) ISSUE AN ORDER DISMISSING THE
(15) YEAR TERM IN COUNT ONE FOR
THE USE OF A DEADLY WEAPON, AND
GRANT THE 15 YEARS SERVED, CREDITING
IT TO COUNT TWO AND (4) FOUR

(3) GRANT PETITIONER THE JUST RELIEF
TO WHICH HE IS ENTITLED IN THESE
PROCEEDINGS.

DATED THIS 10TH DAY OF FEBRUARY 2002

Joel T. Burkett
PRO SE PETITIONER

100
1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

2
FILED

FEB 14 4 14 PM '02

Shirley S. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8
9 Plaintiff,

-vs-

10 JOEL BURKETT,
11 aka Raymond Haire,
12 #0609533

Defendant.

Case No.. C52190
Dept. No. XI

15 **FINDINGS OF FACT, CONCLUSIONS OF**
16 **LAW AND ORDER**

17 DATE OF HEARING: 1-24-02
18 TIME OF HEARING: 9:00 A.M.

19 THIS CAUSE having come on for hearing before the Honorable Michael L. Douglas,
20 District Judge, on the 24th day of January, 2002, the Petitioner not being present, nor represented
21 by counsel, the Respondent being represented by STEWART L. BELL, District Attorney, by and
22 through CHERYL L. KOSEWICZ, Deputy District Attorney, and the Court having considered
23 the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now
24 therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

25 1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information
26 with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime (Felony - NRS
27 200.380, 193.165); Count II - First Degree Kidnaping & Use of Deadly Weapon in Commission
28 of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual Assault (Felony - NRS 200.364,

1 200.366); and Count IV - Sexual Assault (Felony - NRS 200.364, 200.366).

2 2. Defendant was convicted by jury on May 4, 1981. The original Judgement of Conviction
3 was filed on July 29, 1981, however, an Amended Judgment of Conviction was filed on
4 February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for Robbery and an
5 additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be
6 served consecutively; as to Count II, Life with Possibility of Parole and an additional term of
7 Life with Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be
8 served consecutively, Count II to be served consecutive to Count I; as to Count III, Life with
9 Possibility of Parole; as to Count IV, Life with the Possibility of Parole, Count IV to be served
10 consecutive to Count III; Counts III and IV to be served concurrent to the sentences imposed in
11 Counts II.

12 3. Defendant appealed his judgement of conviction and the Supreme Court of Nevada filed
13 an Order Dismissing Appeal on April 21, 1983. The State received the remittitur on May 16,
14 1983.

15 4. Defendant then filed a petition for writ of habeas corpus on February 2, 1994, which was
16 granted in part and denied in part. Defendant filed a second petition for writ of habeas corpus
17 on June 7, 1999. Defendant's petition was denied on August 12, 1999. Defendant filed the
18 instant Petition for Writ of Habeas Corpus (Post-Conviction) on November 19, 2001.

19 5. Relevant to the instant Petition, on October 6, 1995, Defendant was transferred from
20 prison in Nevada to a New Mexico prison pursuant to the Interstate Compact Agreement. This
21 transfer was at the request of the Nevada warden after indications that Defendant had been
22 plotting to take the assistant warden of operations hostage. Defendant was subsequently
23 transferred back to Nevada on September 19, 2000, as a result of gang activity in New Mexico.
24 Since the same assistant warden of operations was still at the Nevada prison, Defendant was
25 again transferred pursuant to the Interstate Compact Agreement to a prison in Montana. Then
26 on January 16, 2002, Defendant was transferred back to Nevada as a result of him being
27 classified as a management problem.

28 6. Defendant's writ is time barred pursuant to NRS 34.726.

1 7. Defendant's writ is barred by the doctrine of laches.

2 8. Defendant has improperly filed successive petitions pursuant to NRS 34.810(2).

3 9. Defendant has not shown good cause for the untimely and successive filing of his
4 petition.

5 CONCLUSIONS OF LAW

6 1. NRS 34.726 states that "unless there is good cause shown for delay, a petition that
7 challenges the validity of a judgment or sentence must be filed within one (1) year after entry
8 of the judgment of conviction or, if an appeal has been taken from the judgment, within one (1)
9 year after the Supreme Court issues its remittitur." This statute bars Defendant's instant petition
10 seeking post-conviction relief because it was filed after the one year deadline for such petitions.
11 Defendant's original Judgment of Conviction was filed on July 29, 1981, and an Amended
12 Judgment of Conviction was filed on February 28, 1994. An Order Dismissing Appeal was filed
13 on April 21, 1983, and the State received the remittitur on May 16, 1983. Defendant did not file
14 the present Petition for Writ of Habeas Corpus until November 19, 2001. Therefore,
15 Defendant's writ is dismissed as it was filed well after the one year time bar.

16 2. Furthermore, Defendant has failed to demonstrate good cause existed to excuse the
17 procedural time bars. In addressing the dismissal of a defendant's petition for writ of habeas
18 corpus because it was belatedly filed, the Nevada Supreme Court has previously defined good
19 cause as "an impediment external to the defense which prevented [the petitioner] from
20 complying with the state procedural rules." Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247,
21 252 (1997); *see also* Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), *quoting*
22 State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981) ("Good cause" under NRS 34.726 "means
23 a substantial reason; one that affords a legal excuse."). The lack of the assistance of counsel
24 when preparing a petition and even the failure of trial counsel to forward a copy of the file to a
25 petitioner have been found to *not* constitute good cause. *See* Phelps v. Director Nevada
26 Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335,
27 890 P.2d 797 (1995).

28 3. As stated *supra*, Defendant has not provided good cause as to why his claims are not

1 procedurally barred. Defendant alleges that the "issue raised herein could not be raised until
2 Petitioner's first parole date at which time the violation became ripe." Defendant further asserts
3 that he has been incarcerated out of state for all but five months of his sentence at issue
4 (commencing in 1998) and therefore has been without access to Nevada law. Thus, Defendant
5 alleges that he was not aware of the present constitutional violations. Obviously, Defendant's
6 arguments do not rise to the level of being impediments external to the defense which prevented
7 him from complying with the state procedural rules. Crump v. Warden, 113 Nev. 293, 295, 934
8 P.2d 247, 252 (1997). There is absolutely no reason Defendant could not have discovered the
9 alleged violation previously and the fact that he may have been incarcerated outside of Nevada
10 for all but five months of his sentence at issue is not sufficient to overcome the procedural bars.
11 Therefore, Defendant's Petition for Writ of Habeas Corpus is dismissed.

12 4. The instant petition was filed more than eighteen (18) years after the Nevada Supreme
13 Court issued its remittitur, more than seven (7) years after the filing of the Amended Judgment
14 of Conviction, and more than twenty (20) years after the filing date of the original Judgment of
15 Conviction. Because more than eighteen (18) years have elapsed between the issuance of the
16 remittitur and the filing of this petition, Defendant's petition is barred by laches. NRS 34.800(2)
17 creates a rebuttable presumption of prejudice to the State if "[a] period of five years [elapses]
18 between the filing of a judgment of conviction, an order imposing sentence of imprisonment, or
19 a decision on direct appeal of a judgment of conviction and the filing of a petition challenging
20 the validity of a judgment of conviction" Failure to rebut the presumption of prejudice
21 results in dismissal.

22 5. In determining whether laches applies, the court must look at several factors: "(1)
23 whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has
24 arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether
25 circumstances exist that prejudice the State." Hart v. State, 116 Nev. Adv. Op. 66, pp. 4-5, 1
26 P.3d 969, 972 (2000). In the present case, Defendant fails to provide any legitimate excuse for
27 waiting eighteen (18) years to file the present post-conviction relief. Defendant unsuccessfully
28 appealed his judgment of conviction and has previously filed two petitions for post conviction

1 relief. Defendant has had ample opportunity to have his arguments raised in the current petition
2 previously reviewed.

3 6. NRS 34.800 was enacted to protect the State from having to go back years later to re-
4 prove matters that have become ancient history. There is a rebuttable presumption of prejudice
5 for this very reason and the doctrine of laches must be applied in the instant matter. If courts
6 required evidentiary hearings for long delayed petitions such as in the instant matter, the State
7 would have to call and find long lost witnesses whose once vivid recollections have faded and
8 re-gather evidence that in many cases has been lost or destroyed because of the lengthy passage
9 of time. In the present case, the State affirmatively pleaded laches. Therefore, the instant
10 petition is summarily denied according to the doctrine of laches pursuant to NRS 34.800, as the
11 delay of over eighteen years in filing is unexcused.

12 7. NRS 34.810(2) provides as follows:

13 A second or successive petition must be dismissed if the
14 judge or justice determines that it fails to allege new or different
15 grounds for relief and that the prior determination was on the merits
16 or, if new and different grounds are alleged, the judge or justice
 finds that the failure of the petitioner to assert those grounds in a
 prior petition constituted an abuse of the writ.

17 8. In the present petition, Defendant alleges a due process violation under the 14th
18 Amendment of the United States Constitution because he has been denied the possibility of
19 parole contrary to his sentence. Defendant alleges that because he has been incarcerated out of
20 State for all but five months of his sentence at issue, it has been impossible for a Nevada
21 psychiatrist to certify him, after observation, while he has been confined in an institution of the
22 Department of Prisons. Defendant alleges that since he has been incarcerated out of state, the
23 parole panel has had no authority to certify him. Defendant's prior petitions for post conviction
24 relief alleged: that there was a discrepancy between the orally stated sentence by the trial court
25 and the original Judgment of Conviction; an ex post facto violation because he was entitled to
26 the law in effect at the time of his conviction and the State was required to treat Count II of his
27 sentence as one continuous term for the purpose of good time credits and parole eligibility; and
28 that he was never given a parole hearing in 1997 thus his parole granted in 1998 should be

1 counted from 1997. The District Court subsequently accepted Defendant's argument with regard
2 to the discrepancy between the oral sentence and the original Judgment of Conviction, however,
3 denied Defendant's other arguments contained in his petitions. Therefore, pursuant to 34.810(2),
4 the present petition should be dismissed because Defendant's present claims could have been
5 raised previously. Furthermore, to the extent the claims in the prior petitions and those in the
6 present petition overlap, the present petition is dismissed because it fails to allege new grounds
7 for relief.

8 9. This is Defendant's third petition for post-conviction relief. Defendant has failed to
9 establish good cause for filing successive petitions nor has he established that he has suffered
10 any actual prejudice as required by NRS 34.810(3) See Lozada v. State, 110 Nev. 349, 358, 871
11 P.2d 944 (1994). There is absolutely no legal defect in the fact that Defendant was housed out
12 of state for portions of his sentence. Defendant was legitimately removed from Nevada as a
13 result of his own actions and has suffered no adverse consequences or legal implications from
14 such. Moreover, Defendant is now incarcerated back in Nevada. Thus, Defendant's instant
15 petition constitutes an abuse of writ. Therefore, Defendant's current petition is dismissed.


16 **ORDER**

17 Based upon the Findings of Fact and Conclusions of Law contained herein, it is hereby:
18 ORDERED, ADJUDGED, AND DECREED that Defendant's Petition for Writ of Habeas
19 Corpus is denied.

20 DATED this 12 day of February, 2002.

21
22 
DISTRICT JUDGE

23 STEWART L. BELL
24 DISTRICT ATTORNEY
Nevada Bar #000477

25
26 BY 
27 CHERYL L. KOSEWICZ
28 Deputy District Attorney
Nevada Bar #007409

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District Court FILED

Clark County, Nevada

FEB 19 3 02 PM '02

JOEL BURKETT,

Petitioner,

Shirley B. Parraguirre
CLERK

Case No. C52190

vs

Dept. No. XI

THE STATE OF NEVADA,

Respondent.

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on February 14, 2002, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 19, 2002.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: *Norreta Caldwell*
Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of February, 2002, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the County Clerk of:
Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division

☐ The United States mail addressed as follows:

Joel Burkett 2002346
700 Conley Lake Rd
Deer Lodge, MT 59722

Norreta Caldwell
Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

\$12

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FILED

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Shelley S. Pinquini
CLERK

1 **ORDR**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**
10
11 Plaintiff,

12 -vs-

13 **JOEL BURKETT,**
14 aka Raymond Haire,
15 #0609533

16 Defendant.

Case No.. C52190
Dept. No. XI

17 **FINDINGS OF FACT, CONCLUSIONS OF**
18 **LAW AND ORDER**

19 **DATE OF HEARING: 1-24-02**
20 **TIME OF HEARING: 9:00 A.M.**

21 **THIS CAUSE** having come on for hearing before the Honorable Michael L. Douglas,
22 District Judge, on the 24th day of January, 2002, the Petitioner not being present, nor represented
23 by counsel, the Respondent being represented by STEWART L. BELL, District Attorney, by and
24 through CHERYL L. KOSEWICZ, Deputy District Attorney, and the Court having considered
25 the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now
26 therefore, the Court makes the following findings of fact and conclusions of law:

27 **FINDINGS OF FACT**

28 1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information
with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime (Felony - NRS
200.380, 193.165); Count II - First Degree Kidnaping & Use of Deadly Weapon in Commission
of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual Assault (Felony - NRS 200.364,

COUNTY CLERK

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1 200.366); and Count IV - Sexual Assault (Felony - NRS 200.364, 200.366).

2 2. Defendant was convicted by jury on May 4, 1981. The original Judgement of Conviction
3 was filed on July 29, 1981, however, an Amended Judgment of Conviction was filed on
4 February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for Robbery and an
5 additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be
6 served consecutively; as to Count II, Life with Possibility of Parole and an additional term of
7 Life with Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be
8 served consecutively, Count II to be served consecutive to Count I; as to Count III, Life with
9 Possibility of Parole; as to Count IV, Life with the Possibility of Parole, Count IV to be served
10 consecutive to Count III; Counts III and IV to be served concurrent to the sentences imposed in
11 Counts II.

12 3. Defendant appealed his judgement of conviction and the Supreme Court of Nevada filed
13 an Order Dismissing Appeal on April 21, 1983. The State received the remittitur on May 16,
14 1983.

15 4. Defendant then filed a petition for writ of habeas corpus on February 2, 1994, which was
16 granted in part and denied in part. Defendant filed a second petition for writ of habeas corpus
17 on June 7, 1999. Defendant's petition was denied on August 12, 1999. Defendant filed the
18 instant Petition for Writ of Habeas Corpus (Post-Conviction) on November 19, 2001.

19 5. Relevant to the instant Petition, on October 6, 1995, Defendant was transferred from
20 prison in Nevada to a New Mexico prison pursuant to the Interstate Compact Agreement. This
21 transfer was at the request of the Nevada warden after indications that Defendant had been
22 plotting to take the assistant warden of operations hostage. Defendant was subsequently
23 transferred back to Nevada on September 19, 2000, as a result of gang activity in New Mexico.
24 Since the same assistant warden of operations was still at the Nevada prison, Defendant was
25 again transferred pursuant to the Interstate Compact Agreement to a prison in Montana. Then
26 on January 16, 2002, Defendant was transferred back to Nevada as a result of him being
27 classified as a management problem.

28 6. Defendant's writ is time barred pursuant to NRS 34.726.

1 7. Defendant's writ is barred by the doctrine of laches.

2 8. Defendant has improperly filed successive petitions pursuant to NRS 34.810(2).

3 9. Defendant has not shown good cause for the untimely and successive filing of his
4 petition.

5 **CONCLUSIONS OF LAW**

6 1. NRS 34.726 states that "unless there is good cause shown for delay, a petition that
7 challenges the validity of a judgment or sentence must be filed within one (1) year after entry
8 of the judgment of conviction or, if an appeal has been taken from the judgment, within one (1)
9 year after the Supreme Court issues its remittitur." This statute bars Defendant's instant petition
10 seeking post-conviction relief because it was filed after the one year deadline for such petitions.
11 Defendant's original Judgment of Conviction was filed on July 29, 1981, and an Amended
12 Judgment of Conviction was filed on February 28, 1994. An Order Dismissing Appeal was filed
13 on April 21, 1983, and the State received the remittitur on May 16, 1983. Defendant did not file
14 the present Petition for Writ of Habeas Corpus until November 19, 2001. Therefore,
15 Defendant's writ is dismissed as it was filed well after the one year time bar.

16 2. Furthermore, Defendant has failed to demonstrate good cause existed to excuse the
17 procedural time bars. In addressing the dismissal of a defendant's petition for writ of habeas
18 corpus because it was belatedly filed, the Nevada Supreme Court has previously defined good
19 cause as "an impediment external to the defense which prevented [the petitioner] from
20 complying with the state procedural rules." Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247,
21 252 (1997); *see also* Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), *quoting*
22 State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981) ("Good cause" under NRS 34.726 "means
23 a substantial reason; one that affords a legal excuse."). The lack of the assistance of counsel
24 when preparing a petition and even the failure of trial counsel to forward a copy of the file to a
25 petitioner have been found to *not* constitute good cause. *See* Phelps v. Director Nevada
26 Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335,
27 890 P.2d 797 (1995).

28 3. As stated *supra*, Defendant has not provided good cause as to why his claims are not

1 procedurally barred. Defendant alleges that the "issue raised herein could not be raised until
2 Petitioner's first parole date at which time the violation became ripe." Defendant further asserts
3 that he has been incarcerated out of state for all but five months of his sentence at issue
4 (commencing in 1998) and therefore has been without access to Nevada law. Thus, Defendant
5 alleges that he was not aware of the present constitutional violations. Obviously, Defendant's
6 arguments do not rise to the level of being impediments external to the defense which prevented
7 him from complying with the state procedural rules. Crump v. Warden, 113 Nev. 293, 295, 934
8 P.2d 247, 252 (1997). There is absolutely no reason Defendant could not have discovered the
9 alleged violation previously and the fact that he may have been incarcerated outside of Nevada
10 for all but five months of his sentence at issue is not sufficient to overcome the procedural bars.
11 Therefore, Defendant's Petition for Writ of Habeas Corpus is dismissed.

12 4. The instant petition was filed more than eighteen (18) years after the Nevada Supreme
13 Court issued its remittitur, more than seven (7) years after the filing of the Amended Judgment
14 of Conviction, and more than twenty (20) years after the filing date of the original Judgment of
15 Conviction. Because more than eighteen (18) years have elapsed between the issuance of the
16 remittitur and the filing of this petition, Defendant's petition is barred by laches. NRS 34.800(2)
17 creates a rebuttable presumption of prejudice to the State if "[a] period of five years [elapses]
18 between the filing of a judgment of conviction, an order imposing sentence of imprisonment, or
19 a decision on direct appeal of a judgment of conviction and the filing of a petition challenging
20 the validity of a judgment of conviction" Failure to rebut the presumption of prejudice
21 results in dismissal.

22 5. In determining whether laches applies, the court must look at several factors: "(1)
23 whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has
24 arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether
25 circumstances exist that prejudice the State." Hart v. State, 116 Nev. Adv. Op. 66, pp. 4-5, 1
26 P.3d 969, 972 (2000). In the present case, Defendant fails to provide any legitimate excuse for
27 waiting eighteen (18) years to file the present post-conviction relief. Defendant unsuccessfully
28 appealed his judgment of conviction and has previously filed two petitions for post conviction

1 relief. Defendant has had ample opportunity to have his arguments raised in the current petition
2 previously reviewed.

3 6. NRS 34.800 was enacted to protect the State from having to go back years later to re-
4 prove matters that have become ancient history. There is a rebuttable presumption of prejudice
5 for this very reason and the doctrine of laches must be applied in the instant matter. If courts
6 required evidentiary hearings for long delayed petitions such as in the instant matter, the State
7 would have to call and find long lost witnesses whose once vivid recollections have faded and
8 re-gather evidence that in many cases has been lost or destroyed because of the lengthy passage
9 of time. In the present case, the State affirmatively pleaded laches. Therefore, the instant
10 petition is summarily denied according to the doctrine of laches pursuant to NRS 34.800, as the
11 delay of over eighteen years in filing is unexcused.

12 7. NRS 34.810(2) provides as follows:

13 A second or successive petition must be dismissed if the
14 judge or justice determines that it fails to allege new or different
15 grounds for relief and that the prior determination was on the merits
16 or, if new and different grounds are alleged, the judge or justice
 finds that the failure of the petitioner to assert those grounds in a
 prior petition constituted an abuse of the writ.

17 8. In the present petition, Defendant alleges a due process violation under the 14th
18 Amendment of the United States Constitution because he has been denied the possibility of
19 parole contrary to his sentence. Defendant alleges that because he has been incarcerated out of
20 State for all but five months of his sentence at issue, it has been impossible for a Nevada
21 psychiatrist to certify him, after observation, while he has been confined in an institution of the
22 Department of Prisons. Defendant alleges that since he has been incarcerated out of state, the
23 parole panel has had no authority to certify him. Defendant's prior petitions for post conviction
24 relief alleged: that there was a discrepancy between the orally stated sentence by the trial court
25 and the original Judgment of Conviction; an ex post facto violation because he was entitled to
26 the law in effect at the time of his conviction and the State was required to treat Count II of his
27 sentence as one continuous term for the purpose of good time credits and parole eligibility; and
28 that he was never given a parole hearing in 1997 thus his parole granted in 1998 should be

1 counted from 1997. The District Court subsequently accepted Defendant's argument with regard
2 to the discrepancy between the oral sentence and the original Judgment of Conviction, however,
3 denied Defendant's other arguments contained in his petitions. Therefore, pursuant to 34.810(2),
4 the present petition should be dismissed because Defendant's present claims could have been
5 raised previously. Furthermore, to the extent the claims in the prior petitions and those in the
6 present petition overlap, the present petition is dismissed because it fails to allege new grounds
7 for relief.

8 9. This is Defendant's third petition for post-conviction relief. Defendant has failed to
9 establish good cause for filing successive petitions nor has he established that he has suffered
10 any actual prejudice as required by NRS 34.810(3) See Lozada v. State, 110 Nev. 349, 358, 871
11 P.2d 944 (1994). There is absolutely no legal defect in the fact that Defendant was housed out
12 of state for portions of his sentence. Defendant was legitimately removed from Nevada as a
13 result of his own actions and has suffered no adverse consequences or legal implications from
14 such. Moreover, Defendant is now incarcerated back in Nevada. Thus, Defendant's instant
15 petition constitutes an abuse of writ. Therefore, Defendant's current petition is dismissed.


16 **ORDER**

17 Based upon the Findings of Fact and Conclusions of Law contained herein, it is hereby:
18 ORDERED, ADJUDGED, AND DECREED that Defendant's Petition for Writ of Habeas
19 Corpus is denied.

20 DATED this 12 day of February, 2002.

21
22 
23 DISTRICT JUDGE

24 STEWART L. BELL
25 DISTRICT ATTORNEY
26 Nevada Bar #000477

27 BY 
28 CHERYL L. KOSEWICZ
Deputy District Attorney
Nevada Bar #007409

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CLERK

1 **RSPN**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 **JOEL BURKETT,**
12 aka Raymond Haire,
13 #0609533

13 Defendant.

Case No. C52190
Dept. No. XI

14
15
16 **STATE'S RESPONSE TO DEFENDANT'S PROPER PERSON**
17 **SUPPLEMENTAL ARGUMENT IN SUPPORT OF AMENDED PETITION**
18 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

19
20 DATE OF HEARING: 2-26-02
21 TIME OF HEARING: 9:00 A.M.

22 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
23 H. LEON SIMON, Deputy District Attorney, and hereby submits the attached Points and
24 Authorities in Response to Defendant's Proper Person Supplemental Argument in Support of
25 Amended Petition for Writ of Habeas Corpus (Post-Conviction).

26 This Response is made and based upon all the papers and pleadings on file herein, the
27 attached points and authorities in support hereof, and oral argument at the time of hearing, if
28 deemed necessary by this Honorable Court.

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1 **ARGUMENT**

2 **DEFENDANT'S SUPPLEMENTAL ARGUMENT IN SUPPORT OF**
3 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**
4 **SHOULD BE DISMISSED**

5 Defendant's Supplemental Argument in Support of Amended Petition for Writ of Habeas
6 Corpus is moot and should be dismissed. Defendant filed his petition for writ of habeas corpus
7 (post-conviction) on November 19, 2001. The State filed a response on January 23, 2002,
8 arguing that Defendant's petition was procedurally barred pursuant to NRS 34.726, NRS 34.800,
9 and NRS 34.810. Defendant's petition was then denied on January 24, 2002. Therefore, since
10 Defendant's petition has already been denied the present Supplemental Argument in Support of
11 Amended Petition for Writ of Habeas Corpus is moot and should be dismissed.

12 **CONCLUSION**

13 Based upon the foregoing, the State respectfully requests that Defendant's Supplemental
14 Argument in Support of Amended Petition for Writ of Habeas Corpus be dismissed.

15 DATED this 19 day of February, 2002.

16 Respectfully submitted,

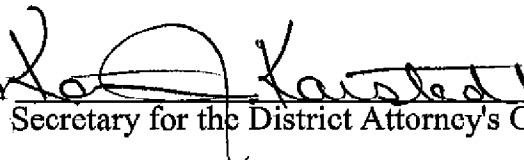
17 STEWART L. BELL
18 DISTRICT ATTORNEY
19 Nevada Bar #000477

20 BY H. Leon Simon
21 H. LEON SIMON
22 Deputy District Attorney
23 Nevada Bar #000411
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 29th day of February, 2002, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JOEL T. BURKETT, #16111
Ely State Prison
P. O. Box 1989
Ely, Nevada 89301

BY 
Secretary for the District Attorney's Office

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

FEB 27 6:45 PM '02

JOEL T. BURKETT | CASE NO: C52190
PETITIONER | DEPT NO: XI

VS

NOTICE AND
THE STATE OF NEVADA | MOTION FOR
RESPONDANT, DOCUMENTS

3/2/02
9:00AM

COMES NOW, PRO SE PETITIONER JOEL T. BURKETT PURSUANT TO N.R.S. 34, 780 (3) AND RESPECTFULLY REQUEST THE FOLLOWING DOCUMENTS, IN SUPPORT OF SAID REQUEST PETITIONER STATES THE FOLLOWING.

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COUNTY CLERK

IN 1986 PETITIONER FILED HIS FIRST PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION IN CASE NO: 86-013064. WHILE THAT CASE WAS PENDING RESPONDANT TOOK ALL OF PETITIONER'S TRIAL TRANSCRIPTS AND LEGAL PAPERS AND TRANSFERED HIM INTO THE FEDERAL PRISON SYSTEM.

RECEIVED
FEB 27 2002
COUNTY CLERK

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IN VIOLATION OF STATE LAW, WHILE IN THE FEDERAL SYSTEM, AND AFTER SOME TIME, PETITIONER ONCE AGAIN GOT A NEW SET OF HIS TRIAL TRIAL TRANSCRIPTS. HOWEVER, FOR THE NEXT 6 YEARS HE HAD NO ACCESS TO ANY NEVADA LAW OR EVEN A NEVADA PETITION IN ORDER TO FILE ANY-THING IN STATE COURT.

UPON PETITIONER'S RETURN TO NEVADA IN LATE 1993 ALL OF HIS PROPERTY WAS LOST AS HE WASN'T ALLOWED TO BRING IT WITH HIM.

PETITIONER ONCE AGAIN SET OUT TO GET HIS TRIAL TRANSCRIPTS, JURY INSTRUCTIONS, BEFORE THEY COULD BE GOTTEN HE WAS ONCE AGAIN TRANSFERRED TO NEW MEXICO AND FOR THE NEXT 5 YEARS HE HAD NO ACCESS TO NEVADA LAW. OR ALL OF HIS TRANSCRIPTS.

IN SEPT 2000, PETITIONER RETURN TO NEVADA, AGAIN ALL OF HIS PROPERTY WAS LOST BECAUSE HE WASN'T ALLOWED TO BRING IT WITH HIM.

5 MONTHS AFTER HIS RETURN FROM NEW MEXICO, HE WAS AGAIN TRANSFERRED INTO MONTANA WHERE ONCE AGAIN PETITIONER HAD NO ACCESS TO NEVADA LAW

PURSUANT TO MAZZAN V. WHITLEY, 921 P.2d 920 (NEV 1996) "TO ESTABLISH GOOD CAUSE TO EXCUSE A PROCEDURAL DEFAULT, A DEFENDANT MUST DEMONSTRATE THAT SOME IMPEDIMENT EXTERNAL TO THE DEFENSE PREVENTED HIM FROM COMPLYING WITH THE PROCEDURAL RULE THAT HAS BEEN VIOLATED"

PETITIONER BELIEVES THAT HE CAN OVERCOME ANY PROCEDURAL DEFAULT, AND THAT HE HEREBY GIVES NOTICE TO THIS COURT THAT HE DOES NOT WISH TO WAIVE ANY ISSUES THAT SHOULD BE RAISED IN THESE PROCEEDINGS

THEREFORE, PETITIONER RESPECTFULLY REQUESTS THE FOLLOWING DOCUMENTS

(1) ALL TRIAL TRANSCRIPTS IN CASE NO: C52190 AS WELL AS ALL JURY INSTRUCTIONS.

(2) ALL HABEAS CORPUS TRANSCRIPTS IN CASE NO: 86-013064

PETITIONER HAS INFORMED THIS COURT FROM THE START, THAT HE HAD NO ACCESS TO NEVADA LAW OR HIS LEGAL PAPER'S, MOREOVER, PETITIONER REQUESTED THE APPOINTMENT OF COUNSEL, IN HIS MOTION TO PROCEED IN FORMA PAUPERIS.

PETITIONER RESPECTFULLY STATES THAT THIS COURT SHOULD ~~NOT~~ GRANT HIS REQUEST.

DATED THIS 24th DAY OF February 2002.

RESPECTFULLY SUBMITTED

Joe Beckett
PRO SE PETITIONER

PROOF OF SERVICE

JOEL T. BURKETT DOES HEREBY
CERTIFY THAT HE DID SERVE
RESPONDANT WITH A TRUE AND
CORRECT COPY OF THE ABOVE
NOTICE AND MOTION FOR DOCUMENTS
ON THIS 24th DAY OF February 2002.

Joel Burkett

ORIGINAL

104
1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

MAR 7 11 39 AM '02

Shirley L. Brangman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JOEL BURKETT,
12 aka Raymond Haire,
13 #0609533

14 Defendant.

Case No. C52190
Dept No. XI

15
16 **ORDER DENYING DEFENDANT'S PROPER PERSON**
17 **MOTION FOR LEAVE OF THE COURT TO AMEND**
18 **PETITION FOR WRIT OF HABEAS CORPUS**

19
20 DATE OF HEARING: 2-26-02
21 TIME OF HEARING: 9:00 A.M.

22 THIS MATTER having come on for hearing before the above entitled Court on the 26th
23 day of February, 2002, the Defendant not being present, nor represented by counsel, the Plaintiff
24 being represented by STEWART L. BELL, District Attorney, through TAMARA F. LAWSON,
Deputy District Attorney, and the Court having heard the arguments of counsel and good cause
appearing therefor,

///
///
///
///

RECEIVED

MAR 7 2002

COUNTY CLERK


82

1 IT IS HEREBY ORDERED that the Defendant's Proper Person Motion for Leave to
2 Amend Petition for Writ of Habeas Corpus, shall be, and it is Denied.

3 DATED this 5 day of March, 2002.

4
5 
6 DISTRICT JUDGE *JB*

7
8 STEWART L. BELL
9 DISTRICT ATTORNEY
Nevada Bar #000477

10
11 BY 
12 TAMARA F. LAWSON
13 Deputy District Attorney
14 Nevada Bar #006029
15
16
17
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21
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27
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ORIGINAL

1 **ORDR**
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

MAR 15 3 46 PM '02

Shirley S. Ramirez
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JOEL T. BURKETT,
12 #609533

13 Defendant.
14

Case No. C52190
Dept No. XI

15 **ORDER DENYING DEFENDANT'S MOTION FOR DOCUMENTS**

16 DATE OF HEARING: 3-12-02
17 TIME OF HEARING: 9:00 A.M.

18 THIS MATTER having come on for hearing before the above entitled Court on the 12th
19 day of March, 2002, the Defendant not being present, in Proper Person, the Plaintiff being
20 represented by STEWART L. BELL, District Attorney, through JAMES SWEETIN, Deputy
21 District Attorney, and the Court having heard the arguments of counsel and good cause
22 appearing therefor,

23 //

24 //

//

//

//

//

RECEIVED

MAR 15 2002

COUNTY CLERK


615

1 IT IS HEREBY ORDERED that the Defendant's Motion for Documents, shall be, and
2 it is denied.

3 DATED this 15 day of March, 2002.

4
5 
6 DISTRICT JUDGE 

7
8 STEWART L. BELL
9 DISTRICT ATTORNEY
10 Nevada Bar #000477

11 BY 
12 for JAMES SWEETIN
13 Deputy District Attorney
14 Nevada Bar #005144
15
16
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24
25
26
27

28 msf

984

DATED THIS 18TH DAY OF MARCH 2002

JOEL T. BURKETT
PRO SE PETITIONER

COMES NOW, JOEL T. BURKETT PRO SE IN
THE ABOVE ENTITLED MATTER AND HEREBY
GIVES NOTICE THAT HE INTENDS TO APPEAR
THIS COURT'S DENIAL OF THE ABOVE PETITIONED
FOR WRIT OF HABEAS CORPUS ON FEBRUARY
14TH 2002, TO THE NEVADA SUPREME COURT.

THE STATE OF NEVADA
RESPONDENT

V.

JOEL T. BURKETT
PETITIONER

CASE NO: 052190

NOTICE OF APPEAL

DISTRICT COURT
CLARK COUNTY NEVADA
MAR 20 2 58 PM '02
CLERK

FILED

108

PROOF OF SERVICE

I, JOEL T. BURKETT DO HEREBY CERTIFY
THAT I DID SERVE UPON RESPONDENT
A TRUE AND CORRECT COPY OF THE
ABOVE NOTICE OF APPEAL ON THIS 18TH
DAY OF MARCH 2002

Joel T. Burkett

ORIGINAL

FILED

MAR 21 9 43 AM '02

Shirley B. Ruggins
CLERK

District Court
Clark, County, Nevada

Case No. C52190

Department XI

THE STATE OF NEVADA,

Plaintiff,

vs.

JOEL T. BURKETT,

Defendant(s),

CASE APPEAL STATEMENT

1. Appellant(s): JOEL T. BURKETT

2. Judge: MICHAEL L. DOUGLAS

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), JOEL T. BURKETT

4. All Parties, Appeal:

Appellant(s), JOEL T. BURKETT

/C52190

1 Respondent, THE STATE OF NEVADA

2 5. Appellate Counsel: Proper Person, JOEL T. BURKETT, P O BOX 1989, ELY,
3 NV 89301, Appellant

4 THE STATE OF NEVADA, Stewart L. Bell, District
5 Attorney, 200 South Third Street, Las Vegas, Nevada 89155 (702) 455-4711, Counsel for
6 Respondent

7 6. District Court, NA

8 7. On Appeal, N/A


9 8. Forma Pauperis: GRANTED

10 9. Date Commenced in District Court: 1-16-81

11
12 DATED this 21 day of March, 2002.

13 CLARK COUNTY CLERK

14
15
16 By


LANNA GREEN
DEPUTY CLERK
200 South Third Street
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 455-4409

FILED

JOEL T. BURKETT #16111 DISTRICT COURT

MAR 25 1 13 PM '02

P.O. Box 1989

CLARK COUNTY, NEVADA

ELY, NEVADA

89301

C52190

JOEL BURKETT

PETITIONER

CASE NO: ~~C52109~~

DEPT NO: 11

VS.

THE STATE OF NEVADA,

RESPONDENT.

NOTICE OF APPEAL

JOEL T. BURKETT, PRO SE PETITIONER IN THE ABOVE ENTITLED MATTER DOES HEREBY GIVE NOTICE, THAT HE INTENDS TO APPEAL TO THE NEVADA SUPREME COURT FOR THE ACTIONS OF THIS COURT IN THE ABOVE ENTITLED PETITION FOR WRIT OF HABEAS CORPUS ON THE 6TH DAY OF MARCH 2002.

DATED THIS 22 DAY OF MARCH 2002

COUNTY CLERK

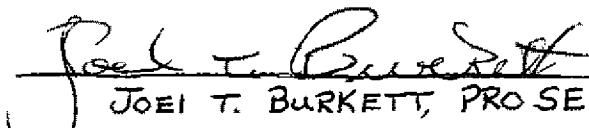
MAR 25 2002

RECEIVED

Joel T. Burkett
JOEL T. BURKETT PRO SE

CERTIFICATE OF SERVICE

I, JOEL T. BURKETT, do HEREBY CERTIFY THAT I
did SERVE by MAIL, upon RESPONDENT, A TRUE
AND CORRECT COPY OF THE ABOVE NOTICE OF
APPEAL ON THIS 22 day OF March, 2002,


JOEL T. BURKETT, PRO SE.

John T. Burkett

#16111

PO Box 1989

Ely NV 89301

LOVE

1072 ELIZABETHTOWN NM 87122 PM 22 2002 ALBUQUERQUE NM 87101

990

ORIGINAL

104
1 ASTA

Shirley B. Pung

MAR 26 8 28 AM '02

FILED

2
3
4
5
6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 Case No. C52190

11 Department XI

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 JOEL BURKETT

16 Defendant(s).
17

18
19 CASE APPEAL STATEMENT

20 1. Appellant(s): JOEL BURKETT

21 2. Judge: MICHAEL L. DOUGLAS

22 3. All Parties, District Court:

23 Plaintiff, THE STATE OF NEVADA

24 Defendant(s), JOEL BURKETT

25 4. All Parties, Appeal:

26 Appellant(s), JOEL BURKETT
27
28

/C52190

215

1 Respondent, THE STATE OF NEVADA

2 5. Appellate Counsel: Proper Person, JOEL BURKETT, P.O. BOX 1989
3 ELY, NV. 89301, Appellant

4 Respondent Counsel: THE STATE OF NEVADA, Stewart L. Bell,
5 District Attorney, 200 South Third Street, Las Vegas, Nevada 89155 (702) 455-4711,
6 Counsel for Respondent

7 6. District Court, N/A

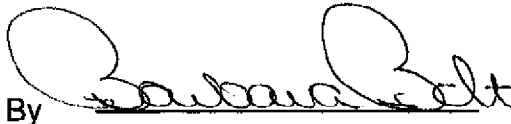
8 7. On Appeal, N/A

9 8. Forma Pauperis: GRANTED

10 9. Date Commenced in District Court: 1-16-81

11
12 DATED this 26th day of March, 2002.

13 SHIRLEY B. PARRAGUIRRE,
14 CLARK COUNTY CLERK

15
16 
17 By

18 Barbara Belt
19 DEPUTY CLERK
20 200 South Third Street
21 PO Box 551601
22 Las Vegas, Nevada 89155-1601
23 (702) 455-4409
24
25
26
27
28

FILED

DISTRICT COURT, CLARK
 County, NEVADA

FEB 19 11 04 AM '03
Shirley B. Rungius
 CLERK

JOEL T. BURKETT
 PETITIONER

VS.

THE STATE OF NEVADA,
 RESPONDANT,

CASE No: C52190
 Dept. XI

MOTION FOR
DOCUMENTS

COME'S NOW, PRO SE, PETITIONER JOEL T. BURKETT, PURSUANT TO N.R.S. 34, 780(3) AND RESPECTFULLY REQUEST THE FOLLOWING DOCUMENTS, IN SUPPORT OF SAID REQUEST, PETITIONER STATES THE FOLLOWING;

SUBMITTED HERE WITH PETITIONER HAS REQUESTED LEAVE OF THE COURT TO AMEND THE PETITION FOR WRIT OF HABEAS CORPUS, ALONG WITH AN AMENDED PETITION,

RECEIVED

FEB 18 2003

COUNTY CLERK

(1)

518

THE COURT WILL NOTE GROUND ONE AND TWO OF THE AMENDED PETITION SETS FORTH A SUBSTANTIAL SHOWING OF CONSTITUTIONAL RIGHTS BEING DENIED PETITIONER, PURSUANT TO SULLIVAN V. LOUISIANA, 113 S.Ct 2078 (1993) AS WELL AS; UNITED STATES V. CRONIC, 104 S.Ct 2039 (1984); UNITED STATES V. SWANSON, 943 F.2d 1070 (9TH CIR, 1991), AND JONES V. NEVADA, 877 P.2d 1052 (NEV 1994) INDEED, PETITIONER CAN OVERCOME THE TWO PRONG TEST OF, STRICKLAND V. WASHINGTON, 104 S.Ct 2052 (1984)

MOREOVER, THE ISSUES RAISED CLEARLY SHOW "ACTUAL PREJUDICE" LIKEWISE, UNDER QUESTION 19 OF THE AMENDED PETITION, PETITIONER HAS SET FORTH A SUBSTANTIAL SHOWING OF "CAUSE" PURSUANT TO PELLEGRINI V. STATE, 34 P.3d 519 (NEV 2001) (AS WELL AS IN QUESTION 18)

WHERE THE COURT HELD "SOME INTERFERENCE BY OFFICIALS" IS "CAUSE" AND "THE FACTUAL OR LEGAL BASIS FOR A CLAIM WAS NOT REASONABLY AVAILABLE".

INDEED, INEFFECTIVE HABEAS COUNSEL IS "CAUSE" PURSUANT TO CRUMP V. WARDEN, 934 P.2D 247 (NEU 1997) IN WHICH PETITIONER HAD A RIGHT TO COUNSEL IN HIS 1986 HABEAS CORPUS (POST-CONVICTION) IN CASE NO. 86-013064

MOREOVER, PETITIONER NEED NOT SHOW "CAUSE" UNTIL THE STATE RAISES WAIVER, OR ABUSE OF THE WRIT AS AFFIRMATIVE DEFENSES, MAZZAN V. WHITLEY, 921 P.2D 920 (NEU, 1996)

IN LIGHT OF GROUND TWO, OF THE AMENDED PETITION, PETITIONER CAN PROVE THAT IN CLOSING ARGUMENT OF HIS TRIAL THE STATES ATTORNEY.

(3)

MADE STIPULATIONS TO PETITIONER
BEING guilty.

HOWEVER, PETITIONER IS UNABLE
TO RAISE THE ISSUE WITHOUT
HIS TRIAL TRANSCRIPTS, JURY
INSTRUCTIONS IN CASE NO C52190

WHILE IT IS TRUE PETITIONER HAS
CITED TRIAL TRANSCRIPTS IN HIS
SUPPORTING FACTS,
PETITIONER IS WORKING WITH OLD
FEDERAL BRIEFS, AND HAS NONE
OF HIS TRIAL TRANSCRIPTS, PETITIONER'S
FEDERAL PETITIONS WERE DENIED ON
FAILURE TO EXHAUST.

PETITIONER, RESPECTFULLY REQUEST
THE FOLLOWING DOCUMENTS:

ALL TRIAL TRANSCRIPTS AND JURY
INSTRUCTIONS IN CASE NO: C52190

AND ALL HABEAS CORPUS TRANSCRIPT'S
IN CASE NO: 86-013064

AT THE TIME PETITIONER FILED THESE
PROCEEDINGS HE WAS HOUSED OUT
OF STATE WITHOUT ACCESS TO
NEVADA LAW THIS MOTION IS
MADE IN GOOD FAITH IN ORDER TO
RAISE ALL CLAIMS IN THIS
PROCEEDING.

DATED THIS 11th DAY OF FEBRUARY 2003

RESPECTFULLY SUBMITTED,

Paul Bucklett
PRO SE PETITIONER

(5)

10
FILED

114
DISTRICT COURT FEB 19 11 03 AM '03
CLARK COUNTY, NEVADA
Shirley B. Pungione
CLERK

JOEL T. BURKETT
PETITIONER

VS.

THE STATE OF NEVADA
RESPONDANT /

CASE NO: C52190

Dept XI

MOTION FOR LEAVE TO
AMEND THE PETITION
FOR WRIT OF HABEAS
CORPUS

COMES NOW, THE PETITIONER, JOEL T.
BURKETT, PRO SE IN THE ABOVE
ENTITLED MATTER, RESPECTFULLY SEEKING
LEAVE OF THE COURT TO AMEND
THE PETITION FOR WRIT OF HABEAS
CORPUS,
IN SUPPORT OF SAID REQUEST
PETITIONER STATES;

AT THE TIME THE ABOVE PETITION WAS FILED, PETITIONER WAS BEING HOUSED OUT OF STATE WITHOUT ACCESS TO NEVADA LAW.

UPON PETITIONER'S RETURN, HE HAS LEARNED OF THE NEVADA SUPREME COURT'S RULING IN, CRUMP V. WARDEN, 934 P.2D 254 (NEV, 1997) IN WHICH PETITIONER HAD A RIGHT TO COUNSEL, EFFECTIVE COUNSEL, IN HIS 1986 HABEAS CORPUS POST-CONVICTION,

THIS MOTION IS MADE IN GOOD FAITH IN ORDER TO RAISE ALL CLAIMS IN THIS PROCEEDING. THIS COURT SHOULD ALLOW PETITIONER TO AMEND THE PETITIONER IN LIGHT OF THE NEVADA SUPREME COURT'S ORDER OF REVERSAL AND REMAND FILED FEB. 6, 2003

SO ALL CLAIMS CAN BE ADDRESSED
IN ONE EVIDENTIARY HEARING
IN ORDER TO ALLOW PETITIONER
TO PROVE ALL CLAIMS OF CAUSE
THAT WILL NO DOUBT COME UP
IN THESE PROCEEDINGS.

FOR THE ABOVE STATED REASONS
THIS COURT SHOULD ALLOW THE
PETITION TO BE AMENDED.

DATED THIS 11th DAY OF FEBRUARY 2003

RESPECTFULLY SUBMITTED



PRO SE PETITIONER

Case No. CS 2190

Dept. No. XI

FILED

FEB 19 11 AM '03

Shirley B. Rungius
CLERK

IN THE 8TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOEL BURKETT, CASE NO: CS 2190

Petitioner,

v.

E. K. McDANIELS,

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
5 sentence. Failure to allege specific facts rather than just
6 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
9 conviction or sentence, the original and one copy must be filed
10 with the clerk of the district court for the county in which
11 the conviction occurred. Petitions raising any other claims
12 must be filed with the clerk of the district court for the
13 county in which you are incarcerated. One copy must be mailed
to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18 Ely STATE PRISON WHITE PINE COUNTY

19 2. Name and location of court which entered the judgment
20 of conviction under attack: EIGHTH JUDICIAL DISTRICT
21 COURT CLARK COUNTY

22 3. Date of judgment of conviction: JAN 20TH 1981

23 4. Case number: C52190

24 5. (a) Length of sentence: 4 LIFES - 30 YEARS

25 (b) If sentence is death, state any date upon which
26 execution is scheduled: _____

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No NO. If "yes," list crime, case number and
2 sentence being served at this time: _____
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: 1ST DEGREE KIDNAPPING W/USE OF WEAPON
7 SEXUAL ASSAULT, ROBBERY W/USE OF WEAPON

8 8. What was your plea? (check one)

9 (a) Not guilty ✓

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury ✓

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes ✓ No _____

23 12. Did you appeal from the judgment of conviction?

24 Yes ✓ No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: NEVADA SUPREME COURT

27 (b) Case number or citation: 13600
28

(c) Result: DENIED

(d) Date of Result: APRIL 21ST 1983

(Attach copy of order or decision, if available).

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of Court: FIRST JUDICIAL DISTRICT

(2) Nature of proceeding: WRIT OF

HABEAS CORPUS POST-CONVICTION

(3) Grounds raised: INEFFECTIVE COUNSEL

AT TRIAL AND DIRECT APPEAL, POST-ARREST VIOLATIONS

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result: DENIED

(6) Date of Result: AUGUST 5TH 1988

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: 86-01306H

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: EIGHTH JUDICIAL DISTRICT

(2) Nature of proceeding: CORRECT MISTAKE
IN T.C. HABEAS CORPUS

(3) Grounds raised: MISTAKE IN T.C.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No N

(5) Result: GRANTED

(6) Date of Result: FEB 24TH 1994

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: FEB 24TH
1994

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion?

Yes ✓ No

Citation or date of decision: JUNE 3RD 1986

(2) Second petition, application or motion?

Yes No ✓

Citation or date of decision: FEB 24 1994

(3) Third or subsequent petitions, applications or motions? Yes ✓ No

Citation or date of decision: JULY 2004

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)

7 N/A

8
9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: No

14
15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)

22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate

specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

SEE ATTACHED HERETO QUESTION 18

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

SEE ATTACHED HERETO QUESTION 19

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓.

If yes, state what court and the case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE AT THIS TIME

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓. If yes, specify where and when it is to be served, if you know: _____

1 23. State concisely every ground on which you claim that
2 you are being held unlawfully. Summarize briefly the facts
3 supporting each ground. If necessary you may attach pages
4 stating additional grounds and facts supporting same.

5 (a) Ground one: SEE ATTACHED PAGE'S
6 FOR "SUPPORTING FACTS"
7 Supporting FACTS (Tell your story briefly without citing cases
8 or law): _____
9 _____

10 (b) Ground two: SEE SUPPORTING FACTS
11 ATTACHED HERETO
12 Supporting FACTS (Tell your story briefly without citing cases
13 or law): _____
14 _____

15 (c) Ground three: SEE SUPPORTING FACTS
16 ATTACHED HERETO
17 Supporting FACTS (Tell your story briefly without citing cases
18 or law): _____
19 _____

20 (d) Ground four: SEE SUPPORTING FACTS
21 ATTACHED HERETO
22 Supporting FACTS (Tell your story briefly without citing cases
23 or law): _____
24 _____

25 WHEREFORE, Petitioner prays that the court grant
26 petitioner relief to which he may be entitled in this
27 proceeding.
28

1 EXECUTED at Ely State Prison on the 11th day
2 of FEBRUARY, 2003.

3
4 Paul Benedict #1611
Signature of Petitioner
5
6 P.O. Box 1989
Address

7 Ely, NEV, 89301

8 _____
Signature of Attorney (if any)

9 _____
10 Attorney for Petitioner

11 _____
Address

12
13
14 VERIFICATION

15 Under penalty of perjury, the undersigned declares that he
16 is the petitioner named in the foregoing petition and knows the
17 contents thereof; that the pleading is true of his own
18 knowledge, except as to those matters stated on information and
19 belief, and as to such matters he believes them to be true.

20
21 Paul Benedict
Signature of Petitioner
22
23 _____
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant
to N.R.C.P. 5(b), that on the 11th day of FEBRUARY,
2003, ~~I WAS UNABLE TO MAIL A COPY OF~~
~~I mailed a true and correct copy of~~ the foregoing
PETITION FOR WRIT OF HABEAS CORPUS addressed to:


Respondent prison or jail official

Address

Nevada Attorney General
100 N Carson St
Carson City NV 89701-4717

District Attorney of County of Conviction

Address


Signature of Petitioner

QUESTION 18

NONE OF THE ISSUES RAISED HEREIN HAVE BEEN RAISED IN ANY PRIOR STATE COURT, PETITIONER CONTENTS THAT THE FAILURE TO RAISE THESE CLAIMS IN THE 1986 PROCEEDINGS WAS DUE TO INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL,

LIKEWISE, THE LEGAL BASIS FOR A CLAIM OF INEFFECTIVE ASSISTANCE OF HABEAS COUNSEL WAS NOT REASONABLY AVAILABLE UNTIL THE NEVADA SUPREME COURT'S RULING IN 1997 IN CRUMP V. WARDEN, 934 P.2D 247 (NEV 1997)

MOREOVER, FROM 1987 UNTIL 1993 PETITIONER WAS HOUSED OUT OF STATE WITHOUT ACCESS TO NEVADA LAW OR EVEN A NEVADA PETITION IN ORDER TO FILE ANYTHING IN STATE COURT, AND FROM 1995 TO 2002 PETITIONER WAS HOUSED OUT OF STATE WITHOUT ACCESS TO NEVADA LAW.

(11)

QUESTION 18 CONTINUED:

PETITIONER CONTENDS THE DENIAL OF HIS CONSTITUTIONAL RIGHT OF ACCESS TO THE COURT AS "CAUSE"

MOREOVER, WHILE HOUSED OUT OF STATE FROM 1987 UNTIL 1991 PETITIONER HAD NO STATE CORRECTIVE PROCESS. PETITIONER CONTENDS THE DENIAL OF A STATE CORRECTIVE PROCESS AS "CAUSE"

PETITIONER, ALSO CONTENDS, THAT IN THE 1986 HABEAS CORPUS, PRIOR TO A HEARING, IN VIOLATION OF STATE LAW, RESPONDANTS TRANSFERRED PETITIONER OUT OF STATE AND TOOK ~~ALL~~ ^{ALL} OF HIS LEGAL PAPERS, TRIAL TRANSCRIPTS, AND DENIED HIM ACCESS TO COUNSEL

PETITIONER FILED A PETITION IN 1999 WHILE HOUSED OUT OF STATE WITHOUT ACCESS TO NEVADA LAW HE SIMPLY DID NOT KNOW OF THE COURTS 1997 RULING IN GRUMP (SUPRA)

QUESTION 19

YES. THIS PETITION IS BEING FILED
MORE THAN ONE YEAR AFTER
DIRECT APPEAL.

IN 1986 PETITIONER RECEIVED INEFFECTIVE
ASSISTANCE OF COUNSEL, MOREOVER
PETITIONER WAS HOUSED OUT OF STATE
FROM 1987 TO 1993, FROM 1987
UNTIL 1991 PETITIONER HAD NO
STATE CORRECTIVE PROCESS WHILE
HOUSED OUT OF STATE.

LIKEWISE, FROM 1987 TO 1993 WHILE
HOUSE OUT OF STATE PETITIONER
HAD NO ACCESS TO NEVADA LAW
OR EVEN A NEVADA PETITION
IN ORDER TO FILE ANYTHING IN
STATE COURT.

UPON PETITIONERS RETURN TO
NEVADA AND WHILE HE WAS
BACK IN NEVADA BETWEEN
1993 AND 1995 THE LEGAL
BASIS OF HIS CLAIM WAS
NOT REASONABLY AVAILABLE

QUESTION 19 CONTINUED

UNTIL THE COURTS RULING IN
1997 IN CRUMP V. WARDEN, 934
P.2D 247 (NCO 1997)

AND IN 1995 PETITIONER WAS
ONCE AGAIN SENT OUT OF STATE
WHERE HE HAD NO ACCESS
TO NEVADA LAW. FROM 1995
UNTIL SEPT 2000,
PETITIONER WAS AGAIN SENT OUT OF
STATE JAN 2001 UNTIL JAN 2002,
WITHOUT ACCESS TO NEVADA LAW.

PETITIONER CONTENTS INEFFECTIVE
ASSISTANCE OF HABEAS COUNSEL IN
1986, AND THE DENIAL OF HIS
CONSTITUTIONAL RIGHT OF ACCESS TO
THE COURT AS "CAUSE"

LIKEWISE PETITIONER WAS WAITING ON A RULING
IN CASE NO 39400 FROM THE NEVADA SUPREME
COURT, WHICH WAS HANDED DOWN FEB 6TH 2003.

SUPPORTING FACTS

GROUND ONE: PETITIONER CONTENTS THAT THE FACTS SET FORTH BELOW, CLEARLY SHOW THAT PETITIONER'S WAS DENIED HIS CONSTITUTIONAL RIGHTS OF THE U.S. CONSTITUTION 6TH AMENDMENT. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL; 6TH AMENDMENT RIGHT TO A JURY TRIAL; AND 14TH AMENDMENT RIGHT OF DUE PROCESS. WHEN TRIAL COUNSEL INFORMED THE JURY THAT PETITIONER WAS GUILTY; "WHAT COULD YOU FIND HIM GUILTY OF, THESE FOUR COUNTS; THAT LEAVES ONE COUNT... THAT HE HAD SEXUAL INTERCOURSE WITH HER AGAINST HER WILL, BY FORCE OR FEAR A SEXUAL ASSAULT, MORE REFIND WAY FOR RAPE, ALL RIGHT, AND THERE WAS EVIDENCE OF THAT TAKING THE BEST EVENTS, BECAUSE SHE AGREED IT WASN'T WITH HER CONSENT (T.O. Pg. 476) THATS EVIDENCE OF RAPE (T.O. Pg 477).

you could come back with a
VERDICT OF GUILTY OF SEXUAL
ASSAULT (T.O. Pg 477) ONLY
ONE CRIME you CAN FIND HIM
GUILTY OF, THAT'S SEXUAL
ASSAULT, ONE COUNT OF HAVING
SEXUAL INTERCOURSE WITH TINA
CAGE, BECAUSE TO FIND HIM
GUILTY OF THE REST, you HAVE
TO FIND BEYOND A REASONABLE
DOUBT (T.O. Pg 479)

So, WE REALLY ARE DOWN, NOT
A VERY HARD PROBLEM AS FAR
AS you're CONCERNED, BECAUSE,
COURSE I'M HERE TO TRY AND
CONVINCE you OTHERWISE, (T.O. Pg 480)

you know it could be IN PART
TRUE EVERYTHING AFTER THE
FACT OF GOING OUT IN THE
DESERT MAYBE HE FORCED
HIMSELF ON HER (T.O. Pg 481)

THE COURT HAD INSTRUCTED THE
JURY;

" IF THE ATTORNEYS STIPULATE
OR AGREE TO THE EXISTENCE
OF A FACT YOU MUST
ACCEPT THE STIPULATION
AS EVIDENCE AND REGARD
THE FACT AS PROVED " (JURY
INSTRUCTION 20: STATED IN PART).

Ground Two: PETITIONER CONTENTS THAT HIS 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION TO A JURY TRIAL; AND DUE PROCESS, WERE DENIED. WHEN THE JURY WAS INSTRUCTED;

" IF THE ATTORNEY'S STIPULATE OR AGREE TO THE EXISTENCE OF A FACT YOU MUST ACCEPT THE STIPULATION AS EVIDENCE AND REGARD THE FACT AS PROVED" (JURY INSTRUCTION 20: STATED IN PART).

THE STATE'S ATTORNEY STIPULATED TO PETITIONER BEING GUILTY⁽¹⁾

(FOOTNOTE (1)) "PETITIONER IS UNABLE TO CITE WHERE IN THE RECORD THIS HAPPENS AS HE DOES NOT HAVE HIS TRIAL TRANSCRIPT"

GROUND THREE: PETITIONER CONTENDS
THAT HIS CONVICTION AND SENTENCE
IS IN VIOLATION OF THE 14TH
AMENDMENT OF THE U.S. CONSTITUTION
"DUE PROCESS"

AT TRIAL THE STATE CONTENDED THAT
THE ALLEGED VICTIM WAS KIDNAPED
AT KNIFE POINT BY A CO-DEFENDANT
AND HELD IN A CAR WHILE PETITIONER
REMAINED IN THE STORE TAKING THE
MONEY; (T.O. Pg 440 IN 28-32;
T.O. Pg 441 IN 1-12)

THE STATE THUS ARGUED THE USE
OF THE WEAPON WAS AT THE
SAME TIME AND PLACE FOR BOTH
THE ROBBERY, AND KIDNAPPING.
PETITIONER CONTENDS THAT CONVICTING
AND SENTENCING HIM TO A (15)
YEAR TERM AND A LIFE TERM IN
BOTH COUNT ONE AND COUNT TWO
VIOLATES THE COURTS HOLDING IN
RADY V. STATE, 544 P.2D 895
(WEU 1976) MOREOVER,

PURSUANT TO THE COURTS HOLDING
IN, WAITERS V. STATE, 825 P.2D
1237 (NEV 1992) PETITIONER DID
NOT HAVE THE POSSESSION
NECESSARY TO JUSTIFY THE
STATUTORY ENHANCEMENT IN
COUNT ONE, ROBBERY.

Ground Four:

PETITIONER CONTENDS THAT HE WAS DENIED HIS 6TH AND 14TH AMENDMENT OF THE U.S. CONSTITUTION TO EFFECTIVE ASSISTANCE OF COUNSEL IN THE 1986 HABEAS CORPUS POST CONVICTION IN CASE NO. 86-013064

PURSUANT TO GRUMP V. WARDEN, 934 P.2D 254 (WED. 1997) PETITIONER HAD THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN THE 1986 PROCEEDINGS THE FAILURE OF HABEAS COUNSEL TO RAISE THE ISSUES IN GROUNDS ONE, TWO, AND THREE, WHEN THE TRIAL RECORD THEN SUPPORTED THESE ISSUES CLEARLY SHOWS COUNSEL WAS INEFFECTIVE.

1 PPOW

District Court
Clark County, Nevada

FILED

FEB 28 12 01 PM '03

Shirley B. Pringle
CLERK

JOEL BURKETT,

Petitioner,

vs

THE STATE OF NEVADA,

Respondent.

Case No: C52190

Dept No: 11

ORDER RE PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on FEBRUARY 19, 2003. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefor,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's calendar on the 15th day of April, 2003, at the hour of 9:00 o'clock A. M. for further proceedings.

DATED this 27th day of February, 2003.

Michael H. Doyle
DISTRICT COURT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2003 MAR -7 AM 9:38

Supreme Court No. 39400

District Court Case No. C52190

Janette M. Bloom
CLERK

C52190

122
JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 6th day of February, 2003.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 4th day of March, 2003.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

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COUNTY CLERK

875

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39400

FILED

FEB 06 2003

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On November 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 14, 2002, the district court denied appellant's petition. This appeal followed.¹

¹On February 13, 2002, after the district court orally denied his petition, appellant filed a motion for leave to amend his habeas corpus petition. The State opposed the motion. On March 7, 2002, the district court denied appellant's motion. To the extent that appellant appeals from the decision of the district court denying his motion for leave to amend the habeas corpus petition, this court lacks jurisdiction to consider the appeal because no statute or court rule provides for an appeal from such a motion. Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

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SUPREME COURT
OF
NEVADA

(O) 1947A

03-02125

In his petition, appellant claimed that he was deprived of an opportunity for parole because he was housed in a prison outside of Nevada. Appellant claimed that his out-of-state housing made him ineligible for certification pursuant to NRS 213.1214 because he was not "under observation" by a Nevada-licensed psychiatrist or psychologist.² Appellant asserted that these circumstances violated his judgment of conviction and that he should be released from counts II and III of his judgment of conviction.

The district court denied the petition on the ground that the petition was untimely, successive and barred by laches. We conclude that the district court erred in applying the procedural bars of NRS chapter 34

²NRS 213.1214(1) provides:

The [Parole Board] shall not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of:

(a) The administrator of the division of mental health and developmental services of the department of human resources or his designee;

(b) The director of the department of corrections or his designee; and

(c) A psychologist licensed to practice in this state or a psychiatrist licensed to practice medicine in this state,

certifies that the prisoner was under observation while confined in an institution of the department of corrections and does not represent a high risk to

continued on next page . . .

to appellant's petition. Appellant did not challenge the validity of his judgment of conviction and sentence in his November 19, 2001 habeas corpus petition; rather appellant challenged the continued legality of his confinement. NRS 34.726 does not apply to a petition challenging the continued legality of a petitioner's confinement.³ The doctrine of laches is likewise inapplicable to a petition that challenges the continued legality of a petitioner's confinement.⁴ Finally, appellant's petition was not successive because the claim had not been raised or decided on the merits in a prior petition and the claim could not have been raised in appellant's prior petitions.⁵

We conclude that appellant's claim that his out-of-state housing made him ineligible for certification pursuant to NRS 213.1214 because he was not "under observation" by a Nevada-licensed psychiatrist or psychologist lacked merit. NRS 213.1214 does not preclude certification for a prisoner incarcerated outside of Nevada.⁶ Contrary to appellant's

... continued

reoffend based upon a currently accepted standard of assessment.

³NRS 34.726(1) (setting forth a procedural time bar for "a petition that challenges the validity of a judgment or sentence").

⁴See NRS 34.800(2); Boatwright v. Director, 109 Nev. 318, 322, 849 P.2d 274, 277 (1993).

⁵NRS 34.810(2), (3).

⁶NRS 213.1214; NRS 215A.020 (Interstate Corrections Compact, Article IV (d)-(f), (h)).

argument, nothing in NRS 213.1214 requires that a Nevada-licensed psychiatrist or psychologist personally observe or treat appellant; rather, a Nevada-licensed psychiatrist or psychologist is a required member of the panel making the certification decision. Despite the fact that appellant was incarcerated outside of Nevada, appellant may be "under observation while confined in an institution of the department of corrections."⁷ However, the record does not indicate whether appellant, as a result of his incarceration outside of Nevada, received all of the rights and protections relating to certification available to a Nevada prisoner. Although appellant acknowledged that he had received a certification hearing by telephone, the record does not indicate whether appellant was denied certification based upon a lack of suitability for certification pursuant to NRS 213.1214(1) or whether he was denied certification simply because he was housed outside of Nevada and not directly under observation by a Nevada institution. Therefore, we cannot conclude that the district court properly denied appellant's petition and we remand for further proceedings on the issue of whether appellant was denied any rights or protections relating to certification available to Nevada prisoners.


⁷See Boatwright, 109 Nev. at 321, 849 P.2d at 276 (stating that a prisoner held solely under the authority of a Nevada judgment of conviction remains in the custody of the director of the department of prisons despite the fact that the prisoner is incarcerated out-of-state pursuant to the Interstate Corrections Compact).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁸ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁹


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Gibbons

cc: Hon. Michael L. Douglas, District Judge
Attorney General/Carson City
Clark County District Attorney
Joel Burkett
Clark County Clerk

⁸Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 39400

District Court Case No. C52190

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: March 4, 2003

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Michael L. Douglas, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Joel Burkett

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 3-6-03.



NORRETA CALDWELL
County Clerk

63-02202

ORIGINAL

11

FILED

MAR 19 4 26 PM '03

Shirley B. Rungius
CLERK

125
1 RSPN
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CLARK PETERSON
6 Deputy District Attorney
7 Nevada Bar #006088
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

-vs-)

JOEL BURKETT,
#609533)

Defendant.)

CASE NO: C52190

DEPT NO: XI

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DOCUMENTS

DATE OF HEARING: 3/20/03
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through CLARK PETERSON, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's State's Response To Defendant's Motion For Documents.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime

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S14

1 (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use of Deadly
2 Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual
3 Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual Assault (Felony - NRS
4 200.364, 200.366).

5 Defendant was convicted by jury on May 4, 1981. The original Judgement of
6 Conviction was filed on July 29, 1981, however, an Amended Judgment of Conviction was
7 filed on February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for
8 Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of
9 a Crime, to be served consecutively; as to Count II, Life with Possibility of Parole and an
10 additional term of Life with Possibility of Parole for Use of a Deadly Weapon in
11 Commission of a Crime, to be served consecutively, Count II to be served consecutive to
12 Count I; as to Count III, Life with Possibility of Parole; as to Count IV, Life with the
13 Possibility of Parole, Count IV to be served consecutive to Count III; Counts III and IV to be
14 served concurrent to the sentences imposed in Counts II.

15 Defendant appealed his judgement of conviction and the Supreme Court of Nevada
16 filed an Order Dismissing Appeal on April 21, 1983. The State received the remittitur on
17 May 16, 1983.

18 Defendant then filed a petition for writ of habeas corpus on February 2, 1994, which
19 was granted in part and denied in part. Defendant filed a second petition for writ of habeas
20 corpus on June 7, 1999. Defendant's petition was denied on August 12, 1999. On February
21 19, 2003, Defendant filed the instant motion for documents. In addition, on February 19,
22 2003, Defendant filed a motion to amend his petition for writ of habeas corpus.

23 Relevant to the instant motion, on October 6, 1995, Defendant was transferred from
24 prison in Nevada to a New Mexico prison pursuant to the Interstate Compact Agreement.
25 This transfer was at the request of the Nevada warden after indications that Defendant had
26 been plotting to take the assistant warden of operations hostage. Defendant was
27 subsequently transferred back to Nevada on September 19, 2000, as a result of gang activity
28 in New Mexico. Since the same assistant warden of operations was still at the Nevada

1 prison, Defendant was again transferred pursuant to the Interstate Compact Agreement to a
2 prison in Montana. Then on January 16, 2002, Defendant was transferred back to Nevada as
3 a result of him being classified as a management problem.

4 ARGUMENT

5 I. DEFENDANT HAS NOT ESTABLISHED A NEED FOR STATE FUNDED 6 TRANSCRIPTS

7 Defendant asks that the State provide him with transcripts and records at State
8 expense. However, the State is not required to furnished transcripts based on an unsupported
9 request by a petitioner who is unable to pay for them. The Nevada Supreme Court has set
10 forth a threshold requirement which a Defendant must meet in order to qualify for State
11 supplied transcripts and records. The Nevada Supreme Court has stated:

12 NRS 177.325, 177.335, and 177.345 do not contemplate that records will be furnished
13 at state expense upon the mere unsupported request of a petitioner who is unable to
14 pay for them. Just as the petitioner must show that the requested review is not
15 frivolous before he may have an attorney appointed (NRS 177.345 (2)), so must he
satisfy the court that the points raised have merit and such merit will tend to be
supported by a review of the record before he may have trial records supplied at state
expense. He must specifically set forth grounds upon which the petition is based.

16 Peterson v. Warden, 87 Nev. 134, 135-136, 483 P.2d 204, 205 (1971). Defendant must
17 satisfy the court that the points raised have merit and such merit will tend to be supported by
18 a review of the record before he may have trial records supplied at state expense. Peterson v.
19 Warden, 87 Nev. 134, 483 P.2d 204 (1971).

20 In the present case, Defendant claims he needs the transcripts in order to allege all
21 available issues in his Petition for Writ of Habeas Corpus (Post-conviction). Defendant has
22 not demonstrated that the arguments he intends to raise on appeal have merit. As such,
23 Defendant has not met the threshold requirement and should be denied transcripts at state
24 expense.

25 //

26 //

27 //

28 //

1 CONCLUSION

2 Defendant has not demonstrated a need for State funded documents. Therefore, the
3 Court should deny Defendant's Motion for Transcripts at State Expense.

4 DATED this 19th day of March, 2003.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9
10 BY 

11 CLARK PETERSON
12 Deputy District Attorney
13 Nevada Bar #006088

14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 19 day of
16 March, 2003, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 JOEL BURKETT #16111
18 E.S.P.
19 P.O. BOX 1989
20 ELY NV 89301

21 BY 

22 Secretary for the District Attorney's Office
23
24
25
26
27
28

CP/to/mb

ORIGINAL

BRIAN SANDOVAL
Attorney General
By: BRIAN KUNZI
Senior Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 2173
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3420

FILED

MAR 24 9 50 AM '03

Shirley D. Thompson
CLERK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT,
Petitioner,

Case No: C52190
Dept No: XI

vs.

ORDER TO TRANSPORT PRISONER

NEVADA DEPARTMENT OF PRISONS,
Respondent.

TO: NEVADA DEPARTMENT OF CORRECTIONS:

THE COURT HEREBY FINDS that the Defendant is presently in the custody of the Nevada Department of Corrections;

IT IS HEREBY ORDERED that the Nevada Department of Corrections shall transport Defendant **BURKETT #16111** to the Las Vegas District Court on or before the 24th day of April, 2003, in Department 11 at 9:00 a.m. for the Hearing regarding the instant matter, and arrange for his appearance on said date, *and all subsequent dates* as relayed by Memorandum from the Office of the Attorney General.

Defendant will remain in the custody of Clark County Detention Center for the duration of the proceedings, or in the alternative, the Nevada Department of Corrections shall transport Defendant **BURKETT** to the Eighth Judicial District Court, as specified, on or

///

///

///


1 before **all subsequent dates** as relayed by Memorandum from the Office of the Attorney
2 General.

3 DATED this 24 day of march, 2003

4
5 
6 DISTRICT COURT JUDGE 98.

7 Respectfully submitted this 20th day of March, 2003:

8 BRIAN SANDOVAL
9 Attorney General

10 By: 
11 BRIAN KUNZI
12 Senior Deputy Attorney General

ORIGINAL

16

ANSW

BRIAN SANDOVAL
Attorney General
By: BRIAN T. KUNZI
Senior Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 2173
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3420
(702) 486-3768 - fax
Attorneys for Respondents

FILED

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Shirley C. Longoria
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,

Petitioner,

v.

NEVADA DEPARTMENT OF PRISONS,

Respondent.

CASE NO.: C52190

DEPT NO.: XI

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

The State of Nevada, by BRIAN SANDOVAL, Attorney General, through counsel, Senior Deputy Attorney General Brian T. Kunzi, hereby submits its answer to Petitioner JOEL BURKETT'S Petition for Writ of Habeas Corpus and in support thereof relies upon the attached points and authorities and all papers and pleadings on file herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

Burkett has been involved in numerous appeals, motions and habeas corpus writs. The matters to be addressed in this answer pertain solely to the issues involved with the petition for writ of habeas corpus that was filed on November 19, 2001, which action was appealed to the Nevada Supreme Court, and now has been remanded back to this court for further action.

The Nevada Supreme Court remanded this case for a finding on one specific issue, the court having rejected the other claims raised by Burkett in this particular petition for writ of

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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COUNTY CLERK

1 habeas corpus. The Supreme Court has requested this court make a finding as to whether
2 Burkett "was denied certification based upon a lack of suitability for certification pursuant to
3 NRS 213.1214(1) or whether he was denied certification simply because he was housed
4 outside of Nevada and directly under observation by a Nevada institution." See Order of
5 Reversal and Remand, at 4. No other issue or argument by Burkett is germane to this
6 determination.

7 II. STATEMENT OF THE LAW

8 NRS 213.1214 is the governing law pertaining to the parole of a prisoner, like Burkett,
9 that has been convicted of one of the listed sex related offenses. Prisoners convicted of a sex
10 crime are not eligible for parole unless the prisoner "was under observation while confined in
11 an institution of the department or corrections" and the prisoner has been certified by a panel
12 that the prisoner "does not represent a high risk to reoffend based upon a currently accepted
13 standard of assessment." NRS 213.1214(1).

14 Burkett alleges in the petition that he could never be eligible for parole under NRS
15 213.1214 because he was being housed out-of-state and thus was not under observation in a
16 Nevada institution. The Supreme Court rejected this argument. The sole remaining question
17 to be answered is whether the Nevada Parole Board denied parole because he was
18 unsuitable for parole.

19 III. DISCUSSION

20 A panel convened in accordance with NRS 213.1214 on September 11, 2001, to review
21 Burkett and to determine if he could be certified for release. See Nevada Department of
22 Prisons Psychological Panel Results Notification, Exhibit 1. The panel states Burkett was
23 examined and the panel concluded Burkett could not "be certified as not representing a
24 menace to the health, safety or morals of others." See id. Clearly the panel did not reject
25 Burkett because he was housed out of state. The panel made a specific finding he
26 represented a menace to the health, safety or moral of others.

27 Burkett's risks as a parolee are amply supported by his conduct since his incarceration.
28 As can be seen from materials presented to the Nevada Board of Parole Commissioners

1 Burkett is and will continue to be a risk. See Exhibit 2. Given his past behavior in prison, any
2 claim from Burkett that he believes he is entitled to parole can not be taken seriously.

3 Burkett escaped from prison in 1981. He was sent to California because of misconduct
4 issues in 1985. In 1986 California rejected him because of his possession of weapons. In
5 1989 continuing problems prompted prison officials to send him to the maximum security
6 federal prison in Marian, Illinois. He was forced to be placed in protective segregation until his
7 return to Nevada in 1992. He was returned to Nevada once again because of his misconduct
8 in the federal prison. In 1995 he was involved in a conspiracy against administrators of
9 Nevada Department of Corrections and was transferred to New Mexico. New Mexico rejected
10 him in September of 2000 because he would not adapt and was once again involved in gang
11 activity. He then was moved to Montana.

12 The Board of Parole Commissioners considered Burkett for parole on October 31,
13 2001. See State of Nevada Panel Recommendation, Exhibit 3. The Parole Board uses
14 guidelines to score each applicant in an effort to determine suitability for parole. Based on the
15 score given to Burkett, the minimum he should be expected to serve before parole is 180 to
16 210 months. He has served 46 months on his current sentence. Given his exemplary
17 behavior it is easy to understand how Burkett can feel he was denied parole simply because
18 he was being housed out of state. The State guesses Burkett feels his misconduct is not
19 indicative of whether he has been rehabilitated or whether he is capable of conforming his
20 behavior to our community standards.

21 The remand from the Supreme Court creates the impression that the denial of the
22 parole rests solely with the determination of the psychological panel. This is not accurate. A
23 favorable certification from the psychological panel is a prerequisite to parole, however,
24 receiving a certification from the panel does not ensure parole. The Board has the ultimate
25 responsibility for making the determination if Burkett should be paroled.

26 NRS 213.1099 provides "the board may release on parole a prisoner who is otherwise
27 eligible for parole." (emphasis added). This language is hardly mandatory. NRS 213.1099
28 further states "[i]n determining whether to release a prisoner on parole, the board shall

1 consider" certain criteria. As was stated in Weakland v. Board of Parole Commissioners, 100
2 Nev. 218, 678 P.2d 1158 (1984), the Nevada framework "only gives rise to a 'hope' of release
3 on parole, and the Board's discretionary decision to deny parole is not subject to the
4 constraints of due process." Id. at 219-20, 678 P.2d at 1160.

5 IV. CONCLUSION

6 The State contends the Board of Parole Commissioners had the discretion to deny
7 parole to Burkett and the records demonstrate the legitimacy of their decision. Burkett is not a
8 proper person to be considered for parole. His conduct demonstrates his continuing risk to
9 the health, safety and morals of others if he is permitted to be released. Burkett was properly
10 considered for parole. Two different panels evaluated him and concluded he was not suitable
11 for parole. The records from the Board of Parole Commissioners demonstrate he was not
12 denied parole because he was being housed out of state. Burkett first was found by the
13 psychological panel not to be certifiable and subsequently was found by the Board of Parole
14 Commissioners to present unsuitable risks for release at this time. Burkett has failed to
15 demonstrate he illegally is being maintained in custody, thus warranting a denial of his writ of
16 habeas corpus.

17 DATED this 3rd day of April, 2003.

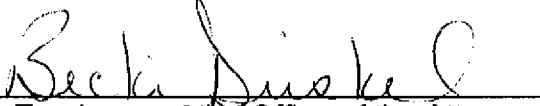
18 BRIAN SANDOVAL
19 Attorney General

20 By: Brian T. Kunzi
21 Brian T. Kunzi
22 Senior Deputy Attorney General
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I do hereby certify that I am an employee of the Office of the Attorney General and that on the 3rd day of April, 2003, I served a true and accurate copy of the foregoing **Answer to Petition for Writ of Habeas Corpus** by mailing via United States mail, first class, postage prepaid, to:

JOEL BURKETT #16111
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301


An Employee of the Office of the Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT "1"

**NEVADA DEPARTMENT OF PRISONS
PSYCHOLOGICAL PANEL RESULTS NOTIFICATION**

The inmate whose name appears below has been sentenced for an offense or offenses which require clearance (certification) by the Psychological Panel as a prerequisite to parole consideration. Certification applies only to the singular sentence or concurrent sentences for which it was granted. A separate certification is required for each consecutive sentence which falls under Psych Panel purview.

A certification of the Psych Panel is not valid indefinitely. It is the policy of the Parole Board to require re-certification when intervening misconduct or newly acquired information indicates a previous certification may have been improvidently rendered, or when a parole denial exceeds one year.

1. INMATE INFORMATIONNAME: **BURKETT, JOEL**NDOP#: **16111**CURRENT LOCATION: **O.S.C.**DATE: **09/11/01****2. OFFENSE/SENTENCE INFORMATION**

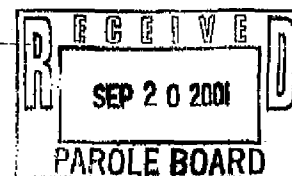
- ☐ This is an original certification action.
☐ This is a re-certification action.

List all case and count numbers for which the inmate is currently being considered for certification or re-certification.

CASE # **52190**COUNT **1**

Check Each NRS That Applies

- ☐ NRS 200.366 - "Sexual Assault"
☐ NRS 200.368 - "Statutory Sexual Seduction"
☐ NRS 200.400 - "Battery With Intent to Commit Sexual Assault"
☐ NRS 200.608 - "Abuse or Neglect of a Child"
☐ NRS 200.710 to 200.730 - "An Offense Involving Pornography and a Minor"
☐ NRS 201.180 - "Incest"
☐ NRS 201.190 - "Infamous Crime Against Nature" (Applies only to offenses committed prior to 06/30/77)
☐ NRS 201.196 - "Solicitation of Minor to Engage in Acts Constituting the Infamous Crime Against Nature"
☐ NRS 201.210 - "Open or Gross Lewdness"
☐ NRS 201.220 - "Indecent or Obscene Exposure"
☐ NRS 201.230 - "Lewdness With Child Under 14 Years"
☐ NRS 201.450 - "Sexual Penetration of Dead Human Body"
☐ NRS 207.193 - "Coercion or Attempted Coercion that is determined to be Sexually Motivated"

**3. RESULTS**

A panel consisting of the members whose names and titles appear below have examined the subject inmate. It is the opinion of the panel that: (check appropriate box)

- ☐ The subject inmate CAN BE certified as not representing a menace to the health, safety or morals of others.
☒ The subject inmate CANNOT, at this time, be certified as not representing a menace to the health, safety or morals of others.

PRISON DIRECTOR
OR DESIGNEE:**Stefanie Humphrey**

PRINT NAME

SIGNATURE

TITLE

**Psychologist
Dept. of HR/Mental Health/
Developmental Svcs. Div.**

ADMINISTRATOR OF
MH/MR OR DESIGNEE:**Dr. Patricia Brassfield**

PRINT NAME

SIGNATURE

TITLE

PSYCHOLOGIST/
PSYCHIATRIST:**Dr. A. T. Vogt, Ph.D.**

PRINT NAME

SIGNATURE

Psychologist IV/NDOP

TITLE

4. DISTRIBUTION: Original - Board of Parole Commissioners; Copy - C-File; Copy - I-File

EXHIBIT “2”




BOARD OF PRISON COMMISSIONERS

KENNY C. GUINN
GOVERNOR
FRANKIE SUE DEL PAPA
ATTORNEY GENERAL
DEAN HELIKER
SECRETARY OF STATE

STATE OF NEVADA
DEPARTMENT OF PRISONS
ADMINISTRATIVE OFFICES

JACKIE CRAWFORD
DIRECTOR
JOHN BLANNKY
ASSISTANT DIRECTOR, OPERATIONS
JANET M. JOHNSON
ASSISTANT DIRECTOR, SUPPORT SERVICES
HOWARD L. SKOLNIK
ASSISTANT DIRECTOR, PRISON INDUSTRIES

TO: Susan McCurdy, Executive Secretary
Nevada Board of Parole Commissioners

FROM:  Glen Whorton, Chief
Classification and Planning

DATE: August 16, 2001

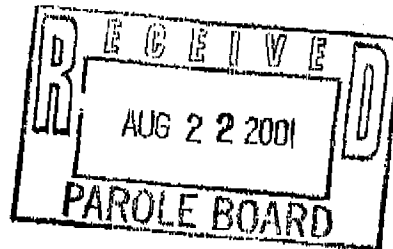
SUBJECT: Joel Burkett, #16111 10/01 Parole Board Hearing

Joel Burkett is scheduled to appear in absentia before the October 2001 meeting of the Parole Board. He is presently out of state under the Interstate Corrections Compact. He has been transferred because of his status as an extreme management problem. We note that this individual escaped from NNCC in 1981. In 1985 he was sent to California because of his misconduct, however, he was returned in 1986 because of his possession of weapons. In 1989, he was sent to federal authorities under the ICC and spent his time in maximum security at Marlan Illinois. He was assaulted by AW's, and almost killed. He was placed in protective segregation from that point forward. In 12/92, he returned to Nevada from the feds because of his misconduct, and unwillingness to adapt. In 1995, there was a notification of a conspiracy against administrators of the NDOC which resulted in his transfer to New Mexico. He was returned from New Mexico in 9/00 because he would not program, and assaulted another gang member. He is presently in the State of Montana.

Burkett is currently serving a Life sentence for Kidnapping 1st Degree, as well as a Life sentence for Sexual Assault. He has a parole eligibility date 12/7/02. He also has two consecutive Life sentences for Sexual Assault With the Use of a Deadly Weapon.

GW:scc

cc: C-File



CENTRAL OFFICE
P.O. BOX 7011
CARSON CITY, NEVADA 89702
PHONE (775) 887-3285
FAX (775) 687-6715

SOUTHERN OFFICE
2770 S. MARYLAND PKWY. NO. 300
LAS VEGAS, NEVADA 89109
PHONE (702) 486-6491
FAX (702) 486-6431

EXHIBIT “3”

State of Nevada
Panel Recommendation
Board of Parole Commissioners

Burkett, Joel
Inmate Name

16111
NDOP #

OSC
Institution

10-31-01
Date

Hearing type: Regular

MPR

Regular Deny/MPR

☐ In Absentia

☐ Parole granted Effective

TO: (circle one) STREET HOLD CS ISC

Notes:

HOLDS

1. If detainers are dropped prior to release from NDOP, parole with special conditions listed below.
2. If detainers are dropped prior to release from NDOP, Rescind parole and deny to:
3. If detainers are dropped prior to release from NDOP, reschedule inmate for a personal hearing to RPO.
4. If released by the detaining authority with time remaining on parole, parole with special conditions listed below.

INTER-STATE COMPACT

1. If the requested state does not accept, parole to alternate out of state plan.
2. If the requested state does not accept, parole to alternate in-state plan.
3. If the requested state does not accept, reschedule inmate for a personal hearing to RPO.
4. If the requested state does not accept, deny parole to (denial order will follow).
- 5.

SPECIAL CONDITIONS

- Pay applicable fines, fees & restitution on a schedule determined by P&P.
1. Intensive supervision. HAP not to exceed _____ days.
2. Max supervision w/out HAP. Period determined by P&P.
3. Mandatory self-help to address alcohol/substance abuse.
4. Mand self help attendance to address gambling addiction.
6. Do not enter any gaming establishment for any purpose except employment.
8. No drinking of alcoholic beverages whatsoever.
10. Not to enter any bar/lounge except employ purposes.
11. Residential half way house.
13. Residential housing substance abuse program as deemed necessary by P&P.
14. Submit to polygraph/DNA testing as deemed necessary by P&P.
15. Mandatory drug testing.

16. Parolee is prohibited from contacting or soliciting another to contact the victim and/or victim's family in any way without permission from P&P.
17. No contact or association with gang members and no possession of gang paraphernalia.
19. IPSAC as deemed necessary by P&P.
21. OPSAC as deemed necessary by P&P.
22. Must satisfy any or all warrants within _____ days of parole date without fail.
23. Attend anger control management counseling as deemed necessary by Parole and Probation.
24. Attend mental health counseling as deemed necessary by P&P.
26. No driving of a motor vehicle except for employ and/or counseling purposes.
29. Sex offender conditions (attached)

☒ Parole Denied to: 2/03 (or expiration)

OVER:

1. Nature and severity of the crime
2. Previous criminal history
3. Failed supervision
4. Factors involved (weapon, victim impact)
5. Further evaluation is needed.
6. Poor disciplinary record
7. Failed Psych panel
8. In the opinion of the board, more confinement is needed to protect the public from further criminal activity.
9. Insufficient time remaining on sentence to allow for parole

UNDER:

21. Positive prison programming
22. Lack of criminal record
23. Stable release plans
24. Youth of offender in conjunction with no juv record
25. Parole to hold/other sentence

TIME SERVED TO PED: 46

GRM: A3.29
180 TO 210

COMMENT:

Panel Recommendation:

FINAL ACTION: (underline panel present and circle preparer):

Commissioner Allen (2): ☐ Grant ☒ Deny
Chairman Salling (1): ☐ Grant ☒ Deny
Commissioner Goodson (3): ☐ Grant ☒ Deny
Commissioner Harris (4): ☐ Grant ☐ Deny

Commissioner Bass (6): ☐ Grant ☐ Deny
Commissioner Morales (5): ☐ Grant ☐ Deny
Commissioner Morrow (7): ☐ Grant ☒ Deny

Hearing Rep:

Hearing Rep vote: ☐ Grant ☐ Deny

Signature:

PBFORM-panelrec (rev 8/6/2001)

ORIGINAL

14

FILED

APR 11 11 05 AM '03

Shirley B. Pappas
CLERK

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
) Plaintiff,)
)
) -vs-)
)
) RAYMOND HAIRE, aka Joel Burkett,)
) #609533)
)
) Defendant.)

CASE NO: C52190
DEPT NO: XI

MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

DATE OF HEARING: 04/15/03
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
H. LEON SIMON, Deputy District Attorney, and hereby submits the attached Points and
Authorities in Opposition to Defendant's Motion To Dismiss Defendant's Petition For Writ
Of Habeas Corpus (Post Conviction).

This motion is made and based upon all the papers and pleadings on file herein, the
attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by this Honorable Court.

///
///
///

RECEIVED
APR 11 2003
COUNTY CLERK

24

STATEMENT OF THE CASE

On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use of Deadly Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165); Count III - Sexual Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual Assault (Felony - NRS 200.364, 200.366).

Defendant was convicted by a jury on May 4, 1981. The original Judgment of Conviction was filed on July 29, 1981, however, an Amended Judgment of Conviction was filed on February 28, 1994, sentencing Defendant: as to Count I, fifteen (15) years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively; as to Count II, Life with Possibility of Parole and an additional term of Life with Possibility of Parole for Use of a Deadly Weapon in Commission of a Crime, to be served consecutively, Count II to be served consecutive to Count I; as to Count III, Life with Possibility of Parole; as to Count IV, Life with the Possibility of Parole, Count IV to be served consecutive to Count III; Counts III and IV to be served concurrent to the sentences imposed in Counts II.

Defendant appealed his judgment of conviction and the Supreme Court of Nevada filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed on May 16, 1983. Defendant then filed a petition for writ of habeas corpus on February 2, 1994, which was granted in part and denied in part. Defendant filed a second petition for writ of habeas corpus on June 7, 1999. Defendant's petition was denied on August 12, 1999. Defendant filed another petition for writ of habeas corpus on November 19, 2001. On February 14, 2002, Defendant's petition was denied. Soon thereafter, Defendant filed an appeal to the Nevada Supreme Court challenging the district court's order denying the petition he filed February 14, 2002.

On February 6, 2003, the Nevada Supreme Court filed an order of reversal and remand. In this order the Nevada Supreme Court's remand was limited for further

1 proceedings on the issue of whether Defendant was denied any rights or protections relating
2 to certification available to Nevada prisoners. As this court previously agreed, this issue will
3 be addressed by the Nevada Attorney General in a separate response. Here, the office of the
4 District Attorney will address the remainder of Defendant's most recent petition filed on
5 February 28, 2003.

6 ARGUMENT

7 I. DEFENDANT'S WRIT IS TIME BARRED

8 NRS 34.726 states that "unless there is good cause shown for delay, a petition that
9 challenges the validity of a judgment or sentence must be filed within one (1) year after entry
10 of the judgment of conviction or, if an appeal has been taken from the judgment, within one
11 (1) year after the Supreme Court issues its remittitur." This statute bars Defendant's instant
12 petition seeking post-conviction relief because it was filed after the one year deadline for
13 such petitions. Defendant's original Judgment of Conviction was filed on July 29, 1981, and
14 an Amended Judgment of Conviction was filed on February 28, 1994. An Order Dismissing
15 Appeal was filed on April 21, 1983, and the State received the remittitur on May 16, 1983.
16 Defendant did not file the present Petition for Writ of Habeas Corpus until February 28,
17 2003. Therefore, Defendant's writ must be dismissed as it was filed well after the one year
18 time bar.

19 Furthermore, Defendant has failed to demonstrate good cause existed to excuse the
20 procedural time bars. In addressing the dismissal of a defendant's petition for writ of habeas
21 corpus because it was belatedly filed, the Nevada Supreme Court has previously defined
22 good cause as "an impediment external to the defense which prevented [the petitioner] from
23 complying with the state procedural rules." Crump v. Warden, 113 Nev. 293, 295, 934 P.2d
24 247, 252 (1997); see also Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989),
25 quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981)("Good cause" under NRS
26 34.726 "means a substantial reason; one that affords a legal excuse."). The lack of the
27 assistance of counsel when preparing a petition and even the failure of trial counsel to
28

1 forward a copy of the file to a petitioner have been found to not constitute good cause. See
2 Phelps v. Director Nevada Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988);
3 Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

4 As stated supra, Defendant has not provided good cause as to why his claims are not
5 procedurally barred. Defendant alleges that the issues raised herein could not be raised
6 earlier because an ineffective assistance of counsel claim was not available until the Nevada
7 Supreme Court's holding in Crump v. Warden, 934 P.2d 247 (1997).

8 Defendant further asserts that he has been incarcerated out of state and without access to
9 Nevada law. Thus, Defendant alleges that he was not aware of the present constitutional
10 violations. Obviously, Defendant's arguments do not rise to the level of being impediments
11 external to the defense which prevented him from complying with the state procedural rules.
12 There is absolutely no reason Defendant could not have discovered the alleged violation
13 previously and the fact that he may have been incarcerated outside of Nevada cannot be
14 considered sufficient to overcome the procedural bars. Therefore, this Court should dismiss
15 Defendant's Petition for Writ of Habeas Corpus.

16 **II. DEFENDANT'S PETITION IS BARRED BY THE DOCTRINE OF LACHES**

17 The instant petition was filed more than eighteen (18) years after the Nevada Supreme
18 Court issued its remittitur, more than seven (7) years after the filing of the Amended
19 Judgment of Conviction, and more than twenty (20) years after the filing date of the original
20 Judgment of Conviction. Because more than eighteen (18) years have elapsed between the
21 issuance of the remittitur and the filing of this petition, Defendant's petition is barred by
22 laches. NRS 34.800(2) creates a rebuttable presumption of prejudice to the State if "[a]
23 period of five years [elapses] between the filing of a judgment of conviction, an order
24 imposing sentence of imprisonment, or a decision on direct appeal of a judgment of
25 conviction and the filing of a petition challenging the validity of a judgment of conviction . .
26 . ." Failure to rebut the presumption of prejudice results in dismissal.

27 In determining whether laches applies, this court must look at several factors: "(1)
28 whether there was an inexcusable delay in seeking relief; (2) whether an implied waiver has

1 arisen from the defendant's knowing acquiescence in existing conditions; and (3) whether
2 circumstances exist that prejudice the State." Hart v. State, 116 Nev. Adv. Op. 66, pp. 4-5, 1
3 P.3d 969, 972 (2000). In the present case, Defendant fails to provide any legitimate excuse
4 for waiting eighteen (18) years to file the present post-conviction relief. Defendant
5 unsuccessfully appealed his judgment of conviction and has previously filed two petitions
6 for post conviction relief. Defendant has had ample opportunity to have his arguments
7 raised in the current petition previously reviewed.

8 NRS 34.800 was enacted to protect the State from having to go back years later to re-
9 prove matters that have become ancient history. There is a rebuttable presumption of
10 prejudice for this very reason and the doctrine of laches must be applied in the instant matter.
11 If courts required evidentiary hearings for long delayed petitions such as in the instant
12 matter, the State would have to call and find long lost witnesses whose once vivid
13 recollections have faded and re-gather evidence that in many cases has been lost or destroyed
14 because of the lengthy passage of time. Therefore, this Court should summarily dismiss the
15 instant petition according to the doctrine of laches pursuant to NRS 34.800, as the delay of
16 over eighteen years in filing is unexcused. Therefore, the State affirmatively pleads laches.

17 **III. DEFENDANT HAS FILED SUCCESSIVE PETITIONS**

18 NRS 34.810(2) provides as follows:

19 A second or successive petition must be dismissed if the judge or
20 justice determines that it fails to allege new or different grounds
21 for relief and that the prior determination was on the merits or, if
22 new and different grounds are alleged, the judge or justice finds
that the failure of the petitioner to assert those grounds in a prior
petition constituted an abuse of the writ.

23 In the present petition, Defendant alleges a violation of his sixth amendment rights to
24 effective assistance of counsel, right to a jury trial and a fourteenth amendment due process
25 violation. Defendant's prior petitions for post conviction relief alleged: a 14th Amendment
26 violation because he had been denied the possibility of parole contrary to his sentence; that
27 since he has been incarcerated out of state, the parole panel has had no authority to certify
28 him; that there was a discrepancy between the orally stated sentence by the trial court and

1 the original Judgment of Conviction; an ex post facto violation because he was entitled to the
2 law in effect at the time of his conviction and the State was required to treat Count II of his
3 sentence as one continuous term for the purpose of good time credits and parole eligibility;
4 and that he was never given a parole hearing in 1997 thus his parole granted in 1998 should
5 be counted from 1997. The District Court subsequently accepted Defendant's argument with
6 regard to the discrepancy between the oral sentence and the original Judgment of Conviction,
7 however, denied Defendant's other arguments contained in his petitions. Therefore, pursuant
8 to 34.810(2), the present petition should be dismissed because Defendant's present claims
9 could have been raised previously. Furthermore, to the extent the claims in the prior
10 petitions and those in the present petition overlap, this Court should dismiss the present
11 petition because it fails to allege new grounds for relief.

12 This is Defendant's third petition for post-conviction relief. The Nevada Supreme
13 Court has previously defined good cause as "an impediment external to the defense which
14 prevented [the petitioner] from complying with the state procedural rules." Crump v.
15 Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); see also Colley v. State, 105 Nev.
16 235, 236, 773 p.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042
17 (Haw. 1981)("Good cause" under NRS 34.726 "means a substantial reason; one that affords
18 a legal excuse."). Here, Defendant has failed to establish good cause for filing successive
19 petitions nor has he established that he has suffered any actual prejudice as required by NRS
20 34.810(3) See Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944 (1994). The lack of the
21 assistance of counsel when preparing has been found to *not* constitute good cause. See
22 Lozada v. State, 110 Nev. 871 (1994); Phelps v. Director Nevada Department of Prisons,
23 104 Nev. 656, 660, 764 P.2d 1303 (1988). In addition, there is absolutely no legal defect in
24 the fact that Defendant was housed out of state for portions of his sentence.

25 Defendant was legitimately removed from Nevada as a result of his own actions and
26 has suffered no adverse consequences or legal implications from such. Moreover, Defendant
27 is now incarcerated back in Nevada. Thus, Defendant's instant petition constitutes an abuse
28 of writ. Therefore, this Court should dismiss Defendant's current petition.

1 CONCLUSION

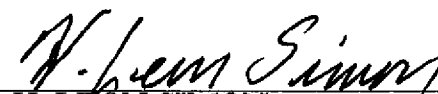
2 Based upon the foregoing, Defendant's petition should be denied.

3 DATED this 10 day of April, 2003.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
7 Nevada Bar #002781

8
9 BY




10 H. LEON SIMON
11 Deputy District Attorney
12 Nevada Bar #000411

13 CERTIFICATE OF MAILING

14
15 I hereby certify that service of the above and foregoing, was made this 10th day
16 of April, 2003, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17
18 JOEL BURKETT, NDOC#16111
19 ELY STATE PRISON
20 P.O. BOX 1989
21 ELY, NV 89301

22 
23 Secretary for the District Attorney's
24 Office

25
26
27 HLS/TO/dm
28

JOEL BURKETT #161
P.O. BOX 1989
ELY NEVADA 89301

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

21
FILED

APR 14 1 01 PM '03

Shirley S. Anglin
CLERK

131
JOEL T. BURKETT
PETITIONER

CASE NO. C52190

DEPT. NO: XI

VS.

THE STATE OF NEVADA
RESPONDENT/

MOTION TO STRIKE

4-29-03

Comes now, Joel burkett, pro se in the above entitled matter and respectfully request that the answer filed by respondent April 3, 2003 be strike from the record. Should the court deny petitioners request petitioners submits here with petitioner reply. This motion is made and based upon the following fact;

The Nevada Supreme Court issued it's order February 4, 2003.

This court has not ordered the answer filed by respondent.

Petitioner has properly submitted a motion to amend the petition. This court has not yet ruled on those motions before it.

This court should strike the answer filed April 3, 2003 by respondent. Amend the petition than allow an answer to the petition.

25
DATED THIS 8TH DAY OF APRIL 2003

RESPECTFULLY SUBMITTED,

Joel Burkett
pro se petitioner

(1)

RECEIVED

APR 11 2003

COUNTY CLERK

PROOF OF SERVICE

I, Joel Burkett, do hereby certify that I did serve respondent with a true and correct copy of the above motion to strike on this 8th day of April 2003.


PRO SE PETITIONER

JOEL BURKETT #16111
P.O. BOX 1989
ELY, NEVADA 89301

132

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL T. BURKETT
PETITIONER

VS.

THE STATE OF NEVADA
RESPONDENTS/

FILED
APR 14 1 04 PM '03
Shelly S. Rasmussen
CASE NO. 052190
DEPT. NO: XI

PETITIONERS REPLY

Comes now, Joel T. Burkett, pro se in the above entitled
matter, and hereby submits his reply to the answer to
the petition for writ of habeas corpus filed by respondent on
April 3, 2003.

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APR 11 2003

COUNTY CLERK

(1)

Respondents claim petitioner escaped from prison in 1981. This is simply a lie. Petitioner has never escaped from prison

Nor was petitioner sent to California in 1985 for misconduct. Petitioner requested a hardship transfer as his father was dying of cancer.

Petitioner, while in New Mexico, did take a weapon from another inmate that was trying to kill him and used the weapon on the inmate. Petitioner was never charged or given a write-up because it was proven petitioner defended himself.

Moreover, respondents claim the only matter to be addressed by this court is that appealed to the Nevada Supreme Court.

In petitioners argument in support filed with the original petition, petitioner claimed while housed out of state, the panel pursuant to N.R.S. 213.1214 could not pass him.

Petitioner, likewise argued at page 7 of the argument in support "The parole board has no authority to grant parole" as granted in petitioners judgment of conviction.

Respondent would mislead this court, that pursuant to N.R.S. 213.1099 the board may release on parole, petitioner without approval of the panel pursuant to N.R.S. 213.1214,. In respondents answer at page 3, in line 27, they claim that this "Language is hardly mandatory".

N.R.S. 213.1099(1) reads as follows:

"except as otherwise provided in this section and N.R.S. 213.1214 and N.R.S. 213.1215 the board may release on parole a prisoner who is otherwise eligible for parole (Emphasis Added)."

N.R.S. 213.1214 reads in part:

"the board shall not release on parole a prisoner convicted of an offense listed in subsection 5" (emphasis added).

The word shall within a statute is clearly mandatory.

In light of N.R.S. 213.1099; and N.R.S. 213.1214 the parole board has no authority to grant parole. Petitioners judgment of conviction is therefore violated. He was not sentenced to life with the possibility of passing a panel.

Moreover, respondents claim in light of petitioners past behavior "entitled to parole can't be taken seriously." (page 3 of answer).

The fact is, petitioner received a parole in 1998 from count one(1). At which time he had over 9 years of good time. With that kind of good time, petitioner past behavior must not be all that bad. Nor has petitioner

ever been charged with a new crime while in prison.

It is claimed petitioner has been in possession of a weapon but petitioner has never received a misconduct for possession of a weapon.

Likewise, on February 19, 2003 petitioner has sought to amend the petition. Petitioner has pointed out at the time original petition was filed, his constitutional right to access to the court was being denied. This court has not yet ruled on the motions before it. The motion to amend the petition for writ of habeas corpus is properly before the court.

Nor has the court ordered the respondents to answer the petition. It is clear respondent filed an answer real fast in hope's that they won't have to answer to the amended petition.

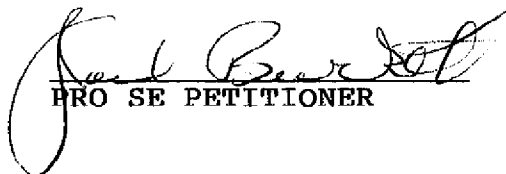
Petitioner has medical evidence to prove his innocence that will support an argument on fundamental miscarriage of justice. So the issue's in the amended petition are not going away if this court deny's the amended petition.

Moreover, respondents claim petitioner was convicted. It is clear from the issue's raised in the amended petition that petitioner has not been convicted, but denied his sixth amendment of the U.S. constitution to a trial by jury.

Petitioner respectfully submits respondents answer is without merit. Moreover, they have not answered the issue that the possibility of parole does not exist the parole board has no authority to grant parole.

DATED THIS 8th DAY OF APRIL 2003

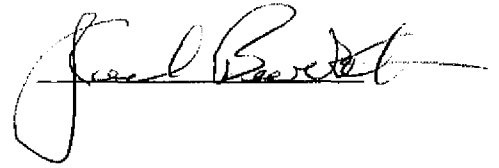
RESPECTFULLY SUBMITTED


PRO SE PETITIONER

(3)

PROOF OF SERVICE

I, Joel Burkett, do hereby certify that I did serve the above reply
to respndent on this 8th day of April 2003

A handwritten signature in cursive script, reading "Joel Burkett", written over a horizontal line.

RECEIVED

APR 22 2003

COUNTY CLERK

1060

S3

Comes now, Petitioner Joel T. Burkett
and hereby submits his opposition
to Respondent's motion to Dismiss
Filed on April 16th, 2003
This motion is made and based upon
the attached facts and authorities
submitted herewith.

CASE NO: CS2190
DEPT NO: X1
OPPOSITION TO
RESPONDENT'S MOTION
TO DISMISS

JOEL T. BURKETT
PETITIONER,
vs.
THE STATE OF NEVADA
RESPONDENT,

DISTRICT COURT

CLARK County, NEVADA

APR 22 1 54 PM '03
Clerk's Office
CLERK

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Box 1489

T. Burkett 1611

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GOOD CAUSE, AND ACTUAL PREJUDICE

THE NEVADA SUPREME COURT HELD IN,
PELLEGRINI V. STATE, 34 P.3D 519 (NEV. 2001),

"TO OVERCOME THE PROCEDURAL
BARS OF N.R.S. 34, 726 AND
N.R.S. 34, 810"... HABEAS PETITIONER,
HAS "THE BURDEN OF
DEMONSTRATING GOOD CAUSE FOR
DELAY IN BRINGING HIS NEW
CLAIMS... AND ACTUAL
PREJUDICE."

TO SHOW GOOD CAUSE A PETITIONER MUST
DEMONSTRATE THAT AN IMPEDIMENT EXTERNAL
TO THE DEFENSE PREVENTED HIM FROM
RAISING HIS CLAIMS EARLIER. PELLEGRINI, (SUPRA)
SUCH AN IMPEDIMENT MIGHT BE
DEMONSTRATED BY A SHOWING "THAT
THE FACTUAL OR LEGAL BASIS FOR A CLAIM
WAS NOT REASONABLY AVAILABLE.. OR
THAT SOME INTERFERENCE BY OFFICIALS
MADE COMPLIANCE WITH THE PROCEDURAL
RULE IMPRACTICABLE" PELLEGRINI, (SUPRA)

THE COURT HAS ALSO HELD, THAT INEFFECTIVE ASSISTANCE OF POST CONVICTION COUNSEL IS "CAUSE" CRUMP V. WARDEN, 934 P.2D 254 (NEV. 1997)

THE NEVADA SUPREME COURT HELD IN, PELLEGRINI V. STATE, 34 P.3D 519 (NEV 2001) THAT A HABEAS CORPUS PETITIONERS WHOSE CONVICTIONS WERE FINAL BEFORE EFFECTIVE DATE OF N.R.S. 34.726, "WERE ENTITLED TO FILE A SUCCESSIVE PETITION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THAT PROVISION." PETITIONER SUBMITS AS "CAUSE" THAT THE "LEGAL BASIS FOR A CLAIM WAS NOT REASONABLY AVAILABLE" PELLEGRINI, (SUPRA) AS TO, INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL UNTIL THE COURTS RULING IN, 1997 IN, CRUMP, (SUPRA) MOREOVER, PETITIONER, FILED HIS FIRST PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION IN 1986, AT WHICH TIME PETITIONER HAD THE RIGHT TO COUNSEL, AND THE EFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO CRUMP V. WARDEN, 934 P.2D 254 (NEV. 1997)

FAILURE OF POST CONVICTION COUNSEL TO RAISE THE ISSUES RAISED HEREIN, WHEN THE TRIAL RECORD THEN SUPPORTED THOSE CLAIMS, CONSTITUTES "INEFFECTIVE ASSISTANCE OF COUNSEL" PETITIONER SUBMITS "INEFFECTIVE ASSISTANCE OF COUNSEL AS "CAUSE"

IN 1994 PETITIONER FILED A SECOND PETITION, TO CORRECT A MISTAKE IN HIS JUDGMENT OF CONVICTION, PETITIONER CONTENTS AS "CAUSE" THAT THE "LEGAL BASIS FOR, HIS CLAIM WAS NOT REASONABLY AVAILABLE" PELLEGRINI (SUPRA) UNTIL THE COURTS RULING IN 1997 IN CRUMP, (SUPRA)

IN 1999, PETITIONER FILED A THIRD PETITION SO TO THE PRISONS TREATMENT OF HIS SENTENCES, AT WHICH TIME PETITIONER WAS HOUSED OUT OF STATE IN THE NEW MEXICO STATE PRISON SYSTEM WITHOUT ANY ACCESS TO NEVADA LAW, PETITIONER CONTENTS THAT THE DENIAL OF HIS CONSTITUTIONAL RIGHT OF ACCESS

TO THE COURT PURSUANT TO, BOUNDS V. SMITH, 99 S. CT 1491 (1977). CONSTITUTES "INTERFERENCE BY OFFICIALS" PELLEGRINI, (SUPRA) LIKEWISE, WHILE HOUSED OUT OF STATE WITHOUT ACCESS TO NEVADA LAW, THE ISSUE OF INEFFECTIVE ASSISTANCE OF ~~POST~~ CONVICTION COUNSEL PURSUANT TO CRUMP, (SUPRA) WAS "REASONABLY UNKNOWN" TO PETITIONER AMADEO V. ZANT, 106 S. CT 2661 (1986).

IN 1984, OR 85 UNTIL 1986 PETITIONER WAS HOUSED IN THE CALIFORNIA PRISON SYSTEM, AND MAY, 1988 UNTIL DECEMBER 1992, PETITIONER WAS HOUSED OUTSIDE THE STATE IN THE FEDERAL PRISON SYSTEM. PETITIONER SUBMITS, THAT A DENIAL OF A STATE CORRECTIVE PROCESS CONSTITUTES "INTERFERENCE BY OFFICIALS" PELLEGRINI, (SUPRA) IN, THAT PRIOR TO THE COURTS RULING IN, BIRGES V. STATE, 820 P.2D 764 (NEV. 1991) THIS COURT HAD NO JURISDICTION TO HEAR A PETITION FOR POST CONVICTION RELIEF WHILE PETITIONER WAS HOUSED OUTSIDE THE STATE, DIXON V. WARDEN, 462 P.2D 753 (NEV. 1969)

MOREOVER, IN 1984, ²⁵ UNTIL 1986 PETITIONER WAS HOUSED IN CALIFORNIA, AND FROM MAY, 1988 UNTIL DECEMBER 1992, PETITIONER WAS HOUSED IN THE FEDERAL PRISON SYSTEM, AND FROM NOVEMBER, 1995 UNTIL SEPTEMBER 2000 PETITIONER WAS HOUSED IN THE NEW MEXICO STATE PRISON SYSTEM AND, FROM JANUARY 2001 UNTIL JANUARY 2002 PETITIONER WAS HOUSED IN THE MONTANA STATE PRISON SYSTEM ALL WITHOUT ACCESS TO NEVADA LAW. PETITIONER CONTENTS, THAT THE DENIAL OF HIS CONSTITUTIONAL RIGHT OF ACCESS TO THE COURT PURSUANT TO BOWDOWS (SUPRA) CONSTITUTES "INTERFERENCE BY OFFICIALS" PELLEGRINI (SUPRA)

WHILE IT IS TRUE, PETITIONER WAS IN NEVADA FOR 5 MONTHS BETWEEN SEPT, 2000, UNTIL HIS TRANSFER TO MONTANA JAN, 2001 PETITIONER SUBMITS THAT A (5) FIVE MONTH DELAY ON HIS PART VIOLATES NO PROCEDURAL RULE NOR IS IT UNREASONABLE.

LIKEWISE, PETITIONER, CONTENTS AS CAUSE, THAT THE FAILURE TO RAISE THE ISSUES RAISED IN THESE PROCEEDINGS, (AS TO THE UNDERLYING CLAIMS OF INEFFECTIVE ASSISTANCE OF POST-CONVICTION COUNSEL) AT TRIAL, OR ON DIRECT APPEAL, IS DUE TO INEFFECTIVE COUNSEL AT TRIAL, AND ON DIRECT APPEAL, INDEED, PETITIONER DID NOT AUTHORIZE THE FILING OF HIS DIRECT APPEAL, COUNSEL NEVER ONCE CONTACTED PETITIONER BY PHONE, MAIL OR VISIT

PETITIONER, RESPECTFULLY SUBMITS THAT PURSUANT TO W.R.S. 34, 726(A); W.R.S. 34, 810(3)(A) GOOD CAUSE EXIST TO EXCUSE THE PROCEDURAL BARRIS

THE NEVADA SUPREME COURT HAS EXPRESSED
NO OPINION AS TO THE FACTUAL ALLEGATIONS
AND EVIDENCE NECESSARY TO MAKE SUCH
A SHOWING OF "INTERFERENCE BY OFFICIALS"
AS CAUSE SEE, GONZALES V. STATE, 53
P.3d 901 (NEV 2002) (FOOTNOTE 5 OMITTED)
HOWEVER, THE COURTS REASONING IN
MAZZAN V. WHITLEY, 921 P.2d 920 (NEV 1996)
PROVIDES THE ANSWER AS TO WHY THE
DENIAL OF PETITIONERS CONSTITUTIONAL
RIGHT OF ACCESS TO THE COURT PURSUANT
TO BOARDS, (SUPRA) MUST CONSTITUTE
CAUSE, IN, MAZZAN, (SUPRA) THE COURT
STATED: "WHERE A PETITIONER DEFAULTS
A CLAIM AS THE RESULT OF THE
DENIAL OF THE RIGHT TO EFFECTIVE
ASSISTANCE OF COUNSEL THE STATE
WHICH IS RESPONSIBLE FOR THE
DENIAL AS A CONSTITUTIONAL MATTER,
MUST BEAR THE COST OF ANY
RESULTING DEFAULT AND HARM TO
STATE INTERESTS"

THE STATE IS NO LESS RESPONSIBLE
AS A "CONSTITUTIONAL MATTER" MAZZAN (SUPRA)
OF INSURING PETITIONER TO HIS
CONSTITUTIONAL RIGHT OF ACCESS TO
THE COURT PURSUANT TO, BOUNDS (SUPRA)

LACHES

ALTHOUGH PETITIONER HAS SET FORTH A
FUNDAMENTAL MISCARRIAGE OF JUSTICE
ARGUMENT BELLOW TO OVERCOME
LACHES PURSUANT TO N.R.S. 34.800
PETITIONER RESPECTFULLY SUBMITS, THAT
RESPONDANT CANNOT RELY ON LACHES
PURSUANT TO N.R.S. 34.800.

"LACHES IS AN EQUITABLE DOCTRINE WHICH
MAY BE INVOKED WHEN DELAY BY
ONE PARTY WORKS TO THE DISADVANTAGE
OF ANOTHER" CARSON CITY V. PRICE, 934
P.2D 1042 (NEV. 1997)

PETITIONER SIMPLY HAS NOT CAUSED
THE DELAY, IN FACT. RESPONDANT HAS
CAUSED ALL BUT FIVE MONTHS OF ANY
DELAY BASED UPON, THE DENIAL OF
EFFECTIVE ASSISTANCE OF TRIAL COUNSEL,
COUNSEL ON DIRECT APPEAL, AND POST-
CONVICTION COUNSEL IN THE 1986
HABEAS PROCEEDINGS. LIKEWISE, RESPONDANT
HAS DEVOID PETITIONER OF HIS
CONSTITUTIONAL RIGHT OF ACCESS TO THE
COURT, AS WELL AS TO A STATE
CORRECTIVE PROCESS, INDEED.

PRIOR TO A HEARING IN THE 1986
POST-CONVICTION PROCEEDINGS AND
IN VIOLATION OF W.R.S. 34,770(1)
RESPONDANTS TOOK ALL OF PETITIONERS
LEGAL FILES AND SENT HIM OUTSIDE
THE JURISDICTION OF THE COURT,
DENYING HIM ACCESS TO COUNSEL.

MOREOVER, IN 1991 AND AGAIN JUNE 4TH
2002, RESPONDANTS INFORMED PETITIONER,
THAT HIS ISSUES WERE EXHAUSTED
IN STATE COURT, RELYING UPON THE
ATTORNEY GENERALS CLAIMS OF EXHAUSTION.
PETITIONER FILED A FEDERAL PETITION
FOR WRIT OF HABEAS CORPUS IN 1991.
RESPONDANTS MOVED TO DISMISS THE
FEDERAL PETITION FOR FAILURE TO
EXHAUST. INDEED, THE PETITION WAS
DISMISSED FOR FAILURE TO EXHAUST.

TO ALLOW RESPONDANTS TO RELY UPON
A STATUTORY RIGHT IN THE FACE
OF SUCH CONSTITUTIONAL VIOLATIONS
WOULD RENDER THE STATE CORRECTIVE
PROCESS

INEFFECTIVE TO PROTECT THE RIGHTS
OF PRISONERS, RESPONDANT WOULD
ONLY HAVE TO VIOLATE THE CONSTITUTIONAL
RIGHT OF ACCESS TO THE COURT
OF PRISONERS FOR (5) FIVE YEARS
THEN INVOKE LACHES UNDER
N.R.S. 34.800 TO DENY A HEARING
ON ANY OTHER CONSTITUTIONAL
VIOLATIONS THAT ACCURED AT TRIAL.

PETITIONER RESPECTFULLY SUBMITS, RESPONDANT
CAN NOT RELY UPON N.R.S. 34.800 AS
RESPONDANT HAS CAUSED THE DELAY.
MOREOVER, THE COURT SHOULD
EQUITABLE ESTOPPE RESPONDANTS FROM
RELYING ON N.R.S. 34.800 IN LIGHT
OF THEIR CLAIMS THAT PETITIONER
HAS EXHAUSTED HIS ISSUES, CAUSING
PETITIONER TO FILE A FEDERAL PETITION
IN 1991, THAT WASN'T DISMISSED
UNTIL 1993 THEREBY CAUSING ANOTHER
TWO YEAR DELAY, IN PETITIONER
BRINGING HIS CLAIMS TO STATE COURT.

ACTUAL PREJUDICE
INEFFECTIVE ASSISTANCE OF
POST-CONVICTION COUNSEL

PURSUANT TO CRUMP V. WARDEN, 934 P.2D
254 (NEV. 1997) PETITIONER HAD THE
RIGHT TO THE EFFECTIVE ASSISTANCE
OF COUNSEL IN THE 1986 POST-CONVICTION
PROCEEDINGS

POST-CONVICTION COUNSEL'S FAILURE TO
RAISE THE DENIAL OF PETITIONERS
CONSTITUTIONAL RIGHT TO A TRIAL BY
JURY, IN LIGHT OF JURY INSTRUCTION
201, AND THE DENIAL OF EFFECTIVE
ASSISTANCE OF TRIAL COUNSEL IN
THE OMISSIONS OF COUNSEL,
CONSTITUTES INEFFECTIVE ASSISTANCE
OF COUNSEL.

THERE CAN BE NO QUESTION, IN LIGHT
OF JURY INSTRUCTION 201, TRIAL
COUNSEL'S OMISSIONS MADE PETITIONER
GUILTY, AND LEFT THE JURY NO
OPTION BUT TO CONVICT.

THE DECISION TO PLEAD GUILTY, OR WAIVING
A JURY TRIAL BELONGS TO PETITIONER
ALONE, JONES V. BARWES, 103 S.Ct 3308 (1983)
POST-CONVICTION COUNSEL MAY NOT OF
HAD THE BENEFIT OF, SULLIVAN V. LOUISIANA,
113 S.Ct 2078 (1993) IN THE 1986
POST-CONVICTION PROCEEDINGS, HE SHOULD
NEVERTHELESS, HAVE KNOWN, THAT
THE RIGHT TO TRIAL BY JURY IS AS
OLD AS THE SIXTH AMENDMENT ITSELF,
AND THAT JURY INSTRUCTION 20: AS
WELL AS TRIAL COUNSEL'S OMISSIONS,
AND THE PROSECUTOR'S STIPULATION
DENIED PETITIONER OF A JURY
DETERMINATION OF HIS GUILT OR
INNOCENCE, IS VIOLATION OF HIS
SIXTH AMENDMENT, SEE, IN RE PETERSON,

"THE CONSTITUTION MANDATES...
ENJOYMENT OF THE RIGHT OF
TRIAL BY JURY BE NOT
OBSTRUCTED, AND THAT THE
ULTIMATE DETERMINATION OF
ISSUES OF FACT BY JURY
BE NOT INTERFERED WITH?"

LIKEWISE, THE NEVADA SUPREME COURT
 HAS SAID: "IT IS THE DUTY
 EXCLUSIVE RESPONSIBILITY TO DETERMINE
 THE ULTIMATE ISSUE OF GUILT OR
 INNOCENCE" ROSSADA V. STATE, 934
 P2D 1045 (JUL. 1997) NOT TRIAL COUNSEL,
 OR THE PROSECUTION. INDEED, THE
 UNITED STATES SUPREME COURT HAS
 STATED: "A TRIAL JUDGE IS PROHIBITED
 FROM ENTERING A JUDGMENT OF CONVICTION
 OR DIRECTING THE DUTY TO COME
 FORWARD WITH SUCH VERDICT
 REGARDLESS OF HOW OVERWHELMINGLY
 THE EVIDENCE MAY POINT IN THAT
 DIRECTION" ROSE V. CLARK, 106 S.C.T. 3101
 (1986) MOREOVER, THE UNITED STATES
 SUPREME COURT HAS MADE CLEAR, THAT
 "EVEN WHEN NO THEORY OF
 DEFENSE IS AVAILABLE, IF
 DECIDED TO STAND TRIAL HAS
 BEEN MADE, COUNSEL MUST
 HOLD THE PROSECUTION TO ITS
 HEAVY BURDEN OF PROOF BEYOND
 A REASONABLE DOUBT" UNITED STATES V.
CRONIN, 104 S.C.T. 2039 (1984)

TRIAL COUNSEL FAILED TO HOLD THE PROSECUTION TO ITS HEAVY BURDEN WHEN HE INFORMED THE JURY THEY COULD RETURN A GUILTY VERDICT AGAINST HIS CLIENT, OR OBJECT TO THE PROSECUTION'S STIPULATION OF GUILT AND JURY INSTRUCTION 20:

INDEED, JURY INSTRUCTION 20, IS A "STRUCTURAL DEFECT" WHICH DEFIES ANALYSIS BY HARMLESS ~~OF~~ ERROR STANDARDS, SULLIVAN (SUPRA) MOREOVER, SULLIVAN APPLIES RETROACTIVE AS A WATERBROOK RULE, HARMON V. MARSHALL, 69 F.3D 963 (9TH CIR. 1995)

PETITIONER RESPECTFULLY SUBMITS POST-CONVICTION COUNSEL'S FAILURE TO RAISE TRIAL COUNSEL'S OMISSIONS, THE PROSECUTION'S STIPULATION AND THE DENIAL OF PETITIONER'S CONSTITUTIONAL RIGHT TO TRIAL BY JURY IN LIGHT OF JURY INSTRUCTION 20, RENDERED COUNSEL "CONSTITUTIONALLY DEFICIENT" STRICKLAND V. WASHINGTON, 104 S.Ct 2052 (1984)

AND, THAT THE CONSTITUTIONALLY DEFICIENT
PERFORMANCE "PREJUDICE" PETITIONER
STRICKLAND, (SUPRA) WHEREAS HERE,
PETITIONERS CONVICTION MUST BE
OVERTURNED UNDER SULLIVAN (SUPRA)
ALONE FOR THE DENIAL OF HIS
CONSTITUTIONAL RIGHT TO TRIAL BY
JURY.

LIKewise, TRIAL COUNSEL'S OMISSIONS
DENIED PETITIONER TO EFFECTIVE ASSISTANCE
OF COUNSEL UNDER, JONES V. NEWADA,
877 P.2D 1052 (NEU. 1994); UNITED STATES V.
SWANSON, 943 P.2D 1070 (9TH CIR 1991)

PETITIONER SUBMITS AS CAUSE
INEFFECTIVE ASSISTANCE OF POST-CONVICTION
COUNSEL IN THE 1986 PROCEEDINGS
PURSUANT TO GRUMP V. WARDEN, 934
P.2D 254 (NEU. 1997)

THE OMISSIONS OF TRIAL COUNSEL, DENIED
PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL

HAD TRIAL COUNSEL BEEN AWARE OF THE
DEFENSE OF CONSENT, THERE CAN BE
NO JUSTIFICATION FOR HIM TELLING THE
JURY THAT PETITIONER WAS GUILTY OF
RAPE: "WHAT COULD YOU FIND HIM GUILTY
OF, THESE FOUR COUNTS, THAT LEAVES
ONE COUNT... THAT HE HAD SEXUAL
INTERCOURSE WITH HER AGAINST HER
WILL, BY FORCE OR FEAR, A SEXUAL
ASSAULT, MORE REFINED WAY FOR
RAPE. ALL RIGHT. AND THERE WAS
EVIDENCE OF THAT TAKING THE
BEST EVENTS. BECAUSE SHE AGREED
IT WASN'T WITH HER CONSENT")
(T.O.T. Pg. 476) "THATS EVIDENCE OF
RAPE (T.O.T. Pg 477) "you could
COME BACK WITH A VERDICT OF
GUILTY OF SEXUAL ASSAULT" (T.O.T. Pg 477)
"ONLY ONE CRIME YOU CAN FIND
HIM GUILTY OF, THATS SEXUAL
ASSAULT, ONE COUNT OF HAVING
SEXUAL INTERCOURSE WITH

TINA CAGE, BECAUSE TO FIND HIM
GUILTY OF THE REST, YOU HAVE TO
FIND BEYOND A REASONABLE
DOUBT" (T.O. Pg 479) COUNSEL WENT
ON TO INFORM THE JURY:

"SO, WE REALLY ARE DOWN, NOT A VERY
HARD PROBLEM AS FAR AS YOUR
CONCERNED, BECAUSE, COURSE, I'M
HERE TO TRY TO CONVINCE YOU
OTHERWISE" (T.O. Pg 480)

"YOU KNOW IT COULD BE IN PART
TRUE EVERYTHING AFTER THE FACT
OF GOING OUT IN THE DESERT
MAYBE HE FORCED HIMSELF ON
HER" (T.O. Pg 481)

COUNSEL HAD INFORMED THE JURY
THE SOUL QUESTION FOR THEM
WOULD BE CONSENT. (T.O. Pg 81, n.
24-28).

19.

THE SWANSON, (SUPRA) COURT WENT
ON TO HOLD THAT: "IF COUNSEL'S
OMISSIONS OCCURRED IN AN ATTEMPT
TO PRESENT A DEFENSE PROOF OF
PREJUDICE IS REQUIRED?"

LIKOWITZ, JR., UNITED STATES V. SWANSON,
943 F.2d 1070 (9TH CIR 1991) THAT COURT
HELD, WHERE AS HERE, "COUNSEL'S
CONCESSIONS DURING CLOSING ARGUMENT
THAT NO REASONABLE DOUBT EXISTED
REGARDING ONLY FACTUAL ISSUES
IN DISPUTE CONSTITUTED DEPRIVATION
OF RIGHT TO DUE PROCESS AND
EFFECTIVE ASSISTANCE OF COUNSEL.
THAT PREJUDICIAL PER SE, ABANDONMENT
OF DEFENSE WAS INHERENTLY
PREJUDICIAL AND THUS NO SEPARATE
SHOWING OF "PREJUDICE WAS
NECESSARY?"

THE NEVADA SUPREME COURT IN, JONES V.
NEVADA, 877 P.2d 1052 (NEV. 1994) HELD
"PREJUDICE PRESUMED WHERE
DEFENSE COUNSEL IMPROPERLY
CONCEDES HIS CLIENTS GUILT"

PETITIONER ADMITS COUNSEL'S OMISSIONS
OCCURRED AT HIS ATTEMPT TO ARGUE
THE CASE AS A DICHOTOMY.

NEVERTHELESS, PREJUDICE EXISTS, WHERE
AS HERE, THE JURY WAS
INSTRUCTED: " IF THE ATTORNEYS
STIPULATE OR AGREE TO THE
EXISTENCE OF A FACT YOU
MUST ACCEPT THE STIPULATION
AS EVIDENCE AND REGARD
THE FACT AS PROVED." (PETITIONER'S
JURY INSTRUCTION 20: STATED IN PART)

THERE CAN BE NO QUESTION IN LIGHT
OF JURY INSTRUCTION 20: AND TRIAL
COUNSEL'S OMISSIONS, HIS ATTEMPT
AT ARGUING THE CASE AS A
DICHOTOMY, DID NO MORE THAN
INFORM THE JURY PETITIONER WAS
GUILTY. INDEED, HE STIPULATED TO
THAT FACT.

PETITIONER RESPECTFULLY SUBMITS, THAT
IN LIGHT OF THE COURTS RULINGS IN
JONES (SUPRA); SWANSON, (SUPRA) TRIAL
COUNSEL'S OMISSIONS CONSTITUTE THE
"CONSTITUTIONALLY DEFICIENT PERFORMANCE"
UNDER STRICKLAND V. WASHINGTON, 104
S.Ct 2052 (1984) AND, THAT
THE CONSTITUTIONALLY DEFICIENT
PERFORMANCE PREJUDICE STRICKLAND (SUPRA)
PETITIONER, WHERE AS HERE, COUNSEL'S
OMISSIONS, IN LIGHT OF JURY
INSTRUCTION 20 HAD THE EFFECT
OF DENYING PETITIONER OF HIS
CONSTITUTIONAL RIGHT TO TRIAL
BY JURY PURSUANT TO SULLIVAN V.
LOUISIANA, 113 S.Ct 2078 (1993)
AND EFFECTIVELY DIRECTED A VERDICT
OF GUILTY FOR THE STATE, SEE,
POWELL V. GALAZA, 282 F.3d 1089 (9TH CIR 2002)

PETITIONER RESPECTFULLY SUBMITS
ACTUAL PREJUDICE EXIST.

FUNDAMENTAL MISCARRIAGE OF JUSTICE

THE NEVADA SUPREME COURT IN PELLEGRINI (SUPRA) HELD, THAT THE "COURT MAY EXCUSE THE FAILURE TO SHOW "CAUSE" WHERE THE PREJUDICE FROM A FAILURE TO CONSIDER THE CLAIM AMOUNTS TO "A FUNDAMENTAL MISCARRIAGE OF JUSTICE." THE COURT STATED, THAT THIS STANDARD CAN BE MET WHERE THE PETITIONER MAKES A COLORABLE SHOWING HE IS ACTUALLY INNOCENT OF THE CRIME, PELLEGRINI (SUPRA) A PETITIONER CLAIMING ACTUAL INNOCENCE MUST SHOW THAT IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM ABSENT A CONSTITUTIONAL VIOLATION, PELLEGRINI (SUPRA)

THE NINTH CIRCUIT IN, SISTRUNK V. ARMENAKIS, 292 F.3d 669 (9TH CIR 2002) STATED;
" WHERE POST-CONVICTION EVIDENCE CAST DOUBT ON THE CONVICTION BY UNDERCUTTING THE RELIABILITY OF THE PROOF OF GUILT, BUT

NOT BY AFFIRMATIVELY PROVING
INNOCENCE, THAT CAN BE ENOUGH
TO PASS THROUGH THE SCHUP
GATEWAY TO ALLOW CONSIDERATION
OF OTHERWISE BARRED CLAIMS?"

LIKEWISE, "IMPEACHMENT EVIDENCE, BY ITSELF,
CAN DEMONSTRATE ACTUAL INNOCENCE, WHERE
IT GIVES RISE TO SUFFICIENT DOUBT ABOUT
THE VALIDITY OF THE CONVICTION"

SISTRUNK V. ARMENAKIS, 292 F.3d 669
(9TH CIR. 2002)

PETITIONER, FIRST CONTENTS, THAT THE MEDICAL
REPORT, INEFFECTIVE COUNSEL FAILED TO
PLACE INTO EVIDENCE FOR THE JURY TO
CONSIDER SUPPORTS HIS CLAIM OF
INNOCENCE.

THE ALLEGED VICTIM TESTIFIED TO
ANAL INTERCOURSE, AND, THAT THE
PETITIONER EJACULATED (T.O.P. 109 N. 21-28).

RICHARD KENNER, CHIEF CRIMINALIST, TESTIFIED, THAT THERE WOULD BE SIGNS OF SPERMATOZOA IN THE ANUS FOR AT LEAST TWO OR THREE DAYS, AND AT THE MINIMUM SIX HOURS WITHOUT FACTORS SUCH AS DEFECATION (T.T. Pg 351, W. 9-18) HE ALSO TESTIFIED HE FOUND NO SEMINAL FLUID IN THE ALLEGED VICTIM'S ANUS, (T.T. Pg 346 W. 9-23) AND THAT FROM A HEALTHY 19 YEAR OLD BOY HE WOULD EXPECT SEMINAL FLUID TO BE PRESENT (T.T. Pg UNABLE TO CITE DON'T HAVE TRANSCRIPT) THE VERY MEDICAL REPORT INEFFECTIVE COUNSEL FAILED TO PUT INTO EVIDENCE SHOWS, THAT THE ALLEGED VICTIM DID NOT DEFECATE OR ANY SIGNS OF ANAL ASSAULT (1)

(FOOTNOTE ONE) THE MEDICAL REPORT WAS TAKEN FROM PETITIONER BY RESPONDANT. ALONG WITH THE REST OF PETITIONER'S LEGAL FILES IN 1987 WHEN HE WAS SENT OUT OF STATE, PETITIONER WOULD ASK THE COURT TO ORDER RESPONDANT TO GIVE THIS COURT AND PETITIONER COPIES OF ANY AND ALL MEDICAL REPORTS OF THE ALLEGED VICTIM WITHIN ITS OWN FILES.

PETITIONER, RESPECTFULLY SUBMITS, THAT THE MEDICAL REPORT IS CLEAR AND CONVINCING PROOF, THAT THE ALLEGED VICTIMS VERSION OF EVENTS AS TO AWAI ASSAULT COULD NOT OF HAPPEN, AND SUCH EVIDENCE CAST DOUBT ON THE RELIABILITY OF GUILT.

MOREOVER, PETITIONER SUBMITS AS "IMPEACHMENT EVIDENCE" THE SWORN TRIAL TESTIMONY OF CHIEF CRIMINALIST, RICHARD RENNER. THE SWORN TRIAL TESTIMONY OF THE PETITIONER, JOEL BURKETT, AS WELL AS THE SWORN TRIAL TESTIMONY OF DEFENSE WITNESSES, AND OFFICER MUPIN.

THERE CAN BE NO QUESTION, THAT PETITIONER'S VERSION OF EVENTS AT TRIAL AND, THAT OF DEFENSE WITNESSES

CLEARLY UNDERCUTS THE RELIABILITY OF THE ALLEGED VICTIMS VERSION OF EVENT. HAD THE JURY BEEN ALLOWED TO CONSIDER, AND MAKE

A DETERMINATION AS TO WHAT VERSION OF EVENTS THEY BELIEVED, PETITIONER SUBMITS, THAT "IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM?"

TELEGRAFI (SUPRA) HAD THE ATTORNEY'S NOT STIPULATED TO PETITIONER'S GUILT, AND HAD THE COURT NOT INSTRUCTED THE JURY, THEY MUST FIND PETITIONER GUILTY IN THE FACE OF SUCH STIPULATION.

PETITIONER SUBMITS THERE IS A "PROBABILITY" THAT MORE LIKELY THEY WOULD, THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM" SHELLEY V. DENO, 115 S. CT 851 (1995) HAD THE JURY BEEN ALLEGED TO CONSIDER THE DEFENSE AND MAKE A DETERMINATION. AS TO GUILT OR INNOCENCE, INDEED, "ACTUAL INNOCENCE ALLOWS REVIEWING TRIBUNAL ALSO TO CONSIDER PROBATIVE FORCE OF RELEVANT EVIDENCE THAT WAS EITHER EXCLUDED OR UNAVAILABLE AT TRIAL" SHELLEY (SUPRA)

MOREOVER, WHEREAS HERE, " THERE HAS BEEN NO JURY VERDICT WITHIN THE MEANING OF THE SIXTH AMENDMENT." SULLIVAN V. LOUISIANA, 113 S. CT 2078 (1993) PETITIONER SHOULD BE ENTITLED TO THE BENEFIT OF THE PRESUMPTION OF INNOCENCE GIVEN TO ALL CHARGED WITH A CRIME PRIOR TO A JURY OF GUILTY, OR JURY VERDICT OF GUILTY BEYOND A REASONABLE DOUBT.

PETITIONER RESPECTFULLY SUBMITS, THAT A FUNDAMENTAL MISCARRIAGE OF JUSTICE EXISTS, AND THAT THE TRIAL RECORD OF THE DEFENSE CONTAINS MORE THAN ENOUGH EVIDENCE FOR A JURY TO RETURN A VERDICT OF NOT GUILTY, HAD THEY SIMPLY BEEN ALLOWED TO DO SO.

PETITIONER RESPECTFULLY SUBMITS, THAT FOR THE DENIAL OF HIS CONSTITUTIONAL RIGHT TO A JURY TRIAL, AND EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, NO JURY WOULD HAVE CONVICTED HIM.

CONCLUSION

PETITIONER RESPECTFULLY SUBMITS, THAT RESPONDANTS MOTION TO DISMISS IS WITHOUT MERIT AND MUST BE DENIED.

THERE IS NO QUESTION, PETITIONER HAS BEEN DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, ON DIRECT APPEAL, AND IN THE 1986 HABEAS CORPUS PROCEEDINGS, IN FAILING TO ADDRESS THE DENIAL OF PETITIONERS 6TH AMENDMENT RIGHT TO A TRIAL BY JURY, ALLOWING PETITIONERS UNCONSTITUTIONAL CONVICTION TO STAND, MOREOVER, RESPONDANTS HAVE DENIED PETITIONER OF A STATE CORRECTIVE PROCESS, DENIED PETITIONER OF HIS CONSTITUTIONAL RIGHT OF ACCESS TO THE COURT. NOR HAS PETITIONER CAUSED A (5) FIVE YEAR DELAY WHERE THIS COURT MAY INVOKE THE PRESUMPTION OF PREJUDICE UNDER N.R.S. 34,800(2) IF ADDED UP FROM THE TIME PETITIONERS APPEAL WAS DENIED IN 1983.

UNTIL THE FILING OF THESE PROCEEDINGS IN 2001
PETITIONER HAS ONLY BEEN IN THE STATE OF
NEVADA WITH ACCESS TO THE COURTS FOR
FOUR YEARS. CLEARLY ANY DELAYS ARE THE
FAULT OF RESPONDANT.

MOREOVER, IF THIS COURT FEELS THAT THE
PETITIONER HAS FAILED TO PROPERLY BRIEF
OR ADDRESS ANY ISSUES OR CLAIMS, IT
IS BECAUSE THIS COURT HAS FAILED OR
REFUSED TO RULE UPON PETITIONERS
REQUEST FOR DOCUMENTS, FORCING
PETITIONER TO WORK WITHOUT BENEFIT
OF TRIAL OR HABEAS TRANSCRIPTS

PETITIONER RESPECTFULLY SUBMITS RESPONDANTS
MOTION TO DISMISS IS WITHOUT MERIT
AND MUST BE DENIED. MOREOVER,
PETITIONER IS ENTITLED TO AN EVIDENCE HEARING
ON HIS CLAIMS OF "CAUSE" CRUMP V.
WARDEN, 934 P.2D 247 (NEV 1997)

DATED THIS 16TH DAY OF
APRIL 2003

Respectfully submitted,
Paul Buxton
PRO SE PETITIONER

PROOF OF SERVICE

I, JOEL BURKETT 16111, DO HEREBY
CERTIFY THAT I DID SERVE
RESPONDANT BY MAIL A COPY OF
THE ABOVE MOTION ON THIS
16 DAY OF APRIL 2003

Joel Burkett

ORIGINAL

FILED

APR 22 1 50 PM '03

Shirley S. Rungius
CLERK

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Deputy District Attorney
Nevada Bar #000411
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAYMOND HAIRE, aka Joel Burkett,
#609533

Defendant.

CASE NO: C52190

DEPT NO: XI

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO AMEND THE
PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR DOCUMENTS

DATE OF HEARING: 04/24/03
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
H. LEON SIMON, Deputy District Attorney, and hereby submits the attached Points and
Authorities in Opposition to Defendant's Motion For Leave To Amend The Petition For Writ
Of Habeas Corpus And Motion For Documents.

This opposition is made and based upon all the papers and pleadings on file herein,
the attached points and authorities in support hereof, and oral argument at the time of
hearing, if deemed necessary by this Honorable Court.

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1 the assistant warden of operations hostage.

2 Defendant filed his second petition for writ of habeas corpus on June 7, 1999.
3 Defendant's second petition was denied on August 12, 1999.

4 On September 19, 2000, Defendant was transferred from New Mexico back to
5 Nevada, as a result of gang activity in New Mexico. Since the same assistant warden of
6 operations was still at the Nevada prison, Defendant was again transferred pursuant to the
7 Interstate Compact Agreement to a prison in Montana.

8 Defendant filed a third petition for writ of habeas corpus on November 19, 2001.

9 Meanwhile, on January 16, 2002, Defendant was transferred back to Nevada as a
10 result of him being classified as a management problem.

11 On February 14, 2002, Defendant's third petition was denied. Soon thereafter,
12 Defendant filed an appeal to the Nevada Supreme Court challenging the district court's order
13 denying the (third) petition he filed on November 19, 2001.

14 On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
15 remand. In this order the Nevada Supreme Court's remand was limited for further
16 proceedings on the issue of whether Defendant was denied any rights or protections relating
17 to certification available to Nevada prisoners. As this court previously agreed, this issue will
18 be addressed by the Nevada Attorney General in a separate response. The office of the
19 District Attorney will address the two remaining motions referenced above.

20 **STATEMENT OF THE CASE**

21 In that the Defendant was convicted almost 22 years ago and this case is now ancient
22 history, a brief review of the underlying crimes are warranted.

23 Shortly after midnight on December 20, 1980, the 21 year old victim was working as
24 a clerk at a Stop and Go Store. The Defendant entered the store, purchased a pack of
25 cigarettes and left. Ten minutes later he returned and placed two beers on the counter near
26 the cash register. At about that time, his cousin, Codefendant Theodore Burkett, entered
27 brandishing a knife. He grabbed the victim, held a knife to her throat and forced her into
28 their car. Moments later the Defendant exited the store, got into the car with his cousin and

1 the victim and drove the three of them to a deserted road near Lake Mead.

2 The Defendant and his cousin both undressed the victim then argued over who would
3 "get her first." Defendant's cousin apparently won the argument because he ordered the
4 victim out of the car and told her to place her head on the front seat with her rear sticking
5 out. Codefendant attempted to sodomize the victim but was only able to partially penetrate
6 her so he proceeded to rape her vaginally. When Codefendant finished it was the
7 Defendant's turn and he also raped her. Afterwards the Defendant and Codefendant allowed
8 the victim to get partially dressed and they drove around trying to decide what to do with
9 her.

10 The Defendant stopped a second time on a deserted road, was forcibly undressed and
11 forced to orally copulate the Codefendant while the Defendant simultaneously sodomized
12 her. After the second attack the victim was allowed to dress while the Defendant and his
13 cousin debated whether or not they should kill her. The Codefendant gave a knife to the
14 Defendant and ordered him to kill the victim. The Defendant then ordered the victim out of
15 the car. Thinking that she was about to die, the victim struggled with the Defendant who
16 shoved her back into the car where his cousin tried (unsuccessfully) to break her neck while
17 the Defendant urged him to "Snap her neck and that's it. She is dead." The victim managed
18 to break free from the grip on her neck as the Defendant and codefendant continued their
19 debate as to whether or not they should kill her. The Defendant was reluctant to let the
20 victim go because he had previously served a long prison sentence because he'd let someone
21 go. However after the victim pleaded for her life, the Defendant asked his cousin if it would
22 be okay if they let the victim live. He consented, so she was driven back into town and
23 released.

24 ARGUMENT

25 Both the Defendant's Motion to Amend the Petition for Writ of Habeas Corpus and
26 Defendant's Motion For Documents should be summarily denied for the reasons set forth
27 below.

28 ///

1 **Defendant's Motion to Amend the Petition for Writ of Habeas Corpus**
2 **Is Barred**

3 Defendant seeks to amend his third petition for writ of habeas corpus (filed November
4 19, 2001) based on Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997) claiming it
5 granted him a right to effective counsel in his "1986 petition for habeas corpus."

6 The District Attorney's Office has no such record of a 1986 petition. However, in the
7 Defendant's first (by the State's count) petition filed February 2, 1994, Defendant claims
8 that he previously filed a Writ of Habeas Corpus (Post-Conviction) in the First Judicial
9 District raising "ineffective counsel at trial and direct appeal, prosecute (sic) misconduct,
10 violation of post-arrest silence" that was denied on August 5, 1988.

11 In any event, Crump, in footnote 5 stated that *if* the appointment of counsel was
12 *mandatory*, then a defendant was entitled to the appointment of effective counsel but if such
13 appointment was discretionary, then a defendant was not entitled to the effective assistance
14 of counsel.

15 In this case, Defendant has not shown (1) that he actually filed a 1986 petition, (2)
16 that he was indigent at that time, (3) that he wasn't represented by counsel for that first
17 petition and (4) that he was entitled to an attorney under the statutory mandate of NRS
18 177.345.

19 Crump, decided almost 16 years after Defendant's conviction, does not constitute
20 "good cause" for amending Defendant's fourth (by his count) petition for writ of habeas
21 corpus (the petition filed November 19, 2001). What Crump does stand for is the idea that
22 "good cause" for excusing a procedural bar must be "an impediment external to the defense
23 which prevented him [the petitioner] from
24 complying with the state procedural rules." Crump v. Warden, 113 Nev. 293, 295, 934 P.2d
25 247, 252 (1997); see also Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989).
26 The lack of the assistance of counsel when preparing a petition, the failure of counsel to
27 inform defendant about his right to appeal and even the failure of trial counsel to forward a
28 copy of the file to a petitioner have been found to not constitute good cause. See Phelps v.

1 Director Nevada Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v.
2 State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995); Harris v. Warden, 114 Nev. 956, 964
3 P.2d 785 (1998).

4 Defendant was legitimately removed from Nevada as a result of his own actions and
5 has suffered no adverse consequences or legal implications from such. Defendant remained
6 subject to the jurisdiction of Nevada while incarcerated out of state pursuant to the Interstate
7 Compact and could have brought this amendment earlier even though he was physically
8 incarcerated elsewhere. Boatwright v. Director, 109 Nev. 318, 321, 849 P.2d 274, 276
9 (1993). Crump was decided about six years ago and Defendant's request to amend is
10 untimely. Defendant has failed to establish "good cause" to excuse the substantial and
11 insurmountable procedural bars in this situation.

12 Although the *conditions* of Defendant's incarceration are not barred per Boatwright,
13 and will be addressed separately by the Attorney General's office, this amendment, which
14 challenges the *legality* of his conviction and continued incarceration, is procedurally barred.

15 **Defendant's Motion to Amend the Petition for Writ of Habeas Corpus**
16 **Is Barred By NRS 34.726-1 Year Bar**

17 NRS 34.726(1) (enacted in 1991) states that "unless there is good cause shown for
18 delay, a petition that challenges the validity of a judgment or sentence must be filed within
19 one (1) year after entry of the judgment of conviction or, if an appeal has been taken from
20 the judgment, within one (1) year after the Supreme Court issues its remittitur." While this
21 statute would not apply to any post-conviction proceeding commenced *before* January 1,
22 1993, it certainly would bar any petitions filed *after* that date. This statute bars Defendant's
23 instant petition seeking post-conviction relief because it was filed after the one year deadline
24 for such petitions. Defendant's original Judgment of Conviction was filed on July 29, 1981,
25 and an Amended Judgment of Conviction was filed on February 28, 1994. An Order
26 Dismissing Appeal was filed on April 21, 1983, and the State received the remittitur on May
27 16, 1983. Defendant did not file the present Petition for Writ of Habeas Corpus until
28 November 19, 2001. Therefore, Defendant's writ must be dismissed as it was filed well after

1 the one year time bar.

2 **Defendant's Motion to Amend the Petition for Writ of Habeas Corpus**
3 **Is Barred By NRS 34.810(2)- Successive Petition Bar**

4 NRS 34.810(2) (enacted in 1985) provides as follows: " A second or successive
5 petition must be dismissed if the judge or justice determines that it fails to allege new or
6 different grounds for relief and that the prior determination was on the merits or, if new and
7 different grounds are alleged, the judge or justice finds that the failure of the petitioner to
8 assert those grounds in a prior petition constituted an abuse of the writ."

9 As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 29 P.3d 498
10 (2001) "[a] court must dismiss a habeas petition if it presents claims that either were or could
11 have been presented in an earlier proceeding, unless the court finds both cause for failing to
12 present the claims earlier or for raising them again and actual prejudice to the petitioner."
13 The Court went on to hold that "post-conviction habeas claims that are independent of
14 ineffective assistance claims and that could have been raised on direct appeal are waived."
15 Evans, id.

16 Defendant's successive filing amounts to an abuse of the writ and the instant
17 amendment to his third petition should be dismissed. "Without such limitations on the
18 availability of post-conviction remedies, prisoners could petition for relief in perpetuity and
19 thus abuse post-conviction remedies. In addition, meritless, successive and untimely
20 petitions clog the court system and undermine the finality of convictions." Lozada v. State,
21 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); Dickerson v. State, 114 Nev. 1084, 967 P.2d
22 1132 (1998). Defendant's guilty plea has already been repeatedly affirmed by the district
23 court and the Nevada Supreme Court. Further review of this matter is simply not necessary.
24 As the Nevada Supreme Court has stated on numerous occasions, "Criminal appeals must be
25 given finality." Rogers v. Warden, 86 Nev. 359, 362, 468 P.2d 993, 994 (1970), Darnell v.
26 State, 98 Nev. 518, 521, 654 P.2d 1009, 1011 (1982), Groesbeck v. Warden, 100 Nev. 259,
27 261, 679 P.2d 1268, 1269 (1984), Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
28 (1989), Little v. Warden, 117 Nev. 845, 34 P.3d 540, 546 (2001).

1 The Nevada Supreme Court has also stated "Unlike initial petitions which certainly
2 require a careful review of the record, successive petitions may be dismissed based solely on
3 the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

4 Furthermore, as the United States Supreme Court noted in United States v. Timmreck,
5 441 U.S. 780, 784, 99 S.Ct. 2085 (1979) "Every inroad on the concept of finality undermines
6 confidence in the integrity of our procedures; and, by increasing the volume of judicial work,
7 inevitably delays and impairs the orderly administration of justice."

8 Defendant's proposed amendment to his current petition is an abuse of the post-
9 conviction process and a successive petition that should be barred pursuant to NRS 34.810.

10 **Defendant's Motion to Amend the Petition for Writ of Habeas Corpus**
11 **Is Barred By NRS 34.800(2)- Five Year Bar**

12 NRS 34.800(2) (enacted in 1985) creates a rebuttable presumption of prejudice to the
13 State if "[a] period of five years [elapses] between the filing of a judgment of conviction, an
14 order imposing sentence of imprisonment or a decision on direct appeal of a judgment of
15 conviction and the filing of a petition challenging the validity of a judgment of conviction."
16 The statute also requires that the State plead laches in its motion to dismiss the petition,
17 which the State does in the instant case. NRS 34.800. The Amended Judgment of
18 Conviction was filed February 28, 1994. Since over nine (9) years have elapsed between the
19 entry of the judgment of conviction and the filing of the instant motion, NRS 34.800 directly
20 applies in this case.

21 NRS 34.800 was enacted to protect the State from having to go back years later to re-
22 prove matters that have become ancient history. There is a rebuttable presumption of
23 prejudice for this very reason and the doctrine of laches must be applied in the instant matter.
24 If courts required evidentiary hearings for long delayed petitions such as in the instant
25 matter, the State would have to call and find long lost witnesses whose once vivid
26 recollections have faded and re-gather evidence that in many cases has been lost or destroyed
27 because of the lengthy passage of time. Therefore, this Court should summarily deny
28 Defendant's motion to amend his petition according to the doctrine of laches pursuant to

1 NRS 34.800, as the delay in filing is unexcused. The State affirmatively pleads laches under
2 this statute and the Defendant has failed to rebut this presumption of prejudice to the State.

3 **Defendant's Motion to Amend the Petition for Writ of Habeas Corpus**
4 **Is Barred By Laches**

5 Defendant's motion to amend his petition is also barred by the doctrine of equitable
6 laches, which is separate, distinct and in addition to the statutory bar of NRS 34.800
7 referenced above. Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000). As the Nevada Supreme
8 Court observed in Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984) "petitions that
9 are filed many years after conviction are an unreasonable burden on the criminal justice
10 system. The necessity for a workable system dictates that there must exist a time when a
11 criminal conviction is final." That time has long since passed in this case.

12 As the Nevada Supreme Court noted in the Hart case, there may be situations where
13 the bar imposed by the doctrine of equitable laches may be *earlier* than analogous statutory
14 bars. Hart, Id. Furthermore, once "the State pleads laches, the defendant will have the
15 heavy burden of proving a fundamental miscarriage of justice to overcome the presumption
16 of prejudice to the State." Little v. Warden, 117 Nev. 845, 34 P.3d 540, 545 (2001). The
17 Defendant has not overcome that heavy burden and has had ample opportunity to have his
18 arguments raised in the petitions previously reviewed.

19 **Defendant's Motion For Documents Is Premature**

20 Defendant is asking this Court to supply him with yet another set of transcripts.

21 Defendant's motion must be denied (again) because he has not demonstrated that he is
22 entitled to a *third* set of court records at the State's expense. In order to be entitled to
23 transcripts at the State's expense, a defendant must set forth the grounds upon which the
24 petition is based. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971). In addition, the
25 defendant must show that the requested review is not frivolous. Specifically, the defendant
26 must demonstrate: (1) the points raised have merit; and (2) such merit will tend to be
27 supported by a review of the record. Id. Transcripts will not be furnished at the State's
28 expense based upon "the mere unsupported request of a petitioner who is unable to pay for

1 them." Peterson, 87 Nev. at 135, 483 P.2d at 205.

2 "NRS 177.325, 177.335, and 177.345 do not contemplate that records will be
3 furnished at state expense upon the mere unsupported request of a petitioner who is unable to
4 pay for them. Just as the petitioner must show that the requested review is not frivolous
5 before he may have an attorney appointed (NRS 177.345(2)), so must he satisfy the court
6 that the points raised have merit and such merit will tend to be supported by a review of the
7 record before he may have trial records supplied at state expense. He must specifically set
8 forth grounds upon which the petition is based." Id.

9 On February 27, 2002 the Defendant filed a "Notice and Motion for Documents"
10 asking for a *third* set of trial transcripts because the first two had been lost for various
11 reasons. This Court's order denying Defendant's request was filed on March 15, 2002.
12 Nothing in Defendant's current Motion justifies expending the State's money to provide him
13 with yet another set of trial transcripts since any attack on the legality of his conviction must
14 be procedurally barred.

15 **CONCLUSION**


16 Based upon the foregoing, the State respectfully requests that the Defendant's
17 "Motion For Leave To Amend The Petition For Writ Of Habeas Corpus" and "Motion For
18 Documents" be denied.

19 DATED this 22 day of April, 2003.

20 Respectfully submitted,

21 DAVID ROGER
22 Clark County District Attorney
23 Nevada Bar #002781

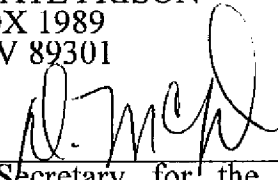
24
25 BY


26 H. LEON SIMON
27 Deputy District Attorney
28 Nevada Bar #000411

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 22 day
of April, 2003, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JOEL BURKETT, NDOC #16111
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301


Secretary for the District Attorney's
Office

HLS/GM/dm

138

DISTRICT COURT
CLARK COUNTY, NEVADA

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FILED

MAY 14 10 16 PM '03

Shelly D. Rungius
CLERK

JOEL BURKETT
PETITIONER

CASE NO: CS2190

DEPT NO: X1

VS.

THE STATE OF NEVADA
RESPONDANT.

NOTICE

PRO SE PETITIONER, JOEL BURKETT IN
THE ABOVE ENTITLED MATTER DOES
HEREBY GIVE NOTICE
THAT HE DID NOT RECEIVE THE
STATES OPPOSITION TO DEFENDANTS MOTION
FOR LEAVE TO AMEND THE PETITIONS FOR
WRIT OF HABEAS CORPUS AND MOTIONS
FOR DOCUMENTS SUBMITTED ON
APRIL 22, 2003 UNTIL MAY 1ST
2003 BECAUSE HE WAS TRANSFERRED
ON APRIL 23, FROM ELY STATE PRISON
TO THE HIGH DESERT STATE PRISON.

S3

AND THAT PETITIONER'S MOTION IN
REPLY SUBMITTED HEREWITH IS
TIMELY.

DATED THIS 11th DAY OF MAY 2003

RESPECTFULLY SUBMITTED

Joel Buehler
PRO SE PETITIONER

ORDR
BRIAN SANDOVAL
Attorney General
By: BRIAN T. KUNZI
Senior Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 2173
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3420
(702) 486-3768 - fax
Attorneys for Respondents

FILED

MAY 14 3 17 PM '03

Shirley B. Dominguez
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,

Petitioner,

CASE NO.: C52190

v.

DEPT NO.: XI

NEVADA DEPARTMENT OF PRISONS,

Respondent.

ORDER

This matter having come before this court the 1st day of May, 2003, on Petitioner JOEL BURKETT'S Petition for Writ of Habeas Corpus and having considered all papers on file herewith and for good cause appearing the court makes the following findings of fact, conclusions of law as follows:

FINDINGS OF FACT

1. Petitioner Burkett was reviewed by a Department of Corrections psychological panel on September 11, 2001, for the purpose of determining his suitability for parole pursuant to NRS 213.1214.

2. The record reveals the panel concluded Burkett could not be certified as not representing a high risk to re-offend.

3. Petitioner Burkett was considered for Parole by the Board of Parole Commissioners on October 31, 2001, which Board determined Burkett was not suitable for parole.

CONCLUSIONS OF LAW

1. Petitioner Burkett properly was considered for parole and was not denied parole simply because he was being housed out-of-state.

2. Petitioner Burkett's claim of ineffective assistance of counsel is a successive petition and Burkett has failed to show good cause for the filing of a successive petition..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition for a writ of habeas corpus is hereby DENIED.

SO ORDERED this 14 day of May, 2003.


DISTRICT JUDGE

Respectfully submitted by:

BRIAN SANDOVAL
Attorney General

By: 
Brian T. Kunzi
Senior Deputy Attorney General

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

MAY 14 10 35 PM '03

Shirley B. Langione
CLERK

139

JOEL BURKETT,
PETITIONER.

✓

THE STATE OF NEVADA
RESPONDANT

CASE NO: CS2190

DEPT NO: X1

PETITIONERS REPLY
TO STATES OPPOSITION
TO AMEND AND MOTION
FOR DOCUMENTS

COMES NOW, JOEL BURKETT, PRO SE PETITIONER
IN THE ABOVE ENTITLED MATTER AND DOES
HEREBY SUBMIT PETITIONERS REPLY TO
THE STATES OPPOSITION TO AMEND THE
PETITION, AND MOTION FOR DOCUMENTS
THIS MOTION IS BASED UPON ALL THE
PAPERS AND READINGS FILED HEREIN.

S3.

ON APRIL 10TH 2003, RESPONDANT FILED
A MOTION TO DISMISS PETITIONER'S
PETITIONS FOR WRIT OF HABEAS CORPUS.

ON APRIL 16TH 2003, PETITIONER FILED
HIS OPPOSITION TO RESPONDANT'S MOTION
TO DISMISS. WHERE-IN PETITIONER
SET FORTH "GOOD CAUSE AND ACTUAL
PREJUDICE" PURSUANT TO, PELLEGRINI V.
STATE, 34 P.3D 519 (NEV 2001)

LIKEWISE, PETITIONER PUT FORTH AN
ARGUMENT PURSUANT TO, PELLEGRINI (SUPRA)
ON A "FUNDAMENTAL MISCARriage OF
JUSTICE" TO OVERCOME ALL PROCEDURAL
BAR'S PURSUANT TO N.R.S. 34, 726,
N.R.S. 34, 810, AS WELL AS LACHES
UNDER N.R.S. 34, 800.

PETITIONER GUESSES THE RESPONDANT
FEELING UNABLE TO REPLY TO
PETITIONERS OPPOSITION TO THEIR MOTION
TO DISMISS HAS NOW FILED
A STATES OPPOSITION TO PETITIONERS
MOTION FOR LEAVE TO AMEND THE

PETITION FOR WRIT OF HABEAS CORPUS
AND REQUEST FOR DOCUMENTS.

WHEREIN RESPONDANTS CLAIMS, THAT
THEIR OFFICE HAS NO RECORD OF
A 1986 PETITION. THIS CLAIM IS
EASY TO DISMISS SEE, 810 P.2D AT
318 BURKETT V. WARDEN CASE NO
19446 DISMISSAL 11/21/89

LIKewise, PETITIONER HAS CONTACTED
THE CLERK OF THE FIRST JUDICIAL
DISTRICT COURT AND HAS BEEN
INFORMED THAT THE RECORD EXIST
OF THE 1986 HABEAS PROCEEDINGS
WHEREIN (1) PETITIONER WAS FOUND TO
BE INDIGENT, (2) THAT HE WAS
ENTITLED TO AN ATTORNEY UNDER
THE STATUTORY MANDATE OF W.R.S. 177.
345., (3) THAT COUNSEL WAS APPOINTED.

IT WOULD APPEAR FROM THE REST
OF RESPONDANTS OPPOSITION TO AMEND
AND MOTIONS FOR DOCUMENTS
THEY ARE SIMPLY TRYING TO
RE-ARGUE THEIR MOTION TO DISMISS
FILED APRIL 10TH 2003.

TO THE EXTENT RESPONDANTS ARE TRYING
TO REARGUE THEIR MOTION TO DISMISS,
PETITIONER WILL INCORPORATE HEREIN BY
REFERRING THERETO "PETITIONERS OPPOSITION
TO RESPONDANTS MOTION TO DISMISS"
AND ALL ARGUMENTS FILED THEREIN.

PETITIONER RESPECTFULLY SUBMITS THAT
AT THE TIME THESE PROCEEDINGS WERE
FILED IN NOVEMBER 2001, PETITIONER
WAS BEING HOUSED OUT OF STATE
IN THE STATE OF MONTANA WITHOUT
ACCESS TO NEVADA LAW.
IF THE DENIAL OF PETITIONER'S
CONSTITUTIONAL RIGHT OF ACCESS TO
THE COURT IS NOT GOOD REASON
TO ALLOW PETITIONER TO AMEND
THE PETITION, THEN NO GOOD
REASON EXIST TO EVER AMEND A
PETITION.

PETITIONER RESPECTFULLY STATES THAT
HE HAS DONE ALL THE LAW ASK
OF HIM. PETITIONER HAS SHOWN
"GOOD CAUSE AND ACTUAL PREJUDICE"
HAS ARGUED A FUNDAMENTAL

MISCARRIAGE OF JUSTICE, AS WELL
AS A VIOLATION OF HIS CONSTITUTIONAL
RIGHT OF ACCESS TO THE COURT

RESPONDANTS OPPOSITIONS TO AMEND
THE PETITION, AND REQUEST FOR
DOCUMENTS IS WITHOUT MERIT
AND SHOULD BE DENIED.

DATED THIS 11th DAY OF MAY 2003,

Respectfully Submitted

Joel Burdett
PRO SE PETITIONER

ORIGINAL

FILED

18

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 GEORGE W. MCFETRIDGE, JR.
6 Deputy District Attorney
7 Nevada Bar #007442
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

MAY 15 3 54 PM '03

Shirley B. Pangloss
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAYMOND HAIRE, aka Joel Burkett,
#609533

Defendant.

CASE NO: C52190

DEPT NO: XI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 05/01/03
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable MICHAEL DOUGLES, District Judge, on the 1st day of May, 2003, the Petitioner not being present, In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through GEORGE W. MCFETRIDGE, JR., Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use

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S14

1 of Deadly Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165);
2 Count III - Sexual Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual
3 Assault (Felony - NRS 200.364, 200.366).

4 2. Defendant was convicted by a jury on May 4, 1981. The original Judgment of
5 Conviction was filed on July 29, 1981, however, an Amended Judgment of
6 Conviction was filed on February 28, 1994 (pursuant to an order on Defendant's first
7 Petition for Writ of Habeas Corpus), sentencing Defendant: as to Count I, fifteen (15)
8 years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in
9 Commission of a Crime, to be served consecutively; as to Count II, Life with
10 Possibility of Parole and an additional term of Life with Possibility of Parole for Use
11 of a Deadly Weapon in Commission of a Crime, to be served consecutively, Count II
12 to be served consecutive to Count I; as to Count III, Life with Possibility of Parole; as
13 to Count IV, Life with the Possibility of Parole, Count IV to be served consecutive to
14 Count III; Counts III and IV to be served concurrent to the sentences imposed in
15 Counts II.

16 3. Defendant appealed his judgment of conviction and the Supreme Court of Nevada
17 filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed
18 on May 16, 1983. Defendant then filed his first petition for writ of habeas corpus on
19 February 2, 1994, which was granted in part and denied in part on February 28, 1994
20 "to correct an error between the oral pronouncement of Judgment and the written and
21 filed Judgment of Conviction."

22 4. On October 6, 1995, Defendant was transferred from prison in Nevada to a New
23 Mexico prison pursuant to the Interstate Compact Agreement. This transfer was at
24 the request of the Nevada warden after indications that Defendant had been plotting
25 to take the assistant warden of operations hostage.

26 5. Defendant filed his second petition for writ of habeas corpus on June 7, 1999.
27 Defendant's second petition was denied on August 12, 1999.
28

- 1 6. On September 19, 2000, Defendant was transferred from New Mexico back to
2 Nevada, as a result of gang activity in New Mexico. Since the same assistant warden
3 of operations was still at the Nevada prison, Defendant was again transferred
4 pursuant to the Interstate Compact Agreement to a prison in Montana.
- 5 7. Defendant filed a third petition for writ of habeas corpus on November 19, 2001.
- 6 8. Meanwhile, on January 16, 2002, Defendant was transferred back to Nevada as a
7 result of him being classified as a management problem.
- 8 9. On February 14, 2002, Defendant's third petition was denied. Soon thereafter,
9 Defendant filed an appeal to the Nevada Supreme Court challenging the district
10 court's order denying the (third) petition he filed on November 19, 2001.
- 11 10. On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
12 remand. In this order the Nevada Supreme Court's remand was limited for further
13 proceedings on the issue of whether Defendant was denied any rights or protections
14 relating to certification available to Nevada prisoners. As this court previously
15 agreed, this issue will be addressed by the Nevada Attorney General in a separate
16 response while the office of the District Attorney will address the two motions
17 referenced above.
- 18 11. Defendant's Motion to Amend amounts to a successive petition for writ of habeas
19 corpus.
- 20 12. No good cause has been proven to excuse the procedural bars against filing
21 successive petitions.
- 22 13. Defendant has not set forth sufficient grounds in his Motion for Documents to entitle
23 him to another set of free transcripts.

24 CONCLUSIONS OF LAW

- 25 1. NRS 34.810(2) provides as follows: "A second or successive petition must be
26 dismissed if the judge or justice determines that it fails to allege new or different
27 grounds for relief and that the prior determination was on the merits or, if new and
28

- different grounds are alleged, the judge or justice finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”
2. As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 29 P.3d 498 (2001) “[a] court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” The Court went on to hold that “post-conviction habeas claims that are independent of ineffective assistance claims and that could have been raised on direct appeal are waived.” Evans, *id.*
3. The Nevada Supreme Court has also stated “Unlike initial petitions which certainly require a careful review of the record, successive petitions may be dismissed based solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).
4. In order to be entitled to transcripts at the State's expense, a defendant must set forth the grounds upon which the petition is based. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971). In addition, the defendant must show that the requested review is not frivolous. Specifically, the defendant must demonstrate: (1) the points raised have merit; and (2) such merit will tend to be supported by a review of the record. *Id.* Transcripts will not be furnished at the State's expense based upon “the mere unsupported request of a petitioner who is unable to pay for them.” Peterson, 87 Nev. at 135, 483 P.2d at 205.
5. “NRS 177.325, 177.335, and 177.345 do not contemplate that records will be furnished at state expense upon the mere unsupported request of a petitioner who is unable to pay for them. Just as the petitioner must show that the requested review is not frivolous before he may have an attorney appointed (NRS 177.345(2)), so must he satisfy the court that the points raised have merit and such merit will tend to be supported by a review of the record before he may have trial records supplied at state

1 expense. He must specifically set forth grounds upon which the petition is based.”
2 Id.

3 ORDER

4 Based upon the Findings of Fact and Conclusions of Law contained herein, it is
5 hereby:


6 ORDERED, ADJUDGED, and DECREED that Defendant's Motion For Leave To Amend
7 Petition For Writ Of Habeas Corpus (Post Conviction) & Motion For Documents are
8 DENIED.

9 DATED this 14 day of May, 2003.

10 
11 DISTRICT JUDGE

12
13 DAVID ROGER
14 DISTRICT ATTORNEY
15 Nevada Bar #002781

16 BY


17 GEORGE W. MCFETRIDGE
18 Deputy District Attorney
19 Nevada Bar #007442
20
21
22
23
24
25
26

27 HLS/GM/ddm
28

16

NEO
BRIAN SANDOVAL
Attorney General
By: BRIAN KUNZI
Nevada Bar Number 2173
Senior Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3455

FILED

MAY 16 11 44 AM '03

Shirley S. Livingston
CLERK

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,
Petitioner,

Case No: C52190
Dept No: XI

v.

NOTICE OF ENTRY OF ORDER

NEVADA DEPARTMENT OF PRISONS,
Respondent.

PLEASE TAKE NOTICE that an Order was entered in the above-title action on the 14th day of May, 2003, a copy of which is attached hereto as Exhibit 1.

DATED this 15th day of May, 2003.

BRIAN SANDOVAL
Attorney General

By: *Brian T. Kunzi*
BRIAN KUNZI
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 16th day of May, 2003, I served a true and accurate copy of the foregoing **Order** by mailing via United States mail, first class, postage prepaid to:

JOEL BURKETT #16111
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301



An Employee of the Office of the Attorney General

EXHIBIT “1”

ORDER

BRIAN SANDOVAL
Attorney General
By: BRIAN T. KUNZI
Senior Deputy Attorney General
Criminal Justice Division
Nevada Bar Number 2173
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
(702) 486-3420
(702) 486-3768 - fax
Attorneys for Respondents

FILED

MAY 14 3 17 PM '03

Shirley C. Ruggins
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,

Petitioner,

v.

NEVADA DEPARTMENT OF PRISONS,

Respondent.

CASE NO.: C52190

DEPT NO.: XI

ORDER

This matter having come before this court the 1st day of May, 2003, on Petitioner JOEL BURKETT'S Petition for Writ of Habeas Corpus and having considered all papers on file herewith and for good cause appearing the court makes the following findings of fact, conclusions of law as follows:

FINDINGS OF FACT

1. Petitioner Burkett was reviewed by a Department of Corrections psychological panel on September 11, 2001, for the purpose of determining his suitability for parole pursuant to NRS 213.1214.

2. The record reveals the panel concluded Burkett could not be certified as not representing a high risk to re-offend.

3. Petitioner Burkett was considered for Parole by the Board of Parole Commissioners on October 31, 2001, which Board determined Burkett was not suitable for parole.

CONCLUSIONS OF LAW

1. Petitioner Burkett properly was considered for parole and was not denied parole simply because he was being housed out-of-state.

2. Petitioner Burkett's claim of ineffective assistance of counsel is a successive petition and Burkett has failed to show good cause for the filing of a successive petition..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition for a writ of habeas corpus is hereby DENIED.

SO ORDERED this 14 day of May, 2003.

MICHAEL L. DOUGLAS

DISTRICT JUDGE

Respectfully submitted by:

BRIAN SANDOVAL
Attorney General

By:

Brian T. Kunzi
Brian T. Kunzi
Senior Deputy Attorney General

ORIGINAL

FILED

District Court
Clark, County, Nevada

2003 MAY 27 PM 2:01

Case No. C52190

Department XI

CLERK

THE STATE OF NEVADA,

Plaintiff,

vs.

JOEL BURKETT,

Defendant(s),

CASE APPEAL STATEMENT

1. Appellant(s): JOEL BURKETT

2. Judge: MICHAEL L. DOUGLAS

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), JOEL BURKETT

4. All Parties, Appeal:

Appellant(s), JOEL BURKETT

Respondent, THE STATE OF NEVADA

5. Appellate Counsel: Proper Person, JOEL BURKETT, #16111

PO BOX 650, INDIAN SPRINGS, NEVADA 89070, Appellant

THE STATE OF NEVADA, David Roger, District Attorney, 200 South Third
Street, Las Vegas, Nevada 89155 (702) 455-4711, Counsel for Respondent

/C52190

1 6. District Court, APPOINTED

2 7. On Appeal, N/A

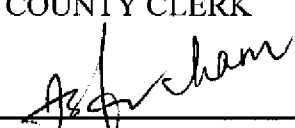
3 8. Forma Pauperis: GRANTED

4 9. Date Commenced in District Court: 01/16/1981

5
6 DATED this 27 day of May, 2003.

7
8
9
10
11 SHIRLEY B. PARRAGUIRRE
12 CLARK COUNTY CLERK

13 By

14 
15 ASTOR CHAM, DEPUTY CLERK
16 200 South Third Street
17 PO Box 551601
18 Las Vegas, Nevada 89155-1601
19 (702) 455-4409
20
21
22
23
24
25
26
27
28

JOEL BURKETT 1001
P.O. BOX 650
INDIAN SPRINGS, NEV
89070

21

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

MAY 27 1 05 PM '03

Shirley B. McGuire
CLERK

JOEL BURKETT
PETITIONER

CASE NO: C52190
DEPT NO: XI

VS.

THE STATE OF NEVADA
RESPONDANT,

NOTICE OF APPEAL

COMES NOW, PETITIONER JOEL BURKETT
PRO SE IN THE ABOVE ENTITLED MATTER
AND DOES HEREBY GIVE NOTICE THAT
HE DOES INTEND TO SEEK APPEAL
TO THE NEVADA SUPREME COURT,
FOR THE DENIAL OF THE ABOVE
PETITION FOR WRIT OF HABEAS CORPUS
ON MAY 14TH 2003, LIKEWISE,
IN DENYING PETITIONERS INEFFECTIVE
ASSISTANCE OF POST-CONVICTION COUNSEL
SUCCESSIVE, AND THE COURTS
FINDING THAT PETITIONER HAS FAILED

RECEIVED

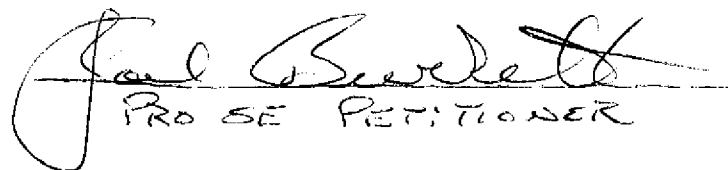
MAY 27 2003

COUNTY CLERK

S3

TO SHOW GOOD CAUSE.

DATED THIS 22 DAY OF MAY, 2003


PRO SE PETITIONER

FILED

JUN 2 4 57 PM '03

Shirley B. Parraguirre
CLERK

1 NOED

District Court

Clark County, Nevada

4 JOEL BURKETT,

Petitioner,

Case No. C52190

7 vs

Dept. No. XI

9 THE STATE OF NEVADA,

NOTICE OF ENTRY OF
DECISION AND ORDER

Respondent.

11 PLEASE TAKE NOTICE that on May 14, 2003, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal,
14 you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this
15 notice is mailed to you. This notice was mailed on June 2, 2003.

SHIRLEY B. PARRAGUIRRE, CLERK OF COURT

By: *Norreta Caldwell*

Norreta Caldwell, Deputy Clerk

CERTIFICATE OF MAILING

19 I hereby certify that on the 2 day of June, 2003, I placed a copy of this
20 Notice of Entry of Decision and Order in:

21 The bin(s) located in the Office of the County Clerk of:
22 Clark County District Attorney's Office - Appellate Division
Attorney General's Office - Appellate Division

23 ☐ The United States mail addressed as follows:

24 Joel Burkett 16111
25 PO Box 650
Indian Springs, NV 89070

Norreta Caldwell
Norreta Caldwell, Deputy Clerk

Notice of Entry of Decision and Order/2-01/jh

S14

ORIGINAL

21

ORDR

BRIAN SANDOVAL

Attorney General

By: BRIAN T. KUNZI

Senior Deputy Attorney General

Criminal Justice Division

Nevada Bar Number 2173

555 E. Washington Avenue, Suite 3900

Las Vegas, Nevada 89101

(702) 486-3420

(702) 486-3768 - fax

Attorneys for Respondents

FILED

MAY 14 3 17 PM '03

Shelly B. Purgina
CLERK

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

JOEL BURKETT,

Petitioner,

v.

NEVADA DEPARTMENT OF PRISONS,

Respondent.

CASE NO.: C52190

DEPT NO.: XI

ORDER

This matter having come before this court the 1st day of May, 2003, on Petitioner JOEL BURKETT'S Petition for Writ of Habeas Corpus and having considered all papers on file herewith and for good cause appearing the court makes the following findings of fact, conclusions of law as follows:

FINDINGS OF FACT

1. Petitioner Burkett was reviewed by a Department of Corrections psychological panel on September 11, 2001, for the purpose of determining his suitability for parole pursuant to NRS 213.1214.

2. The record reveals the panel concluded Burkett could not be certified as not representing a high risk to re-offend.

3. Petitioner Burkett was considered for Parole by the Board of Parole Commissioners on October 31, 2001, which Board determined Burkett was not suitable for parole.

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

RECEIVED
MAY 14 2003
COUNTY CLERK

CONCLUSIONS OF LAW

1. Petitioner Burkett properly was considered for parole and was not denied parole simply because he was being housed out-of-state.

2. Petitioner Burkett's claim of ineffective assistance of counsel is a successive petition and Burkett has failed to show good cause for the filing of a successive petition..

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition for a writ of habeas corpus is hereby DENIED.

SO ORDERED this 12 day of May, 2003.


DISTRICT JUDGE

Respectfully submitted by:

BRIAN SANDOVAL
Attorney General

By:


Brian T. Kunzi
Senior Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

ORIGINAL

FILED

18

1 ORDR

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 GEORGE W. MCFETRIDGE, JR.
6 Deputy District Attorney
7 Nevada Bar #007442
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

MAY 15 3 54 PM '03

Shirley E. Rungius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAYMOND HAIRE, aka Joel Burkett,
#609533

Defendant.

CASE NO: C52190

DEPT NO: XI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 05/01/03
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable MICHAEL DOUGLES, District Judge, on the 1st day of May, 2003, the Petitioner not being present, In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through GEORGE W. MCFETRIDGE, JR., Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 19, 1981, Joel Burkett, hereinafter Defendant, was charged by Information with: Count I - Robbery & Use of Deadly Weapon in Commission of a Crime (Felony - NRS 200.380, 193.165); Count II - First Degree Kidnapping & Use

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COUNTY CLERK

MAY 15 2003

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1 of Deadly Weapon in Commission of a Crime (Felony - NRS 200.310, 193.165);
2 Count III - Sexual Assault (Felony - NRS 200.364, 200.366); and Count IV - Sexual
3 Assault (Felony - NRS 200.364, 200.366).

4 2. Defendant was convicted by a jury on May 4, 1981. The original Judgment of
5 Conviction was filed on July 29, 1981, however, an Amended Judgment of
6 Conviction was filed on February 28, 1994 (pursuant to an order on Defendant's first
7 Petition for Writ of Habeas Corpus), sentencing Defendant: as to Count I, fifteen (15)
8 years for Robbery and an additional fifteen (15) years for Use of a Deadly Weapon in
9 Commission of a Crime, to be served consecutively; as to Count II, Life with
10 Possibility of Parole and an additional term of Life with Possibility of Parole for Use
11 of a Deadly Weapon in Commission of a Crime, to be served consecutively, Count II
12 to be served consecutive to Count I; as to Count III, Life with Possibility of Parole; as
13 to Count IV, Life with the Possibility of Parole, Count IV to be served consecutive to
14 Count III; Counts III and IV to be served concurrent to the sentences imposed in
15 Counts II.

16 3. Defendant appealed his judgment of conviction and the Supreme Court of Nevada
17 filed an order dismissing Defendant's appeal on April 21, 1983. Remittitur was filed
18 on May 16, 1983. Defendant then filed his first petition for writ of habeas corpus on
19 February 2, 1994, which was granted in part and denied in part on February 28, 1994
20 "to correct an error between the oral pronouncement of Judgment and the written and
21 filed Judgment of Conviction."

22 4. On October 6, 1995, Defendant was transferred from prison in Nevada to a New
23 Mexico prison pursuant to the Interstate Compact Agreement. This transfer was at
24 the request of the Nevada warden after indications that Defendant had been plotting
25 to take the assistant warden of operations hostage.

26 5. Defendant filed his second petition for writ of habeas corpus on June 7, 1999.
27 Defendant's second petition was denied on August 12, 1999.
28

- 1 6. On September 19, 2000, Defendant was transferred from New Mexico back to
2 Nevada, as a result of gang activity in New Mexico. Since the same assistant warden
3 of operations was still at the Nevada prison, Defendant was again transferred
4 pursuant to the Interstate Compact Agreement to a prison in Montana.
- 5 7. Defendant filed a third petition for writ of habeas corpus on November 19, 2001.
- 6 8. Meanwhile, on January 16, 2002, Defendant was transferred back to Nevada as a
7 result of him being classified as a management problem.
- 8 9. On February 14, 2002, Defendant's third petition was denied. Soon thereafter,
9 Defendant filed an appeal to the Nevada Supreme Court challenging the district
10 court's order denying the (third) petition he filed on November 19, 2001.
- 11 10. On February 6, 2003, the Nevada Supreme Court filed an order of reversal and
12 remand. In this order the Nevada Supreme Court's remand was limited for further
13 proceedings on the issue of whether Defendant was denied any rights or protections
14 relating to certification available to Nevada prisoners. As this court previously
15 agreed, this issue will be addressed by the Nevada Attorney General in a separate
16 response while the office of the District Attorney will address the two motions
17 referenced above.
- 18 11. Defendant's Motion to Amend amounts to a successive petition for writ of habeas
19 corpus.
- 20 12. No good cause has been proven to excuse the procedural bars against filing
21 successive petitions.
- 22 13. Defendant has not set forth sufficient grounds in his Motion for Documents to entitle
23 him to another set of free transcripts.

24 CONCLUSIONS OF LAW

- 25 1. NRS 34.810(2) provides as follows: "A second or successive petition must be
26 dismissed if the judge or justice determines that it fails to allege new or different
27 grounds for relief and that the prior determination was on the merits or, if new and
28

- 1 different grounds are alleged, the judge or justice finds that the failure of the
2 petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”
- 3 2. As the Nevada Supreme Court noted in Evans v. State, 117 Nev. 609, 29 P.3d 498
4 (2001) “[a] court must dismiss a habeas petition if it presents claims that either were
5 or could have been presented in an earlier proceeding, unless the court finds both
6 cause for failing to present the claims earlier or for raising them again and actual
7 prejudice to the petitioner.” The Court went on to hold that “post-conviction habeas
8 claims that are independent of ineffective assistance claims and that could have been
9 raised on direct appeal are waived.” Evans, id.
- 10 3. The Nevada Supreme Court has also stated “Unlike initial petitions which certainly
11 require a careful review of the record, successive petitions may be dismissed based
12 solely on the face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123,
13 129 (1995).
- 14 4. In order to be entitled to transcripts at the State's expense, a defendant must set forth
15 the grounds upon which the petition is based. Peterson v. Warden, 87 Nev. 134, 483
16 P.2d 204 (1971). In addition, the defendant must show that the requested review is
17 not frivolous. Specifically, the defendant must demonstrate: (1) the points raised
18 have merit; and (2) such merit will tend to be supported by a review of the record. Id.
19 Transcripts will not be furnished at the State's expense based upon “the mere
20 unsupported request of a petitioner who is unable to pay for them.” Peterson, 87 Nev.
21 at 135, 483 P.2d at 205.
- 22 5. “NRS 177.325, 177.335, and 177.345 do not contemplate that records will be
23 furnished at state expense upon the mere unsupported request of a petitioner who is
24 unable to pay for them. Just as the petitioner must show that the requested review is
25 not frivolous before he may have an attorney appointed (NRS 177.345(2)), so must
26 he satisfy the court that the points raised have merit and such merit will tend to be
27 supported by a review of the record before he may have trial records supplied at state
28

1 expense. He must specifically set forth grounds upon which the petition is based.”
2 Id.

3 **ORDER**

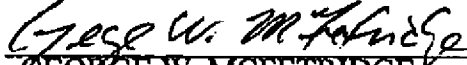
4 Based upon the Findings of Fact and Conclusions of Law contained herein, it is
5 hereby:

6 ORDERED, ADJUDGED, and DECREED that Defendant's Motion For Leave To Amend
7 Petition For Writ Of Habeas Corpus (Post Conviction) & Motion For Documents are
8 DENIED.

9 DATED this 14 day of May, 2003.

10 
11 DISTRICT JUDGE

12
13 DAVID ROGER
14 DISTRICT ATTORNEY
15 Nevada Bar #002781

16 BY 
17 GEORGE W. MCFETRIDGE
18 Deputy District Attorney
19 Nevada Bar #007442

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21
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27 HLS/GM/ddm
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149
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2004 APR -2 AM 10:56

JOEL BURKETT A/K/A RAYMOND HAIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 41504

District Court Case No. 682199

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 5th day of March, 2004.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 30th day of March, 2004.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

RECEIVED

APR 01 2004

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COUNTY CLERK APR 05 2004

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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT A/K/A RAYMOND
HAIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41504

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Joel Burkett's post-conviction petition for a writ of habeas corpus.

On July 29, 1981, the district court convicted Burkett, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon, and two counts of sexual assault. The district court sentenced Burkett to serve a period totaling two consecutive fixed terms of life in the Nevada State Prison with the possibility of parole after thirty years. This court dismissed Burkett's appeal from his judgment of conviction and sentence.¹ The remittitur issued on May 10, 1983.

On August 21, 1986, Burkett filed a post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition. This court dismissed Burkett's subsequent appeal.²

¹Burkett v. State, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983).

²Burkett v. Warden, Docket No. 19446 (Order Dismissing Appeal, November 21, 1989).

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SUPREME COURT
OF
NEVADA

(C) 1947A

04-04178

On February 2, 1994, Burkett filed a post-conviction petition for a writ of habeas corpus in the district court. In his petition, Burkett alleged that there was a discrepancy between the district court's oral pronouncement of his sentence and the written judgment of conviction. On February 28, 1994, the district court corrected the error and filed an amended judgment of conviction.

On June 7, 1999, Burkett filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 18, 1999, the district court denied Burkett's petition. This court affirmed the order of the district court.³

On November 19, 2001, Burkett filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On February 14, 2002, the district court denied Burkett's petition. On appeal, this court reversed and remanded the case to the district court on the sole issue of whether Burkett was denied certification pursuant to NRS 213.1214 only because he was housed outside of Nevada and not under observation by a Nevada institution.⁴ On May 14, 2003, the district court denied Burkett's claim on remand.⁵

³Burkett v. State, Docket No. 34767 (Order of Affirmance, July 10, 2001).

⁴Burkett v. State, Docket No. 39400 (Order of Reversal and Remand, February 6, 2003).

⁵To the extent that Burkett's instant notice of appeal concerns the May 14, 2003 district court order denying Burkett's claim that he was refused certification pursuant to NRS 213.1214 simply because he was housed outside of Nevada, we conclude that Burkett is not entitled to relief. A psychological panel from the Nevada Department of Prisons determined that Burkett could not "be certified as not representing a menace to the health, safety or morals of other." There is no indication

continued on next page . . .

On February 19, 2003, Burkett filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss, specifically pleading laches. Burkett filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Burkett or to conduct an evidentiary hearing. On May 15, 2003, the district court denied Burkett's petition. This appeal followed.

Burkett filed his petition almost twenty years after this court issued the remittitur from his direct appeal. Thus, Burkett's petition was untimely filed.⁶ Moreover, Burkett's petition was successive because he had previously filed four petitions for a writ of habeas corpus.⁷ Burkett's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸ Further, because the State specifically pleaded laches, Burkett was required to overcome the presumption of prejudice to the State.⁹

In an attempt to excuse his procedural defects, Burkett argued that he received ineffective assistance of counsel in his 1986 post-conviction matter. Burkett contended that he did not raise this allegation in an earlier proceeding because he did not learn of this court's 1997

... continued

that Burkett was denied certification because he was housed outside of Nevada. Therefore, the district court did not err in denying this claim.

⁶See NRS 34.726(1).

⁷See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁸See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

⁹See NRS 34.800(2).

decision in Crump v. Warden¹⁰ until recently. Burkett has been housed outside of Nevada for much of his sentence and claimed that he did not have access to Nevada legal materials.

Based upon our review of the record on appeal, we conclude that Burkett failed to demonstrate good cause to excuse his untimely and successive petition. Even assuming that this court's decision in Crump constituted an "impediment external to the defense,"¹¹ Burkett failed to adequately explain his subsequent six-year delay in filing the instant petition. Burkett was housed in Nevada for five months in 2000, and again from January 2002 until the present. Additionally, Burkett's 2001 habeas petition, which included arguments and references to Nevada law, was filed during the period he was housed out-of-state. Thus, Burkett's excuse that he was unable to access Nevada legal materials until early 2003, when he filed the instant petition, is not convincing. Consequently, Burkett's belated discovery of this court's decision in Crump did not provide the necessary good cause to overcome the procedural bars.

Moreover, we have examined Burkett's claims of ineffective assistance of counsel in his 1986 post-conviction matter, and conclude that Burkett failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition because he did not establish that his counsel was ineffective. Therefore, we conclude that the district court properly determined that Burkett's petition was procedurally barred.

¹⁰113 Nev. 293, 934 P.2d 247 (1997). Crump held "that a petitioner who has counsel appointed by statutory mandate is entitled to effective assistance of that counsel." Id. at 303, 934 P.2d at 253. In 1986, Burkett was appointed counsel pursuant to NRS 177.345(1), which at that time required the appointment of counsel if the petitioner proved that he was indigent.


¹¹Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).


Burkett also claimed that he is actually innocent of the crimes. Burkett contended that medical evidence would demonstrate that he did not sexually assault the victim. We conclude that Burkett's claim of actual innocence is not credible, and he did not demonstrate that a fundamental miscarriage of justice would result from failure to consider his claims.¹²

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Burkett is not entitled to relief and that briefing and oral argument are unwarranted.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁴

 C.J.
Shearing

 J.
Becker

 J.
Gibbons

¹²See Mazzan v. Warden, 112 Nev. 838, 843, 921 P.2d 920, 923 (1996).

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁴We have reviewed all documents that Burkett has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Burkett has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michael L. Douglas, District Judge
Joel Burkett
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT A/K/A RAYMOND HAIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 41504

District Court Case No. C52190

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: March 30, 2004

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Michael L. Douglas, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Joel Burkett

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 4-1-04.

NORRETA CALDWELL

DEPUTY County Clerk

04-04303

Case No.

C52190

Dept. No.

12

FILED

SEP 1 10 00 AM '04

Shirley A. Thompson
CLERK

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

JOEL BURKETT

Petitioner,

v.

E. K. MCDANIEL

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

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COUNTY CLERK

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON, WHITEPINE COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

3. Date of judgment of conviction: MAY 4TH, 1981

4. Case number: C52190

5. (a) Length of sentence: 30 YEARS, 4 LIFE TERMS

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No XX

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: ROBBERY/DEADLY WEAPON, FIRST DEGREE KIDNAPPING/DEADLY, SEXUAL ASSAULT(2) COUNTS

8. What was your plea? (check one):

(a) Not guilty XX (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury XX (b) Judge without a jury _____

11. Did you testify at the trial? Yes XX No _____

12. Did you appeal from the judgment of conviction? Yes XX No _____

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT

(b) Case number or citation: DOCKET NO. 13600 April 21, 1983

(c) Result: denied

(d) Date of result: APRIL 21, 1983

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not. N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes XXXX No

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: FIRST JUDICIAL DISTRICT COURT

(2) Nature of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes XXX No

(5) Result: DENIED

(6) Date of result: DO NOT HAVE

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: DO NOT HAVE

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: EIGHTH JUDICIAL DISTRICT COURT

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: VIOLATION OF SENTENCE

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No XXX

(5) Result: DENIED

(6) Date of result: DO NOT HAVE

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: DO NOT HAVE

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes XXX No

Citation or date of decision: DO NOT HAVE

(2) Second petition, application or motion? Yes XXXX No

Citation or date of decision: DO NOT HAVE

(3) Third or subsequent petitions, applications or motions? Yes XXXX No

Citation or date of decision: DO NOT HAVE

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) GROUND ONE, ISSUE NOT AVAILABLE

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ISSUE NOT AVAILABLE UNTIL OCT, 2004

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes XX No

If yes, state what court and case number: UNITED STATES DISTRICT COURT,
CASE NO: CV-N-04-0241- LRH-VPC

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE AT THIS TIME

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No XXX

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully, summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) **Ground One:** PETITIONER CONTENDS THAT HIS SENTENCES HAVE BEEN VIOLATED IN VIOLATION OF THE 14TH AMENDMENT OF THE U.S CONSTITUTION "DUE PROCESS"

Supporting **FACTS** (Tell your story briefly without citing cases or law.): IN PETITIONERS JUDGMENT OF CONVICTION FOR COUNTS TWO, THREE & FOUR HE WAS SENTENCE TO LIFE WITH THE POSSIBILITY OF PAROLE, HOWEVER, AT THE TIME OF HIS PAROLE HEARING THE NEVADA PAROLE BOARD HAD NO AUTHORITY TO ISSUE A PAROLE. THE POSSIBILITY OF PAROLE GRANTED IN HIS JUDGMENT OF CONVICTION DOES NOT EXIST. THE SENTENCE HAS BEEN VIOLATED AS PURSUANT TO NRS 213.1214 THE NEVADA PAROLE BOARD CAN NOT ISSUE A PAROLE.

(b) **Ground Two:**

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

(c) **Ground Three:**

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

(d) **Ground Four:**

Supporting **FACTS** (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 30th day of the month of AUGUST, of the year 2004.


Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

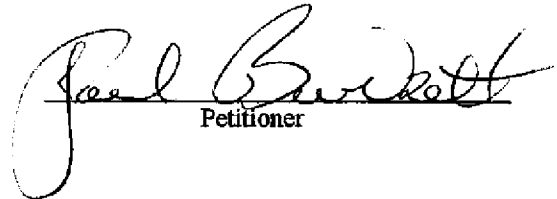
Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.


Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL BURKETT, hereby certify pursuant to N.R.C.P. 5(b), that on this 30th day of the month of AUGUST, of the year 2004, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

E.K. MCDANIEL

Respondent prison or jail official

P.O. BOX 1989

Ely, NV 89301

Address

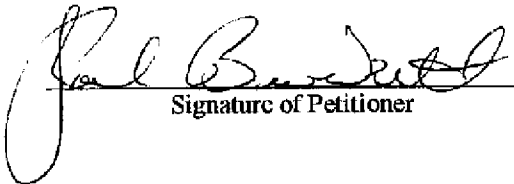
Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

Stewart Bell
District Attorney of County of Conviction

200 S. Third St. #701

Las Vegas, NV 89155

Address


Signature of Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 4

ATTORNEY FOR APPELLANT

JOEL BURKETT # 16111,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

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1 motorcycle. He pulled over, met her this way. She
2 wanted a ride on his motorcyle, and then they got to
3 know each other.

4 He asked her to the party earlier,
5 couple of days before the party, and she wanted to go.
6 He went by the party earlier. He was with Ted. He
7 left about 9:30, took Ted home, went and got something
8 to eat, then went down to the Stop & Go.

9 Found Tina there. Said -- went,
10 got two beers. Put them on the counter.

11 "Tina," he said, "You ready to go
12 to the party?" Tina said, "No. Just a minute."

13 He went out to the car, leaving
14 the two beers on the counter. Tina then came out.

15 Of course, he didn't notice her
16 not locking the door, putting the sign up or anything,
17 because he was conveniently looking down under his
18 dashboard.

19 They left the Stop & Go, went up
20 and sat with -- or left the Stop & Go, immediately went
21 to another convenience store where they got gas and
22 they got beer, and then they went to the party. Tina
23 didn't want to go in 'cause she didn't know anybody,
24 so they sat in the car with Jim, and they talked.

25 And then he was taking her back to
26 the Stop & Go, but there was police cars out front, so
27 she said, "Well, I don't want to go back. Let's go to
28 the desert."

29 So they go to the desert, and the
30 sexual intercourse that he testified to of course is
31 consensual.

32 He brought her back to town around

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1 3:00, let her off. I believe they had beer and smoking
2 some marijuana out in the desert.

3 He let her off someplace down in
4 North Las Vegas, and he went home, thinking nothing
5 of it.

6 Next day, the police officer grabs
7 him, puts the arm on him. Next thing he knows, he's in
8 a lineup, and he makes the statement, "Did she pick my
9 partner, too?"

10 Because, heck, he'd been arrested
11 with Ted Burkett and, you know, everybody is his partner.

12 Okay. Basically I think that's a
13 fair statement of the facts as to the testimony.

14 Ladies and gentlemen, I offer you
15 three main reasons why the facts are just exactly as
16 Tina Cage testified. Number one is the abduction,
17 the facts surrounding the abduction.

18 Number two is the identity, and
19 number three is defendant's story in general.

20 Number one, the abduction. Let's
21 look at a couple of the factors concerning the abduction.
22 Let's look at who stole the money. Let's just look at
23 that for a minute.

24 We know there's money missing from
25 the cash register, because Pat Seevers goes there, and
26 there's no hard paper in the cash register, so somebody
27 took it. Somebody took the paper out.

28 Now, the victim leaves the store at
29 knifepoint with Subject No. 2, forces her out of the
30 store. Defendant Burkett is still in the store when she
31 leaves.

32 Now, remember the testimony of

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1 Williams, George Williams? He was there. Victim's there.
2 He leaves, goes around the corner, comes back about five
3 minutes, and now, as soon as he comes back, no clerk.

4 He notifies Metro, and everything
5 else happens. George Williams didn't steal that money,
6 ladies and gentlemen, because if he did, he would have
7 left. He wouldn't have waited around. George Williams
8 didn't steal that money.

9 Did Tina Cage steal the money? Well,
10 maybe that's what defense will argue. Does it make sense
11 to you that if a girl is going to steal money from the
12 cash register, number one, that she's going to take a
13 hundred thirty dollars, put it in the safe first? Does
14 it make sense to you that she's going to steal money in
15 the cash register, she's going to leave the store,
16 leaving her purse with more money in her purse than
17 she's stealing from the cash register, leave her purse
18 there for anybody who comes along to take her purse
19 and her money? Ladies and gentlemen, doesn't sound
20 reasonable. Okay.

21 Who stole the money? It would be
22 highly unlikely that Tina Cage and the defendant
23 voluntarily, Tina Cage voluntarily leaving the store
24 and just before George Williams can come back. So they
25 have -- slipped in, immediately opened the cash register
26 from the other side, takes the paper out and leaves.
27 Highly unlikely. If he was going to go around to open
28 the cash register, probably what you'd have to do --
29 can't see the keys. Probably have to go around, open
30 the cash register. Wouldn't he also take her purse,
31 which is right on the counter?

32 How did that money get out of the

1 register? You remember Tina Cage's testimony -- hit
2 the keys, the register opens, and then the knife was
3 on her, and she's being forced away. Doesn't that
4 sound more reasonable? Doesn't that make more sense?

5 Additionally, couple of other
6 facts. The beer is still on the Stop & Go counter.
7 Why would the defendant leave the beer on the Stop & Go
8 counter? If he's reaching around on the cash register,
9 taking money out, he's got his hands busy. His hands
10 are busy, so he can't carry the beer out.

11 Ladies and gentlemen, going further
12 on the abduction, if the story is true as Joel Burkett
13 told it, why would Tina Cage walk out of her store.
14 She's in a hurry to get to this party. Remember that.
15 Why would she walk out of her store and leave her coat?
16 Why would she walk out of the store and leave her
17 purse? Why would she walk out of the store and leave
18 her sandwich half eaten? Why would she walk out of
19 the store and leave the door unlocked.

20 You heard testimony that they have
21 a key to lock the door if they have to go stock the
22 cooler or something. Why would she walk out of the
23 store and leave the sign not posted on the door?

24 Remember, he was in a hurry to get
25 to this party, defense might argue, ladies and
26 gentlemen. What does she do when she gets to the party?
27 Doesn't go in, because she doesn't know anybody. If
28 she's in such a hurry to get to the party, she would
29 have gone in.

30 Additionally, ladies and gentlemen,
31 look at this. Soon as they leave the store, they go to
32 another store to buy gas and, as defendant testified,

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1 beer. If defendant's statement is true, why do they
2 leave a Stop & Go that sells beer and gas to go up
3 the street to another Stop & Go that sells what? Beer
4 and gas. It just doesn't hold water, ladies and
5 gentlemen.

6 Point number two is the
7 identification. I told you I was going to try and talk
8 about three areas. That's number one, is the abduction.
9 Number two is the identification. Tina Cage gave a
10 good description. The guy came in, got Zig-Zag papers.
11 Zig-Zag papers are on the defendant next day.

12 Name's Dusty. Sure enough, you've
13 heard testimony that his name is Dusty.

14 She had the size. In fact, she
15 testified a hundred eighty-five pounds. On his phony
16 ID that he got from Raymond Haire, it says a hundred
17 eighty-four pounds. She said six-zero to six-two.
18 His ID says six-foot-two, I believe.

19 Ladies and gentlemen, what about
20 the tatooes? She testified he had a spider web tatoo
21 on his right elbow and a marijuana leaf on his right
22 arm. Now, she also testified he had a tatoo of an
23 unknown description on his left arm.

24 If you were riding in my car with
25 me and I'm the driver and you're sitting on the front
26 seat in between passenger -- you're sitting right here
27 as I'm driving, what are the tatooes that are staring
28 you right in the face? My elbow and my forearm.

29 She had a good description of
30 these two. Now, maybe some of you noticed when they
31 took off his shirt or coat, bared his arms, also
32 noticed a spider web tatoo on the left arm, barely

1 visible. She didn't describe that one. She also didn't
2 give you a very good description in detail of this
3 tatoo on this other arm. Why do you suppose? Well,
4 that's because he's driving. The closest arm to her
5 face is the right arm.

6 Now, his story is that she'd known
7 him for a while. If that's the case, ladies and
8 gentlemen, why didn't she give a better description of
9 the tatooes? She gave the description of the tatooes
10 totally corroborating the version -- or pardon me --
11 the facts as they occurred.

12 Continuing with the identification,
13 the facts surrounding it. They key ring. She testified
14 J. W. on it. The vest, Camel Regulars, the
15 Harley Davidson belt, the knives.

16 Now, that's interesting. You
17 remember the testimony of the officer. He found this
18 on Subject No. 2. He found this on Joel Burkett.

19 We asked her on the stand,
20 "Recognize this?" "Yes."

21 Who did she tie this to?
22 Subject No. 2. Who did she tie this one to? Defendant
23 Burkett.

24 She hadn't seen these knives since
25 December 18th when they were held on her; yet she
26 could put these to the people who had them.

27 Now, you might ask, "Well, wait a
28 minute. Her description was so good." Ladies and
29 gentlemen, she'd been robbed a week before. She'd
30 gone through with the police questioning on height,
31 weight, description, everything else. This girl was
32 with them for about three hours. She's in the car,

1 being held by Subject No. 2 with a knife.

2 They stopped at two places where
3 the driver got out, probably walked in front of the
4 car under the light past the gas pump and everything
5 else. Who's she going to be able to see besides the
6 guy that's walking in the light? Not the guy sitting
7 in the car holding her with the knife where she can't
8 look around at. That would totally explain her
9 description as she gave it.

10 Ladies and gentlemen, she further
11 described the quilt in the back seat. Described her
12 underwear -- her panties, her bra.

13 Let's talk about that for a minute.
14 This defendant Burkett is such a good friend of this
15 girl's, why didn't he return her bra? Her bra's
16 missing from the car. Perhaps it was lost in the
17 desert during the scuffle. Perhaps the next day it's
18 sitting on the seat and he throws it away.

19 How about her panties under the
20 seat. Maybe he didn't know they were there. Maybe
21 he didn't know they were there. He's such a good
22 friend of this girl, why didn't he return her
23 underclothing? He knew she was married. Didn't he
24 think that might cause her a problem?

25 Again, his version just doesn't
26 hold water.

27 Now, he offers an explanation of
28 why she remembered and could identify Ted. She'd met
29 him once. When she met him this one time, did she
30 memorize what kind of knife he carried? Did she
31 memorize how he stood -- his weight, everything else?

32 She didn't. He testified Ted wasn't

1 with him that night. In fact, only one in the car was
2 this Jim Delaney. Why didn't she describe Jim Delaney
3 for the police, then? It just doesn't hold water.

4 The lineup. When she -- when
5 Joel Burkett says, "Did she identify my partner, too,"
6 why would he think she could identify Ted Burkett, who
7 wasn't there the night before, according to his story?
8 Why would would she think, or why would he think she could
9 identify Ted?

10 His answer was, "Well, Ted was with
11 me when I was arrested. That's why I thought she could
12 identify Ted."

13 Well, she wasn't there when he was
14 arrested. What made him think she could identify Ted
15 Burkett unless Ted was his partner in crime? He called
16 him his partner. You've heard the term "Partners in
17 crime." Ever heard the term "Partners in arrest"?
18 No.

19 The lab. Continuing, under the ID
20 heading, the lab clearly puts Tina Cage in that car
21 and, furthermore, shows the defendant's hair on
22 Tina Cage's vagina.

23 Third area, ladies and gentlemen --
24 we talked about the abduction. We've talked about the
25 identification. Third area I would just entitle liars'
26 poker.

27 This is the party that they
28 supposedly had on December 17, the people you've heard
29 testify. Let's talk about the defendant for a minute.

30 He's 19 years old, convicted of a
31 crime of violence, and admitted liar. He testified,
32 "Yes. I used this, this phony..." Or not phony, it's

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1 a birth certificate of his uncle. Gone down to the
2 Department of Motor Vehicle to get an identification.
3 I believe it was December 5th. He got this
4 identification.

5 Says, "I do hereby attest that I
6 do not," it goes on, "and that the above information is
7 true and correct to the best of my knowledge." He signs
8 it as Raymond Haire, and it's notarized by a notary
9 public.

10 He has no problem lying. His
11 explanation -- "So I can buy beer."

12 He lies for the application, lies
13 to the notary. He lies on the application to
14 Stop & Go. He lies to the interviewer at the Stop & Go.
15 He lies to the police when they stop him.

16 Ladies and gentlemen, if he'd lie
17 about all these seemingly unimportant things, would you
18 think he'd come into court and lie about the serious
19 charges against him now? Well, you bet he would. He's
20 an habitual liar.

21 Ladies and gentlemen, Jury
22 Instruction No. 22 addresses something similar to this.
23 It says if you believe that a witness has lied about
24 any material fact in the case, you may disregard the
25 entire testimony of that witness or any portion of
26 his testimony which is not proved by other evidence.

27 I say analogize this. I just
28 change a word or two, and I'd say if you find that a
29 witness is an habitual liar and cannot be believed,
30 then you may disregard his entire testimony or any
31 portion of his testimony which is not proved by other
32 evidence.

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1 What other evidence does he have
2 proving his statement of the facts? Jim Delaney.
3 Jim Delaney and Doug Hann. Puppet. Or pardon me.
4 Parrot.

5 The times. What time did he leave?
6 9:30. Doug Hann. "Did you have a watch that night?"
7 "No."

8 "Were you drinking?" "Yeah."
9 "This was a long time ago." "Yes,
10 it was."

11 How about Delaney? Remember
12 Delaney? He's the one that says, "I'd never met her
13 before, never seen her since. I can't tell you what
14 day of the week this was. I can't tell you what she
15 was wearing, can't tell you whether she had a coat or
16 a purse. I can't tell you what the defendant was
17 wearing, can't tell you even if he ever had a knife.
18 I can't tell you any of these things, but I can tell
19 you her name -- Tina Cage."

20 Can you just imagine him
21 introducing Tina Cage? "May I present Mr. Delaney?
22 Mr. Delaney, may I present Tina Cage?"

23 Ladies and gentlemen, his
24 phenomenal memory leaves something to be questioned.

25 He stated to you that he had not
26 made any statements of this, written statements.
27 Additionally, you might test it with this proposition.

28 Joel Burkett was arrested on the 19th
29 and put in jail. He's in jail continuously after that.

30 Doug Hann, Jim Delaney both know
31 he's in jail. They come and see him in jail.

32 They both know where the police

1 department is. They both know where the DA's Office is.
2 This is their friend. You know, they can get their
3 friend out of jail if they come forward and give their
4 version of the facts that clears him.

5 They can get him out of jail if
6 those facts can be verified or those statements can
7 be verified. And what do they do? Do they come to
8 the police, come to the DA's Office?

9 They wait until Friday afternoon,
10 the eleventh hour, when these statements cannot be
11 verified -- come in here on the witness stand and give
12 you their story. Ladies and gentlemen, if those stories
13 were true, they could withstand the light of day. They
14 could withstand the test of verification.

15 But, as I was, Friday afternoon
16 you heard them for the first time, the same time we
17 did. We asked the defendant, "Why didn't you ask your
18 friends to come -- come in and give those stories,
19 clear you up?" Well, the police were against him.
20 Well, the DA was against him.

21 Well, let's hope the community
22 standards are against him, too. Ladies and gentlemen,
23 let's apply the law to the facts.

24 I would submit to you that those
25 three areas we've discussed -- that being the abduction,
26 that being the identification, and that being the
27 defense position in general -- establishes beyond a
28 reasonable doubt that the crimes, that the facts
29 occurred as Tina Cage testified.

30 Now, if you will accept that --
31 and I'm sure you do accept that -- let's compare that
32 to the law as stated.

1 Robbery. There's a few elements of
2 robbery with use of a deadly weapon. The unlawful
3 taking of personal property from a person or in their
4 presence by means of force or fear. And the use of a
5 deadly weapon.

6 Now, some of you might say, "Well
7 wait a minute. Tina Cage was taken from the Stop & Go
8 with a knife, and she was outside. She didn't see
9 anybody take the money from the register."

10 Jury Instruction No. 6 says, talks
11 about the unlawful taking. This is important.

12 It says such taking constitutes
13 robbery whenever it appears that although the taking
14 was fully completed without the knowledge of the person
15 from whom taken -- isn't that what happened here? She
16 didn't know that the money was being taken. Such
17 knowledge was prevented by the use of force or fear.

18 She was removed from the premises.
19 Ladies and gentlemen, Joel Burkett took the money from
20 the register, and he took it as Tina Cage was being
21 taken out to the car.

22 You might have a question. You say
23 how can he be guilty of robbery with use of a deadly
24 weapon when he wasn't robbing with the weapon, he
25 didn't have the knife in his hand? Well, the law is
26 very clear there, too, ladies and gentlemen. If two
27 people commit a crime and each of them do one or two
28 of the elements, they're both equally guilty. They're
29 both equally guilty as principals. That's your
30 principle instruction which you have.

31 There's another instruction that
32 says two or more persons commit a crime with use of a

1 deadly weapon and only one of the persons used the
2 deadly weapon in the commission of a crime, it's not
3 necessary for the State to prove both persons used the
4 weapon because one who aids and abets another to commit
5 a crime with use of a deadly weapon is equally guilty
6 as a principal. I would submit to you that's exactly
7 what happened here.

8 Ladies and gentlemen, that could
9 constitute the taking, unlawful taking, is what we're
10 talking about -- personal property. That was the money
11 at Stop & Go in the possession of Tina Cage, and the
12 use of force or fear in taking it, the weapon -- a
13 knife. I would submit to you a knife is a deadly
14 weapon.

15 You have a definition of a deadly
16 weapon in your jury instructions.

17 Kidnapping. Do we have a
18 kidnapping? First degree kidnapping has got a long
19 definition, but first, first degree kidnapping is
20 confining someone. One word there. These are all
21 disjunctive.

22 It's either seizing, confining,
23 or inveigling or enticing. These are all disjunctive.

24 Confining. You confine someone
25 against their will for the purposes of sexual assault,
26 you've committed a first degree kidnapping. You use
27 a weapon, in doing so, you've committed a first degree
28 kidnapping with use of a deadly weapon.

29 That's what happened here. They
30 confined her. Actually, they seized her and then
31 confined her for those purposes.

32 Okay. Sexual assault. Did a sexual

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1 assault occur?

2 Sexual assault is defined as sexual
3 penetration. Okay. Sexual penetration means any
4 intrusion, however slight. And, in this case, into the
5 vagina or the anus of the victim.

6 You've heard the testimony. She
7 didn't consent to these acts. You might ask the
8 question, "Well, we had a -- didn't have evidence of
9 ejaculation in the anus." Well, proof of emission is
10 not necessary. That's another jury instruction --
11 slightest penetration, is the crime.

12 There's another interesting
13 instruction, and this is Jury Instruction 15, and it
14 says -- basically it says one witness worthy of belief
15 is sufficient to establish any fact. How many rapes
16 are committed in a public place like the Meadows Mall?
17 None. Rape by necessity is the kind of crime that's
18 committed out in the desert in some secret place.
19 It's a secret kind of a crime.

20 Generally, who do you have as your
21 witness? You have the victim. You don't have a bunch
22 of people standing and watching, taking notes. You have
23 the victim. That's why you have a jury instruction like
24 this. One witness worthy of belief is sufficient to
25 establish any fact. And you take that witness, and you
26 start asking, is there anything you don't have to --
27 'cause that says you don't have to, you don't have to
28 have corroboration.

29 But in this case, you take
30 Tina Cage's story, and you start plugging in the
31 corroboration, and you can spend all day plugging in
32 the corroboration. Every time she said something

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1 happened, you can search further and say, "Aha. The
2 guy did have a belt buckle. Aha, there was a J. W.
3 key ring." Aha this, aha that. It totally
4 corroborates her story.

5 Now, ladies and gentlemen, I've had
6 an opportunity to address you. Like I said as I began,
7 the defense is now going to have an opportunity to
8 address you, and I'll have one more opportunity to
9 respond to what the defense might offer. I thank you
10 for your attention.

11 THE COURT: We'll take a recess at this
12 time.

13 Ladies and gentlemen, during the
14 recess, I would remind you it is your duty not to
15 converse among yourselves or with anyone else on any
16 subject connected with this trial, or to read, watch
17 or listen to any report of or commentary on this trial
18 or any person connected with this trial by any medium
19 of information, including newspapers, television and
20 radio, and you are not to form or express an opinion on
21 any subject connected with this case until it is finally
22 submitted to you.

23 We'll be in recess for ten to
24 fifteen minutes

25 (At this time, a brief
26 recess was taken.)

27 THE COURT: I'd like to ask if counsel
28 would stipulate to the presence of all members of the
29 jury and the two alternate jurors.

30 MR. BLOXHAM: State would so stipulate,
31 your Honor.

32 MR. BUCHANAN: Defense would so stipulate.

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1 THE COURT: You may proceed, Mr. Buchanan.

2 MR. BUCHANAN: Thank you, your Honor.

3 Ladies and gentlemen of the jury,
4 it's always a pleasure to be able to come here after the
5 submission of all the evidence and talk to you about the
6 facts of this case. Now, it hasn't been a very long case.
7 It's one that I'm sure that you've all listened to and
8 listened to the evidence.

9 We have people from different
10 backgrounds and different ideas, different feelings
11 that comes and try and arrive at a verdict in this case.
12 Now, I've had the opportunity to talk to approximately
13 two hundred fifty juries. I have an idea pretty much
14 what juries feel, and it's always been my impression
15 that juries, when they come in and sit down in a box
16 for a trial, and they see a defendant seated there,
17 they think the defendant's guilty.

18 Now, all defendants, of course, are
19 cloaked with the presumption of innocence, and that's
20 what our constitution says, and that's what our laws
21 say, and that's what we try and tell people. But still
22 it's been my impression that people feel that because
23 a person's accused of a crime and because a person
24 comes in before a jury trial that he's guilty.

25 So I don't know how you felt the
26 other day, last Wednesday when you were seated here
27 and were called and finally selected, of how you felt
28 about Joel Burkett, who's seated right here -- 19 year
29 old young man who's here before you today for really
30 a very, very serious decision. Because these are two
31 very serious crimes. So it's your duty now to arrive
32 at a verdict of guilty or innocence.

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1 Now, one of my clients who was
2 waiting around trying to talk to me and -- the other
3 day related to me -- he said he heard someone say, or
4 some jurors walk by. I don't know whether it was you.
5 Thought the person was guilty. Of course, that was
6 the day before we put on our defense, so I don't know
7 whether that was one of you or whatever it was, but
8 in any event, that goes along with the feeling that
9 I've always harbored in a long time of defense work
10 of what a jury actually thinks. So basically I --
11 you listened to argument of Mr. Bloxham, who came up
12 here, thundered and hammered and gave a good argument,
13 gave good reasons why you should convict. He said
14 certain things.

15 But basically, before I go with my
16 argument, I'd like to comment on his. He talked about
17 a lot of things. He talked about this identification,
18 everything else, but he must have been in the wrong
19 crowd, because my client is Joel Burkett, this 19 year
20 old, has admitted being with Tina Cage. There's no
21 doubt in your mind.

22 Why is he talking about a tatoo on
23 the arm, a scar, or a spider web, so forth -- tatooes,
24 identification? That is not an issue in this trial.

25 Joel Burkett has taken the stand
26 and admitted being with Tina Cage, has admitted having
27 sexual intercourse with Tina Cage. There's no doubt
28 that the person we're talking about is Joel Burkett.
29 He's admitted that.

30 So they bring in a box over there --
31 these jackets, these clothes. Boxes, reams. Expert
32 witnesses.

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1 For what? To try and make the case
2 seem as overbearing as possible. But it really doesn't
3 make a bit of difference.

4 Do any of you have to go and sift
5 through that evidence, the boots, the -- God. I don't
6 know how much stuff's in there. Everything in the
7 world.

8 But you can throw it away. You don't
9 even need it, because everything that happened, as far
10 as he being with Tina Cage on Decemner 17th, has been
11 admitted.

12 So now we know that Tina Cage and
13 Joel Burkett were together on the night in question of
14 December 17th, so basically we come down to what? What
15 do you believe? What do you think actually happened?
16 And why do certain events come up?

17 So what you boil down to is the
18 testimony of Tina Cage, Joel Burkett, James Delaney,
19 Mr. Hann, and no one else. No one else can add one
20 thing to this evidence.

21 But let's start and let's take this
22 argument as a dichotomy because of what I heard or what
23 my client said he heard a juror say, that he thought
24 he was guilty. So let's assume -- and now, I'm not
25 taking the State's case or taking the State's case in
26 its totality and where you were or where this one juror,
27 whoever it was -- you, someone else -- said they thought
28 he was guilty. So let's cut it off there.

29 At that point, when the State
30 rested, you did not know what my client was going to
31 say, whether he was going to admit, which he did --
32 what he was going to do, whether it was an identification

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1 problem or not. All you saw was circumstantial evidence,
2 a lot of evidence that in the long run turned out to be
3 not material, but he admitted being there.

4 But let's take it from that point
5 forward, so let's say that instead of pointing to the
6 evidence, we decided to do nothing -- we stopped. We
7 didn't put on any evidence, didn't contradict anything.
8 We didn't rebut anything the State said. We just
9 stand silent and take our lumps.

10 Where would that leave you? All
11 right. Now, Mr. Bloxham has given you examples --
12 pulled out a story about mules and up and down around
13 all the old 18th Century. But we're not in the 18th
14 Century. We're in the 20th Century.

15 We have a 19 year old boy here
16 who's looking to you for some kind of justice. Now,
17 the first two crimes that he's charged with, which
18 will be robbery and first degree kidnapping -- first
19 degree kidnapping. Same penalty, severe as murder.
20 Robbery --

21 MR. BLOXHAM: Your Honor, I'm going to
22 object. Sentencing has nothing to do with this.

23 THE COURT: Okay. The objection is
24 sustained. You can't --

25 MR. BUCHANAN: I'll withdraw the --

26 THE COURT: You can't refer to possible
27 sentences, and I don't want you to do it.

28 MR. BLOXHAM: Fact, your Honor, he's
29 made a statement to the jury, and I think it needs to
30 be corrected.

31 THE COURT: Well --

32 MR. BUCHANAN: In any event, the crime

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1 for first degree kidnapping is very serious. The crime
2 for robbery is very serious. And the punishment for
3 these crimes are very serious, and that's up to the
4 Court. The Court has so instructed you.

5 But now what do we have as far as
6 robbery? And let's take those two first crimes. Now,
7 remember, we're talking here as if we did not put on a
8 defense. We're talking a dichotomy. Because someone
9 might get back to the jury room -- "I don't believe
10 anything he said. I don't believe any of his witnesses,
11 and I don't believe anything." Let's go from there.

12 So what I'm trying to show you is
13 if you went with that view, which of course I would
14 seriously oppose and will vigorously argue against --
15 where can you go from here? Let's take the robbery.

16 Now, there is a very serious
17 instruction beyond a reasonable doubt. Now, the State
18 continually -- and I'm always amazed at this --
19 downplays what reasonable doubt is. Doubt to be
20 reasonable must be actual and substantial, not mere
21 possibility or speculation, and those events that
22 would weigh in the more weighty affairs of your life.

23 Now, what are the more weighty
24 affairs of your life that would decide what you're
25 going to do? Maybe a health reason, an operation, a
26 financial investment. The more weighty affairs of your
27 life.

28 Or how you're going to arrive at the
29 verdict. You must find this defendant, Joel Burkett --
30 walk back in this room, look at him and say, "I find him
31 guilty beyond a reasonable doubt." Not what the State
32 had you believe is just something that's just there;

1 it's comme ci, comme ca. That's not it. You have to
2 find him guilty beyond a reasonable doubt.

3 So let's talk about that with the
4 crimes with which he's charged. Joel Burkett -- can
5 you say beyond a reasonable doubt that Joel Burkett
6 robbed that Seven-Eleven? Can you say beyond a
7 reasonable doubt that this -- or Stop & Go? That this
8 Stop & Go was even robbed?

9 Now, let's talk about that for a
10 minute. We had Mrs. Seevers come in. She testified
11 that one shift, they're over forty, down twenty. The
12 gas pumps are off, and they're up and down, up and
13 down twenty. I asked her how much money was actually
14 taken, and she said around twenty dollars. When she
15 was short four or five dollars, she was short even
16 ten dollars on the first shift, she came back, so I
17 don't think that you have enough evidence here today
18 to even state that a robbery had taken place.

19 Now, can you find beyond a
20 reasonable doubt that a robbery took place or that
21 somebody went over and punched that cash register
22 over and took all the money out? Is any more of a
23 fallacy to say because the twenty dollars was in
24 Tina Cage's purse that she was keeping the twenty
25 dollars there, that because she was going to go out
26 for a couple minutes and sit in a car that she took
27 all the paper money out, put it in her purse, that
28 twenty dollars there? Is it a coincidence that the
29 twenty dollars was in Tina's purse and not in the
30 cash register and all the money was gone and nothing
31 else?

32 Can you find beyond a reasonable

1 that someone took personal property from, without her
2 presence, through fear or violence, yet can't even find
3 from the evidence we have that a robbery took place?

4 Now, you might think, "Well, boy,
5 I think there was a robbery. Why would all this stuff
6 have happened?" And so forth.

7 But thinking about it is not enough.
8 You have to come back there and say, "I find from the
9 evidence here that a robbery took place, has taken
10 place."

11 Does Mrs. Seevers' testimony ever,
12 being up and down, and about twenty dollars, state that
13 lawful money of the United States was taken from
14 Tina Cage in her presence by force and fear of bodily
15 injury to herself? The answer has to be no. You can't
16 even say there's a robbery. You don't have the evidence.
17 You don't have that evidence to prove beyond a
18 reasonable doubt.

19 You might think it happened, but
20 that again is not it. You can't come back to some
21 18th Century parody and say that that's what it is.

22 A reasonable doubt is not that
23 great a burden, because that's what we gauge our
24 criminal prosecutions on. You must find it beyond a
25 reasonable doubt.

26 So we're saying that, number one,
27 there were certain elements that were charged in the
28 Instruction No. 4 to find conviction of defendant of
29 robbery. One was an unlawful taking of personal
30 property.

31 Can any of you here today say
32 exactly how much, or around twenty dollars? All anybody

1 knows is a cash register was short twenty bucks. It
2 was short the shift before. It was short a lot more
3 the shift before that.

4 Do you know that National
5 Convenience Stores lost twenty bucks in this robbery?
6 Do you know that beyond a reasonable doubt? Can you
7 say that with absolute certainty, that they actually
8 had a robbery? That's element number one.

9 Two, from the person of another
10 or in his or her presence. Tina Cage stated that,
11 according, now, taking the best testimony -- she was
12 already out of the store. She didn't even know what
13 happened. It wasn't even taken in her presence.

14 There's another instruction about
15 the fact that it doesn't have to be, but she's going
16 to have to state that she testified about a prior
17 robbery -- broke her hand or hit her hand or something.
18 She's going to have to state twenty bucks was taken
19 from that cash register, or all her paper money was
20 taken from that cash register in her presence or
21 with her knowledge or known if we're going to
22 satisfy these elements. Can you state that beyond a
23 reasonable doubt?

24 Against the person's will. Well,
25 if you believe her testimony in its entirety, that
26 element could be proved, but you need all elements
27 beyond a reasonable doubt to have that crime.

28 With the intent to permanently
29 deprive the owner of the property. Well, I suppose
30 you could say, if you could find first that the money
31 was taken, that they intended to permanently deprive
32 the owner. You have to find first that money was

1 taken, and without that finding, without anybody
2 knows what was in the cash register, without knowing
3 what was actually taken, you don't have a robbery.

4 So we're saying if you take the
5 State's case in its best light, you can't find him
6 guilty of robbery.

7 All right. Now we go to the
8 second, the biggie -- first degree kidnapping.

9 Two types of kidnapping here --
10 kidnapping with use and kidnapping without the use of
11 a deadly weapon. What evidence do you have that
12 Joel Burkett ever kidnapped Tina Cage?

13 Taking the best evidence of the
14 State, you have what? You have Tina Cage was
15 abducted or -- by someone who she didn't see, put a
16 knife and took her outside the back and to the front.

17 That knife wasn't in the hand of
18 Joel Burkett. That knife wasn't wielded by him. He
19 was not the person.

20 Again, we're taking this in the
21 best evidence, the State. Who abducted her from the
22 store? He wasn't the one that put her in the car.
23 He wasn't the one that held the knife on her,
24 according to her testimony. When he went and got
25 her beer, when he went and got her cigarettes, when
26 he went and got gas, he got out of the car. He did
27 all these things. He did not hold her at all.

28 The State will harp, though, when
29 they come back that as long as he's just merely
30 present, that that is enough, force him as an
31 accessory, enough to charge him with kidnapping.

32 But you have to find it again

1 beyond a reasonable doubt that he actually kidnapped,
2 and taking the evidence of the State in its best light,
3 evidence that you can rely on, evidence beyond a
4 reasonable doubt, there's no evidence at all that
5 Joel Burkett did any kidnapping with what Tina Cage
6 testified to. In fact, Tina Cage on cross-examination
7 agreed, number one, there was no knife at the store.
8 There was no knife with Joel Burkett in the car. There
9 was no knife with Joel Burkett whenever they had the
10 sexual intercourse. There was no knife when they had
11 the anal intercourse, or at any time did Joel Burkett
12 have a knife with the crimes with which he's charged
13 in these four counts.

14 So in none of these counts did he
15 have any weapon, no weapon that he could find beyond
16 a reasonable doubt.

17 All right. Taking it in the best
18 event, then, of what could you find him guilty of,
19 these four counts, that leaves one count -- that he
20 had sexual intercourse with her against her will, by
21 force or fear. A sexual assault. More refined way
22 for rape. All right.

23 And there was evidence of that,
24 taking the best events, because she agreed it was not
25 with her consent.

26 He's also charged with anal
27 intercourse. Have anal intercourse with her against
28 her consent, without her -- any type of cooperation
29 or willingness.

30 We go back to Renner, who goes back
31 and says that he found no evidence of any anal
32 intercourse at all, or oral copulation that she said

1 she had with the other person. So we feel without some
2 cooperation, although there's an instruction if you
3 believe Tina Cage in her entirety that you don't need
4 any corroboration -- but the only corroboration that
5 you have that there was even a sexual assault was the
6 fact that she had acid phosphatase inside of her and
7 spermatozoa in her vagina. That's evidence of rape.

8 Now, if you take our case and
9 throw it out the window -- don't believe anything
10 from him. Don't believe anybody, or her, with a
11 vengeance of conviction, and going with the
12 State's -- simply back to the 18th Century -- then
13 you could come back with a verdict of guilty of
14 sexual assault.

15 That's Count III. None of it.

16 Now, you talk about the sexual
17 assault of Tina Cage, and you say I have to have
18 corroboration of that sexual assault of someone. If
19 you believe all the testimony of Tina Cage about
20 struggling with a beer bottle, about being held
21 around the neck, about struggling inside, outside
22 the car -- we have two women on the jury. How easy
23 it is to bruise a woman. How easy it is to touch a
24 woman or do this or fool around or punch a woman,
25 or something, and a bruise.

26 If you take somebody around the
27 neck and you're dragging them out of a store,
28 throwing them into a car, have a fight out in the
29 desert -- according to her, you're out in the middle
30 of a desert. You're stumbling. You're outside the
31 car. You're thrown back in. You're sexually violated
32 by two adults, and not in the best place.

1 Your hair is pulled. Clumps of hair
2 supposed to come out. They find one tiny woman's hair
3 in the car.

4 How can you say beyond a reasonable
5 doubt that she was a victim of a rape when she didn't
6 have a mark on her body? Not a mark.

7 Now, if there is a rape, and all
8 this is going on -- conversely, Joel Burkett didn't
9 have a mark on his body, a scratch, anything.
10 Corroboration of rape. Not a mark.

11 She admitted she didn't have a mark.
12 The Officer Leonard said she didn't have a mark.

13 And what else? Can we believe
14 Tina Cage? Why would Tina Cage lie to you, the members
15 of the jury, from this very box? Did she lie to you?
16 Did she try and cover up certain facts and circumstances
17 of what happened on that early morning hours of
18 December 18th?

19 She most certainly did. I asked
20 her specifically, "Did you have any beer?" "No."
21 "Marijuana cigarette?" "No."

22 Officer Leonard takes the stand.
23 Says, "Sure. She admitted to me she'd been drinking
24 beer. She was thirsty," so forth.

25 Joel Burkett the only liar here?

26 Now, again, we're still talking
27 in the best evidence of the State's case. Is that the
28 way it can go? Is that the way you would believe?
29 Is that the evidence that you take to try and find him
30 guilty of all of these crimes?

31 No. I don't think you can. But
32 if you do, if you go back there and say, "It's a nice

1 shot. Didn't make it. Now, what are we going to find
2 him guilty of?"

3 Only one crime you can find him
4 guilty of. That's sexual assault, one count of having
5 sexual intercourse with Tina Cage. Because to find him
6 guilty of the rest, you have to find beyond a
7 reasonable doubt.

8 You can read these instructions.
9 You're going to be having the advantage and opportunity
10 to take these instructions back with you and read them.
11 Leave all that evidence in the courtroom, because you
12 don't need it.

13 He's admitted being with her.
14 Your only job now is to try and put these facts, that
15 you remember them as you heard from the stand, in
16 light with these instructions and come up with a fair
17 verdict.

18 All right. We've gone -- we've gone
19 through that. Now, the State's second main point --
20 and they said, I've marked here first, was the
21 introduction.

22 Well, well. That Joel Burkett
23 didn't do anything. Says ID. Why are they harping
24 to you? Why is the State coming here talking about
25 identification?

26 God. The guy got on the stand.
27 Joel Burkett got right up here, told you right to
28 your face, "I was with Tina Cage. I had sexual
29 intercourse with her. It was willing." And he gave
30 you a reason.

31 Why talk about ID? The State feels
32 their case is so weak. We commented all during the

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1 trial that every witness they had tried to corroborate
2 and build up Tina Cage's testimony when up to the end,
3 it wasn't even corroborated or impeached in any way
4 during the State's case. But that's what they tried to
5 do, and that's what they wanted to do.

6 So we really are down. Not a very
7 hard problem as far as you're concerned, because
8 'course I'm here to try and convince you otherwise,
9 but it all comes down to that very famous fable, and
10 that's Instruction No. 18 about reasonable doubt.

11 Now, this is the one instruction
12 that normally I make a lot of notes on after I get
13 the instructions from his Honor, because this is the
14 one where you have to look at it. If you didn't take
15 into consideration and you listened to Mr. Roarke's
16 argument, you might think innocence would float away
17 like that paper. But that's not it. You've got to
18 say, "Now, do I have a reasonable doubt? Do I have
19 a doubt as to what happened? And if I do, why should
20 I?"

21 I hope someone on the jury goes
22 back into that jury room in deliberation and says,
23 "Yes. I have a reasonable doubt about some of these
24 facts."

25 Let's talk first about Tina Cage.
26 Two robberies in two weeks. Stop & Go manager says
27 very rare, extremely rare. But it happened. Two
28 weeks with Tina Cage. What would be bad about that?

29 Husband's unemployed, living in
30 a rundown motel. She's working a night shift, not
31 the greatest in the world -- from 11:00 at night
32 until 7:00 in the morning. Evidently doesn't have

1 any money. Trying to get -- make ends meet, or whatever.
2 Not the best life for anybody, especially not the best
3 life for a 21 year old girl who -- relatively attractive
4 and not bad.

5 Why would Tina Cage lie? You have
6 reasonable doubt about her story?

7 You know, it could be in part true,
8 everything after the fact of going out in the desert.
9 Maybe he forced himself on her. She got mad, came back,
10 said, "He raped me," and made up the rest to cover her
11 job, her husband -- playing around, everything else.
12 Reasonable doubt? You have to think about it. You
13 have to answer that question.

14 Again, no marks on the body.
15 Something I put on -- how could anybody go through an
16 endurance like this and all the things that are
17 supposed to have happened and not put a mark on her
18 body? Make you wonder? Make you wonder why at least
19 you don't have some marks, some bruise, some scuff
20 mark on the neck if you were being held that way, if
21 you were being sexually abused?

22 She testified in one statement it
23 was forty-five minutes before the guy came back.
24 Mr. Burkett, purchased the Zig-Zags. Another time
25 she said ten minutes. She says, "I don't know.
26 I can't recall."

27 Lineup. Why would Tina Cage not
28 I. D. somebody else if she was so explicit and so direct
29 and so precise on her identification of Joel Burkett?
30 Why would all of a sudden her memory go, fade away
31 on the second person who she's identified?

32 Why? Ask yourself.

1 And some members of the jury, when
2 you're back there, you ask your remembrance. Why would
3 she not identify with as precise as she was?

4 The State sat up here and listed,
5 read them off, what she told Detective Leonard --
6 belt buckle, spider web tatooes, age and height, so
7 forth.

8 She was in another robbery. She
9 remembers things now. Goes to the lineup, and she
10 doesn't identify the second person. Says it resembles
11 him but she doesn't want to I. D. somebody.

12 And I'll tell you why -- because
13 Ted Burkett, this other party, the second party
14 wasn't there that night. She wasn't going to finger
15 an uninvolved person who was not with her, who would
16 have nothing to do with the crime at all. She wasn't
17 going to put the finger on him.

18 But yet she has this remarkable
19 identity. She was with him, this Ted Burkett. If he'd
20 been there for two or three hours, the same time she
21 was with Joel Burkett -- but she doesn't identify him.
22 Make you wonder? Make you think did all these events
23 occur?

24 We know that there was a ride to
25 the desert. We know there was sexual intercourse. We
26 don't know whether or not Ted Burkett was there. We
27 don't know what was happening.

28 You have reasonable doubt. Can you
29 sleep with this? Would you engage in the more weighty
30 affairs of your life in arriving at the guilt or
31 innocence based on her testimony?

32 Didn't find the bra. Don't know

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1 where that is. Was she wearing a bra? We don't know.

2 Let's contrast, because the
3 statements that you have here are contracted between
4 Joel Burkett and Tina Cage. Everything else is
5 secondary.

6 All right. What about -- what about
7 Joel Burkett? Now, I don't care how brazen you are, I
8 don't care what you are. If anyone committed a crime
9 such as was described here -- a kidnapping, a taking
10 out in a vehicle, a rape, a robbery. Next morning,
11 now, not a week later, five days later, something --
12 the very next morning, he drives into a used parts
13 store, North Las Vegas, next to a North Las Vegas
14 black and white. Comes into the store without -- with
15 a black vest on, baring all these tatooes, which would
16 make an identification, and says hi to Robert Smith,
17 the cop. Orders parts. Goes about his business.

18 Robert Smith, a police officer
19 of fifteen years says, "I was amazed. Here's a guy on
20 a hot sheet, attempt to locate, who walks into a store
21 the next morning after the attempt to locate comes out
22 and says, "Hi." Stands right next to him at the
23 counter -- bare arm, bare chest, with these tatooes
24 that are marked.

25 I said, "Is that the normal attitude
26 of a guy who's committed these kinds of crimes?"

27 "I'm amazed."

28 It's not the kind of way things
29 happen. And Joel Burkett took the stand. He admitted
30 he was an ex-felon. He's no dummy. If he was
31 criminally involved in this type of a crime -- he has
32 no ties to the community here, more or less, at that

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1 time. He could have just said, "Adios." That's it.
2 Split. Instead of walking into a police officer.

3 Now, I mean not happenstance or
4 just go in and casually meeting him. He drives in
5 and sees a police officer's car and parked next to it.

6 Does that give you reasonable doubt
7 as to what actually happened on this night for the next
8 morning to go put yourself in the midst of a police
9 officer. Do you have reasonable doubt as to these
10 factually occurring as Tina Cage testified to the
11 night before?

12 We have two witnesses who came
13 forward, who put up further light onto this, these
14 events. James Delaney. Family man. Married.
15 Steady job. Who says that Tina Cage about 12:00
16 o'clock and he and the defendant came and sat here
17 and talked.

18 If you believe James Delaney --
19 and his testimony at this point is unrebutted. Wouldn't
20 it have been nice to have brought Tina Cage back in
21 here, put her up here for your identification --
22 because you have to decide -- and have Tina Cage tell
23 you from this chair, "I never went to any party.
24 I never knew Joel Burkett. I never rode on his bicycle.
25 I never saw Ted Burkett before. I didn't have a date
26 with him on December 19th. I didn't go to that party.
27 I didn't see any James Delaney. I didn't talk to
28 anybody." Period.

29 No. They didn't bring her back.
30 Would it have been nice? If you were going to arrive
31 at a verdict, would it be nice to know if Tina Cage
32 at this point knows James Delaney? Can any one of you

1 answer me, does Tina Cage know James Delaney? You
2 don't know.

3 Do you have a reasonable doubt about
4 Tina Cage's veracity about what actually happened on
5 that night? Did Tina Cage sit outside in the
6 automobile and talk to these people for thirty minutes?
7 Did Tina Cage then, after the party, decide, well, she
8 better get back to the store?

9 Goes back there and finds police
10 cars and everything around it and says, "Oh, my God.
11 What am I going to do?" Goes out and has a couple
12 beers, smokes a joint, has sexual intercourse. Comes
13 back and says, "How am I going to cover myself? I've
14 been missing from the store. The police are there.
15 I'm sure my husband knows. How am I going to explain
16 walking up? What am I going to say?"

17 She's dropped off at an apartment
18 building. She's not dropped someplace away from a
19 phone where she couldn't make an immediate call to the
20 police. She's not dropped out in the Lake Mead
21 Boulevard where she has to walk, give people time to
22 get away. She's dropped right in front of an
23 apartment complex, North Las Vegas, where she told them
24 she wanted to be dropped.

25 Is this -- is this a
26 rapist-kidnapper who has beer with the individual?
27 Says, "May -- can you get me some Marlboro 100s.
28 I'm kind of dry, need a cigarette." Go in, buy her
29 Marlboro 100s.

30 Is that the acts of a kidnapper?
31 This what normally happens in a kidnap? "Hey, I want
32 a six-pack of beer. Get me a Michelob or a Coors Light,

1 a pack of Marlboros. While you're at it, make it Light."

2 Is this the acts? And then drinks
3 with them, denies it on the stand, lies to you, tells
4 you a story.

5 You have reasonable doubt that she
6 was actually kidnapped? Do you have reasonable doubt
7 as to what actually happened on that night in question?
8 Because there are facts.

9 And Joel Burkett's testimony is also
10 unrebutted at this time.

11 Be nice to have Tina Cage -- says,
12 "I never saw him before. I wouldn't ride on a
13 motorcycle because I'm definitely afraid of motorcyles
14 and because I didn't have a helmet. I never saw
15 Joel Burkett in the other store on Eastern."

16 Now, let's take the most amazing
17 fact. And I've been involved in criminal law for a
18 long time.

19 What would a guy who's in his
20 right mind, who's let's say in a planning stages of
21 a robbery on December 17th at 4:00 o'clock, some
22 according to the testimony eight hours before this
23 event happened, go to the home office -- the home
24 office of Stop & Go, make out a job application,
25 go to an interview and go to the manager and say,
26 "Hey, my name is Raymond Haire."

27 You've got that evidence of that
28 thing. "My name is Raymond Haire. I'm 23 years old.
29 I'm looking for a job. I'll take a polygraph test,"
30 and so forth. Does that make you wonder?

31 Would anybody in their right mind
32 go and give your home address? His home address is on

1 there. Everything is on that job application about
2 Raymond Haire's life. Address, telephone number.
3 Anything you want.

4 Now, you know, we have to use
5 common sense. Would anybody in their right mind go
6 to an interview and give all that information?
7 That's like going to the First National Bank and
8 going to ask them for a loan and filling out the
9 loan papers and doing all this, then walking over to
10 the counter and sticking up the bank and walk out
11 because the loan process wasn't fast enough.

12 This is not consistent with any
13 kind of criminal activity.

14 He testified that Tina Cage told
15 him about the job and that's it good working conditions.
16 We know also Tina Cage gets fifty bucks if she
17 recommends somebody. Make you wonder? Make you wonder
18 what if Tina Cage actually told him, "Go get that job.
19 Apply. I can get fifty bucks. I need bread."

20 Make you wonder? Make you have
21 reasonable doubt whether Tina Cage ever knew him?
22 A coincidence that he would go and make application
23 to Stop & Go, the same place that Tina Cage worked,
24 the same place that he testified he was dating a
25 girl with. Make you have reasonable doubt?

26 You know, I can't, of course,
27 get into your minds, but you have to wonder whether
28 or not anybody would do that.

29 Every act that he's done in this
30 case is consistent with innocence. The North Las Vegas
31 cop -- to me, incredulous.

32 MR. BLOXHAM: I'm going to object, your

1 Honor. Counsel keeps putting his own personal beliefs
2 in this, and I think under the circumstances the jury
3 shouldn't hear what counsel believes, but he should
4 be commenting on the evidence. I believe that's the
5 law.

6 THE COURT: The law is that you can't
7 state a personal belief.

8 MR. BUCHANAN: Incredulous. And said
9 by Officer Smith, a law enforcement officer of fifteen
10 years.

11 Make application to a convenience
12 store that you're going to rob? Go talk to a cop the
13 next morning after you've supposedly done all these
14 things? Make you wonder? Make you have reasonable
15 doubt that maybe Tina Cage lied about this whole
16 affair to cover up something else?

17 All the facts are there. Do you
18 have reasonable doubt that this event occurred? Do
19 you have reasonable doubt? Because that's what you're
20 talking about.

21 You can walk out of here and say,
22 "I think he might have done it, but I just wasn't
23 convinced," and bring back a not guilty, and that's
24 in accordance with the law.

25 Ladies and gentlemen of the jury,
26 I'm not going to belabor this. I could go over it.
27 I -- I think I have. We've gone over the oral sex
28 and the anal sex. We know that she -- she told some
29 facts. Thirty years old. Is this a thirty year old
30 man? Did he sound like a thirty year old man on the
31 stand?

32 Do we know it was a blue, green car?

1 Do we have some suspicions that maybe Tina Cage gave a
2 wrong address or wrong age so that this person wouldn't
3 be picked up, so that this crime would go undiscovered
4 and yet still be plausible enough to sell to the police
5 so she wouldn't get in trouble with her husband,
6 wouldn't get in trouble with Stop & Go for her
7 indiscretions or her faulting.

8 You can't tell me because
9 Joel Burkett, James Delaney's testimony is unrebutted.
10 You don't know.

11 And, ladies and gentlemen, if you
12 think he did it but you don't know, you have unrebutted
13 testimony that you can't answer in your own mind,
14 because there's nothing else you can get that can any
15 way rebut Delaney's and Joel Burkett's testimony,
16 because no one did it.

17 If you don't know, according to the
18 law, he's innocent. So, ladies and gentlemen, what
19 I'm going to ask you is to go back there, think about
20 these things. Think about these types of what has
21 actually happened. We're never going to know what
22 actually happened that night -- whether Tina Cage had
23 an indiscretion, got caught up in a web of intrigue,
24 a web of deceit. To cover herself, lied.

25 We don't know whether it was part
26 deceit, part true. Sexual assault took place. Forces
27 attention on her. We don't know.

28 So you're going to have to take all
29 those circumstances and all those events and put them
30 together and come up with a just verdict, and what I
31 say the just verdict is is not guilty.

32 You can't find him guilty if you

1 don't know. If you don't know, there's only one
2 verdict -- not guilty.

3 If you walk out of here, say not
4 guilty, and still feel he might have done it but you
5 weren't given the evidence because of the lies of
6 Tina Cage and all the other events that occurred which
7 don't make it plausible that this actually happened the
8 way it went down, then the only verdict you can come
9 back with is not guilty.

10 You were sworn to uphold your duty
11 to the Judge, to us during questions, whether you could
12 be fair and impartial and arrive at a just and true
13 verdict. Now you have to put those facts in light of
14 these laws that the Judge has given you and come back
15 with a just verdict.

16 And, ladies and gentlemen, what I'm
17 telling you and what I'm asking you to do is come back
18 in, look at this 19 year old kid and say, "You might
19 not be number one citizen, but in the eyes of the laws
20 of the United States and the State of Nevada, you are
21 not guilty." And God hope it doesn't happen again.

22 I ask you to bring back that verdict,
23 and I thank you for your attention.

24 THE COURT: Mr. Bloxham, you may make the
25 State's rebuttal argument.

26 MR. BLOXHAM: Thank you, your Honor.

27 Ladies and gentlemen, after being
28 involved in this trial, is there any wonder in your mind
29 why many victims of crimes fail to report, and especially
30 rape -- fail to report it to the police? Fail to follow
31 through on prosecutions. Refuse to give statements to
32 the police?

1 Is there any question in your minds
2 why a woman wouldn't want to go through what Tina Cage
3 has gone through? Why she wouldn't want to have to
4 re-live that experience with the police? Why she
5 wouldn't want to have to re-live that experience with
6 the hospital? Why she wouldn't want to have to re-live
7 that experience at preliminary hearing and then be
8 subjected to cross-examination by defense counsel?
9 And then again at trial, re-live it?

10 It's bad enough when the State asks
11 her the questions, but also under cross-examination.
12 When you have two co-defendants, you do it twice. Is
13 there any wonder in your mind why a woman may refuse
14 to even report the crime?

15 That's why that man right there felt
16 secure in walking in that auto parts December 19th. He
17 had threatened her with a knife. The co-defendant had
18 said, "She won't tell," and he had released her.

19 He had asked her to describe him
20 first, and she didn't mention anything about tattoos,
21 just said six-foot, blond hair, and he felt perhaps he
22 was comfortable, no problem.

23 That's why the man felt comfortable
24 that this woman would not describe him, couldn't
25 describe him or would not describe him, would not
26 follow through on it.

27 You know, Mr. Buchanan made some
28 interesting comments. He said the State put all this
29 evidence in, and for what? I'll tell you why --
30 because if the State came forward and presented this
31 case --

32 Well, let me explain it this way.

1 What did you see the State do? The State had, to first
2 begin with the case, had to step by step go through
3 the facts and step by step fix this defendant up with
4 the crime because, believe me, if we had not shown
5 the identity of the perpetrator, this man would have
6 taken the stand and said, "It wasn't met."

7 He couldn't do that, because the
8 identity was too darn good.

9 Next, back peddled. He stepped a
10 little back and said, "Well, I was -- I was with her,
11 but no -- no sex, no -- nothing else."

12 Well, Richard Renner could establish
13 his hair in her vaginal area and acid phosphatase in the
14 vagina, so he's got to back peddle once more, step and
15 say, "Well, it was me. We did have sex, but it was
16 consensual."

17 He takes the farthest step back,
18 because the evidence is so overwhelming that he's back
19 there. He's on the very back step he's got, and he's
20 arguing to you the only thing that he can, and that's
21 consent. I don't think there's any question, as you
22 look at the strategy. You didn't hear that story
23 that he told on the stand. You didn't hear that.
24 No one heard that. No police agency heard that until
25 he told it on the stand, and Mr. Buchanan has the
26 nerve to say, "Well, why did the State show you his
27 identity? Why did the State put in his belt buckle?"

28 The State had to, ladies and
29 gentlemen, to put him back to the very last step he
30 had, and that was to argue, "Yes, she came along
31 voluntarily."

32 Mr. Buchanan starts with a robbery.

1 He says a -- what she did with the money in the register
2 was take it out of the register and put it in her purse.
3 She had a twenty dollar bill in the register? Ladies
4 and gentlemen, the policy of the Stop & Go -- it only
5 makes sense, you're going to keep fifty dollars in the
6 register, that you keep small bills. If you had a
7 twenty, you'd put it in the safe. You keep the money
8 to make change.

9 He continues on. Well, she didn't
10 see anybody take it, so you can't find a robbery.

11 Ladies and gentlemen, that's just
12 not the law. That's just not the law. If I was to
13 kidnap somebody and rob them and kill them, they're
14 never going to tell the police there was a robbery,
15 but you can establish the robbery through the
16 circumstantial evidence. The fact that purse is gone.
17 The fact that this and that. Fits together, and
18 that's what we've got here.

19 We've got the money missing from
20 the register. We've got him leaving with
21 Defendant No. 2, the shorter, the younger guy. Got
22 him leaving. The circumstances are there. The
23 money was taken from the register. It's just
24 totally, totally unbelievable.

25 Well, it's not totally unbelievable.
26 It's just highly unlikely that somebody else would have
27 walked right in the store after she was abducted. The
28 money in the register, taken the money. Then left.

29 And here comes George Williams.
30 Left. That's highly unlikely, ladies and gentlemen.

31 He talks about the kidnapping. He
32 says, "Wait a minute. He didn't hold a knife. Wait a

1 minute. He was merely present."

2 Ladies and gentlemen, you've got a
3 good instruction on what an accomplice is, and it
4 talks about aiding, whether present or absent. You can
5 be convicted of a crime, and you can be guilty of a
6 crime if you assist in the perpetration of that crime,
7 even if you're not there.

8 If there's any doubt in your mind
9 on the facts of Tina Cage -- that this man wasn't
10 helping. That would be an unreasonable -- let's assume
11 you accept Tina Cage's story. This man had to have
12 helped. He was driving the car. He had to have helped.
13 He took her to the desert. He had to have been helping,
14 under all the facts that have been shown.

15 He talks further. He says --
16 sexual assault. He says there's only one hair found.
17 Ladies and gentlemen, you're going to have the rape,
18 or the recoveries of the hair to take back to the
19 jury room with you.

20 Richard Renner testified that he
21 made one hair. He also testified he had scanned a
22 number of them and made this one hair, but he didn't
23 have time to fully analyze the others.

24 I've never looked in that envelope,
25 the hair that was found in the car, but you'll have it.
26 Why don't you open it up and look in it and see if
27 there's no other hair there?

28 But Mr. Buchanan would talk about
29 the one hair. He talks about no sexual assault because
30 there's no marks on the body.

31 Ladies and gentlemen, there's a jury
32 instruction. You know, a person can be so frightened

1 that they do nothing, and therefore no marks. It's a
2 jury instruction, and it's 14, and it's designed for
3 that very purpose. It says if her yielding -- talking
4 about sexual intercourse -- has been induced by fear
5 that it's necessary to save her from violence or other
6 physical harm or that it offers hope of so doing, her
7 conduct in such circumstances does not amount to consent.

8 You don't have to get beaten up,
9 ladies, if you're being raped. You don't have to.
10 And they're still committing the crime, and that's what
11 that jury instruction tells you. I'd ask you to read it
12 over when you get back there.

13 He talks about the lineup. She could
14 identify number -- on the second lineup, she identified
15 the defendant, Joel Burkett. Rapist Burkett. She didn't
16 identify the first guy in the first lineup, and
17 Mr. Buchanan offers you an explanation she didn't want
18 to finger the wrong guy. How could she give a good
19 description of him. Then the night before, how could
20 she know.

21 She was asked, and the lineup, on
22 the first lineup, she said, "No. 2 resembles him."
23 And who is No. 2? Ted Burkett. I'd submit to you
24 she -- she did finger No. 2.

25 And then Mr. Buchanan asks, "Why
26 didn't she take the stand again?" Ladies and
27 gentlemen, you are to decide this case on the facts
28 you receive. You are not to speculate. You are not
29 to make hypotheses and try to figure what if, what if,
30 what if. The case has been presented to you. The
31 evidence has been presented to you.

32 Mr. Buchanan asks you to merely

1 speculate on what else. You know, there's an old saying
2 in law school that if the facts are against you, you
3 argue the law, and if the law is against you, you argue
4 the facts, and if both of them are against you, you
5 argue like hell. And that's what Mr. Buchanan is doing.

6 Failed to address a number of issues
7 that are important to this case, and he just walked
8 around them, talked about why would he go and apply
9 for a job the same day he's planning the robbery.
10 Why would he do that? Well, Mr. Buchanan says,
11 "Hey. She wanted fifty dollars, because if she got
12 a guy working for the company, she gets fifty dollars."
13 That and some other things.

14 You didn't see Tina Cage's name
15 on the application. You see some person named
16 Daughtery. Mr. -- or pardon me -- Burkett, defendant
17 Burkett doesn't mention her name at the interview.
18 At least, when he was asked, "Did you mention her
19 name at the interview," the kind of statement that
20 could be verified to the interviewer, says, "Well,
21 I don't remember." He testified she's the only one
22 he knows that works at Stop & Go, but he doesn't
23 mention her name. He doesn't have it on the
24 application. She's not going to get the fifty
25 dollars. Some guy Daughtery will, if he's hired.
26 Again, he just apparently wasn't Stop & Go material.

27 Ladies and gentlemen, I wrote
28 some notes, and I'm getting lost in them. I think
29 the very last thing I'd like to ask you -- there's
30 a jury instruction that is one of the -- it's the
31 number one --

32 Let's call it this.

1 It's Jury Instruction No. 24, and
2 it tells you you must bring to the consideration of the
3 evidence your everyday common sense and judgment as
4 reasonable men and women.

5 Ladies and gentlemen, same story
6 that would sound ridiculous to you on the street is
7 no less ridiculous when it's told by this man on the
8 stand.

9 Ladies and gentlemen, does it sound
10 in keeping with the lifestyle of Tina Cage to go hopping
11 off away from her store -- good employee and wife and
12 mother -- hopping away from the store to hurry to a
13 party, and then not go in because she doesn't know
14 anybody. That's the kind of party she would go in.
15 She's a married woman, doesn't want this getting back
16 to her husband. That's the kind of party she would
17 go in.

18 Yet he says she didn't go in 'cause
19 she didn't know anybody. Husband's going to check back
20 on her in a short time. He's checking up, make sure
21 she's okay. Yet she's going to leave her store, leave
22 her purse, leave everything and go off with him. She's
23 in a hurry to do so.

24 They leave that store, where there's
25 gas and beer, to go down the street to another store
26 and buy -- you guessed it -- gas and beer.

27 Ladies and gentlemen, is it in
28 keeping with his background to commit this kind of a
29 crime? Consider the evidence you heard, and I'm sure
30 that you're going to reach the right conclusion there.

31 You're the conscience of this
32 community. Mr. Buchanan has asked you can you come back

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1 and look that man in the face and say, "I find you
2 guilty of these crimes"? I asked the question on
3 jury voir dire -- I asked, "I'm sitting over here
4 alone. There's nobody sitting next to me, but I
5 represent the people of the State of Nevada." So
6 when you come back in here, I asked you to look
7 everybody in the face, everybody in the State of
8 Nevada, and answer the question, "Is that the kind of
9 man that you want out on the street?"

10 Ladies and gentlemen, I want to
11 thank you for your service as jurors. It's one of the
12 highest forms of civic service, and on behalf of
13 Robert Miller, myself -- Robert Miller is the
14 District Attorney of Clark County -- we thank you for
15 your time and attention, and we in the most sincere
16 terms ask you to return the verdicts of guilty to
17 all four counts.

18 Now, perhaps before I step down --
19 you've got about ten verdict forms. There's one, for
20 example, robbery, and then one right after it, robbery
21 with use of a deadly weapon. If you return, for
22 example -- we're asking a robbery with use of a
23 deadly weapon. Only robbery with use of a deadly
24 weapon would be signed.

25 Kidnapping is kidnapping, first
26 degree and then kidnapping with use of a deadly weapon,
27 and we ask that the kidnapping with use of a deadly
28 weapon be signed. You'd only return one.

29 And then also the sexual assault.

30 Thank you again for your time and
31 attention.

32 THE COURT: Would the officers come up

1 to be sworn to take charge of the jury?

2 (At this time, the officers
3 were sworn to take charge of the
4 jury.)

5 THE COURT: Miss Clerk, would you
6 swear the officers to take charge of the alternate
7 jurors?

8 (At this time, the officers
9 were sworn to take charge of the
10 alternate jurors.)

11 THE COURT: The ladies and gentlemen of
12 the jury may be excused to the jury room for
13 deliberation at this time.

14 Terry will show you the way.

15 The alternate jurors may -- if you'd
16 come, the alternate jurors would come right down here
17 to the center. Then you can go with these folks.

18 (At this time, the jury
19 and alternate jurors left
20 the courtroom.)

21 THE COURT: Court is in recess to the call
22 of the bailiff.

23 (Recess.)

24 (At 4:44 p.m., the jury
25 and alternate jurors returned
26 to the courtroom.)

27 THE COURT: Miss Clerk, would you call
28 the roll of the jury and the alternate jurors?

29 (At this time, the clerk
30 called the roll of the jury
31 and alternate jurors, and all
32 members indicated their presence.)

1 THE COURT: At this time, the Court has
2 a note which we'll mark for identification as
3 Court's Exhibit Roman Numeral II so it will remain a
4 part of the record.

5 The note reads, "5/4/81. Buchanan
6 stated that an associate of his heard a juror in the
7 hallway state he is guilty. Why didn't he have the
8 juror pointed out by the person who heard the statement
9 to find out if it was one of us? Fred Stone.
10 Foreman, Steve ..." Is it Bulger?

11 JUROR BULGER: Uh-huh, that's right.

12 THE COURT: "Bulger. 4/4/81."

13 Of course, this isn't evidence in
14 the case. This is a statement made by counsel in --

15 JUROR NO. 2: Your Honor, that should
16 be 5.

17 THE COURT: What should be 5?

18 JUROR NO. 2: Should be 5/4. I made a
19 mistake in the note.

20 THE COURT: Okay, fine. Thank you.

21 The arguments of counsel aren't
22 evidence in a case. They're illustrations and
23 comparisons that are made, and this is something that
24 should not be considered by any member of the jury in
25 the case.

26 We can't supplement the evidence,
27 so you have to go in your deliberation on the evidence
28 that was presented -- either documentary evidence or
29 the testimony of witnesses. And the arguments of
30 counsel is in no way any evidence to be considered by
31 the ladies and gentlemen of the jury.

32 The jury may retire for further

1 deliberation.

2 (At this time, the jury
3 and alternate jurors left
4 the courtroom.)

5 THE COURT: Court is in recess to the call
6 of the bailiff.

7 (Recess.)

8 (At 7:25 p.m., the jury and
9 alternate jurors returned to the
10 courtroom.)

11 THE COURT: Miss Clerk, will you call the
12 roll of the jury and the alternate jurors?

13 (At this time, the clerk
14 called the roll of the jury
15 and alternate jurors, and all
16 members indicated their presence.)

17 THE COURT: Mr. Bolger, have the ladies
18 and gentlemen of the jury reached four verdicts in
19 this case?

20 THE FOREMAN: Yes, we have, your Honor.

21 THE COURT: Would you hand the four
22 verdict forms to the bailiff, please?

23 Miss Clerk, will you read the four
24 verdicts aloud and inquire if these are the verdicts
25 of the jury?

26 THE CLERK: "Case No. C52190,
27 Department No. VII.

28 In the Eighth Judicial District
29 Court of the State of Nevada, in and for the County of
30 Clark.

31 The State of Nevada, plaintiff,
32 versus Joel Burkett aka Raymond Haire, defendant.

1 "Verdict: We, the jury in the above
2 entitled case, find the defendant, Joel Burkett aka
3 Raymond Haire, guilty of robbery with use of a deadly
4 weapon, Count I.

5 Dated this 5th day of May, 1981.

6 Steve --"

7 THE FOREMAN: R. Bulger, B-u-l-g-e-r.

8 THE CLERK: "Steve R. Bulger, Foreman."

9 "Case No. C52190, Department No. VII.

10 In the Eighth Judicial District Court
11 of the State of Nevada, in and for the County of Clark.

12 The State of Nevada, plaintiff,
13 versus Joel Burkett aka Raymond Haire, defendant.

14 Verdict: We, the jury in the above
15 entitled case, find the defendant, Joel Burkett aka
16 Raymond Haire, guilty of first degree kidnapping with
17 use of a deadly weapon, Count II.

18 Dated this 4th day of May, 1981.

19 Steve R. Bulger, Foreman."

20 "Case No. C52190, Department No. VII.

21 In the Eighth Judicial District
22 Court of the State of Nevada, in and for the County of
23 Clark.

24 The State of Nevada, plaintiff,
25 versus Joel Burkett aka Raymond Haire, defendant.

26 Verdict: We, the jury in the above
27 entitled case, find the defendant, Joel Burkett aka
28 Raymond Haire, guilty of sexual assault, Count III.

29 Dated this 4th day of May, 1981.

30 Steve R. Bulger, Foreman."

31 "Case No. C52190, Department No. VII.

32 In the Eighth Judicial District Court

1 "of the State of Nevada, in and for the County of Clark.

2 The State of Nevada, plaintiff,
3 versus Joel Burkett aka Raymond Haire, defendant.

4 Verdict: We, the jury in the above
5 entitled case, find the defendant, Joel Burkett aka
6 Raymond Haire, guilty of sexual assault, Count IV.

7 Dated this 4th day of May, 1981.
8 Steve R. Bulger, Foreman."

9 Ladies and gentlemen of the jury,
10 are those your four verdicts as read, so say you one,
11 so say you all?

12 THE JURY: (In unison) Yes.

13 THE COURT: Do either of the parties
14 desire to have the jury polled?

15 MR. BLOXHAM: State does not, your Honor.

16 MR. BUCHANAN: Defense does not.

17 THE COURT: The clerk will now record
18 the verdicts in the minutes of the Court.

19 At this time, I would like to --
20 in the presence of counsel and the spectators and
21 the ladies and gentlemen of the jury -- thank the
22 members of the staff here of Department No. VII. We
23 are proud of the caseload that we accomplish in this
24 department, and I always like to thank the members of
25 this staff, because they're very loyal and very good
26 working people who enable me to accomplish my task
27 in the manner that we've been able to.

28 I would also like to thank and
29 congratulate the attorneys that have tried this case.
30 These two gentlemen are two of our leading trial
31 lawyers in the city. They try cases on a regular
32 basis in the courts and are both tops in the legal

1 profession, and I always welcome either of these
2 gentlemen into this courtroom.

3 Last, and certainly but not least,
4 I would like to thank and congratulate the ladies and
5 gentlemen of the jury and the two alternate jurors
6 for their services in these proceedings. By saying
7 this, this doesn't say that I approve or disapprove
8 of your verdict, because of course the findings of fact
9 and the fact questions are the sole province of the
10 jury.

11 But I noted at the outset that
12 you were serious people who listened and paid
13 attention during these proceedings, and I'm sure that
14 the verdicts that you've returned are the products of
15 conscientious deliberation.

16 In our country, we enjoy personal
17 rights and property rights to a much greater degree
18 than has ever been known to any other society in
19 history, and the reason for this is our judicial
20 system that has as its very foundation trial by jury.
21 Years ago, when our country was founded, the idea was
22 to preserve rights rather than to accomplish justice
23 inexpensively, swiftly and in a super expedient way;
24 and this day and age, we hear a lot of criticism of
25 the jury system. We hear people say, "Well, it's
26 inconvenient. It's expensive."

27 But I hope as you leave here, even
28 though this has probably been a traumatic experience
29 for you due to the gravity of the case, that you think
30 in terms of your contribution to the judicial system
31 and the strength of the rights that we have in our
32 country as opposed to the inconvenience that it's been

1 to you.

2 At this time, with the thanks of
3 the Court, I would excuse the ladies and gentlemen of
4 the jury and the alternate jurors.

5 (At this time, the jury
6 and alternate jurors left
7 the courtroom.)

8 MR. BUCHANAN: Your Honor, the defendant
9 has requested -- and not with my concurrence -- but to
10 waive the P & P report and be sentenced now, and it's
11 my advice to him not to do so, but he's requested me
12 to ask the Court, which I've done.

13 MR. BLOXHAM: Your Honor, I believe
14 statutorily it's required.

15 THE COURT: Yes. I have to have it.
16 The statute requires that I go thirty days. I can't
17 sentence until somebody's -- until, I think, after
18 thirty days. Then I probably could.

19 MR. BUCHANAN: All right, but he made
20 the request and, as I say, it's not my concurrence.

21 MR. BLOXHAM: We would request any bail
22 that has been set, your Honor, to be revoked.

23 THE COURT: In view of the gravity of
24 the charges and the convictions, at this time the
25 Court revokes any bail that's been set, and the
26 defendant will be held without bond.

27 This case is set over to Tuesday,
28 June 2, 1981 at the hour of 9:30 a.m. for entry of
29 judgment and imposition of sentence.

30 The defendant is remanded to the
31 custody of the Sheriff.

32 * * * * *

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ATTEST: Full, true and accurate transcript
of the proceedings had in the jury trial of JOEL BURKETT
aka RAYMOND HAIRE.

Constance Kroon
CONSTANCE KROON, CSR, No. 75

75
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

CLERK'S CERTIFICATE

May 11 4 46 PM '83

C52190

VII P

STATE OF NEVADA, ss.

LORETTA BOWMAN
CLERK
BY *[Signature]*

I, C. R. Davenport, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of *Burkett v. State*, No. 13600.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "ORDER this appeal dismissed."

Judgment, as quoted above, entered this 21st day of April, 19 83.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of said Supreme Court, at my office
in Carson City, Nevada, this 10th day of
May, 19 83

C. R. Davenport

Clerk of Supreme Court of the State of Nevada

By

Joanne C. Richards
Deputy



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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT a/k/a RAYMOND
HAIRE,

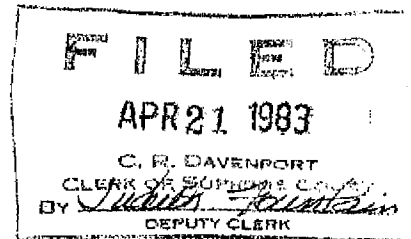
Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 13600



ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction of one count of robbery with the use of a deadly weapon, one count of first degree kidnapping with the use of a deadly weapon, and two counts of sexual assault.

Appellant first contends that the trial court erred by instructing the jury that a reasonable doubt is equivalent to a "substantial doubt." However, appellant did not object to the giving of this instruction, and thus cannot now complain about the instruction unless it constituted plain error. See *McCall v. State*, 91 Nev. 556, 540 P.2d 95 (1975). The reasonable doubt instruction given by the trial court was in accordance with the provisions of NRS 175.211, and we have expressly approved the giving of such an instruction on several occasions. See *Taylor v. State*, 96 Nev. 385, 609 P.2d 1238 (1980); *Buckner v. State*, 95 Nev. 117, 590 P.2d 628 (1979); *Cutler v. State*, 93 Nev. 329, 566 P.2d 809 (1977). We perceive no reason to disturb the above decisions at this time, and we therefore conclude that the instruction in this case did not constitute plain error.

Appellant also contends that the prosecutor committed misconduct during his closing argument by making two references to appellant's prior felony conviction.¹ Appellant contends that the

¹

Appellant admitted during direct examination that he had previously been convicted of assault with a deadly weapon.


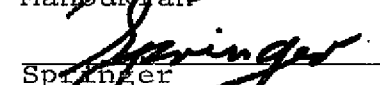

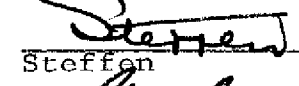

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comments were made for the impermissible purpose of showing that appellant had a propensity to commit crimes. See NRS 48.045. Since appellant did not object to the comments when they were made, he has waived his right to object to them on appeal, unless he can show that the comments were "patently prejudicial" to his case. See Garner v. State, 78 Nev. 366, 374 P.2d 525 (1962).

We do not believe that the prosecutor's comments were improper, much less that they were "patently prejudicial." Taken in context, the comments were clearly made for the permissible purpose of attacking appellant's credibility. See NRS 50.095; Givens v. State, 99 Nev. ___, 657 P.2d 97 (1983).

Accordingly, we hereby

ORDER this appeal dismissed.

 Mahoukjian, C. J.
 Springer, J.
 Mowbray, J.
 Steffen, J.
 Gunderson, J.

cc: Hon. Carl J. Christensen, District Judge
Hon. Brian McKay, Attorney General
Hon. Robert J. Miller, District Attorney
Messrs. Smith, Maurer & Ayers
Loretta Bowman, Clerk

78
1 CASE NO. C52190

FILED

AUG 20 11 46 AM '87

Loretta Bowman
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

8 STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 JOEL BURKETT)

12 Defendant.)

13
14 CERTIFICATE OF DESTRUCTION

15 The undersigned does hereby certify that she destroyed the
16 following exhibits in accordance with the Order of the Court
17 filed therein;

18 State's Exhibits

Defense exhibits
A-Work application
B-notebook on onterviews

19 8-12 Photograph
20 14-15 Photos
21 17-records of stop & go
22 18-34 Photos
23 36-Evidence envelope & contents
24 37-Evidence envelope & contents
25 40-booking sheet
26 50-Nevada ID card
27 51-application fir Nevada ID
28 52-Birth certificate
53-Subst of attorneys

Dated this

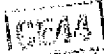
day of

AUG 19 1987

LORETTA BOWMAN, COUNTY CLERK

By

Loretta Caldwell
Deputy County Clerk



166 100

1 CASE NO. C52190

2 DEPT, NO.

AUG 20 11 45 AM '87

Loretta Bowman
CLERK

3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 JOEL BURKETT)

11 Defendant.)

12
13
14 O R D E R

15 Upon the ex-parte Petition of LORETTA BOWMAN, COUNTY CLERK,
16 and good and sufficient cause appearing to the Court, therefor

17 IT IS HEREBY ORDERED that the exhibits described and listed
18 in the Petition as having been admitted into evidence in the
19 above entitled action be, and the same are hereby Ordered to be
20 given to the Custodian of Evidence, County Clerk & Metro
21 and by him to be destroyed or otherwise disposed of.

22 Dated this

day of

23 AUG 12 1987

24 *Carl W. White, Jr.*
25 DISTRICT JUDGE

26
27 REX BELL DISTRICT ATTORNEY

28 *R. D. Jeffers*
Deputy District Attorney

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[Stamp]

76
1 CASE NO. C52190
2 DEPT. NO.
3 DR. NO. 80-95384
4

AUG 20 11 46 AM '87

Loretta Bowman
CLERK

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 STATE OF NEVADA,)
8 Plaintiff,)
9 -vs-)
10 JOEL BURKETT)
11)
12 Defendant.)

13 P E T I T I O N

14 The Petition of LORETTA BOWMAN, COUNTY CLERK, moves this
15 Honorable Court for an ex-parte Order to destroy or dispose of
16 any exhibits in her custody for at least two (2) years after
17 Judgment has been filed and the time for taking an appeal has
18 expired.

19 The exhibits sought to be destroyed or disposed of are
20 of no value and that they do not have any value warranting their
21 delivery to the Clark County Treasurer as the property of said
22 County.

23 The following exhibits are to be destroyed or disposed
24 of by the Custodian of Evidence of County Clerk & Metro

25
26 ///////////////
27 ///////////////
28 ///////////////

163
[SEAL]

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97 (R)

1 State's Exhibits

2 1-evidence envelope & contents
3 1a-underpants
4 2-black leather vest
5 3-knife & case
6 4-keys
7 5-Jean jacket
8 6-knife
9 7-belt buckle
10 8-12 photograph
11 13-fingerprint exemplar
12 14-15 photo
13 16-latent finger prints
14 17-records of stop & go
15 18-34 Photos
16 35-evidence envelope
17 35a-black & white t-shirt
18 36-evidence envelope & contents
19 empty camel cigarette package
20 37-evidence envelope & contents
21 marlboro cigarettes
22 38-evidence bag & contents
23 mattress cover
24 39-evidence bag & contents
25 40-booking sheet
26 41-rape kit
27 42-hair collect kit
28 43-45 hair sample

46-hair collect kit
47-evidence envelope & hair
48-49 Evidence envelope-Hair
5-Nevada ID card
51-application for Nevada ID
52-Birth certificate
53-Subst. of attorneys

Defense exhibits
A-work application
B-notebook on interviews

WHEREFOR, Petitioner respectfully prays that an Order be
entered by this Honorable Court authorizing her to effect the
destruction or other disposition of the exhibits held in her
custody.

Dated this 26 day of June, 1987.

LORETTA BOWMAN, COUNTY CLERK
Petitioner

By Loretta Bowman
Deputy County Clerk

REX BELL, DISTRICT ATTORNEY

By R. A. Jeffers
Deputy District Attorney

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1 CASE NO. C52190
2 DEPT. NO.
3 DR. NO. 80-95384

FILED

DISTRICT COURT SEP 1 8 56 AM '87

CLARK COUNTY

NEVADA
CLERK

7 STATE OF NEVADA,)
8 Plaintiff,)
9 -vs-)
10 JOEL BURKETT)
11 Defendant.)

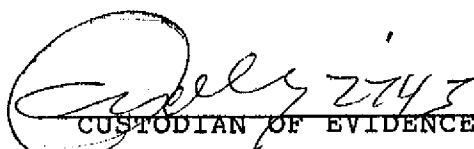
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13 R E C E I P T

14 As Custodian of Evidence, I do hereby acknowledge that I
15 have received the following exhibits which were heretofore
16 admitted into evidence in the above entitled action, for destruc-
17 tion or other disposition in accordance with the Order of the
18 Court.

19 State's exhibits

20 1-Evidence envelope & contents	41-rape kit
21 1a-under pants	42-hair collect kit
22 2-black leather vest	43-45 hair sample
23 3-knife & case	46-hair collection kit
24 4-keys	47-evidence envelope & hair
25 5-Jean jacket	48-49 evidence envelope hair
26 6-knife	
27 7-belt buckle	
28 13-fingerprint exemplar	
16-latent finger prints	
35-evidence envelope	
35a-black & white t-shirt	
38-evidence bag & contents	
mattress cover	
39-evidence bag & contents	

27 Dated this day of


CUSTODIAN OF EVIDENCE

METRO POLICE DEPT.

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COUNTY CLERK

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IN THE EIGHTH JUDICIAL DISTRICT

COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF

CLARK

Joetta Swann
CLERK

JOEL T. BURKETT,

Petitioner,

vs.

Mr. McDANIELS,
Warden,

Respondent.

February 28 1994

Case No. *052190*
VII

BRIEF IN SUPPORT OF PETITION

FOR WRIT OF HABEAS CORPUS

Joel T. Burkett
P.O. Box 1989
Ely, NV 89301

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1 concurrent to the sentence imposed in count 2.

2 STATEMENT OF FACTS

3 At the time Petitioner was orally sentenced the court
4 clearly stated that Counts 3 and 4 were to run concurrent with
5 the sentence imposed in Count 2. Leaving Petitioner to serve a
6 total of two fifteen (15) year terms for Count 1, and two life's
7 with the possibility of parole for Count 2.

8 Because of a mistake in the written order of the Judgment of
9 Conviction wherein the Court ran Counts 3 and 4 concurrent with
10 both Counts 1 and 2, the prison was left to believe Petitioner
11 must serve a total of three (3) life terms. Because of the
12 written mistake in the Judgment of Conviction Petitioner has been
13 denied the chance to ever parole from Count 1 over to Count 2,
14 and now that Petitioner has served fourteen (14) years on Count 2
15 and may receive a parole in June of 1994 he's left to serve a
16 life term never imposed by the Court. [See sentencing transcript
17 Exhibit-A and Judgment of Conviction Exhibit-B attached to
18 Petition For Writ of Habeas Corpus]

19 ARGUMENT

20 There can be no question "when order of Judgment and
21 commitment contains clerical error, but trial Judge's orally
22 pronounced sentence unambiguous, Judge's oral sentence in
23 defendant's presence overrides written Judgment," United States
24 v. Villano, 816 F.2d 1448 (10th Cir., 1987)(en banc); see also:
25 United States v. Blackner, 901 F.2d 853 (10th Cir., 1990); United
26 States v. Chasmer, 952 F.2d 50 (3rd Cir., 1990); United States v.
27 Khoury, 901 F.2d 975 (11th Cir., 1990).

28 Indeed a "defendant is entitled to know precise penalty for

1 each count and order in which sentence must be served," Benson v
2 United States, 332 F.2d 238 (5th Cir., 1964). And the "failure
3 to individualize a sentence compels reversal or resentencing,"
4 United States v. Manaco, 852 F.2d 1143 (9th Cir., 1983).

5 Whereas here, Petitioner has been denied due process in ever
6 being able to parole from Count 1 over to Count 2, and now
7 Petitioner is left to serve a life term never meant to serve by
8 the sentencing Court. The discrepancy between the orally imposed
9 sentence and written order of the Judgment of Conviction "has
10 worked to the extreme detriment of the Petitioner. This Court
11 has jurisdiction to vacate or modify the suspect sentence or
12 Judgment," State v. Eighth Judicial District Court, 667 P.2d 1044
13 (Nev. 1984)(emphasis added).

14 Moreover, the Nevada Supreme Court has long ago stated in
15 Warden v. Peters, 429 P.2d 549 (Nev. 1967) that:

16 "we explicitly hold that when a mistake is
17 made in rendering a Judgment, the sentencing
18 Court has the inherent power to reconsider
19 the judgment, and if the Judgment is void the
20 sentence automatically fails." (emphasis
21 added) Peters, (supra) Id. at 302.

22 Petitioner respectfully states that due to the Judgment of
23 Conviction having "worked to the extreme detriment of
24 Petitioner," State v. Eighth Judicial District Court, (supra),
25 that said Judgment must be void and Petitioner's sentence must
26 "automatically fail," Peters, (supra).

27 CONCLUSION

28 Petitioner respectfully submits, based upon the above points
and authorities that the issue raised by the Petition For Writ of
Habeas Corpus is of such a Constitutional dimension as to warrant
the issuance of the Writ of Habeas Corpus.

202

RELIEF SOUGHT

Wherefore, Petitioner Joel T. Burkett moves this Honorable Court to grant the following relief:

- (A) Accept jurisdiction over this case pursuant to N.R.S. 177.320;
- (B) Require the Respondent to answer the allegations in the Petition For Writ of Habeas Corpus and Brief in Support;
- (C) Hold such evidentiary hearing as this Court may deem necessary or appropriate;
- (D) Issue a Writ of Habeas Corpus freeing Petitioner from his unconstitutional sentence and confinement.

DATED this 20th day of January, 1994.

Respectfully submitted,


Pro Se Petitioner

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EST

REC'D IN CLK. DIVISION

1 CASE NO: 052190
2 DEPT NO: VII

FILED

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Loretta L. Luman
CLERK

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IN THE 8TH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF

FINANCIAL
CERTIFICATE

JOEL T. BURKETT # 16111
NAME
ON MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

February 28/1994

I hereby certify that the Petitioner herein has the sum
of \$ 16.70 on account to his credit at the institution
where he is confined. I further certify that Petitioner likewise
has the following securities to his credit according to the records
of said institution: 0

DATED this 1ST day of DECEMBER, 1993.

BY: Edna Irene Ramirez
Nevada Department of Prisons
Inmate services Accountant
Authorized Officer of Institution

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1 Case No. C52190

2 Dept. No. VII

FILED

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Laetta Shuman
CLERK

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

8
9 JOEL T. BURKETT,
10 Petitioner,

11 -vs-

12 MR. Mc DANIELS,
13 WARDEN,
14 Respondent.

February 28, 1994
MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

15
16 COMES NOW the Petitioner, in propria persona, pursuant
17 to N.R.S. §12.015, and respectfully moves this Honorable Court for
18 an Order granting Petitioner leave to proceed in the above-entitled
19 action in forma pauperis, without requiring Petitioner to pay or
20 provide security for the payment of costs of prosecuting this
21 action.

22 This motion is made and based upon the attached affidavit
23 and certificate.

24 DATED this 20th day of January, 19 94.

25 Respectfully submitted,

Joel T. Burkett

193

COUNTY CLERK

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135

1 JOEL T. BURKETT #16111
2 P.O. Box 1989
3 ELY, NEVADA, 89301

4 FOR PETITIONER, PRO-SE

5 IN THE 8th JUDICIAL DISTRICT COURT

6 OF THE STATE OF NEVADA 2 2 09 PM '94

7 IN AND FOR THE COUNTY OF Clark

8 CLERK

9 JOEL T. BURKETT,

10 PETITIONER,

11 -VS-

12 MR. McDANIELS,

13 RESPONDENT,

CASE NO. C52190

DEPT. NO. VII

PETITION FOR WRIT OF

HABEAS CORPUS

February 28/1994

16 1. Name and institution and county in which you are presently
17 imprisoned or where and how you are presently restrained of
18 you liberty: ELY STATE PRISON

19 WHITE PINE COUNTY

20 2. Name and location of court which entered the judgment of
21 conviction under attack: 8th JUDICIAL DISTRICT

22 CLARK COUNTY

23 3. Date of judgment of conviction: 6-2-1981

24 Case number: 52190

25 (a) Length of sentence: 30 YEARS AND TWO LIFE TERMS

26 (b) If sentence is death, state any date upon which
27 execution is scheduled: _____

28 ///

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1 6. Are you presently serving a sentence for a conviction other
2 than the conviction under attack in this petition? Yes _____

3 No X If "yes," list crime, case number and
4 sentence being served at this time: _____
5 _____
6 _____:

7 7. Nature of offense involved in conviction being challenged:

8 Robbery with the use, First Degree
9 Kidnaping with the use, 2nd
10 Sexual Assault

11 8. What was your plea? (check one)

12 (a) Not guilty X

13 (b) Guilty _____

14 (c) Nolo contendere _____

15 9. If you entered a guilty plea to one count of an indictment
16 or information, and a not guilty plea to another count of an
17 indictment or information, or if a guilty plea was
18 negotiated, give details: _____
19 _____
20 _____
21 _____.

22 10. If you were found guilty after a plea of not guilty, was the
23 finding made by: (check one)

24 (a) Jury X

25 (b) Judge without a jury _____

26 11. Did you testify at the trial? Yes X No _____

27 12. Did you appeal from the judgment of conviction?

28 Yes X No _____

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- 1 13. If you did appeal, answer the following:
- 2 (a) Name of court: NEVADA SUPREME COURT.
- 3 (b) Case number or citation: 13600.
- 4 (c) Result: Denied.
- 5 (d) Date of result: April 21, 1983.
- 6 14. If you did not appeal, explain briefly why you did not:
- 7 _____
- 8 _____
- 9 15. Other than a direct appeal from the judgment of conviction
- 10 and sentence, have you previously filed any petitions,
- 11 applications or motions with respect to this judgment in any
- 12 court, state or federal? Yes X No _____
- 13 16. If your answer is to No. 15 was "yes" give the following
- 14 information:
- 15 (a) (1) Name of court: 1ST JUDICIAL DIST.
- 16 (2) Nature of proceeding: WRIT OF HABEAS
- 17 Corpus Post Conviction.
- 18 (3) Grounds raised: INEFFECTIVE COUNSEL
- 19 AT TRIAL AND DIRECT APPEAL, PROSECUTOR
- 20 MISCONDUCT, VIOLATION OF POST-ARREST SILENCE.
- 21 (4) Did you receive an evidentiary hearing on your
- 22 petition, application or motion?
- 23 Yes X No _____
- 24 (5) Result: Denied.
- 25 (6) Date of result: Aug - 5 - 1988.
- 26 (7) If known citations or any written opinion or date
- 27 of orders entered pursuant to such result?
- 28 YES 170

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: U.S. DISTRICT COURT.

(2) Nature of proceeding: WRIT OF HABEAS

CORPUS (2254).

(3) Grounds raised: SAME AS PAGE 3

QUESTION 16(A).

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No X

(5) Result: DENIED.

(6) Date of result: MAY - 22 - 1998.

(7) If known citations or any written opinion or date of orders entered pursuant to such result?

YES.

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application, or motion?

Yes _____ No _____

Citation or date of decision: _____.

(2) Second petition, application, or motion?

Yes _____ No _____

Citation or date of decision: _____.

///

171 112

(3) Third or subsequent petitions, applications or motions? Yes _____ No _____

Citation or date of decision: _____.

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

_____.

17. Has any ground being raised in this petition been previous presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: NONE

_____.

(b) The proceedings in which these grounds were raised:

NONE

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

NONE

172-113

1 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d),
2 or listed on any additional pages you have attached, were not
3 previously presented in any other court, state or federal,
4 list briefly what grounds were not so presented, and give
5 your reasons for not presenting them. (You must relate
6 specific facts in response to this question. your response
7 may be included on paper which is 8 1/2 by 11 inches attached
8 to the petition. Your response may not exceed five
9 handwritten or typewritten pages in length). SEE

10 Page attached HERETO
11

12 19. Are you filing this petition more than 1 year following the
13 filing of the judgment of conviction or the filing of a
14 decision on direct appeal? If so, state briefly the reasons
15 for the delay. (You must relate specific facts in response
16 to this question. Your response may be included on paper
17 which is 8 1/2 by 11 inches attached to the petition. Your
18 response may not exceed five handwritten or typewritten pages
19 in length).

20 SEE PAGE ATTACHED HERETO
21

22 20. Do you have any petition or appeal now pending in any court,
23 either state or federal, as to the judgment under attack?
24 Yes _____ No X If yes, state what court and the case
25 number: _____
26 _____
27 _____
28

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- 1 21. Give the name of each attorney who represented you in the
2 proceeding resulting in your conviction and on direct appeal:
3 JAMES BUCHANAN, EARL
4 AYER'S, PATRICK GILBERT
5 _____.
- 6 22. Do you have any future sentences to serve after you complete
7 the sentence imposed by the judgment under attack? Yes _____
8 No X If yes, specify where and when it is to be served,
9 if you know: _____
10 _____
11 _____.
- 12 23. State concisely every ground on which you claim that you are
13 being held unlawfully. Summarize briefly the facts
14 supporting each ground. If necessary you may attach pages
15 stating additional grounds and facts supporting same.
16 (a) Ground one: SEE PAGES ATTACHED
17 HERETO MARKED SUPPORTING FACTS
18 _____
19 _____.
- 20 **SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT CITING CASES**
21 **OR LAW.):** _____
22 _____
23 _____
24 _____
25 _____
26 _____
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28 ///

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(b) Ground two: _____

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**SUPPORTING FACTS (TELL YOU STORY BRIEFLY WITHOUT CITING CASES
OR LAW.):** _____

_____.

(c) Ground three: _____

_____.

**SUPPORTING FACTS (TELL YOU STORY BRIEFLY WITHOUT CITING CASES
OR LAW.):** _____

_____.

(d) Ground four: _____

_____.

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SUPPORTING FACTS (TELL YOU STORY BRIEFLY WITHOUT CITING CASES
OR LAW.): _____

WHEREFORE, Petitioner prays that the court grant Petitioner
relief to which he may be entitled to in this proceeding.

DATED this 20th day of JANUARY, 19 94, at
Ely, Nevada.

Respectfully Submitted:

Paul B. Bredt
FOR PETITIONER, PRO-SE

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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

DATED this 20th day of JANUARY, 19 94, at
Ely, Nevada.

Respectfully Submitted:

Paul T. Burkett
FOR PETITIONER, PRO-SE

CERTIFICATE OF SERVICE BY U.S. MAIL

I, JOEL T. BURKETT, hereby certify pursuant to N.R.C.P. 5(b), that on this 20th day of JANUARY, 19 94, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Frankie Sue Del Papa, Attorney General of Nevada
Capitol Complex
Heroes' Memorial Building
Carson City, NV 89710;

RONALD G. BLOKHAN, District Attorney
County of CLARK
200 S. THIRD ST STE 701, P.O. BOX 552211
LAS VEGAS, Nevada 89155-2211;

MR. McDONALD, Warden
P.O. Box 1989
Ely, Nevada 89301;

DATED this 20th day of JANUARY, 19 94, at
Ely, Nevada.

Respectfully Submitted:

Paul T. Burkett
FOR PETITIONER, PRO-SE

RECEIVED

FEB 1 1994

COUNTY CLERK

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Page 6. Question 18.

None of the issues raised in this petition has been raised previously. At the time Petitioner filed his post-conviction petition for relief, he had never had a parole hearing and was unaware as to the violations of his sentence.

Page 6. Question 19.

Petitioner has been unable to file, into the state court, the issue raised herein due to a denial of access to state law. For the last (5) five years Petitioner had been in the federal prison system, having been transferred there by respondents in 1987, whereas in the federal system Petitioner had no access to state law.

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SUPPORTING FACTS

Petitioner was sentenced to the following terms of imprisonment:

Count I: Fifteen years for robbery and an additional (15) fifteen years for the use of a deadly weapon in the commission of a crime, to be served consecutively.

Count II: Life with the possibility of parole for first degree kidnapping, and an additional term of life with the possibility of parole for the use of a deadly weapon in the commission of a crime, to be served consecutively. Count II. is to be served consecutively to Count I.

Count III: Life with the possibility of parole.

Count IV: Life with the possibility of parole.

Counts III. and IV. to be served concurrently to the sentences imposed in Count II. (See Sentencing Transcripts attached hereto and marked Exhibit - A)

Petitioner has served fourteen years on a sentence not imposed by the court. Upon Petitioner's arrival to the Nevada State Prison and serving 8½ years on Count II. the prison informed Petitioner that he did not have to serve any time on Count I. as it was run concurrently to Count II. Petitioner thought no more of it. Now that Petitioner has served 14 years and may receive a parole in 1994, the prison has informed Petitioner that he can only be paroled to a life with the possibility of parole for Counts III. and IV.: Petitioner contends this is not the sentence imposed by the court and in violation of his due process rights. Upon investigation to find the mistake, Petitioner found that the mistake lays in the Judgment of Conviction attached hereto marked (Exhibit - B) (In Exhibit - B page 2 - lines 12 and 13)

(1)

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The court ran Counts III. and IV. concurrently with both Counts I. and Count II. leaving the prison to believe that Petitioner must serve three life terms, when clearly the Oral Sentencing (Exhibit - A) states Petitioner is to serve two fifteen year terms for Count I. and two life terms for Count II.

Because of the mistake in the Judgment of Conviction Petitioner has been denied to ever parole from Count I. to Count II. And now that Petitioner may receive a parole from Count II. he is left to serve a life term never meant to be served by the court's oral sentence.

RELIEF SOUGHT

Wherefore Petitioner Joel T. Burkett respectfully seeks the following relief:

- A. Grant the writ of habeas corpus freeing Petitioner from his unconstitutional sentence.
- B. Grant the reversal of Petitioner's sentence so that he may be resentenced.
- C. Grant whatever relief this Court deems just and proper.

Dated this 20th day of January, 1994.

Respectfully submitted:

Joel T. Burkett
(Pro Se Petitioner)

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(2)

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FILED

JUL 29 9 57 AM '81

LORETTA BOWMAN
CLERK

By *Prada Jewel*

1 CASE NO. C52190

2 DEPT. NO. VII

3
4
5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF CLARK.
8

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)

12 JOEL BURKETT aka)
13 Raymond Haire,)

14 Defendant.)

JUDGMENT OF CONVICTION
(Jury Trial)

15
16 WHEREAS, on the 20th day of January, 1981, the Defendant
17 JOEL BURKETT aka Raymond Haire, entered a plea of not guilty to
18 the crimes of Robbery with Use of a Deadly Weapon in Commission
19 of a Crime, Count I; First Degree Kidnaping with Use of a Deadly
20 Weapon in Commission of a Crime, Count II; Sexual Assault, Count
21 III; and Sexual Assault, Count IV, committed on the 18th day of
22 December, 1980, in violation of NRS 200.380; 193.165; 200.310;
23 200.364 and 200.366, and the matter having been tried before a
24 jury, and the defendant being represented by counsel and having
25 been found guilty of the crimes of Robbery with Use of a Deadly
26 Weapon, Count I; First Degree Kidnaping with Use of a Deadly
27 Weapon, Count II; Sexual Assault, Count III; and Sexual Assault,
28 Count IV; and

29 WHEREAS, thereafter, on the 2nd day of June, 1981, the
30 defendant being present in Court with his counsel, JAMES L.
31 BUCHANAN, and BONALD C. BLOXHAM, Deputy District Attorney, also
32 being present, the above entitled Court did adjudge Defendant



(EXHIBIT-B) 422

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1 guilty thereof by reason of said trial and verdict and sentenced
2 Defendant to serve a term in the Nevada State Prison as follows:
3 Count I: Fifteen years for Robbery and an additional fifteen (15)
4 years for Use of a Deadly Weapon in Commission of a Crime, to be
5 served consecutively.
6 Count II: Life with Possibility of Parole and an additional term
7 of Life with the Possibility of Parole for Use of a Deadly Weapon
8 in Commission of a Crime, to be served consecutively. Count II
9 is to be served consecutive to Count I.
10 Count III: Life with Possibility of Parole.
11 Count IV: Life with Possibility of Parole.
12 Counts III and IV to be served concurrent to the sentences imposed
13 in Counts I and II.
14 Defendant granted credit for time served of 165 days.

15 THEREFORE, the Clerk of the above entitled Court is hereby
16 directed to enter this Judgment of Conviction as part of the
17 record in the above entitled matter.

18 DATED this 28 day of July 1981, in the City of Las Vegas,
19 County of Clark, State of Nevada.

20
21 Civil / Al. Martinez
22 DISTRICT JUDGE
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81-52190X/1b
LVMPD 80-95384
Rob; 1° Kidnap; UDW;
2 cts. of S/A - F

SENTENCING

JUL 23 2 48 PM '81

LORETTA B. SHERMAN
CLERK

BY *Cherry Strong*

ORIGINAL

CASE NO. C52190

DEPT. NO. VII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND THE FOR THE COUNTY OF CLARK

THE STATE OF NEVADA)
Plaintiff,)
vs.)
JOEL BURKETT aka Raymond)
Haire,)
Defendant.)

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE

TUESDAY, JUNE 2, 1981, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the State:	RONALD C. BLOXHAM, ESQ. Deputy District Attorney
For the Defendant:	JAMES BUCHANAN, ESQ.
For the Department of Parole and Probation:	FREDERIC L. BAIRD

REPORTED BY: Constance Kroon, C.S.R. No. 75

BERNIE
SEE PAGE 41-8

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(EXHIBIT-A) 124

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 2, 1981, 9:00 A.M.

2 * * * * *

3
4 THE COURT: Case number C52190, the State of Nevada vs. Joel
5 Burkett, also known as Raymond Haire.

6 The record will show the presence of the defendant, in
7 custody; the presence of counsel, James Buchanan; Ron Bloxham, Deputy District
8 Attorney representing the State of Nevada.

9 This is the time set for the entry of judgment and
10 imposition of sentence. Is the defendant ready to proceed at this time? Mr.
11 Haire, have you read over the -- Mr. Burkett, have you read over the report?
12 What is your right name? Raymond Haire, isn't it?

13 THE DEFENDANT: Joel Burkett.

14 THE COURT: Okay. Mr. Burkett, have you read over the report
15 by the Department of Parole and Probation?

16 THE DEFENDANT: Yes, sir, I have.

17 THE COURT: Do you know of any legal cause or reason why
18 judgment should not be pronounced against you at this time?

19 THE DEFENDANT: Well, there's a few lies in there.

20 MR. BUCHANAN: We have no legal reason for judgment not be
21 imposed at this time, your Honor. We have some comments on the contents of
22 the probation report.

23 THE COURT: We'll get back to that.

24 Joel Burkett, by virtue of your verdict of the jury
25 finding you guilty, you are hereby adjudged guilty to Count I, the crime of
26 robbery and use of a deadly weapon in commission of a crime.

27 The Court hereby finds you guilty under Count II of the
28 crimes of first degree kidnapping and use of a deadly weapon in commission of
29 a crime.

30 The Court finds you guilty under Count III of the crime of
31 sexual assault, a felony.

32 The Court finds you guilty under Count IV of the crime of

1 sexual assault, a felony.

2 Does the Department of Parole and Probation have anything
3 further to state at this time?

4 MR. BLOXHAM: Your Honor, we don't have a representative from
5 the Department of Parole and Probation here at this time.

6 (At this time, Mr. Baird entered the courtroom).

7 MR. BLOXHAM: Yes, we do.

8 THE COURT: Your name, sir?

9 MR. BAIRD: Frederic L. Baird.

10 THE COURT: Frederic L. Baird?

11 MR. BAIRD: Yes, sir.

12 THE COURT: The record will show the presence of Frederic L.
13 Baird of the Department of Parole and Probation.

14 Do you have anything further to state at this time in the
15 Joel Burkett case?

16 MR. BAIRD: Submitted, your Honor.

17 THE COURT: Does the District Attorney have any statements to
18 make?

19 MR. BLOXHAM: Yes, your Honor. We would like to make a few
20 statements.

21 First of all, your Honor, on page 6 of the report, bottom
22 paragraph, it talks about the victim. There was an attempt made on the 26th
23 of May to contact the victim and have a statement of the victim included in
24 the report. I notice the report was prepared the 27th of May. They made a
25 phone call to the victim's mother-in-law asking the mother-in-law to have the
26 victim get a hold of them.

27 I can inform the Court that the victim has no phone; that
28 the mother-in-law lives clear across town; and I can assure you that if the
29 victim were contacted and asked for a statement, that she would provide one.
30 I don't believe it would stop sentencing today, though, because this Court did
31 hear the trial. This Court did hear the victim's testimony from the stand.

32 Your Honor, as I approach this sentencing, I have to look

1 at the defendant, and I have to compare him to a mad dog, your Honor, but
2 there are some differences between the defendant Burkett and a mad dog. Your
3 Honor, a mad dog has no choice in the way he acts. Joel Burkett, your Honor,
4 has purposefully decided and chosen to act in the manner which he has.

5 Your Honor, a mad dog has no respect for other people's
6 property. Joel Burkett has purposefully determined in the past, commit the
7 crimes of grand larceny, petty larceny, burglary, robbery, auto theft,
8 possession of stolen property. Your Honor, a mad dog has no respect for the
9 people's dignity. Joel Burkett has purposefully determined on his own to
10 ignore other people's dignity. The sex crimes he stands convicted of today
11 bears record of that.

12 Your Honor, on page 10 of the report, it reflects that
13 Joel Burkett shows no concern nor no sympathy for the victim in this
14 particular crime -- very vicious crime. Your Honor, Mr. Burkett, Joel
15 Burkett, has no respect for human life, just like a made dog.

16 Your Honor, the testimony this Court heard from the stand
17 from the victim as to the facts of the case, what happened out in the desert,
18 this victim -- I don't believe the defendant was bluffing when he attempted to
19 find a place to bury the victim. Talked to his companion about killing the
20 victim.

21 You know, there's an argument to be made -- well, he was
22 just bluffing so she wouldn't report the crime. Your Honor, from the
23 testimony that was adduced from the stand, I believe Joel Burkett was totally
24 willing and totally prepared to go through with that killing, and only because
25 of the other person present did the killing not occur.

26 Your Honor, Mr. Buchanan will argue to the Court, I am
27 sure, that this young man -- he's nineteen years old, he's never convicted of
28 any other adult crimes.

29 Your Honor, there's a good reason for that. This young
30 man turned eighteen in the California Youth Authority. He turned nineteen in
31 the California Youth Authority. He escaped November 29, 1980, and he was
32 apprehended here in Las Vegas for these crimes December 19, 1980. He just

1 didn't have a chance.

2 Your Honor, talking about the California Youth Authority.
3 His own statement reflected in the parole and probation report is he committed
4 so many crimes, he'd been convicted of so many charges down there, he didn't
5 even remember them all. He couldn't even list them all for the parole and
6 probation people.

7 Your Honor, as this Court considers sentencing, it takes
8 into account the character of the defendant, and it also takes into account
9 the nature of the crime committed. This Court heard the testimony of
10 Detective Leonard. He went over to the house where the defendant Burkett was
11 staying, and he obtained some items.

12 One thing the Court may or may not have been aware of is
13 the detective obtained some photographic albums, some photo albums from that
14 house. I'd like, if I could, at this time to have the Court either review the
15 photo albums, or at least a couple of the photographs reflecting Joel Burkett
16 in the photo albums, pictures that come from the California Youth Authority
17 while he was in there, if the Court is so inclined.

18 MR. BUCHANAN: Your Honor, we'd object to that. We haven't had
19 the chance to review it. It's not in the probation report, hasn't been looked
20 at by Parole and Probation. And I know what they're trying to show. They're
21 trying to show this Nazi stuff and pictures.

22 I've seen them before, but I don't think that should be
23 brought before sentencing. We don't come forth knowing that was going to be
24 offered. I'd never seen the entire photograph album. It's been in custody.

25 There have been certain pictures that have been shown me
26 by Detective Leonard, and I've seen those, and I don't feel they're
27 appropriate at this time, and I feel they'd be prejudicial.

28 MR. BLOXHAM: Your Honor, the reason that I offer them is
29 there's a couple of statements made in the report such as the guard in
30 California has indicated this man is a member of the Nazi white power group in
31 California, things like this. This supports and corroborates those
32 statements.

1 I just don't want to have this Court reading over the
2 report and saying, well, a number of these things are uncorroborated. We have
3 some corroboration for some of the statements in the report. We offer them,
4 if the Court chooses. If not, fine. We could move forth without --

5 THE COURT: I choose not.

6 MR. BLOXHAM: Okay, fine. Thank you.

7 Your Honor, what do we have when we consider the nature of
8 the crime, the background of the defendant? We have a very violent, violent
9 individual. His answer to all of these charges against him is, well, he's
10 bitter toward the jury. He's bitter toward the victim. There's people that
11 are conspiring to put him in jail and keep him there.

12 Your Honor, he blames everyone except who's really to
13 blame, and that's himself.

14 Your Honor, Parole and Probation has done a good job in
15 evaluating this defendant, comparing his background, looking at the crime,
16 putting it all together, making a recommendation. They've made a very good
17 recommendation. In fact, they recommended the maximum, with the exception of
18 concurrent and consecutive time.

19 My understanding, they recommended thirty years on the
20 robbery, consecutive to double life on the kidnapping, which are consecutive
21 to each other, but then, as to the sexual assaults, concurrent -- two sexual
22 assaults to the kidnapping and robbery.

23 We'd ask the Court to consider that as the minimum, the
24 minimum recommendation to be considered. The State asks that that be imposed,
25 and we also ask the Court to consider perhaps a heavier sentence due to his --
26 the defendant's -- background, and the serious nature of this crime.

27 Thank you, your Honor.

28 THE COURT: Mr. Burkett, your attorney will have an opportunity
29 to address this Court in your behalf. At this time, do you wish to make a
30 statement in your own behalf or present any information in mitigation of
31 punishment before sentence is pronounced?

32 THE DEFENDANT: Yes, your Honor. You know, he's saying that

1 they -- you know, the Probation Department checked me out real good.

2 Well, they said that -- on page 8 -- I got three brothers
3 in the California prison. I ain't even got three brothers, man, and -- and
4 they're saying that I stole a radio in the jail and I was talking over the
5 radio. And I didn't steal a radio. They're going to say that kind of
6 stipulation against me, and I want to say I didn't steal, and I can prove it.

7 Got in the front that he's appointed to me. He's not
8 appointed to me. So this Probation Department, they don't know nothing, man,
9 they don't know nothing. They're going on what Detective Leonard said. This
10 is supposed to be a P & P report, not from a detective that's got something
11 against me, you know.

12 And he's talking about this girl getting up on the stand.
13 She got right up on the stand and said I didn't even kidnap and rob her.

14 That's all I got to say, man.

15 THE COURT: Mr. Buchanan?

16 MR. BUCHANAN: Well, your Honor, I must say this report is
17 probably one of the most negative I've ever read. And of course, as we know,
18 during the trial there was some testimony or at least some evidence brought
19 that when he came down here, that he was going to make a big disturbance.
20 There was also some evidence brought out during the trial, or at least some
21 conversation, that he was a very violent person and had to be watched very
22 carefully.

23 But none of these things ever occurred. He's been in the
24 Clark County Jail now since November. He's never had any incidents up there
25 as far as fights or anything else, violence.

26 This Nazi white supremacy they've talked about over in
27 California -- didn't see none of this.

28 Now he appears and he appeared on the stand and he -- this
29 morning, there was this statement that Guy asked me for some kind of leniency
30 the Court could make. But when I talked to him and when I see him, I see an
31 eighteen-year-old boy who has not had quite as much bravado and macho as he
32 does here in Court and as he did on the stand and as he did this night.

1 We went through a long jury trial on this. There was some
2 evidence we presented, what I thought was a good case, as the jury evidently
3 didn't believe he and his witnesses as to what happened. He's still
4 protesting his innocence and stating that in the probation report, and has
5 gone down that that girl was not kidnapped, she went voluntarily, and the
6 rest.

7 We thought, of course, there was some evidence that the
8 jury could have believed. They were out some five or six hours, and evidently
9 they thought something.

10 Anyway, he stands here now with these counts that can go
11 to life. Now, of course, we're not asking the Court for probation, because
12 it's not even available, but before the Court gives some horrendous sentence,
13 some stacked case back to back, life, robbery with use and so forth, I'd like
14 to take into consideration that he is only nineteen, that at this point in his
15 life, he has a lot of violence in himself, and he's shown that in the past.
16 He'll probably show that for a while in the future.

17 But as they teach you in law school, they teach you in
18 psychology and psychiatric evaluation of prisoners, after a while that burns
19 out. Now, how long it will take Joel Burkett to burn out in the Nevada State
20 Prison -- that's one thing. But for the Court to impose some horrendous
21 sentence on the first time that this person has been before the Court as an
22 adult and being sentenced, we'd ask the Court to take that into consideration.

23 Now, this Court can stack a couple of these cases and make
24 sure that he stays in prison for around five to ten years. I think ten years
25 would have to be about the minimum that he could stay, under the case law
26 here.

27 So what I'm asking the Court is not to stack these and go
28 the life as they've recommended in the parole and probation report, but to
29 give him some of these five-year terms back to back, which would insure that
30 he is not eligible for probation for around ten years. In ten years, he'll be
31 twenty-nine years old, and he'll spend most of the best years of his life in
32 prison. And that, of course, will be at least a great inducement to come out

1 and be a worthwhile citizen; but to take somebody at nineteen to twenty-nine
2 and put them in prison I feel is punishment enough.

3 Now, at that point also they're going to have an
4 evaluation of this prisoner in jail, see whether or not he burns out and so
5 forth and whether or not he can be given probation, so they'll have a good
6 indication. But I'd ask the Court to take into consideration the fact that he
7 is nineteen, the fact that he is a violent person, but I think that can be
8 corrected in prison, or at least thwarted over ten years, which is a long
9 enough time for anyone, and to do it.

10 His parents have been here. His mother and family sat
11 through the whole trial. His father's in the courtroom today. They've stood
12 behind him, and -- and he has a problem with this Court, so I'd ask the Court
13 to give him whatever leniency it can in the sentencing.

14 To characterize him as a mad dog, I don't know. Maybe his
15 background, his upbringing, his treatment with the youth authorities, in being
16 kicked out of school when he was in seventh grade contributed to all of this.
17 But I think at this point that the Court can at least give him some leniency
18 on his first offense.

19 THE COURT: Joel Burkett, in accord with the law of the State
20 of Nevada, this Court does now sentence you to confinement for fifteen years
21 in the Nevada State Prison for the crime of robbery in Count I; and does also
22 sentence you to fifteen years in the Nevada State Prison for use of a deadly
23 weapon in commission of a crime.

24 These two fifteen-year sentences under Count I shall run
25 consecutively to each other.

26 Joel Burkett, in accord with the law of the State of
27 Nevada, this Court does now sentence you to confinement for life in the Nevada
28 State Prison for the crime of first degree kidnapping as set forth in Count II
29 of the information in this case.

30 The Court imposes an additional sentence of life in the
31 Nevada State Prison under Count II for use of a deadly weapon in commission of
32 a crime.

1 These two sentences shall run concurrently -- excuse me --
2 shall run consecutively to each other and shall run consecutively to the
3 fifteen-year sentences imposed under Count I.

4 Joel Burkett, in accord with the law of the State of
5 Nevada, this Court does now sentence you to confinement for life in the Nevada
6 State Prison for the crime of sexual assault, a felony, as set forth in Count
7 III.

8 The Court also sentences you to confinement for life in
9 the Nevada State Prison for the crime of sexual assault, a felony, as set
10 forth in Count IV.

11 These two life sentences shall run consecutively to each
12 other but shall run concurrently with the sentences imposed in Count II of the
13 information in this case.

14 MR. BUCHANAN: Thank you, your Honor.

15 MR. BLOXHAM: Your Honor, credit for time served I believe is
16 reflected as 165 days. Is that correct?

17 THE COURT: The defendant is given credit for time served in
18 the sum of 165 days.

19 MR. BLOXHAM: Your Honor, am I to understand that Count I, Count
20 II are consecutive to each other, concurrent to three and four? That's just
21 for clarification, for my sake.

22 MR. BUCHANAN: I think the sentencing was proper.

23 THE COURT: Fifteen, fifteen, life, life. And then you've got
24 two more lives to run concurrently with those counts.

25 We'll be in recess at this time for a few minutes.

26 * * * * *

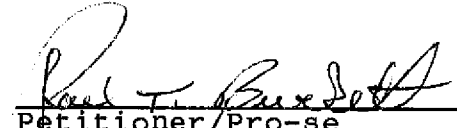
27 ATTEST: Full, true and accurate transcript of proceedings.

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29 *Constance Kroon*
30 CONSTANCE KROON, C.S.R. NO. 75
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CERTIFICATE OF SERVICE

I, JOEL T. BURKETT, do hereby certify pursuant to N.R.C.P.
5(b), that on this 20th day of January, 1994, I mailed a true
copy of the above brief in support of Petition for Writ of
Habeas Corpus to the Respondant therein and the District Attorney
of said county.



Petitioner/Pro-se

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1 Case No. C52190
2 Dept. No. VII

FILED
FEB 2 2 1- PM '94
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CLERK

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

9 JOEL T. BURKETT,
10 Petitioner,
11 -vs-
12 MR. McINTOSH,
13 WARDEN,
14 Respondent.

February 28 1994
AFFIDAVIT IN SUPPORT
OF MOTION TO PROCEED
IN FORMA PAUPERIS

16 I, JOEL T. BURKETT, hereby declare and state
17 that I am the Petitioner in the above entitled case; that in support
18 of my Motion to proceed without being required to prepay fees, costs
19 or give security therefor; I state that because of my poverty I am
20 unable to pay the costs of said proceeding or to give security
21 therefor; that I am entitled to relief.

22 I do X do not request an attorney be appointed to
23 represent me.

24 I further swear that the responses which I have made to
25 questions and instructions below are true.

26 1. Are you presently employed: Yes No X
27 a. If the answer is Yes, state the amount of your salary
28 or wages per month, and give the name and address of your employer:

COUNTY CLERK

RECEIVED
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1
2
3 b. If the answer is No, state the date of last employment
4 and the amount of salary and wages per month which you received:

5 None

6 2. Have you received within the past twelve months any
7 money from any of the following sources?

8 a. Business, profession or form of self-employment?

9 Yes No X

10 b. Rent payments, interest or dividends?

11 Yes No X

12 c. Pensions, annuities or life insurance payments?

13 Yes No X

14 d. Gifts or inheritances?

15 Yes No X

16 e. Any other sources?

17 Yes X No

18 If the answer to any of the above is "Yes" describe each
19 source of money and state the amount received from each during the
20 past twelve months: MY MOTHER VIVIAN KUKHAM

21 \$200

22
23 3. Do you own cash or equivalent prison currency, or do
24 you have money in a checking or savings account?

25 Yes X No

26 If the answer is "Yes", state the total value of the
27 items owned: SEE FINANCIAL CERTIFICATE FILED

28 HERE WITH

1 4. Do you own any real estate, stocks, bonds, notes,
2 automobiles, or other valuable property (excluding ordinary house-
3 hold furnishings and clothing)? Yes ____ No X

4 If your answer is "Yes", describe the property and state
5 its approximate value: _____
6

7 5. List the persons who are dependent upon you for
8 support, state your relationship to those persons, and indicate
9 how much you contribute towards their support: NONE
10
11

12 UNDER THE PENALTY OF PERJURY, pursuant to N.R.S. §208.165,
13 the above affidavit is true and correct to the best of affiants
14 personal knowledge.

15 DATED this 20th day of January, 19 94.
16

17 Karl T. Burkett
18 Sign your name
19

20 Karl T. Burkett 16111
21 Print your name DOP#
22
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25
26
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28

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13
- FILED IN OPEN COURT -

FEB 28 1994

, 19

LORETTA BOWMAN, CLERK

By

Julie Hale

Deputy

1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA
5
6
7

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JOEL BURKETT aka Raymond Haire

13
14 Defendant.
15

CASE NO. C52190

DEPT. NO. VII

DOCKET NO. P

16 ORDER

AND AMENDED JUDGMENT OF CONVICTION (Jury Trial)

17 THIS MOTION came on for hearing before this Court on the 28th
18 day of February, 1994, on Defendant's Petition for Writ of Habeas
19 Corpus to correct an error between the oral pronouncement of
20 Judgment and the written and filed Judgment of Conviction. The
21 Court having studied the prior Judgment of Conviction and the
22 transcripts of sentencing, and pursuant to NRS 176.565 hereby

23 ORDERS that Defendant's sentence is hereby corrected as
24 follows:

25 WHEREAS, on the 20th day of January, 1981, the Defendant, JOEL
26 BURKETT aka Raymond Haire entered a plea of not guilty to the
27 crimes of Robbery with Use of a Deadly Weapon in Commission of a
28 Crime, Count I; First Degree Kidnapping with Use of a Deadly Weapon

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1 in Commission of a Crime, Count II; Sexual Assault, Count III; and
2 Sexual Assault, Count IV, committed on the 18th day of December,
3 1980, in violation of NRS 200.380; 193.165; 200.310; 200.364; and
4 200.366 and the matter having been tried before a jury, and the
5 defendant being represented by counsel and having been found guilty
6 of the crimes of Robbery with Use of a Deadly Weapon, Count I;
7 First Degree Kidnapping with Use of a Deadly Weapon, Count II;
8 Sexual Assault, Count III; and Sexual Assault, Count IV; and

9 WHEREAS, thereafter, on the 2nd day of June, 1981, the
10 Defendant being present in Court with his counsel JAMES L.
11 BUCHANAN, and RONALD C. BLOXHAM, Deputy District Attorney, also
12 being present; the above entitled Court did adjudge Defendant
13 guilty thereof by reason of said trial and verdict and sentenced
14 Defendant to serve a term in the Nevada State Prison as follows:

15 COUNT I - Fifteen years for Robbery and an additional fifteen (15)
16 years for Use of a Deadly Weapon in Commission of a Crime, to be
17 served consecutively.

18 COUNT II - Life with Possibility of Parole and an additional term
19 of Life with the Possibility of Parole for Use of a Deadly Weapon
20 in Commission of a Crime, to be served consecutively. Count II is
21 to be served consecutive to Count I.

22 COUNT III - Life with Possibility of Parole.

23 COUNT IV - Life With Possibility of Parol. Count IV is to be
24 served consecutive to Count III.

25 Counts III and IV to be served concurrent to the sentenced imposed
26 in Count II.

27 Defendant granted credit for time served of 165 days.

28 THEREFORE, the Clerk of the above entitled Court is hereby

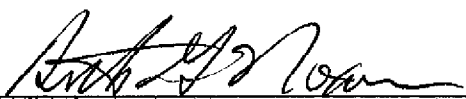
1 directed to enter this Judgment of Conviction as part of the record
2 in the above entitled matter.

3 DATED this 28th day of February, 1994, in the City of Las
4 Vegas, County of Clark, State of Nevada.

5 
6

DISTRICT JUDGE

7
8 REX BELL
9 District Attorney
10 200 South Third Street
11 Las Vegas, Nv. 89101

12 BY 
13 ARTHUR G. NOXON
14 Deputy District Attorney
15 Nevada Bar #000981
16
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28 81-52190X/lib
LVMPD DR#80-95384

14

FILED

DISTRICT COURT,
CLARK COUNTY, NEVADA

JUN 10 11 07 AM '94

* * * * *

Loretta Swann
CLERK

JOEL T. BURKETT,

Petitioner,

- vs -

E. K. McDANIEL,

Respondent.

Case No. C-52190

Dept. No. VII

Docket: _____

JUDICIAL NOTICE TO THE COURT

Petitioner above named, **HEREBY GIVES JUDICIAL NOTICE THAT:**

1) He is the same JOEL T. BURKETT, as set forth above within this application for HABEAS CORPUS RELIEF, his Petition being lawfully filed, FEBRUARY 2, 1994 in such Dept. No. VII contemporaneously with his "MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, AND REQUESTING AN ATTORNEY, according to his Filed Stamp Return Copy from the Court Clerk.

2) WHEREAS, as of this 5th day of June, 1994, Petitioner has received no orders, information, status reports or other data regarding either when the Respondent has been ORDERED to ANSWER; whether the Court Appointed Counsel, nor what occurred & resulted from the preliminary review of the Petition which was set for February 28, 1994.

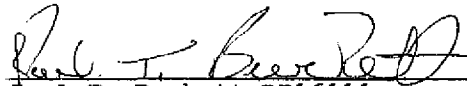
3) On Friday, JUNE 3, 1994, Petitioner has his legally authorized agent contact the Court Clerk's Office by telephone to inquire as to the status of the case & proceedings; EVEN THOUGH petitioner is in forma pauperis, & to his knowledge, without counsel, the Court General Docketing Clerk refused to provide Petitioner any information whatsoever.

//////

1 4) Petitioner has been advised that a Habeas Corpus Application is to be
2 of the very swiftness of adjudications; NRS CHAPTER 34; Fay v. Noia, 372 U.S.
3 391, at 400, 83 S.Ct. 822, at 828 (1963); & Preiser v. Rodriguez, 411 U.S. 475,
4 at 495, 93 S.Ct. 1827 at 1839, (1973). Based upon the law & the instant problem
5 with the Court Clerk's Refusal to ADVISE Petitioner of the Legal Status of his
6 Pending Petitioner & refusal to send him a Docket Minutes Sheet, Petitioner
7 felt it of such URGENT nature as to give this JUDICIAL NOTICE as, without any
8 question, the Judgment of Conviction ab initio & his imprisonment are illegal.

9 5) Petitioner Respectfully **GIVES NOTICE** that the lapse of time now being
10 **Over Four (4) Months** since the filing of his Petition is Unreasonable & urges
11 this Honorable Court to censure the Clerk's Personnel & ACT upon his Writ.

12 DATED & DONE JUNE 5, 1994.

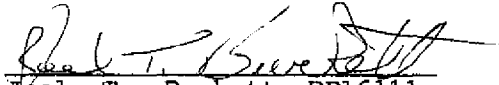
13 
14 Joel T. Burkett DP16111
15 Nevada's Ely State Prison
16 BX-1989: 12000 N. Bothwick Rd.,
Near, Ely, Nevada 89301
Habeas Corpus Petitioner

17 CERTIFICATE OF SERVICE BY MAIL#

18 I, JOEL T. BURKETT, DP16111, hereby Certify pursuant to N.R.Civ.P., 5(b),
19 that on this 5th day of June, 1994, I served Respondent, through Counsel, a
20 true & correct copy of this JUDICIAL NOTICE by placing same into prison staffs'
21 possession for mailing to:

22 Nev. Atty. General
23 Hon. Frankie Sue Del Papa
24 Capitol Complex
Carson City, Nevada 89710

Clark County District Attorney
Mr. Rex Bell
200 S. Third St., Suite-701
Las Vegas, Nevada 89155

25 
26 Joel T. Burkett DP16111

27 // / / / /

28 // / / / /

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3 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR CLARK COUNTY

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Loretta L. Luman
CLERK

JOEL T. BURKETT,

Petitioner,

v.

Case No. 81-C-052190-C

MR. McDANIALS, Warden,
Ely State Prison,

Respondent./

C052190

Dept VII

Set for 7-13-94

MOTION FOR ENLARGEMENT OF TIME

Comes Now, Joel T. Burkett, the Petitioner herein, who respectfully moves the Court for an enlargement of time, from June 23, 1994, to August 7, 1994, in which to file a Motion for Reconsideration and/or Petition for Rehearing in the above-entitled Court decision of the Petitioner's habeas corpus petition. This motion is supported by the attached Facts.

Wherefore, the Petitioner respectfully prays that the Court grant this motion.

Dated: June 23, 1994.

Respectfully submitted:

Joel T. Burkett
Joel T. Burkett #16111
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

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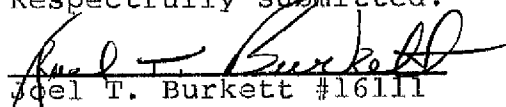
COUNTY CLERK

1 FACTS

2 The Court rendered a decision in the Petitioner's
3 above-entitled habeas corpus petition on June 8, 1994. The
4 Petitioner received the Court's Order at the Ely State Prison on
5 June 15, 1994. Since the Petitioner believes that the Court erred
6 in its decision by failing to address the prejudice of the issue
7 presented in his petition, he began researching the statute
8 relied upon by the Court in its decision---NRS 176.565 (Clerical
9 Error). However, the Ely State Prison went into a total prison
10 lockdown situation on June 16, 1994. At that time, access to the
11 prison law library was suspended. On or about June 22, 1994, the
12 law library was partially opened for the general population. But,
13 the prison presently remains on lockdown status. The Petitioner
14 has thus been prevented from conducting research work for his
15 Motion for Reconsideration and/or Petition for Rehearing in the
16 above-entitled Court decision. As a result, the Petitioner has
17 not been able to prepare his reconsideration motion and/or
18 rehearing petition for submission to the Court.

19 The Petitioner firmly believes the Court misapprehended or
20 overlooked the prejudice issue relating to the error in
21 sentencing as presented in his petition---an issue rising to the
22 level of a due process violation of the Fourteenth Amendment to
23 the United States Constitution. Consequently, this motion is made
24 in good faith by the Petitioner.

25 Respectfully submitted:

26 
27 Joel T. Burkett #16111
28 Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

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CERTIFICATE OF SERVICE

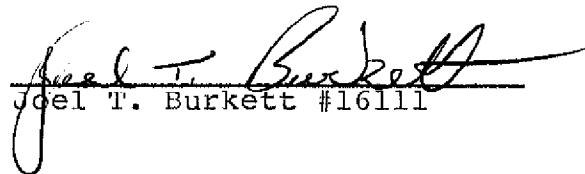
Joel T. Burkett hereby certifies that on June 24, 1994, he mailed a copy each of his Motion for Enlargement of Time to:

Frankie Sue Del Papa
Capitol Complex
Carson City, Nevada 89710

Rex Bell
Cleark County District Attorney
200 South Third Street
Suite 701
Las Vegas, Nevada 89155

by placing said copies in the United States Postal Service at the Ely State Prison.

Dated: June 24, 1994.


Joel T. Burkett #16111

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FILED

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Frederick L. ...
CLERK

1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA
5
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C52190
)		
10 Plaintiff,	)	DEPT. NO.	VII
)		
11 -vs-	)	DOCKET NO.	P
)		
12 JOEL BURKETT, aka)		
Raymond Haire,)		
13 #0609533)		
)		
14 Defendant.)		
)		
15)		

16 PLAINTIFF'S RESPONSE TO DEFENDANT'S
17 MOTION FOR ENLARGEMENT OF TIME

18 DATE OF HEARING: 08-03-94
19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by REX BELL, District
21 Attorney, through RONALD C. BLOXHAM, Chief Deputy District
22 Attorney, and files this Response to Defendant's Motion for
Enlargement of Time.

23 This Response is made and based upon all the files, papers and
24 pleadings on file herein, the Points and Authorities in support

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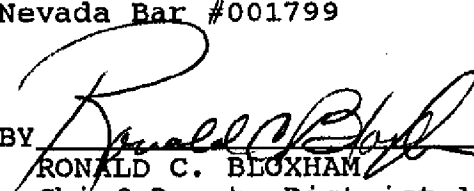
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1 hereof, as well as oral argument at the time of hearing, if deemed
2 necessary by this Honorable Court.

3 DATED this 18th day of July, 1994.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799

8 BY 
9 RONALD C. BLOXHAM
10 Chief Deputy District Attorney
11 Nevada Bar #001398

12 POINTS AND AUTHORITIES

13 STATEMENT OF FACTS

14 On May 4, 1981, a jury found the Defendant guilty of the
15 crimes of Robbery With Use Of A Deadly Weapon, Count I; First
16 Degree Kidnapping With Use Of A Deadly Weapon, Count II; Sexual
17 Assault, Count III; and Sexual Assault, Count IV.

18 On June 2, 1981, the Court sentenced the Defendant to serve
19 the following terms of imprisonment: Count I, fifteen (15) years
20 imprisonment for Robbery, and a consecutive fifteen (15) years
21 imprisonment for the Use Of A Deadly Weapon in the commission of
22 the robbery; Count II, Life imprisonment with the possibility of
23 parole for First Degree Kidnapping, and a consecutive term of Life
24 imprisonment with the possibility of parole for Use Of A Deadly
25 Weapon in the commission of the kidnapping. The sentence imposed
26 for Count II was ordered to run consecutive to the sentence imposed
27 for Count I. As to Count III, the Defendant was ordered to serve
28 Life imprisonment with the possibility of parole for Sexual
Assault; and as to Count IV, Life imprisonment with the possibility

1 of parole for Sexual Assault. The sentenced imposed in Counts III
2 and IV were ordered to run consecutive to each other and to run
3 concurrent to the sentences imposed in Count II.

4 The original Judgment of Conviction was filed on July 29,
5 1981. That original Judgment of Conviction incorrectly ordered
6 that the sentences in Counts III and IV were to be served
7 concurrently to the sentences imposed in Counts I and II. By
8 operation of law (NRS 176.035) the sentences in Counts III and IV
9 would have incorrectly computed as concurrent to each other by the
10 prison system.

11 On February 28, 1994, an Amended Judgment of Conviction was
12 filed. The Amended Judgment of Conviction correctly states the
13 sentences as orally stated by the District Court. The Amended
14 Judgment of Conviction correctly states that Counts III and IV were
15 to be served consecutive to each other, but were to be served
16 concurrent with the sentences imposed in Count II.

17 The Defendant appealed the conviction and the Nevada Supreme
18 Court issued an Order Dismissing Appeal which was filed April 21,
19 1983.

20 Although the State has not verified the information in the
21 Defendant's current Petition for Writ of Habeas Corpus, the
22 Defendant alleges that he had filed a previous Petition for Writ of
23 Habeas Corpus in the First Judicial District Court for the State of
24 Nevada. The Defendant indicates that Petition was denied on or
25 about August 5, 1988.

26 ///

27 ///

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1 The Defendant further suggests that he thereafter filed a
2 Petition for Writ of Habeas Corpus in the Federal Court. The
3 Defendant indicates that the Federal Petition was denied on or
4 about May 22, 1993.

5 On February 2, 1994, the Defendant filed a Petition for Writ
6 of Habeas Corpus in the present Court. In that Petition, the
7 Defendant correctly pointed out the discrepancy between the orally
8 stated sentence by the trial Court and the written original
9 Judgment of Conviction.

10 On February 28, 1994, the Court agreed with the Defendant's
11 contention that the Judgment of Conviction did not accurately
12 reflect the orally stated sentence. Therefore, the Court permitted
13 the filing of the Amended Judgment of Conviction in the present
14 case.

15 The Defendant has filed the present Motion for Enlargement of
16 Time wherein he requests until August 7, 1994, in which to file a
17 Motion for reconsideration and/or petition for rehearing of the
18 Court's action of February 28, 1994.

19 ARGUMENT

20 INASMUCH AS THE DEFENDANT HAS FAILED TO SUGGEST
21 GROUND'S UPON WHICH THE COURT MAY GRANT A
REHEARING, THE CURRENT MOTION SHOULD BE DENIED.

22 Nevada District Court Rules, Rule 13(7) provides that no
23 motion once heard and disposed of shall be renewed in the same
24 cause, nor shall the same matters therein embraced be reheard,
25 unless by leave of the court granted upon motion therefore, after
26 notice of such motion to the adverse parties.

27 NRS 176.565 provides that clerical mistakes in judgments,
28 orders or other parts of the record and errors in the record

1 arising from oversight or omission may be corrected by the court at
2 any time and after such notice, if any, as the court orders.

3 In the case presently before the Court, the State submits that
4 the Defendant has not been harmed or prejudiced by the error of the
5 original Judgment of Conviction. To best highlight this fact, the
6 State offers the following layout:

7 ORIGINAL JUDGMENT OF CONVICTION:

8	COUNT I 15 YEARS	COUNT I 15 YEARS	COUNT II LIFE	COUNT II LIFE
9				
10	COUNT III LIFE			
11				
12	COUNT IV LIFE			

13 AMENDED JUDGMENT OF CONVICTION:

14	COUNT I 15 YEARS	COUNT I 15 YEARS	COUNT II LIFE	COUNT II LIFE
15				
16				COUNT III LIFE
17				COUNT IV LIFE

18 Inasmuch as the error in the original Judgment of Conviction
19 has been corrected, the Defendant has properly been sentenced in
20 the present case.

21 DATED this 18th day of July, 1994.

22 Respectfully submitted,

23 REX BELL
24 DISTRICT ATTORNEY
25 Nevada Bar #001799

26 BY Ronald C. Bloxham
27 RONALD C. BLOXHAM
28 Chief Deputy District Attorney
Nevada Bar #001398

CERTIFICATE OF MAILING

I hereby certify that service of the PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME, was made this 19th
day of July, 1994, by depositing a copy in the U.S. Mail, postage
pre-paid, addressed to:

JOEL BURKETT #16111
IN PROPRIA PERSONA
ELY STATE PRISON
P O BOX 1989
ELY NV 89301

BY: D. Anderson

D. ANDERSON

Secretary, District Attorney's Office

da

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Loretta D. ...
CLERK

1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C52190
)		
10 Plaintiff,	)	DEPT. NO.	VII
)		
11 -vs-	)	DOCKET NO.	P
)		
12 JOEL BURKETT,)		
aka Raymond Haire)		
13 #0609533)		
)		
14 Defendant.)		
)		

O R D E R

DATE OF HEARING: 8-3-94
TIME OF HEARING: 9:00 a.m.

20 THIS MATTER having come on for hearing before the above
21 entitled Court on the 3rd day of August, 1994, the Defendant not
22 being present nor represented by counsel, the Plaintiff being
23 represented by REX BELL, District Attorney, through DAVID B.
24 BARKER, Deputy District Attorney, and the Court having heard the
25 arguments of counsel and good cause appearing therefore,

26 / / /
27 / / /
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1 IT IS HEREBY ORDERED that the Defendant's Motion for
2 Enlargement of Time, shall be, and it is, hereby denied.

3 DATED this 9th day of August, 1994.

4
5 
6 DISTRICT JUDGE

7 REX BELL
8 DISTRICT ATTORNEY
9 Nevada Bar #001799

10 BY 
11 DAVID B. BARKER
12 Deputy District Attorney
13 Nevada Bar #001648
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1 Joel T. Burkett #16111
P.O. Box 1989
2 Ely, Nevada 89301

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Loretta Shannon
CLERK

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7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 JOEL T. BURKETT, aka Raymond Haire, Case No. C52190
11 Petitioner, Dept. No. VII
12 v. Docket No. P
13 THE STATE OF NEVADA,
14 Respondent./

15 NOTICE OF APPEAL AND DESIGNATION OF RECORDS

16 Joel T. Burkett, the Petitioner herein, respectfully
17 notifies the Court of his intention to appeal the Court's
18 February 28, 1994 Order correcting an error between the oral
19 pronouncement of Judgment and the written and filed Judgment of
20 Conviction, relying upon NRS 176.565, and the denial of the
21 Petitioner's motion for enlargement of time in which to file
22 reconsideration motion of the Court's February 28, 1994, Order,
23 said Order entered on August 12, 1994.

24 The Petitioner firmly believes that the Court's reliance
25 upon NRS 176.565 was incorrect in disposing of the issues raised
26 in his habeas petition.

27 The Petitioner additionally requests that all documents
28 filed in the above-entitled case be designated to the Nevada

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CP

1 Supreme Court as records for his appeal.

2 Dated: August 28, 1994.

3

4

Respectfully submitted,

5



6

Joel T. Burkett #16111

7

P.O. Box 1989

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Ely, Nevada 89301

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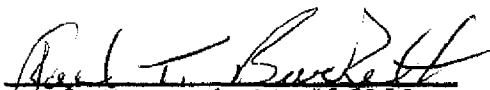
CERTIFICATE OF SERVICE

Joel T. Burkett hereby certifies that on August 30, 1994, he mailed a true copy of Notice of Appeal and Designation of Records to:

Rex Bell, District Attorney
200 South Third Street
Las Vegas, Nevada 89155

by placing said copy in the United States Postal Service at the Ely State Prison with postage prepaid.

Dated: August 30, 1994.


Joel T. Burkett #16111

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Eighth Judicial District Court
In And For Clark County
NEVADA

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Loretta L. Luman
CLERK

Joel T. Burkett

Petitioner.

Case No. C52190

V.

VII

The State of Nevada

Motion To Correct Record

Respondent/

Set: 11-2-94 9:00AM

Comes now, Petitioner, **Joel T. Burkett**, Pro Se, in the above Entitled matter, Respectfully Requesting the court to issue a COPY of the above order giving in this case on 02-28-94.

This court issued a order in the above mentioned case # on 02-28-94, However it failed to send a copy of the New Judgement and Conviction to the (NDOP) Nevada Department of Prisons.

A copy needs to be sent **directly** to; N.D.O.P. Central office

attn; Central Classification-Records

The Respondents have failed or refuse to comply with Petitioners copy of this courts order.

Dated this 14th day of October, 1994

Joel T. Burkett

Joel T Burkett
Pro Se Petitioner

RECEIVED

OCT 20 1994

COUNTY CLERK



224

1 Case No. C52190

2 Dept. No. III

FILED

JUN 7 10 42 AM '99

Shirley D. Higgins
CLERK

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

8
9 JOEL T. BURKEIT,

10 Petitioner,

11 -vs-

12 DIRECTOR, NEV. DEPT.

13 OF PRISONS,

14 Respondent.

AFFIDAVIT IN SUPPORT
OF MOTION TO PROCEED
IN FORMA PAUPERIS

15
16 I, JOEL T. BURKEIT, hereby declare and state
17 that I am the Petitioner in the above entitled case; that in support
18 of my Motion to proceed without being required to prepay fees, costs
19 or give security therefor; I state that because of my poverty I am
20 unable to pay the costs of said proceeding or to give security
21 therefor; that I am entitled to relief.

22 I do ___ do not ☒ request an attorney be appointed to
23 represent me.

24 I further swear that the responses which I have made to
25 questions and instructions below are true.

26 1. Are you presently employed: Yes ___ No ☒

27 a. If the answer is Yes, state the amount of your salary
28 or wages per month, and give the name and address of your employer:

230 CE43

COUNTY CLERK
JUN 9 7 1999

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b. If the answer is No, state the date of last employment and the amount of salary and wages per month which you received:

N/A

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes ☐ No ☒

b. Rent payments, interest or dividends?

Yes ☐ No ☒

c. Pensions, annuities or life insurance payments?

Yes ☐ No ☒

d. Gifts or inheritances?

Yes ☐ No ☒

e. Any other sources?

Yes ☒ No ☐

If the answer to any of the above is "Yes" describe each source of money and state the amount received from each during the past twelve months:

MOTHER AND WIFE
ABOUT \$75.00 PER MONTH

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account?

Yes ☐ No ☒

If the answer is "Yes", state the total value of the items owned:

N/A

1 4. Do you own any real estate, stocks, bonds, notes,
2 automobiles, or other valuable property (excluding ordinary house-
3 hold furnishings and clothing)? Yes _____ No ✓

4 If your answer is "Yes", describe the property and state
5 its approximate value: N/A

6
7 5. List the persons who are dependent upon you for
8 support, state your relationship to those persons, and indicate
9 how much you contribute towards their support: N/A

10
11
12 UNDER THE PENALTY OF PERJURY, pursuant to N.R.S. §208.165,
13 the above affidavit is true and correct to the best of affiants
14 personal knowledge.

15 DATED this 24 day of May, 19 99.

16

17

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28

Joel T. Burkett
Sign your name

JOEL T. BURKETT #45804
Print your name DOP#

232

28
In the Eighth Judicial Court
of the State of Nevada
In and For the County of Clark

FILED

JUN 7 10 42 AM '99

Shirley L. Augustine
CLERK

Joel T. Burkett,

Petitioner,

vs.

Director, Nevada Dept.
of Prisons, et al

Respondent.

CASE NO:

C52 190

Dept III

ARGUMENT IN SUPPORT OF
PETITION FOR
WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, **JOEL T. BURKETT**, in the above
entitled matter respectfully submitting Argument in Support of the Petition Writ of
Habeas Corpus.

ARGUMENT

The facts cannot be disputed. At the time of Petitioner's
conviction the law applying to the awarding of good time credits and parole eligibility
pursuant to a primary offense and an enhanced term imposed for the use of a deadly
weapon in the commission of a crime were set forth in, **Director, Nevada Dept. of**
Prisons v. Biffath, 621 P.2d 1113 (Nev.1981) holding, that the primary offense

COUNTY CLERK

JUN 07 1999

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and enhanced term for the use of a deadly weapon were to be treated as one continuous sentence for the purpose of determining parole eligibility and good time credits under **Biffath (supra)**. Petitioner could receive a total of three (3) years, six (6) months on Count Two of his Judgment and Conviction making the eligibility of parole OFF BOTH TERMS six years and four months.

In 1987 the Nevada Supreme Court reversed its ruling in **Biffath (supra)** in **Nevada Dept. of Prisons v. Bowen, 745 P.2d 697 (Nev.1987)** holding, that the primary offense and enhanced penalty for the use of a deadly weapon were separate, and consecutive sentences imposed had to be treated as separate for all purposes. At footnote (4) in **Bowen (supra)** the Court applied the decision retroactively.

Pursuant to the Court's ruling in **Bowen (supra)** Petitioner can only receive one (1) year five (5) months off each of the terms in Count Two of his sentence making it a total of two (2) years (10) months. Assuming Petitioner receives a parole at his first hearing it will take over seven (7) years before the possibility of parole in the second (2nd) term in Count Two comes up for eligibility. The Court in **Bowen (supra)** did state at footnote four (4) the decision could not be applied to the detriment of any prisoner sentenced before the date hereof.

The United States Supreme Court has held that two elements must be present for a criminal or penal law to be Ex Post Facto, "It must be retrospective, and It must disadvantage the offender affected by It", **Weaver v. Graham, 101 S.Ct. 960 (1981)**. Indeed, the "law need not impair a vested right to violate the Ex Post Facto prohibition", **Graham (supra)**.

Petitioner respectfully submits that he is disadvantaged by the Nevada Supreme Court's ruling in **Bowen (supra)** in that he must serve more time before the possibility of parole on Count Two for the use of a deadly weapon. Moreover, under **Bowen (supra)** Petitioner must receive a parole from the kidnapping in Count Two before starting the enhanced term for the weapon, as such the prejudice to Petitioner cannot be fully determined. Under **Biffath (supra)** Petitioner can only be paroled to the street after six (6) years four (4) months, if given a parole. Applying **Bowen (supra)** to the Petitioner violates the Ex Post Facto prohibition set forth in **Graham (supra)**; Art. I, 10 of the Federal Constitution; see also **Miller v. Warden, 921 P.2d 882 (Nev, 1996)** applying Ex Post Facto.

Petitioner respectfully states that he is entitled to have the sentences imposed under Count Two of his Judgment and Conviction treated as one continuous term for the purpose of good time credits and parole eligibility as set forth in: **Director, Nevada Dept. of Prisons v. Biffath, 621 P.2nd 1113 (Nev. 1981)**.

DENIAL OF DUE PROCESS OF LAW

Petitioner agrees that he has no constitutionally cognizable interest sufficient to invoke due process of law when it comes to the granting or denying of parole, **Cooper v. Sumner, 672 F.Supp. 1361 (D.Nev, 1987)**; **Weakland v. Board of Parole Comm'rs, 678 P.2d 1158 (1984)**; **Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 99 S.Ct, 2100 (1979)**. Here Petitioner contends he has a constitutionally cognizable interest that

is sufficient to invoke due process of law in the date given to appear before the Parole Board. N.R.S. 213.142. There can be no question that a "Statute can create liberty interest protected by due process guaranteed". Bergen v. Spaulding, 881 F.2d 719 (9th Cir. 1989) and pursuant to N.R.S. 213.142 a date fixed for considering applications for clemency is fixed by the Parole board. In 1994, the Nevada Parole Board denied Petitioner parole but fixed a date of June 1997 for his next consideration. Petitioner was never given consideration by the Board in 1997 or any reason for the failure. In July of 1998 Petitioner was seen by the Parole Board and granted parole. While it is true the "State may be specific or general in defining conditions for release", Severance v. Armstrong, 620 P.2d 369 (1980) Petitioner contends due process must be fixed to the date for consideration and that he is entitled to have the parole granted in 1998.

Given an effective starting date of June 1997, indeed, the United States Supreme Court has held that "Prisoners have a liberty interest in good behavior time credits" Wolff v. McDonnell, 418 U.S. 539 (1974); Bergen v. Spaulding, 881 F.2d 719 (9th Cir. 1989) and "Once given they cannot be denied without minimal due process protections" Spaulding (supra). The same must hold true to a date fixed for consideration of parole by the parole board pursuant to N.R.S. 213.142, while it is true a prisoner has no constitutional right to parole, Petitioner respectfully states that pursuant to Nevada Law he has the constitutional right to the possibility of parole. N.R.S. 213.1099; N.R.S. 213.120 and N.R.S. 213.130, and, that the date given for consideration cannot be denied without due process. Indeed, within the date for consideration lies

END

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the possibility of parole. Moreover, pursuant to N.R.S. 213.142, "The time elapsed between hearings must not exceed three years". Petitioner's discharge date is May 16th, 2002. Therefore, subsection (2) of N.R.S. 213.142 does not apply which allows for up to five years between hearings.

Petitioner respectfully states that the failure to give him consideration for parole in June of 1997 violates due process of law in violation of the 14th Amendment of the United States Constitution and N.R.S. 213.142.

RELIEF SOUGHT

Wherefore, Petitioner, **Joel T. Burkett**, respectfully requests the following relief:

- (1) Issue an Order to grant the Petition for Writ of Habeas Corpus;
- (2) Issue an Order directing Respondents to treat Counts 2, 3, and 2, 4 as one continuous term for the purpose of good time credits and parole eligibility;
- (3) Issue an Order directing Respondents to make Petitioner's parole date in 1998 effective from 1997.

Dated this 27th day of May, 1999.

Respectfully submitted,


Pro se Petitioner

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VERIFICATION OF SERVICE

I, **JOEL T. BURKETT**, do hereby certify that I did mail a true and correct copy of the above Argument in Support of the Petition for Writ of Habeas Corpus to Respondent on this 29th day of May, 1999.


Pro se Petitioner

FILED

CASE NO: C 52190

DEPT NO: III

JUN 7 10 42 AM '99

Shirley D. Hargrave
CLERK

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

IN THE MATTER OF

FINANCIAL
CERTIFICATE

JOEL T. BURKEIT # 45804
NAME

ON MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

I hereby certify that the Petitioner herein has the sum
of \$ 46.43 spendable on account to his credit at the institution
28.92 non spendable
where he is confined. I further certify that Petitioner likewise
has the following securities to his credit according to the records
of said institution:

DATED this 24 day of May, 1999.

BY: Shirley Wood Inmate Services
~~Nevada Department of Prisons~~
~~Inmate Services Accountant~~
~~Authorized Officer of Institution~~
NEW MEXICO DEPT OF PRISONS
INMATE SERVICE ACCOUNTANT
AUTHORIZED OFFICER OF
INSTITUTION.

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CORRECTIONS DEPARTMENT OF NEW MEXICO

24-May-99

LOCATION: 1

INMATE LEDGER

CSN	LAST	FIRST	BEG BAL	DEBITS	CREDITS	END BAL	TRAN CODE	TRAN DATE	REFERENCE
45804	BURKETT	JOEL	\$0.00	\$0.00	\$50.00	\$50.00	CASH DEPOSIT	12/8/1998	4347
45804	BURKETT	JOEL	\$50.00	\$49.00	\$0.00	\$1.00	SALES (CANTEEN, POSTAGE, ETC)	12/22/1998	081NORTH
45804	BURKETT	JOEL	\$1.00	\$0.00	\$28.93	\$29.93	CASH DEPOSIT	1/1/1999	5143
45804	BURKETT	JOEL	\$29.93	\$28.92	\$0.00	\$1.01	TRANSFER TO RESTRICTED ACCOUNT	1/1/1999	5143
45804	BURKETT	JOEL	\$1.01	\$0.00	\$50.00	\$51.01	CASH DEPOSIT	1/21/1999	5663
45804	BURKETT	JOEL	\$51.01	\$21.87	\$0.00	\$29.14	SALES (CANTEEN, POSTAGE, ETC)	1/28/1999	098NORTH
45804	BURKETT	JOEL	\$29.14	\$26.42	\$0.00	\$2.72	SALES (CANTEEN, POSTAGE, ETC)	2/3/1999	101NORTH
45804	BURKETT	JOEL	\$2.72	\$0.00	\$50.00	\$52.72	CASH DEPOSIT	2/17/1999	6469
45804	BURKETT	JOEL	\$52.72	\$0.00	\$50.00	\$102.72	CASH DEPOSIT	2/19/1999	6632
45804	BURKETT	JOEL	\$102.72	\$46.61	\$0.00	\$56.11	SALES (CANTEEN, POSTAGE, ETC)	2/24/1999	110 NORTH
45804	BURKETT	JOEL	\$56.11	\$45.61	\$0.00	\$10.50	SALES (CANTEEN, POSTAGE, ETC)	3/3/1999	113NORTH
45804	BURKETT	JOEL	\$10.50	\$1.25	\$0.00	\$9.25	SALES (CANTEEN, POSTAGE, ETC)	3/11/1999	116NORTH
45804	BURKETT	JOEL	\$9.25	\$0.50	\$0.00	\$8.75	SALES (CANTEEN, POSTAGE, ETC)	3/17/1999	119NORTH
45804	BURKETT	JOEL	\$8.75	\$0.00	\$50.00	\$58.75	CASH DEPOSIT	3/23/1999	7748
45804	BURKETT	JOEL	\$58.75	\$1.05	\$0.00	\$57.70	SALES (CANTEEN, POSTAGE, ETC)	3/25/1999	122NORTH
45804	BURKETT	JOEL	\$57.70	\$32.45	\$0.00	\$25.25	SALES (CANTEEN, POSTAGE, ETC)	4/1/1999	125NORTH
45804	BURKETT	JOEL	\$25.25	\$1.50	\$0.00	\$23.75	SALES (CANTEEN, POSTAGE, ETC)	4/7/1999	127NORTH
45804	BURKETT	JOEL	\$23.75	\$2.80	\$0.00	\$20.95	SALES (CANTEEN, POSTAGE, ETC)	4/12/1999	LIB/XEROX
45804	BURKETT	JOEL	\$20.95	\$20.75	\$0.00	\$0.20	SALES (CANTEEN, POSTAGE, ETC)	4/14/1999	131NORTH

822

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LOCATION: 1

INMATE LEDGER

CSN	LAST	FIRST	BEG BAL	DEBITS	CREDITS	END BAL	TRAN CODE	TRAN DATE	REFERENCE
45804	BURKETT	JOEL	\$0.20	\$0.00	\$50.00	\$50.20	CASH DEPOSIT	4/20/1999	8652
45804	BURKETT	JOEL	\$50.20	\$46.27	\$0.00	\$3.93	SALES (CANTEEN, POSTAGE, ETC)	4/28/1999	137 NORTH
45804	BURKETT	JOEL	\$3.93	\$7.50	\$0.00	(\$3.57)	TRANSFER FROM INMATE TO CLUB	4/29/1999	PICTURE
45804	BURKETT	JOEL	(\$3.57)	(\$7.50)	\$0.00	\$3.93	TRANSFER FROM INMATE TO CLUB	4/29/1999	PICTURE
45804	BURKETT	JOEL	\$3.93	\$7.50	\$0.00	(\$3.57)	TRANSFER FROM INMATE TO CLUB	4/29/1999	PICTURE
45804	BURKETT	JOEL	(\$3.57)	\$0.00	\$50.00	\$46.43	CASH DEPOSIT	5/18/1999	9426
			\$0.00	\$332.50	+	\$378.93	=	\$46.43	
Restricted Account Balance:			\$0.00	\$0.00	+	\$28.92	=	\$28.92	

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229

30
1 Case No. C52190

2 Dept. No. III

FILED

JUN 7 10 42 AM '99

Shirley M. Thompson
CLERK

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5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 FOR THE COUNTY OF CLARK

8
9 JOEL T. BURKETT,

10 Petitioner,

11 -vs-

12 DIRECTOR, NEV. DEPT.,

13 OF PRISONS,

14 Respondent.

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

15
16 COMES NOW the Petitioner, in propria persona, pursuant
17 to N.R.S. §12.015, and respectfully moves this Honorable Court for
18 an Order granting Petitioner leave to proceed in the above-entitled
19 action in forma pauperis, without requiring Petitioner to pay or
20 provide security for the payment of costs of prosecuting this
21 action.

22 This motion is made and based upon the attached affidavit
23 and certificate.

24 DATED this 24th day of MAY, 19 99.

25 Respectfully submitted,

Joel T. Burkett

26
27
28 257

24
FILED

JUN 7 10 42 AM '99

Shirley R. Thompson
CLERK
In the Eighth Judicial District
of the State of Nevada
In and For the County of Clark

Joel T. Burkett,

Petitioner,

vs.

Director, Nevada Dept.
of Prisons, et al

Respondent.

Case No:

C 52190
Dept III

NOTICE

Petitioner wishes to inform the Court that he is being housed out of state. So, he has filed in the district of his conviction, issues upon good time credits and computation of time.

Dated this 27th day of May, 1999.

Respectfully submitted,

Joel T. Burkett
Pro se Petitioner

RECEIVED
JUN 07 1999
COUNTY CLERK

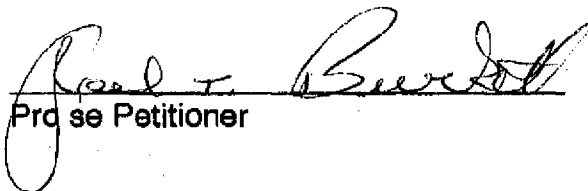
225

CE43

VERIFICATION OF SERVICE

I, **JOEL T. BURKETT**, do hereby certify that I did mail
a true and correct copy of the above Notice to Respondent on this

28th day of May, 1999.


Pro se Petitioner

29-
1 Case No. C 5290

2 Dept. No. III

FILED

JUN 7 10 42 AM '99

Shirley B. Harrison

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

9 JOE T. BURKE,

10 Petitioner,

11 v.

12 DIRECTOR, NEVADA, DEPT.
OF PRISONS

13 Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

14 INSTRUCTIONS:

15 (1) This petition must be legibly handwritten or type-
16 written, signed by the petitioner and verified.

17 (2) Additional pages are not permitted except where noted
18 or with respect to the facts which you rely upon to support
your grounds for relief. No citation of authorities need be
furnished. If briefs or arguments are submitted, they should
be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete
the Affidavit in Support of Request to Proceed in Forma
Pauperis. You must have an authorized officer at the prison
complete the certificate as to the amount of money and
securities on deposit to your credit in any account in the
institution.

(4) You must name as respondent the person by whom you are
confined or restrained. If you are in a specific institution
of the department of prisons, name the warden or head of the
institution. If you are not in a specific institution of the
department but within its custody, name the director of the
department of prisons.

(5) You must include all grounds or claims for relief
which you may have regarding your conviction or sentence.

-1-

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1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
5 sentence. Failure to allege specific facts rather than just
6 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
conviction or sentence, the original and one copy must be filed
9 with the clerk of the district court for the county in which
the conviction occurred. Petitions raising any other claims
10 must be filed with the clerk of the district court for the
county in which you are incarcerated. One copy must be mailed
11 to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
12 you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
13 conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently

17 restrained of your liberty: NEW PRISONER HOUSED OUT OF
18 STATE, IN THE NEW MEXICO PRISON SYSTEM

19 2. Name and location of court which entered the judgment
20 of conviction under attack: EIGHTH JUDICIAL DISTRICT

21 COURT CLARK COUNTY

22 3. Date of judgment of conviction: JAN 20TH 1981

23 4. Case number: C52190

24 5. (a) Length of sentence: STATEMENT OF CASE ATTACHED

25 (b) If sentence is death, state any date upon which
26 execution is scheduled: N/A

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No ☒ . If "yes," list crime, case number and
2 sentence being served at this time: _____
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: SEE STATEMENT OF CASE ATTACHED

7 HERETO

8 8. What was your plea? (check one)

9 (a) Not guilty ☒

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury ☒

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes ☒ No _____

23 12. Did you appeal from the judgment of conviction?

24 Yes ☒ No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: NEVADA SUPREME COURT

27 (b) Case number or citation: 13600

1 (c) Result:

DENIED

2 (d) Date of Result:

APRIL 21, 1983

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did

5 not: N/A

6
7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes ☒ No ☐.

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: FIRST JUDICIAL DISTRICT

14 (2) Nature of proceeding: PETITION FOR

15 WRIT OF HABEAS CORPUS POST-CONVICTION

16
17 (3) Grounds raised: INEFFECTIVE COUNSEL

18 BOTH AT TRIAL AND DIRECT APPEAL

19
20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes ☒ No ☐

22 (5) Result: DENIED

23 (6) Date of Result: AUGUST 5, 1988

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: CASE NO.

26 86-01306H

1 (b) As to any second petition, application or motion,
2 give the same information:

3 (1) Name of Court: EIGHTH JUDICIAL DISTRICT
4 (2) Nature of proceeding: HABEAS CORPUS
5 (3) Grounds raised: MISTAKE IN J. AND C.
6 (4) Did you receive an evidentiary hearing on
7 your petition, application or motion? Yes _____ No ✓
8 (5) Result: GRANTED
9 (6) Date of Result: FEB. 28 1994
10 (7) If known, citations or any written opinion or
11 date of orders entered pursuant to each result: ORDER
12 ENTERED FEB 28 1994

13 (c) As to any third or subsequent additional
14 applications or motions, give the same information as above,
15 list them on a separate sheet and attach.

16 (d) Did you appeal to the highest state or federal
17 court having jurisdiction, the result or action taken on any
18 petition, application or motion?

19 (1) First petition, application or motion?

20 Yes ✓ No _____

21 Citation or date of decision: SEE STATEMENT OF CASE

22 (2) Second petition, application or motion?

23 Yes _____ No _____

24 Citation or date of decision: SEE STATEMENT OF CASE

25 (3) Third or subsequent petitions, applications .
26 or motions? Yes _____ No _____

27 Citation or date of decision: SEE STATEMENT OF CASE

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)

7 N/A

8
9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: N/A

14
15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)

22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may
2 be included on paper which is 8 1/2 by 11 inches attached to
3 the petition. Your response may not exceed five handwritten or
4 typewritten pages in length.)

5 NEW VIOLATIONS COULD NOT HAVE BEEN RAISED (SCANNER)

6 19. Are you filing this petition more than 1 year
7 following the filing of the judgment of conviction or the
8 filing of a decision on direct appeal? If so, state briefly
9 the reasons for the delay. (You must relate specific facts in
10 response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition.
12 Your response may not exceed five handwritten or typewritten
13 pages in length.)

14 NEW VIOLATION AS OF 1998

15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under
17 attack? Yes _____ No ✓.

18 If yes, state what court and the case number: _____
19

20 21. Give the name of each attorney who represented you in
21 the proceeding resulting in your conviction and on direct
22 appeal: DO NOT HAVE AT THIS TIME
23

24 22. Do you have any future sentences to serve after you
25 complete the sentence imposed by the judgment under attack?

26 Yes _____ No ✓. If yes, specify where and
27 when it is to be served, if you know: N/A
28

1 23. State concisely every ground on which you claim that
2 you are being held unlawfully. Summarize briefly the facts
3 supporting each ground. If necessary you may attach pages
4 stating additional grounds and facts supporting same.

5 (a) Ground one: EX POST FACTO VIOLATION

6 U.S.C.A. CONST. ART. I, 10, CL. 1.

7 Supporting FACTS (Tell your story briefly without citing cases
8 or law): SEE SUPPORTING FACTS ATTACHED HERETO, AND

9 ARGUMENT IN SUPPORT OF PETITION FOR HABEAS CORPUS

10 (b) Ground two: DENIAL OF DUE PROCESS

11 U.S.C.A. CONST. AMEND. 14.

12 Supporting FACTS (Tell your story briefly without citing cases
13 or law): SEE SUPPORTING FACTS ATTACHED HERETO AND

14 ARGUMENT IN SUPPORT OF PETITION FOR HABEAS CORPUS

15 (c) Ground three: _____

16
17 Supporting FACTS (Tell your story briefly without citing cases
18 or law): _____

19
20 (d) Ground four: _____

21
22 Supporting FACTS (Tell your story briefly without citing cases
23 or law): _____

24
25 WHEREFORE, Petitioner prays that the court grant
26 petitioner relief to which he may be entitled in this
27 proceeding.

EXECUTED at NEW MEXICO STATE PRISON on the 27 day
of May, 1999.

Paul T. Bevedett
Signature of Petitioner

P.O. Box 1059
Address

SANTA FE, NM 87504

Signature of Attorney (if any)

Attorney for Petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he
is the petitioner named in the foregoing petition and knows the
contents thereof; that the pleading is true of his own
knowledge, except as to those matters stated on information and
belief, and as to such matters he believes them to be true.

Paul T. Bevedett
Signature of Petitioner

Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL T. BURKETT, hereby certify pursuant
to N.R.C.P. 5(b), that on the 27 day of May,
19 99, I mailed a true and correct copy of the foregoing
PETITION FOR WRIT OF HABEAS CORPUS addressed to:

DIRECTOR, NEV. DEPT. OF PRISONS
Respondent prison or jail official

P.O. Box 607
Address

CARSON CITY, NEV, 89701

Attorney General
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

RONALD C. BLOXHAM
District Attorney of County of Conviction

200 S. THIRD ST LAS VEGAS, NEV 89155
Address

Joel T. Burkett
Signature of Petitioner

STATEMENT OF THE CASE

JOEL T. BURKETT (hereafter Petitioner) is in the custody of the Nevada Department of Prisons pursuant to a Judgment of Conviction filed July 29, 1981, entered in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, in Case No. C52190, entitled State of Nevada v. Joel T. Burkett, following a jury trial. Petitioner was adjudged guilty of robbery with a deadly weapon, kidnapping in the first degree with a deadly weapon and two counts of sexual assault. Petitioner was sentenced to the following terms of imprisonment: Count One: Robbery fifteen (15) years and a consecutive fifteen (15) years for the use of a deadly weapon. Count Two: First degree kidnapping, life with the possibility of parole and a consecutive life with the possibility of parole for the use of a deadly weapon. Count Three: Sexual assault, life with the possibility of parole. Count Four: Sexual assault, life with the possibility of parole. Count Three and Count Four to run consecutive to each other, but concurrent to Count Two.

Petitioner filed an appeal to the Nevada Supreme Court on December 7th, 1981. On April 21, 1983, the appeal was dismissed. On August 21, 1986, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction) in the First Judicial District Court of the State of Nevada, in and for Carson City, Case No. 86-013064. On June 3rd, 1988, a hearing was conducted on the State Habeas Corpus Petition. On August 5, 1988, an Order Denying the Petition was entered. Petitioner appealed from the Order Denying the Petition for Writ of Habeas Corpus to the Nevada Supreme Court in Case No. 19446. On November 21, 1989, the Nevada

Supreme Court entered the Order Dismissing the Appeal. On December 27, 1991, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254 in Case No. CV-N-91-618-HDM.

On October 29, 1992, Respondents moved to dismiss the Petition on the basis that several of the claims were unexhausted. Petitioner filed a Response, setting forth a denial of a State Corrective Process as "Cause". The Court failed or refused to address Petitioner's issues of cause, and, ultimately, dismissed the Petition.

On April 11, 1995, Petitioner filed pursuant to 28 U.S.C. 2254, a Writ of Habeas Corpus in Case No. CV-N-95-127-ECR. The Court denied the Petition in 1997.

In 1994 Petitioner filed a Writ of Habeas Corpus in the Eighth Judicial District Court seeking to correct a mistake in his Judgment and Conviction. Pursuant to N.R.S. 176.565, the Court granted the petition and corrected the sentence on February 28, 1994.

SUPPORTING FACTS

Ground One: At the time Petitioner was convicted and sentenced under Nevada Law a primary offense and a term enhanced for the use of a deadly weapon were treated as one continuous term for the purpose of parole eligibility and good time credits.

In Count Two of Petitioner's Judgment and Conviction he was given a

term of life with the possibility of parole for first degree kidnapping and a consecutive term of life with the possibility of parole for the use of a deadly weapon. Due to a mistake in Petitioner's Judgment and Conviction he began Count Two of his sentence first and the prison treated the term as one continuous term. (See attached hereto inmate time card.) In 1994 Petitioner received a correction from the Court as to his sentence.

Petitioner was placed on Count One of his terms and in 1998 Petitioner received a parole from Count One to his consecutive term in Count Two, at which time the prison treated the terms in Count Two separate due to a change in Nevada Law in 1987.

Petitioner contends that he is entitled to the law in effect at the time of his conviction and that the Respondent must treat Count Two as one continuous term for the purpose of good time credits and parole eligibility. Applying the new law to Petitioner is an Ex Post Facto violation. Under the old law Petitioner can receive a total of three (3) years, six (6) months good time making the possibility of parole off all counts in six (6) years, four (4) months. Whereas, under the new law of 1987 Petitioner can only receive a total of two (2) years ten (10) months off both terms under Count Two. Moreover, because Petitioner must receive a parole from the first term in Count Two pursuant to the new law of 1987 before starting the 2nd term in Count Two. The prejudice to Petitioner cannot fully be determined at this time. Petitioner respectfully states that the new law being applied to him is to his detriment and violates the Ex Post Facto clause of Art. 10 of the Federal Constitution.

Ground Two: Petitioner was taken before the Nevada Parole Board on June 6, 1994, at which time he was denied parole until June 1997. However, Petitioner was never given a parole hearing in 1997.

In 1998 the Nevada Parole Board reviewed Petitioner's case and he was granted parole from Count One of his Judgment and Conviction to his consecutive terms. Petitioner contends that the failure to take him to the parole board in 1997 was a denial of due process in violation of the 14th Amendment of the United States Constitution and that the parole granted in 1998 should be counted from 1997. This would effect Petitioner's parole eligibility date on his consecutive terms. Court grants the petition on Ground One Petitioner's first parole eligibility date would be in 2003 off Counts Two, Three and Four, not 2004. The failure to take Petitioner to his parole hearing in 1997 has had the effect of adding a year to his consecutive terms. (See attached hereto parole board action in 1994.)

RELIEF SOUGHT

Wherefore, Petitioner, **Joel T. Burkett**, respectfully requests the following relief:

- (1) Issue an Order to grant the Petitioner a Writ of Habeas Corpus:
- (2) Issue an Order directing Respondent to treat Counts Two, Three and Two, Four of Petitioner's Judgment and Conviction as one continuous term for the purpose of good time credits and parole eligibility;
- (3) Issue an Order to credit Petitioner's parole date from 1997, not 1998.
- (4) Grant Petitioner the just relief to which he is entitled in these proceedings.

Dated this 27th day of May, 1999.


Pro se Petitioner

Date : 05/01/85
NDP #16111 BURKETT, J.
Institution : Out For Treatment

Nevada Department of Prisons
INMATE TIME CARD

Crime : KIDNAP 1ST/UDW CS Case #52190 County : CL

Date Sentenced	Years Sentenced	County Jail Credits	Time Started	Full Time
06/02/81	LIFE	165	12/19/80	LIFE

Credits Earned	Current Exp.	Days Remain	Time to Serve
454	LIFE	N/A	LIFE

Parole Eligibility Date : 12/15/87 Last Parole Action : N/A

--> No Projected Expiration Date .

00 0

E1C

INMATE WORK CARD

NAME: BURKETT, J NUMBER: 16111 (CRIME: KID 1/UDW,CS)
 INSTITUTION: NSP COUNTY: CL SENT: LIFE
 CASE #: 52190 JAIL CREDITS: 165 CREDITS EARNED - THRU 12-82: 135

1983 JA FE MA AP MA JU JL AU SE OC NO DE

STAT TIME:
 PROGRAM TIME: -00-00-10-10
 BLOOD:

BLOOD NOT FOUND

RECEIVED DATE: 06-03-81
 SENTENCE DATE: 06-02-81
 RETRO DATE: 12-19-80
 RATE: 10/12-19-84
 PAROLE DATE: 07-06-87
 EXPIRATION DATE: LIFE

PAROLE BOARD RESULTS: N/A

1 C1

CERTIFICATION OF
BOARD OF PAROLE COMMISSIONERS ACTION

CC No. 52190

Count No.

NAME Buckett, Joel NUMBER 10111 INSTITUTION ESP DATE 6/14/94

Only the paragraph checked applies to you: ☒ Personal hearing ☐ In absentia

☐ The Board has decided to parole you effective:

Special Conditions:

- | | |
|---|---|
| <input type="checkbox"/> Out-of-State.....Only | <input type="checkbox"/> Drug testing |
| <input type="checkbox"/> Mandatory AA/NA attendance | <input type="checkbox"/> House arrest program/not to exceed 90 days |
| <input type="checkbox"/> No drinking | <input type="checkbox"/> Mental health counseling if deemed necessary by Parole and Probation Department |
| <input type="checkbox"/> Payment of all court ordered fines, fees, restitution, if applicable, on schedule as determined by Parole and Probation Department | <input type="checkbox"/> Outpatient substance abuse counseling if deemed necessary by Parole and Probation Department |
| <input type="checkbox"/> Inpatient substance abuse counseling program | |
| <input type="checkbox"/> No contact with minor children—or as deemed appropriate by Officer | |

☐ Board recommends intensive supervision

☒ Parole has been denied to: 3 yrs 6/97

☐ Because your guideline-recommended parole month is later than your projected expiration date, parole is denied to expiration

☒ The Board has determined that the crime severity level and/or parole success factors do not adequately reflect the true nature of your case. Therefore, the Board has departed from the guideline recommendation. The reasons for departure are listed below:

Nature & Severity of Crime

☐ COMMENT:

☐ No action has been taken in your case due to the following:

Crime Severity Level: VII

Parole Success Likelihood Score: 6

Guideline-Recommended Months: 28

Panel recommendation: Deny 3 yrs 6/97

Final Action:

Commissioner Gunderson: ☐ Grant ☐ Deny

Commissioner Harris: ☐ Grant ☒ Deny

Commissioner Chickory: ☐ Grant ☒ Deny

Commissioner Scott: ☐ Grant ☒ Deny

Commissioner Franklin: ☐ Grant ☐ Deny

Hearing Rep.: ☐ Grant ☐ Deny

Commissioner Wright: ☐ Grant ☐ Deny

: ☐ Grant ☐ Deny

Recommendation: ☒ Ratified ☐ Overturned ☐ Amended ☒ By Board majority

ORDR

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

JUN 9 12 19 PM '99

Shirley S. Thompson
CLERK

Joel Burkett)	
)	
Petitioner,	)	Case No. 81-C-052190-C
)	
Vs	)	Dept. No. 3
)	
THE STATE OF NEVADA,	)	ORDER RE: PETITION FOR
	)	WRIT OF HABEAS CORPUS
)	
Respondent.)	

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on JUNE 7, 1999. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefor,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's calendar on the 12 day of August 1999, at the hour of 8:30 o'clock A.m. for further proceedings.
DATED this 8th day of June 1999.

[Signature]
DISTRICT JUDGE

Rev4/99

MC

258

CE43

ORIGINAL

10

1 ANS
2 FRANKIE SUE DEL PAPA
3 Attorney General
4 By: RENE L. HULSE
5 Deputy Attorney General
6 Nevada Bar No. 3778
7 Criminal Justice Division
8 555 E. Washington Ave., #3900
9 Las Vegas, Nevada 89101
10 (702) 486-3420
11 Attorneys for Respondent

FILED

AUG 4 11 27 AM '99

Shirley B. Ruggins
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOEL BURKETT,
11 Petitioner,
12 vs.
13 THE STATE OF NEVADA
14 Respondents.

Case No. 81-C-052190-C
Dept. No. III

ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE: August 12, 1999
TIME: 8:30 a.m.

19 Respondents, through legal counsel FRANKIE SUE DEL PAPA, attorney General of the State
20 of Nevada, by Rene L. Hulse, Deputy Attorney General, hereby submit their Answer to JOEL
21 BURKETT's (BURKETT) Petition for Writ of Habeas Corpus (Post-Conviction). This Answer is
22 based upon all the pleadings and papers on file herein, the following Memorandum of Points and
23 Authorities, and the attached exhibits.

24 DATED this 3rd day of August, 1999.

FRANKIE SUE DEL PAPA
Attorney General of Nevada

26 By: *Rene L. Hulse*
27 RENE L. HULSE
28 Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

2005 0 4 1999
88801 4 0 9004

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PROCEDURAL BACKGROUND

On May 4, 1981, a jury found BURKETT guilty of the crimes of ROBBERY WITH THE USE OF A DEADLY WEAPON, Count I; FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON, Count II; SEXUAL ASSAULT, Count III; and SEXUAL ASSAULT, Count IV.

On June 2, 1981, the Court sentenced BURKETT to serve the following terms of imprisonment:

- Count I = fifteen (15) years imprisonment for Robbery, and a consecutive fifteen (15) years imprisonment for the Use of a Deadly Weapon;
- Count II = Life with the possibility of parole for First Degree Kidnapping, and a consecutive term of Life with the possibility of parole for the Use of a Deadly Weapon. Count II was to run consecutive to Count I;
- Count III = Life with the possibility of parole for Sexual Assault;
- Count IV = Life with the possibility of parole for Sexual Assault. Counts III and IV were ordered to run consecutive to each other and concurrent to the sentences imposed in Count II.

Judgment of Conviction, at Exhibit A.

The original Judgment of Conviction was filed on July 29, 1981. Exhibit A. That original Judgment of Conviction incorrectly ordered that the sentences in Counts III and IV were to be served concurrently to the sentences imposed in Counts I and II. By operation of law (NRS 176.035), the sentences in Counts III and IV would have incorrectly computed as concurrent to each other by the prison system.

On February 28, 1994, an Amended Judgment of Conviction was filed. Exhibit B. The Amended Judgment of Conviction correctly states the sentences as orally stated by the district court — that Counts III and IV are to be served consecutive to each other, but are also to be served concurrently with the sentences imposed in Count II. Exhibit B.

BURKETT appealed his conviction and the Nevada Supreme Court issued an Order Dismissing Appeal which was filed April 21, 1983.

1 In February 2, 1992, BURKETT filed a Petition for Writ of Habeas Corpus in the present Court.
2 In that Petition, BURKETT pointed out the discrepancy between the orally stated sentence by the trial
3 court and the written original Judgment of Conviction.

4 On February 28, 1994, the court agreed with BURKETT's contention that the Judgment of
5 Conviction did not accurately reflect the oral pronouncement of sentence. Therefore, the court
6 permitted the filing of the Amended Judgment of Conviction in the present case. Exhibit B.

7 BURKETT now brings the instant Petition alleging two claims for relief. First, BURKETT
8 raises a "Biffath and Bowen" claim arguing that the Nevada Department of Prisons (NDOP) is
9 improperly treating the two life sentences under Count II as separate sentences. Secondly, BURKETT
10 alleges that his due process rights were violated because he did not get a parole hearing in 1997. For
11 the reasons stated below, BURKETT is not entitled to the relief he requests.

12 II.

13 ANALYSIS

14 A. BURKETT'S "BIFFATH AND BOWEN" ARGUMENT MUST FAIL BECAUSE 15 TREATING THE LIFE SENTENCES OF COUNT II SEPARATELY IS NOT 16 DETRIMENTAL TO BURKETT.

17 BURKETT claims that NDOP's separate treatment of his consecutive life sentences under Count
18 II pursuant to Nevada Department of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1997), violates the
19 ex post facto clause. According to BURKETT, his consecutive life sentence for the deadly weapon
20 enhancement should be combined pursuant to Nevada Department of Prisons v. Biffath, 97 Nev. 18,
21 621 P.2d 1113 (1981).

22 In Biffath v. Warden, 95 Nev. 260 (1979) (Biffath I) and Director, N.D.O.P. v. Biffath, 97 Nev.
23 18 (Biffath II), the Nevada Supreme Court held that enhanced sentences must "be treated as one
24 continuous sentence for purposes of awarding good time credits" and for parole eligibility. That law
25 was changed, however, in 1987. In Bowen, 103 Nev. 477, 745 P.2d 697, the Nevada Supreme Court
26 reversed itself and held that sentences which are enhanced for using a deadly weapon must be treated as
27 separate sentences by NDOP for purposes of sentence calculation.

28 The Nevada Supreme Court was aware, however, that applying the Bowen decision retroactively
might have a deleterious effect on the sentence calculations of some prisoners which would violate

1 notions of basic fairness. The court therefore stated that its opinion would apply retroactively unless
2 such application would be detrimental to a prisoner. Id. 103 Nev. at 481, n.4.

3 When BURKETT was convicted on July 29, 1981, weapon-enhanced sentences were treated as
4 one combined sentence pursuant to Biffath. However, as Bowen instructs, NDOP is now required to
5 treat BURKETT's weapon-enhanced sentence separately unless such treatment is detrimental to the
6 prisoner. BURKETT argues that separate treatment is detrimental to him because he would earn more
7 good time credits if the sentences were combined. BURKETT's separate sentence of life with the
8 possibility of parole for First Degree Kidnapping (Count II) has a minimum parole eligibility of five (5)
9 years. By law, an inmate like BURKETT, who committed his crime before July 1, 1985, and who was
10 sentenced after June 30, 1969, can accumulate good time credits as set forth in NRS 209.443. As that
11 statute shows, the amount of credits increases from two (2) months a year for the first year, up to five
12 (5) months a year in the fifth and remaining years. Under Demosthenes v. Williams, et al., 97 Nev.
13 611, 614-15, 637 P.2d 1203 (1981), and prior to the amendment of NRS 209.443, good time credits
14 apply to "the parole eligibility of all inmates entitled to eventual parole, regardless of the minimum
15 sentence specified in the relevant statute." Accordingly, BURKETT's accumulated good time credits
16 are deducted from his five (5) year minimum sentence to determine his parole eligibility.

17 BURKETT argues that he would accumulate good time credits more rapidly if his consecutive
18 life sentences under Count II are combined to one ten (10) year minimum term. In that regard,
19 BURKETT determines that the retroactive application of Bowen (requiring separate treatment) would
20 be detrimental. The problem with this argument is that BURKETT overlooks the entire sentence that
21 the court imposed. As the Amended Judgment of Conviction states, the consecutive life sentences
22 imposed in Counts III and IV¹ are to run concurrently with the consecutive life sentences imposed in
23 Count II. Exhibit B. BURKETT offers no authority showing that the consecutive life sentences
24 imposed on Counts III and IV can be combined -- nor can he. The consecutive life sentences of Counts
25 III and IV must be served before ultimate parole to the streets could be obtained. The sentences
26 imposed in Counts III and IV must therefore control the computation of time to serve on the

27 ¹ Counts III and IV also have a five (5) year minimum parole eligibility. Good time credits would also
28 accumulate pursuant to the provisions of NRS 209.443 and would be deducted from the minimum
parole eligibility.

1 consecutive life sentences, otherwise the court's intended sentence would be undermined. When
2 following the dictates of this Court's sentence, treating the consecutive life sentences of Count II
3 separately does not have a detrimental effect. Contrary to BURKETT's belief, he gains nothing by
4 combining the two life sentences of Count II, because that sentence is restricted by the consecutive
5 separate sentences of Counts III and IV that run concurrently with Count II. BURKETT is not entitled
6 to relief on this claim and the claim should be denied.

7
8 **B. THE PAROLE BOARD CONSIDERED BURKETT FOR PAROLE IN 1997 AND**
9 **THEREFORE HIS DUE PROCESS CLAIM HAS NO MERIT.**

10 BURKETT next argues that his due process rights were violated when the parole board failed to
11 consider him for parole in 1997. According to BURKETT, he was denied parole in 1994, for further
12 review in 1997. BURKETT claims that he was never considered in 1997. The records of the Parole
13 Board, however, indicate otherwise.

14 As BURKETT states in his Petition, he is being housed out of state in the New Mexico Prison
15 System under the Interstate Corrections Compact. See NRS 215A.010 et seq. During his absence, the
16 Parole Board held a parole hearing on April 30, 1997, to consider BURKETT for parole. Exhibit C.
17 BURKETT was denied parole for one more year and was notified of the Parole Board's decision by
18 letter dated May 15, 1997. Exhibit D. Despite being in absentia, BURKETT clearly received a parole
19 hearing in 1997, and he is not entitled to relief on this claim.

20 Moreover, there is no constitutional or inherent right of a convicted person to be conditionally
21 released before the expiration of a valid sentence, and a reasonable entitlement to due process is not
22 created merely because a state provides for the possibility of parole. Greenholtz v. Inmates of the
23 Nebraska Penal and Correctional Complex, 442 U.S. 1, 11 (1979). An inmate has no protectible
24 expectation of parole unless a statute is phrased to specifically create a real expectation of parole as
25 opposed to a unilateral hope for parole. Id. at 12; Severance v. Armstrong, 96 Nev. 836, 839, 620 P.2d
26 369, 370 (1980).

27

28

....

BURKETT apparently believes that he has a liberty interest in being paroled. Section 213.1099 of the Nevada Revised Statutes vests the Board with the authority to release prisoners on parole:

1. Except as otherwise provided in this section and NRS 213.1215, the board may release on parole a prisoner otherwise eligible for parole under NRS 213.107 to 213.160, inclusive.
2. In determining whether to release a prisoner on parole, the board shall consider:
 - (a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;
 - (b) Whether the release is incompatible with the welfare of society;
 - (c) The seriousness of the offense and the history of criminal conduct of the prisoner;
 - (d) The standards adopted pursuant to NRS 213.10885 and the recommendation, if any, of the chief; and
 - (e) Any documents or testimony submitted by a victim notified pursuant to NRS 213.130.

NRS 213.1099 (emphasis added). Although the Board must consider certain factors in making its decision, it is clear that the Board's determination regarding parole is entirely discretionary. The Nevada Supreme Court, in construing similar prior versions of this statute, has consistently held that no liberty interest lies in being granted parole precisely because the Board has nearly unlimited discretion in determining whether parole is proper. Severance, 96 Nev. at 839, 620 P.2d at 370; Weakland v. Board of Parole Comm'rs., 100 Nev. 218, 219-20, 678 P.2d 1158 (1984). Clearly, NRS 213.1099 does not create a protectible liberty interest. Accordingly, even if BURKETT had not received parole consideration, as he erroneously alleges, he cannot state a claim for relief on due process grounds. In addition, because due process concerns are not implicated, BURKETT cannot complain that his parole hearing was held in his absence. BURKETT's second claim for relief should therefore be denied as meritless.

III.

CONCLUSION

BURKETT gains nothing by combining the two life sentences of Count II, because that sentence is restricted by the consecutive separate sentences of Counts III and IV that run concurrently with Count II. BURKETT is therefore not entitled to relief on his "Biffath/Bowen" claim in Ground One.

BURKETT's second allegation that he did not receive a parole hearing in 1997 is erroneous, and he has no due process right to parole release. Respondents therefore request that the instant Petition for Writ of Habeas Corpus (Post-Conviction) be denied.

DATED this 3rd day of August, 1999.

FRANKIE SUE DEL PAPA
Attorney General

By:

Rene L. Hulse
RENE L. HULSE
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 3rd day of August, 1999, I served a true and accurate copy of the foregoing ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS by mailing via United States mail, first class, postage prepaid, to:

JOEL BURKETT, NDOP #16111
NEW MEXICO STATE PRISON
P O BOX 1059
SANTE FE, NM 87504

Anne P. Hopp
An Employee of the Office of
the Attorney General

FILED

JUL 29 9 57 AM '81

LORETTA BOWMAN
CLERK

BY *[Signature]*

CASE NO. C52190

DEPT. NO. VII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,
Plaintiff,
v.
JOEL BURKETT aka
Raymond Haire,
Defendant.

JUDGMENT OF CONVICTION
(Jury Trial)

WHEREAS, on the 20th day of January, 1981, the Defendant JOEL BURKETT aka Raymond Haire, entered a plea of not guilty to the crimes of Robbery with Use of a Deadly Weapon in Commission of a Crime, Count I; First Degree Kidnaping with Use of a Deadly Weapon in Commission of a Crime, Count II; Sexual Assault, Count III; Sexual Assault, Count IV, committed on the 18th day of January, 1980, in violation of NRS 200.380; 193.165; 200.310; 200.364 and 200.366, and the matter having been tried before a jury, and the defendant being represented by counsel and having been found guilty of the crimes of Robbery with Use of a Deadly Weapon, Count I; First Degree Kidnaping with Use of a Deadly Weapon, Count II; Sexual Assault, Count III; and Sexual Assault, Count IV; and

WHEREAS, thereafter, on the 2nd day of June, 1981, the defendant being present in Court with his counsel, JAMES L. BUCHANAN, and BONALD C. BLOXHAM, Deputy District Attorney, also being present, the above entitled Court did adjudge Defendant

EXHIBIT


A

266

1 gulf. thereof by reason of said trial and verdict and sentenced
2 Defendant to serve a term in the Nevada State Prison as follows:
3 Count I: Fifteen years for Robbery and an additional fifteen (15)
4 years for Use of a Deadly Weapon in Commission of a Crime, to be
5 served consecutively.
6 Count II: Life with Possibility of Parole and an additional term
7 of Life with the Possibility of Parole for Use of a Deadly Weapon
8 in Commission of a Crime, to be served consecutively. Count II
9 is to be served consecutive to Count I.
10 Count III: Life with Possibility of Parole.
11 Count IV: Life with Possibility of Parole.
12 Counts III and IV to be served concurrent to the sentences imposed
13 in Counts I and II.
14 Defendant granted credit for time served of 165 days.

15 THEREFORE, the Clerk of the above entitled Court is hereby
16 directed to enter this Judgment of Conviction as part of the
17 record in the above entitled matter.

18 DATED this 28 day of July, 1981, in the City of Las Vegas,
19 County of Clark, State of Nevada.

20
21 
22 Carl J. Christensen
DISTRICT JUDGE
23
24
25
26
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-2-

81-52190X/1b
LVMPD 80-95384
Rob; 1° Kidnap; UDW;
2 cts. of S/A - F

267

- FILED IN OPEN COURT -

FEB 28 1994

19

LORETTA LOMAX, CLERK

By

John Hall

Deputy

1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA
5
6
7

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,	)	CASE NO.	C52190
)		
10 Plaintiff,	)	DEPT. NO.	VII
)		
11 -vs-	)	DOCKET NO.	P
)		
12 JOEL BURKETT aka Raymond Haire)		
)		
)		
14 Defendant.)		

ORDER

AND AMENDED JUDGMENT OF CONVICTION (Jury Trial)

17 THIS MOTION came on for hearing before this Court on the 28th
18 day of February, 1994, on Defendant's Petition for Writ of Habeas
19 Corpus to correct an error between the oral pronouncement of
20 Judgment and the written and filed Judgment of Conviction. The
21 Court having studied the prior Judgment of Conviction and the
22 transcripts of sentencing, and pursuant to NRS 176.565 hereby

23 ORDERS that Defendant's sentence is hereby corrected as
24 follows:

25 WHEREAS, on the 20th day of January, 1981, the Defendant, JOEL
26 BURKETT aka Raymond Haire entered a plea of not guilty to the
27 crimes of Robbery with Use of a Deadly Weapon in Commission of a
28 Crime, Count I; First Degree Kidnapping with Use of a Deadly Weapon

EXHIBIT

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1 in Commission of a Crime, Count II; Sexual Assault, Count III; and
2 Sexual Assault, Count IV, committed on the 18th day of December,
3 1980, in violation of NRS 200.380; 193.165; 200.310; 200.364; and
4 200.366 and the matter having been tried before a jury, and the
5 defendant being represented by counsel and having been found guilty
6 of the crimes of Robbery with Use of a Deadly Weapon, Count I;
7 First Degree Kidnapping with Use of a Deadly Weapon, Count II;
8 Sexual Assault, Count III; and Sexual Assault, Count IV; and

9 WHEREAS, thereafter, on the 2nd day of June, 1981, the
10 Defendant being present in Court with his counsel JAMES L.
11 BUCHANAN, and RONALD C. BLOXHAM, Deputy District Attorney, also
12 being present; the above entitled Court did adjudge Defendant
13 guilty thereof by reason of said trial and verdict and sentenced
14 Defendant to serve a term in the Nevada State Prison as follows:

15 COUNT I - Fifteen years for Robbery and an additional fifteen (15)
16 years for Use of a Deadly Weapon in Commission of a Crime, to be
17 served consecutively.

18 COUNT II - Life with Possibility of Parole and an additional term
19 of Life with the Possibility of Parole for Use of a Deadly Weapon
20 in Commission of a Crime, to be served consecutively. Count II is
21 to be served consecutive to Count I.

22 COUNT III - Life with Possibility of Parole.

23 COUNT IV - Life With Possibility of Parol. Count IV is to be
24 served consecutive to Count III.

25 Counts III and IV to be served concurrent to the sentenced imposed
26 in Count II.

27 Defendant granted credit for time served of 165 days.

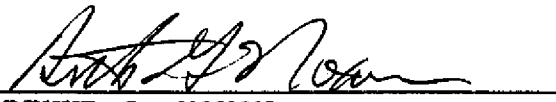
28 THEREFORE, the Clerk of the above entitled Court is hereby

1 directed to enter this Judgment of Conviction as part of the record
2 in the above entitled matter.

3 DATED this 28th day of February, 1994, in the City of Las
4 Vegas, County of Clark, State of Nevada.

5 
6 DISTRICT JUDGE

7 REX BELL
8 District Attorney
9 200 South Third Street
10 Las Vegas, Nv. 89101

11 BY 
12 ARTHUR G. NOXON
13 Deputy District Attorney
14 Nevada Bar #000981
15
16
17
18
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21
22
23
24
25
26
27

28 81-52190X/lib
LVMPD DR#80-95384

270

CERTIFICATION OF
BOARD OF PAROLE COMMISSIONERS ACTION

Burkett, Joel NAME 16111 NUMBER OSC INSTITUTION 4/30/97 DATE

Only the paragraph checked applies to you: ☐ Personal hearing ☒ In absentia

- ☐ The Board has decided to parole you to your Hold/Detainer, if dropped.
- ☐ The Board has referred your Parole Application for investigation of your proposed release plan. If approved, parole effective. Must remain disciplinary free and continue positive programming until released.
- ☐ The Board has decided to parole you to your Consecutive Sentence only.

Special Conditions:

- Out-of-State.....only.
- Mandatory (AA) (NA) (GA) attendance.
- No drinking of alcoholic beverages.
- Payment of all court-ordered fines, fees, restitution, if applicable, on schedule as determined by Parole and Probation Division.
- No contact with victim and/or victim's family whatsoever.
- No contact or association with gang members and no possession of gang paraphernalia.
- Do not enter any gaming establishment for any purpose.
- Residential Housing Substance Abuse Counseling Program.
- Inpatient substance abuse counseling.
- Enter and successfully complete the CRC Program as deemed necessary by Parole and Probation.
- Any failure of mandated program may result in revocation.
- Must satisfy any or all warrants within 6 months of parole date without fail.
- No contact with minor children—or as deemed appropriate by officer.
- Drug testing.
- Mental health counseling which may include: sex offender therapy and anger control management if deemed necessary by Parole and Probation Division.
- Outpatient substance abuse counseling if deemed necessary by Parole and Probation Division.

☐ Board directs intensive supervision. House Arrest Program—not to exceed.....days.

☒ Parole has been denied to: 1 Year 4/98

☒ The Board has determined that the crime severity level and/or parole success factors do not adequately reflect the true nature of your case. Therefore, the Board has departed from the guideline recommendation. The reasons for departure are listed below:

Over NRAT: When Denied

- ☒ Nature and severity of the crime.
- ☐ Previous criminal history.
- ☐ Failed supervision.
- ☐ Factors involved in the crime (use of weapon, injury to victim, financial loss to victim).
- ☐ Further evaluation is needed.
- ☒ Poor disciplinary record.

Under NRAT: When Granted

- ☐ Positive prison programming.
- ☐ Lack of criminal record.
- ☐ Stable release plans.
- ☐ Youth of offender in conjunction with no juvenile record.

☒ COMMENT: Remain disciplinary free

☐ No action has been taken in your case due to the following:

PANEL RECOMMENDATION:

Crime Severity Level: VII

Parole Success Likelihood Score: 6

Guideline-Recommended Months: 1 to 78

Final Action:

Commissioner ALLEN: ☐ Grant ☒ Deny

Commissioner DENISON: ☐ Grant ☐ Deny

Commissioner DUNFIELD: ☐ Grant ☒ Deny

Commissioner HARRIS: ☐ Grant ☐ Deny

Commissioner SCOTT: ☐ Grant ☐ Deny

Commissioner GELER: ☐ Grant ☒ Deny

Commissioner WRIGHT: ☐ Grant ☒ Deny

Hearing Representative: ☐ Grant ☐ Deny

Recommendation: ☒ Ratified ☐ Overturned ☐ Amended ☒ By Board majority

EXHIBIT C

271

CENTRAL OFFICE
1445 Hot Springs Road
Suite 108-B
Carson City, Nevada 89711
(702) 687-5049
Fax (702) 487-6736

DONALD L. DENISON, *Chairman*
CORDELIA DUNFIELD, *Member*
JAMES D. ALLEN, *Member*
THOMAS P. WRIGHT, *Member*

SUSAN J. McCURDY
Executive Secretary

STATE OF NEVADA

BOB MILLER
Governor



LAS VEGAS OFFICE
2601 E. Sahara Avenue
Las Vegas, Nevada 89104
(702) 486-4370
Fax (702) 486-4376

DONALD L. DENISON, *Chairman*
MICHAEL R. HARRIS, *Member*
JESSE D. SCOTT, *Member*
ROBERT G. SEILER, *Member*

BOARD OF PAROLE COMMISSIONERS

MAY 15, 1997

NEW MEXICO DEPARTMENT OF CORRECTIONS
PENITENTIARY OF NEW MEXICO - NORTH
PO BOX 1059
SANTA FE NEW MEXICO 87501-1059

RE: BURKETT, JOEL
NV #: 16111
YOUR # NMCD- 45804

Dear Case Worker:

The above named inmate was considered for parole in absentia at a hearing held by the Nevada Board of Parole Commissioners on April 30, 1997.

The decision by the Board was to deny parole for another year. Further review by the Nevada board will be April of 1998.

Please provide the enclosed decision of the Board to the inmate.

Sincerely,

FOR THE NEVADA BOARD OF
PAROLE COMMISSIONERS:

A handwritten signature in cursive script, reading "Susan J. McCurdy".
Susan J. McCurdy
Executive Secretary

SJM/dm
enclosures

EXHIBIT

D

272

Joel Burkett #45804
P.O. Box 1059
Santa Fe, N.M.
87504-1059

FILED

AUG 11 4 40 PM '99

Shirley L. Hargrave
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

JOEL BURKETT
PETITIONER,

CASE NO:81-C-052190-C
DEPT. NO. III

VS.

THE STATE OF NEVADA
RESPONDENT,

OPPOSITION

Comes now, Petitioner Joel Burkett in opposition to the answer filed by respondent on the 3rd day of August, 1999 to the Petition for Writ of Habeas Corpus.

ARGUMENT

Respondent concedes that at the time of Petitioner's conviction the law applying to good time credits and parole eligibility were set forth in Nevada Dept. of Prisons V. Biffath, 97 Nev. 18 621 P.2d 1113 (1981) Holding: That the primary offense and enhancement for the use of a deadly weapon were to be treated as one continuous sentence for the purpose of determining parole eligibility and good time credits. It is clear from Respondent's exhibit B that counts three and four are concurrent to the life terms in count two. Counts three and

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FOUR

therefore have no bearing on the terms in count two being treated as one continuous term for the purpose of parole eligibility and good time credits.

Respondent contends that Petitioner was sentenced in such a way as to deny him equal protection of the law. If the court were to agree with Respondent's contention, then of course Petitioner's sentence is illegal, and unconstitutional in violation of the Fourteenth Amendment of the United States Constitution, which forbids a state to deny any person within its jurisdiction the equal protection of the laws, see, Neal V. Hargrave, 770 F.Supp 553, 558 (D.Nev. 1991)

"The allegation that the Plaintiff intentionally was given less good time than the other similar situated prisoners stated an equal protection claim"

It would appear Counsel for the REspondent has misunderstood the term concurrent. Indeed Respondent concedes that it is detrimental to Petitioner to serve counts two separately, at page 4, in lines 11-12. Respondent admits Petitioner can receive more good time after (5) years. It must follow that applying Nevada Dept. of Prisons V. Bowen, 745 P.2d 697 (1987) to Petitioner is therefore detrimental. Respondents analysis in part (A) of the answer is without merit.

As to Respondent's analysis of ground two of the petition in part (B) of the answer.

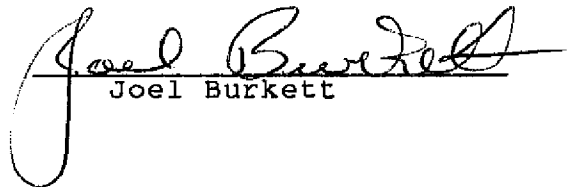
Petitioner was never informed of the 1997 hearing. In light of exhibit C and D it is clear that ground two of the Petition for Writ of Habeas Corpus is without merit and must be dismissed.

Conclusion

In light of the respondents misunderstanding of the term "concurrent" and the fact that Petitioner cannot be sentenced in such a way as to deny equal protection of the law Respondent's answer to ground one of the petition is meritless.

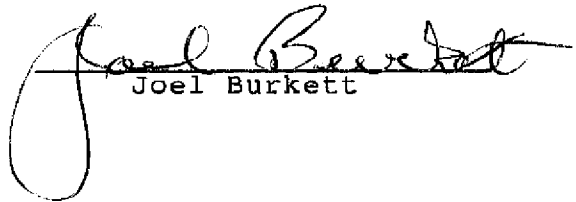
Petitioner concedes ground two of the petition is without merit in light of exhibit C and D of Respondent.

Dated this 8TH day of August 1999


Joel Burkett

Certificate of Service

I, Joel Burkett, do hereby certify that I did serve upon Respondent a true and correct copy of the above opposition on this 8TH day of August 1999.


Joel Burkett

18

✓

ORIGINAL

3

1 **FFCL**
2 **FRANKIE SUE DEL PAPA**
3 **Attorney General**
4 **By: RENE L. HULSE**
5 **Deputy Attorney General**
6 **Nevada Bar No. 3778**
7 **Criminal Justice Division**
8 **555 E. Washington Ave., #3900**
9 **Las Vegas, Nevada 89101**
10 **(702) 486-3420**
11 **Attorneys for Respondent**

FILED

AUG 18 10 45 AM '99

Shirley A. Thompson
CLERK

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

10 **JOEL BURKETT,**

11 **Petitioner,**

12 **vs.**

13 **THE STATE OF NEVADA**

14 **Respondents.**

Case No. 81-C-052190-C
Dept. No. III

15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

16
17 **DATE: August 12, 1999**
18 **TIME: 8:30 a.m.**
19

20 **JOEL BURKETT's (BURKETT) Petition for a Writ of Habeas Corpus came on for hearing on the**
21 **12th day of August, 1999. BURKETT, in proper person, was not present being in the custody of the**
22 **Nevada Department of Prisons and incarcerated in the New Mexico Prison System. Respondents were**
23 **represented by and through its legal counsel, Attorney General FRANKIE SUE DEL PAPA, by Deputy**
24 **Attorney General Rene L. Hulse. Upon reviewing the Petition, the pleadings and papers on file herein,**
25 **and considering argument of counsel, the Court finds and concludes as follows:**

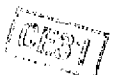
26 **1. On May 4, 1981, a jury found BURKETT guilty of the crimes of ROBBERY WITH**
27 **THE USE OF A DEADLY WEAPON, Count I; FIRST DEGREE KIDNAPPING WITH USE OF A**
28 **.....**

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

AUG 18 1999

RECORDED

28



1 DEADLY WEAPON, Count II; SEXUAL ASSAULT, Count III; and SEXUAL ASSAULT, Count IV.

2 2. The original Judgment of Conviction was filed on July 29, 1981. That original
3 Judgment of Conviction incorrectly ordered that the sentences in Counts III and IV were to be served
4 concurrently to the sentences imposed in Counts I and II. By operation of law (NRS 176.035), the
5 sentences in Counts III and IV would have incorrectly computed as concurrent to each other by the
6 prison system.

7 3. On February 28, 1994, an Amended Judgment of Conviction was filed. The Amended
8 Judgment of Conviction correctly states the sentences as orally stated by the district court — that
9 Counts III and IV are to be served consecutive to each other, but are also to be served concurrently with
10 the sentences imposed in Count II.

11 4. BURKETT claims that NDOP's separate treatment of his consecutive life sentences
12 under Count II, one of which is a deadly weapon enhancement, pursuant to Nevada Department of
13 Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1997), violates the ex post facto clause.

14 5. When BURKETT was convicted on July 29, 1981, weapon-enhanced sentences were
15 treated as one combined sentence pursuant to Director, Nevada Department of Prisons v. Biffath, 97 Nev.
16 18 (1981).

17 6. In 1987, NDOP began treating weapon-enhanced sentences as separate sentences pursuant
18 to Nevada Department of Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697 (1987). Bowen was applied
19 retroactively unless it would be detrimental to a prisoner. Id. 103 Nev. at 481, n.4.

20 7. BURKETT's separate sentence of life with the possibility of parole for First Degree
21 Kidnapping (Count II) has a minimum parole eligibility of five (5) years. BURKETT, who committed
22 his crime before July 1, 1985, and who was sentenced after June 30, 1969, accumulates good time
23 credits as set forth in NRS 209.443. Under Demosthenes v. Williams, et al., 97 Nev. 611, 614-15, 637
24 P.2d 1203 (1981), and prior to the amendment of NRS 209.443, good time credits apply to "the parole
25 eligibility of all inmates entitled to eventual parole, regardless of the minimum sentence specified in the

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1 relevant statute." BURKETT's accumulated good time credits are deducted from his five (5) year
2 minimum sentences to determine his parole eligibility.

3 8. BURKETT argues that he would accumulate good time credits more rapidly if his
4 consecutive life sentences under Count II are combined to one ten (10) year minimum term, and
5 therefore the retroactive application of Bowen (requiring separate treatment) is detrimental.

6 9. As the Amended Judgment of Conviction states, however, the consecutive life sentences
7 imposed in Counts III and IV are to run concurrently with the consecutive life sentences imposed in
8 Count II. The consecutive life sentences imposed on Counts III and IV cannot be combined. The
9 consecutive life sentences of Counts III and IV must be served before ultimate parole could be obtained.
10 Treating the consecutive life sentences of Count II separately is not detrimental to BURKETT, because
11 the sentences under Count II are necessarily restricted by the consecutive separate sentences of Counts
12 III and IV that run concurrently with Count II. BURKETT is not entitled to relief on this claim.

13 10. BURKETT also argues that his due process rights were violated when the parole board
14 failed to consider him for parole in 1997.

15 11. BURKETT is being housed out of state in the New Mexico Prison System under the
16 Interstate Corrections Compact. During his absence, the Parole Board held a parole hearing on April
17 30, 1997, to consider BURKETT for parole. BURKETT was denied parole for one more year and was
18 notified of the Parole Board's decision by letter dated May 15, 1997. BURKETT clearly received a
19 parole hearing in 1997, and there is no merit to this claim.

20 12. In addition, there is no constitutional or inherent right of a convicted person to be
21 conditionally released before the expiration of a valid sentence, and a reasonable entitlement to due
22 process is not created merely because a state provides for the possibility of parole. Greenholtz v.
23 Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 11 (1979). An inmate has no
24 protectible expectation of parole unless a statute is phrased to specifically created a real expectation of
25 parole as opposed to a unilateral hope for parole. Id. at 12; Severance v. Armstrong, 96 Nev. 836, 839,
26 620 P.2d 369, 370 (1980). The Nevada parole statutes do not create a liberty interest in being granted

27

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1 parole. Severance, 96 Nev. at 839, 620 P.2d at 370; Weakland v. Board of Parole Comm'rs., 100 Nev.
2 218, 219-20, 678 P.2d 1158 (1984). BURKETT is not entitled to relief on due process grounds.

3 Based upon the foregoing, and good cause appearing;

4 IT IS HEREBY ORDERED that BURKETT's Petition for a Writ of Habeas Corpus is denied.

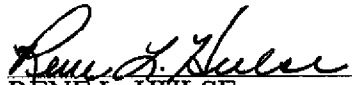
5 DATED: August 18, 1999

6 
7 DISTRICT COURT JUDGE
8
9
10

11 Submitted this 12th day of August, 1999, by:

12 FRANKIE SUE DEL PAPA
13 Attorney General

14 By:


15 RENE L. HULSE
16 Nevada Bar No. 3778
17 Deputy Attorney General
18 555 East Washington Ave., #3900
19 Las Vegas Nevada 89101
20 (702) 486-3420
21
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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

230. ORIGINAL

FILED

AUG 19 12 16 PM '99

Shirley B. Pangina
CLERK

1 NEOJ
2 FRANKIE SUE DEL PAPA
3 Attorney General
4 By: RENE L. HULSE
5 Deputy Attorney General
6 Criminal Justice Division
7 Nevada Bar Number 3778
8 555 E. Washington Ave. #3900
9 Las Vegas, Nevada 89101
10 (702) 486-3107
11 Attorneys for Respondents

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 JOEL E. BURKETT,

11 Petitioner,

12 vs.

13 STATE OF NEVADA,

14 Respondents.

* * *

CASE NO. 81-C-052190C
DEPT. NO. III

NOTICE OF ENTRY OF ORDER

15
16
17 TO: JOEL E. BURKETT, Petitioner

18
19 PLEASE TAKE NOTICE that an Order was entered in the above-entitled action on the
20 18th day of August, 1999, a copy of which is attached hereto.

21 DATED this 19th day of August, 1999.

22 FRANKIE SUE DEL PAPA
23 Attorney General

24 By: *Rene L. Hulse*
25 RENE L. HULSE
26 Deputy Attorney General

27 -1-

COUNTY CLERK

AUG 19 1999

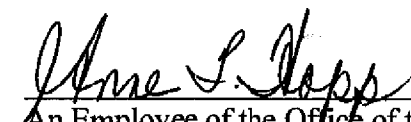
RECEIVED

280 CE31

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on the 19th day of August, 1999, I served the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof addressed to:

JOEL E. BURKETT, NDOP #16111
NEW MEXICO STATE PRISON
P.O. BOX 1059
SANTE FE, NEW MEXICO 87504


An Employee of the Office of the
Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 **FFCL**
2 **FRANKIE SUE DEL PAPA**
3 **Attorney General**
4 **By: RENE L. HULSE**
5 **Deputy Attorney General**
6 **Nevada Bar No. 3778**
7 **Criminal Justice Division**
8 **555 E. Washington Ave., #3900**
9 **Las Vegas, Nevada 89101**
10 **(702) 486-3420**
11 **Attorneys for Respondent**

FILED

AUG 18 10 46 AM '99

Shirley B. Brumby
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

10 **JOEL BURKETT,**

11 **Petitioner,**

12 **vs.**

13 **THE STATE OF NEVADA**

14 **Respondents.**

Case No. 81-C-052190-C
Dept. No. III

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE: August 12, 1999
TIME: 8:30 a.m.

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23 **represented by and through its legal counsel, Attorney General FRANKIE SUE DEL PAPA, by Deputy**
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25 **and considering argument of counsel, the Court finds and concludes as follows:**

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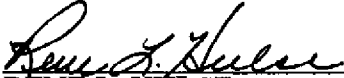
4 IT IS HEREBY ORDERED that BURKETT's Petition for a Writ of Habeas Corpus is denied.

5 DATED: AUG 18 1999.

6 JOSEPH PAVLIKOWSKI
7 DISTRICT COURT JUDGE

8
9
10
11 Submitted this 12th day of August, 1999, by:

12 FRANKIE SUE DEL PAPA
13 Attorney General

14 By: 
15 RENE L. HULSE
16 Nevada Bar No. 3778
17 Deputy Attorney General
18 555 East Washington Ave., #3900
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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

32

Shirley B. Pugh

AUG 31 1 58 PM '99

FILED

District Court
Clark, County, Nevada

Case No. C52190

Department III

THE STATE OF NEVADA,
Plaintiff,
vs.
JOEL BURKETT,
Defendant(s),

CASE APPEAL STATEMENT

- 1. Appellant(s): JOEL BURKETT
- 2. Judge: JOSEPH PAVLIKOWSKI
- 3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA
Defendant(s), JOEL BURKETT

- 4. All Parties, Appeal:

Appellant(s), JOEL BURKETT

/C52190

288

CBT

1 Respondent, THE STATE OF NEVADA

2 5. Appellate Counsel: Proper Person, JOEL BURKETT, P.O. Box 1059 Sante Fe,
3 New Mexico 87504, Appellant

4 THE STATE OF NEVADA, Stewart L. Bell, District
5 Attorney, 200 South Third Street, Las Vegas, Nevada 89155 (702) 455-4711, Counsel for
6 Respondent

7 6. District Court, Rtnl

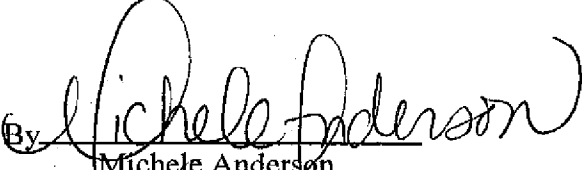
8 7. On Appeal, N/A

9 8. Forma Pauperis: Granted

10 9. Date Commenced in District Court: 01/16/81

11
12 DATED this 31st day of August, 1999.

13 CLARK COUNTY CLERK

14
15 By 
16 Michele Anderson
17 DEPUTY CLERK
18 200 South Third Street
19 PO Box 551601
20 Las Vegas, Nevada 89155-1601
21 (702) 455-4409
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28

31
Joel T. Burkett 45804
P.O. Box 1059
Santa Fe, NM 87504-1059

District Court
Clark County, Nevada

FILED
AUG 31 12 31 PM '99
Shirley L. Hargrave
CLERK

Joel Burkett
Petitioner,
VS.

Case No.: 81-C-052190-C
Dept. No.: III

The State of Nevada
Respondent,

Notice of Appeal

Joel Burkett, Pro Se, Petitioner in the above entitled matter does hereby give notice that he intends to seek an appeal for the courts denial of the above entitled Petition for Writ of Habeas Corpus on the 18th day of AUGUST 1999.

Dated this 25th day of AUGUST 1999

Joel Burkett
Joel Burkett, Pro Se

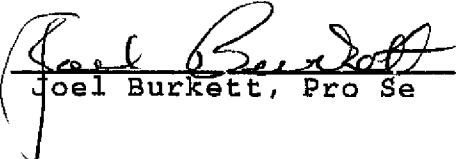
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COUNTY CLERK

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CERTIFICATE OF SERVICE

I, Joel Burkett, do hereby certify that I did serve by mail, upon
Respondent, a true and correct copy of the above notice of appeal on
this 25 day of AUGUST 1999.


Joel Burkett, Pro Se

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 34767
Aug 21 1 37 PM '01
District Court Case No. C052190
Shirley M. King
CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 10th day of July, 2001.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 7th day of August, 2001.

Janette M. Bloom, Supreme Court Clerk

By: *J. Richards*
Chief Deputy Clerk

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3

ORIGINAL

18

1 FFCL
 2 FRANKIE SUE DEL PAPA
 3 Attorney General
 4 By: RENE L. HULSE
 5 Deputy Attorney General
 6 Nevada Bar No. 3778
 7 Criminal Justice Division
 8 555 E. Washington Ave., #3900
 9 Las Vegas, Nevada 89101
 10 (702) 486-3420
 11 Attorneys for Respondent

FILED

AUG 18 10 45 AM '99

Shirley A. Mayhew
 CLERK

DISTRICT COURT
 CLARK COUNTY, NEVADA

12 JOEL BURKETT.

13 Petitioner,

14 vs.

15 THE STATE OF NEVADA

16 Respondents.

Case No. 81-C-052190-C
 Dept. No. III

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE: August 12, 1999
 TIME: 8:30 a.m.

JOEL BURKETT's (BURKETT) Petition for a Writ of Habeas Corpus came on for hearing on the 12th day of August, 1999. BURKETT, in proper person, was not present being in the custody of the Nevada Department of Prisons and incarcerated in the New Mexico Prison System. Respondents were represented by and through its legal counsel, Attorney General FRANKIE SUE DEL PAPA, by Deputy Attorney General Rene L. Hulse. Upon reviewing the Petition, the pleadings and papers on file herein and considering argument of counsel, the Court finds and concludes as follows:

1. On May 4, 1981, a jury found BURKETT guilty of the crimes of ROBBERY WITH THE USE OF A DEADLY WEAPON, Count I; FIRST DEGREE KIDNAPPING WITH USE OF A

.....

Attorney General's Office
 555 E. Washington, Suite 3900
 Las Vegas, NV 89101

COUNTY CLERK

AUG 19 1999

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1 DEADLY WEAPON, Count II; SEXUAL ASSAULT, Count III; and SEXUAL ASSAULT, Count IV.

2 2. The original Judgment of Conviction was filed on July 29, 1981. That original
3 Judgment of Conviction incorrectly ordered that the sentences in Counts III and IV were to be served
4 concurrently to the sentences imposed in Counts I and II. By operation of law (NRS 176.035), the
5 sentences in Counts III and IV would have incorrectly computed as concurrent to each other by the
6 prison system.

7 3. On February 28, 1994, an Amended Judgment of Conviction was filed. The Amended
8 Judgment of Conviction correctly states the sentences as orally stated by the district court — that
9 Counts III and IV are to be served consecutive to each other, but are also to be served concurrently with
10 the sentences imposed in Count II.

11 4. BURKETT claims that NDOP's separate treatment of his consecutive life sentence
12 under Count II, one of which is a deadly weapon enhancement, pursuant to Nevada Department of
13 Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1997), violates the ex post facto clause.

14 5. When BURKETT was convicted on July 29, 1981, weapon-enhanced sentences were
15 treated as one combined sentence pursuant to Director, Nevada Department of Prisons v. Biffath, 97 Nev.
16 18 (1981).

17 6. In 1987, NDOP began treating weapon-enhanced sentences as separate sentences pursuant
18 to Nevada Department of Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697 (1987). Bowen was applied
19 retroactively unless it would be detrimental to a prisoner. Id. 103 Nev. at 481, n.4.

20 7. BURKETT's separate sentence of life with the possibility of parole for First Degree
21 Kidnapping (Count II) has a minimum parole eligibility of five (5) years. BURKETT, who committed
22 his crime before July 1, 1985, and who was sentenced after June 30, 1969, accumulates good time
23 credits as set forth in NRS 209.443. Under Demosthenes v. Williams, et al., 97 Nev. 611, 614-15, 637
24 P.2d 1203 (1981), and prior to the amendment of NRS 209.443, good time credits apply to "the parole
25 eligibility of all inmates entitled to eventual parole, regardless of the minimum sentence specified in the

26

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1 relevant statute." BURKETT's accumulated good time credits are deducted from his five (5) year
2 minimum sentences to determine his parole eligibility.

3 8. BURKETT argues that he would accumulate good time credits more rapidly if his
4 consecutive life sentences under Count II are combined to one ten (10) year minimum term, and
5 therefore the retroactive application of Bowen (requiring separate treatment) is detrimental.

6 9. As the Amended Judgment of Conviction states, however, the consecutive life sentences
7 imposed in Counts III and IV are to run concurrently with the consecutive life sentences imposed in
8 Count II. The consecutive life sentences imposed on Counts III and IV cannot be combined. The
9 consecutive life sentences of Counts III and IV must be served before ultimate parole could be obtained.
10 Treating the consecutive life sentences of Count II separately is not detrimental to BURKETT, because
11 the sentences under Count II are necessarily restricted by the consecutive separate sentences of Counts
12 III and IV that run concurrently with Count II. BURKETT is not entitled to relief on this claim.

13 10. BURKETT also argues that his due process rights were violated when the parole board
14 failed to consider him for parole in 1997.

15 11. BURKETT is being housed out of state in the New Mexico Prison System under the
16 Interstate Corrections Compact. During his absence, the Parole Board held a parole hearing on April
17 30, 1997, to consider BURKETT for parole. BURKETT was denied parole for one more year and was
18 notified of the Parole Board's decision by letter dated May 15, 1997. BURKETT clearly received a
19 parole hearing in 1997, and there is no merit to this claim.

20 12. In addition, there is no constitutional or inherent right of a convicted person to be
21 conditionally released before the expiration of a valid sentence, and a reasonable entitlement to due
22 process is not created merely because a state provides for the possibility of parole. Greenholtz v.
23 Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 11 (1979). An inmate has no
24 protectible expectation of parole unless a statute is phrased to specifically created a real expectation of
25 parole as opposed to a unilateral hope for parole. Id. at 12; Severance v. Armstrong, 96 Nev. 836, 839,
26 620 P.2d 369, 370 (1980). The Nevada parole statutes do not create a liberty interest in being granted

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28

1 parole. Severance, 96 Nev. at 839, 620 P.2d at 370; Weakland v. Board of Parole Comm'rs., 100 Nev.
2 218, 219-20, 678 P.2d 1158 (1984). BURKETT is not entitled to relief on due process grounds.

3 Based upon the foregoing, and good cause appearing;

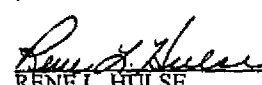
4 IT IS HEREBY ORDERED that BURKETT's Petition for a Writ of Habeas Corpus is denied.

5 DATED: August 18, 1999

6 
7 DISTRICT COURT JUDGE
8
9
10

11 Submitted this 18th day of August, 1999, by:

12 FRANKIE SUE DEL PAPA
13 Attorney General

14 By: 
15 RENE L. HULSE
16 Nevada Bar No. 3778
17 Deputy Attorney General
18 555 East Washington Ave., #3900
19 Las Vegas Nevada 89101
20 (702) 486-3420
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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 34767

District Court Case No. C052190

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 7, 2001

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Joel Burkett

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on AUG 20 2001
DEPUTY NORRETA CALDWELL
County Clerk

01-11655

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,

No. 34767

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
JEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a petition for a writ of habeas corpus.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petition. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Young

Young J.

Leavitt

Leavitt J.

Becker

Becker J.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Joel Burkett
Clark County Clerk

¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

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AUG 09 2001
COUNTY CLERK

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: August 7, 2001
Supreme Court Clerk, State of Nevada

By J. Richards Chief Deputy

1 Case No. 052190
2 Dept. No. VII

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FILED

2001 NOV 19 PM 2:46

Spencer
CLERK

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

9 JOEL T. BURKETT,
10 Petitioner,

11 -vs-

12 DIRECTOR, NEV. DEPT.
13 OF PRISON'S,
14 Respondent.
15

AFFIDAVIT IN SUPPORT
OF MOTION TO PROCEED
IN FORMA PAUPERIS

16 I, JOEL BURKETT, hereby declare and state
17 that I am the Petitioner in the above entitled case; that in support
18 of my Motion to proceed without being required to prepay fees, costs
19 or give security therefor; I state that because of my poverty I am
20 unable to pay the costs of said proceeding or to give security
21 therefor; that I am entitled to relief.

22 I do ☒ do not ☐ request an attorney be appointed to
23 represent me.

24 I further swear that the responses which I have made to
25 questions and instructions below are true.

26 1. Are you presently employed: Yes ☐ No ☒

27 a. If the answer is Yes, state the amount of your salary
28 or wages per month, and give the name and address of your employer:

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N/A

b. If the answer is No, state the date of last employment and the amount of salary and wages per month which you received:

N/A

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes ☐ No ☒

b. Rent payments, interest or dividends?

Yes ☐ No ☒

c. Pensions, annuities or life insurance payments?

Yes ☐ No ☒

d. Gifts or inheritances?

Yes ☒ No ☐

e. Any other sources?

Yes ☐ No ☒

If the answer to any of the above is "Yes" describe each source of money and state the amount received from each during the past twelve months:

MY WIFE AND MOTHER
About \$100.00 A MONTH

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account?

Yes ☒ No ☐

If the answer is "Yes", state the total value of the items owned:

About \$50.00 IN MY
PRISON ACCOUNT

1 4. Do you own any real estate, stocks, bonds, notes,
2 automobiles, or other valuable property (excluding ordinary house-
3 hold furnishings and clothing)? Yes _____ No ✓

4 If your answer is "Yes", describe the property and state
5 its approximate value: N/A

6
7 5. List the persons who are dependent upon you for
8 support, state your relationship to those persons, and indicate
9 how much you contribute towards their support: N/A

10

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12 UNDER THE PENALTY OF PERJURY, pursuant to N.R.S. §208.165,
13 the above affidavit is true and correct to the best of affiants
14 personal knowledge.

15 DATED this 10th day of November, 2001.

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Joel Burkett
Sign your name

JOEL BURKETT 2002346
Print your name DOP#

NEVADA DISTRICT COURT

CLARK COUNTY

FILED

2001 NOV 12 PM 2:46

Shirley Ringen
CLERK

JOEL T. BURKETT

PETITIONER,

VS.

DIRECTOR, NEV. DEP'T
OF PRISONS, ET AL,
RESPONDENT,

CASE NO:

C52190

VII

ARGUMENT IN SUPPORT
OF PETITION FOR WRIT
OF HABEAS CORPUS

COMES NOW, PETITIONER, JOEL T. BURKETT, PRO SE
IN THE ABOVE ENTITLED MATTER SUBMITTING
ARGUMENT IN SUPPORT OF THE PETITION FOR
WRIT OF HABEAS CORPUS.

JURISDICTION

PETITIONER IS LEGALLY A NEVADA STATE PRISONER
SOLELY UNDER AUTHORITY OF NEVADA PURSUANT
TO HIS CONVICTION, EVEN WHILE HOUSED IN
THE MONTANA STATE PRISON SYSTEM UNDER
THE INTERSTATE CORRECTION COMPACT,
BOATWRIGHT V. DIRECTOR, 849 P.2d 274 (1993)
AND, HABEAS CORPUS RELIEF IS AVAILABLE TO
ALLOW THE PRESENTATION OF QUESTION OF

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LAW THAT CANNOT OTHERWISE BE REVIEWED, OR THAT ARE SO IMPORTANT AS TO RENDER ORDINARY PROCEDURE INADEQUATE AND JUSTIFY THE EXTRAORDINARY REMEDY, DIRECTOR, DEPT. PRISONS V. ARNDT, 640 P.2d 1318 (1982); STATE EX REL OSBORN V. FOGLIANI, 417 P.2d 148, 149, BOATWRIGHT (SUPRA).

ARGUMENT

THE FACTS ARE UNDISPUTABLE, RESPONDENT TRANSFERRED PETITIONER OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTIONS COMPACT IN 1995, INTO THE NEW MEXICO STATE PRISON SYSTEM, IN 1998 WHILE IN NEW MEXICO PETITIONER RECEIVED A PAROLE FROM COUNT ONE OF HIS JUDGEMENT OF CONVICTION OVER TO COUNTS TWO AND THREE, IN SEPTEMBER 2000 PETITIONER WAS RETURN TO NEVADA, FIVE MONTHS LATER, IN JANUARY 2001, PETITIONER WAS ONCE AGAIN TRANSFERRED, INTO THE MONTANA STATE PRISON SYSTEM THIS TIME. PURSUANT TO THE TERMS OF PETITIONER'S JUDGEMENT AND CONVICTION IN COUNTS TWO, THREE, AND FOUR, HE WAS SENTENCE TO

3.

LIFE WITH THE POSSIBILITY OF PAROLE,
 HOWEVER, PURSUANT TO N.R.S. 213, 1214,
 PETITIONER HAS NO POSSIBILITY OF PAROLE, UNLESS
 "A PHYSICIAN AUTHORIZED TO PRACTICE
 MEDICINE IN NEVADA WHO IS ALSO A
 QUALIFIED PSYCHIATRIST CERTIFIES THAT THE
 PERSON SO CONVICTED WAS UNDER
 OBSERVATION WHILE CONFINED IN A
 INSTITUTION OF THE DEPARTMENT OF
 PRISONS" N.R.S. 213, 1214, BECAUSE
 RESPONDENT HAS HOUSED PETITIONER OUT OF
 STATE DENYING HIM ACCESS TO A PSYCHOLOGIST
 LICENSED TO PRACTICE IN THE STATE OF
 NEVADA, OR A PSYCHIATRIST, THE PANEL
 PURSUANT TO N.R.S. 213, 1214, WAS WITHOUT
 ANY AUTHORITY TO CERTIFY PETITIONER
 ON SEPTEMBER 11TH 2001 WHEN HE WAS
 GIVEN A HEARING BY THOSE BEFORE
 THE PANEL IN NEVADA, AS SUCH, THE
 POSSIBILITY OF PAROLE AS SET FORTH IN
 PETITIONER'S JUDGEMENT AND CONVICTION
 DID NOT EXIST AT THE TIME OF PETITIONER'S
 PAROLE HEARING, PURSUANT TO N.R.S. 213, 1214,
 AND N.R.S. 213, 1099 THE PAROLE BOARD
 HAD NO AUTHORITY TO GRANT PAROLE.

THE NEVADA SUPREME COURT IN, BOATWRIGHT V. DIRECTOR, 849 P.2d 274 (1993) REALIZED, "THAT CONFINEMENT IN ARIZONA PRECLUDES THE POSSIBILITY OF PAROLE GRANTED IN HIS JUDGEMENT OF CONVICTION." THE SAME HOLDS TRUE, WHEREAS HERE, PETITIONER HAS BEEN HOUSED OUT OF STATE ALL BUT FIVE MONTHS OF HIS SENTENCE IN COUNTS TWO AND THREE, THE PANEL PURSUANT TO N.R.S. 213.1214 HAS NO AUTHORITY TO CERTIFY PETITIONER, LIKEWISE, THE NEVADA PAROLE BOARD IS WITHOUT AUTHORITY TO GRANT PAROLE N.R.S. 213.1099. WHILE IT IS TRUE; "AS LONG AS THE DEGREE OF CONFINEMENT TO WHICH THE PRISONER IS SUBJECTED... IS WITHIN THE SENTENCE IMPOSED UPON HIM... THE DUE PROCESS CLAUSE DOES NOT ITSELF SUBJECT AN INMATE'S TREATMENT BY PRISON AUTHORITIES TO JUDICIAL OVERSIGHT" KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON, 109 S.Ct 1909 (1989). IT NECESSARILY FOLLOWS, WHEREAS HERE, THE DEGREE OF CONFINEMENT IS NOT WITHIN THE SENTENCE IMPOSED, IN THAT PETITIONER WAS NOT SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE,

DUE PROCESS ATTACHES, INDEED, "FREEDOM FROM BODILY RESTRAINT HAS ALWAYS BEEN AT THE CORE OF THE LIBERTY PROTECTED BY THE DUE PROCESS CLAUSE FROM ARBITRARY GOVERNMENTAL ACTION".

YOUNGBERG V. REMEO, 102 S.C.T. 2252 (1982);
FOUCHA V. LOUISIANA, 112 S.C.T. 1780 (1992)

THE COURT IN VITEK V. JONES, 100 S.C.T. 1254 (1980) FOUND THAT THE DUE PROCESS CLAUSE ITSELF CONFERS A LIBERTY INTEREST IN CERTAIN SITUATIONS IRRESPECTIVE OF STATE REGULATIONS, AT THE HEART OF VITEK (SUPRA) THE COURT CONCLUDED THAT AN "INMATE CRIMINAL CONVICTION AND SENTENCE DO NOT AUTHORIZE THE STATE TO CLASSIFY HIM AS MENTALLY ILL" NEAL V. SHIMODA, 131 F.3d 828 (9TH CIR. 1997) LIKEWISE, PETITIONER'S CONVICTION AND SENTENCE DO NOT AUTHORIZE THE STATE TO DENY THE POSSIBILITY OF PAROLE.

THE UNITED STATES SUPREME COURT HAS MADE CLEAR THAT "PRISON OFFICIALS MAY NOT PUNISH AN INMATE BEYOND THE TERMS OF HIS CONFINEMENT SET BY THE COURT" HEWITT V. HELMS, 103 S.C.T. 864-869 (1983)

MOREOVER, "THE DUE PROCESS CLAUSE PROTECTS AGAINST RESTRAINTS OR CONDITIONS OF CONFINEMENT THAT EXCEED THE SENTENCE IN AN UNEXPECTED MANNER" SANDIN V. CONNER, 115 S.Ct 2300 (1995) HERE, PETITIONER'S SENTENCE'S HAVE BEEN EXCEEDED IN AN UNEXPECTED MANNER, IN THAT HOUSING PETITIONER OUT OF STATE HAS DENIED ANY POSSIBILITY OF PAROLE, INEFFECT, PETITIONER HAS SERVED THREE (3) YEAR'S SIX (6) MONTHS FOR NOTHING AS IT CANNOT APPLY TO ANY POSSIBILITY OF PAROLE AS SET FORTH WITHIN HIS JUDGMENT OF CONVICTION.

THE SENTENCE'S HAVING BEEN VIOLATED PETITIONER IS ENTITLED TO IMMEDIATE RELEASE FROM COUNTS TWO (2) AND THREE (3), WHEREAS HERE, THE COURT IS WITHOUT AUTHORITY TO ENFORCE THE POSSIBILITY OF PAROLE, IN LIGHT OF THE MANDATORY INTENT OF, N.R.S. 213, 1214; AND N.R.S. 213, 1099, WHICH STATES, "THE BOARD SHALL NOT RELEASE ON PAROLE A PRISONER CONVICTED OF AN OFFENSE LISTED IN SUBSECTION 5 UNLESS..." N.R.S. 213, 1214(1) LIKEWISE,

N.R.S. 213.1099 STATES, "EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND N.R.S. 213.1214... THE BOARD MAY RELEASE ON PAROLE".... PETITIONER IS MINDFUL THAT "IT IS BASIC CANON OF STATUTORY CONSTRUCTION THAT USE OF WORD "SHALL" INDICATES MANDATORY INTENT." SALAHUDDIN V. MEAD, 174 F.3D 271 (2ND CIR, 1999) LIKEWISE, THE NEVADA SUPREME COURT HAS STATED, "WHEN THE INTENTION OF THE LEGISLATURE IS CLEAR, IT IS THE DUTY OF THIS COURT TO GIVE EFFECT TO SUCH INTENTION AND TO CONSTRUCT THE LANGUAGE OF THE STATUTE SO AS TO GIVE IT FORCE AND NOT NULLIFY ITS MANIFEST PURPOSE" NEVADA DEPT. OF PRISONS V. BOWEN, 745 P.2D AT 699 (NEV. 1987) THE PANEL CANNOT CERTIFY PETITIONER AS HE HAS NOT BEEN UNDER OBSERVATION WHILE CONFINED BY A PHYSICIAN AUTHORIZED TO PRACTICE MEDICINE IN NEVADA, N.R.S. 213.1214, THEREFORE, THE PAROLE BOARD IS WITHOUT AUTHORITY TO GRANT PAROLE N.R.S. 213.1099 PETITIONER IS ENTITLED TO RELEASE FROM

COUNTS TWO (2) AND THREE (3)
WHEREAS HERE, THE COURT CAN NOT
ORDER ANY POSSIBILITY OF PAROLE,
AFTER HIS SENTENCES HAVE BEEN VIOLATED.

DATED THIS 10th DAY OF November, 2001

RESPECTFULLY SUBMITTED,

Paul T. Burkett
PRO SE PETITIONER

VERIFICATION OF SERVICE

I, JOEL T. BURKETT, DO HEREBY CERTIFY
THAT I DID MAIL A TRUE AND CORRECT
COPY OF THE ABOVE ARGUMENT IN
SUPPORT OF THE PETITION FOR WRIT OF
HABEAS CORPUS TO RESPONDENT ON
THIS 10th DAY OF November 2001

Joel T. Burkett
PRO SE PETITIONER

FILED

2001 NOV 19 PM 2:46

Shirley H. Hagen
CLERK

1 CASE NO: C82190

2 DEPT NO: VII

3
4
5
6 IN THE Eighth JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8
9 IN THE MATTER OF

FINANCIAL
CERTIFICATE

10 JOEL T. BURKETT # 2002346
NAME

11 ON MOTION FOR LEAVE TO PROCEED

12 IN FORMA PAUPERIS /

13 I hereby certify that the Petitioner herein has the sum
14 of \$ - on account to his credit at the institution
15 where he is confined. I further certify that Petitioner likewise
16 has the following securities to his credit according to the records
17 of said institution: SEE ATTACHED HERETO

18 INMATE ACCOUNT PRINT OUT

19
20 DATED this 10th day of November, 2001

21
22 BY: _____

23 Nevada Department of Prisons
24 Inmate services Accountant
Authorized Officer of Institution

25 /// NOTE: ACCOUNTANT WOULD NOT DO THE
26 /// FINANCIAL CERTIFICATE BUT GAVE ME
27 /// THE ATTACHED INMATE PRINT OUT DO TO IT
28 /// BEING A NEVADA DOCUMENT. *Paul Burkett*

Daily Transaction Summary: October 01, 2001 - October 31, 2001

Page 1

Offender Information						
Offender Number:	2002346	Account Status:	Open	Beginning Balance:	\$13.10	Mandatory Savings: Yes
Offender Name:	BURKETT, JOEL T			Deposits:	\$137.50	
Living Unit:	CU3	Primary Balance:	\$67.70	Expenditures:	(\$53.09)	
Cell:	LA	Savings Balance:	\$0.00	Commissary:	(\$29.81)	
Bed:	061	Hold Balance:	\$0.00	Ending Balance:	\$67.70	

Payments				
Date	Payer	Account	Paid To	Amount
10/16/2001	Burkett/Vivian Pinkham	Primary		\$100.00
10/03/2001	Inmate Payroll - September 2001	Primary		\$37.50

Expenditures							
Date	Category	Recipient	Check Number	Amount	Taxes	S&H/Other	Total
10/30/2001	Canteen Special Purchase	Canteen - Special Purchases		(\$39.14)	\$0.00	\$0.00	(\$39.14)
10/16/2001	United Parcel Service	United Parcel Service		(\$13.95)	\$0.00	\$0.00	(\$13.95)

Expenditures Note: Check numbers refer to non-voided checks. Check numbers that were voided prior to the printing of this report will not appear.

Summary				
Date	Amount	Taxes	Surcharges	Total
10/19/2001	\$0.00	\$0.00	\$0.00	(\$10.08)
10/17/2001	\$0.00	\$0.00	\$0.00	(\$17.01)
10/11/2001	\$0.00	\$0.00	\$0.00	(\$2.72)

Remaining Obligations - Current as of Date and Time of Report										
Description	Paid To	Period To Curr	Max per Period	Ordered	Pct Ordered	Transferred	Paid To Curr	Outside Source	Total Paid	Total Remaining
No Remaining Obligations										

83

1 Case No. C52190
2 Dept. No. VII

FILED

2001 NOV 19 PM 2:46

Shirley B. ...
CLERK

6 IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 FOR THE COUNTY OF CLARK

9 JOEL T. BURKETT,

10 Petitioner,

11 -vs-

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

12 DIRECTOR, NEV. DEPT.,

13 OF PRISONS,

14 Respondent.

16 COMES NOW the Petitioner, in propria persona, pursuant
17 to N.R.S. §12.015, and respectfully moves this Honorable Court for
18 an Order granting Petitioner leave to proceed in the above-entitled
19 action in forma pauperis, without requiring Petitioner to pay or
20 provide security for the payment of costs of prosecuting this
21 action.

22 This motion is made and based upon the attached affidavit
23 and certificate.

DATED this 10th day of November, 2001.

Respectfully submitted,

Joel Burkett

24
25
26
27
28
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NOV 16 2001

COUNTY CLERK

Case No.

CS2190

Dept. No.

VII

FILED

2001 NOV 19 PM 2:45

Shirley L. Higgins
CLERK

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOEL T. BURKEIT,

Petitioner,

v.

DIRECTOR, NEV. DEPT OF,
PRISON'S

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

COUNTY CLERK

NOV 16 2001

RECEIVED

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
sentence. Failure to allege specific facts rather than just
5 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
6 that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
conviction or sentence, the original and one copy must be filed
9 with the clerk of the district court for the county in which
the conviction occurred. Petitions raising any other claims
10 must be filed with the clerk of the district court for the
county in which you are incarcerated. One copy must be mailed
11 to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
you were convicted or to the original prosecutor if you are
12 challenging your original conviction or sentence. Copies must
conform in all particulars to the original submitted for
13 filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty: HOUSED OUT OF STATE
18 IN THE MONTANA STATE PRISON

19 2. Name and location of court which entered the judgment
20 of conviction under attack: EIGHTH JUDICIAL DISTRICT
21 COURT, CLARK COUNTY

22 3. Date of judgment of conviction: JAN. 20 1981

23 4. Case number: 052190

24 5. (a) Length of sentence: STATEMENT OF CASE ATTACHED

25 (b) If sentence is death, state any date upon which
26 execution is scheduled: _____

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No ✓. If "yes," list crime, case number and
2 sentence being served at this time: _____
3 _____
4 _____

5 7. Nature of offense involved in conviction being
6 challenged: SEE STATEMENT OF CASE ATTACHED
7 HERETO

8 8. What was your plea? (check one)

9 (a) Not guilty ✓

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A
16 _____
17 _____

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury ✓

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes ✓ No _____

23 12. Did you appeal from the judgment of conviction?

24 Yes ✓ No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: NEVADA SUPREME COURT

27 (b) Case number or citation: 13600
28

1 (c) Result: DENIED

2 (d) Date of Result: APRIL 21, 1983

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did
5 not: N/A

6
7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes ☒ No ☐.

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: FIRST JUDICIAL DISTRICT

14 (2) Nature of proceeding: WRIT OF

15 HABEAS CORPUS POST-CONVICTION

16
17 (3) Grounds raised: INEFFECTIVE COUNSEL

18 BOTH AT TRIAL AND DIRECT APPEAL

19
20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes ☒ No ☐

22 (5) Result: DENIED

23 (6) Date of Result: AUGUST 5, 1988

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: 86-01306H

1 (b) As to any second petition, application or motion,
2 give the same information:

3 (1) Name of Court: EIGHTH JUDICIAL DISTRICT

4 (2) Nature of proceeding: HABEAS CORPUS

5 (3) Grounds raised: MISTAKE IN SENTENCING

6 (4) Did you receive an evidentiary hearing on
7 your petition, application or motion? Yes _____ No ✓

8 (5) Result: GRANTED PETITION

9 (6) Date of Result: FEB 28 1994

10 (7) If known, citations or any written opinion or
11 date of orders entered pursuant to each result: FEB 28
12 1994

13 (c) As to any third or subsequent additional
14 applications or motions, give the same information as above,
15 list them on a separate sheet and attach.

16 (d) Did you appeal to the highest state or federal
17 court having jurisdiction, the result or action taken on any
18 petition, application or motion?

19 (1) First petition, application or motion?

20 Yes _____ No _____

21 Citation or date of decision: STATEMENT OF CASE

22 (2) Second petition, application or motion?

23 Yes _____ No _____

24 Citation or date of decision: STATEMENT OF CASE

25 (3) Third or subsequent petitions, applications
26 or motions? Yes _____ No _____

27 Citation or date of decision: STATEMENT OF CASE

1 e. If you did not appeal from the adverse action on
2 any petition, application or motion, explain briefly why you
3 did not. (You must relate specific facts in response to this
4 question. Your response may be included on paper which is
5 8 1/2 x 11 inches attached to the petition. Your response may
6 not exceed five handwritten or typewritten pages in length.)
7 N/A
8

9 17. Has any ground being raised in this petition been
10 previously presented to this or any other court by way of
11 petition for habeas corpus, motion or application or any other
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: ALONE
14

15 b. The proceedings in which these grounds were raised:
16 N/A

17 c. Briefly explain why you are again raising these
18 grounds. (You must relate specific facts in response to this
19 question. Your response may be included on paper which is
20 8 1/2 x 11 inches attached to the petition. Your response may
21 not exceed five handwritten or typewritten pages in length.)
22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)
24 and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or
26 federal, list briefly what grounds were not so presented, and
27 give your reasons for not presenting them. (You must relate
28

specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

SEE ATTACHED HERETO QUESTION 18; AT PAGE 11

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

THE ISSUE RAISED HEREIN COULD NOT BE RAISED UNTIL PETITIONER'S FIRST PAROLE DATE AT WHICH TIME THE VIOLATION BECAME RIPE.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓.

If yes, state what court and the case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE AT THIS TIME

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No ✓. If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: DENIAL OF DUE PROCESS

VIOLATION OF 14TH AMENDMENT U.S. CONSTITUTION

Supporting FACTS (Tell your story briefly without citing cases or law): SEE SUPPORTING FACTS ATTACHED
HERETO

(b) Ground two: _____

Supporting FACTS (Tell your story briefly without citing cases or law): _____

(c) Ground three: _____

Supporting FACTS (Tell your story briefly without citing cases or law): _____

(d) Ground four: _____

Supporting FACTS (Tell your story briefly without citing cases or law): _____

WHEREFORE, Petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

1 EXECUTED at MONTANA STATE PRISON on the 10th day
2 of November, 2001.

3
4 Paul Benedict 2002346
Signature of Petitioner

5
6 700 CONLEY LAKE RD
Address

7 DEER LODGE, MT, 59722

8 _____
Signature of Attorney (if any)

9 _____
10 Attorney for Petitioner

11 _____
Address

12
13
14 VERIFICATION

15 Under penalty of perjury, the undersigned declares that he
16 is the petitioner named in the foregoing petition and knows the
17 contents thereof; that the pleading is true of his own
18 knowledge, except as to those matters stated on information and
19 belief, and as to such matters he believes them to be true.

20 Paul Benedict
21 Signature of Petitioner

22 _____
23 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL T. BURKETT, hereby certify pursuant
to N.R.C.P. 5(b), that on the 10th day of November,
2001, I mailed a true and correct copy of the foregoing
PETITION FOR WRIT OF HABEAS CORPUS addressed to:

DIRECTOR NEV. DEPT OF PRISONS
Respondent prison or jail official

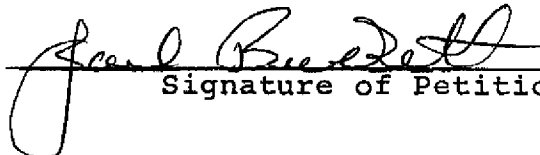
P.O. BOX 607
Address

CARSON CITY, NEV, 89701

Attorney General
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

REX BELL
District Attorney of County of Conviction

201 SOUTH THIRD ST LAS VEGAS, NV, 89101
Address


Signature of Petitioner

QUESTION 18:

PETITIONER CONTENDS THAT THE ISSUE RAISED HEREIN HAS NOT BEEN RAISED IN ANY OTHER COURT, STATE OR FEDERAL. LIKEWISE, PETITIONER CONTENDS THAT THE ISSUE COULD NOT BE RAISED UNTIL THE DATE OF HIS FIRST PAROLE HEARING, AT WHICH TIME THE SENTENCE WAS VIOLATED, AND THE ISSUE RIFE FOR COURT.

PETITIONER ALSO CLAIMS THAT HE HAS BEEN HOUSED OUT OF STATE ALL BUT FIVE (5) MONTHS OF THE SENTENCE AT ISSUE WITHOUT ACCESS TO ANY NEVADA LAW. AND DID NOT KNOW THAT A CONSTITUTIONAL VIOLATION WAS AT ISSUE UNTIL FOUR MONTHS PRIOR TO THE FILING OF THIS PETITION, AT WHICH TIME A FRIEND SENT HIM COPIES OF THE NEVADA STATUTES. AT ISSUE.

STATEMENT OF THE CASE

JOEL T. BURKETT (HEREAFTER PETITIONER) IS IN THE CUSTODY OF THE NEVADA DEPARTMENT OF PRISONS PURSUANT TO A JUDGMENT OF CONVICTION FILED JULY 29, 1981, ENTERED IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, IN CASE NO. CS2190, ENTITLED STATE OF NEVADA V. JOEL T. BURKETT. FOLLOWING A JURY TRIAL, PETITIONER WAS ADJUDGED GUILTY OF ROBBERY WITH A DEADLY WEAPON; KIDNAPPING IN THE FIRST DEGREE WITH A DEADLY WEAPON AND TWO COUNTS OF SEXUAL ASSAULT.

PETITIONER WAS SENTENCED TO THE FOLLOWING TERMS OF IMPRISONMENT; COUNT ONE; ROBBERY, FIFTEEN YEARS AND A CONSECUTIVE FIFTEEN YEARS FOR THE USE OF A DEADLY WEAPON.

COUNT TWO: FIRST DEGREE KIDNAPPING, LIFE WITH THE POSSIBILITY OF PAROLE, AND A CONSECUTIVE LIFE WITH THE POSSIBILITY OF PAROLE FOR THE USE OF A DEADLY WEAPON.

COUNT THREE; SEXUAL ASSAULT, LIFE WITH THE POSSIBILITY OF PAROLE. COUNT FOUR; SEXUAL ASSAULT, LIFE WITH THE POSSIBILITY OF PAROLE. COUNTS THREE AND FOUR TO RUN CONSECUTIVE TO EACH OTHER, BUT CONCURRENT TO COUNT TWO.

PETITIONER FILED AN APPEAL TO THE NEVADA SUPREME COURT ON DECEMBER 7TH 1981, ON APRIL 21ST 1983, THE APPEAL WAS DISMISSED, ON AUGUST 21ST 1986, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE FIRST JUDICIAL DISTRICT COURT, CASE NO: 86-013064, ON JUNE 3RD 1988 A HEARING WAS CONDUCTED, ON AUGUST 5TH 1988 AN ORDER DENYING THE PETITION WAS ENTERED. PETITIONER APPEALED IN CASE NO: 19446, ON NOVEMBER 21, 1989 THE NEVADA SUPREME COURT ENTERED THE ORDER DISMISSING THE APPEAL. ON DECEMBER 27, 1991 PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2254 IN CASE NO: CV-N-91-HDM. THE PETITION WAS DISMISSED.

ON APRIL 11, 1995 PETITIONER FILED PURSUANT TO 28 U.S.C. 2254 IN CASE NO: CV-N-95-127-ECR, THE COURT DENIED THE PETITION IN 1997.

IN 1994 PETITIONER FILED A WRIT OF HABEAS CORPUS IN THE EIGHTH JUDICIAL DISTRICT COURT SEEKING TO CORRECT

A MISTAKE IN HIS JUDGEMENT OF CONVICTION, THE COURT GRANTED THE PETITION ON FEBRUARY 28TH 1994.

IN 1999, PETITIONER FILED A WRIT OF HABEAS CORPUS IN THE EIGHTH JUDICIAL DISTRICT COURT, THE PETITION WAS DENIED, PETITIONER APPEALED TO THE NEVADA SUPREME COURT IN CASE NO: 34767, THE APPEAL WAS DENIED IN JULY OF 2001.

"SUPPORTING FACTS"

GROUND: 1 PETITIONER WAS TRANSFERRED OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTIONS COMPACT IN 1995, INTO THE NEW MEXICO STATE PRISON SYSTEM, IN 1998 WHILE IN NEW MEXICO PETITIONER WAS GRANTED A PAROLE FROM COUNT ONE OF HIS JUDGEMENT OF CONVICTION OVER TO COUNTS (2) TWO AND (3) THREE. PURSUANT TO THE TERMS OF PETITIONERS JUDGEMENT OF CONVICTION IN COUNTS TWO (2) AND THREE (3), HE WAS SENTENCED TO "LIFE WITH THE POSSIBILITY OF PAROLE". PETITIONER WAS RETURN TO NEVADA FROM NEW MEXICO IN SEPTEMBER 2000, IN JANUARY 2001, PETITIONER WAS ONCE MORE TRANSFERRED OUT OF STATE TO THE MONTANA STATE PRISON SYSTEM. ON SEPTEMBER 11TH 2001 PETITIONER WAS CONTACTED BY A PAROLE PURSUANT TO NEVADA STATUTE; N.R.S. 213.1214 THE PETITIONER

HAS NO POSSIBILITY OF PAROLE UNLESS"
A PHYSICIAN AUTHORIZED TO
PRACTICE MEDICINE IN NEVADA WHO
IS ALSO A QUALIFIED PSYCHIATRIST
CERTIFIES THAT THE PERSON SO
CONVICTED WAS UNDER OBSERVATION
WHILE CONFINED IN AN INSTITUTION
OF THE DEPARTMENT OF PRISONS.
BECAUSE PETITIONER HAS BEEN HOUSED
OUT OF STATE ALL BUT FIVE MONTHS
OF HIS SENTENCE, THE PANEL
HAD NO AUTHORITY TO CERTIFY
H.M. LIKEWISE, PURSUANT TO
NEVADA STATUTE THE PAROLE BOARD
HAS NO AUTHORITY TO GRANT
PETITIONER A PAROLE BECAUSE HE
COULD NOT BE CERTIFIED. THEREFORE,
IT IS PETITIONER'S CONTENTION
THAT COUNT TWO AND THREE OF
HIS JUDGMENT OF CONVICTION,
"LIFE WITH THE POSSIBILITY OF PAROLE"
HAVE BEEN VIOLATED, IN VIOLATIONS
OF THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION
DUE PROCESS OF LAWS, AS WELL
AS NEVADA LAWS.

AT THE TIME OF PETITIONER'S
PAROLE HEARING THE POSSIBILITY OF
PAROLE DID NOT EXIST.

IT IS PETITIONER'S CONTENTION THAT
THE SENTENCE, HAVING BEEN
VIOLATED, IT CAN NOT BE CORRECTED,
IN THAT THE COURT CAN NOT
ORDER A PAROLE HEARING WITH THE
POSSIBILITY OF PAROLE BECAUSE
PURSUANT TO NEVADA STATUTE
THE PAROLE BOARD HAS NO
AUTHORITY TO GRANT PAROLE, NOR
CAN PETITIONER BE CERTIFIED
PURSUANT TO NEVADA STATUTE,
AT THIS TIME.

RELIEF Sought

WHEREFORE, PETITIONER, JOEL T. BURKETT
RESPECTFULLY REQUESTS THAT THE COURT
GRANT THE FOLLOWING RELIEF;

(1) ISSUE AN ORDER GRANTING
THE PETITION FOR WRIT OF HABEAS
CORPUS;

(2) ISSUE AN ORDER DISMISSING
THE SENTENCE'S IN COUNT ~~ONE~~
TWO AND THREE OF PETITIONER'S
JUDGEMENT OF CONVICTION;

(3) GRANT PETITIONER THE JUST
RELIEF TO WHICH HE IS ENTITLED IN
THESE PROCEEDINGS.

DATED THIS 10th OF November, 2001,

RESPECTFULLY SUBMITTED,

Joel T. Burkett
PRO SE PETITIONER

ORIGINAL

ORDR

District Court
Clark County, Nevada

FILED

Nov 30 8 19 PM '01

Shirley A. Ruyter
CLERK

JOEL BURKETT,

Petitioner,

vs

THE STATE OF NEVADA,
Respondent.

Case No: C52190

Dept No: 7

ORDER RE PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on NOVEMBER 19, 2001. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefor,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's calendar on the 24 day of January, 2002, at the hour of 9 o'clock a. M. for further proceedings.

DATED this 29 day of NOVEMBER, 2001.

Michael D. Dwyer
DISTRICT COURT JUDGE

MC1

Order Re Writ of Habeas Corpus/Rev- 2/01/jh

RECEIVED

NOV 30 12:20 PM '01

COUNTY CLERK

92
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

2001 DEC 24 PM 3:58

Shirley L. Loring
CLERK

JOEL BURKETT

PETITIONER,

VS.

THE STATE OF NEVADA

RESPONDENT,

CASE NO: C52190

DEPT NO: 7 11

MOTION TO APPEAR

1-24-02

(MC) COMES NOW, JOEL BURKETT, PRO SE, IN THE
ABOVE ENTITLED MATTER RESPECTFULLY REQUESTING
THAT HE BE PRESENT IN COURT FOR
THE JAN. 24TH 2002 HEARING.

THIS COURT ISSUED A ORDER IN THE ABOVE
ENTITLED MATTER ON NOVEMBER 29TH 2001,
IN WHICH IT ORDERED RESPONDENT TO
RESPOND TO THE PETITION WITHIN 45 DAYS.

IT WAS FURTHER ORDERED THAT THE
CASE BE PLACED ON THE COURTS

515

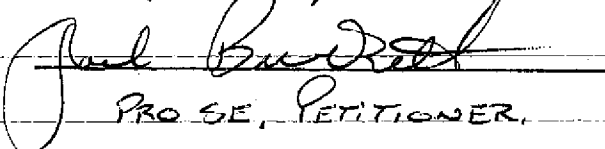
RECEIVED
DEC 24 2001
COUNTY CLERK

CALENDAR FOR JAN 24TH 2002. FOR
FUTHER PROCEEDINGS.

PETITIONER RESPECTFULLY REQUESTS THAT
THE COURT ISSUE AN ORDER DIRECTING
RESPONDENT TO BRING PETITIONER TO
THE JAN 24TH 2002 HEARING. PETITIONER
CONTENDS THAT HE IS ENTITLED TO BE
PRESENT, AND THAT PURSUANT TO
WHITE V. STATE, 771 P.2D 152 (WEN 1989)
THE COURT HELD THAT "THE DISTRICT COURT
ABUSED ITS DISCRETION WHEN IT
CONDUCTED A HEARING ON THE WRIT OF
HABEAS CORPUS WITHOUT PETITIONER
BEING PRESENT".

IN LIGHT OF THE ABOVE CASE, PETITIONER
RESPECTFULLY REQUESTS THAT HE BE
PRESENT FOR ANY HEARING IN THIS MATTER.

DATED THIS 20TH DAY OF DECEMBER, 2001

RESPECTFULLY SUBMITTED,

PRO SE, PETITIONER.

PROOF OF SERVICE

I, JOEL BURKETT, DO HEREBY CERTIFY
THAT I did MAIL A COPY OF THE
ABOVE MOTION TO APPEAR TO THE
RESPONDENT ON THIS 20th DAY OF December 2001.

Joel Burkett
PRO SE PETITIONER

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT

JOEL BURKETT # 16111,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

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1 A No.
2 Q And was it disturbed? Did it
3 appear disturbed?
4 A No.
5 Q Now, you performed a count down; is
6 that correct?
7 A Yes.
8 Q And after performing this count down,
9 did you arrive at any kind of a conclusion whether or
10 not money was missing from the store?
11 A Yes.
12 Q What was that conclusion?
13 A \$20.
14 MR. BUCHANAN: To which I object, unless
15 there's foundation how she arrived at this, your Honor.
16 She can't just make this flat statement.
17 THE COURT: The answer is stricken.
18 The jury is admonished to disregard it.
19 Now, then, the question is did you
20 come to a conclusion, and so you should answer that
21 question either yes or no.
22 Q Did you come to a conclusion whether
23 or not money was missing?
24 A Yes.
25 Q Yes. Okay.
26 Did you bring something with you
27 to court today at our request?
28 A Yes.
29 MR. BLOXHAM: May I approach the
30 witness, your Honor?
31 THE COURT: Yes.
32 MR. BLOXHAM: May we have this marked

1 as State's Proposed Exhibit next in order?

2 Q Now, Mrs. Seavers, showing you what's
3 been marked for identification purposes as State's
4 Proposed Exhibit 17, I'd ask you, what are those?

5 A What is it, means?

6 Q State's Proposed Exhibit 17.

7 A 17?

8 Q That's been marked as State's Proposed
9 Exhibit 17.

10 A Yes, sir.

11 Q What are these documents?

12 A This -- this is what I ran on the
13 adding machine.

14 Q Okay. When?

15 A Decipher --

16 Q When did you run that on the adding
17 machine?

18 A Just the other day when I dug -- when
19 I got this out.

20 Q These particular documents that you
21 do have attached, though, these long --

22 A These were all done that -- that
23 morning.

24 Q December 18?

25 A Yes, sir.

26 Q Okay. Now, is that, those documents --
27 are they kept the ordinary, regular course of business
28 at Stop and Go markets when you compute sales and
29 shortages, overages, and things like that?

30 A Yes. Every day.

31 Q I noticed there's a lot of writing on
32 there. Who did the writing? Do you know?

1 A Yes. This -- this writing was -- the
2 first shift is mine. Then the second shift here was
3 the girl that worked from 3:00 to 11:00, and this is
4 my writing again.

5 Q Shows three shifts?

6 A Yes.

7 Q Now, who would have completed the
8 third shift?

9 A I did.

10 Q And who was supposed to complete it?

11 A Well, I usually do in the morning when
12 I go in.

13 Q So you generally complete the two out
14 of the three shift figures?

15 A Yes, uh-huh.

16 Q Okay. Now, that's your top sheet.
17 What's the next sheet, if I could ask?

18 A This one here. Well, we sell gas.

19 Q Okay.

20 A At the store. And it takes a separate
21 sheet, and the daily gas checkout sheet, each shift,
22 to tell how much gas was pumped out of the gas sales,
23 were pumped out of the pumps, so forth, and then what
24 was rang up on the register as gas. We have a separate
25 key for gas.

26 Q On the register?

27 A Yes.

28 Q Now, the third sheet. So the second
29 sheet concerns gasoline sales at your Stop and Go?

30 A Uh-huh, uh-huh.

31 Q Is there a third sheet, or not?

32 A No, no. These sheets here -- this one

1 here is -- is done every day, and it tells you exactly
2 where all the money, how much, how many checks, food stamps,
3 change, funds, and exactly how much cash. How much money
4 we should have and how much we did.

5 Q Okay. Are all of these documents, then,
6 kept in the ordinary and regular course of business at
7 the Stop and Go market, 732 North Eastern?

8 A Yes, sir.

9 Q Are they kept by someone with knowledge
10 of the transactions?

11 A Yes.

12 Q Okay. And where did you obtain these
13 to bring them to court?

14 A I had them in my store.

15 Q You keep them yourself, and you instruct
16 other people on how to keep them. Is that correct?

17 A Well, as the manager, I keep them when
18 I'm there every day.

19 Q Okay. And are these the documents that
20 you used to compute whether or not there was a shortage
21 or money missing from --

22 A Yes, uh-huh.

23 Q -- 732 North Eastern on December 18, 1980?

24 A That's right.

25 MR. BLOXHAM: Your Honor, I'd ask this
26 be admitted as business records concerning the Stop and Go
27 market, and allow the witness to testify from them.

28 MR. BUCHANAN: No objection.

29 MR. BLOXHAM: Thank you.

30 Q Now, Mrs. Seevers, can you kind of tell
31 us what you did and what you arrived at, what kind of
32 conclusion?

1 A From when I entered the inventories?
2 Q Well, as you did your --
3 A Are we still on these, these papers,
4 concerning these papers?
5 Q Yes, ma'am.
6 A All right. Well, I checked out all
7 the money, counted all the money, opened the safe and
8 dropped all the money, all the money in the tubes and
9 all the money underneath and counted everything, every
10 bit of money that was in that store.
11 And then first I did a reading on it.
12 You -- on the register.
13 Mine is a kind of an electronic
14 register that you turn a key and it gives you the
15 readings for everything for the whole day, and it
16 gives you a grand total on the end, and that is the
17 figure you begin with less the beginning figure from
18 that day, and that's how.
19 And then I did this paperwork.
20 Q So, in other words, did you total out
21 what you should have and then count what you did have
22 and come up with a difference?
23 A Right.
24 Q Was there money missing?
25 A Yes, sir.
26 Q Approximately how much?
27 A \$20.
28 Q Approximately \$20?
29 A Uh-huh.
30 Q Now, on those sheets, how does a person
31 drop money in the safe?
32 I assume it's in the floor?

1 A Uh-huh. It is, it is.
2 Q Where is it?
3 A It's a Diebold safe and --
4 Q Where is it located in the store?
5 A It's to the right of the -- as you're
6 behind the counter and you're facing the register, it's
7 to your -- the person, salesperson's right.
8 Q Can the clerk get in that safe?
9 A Not in the bottom. The only thing she
10 can do is to drop coins out in tubes, in little plastic
11 tubes that the money is in, like a -- like a roll of
12 nickels or a roll of quarters, to make change.
13 Q Okay.
14 A When she runs low on change.
15 Q So am I -- once a person puts money in
16 the safe, once a clerk puts money in the safe, can that
17 clerk extract paper money, for example?
18 A Not if she drops it to the side, where it
19 drops down into the bottom of the safe, no.
20 Q So the money, did you -- did you find
21 any money in any place in the safe other than all the
22 way in the bottom where there are some coins?
23 A Yes.
24 Q Okay. Was there any paper on the top?
25 A In the register, are you talking about?
26 Q Well, I'm talking about in the safe.
27 As I understood it, there's two parts of your safe?
28 A Uh-huh.
29 Q One she can get in, one she can't?
30 A That's right.
31 Q So I'm directing my question, I guess,
32 to the one she cannot get in.

1 A All right. Yes. There was -- the
2 money was all there in the bottom.
3 Q Okay. Now, as a clerk makes a drop,
4 how is the drop made?
5 A All right. She puts it in an envelope
6 which corresponds with this number here on this sheet.
7 Q Okay.
8 A And you can tell here, some of them
9 are underlined where each clerk stops and the next
10 one begins. And she drops it in the envelope in the
11 side, and then that drops down, and no one can get down
12 to the bottom, except me, or who's ever in charge with
13 a key.
14 Q Okay. Now, do you know what time
15 Tina Cage started her shift on December 17th?
16 A Well, she was always on time, and her
17 shift began at 11:00 o'clock.
18 Q Okay. So between 11:00 and then the
19 time you showed up, can you tell from your records if
20 any drops were made by Tina Cage into the safe that
21 you can't retrieve money from?
22 A Yes.
23 Q Okay. And how many drops were made?
24 A Three.
25 Q Three drops?
26 A Uh-huh.
27 Q Is it in somebody's handwriting?
28 A Yes.
29 Q Is -- do you recognize the handwriting?
30 A No, I don't recognize the handwriting.
31 Q Okay. Do you know Tina Cage's
32 handwriting?

1 Okay. Who records on this?
2 Who makes the recordation on this sheet? The clerk?
3 A Yes.
4 Q So the clerk, am I to understand, drops
5 the money in the safe and then records here?
6 A Yes.
7 Q Okay. And it does show three drops
8 from 11:00 o'clock?
9 A Uh-huh.
10 Q What are the amounts of the drops?
11 A First one was 80, the second one was 20,
12 and the next one was 30.
13 Q Does that reflect dollars, \$80?
14 A Dollars, yes -- \$80. I'm sorry.
15 Q \$20 and \$30?
16 A Yes.
17 Q Do those particular numbers correspond
18 with numbers in the safe?
19 A Yes.
20 Q Money in those amounts?
21 A Uh-huh.
22 Q You have to answer out loud.
23 A Yes, yes. I'm sorry.
24 Q Okay. Any kind of a procedure at the
25 Stop and Go if a clerk has to leave for any reason --
26 an emergency or something like that?
27 MR. BUCHANAN: To which I object.
28 Immaterial.
29 MR. BLOXHAM: I think it's very
30 material, your Honor.
31 THE COURT: The objection is overruled.
32 MR. BLOXHAM: Thank you.

1 Q Assume that your clerk had to leave,
2 got a call, an emergency, or maybe a -- I'll stop here.

3 Let me ask you, is there any
4 procedure where a clerk can lock the front door?

5 A Yes, there is.

6 Q And how would the person secure the
7 front door?

8 A There's a key in the store all times
9 for that person to use to lock the front door.

10 Q Okay. Now, is there any signs or
11 anything like that to be posted at that point?

12 A Yes. We have a handwritten sign that
13 they can put on the door.

14 Q So there is a procedure if a person had
15 to leave for something?

16 A Well, they can just lock the door and --
17 if it was an emergency -- and leave.

18 Q Okay. Now, does that store have a
19 back door?

20 A Yes.

21 Q Was the back door operational on
22 December 18, 1960?

23 A No, sir.

24 Q Why was it not operational?

25 A Well, it's locked with a -- one of those --
26 let's see. You know, regular silver lock with a little
27 key. And then it has a heavy two by four across on the
28 inside with metal, those holders, like that.

29 Q Were there anything, was there anything
30 stacked up in front of it, to your knowledge, on that --

31 A Yes. My cylinders that hold CO₂ and
32 Pepsi syrup.

1 Q Okay. Now, did you have occasion to
2 see Tina Cage after she turned up missing from the
3 store that night?

4 A That night?

5 Q Yes. Well, when did you next see
6 Tina Cage?

7 A I saw her -- let's see, now -- the
8 next day.

9 Q Okay.

10 A Or -- well, it was that same day,
11 only later.

12 Q Later on in that day, or the next day,
13 or do you recall?

14 A No. I really can't say for sure.

15 Q Okay. Was that at the store that you
16 saw her, though?

17 A Yes, yes.

18 Q And can you kind of describe her
19 appearance at that time?

20 MR. BUCHANAN: To which I object.
21 Immaterial. Unless there's some relation, I can't see
22 how it can be material some five hours later.

23 MR. BLOXHAM: There's been no
24 testimony of how much later it was. Was it either that
25 day or the next day, sometime in that time frame.

26 I'm going to withdraw the question,
27 your Honor.

28 THE WITNESS: Yes, uh-huh.

29 Q What does the night clerk generally do
30 from 11:00 to 7:00 in the morning?

31 Is that an easy shift, a difficult
32 shift? What is the work scene?

1 A It's very hard manually. They -- the --
2 that shift has to take care of all the store, cleaning
3 and stocking, and stocking all the cups and getting
4 ready for the next day. You have to mop the floors.

5 She cleans outside, you know,
6 sweeps the parking lot. Washes all the glass, stocks
7 the cooler. You know, just -- it's -- it's a full
8 time job to do.

9 Q Busy shift?

10 A It's a busy shift for that, yes.

11 Q What kind of worker was Tina Cage?

12 A Very good, very good.

13 Q Did you -- when did you generally go
14 in the store -- during the daytime? Or when did you
15 generally go into the store 732 North Eastern?

16 A 6:00 in the morning.

17 Q And Tina Cage -- what time would she
18 generally get off?

19 A 7:00.

20 Q So you did see Tina Cage a few times
21 while she was working at that store?

22 A Yes, uh-huh.

23 Q Did you find the store in good shape
24 when you went there, or bad shape?

25 A Excellent shape.

26 Q Did you ever see her husband?

27 A Yes.

28 Q What was the circumstances under which
29 you'd see her husband?

30 A Well, he'd -- sometimes would wait for
31 her to get off work. He would either be out. One time
32 I remember that he was sitting out in the car. The next

1 time or two, he was inside the store waiting for her.

2 Q She didn't work for you very long,
3 did she?

4 A No.

5 MR. BLOXHAM: I have no further
6 questions. Pass the witness.

7 THE COURT: Cross examination?

8 MR. BUCHANAN: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MR. BUCHANAN:

11 Q All right. Now, Mrs. SeEVERS, you're
12 a manager, and you would instruct your employees in
13 certain procedures, everything else, right?

14 A Yes.

15 Q And the cup of ammonia is an instruction
16 you give your employees to throw in someone if there's
17 an attempted robbery. Is that correct?

18 A No, sir.

19 Q What do you do with it?

20 A I didn't instruct her to put that
21 ammonia there.

22 Q Was that a normal instruction you do?

23 A No.

24 Q So you don't know what the ammonia was
25 doing there?

26 A I assumed that it was there in case
27 she was robbed or she had something to defend
28 herself with.

29 Q That's what she defends herself with --
30 throw it on somebody or use it, correct?

31 A She didn't use it.

32 Q I know she didn't use it, but I'm saying

1 that's what it's there for, to be used in the event
2 of a robbery or something, to use it to throw or
3 whatever?

4 A I have to assume that she was going
5 to do that. I don't know for sure.

6 Q When you observed that ammonia that
7 night, it was not used. It was still in a position
8 of -- let's say a defensive position, defensive
9 weapon?

10 A It was still sitting over in a cup
11 right there.

12 Q So then in other words, it had not
13 been used?

14 A It wasn't tipped over. There was still
15 ammonia in the cup. I don't know how full it was to
16 begin with, whether it was used or not.

17 Q Now, you say, according to your records
18 in that exhibit, that voluminous exhibit, that's
19 approximately \$20 short?

20 A Yes, sir.

21 Q Isn't it common in the Stop and Go to
22 be anywhere from 20 or \$50 O.D. or short or over on
23 any one day?

24 A No.

25 Q What's the average overage on that slip?

26 Can you state whether the -- any
27 of the other shifts were over or under?

28 A Yes.

29 Q Were they over or under, or all on
30 the money?

31 A Pretty close, yes, sir.

32 Q Not pretty close. How close?

1 A I'd have to look at the slips again.
2 Q All right. Tell me about the first
3 shift, from 7:00 to -- from 7:00 in the morning until
4 1:00 o'clock in the afternoon.
5 A All right. That was the shift I worked.
6 Q All right. Were you over or under?
7 A I was over on the front part of the
8 shift.
9 Q How much?
10 A Forty-nine twenty.
11 Q Made 49 bucks, shortchanged somebody?
12 A No, sir. On the second sheet I was
13 short thirty-eight eighty on gas.
14 Q So you're short thirty-eight eighty
15 on gas. Someplace you lost it?
16 A No. Someplace it wasn't rang up on
17 the right key, or was put in the drawer without being
18 rang up at all, which happens.
19 Q Okay. So it happens?
20 A Right.
21 Q So -- all right. So what about the
22 next shift?
23 A She came up sixty-two ninety-two over
24 on the first sheet, and fifty-eight sixty short on the
25 second sheet.
26 Q So in other words, there's a spread of
27 about, in one shift, of a hundred forty, approximately
28 a hundred forty dollars?
29 A A spread. Yes, sir.
30 Q Your shift was approximately hundred bucks
31 one way or the other?
32 A No.

1 Q Well, you're over -- you're under in
2 the gas, right?
3 A Yes, but I'm over on cash, so that
4 means --
5 Q I'm talking about the spread.
6 A Between that one of the one shift.
7 On the first shift. The spread is only -- the
8 difference between forty-eight twenty and thirty-eight
9 eighty --
10 Q Ten dollars.
11 A All right.
12 Q All right. And the second shift was
13 about a hundred and forty?
14 A No, sir.
15 Q How much?
16 A Between sixty-two and fifty-eight.
17 Q All right. Let's just say, then,
18 \$60 short, approximately?
19 A No.
20 Q Four dollars?
21 A No. That's over -- we were over on
22 the front and short on the -- on the second sheet.
23 Q Okay. How much were you short?
24 A Fifty-eight and sixty-two over.
25 Q What about the next shift, or is that
26 the only two shifts?
27 A That's the only two shifts, plus the
28 third one that I did myself.
29 Q All right. And then we can assume, then,
30 if you say that according to your calculations that
31 Tina Cage's money, or whatever your calculations come up,
32 were \$20 short?

1 A Yes, sir. What about it?
2 Q That's not very much, in accordance
3 with the way you keep books?
4 A No. This happened to be one of the
5 days that sometimes this happens, but the --
6 Q So you can't state right now today
7 whether or not Tina Cage hit the wrong button on the
8 gas pumps or whether or not she shorted somebody or
9 made money or anything. You can't state here today
10 how that \$20 shortage came about?
11 A The money was gone out of the register,
12 though.
13 Q But you don't know that. There was no
14 money to begin with? You of your own knowledge cannot
15 say what happen to that \$20.
16 A No.
17 Q Just that it wasn't there.
18 A It wasn't there.
19 Q And it could have been short, rung
20 up wrong on the gas pump, or whatever.
21 It could have been, right?
22 A It could have been.
23 Q So what you're telling us today and
24 by reason of your calculations is -- and your figures
25 on that sheet -- you can't state today whether that
26 money was taken in a robbery or that money was short
27 on a gas pump or that it was short change or anything.
28 Is that correct?
29 A That's correct.
30 MR. BUCHANAN: Thank you. No further
31 questions.
32

1 REDIRECT EXAMINATION

2 BY MR. BLOXHAM:

3 Q You weren't there?

4 A No.

5 Q When anything happened, you came and
6 counted it, right?

7 A No.

8 Q Now, the way I understood your testimony
9 is depending upon which key you hit, you've got to take
10 these two figures together to get your overage or
11 underage?

12 A That's right.

13 Q You testified at the end of the first
14 shift you had an overage -- you had an underage which
15 resulted in an overage of \$11.30. Does that sound
16 about right?

17 A Yes.

18 Q Okay. And then the second shift,
19 depending on which key you hit, you had an overage
20 of sixty-two and an underage of fifty-eight sixty,
21 roughly, or plus \$4.32.

22 You're still carrying an overage.
23 Is that correct?

24 A Yes, of four dollars.

25 Q \$4.32?

26 A That doesn't carry over from the
27 second shift. That's for the two shifts.

28 Q That's total for two shifts?

29 A Total for two shifts.

30 Q Okay. Now, that's -- is that as of
31 11:00 o'clock p.m.?

32 When would this \$4.32 overage --

1 A That's when the girl checked out,
2 11:00.
3 Q Okay. So in other words, in her books,
4 she showed an overage of \$4.32 for the day?
5 A That's right.
6 Q But again, it's because of hitting
7 different keys, and then you've got to take it from
8 different areas. Is that right?
9 A Yes. Sometimes if you don't ring
10 it up, just put the money in there, so you're going
11 to be over on money.
12 Q Okay. Even though you sold the things
13 it wasn't --
14 A Yes. Even though the merchandise was
15 purchased by a customer, if you get super busy --
16 somebody will come in and throw thirty cents down for
17 a candy bar, and you'll scoop it up and put it in
18 the register rather than to leave it on the counter.
19 Maybe you forget to ring that up.
20 Q So your testimony from that record is
21 that at 11:00 o'clock p.m., there was an overage
22 roughly of \$4.32, or whatever the difference was?
23 A Yes, sir.
24 Q Then you show three deposits into the
25 safe of a total of a hundred thirty dollars?
26 A That's right.
27 Q Now, you mentioned this cup of ammonia.
28 Did you ever talk to Tina Cage about that ammonia, or
29 are you just assuming that that's what that was for?
30 A I'm just assuming that that's what that
31 was for.
32 MR. BLOXHAM: I have no further questions.

1 Thank you, your Honor.

2 RE CROSS EXAMINATION

3 BY MR. BUCHANAN:

4 Q Your question, your answer to my last
5 question I gave you wouldn't change, would it?

6 A What was your last question?

7 Q About the fact that you can't state
8 over, under, gas pump, shortage -- where it went?

9 A No, because I wasn't there.

10 MR. BUCHANAN: Thank you. Nothing
11 further.

12 THE COURT: You may step down.
13 Thank you, Mrs. Seevers.

14 THE WITNESS: You're welcome.

15 MR. BLOXHAM: We'd call the next
16 witness, Detective Leonard.

17 THE COURT: 17 was offered. I guess
18 I never admitted it, did I?

19 MR. BLOXHAM: I did offer it,
20 your Honor.

21 THE COURT: Any objections to that?
22 17 for identification will be
23 received in evidence as State's Exhibit numbered 17.

24 MR. BLOXHAM: Thank you.

25 ROBERT D. LEONARD,
26 having been first duly sworn to tell the truth, the whole
27 truth and nothing but the truth, testified and said
28 as follows:

29 DIRECT EXAMINATION

30 BY MR. BLOXHAM:

31 Q Would you state your full name and spell
32 the last name for the record, please?

1 A Robert D. Leonard, L-e-o-n-a-r-d.
2 Q Is it Detective Leonard?
3 A Yes, sir.
4 Q You're employed by the Las Vegas
5 Metropolitan Police Department; is that correct, sir?
6 A Yes, sir, I am.
7 Q How long have you been so employed?
8 A Twelve and a half years.
9 Q What is your current position and
10 assignment?
11 A I'm assigned to the robbery detail.
12 Q Okay. Sir, directing your attention
13 to December 18, 1980, where you on duty?
14 A Yes, sir, I was.
15 Q Did you have occasion to go to
16 732 North Eastern, a Stop and Go located here in
17 Clark County, Nevada?
18 A Yes, sir, I did.
19 Q Approximately what time did you go to
20 that location?
21 A Approximately 1:00 a.m..
22 Q And were you dispatched, or were you
23 just patrolling through that area?
24 A We were called out to respond to that
25 location. Detective Mark Brook, B-r-o-o-k, and myself.
26 Q Okay. When you arrived at that location,
27 what if anything did you observe?
28 A We observed Detective Sergeant Gary Robey,
29 R-o-b-e-y; Detective Will Wuke, W-u-k-e; and ID
30 Officer Mumpower, M-u-m-p-o-w-e-r; and another ID officer
31 who I do not know, already at the scene, along with a
32 number of other persons.

1 Q Okay. Did you have occasion to enter
2 the Stop and Go at that location?

3 A Yes, sir, I did.

4 Q Did you have occasion to observe the
5 counter area where the register is?

6 A Yes, sir, I did.

7 Q Both in front and behind?

8 A Yes, sir.

9 Q What if anything did you observe, sir?

10 A Well, pointed out to myself by
11 Sergeant Robey were a number of items sitting on the
12 counter itself. I believe there was a Michelob bottle
13 and a six-pack of some other brand of beer, and pointed
14 out a purse.

15 MR. BUCHANAN: To which I'm going to
16 object if it's pointed out. The question is, your Honor,
17 whether he observed. I would just ask the officer to
18 restrict his answer to the question.

19 THE COURT: The objection is --

20 MR. BUCHANAN: Not what it was pointed
21 out to him.

22 THE COURT: The objection is overruled.

23 MR. BLOXHAM: Thank you, your Honor.

24 Q This purse that you observed -- what if
25 anything did you observe -- what if anything did you
26 notice about the purse?

27 A The purse was examined by Detective Wuke
28 for some type of identification. Apparently identification
29 had been found, and the person's name later determined
30 to be the victim, Tina Cags.

31 Q Do you recall seeing any identification?

32 A Yes, sir.

1 Q Driver's license or anything?
2 A Yes, sir.
3 Q Did you notice whether or not there
4 was any money in that purse?
5 A Yes, sir, there was. I believe it
6 was -- I think there was a twenty-dollar bill.
7 Q Now, did you subsequently become the
8 detective assigned to this particular robbery case?
9 A Yes, sir, I did.
10 Q Did you have occasion to meet with a
11 Tina Cage at any time after going to that location?
12 A Yes, sir -- approximately 3:00 a.m..
13 Q And where was it that you met with
14 Mrs. Cage?
15 A At the Metropolitan Police Department
16 Detective Bureau.
17 Q And this is approximately 3:00 a.m.?
18 A Yes, sir.
19 Q Did you meet Tina Cage's husband?
20 A There was a gentleman that I later
21 learned to be her husband. I didn't personally
22 meet him.
23 Q You didn't interview him?
24 A No, sir.
25 Q Now, at the station or the detective
26 bureau, did you interview Tina Cage?
27 A Yes, sir, I did.
28 Q Where did the interview take place?
29 A In one of our interview rooms.
30 Q That a large room, small room, medium
31 room?
32 A No, sir. It's a small room.

1 Q Did you have occasion to speak with
2 Tina Cage?
3 A Yes, sir, I did.
4 Q Did you have occasion to watch her
5 walk, observe her demeanor?
6 A Yes, sir.
7 Q Did you notice anything unusual, smell
8 any alcoholic beverage or anything like that about
9 her person?
10 A No, sir, I did not.
11 Q She appear to be under the influence
12 of anything, based on your experience?
13 A No, sir, she didn't appear to be
14 under the influence.
15 Q Okay. She was able to converse with
16 you, no problem, is that right?
17 A Yes, sir.
18 MR. BUCHANAN: To which I object.
19 Leading again.
20 THE COURT: Well, the answer is in.
21 It will stand.
22 Q Was there a formal statement taken at
23 that time from Tina Cage?
24 A Shortly after that. Yes, sir.
25 Q That -- was that prepared and typed,
26 to your knowledge?
27 A Yes, sir.
28 Q After meeting with Tina Cage, was there
29 anything else that you did that morning pursuant to this
30 case or pertaining to this case?
31 A After interviewing her and obtaining a
32 description of the suspect and of the vehicle and

1 obtaining the statement, we then transported her to
2 Southern Nevada Memorial Hospital.

3 Q Okay. Now, you obtained statements
4 concerning her -- the descriptions of the individuals
5 involved. Is that right?

6 This is about 3:00 a.m., 4:00 a.m.,
7 or whatever?

8 A Yes, sir.

9 Q Do you recall what those descriptions
10 were of the individuals involved in this robbery?

11 A She described them as two white male
12 adults. I'd have to look at my --

13 MR. BUCHANAN: To which we'd object
14 as hearsay.

15 THE COURT: The objection is sustained.

16 Q Okay. Pursuant to the discussion with
17 Tina Cage, were you looking for anyone?

18 A Yes, sir, I was.

19 Q Can you tell us what the description
20 of the people you were looking for was? Can you give
21 us that?

22 A I'd have to refer to my notes to get
23 any exact description.

24 Q Did you at or near the time that you
25 were preparing this description to look for these
26 individuals -- did you prepare in your own hand a list
27 of the description that you were going to then
28 subsequently look for?

29 A Yes, sir, I did.

30 Q Do you have a complete and absolute
31 memory of every detail that you completed on your
32 description sheet?

1 A No, sir, I don't.

2 Q By referring to your notes, would that
3 aid you in testifying as to what, who you were looking
4 for then?

5 A Yes, there.

6 MR. BLOXHAM: Your Honor, I'd ask
7 permission for Detective Leonard to review his notes
8 and inform this Court of who he was looking for.

9 MR. BUCHANAN: Well, your Honor, we
10 would object to that. I can't see the materiality,
11 number one. It would be hearsay because he obtained
12 it from somebody else. Because he recorded it or put
13 it into recorded form doesn't make it any less hearsay.

14 We've already had testimony from
15 Tina Cage as to what evidence or what testimony she
16 gave. That was the proper identification, and unless
17 there's some difference now from what she said or what
18 she said she told Detective Leonard, I can't see now
19 why Detective Leonard, who is reading it right now
20 anyway, can add to the testimony.

21 It's hearsay. She's the one that
22 testified. She said what they looked like. She said
23 what they told the police. That's it. Now to come back
24 again -- every witness seems to want to buttress up
25 Tina Cage.

26 That's hearsay of what he's going
27 to testify to, and we object to it.

28 MR. BLOXHAM: We're not asking this
29 detective what Tina Cage said. We're asking this
30 detective if he was looking for two individuals in
31 a car.

32 He testified he was. We were asking

1 this detective who or what's the description of the
2 person you were looking for, what's the car look like.

3 I think it becomes most important
4 to complete the testimony of the further witnesses
5 we intend to call. I would suggest strongly to the
6 Court that that is not hearsay. What this detective,
7 who this detective is looking for is not hearsay.

8 THE COURT: The objection is overruled.

9 MR. BLOXHAM: Thank you. May we have
10 the detective refer to his notes and perhaps read,
11 unless he has a good memory of it?

12 THE COURT: Yes.

13 MR. BLOXHAM: Read to us?

14 THE COURT: Yes, he may. Yes,
15 he may.

16 MR. BLOXHAM: Thank you.

17 Q Who were you looking for,
18 Detective Leonard?

19 A The number one suspect I was looking for
20 was a subject going by the name of Dusty, a white male
21 approximately 30 years of age, six foot to six foot two,
22 185 pounds, muscular built, short straight parted on
23 the left side sandy blond hair, brown eyes, a van dyke
24 type beard, slightly darker than the hair. He had a
25 tattoo of a spider web on his right elbow, tattoo of a
26 marijuana leaf on his right forearm, the left forearm
27 completely covered with tattoos.

28 He was the driver of the suspect
29 vehicle. He was in possession of a key ring which
30 was orange in color and had initials J as in John,
31 W as in whiskey on the key ring.

32 He was wearing a white t-shirt

1 with the name of a rock group in a circular design
2 and a year printed in black on it. He was wearing
3 a black leather or plastic type vest, worn blue jeans,
4 and shoes unknown type.

5 He was in possession of a
6 four-inch long hunting type knife, a buck type knife,
7 in a pouch on the right side of his belt.

8 He smoked Camel cigarettes, the
9 regular kind, and had a chain on his belt loop possibly
10 going into a wallet.

11 The second subject I was looking
12 for --

13 MR. BUCHANAN: To which we object --
14 no materiality to the second subject.

15 THE COURT: The objection is overruled.

16 MR. BLOXHAM: Thank you, your Honor.

17 A (Continuing) was a white male, 19 to 20
18 years, approximately five foot six, a hundred forty
19 pounds, slim build.

20 He had collar length black hair
21 which was slightly wavy, parted on the right side,
22 dark eyes, and a thin stubble of beard growth on
23 his chin.

24 He had a Harley-Davidson type
25 belt buckle, golden in color, attached to his belt,
26 a wide thick brown belt. Had a fairly new looking
27 Levi jacket, blue jeans, white basketball type tennis
28 shoes that were very dirty.

29 He was wearing a thin bladed
30 skinning type knife in a sheath. He also smoked regular
31 Camel cigarettes.

32 The Levi jacket appeared to be too

1 large for him. He was in possession of a yellow
2 Cricket lighter. He had a large brown leather wallet.

3 And the subjects were in possession
4 of an approximately 1974 to '75 Ford Maverick two-door,
5 medium blue in color, extremely dirty on the outside.
6 It had stock blackwall tires, stock hubcaps. It had
7 black cloth split back seat. It had a small white
8 quilt laying in the back seat.

9 MR. BUCHANAN: Your Honor, I think
10 this way and above what the question was -- what was
11 the physical description. Now we're going through
12 the whole thing. Why don't we just put the report
13 in if he can't remember anything?

14 MR. BLOKHAM: Your Honor, I think the
15 question goes to the suspects he was looking for and
16 the vehicle that they might be driving.

17 MR. BUCHANAN: The vehicle wasn't
18 asked in the question. He's just volunteering. He's
19 just reading his whole report.

20 Q At this time I'll ask what vehicle were
21 you looking for at that time, Officer?

22 A I was looking for a 1974 to '75
23 Ford Maverick two-door, medium blue in color, very dirty
24 on the outside. Stock blackwall tires, stock hubcaps.
25 A black cloth type split back seat, small white quilt
26 laying in the back seat. A black plastic dash.

27 The interior light did not work.
28 The heater did not work. The radio just barely worked.

29 There was a brown plastic console
30 tray sitting in the front floorboard. The floorboards
31 were extremely dirty with trash, old newspapers, food
32 bags and so on.

1 There was a spare battery in the
2 rear floorboard which had to be used to start the car
3 each time it was stopped.

4 The gas tank showed approximately
5 one quarter of a tank of gas. And it contained a
6 package, partially opened package of Marlboro 100s
7 cigarettes and it also contained the victim's bra
8 and panties.

9 Q Did you have a description of panties
10 that you were looking for?

11 A I obtained a description of the panties
12 on 12/19 of 1980.

13 Q Okay.

14 A The panties were Wonderworld brand,
15 size 7, bikini type, white with small pink and blue
16 flowers and a lace top.

17 Q Thank you, Detective. Did you testify
18 that you took the victim, Tina Cage, to the hospital
19 on December 18th?

20 A Yes, sir, I did.

21 Q What hospital was she taken to?

22 A Southern Nevada Memorial Hospital.

23 Q Approximately what time did you go to
24 the hospital?

25 A Approximately 7:00 a.m..

26 Q And were you given anything at the
27 hospital by the doctor or nurse to look, book into
28 evidence?

29 A Obtained what's referred to as a
30 rape kit from the substation. Placed a D.R. number
31 on the front of it and then gave that to a nurse who
32 then returned this rape kit to me.

1 Q Okay. What if anything did you do
2 with the rape kit after obtaining it?

3 A It was placed into evidence.

4 Q Did you put your name on it,
5 P.R. number?

6 MR. BUCHANAN: Your Honor, I think
7 he'd have to identify the rape kit. If there is one
8 in existence, he should be able to. It should be
9 marked, and he should identify it.

10 MR. BLOXHAM: I'll withdraw the
11 question if it's that offensive, your Honor.

12 Q Sir, can you -- now I want to direct
13 your attention to, Detective Leonard, to December 19, 1980.
14 Were you on duty at that time, also?

15 A Yes, sir, I was.

16 Q Did you have occasion to meet with
17 Tina Cage again?

18 A Yes, sir, I did.

19 Q Where did this meeting occur?

20 A Metropolitan Police Department,
21 Detective's Bureau.

22 Q And what if anything did you do at
23 that point?

24 A Went over her statement with her again,
25 obtained some additional information such as description
26 of the panties and bra that she was wearing, and --

27 Q Let's stop right there.

28 Now, you gave a pretty good
29 description of who you were looking for. What time and
30 date did you receive that description, again, the
31 complete one, except the additional and the panties?

32 Was that on December 18th in the

1 morning hours at Metro?
2 A Yes, sir.
3 Q Okay. So at that point, you had that
4 description. Is that correct?
5 A Yes, sir.
6 Q Okay. You know you met with her on the
7 19th, and what occurred?
8 That's the next day, the 19th.
9 What happened?
10 A Uh-huh.
11 MR. BUCHANAN: We're going to object,
12 your Honor. I can't again make an offer of proof.
13 I can't determine what happened the 19th, 20th. Maybe
14 he had a date. We're on the 21st. It doesn't make
15 any difference.
16 What we're talking about is the
17 night of the 19th. Everything else is immaterial, unless
18 it's someplace relevant to this, what we're talking about,
19 this crime, unless they're again trying to buttress up
20 her testimony, with which I can't understand.
21 THE COURT: The objection is overruled.
22 MR. BLOXHAM: Thank you.
23 Q Please continue, sir. Your testimony
24 was, I believe, you met with Tina Cage the 19th at the
25 detective bureau. What occurred?
26 A Obtained additional descriptions and had
27 her go through the mug books and attempt to identify
28 suspects.
29 Q Was she able to identify anyone from the
30 mug book?
31 A No, sir, she was not.
32 Q Did she point out any that -- did she

1 draw your attention to any at all?

2 A Yes, sir, she did.

3 Q For what reason?

4 A They were very similar looking to the
5 two suspects we were attempting to locate.

6 Q Did she identify anyone, do you know?

7 A Pardon me?

8 Q Did she specifically make identification
9 of anyone?

10 A No, she did not.

11 Q Other than just drawing your attention?

12 A No, sir.

13 Q Okay. Now, did you have occasion on the
14 19th to meet with two individuals who were suspect in
15 this case?

16 A Yes, sir, I did.

17 Q Where was it that you met with these
18 individuals?

19 A In the detective bureau in the
20 Metropolitan Police Department.

21 Q Did you ascertain their names from them?

22 A Yes, sir, I did.

23 Q And what were the names that were given?

24 A Raymond Haire and Theodore Burkett.

25 Q Raymond Haire and Theodore Burkett. Do you
26 see the man that identified himself as Raymond Haire in
27 the courtroom today?

28 A Yes, sir, I do.

29 Q Would you identify him by where he's
30 seated, what he's wearing, Mr. Leonard?

31 A Sitting to the left of Mr. Buchanan.
32 He's wearing a tan corduroy coat, black pants, or

1 black shirt and blue Levis. Appears to be brown shoes.

2 MR. BLOXHAM: May the record reflect
3 identification of the defendant, Joel Burkett,
4 your Honor?

5 THE COURT: The record may so show,
6 yes.

7 Q Detective Leonard, did you Raymond Haire
8 by any other name at any time?

9 Have you known Raymond Haire
10 by any other name?

11 A Yes, sir. Later on I discovered that
12 subject was known as Joel Burkett.

13 Q Now, you mentioned a Theodore Burkett.
14 Do you see Theodore Burkett in the courtroom today?

15 A Yes, sir, I do.

16 Q Where is he seated and what is he
17 wearing?

18 A Well, from my position, he's seated
19 directly behind Joel Burkett, and he's wearing a white
20 and black like a t-shirt or something with Led Zeppelin
21 written across the front of it.

22 Q These are the two individuals you saw
23 at the detective bureau?

24 A Yes, sir.

25 Q What was Joel Burkett or Raymond Haire,
26 the same individual -- what was he, how was he dressed
27 and what was he wearing when you saw him?

28 A He was wearing a black leather type
29 vest, no shirt, and dirty Levis, and black motorcycle
30 boots, is what we call them.

31 Q Did you notice if he had any tattoos?

32 A Yes, sir, he did.

1 Q And what tattoos did you notice?
2 MR. BUCHANAN: Objection. Immaterial.
3 They already looked at the tattoos, the jury, and
4 this thing. What -- I can't -- it's been asked
5 and answered.
6 MR. BLOXHAM: I'm going to withdraw
7 the question, your Honor.
8 May we have this marked as State's
9 next in order?
10 Q Detective Leonard, showing you what's
11 been marked for identification purposes as State's
12 Proposed Exhibit 18, can you identify that?
13 A Yes, sir.
14 Q And what does that appear to be?
15 A These were four extra photographs taken
16 of subject Raymond Haire or Joel Burkett.
17 Q Do you know when those were taken?
18 A At the time of his booking.
19 Q Do those fairly -- do those fairly and
20 accurately depict how he appeared on December 19, 1980?
21 A Yes, sir, they do.
22 MR. BLOXHAM: Move to admit State's
23 Proposed Exhibit 18, your Honor.
24 MR. BUCHANAN: No objection.
25 THE COURT: State's Proposed 18 will
26 be received in evidence as State's Exhibit numbered 18.
27 Q Did you observe Theodore Burkett at that
28 time, sir?
29 A Yes, sir I did.
30 Q What if anything did you observe about
31 Theodore Burkett?
32 A He also matched the description of the

1 subject we was looking for.

2 Q By clothing, did you notice anything?

3 A He was wearing a Harley-Davidson belt

4 buckle.

5 Q Okay. Now, did you have occasion to

6 prepare a physical lineup concerning the two suspects

7 that you're talking about December 19, 1980?

8 A Yes, sir, I did.

9 Q When was the physical lineup conducted?

10 A On the 19th, beginning at approximately

11 3:15 p.m.

12 Q And where was the physical lineup

13 conducted.

14 A On the third floor of the same building,

15 in the auditorium.

16 Q And who viewed this physical lineup as

17 a witness or victim?

18 A Tina Cage.

19 Q Now, were you conducting the lineup, sir?

20 A Yes, sir.

21 Q And how many lineups were conducted?

22 A Two, sir.

23 Q The first physical lineup -- do you

24 know who the suspect in the lineup was?

25 A Theodore Burkett.

26 Q Did Tina Cage view this lineup?

27 A Yes, sir, she did.

28 Q Was she able to make identification

29 of anyone in the lineup?

30 A No, sir, she did not.

31 Q Did she indicate to you anything further

32 as far as viewing this lineup?

1 A Yes, sir. She stated that the suspect
2 in No. 2 position resembled the young suspect with
3 the black hair.

4 Q And who was in No. 2 position?

5 A Theodore Burkett.

6 Q Did you subsequently then conduct
7 a second physical lineup?

8 A Yes, sir, I did.

9 Q And was Tina Cage the person who
10 viewed this one, also?

11 A Yes, sir.

12 Q Was Tina Cage able to identify anyone
13 in the second physical lineup?

14 A Yes, sir, she did.

15 Q And who was it that she identified?

16 A The subject in No.2 position, which was
17 Raymond Haire at that time, or Joel Burkett.

18 Q Was there any problem with the
19 identification?

20 MR. BUCHANAN: To which I object.
21 That's asking for a conclusion of this witness from
22 Tina Cage.

23 MR. BLOXHAM: I'm going to withdraw
24 that, your Honor.

25 Q Were photographs prepared at that time,
26 sir?

27 A Of the physical lineup? Yes, sir.

28 Q At your request or --

29 A Yes, sir.

30 Q Do you know who requested them?

31 A I requested them. Standard procedure.

32 Q After these physical lineups,

1 Detective Leonard, did you have occasion to apply for
2 a search warrant concerning any automobile?

3 A Yes, sir, I did.

4 Q And did you recall what the automobile
5 was that you applied for the search warrant for?

6 A It was the vehicle that Joel Burkett
7 and Theodore Burkett had been -- had had in their
8 possession at the time of their arrest.

9 Q Do you recall what year or anything
10 from -- without looking at your records?

11 A It was a 1972 Maverick.

12 Q And where was the automobile located,
13 or did you subsequently search that automobiles?

14 A Yes, sir.

15 Q With assistance from other people?

16 A Yes, sir.

17 Q Where was the automobile located?

18 A In our ID garage, this same building.

19 Q When the search began, were you
20 personally present?

21 A Yes, sir.

22 Q Was the automobile sealed or in an
23 unsealed condition when the search began?

24 A Sealed.

25 Q What if anything did you observe as
26 the search of the automobile occurred?

27 A Observed a number of items in the
28 automobile that I thought were of evidentiary value,
29 items Tina Cage had described in her description of
30 the vehicle.

31 Q Okay. What did you specifically notice,
32 if anything, that you can describe after you personally

1 looked in and viewed this car?

2 A Observed the description from the
3 vehicle. The white -- ended up being a mattress cover
4 laying in the back seat. A plastic console type tray
5 sitting in the front. Numerous Michalob beer bottle
6 caps scattered throughout the floorboard. An empty
7 package of Marlboro 100s cigarettes.

8 After the vehicle was then opened
9 and further searching, also discovered numerous hairs
10 which appeared to be female type hairs, and also
11 discovered a pair of white panties hidden underneath
12 the right front seat.

13 Q Were these items impounded, to
14 your knowledge?

15 A Yes, sir, they were.

16 Q And do you know who did that?

17 A The ID officer who conducted or did
18 the processing. That's ID Officer Nancy Kingsbury.

19 MR. BLOXHAM: Okay. Now, just so that
20 we don't have any questions, could I have State's
21 Proposed Exhibits 1 and 1A?

22 May I approach the witness,
23 your Honor?

24 THE COURT: Yes.

25 Q Detective Leonard, showing you what's
26 been marked for identification as State's Proposed
27 Exhibit 1, have you ever seen that particular envelope
28 before, sir?

29 A Yes, sir.

30 Q And when did you see it?

31 A Yesterday afternoon at approximately
32 1:00 p.m. when I picked it up from the evidence vault.

1 Q You did pick it up from the
2 evidence vault?
3 A Yes, sir.
4 Q What did you do with it when you picked
5 it up?
6 A Brought it here to the courtroom,
7 presented it to the court clerk.
8 Q Okay. Was it sealed when you picked
9 it up?
10 A Yes, sir.
11 Q And was it still in the same condition
12 when you deposited it with the court clerk?
13 A Yes, sir.

14 MR. BLOXHAM: Thank you. May we have
15 these photographs marked State's next in order?

16 THE COURT: We'll take our
17 recess here.

18 During the time we are in recess,
19 ladies and gentlemen, I would remind you it is your duty
20 not to converse among yourselves or with anyone else on
21 any subject connected with this trial, or to read, watch
22 or listen to any report of or commentary on this trial
23 or any person connected with this trial by any medium of
24 information, including newspapers, television and radio,
25 and you are not to form or express an opinion on any
26 subject connected with this case until it is finally
27 submitted to you.

28 We will be in recess for ten or
29 fifteen minutes.

30 (A brief recess was
31 taken at this time.)

32

1 THE COURT: Will counsel stipulate
2 to the presence of all members of the jury and the
3 two alternate jurors?

4 MR. BLOXHAM: State would stipulate,
5 your Honor.

6 MR. BUCHANAN: Defense would
7 stipulate, your Honor.

8 THE COURT: Thank you. You may
9 continue your direct examination.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. BLOXHAM:

12 Q Photographs were taken at the lineup
13 at your direction, of the second lineup, at the final
14 lineup. Is that correct?

15 A Yes, sir.

16 Q Okay. Before I show you these
17 photographs of the lineup, your testimony was that
18 Tina Cage identified Joel Burkett or Raymond Haire
19 at that lineup. Is that correct?

20 A Yes, sir.

21 Q Where was this identification made?
22 Was it inside?

23 What is the format of the lineup?
24 Is it an auditorium, or just where is the lineup
25 conducted?

26 A Well, it's up on the third floor of
27 the courthouse, and it's a regular auditorium, and it
28 has a stage, and also a number of chairs where the
29 witnesses sit.

30 After the conclusion of the lineup,
31 however, the witness is brought outside into the
32 hallway in front of the auditorium.

1 Q Is there any talking generally allowed
2 inside the auditorium during the lineup by the victim?

3 A No, sir.

4 Q Or the witness?

5 A No, sir.

6 Q Was there any talking that day by
7 Tina Cage?

8 A No, sir.

9 Q Either to her or from her?

10 A No, sir.

11 Q Then did she then go out into the hallway,
12 as the general custom is?

13 A Yes.

14 MR. BUCHANAN: Leading, your Honor.
15 Again, this is rehabilitation. I can't understand the
16 line of questioning.

17 I'm objecting to it until -- we have
18 an objection. They're rehabilitating Tina Cage on
19 every sentence.

20 MR. BLOXHAM: Your Honor, what we are
21 doing is painting the picture of what happened, and I
22 think it's important, because we're getting to a
23 point --

24 MR. BUCHANAN: Well, I'm going to
25 object to it. I don't think it's proper questioning.
26 He's leading the witness. He's asking for a conclusion
27 of that witness, and it's just objectionable, and we --

28 MR. BLOXHAM: I'll refrain from
29 leading, your Honor, if I can continue in this area.

30 THE COURT: The objection is sustained
31 on the grounds that the question was leading.

32 MR. BLOXHAM: Thank you.

1 Q Did you have occasion to speak to
2 Tina Cage in the hallway?

3 A Yes, sir, I did.

4 Q And what if anything was said in
5 the hallway?

6 MR. BUCHANAN: To which we object,
7 hearsay. Unless they lay a foundation, I don't believe
8 they can --

9 THE COURT: The objection is --

10 MR. BLOKHAM: Your Honor --

11 THE COURT: The objection is sustained.

12 MR. BLOKHAM: Your Honor, this pertains
13 to an identification by a witness, and I believe it's
14 a specific exception to the hearsay rule.

15 THE COURT: The objection is sustained.

16 Q Officer, or Detective Leonard, did you
17 have occasion then to return into the auditorium?

18 A Yes, sir, I did.

19 Q And who went back into the auditorium?

20 A Myself and the Public Defender,
21 Peggy Leen.

22 Q Did Tina Cage return to the auditorium?

23 A No, sir.

24 Q After returning into the auditorium,
25 was there any conversation by Raymond Haire or
26 Joel Burkett and Peggy Leen?

27 A Yes, sir, there was.

28 Q After that conversation, did Raymond Haire
29 or Joel Burkett make any statements in your presence?

30 A Yes, sir, he did.

31 Q What if anything did he say?

32 A Directed a question at Peggy Leen and

1 asked her, "Did they also identify my partner?"

2 Q Who else was present when this
3 statement was made?

4 A Detective Brook, Detective Mings,
5 Peggy Leen herself, and I believe Detective Grizzle.

6 Q Now, Detective Leonard --

7 MR. BLOXHAM: May I approach the
8 witness, your Honor?

9 THE COURT: Yes.

10 Q Detective Leonard, showing you what's
11 been marked for identification purposes --

12 MR. BLOXHAM: May the record reflect
13 I'm showing defense counsel these photographs first.

14 Q Detective Leonard, showing you what's
15 been marked for identification purposes as State's
16 Proposed Exhibit 19 -- maybe I should just give you
17 the stack, 19 through 34, in order.

18 I'd ask you to look at each and
19 every picture, and then my question to you would be
20 can you identify each picture?

21 A Yes, sir, I can. Would you like for me
22 to identify them?

23 Q Well, are there a series of pictures
24 which represent different things?

25 A Yes, sir. This is one series, and this
26 is a separate series.

27 MR. BUCHANAN: Your Honor, I'm going
28 to object. If we're going to go by series and numbers
29 and that, there's no way the record can tell which
30 series we're talking about, which is objectionable,
31 which is not objectionable, and I just wish they would
32 refer to it by number. I don't think -- I know the

1 Court can't and the record can't state --

2 Q (By Mr. Bloxham) Okay. Referring to
3 State's Proposed Exhibit 19, would you please look
4 at State's Proposed Exhibit 19?

5 Can you identify that?

6 A Yes, sir.

7 Q What is it?

8 A This depicts the rear seat from the
9 vehicle depicted in State's Exhibit No. 28.

10 Q Now, does that fairly and accurately
11 depict what you saw in the back seat of that car?

12 MR. BUCHANAN: No objection.

13 MR. BLOXHAM: Pardon me?

14 MR. BUCHANAN: No objection to 19.

15 MR. BLOXHAM: Okay. We'd move to
16 admit 19.

17 THE COURT: 19 will be received in
18 evidence as State's Exhibit No. 19.

19 Q Directing you to State's Proposed
20 Exhibit 20, can you identify that?

21 A Yes, sir. 20 is the same back seat,
22 taken from the passenger side.

23 MR. BUCHANAN: No objection.

24 MR. BLOXHAM: Move to admit it,
25 your Honor.

26 THE COURT: Exhibit 20 will be received
27 in evidence as State's Exhibit 20.

28 Q Directing you to State's Exhibit 20, what
29 appears in the back seat of that car on 20?

30 A This is the white mattress cover.

31 Q And did you observe that in the back
32 of that car on December 20?

1 A Yes, sir.
2 Q Moving on to State's Proposed Exhibit 21,
3 can you identify that?
4 A Yes, sir. This is the right front seat
5 of the same vehicle.
6 Q Does that fairly and accurately depict
7 what you saw that day?
8 A Yes, sir.
9 MR. BLOXHAM: Move to admit it,
10 your Honor.
11 MR. BUCHANAN: No objection.
12 THE COURT: Same will be received in
13 evidence as State's Exhibit 21.
14 MR. BLOXHAM: Thank you, your Honor.
15 Q What do you see in State's Exhibit 21?
16 A This is the pair of panties I had
17 referred to earlier.
18 Q Did you observe those underneath the
19 seat there?
20 A The same position you see them here.
21 Q That the right or the left seat?
22 A That's the right front seat.
23 Q Thank you. Moving on to State's
24 Proposed Exhibit 22, can you identify that?
25 A It's the driver's seat.
26 Q And does that fairly and accurately
27 depict what you saw on December 20, 1980?
28 A Yes, sir.
29 MR. BUCHANAN: No objection.
30 THE COURT: What's the number?
31 MR. BLOXHAM: 22, your Honor.
32 THE WITNESS: 22.

1 THE COURT: 22 will be received in
2 evidence as State's Exhibit numbered 22.

3 Q Directing you to State's Proposed
4 Exhibit 23, can you identify that?

5 A Yes, sir. It's just a more overall view
6 of the right front seat.

7 Q Does it fairly and accurately depict
8 what you saw on December 20, 1980 as you observed that?

9 A Yes.

10 MR. BLOXHAM: Move to admit it,
11 your Honor.

12 MR. BUCHANAN: No objection.

13 THE COURT: Same will be received in
14 evidence as State's Exhibit numbered 23.

15 Q Directing you attention to State's
16 Proposed Exhibit No. 24, can you identify that?

17 A Yes, sir.

18 Q What does it purport to be?

19 A Almost the same photograph, except a
20 different angle.

21 Q And does that fairly and accurately
22 depict what you saw on December 20, 1980?

23 A Yes, sir.

24 MR. BLOXHAM: Move to admit it,
25 your Honor.

26 MR. BUCHANAN: No objection.

27 THE COURT: Same will be received in
28 evidence as State's Exhibit No. 24.

29 Q Directing you attention to State's
30 Proposed Exhibit 25, same question. Can you identify
31 it, sir?

32 A Yes, sir. It's the right side, photograph

1 of the vehicle on the right side, depicting the
2 sealed condition.

3 Q Do you appear anywhere in
4 that photograph?

5 A Yes, sir, I do -- directly behind
6 the vehicle.

7 Q Does that fairly and accurately depict
8 what you saw on December 20, 1980?

9 A Yes, sir.

10 MR. BLOXHAM: Move to admit it,
11 your Honor.

12 MR. BUCHANAN: No objection.

13 THE COURT: Same will be received in
14 evidence as State's Exhibit numbered 25.

15 Q Directing your attention to State's
16 Proposed Exhibit 26, can you identify that?

17 A Yes, sir. This is a photograph depicting
18 the driver's side in a sealed condition.

19 Q Does that fairly and accurately depict
20 what you saw, December 20, 1980?

21 A Yes, sir.

22 MR. BLOXHAM: Move to admit it,
23 your Honor.

24 MR. BUCHANAN: No objection.

25 THE COURT: Same will be received in
26 evidence as State's Exhibit numbered 26.

27 Q Directing your attention to State's
28 Proposed Exhibit 27, can you identify that?

29 A Yes, sir. This is the rear of the
30 vehicle, displaying the license plate.

31 Q Does that fairly and accurately
32 depict what you saw on December 20, 1980?

1 A Yes, sir.
2 MR. BLOXHAM: Move to admit it,
3 your Honor.
4 MR. BUCHANAN: No objection.
5 THE COURT: Same will be received in
6 evidence as State's Exhibit numbered 27.
7 Q Directing your attention to State's
8 Proposed Exhibit 28, can you identify that?
9 A It's an overall view of the rear of
10 the vehicle.
11 Q Does that fairly and accurately depict
12 what you saw on December 20, 1980?
13 A Yes, sir.
14 MR. BLOXHAM: Move to admit it,
15 your Honor.
16 MR. BUCHANAN: No objection.
17 THE COURT: Same will be received in
18 evidence as State's Exhibit numbered 28.
19 Q Directing your attention to State's
20 Proposed Exhibit 29, can you identify that? Can you
21 identify that, Detective Leonard?
22 A Through the rest of the photos I can
23 identify this as the right front forearm of subject
24 Joel Burkett or Raymond Haire.
25 Q Have you ever observed his right
26 front forearm?
27 A Yes, sir.
28 Q Does that picture fairly and accurately
29 depict his right front forearm?
30 A Yes, sir.
31 MR. BLOXHAM: Move to admit it,
32 your Honor.

1 MR. BUCHANAN: Your Honor, we're going
2 to object to the next series of photos of Mr. Burkett,
3 the defendant here. It's been cumulative evidence.
4 It's been identified. He's shown his arms in court
5 to the jury, which is a more -- better representation
6 than the photographs.

7 It's not material to the issues
8 here at hand, and we'd object to it.

9 MR. BLOXHAM: Your Honor, may we
10 approach the bench with the exhibit?

11 THE COURT: Sure.

12 MR. BUCHANAN: Your Honor, can the
13 court reporter come to the bench?

14 MR. BLOXHAM: No. I just wanted to --

15 (At this time, counsel
16 approached the bench for a brief
17 discussion with the Court which
18 was not reported.)

19 Q (By Mr. Bloxham) Detective Leonard,
20 showing you what's been marked for identification purposes
21 as State's Proposed Exhibit 33, can you identify
22 that photograph?

23 A Yes, sir. This depicts the lineup which
24 we had for subject Joel Burkett. This would be the
25 profile view of it, second photograph taken.

26 Q Does that photograph fairly and accurately
27 depict the lineup December 19, 1980?

28 A Yes, sir.

29 Q Ask the same question -- State's Proposed
30 Exhibit 34. Can you identify that?

31 A This is a frontal view.

32 Q And does that fairly and accurately depict

1 the lineup December 19, 1980?

2 A Yes, sir.

3 Q I notice in the lineup the men are
4 wearing coats. Was that directed to be done?

5 A Yes, sir, in order to distinguish any
6 tattoos which might be visible.

7 Q So the person viewing the lineup, being
8 Tina Cage -- could she observe any tattoos?

9 A No, sir.

10 MR. BLOXHAM: Your Honor, at this
11 time we'd move to admit State's Proposed Exhibits 33
12 and 34.

13 MR. BUCHANAN: No objection.

14 THE COURT: Same will be received
15 in evidence as State's Exhibits numbered 33 and 34.

16 Q Now, at our request, did you bring
17 anything to court with you today?

18 A Yes, sir, I did.

19 MR. BLOXHAM: And may I approach
20 the witness, your Honor.

21 THE COURT: Actually, in here, unless
22 it's done in a menacing or threatening manner, anybody
23 can approach the witness anytime they want.

24 MR. BLOXHAM: Thank you, your Honor.
25 Haven't done that in his Honor's court for a while.

26 Q Detective Leonard, showing you what's
27 been marked for identification purposes as State's
28 Proposed Exhibit 35, can you identify this?

29 A Yes, sir. This is a shirt that I
30 impounded on December the 22nd, 1980.

31 Q And -- well, that's the evidence bag;
32 is that correct?

1 A Yes, sir.
2 Q And when did you first see the bag
3 marked State's Proposed Exhibit 35?
4 On that same day?
5 A Yes, sir. I filled out all the writing
6 on the bag and sealed it and placed it into the
7 evidence vault.
8 Q Did you place something into the bag
9 and then seal it?
10 A Yes, sir.
11 Q Okay. Do the seals appear to have
12 been broken?
13 A No, sir.
14 Q And where did you --
15 MR. BLOXHAM: Well, may we have
16 scissors and open the bag, your Honor?
17 Q Will you please open the bag, without
18 disturbing the seals?
19 Tell us what you're doing, please.
20 A The bottom has now been cut.
21 Q Would you remove any items that might
22 be in the bag?
23 MR. BLOXHAM: May we have this marked
24 as State's Proposed Exhibit 35A?
25 Q Officer, Detective Leonard, showing you
26 what's been marked for identification purposes as
27 State's Proposed Exhibit 35A, can you identify that?
28 A Yes, sir, I can.
29 MR. BUCHANAN: Your Honor, prior to --
30 we'd like to make a motion in regard to 35A outside the
31 presence of this jury.
32 MR. BLOXHAM: Your Honor, may we just go

1 through the foundational steps, and we'll not offer
2 it at this time without further linking up?

3 MR. BUCHANAN: Well, if it's not going
4 to be offered, we don't wish to be --

5 MR. BLOKHAM: I intend to offer it,
6 your Honor, but this is a foundational witness for
7 the offer.

8 MR. BUCHANAN: I think there's a
9 question that we would object to.

10 THE COURT: We'll just do it.

11 At this time, court will remain
12 in session outside the presence of the jury. We will
13 excuse the ladies and gentlemen of the jury to the
14 hallway to the call of the bailiff.

15 During the time court is in recess
16 outside the presence of the jury, ladies and gentlemen,
17 I would remind you it is your duty not to converse among
18 yourselves or with anyone else on any subject connected
19 with this trial, or to read, watch or listen to any
20 report of or commentary on this trial or any person
21 connected with this trial by any medium of information,
22 including newspapers, television and radio, and you are
23 not to form or express an opinion on any subject connected
24 with this case until it is finally submitted to you.

25 We'll excuse the jury to the hallway
26 to the call of the bailiff.

27 (At this time, the jury
28 and alternate jurors left the
29 courtroom.)

30 THE COURT: Mr. Buchanan?

31 MR. BUCHANAN: If I could ask
32 Detective Leonard a few voir dire questions, maybe

1 we'll know what we're talking about.

2 THE COURT: All right.

3 VOIR DIRE EXAMINATION

4 BY MR. BUCHANAN:

5 Q Officer Leonard, 35A was not obtained
6 from the car. Is that correct?

7 35A is the shirt.

8 A The shirt. No, sir, it was not.

9 Q That was obtained from the house of
10 the defendant. Is that correct?

11 A Yes, sir.

12 Q And did you have a search warrant to
13 go into that house?

14 A No, sir. I had a consent to search.

15 Q Did Mr. Burkett give you a consent
16 to search?

17 A No, sir.

18 Q And that's where he was living?

19 A I do not know for sure, sir.

20 Q Whose house was it?

21 A Raymond Haire gave an address of
22 725 North Bruce Street.

23 Q All right. And that's where you went,
24 that location?

25 A Yes, sir.

26 Q And did you have Mr. Haire's or
27 Joel Burkett's permission to go into that house?

28 A No, sir. Requested permission from
29 the people who owned the house.

30 Q But the people who owned the house
31 did not -- were renting it to Mr. Burkett. Is
32 that correct?

1 A Pardon?
2 Q The people that owned the house were
3 renting to Mr. Burkett. Is that correct?
4 A Were renting it to Mr. Burkett?
5 Q Yes.
6 A Not to my knowledge, sir.
7 Q Mr. Burkett was living there, right?
8 A As far as I know, along with the
9 people who we obtained the permission from.

10 MR. BUCHANAN: Well, your Honor,
11 I think it's standard procedure and constitutional law
12 that people who own the house or property can give
13 consent to search, to go into somebody's premises,
14 the same as a motel or anything else.

15 He has a right to privacy under
16 the search and seizure clause. These items are not
17 permissible unless they have a search warrant and unless
18 they can show some exigent circumstances why they
19 couldn't find a person and went and got a permission to
20 search from somebody else -- who I don't know who these
21 people are, but he said he knew where Mr. Burkett
22 lived. Went there and got permission from someone
23 else who's not in court, who can't be verified.

24 Now he comes in and says because
25 of that consent, it's a constitutionally permissible
26 search.

27 We object to it. There's not
28 a sufficient foundation, and we feel it's an
29 unconstitutional search. We object to it.

30 MR. BLOKHAM: Maybe I can flesh this
31 out a little bit. This man did not find this in the
32 house himself.

1 May I ask some questions?
2 THE COURT: Go ahead.
3 MR. BLOXHAM: So the Court will know.
4 VOIR DIRE EXAMINATION
5 BY MR. BLOXHAM:
6 Q How did you obtain this shirt,
7 Detective Leonard?
8 A Knocked on the door and spoke to a
9 woman who lived at that residence.
10 Q Do you know her name?
11 A Shirley White.
12 Q And did there come a time when you
13 were given something by Shirley White?
14 A Yes, sir.
15 Q When was that?
16 A When asked if she had located the
17 shirt, at which time she went and retrieved a shirt
18 and presented myself and Detective Brook with this
19 particular shirt.
20 Q When she presented it to you, were you
21 on the front step, or inside the house?
22 A Inside of the residence, in the
23 living room.
24 Q Did you enter any of the bedrooms or
25 anything, search for this shirt on this day that it
26 was presented to you?
27 A No, sir.
28 Q In other words, Shirley White gave it
29 to you?
30 A Yes, sir.
31 MR. BLOXHAM: Your Honor, we're
32 trying through this witness to establish foundation

1 to have this not offered to be admitted at this point
2 but at a subsequent time.

3 MR. BUCHANAN: Well, I don't care.
4 A subsequent time or not, I don't want that shirt
5 permitted.

6 Number one, now, what they're
7 trying to do is make a constitutional search because
8 they directed Mrs. White to go get this shirt into
9 this room, or wherever. They in fact didn't retrieve
10 the shirt. It was a governmental intrusion into
11 somebody's private affairs.

12 Police tell someone to go into
13 a motel room, you can go in and retrieve that murder
14 weapon and bring it outside and give it to me. So the
15 motel owner goes into the room, gets the murder weapon,
16 brings it out and gives it to the police officer. They
17 don't have to go get a search warrant and make an
18 affidavit, go through that routine. That gun is not
19 permitted to be entered into evidence. They have to
20 have a search warrant.

21 Now, they're using Mrs. White as
22 a conduit or as an agent to go retrieve certain items
23 they're looking for. For them to go into court, say,
24 "She gave it to me there," it's a constitutional
25 search -- they didn't make a search. Somebody else did.

26 MR. BLOXHAM: Can we ask if the witness
27 he directed her to search through these things? I don't
28 think that's been asked.

29 THE COURT: Go ahead.

30 Q. (By Mr. Bloxham) Detective Leonard, did
31 you direct Mrs. White to search through the items of
32 Joel Burkett or Raymond Haire and retrieve a shirt?

1 A No, sir, I did not. I was not present
2 when she was first talked to by Detective Brook and
3 Grizzle, and I have no knowledge as to what --

4 Q You don't know what she was told, then?

5 A No, sir.

6 Q Am I to understand you called and said,
7 "Do you have a shirt," or whatever, and she said,
8 "Yes. Come over and get it"?

9 Or how did it happen?

10 A She had originally been contacted by
11 Detective Grizzle and Brook on I believe it was the
12 19th, December the 19th. A consent to search was
13 obtained at that time from her and her husband,
14 Jessie White, and apparently they did look for the
15 shirt at that time. Did not --

16 Q When you say "they," you mean the
17 detectives, perhaps, or Jessie and --

18 A Who looked for the shirt, I don't know.

19 Q Okay.

20 A However, there was no shirt found.
21 Mrs. White related that she would attempt to locate
22 it, and where she found it I do not know. However,
23 she presented it with -- to us when we returned on
24 the 22nd.

25 Q And was that pursuant to a phone call
26 you placed to her, or a phone call she placed to you?

27 A No, sir. We just stopped by the
28 house.

29 MR. BLOXHAM: Okay.

30 MR. BUCHANAN: Your Honor, I'd submit
31 it on that evidence. That even makes it worse, and I
32 don't think they could ever come up with this being a

1 proper constitutional search, and so we're objecting
2 to that admission, to the admission of this shirt,
3 even to have it introduced in front of the jury at
4 this time.

5 THE COURT: The objection is overruled.

6 MR. BLOXHAM: Thank you. Before the
7 jury is called back in, then, your Honor, may I just
8 have this officer testify foundationally when he
9 received this shirt, from whom, and not offer it at this
10 time until we can link it up?

11 THE COURT: That's right.

12 MR. BUCHANAN: Your Honor, we'd like
13 to have Officer Grizzle and Brooks called. We'd like
14 to have another session outside of the presence of
15 the jury so we can do it -- knowing that I'm going to
16 object to this, we could do it prior to a recess.
17 We could bring them back in, not have to run the jury
18 back in and out, because I'm going to make the same
19 objection at this time.

20 MR. BLOXHAM: What he's saying is we
21 need that hearing prior to the offering of the shirt?

22 THE COURT: And prior to them testifying.

23 MR. BLOXHAM: Prior to the testimony
24 of --

25 THE COURT: The two officers that went
26 over and got the consent, permission to voluntarily
27 have the item turned over. He wants to give them
28 voir dire questions outside of the jury prior to the
29 time they testify.

30 MR. BLOXHAM: Okay. Very well,
31 your Honor.

32 At this time, I think we will just

1 withdraw our offer. Our marking and everything else --
2 since it's been marked for identification purposes,
3 we'll just leave it with the clerk.

4 And we're ready to have the
5 jury back in, then.

6 (At this time, the jury
7 and alternate jurors returned
8 to the courtroom.)

9 THE COURT: Will counsel stipulate
10 to the presence of all members of the jury and the
11 two alternate jurors?

12 MR. BUCHANAN: Defense so stipulates,
13 your Honor.

14 MR. BLOXHAM: State would so stipulate,
15 your Honor.

16 THE COURT: You may proceed with you
17 direct examination.

18 MR. BLOXHAM: Your Honor, we'd pass
19 the witness at this time.

20 MR. BUCHANAN: Thank you, your Honor.

21 CROSS EXAMINATION

22 BY MR. BUCHANAN:

23 Q All right. Detective Leonard, you've
24 stated on the next day that you questioned -- or that
25 night, rather, on the 19th, that you questioned
26 Tina Cage?

27 A The --

28 Q Would it be the 18th? Excuse me.
29 The morning of the 18th?

30 A The morning of the 18th. Yes, sir.

31 Q Early morning hours of the 18th. And you
32 had an opportunity to interrogate Tina Cage?

1 A Interview her, yes, sir.
2 Q All right. And you, on direct examination,
3 said you smelled no booze on her. Is that correct?
4 A Yes, sir.
5 Q You know of your own knowledge whether
6 or not she had been drinking booze?
7 A I believe she related in her statement
8 that she had consumed some beer.
9 Q So she had admitted to you that she
10 had consumed some beer?
11 A Yes, sir.
12 Q All right. And because she had admitted
13 to consume some beer, then you couldn't smell it,
14 could you?
15 You state you didn't smell it?
16 A Normally when a person's under the
17 influence, there's more of a smell.
18 Q Just answer the question. Did you
19 smell the beer?
20 A No, sir.
21 Q But she had admitted to you in her
22 statement that she had been drinking beer?
23 MR. BLOXHAM: I'm going to object to
24 that, your Honor. That's hearsay.
25 THE COURT: The objection is overruled.
26 Q Isn't that a fact?
27 A She admitted that she had had some quite
28 some time earlier from the time of the interview.
29 Q All right. Now, you said also that you
30 observed her, and she didn't appear to be under the
31 influence of any drugs?
32 A No, sir. I just said under the influence.

1 Q All right. I don't exactly understand
2 what that means -- under the influence.
3 You're saying drugs, alcohol,
4 anything?
5 A Yes, sir.
6 Q All right. So you can't state, then,
7 whether or not she was smoking marijuana.
8 Do you have any knowledge whether
9 or not she was smoking marijuana?
10 A No, sir. I can't state that.
11 Q And there is no way whether or not,
12 you can tell whether or not -- experience, just by
13 a casual observation of them?
14 A It depends how far under the influence
15 they are.
16 Q If they're found on quaaludes or
17 something like that, you can tell -- their slow
18 speech and so forth, right?
19 A Yes, sir.
20 Q But in this particular instance, she
21 admitted she was consuming beer, but you couldn't
22 state or smell beer. Isn't that correct?
23 A Right. Yes, sir.
24 Q And the same thing goes, then, for
25 being under the influence of marijuana or smoking
26 marijuana -- she did not appear to be smoking marijuana
27 to such a degree that she was groggy or soggy or eyes
28 watery or anything else?
29 A Yes, sir.
30 Q So then from your observation -- of you --
31 she could have been smoking marijuana. Isn't that true?
32 A Yes, sir, she could have.

1 Q And we know from her statements and
2 her representations to you that she was smoking or
3 was drinking beer?

4 A Yes, sir.

5 Q All right. Now, then we go to all of
6 these identifications, and she said that her identification
7 of this Dusty was that he was 30?

8 A Yes, sir.

9 Q Do you think the defendant here
10 looks 30?

11 A The way he is now, no, sir.

12 Q All right. And do you think that the
13 clothes that he was wearing when you picked him up,
14 or his description -- did that indicate that it was
15 a windbreaker?

16 Is there any indication from your
17 witness's statements that he was wearing a windbreaker?

18 A Not that I'm aware of, sir.

19 Q All right. Is there indications from
20 the witness's statement of Tina Cage that he was wearing
21 gray or brown, tan pants?

22 A Not that I'm aware of, sir.

23 Q All right. And now, you've stated
24 that you have pictures of him there, and does it look
25 like, in those pictures, and particularly the extra
26 pictures you had taken after he was booked -- do you
27 describe his hair as an Afro?

28 A No, sir.

29 Q All right. And so then you wouldn't
30 say that the defendant's description what Tina Cage
31 gave you either was an Afro haircut or a windbreaker
32 or light brown pants?

1 A She did not give that description
2 to me. No, sir.
3 Q All right. So that's not the person
4 you were looking for?
5 A No, sir.
6 Q All right. Now, then, you went also
7 to a lineup with Theodore Burkett, who you've testified
8 was in the courtroom -- I don't know whether he still
9 is or not -- but she did not identify him. Is that
10 correct?
11 A That's an opinion, sir.
12 Q All right. But isn't it a fact --
13 yes or no -- that she did not identify Theodore Burkett
14 in lineup No. 1?
15 A She did not make an identification
16 on the lineup 1.
17 Q Theodore Burkett?
18 A Yes, sir.
19 Q All right. Now, this was not a
20 '74 Maverick; was it?
21 A No, sir.
22 Q And it was a '72 Maverick?
23 A Yes, sir.
24 Q And your description, what you were
25 looking for, was a blue '74 Maverick. Isn't that
26 correct?
27 A Yes, sir.
28 Q And this is actually a green '72 Maverick.
29 Isn't that correct?
30 A Yes, sir.
31 Q So if you put an APB or an all points
32 bulletin out for a '74 blue Maverick, the chances are

1 that you would not come up on a routine stop or
2 routine observation, if you saw a '72 green Maverick?

3 MR. BLOXHAM: I'm going to object,
4 your Honor -- calls for speculation on just what would
5 be observed and what would not be observed.

6 MR. BUCHANAN: This officer is a
7 detective, your Honor. He has the expertise to have
8 observed, if he's looking for a '74 blue Maverick,
9 would he stop a '72 green Maverick.

10 MR. BLOXHAM: Your Honor, when you
11 add other factors, however, they may very well stop
12 a '72 green Maverick. Other identification features.
13 That's my point.

14 MR. BUCHANAN: That's not the
15 question. I have one question to him, and I think
16 he's --

17 THE COURT: I don't know what it is.
18 You know, you gentlemen -- you talk so fast you don't
19 give me a chance to rule, and I hear four speeches.
20 I'm all ready to rule after the first words "I object,"
21 usually.

22 Now, in this case, the objection
23 is overruled. The best one to satisfy what he would
24 do or what he wouldn't do is the witness.

25 MR. BUCHANAN: Thank you.

26 Q Now, Officer Leonard, you're an
27 experienced police officer?

28 A Yes, sir.

29 Q You're driving down the street.
30 You see -- and you have an APB for a '74 blue Maverick,
31 and a '72 green Maverick goes roaring by you, within
32 the speed limit.

1 You would not stop that car?
2 A It would depend on if the description
3 said an approximately '74 or '75 two-door Maverick,
4 blue in color, extremely dirty on the outside.

5 Q All right. Didn't you --

6 A And --

7 Q Didn't you also say in that same car
8 that it had standard stock hubcaps?

9 A Yes, sir.

10 Q Now, you observed Exhibits 25 and 26,
11 that we admitted without objection, that there were
12 no hubcaps on any of the car?

13 A Yes, sir.

14 Q All right. So now let's take it a step
15 further, then.

16 She related to you stock hubcaps,
17 a green or a blue Maverick, '74, '75.

18 So now we have a '72 Maverick,
19 green in color, no hubcaps. Does that make any difference?

20 A As for the year, I can't -- not myself
21 personally tell the difference between a '72 or '74.

22 Q Agreed. All right.

23 A Okay.

24 Q Color, though, unless you're color blind --

25 A Color. Yes, sir. There's a difference
26 between blue and green. However, being nighttime and
27 in extremely dirty condition --

28 Q Okay.

29 A There again it's an opinion.

30 Q All right.

31 A No. It's an opinion.

32 Q Let's take hubcaps, then. Hubcaps either

1 are on or they're off?

2 A Yes, sir.

3 Q And your statement that what she gave
4 you was that they were on.

5 A There again, you're talking about a
6 woman. She was asked if there was any identifiable
7 type tires, and she said --

8 Q Stock tires.

9 A She said stock blackwall tires and
10 stock hubcaps.

11 Q Stock hubcaps. All right. Now, I'll
12 show you again Exhibit 25. I show you Exhibit 26,
13 just as a --

14 MR. BUCHANAN: And then I want to show
15 it to the jury, if I may, your Honor.

16 Q I show you Exhibit 26. All right?

17 A Yes, sir.

18 Q Now, that Exhibit 26 shows a green
19 '72 Maverick with no hubcaps.

20 A There's hubcaps on the left front wheel.

21 Q You call that a hubcap? Look again.

22 A On the left front wheel. Yes, sir,
23 I do.

24 Q Well, I don't, but I'll submit it to
25 the jury.

26 All right. Are there any hubcaps
27 on the right, Exhibit No. 25?

28 A There's not one on the right rear.

29 I cannot tell if there's one the right front or not.
30 Possibly the impound slip would say.

31 Q All right, but as far as the photographs
32 you've introduced, or the State has introduced, there's

1 no hubcaps on the right rear?

2 A Yes, sir.

3 Q Or as far as you're saying, on the
4 left rear?

5 A None on the left rear, either.
6 No, sir.

7 Q All right. Now, Detective Leonard,
8 that in itself, as far as the identification of the
9 person -- relatively accurate, from what you've stated.
10 Is that correct?

11 From the person that you arrested,
12 that identification was relatively accurate, the person?

13 A Yes. Yes, sir.

14 Q Except for the age?

15 A That again is a matter of opinion.

16 I --

17 Q All right. But you can agree that their --
18 from her identification of the age of the suspect and
19 the actual age that you've determined him to be upon
20 booking and so forth, that there is some 11 years
21 difference?

22 A Yes, sir.

23 Q All right. So now, taking it a step
24 further, being an experienced police officer, the lead
25 detective in this case, if you're looking for a
26 thirty-year old suspect driving a green '72 Maverick
27 and having certain physical characteristics, now,
28 wouldn't you say that that's a little far from a
29 nineteen-year old who might possibly be driving a
30 '74 or '75 green Maverick with no hubcaps on it?

31 A Just with the elements that you've
32 mentioned? I'll agree with you.

1 Q All right. So then if you agree with
2 me, then you would go further to say that because of
3 that, it could possibly be that the witness is trying
4 to mislead you?

5 A No, sir.

6 MR. BUCHANAN: I knew you would
7 say that. No further questions.

8 REDIRECT EXAMINATION

9 BY MR. BLOXHAM:

10 Q Detective Leonard, you state that the
11 victim told you she had drinken a beer or beer that
12 evening?

13 A Yes, sir.

14 Q Did she tell you when?

15 A It's in her statement. I do not recall
16 exactly, sir. It was somewhere, I believe, at the
17 beginning. They had stopped and purchased a six-pack
18 of beer.

19 Q Did she say she actually drank beer,
20 or did she say they had beer?

21 A I believe she stated that she had
22 drank a beer or a portion of it, at least.

23 Q Would you know the statement if you
24 saw it again?

25 A Yes, sir.

26 MR. BLOXHAM: Could I have this
27 marked, your Honor, or shall I just show it to him?

28 MR. BUCHANAN: We'd object to any
29 police report being marked.

30 MR. BLOXHAM: I just want this officer
31 to review what he's testifying from and make sure that
32 his testimony is accurate with his memory. If this

1 jogs his memory, your Honor, I want it to be --

2 MR. BUCHANAN: But that is not proper,
3 your Honor. Number one, he has not said that he can't --

4 THE COURT: It's like this. Technically
5 everything that's ever showed to a witness should be
6 marked for identification. Generally, we don't do
7 that. We say, "You made police reports on such and
8 such a day. If I showed you that report, would that
9 refresh your memory as to what you're testifying to?"

10 And I think that's fine. Why not --

11 MR. BUCHANAN: All right. Fine,
12 your Honor, but my objection doesn't go to that.
13 My objection goes to this: that unless the prosecution --
14 again trying to rehabilitate their own witnesses -- can
15 say that he does not remember, that he does not remember
16 or he might be clouded, to have past recollections
17 recorded and now to come and show him a statement, fine.

18 But this officer's made no
19 qualifications that his statement is anywhere incorrect
20 or he can't recall. He's said specifically she was
21 drinking beer, period.

22 Unless there's something that he does
23 not remember, only then can they show him that statement
24 and ask him if the past recollection recorded would
25 refresh your memory, and that is better now than it is
26 now. But that has not been established for foundation,
27 so we object to that.

28 THE COURT: Okay. The objection is
29 overruled. You may use the statement to refresh the
30 witness's memory.

31 MR. BLOXHAM: Thank you. May I have
32 it marked?

1 MR. BUCHANAN: We'd object to it
2 being marked.

3 THE COURT: Well, I'm not standing
4 on that formality. Technically, it should be marked.

5 MR. BLOXHAM: Thank you.

6 THE COURT: In this jurisdiction,
7 habitually -- I guess that's not even a word -- but
8 as a matter of habit, it is not marked.

9 Q (By Mr. Bloxham) Detective Leonard,
10 showing you that report, is that where your testimony
11 comes from that she said she had a beer that night?

12 Is that statement that -- from
13 which you get that information?

14 A I -- without having read it, I do not
15 know if it was in this or not. She had been verbally
16 interviewed prior to a formal statement with a
17 stenographer having been taken.

18 Q Okay. Have you reviewed this
19 statement recently?

20 MR. BUCHANAN: I'm going to object
21 to that.

22 THE COURT: In view of the testimony,
23 the objection will now be sustained.

24 MR. BLOXHAM: Okay.

25 Q The best of your recollection, then,
26 she made a statement that she had a beer that night?

27 A Well, I can't recall if she said she
28 drank a whole beer or if she stated she did drink part
29 of one because she was thirsty.

30 Q Do you know whether that appears in
31 her statement at all?

32 A I don't know without reading it.

1 Q Detective Leonard, it's been a lot of
2 questions asked you concerning who you'd stop, who you
3 wouldn't stop.

4 Did you personally put out an
5 attempt to locate concerning this case?

6 A Detective Mark Brook is the one who
7 actually wrote out the attempt to locate.

8 Q Were you present when that was done,
9 or do you have knowledge it was done?

10 A Yes, sir.

11 Q What is an attempt to locate, sir?

12 A Just basic information that's
13 broadcast to the units to be on the lookout.

14 Q Did it contain the description that you
15 gave us that you obtained from Mrs. Cage?

16 A Not a complete description -- only the
17 basic information.

18 Q Would it have included a description --
19 physical description -- clothing description?

20 A Yes, sir.

21 Q Would it include tattoo description?

22 A Yes, sir.

23 Q When you saw these two individuals,
24 actually, you didn't arrest them, did you?

25 A No, sir. Officer Singer.

26 Q But you did observe them before
27 booking; is that correct?

28 A Yes, sir, I did.

29 Q You didn't book them though; did you?

30 A No, sir. I was present at the time
31 they were booked.

32 Q Now, when you observed these two individuals,

1 would you have arrested them if you would have
2 seen them?

3 A. Immediately.

4 MR. BLOXHAM: Thank you. No further
5 questions.

6 MR. BUCHANAN: No questions, your Honor.

7 THE COURT: You may step down.
8 Thank you, Lieutenant Leonard.

9 At this time, we'll take our recess.

10 During the time we are in recess,
11 I would remind you, ladies and gentlemen of the jury
12 and alternate jurors, it is your duty not to converse
13 among yourselves or with anyone else on any subject
14 connected with this trial, or to read, watch or listen
15 to any report of or commentary on this trial or any
16 person connected with this trial by any medium of
17 information, including newspapers, television and radio
18 and you are not to form or express an opinion on any
19 subject connected with this case until it is finally
20 submitted to you.

21 We'll be in recess for ten to
22 fifteen minutes.

23 (A brief recess was
24 taken at this time.)

25 THE COURT: Will counsel stipulate
26 to the presence of all members of the jury and the
27 two alternate jurors?

28 MR. BLOXHAM: State so stipulates,
29 your Honor.

30 MR. BUCHANAN: Defense would
31 stipulate.

32 THE COURT: You may call the State's

1 next witness.

2 MR. BLOXHAM: State would call
3 Nancy Kingsbury.

4 NANCY KINGSBURY,
5 having been first duly sworn to tell the truth, the whole
6 truth and nothing but the truth, testified and said
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. BLOXHAM:

10 Q Ma'am, would you state your full name
11 and spell the last name, for the record, please?

12 A Nancy Kingsbury, K-i-n-g-s-b-u-r-y.

13 Q And is it Mrs. Kingsbury?

14 A Yes.

15 Q Are you employed by the Las Vegas
16 Metropolitan Police Department?

17 A Yes, I am.

18 Q And what is your position?

19 A I'm an identification specialist.

20 Q How long have you been so employed?

21 A Approximately seven months.

22 Q Directing your attention to
23 December 20, 1980, did you have occasion to be involved
24 in the search of an automobile with Detective Leonard
25 of the Las Vegas Metropolitan Police Department?

26 A Yes, I did.

27 Q And was that a 1972 Ford Maverick?

28 Do you recall what kind of car it was?

29 A Not -- no, I don't.

30 Q Where did the search occur?

31 A At a criminalistics bureau lab.

32 Q Were certain items booked into evidence?

1 A Yes.
2 Q After that search?
3 A Yes, they were.
4 Q Who booked them into evidence, the items?
5 A I did.
6 Q Now, if we could have you -- at our
7 request bring some things to court with you today?
8 A Yes.
9 Q If we could have you specifically --
10 well, first of all, may I show you State's Proposed
11 Exhibit 1 and ask you if you can identify the envelope
12 which has been marked State's Proposed Exhibit 1?
13 A Yes, I can.
14 Q And what is the basis of your
15 identification?
16 A My writing and my signature.
17 Q And when did you first see State's
18 Proposed Exhibit 1?
19 A On December 20, 1980.
20 Q What did you do with the envelope
21 when you completed -- you know, when you picked it
22 up and completed all the information, everything?
23 What did you do with the envelope?
24 A I sealed it, and I put it in the
25 evidence vault.
26 Q Did you place something inside of
27 it first?
28 A Yes, I did.
29 Q Okay. And where did you seal it?
30 A Across the front.
31 Q Does that seal appear to be still intact?
32 A Yes, it does.

1 Q Okay. Did you ever take it out of
2 the evidence vault after putting it in?
3 A No, sir.
4 Q Removing what's been marked for
5 identification purposes State's Proposed Exhibit 1A,
6 can you identify this?
7 A Yes. That is the pair of pants that
8 I impounded.
9 Q Okay. And what is the basis of your
10 identification?
11 Is there any identifying writing
12 on that bag?
13 A I initialed it and dated it.
14 Q Okay. So you do find your initials
15 and date on their?
16 A Yes.
17 Q In your handwriting?
18 A My initials and the case number, not
19 the date. I'm sorry.
20 Q Okay. It appears to be what inside
21 the bag?
22 A A pair of underpants.
23 Q Okay. Where did you obtain the pair
24 of underpants which is inside the bag marked State's
25 Proposed Exhibit 1A?
26 A On a floor under the passenger seat
27 in the front.
28 Q Okay. Of this particular automobile?
29 A Yes.
30 Q You searched on December 20th?
31 A Yes.
32 MR. BLOXHAM: Your Honor, at this time

1 we'd move to admit State Proposed Exhibits 1 and 1A.

2 MR. BUCHANAN: No objection.

3 THE COURT: Same will be received in
4 evidence as State's Exhibits numbered 1 and 1A.

5 Q Specifically, now, Mrs. Kingsbury, did
6 you bring a package lifted as Package No. 4?

7 A Yes, I did.

8 Q Did you also bring an additional package
9 marked Package No. 8?

10 A Yes, I did.

11 MR. BLOXHAM: May I have those two
12 packages, please? May I also have Package No. 5 at the
13 same time? May we have these marked State's next
14 in order?

15 Q Mrs. Kingsbury, showing you what's been
16 marked for identification purposes -- may I first of
17 all show them to defense counsel, if he chooses to
18 view them?

19 While defense counsel is doing that,
20 do you have some cards that need to be signed off by
21 the clerk?

22 A Yes, I do.

23 MR. BUCHANAN: Your Honor, for the
24 record, we have no objection to the offering and
25 introductions of evidence, State's Proposed Exhibits 37,
26 State's Proposed Exhibit 36, or State's Proposed
27 Exhibit 38.

28 THE COURT: Offer them?

29 MR. BLOXHAM: Yes, your Honor. At this
30 time we'd offer them.

31 THE COURT: State's Proposed Exhibits
32 36, 37 and 38 will be received in evidence as State's

1 Exhibits designated 36, 37, and 38.

2 MR. BLOXHAM: Thank you.

3 MR. BUCHANAN: That also goes for the
4 contents, your Honor.

5 MR. BLOXHAM: May we just leave the
6 contents, remove -- putting them right back in the
7 envelopes so we won't have to submark them?

8 MR. BUCHANAN: No objection.

9 THE COURT: Sounds like a good way.

10 Q Would you open State's Exhibit 36 now
11 are remove the contents and tell us what you're doing?

12 A I've opened Package 4, State's Exhibit 36.

13 Q Will you remove any contents right
14 here and tell us what they appear to be?

15 A A baggie containing one Camel cigarette
16 pack, one -- two Michelob beer top bottle caps, and
17 one cigarette butt.

18 Q Okay. Where did you obtain these
19 particular items?

20 A May I refer to my notes?

21 MR. BLOXHAM: Your Honor, may the
22 witness refer to her report at this time?

23 Q Do you have working knowledge, memory
24 of where you obtained these items at this time,
25 completely?

26 A Not --

27 MR. BUCHANAN: Stipulate they found
28 them in the car.

29 MR. BLOXHAM: Well, we'd like to
30 pinpoint where they were found, your Honor. It doesn't
31 make that much difference, I guess, but how about if we
32 were to do this.

1 Q (By Mr. Bloxham) Did you find
2 Package No. 4, which is State's Proposed Exhibit 36,
3 inside that Ford as you examined it.

4 A Yes.

5 Q Moving along to State's Proposed
6 Exhibit 37, would you please cut that open, tell us
7 what you're doing?

8 A I've opened the bottom of State's
9 Exhibit 37.

10 Q And would you remove any contents?

11 And where did you find the items
12 that you just removed?

13 A In the vehicle.

14 Q Okay. What does it appear to be?

15 A One Marlboro cigarette package.

16 Q Do you know whether that was recovered
17 from the front or the rear of the car?

18 A Not without referring to my notes.

19 MR. BLOXHAM: Your Honor, may the witness
20 refer to her notes so we might know which area of the car,
21 the particular area of the car this item was retained?

22 MR. BUCHANAN: No objection.

23 Q Please refer to your notes and tell us
24 where you obtained the Marlboro pack from State's
25 Exhibit 37.

26 A Item on the left front floorboard of
27 the vehicle.

28 Q Please open State's Exhibit 38 and
29 remove any contents. I guess you wouldn't have to
30 remove it.

31 Could you just kind of pull it
32 out and tell us what it is?

1 A This is one mattress cover.
2 Q Okay. Where did you recover that?
3 Did you recover it from that same Ford automobile
4 that was being searched?
5 A Yes, I did.
6 Q Okay. And which area of the car was
7 that found in?
8 A I believe it was in the rear of the
9 vehicle, the back seat.
10 MR. BLOXHAM: Okay. Thank you
11 very much.
12 We would pass the witness,
13 your Honor.
14 MR. BUCHANAN: No questions.
15 THE COURT: You may step down,
16 Mrs. Kingsbury. Thank you.
17 THE WITNESS: Thank you.
18 MR. BLOXHAM: Call the next witness,
19 Officer Smith.
20 Your Honor, for my records, is that
21 36, 37 and 38 that we just had marked and admitted?
22 THE COURT: I believe it was.
23 THE CLERK: Yes.
24 THE COURT: Yes.
25 MR. BLOXHAM: Thank you.
26 ROBERT SMITH,
27 having been first duly sworn to tell the truth, the whole
28 truth and nothing but the truth, testified and said
29 as follows:
30 DIRECT EXAMINATION
31 BY MR. BLOXHAM:
32 Q Sir, would you state your full name,

1 spell the last name for the record.

2 A My name is Robert Smith. Last name is
3 spelled S-m-i-t-h.

4 Q And Officer Smith, are you employed
5 by the North Las Vegas Police Department?

6 A Yes, I am.

7 Q How long have you been so employed?

8 A Fifteen years.

9 Q What is your current position?

10 A Patrolman.

11 Q Sir, directing your attention to
12 December 19, 1980, were you on duty?

13 A Yes, I was.

14 Q And did you have occasion to be at
15 2560 North Las Vegas, Nevada Cycle Parts?

16 A Yes.

17 Q Anything unusual occur at that location
18 on that date?

19 A Yes.

20 Q Were you in uniform that day?

21 A Yes, I was.

22 Q And were you on duty when this event
23 occurred? Is that correct?

24 A Yes.

25 Q Tell us what happened, please.

26 A Approximately 10:30 that morning, I was
27 inside the Nevada Cycle Parts store talking to the
28 owner. This gentleman came through the door and walked
29 up beside me, walked around behind me, said "Hello,"
30 and wanted to purchase a part for his motorcycle.

31 I recognized him as fitting the
32 description of a suspect that was in our wanted hot sheet

1 that was wanted by Metro Police Department.

2 Q Is that hot sheet also known as an
3 attempt to locate?

4 A Yes.

5 Q And what happened then?

6 Or what drew your attention to him,
7 first of all?

8 A Well, when he walked through the door,
9 like I say, he fit the description of the suspect
10 that was described. He was wearing a black leather
11 vest, which was an outstanding thing, and then also
12 he had a spider web tattoo on his right elbow which,
13 you know, like I said, really stood out and brought
14 my attention to him.

15 Q What did you do upon noticing this
16 individual?

17 A I walked to the back of the store and --
18 walkie-talkie in my possession, and I called for a
19 back up unit.

20 Then I went back up and continued
21 to talk to the proprietor, who was still dealing with
22 the suspect.

23 And he walked out of the store,
24 and at that time, after he left the store, I took him
25 into custody.

26 Q Was he alone?

27 A No, he was not.

28 Q And did you ascertain that person's
29 name and identification, or did you ascertain his name
30 at that point?

31 A I don't --

32 Q This first individual?

1 A I don't believe so.

2 Q Do you see that individual in the
3 courtroom today?

4 A Yes, I do.

5 Q Can you identify where he's seated,
6 what he's wearing?

7 A Gentleman sitting here with the
8 brown jacket on.

9 MR. BLOXHAM: May the record reflect
10 identification of the defendant Raymond Haire or
11 Joel Burkett, your Honor?

12 THE COURT: Yes.

13 Q Okay. Now, this is the individual you
14 saw at the counter. Is that correct?

15 A That's correct.

16 Q After taking him into custody, what
17 happened next?

18 A Well, as soon as he exited they had
19 parked, or he had parked the vehicle they were driving
20 right in front of the door of the Nevada Cycle Shop.
21 As he exited the door, and I told him to halt and place
22 his hands on the front of his vehicle, at this time I
23 had already seen another young individual sitting in
24 the passenger seat of the car.

25 At that time, I ordered him out of
26 the car and also placed his hands on the hood of the
27 car, and at this time my back up, Robert Tanner, arrived.

28 Q The second individual -- was there
29 anything drew your attention to him?

30 A Well, he also fit the description of
31 the second subject on the hot sheet.

32 Q Was there anything noticeable about

1 what matched this description?

2 A Oh, he had black wavy hair, had a white
3 T-shirt on, blue Levis, was young. I believe he was
4 approximately five foot six, and he had a Harley-Davidson
5 belt buckle on him.

6 Q What type of an automobile was it, if
7 you recall?

8 A I believe it was about a 1974 Ford
9 Maverick, green in color.

10 Q Okay. Why didn't you approach this
11 individual at the counter when you first saw him, if
12 you recognized him as fitting the hot sheet?

13 A Because of the hassle that could take
14 place inside of the store, and other people that were
15 in there.

16 Q Did you take him into custody as soon
17 as you felt it was reasonably safe?

18 A Yes. As soon as he exited the store.

19 Q In fact, when you took him into custody,
20 did you draw your gun?

21 A Yes, I did.

22 MR. BLOXHAM: Pass the witness,
23 your Honor.

24 MR. BUCHANAN: Thank you.

25 MR. BLOXHAM: May I ask a couple other
26 questions before I pass the witness?

27 Q (By Mr. Bloxham) After you took him
28 into custody, you had a back up there at that time?

29 A Yes.

30 Q Did -- who else became involved in
31 this incident?

32 A Officer Tanner. There's an -- another

1 officer that arrived. His name is Officer Sam Smith.
2 He arrived.

3 Q Do you know an Officer Singer?

4 A Yes, I do.

5 Q And is he with North Las Vegas or
6 Metro?

7 A He's with Metro. He was -- Metro was
8 notified, and he, Officer Singer, arrived.

9 Q And did -- was this at the same
10 location that Officer Singer came?

11 A Yes.

12 Q Were these individuals then turned
13 over to anyone else?

14 A No. To Officer Singer.

15 Q Okay. To Officer Singer?

16 A Yes.

17 MR. BLOXHAM: Thank you. Pass the
18 witness, your Honor.

19 MR. BUCHANAN: All right. Thank you.

20 CROSS EXAMINATION

21 BY MR. BUCHANAN:

22 Q Now, Officer Smith, you've been a
23 police officer for fifteen years?

24 A Yes.

25 Q And you're familiar with criminal
26 activity and suspects, and made numerous arrests during
27 your career in North Las Vegas?

28 A (Witness nodded,)

29 Q All right. Now, when you first observed
30 this person walk into the store, you were in uniform,
31 right?

32 A Yes, I was.

1 Q Carrying a weapon?
2 A Yes.
3 Q Walkie-talkie?
4 A (Witness nodded.)
5 Q And your police car parked outside?
6 A Yes.
7 Q In fact, you were in a black and white?
8 A White,
9 Q That's right. They're all white
10 down there?
11 A Yes.
12 Q White compact?
13 A (Witness nodded.)
14 Q Okay. Your white compact with lights
15 on it and North Las Vegas Police and Department Safety
16 and everything else parked right outside?
17 A That's right.
18 Q All right. So anybody coming to that
19 store would have no doubts in their mind that there
20 was either a policeman inside or someplace around?
21 A That's right.
22 Q All right. Now, a suspect who is --
23 an APB is out for him, or something like that, would
24 it be normal for a person who has an APB who is
25 supposedly wanted by the police to walk into a store
26 and say "Hello" to a police officer, with a police car
27 outside, if he knows he's wanted?
28 A No.
29 MR. BLOXHAM: I'm going to object,
30 your Honor. Most criminals are abnormal, and this
31 question asks for a -- this man to testify as to
32 normal criminals. I'd suggest that it's beyond his

1 personal knowledge, or whatever, and I'd object to
2 that question.

3 MR. BUCHANAN: If he can say.

4 THE COURT: The objection is overruled.

5 Q All right. And I think your answer
6 just during the objection was "No," correct?

7 A I wouldn't think he would do that, no.

8 Q So then we can assume if a person
9 walked into a store, and in fact, when he walked in,
10 he didn't have a shirt on, did he?

11 A No. Just a vest.

12 Q Black vest?

13 A (Witness nodded.)

14 Q And of course for someone who has an
15 APB out on him, especially someone who would have
16 tattoos -- you saw the tattoos, right?

17 A (Witness nodded.)

18 Q He didn't have a long sleeved shirt on,
19 anything, trying to hide them?

20 A No.

21 Q And just a black vest. And when he
22 walked in, he said, "Hello"?

23 A That's right.

24 Q Did he appear nervous?

25 A No.

26 Q Did he appear that, when he saw you, that
27 an officer in uniform, with a gun, that he was in any
28 way apprehensive?

29 A No.

30 Q Just walked up, tried to order a part
31 for a motorcycle?

32 A (Witness nodded.)

1 Q And did that strike you as funny as
2 being some kind of a suspect for somebody you were
3 trying to locate?

4 A My first reaction was I couldn't
5 believe it.

6 Q And that's right, because it would
7 appear that this person walked in not knowing he was
8 a suspect in any crime, not caring about police or
9 anything?

10 A That's right.

11 Q And in fact, when you ordered him to
12 stop and placed him under arrest, he thought amazement.
13 Isn't that correct? Didn't offer any resistance?

14 A No.

15 Q He was amazed. "What are you stopping
16 me for?" Correct?

17 A Correct.

18 Q And in your experience, all the collars
19 you've put on people, that's not the ordinary response
20 you would expect from someone who's on the lam, or
21 someone who has an APB, or someone who's committed
22 a violent crime, correct?

23 A Are you talking about the time
24 apprehension, or inside?

25 Q Anytime. I mean it's just not the
26 conduct you would expect from somebody who's on the
27 lam or had an APB out on him or has committed a crime?

28 A Most -- most generally, the people that
29 you arrest always deny it.

30 Q All right. But everybody denies it?

31 A Right.

32 Q That's -- no one's going to admit it,

1 but I'm saying as far as his conduct, as far as his
2 walking into a store, his demeanor inside the store,
3 his carrying on his business, and then his walking
4 outside the store -- no indication at all that he
5 was any way in apprehension of being arrested, and
6 would be that you had no apprehension, or he had
7 no apprehension that he's even wanted by the law?

8 A Reasonable assumption.

9 Q That would be your impression from
10 what you observed, correct?

11 A (Witness nodded.)

12 Q And as you said, it was amazing that
13 a person would come in who has an APB on him with
14 spider web or marijuana leaf on his elbow, bare shirt,
15 arms exposed -- walks in and says "Hello" to a police
16 officer?

17 A That's correct.

18 Q Almost incredulous.

19 A Yes.

20 Q Could almost make That's Incredible.
21 Is that correct?

22 A Right.

23 MR. BUCHANAN: Thank you. No further
24 questions.

25 REDIRECT EXAMINATION

26 BY MR. BLOXHAM:

27 Q Officer, you've had fifteen years
28 experience, and I assume you've met a number of criminals.

29 Most of the criminals that get caught --
30 are they smart, or are they stupid, would you categorize
31 them?

32 MR. BUCHANAN: I object to that question.

1 That's too vague and general, your Honor.
2 MR. BLOXHAM: Same kind of a question
3 Mr. Buchanan's been asking, your Honor.
4 THE COURT: The objection is sustained.
5 Q Officer, you say you couldn't believe it
6 when you saw him. What was it you couldn't believe?
7 A I couldn't believe that the man was
8 wanted that would have -- would be that outstanding
9 in all these clothing, would simply have the clothing
10 on and walk in the store and say "Hi" and walk up
11 right beside me.
12 Q Was the description that accurate?
13 A Yes.
14 Q Was the hot sheet that accurate that
15 you could see that that was the man that was wanted?
16 A Yes.
17 Q No question in your mind?
18 A No.
19 MR. BLOXHAM: Thank you. Pass the
20 witness, your Honor.
21 MR. BUCHANAN: Nothing further.
22 He helped.
23 THE COURT: You may step down,
24 Officer Smith. Thank you.
25 MR. BLOXHAM: Call our next witness,
26 Officer Singer.
27 BRUCE ALLEN SINGER,
28 having been first duly sworn to tell the truth, the whole
29 truth and nothing but the truth, testified and said
30 as follows:
31
32

1 DIRECT EXAMINATION

2 BY MR. BLOXHAM:

3 Q Sir, would you state your full name
4 and spell the last name for the record?

5 A It's Bruce Allen Singer. Last name
6 is spelled S-i-n-g-e-r.

7 Q And Mr. Singer, you are employed by
8 the Las Vegas Metropolitan Police Department?

9 A Yes, I am.

10 Q How long have you been so employed?

11 A Little over two years.

12 Q What is your current position and
13 assignment?

14 A I'm a patrol officer with the uniformed
15 field services division.

16 Q Sir, directing your attention to
17 December 19, 1960, were you on duty?

18 A Yes, I was.

19 Q Did you have occasion to be dispatched
20 to 2560 North, or Las Vegas Boulevard North?

21 A Yes, I was.

22 Q And upon arrival at that location, what
23 if anything did you find?

24 A I found two North Las Vegas officers out
25 front of the Nevada Cycle Parts with two white male
26 suspects in custody in front of a '71 green Maverick.

27 Q Okay. Do you see either one of those
28 individuals or both those individuals in the courtroom
29 today?

30 A I see the white male adult sitting there
31 in the defendant's chair.

32 MR. BLOXHAM: Okay. If the record

1 could reflect identification of the defendant,
2 Raymond Haire or Joel Burkett, your Honor.

3 THE COURT: Yes. The record will
4 show the witness identified the defendant.

5 Q Now, were there other officers around
6 when you arrived at that location?

7 A There were two North Las Vegas officers
8 and myself, initially.

9 Q Did you have occasion to search
10 Mr. Haire or Burkett that you've identified in court?

11 A Yes, I did.

12 Q What if anything did you find on
13 his person?

14 A I patted him down for weapons, even
15 though the North Las Vegas unit had already done so.
16 When I patted down Mr. Burkett, or Haire, I had also
17 discovered a set of key -- keys on a tag and some
18 cigarettes and a lighter.

19 Q What if anything else did you find upon
20 his body?

21 A To my recollection, on his -- on his --
22 as far as possessions in his pockets, that was about it.

23 Q Find any rolling paper at all, any type
24 of papers?

25 MR. BUCHANAN: Object, leading.

26 THE COURT: Sustained.

27 Q Was there anything else unusual about
28 this particular individual that you searched?

29 A Clarify the statement, sir.

30 Q Was there anything else that you found
31 that you impounded concerning this individual?

32 A Yes, there was. There was a marijuana

1 cigarette and some wrapping papers.

2 Q What was the brand of the wrapping
3 papers, sir?

4 A They were Zig-Zag.

6 Q Zig-Zag wrapping papers?

6 A Yes, they were.

7 Q Did you impound a number of items
8 at that time?

9 A Yes, I did. Not at that particular
10 moment. After I effected the arrest, I impounded them.

11 Q And at our request, did you bring a
12 number of those items to court yesterday?

13 A Yes, I did.

14 Q And did you deposit those with the
15 clerk at that time?

16 A I've deposited certain items. The Zig-Zag
17 papers, cigarettes and a cigarette lighter have not been
18 turned over to the court as of yet.

19 Q Sir, at our request, did you bring
20 certain Package No. 1, Item 4 to court with you today?

21 A Yes, I did.

22 Q And could you please let me have that
23 and have it marked?

24 A Here is Package No. 1.

25 MR. BLOXHAM: Okay.

26 MR. BUCHANAN: Your Honor, if we had
27 an opportunity to look at this, we might short circuit
28 this somewhat.

29 THE WITNESS: Okay.

30 MR. BLOXHAM: Could we bring that
31 over here, please?

32 Your Honor, may we have, at this time

1 have this marked State's Proposed Exhibit 38?

2 Actually, by marking this, we're
3 going to have to leave the whole thing with the court.
4 We only intended to extract a few items.

5 MR. BUCHANAN: Your Honor, if my --
6 if my recollection of Proposed Item 38 involves a
7 pair of boots, Levis and a pack of cigarettes. If that's
8 it, we have no objection to --

9 MR. BLOXHAM: That would be fine,
10 your Honor. If I could just inquire of this particular
11 witness, maybe we'd have the whole package admitted.

12 Q Officer Singer, showing you what's been
13 marked or identified as State's Proposed Exhibit 38 --
14 pardon me -- 39, can you identify that?

15 A Yes, I can.

16 Q Are those items that were taken off
17 of defendant Burkett, defendant Haire, whichever way
18 we refer to him?

19 A They were taken off of that gentleman
20 sitting down there in defendant's chair, yes.

21 Q All of those items?

22 A Yes.

23 MR. BLOXHAM: We'd move to admit it.

24 MR. BUCHANAN: No objection.

25 THE COURT: 39 will be received in
26 evidence as Plaintiff's Exhibit designated 39.

27 MR. BLOXHAM: Thank you.

28 Q Now, Officer Singer, showing you what's
29 been marked for identification purposes as State's
30 Proposed Exhibit 2 -- Officer Singer, showing you what's
31 been marked for identification purposes State's
32 Proposed Exhibit 2, can you identify this, sir?

1 A Yes, I can.
2 Q What does it appear to be?
3 A It's a black vest that the defendant
4 was wearing at the time that I was called to the
5 Nevada Cycle Parts.
6 Q And at that time, did you impound it?
7 A After I effected the arrest at that time,
8 the jail, I did.
9 Q Is that the same item that you brought
10 to court yesterday and placed with the court clerk?
11 Do you recall?
12 A Yes, it is.
13 MR. BLOXHAM: Your Honor, move to
14 admit State's Proposed Exhibit 2.
15 MR. BUCHANAN: No objection.
16 THE COURT: Same will be received in
17 evidence as State's Exhibit designated 2.
18 Q Sir, showing you what's been marked for
19 identification purposes State's Exhibit 3, can you
20 identify that?
21 A Yes, I can.
22 Q And is that the same item you took off
23 of the defendant Haire or defendant Burkett on
24 December 19, 1980?
25 A Yes, it is. The scabbard was on his
26 person. The knife had already been taken out of the
27 scabbard by the North Las Vegas officers.
28 Q Where was the knife when you saw it?
29 A It was on the roof of the Maverick.
30 Q And did you bring that to court yesterday
31 and deposit it with the court clerk?
32 A Yes, I did.

1 MR. BLOXHAM: Move to admit State's
2 Proposed Exhibit 3, your Honor.

3 MR. BUCHANAN: No objection.

4 THE COURT: Same will be received in
5 evidence as State's Exhibit designated 3.

6 Q Showing you State's Proposed Exhibit 4,
7 can you identify that?

8 A Yes, I can.

9 Q What does it purport to be?

10 A It's a key tab with three keys, with
11 the initials J.W. on them.

12 Q Okay. Where did you first see that?

13 A This was on the defendant's person.

14 Q Okay. And when you say "the defendant,"
15 are you referring to defendant Haire or defendant Burkett
16 seated at counsel table?

17 A Yes, I am.

18 Q Did you book that into evidence, then?

19 A After I effected the arrest, yes.

20 Q Did you bring that to court yesterday
21 and deposit it with the court clerk?

22 A Yes, I did.

23 MR. BLOXHAM: Move to admit State's
24 Proposed Exhibit 4, your Honor.

25 MR. BUCHANAN: No objection.

26 THE COURT: Same will be received in
27 evidence as State's Exhibit designated No. 4.

28 Q Showing you what's been marked for
29 identification purposes as State's Proposed Exhibit 5,
30 can you identify that?

31 A Yes, I can.

32 Q And where did you first see that, sir?

1 A This was in the back seat of the
2 Maverick.

3 Q And did you book it into evidence?

4 A Yes, I did.

5 Q After booking it into evidence, did
6 there come a time when you brought that and deposited
7 it with the court clerk?

8 A Yesterday afternoon, sir.

9 MR. BLOXHAM: Thank you. Move to
10 admit State's Proposed Exhibit 5.

11 MR. BUCHANAN: We object to State's
12 Proposed Exhibit 5 as being a product of illegal
13 search and seizure unless there's a -- didn't have
14 a warrant to go in that vehicle at that time.

15 Q Did you have occasion to view into
16 that vehicle, sir?

17 A It was in plain view on the back seat,
18 and prior to -- we were supposed to do an inventory
19 of the articles in the vehicle.

20 MR. BLOXHAM: Move to admit it,
21 your Honor.

22 MR. BUCHANAN: Still object.

23 THE COURT: What's the --

24 MR. BLOXHAM: State's Proposed Exhibit 5.

25 THE COURT: Is that the Levi jacket?

26 MR. BLOXHAM: Yes, your Honor.

27 THE COURT: State's Proposed Exhibit 5
28 will be received in evidence as State's Exhibit No. 5.

29 MR. BLOXHAM: Thank you, your Honor.

30 Q Showing you what's been marked for
31 identification purposes State's Proposed Exhibit 6,
32 can you identify that, sir?

1 A Yes, I can.

2 Q And where did you see State's Proposed
3 Exhibit 6, which purports, or appears to be scabbard
4 and knife?

5 A The scabbard was on the second subject,
6 not defendant Haire or Burkett. The knife was also
7 on the roof along with the knife that was taken off
8 of defendant Burkett.

9 Q Did the second subject give you a name?

10 A Yes, he did.

11 MR. BLOXHAM: We would move to admit
12 State's Proposed Exhibit 6, your Honor.

13 MR. BUCHANAN: We object to State's
14 Proposed Exhibit 6. I don't think it's material to
15 the issue here. It's not of the defendant, nothing
16 material and relevant to this issue.

17 THE COURT: Same will be received in
18 evidence as State's Exhibit designated 6.

19 Q Now, you received a name from the second
20 individual?

21 A Yes, I did.

22 Q What name, if you recall, was given
23 to you?

24 A Theodore Burkett.

25 Q Please look around the courtroom completely,
26 Officer, and see if you see that second individual in the
27 courtroom today.

28 A The subject in the back of the room,
29 slouched down with the white shirt shows a good resemblance
30 of Theodore Burkett.

31 Q Thank you. Showing you State's Proposed
32 Exhibit 7, can you identify that?

1 A Yes, I can.
2 Q And where did you first see State's
3 Proposed Exhibit 7?
4 A This was on the belt of second subject,
5 Theodore Burkett.
6 Q And did you book it into evidence?
7 A Yes, I did.
8 Q And did you bring it to the courtroom
9 yesterday and deposit it with the court clerk?
10 A Yes, I did.
11 MR. BLOXHAM: Move to admit State's
12 Proposed Exhibit 7, your Honor.
13 MR. BUCHANAN: No objection.
14 THE COURT: 7 will be received in
15 evidence as State's Exhibit designated 7.
16 Q Now, after --
17 THE COURT: Can this witness be
18 concluded within five minutes?
19 MR. BLOXHAM: I'm almost done,
20 your Honor.
21 MR. BUCHANAN: Won't be very long.
22 THE COURT: All right.
23 Q After arresting -- did you place this,
24 these two men under arrest?
25 A Yes, I did.
26 Q Where did you take them after arresting
27 them?
28 A After the arrest, and their vehicle was
29 sealed and towed, they were taken up to the detective
30 bureau, robbery detail.
31 Q Okay. And did you meet with any of the
32 the detectives?

1 A Yes, I did.
2 Q Who was that?
3 A Detective Leonard.
4 Q Now, when did you book the defendant
5 Haire, defendant Burkett into -- book him into the jail?

6 A This defendant here was booked into
7 the central receiving center, yes.

8 Q Did he give you certain information
9 at the time as far as his date of birth, address and
10 everything else?

11 A Yes, he did, so that I could fill out
12 a booking form.

13 MR. BLOXHAM: May I have those
14 marked State's Proposed Exhibit next in order?

15 Q Do you have a complete memory of the
16 information he gave you as far as date of birth,
17 address, and full name?

18 A No, I do not.

19 Q Did you complete the booking form at
20 another time of booking him?

21 A I completed one booking form, and that
22 was at the time of booking.

23 Q And if you reviewed that booking form
24 at this time, would that refresh your memory, or would
25 you be able to at least testify from that booking form
26 as to the information he gave you?

27 A Yes, I would.

28 MR. BLOXHAM: Your Honor, I'd ask
29 permission of the Court to have the Officer look at
30 State's Proposed Exhibit 40 and ask a few questions.

31 MR. BUCHANAN: We'd object to this,
32 your Honor. We can't see the materiality. There's

1 other information on here that's --

2 MR. BLOXHAM: Only going to be
3 addressing a couple of items.

4 THE COURT: Would this booking refresh
5 your memory as to what was given you?

6 THE WITNESS: Yes, it would,
7 your Honor.

8 THE COURT: You may look at it.

9 Q (By Mr. Bloxham) Showing you State's
10 Proposed Exhibit 40, please look over it. Is it in
11 your handwriting?

12 A It's in -- in my handwriting.

13 Q This the information that was given
14 to you by defendant Haire, defendant Burkett on
15 December 19, 1980?

16 A Yes, it was.

17 Q What date of birth did he give you?

18 A He gave me a date of birth of
19 November 9, 1958, as written on this booking form
20 11/9 of '58.

21 Q Did he give you a full name?

22 A He gave me a first and last name of
23 Raymond Haire.

24 Q Did he give you an address?

25 A Yes, he did.

26 Q What address was given?

27 A 725 North Bruce, Las Vegas, Nevada.

28 Q What weight was given to you at that time?

29 A One hundred eighty-four pounds.

30 Q What is the height that was given to
31 you at that time?

32 A Six foot two.

1 MR. BLOXHAM: Thank you. Pass the
2 witness, your Honor.

3 CROSS EXAMINATION

4 BY MR BUCHANAN:

5 Q All right. Now, Officer --

6 MR. BLOXHAM: I'm sorry. May I ask
7 one more question? I apologize for the delay.

8 FURTHER DIRECT EXAMINATION

9 BY MR. BLOXHAM:

10 Q Did he give you a social security number?

11 A Yes, he did, sir.

12 Q What social security number was given?

13 A 440-30-5711.

14 MR. BLOXHAM: Thank you. Pass the
15 witness, your Honor.

16 MR. BUCHANAN: Are we through?

17 MR. BLOXHAM: Pass the witness.

18 MR. BUCHANAN: All right.

19 CROSS EXAMINATION

20 BY MR. BUCHANAN:

21 Q Officer Singer, now, you had an occasion
22 to go down to North Las Vegas to make an arrest. Is
23 that correct?

24 A I had occasion to be dispatched to
25 that location.

26 Q You knew what this arrest was for.
27 Is that correct?

28 A No, sir. I did not know exactly what
29 it was for at that particular time.

30 Q Did you at any time ever find out?

31 A Yes, I did.

32 Q Did you find out it was for sexual assault?

1 A Yes, I did.
2 Q All right. When you went down to
3 North Las Vegas, the defendant was wearing this?
4 A Yes, he was.
5 Q Arms were exposed?
6 A Yes.
7 Q Chest was exposed?
8 A Yes.
9 Q Can see most of his entire body except
10 possible where this was covering. Is that correct?
11 A Correct.
12 Q You made a pat down or search of his body?
13 A Yes, I did.
14 Q Did you see any marks on his body?
15 A Are you talking to -- as far as scars?
16 Q As far as scratches.
17 A Pardon me?
18 Q I'm saying as far as any recent
19 abrasions or contusions on his body.
20 A I do not recall.
21 Q Did you see any scratch marks or
22 anything else on his arms or chest or face at all?
23 A I do not recall.
24 Q All right, but you think that would have
25 been remarkable, or you would have noticed them if you'd
26 have seen scratch marks on his arms or chest or something?
27 A Possible, but due to the length of time
28 that I effected the arrest, I can't recall.
29 Q Anyway, none of your reports you put down
30 there was any marks?
31 A As far as scratches or abrasions, no.
32 Q As far as your recollection on the

1 booking or as seeing him in North Las Vegas, you
2 don't recall any abrasions, scratches, anything?
3 A No, I do not.
4 Q Nothing to indicate that he's been in
5 a scuffle, a fight, or any type of altercation at
6 all when you arrested him on that particular day in
7 North Las Vegas?
8 A I don't recall.
9 MR. BUCHANAN: No further questions.
10 MR. BLOXHAM: Nothing further,
11 your Honor.
12 THE COURT: You may step down,
13 Officer Singer. Thank you.
14 How many more witnesses do
15 you have?
16 MR. BLOXHAM: Your Honor, we're
17 finished for the afternoon, if the Court -- we do have
18 one further witness, but I don't think he's available
19 right now, your Honor. We did excuse him.
20 THE COURT: I'm finished for this
21 afternoon. Just trying to find out how long the trial
22 is going to go.
23 MR. BLOXHAM: We intend to call one
24 more witness, your Honor.
25 THE COURT: Long or short?
26 MR. BLOXHAM: It would be
27 Richard Renner.
28 MR. BUCHANAN: Well, if we estimate
29 half an hour I'd like to have my witnesses tomorrow
30 morning. If that's half an hour, would be probably
31 right.
32 THE COURT: Do you have any estimate

1 as to how long your side of the case is going to take?

2 MR. BUCHANAN: An hour to two hours.

3 Again, it depends on cross examination, but I would
4 say -- I would say probably an hour and a half I think
5 would be a fair estimate. There's a possibility of,
6 if Renner will be on at 10:00 o'clock, that I could
7 conclude my case in chief tomorrow morning. I don't
8 know whether they have rebuttal tomorrow afternoon
9 or not, but I think if we got to my case by
10 11:00 o'clock, we could possibly conclude it by 12:00.

11 THE COURT: Well, we'll wait and
12 see how it goes. We'll take our recess this evening,
13 be in recess until tomorrow morning until 9:45.

14 During the time we are in recess,
15 I would remind you, ladies and gentlemen, it is your
16 duty not to converse among yourselves or with anyone else
17 on any subject connected with this trial, or to read,
18 watch or listen to any report of or commentary on this
19 trial or any person connected with this trial by any
20 medium of information, including newspapers, television
21 and radio, and you are not to form or express an opinion
22 on any subject connected with this case until it is
23 finally submitted to you.

24 We'll be in recess until
25 9:45 a.m. tomorrow morning.

26 * * * * *

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FILED

CASE NO. C52190

ORIGINAL

SEP 23 1981

DEPARTMENT VII

LORENA BOVIMAN, CLERK
BY *Mary Masley*
DEPUTY

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

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JOEL BURKETT aka)
Raymond Haire,)
)
Defendant.)

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE
THURSDAY, JUNE 18, 1981, 9 O'CLOCK A.M.

APPEARANCES:

For the State: JAMES BUCHANAN, III, ESQ.

For the Defendant: DAVID SCHWARTZ, ESQ. and
JOHN WATKINS, ESQ.,
Deputy District Attorneys

Reported by: Constance Kroon, C.S.R. #75

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** LAS VEGAS, NEVADA, THURSDAY, JUNE 18, 1981, 9 O'CLOCK A.M. **

* * * * *

THE COURT: Case No. C52190, the State of Nevada
vs. Joel Burkett.

The record will show the defendant is not present; counsel for the defendant is not present.

The matter is taken off calendar for failure of counsel to appear.

* * * * *

* * * * *

THE COURT: Case No. C52190, the State of Nevada
vs. Joel Burkett, also known as Raymond Haire.

The record will show that the defendant is in custody in the Nevada State Prison, not present in court this morning.

The motion of James Buchanan to withdraw is granted.

The Court appoints Earl Ayers to contact the defendant and ask him if he wants to proceed with an appeal.

As a last act prior to discharge, I would direct James Buchanan to file a notice of appeal so the time doesn't lapse.

MR. BUCHANAN: That's fine. Thank you.

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

Constance Kroon
CONSTANCE KROON, C.S.R. #75

ORIGINAL

CASE NO. C52190
DEPARTMENT SEVEN

FILED
10/1/81
BY *[Signature]* DEPUTY

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

THE STATE OF NEVADA,)
)
) Plaintiff,)
)
 vs.)
)
) JOEL BURKETT, aka)
) RAYMOND HAIRE,)
)
) Defendant.)

VOLUME III

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE
Friday, May 1, 1981
Monday, May 4, 1981

APPEARANCES:

For the State: RONALD BLOXHAM, ESQ.
Deputy District Attorney
Clark County Courthouse
Las Vegas, Nevada

For the Defendant: JAMES BUCHANAN, III, ESQ.
Attorney at Law
302 Carson
Las Vegas, Nevada

Reported by: CONSTANCE KROON, CSR, No. 75

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* * * * *

1 LAS VEGAS, NEVADA, FRIDAY, MAY 1, 1981, 10:00 A. M.

2 * * * * *

3
4 THE COURT: Miss Clerk, will you call the
5 roll of the jury and the alternate juror?

6 (At this time, the clerk
7 called the roll of the jury
8 and alternate juror, and all
9 members indicated their presence.)

10 THE COURT: I thought we'd get a little
11 earlier start this morning. You remember I said I'd
12 have two or three items. I don't know if you noticed
13 our calendar out there. It was seven pages. Then we
14 had some other delays caused by not this case but
15 other departmental matters.

16 Of course, today is a Friday, and I'm
17 sure you wonder what will happen, and what I think
18 we'll do is probably finish fairly early in the day
19 with the evidence, and rather than lock you up and have
20 you deliberate tonight, I think I'll have you come back
21 on Monday at 2:00 o'clock, so that the case would be
22 presented at that time, if we finish today. And of
23 course that's maybe. I shouldn't speculate what the
24 future holds. I think that would be better than to
25 try to tear into a Friday night for everybody.

26 You may call the State's next witness.

27 MR. BLOXHAM: The State would call
28 Richard Renner.

29 RICHARD RUSSELL RENNER,
30 was called as a witness by the State and duly sworn
31 to testify.

32 MR. BUCHANAN: Your Honor, for the purposes

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1 of this trial, I would stipulate to the qualifications
2 of Mr. Renner as an expert, so we can get -- he's
3 testified many other trials I've been involved with,
4 so I have no problem with his qualifications.

5 THE COURT: Do you accept the stipulation?

6 MR. BLOXHAM: Yes, your Honor.

7 THE COURT: At this time, the Court,
8 pursuant to stipulation, will declare
9 Mr. Richard Renner an expert witness in the area of
10 criminology.

11 That what you call it?
12 Criminalistics. That's what it is.

13 THE WITNESS: Criminalistics, sir.

14 THE COURT: Criminalistics.

15 MR. BLOXHAM: Your Honor, at this time
16 I'd ask the Court to also accept Mr. Mumpower and
17 declare him to be an expert. If the Court remembers,
18 he did testify. We put certain qualifications before
19 the Court. Mr. Buchanan then resisted our efforts
20 to have the Court declare him an expert. I'd like
21 to have the Court --

22 THE COURT: It's purely a matter of
23 semantics, and you'll get an instruction. The
24 ladies and gentlemen of the jury will get an
25 instruction on expert witnesses.

26 There is a certain threshold, that
27 an expert has to reach, and from thereon, then, it's
28 a question of weight rather than admissibility.

29 And I'm sure that Mr. -- is it
30 Manpower -- Mumpower qualified as an expert witness
31 in the case, and that's why there was not an
32 objection.

1 MR. BLOXHAM: Thank you, your Honor.

2 (Richard Russell Renner, having
3 been duly sworn, testified as follows:)

4 DIRECT EXAMINATION

5 BY MR. BLOXHAM:

6 Q Mr. Renner, would you state your full
7 name and spell the last name for the record, please?

8 A Richard Russell Renner, R-e-n-n-e-r.

9 Q Mr. Renner, are you employed by the
10 Las Vegas Metropolitan Police Department?

11 A Yes, sir, I am. I'm the Chief
12 Criminalist.

13 Q How long have you been so employed
14 with Metro?

15 A With the Metropolitan Police Department,
16 since November of 1971.

17 Q How long have you been the Chief
18 Criminalist?

19 A Off and on, since I was hired. I was
20 hired by the City of Las Vegas as the only criminalist,
21 so you might say I was Chief Criminalist at that time.

22 Q Okay. So you've been involved in the
23 lab for a long time; haven't you?

24 A Yes, sir.

25 Q Now, have you, do your duties include
26 the comparison of hair samples?

27 A Yes, sir, they do.

28 Q Do your duties include the analysis of
29 rape kits for presence of acid phosphatase and also
30 semen and whatever spermatozoa or however you pronounce
31 that.

32 A Yes, sir.

1 Q Okay. Now, I want to ask you,
2 Mr. Renner, if you received a rape kit with the name
3 of Nina Cage on it?

4 A Yes, sir, I did.

5 Q And did you bring that with you to
6 court today?

7 A Yes, sir.

8 MR. BLOXHAM: Perhaps to make things
9 easier if we could have the items you're going to
10 testify about all marked together, one at a time,
11 over at the clerk's desk.

12 Your Honor, would that be proper?
13 Could we have the witness go over to the clerk's
14 desk and have this marked? Because I believe he
15 knows the order that he'll be testifying about.

16 THE COURT: Is that satisfactory to you?

17 Yes, that's fine.

18 MR. BLOXHAM: Could we have you step
19 over to the clerk's desk, Mr. Renner, please, just to
20 have these marked?

21 MR. BUCHANAN: Your Honor, if I could
22 see the list, we might stipulate to the admission of
23 it, I know what it is, and I might be able to, if
24 I could take a look.

25 MR. BLOXHAM: Okay.

26 MR. BUCHANAN: Your Honor, for the
27 record, we have no objection to State's Proposed
28 Exhibit 49.

29 MR. BLOXHAM: 41 through 49, I believe.

30 MR. BUCHANAN: 41 through 49, I
31 believe, your Honor, and if they wish to offer them,
32 they can.

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1 MR. BLOXHAM: The State would offer
2 those exhibits, your Honor.

3 THE COURT: Exhibits marked State's
4 Proposed Exhibits 41 through 49 for identification
5 will be received in evidence as State's exhibits
6 designated 41 through 49.

7 Q (BY MR. BLOXHAM) Now, Mr. Renner,
8 directing your attention to State's Exhibit 41,
9 does that, is this the rape kit that you analyzed?

10 A Yes, sir, it is.

11 Q Now, in that rape kit, did you find
12 sample hair from Nina Cage, from her head?

13 A Yes, sir.

14 Q Sample hair. That is what's done in a
15 rape kit, is you take --

16 A Sexual assault evidence collection kits
17 provided to the medical people to collect physical
18 evidence from the victim of a sexual assault.

19 Included in the kit is a hair
20 collection kit, in which we obtain a combed pubic
21 hair sample, a standard pubic hair sample, and a
22 strand of head hair sample, and that was contained
23 in this kit.

24 Q Are there also swabs that are taken at
25 the hospital and put in that kit?

26 A Yes, sir, there are.

27 Q How are those swabs taken, if you know?

28 A Well, the examining physician, at the
29 time of his examination, will collect a swab, if it's
30 the -- a rape, will collect a swab from the vaginal
31 area. He prepares some smeared slides, which are also
32 contained in the kit.

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1 In this particular case, there
2 were also swabs obtained from the anal area and from
3 the mouth.

4 Q Okay. Now, do you know how these swabs
5 are taken at the hospital?

6 A Are they just like, from the mouth,
7 for example, is it just a quick movement around the
8 mouth, or how does it work?

9 A That's to the doctor's discretion.

10 Q Swab could just be a touching into the
11 thing?

12 A Yes.

13 MR. BUCHANAN: Object to leading. It
14 is a --

15 THE COURT: Yes. The objection is
16 sustained.

17 MR. BLOXHAM: Okay. Now --

18 THE COURT: The question suggests the
19 answer.

20 MR. BLOXHAM: Thank you, your Honor.

21 Q Now, directing your attention to
22 Exhibit 41, did you recover head hair from the rape
23 kit purportedly to be from Nina Cage?

24 A Yes, sir, I did.

25 Q And want to direct your attention to
26 State's Exhibit 42 and ask you what that is.

27 A 42 is a hair, a police department hair
28 collection kit with the name Raymond Haire on it,
29 H-a-i-r-e.

30 Q Okay. I want to direct your
31 attention to Exhibit 46 -- or pardon me -- 44, also.
32 Would you find Exhibit 44?

1 And I'd ask you what that is.

2 A. 44 is a manila envelope containing
3 plastic bag with a number of hair-like fibers in it
4 that was recovered by Identification Officer Kingsbury
5 from the front area of the vehicle, front forward area
6 of the vehicle.

7 Q Also would you identify Exhibit 46,
8 please?

9 A. 46 is a Metro Police Department hair
10 collection kit bearing the name Theodore Burkett.

11 Q Okay. And what is in that particular
12 Exhibit 46, if you know?

13 A. Exhibit 46 contains a sample of combed
14 pubic hair, a sample of standard public hair, and a
15 sample of head hair.

16 Q Okay. To save perhaps some time, I
17 want to direct you specifically to 41 again.

18 And did you recover, did you do an
19 analysis of the pubic hair combed from Nina Cage?

20 A. Yes, sir.

21 Q And during this examination of the
22 pubic hair combing, did you discover any foreign hair?

23 A. Yes, I did.

24 Q And how many did you, were you able to
25 identify?

26 A. The combed sample from Tina Cage
27 consisted primarily of cut hairs. All the hairs from
28 the combed sample were mounted on microscope slides
29 and examined microscopically.

30 They were also compared to her
31 standard pubic hairs. The sample consisted
32 primarily -- the combed sample consisted primarily

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1 of cut hairs and was not technically a valid sample.

2 However, contained in that combed
3 sample was a hair that did not match any of Tina Cage's
4 standard pubic hairs.

5 Q Okay, now did you then compare that hair
6 with a hair sample from State's Exhibit 42, which
7 purports to be a pubic hair sample from -- from who?

8 A 42 is a sample from Raymond Haire.
9 I also compared it to the standard pubic hair from
10 Exhibit 46, which was under Theodore Burkett.

11 Q Okay. Now, I want to direct you to
12 State's Exhibit 43, if you could.

13 A Yes, sir.

14 Q And what does that -- is there a hair
15 in there, the moustache hair in there, to your
16 knowledge?

17 A There's a large number of hairs in
18 here. One of the slides does include the sample of
19 moustache hairs from Joel Burkett or Richard --
20 Raymond Haire.

21 Q Is that man seated in the courtroom
22 today?

23 A That's who I recovered the sample from.
24 Yes, sir.

25 Q You yourself took that moustache hair
26 sample; is that right?

27 A Yes, sir. Yesterday.

28 Q Okay, now, were you able to compare the
29 moustache hair sample from the man you've identified
30 as Joel Burkett or Raymond Haire with -- the pubic
31 hair combed from Raymond Haire with the foreign hair
32 that you found in Tina Cage's comb?

1 A Yes, sir

2 Q And did you arrive at any conclusion?

3 A The hair that is -- was contained in the

4 combed pubic hair sample from the victim is not

5 consistent with the defendant's moustache hair, pubic

6 hair or head hair.

7 Q Okay.

8 A It does exhibit significant similarities

9 to his hair, but it's not from one of those three

10 locations.

11 Q Is there a difference between pubic

12 hair?

13 Can you identify specifically pubic

14 hair as opposed to head hair?

15 A Yes, sir. They're morphologically

16 different. They have different shapes, textures and

17 style. Well, not style, but they're different and can

18 be identified.

19 Q Can you then also identify or distinguish

20 between moustache hair and pubic hair?

21 A Yes, sir

22 Q And are they different, also?

23 A Yes, sir. Moustache hair is normally

24 coarser and have morphological features or different

25 physical features.

26 Q Do generally adults that have hair --

27 moustache hair, head hair and pubic hair -- also have

28 hair on other parts of their bodies?

29 A Quite often, yes, sir.

30 Q And are those hairs identifiable,

31 generally?

32 MR. BUCHANAN: I'm going to object to

1 this line of questioning, your Honor. I don't think
2 it's consistent with the evidence and the witness'
3 testimony.

4 Now counsel is trying to come up
5 with some suggestion of some innuendo. I don't have
6 any objection to his testimony on the evidence, but
7 not innuendoes of counsel, trying to say similarities
8 and so forth in innuendoes. Only from the evidence.
9 Otherwise I'll object to it.

10 And I object to the form of the
11 questions.

12 THE COURT: The objection is sustained
13 at this time for lack of foundation as to how it's
14 material in this case.

15 Q. (BY MR. BLOXHAM) Mr. Renner, did you
16 arrive at any conclusions concerning foreign hair in
17 Tina Cage's -- the comb, the pubic comb or whatever we
18 call that? Did you arrive at any conclusions
19 concerning that foreign hair?

20 A. The hair is a short hair, approximately
21 one and a half centimeters long, or, you know, one
22 and a half centimeters, approximately that long
23 (indicating).

24 It's intact. In other words, it
25 has a well worn end, and it has the root attached to
26 it, so it's the full hair.

27 The hair is consistent with a body
28 type hair. It's shorter than the normal pubic hair
29 encountered.

30 It's definitely not a head hair.
31 It's probably a body hair from another portion on the
32 body. Exactly where, I have no idea.

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1 Q Did you find any similarities between
2 that foreign hair and the other samples from
3 Raymond Haire?

4 A There were some similarities.
5 Yes, sir.

6 Q What were the similarities?

7 A Color, degree of pigmentation, the type
8 of cuticle was present, the internal structure.

9 The hair is composed of a long
10 number of strands called carotin that are bound
11 together. The way this appears under the microscope
12 can vary between individuals.

13 This was similar between the
14 questioned hair and all of the hair samples of
15 Richard Haire, or Raymond Haire.

16 Q Now, did you obtain any hair samples
17 from Raymond Haire other than the head, the moustache
18 and the pubic area?

19 A No, sir.

20 Q Now, directing your attention to
21 State's Exhibit 45, in that particular exhibit, do
22 you have a head hair of the victim, Tina Cage, to
23 your knowledge?

24 A What these exhibits -- 45 and 43 --
25 contain are all of the mounted hairs that I, or
26 most of the mounted hairs that I examined in this
27 particular case. This particular package contains
28 the mounted hairs that were recovered from
29 Exhibits 47, 49, 48 and 44, and contains one
30 standard hair from Theodore Burkett.

31 It was just -- I just needed a
32 place to put the slide, so it went in the slot.

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1 Q I guess my question is did you ever
2 compare a hair, a head hair sample from Tina Cage's
3 kit, to any head hair samples found in the front seat
4 of this Ford?

5 A Yes, sir, I did.

6 Q And what exhibits are we talking about
7 when we're talking about that?

8 A The mounted hairs from the vehicle are
9 contained in this State's Exhibit 45. The standard
10 hairs of Tina Cage were removed from the evidence
11 collection kit and are now on mounted glass slides,
12 the State's Exhibit 43.

13 All of the hairs that were
14 recovered from the vehicle were compared to the
15 victim's head hair. Those hairs are in here.

16 Q Okay.

17 A In State's Exhibit 45.

18 Q Did you find any hair recovered from
19 the vehicle that was consistent with the head hair
20 of Tina Cage?

21 A Yes, sir, I did.

22 Q And do you know where the, or are you
23 informed through these particular packages where the
24 head hair recovered from the vehicle was found?

25 A Yes, sir.

26 Q And where was that?

27 A It was -- the head hair that was
28 similar to and consistent with the victim's head is
29 from Package 1 of 10, Item No. 1, which is State's
30 Exhibit 44, which was reportedly recovered from the
31 floorboard of -- the front floorboard of the vehicle.

32 Q Okay. And you say that -- was there

1 consistencies with those particular hairs that you
2 examined?

3 A. Yes, sir. The hairs were similar.

4 One hair that's contained in here
5 is similar to and consistent with the head hairs
6 recovered from the victim.

7 Q. Okay. Now, is it possible that two
8 different people might have similarities in head hair?

9 A. We're talking about microscopically
10 comparing hairs. It's possible that with a large
11 number of individuals on this planet, that there are
12 two people with similar head hairs. Generally in
13 the neighborhood of maybe one in five thousand to one
14 in ten thousand people will have similar head hairs.

15 Q. Were there sufficient characteristics
16 for you to determine within a reasonable degree of
17 certainty that the two hairs were from the same person?

18 A. In my opinion, the features that I
19 looked at on the one questioned hair covered from the
20 floorboard of the vehicle matched all the features
21 that were present on the standard head hair of the
22 victim.

23 Q. Thank you. Now, did you have occasion
24 to examine State's Exhibit 46?

25 A. That is a -- State's Exhibit 46 is a
26 hair collection kit from a Theodore Burkett. Yes, sir.

27 Q. Were you able to examine the pubic hair
28 sample from Theodore Burkett?

29 A. Yes, sir.

30 Q. Find any foreign hair?

31 A. No, sir.

32 Q. Did you also examine a hair collection

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1 kit for a Raymond Haire?
2 A. Yes, sir. That would be State's
3 Exhibit 42.
4 Q And did you examine that for the presence
5 of foreign hair?
6 A. Yes, sir, I did.
7 Q Did you find any present, or any evidence
8 of foreign hair?
9 A. No, sir, I did not.
10 Q Now, did you also examine certain swabs
11 out of the rape kit, which is State's Exhibit I
12 believe 41?
13 A. Yes, sir, I did.
14 Q And did one swab purport to be from the
15 vaginal area of Nina Cage?
16 A. Yes, sir.
17 Q And what, for what purpose did you
18 examine this swab?
19 A. For the presence of semen residues.
20 Q And what would indicate semen residue
21 here.
22 A. I performed a chemical test on it for
23 the presence of an enzyme known as acid phosphatase.
24 This enzyme is present in very high concentration in
25 seminal fluid, or semen, the male ejaculate.
26 Q Now, did you perform a test on this
27 swab to determine the presence or absence of acid
28 phosphatase on this vaginal swab?
29 A. Yes, sir, I did.
30 Q And how is this test performed, sir?
31 A. I moisten the swab with a little bit
32 of saline, transferred that material to a piece of

1 filter paper and added a drop of a color test forming
2 chemicals.

3 It's a -- it's a substrata
4 alpha naphthol phosphate, and if the enzyme is present,
5 it reacts with this chemical.

6 And I then add a drop of another
7 reagent, a fast blue B salt, which is a -- effect
8 the change, the chemical change. So it's a color
9 forming test to see if this enzyme is present.

10 Q Is it based on chemical reaction, then?

11 A Yes, sir, it is.

12 Q Presence or absence of a chemical
13 reaction?

14 A Yes, sir.

15 Q And did you have this chemical reaction
16 on this test on the vaginal swab?

17 A Definitely. Yes, sir.

18 It was strong reaction to the
19 presence of acid phosphatase.

20 Q Okay. Now, the vaginal area -- would
21 you expect that to retain acid phosphatase?

22 MR. BUCHANAN: To which I object, to
23 the form of that question. That's assuming a fact
24 this expert hasn't testified to.

25 THE COURT: Overruled.

26 Q (BY MR. BLOXHAM) Would you expect the
27 vaginal area to retain acid phosphatase?

28 A The question is relative. How long.
29 You mean how long would the vaginal area maintain --

30 Q Well, I'm asking would it be
31 conducive with, the area be conducive?

32 Would you expect it to disappear

1 soon after intercourse or whatever?

2 MR. BUCHANAN: Your Honor, again I'm
3 objecting. Counsel is trying to testify. I've
4 stipulated Mr. Renner's an expert. Mr. Renner wants
5 to explain to the jury, fine. I'm objecting to counsel
6 making these assumptions.

7 THE COURT: Yes. The objection is
8 sustained.

9 Q (BY MR. BLOXHAM) Moving along,
10 Officer Renner, did you also examine an anal swab from
11 the rape kit of Nina Cage?

12 A Yes, sir, I did.

13 Q And for what purpose did you examine
14 that anal swab?

15 A First to determine whether the enzyme
16 was present. I also examined for the presence of
17 spermatozoa.

18 Q And did you find any indication of
19 presence of acid phosphatase?

20 A No, sir.

21 Q Did you have, did you find any
22 evidence of presence of spermatozoa?

23 A No, sir.

24 Q Okay. Now, did you also have a swab
25 from the mouth of Tina Cage?

26 A Yes, sir.

27 Q And did you examine that?

28 A Yes, sir.

29 Q And for what purpose? Same?

30 A Determining the presence of acid
31 phosphatase.

32 Q What conclusion, if any, did you reach?

1 A I did not identify any.

2 Q As an expert, I'm asking you, the three
3 areas that the swabs were taken -- and let's assume a
4 period of about five hours from the time of -- well,
5 let me ask you this.

6 How is this enzyme, acid
7 phosphatase, created?

8 Or you say that there's a large
9 amount in, in sperm. Is that right?

10 A In semen.

11 Q Or in semen.

12 A Yes, sir.

13 Q Is it true that everybody has a little
14 bit on -- in cells on their body?

15 MR. BUCHANAN: Object, object, object.
16 Again, counsel is testifying.

17 THE COURT: Yes. You can't lead the
18 witness. It suggests the answer. The objection is
19 sustained.

20 Q (BY MR. BLOXHAM) Are there other areas
21 of the body you find acid phosphatase?

22 A Yes, sir, there are.

23 Q In which area would you find the most?

24 A Acid phosphatase is an enzyme that's
25 necessary for cell metabolism. Almost every cell in the
26 body will contain small quantities of acid phosphatase.

27 In seminal ejaculate or seminal
28 fluid, the prostate gland at the time of ejaculation
29 adds a significant amount of prostatic secretion to
30 the seminal fluid which contains extremely high levels
31 of this enzyme. This is to produce the, activate the
32 spermatozoa and give them the energy necessary for them

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1 to swim, you might say, and achieve conception.

2 So this is added just at the time
3 of ejaculation, so seminal fluid is the only fluid
4 in the body that contains extremely high levels of it.

5 Q Would it require ejaculation, then, to
6 form this, as you're talking about where it comes from
7 and everything? Would it require the ejaculation?

8 A Yes, sir, it would.

9 Q Now, I'm going to ask you, as an expert,
10 and giving you the hypothesis that someone had sexual
11 intercourse in the vagina, in the anus and in the mouth,
12 where would you expect acid phosphatase to remain longest?

13 MR. BUCHANAN: To which I object.
14 I think that's an improper question. It's an assumption
15 question, but it is too vague and too indefinite for
16 this person to answer.

17 THE COURT: May or may not be. The
18 objection is overruled.

19 Do you know?

20 THE WITNESS: Well, with the hypothetical
21 situation, I would expect it to remain the longest in
22 the vagina.

23 Q (BY MR. BLOXHAM) And what is that?

24 A Well, the vagina is the normal female
25 receptor for seminal fluid. This would be the normal
26 course of events, and it's more -- the environment
27 there is more conducive for the stability of the
28 seminal fluid.

29 The mouth would be the place I
30 would expect it to remain the least, because in the
31 mouth you're constantly salivating, constantly
32 producing saliva, and it will be cleansed out of the

1 mouth after a period of time.

2 The anus or rectum -- it could be
3 there for -- I have no real knowledge how long it
4 would stay there.

5 Q Okay. But it's not as conducive as
6 the vagina?

7 MR. BUCHANAN: To which I object.

8 MR. BLOXHAM: I'm going to withdraw
9 that question, your Honor.

10 Q Directing your attention to State's
11 Exhibits 47, 48 and 49, what do those appear to be?

12 A 47, 48 and 49 are evidence packages
13 that were booked by the Officer Kingsbury which
14 contain additional hairs recovered from the victim.

15 Q And have you performed any preliminary
16 examinations of the hairs?

17 A Yes, sir, I have.

18 Q Were you able to ascertain perhaps the
19 types of hairs they were?

20 A There are a wide variety of hairs and
21 fibers contained in those packages.

22 Q Which types have you -- I'm just asking
23 if you've just screened them and just barely looked at
24 them, did you ascertain the types?

25 A My examination was limited to try to
26 determine if there were any hairs present that
27 possibly belonged to the victim, Tina Cage.

28 Q And did you, were you able to
29 ascertain types, though, as you looked at them?

30 I'm talking about pubic hairs
31 as opposed to head hairs as opposed --

32 A Yes, sir. Yes, sir.

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1 Q What did you find.
2 A The majority of them are head hairs.
3 There's one or two pubic hairs present in there.
4 Q Were you able to conduct further tests
5 on these?
6 A What do you mean by further tests?
7 Q This is just kind of a scanning, I
8 take it.
9 A Yes, sir.
10 Q Were you able to test them in depth?
11 A No, sir.
12 Q Is there a reason?
13 A Time. Yes, sir.
14 MR. BLOXHAM: Okay. Thank you.
15 I have no further questions, your
16 Honor.
17 THE COURT: Cross-examination,
18 Mr. Buchanan?
19 MR. BUCHANAN: Thank you, your Honor.
20 CROSS-EXAMINATION
21 BY MR. BUCHANAN:
22 Q All right. Now, Mr. Renner, I believe
23 we've established you have an expert in this case.
24 I'm just going to ask you a very few amount of
25 questions.
26 Number one, as far as the anal
27 swab that you obtained, you found no acid phosphatase?
28 A That's correct.
29 Q No spermatozoa. Is that correct?
30 A That's correct.
31 Q And that would indicate to you that there
32 was no ejaculation or no seminal fluid in the anus?

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1 MR. BLOXHAM: I'm going to object to
2 that, your Honor. That's not a necessary conclusion
3 from that particular finding.

4 MR. BUCHANAN: I think he can answer.

5 THE COURT: It's cross-examination.
6 The witness can state that, if that is the case.

7 THE WITNESS: I did not detect any.
8 No, sir.

9 Q (BY MR. BUCHANAN) That would indicate
10 to you as an expert that there was no ejaculation in
11 the anus of this person?

12 A That I could detect.

13 Q That's correct. And spermatozoa would
14 last for two or three days and, at the very minimum,
15 six hours?

16 A Yes, sir. I believe that could be
17 possible. It would -- without further factors such
18 as defecation or some other means of eliminating them.

19 Q All right, but -- and the same. But
20 they last for two or four hours, something like that?

21 A Yes, sir, if there was no --

22 Q There was a considerable amount of
23 spermatozoa that would be in an ejaculation?

24 A Yes, sir.

25 Q And that would be an immense amount,
26 amount normally picked up on a swab such as the
27 vaginal swab that didn't show positive?

28 A Yes, sir.

29 Q And if a person said that they had oral
30 copulation on a person, there would possibly and more
31 likely after six hours still be some acid phosphatase
32 left within the mouth?

1 A. In my opinion, no.
2 Q. You figure it would all be gone at that
3 period of time?
4 A. Amount of salivation that takes place in
5 the normal mouth, normal washing of the interior of the
6 mouth by salivation, most of that material's going to
7 be washed away.
8 Q. Now, in the car, you've said that -- and
9 this is Exhibit 44, which was -- Tina Cage. Is that
10 correct? That's the hair that was found in the car?
11 A. Exhibit 44 is the -- a sample of hairs
12 that were recovered from the front floorboard of the
13 vehicle.
14 Q. All right. And in that exhibit, you
15 found one hair that was similar to Tina Cage?
16 A. That's correct.
17 Q. And this would be hair that could
18 possibly be discarded by a combing, combing the hair,
19 or something like that?
20 A. Yes. There's no indication of how the
21 hair got there. It is there.
22 Q. You didn't find a clump of hair or
23 anything else, just this one strand of hair?
24 A. That's correct.
25 MR BUCHANAN: Nothing further.
26 REDIRECT EXAMINATION
27 BY MR. BLOXHAM:
28 Q. You didn't search the car for hair,
29 though, did you Mr. Renner?
30 A. No, sir.
31 Q. Someone else did that; is that correct?
32 Now, there's a question about

1 spermatozoa. Is spermatozoa present in all ejaculation?
2 A. Not necessarily.
3 Q. What would cause someone not to have
4 spermatozoa in an ejaculation, if you know?
5 A. The obvious would be a vasectomy.
6 A vasectomy, the tubes are tied off between the
7 testicle and the rest of the organs that are
8 contributing to the seminal secretions, so you can have
9 an ejaculation without having any spermatozoa.
10 Other problems that could arise. You
11 have to have a coordination of several small organs,
12 all contributing at once to the ejaculation.
13 Some things that have been
14 reported that will cause the nonsecretion of the
15 spermatozoa in the ejaculate would be intoxication,
16 drugs, and in some cases abnormal stress.
17 Q. So in those certain cases, you'd perhaps
18 not find spermatozoa?
19 A. That's correct.
20 MR. BLOXHAM: I have nothing further,
21 your Honor.
22 MR. BUCHANAN: Just one question.
23 RE-CROSS-EXAMINATION
24 BY MR. BUCHANAN:
25 Q. Normally, in a sperm count of a hefty
26 nineteen year old male, during ejaculation, there will
27 be spermatozoa?
28 A. Yes, sir.
29 MR. BUCHANAN: Thank you. Nothing
30 further.
31 MR. BLOXHAM: Nothing further, your
32 Honor.

1 THE COURT: You may step down, Mr. Renner.
2 Thank you.

3 THE WITNESS: Yes, sir.

4 THE COURT: The State may call the
5 State's next witness.

6 MR. BLOXHAM: At this time, your Honor,
7 the State would rest.

8 THE COURT: We'll take our brief recess
9 right now, then, before we start calling the defense
10 witnesses.

11 During the time we are in recess,
12 I would remind you, ladies and gentlemen, it is your
13 duty not to converse among yourselves or with anyone
14 else on any subject connected with this trial, or to
15 read, watch or listen to any report of or commentary
16 on this trial or any person connected with this trial
17 by any medium of information, including newspapers,
18 television and radio, and you are not to form or
19 express an opinion on any subject connected with this
20 case until it is finally submitted to you.

21 We'll be in recess about ten to
22 fifteen minutes.

23 (At this time, a brief
24 recess was taken.)

25 (The following proceedings
26 were had in open court, outside
27 the presence of the jury, except
28 Juror No. 5, Richard P. Lang.)

29 THE COURT: The record will show that
30 Court is in session, outside of the presence of the
31 jury, except Juror No. 5, Richard P. Lang.

32 The Court received a note from

1 Mr. Lang, and we'll mark it as part of the record in
2 the case as Court's Exhibit Roman Numeral I for
3 identification.

4 The note reads:

5 "Judge Christensen, I am Juror 5,
6 Richard Lang. I'm employed by Ed Fountain Motors to
7 its assistant manager. They pay by commission. I've
8 missed approximately two days work, one twenty a day,
9 which I lose for being here.

10 I want to be a good citizen and do
11 my duty, but it has created a hardship on my family,
12 and I would like to ask how I could be reimbursed for
13 my losses. Please instruct me on my problem.
14 Richard Lang."

15 This is a serious question and
16 problem, because sometimes people different places
17 of employment also pay and continue the salary of
18 those people that are there. I take a hard-nosed
19 attitude, because we like to have a cross-section of
20 jurors, not professional jurors, and so I don't even
21 allow attorneys to ask questions about hardships,
22 because it's a hardship to a greater or lesser degree
23 on everyone.

24 Here, I think we'll probably finish
25 before 1:00 o'clock today, and then we'll have
26 argument and deliberation and the case will be
27 submitted to the jury. I'm going to have the jury
28 come back at 2:00 o'clock on Monday, so you can
29 probably catch most of Monday's before, before you
30 come down.

31 And other than that, I don't know.
32 You know, the rate is \$16 a day, which I think is

1 inadequate, but that's the rate that's set by the
2 legislature.

3 I personally am not amenable to
4 holding you in, even though I know this is a sacrifice
5 on your part. There's no other provision for me to
6 pay any additional money, and unless it would make you
7 so disgruntled that you wouldn't properly function as
8 a juror, I'm going to request that you stay.

9 JUROR LANG: I'd be more than happy to
10 stay. I have no objection whatsoever. I feel great
11 about that.

12 I just had a question of is there
13 any possible way that we can work with my employer to
14 help, you know, take care of what my loss is for the
15 last, you know.

16 THE COURT: I'll be glad to call him,
17 if you'd like me to do that.

18 JUROR LANG: I would appreciate it.

19 THE COURT: I sure would. Who is it
20 that I should talk to there?

21 JUROR LANG: John Mylum. He's the
22 president, owner of Ed Fountain Motors.

23 THE COURT: I'll call on Monday after
24 we've been in -- John Mylum?

25 JUROR LANG: Yes.

26 THE COURT: Thank you.

27 JUROR LANG: Thank you. I appreciate it.

28 THE COURT: I appreciate your attitude.
29 Do you want to step out for a minute while I go over
30 one more matter?

31 (At this time, Juror No. 5
32 exited the courtroom.)

1 (The following proceedings
2 were had in open court, outside
3 the presence of the entire jury
4 and the alternate jurors.)
5 THE COURT: Mr. Burkett, I am advised
6 that you intend to take the witness stand, and I want
7 to ask you if you understand that you may refuse to
8 testify or make a statement in your own behalf and
9 the prosecution may not comment on your failure to
10 testify at a trial.
11 Do you understand this?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: This is your right to remain
14 silent under the Fifth and Sixth Amendments to the
15 Constitution of the United States. Have you had
16 discussions on these matters with Mr. Buchanan?
17 THE DEFENDANT: Yes, sir.
18 THE COURT: Did you understand what he
19 was saying to you?
20 THE DEFENDANT: Yes, sir.
21 THE COURT: Do you have any questions
22 you want me to clear up at this time?
23 THE DEFENDANT: No, sir.
24 (At this time, the jury
25 and alternate jurors returned
26 to the courtroom.)
27 THE COURT: Will counsel stipulate to
28 the presence of all members of the jury and the
29 alternate jurors?
30 MR. BLOXHAM: The State would so
31 stipulate, your Honor.
32 MR. BUCHANAN: Defense so stipulates

1 to all the jurors.

2 THE COURT: Thank you.

3 The defendant may call defendant's
4 first witness.

5 MR. BUCHANAN: I guess I've already made
6 my opening statement. I don't get to?

7 THE COURT: Don't get to.

8 MR. BUCHANAN: All right.

9 TANYA LYNN CRAIN

10 called as a witness by the defense, was first duly
11 sworn and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BUCHANAN:

14 Q Could you give your full name, please,
15 and spell the last name for the reporter?

16 A Tanya Lynn Crain, C-r-a-i-n.

17 Q And Mrs. Crain, where do you work?

18 A National Convenience Stores, Stop & Go.

19 Q How long have you been so employed?

20 A Three months. February 9, I started.

21 Q All right. And in that capacity, are
22 you custodian of the records?

23 A Yes, I am.

24 Q And in that job or capacity, what records
25 do you have, you have jurisdiction over?

26 A All the personnel records.

27 Q In regard to that, did you receive a
28 subpoena from me the other day, duces tecum, to bring
29 with you today a copy of any application of
30 Raymond Haire?

31 A Yes, I did.

32 Q And have you searched those records?

1 A. Yes, I did.
2 Q And did you find such record?
3 A. Yes.
4 Q I show you what's been marked for
5 identification as Defendant's Proposed Exhibit A and
6 ask if you can identify the same?
7 A. Yes.
8 Q And what is that?
9 A. His name is Raymond Haire. It's an
10 application for Raymond Haire.
11 Q Was that an application kept by
12 Stop & Go?
13 A. Yes, it was.
14 Q That an ordinary record, kept in your
15 ordinary course of business?
16 A. Yes.
17 Q And you were a custodian of the records?
18 A. Yes.
19 Q After a search, you found that and brought
20 it here to court today pursuant to a subpoena?
21 A. Yes.
22 MR. BUCHANAN: Your Honor, at this time
23 I'll offer into evidence Defendant's Proposed Exhibit A
24 MR. BLOXHAM: No objection, your Honor.
25 THE COURT: Same will be received in
26 evidence as Defendant's Exhibit A.
27 Q (BY MR. BUCHANAN) All right, referring
28 Miss Crain, to the Exhibit A, when was that application
29 received?
30 A. It was received --
31 MR. BLOXHAM: Your Honor, I'm going to
32 object unless she has personal knowledge. Perhaps the

1 application -- I believe it does have the date on it.
2 MR. BUCHANAN: All right. Then I'll
3 lay a sufficient foundation.
4 Q I show you what's been marked for
5 identification as Defendant's Proposed Exhibit B and
6 ask if you can identify that?
7 A Yes, I can.
8 Q And what is that?
9 A It's a copy of the personnel director's --
10 the people that have come in to apply for a job, his
11 interviews with them.
12 Q And does that log keep a record of when
13 the interview was taken and whose interview it was, and
14 so forth.
15 A Exhibit A tells when the interview was
16 given. Exhibit B tells who it was.
17 Q All right. And can you state when that
18 Exhibit A, that interview was given?
19 A Yes, I can.
20 Q And when was that?
21 A 12/17 at 4:00 p.m.
22 Q And that would be in what year?
23 A 1980.
24 Q All right. And Exhibit B -- would
25 that also show who took the interview and where it
26 was taken?
27 A Doesn't have the name on it, but it's
28 the writing of the personnel director.
29 Q All right. And that is also an
30 ordinary record kept in the normal course of your
31 business?
32 A Yes.

1 Q And you also brought that today pursuant
2 to my subpoenas duces tecum?

3 A Yes.

4 Q Is that record, Exhibit B, a necessary
5 part of your personnel director's records, or can we
6 keep that?

7 A No. It -- you can keep it.

8 MR. BUCHANAN: All right. Your Honor,
9 at this time I'll offer into evidence Defendant's
10 Proposed Exhibit B.

11 MR. BLOXHAM: May I just ask one inquiry?

12 THE COURT: Sure.

13 VOIR DIRE EXAMINATION

14 BY MR. BLOXHAM:

15 Q Exhibit B -- what exactly is recorded on
16 it, again?

17 A When the applicant comes in, the personnel
18 director makes an identification so he can remember --
19 the -- each applicant that comes in. It's each applicant
20 that was interviewed, every one.

21 Q That's written in the personnel
22 director's hand?

23 A Yes.

24 Q And you recognized the handwriting?

25 A Yes.

26 Q Who's handwriting is --

27 A It's Dan McPartlan's.

28 Q M-c --

29 A M-c-P-a-r-t-l-a-n.

30 MR. BLOXHAM: Thank you.

31 I have no objection to Defense
32 Exhibit B.

1 THE COURT: Defendant's Exhibit B will
2 be received in evidence as Defendant's Exhibit B.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. BUCHANAN:

5 Q All right, then. As shown by Defense
6 Exhibit B, that would indicate that a personal interview
7 was given?

8 A Yes.

9 Q That was a person known as Raymond Haire?

10 A Yes.

11 Q Would that indicate to you that that person
12 had been interviewed by the personnel manager in the
13 store?

14 Where would the interview have
15 been taken?

16 A In the office.

17 Q Where was that located?

18 A 557 East Sahara, Butterfly Square.

19 Q And that interview was also taken on
20 the same time?

21 A Yes.

22 Q December 17, 4:00 o'clock?

23 A Yes.

24 MR. BUCHANAN: Thank you.

25 Nothing further.

26 THE COURT: Cross-examination?

27 MR. BLOXHAM: Thank you, your Honor.

28 CROSS-EXAMINATION

29 BY MR. BLOXHAM:

30 Q Now, it was Mrs. Crain?

31 A Miss Crain.

32 Q Miss Crain. May I have those exhibits?

1 Miss Crain, showing you Defense
2 Exhibit A, can you tell where this application was
3 turned in?

4 A. Yes, I can.

5 Q And how can you tell that, and where
6 was it turned in.

7 A. Because all applications are received
8 in the office.

9 Q Okay. Was the application turned in at
10 the office?

11 A. Yes, it was.

12 Q Okay. Do you know where the application
13 was picked up?

14 Was there any indication?

15 A. Yes.

16 Q Do you have the applications out at
17 each store?

18 A. Right.

19 Q Any indication which store that was
20 picked up out of?

21 A. Yes, it was.

22 Q And what's the indication, and what
23 store?

24 A. For 815, because the name
25 Charles Daugherty is on the top of it, and he was
26 manager at 815.

27 Q 815 -- that is a store number?

28 A. Yes.

29 Q What is the location of Store 815?

30 A. 1721 North Las Vegas Boulevard.

31 Q Okay. In the 1700 block down in
32 North Las Vegas of --

1 A. Yes.

2 Q. What -- Las Vegas Boulevard North?

3 A. Yes.

4 Q. Okay. And you say where -- where is

5 Charles Daughtery? Where does his name appear on here?

6 A. At the top, in the corner. Right in the

7 corner.

8 Q. C. Daughtery, apparently?

9 A. Yes.

10 Q. Is that general procedure that the

11 manager of the store puts a name up at the top?

12 A. Yes. We give checks for people that

13 refer people in to the office.

14 Q. Checks as a reward?

15 A. Yes.

16 Q. How much is given?

17 A. Fifty dollars.

18 Q. So in other words, if this C. Daughtery

19 put his name at the top of an application, gave it

20 out to somebody, and you hired them, Daughtery would have

21 received fifty dollars for referring somebody?

22 A. (Witness nodded.)

23 Q. Okay. Now, I notice at the top, too,

24 it says "Date you are available to begin," and I see

25 12/8/80?

26 A. That's right.

27 Q. This could have been picked up any time

28 and completed like 12/8/80 and held and brought in to

29 the office. Is that the general procedure?

30 A. Yes. It was probably picked up 12/8

31 and filled out.

32 Q. Okay. Now, also I notice on it is the

1 name Raymond Haire, initial L. Is that correct?
2 A. Yes.
3 Q. And there's a date of birth on there?
4 A. Yes.
5 Q. What is the date of birth shown?
6 A. 9/9/58.
7 Q. Is there a social security number on
8 there?
9 A. Yes, there is.
10 Q. What is that social security number, if
11 you'd read it, please, for the reporter.
12 A. 440-30-5711.
13 Q. Okay. And going through here further,
14 is there two personal references shown?
15 A. Yes, there is.
16 Q. Any phone number on either one of
17 those personal references?
18 A. None.
19 Q. Looking on the next page, there is
20 prior employment. Is that correct?
21 A. Yes, there is.
22 MR. BUCHANAN: Your Honor, I'm
23 objecting to this line of questioning. I think the
24 document speaks for itself, unless there's reason
25 for cross-examination.
26 MR. BLOXHAM: I think that the jury
27 should have a right to know what the document says,
28 your Honor. It may pertain to other questions that
29 are asked of other witnesses later.
30 MR. BUCHANAN: It's in evidence.
31 I think they can read it.
32 THE COURT: The objection is sustained.

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1 Q (BY MR. BLOXHAM) May I ask if there --
2 is it general procedure to have a witness as to the person
3 completing these documents?

4 A Yes.

5 Q And does there appear to be a signature
6 of a witness on this particular document?

7 A Yes, there does.

8 Q What signature appears?

9 A Ted Burkett.

10 Q Is that dated?

11 A No. Yes, yes. It is.

12 Q What date is that?

13 A 12/8/80.

14 Q Now, your books that you were shown --
15 who keeps that book? Who records in it?

16 A The personnel manager, Dan McPartlan.

17 Q That was his handwriting?

18 A Yes, it was.

19 Q Isn't it the policy of Stop & Go
20 Markets to polygraph or give a lie detector test to
21 all potential employees?

22 A The ones that he wants to hire.

23 Q Okay. Is that standard procedure
24 with Stop & Go Markets?

25 A Yes.

26 Q Is that generally explained in the
27 interview?

28 A Yes.

29 Q Now, your testimony is from that
30 document you can say that this man, Raymond Haire,
31 whoever it might be, was in the office and was
32 interviewed on December 17?

1 A. Yes.

2 Q. At that time, would it have been
3 explained about the polygraph examination?

4 A. Yes.

5 Q. To your knowledge, was any polygraph
6 exam set up for this person?

7 A. No, it wasn't.

8 Q. Was that because maybe he was chosen
9 not to be hired? Is that possible?

10 MR. BUCHANAN: To which I object, unless
11 this person knows.

12 THE COURT: Well, the objection is
13 overruled.

14 Q. Is that possible, that the reason no
15 polygraph exam was set up is that the general policy
16 is if they're not going to hire somebody for sure,
17 because of the interview, they wouldn't set up a
18 polygraph?

19 A. Right.

20 Q. Does your personnel manager,
21 Dan McPartlan, still work for the Stop & Go?

22 A. No, he doesn't.

23 Q. Where does he work for this time?

24 A. Clark County School District.

25 Q. You don't know who came and was
26 interviewed?

27 Did you, did you see that person
28 who was interviewed that day?

29 A. No, I didn't.

30 Q. Do you generally sit out front or
31 during the -- sit in on the interview, or anything
32 like that?

1 A. I see everyone that comes in. I know
2 everyone that comes in.

3 Q. Do you see anyone in the courtroom
4 today that appears familiar to you?

5 A. No. I wasn't working there at that
6 time.

7 MR. BLOXHAM: Okay. I have no further
8 questions, your Honor.

9 MR. BUCHANAN: Nothing further.

10 THE COURT: You may step down,
11 Miss Crain.

12 You may call the defendant's next
13 witness.

14 MR. BUCHANAN: We'd call as our next
15 witness Mr. Hann.

16 DOUGLAS DAVID HANN
17 called as a witness by the defense, was first duly sworn
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BUCHANAN:

21 Q. Would you give your full name, and spell
22 the last name for the court reporter?

23 A. Douglas David Hann, H-a-n-n.

24 Q. Mr. Hann, where do you live?

25 A. 215 South Ninth Street.

26 Q. And how long have you resided here in
27 Clark County?

28 A. For about eight months.

29 Q. Okay. Where were you residing on
30 December 17, 1980?

31 A. It was a yellow house on 15th Street.
32 It was going away party for this girl I know.

1 Q All right. You were living there at the
2 time?
3 A 215 South Ninth?
4 Q Yes.
5 A No. I was living with my father.
6 Q Your father lives here in town?
7 A Yes.
8 Q Are you presently employed, sir?
9 A Yes, I am.
10 Q Where are you working?
11 A Wendy's.
12 Q All right. Have you ever been in trouble
13 before of any kind?
14 A Yes, I have.
15 Q All right. Now, at the time -- on
16 December 17th, 1980 -- where were you in the nighttime
17 hours?
18 A I was at a party.
19 Q Where did this party take place?
20 A I can't give you the exact address.
21 I can tell you it was on 15th Street.
22 Q All right.
23 A It was a yellow house. You know.
24 Just --
25 Q Who lived there?
26 A It was for a girl name of --
27 Q Pardon me?
28 A A girl name of Rene.
29 Q What was the reason for the party?
30 A She was moving to North Carolina. Her
31 father got transferred. He's in the Air Force.
32 Q All right. And at that party, did you

1 have occasion to see Joel Burkett?

2 A. Yes, I did.

3 Q. And approximately what time did you see
4 him?

5 A. Oh, I saw him about 9:30.

6 Q. All right. Who was he with?

7 A. He was with his cousin.

8 Q. Who was that?

9 A. Ted Burkett.

10 Q. All right. And did there come a time
11 when he and his cousin left?

12 A. Yes, there was.

13 Q. What time was that?

14 A. It was about that time, 9:30.

15 Q. Did you have an occasion to later see
16 Joel Burkett?

17 A. Yes, I did.

18 Q. And what time was that?

19 A. That was around midnight, 12:00 o'clock.

20 Q. And where did you see Mr. Burkett at
21 that time?

22 A. I saw him standing right outside the
23 door. I was sitting on the couch right next to the
24 door, and when the door was open, I saw him there.

25 Q. And who was he with?

26 A. Cindy. Okay. Jim's wife, Cindy.
27 He was with Jim, but Cindy opened the door.

28 MR. BLOXHAM: Could we know who Jim is?
29 I don't believe he's been identified.

30 THE COURT: You get to ask
31 cross-examination when the direct is concluded.

32 Q. (BY MR. BUCHANAN) All right. And who

1 opened the door?

2 A. Cindy.

3 Q. And what is her last name?

4 A. Delaney.

5 Q. All right. And her husband's name is?

6 A. Jim.

7 Q. What is his last name?

8 A. Delaney.

9 Q. All right. And what happened whenever

10 you observed Cindy open the door?

11 A. Dusty asked to see Jim, and those two

12 went outside approximately twenty, thirty minutes, and

13 Jim came back inside.

14 Q. All right. And you didn't see what

15 happened outside or anything?

16 A. No, I didn't.

17 MR. BUCHANAN: All right. Nothing further.

18 THE COURT: Cross-examination?

19 MR. BLOXHAM: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BLOXHAM:

22 Q. You talked about being in trouble before.

23 Are you a convicted felon?

24 A. Yes, I am.

25 Q. And what's the conviction? What's the

26 felony conviction for, sir?

27 MR. BUCHANAN: To which I object. That's

28 not proper, your Honor. The answer -- only question

29 that can be asked has been answered.

30 MR. BLOXHAM: I don't think that's

31 correct, your Honor.

32 THE COURT: Well, let's not think. What's

1 the citation?

2 MR. BLOXHAM: I think it's 50. I'd
3 direct the Court's attention to 50.095. But there are
4 some cases, your Honor, that explain that.

5 THE COURT: Why do you say that, that you
6 can't say what the conviction is for?

7 MR. BUCHANAN: Your Honor, because
8 obviously that's prejudicial. The only thing you can
9 say, if it goes to moral turpitude or something, but
10 the only proper question is, "Have you ever been
11 convicted of a felony?" Answer's "Yes," fine.

12 And that goes to the credibility
13 of the witness, and that's the reason for the question.
14 And now to go into it any further, the acts or
15 violations or something, especially of a witness and
16 not a defendant, the same with a defendant -- you can't
17 ask what any crimes are for.

18 THE COURT: The objection is overruled.

19 MR. BLOXHAM: Thank you.

20 Q What is the felony conviction for,
21 Mr. Hann?

22 A Grand larceny.

23 Q A theft crime, right?

24 A Right.

25 THE COURT: That's as far as you can go
26 now.

27 Q (BY MR. BLOXHAM) How old are you,
28 Mr. Hann?

29 A Eighteen.

30 Q What's your date of birth?

31 A May 31st, 1962.

32 Q You were certified, then, as a juvenile.

1 Is that correct?

2 A Right.

3 MR. BUCHANAN: To which I object.

4 THE COURT: Yes. The objection is

5 sustained. That's as far as you can go.

6 Q (BY MR. BLOXHAM) Sir, you remember this

7 party you were having on December 17th, 1980. Isn't

8 that correct?

9 A Right.

10 Q You wearing a watch right now, Mr. Hann?

11 A No, I'm not.

12 Q Wearing a watch that night?

13 A No, I wasn't.

14 Q Remember the time, though, pretty good,

15 don't you? It was 9:30 when they were there, then left?

16 A Right.

17 Q What day of the week was December 17, 1980?

18 A It was a week day.

19 Q Week day. Okay.

20 How about January 17, 1981? That a

21 week day?

22 A I don't remember.

23 Q Don't know. Okay.

24 Remember this party real well,

25 though. Had you been to other parties with

26 Joel Burkett?

27 A No, I haven't.

28 Q You know Joel Burkett, sitting right

29 here?

30 A Right.

31 Q Is he a friend of yours?

32 A I've known him one time.

1 Q Known him one time.

2 A Talked to him one time.

3 Q Wouldn't call him a friend, then?

4 A I'd say we were buddies.

5 Q Okay. You went to the jail, or you

6 visited Mr. Burkett April 13, 1981, didn't you, and you

7 put down "Friend" when you visited him, didn't you?

8 A Yes.

9 Q So you're a friend of Mr. Burkett's?

10 A Okay. Yeah.

11 Q That's the only time you saw him from

12 the 17th of December, though, until April 13th. Isn't

13 that right?

14 A Yes.

15 Q Didn't see him for that long period of

16 time; yet now you remember that party. Is that right?

17 A I just happened to think about going up

18 to see him, so I did.

19 Q Okay. Now, who was having this party?

20 This Jim Delaney, right?

21 A It was for a girl called Rene.

22 Q Jim Delaney's a good friend of

23 Joel Burkett's, isn't he?

24 A Yes.

25 Q Cindy a pretty good friend of

26 Joel Burkett's?

27 A Yes.

28 Q Talked to them about this situation?

29 A What situation? The party or --

30 Q The charges against Joel Burkett.

31 A Well, sure, we talked.

32 Q You talked to them about the charges

1 against Mr. Burkett; didn't you?

2 A. Right.

3 Q. You never talked to the DA's Office about
4 the charges against Mr. Burkett; have you?

5 A. No.

6 Q. No. Until right now on the stand, right?

7 A. Right.

8 Q. Never talked to the police department
9 about the charges against Mr. Burkett; did you?

10 A. No.

11 Q. No. Fact, you wouldn't even think of
12 going to the police department. Would you?

13 A. No, I wouldn't. I wasn't even thinking
14 about going to the DA.

15 Q. Do you know Mr. Burkett by any other name?

16 A. Dusty.

17 Q. Dusty. How about Raymond Haire?

18 A. Yes.

19 Q. Know him by Raymond Haire.

20 When did you meet Raymond Haire,
21 Joel Burkett?

22 A. December 17th, the night of the party.

23 Q. First time you met him?

24 A. Right.

25 Q. Okay. Now, how is it that you -- well,
26 let's back off of that.

27 How was Raymond Haire, Joel Burkett
28 dressed that night of the party?

29 A. I don't remember. He had a -- jeans and
30 a t-shirt, I think.

31 Q. Jeans and a t-shirt. The t-shirt have
32 any kind of a symbol, like yours does -- a rock group

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1 of any sort?

2 A. I don't recall.

3 Q Don't recall. You don't recall whether
4 he was carrying a knife that night?

5 A. No, I don't.

6 Q Don't recall. Okay. You saw him and
7 his cousin Ted.

8 Now, was Joel Burkett drinking when
9 you saw him?

10 A. Yes, he was.

11 Q How about Ted?

12 A. No, he wasn't.

13 Q Okay. Do you see Ted in the courtroom
14 today.

15 A. Yes, I do.

16 Q That him on the back row?

17 A. Yes, it is.

18 Q You say you worked at Wendy's for a
19 while; is that right?

20 A. Right.

21 Q Ted ever work at Wendy's?

22 A. Yes.

23 Q He did, didn't he?

24 A. Yes.

25 Q So you're actually working at Wendy's
26 right now; aren't you?

27 A. Yes.

28 Q Right. And Ted's working there, right?

29 A. Right.

30 Q Same Wendy's?

31 A. Right.

32 Q Co-workers?

1 A. Right.

2 Q. Talked to Ted about this case?

3 A. Yes, I have.

4 Q. Charges against Joel Burkett? Is that

5 right?

6 A. Yes.

7 Q. Now, it's kind of cold on December 17th;

8 wasn't it?

9 A. Yes.

10 Q. Remember Joel Burkett wearing a Levi

11 jacket that night?

12 A. I don't remember wearing them. Him

13 wearing one. Excuse me.

14 Q. Don't remember that?

15 You saw him again at midnight for

16 about a half -- or saw him. He knocked on the door,

17 asked Jim to come out?

18 A. Right.

19 Q. Didn't see anybody with him?

20 A. Right.

21 Q. Did you see Ted with him?

22 A. No.

23 Q. Know whether Ted was carrying a knife

24 that night?

25 A. No, I don't.

26 Q. Never knew Joel Burkett to hold a job,

27 did you?

28 A. I only knew him that one night

29 Q. Never knew him to be a welder?

30 A. No.

31 Q. Do you know what kind of cigarettes

32 he smokes?

1 A. No, I don't.

2 Q Do you know what kind of beer he drinks,

3 whether or not he drinks Michelob?

4 A. No, I don't.

5 Q Do you know how old Ted Burkett is?

6 A. Not exactly.

7 Q Would it surprise you if you found out

8 he was 16?

9 A. No.

10 MR. BUCHANAN: To which I object. That's

11 argumentative.

12 THE COURT: The objection is sustained.

13 MR. BLOXHAM: I have no further

14 questions, your Honor.

15 THE COURT: Anything?

16 MR. BUCHANAN: Nothing further.

17 THE COURT: You may step down, Mr. Hann.

18 Thank you.

19 MR. BUCHANAN: We'd call Jim Delaney.

20 JAMES MICHAEL DELANEY

21 called as a witness by the defense, was first duly sworn

22 and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BUCHANAN:

25 Q Could you give your full name, and spell

26 the last name for the court reporter.

27 A. James Michael Delaney.

28 Q Mr. Delaney, where do you live?

29 A. Right now, 215 South Ninth Street.

30 Q And how long have you resided here in

31 Clark County?

32 A. About eleven years.

1 Q All right. Where were you residing on
2 December 17, 1980?

3 A 380 North 15th Street.

4 Q And who were you residing there with?

5 A My wife.

6 Q And her name is what?

7 A Cindy Ann Delaney.

8 Q And on that night -- do you have any
9 particular reason to remember that night?

10 A Yes, I do.

11 Q And what was that reason?

12 A It was a going away party for Rene, a
13 friend of ours.

14 Q And what time did that party start?

15 A Started about 6:00.

16 Q All right. And how long did it go on?

17 A To about 3:00 or 4:00 in the morning.

18 Q All right. Now, do you recall seeing
19 Joel Burkett at that party?

20 A Yes, I do.

21 Q What time did you first see him there?

22 A Around 7:00.

23 Q All right. And how long did he stay
24 there?

25 A Stayed until around 8:30.

26 Q And then what happened?

27 A He left with his friend, Ted.

28 Q Who was his friend?

29 A Teddy Burkett.

30 Q And you knew Teddy, and you knew Joel?

31 A Yes, I do.

32 Q How long have you known Joel Burkett?

1 A. For about five months now, six months.
2 Q All right. And at the time of the party,
3 how long had you known him?
4 A About two weeks beforehand.
5 Q All right. And you've come here this
6 morning pursuant to subpoena; is that correct?
7 A Yes, I did.
8 Q And you wouldn't lie for Joel Burkett
9 for any reason, would you?
10 A No, I wouldn't.
11 Q All right. You ever been convicted of
12 a felony of any type?
13 A No, I haven't.
14 Q And at the present time, you employed?
15 A Yes, I am.
16 Q And where are you working?
17 A Taylor's Chevron on Boulder Highway.
18 Q What do you do there?
19 A Mechanic.
20 Q How long have you been so employed?
21 A By him, for two months.
22 Q All right. Prior to that and at the
23 time of this offense, or this party?
24 A I was employed at Jim's Chevron for two
25 and a half years.
26 Q All right. And you're married and have
27 a family in town, and everything?
28 A Yes. My family lives in town.
29 Q All right. Now, sir, on that night,
30 December 17, you say that he and Ted left around 9:30?
31 A Yes.
32 Q When's the next time that you saw

1 Joel Burkett?

2 A. Around 12:00.

3 Q And what were the occasion, or what were
4 the circumstances surrounding when, the next time you
5 saw Joel Burkett?

6 A We was all just there drinking, what not,
7 having fun.

8 Q Talking around when he came back?

9 A When he came -- what are you trying to
10 say?

11 Q Well, what time did he come back? Let's
12 put it that way.

13 A. Around 12:00.

14 Q What did you do?

15 A Well, he came to the door, knocked on the
16 door, which my wife answered the door. He asked for me.

17 I came to the door, and we went out
18 to his car.

19 Q All right. What type of car was he
20 driving that night?

21 A. Green Maverick.

22 Q Do you know the year?

23 A About sixty -- '65, something like that.

24 Q And did you have an occasion to get
25 into the car?

26 A. Yes, I did.

27 Q Who all was in the car?

28 A. Joel Burkett, Tina Cage and myself.

29 Q All right. And how long did you stay in
30 the car?

31 A. About twenty or thirty minutes.

32 Q All right. Did you have a conversation

1 with Joel Burkett and Tina Cage?

2 A Yes, I did.

3 Q And do you recall what if anything
4 Tina Cage told you or said?

5 A She really didn't say much. She just
6 was just sitting there.

7 Q Was Ted Burkett in the car?

8 A No, he wasn't.

9 Q Was Tina Cage being held there in any
10 manner, or was she friendly?

11 Or just describe her attitude.

12 A She was friendly. She was just sitting
13 there kicking back. She had her arm around Joel. And
14 that was it.

15 Q I mean there -- she wasn't being held
16 there with a knife or anything; was she?

17 A No.

18 Q And was she friendly towards Joel Burkett?

19 A Yes, she was.

20 Q And how was she friendly?

21 A Well, she had her arm around him and
22 sitting real close to him, whatnot.

23 Q All right. Did she say anything else
24 about going to the party?

25 A No. She did not want to come in. She
26 said she didn't know anybody and just didn't want to
27 come in.

28 Q All right. And after the -- after this
29 time that you sat there talking to Tina Cage and
30 Joel Burkett, what happened then?

31 A I got out of the car, went back in the
32 house, and they left.

1 Q And that's all you know about this
2 offense?

3 A Yes.

4 MR. BUCHANAN: Thank you.

5 Your witness.

6 CROSS-EXAMINATION

7 BY MR. BLOXHAM:

8 Q Now, Mr. Delaney, you're also a friend
9 of Joel Burkett's; aren't you?

10 A Yes, I am.

11 Q And do you know him by the name
12 Raymond Haire? Isn't that correct?

13 A Yes.

14 Q You also know him by Dusty?

15 A Yes.

16 Q Met him about two weeks before this
17 party December 17th, right?

18 A Right.

19 Q Now, your wife Cindy and you've been up
20 to the jail to see Joel Burkett; isn't that correct?

21 A Yes.

22 Q You signed in as friends?

23 A Yes.

24 Q And you didn't see him for the first
25 couple of months after he was arrested; did you?

26 A No, I didn't.

27 Q It was quite a while, then. You didn't
28 see him right after he was arrested. Didn't see him
29 in January. Didn't see him in February.

30 Then you started seeing him, went
31 and saw him, right?

32 A Yes.

1 Q Okay. Cindy went with you?
2 A Yes.
3 Q To the jail?
4 A On occasions.
5 Q Now, when you went to the jail, did you
6 discuss, or did you discuss this particular case and
7 charges against Joel Burkett? Right?
8 A Well, he told me about the charges and
9 whatnot, what was being done.
10 Q Told you about when it happened and all
11 these other things about it, right?
12 A Somewhat of it.
13 Q Didn't go to the police and tell them this
14 story that you're telling us today; did you?
15 A No.
16 Q Didn't go to the District Attorney's
17 Office and tell them what you're telling us today; did
18 you?
19 A No.
20 Q In fact, this is the first time you've
21 ever told that story other than perhaps to defense and
22 defense counsel, right?
23 A Right.
24 Q Now, this party that you had on
25 the 17th -- did you make notes of the party and
26 prepare a written statement of what happened at the
27 party?
28 A No.
29 Q Didn't write down the date or the times
30 or anything, did you?
31 A No. Just what I've been --
32 Q There a lot of parties over there at

1 your house?

2 A We used to have some on occasions.

3 Q When you'd have parties, you were drinking?

4 A Yes.

5 Q Especially from 7:00 o'clock to 3:00 in

6 the morning, right?

7 A Yes. But I'm not a heavy drinker.

8 Q Lots of people at the party?

9 A Yes.

10 Q Lot of people coming and going, things

11 like that?

12 A Yes.

13 Q Okay. Now, you're not wearing a watch

14 today; are you?

15 A No.

16 Q Were you wearing a watch that night?

17 A Probably.

18 Q Okay. So that's how you remember it

19 was about 9:30 exactly when he left, right?

20 A Around that time.

21 Q Yes. Okay. Now, he left with Ted, but

22 he didn't come back with Ted?

23 A Right.

24 Q Now, was Joel Burkett drinking that night?

25 A Yes.

26 Q Drinking Michelob?

27 A Yes.

28 Q Smoking regular Camel cigarettes?

29 A Yes.

30 Q Do you know him that well that you know

31 the brand of cigarettes he smoked?

32 A Yes.

1 Q Do you remember how he was dressed?

2 A No.

3 Q Was he wearing a black vest?

4 A I couldn't say that for sure.

5 Q Wearing his t-shirt with a rock group?

6 Do you recall that?

7 A I couldn't say what he was wearing for

8 sure.

9 Q Was he carrying a knife?

10 A Not that I know.

11 Q How about Ted -- was he carrying a knife?

12 A Not that I know.

13 Q Ever seen any one of these guys with

14 knives?

15 A No.

16 Q Okay. Tina didn't want to go in

17 'cause she didn't know anybody, right?

18 A Right.

19 Q Had you ever seen Tina before?

20 A Not before that night.

21 Q That's the only night you saw her, right?

22 A That's the only time.

23 Q She tell you her name -- "My name's

24 Tina Cage"?

25 A Joel introduced me to her.

26 Q Spell it out for you so you could

27 remember it?

28 A No.

29 Q Have you met her since then?

30 A No.

31 Q Talked to her since then?

32 A No.

1 Q So you saw her at midnight for what --
2 about half hour?
3 A Yes.
4 Q Twenty minutes? Sat out in the car.
5 She was in no hurry to go anywhere. Was she?
6 A No.
7 Q Have a good time?
8 A We just talked.
9 Q Sitting there in the car in the dark.
10 I assume the car light weren't on in the interior?
11 A No.
12 Q It's dark. She tells you her name, or
13 he tells you her name's Tina Cage, and you remember that
14 from that date until now?
15 A Yes.
16 Q Could you identify Tina Cage if you saw
17 her again?
18 A Yes.
19 Q Think you could?
20 A Yes.
21 Q She was wearing glasses that night;
22 wasn't she?
23 A Yes, she was.
24 Q What kind of clothing was she wearing?
25 A I don't know about the clothing. I don't
26 remember the clothing.
27 Q Was she wearing a coat?
28 A I -- I can't tell.
29 Q Probably cold, wasn't it? It was
30 December 17th.
31 A Probably.
32 Q Do you recall her wearing a coat?

1 A. No, I can't.

2 Q. Don't remember. How about Joel?

3 Was he wearing a jacket, a Levi jacket that night?

4 A. No. I couldn't tell you what I was

5 wearing that night.

6 Q. Okay. Got in the car. Did you sit in

7 the front?

8 A. Yes.

9 Q. Do you recall, has a plastic console in

10 the front, right?

11 A. Probably.

12 Q. You noticed the quilt in the back?

13 A. No.

14 Q. Didn't notice that. You said this was

15 a '65 Maverick.

16 But you know car, since you work

17 as a mechanic, right? Probably off a little bit,

18 though.

19 Now, you say you've known

20 Joel Burkett for five months?

21 A. About that time.

22 Q. In the last five months, you saw him for

23 two weeks before the party, December 17th, and then you

24 seen him once since in the jail, right?

25 A. I seen him several occasions in the jail.

26 Q. Okay. Several occasions this week?

27 A. No, not this week.

28 Q. Haven't seen him this week?

29 Do you remember whether or not

30 Tina Cage had her purse in the car in the front seat

31 with you?

32 A. Not that I can remember.

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Q Do you remember whether Tina Cage was smoking that night, front seat with you?

A I don't know.

Q Don't remember.

Remember her name, but you don't remember even whether or not she was wearing a coat or had a purse. Is that correct?

A Don't pay attention to clothing.

Q How long had you worked over at Taylor's Chevron?

A For about two months.

Q How long?

A For about two months.

Q Have you ever known Joel Burkett to have a job, visit him at work?

A Not in this town.

Q Did you know him before he came here?

A No.

MR. BLOXHAM: Nothing further, your Honor.

MR. BUCHANAN: No questions.

THE COURT: You may step down, Mr. Delaney. Thank you.

You may call the defendant's next witness.

MR. BUCHANAN: We would call as our last witness the defendant himself, Joel Burkett.

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1 JOEL THOMAS BURKETT,
2 the defendant herein, was called to testify in his own
3 behalf, and having been first duly sworn, was examined
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. BUCHANAN:

7 Q Could you give your full name, please.

8 A Joel Thomas Burkett.

9 Q And Mr. Burkett, how old are you at the
10 present time?

11 A Nineteen.

12 Q All right. And how old were you at the
13 time of December 17th, 1980?

14 A Nineteen.

15 Q All right. Sir, when did you first come
16 to Las Vegas?

17 A Sometime around the beginning of December.

18 Q All right. And when you came here, did
19 you happen to meet Tina Cage?

20 A Yes, sir, I did.

21 Q When did you first meet Tina Cage?

22 A Well, she worked in a store that I lived
23 close by, and that's where we went and got beer.

24 Q Where was that?

25 A I don't know the address. It's on
26 Eastern.

27 Q All right. And did you have an occasion
28 to talk to Tina Cage?

29 A Yes, sir, I did.

30 Q And did you take her out?

31 A Yes, sir.

32 Q And approximately how many times did you

1 take Tina Cage out?
2 A. Once.
3 Q. All right. And this is prior to
4 December 19th?
5 A. I don't understand.
6 Q. Well, prior to December 17th, the night
7 which you're accused of here, how many times did you
8 take her out?
9 A. Well, I -- I met her again, once on
10 the streets. I seen her walking, and I picked her up
11 on my bike, and I gave her a ride.
12 Q. All right. And did you talk, have
13 conversation and so forth?
14 A. Yes, sir.
15 Q. What did Tina Cage say for you to do?
16 A. What did she -- you mean say for me?
17 Q. In other words, did she give you any
18 source of employment or where to go for a job?
19 MR. BLOXHAM: Objection, your Honor.
20 Leading.
21 THE COURT: Sustained.
22 Q. (BY MR. BUCHANAN) All right. What
23 type of advice did Tina Cage give you?
24 A. Well, I told her I was looking for a
25 job, and she told me that they're always hiring
26 people that store there and always needing somebody.
27 They got a big -- like a big corporation, you know,
28 and so she told me I could get a job there.
29 Q. Tell you where to go to make
30 employment?
31 A. Yes.
32 Q. Did you go in that, make an application?

1 A. Not right at the time.

2 Q All right. I show you what's been marked

3 for identification as Defendant's Exhibit A and ask you

4 if you can identify the same?

5 A. Yes, sir.

6 Q And what is that?

7 A. It's an application that I put in for the

8 job.

9 Q Do you know the date when you put that in?

10 A. 12/80. 12/8, 19 -- or 1980.

11 Q All right. And after that, did there

12 come a time when they asked you to come in for an

13 interview?

14 A. Yes, sir.

15 Q And when was that?

16 A. I can't recall the date that they told me

17 to come back in.

18 Q But the date you went back in --

19 MR. BLOXHAM: Objection. Leading.

20 Q (BY MR. BUCHANAN) All right. In

21 relation to the party, the date in the party, when did

22 you go in, have the interview?

23 A. That morning.

24 Q All right. And you went in and had the

25 interview that day?

26 A. Yes, sir.

27 Q Right. Now, look over that application.

28 Now, you've said that the -- that

29 you're 19, but yet you're putting down your age as

30 in 1958?

31 A. Yes.

32 Q And social security number. Is that age

1 right?

2 A No, sir.

3 Q Why did you put down an older age there?

4 A Because this ID that I was using --

5 because, you know, for to get in the casinos, and

6 that's the name I was going by.

7 Q All right. And in other words, at 19,

8 you couldn't get in casinos, buy beer or anything?

9 A No.

10 Q So you had a fake ID?

11 A Yes, sir.

12 Q All right. Is there any other false

13 statements on that application?

14 A Yeah.

15 Q What's that?

16 A Let me see. Says that I never been

17 arrested before.

18 Q All right. Had you been arrested before?

19 A Yes, sir.

20 Q And had you been convicted of a felony?

21 A Yes, sir.

22 Q And what for?

23 A For assault with a deadly weapon.

24 Q All right. And that's the -- so that's

25 a false statement there?

26 A Yes, sir.

27 Q But everything you're saying here today

28 is true?

29 A Yes, sir.

30 Q All right. Now, after you had this

31 interview on that date, did you go to this party?

32 A Yeah.

1 Q What time did you arrive there?
2 A It was in the afternoon, probably around
3 6:00 or 7:00
4 Q All right. And how long did you stay?
5 A 'Til somewhere's around 9:00 or 10:00.
6 Q Okay. Who was with you during that
7 party?
8 A My cousin Ted.
9 Q All right. Now, had Tina Cage met your
10 cousin Ted before this?
11 A Yes, sir.
12 Q And where had she met him?
13 A In the store where she worked at.
14 Q And why did he go there? To buy beer,
15 or what?
16 A Yes, sir.
17 Q How many times had she met Ted?
18 A Almost every time I went to the store,
19 he was with me. Probably about five or six times.
20 Q And did you know when she changed stores?
21 A Not exactly.
22 Q All right. Well, how do you know that
23 she was at this other store?
24 A She told me.
25 Q All right. And on the night in question,
26 when you left at 9:30, where did you go?
27 A Took Ted home to where he was living.
28 Q Then where did you go?
29 A I went to a Jack-in-the-box, and then
30 from there I went to the store where she was at.
31 Q And what store is this?
32 A It's Stop & Go on Eastern.

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1 Q All right. And did you go into the store.
2 A Yes, sir.
3 Q And what happened?
4 A Well, I got there. I just walked in the
5 store, and I went back to the beer counter, and I got
6 two Michelob, and I put them on the counter.
7 And I asked her was she ready to
8 go to the party with me, 'cause she knew they was
9 having a party. And she said no, just a second.
10 Told her I'd be out in the car
11 waiting. I left the car running because of the battery.
12 So I asked her would she bring a
13 beer out, and she says yes, and I went out to the car.
14 Q Did she come out?
15 A Yes, sir.
16 Q Did she come out voluntarily?
17 A Yes, sir.
18 Q Anything that forced her out to the car?
19 A No, sir.
20 Q All right. After she got in the car,
21 what did you do?
22 A I started up. Well, it was already
23 running. I just drove off.
24 Q Where did you go?
25 A Over to it's a Seven-Eleven or Circle K
26 and got some beer and some gas.
27 Q All right. Did you go back to the party?
28 A Yes, sir.
29 Q And what time did you get there?
30 A I can't say for sure the time, to be
31 exact, but it's anywhere's from 11:00 to 12:00,
32 somewhere's around there.

1 Q All right. And did you meet Jim Delaney?
2 A Yes, sir.
3 Q You've heard him testify?
4 A Uh-huh.
5 Q And what did he and you talk about in the
6 car?
7 A Just what was happening at the party,
8 you know. I wanted to go in the party, but she didn't
9 want to go in, so, you know, we just rattled on for a
10 few minutes, and, you know, he got out the car.
11 Q The girl that was in the car with
12 Jim Delaney was Tina Cage?
13 A Yes, sir.
14 Q All right. Now, after Jim got out of
15 the car and left, where did you and Tina go?
16 A Well, we started -- she wanted to go
17 back to the store, so I started to take her back to
18 the store.
19 And when we got there, there was
20 all kinds of cops at the store, and so she told me
21 not to pull up there. And I asked her what had
22 happened, and she says she thinks she forgot to lock
23 the door on the store and that they'd probably think
24 something was happening.
25 I told her, "Let's go up there
26 and clean it up," and she said, "Don't worry about it.
27 I'll just tell them I was just in a hurry, you know,
28 and I didn't lock the door."
29 Q Then where did you go?
30 A I asked her where she wanted to go from
31 there. She said, you know, just go out and party.
32 So we started going out towards the

1 lake. She showed me the way, because I didn't know
2 the town too good.

3 And on the way out there, I stopped
4 to get some beer at I think it was Seven-Eleven,
5 something -- another little, small store.

6 And, you know, she told me she
7 needed some cigarettes and would I buy them because
8 she left her purse in the store. Went in there, got
9 some beer and more cigarettes, and drove on towards
10 the lake.

11 Q What happened after you got to the lake?

12 A Well, I gave her some weed to roll,
13 and she rolled up a couple joints, and we was sitting
14 there drinking some beer and just kicking back. And
15 then, you know, we started, you know, messing around
16 with each other.

17 Q All right. Did you have intercourse
18 with her?

19 A Yes, sir.

20 Q Was that intercourse by force or any
21 threat?

22 A No, sir.

23 Q And it was completely voluntary on both
24 parts?

25 A Yes, sir.

26 Q All right. Now, did you have any anal
27 intercourse with Tina Cage?

28 A No, sir.

29 Q Did you have -- did she perform oral
30 copulation upon you?

31 A No, sir.

32 Q And it was just that you had sexual

1 intercourse with her?

2 A Yes, sir.

3 Q And did you in fact ejaculate when you
4 had intercourse with her?

5 A Yes, sir.

6 Q All right. After this happened -- and
7 what time did you come back in to town?

8 A I won't be exact, but it was anywhere's
9 around 3:00 or 4:00 in the morning.

10 Q All right. Where did you drop her off?

11 A I asked her where she wanted me to drop
12 her off at, and she told me some friends that live in
13 some apartments that was close by the store, and I
14 dropped her off there.

15 Q Then where did you go?

16 A I went home.

17 Q All right. Did you -- did you think
18 anything more of this?

19 A Of what happened?

20 Q Yes.

21 A No.

22 Q All right. The next day -- you've
23 heard the officer from North Las Vegas testify?

24 A Yes, sir.

25 Q And did you see a police car being
26 drove up to that parts store?

27 A When I went into the parts store, the
28 police car was already parked there. I parked right
29 next to it, and he was already inside the -- inside
30 there, standing there.

31 He -- I guess he'd bought some
32 stuff, and he was standing there talking to the guy at

1 the counter, and I just walked. I had a master link
2 for a chain on my bike, and the dude gave it to me.

3 And I turned around and walked out,
4 and I was getting ready to reach to the car door. He
5 come running out of the door with a gun.

6 Q All right. And you were arrested?

7 A Yeah.

8 Q All right. Now, the only other
9 significant event that occurred, or at least as far as
10 the State's case, when you had this lineup, you made
11 the statement, "Did she identify my partner?"

12 A I called everybody my partner.

13 Q All right. But did -- that's what --

14 In other words, can you explain
15 why you said that?

16 A Well, it's -- you know, she identified
17 me and, you know, I didn't do nothing, and I wanted to
18 know if she identified my partner, and they said no.

19 Q All right. At that time, you knew what
20 you were charged with?

21 A Yeah.

22 Q So, now, I'll ask you these final
23 couple of questions.

24 Mr. Burkett, did you kidnap
25 Tina Cage?

26 A No, sir.

27 Q Did you use any type of weapon with
28 Tina Cage at all that night?

29 A No, sir.

30 Q Did you at any time take any money from
31 that Seven-Eleven?

32 A No, sir.

1 Q And as far as the intercourse you had with
2 Tina Cage, did, was that by force, or was it voluntary?

3 A It was voluntary.

4 Q And as far as you're concerned, you did
5 nothing wrong that night?

6 A No, sir.

7 MR. BUCHANAN: Your witness.

8 MR. BLOXHAM: Thank you.

9 CROSS-EXAMINATION

10 BY MR. BLOXHAM:

11 Q Your date of birth, then, is
12 July 5, 1961, isn't it? That's your correct date of
13 birth?

14 A Yes, sir.

15 Q Your correct social security number is
16 431-08-7375. Isn't that correct?

17 A I don't know it by heart. I guess
18 that's it.

19 Q Okay. Where were you born?

20 A Sacramento, California.

21 MR. BLOXHAM: Now, may I approach --
22 may I have two items marked, please?

23 Q Showing you State's Proposed Exhibit 50,
24 that's your picture on there; isn't it?

25 A Yes.

26 Q That's your signature. You wrote
27 "Raymond Haire," down at the bottom. Didn't you?

28 A Yes, sir.

29 Q Represents you to be 22. Isn't that right?

30 A Yes, sir.

31 Q Showing you State's Exhibit, State's
32 Proposed Exhibit 22, that's a certified copy of a

1 birth certificate for a Raymond Haire; isn't it?
2 A Yes, sir.
3 Q That's what you used to get that ID;
4 isn't it?
5 A Yes, sir.
6 Q Showing you State's Exhibit 51, State's
7 Proposed Exhibit 51, is it the application for that
8 particular exhibit, isn't it -- or that, this particular
9 identification?
10 A What do you mean? Is this the same thing
11 that's on here?
12 Q That's your application to get that
13 Nevada ID. Isn't it?
14 A Yes, sir.
15 Q You went down on December 5, 1980 to
16 the Department of Motor Vehicles and completed that.
17 Didn't you?
18 A Yes, sir.
19 Q Represented to them your name was
20 Raymond Haire. Didn't you?
21 A Yes, sir.
22 Q Gave a date of birth 1958. Didn't you?
23 A Yes, sir.
24 Q Different social security number than
25 is actually yours. Didn't you?
26 A Yes, sir.
27 Q Then you signed it, under oath, under a
28 notary seal, right?
29 A Yes, sir.
30 Q And you took an oath to tell the truth
31 then, when you signed it, represented all the above
32 are true and correct. You signed it in front of a notary.

1 Didn't you?

2 A I don't see no seal on it, though.

3 Q That's this down at the bottom, though,
4 sir. This a notary signature?

5 A Yes, sir.

6 Q Okay. So you're signing it in somebody
7 else's, then, somebody's presence, right?

8 A Yes, sir.

9 Q Okay. Now, you've taken an oath to tell
10 the truth today, too; haven't you?

11 A Yes, sir.

12 Q Now, this employment application isn't
13 correct; is it? Your name's not Raymond Haire; is it?

14 A No, sir.

15 MR. BUCHANAN: I object to counsel
16 standing in front of the witness, badgering him and
17 asking him -- unless he's done -- anything. He can
18 direct questions from the table.

19 MR. BLOXHAM: I'd like to be close to
20 the employment application, your Honor, because --

21 THE COURT: You may continue to do the
22 questioning.

23 Q (BY MR. BLOXHAM) In other words, when
24 you completed that, you were telling a lie on that
25 employment application; were you not?

26 A To get the job, yeah.

27 Q So when you went in to interview and
28 you met this personnel manager at Stop & Go, you
29 represented yourself to be Raymond Haire; didn't you?

30 You lied to him, too; is that
31 correct?

32 A I had ID that I was Raymond Haire.

1 Q Okay. And is there a Raymond Haire?
2 Is there actually a Raymond Haire?
3 A My uncle.
4 Q He's your uncle?
5 A Yes, sir.
6 Q He's actually 22 years old; isn't he?
7 A Yes, sir.
8 Q Where does he live?
9 A In Sacramento.
10 Q He gave you the birth certificate;
11 didn't he?
12 A I don't know if he did or not.
13 Q Or did you go down to the Department of
14 Health and get it yourself?
15 A No, sir.
16 Q Now, you've represented to the Court
17 before that you're Raymond Haire; haven't you?
18 A I think so, yes.
19 Q Yes. You've signed papers, court papers
20 in the name of Raymond Haire; didn't you?
21 A I believe so, yes.
22 Q In fact, in this particular department,
23 you signed papers that were delivered to the Court in
24 the name of Raymond Haire; didn't you?
25 A Yes, sir, with my aka on it as aka.
26 Q It was signed Raymond Haire, not
27 Joel Burkett; wasn't it?
28 A Yes. Joel Burkett aka Raymond Haire.
29 Q You didn't write Joel Burkett; you
30 wrote Raymond Haire. Didn't you?
31 A Talking about a writ that I filed?
32 Q Any kind of papers that you filed with

1 this particular department.

2 A I filed a writ, and it was Joel Burkett
3 aka Raymond Haire.

4 Q Have you filed any other papers where you
5 wrote just Raymond Haire?

6 A Just when I was coming in, that stuff
7 they make you sign.

8 Q Have you done -- what do you mean, just
9 coming in? Into the jail?

10 A Yes, sir.

11 Q In other words, you never signed any
12 court papers with just the name Raymond Haire? You've
13 always written Joel Burkett?

14 A I don't know. I might have, 'cause that's
15 the name the Court knew me by 'til we cleaned it up.

16 MR. BLOXHAM: May I have this marked
17 State's Proposed next in order, then?

18 Q When you were stopped by the police
19 officers, what name did you give them?

20 A I gave them the ID you got there.

21 Q Raymond Haire?

22 A Yes, sir.

23 Q That was who -- Detective Smith, or
24 Officer Smith down in North Las Vegas, and Officer Tanner,
25 right?

26 Then you represented to Singer that
27 you were Raymond Haire. Then you represented to
28 Detective Leonard you were Raymond Haire.

29 Is that correct?

30 A No, sir. Singer, the one that was up
31 here yesterday, the one that got my ID first.

32 Q Showing you --

1 MR. BUCHANAN: May I see it first?
2 MR. BLOXHAM: Sure.
3 Q Showing you State's Proposed Exhibit 53,
4 can you identify that?

5 A Yes, sir. I signed the agreement.

6 Q That's your signature, Raymond Haire,
7 right?

8 MR. BUCHANAN: Your Honor, if he'll let
9 the witness testify or at least the question prior to
10 pondering a question to him, I think he has a right to
11 give another explanation rather than --

12 THE COURT: Was there anything further
13 you wanted to say, state?

14 THE WITNESS: Yes, sir.

15 It has Raymond Haire right here,
16 aka Joel Burkett, so I just signed Raymond Haire,
17 because I thought my --

18 Q (BY MR. BLOXHAM) What's the date on this
19 particular --

20 A 6th day of March, 1981.

21 Q So in March, you're writing the name
22 Raymond Haire still.

23 MR. BLOXHAM: We'd move to admit those
24 particular documents, your Honor -- State's Proposed
25 Exhibit whatever they were, 50 through 53.

26 MR. BUCHANAN: No objections.

27 THE COURT: Exhibits 51, 52 and 53 will
28 be received in evidence as, designated as such for
29 the State.

30 MR. BLOXHAM: Thank you.

31 Q You never did volunteer the name
32 Joel Burkett, did you, to the police?

1 A. No, sir.

2 Q. In fact, it was Detective Leonard who

3 discovered your true identity; wasn't it?

4 A. Yes, sir.

5 Q. And from there on out, you used the name

6 Joel Burkett and Raymond Haire?

7 A. Yes, sir.

8 Q. When you were in being interviewed by

9 this person at Stop & Go, did they tell you about the

10 polygraph test you'd have to take?

11 A. Yes, sir.

12 Q. And is that why you didn't go back for

13 the polygraph, or did they invite you back for a

14 polygraph?

15 A. No, sir. I told them I'd take it.

16 Q. Okay. Did you tell them about Tina Cage

17 at that time, tell them about Tina Cage so that you

18 could get her this fifty dollar bonus that we've heard

19 about?

20 A. I think I just said a friend recommended

21 me or told me to come up here for -- to check on a job.

22 Q. Told them a friend recommended you.

23 Never mentioned Tina Cage, then, by name?

24 A. I ain't going to say for sure. I might

25 have.

26 Q. You might have?

27 A. Yes, sir.

28 Q. Did you know other people who worked at

29 Stop & Go?

30 A. No, sir.

31 Q. You're applying for a job at Stop & Go.

32 She's the only person you know that works there, and

1 you didn't mention her name. A friend recommended you.
2 A. She didn't tell me nothing about the --
3 Q. Did you know Mr. Delaney, or the name
4 we had on the application?
5 A. Did I know him?
6 Q. Yes.
7 A. I don't think there was a name on it.
8 Q. Up at the top of the application, it
9 seems like there's a C. Daughtery.
10 A. That's where I got the application.
11 Q. Did you know this Daughtery guy?
12 A. No, sir.
13 Q. Did you know he'd get a fifty dollar
14 bonus if you got hired?
15 A. No, sir.
16 Q. Weren't aware of that?
17 A. No, sir.
18 Q. You put down on the -- on your booking
19 form that you've never been a welder. Have you?
20 A. Yes, sir.
21 Q. Where did you work as a welder?
22 A. I was in Preston School of Industry for
23 a while.
24 Q. Never had a job as a welder, though,
25 right?
26 A. No, sir.
27 Q. You bought some Zig-Zag papers at that
28 store that night, didn't you -- that Stop & Go on
29 Eastern?
30 A. No, sir. I don't think so.
31 Q. You had some Zig-Zag papers on you when
32 you were arrested the next day, though; isn't that

1 correct?

2 A Yes, sir.

3 Q Okay. Now you say you parked the Maverick

4 and left it running because the battery had problems?

5 A Yes, sir.

6 Q Right. Who owns that car?

7 A Well, I think the registration was in the

8 name of Glenda White.

9 Q Okay. And who did you obtain permission

10 to use that car from?

11 A From my cousin.

12 Q Who's that?

13 A Jeff White.

14 Q Is that the J. W. on the key chain?

15 A I guess so.

16 Q He gave you the keys?

17 A Yes, sir.

18 Q You parked the car that night on the

19 side of the building, right, and left the car running?

20 A No, sir. I parked it in front of the

21 doors.

22 Q Right out front?

23 A Yes.

24 Q What time was it?

25 A Pretty close to probably 11:00 or

26 12:00. It was in between there. I can't say for sure.

27 I didn't have a watch.

28 Q Anybody in the store when you went in?

29 A I don't -- I don't know. I was just

30 in and out, 'cause I left the car running.

31 Q What was the problem with this battery?

32 A I don't know. We put a new battery in

1 it, and it wouldn't start it, either.

2 Q So you had a battery in the back that you
3 used, then, to start the car at times?

4 A Yes.

5 Q There was a battery in the back of the
6 car?

7 A Yes, sir, there was.

8 Q And that was on the 17th, but it wasn't
9 in the car on the 19th when the car was impounded.
10 Was it?

11 A I believe we did get it fixed, sir.

12 Q Okay. You've been in Vegas just since
13 the first part of December. Haven't you?

14 A Somewhere's around that time.

15 Q And you only applied for work at that
16 Stop & Go. Isn't that correct?

17 A No, sir.

18 Q Where else did you apply for work?

19 A A place out in Henderson. It's a big
20 place. I don't know the name of it.

21 Q Don't know the name of it?

22 A No, sir.

23 Q Big place, though. Levi's? That the
24 big Levi corporation out there?

25 A It's some kind of industry. They got
26 all kinds of things going out there.

27 Q What name did you use?

28 A Raymond Haire.

29 Q Raymond Haire. So you pulled the car
30 out front and left it running. You went in the
31 Stop & Go.

32 Q You wearing a knife that night?

1 A Yes, sir. I believe I was.
2 Q On your belt, right?
3 A Yes, sir.
4 Q You wearing that black vest, right?
5 A Yes, sir.
6 Q You were wearing a t-shirt with a rock
7 group on it. Isn't that correct?
8 A I can't remember if I was or not.
9 Q Okay. You also had a chain on your
10 belt that went to your wallet. Isn't that correct?
11 A No, sir. I don't -- I just got a
12 regular little wallet.
13 Q And I believe your testimony was you
14 dropped it off and went and picked up Tina Cage?
15 A Well, I stopped at Jack-in-the-Box first.
16 Q So she didn't see Ted that night, did
17 she?
18 A No, sir, not that I can think.
19 Q Yet the next day when you and Ted are
20 arrested, Ted's wearing this Harley Davidson belt
21 buckle. Isn't he?
22 A Sir, that's the only belt that he has.
23 Q He's also wearing a knife then?
24 A I think he was. Yes, sir.
25 Q That night, you were driving in such a
26 way that your tatooes were visible, too; weren't they?
27 The shirt you were wearing was
28 about a three-quarter length shirt; wasn't it?
29 A I can't remember. I can't remember
30 what shirt I was wearing.
31 Q How about the Levi jacket?
32 A I don't have a Levi jacket, sir.

1 Q That Levi jacket that was impounded out
2 of your car, the '72 Maverick -- was that Ted's?

3 A I don't know whose it was. It was in
4 the back seat when I borrowed the car.

5 Q You're a tall enough person that you
6 could reach over that counter in that Stop & Go if
7 you wanted to get in the register; couldn't you?

8 You remember that register, and
9 you remember that counter?

10 A Yes, sir, I do.

11 Q Okay. So if you wanted to, you could
12 reach over the counter and get in the register and
13 take paper currency out. Couldn't you?

14 MR. BUCHANAN: To which I object,
15 unless there's some foundation, your Honor. There's
16 no way to know whether or not you could reach over
17 and grab it unless you did it.

18 MR. BLOXHAM: The man's familiar with
19 the counter, your Honor.

20 THE COURT: Okay. The objection is
21 overruled.

22 MR. BLOXHAM: Thank you.

23 Q If you wanted to, you could have, right?

24 A I don't know. I didn't try it.

25 Q Now, you walked up to the counter with
26 these two Michelob bottles, put them on the counter,
27 and you immediately go out and get in your car, right?

28 A No, sir. I asked her was she ready to
29 go, and she said just a minute.

30 And I told her I'd be out in the
31 car, 'cause I left it running.

32

1 Q Leave the two Michelob bottles on the
2 counter. You go out and get in the car, and then she
3 scampers out, and away you go.

4 A She's --

5 Q What about the Michelob bottles?

6 A She was supposed to bring them out.

7 MR. BUCHANAN: Your Honor, I object.
8 If counsel's going to ask questions, all I'm asking is
9 to give the courtesy to the witness to answer rather
10 than propelling another question directly after.

11 MR. BLOXHAM: I apologize, your Honor.
12 I've got so many questions, I guess.

13 THE COURT: Okay. This is the problem.
14 A court reporter can only write what one person says at
15 a time, so I don't want you walking over each other's
16 conversations.

17 Go ahead.

18 MR. BLOXHAM: Thank you.

19 Q You left the two bottles on the counter,
20 correct?

21 A Yes, sir.

22 Q Tina Cage did not bring those two bottles
23 out to the car, correct?

24 A She was supposed to, sir.

25 Q She didn't, though; did she?

26 A No.

27 Q So you then went to another store and
28 bought Michelob, right?

29 A Gas. Yes, sir.

30 Q Rather than going back in that store, you
31 choose to go to another store and buy the Michelob?

32 A I didn't know she left them 'til I was

1 already down the road.

2 Q When she got in the car, was she wearing
3 her coat? She wasn't; was she?

4 A Not that I recall.

5 MR. BUCHANAN: Again, object. If he lets
6 him answer rather than him answer the question for the
7 witness.

8 THE COURT: The objection is -- okay.

9 Q (BY MR. BLOXHAM) She didn't carry her
10 purse out to the car, either; did she?

11 A No, sir.

12 Q So she didn't have her coat. She didn't
13 have her purse. You parked out front of the store.
14 Right?

15 A Yes, sir.

16 Q You saw her walking out the door, right?

17 A No, sir. I was bending down, messing
18 with the speaker wire on the car.

19 Q So you didn't see her walk out the door?

20 A No, sir.

21 Q When she walked out the door, did she get
22 in the car?

23 A Yes, sir.

24 Q Did you look up and look back at the
25 store?

26 A I just looked up at her, and then she
27 was ready, and I raised up and backed up and pulled out
28 on the street.

29 Q Was there anybody in the store?

30 A I can't say that. I don't know for
31 sure.

32 Q It struck you as kind of funny that she'd

1 leave her coat. Didn't it?
2 A. No, sir.
3 Q You didn't see her lock the door; did
4 you?
5 A. No, sir.
6 Q You didn't see her put a sign up that
7 she would be gone; did you?
8 A. No, sir.
9 Q Had you visited her at that store
10 before?
11 A. Yes, sir.
12 Q Had she ever left that store before?
13 A. Just outside.
14 Q Had you stood and talked to her for
15 periods of time before at that store?
16 A. Yes, sir.
17 Q Her husband would check on her every
18 few hours. You were aware of that; weren't you?
19 A. No, sir.
20 Q You didn't ever meet her husband; did
21 you?
22 A. No, sir.
23 Q Did you ever meet her little baby?
24 She ever have her baby?
25 A. She told me she had a baby.
26 Q After leaving the Stop & Go, you go
27 back to the party, right?
28 A. We stopped at the other store first.
29 Q Okay. Now, the store you stopped at --
30 what did you do?
31 A. Got some gas and some beer.
32 Q And did you pay for it?

1 A. Yes, sir.
2 Q. What did you pay for it with?
3 A. Money.
4 Q. When's the last time you had worked?
5 This is December 17th, right?
6 A. I was doing tatooes. I'm also a tatoo
7 artist.
8 Q. Weren't getting any unemployment
9 insurance benefits, were you?
10 A. No, sir.
11 Q. You didn't have a job where you --
12 A. Getting tatooes. People wanted tatooes.
13 Q. Who did you do tatooes for that week
14 before December 17th?
15 A. I did 'em for Jim.
16 Q. Jim Delaney?
17 A. Yes, sir.
18 Q. Who else?
19 A. Ted's got one on that I did on him.
20 Q. And you charged you cousin for the
21 tatoo that you did on him?
22 A. No. I did it free for him. Jim's
23 brother got one.
24 Q. What is his name?
25 A. I'm not for sure.
26 Q. Did he pay you?
27 A. Yes, sir.
28 Q. How much?
29 A. Fifteen dollars.
30 Q. Your cousin Ted is 16. Isn't that correct?
31 A. No, sir.
32 Q. Now, when this lineup was conducted on

1 December 19th, there was actually two groups of people;
2 weren't there?

3 A Yes, sir.

4 Q And you saw the first group, didn't you,
5 in the hallway before you'd go in and line up and make
6 the lineup. You saw the people in the first group,
7 the first lineup. Didn't you?

8 A I don't think so.

9 Q You mean you didn't see Ted Burkett
10 that day at the lineup?

11 A I seen him when he was done.

12 Q Okay. You saw him while you were
13 waiting, though, too, didn't you?

14 Didn't he go out on the stage
15 first, and you waited in the back, and then they came
16 back, and then you guys went out. Isn't that how it
17 happened?

18 A No, sir.

19 Q Didn't pass each other in the hall?

20 A No, sir.

21 Q But you knew he was there, right?

22 A There's a cage. He was in a cage
23 where they put him.

24 Q Saw him, didn't you?

25 A We passed by that cage.

26 Q You knew he was there?

27 A Yes, sir.

28 Q Then you make the comment, "Did she
29 pick out my partner, too?" Right?

30 A Yes, sir.

31 Q Okay. But Ted wasn't with you that night;
32 was he?

1 A. He was with me when I was arrested.
2 Q. You were smoking regular Camels that
3 night, right?
4 A. Still am.
5 Q. You remember that car that you were
6 driving was pretty dirty the next day, too. Must have
7 pulled off the road when you went to the lake, right?
8 Had that black console, or that
9 console, plastic console and black dashboard, things
10 like that, right?
11 A. Well, the heater was in the trunk. The
12 bottom of the heater was taken out 'cause it didn't work.
13 It was put in the trunk of the car.
14 Q. Now, Tina Cage had never been in that
15 car before; had she?
16 JUROR NO. 4: Your Honor, this man --
17 JUROR NO. 12: I'm getting sick to my
18 stomach.
19 THE COURT: We'll take a brief recess
20 at this time.
21 During the time we are in recess,
22 ladies and gentlemen, I would remind you it is your
23 duty not to converse among yourselves or with anyone
24 else on any subject connected with this trial, or to
25 read, watch or listen to any report of or commentary
26 on this trial or any person connected with this trial
27 by any medium of information, including newspapers,
28 television and radio, and you are not to form or
29 express an opinion on any subject connected with this
30 trial until it's finally submitted to you.
31 We'll be in recess for ten to
32 fifteen minutes.

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(At this time, a brief recess was taken.)

(At this time, the jury and alternate jurors returned to the courtroom.)

THE COURT: Will counsel stipulate to the presence of all members of the jury and the two alternate jurors?

MR. BLOXHAM: The State so stipulates, your Honor.

MR. BUCHANAN: Defense so stipulates.

THE COURT: I apologize for reading -- I didn't realize things were that imminent, and it's easy to understand. I apologize for us running into the noon hour. I thought we might go on for a few minutes and then we'd have it all over the day, which I thought would be more convenient to everybody, and I'm still going to try to do that, unless there's a problem with anyone.

If anybody gets sick and you need to clear out, you can just hit that rear door. I'll still read this.

JUROR NO. 4: I'm sorry.

THE COURT: That's all right. I read the admonition because the statutes require it read at every recess. If someone leaves, we can take it up with the lawyers. They might stipulate, or not. We could always replace a juror with the alternate juror.

But I just wanted to explain that to you so you wouldn't think I was completely insensitive reading this statutory admonition, and I

1 know you understood it the first time. I don't read
2 it each time because I think you're stupid and won't
3 remember it, but our statutes require that, so I read
4 it each time.

5 Mr. Bloxham?

6 MR. BLOXHAM: Thank you.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. BLOXHAM:

9 Q Now, Tina Cage had never been in that
10 Maverick before; had she?

11 A No, sir, I don't think so.

12 Q That was the first time, right?

13 A Yes, sir.

14 Q Did you have a prior agreement with her
15 to meet her at the store that night?

16 A Yes, sir.

17 Q When had that agreement been made?

18 A I'm not positive, but just a couple
19 nights prior to that night.

20 Q Just a few minutes prior to then. Was
21 it at the store that you made the agreement?

22 A Yes, sir.

23 Q In other words, you showed up at the
24 store just before that, said, "I'll be back to get
25 you"?

26 A Oh, no. Not just a couple minutes, a
27 couple days.

28 Q Oh. So a couple days before that, you
29 had agreed with her to meet her on this was Wednesday
30 night to pick her up between 11:00 and 12:00 and
31 take her to this party, right?

32 A I'm not -- I'm not going to say for

1 sure that it was a couple days, but it was somewhere's
2 in the area.

3 Q Where were you when you made this
4 agreement, this date?

5 A At the store.

6 Q At the store. Was it morning, afternoon?

7 A Night.

8 Q Nighttime?

9 A Yes, sir.

10 Q So you were there a couple of days
11 earlier, and you told her, "I'll pick you up
12 Wednesday. We'll go to this party," and she agreed
13 to go?

14 A I told her, you know -- I told her
15 about the party, and I asked her did she want to go,
16 and she said, "Stop in, and I could go for a little
17 while."

18 Q Did you think it was strange that she'd
19 be leaving her store to go to a party for a little
20 while?

21 You knew she was the only one
22 there; didn't you?

23 A No, sir.

24 Q You say that you'd given her a ride
25 on your motorcycle before, right?

26 A Yes, sir.

27 Q What kind of motorcycle do you have?

28 A '75 Sportster, Harley Davidson.

29 Q Do you generally carry an extra helmet
30 on your cycle for riders? Right?

31 A Yes, sir.

32 Q She's walking down the street, and you

1 just zip up and pick her up?

2 A I seen her, and I recognized her. No,

3 no. I recognized her from the store. That's why I

4 stopped to pick her up.

5 Q You shop at that store often?

6 A I go there all the time for beer.

7 Q You told us you weren't able to buy beer

8 or go in gaming halls without this fake license, right?

9 A No. I said that's what I got it for.

10 Q Okay. Had you ever had to show that ID

11 to Tina Cage, buy beer from her?

12 A No, sir. I don't think so.

13 Q You have a shirt that says "Fog Hat

14 Rural Tour, 1980" on it, with a big circle. Isn't

15 that correct?

16 A No, sir.

17 Q You don't own any such shirt. Is that

18 right?

19 A No, sir.

20 Q Now --

21 A I've wore it before, but it don't belong

22 to me.

23 Q Belongs to Ted, right?

24 A Yes, sir.

25 Q So he's loaned it to you?

26 A Yes, sir.

27 Q Now, this is quite a serious matter that

28 you're being tried for. Isn't that right?

29 MR. BUCHANAN: I object, your Honor.

30 That's argumentative, and it's improper question.

31 THE COURT: Sustained.

32 Q Has this been a pleasant ordeal, this

1 trial?

2 A. No, sir, it hasn't.

3 Q. You talked to Jim Delaney. Was it back

4 in March when you talked to Jim Delaney concerning

5 this particular matter?

6 A. I don't know the date.

7 Q. Did you see him in the jail?

8 He came to visit you in the jail,

9 and you talked to him, right?

10 A. Yes, sir.

11 Q. You talked to him about the charges

12 against you. Didn't you?

13 A. No, sir. I just asked him would he

14 testify that I was at his house that night. That's all.

15 Q. Asked him if he would testify that you

16 were at his house?

17 A. Yes, sir.

18 Q. And he agreed to it?

19 A. He said if I needed him, yes.

20 Q. Okay. Did you tell him to go to the

21 police and tell them about this?

22 A. No, sir. Police was against me.

23 Q. Did you tell him to go to the District

24 Attorney's Office and give them that information so that

25 they could check it out?

26 A. They're against me right now.

27 Q. Pardon me?

28 A. You're against me right now.

29 Q. How about the other individual that was

30 called, this Hann, Douglas Hann. You saw him in April

31 in the jail, right?

32 A. Could be correct. Yes, sir.

1 Q And this's last month? Today's May 1st,
2 I believe. Okay.

3 Now, you talked to him about the
4 charges against you. Didn't you?

5 A No, sir. I just asked him did he see me
6 at the house that night.

7 Q He said yes?

8 A He said he seen me come to the door and
9 that was it.

10 Q Asked him if he'd testify for you, and
11 he said yeah, right?

12 Hadn't seen him since that night,
13 though; had you?

14 A No.

15 Q Yet he's the man that works with your
16 cousin Ted over at the Wendy's, right?

17 A I guess so.

18 Q Now, you've never done anything to this
19 Tina Cage to cause her to hate you; have you?

20 A No, sir, I haven't.

21 Q So it's just completely out of the blue
22 that she would point her finger at you and level these
23 charges. That is what we're looking at today?

24 A It surprised me.

25 MR. BLOXHAM: No further questions,
26 your Honor.

27 MR. BUCHANAN: Just one question.

28 REDIRECT EXAMINATION

29 BY MR. BUCHANAN:

30 Q Why do you think Tina Cage would point
31 the finger at you?

32 A Probably because of her husband or --

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1 I really couldn't tell you. There could be, you know, in
2 her own mind anything, you know. But I haven't done
3 nothing to her.

4 MR. BUCHANAN: Thank you. Nothing further.

5 THE COURT: You may step down. Thank you,
6 Mr. Burkett.

7 MR. BUCHANAN: Your Honor, at this time
8 the defense rests.

9 THE COURT: Rebuttal?

10 MR. BLOXHAM: Yes, your Honor.

11 Jim Delaney's still here, like to
12 recall him to the stand.

13 THE BAILIFF: He doesn't respond, sir.
14 He's left the area.

15 MR. BLOXHAM: We would call Scott Cage,
16 your Honor.

17 THE COURT: Scott Cage. Scott Cage.

18 SCOTT AARON CAGE,
19 called as a rebuttal witness by the State, was first duly
20 sworn and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BLOXHAM:

23 Q Sir, would you state your full name and
24 spell the last name for the record, please.

25 A My name is Scott Aaron Cage, C-a-g-e.

26 Q Mr. Cage, are you married at this time?

27 A Yes, I am.

28 Q Who are you married to?

29 A Married to Tina Cage, Tina Marie.

30 Q Okay. You and Tina Cage, since your
31 marriage, have you ever separated?

32 A No, we haven't.

1 Q And you and Tina have a baby; don't you?
2 A Yes, we do.
3 Q Has Tina Cage in the past been employed?
4 A Yes.
5 MR. BUCHANAN: Object to this line of
6 questioning. I don't see how this can be rebuttal. It's
7 not rebutting anything we put on the stand so far.
8 MR. BLOXHAM: I think counsel should wait
9 until he hears where we're going before the objection is
10 made. I believe it's preliminary.
11 THE COURT: Well, we'll overrule the
12 objection at this time because it's preliminary.
13 Q (BY MR. BLOXHAM) Tina Cage been employed
14 in the past?
15 A Yes, she has.
16 Q Where was she employed most recently?
17 A She was employed with Stop & Go.
18 Q Approximately how long did she work for
19 Stop & Go?
20 MR. BUCHANAN: Again, it's a continuing
21 objection to all these questions. It's immaterial at
22 this point, not proper rebuttal.
23 THE COURT: The objection is sustained.
24 Q (BY MR. BLOXHAM) Sir, directing your
25 attention to December 17, December 18, of 1980, did
26 you -- did Tina Cage go to work that night?
27 A Yes, she did.
28 MR. BUCHANAN: Again, same objection.
29 THE COURT: The objection is sustained.
30 That's established without controversy. Since you've
31 got something in rebuttal, ask that question.
32 Q (BY MR. BLOXHAM) Did you take Tina Cage

1 to work that night?

2 A. Yes, I did.

3 MR. BUCHANAN: Same objection.

4 THE COURT: Sustained.

5 There's no controversy. That's
6 established without any controverting testimony, that
7 he took her to work that night.

8 Q Did you return to the store after taking
9 her to work that night?

10 MR. BUCHANAN: Same objection.

11 THE WITNESS: Yes, I did.

12 THE COURT: The objection is overruled.

13 Q (BY MR. BLOXHAM) Did you return to the
14 store after taking her to work?

15 A. Yes, sir, I did.

16 Q Approximately when?

17 A. About -- be somewhere around 1:30,
18 2:00 o'clock. I told her I'd check back with her, see
19 if she was all right.

20 Q Why would you check back with her?

21 A. Well, there was an incident before this
22 where a colored man had gone into a store over behind
23 the Showboat, beat her hands, tried to club her over
24 the head. She ran out, went to the gas station across
25 the street.

26 So I ordered her -- she wanted to
27 get off the night shift. I thought it was a good idea,
28 but they didn't have an opening at that time on the day
29 shift, so they put her over on the store over on
30 Eastern.

31 So from that time, I -- I used to
32 check her every night, check her out two, three times a

1 night.

2 Q You returned to that store on
3 December 18th in the morning hours; is that correct?

4 A Yes.

5 Q What did you find?

6 A I found the store locked up. The lady
7 runs the store was there. She called -- the police had
8 already been there and left.

9 MR. BUCHANAN: To which I object.
10 Hearsay.

11 THE COURT: Sustained.

12 Q (BY MR. BLOXHAM) Were the police officers
13 there, sir?

14 A Yes. They had arrived after I did.

15 MR. BLOXHAM: Okay. Nothing further,
16 your Honor.

17 MR. BUCHANAN: No questions.

18 THE COURT: You may step down. Thank you,
19 Mr. Cage.

20 MR. BLOXHAM: Nothing further on
21 rebuttal.

22 THE COURT: Does the State rest?

23 MR. BLOXHAM: State rests.

24 THE COURT: Surrebuttal?

25 MR. BUCHANAN: No surrebuttal.

26 THE COURT: Does the defendant rest?

27 MR. BUCHANAN: Defendant rests.

28 THE COURT: At this time, Court will
29 remain in session outside the presence of the jury.
30 All I want to do is just talk to you a minute to line
31 up times for jury instructions and all. 2:00 o'clock
32 Monday going to be satisfactory to you?

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1 MR. BLOXHAM: May I inquire if the last
2 few exhibits were admitted, your Honor. I believe they
3 were, but it just passes my mind.

4 THE COURT: This isn't a computer here.
5 It's going to require the clerk.

6 MR. BLOXHAM: If the last three or four
7 exhibits were admitted.

8 MR. BUCHANAN: I have no objection to them.

9 THE COURT: Thank you.

10 At this time, then, we'll remain in
11 session outside the presence of the jury. Then we'll
12 recess, but we'll ask the jury to return at 2:00 p. m.
13 on Monday. The reason for this is I have another jury
14 trial starting Monday morning that I have a whole panel
15 coming in on, and I want to be sure that I can get
16 a jury selected. Then I'll have to recess that case
17 over until Wednesday morning, and then we'll have the
18 arguments and the instructions and submit the case
19 on -- did I say Tuesday? Monday. On Monday, on
20 Monday afternoon. So that way, you can know where you
21 are and handle the affairs that you have on the
22 Monday morning.

23 So we'll excuse the jury at this
24 time to return at 2:00 p.m. on Monday here in this
25 courtroom.

26 During this time that court is in
27 session outside the presence of the jury and in recess,
28 I would remind you it is your duty not to converse
29 among yourselves or with anyone else on any subject
30 connected with this trial, or to read, watch or listen
31 to any report of or commentary on this trial or any
32 person connected with this trial by any medium of

1 information, including newspapers, television and radio,
2 and you are not to form or express -- this is a
3 temptation now that you have all the evidence and
4 haven't had the arguments, but I hope you abide
5 particularly by this last part of the admonition.

6 You are not to form or express an
7 opinion on any subject connected with this case until
8 it is finally submitted to you.

9 Two things that are really important
10 over a weekend like this. One is don't discuss the case.
11 Don't succumb to temptation to discuss the case with
12 family or friends.

13 And, two, don't make up your minds
14 until after you've heard the arguments of counsel and
15 the case has been submitted so you can deliberate with
16 your fellow jurors.

17 We will excuse at this time the
18 ladies and gentlemen of the jury and the alternate
19 jurors.

20 (At this time, the jury
21 and alternate jurors left the
22 courtroom.)

23 THE COURT: All right, now. Because
24 of the time press involved for me on Monday, I want
25 to meet with counsel at 1:30.

26 MR. BUCHANAN: Today?

27 THE COURT: No, on Monday. But I want
28 you to meet with each other and knock out these
29 instructions, and when I see you at 1:30, I want to
30 have the instructions in the order that they're going
31 to be given, backup instructions, so I'm not having my
32 secretary type. And then I'll decide on those that.

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1 you're in controversy over. I want them in a separate
2 stack but knowing where you want to put them, the order
3 of them.

4 So it's up to you gentlemen to meet
5 between now and Monday at 1:30 so I can be sure and be
6 able to set these instructions within that half hour
7 period of time.

8 And if I have any problem -- in
9 other words, if you haven't met and it's, "Well,
10 Judge, type this one up," or, "We don't know the order,"
11 or, "What do you think," or something like this, I'm
12 going to fine the parties that I just don't think has
13 cooperated. If you don't want to pay fifty bucks, be
14 sure and have this done.

15 MR. BUCHANAN: That's an incentive.

16 THE COURT: Does everybody understand
17 what I'm talking about?

18 MR. BLOXHAM: I'll state on the record
19 we've already turned over our jury instructions to
20 defense counsel.

21 THE COURT: You've each looked at the
22 other?

23 MR. BLOXHAM: I haven't seen any of his.
24 I've turned mine over to him.

25 THE COURT: I want the instructions.
26 Do you understand what I am saying, now?

27 MR. BUCHANAN: Right. I'll meet with
28 him 11:00 o'clock Monday, if that's --

29 THE COURT: Have you understood what
30 I'm saying, Mr. Bloxham?

31 MR. BLOXHAM: Yes, your Honor.

32 MR. BUCHANAN: 11:00 o'clock Monday.

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THE COURT: We'll be in recess, then,
in this case until 1:30 p.m. Monday, at which time
we'll settle instructions.

MR. BLOXHAM: Thank you.

* * * * *

1 LAS VEGAS, CLARK COUNTY, NEVADA, MONDAY, MAY 4, 1981

2 * * * * *

3 THE COURT: Case No. C52190, State of
4 Nevada versus Joel Burkett, outside the presence of
5 the jury.

6 Do counsel agree with the ten forms
7 of verdict the Court has indicated will be given to
8 the jury for its use?

9 MR. BLOXHAM: The State has read it, has
10 no objection to it.

11 MR. BUCHANAN: Defense has read it, has
12 no objection.

13 THE COURT: Does the State object to any
14 of the instructions the Court has indicated will be
15 given the jury?

16 MR. BLOXHAM: No, your Honor.

17 THE COURT: Does the defendant object to
18 any of the instructions the Court has indicated will
19 be given the jury?

20 MR. BUCHANAN: Yes, your Honor. I do
21 have an objection to -- I don't have the instruction
22 number, but it's when two or more persons participate
23 in committing the crime.

24 THE COURT: It's No. 9.

25 MR. BUCHANAN: I object to No. 9 because
26 we don't feel that that's the law, and that there
27 must be an additional instruction that -- aids and
28 abets. Definition of aids and abets in the
29 commission of a crime, use of a deadly weapon, and we
30 don't think that just because the mere presence that
31 he's equally guilty as a principal, so therefore we
32 object to Instruction No. 9. We don't feel it's

1 complete and as in its present state it is not defined
2 enough to isolate the issues that are in this case.

3 THE COURT: The Court is giving it because
4 it feels it is a clear statement of accessory.

5 Does the State request any
6 instructions in addition to -- did you have any other
7 you were objecting to?

8 Excuse me.

9 MR. BUCHANAN: That's the only one we
10 object to.

11 THE COURT: Does the State request the
12 giving of any instructions in addition to those
13 instructions the Court has indicated will be given
14 to the jury?

15 MR. BLOXHAM: No, your Honor.

16 THE COURT: Does the defendant request the
17 giving of any instructions in addition to those
18 instructions the Court has indicated will be given
19 to the jury?

20 MR. BUCHANAN: None, your Honor.

21 THE COURT: Will counsel stipulate that
22 the instructions will be read to the jury prior to
23 argument and not after argument?

24 MR. BLOXHAM: State would so stipulate.

25 MR. BUCHANAN: Defense would request
26 that and also stipulate to that effect.

27 THE COURT: I guess we bring them in.

28 MR. BLOXHAM: The Court is going to call
29 the jury in, may I quickly look at a couple items
30 of evidence that I intended to use?

31 THE COURT: Sure.

32 MR. BLOXHAM: Thank you, your Honor.

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(At this time, the jury
and alternate jurors entered
the courtroom.)

THE COURT: Miss Clerk, will you call the
roll of the jury and the alternate jurors?

(At this time, the clerk
called the roll of the jury
and alternate jurors, and all
members indicated their presence.)

THE COURT: At this time, ladies and
gentlemen of the jury, it is my time to read to you
the carefully prepared written instructions on the law
as it applies in this case.

I would like to read to you, I would
like to give you these instructions orally, without
reading to you. However, the instructions are long
and some are quite complicated, so therefore it is
necessary for me to read to you these carefully
prepared written instructions.

Bear in mind when I'm reading the
instructions to you that if there is something you
don't particularly understand, that you will have
these written instructions to take back to the jury
room with you so that you can there consider them
and look back to them, so as we go down through them,
as I state the numbers, if you've got any questions
on something, you just that write that number down
and you'll be able to go back and read it over again
in the jury room.

(At this time, the Court
read the instructions to the
jury.)

1 THE COURT: At this time, Mr. Bloxham,
2 you may make the State's opening argument.

3 MR. BLOXHAM: Thank you, your Honor.
4 May I have the podium?

5 THE COURT: Yes.

6 MR. BLOXHAM: Good afternoon, ladies and
7 gentlemen of the jury.

8 The evidence portion of the trial is
9 completed. Judge Christensen has instructed you on
10 the law, and now it's time for closing arguments.

11 Closing argument will be as follows.
12 The State is given an opportunity first of all to
13 address you. The defense is given an opportunity to
14 address you, and then the State is given an opportunity
15 to respond to anything that the defense may raise.

16 Ladies and gentlemen, the purpose of
17 closing argument is to give each side an opportunity
18 to recap the evidence, kind of explain any ambiguity
19 which may exist, and just kind of go over the points
20 and argue the law to you.

21 Now, as I restate the evidence, if I
22 misstate anything, please be aware that it's
23 unintentional. Your memories, your collective
24 memories control what the facts are as you deliberate.
25 If you remember something differently than I state
26 it, of course your memory controls, because you are,
27 each and every one of you, a judge in this case.

28 Judge Christensen indicated in the
29 beginning of the matter, if you recall, that there's
30 thirteen, or thirteen judges in the courtroom. There's
31 Judge Christensen, who's the judge of the law,
32 and there's the twelve jurors who will deliberate in

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1 this case which will the judge of the facts.

2 Now, the jury system, talking of the
3 twelve judges, twelve jurors -- the jury system in
4 America is a very good thing. Takes twelve people
5 from various walks of life, various experiences,
6 various backgrounds, and it puts you in a box here,
7 and you listen to the witnesses who testify. You're
8 in a very good position to weigh things, to
9 determine credibility, and then to get together and
10 discuss the things that you see and, among all of you,
11 arrive at a decision.

12 You know, as we try a case, as I put
13 on things, and as I mention things in closing argument,
14 I'll miss a number of things. There's twelve of you
15 who are listening, though, and I bet that you, most
16 of you, will pick up a number of things that I've
17 missed. I'm sure you will.

18 Speaking of the jury system, though,
19 there's a couple of areas which seem to come up and
20 cause problems as jurors begin their deliberations.
21 I'd like to address two of those at this time and
22 perhaps help explain them a little bit.

23 One area is how do you weigh evidence.
24 One jury may say, "Well, this evidence is more
25 important than that evidence." Because we have a jury
26 instruction talks about direct evidence. We have a
27 jury instruction that explains circumstantial
28 evidence.

29 Ladies and gentlemen, I'd like to use
30 an example from law school, if I could, to kind of
31 explain the difference between circumstantial and
32 direct evidence.

1 MR. BUCHANAN: I'm going to object to
2 counsel's instruction as to the law. I think the
3 instruction covers that, your Honor.

4 MR. BLOXHAM: Your Honor, I can explain
5 that the jury instruction as to the law is --

6 THE COURT: Yes. The objection is
7 overruled at this point.

8 MR. BLOXHAM: Thank you, your Honor.

9 The law school example -- early days,
10 or actually it's last days of the 1800s. It's a
11 small town, small western town. It had just rained,
12 and the ground's nice and soft, easy for tracking
13 people and animals.

14 The ground is all set up. These two
15 bank robbers come into the small town, ride up to the
16 bank, go in with guns, rob the bank, jump on their
17 horses and head straight out of town.

18 Posse's immediately formed. It's
19 light. There are prints on the ground. It's clear
20 the two horses had ridden out of town. The horse
21 tracks are very distinguishable. They're marked in
22 such a way as the size, or they can follow these
23 tracks. They follow them a short distance from
24 town. Comes right up to an old prospector's camp.

25 The prospector's sitting there in
26 his chair. The tracks go right up the camp and then
27 go straight down the valley.

28 The horses, the tracks, are very
29 clear where they go. There's no doubt about it.

30 They ride up to the camp and they
31 shout to the prospector, "Which way did the guys on
32 the horses go?" And he points up the canyon, the

1 opposite direction totally.

2 Now, they're bewildered. They look
3 at the tracks. There's no tracks up the canyon. The
4 tracks clearly go down the valley.

5 And they ask him again, "Which way
6 the horses go, these two men?"

7 The prospector's clear they went up
8 the canyon. They look again as they go down the valley.
9 Just doesn't make sense.

10 Now, ladies and gentlemen, right
11 there you've got an inconsistency -- that the
12 prospector's evidence would be direct evidence, what
13 he perceived. The circumstantial evidence would be
14 the tracks. Now, which would be more believable under
15 those circumstances? It's very clear where the tracks
16 are.

17 That's why you do have a jury
18 instruction which explains to you the law makes no
19 distinction between direct and circumstantial evidence
20 but respects each for such convincing force as it may
21 carry and accepts each as a reasonable method of proof.

22 So I only mention that to you
23 because if it starts getting into a point where you
24 say, "The evidence should be worth more," well, you're
25 the ones who determine what it's worth. Don't be
26 hung up on direct circumstantial.

27 Another area I'd like to mention --
28 just a few areas. That's the first one. Here's the
29 second one. What does proof beyond a reasonable doubt
30 mean? What's the standard to apply?

31 Across the country, in criminal courts,
32 this standard is applied daily. People are convicted.

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1 Now, proof beyond a reasonable doubt
2 clearly does not mean proof beyond any doubt, because
3 few propositions, if any, can be proven beyond any
4 doubt. It also does not mean proof beyond a shadow of
5 a doubt, because that's not the standard. It's proof
6 beyond a reasonable doubt.

7 Now, the jury instruction tells you,
8 and it may or may not help you -- reasonable doubt is
9 one based on reason. Well, that doesn't help a lot.

10 Looking at it one way, are your minds
11 set sufficiently to find somebody guilty beyond a
12 reasonable doubt? The jury instruction says if the
13 minds of the jurors after the entire comparison,
14 consideration of all the evidence are in such a
15 condition that they can say they feel -- and these
16 are the key words -- an abiding conviction of the
17 truth, there is not a reasonable doubt.

18 It continues. Then it says doubt to
19 be reasonable must be actual and circumstantial, not
20 mere possibility or speculation. Doubt to be
21 reasonable must be actual and circumstantial.

22 So I would suggest as you weigh the
23 evidence, determine what the facts are, then look at
24 the facts and say there is doubt, and then, if you
25 find doubt, say is it reasonable doubt.

26 Reasonable doubt has to be
27 substantial doubt. Now, the dictionary defines
28 substantial. It says it must be strong, solid,
29 considerable, large, important. In other words, that
30 doubt has got to be strong doubt. That doubt has got
31 to be large doubt. That doubt has got to be
32 considerable doubt, before you would find a person not

1 guilty, if you find the facts one way.

2 With those things in mind, I'd like to
3 now review the evidence with you, as I recall the
4 testimony, and exhibits that were admitted. Then I'd
5 like to stress why I feel, why the State submits to
6 you the facts are a certain way, and then I'd like
7 to discuss the law with you.

8 Ladies and gentlemen, you'll remember
9 the testimony. Tina Cage testified that she had been
10 working for the Stop & Go Market since about September
11 of 1980. She had been moved from the Atlantic and
12 Olive store sometime middle December over to the one
13 at 732 North Eastern.

14 She went to work on the 17th, the
15 evening of the 17th at 11:00 o'clock at night. She
16 made a couple of drops of money into the safe between
17 11:00 and 12:00 p. m.

18 At approximately 12:00 p. m. or so,
19 the defendant walked in the store and purchased some
20 Zig-Zag papers from her. A short time later, when
21 the store's fairly cleared out, defendant comes in,
22 goes to the beer counter. Came back -- or as he's at
23 the back of the counter, a second subject comes in.

24 She thinks nothing of it 'cause he's
25 over there by the soda machine or whatever. She's not
26 expecting anything.

27 Defendant came to the counter with
28 the two Michelob bottles. She hits the key on the
29 register. The register popped open, and then all of
30 a sudden Defendant No. 2 comes around from the side
31 of her and grabs her, with a knife.

32 She's then forced out of the

1 Stop & Go into a waiting care on the side of the
2 building where there's a street. The car's running.
3 She's forced into that car.

4 Defendant follows and gets in the car
5 as the driver. They drive away.

6 She's taken up the street to another
7 stop, or Seven-Eleven, or Stop & Go where gas is
8 purchased, and they're driven further.

9 She's being held all the while with an
10 arm around her neck. She's sitting in the middle of
11 the car. The second subject, who's the passenger,
12 has the knife on her.

13 She's driven further. They stop, and
14 they get some cigarettes. I believe there was
15 testimony a beer being purchased, too. I don't recall
16 whether it was the first place they stopped or the
17 second.

18 Now, the second place they stopped,
19 cigarettes are purchased. We heard the term or the
20 brand of Marlboro 100s. And then they drive out to
21 the lake, toward the lake.

22 They never make it to the lake. They
23 pull off a dirt road. The two defendants, or the two
24 people who apprehended her have taken her, and they
25 pull off the dirt road, and that's where the sexual
26 assaults occurred. That and the next place.

27 You've heard the testimony that once
28 they got down there, the defendant took, stepped out
29 of the car to go to the bathroom. The other suspect,
30 or the other subject who's shorter, who's younger
31 kept her in the car and was making, was grabbing her,
32 things like that.

1 The defendant got into the car. They
2 undress her.

3 The other subject then attempted to
4 have anal intercourse with her and then had vaginal
5 intercourse and ejaculated, and then the defendant took
6 her around the back of the car and then put her back
7 in the car and then had vaginal intercourse with her,
8 and she testified that he ejaculated.

9 They testified that while they were
10 out in the desert, there was discussion of money by
11 the defendant and his -- person that was with him.
12 They talked about the money and some kind of a split.

13 They went, then went to the second
14 place in the desert, where the defendant,
15 Raymond Haire or Joel Burkett, forced her to have anal
16 intercourse.

17 After this, there was discussion
18 about how to kill her or whether to kill her, what to
19 do with her, where to bury her. She at that time
20 testified that Burkett didn't want her to -- or didn't
21 want to kill her in the car because then he'd have to
22 clean up the mess.

23 She at that point was afraid to get
24 out of the car. She was forced out of the car,
25 grabbed a beer bottle and attempted to defend herself,
26 was unable to. She was overpowered by these two guys.

27 They had her head down, they had the
28 knife on her to kill her, and the second subject, the
29 younger subject probably saved her life with the
30 statement to him, "She's not going to tell."

31 They held the knife on her, or
32 Defendant Burkett held a knife on her, asked her to

1 identify him. She said, "You're six-foot-two, blond
2 hair." That was about it.

3 Anyway, the decicison was made not to
4 kill her. Drove her back to town and let her off.

5 What happened next? She immediately
6 contacts the police. This is 3:00 a.m. She's taken
7 to the detective headquarters where she meets with
8 Detective Leonard.

9 Detective Leonard interviews her in
10 a small interview room. He notices no alcohol or
11 the smell of alcohol or anything like that.

12 He takes a statement from her. She
13 testified and gives him -- she gives him a detailed
14 statement at that time.

15 After the statement, Detective Leonard
16 takes the victim over to Southern Nevada Memorial
17 Hospital where the examination is made by the doctor
18 between 7:00 and 8:00 a.m.

19 The victim further testified that she
20 attended the lineup the next day, and she saw two
21 lineups the next day, and she was able to, in the
22 first lineup, to indicate one person who resembled
23 the individual who was younger, who was shorter, who
24 probably saved her life.

25 The second lineup, she was able to
26 identify Defendant Burkett.

27 That is basically what the victim
28 testified to, ladies and gentlemen.

29 We also called George Williams, the
30 man who went into the Stop & Go who was cooking his
31 burrito, if you recall, around midnight -- noticed
32 the victim there, noticed the victim eating a

1 sandwich, noticed the victim was not really talking
2 to anyone, doing her job, waiting on people.

3 George Williams cooked his burrito,
4 paid for it, left. He went to his friend's down the
5 street. Noticed the light on. Decided to go back to
6 the Stop & Go and purchase some beer and go back to
7 his friend's house.

8 He drove back into the Stop & Go
9 driveway, not from the side street where they were
10 waiting with their car but in the front, off of
11 Eastern. Parked in front, because the lot's empty.
12 Walked in the door, Stop & Go, found no one there.

13 He found two Michelob bottles on
14 the counter, which you'll see in the photograph that
15 you'll take to the jury room. He searched for the
16 clerk. No one around.

17 He called Metro. Metro came.

18 Now, ladies and gentlemen, we had
19 lab people that testified. Detective Mumpower was
20 able to lift a fingerprint off one of the Michelob
21 bottles. That fingerprint was matched to
22 Defendant Burkett. He had a hold of the Michelob
23 bottle that was found on the counter.

24 Additionally, we had Richard Renner
25 from the lab testify. He had analyzed the rape kit.
26 He was able to ascertain that one of the hair heads
27 from the car that was impounded matched the victim's
28 hair head. He testified that people have
29 characteristics in their hair that can be identified.

30 He also testified that about one
31 person out of five to ten thousand will have a
32 similar type of hair. In other words, he could

1 almost positively put the victim in the car.

2 We continued with the rape kit at the
3 hospital. They did what they call a hair comb or cut,
4 and they took some pubic hair from the victim,
5 Tina Cage.

6 And the hair sample they examined,
7 they found a foreign hair that was not Tina Cage's.
8 When the defendant, Defendant Burkett was arrested,
9 they did a sample of his hair, pubic hair, and then
10 they also took a sample of moustache hair.

11 Now, the foreign hair found with
12 Tina Cage's sample did not match his pubic hair nor
13 his moustache hair but was consistent with his type
14 of body hair. There was no sample of body hair, so
15 the testimony of Richard Renner basically put this
16 man -- Haire -- in the vaginal area of Tina Cage.

17 Now, samples of -- swabs were then
18 analyzed. You heard the testimony of that.
19 Detective Renner found presence of acid phosphatase
20 or phosphatase in the vaginal area of Tina Cage.
21 That's an enzyme that is produced in ejaculation.

22 He testified further that he found
23 no presence in the mouth swab, but he didn't expect
24 to. His testimony was he didn't expect to because
25 the mouth, with the saliva and constantly cleansing
26 itself, five hours, he wouldn't expect to, even if
27 there was an ejaculate in the mouth.

28 He testified as to the anal swab,
29 and he testified he did not find the presence of
30 acid phosphatase or spermatozoa. He testified that
31 there's many reasons why that might not be so, why
32 that not be present. He gave you a few of them,

1 recalling he testified as to sexual dysfunction,
2 under -- drinking beer, or drinking alcohol, drugs,
3 or stress situations, you wouldn't find that. You
4 also have to have ejaculate to find any presence of
5 it. He of course did not testify there was not any
6 rape, because of the sexual assault definition is
7 mere penetration. Evidence of emission is not
8 necessary.

9 Going further, Stop & Go people --
10 Pat Seevers testified. She's the manager of the
11 Stop & Go at 732 North Eastern. She testified that
12 that evening shift, the 11:00 p.m. to 7:00 a.m. shift,
13 is a tough shift, a lot of work to do during that --
14 the mopping of the floors, the stocking of the cooler,
15 the cleaning of the front lot, the back lot, throwing
16 things away, things like that.

17 She testified it's a tough shift.
18 She testified that Tina Cage was a good worker,
19 always had the shop ready the next morning, and that
20 Pat Seevers would come in at 6:00, come in an hour
21 early.

22 Further testified there were three
23 money drops on December 17 between 11:00 and 12:00 p.m.
24 totally a hundred thirty dollars into the safe by
25 Tina Cage.

26 She testified further that she had
27 seen the victim's husband there to pick her up on
28 other occasions, and she testified, very importantly,
29 that there was no money in the cash register. No
30 paper money in the cash register. There was coin
31 and I believe food stamps.

32 Richard Davies, the regional

1 representative from Stop & Go testified. Richard Davies
2 testified this robbery that occurred to Tina Cage a week
3 prior, somewhere around a week prior. Photographs
4 taken of that robbery, because they had a hidden camera
5 in that particular store.

6 He testified that she voluntarily
7 quit the store in January. They had had their own
8 investigation of the robbery, and they didn't
9 terminate her over it. Because of the things that had
10 happened to her, she finally quit in January because
11 of the fear.

12 Police testified. Detective Leonard
13 went to that Stop & Go early morning hours of the 18th.
14 He testified he saw her purse there, identification of
15 Tina Cage. He testified he saw, looked in the purse,
16 that there was a twenty dollar bill. Doesn't remember
17 the other money, but he remembers a twenty dollar bill.

18 He met with her at 3:00 a.m.
19 December 18th. Again, he met in a small room. He
20 could observe her walk. He could observe her talk.
21 She was not under the influence of anything.

22 He testified he got a description
23 of the two individuals and the car at that time, and
24 he made note of it. And this is 3:00 a.m.
25 December 18th.

26 He read those notes to you. Do
27 you recall the description?

28 Number one went by the name of
29 Dusty -- white male, 30 years old, six to six-two in
30 height, 185 pounds, sandy blond hair and blue eyes,
31 VanDyke beard, spider web right arm at the elbow,
32 marijuana leaf at the right arm, left forearm

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1 completely covered with tatooes with no description
2 given. He was the driver. He had a key ring or key chain
3 said J. W. on it, orange in color.

4 Two, shirt -- rock group, circle.
5 Plastic or leather vest, worn blue jeans, work shoes.
6 He carried a four-inch long hunting type knife, also or
7 a buck-type knife, smoked Camel Regulars, and he had
8 a chain on his belt hooked possibly to a wallet.

9 He had a description of the second
10 subject. White male, 19 to 25, six, hundred forty, slim.
11 Collar length black hair, wavy, parted right side. Dark
12 eyes. Very little stubble on chin. Harley Davidson
13 belt buckle. Fairly new Levi jacket, looked too big
14 for him. Blue jeans, tennis shoes. Had a skinning
15 knife. Regular Camels, smoking. Yellow Cricket lighter,
16 brown leather wallet.

17 Had description of the car as a '74,
18 '75 Maverick two-door, medium blue. Dusty, dirty stock
19 blackwall tired, stock hubcaps. White quilt in the back.
20 Plastic dash. Light didn't -- interior light didn't
21 work. Heater didn't work. Radio is barely working.
22 Brown plastic console tray. Dirty floor with newspapers,
23 et cetera. Spare battery in the back. About a quarter
24 of a tank of gas.

25 She testified, or -- and he was
26 looking for in this case, expected to find inside the
27 car, because it was left by the defendant, or by the
28 victim, Tina Cage, Marlboro 100s, a bra and panties.
29 He had the description of the panties. He received
30 that December, on the 19th. He knew panties were there,
31 but he didn't get a full description of them until
32 the 19th. I believe you recall that testimony.

1 Now, he prepared the attempt to
2 locate for this vehicle, these people. Put it out on
3 the hot sheet.

4 And what do we see happening next,
5 the 19th, very next day? The morning hours,
6 Officer Smith, North Las Vegas Police Department went
7 in that auto parts store down on Las Vegas Boulevard
8 North. Defendant, Joel Burkett, walked in the store.

9 And he noticed right away spider web
10 tatoo, the marijuana leaf tatoo, the black vest. There
11 was no doubt in his mind who that man was.

12 He waited until he exited the store
13 and then took him into custody at gunpoint. He called
14 for a backup and additionally notified Metro.

15 I believe it was Officer Singer
16 responded from Metro, and they testified. The group of
17 them, or the two of them testified that defendant
18 Burkett's wearing the black leather or black plastic
19 or leather vest. He has the tatooes where the victim
20 said he did.

21 The second one had, was wearing
22 the Harley Davidson belt buckle as the victim mentioned.
23 The car matched the description. They found a Cricket
24 lighter on the defendant. They found Zig-Zag papers on
25 the defendant.

26 And they continued. Everything, or
27 darn near everything matched up, didn't it?

28 Now, Detective Leonard testified
29 as to this lineup. This is very interesting. Well, let
30 me back up rather than going to the lineup.

31 This is interesting, also. This
32 knife right here was taken off Subject No. 2, the

1 younger, the smaller one. This knife right here was
2 taken off Subject No. 1, Joel Burkett.

3 This is the testimony of
4 Officer Singer, or Officer Smith. I don't recall which
5 one. But they put the knives on which individual, on
6 the individuals who had them.

7 Now, Detective Leonard testified
8 further that lineup -- he testified that the first
9 lineup, again, the victim was unable to identify anybody
10 involved, however, did indicate that Ted Burkett had a
11 resemblance of the second subject that they were looking
12 for.

13 The second lineup was the one that
14 I find most interesting, because that's the one where
15 the victim points out Burkett, even though he's wearing
16 a coat, can't see the tatooes. She recognizes him.

17 And then, at the conclusion of the
18 lineup, Burkett knows who's in the lineup. What do
19 we -- or the first lineup. When Peggy Leen approaches
20 him and tells him that "The victim's identified you,"
21 and he says, "Did she pick, or did she identify my
22 partner, too?" He makes a spontaneous statement before
23 he can think about it. He puts his foot right in his
24 mouth.

25 You also recall he's identified
26 himself as Raymond Haire. He'd still be known as
27 Raymond Haire, ladies and gentlemen, if Detective Leonard
28 wouldn't have discovered his true name.

9 Defendant's case basically was they
10 call the Stop & Go secretary, brought in the employment
11 application. Testified, "Yes. We received an employment
12 application from a Raymond Haire." Was signed on

1 the 8th of December, interviewed on the 17th of December
2 at 4:00 p.m. by their personnel person. No appointment
3 was made for a polygraph. They make appointments for
4 polygraph if Stop & Go intends to hire them. Obviously
5 Joel Burkett was just not Stop & Go material.

6 What did he testify to, though?

7 He said, "I would have taken the polygraph." He'd have
8 taken the polygraph on an application with a fake name
9 or phony name. Not his date of birth, not his social
10 security number. With all that misinformation, he's
11 willing to take the polygraph.

12 Doug Hann testified. This is the 18
13 year old who's already, in his young life, a felon. He
14 testified there was a party on the 17th of December,
15 evening hours. He remembers Joel Burkett came with Ted.
16 They left about 9:30. Burkett returned at midnight,
17 asked for Jim Delaney, I believe his name was. And then
18 Jim Delaney and he went outside for a while.

19 Okay. Then the next person to
20 testify is Jim Delaney. Jim Delaney parrots the same
21 words. Ted and Joel Burkett were there. They left
22 at 9:30. They returned, or just Joel Burkett came back
23 at midnight, and he had a young girl in the car. Went
24 outside and sat in the car for a while. Her name was
25 Tina Cage. He admitted that. A number of things.
26 But we'll get back to that.

27 Defendant was the next to testify.
Now, defendant admitted to lying in the past. He
admitted to being convicted of a crime of violence in
the past, and then he tells you his story that he met
the victim, Tina Cage, a few weeks back before this
incident, before this crime. Was riding on his

**PLEADING
CONTINUES
IN NEXT
VOLUME**

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 2

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ORIGINAL

CASE NO. C52190
DEPARTMENT SEVEN

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

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JOEL BURNETT, aka)
RAYMOND HAIRE,)
)
Defendant.)

VOLUME I

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE
Wednesday, April 29, 1981

APPEARANCES:

For the State: RONALD BLOKHAM, ESQ.
Deputy District Attorney
Clark County Courthouse
Las Vegas, Nevada

For the Defendant: JAMES BUCHANAN, III, ESQ.
Attorney at Law
302 Carson
Las Vegas, Nevada

Reported by: CONSTANCE KROON, CSR, No. 75

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* * * * *

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 29, 1981, 10:00 A.M.

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(At this time, the jury
panel members entered the courtroom.)
THE COURT: This is the time set for the
trial of Case No. C52190, the State of Nevada versus
Joel Burkett.

Is the State ready to proceed at
this time?

MR. BLOXHAM: State's ready to proceed,
your Honor.

THE COURT: Is the defendant ready
to proceed?

MR. BUCHANAN: Defendant's ready, your Honor.

THE COURT: Miss Clerk, will you call
the names of the roll of the jury panel members summoned
to appear at this time? When your name is called, answer
"present" or "here."

(At this time, the clerk called
the roll of jury panel members summoned
to appear, and all members indicated
their presence.)

THE COURT: Do either of the parties desire
to present a challenge to the entire panel at this time?

MR. BUCHANAN: Defense does not, your Honor.

MR. BLOXHAM: State does not, your Honor.

THE COURT: Do either of the parties desire
to present a challenge to any individual member of the panel
at this time?

MR. BUCHANAN: None on the behalf of
the defense.

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1 MR. BLOXHAM: State does not, your Honor.

2 THE COURT: At this time, I would allow
3 Mr. Bloxham to introduce himself, make a brief statement
4 as to the nature of this case so you'll know what it's
5 about when we're asking you the voir dire questions, and
6 also state the names of the witnesses the State expects
7 to call in the case.

8 Mr. Bloxham?

9 MR. BLOXHAM: Thank you, your Honor.

10 Ladies and gentlemen of the jury panel,
11 my name is Ron Bloxham. I'm an attorney with the District
12 Attorney's Office. My job is to prosecute the case wherein
13 there are charges against the defendant, Joel Burkett.

14 Joel Burkett is charged with having
15 committed four crimes on December 18, 1980. The first
16 crime is robbery with use of a deadly weapon. He is
17 charged with entering a Stop and Go at 732 North Eastern,
18 early morning hours, taking money with use of a deadly
19 weapon, being a knife.

20 He is also charged with thereafter
21 kidnapping the clerk, a woman by the name of Tina Cage.
22 It's first degree kidnapping charge. He's charged with
23 having kidnapped her with use of a deadly weapon, which
24 is a knife, and for the purpose of sexual assault.

25 The last two charges are sexual assault
26 charges. One sexual assault charge charges him with having
27 sexual intercourse against her consent, against her will.
28 The second one is likewise a sexual assault, having charged
29 him with having anal intercourse against her will or
30 consent.

31 During the course of the trial, the
32 State anticipates calling the following witnesses, and 231

1 I'd ask you to listen to the witnesses because if any of
2 you know them, it may become important as Judge Christensen
3 addresses questions later.

4 The victim, Tina Cage. Richard Davies.
5 N. Kingsbury, who's employed by the Las Vegas Metropolitan
6 Police Department. Detective R. Leonard, Las Vegas
7 Metropolitan Police Department. Detective R. Luke,
8 Las Vegas Metropolitan Police Department. Detective T. Ming,
9 Metropolitan Police Department. ID technician Mumpower.
10 Richard Renner of our crime lab. Pat Seevers. Mary Segretto,
11 also of the Las Vegas Metropolitan Police Department.

12 Officer B. Singer, of Metro.
13 Officer R.S. Smith, North Las Vegas. Officer Don Thornton,
14 Las Vegas Metropolitan Police Department. George Williams,
15 a civilian witness.

16 Thank you very much.

17 THE COURT: Thank you. At this time,
18 Mr. Buchanan, you may introduce yourself to the jury panel,
19 and also the defendant, and if you desire, you may state
20 the names of witnesses, but you need not, if you do not
21 desire to do so.

22 MR. BUCHANAN: We don't wish to state
23 witnesses at this point, your Honor.

24 But, ladies and gentlemen, prospective
25 members of the jury, my name is Bucky Buchanan. I'm the
26 attorney for Joel Burkett, who is seated here to my left.

27 This is a crime. The only thing we'd
28 ask you is, prior, to listen to all of these witnesses and
29 our witnesses who we intend to call in our case, and before
30 you reach any type of decision in this matter, because
31 some of the events will be rather on the State's case not
32 the most, please -- and the thing is here we would ask

1 before you make any type of judgment, though, wait until
2 we call our witnesses and present our defense, which will
3 be considerably different from what the State's attempting
4 to prove in this case.

5 And I thank you for your attention
6 and being here today.

7 THE COURT: Ladies and gentlemen, this
8 is Department No. Seven of the Eighth Judicial District
9 Court. That's the trial court of general jurisdiction
10 of the State of Nevada for Clark County, Nevada.

11 The department here is presided over
12 by myself, and I'm Carl Christensen, the District Court
13 judge.

14 The gentleman in the desk clear over
15 to my left near you is Mr. Robert L. Hanfus. He's the
16 Court's lawyer. In the county, because of the caseload
17 that we have, we're allowed to have a law clerk, who's
18 a lawyer that's graduated from law school that works in
19 the research and decision making process of a court. Of
20 course, we have many cases other than the case that's
21 currently in trial. There's not that much research and
22 legal work to be done in a case like that, but I like to
23 have the law clerks in here when we can make that possible.

24 The lady to my left is
25 Miss Elizabeth Lucero. She's the county clerk, deputy
26 county clerk here in Clark County, Nevada. She's the
27 court clerk for this department, No. Seven. She swears
28 the witnesses, marks the evidence, keeps track of the
29 evidence, makes minutes of the proceedings as they go
30 forward.

31 The lady below me at the stenotype
32 machine is Mrs. Connie Kroon. She's the court reporter,

1 and she takes down verbatim everything that is said during
2 these proceedings.

3 The gentleman in the rear in the
4 uniform by the door is the bailiff for Department No. Seven.
5 He's Mr. Leo O'Leary. He's the one that you'll have contact
6 with during this jury trial. If you ask him questions
7 pertaining to the trial, they have to be in writing and
8 made part of the clerk's record, so just don't ask a lot
9 of frivolous questions just to make conversation. If
10 there's something you really need to know, then that should
11 be addressed in writing, and then he would give it to the
12 Court, and it becomes part of the permanent record of the
13 case.

14 At this time, I would ask counsel if
15 they would stipulate that the entire panel may be sworn to
16 answer truthfully the questions so that the Court can ask
17 collective questions on voir dire of the entire panel
18 before putting twelve in the jury box.

19 MR. BUCHANAN: The defense has no
20 objection, your Honor.

21 MR. BLOXHAM: The State so stipulates,
22 your Honor.

23 MR. BUCHANAN: And we'd stipulate to it.

24 THE COURT: Thank you. At this time,
25 would all of the ladies and gentlemen on the jury panel
26 please stand, raise your right hands to be sworn? If for
27 some reason you don't take an oath or swear, than at the
28 conclusion of the oath you can merely say, "I affirm."

29 (At this time, the jury panel
30 members were duly sworn by the clerk.)

31 THE COURT: Generally, cases that are
32 tried by a jury are divided into two kinds. One is

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1 criminal cases, and one is civil cases.

2 The civil case, the typical case is
3 the usual automobile accident where someone is suing for
4 injuries. There, the jury is eight, and the burden of
5 proof is proved by a preponderance or a greater weight
6 of the evidence.

7 A criminal case is a case where a
8 person is charged with the commission of a crime, and
9 there the jury is twelve, and the burden of proof is
10 proof beyond a reasonable doubt.

11 So there are some differences.
12 Criminal cases, of course, go all the way from, on the
13 minor side, a traffic type case. When you have a traffic
14 ticket, that's a criminal case, and the burden of proof
15 is proof beyond a reasonable doubt. But they go all the
16 way up the other way to the most aggravated murder trial,
17 and the burdens are the same.

18 Now, the case we have before us
19 today is a very serious case both for the defendant and
20 for the State of Nevada, and therefore it is very important
21 that we have a jury consisting of twelve fair and impartial
22 people to serve on the jury that won't decide the case on
23 prejudices or biases but will decide the case on the evidence
24 that's submitted here in the courtroom without regard to
25 sympathy, bias or prejudice.

26 There are a few rules of law that we
27 need to discuss here, because sometimes people really
28 don't realize or understand them, and there will be many
29 rules; but I'm going to go over two or three of them that
30 are basic ones.

31 That an Information is a mere
32 accusation, is not any evidence of guilt. In other words,

1 in this case, the defendant is charged with four counts
2 of criminal activity, and the fact that he is charged
3 is not any evidence of guilt. It is the charging sheet
4 that brings him into court; and so you are not to assume
5 that he is guilty merely because he is charged with a
6 crime.

7 Is there anybody who cannot follow
8 this basic rule of law?

9 Okay. The second one is that in our
10 country, a defendant, in a criminal case is presumed to
11 be innocent until or unless he is proven guilty beyond a
12 reasonable doubt. What this means is that it is a rule
13 of evidence that has to be overcome by evidence of a
14 greater weight. If a case were to go to a jury without
15 any proof, then it would be the duty of the jury to come
16 back with a verdict of not guilty, because a defendant in
17 a criminal case -- and that's all criminal cases -- is
18 presumed to be innocent until he is proven guilty, like
19 I said, beyond a reasonable doubt.

20 Now, the Court will define at the
21 conclusion of the trial in the instructions that are given
22 to the jury what beyond a reasonable doubt means, but is
23 there anyone who cannot follow this basic rule of law?

24 Actually in a trial like this there
25 are thirteen judges. There are the twelve members of the
26 jury, who collectively are judges of all questions of fact;
27 and the Court is the judge -- that's me -- of all of the
28 questions of law, and the members of the jury must follow
29 the rules of law that are laid down by the Court in its
30 instruction whether they agree with them or not, because
31 I've been trained in the law and read the Supreme Court
32 cases, when they say, "Judge, you made an error in the law

1 last time, and now we've got a new rule, and you apply it
2 this way."

3 Is there anyone who cannot follow the
4 Court's instructions on the law whether you agree with
5 them or not? Thank you.

6 Is anyone acquainted with the
7 defendant, Mr. Joel Burkett? Any member of the jury
8 panel acquainted with Mr. James L. or Bucky Buchanan,
9 counsel for Mr. Burkett?

10 Is anyone acquainted with
11 Mr. Ron Bloxham, the Deputy District Attorney who's
12 trying this case for the State of Nevada?

13 Does anyone know anything about this
14 case other than what you've heard here in court this
15 morning?

16 Has any member of the jury panel ever
17 been a victim of a rape? Sexual assault is the modern
18 word for the old rape. Of a sexual assault, kidnapping
19 or robbery?

20 Robbery isn't where they go in and
21 burglarize your home when you're not there, but a robbery
22 is a crime where someone takes things from your presence
23 by force or threat of fear and violence.

24 Has any member of the jury panel ever
25 been the victim of a rape, robbery, or kidnapping?

26 Number -- what's your number, sir?

27 MR. FISHEL: Twenty-four. I have,
28 your Honor. Attempted.

29 THE COURT: Okay. We'll --

30 MR. FISHEL: Not actual.

31 THE COURT: Okay. We'll get to that
32 later. I'll just write down your number now, Mr. Fishel.

1 MR. FISHEL: Right.
2 THE COURT: Thank you. Anyone else then
3 the victim of one of these serious crimes?
4 Okay. Has anyone on the jury panel
5 had a close friend or relative that has been the victim
6 of one of these four serious crimes? Let's start over
7 here. Your number, sir?
8 MR. SONDEJ: Twenty-seven.
9 THE COURT: Twenty-seven. And the lady
10 in back, your number?
11 MS. SEAGER: Twenty-five.
12 THE COURT: Anyone else on this side of
13 the room? Okay. Your number, ma'am, is nine?
14 MS. ERNST: Nine.
15 THE COURT: Mrs. Ernst. Anyone else on
16 that side of the room? Your number, sir?
17 MR. COLMENAR: Six.
18 THE COURT: Number six. Thank you.
19 Has any member of the jury panel ever
20 been engaged in law enforcement work? Number three is
21 Mr. Blue.
22 What's your number, sir?
23 MR. STONE: Twenty, sir.
24 THE COURT: Number twenty. Anyone else
25 who's ever been engaged in law enforcement work or -- let
26 me add this -- who has a spouse who has ever been engaged
27 in law enforcement work? Your number, hon?
28 MS. MENGES: Thirty-one.
29 THE COURT: Mrs. Menges. That how your
30 name is pronounced?
31 MS. MENGES: Menges.
32 THE COURT: Menges. Thank you.

1 Okay. Were you trying to decide
2 if you should raise your hand? Number fifteen?
3 MS. LUDWIG: Yes. Security work. Would
4 that be -- my husband's a security guard.
5 THE COURT: Mrs. Ludwig.
6 MS. LUDWIG: Yes.
7 THE COURT: Okay. Now, then, everybody,
8 I'm sure, has known a policeman, so when I ask this
9 question, bear in mind we are seeking to know if it's a
10 close acquaintance or a close friendship that might affect
11 your ability to serve as a juror.
12 Does anyone -- have to use a little
13 common sense, in other words, because otherwise I could
14 write down everybody's name. Anyone on the jury panel
15 who has a close friend or close relative who's been
16 engaged in law enforcement work where it might affect
17 your deliberations in a case like this?
18 Okay. Let's start here. Number
19 thirty-three, is it --
20 MR. SHAFFER: Yes, sir.
21 THE COURT: You're Mr. Shaffer?
22 MR. SHAFFER: Yes, sir.
23 THE COURT: Okay. The lady in the
24 red dress?
25 MS. GALLUP: Nineteen. My son.
26 THE COURT: You're number nineteen,
27 ma'am?
28 MS. GALLUP: Yes.
29 THE COURT: Mrs. Gallup. Thank you.
30 Anyone else on this side of the
31 room? Number three I already have. And what is your
32 number again?

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1 MS. MENGES: Thirty-one.
2 THE COURT: You're Mrs. Menges. Now,
3 anyone on the other side of the room? Number nine,
4 Mrs. Ernst.
5 MR. STONE: Number twenty.
6 THE COURT: Number twenty, Mr. Stone.
7 Anyone else?
8 Has anyone, member of the jury panel,
9 ever had law training?
10 MR. BLUE: That be like academy, police
11 academy?
12 THE COURT: Yes. Let's write that down.
13 Your name is ?
14 MR. BLUE: Billy Blue, number three.
15 THE COURT: Mr. Blue. Anyone else?
16 Okay. Does any member of the jury
17 panel know anything about this case other than what
18 you've heard here today?
19 Is any member of the jury panel
20 acquainted with any of the witnesses who's names were read
21 to you by Mr. Bloxham?
22 Has any member of the jury panel ever
23 been a witness in a criminal prosecution case in a jury
24 trial?
25 Could I see by a show of hands how
26 many of you have been jurors before? That is actually
27 sworn in to serve on a jury.
28 Okay. Let me write them, too. Let's
29 start -- let's see. You're Mrs. Ludwig?
30 MS. LUDWIG: Right.
31 THE COURT: Okay. The gentleman next?
32 MR. SONDEJ: Twenty-seven.

1 THE COURT: Mr. Sondej.
2 MR. SONDEJ: Sondej.
3 THE COURT: Okay. On the second row,
4 your number, sir?
5 MR. BURNS: One.
6 THE COURT: Mr. Burns.
7 MR. BURNS: Yes.
8 THE COURT: The lady next?
9 MS. SHANNON: Twenty-three.
10 THE COURT: Three?
11 MS. SHANNON: Twenty-three.
12 THE COURT: Mrs. Shannon.
13 MS. SHANNON: Right.
14 THE COURT: Okay. The lady on the --
15 MS. GUTHRIE: Thirty-two.
16 THE COURT: Thirty-two, Mrs. Guthrie.
17 MS. GUTHRIE: Right.
18 THE COURT: Yes. Seventeen?
19 MR. WAITE: Seventeen.
20 THE COURT: Mr. Waite.
21 MR. WAITE: Yes.
22 THE COURT: Eighteen, Mr. West, is it?
23 MR. WEST: Yes.
24 THE COURT: Anyone else on this side of
25 the room has ever served on a jury before?
26 Okay. On the other side of the room?
27 None on the first row. The lady in the pink dress?
28 MS. ROYAL: Number seven.
29 THE COURT: You're Mrs. Royal?
30 MS. ROYAL: Yes.
31 THE COURT: Okay. Gentleman on the back
32 row?

1 MR. FRESQUEZ: Number eleven.
2 THE COURT: Number eleven, Mr. Fresquez.
3 MR. FRESQUEZ: Yes.
4 THE COURT: Anyone else who's served on
5 a jury before? And your number, ma'am?
6 MS. RANDOLPH: Thirty-five.
7 THE COURT: Mrs. Randolph.
8 Is there anyone who feels that they
9 could not be completely fair and impartial -- that might
10 tend to decide this case based on the grounds of sympathy,
11 bias and prejudice relating to age, race, religion, sex,
12 color, or creed? These are all forbidden things.
13 Is there anyone who feels that they
14 could not avoid these things and decide the case in a fair
15 and impartial -- you feel you could not?
16 MR. SONDEJ: Yes, your Honor. My daughter
17 was assaulted in sixth grade center a few years back.
18 THE COURT: You don't feel you can be
19 fair and impartial?
20 MR. SONDEJ: I don't know.
21 THE COURT: Your number?
22 MR. SONDEJ: Twenty-seven.
23 THE COURT: Will counsel stipulate that
24 Mr. Sondej may be excused?
25 MR. BUCHANAN: So stipulated on the behalf
26 of the defense, your Honor.
27 MR. BLOXHAM: Your Honor, not to be
28 difficult. If the man is called to the jury box, he says
29 he doesn't know whether he could be fair and impartial --
30 THE COURT: Okay. Fine. Do you have any
31 further questions that you desire that I ask the entire
32 panel?

1 MR. BUCHANAN: No, your Honor.
2 THE COURT: Mr. Bloxham?
3 MR. BLOXHAM: No, your Honor.
4 THE COURT: Okay. At this time I'd
5 like to ask Mr. Burns, is it -- Mr. or Mrs. Burns,
6 No. 1, Francis Burns.
7 MR. BURNS: Francis, Mr.
8 THE COURT: Mr. Burns, would you come
9 and take the first chair on the first row? Then
10 Mrs. Pruitt, the chair next? Mr. Blue, the next chair.
11 Miss Reid, the next chair.
12 MS. REID: It's Mrs. Reid.
13 THE COURT: Excuse me. Thank you.
14 Mr. Lang, chair number five.
15 Mr. Comenar, chair number six.
16 On the second row, the furthest chair
17 in, Edna Royal. Eugene Lawson, the next one. Vittoria Ernst,
18 the next one. David Sweeney, the next one. John Fresquez,
19 the next one. And Richard Steve Bulger, the next one.
20 VOIR DIRE EXAMINATION OF FRANCIS BURNS
21 BY THE COURT:
22 Q Mr. Burns, you stated that you did serve
23 on a jury before?
24 A Yes, sir.
25 Q Without stating what the verdict was, did
26 the jury reach a verdict in that case?
27 A Yes.
28 Q Was it a civil case or criminal case?
29 A Civil.
30 Q Was that here in Clark County?
31 A No. It was in Iowa.
32 Q How long ago?

1 A 1955, I believe.
2 Q Did you serve more times than once?
3 A Twice. Yes.
4 Q Were they both civil cases?
5 A One was a state or a man against the state
6 for a highway right of way.
7 Q And what was the other one?
8 A The other one was a suit in an auto
9 accident.
10 Q They were both civil cases, and the jury
11 reached a verdict in both cases?
12 A Yes.
13 THE COURT: Do you pass Mr. Burns for
14 cause, Mr. Buchanan?
15 MR. BUCHANAN: Yes, we do, your Honor.
16 THE COURT: Mr. Bloxham?
17 MR. BLOXHAM: Yes, your Honor.
18 VOIR DIRE EXAMINATION OF PATTY PRUITT
19 BY THE COURT:
20 Q Mrs. Pruitt, can you think of any reason
21 why you couldn't be a completely fair and impartial juror
22 if you were selected as one in this case?
23 A No, I cannot.
24 THE COURT: Do you pass Mrs. Pruitt for
25 cause, Mr. Buchanan?
26 MR. BUCHANAN: Yes, your Honor.
27 THE COURT: Mr. Bloxham?
28 MR. BLOXHAM: Yes, your Honor.
29 VOIR DIRE EXAMINATION OF BILLY WAYNE BLUE
30 BY THE COURT:
31 Q Mr. Blue, you stated that you had been in
32 a police academy?

1 A Yes, sir. Department of Justice in
2 Virginia with the U.S. Coast Guard. I was with the
3 Drug Enforcement Patrol.

4 Q Were you a member of the Coast Guard?

5 A Yes, sir. Also, I worked at Hoover Dam
6 Police.

7 Q Do you feel that you could be a completely
8 fair and impartial juror if you were selected in this case
9 as one?

10 A Yes, I do.

11 Q You don't feel that you'd favor the State
12 over the defendant or vice versa?

13 A I think I can be impartial.

14 THE COURT: Do you have any questions
15 of Mr. Blue?

16 MR. BUCHANAN: Yes, I might have. May I
17 voir dire him, your Honor?

18 THE COURT: Yes.

19 MR. BUCHANAN: All right.

20 BY MR. BUCHANAN:

21 Q Mr. Blue, you've heard the prosecution
22 state quite a few of these law officers that are going
23 to be called. Quite a few of the witnesses -- in fact,
24 all but around two witnesses, it would seem to me from
25 their preliminary statement, are going to be law
26 enforcement officers.

27 Now, if you were working with the
28 D.E.A. and Coast Guard and have gone through training
29 academy, do you feel you would give those police officers
30 more weight just strictly because they come in here in
31 uniform or with a working police department?

32 A I would view their testimony as probably

1 more accurate.

2 Q All right. So in other words, then, it
3 would be your feeling that because they are police
4 officers and because they wear the uniform and are
5 performing duties that are similar to what you've done
6 in the past, you would give their weight, their testimony
7 more weight and more credence just because they're
8 police officers?

9 A I'd have to say yes.

10 Q All right. And so then you couldn't be
11 a fair and impartial juror because if it was -- let's
12 say, flip a coin, fifty-fifty as to guilt or innocence.
13 Because they're police officers, then you would tend to
14 give them more credence and possibly convict him because
15 of that, just that fact in your past training?

16 Isn't that correct?

17 A Yes.

18 MR. BUCHANAN: Your Honor, I would ask
19 that Mr. Blue be excused for cause, not being fair and
20 impartial because of his training.

21 MR. BLOXHAM: Your Honor, may I, briefly?

22 THE COURT: Yes.

23 BY MR. BLOXHAM:

24 Q Mr. Blue, when you say that "I'd give him
25 more weight," is it based on their training they received
26 or is it based on the fact what -- or what is it based on?

27 A Okay. Their training. They've gone through
28 extensive training, viewing the evidence, collecting
29 evidence, the law behind the evidence they can collect,
30 and I believe that the facts that they investigate will
31 be true and accurate.

32 Q Will you also be looking at their

1 impartiality, since they're not connected with the case
2 other than professionally? Would that be another factor
3 that you'd be examining?

4 A I can't see why.

5 MR. BUCHANAN: I object to that question,
6 your Honor. I don't think that's a proper question,
7 whether he'd be fair and impartial.

8 THE COURT: The objection is sustained.

9 The question is this, Mr. Blue.
10 Because a person is a police officer, and for that reason
11 alone, would you give his testimony more weight than you
12 would any other witness?

13 MR. BLUE: Yes.

14 THE COURT: The challenge is sustained.

15 You may be excused. We'd thank you for
16 your participation in the jury selection process, your
17 candor in answering the questions.

18 Will you call the next name,
19 Miss Clerk?

20 THE CLERK: Franklin Elroy Dieringer.

21 THE COURT: Take chair No. 3 there, if
22 you would, Mr. Dieringer. Do I pronounce your name right?

23 MR. DIERINGER: Yes, sir.

24 VOIR DIRE EXAMINATION OF FRANKLIN ELROY DIERINGER
25 BY THE COURT:

26 Q Can you think of any reason why you could
27 not sit as a completely fair and impartial juror if you
28 were selected as one in this case, Mr. Dieringer?

29 A No, I can't.

30 THE COURT: Do you pass Mr. Dieringer
31 for cause, Mr. Buchanan?

32 MR. BUCHANAN: If I may just ask one or

1 two questions.

2 THE COURT: All right.

3 BY MR. BUCHANAN:

4 Q Mr. Dieringer, you work at the
5 Air Force commissary?

6 A Yes, sir.

7 Q Have you been in the Air Force prior to
8 this time?

9 A No, sir.

10 Q Never been in the military?

11 A No, sir.

12 Q Never had any connection with law
13 enforcement or anything like that?

14 A No.

15 MR. BUCHANAN: I have nothing further.

16 THE COURT: Do you pass him for cause?

17 MR. BUCHANAN: Yes, sir, I do.

18 THE COURT: Mr. Bloxham?

19 MR. BLOXHAM: The State would pass him
20 for cause, your Honor.

21 THE COURT: Thank you.

22 VOIR DIRE EXAMINATION OF JO ANN REID

23 BY THE COURT:

24 Q Mrs. Reid, can you think of any reason
25 why you could not sit as a completely fair and impartial
26 juror doing equal and exact justice to both the State and
27 the defendant if you were selected as one in this case?

28 A I can't think of a reason.

29 THE COURT: Do you pass Mrs. Reid for
30 cause, Mr. Buchanan?

31 MR. BUCHANAN: May I ask again a
32 few questions?

1 THE COURT: All right.

2 BY MR. BUCHANAN:

3 Q Mrs. Reid, you have put down you
4 don't have any children?

5 A No.

6 Q All right. And because this involves
7 sexual assault -- you've heard the crimes with which
8 my client is charged -- do you feel that you could be
9 fair and impartial, being a woman, and do you feel
10 that type of crime, sexual assault, is of such a
11 nature that you would tend to find someone more
12 guilty of that crime because of the crime rather than
13 on the evidence?

14 A I don't think I would be impartial or
15 be prejudiced.

16 Q And you think you could be fair and
17 impartial, even though it's a sexual assault case;
18 and it wouldn't make any difference to you? You'd
19 still have to make them prove it beyond a reasonable
20 doubt?

21 A I think so, yes.

22 Q And if the sexual assault that, then,
23 would have no part of it in your deliberations?

24 A No.

25 MR. BUCHANAN: Thank you. I'll pass
26 the juror for cause, your Honor.

27 THE COURT: Thank you. Mr. Bloxham?

28 MR. BLOXHAM: Pass the juror for cause,
29 your Honor.

30 VOIR DIRE EXAMINATION OF RICHARD P. LANG

31 BY THE COURT:

32 Q Mr. Lang, can you think of any reason why

1 you could not be a completely fair and impartial juror
2 if you were selected as one in this case?

3 A No.

4 THE COURT: Pass Mr. Lang for cause,
5 Mr. Buchanan?

6 MR. BUCHANAN: Yes, I do, your Honor.

7 THE COURT: Mr. Bloxham?

8 MR. BLOXHAM: Yes, your Honor.

9 VOIR DIRE EXAMINATION OF FRANK DENNIS COLMENAR
10 BY THE COURT:

11 Q Mr. Colmenar, you stated earlier that you
12 had a close friend or relative who had been the victim of
13 a crime like this, or I guess it was you yourself?

14 A No. It was my sister, in high school.

15 Q Do you feel that this unfortunate
16 incident in your own life and family could cause you to
17 be unable to be fair and impartial in this case?

18 A I think so.

19 Q Do you realize that it's different
20 circumstances, different facts, different person accused,
21 and everything else? You won't find this person guilty
22 because of the problem your sister had had; would you?

23 A No, I don't think so.

24 Q It's kind of the moment of truth. Do you
25 have a serious doubt that you might?

26 A No.

27 THE COURT: Do you have any questions of
28 Mr. Lang, Mr. Buchanan -- excuse me -- Mr. Colmenar?
29 I apologize.

30 MR. BUCHANAN: If I may, your Honor.

31 BY MR. BUCHANAN:

32 Q Mr. Colmenar, you are -- you say, you don't

1 really say it convincingly to me. In other words,
2 only thing, I'm trying to see if I can get a fair and
3 impartial juror for Mr. Burkett sitting here.

4 Now, because of the past incidents
5 with your sister, or her involvement with that crime,
6 would that have any bearing on your deliberations in this
7 case?

8 A No. All he said was happened to a close
9 relative, and I said yes.

10 Q Okay. So, in other words, because of
11 that, that wouldn't be at the back of your mind so that
12 when you go and deliberate, in the event you're selected,
13 and determine the guilt or innocence of my client, that
14 wouldn't make any difference to favor more of a guilty
15 plea than an innocent plea?

16 A No.

17 Q So you'd listen to all the evidence here
18 and try and arrive at a verdict based on just strictly
19 what you heard in this courtroom and not what happened
20 to your sister or anything else?

21 A (Prospective juror nodded.)

22 Q And your answer is yes to that?

23 A Yes.

24 Q Okay. You feel you could be fair and
25 impartial? You know of no reason at all why you couldn't
26 sit there?

27 A I could sit there.

28 Q Let me put it a different way. If you
29 were seated at my left and were charged with a crime like
30 this, would you want someone on a jury to be in your same
31 frame of mind?

32 A Well, if I felt a person would be fair, yes.

1 Q All right, then. I'm saying if we switched
2 it around. You'd want someone seated on the jury in your
3 same frame of mind right now?

4 A If I felt that the person would be fair, yes,
5 I'd -- I wouldn't mind.

6 MR. BUCHANAN: All right. Fine. I'll
7 pass the juror for cause, your Honor.

8 THE COURT: Thank you. Mr. Bloxham?

9 MR. BLOXHAM: May I inquire?

10 THE COURT: Yes.

11 BY MR. BLOXHAM:

12 Q Sir, were there any suspects caught in the
13 crime against your sister?

14 A No.

15 Q Do you hold any animosity toward the
16 police department for not having developed that case?

17 A No.

18 MR. BLOXHAM: Pass the juror for cause,
19 your Honor.

20 THE COURT: Thank you.

21 VOIR DIRE EXAMINATION OF EDNA ROYAL

22 BY THE COURT:

23 Q Mrs. Royal, you served on a jury before?

24 A Yes.

25 Q When was that?

26 A It's been about four or five years ago.

27 Q Was it here in Clark County, Nevada?

28 A Yes, sir.

29 Q Was the case a civil case or a criminal
30 case?

31 A A criminal case.

32 Q Did the jury reach a verdict in that case?

1 A Yes.

2 Q Do you remember the charge in the case?

3 A Well, there were children involved. It was

4 a sort of a family incest affair, with the neighbors

5 joining in -- that type of thing.

6 Q Can you think of any reason why you

7 couldn't be a completely fair and impartial juror in

8 this case and do equal and exact justice for both the

9 defendant and the State?

10 A No, sir.

11 THE COURT: Do you pass Mrs. Royal for

12 cause, Mr. Buchanan?

13 MR. BUCHANAN: May I inquire, your Honor?

14 THE COURT: Yes.

15 MR. BUCHANAN: All right.

16 BY MR. BUCHANAN:

17 Q Mrs. Royal, I see from the form you filled

18 out you work for the School District?

19 A Yes.

20 Q And because of working in the School District,

21 or in that capacity, I understand that's a food service; is

22 that right?

23 A Yes, sir.

24 Q And would you, because that's done with

25 youth or anything like that, any of your experience in

26 the School District have any animosity towards let's say

27 Mr. Burkett here, who's in age eighteen, nineteen years

28 old -- would that have any bearing on your deliberations

29 here?

30 A I don't think his age has anything to do

31 with it.

32 Q All right. And the fact that this other

1 incest which, you say -- thing that happened in your
2 neighborhood. Would that have any bearing or do you
3 think prejudice you any way against any kind of sex
4 offenses or anything else?

5 A No. I don't like sexual offenses, but
6 I don't think it would have anything to do with the
7 way I saw the case.

8 Q All right, but when you say you don't
9 like sexual offenses, that means is someone who's say
10 forced themselves upon a woman, or in this case, a
11 sexual assault -- no one particularly likes that type
12 of offense, but would you still listen to all the
13 evidence before arriving at a verdict?

14 A Oh, yes.

15 Q And if you found from your evidence here
16 that you felt you had a reasonable doubt that this thing
17 even happened, could you return a verdict of guilty even
18 though he's just charged with sexual offense?

19 A If I didn't think he was guilty, I
20 wouldn't say I thought he was.

21 Q All right. Just because, then he's
22 charged with a sex offense, you wouldn't find him guilty,
23 even though you didn't feel the evidence proved it?

24 A No.

25 Q All right. And prior to arriving at a
26 verdict, since you've heard the Court, do you think you
27 could wait until the evidence, and particularly until
28 the defendant has taken the stand, and his witnesses,
29 before you try and arrive at whether a person is
30 guilty or innocent?

31 A Yes, I think I could.

32 Q And even if there were some sexual events

1 and occurrences that come here that might not be too
2 pleasant, you'd still withhold judgment until you hear
3 all the evidence?

4 A Yes.

5 Q Is there any one reason at all you know
6 in the back of your mind -- religious, anything, kind of
7 experiences you've had in your past history and through
8 your lifetime -- that you don't think you could be fair
9 and impartial?

10 A No.

11 Q All right. If you had a son or someone
12 on trial here, would you want someone to sit in judgment
13 upon him in the same frame of mind you are today?

14 A Yes, I would.

15 MR. BUCHANAN: All right. Thank you.
16 I'll pass the juror for cause, your Honor.

17 THE COURT: Thank you. Mr. Bloxham?

18 MR. BLOXHAM: Pass the juror for cause,
19 your Honor.

20 THE COURT: Thank you.

21 VOIR DIRE EXAMINATION OF LES EUGENE LAWSON
22 BY THE COURT:

23 Q Mr. Lawson, can you think of any reason
24 why you couldn't be a completely fair and impartial juror
25 if you were selected as one in this case?

26 A No, sir.

27 THE COURT: Do you pass Mr. Lawson for
28 cause, Mr. Buchanan?

29 MR. BUCHANAN: Yes, your Honor. I'll
30 pass Mr. Lawson for cause.

31 THE COURT: Mr. Bloxham?

32 MR. BLOXHAM: Yes, your Honor. Pass

1 Mr. Lawson for cause.

2 VOIR DIRE EXAMINATION OF VITTORIA ERNST
3 BY THE COURT:

4 Q Mrs. Ernst, you stated earlier that you
5 did have a close friend or relative who has been engaged
6 in law enforcement work?

7 A Yes.

8 Q Who is that?

9 A It's a young police officer who's
10 been a close friend of our family for years.

11 Q Here with Metro?

12 A Yes.

13 Q Is he a patrolman or a detective?

14 A He's a patrolman, but I -- I have a
15 babysitting agency, and I did take care of a couple
16 of captains' children.

17 Q What was the name of the young
18 policeman you know?

19 A William Young.

20 Q And the captains -- what were their names?

21 A Otis Willis and Dick Womack.

22 Q Did you ever discuss their philosophy
23 of criminology, criminal investigation and criminal
24 prosecution with them?

25 A Not really, but I did overhear discussions
26 between my husband and them.

27 Q Is your husband engaged in law enforcement
28 work in any way?

29 A He's a paramedic on the Fire Department.

30 Q Do you feel that because of this
31 relationship and background that you might favor one
32 side over the other in a case?

1 A Not necessarily. But may I ask a question?
2 Q Sure.
3 A Was the -- the address of the store, was
4 that the Stop and Go on the 700 block of North Eastern?
5 Q I don't know.
6 MR. BLOXHAM: Yes, it was, your Honor.
7 Q Yes.
8 A Up until about a year ago, I lived in that
9 neighborhood, and that is the convenience store that I
10 frequented; so while I don't know the people in the store
11 by name, I might be familiar with their faces.
12 Q Thank you for that. You stated also that
13 you had someone close that had been a victim?
14 A Yes. My husband was a victim of a
15 robbery at gunpoint in a gas station at one time.
16 Q How long ago?
17 A Oh, probably eight years ago.
18 Q Mrs. Ernst, are you a person of your own
19 mind and will?
20 A I'd like to think so.
21 Q Okay. Now, then, if you were selected and
22 served on this jury and you were in deliberation, would
23 it be your deliberation on an honest and unbiased basis,
24 or would you have somebody there looking over your shoulder?
25 In other words, would you think,
26 "Now, what would my friend or my husband think I should
27 rule in this case? Because I'm sure going to have to
28 discuss this with him later on"?
29 A No, uh-uh.
30 Q You would do your own mind, and you'd
31 listen to the evidence and be fair and impartial in
32 the evidence?

1 A Yes.
2 Q And base your verdict on the evidence
3 rather than on supposition?

4 A Yes.

5 THE COURT: Do you have any further
6 questions of Mrs. Ernst, Mr. Buchanan?

7 MR. BUCHANAN: Yes, if I might,
8 your Honor.

9 THE COURT: Go ahead.

10 MR. BUCHANAN: Thank you.

11 BY MR. BUCHANAN:

12 Q All right, Mrs. Ernst. You know, kind of
13 like Fire Department, being a paramedic on a fire department
14 and police and that are pretty close together? I mean
15 they pal around together, and they're good buddies. They
16 play ball together and everything.

17 You know what I mean?

18 A Uh-huh.

19 Q And your husband does that with policemen?

20 A Uh-huh.

21 Q And you babysit with police officers'
22 children, so forth. Now, there's going to be a parade
23 of police officers in this trial, and because of that
24 parade of police officers, they're going to come in here
25 and sit in that witness chair and testify as to certain
26 events.

27 Do you think the preponderance or just
28 the amount of officers coming in and testifying that you
29 could find someone guilty just because the police officers
30 are here testifying?

31 A No, not on that alone.

32 Q All right. Not on that alone. But if it

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1 came to a close call, do you think you would, because
2 of this amount of police officers testifying against my
3 client, that you could find him guilty?

4 A It's hard to say on a supposition -- just
5 on an "if" like that. It would depend upon the -- what
6 was said.

7 Q Take it even a step further. Because you
8 lived in this neighborhood and because you've gone to this
9 Stop and Go at the -- at 732 North Eastern, do you feel
10 that because you've gone in there on occasion, and there's
11 going to be testimony of what happened at that store,
12 that you might take events into consideration that would
13 be outside the scope of this evidence?

14 A If it was somebody that I knew -- you
15 know, that I knew their faces, I would probably be
16 sympathetic to them.

17 Q So if -- and there's been testimony that
18 this Tina Cage, who was an employee of the Stop and Go
19 at that location about December of last year --

20 A Uh-huh.

21 Q -- and possibly before that. If we parade
22 her in here, and she comes in, and that's one of the
23 clerks that you waited on her -- or she waited on you,
24 rather, in that store, do you feel you'd be sympathetic
25 and more prone to go along with her story versus my
26 client's story just because she was a clerk there and you
27 were buying at the store?

28 A I would say probably yes.

29 Q And so then if we did bring those
30 witnesses, and coupled with that your experience in that
31 store, and the police officer, then you really couldn't
32 be fair and impartial so as to give the defendant a

1 fair trial?

2 A Well, under that set of circumstances,
3 then you would be correct.

4 Q I see. You have one child, eleven years
5 old. Let's assume he's a little, few years older --
6 nineteen, like this.

7 Or someone -- would you want someone
8 to sit in judgment on your son being in the same frame
9 of mind you are, knowing your facts, your relationship
10 with police officers, and your relationship with that
11 Stop and Go on Eastern?

12 A I really couldn't say. If my child was
13 guilty of something, then I would expect the child to
14 be disciplined by whatever means it took.

15 Q We'll go along with that. I think
16 everyone goes along with that.

17 What I am saying here, what we're
18 looking for is someone completely fair and impartial, has
19 no outside influences to determine his guilt or innocence.

20 This case might come down to a close
21 call. What I'm saying is if because of these policemen
22 and because of your relationship with this guy who might
23 possibly have waited on you, and your experience in that
24 store, you couldn't be fair and impartial; could you?

25 A No.

26 MR. BUCHANAN: All right. We would ask
27 that Mrs. Ernst be excused for cause, your Honor.

28 THE COURT: Traverse?

29 MR. BLOXHAM: Traverse, your Honor.

30 BY MR. BLOXHAM:

31 Q You don't know Tina Cage, do you?

32 A I don't know the name. But I might know

1 the face.

2 Q Okay. You haven't been in the store for
3 the past year? Is that what I've heard you testify to?

4 A Right.

5 Q So if she -- she would have had to work
6 there over a year ago for you to even recognize her;
7 isn't that correct?

8 A Right.

9 Q What I thought I heard you say as to if
10 you knew somebody personally, that would be bound to affect
11 the way you perceived their testimony, just like anybody
12 with personal knowledge of someone who would weigh their
13 testimony. Isn't that correct?

14 A If I knew her personally?

15 Q Yes. That would have an effect on how
16 you'd weigh her testimony; isn't that correct?

17 A Yes.

18 Q That's all I heard you testify to. Is
19 there anything further about Stop and Go clerks that you'd
20 like to add?

21 A No.

22 Q Since you shopped at a Stop and Go?

23 A No.

24 MR. BLOXHAM: Okay. Your Honor, we oppose
25 the motion for, or the challenge for cause. I believe this
26 witness has testified she could weigh the evidence. She's
27 going to act like any other person judging a statement if
28 they know the person that has a bearing.

29 I can inform the Court my understanding
30 of the evidence is this Tina Cage did not work at that
31 Stop and Go a year ago, so we would oppose the challenge
32 for cause, your Honor.

1 MR. BUCHANAN: We don't think they've
2 sustained the traverse, your Honor. Still ask her to
3 be excused for cause.

4 THE COURT: The challenge is sustained
5 at this time.

6 At this time you may be excused,
7 Mrs. Ernst. We would thank you for your candor in
8 answering the questions, ask you to report back to the
9 jury commissioner.

10 Miss Clerk, will you call the
11 next name?

12 THE CLERK: Joyce Sands.

13 VOIR DIRE EXAMINATION OF JOYCE SANDS

14 BY THE COURT:

15 Q Mrs. Sands, can you think of any reason
16 why you could not serve as a completely fair and impartial
17 juror if you were selected as one in the case?

18 A No, sir, I don't.

19 THE COURT: Do you pass Mrs. Sands
20 for cause, Mr. Buchanan?

21 MR. BUCHANAN: If I may inquire just
22 briefly, your Honor.

23 THE COURT: All right.

24 BY MR. BUCHANAN:

25 Q All right. Mrs. Sands, it's coming now,
26 you know -- you had heard most of the questions I think
27 that I've asked the type of case this is going to be.

28 Because of the sexual aspect of this
29 case and because the defendant's charged with couple
30 crimes involving sex, does that, would that have any
31 bearing on your deliberations?

32 A No.

1 Q I've asked some of the other women here
2 the questions in regard to that. Would your answers
3 have been any different?

4 A Different in regards to my opinions
5 about it?

6 Q Yes.

7 A No, sir. I don't believe so.

8 Q All right. And I see you have two children,
9 and suppose they were on trial in a case. Doesn't matter
10 what kind of case.

11 Would you want someone sit in judgment
12 upon them being in the same frame of mind you are today?

13 A Yes, I would.

14 Q And you know no reason in your past --
15 either religious, personal experiences or anything --
16 that could cause you to be fair and impartial?

17 A I think I could be impartial in this case.

18 Q And if you felt the defendant was innocent
19 after listening to all of the testimony -- not just the
20 State's testimony, but his case and his testimony and his
21 witnesses -- you felt he was innocent, could you hang
22 onto that feeling for deliberations with the other jurors?

23 A I certainly would hope so. I think so,
24 definitely.

25 MR. BUCHANAN: All right. Thank you.
26 We'd pass Mrs. Sands for cause, your Honor.

27 THE COURT: Thank you. Mr. Bloxham?

28 MR. BLOXHAM: Pass the juror for cause,
29 your Honor.

30 VOIR DIRE EXAMINATION OF DAVID E. SWEENEY
31 BY THE COURT:

32 Q Mr. Sweeney, can you think of anything that

1 would keep you from being completely fair and impartial,
2 doing equal and exact justice to both sides in this case,
3 if you were selected?
4 A No, I cannot.
5 THE COURT: Mr. Buchanan, do you pass
6 Mr. Sweeney?
7 MR. BUCHANAN: Yes, I'll pass
8 Mr. Sweeney, your Honor.
9 THE COURT: Mr. Bloxham?
10 MR. BLOXHAM: I'll also pass Mr. Sweeney
11 for cause, your Honor.
12 THE COURT: Thank you.
13 VOIR DIRE EXAMINATION OF JOHN BEN FRESQUEZ
14 BY THE COURT:
15 Q Mr. Fresquez, you've served on a jury
16 before?
17 A Yes, sir.
18 Q Was that here in Clark County, Nevada?
19 A Yes.
20 Q When was it?
21 A Last year.
22 Q Did the jury reach a verdict in the case?
23 A Yes, sir.
24 Q Was it a civil case or criminal case?
25 A Criminal case.
26 Q Did you serve more times than once?
27 A No. Just that one time.
28 Q Can you think of any reason why you
29 couldn't be a completely fair and impartial juror if
30 you were selected as one in this case?
31 A No, I don't.
32 THE COURT: Do you pass Mr. Fresquez

1 for cause, Mr. Buchanan?

2 MR. BUCHANAN: Yes. If I might just
3 inquire briefly, your Honor.

4 BY MR. BUCHANAN:

5 Q Mr. Fresquez, you've heard the questions,
6 again, that have been asked, and the fact that this is a
7 sexual case -- at least, my client is being accused of.

8 Do you have any quarrel with any of the
9 answers so far?

10 A No, I don't.

11 Q And if you were seated next to me here
12 and were a client or a defendant in a case like this,
13 would you want someone to act in your capacity as a juror,
14 in the same frame of mind?

15 A Yes, I would.

16 Q In judgment upon yourself?

17 A Yes, I would.

18 Q So you feel you could be fair and impartial
19 and have no problems with the guilt or innocence in
20 arriving at this case?

21 A Yes, I can.

22 MR. BUCHANAN: Thank you. I'll pass
23 Mr. Fresquez for cause, your Honor.

24 THE COURT: Thank you. Mr. Bloxham?

25 MR. BLOXHAM: Pass the juror for cause,
26 your Honor.

27 THE COURT: Thank you.

28 VOIR DIRE EXAMINATION OF STEVE RICHARD BULGER

29 BY THE COURT:

30 Q Mr. Bulger, is that how your name is
31 pronounced, sir?

32 A Bulger.

1 Q Can you think of anything that would keep
2 you from being completely fair and impartial if you were
3 selected as a juror?

4 A No.

5 THE COURT: Mr. Buchanan?

6 BY MR. BUCHANAN:

7 Q Sir, are you employed at the present time?

8 A No.

9 Q And in the past, you never been involved
10 in law enforcement, anything like that? I don't think
11 you answered any questions to that.

12 A No.

13 Q You're the last one, number twelve, after
14 fourteen, I guess.

15 What -- would you have any questions
16 different from those offered?

17 A No.

18 Q You feel you could sit here and be fair
19 and impartial during this trial?

20 A (Prospective juror nodded.)

21 Q Do you think you can wait until the
22 presentation of all the evidence -- that is, when the
23 defendant takes the stand, his witnesses -- before you'd
24 arrive at a verdict of guilty?

25 A (Prospective juror nodded.)

26 Q You understand the sexual case -- there's
27 going to be some unpleasant testimony that might tend to
28 sway you one way or the other, but you feel you can remain
29 unswayed until you hear all the evidence before you say
30 that so and so, or because of this? You'd wait until
31 you heard all the evidence?

32 A Oh, absolutely.

1 Q You'd have no problem with that?
2 A (Prospective juror shook head from side
3 to side.)
4 MR. BUCHANAN: Fine. Thank you. We'd
5 pass the juror for cause, your Honor.
6 THE COURT: Thank you. Mr. Bloxham?
7 MR. BLOXHAM: Pass the juror for cause,
8 your Honor.
9 THE COURT: Thank you. At this time,
10 the State may exercise State's first peremptory challenge.
11 MR. BLOXHAM: The State would waive
12 that peremptory challenge, your Honor.
13 THE COURT: The defendant may exercise
14 defendant's first peremptory challenge.
15 MR. BUCHANAN: Thank you, your Honor.
16 May I have just one moment?
17 All right. Your Honor, we'd thank
18 and excuse juror number nine, Miss Sands.
19 THE COURT: At this time, Mrs. Sands,
20 you may be excused. We thank you for your participation
21 in the jury selection process, your candor in answering
22 the questions. We would ask you to report back to the
23 jury commissioner.
24 MS. SANDS: Excuse me, your Honor. My
25 number is No. 14. That is --
26 MR. BUCHANAN: I'm going by number in
27 the box, your Honor. Excuse me. I guess it is fourteen.
28 THE COURT: That would be you, Mrs. Sands.
29 MS. SANDS: Okay. Thank you.
30 THE COURT: You have two numbers now.
31 Miss Clerk, will you call the next number?
32 THE CLERK: Annabelle Ludwig.

1 VOIR DIRE EXAMINATION OF ANNABELLE LUDWIG
2 BY THE COURT:

3 Q Mrs. Ludwig, you stated earlier that you
4 had close friends or relatives -- I guess it was your
5 husband that was a security guard, wasn't it?

6 A Yes. My husband is a security guard in
7 the mobile home park where we live.

8 Q Has he even been engaged in law enforcement
9 work other than that?

10 A With civil service, Department of Defense
11 in San Diego. That --

12 Q Was that guard duty or detective type work?

13 A Yes, uh-huh.

14 Q Do you think you could be a fair and
15 impartial juror in the case such as this, or do you think
16 because he'd been engaged in an area of law enforcement
17 work that you'd be more closely aligned with the State?

18 A No. I could be fair.

19 Q When did you serve on the jury before,
20 Mrs. Ludwig?

21 A In 19 -- I think it was 1970, in San Diego.

22 Q Did you serve more times than once?

23 A Just once.

24 Q Was the case a civil case or a criminal case?

25 A Criminal.

26 Q Did the jury reach a verdict in that case?

27 A No.

28 Q It was a hung jury?

29 A Yes.

30 Q Can you think of any reason why you
31 couldn't be a completely fair and impartial juror if you
32 were selected as one in this case?

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1 A No, I couldn't.

2 THE COURT: Do you pass Mrs. Ludwig

3 for cause, Mr. Buchanan?

4 MR. BUCHANAN: If I might just inquire

5 briefly.

6 THE COURT: All right.

7 BY MR. BUCHANAN:

8 Q Your husband has been involved, Mrs. Ludwig,

9 in security work, and he's a security guard with that

10 mobile home estate, is that correct, now?

11 A Right, uh-huh.

12 Q Because of his -- does he carry a gun

13 down there?

14 A No.

15 Q Nightstick?

16 A No.

17 Q Mace?

18 A No.

19 Q He just walks around?

20 A He more or less -- they patrol the park,

21 and they take care of the clubhouse.

22 Q All right. So in other words, he's not

23 even called a quasi-police officer -- he just makes sure

24 that everything's secured down?

25 A Right, uh-huh.

26 Q All right. But because of that and because

27 of his -- in being in the Navy, do you think you would give

28 any more credence to police officers because they testify

29 here?

30 A No.

31 Q All right. And the fact it's a sexual case --

32 any problems with that?

1 A No, sir.

2 Q Do you feel that you could be fair
3 and impartial?

4 A Yes, sir.

5 MR. BUCHANAN: All right. Thank you.
6 We'd pass Mrs. Ludwig for cause, your Honor.

7 THE COURT: Mr. Bloxham?

8 MR. BLOXHAM: We'd also pass
9 Mrs. Ludwig for cause, your Honor.

10 THE COURT: Thank you. The State may
11 exercise State's second peremptory challenge.

12 MR. BLOXHAM: State would waive that
13 peremptory challenge, your Honor.

14 THE COURT: Thank you. Defendant may
15 exercise defendant's second peremptory challenge.

16 MR. BUCHANAN: Thank you, your Honor.
17 If I may, one moment.

18 All right. Thank you, your Honor. We
19 would thank and excuse my number, No. 7, Mrs. Royal,
20 her number, No. 7.

21 THE COURT: At this time, Mrs. Royal,
22 you may be excused. We thank you for your participation
23 in the jury selection process, your candor in answering
24 the questions. We would ask you to report back to the
25 jury commissioner.

26 You may call the next name, Miss Clerk.

27 THE CLERK: Paul Dean Hess.

28 MR. HESS: Yes.

29 VOIR DIRE EXAMINATION OF PAUL DEAN HESS
30 BY THE COURT:

31 Q Mr. Hess, have you been able to hear and
32 understand the questions and answers that have been posed

1 thusfar in our proceedings?

2 A Very little. My hearing's very bad.
3 Very few words I've heard in here since I came in.

4 Q Did you mention this to the jury
5 commissioner?

6 A No.

7 THE COURT: I think this is a reason
8 to excuse Mr. Hess.

9 MR. HESS: Pardon?

10 MR. BLOXHAM: State would so stipulate,
11 your Honor. It's on the questionnaire. The jury
12 commissioner should have been aware of that, I
13 would think.

14 THE COURT: Do you stipulate to --

15 MR. BUCHANAN: We'd stipulate to his
16 being excused.

17 THE COURT: We're going to excuse you
18 at this time and ask you to explain this to the jury
19 commissioner so they don't pick you up again. Thank you.

20 MR. HESS: Very well.

21 THE CLERK: Glade D. Waite.

22 VOIR DIRE EXAMINATION OF GLADE D. WAITE

23 BY THE COURT:

24 Q Mr. Waite, you served on a jury before;
25 is that correct?

26 A About three years ago.

27 Q Was that here in Clark County?

28 A Yes.

29 Q Did the jury reach a verdict in that case?

30 A It was out of court. They -- I was picked
31 for the jury, but before the -- it got through, they
32 settled out of court.

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1 Q I see. Could you think of any reason
2 why you wouldn't be completely fair and impartial if
3 selected as a juror in this case?

4 A No.

5 THE COURT: Do you pass Mr. Waite
6 for cause, Mr. Buchanan?

7 BY MR. BUCHANAN:

8 Q Mr. Waite, after all these questions and
9 all the answers, would your answers be any different
10 because of the nature of the case, or because of the
11 number of police officers that are going to be called?

12 A No, sir.

13 Q Do you feel you can be fair and impartial?

14 A (Prospective juror nodded.)

15 Q If you were seated here and charged with
16 a crime, would you want someone to sit in judgment upon
17 you in your same frame of mind you are today?

18 A Yes, sir.

19 MR. BUCHANAN: Thank you. I'll pass
20 Mr. Waite for cause, your Honor.

21 THE COURT: Mr. Bloxham?

22 MR. BLOXHAM: May I inquire, your Honor?

23 THE COURT: Yes.

24 BY MR. BLOXHAM:

25 Q Mr. Waite, on your questionnaire, I would
26 think you made two mistakes. No. 8, question is have you
27 ever, or have you any mental or physical disabilities to
28 prevent you from serving as a juror, and you checked yes.

29 Was that an incorrect check?

30 A That was an incorrect.

31 Q This one is embarrassing. "Have you
32 ever been convicted of a felony?" You checked yes.

1 Is that correct?

2 A That was still a mistake.

3 MR. BLOXHAM: That was a mistake. Okay.

4 Just wanted to clear that up. Thank you.

5 We would pass Mr. Waite for cause,

6 your Honor.

7 THE COURT: Thank you. At this time

8 the State may exercise State's third peremptory challenge.

9 MR. BLOXHAM: State would waive that

10 challenge also, your Honor.

11 THE COURT: Defendant may exercise

12 defendant's third peremptory challenge.

13 MR. BUCHANAN: Thank you, your Honor.

14 We would waive and thank and excuse Mrs. Ludwig.

15 THE COURT: At this time, Mrs. Ludwig,

16 you may be excused. We thank you for your participation

17 in the jury selection process, your candor in answering

18 the questions. We would ask you to report back to the

19 jury commissioner.

20 THE CLERK: David Randall West.

21 VOIR DIRE EXAMINATION OF DAVID RANDALL WEST

22 BY THE COURT:

23 Q Mr. West, you stated that you had served

24 on a jury before?

25 A Twice.

26 Q Was that here in Clark County?

27 A Yes.

28 Q Were they civil cases or criminal cases?

29 A Drug related cases.

30 Q Both of them?

31 A Yes.

32 Q Did the jury reach a verdict in both cases?

1 A Yes, we did.
2 Q Do you feel you can be a completely fair
3 and impartial juror if you were selected as one in
4 this case?
5 A Yes.
6 THE COURT: Do you pass Mr. West for
7 cause, Mr. Buchanan?
8 MR. BUCHANAN: Yes, we do, your Honor.
9 THE COURT: Mr. Bloxham?
10 MR. BLOXHAM: Yes, your Honor. We
11 would pass Mr. West for cause.
12 THE COURT: Thank you. At this time
13 the State may exercise State's fourth peremptory challenge.
14 MR. BLOXHAM: State would waive that
15 challenge, also, your Honor.
16 THE COURT: Defendant may exercise
17 defendant's fourth peremptory challenge.
18 MR. BUCHANAN: May I just have one
19 moment, please?
20 Your honor, we would waive our next
21 peremptory challenge and accept the jury as presently
22 constituted in the box.
23 THE COURT: State may exercise State's
24 fifth peremptory challenge.
25 MR. BLOXHAM: Your Honor, we would ask
26 the Court to thank and excuse Mr. West -- thank him for
27 his attendance today.
28 THE COURT: At this time, Mr. West, you
29 may be excused. We thank you for your participation in
30 the jury selection process, your candor in answering the
31 questions. We would ask you to report back to the
32 jury commissioner.

1 THE CLERK: Ethel Gallup.
2 VOIR DIRE EXAMINATION OF ETHEL GALLUP
3 BY THE COURT:
4 Q Mrs. Gallup, you stated earlier that you
5 had close friends or relatives engaged in law enforcement
6 work?
7 A My son used to work for North Las Vegas.
8 Q How long ago was this?
9 A I think it was about '62, '63, something
10 like that.
11 Q How long did he work for North Las Vegas?
12 A He worked extra. He wasn't paid, you know.
13 He just worked for them.
14 Q Like a police volunteer?
15 A Yes, uh-huh.
16 Q Can you think of any reasons why you
17 couldn't be a completely fair and impartial juror if
18 you were selected in this case?
19 A No.
20 Q If you had a loved one charged with the
21 commission of a serious crime, would you be satisfied in
22 having someone of your frame of mind seated on the jury?
23 A No.
24 Q Why?
25 A Oh, I don't know. I just don't believe
26 in that stuff. I'm -- I don't know.
27 Q Maybe you misunderstood my question. What
28 I was saying is if you had a son or another loved one who
29 was charged with a crime --
30 A Yes?
31 Q -- would you be satisfied in having someone
32 in your frame of mind on the jury?

1 A No. I wouldn't want me on the jury.
2 Q Why?
3 A Huh?
4 Q Why?
5 A Because I'd sentence him, if they proved
6 that he was actually the one.
7 Q Okay, now. Would you listen to all of the
8 evidence, though?
9 A Yes. I would listen to everything.
10 Q And fairly weigh the evidence?
11 A Yes, sir.
12 Q Without prejudice or bias?
13 A Yes, sir.
14 Q And then you'd make your decision based
15 on the evidence and not based on --
16 A Yes, sir. No, not based on -- it would
17 have to be proven that it was guilty.
18 THE COURT: Thank you. Do you pass
19 Mrs. Gallup for cause, Mr. Buchanan?
20 MR. BUCHANAN: May I ask a few questions,
21 your Honor?
22 THE COURT: Sure.
23 MR. BUCHANAN: Okay.
24 BY MR. BUCHANAN:
25 Q All right, Mrs. Gallup. Your son was a
26 police officer for North Las Vegas?
27 A Yes. He wasn't -- he just worked with the
28 cops, you know. He didn't -- he wore a suit. He didn't
29 get paid or anything.
30 Q He was auxiliary, rode around in the car?
31 A Yes.
32 Q But I imagine he came home at night, or

1 was he living at home at that time?
2 A No. He was married.
3 Q Did he come and talk to you about different
4 cases he had on?
5 A The funny ones.
6 Q The funny ones. All right. And -- but you
7 believe your son?
8 A Yes.
9 Q And because your son was a police officer,
10 an auxiliary, and the fact that they're going to have a
11 parade of police officers here, would that have any
12 bearing on your determination of guilt or innocence?
13 A No, I don't think so.
14 Q Now, I think you've said you wouldn't
15 want someone to sit on a jury --
16 A My frame of mind.
17 Q -- in your frame of mind.
18 Now, is that the way you feel? I
19 mean, in other words, suppose your son was charged with
20 some type of crime. It's a funny thing, but suppose he
21 was sitting here next to me, and a woman was sitting on
22 a jury in your same frame of mind.
23 Would you throw her off, or would
24 you keep her?
25 A I don't know.
26 Q I mean, you know, you have to -- you have
27 to tell me one way or the other.
28 A I know.
29 Q Because the only thing I'm trying to do
30 with you --
31 A You're trying to be honest and get the
32 best you can for your --

1 Q Honest, truthful and try and have a jury
2 that will sit here and listen to all the evidence.

3 A That's right.

4 Q And before they make any type of
5 determination or anything, indications or prejudice or
6 influence one way or the other, listen to all the
7 evidence and then judge only from what they hear in
8 this courtroom, and everything else like it is pulled
9 from your mind, and any prejudice you might have, any
10 animosity, anything at all -- just to be straight and
11 honest and a forthright juror. That's what we're
12 looking for.

13 Now, you know -- and of course, it
14 is a sexual case -- there are some sexual things about
15 it which might not be too pleasant, and when they're
16 testified to, and some other things, and knowing all
17 that and knowing this is a criminal case and that you're
18 going to have to judge the guilt or innocence of someone
19 else, now, would you want someone in your frame of mind
20 to judge your son's guilt or innocence?

21 A I don't think so.

22 MR. BUCHANAN: Thank you. I would ask
23 that Mrs. Gallup be excused for cause, your Honor.

24 THE COURT: Do you have any traverse?

25 MR. BLOXHAM: No, your Honor.

26 THE COURT: The -- just a minute --
27 challenge is denied.

28 At this time, the defendant may
29 exercise defendant's fifth peremptory challenge.

30 MR. BUCHANAN: We would thank and
31 excuse Mrs. Gallup, your Honor.

32 THE COURT: At this time, Mrs. Gallup,

1 you may be excused. We thank you for your participation
2 in the jury selection process, your candor in answering
3 the questions. We would ask you to report back to the
4 jury commissioner.

5 THE CLERK: Freddie D. Stone.

6 VOIR DIRE EXAMINATION OF FREDDIE D. STONE
7 BY THE COURT:

8 Q Mr. Stone, you stated earlier that you had
9 been engaged in law enforcement work?

10 A Yes, sir.

11 Q Where did you perform this work?

12 A I'm a private investigator here in
13 Las Vegas.

14 Q Did you work on a police department prior
15 to that?

16 A No, sir.

17 Q Are you in business for yourself?

18 A Both. I'm an investigator and I own
19 a business.

20 Q Do you think you'd be completely fair and
21 impartial if you were selected as a juror in this case?

22 A Yes, sir.

23 Q You won't favor the State over the
24 defendant or the defendant over the State?

25 A No, sir.

26 Q Can you think of any reason why you
27 couldn't be completely fair and impartial?

28 A No, sir.

29 THE COURT: Mr. Buchanan?

30 MR. BUCHANAN: Thank you, your Honor.

31 BY MR. BUCHANAN:

32 Q Mr. Stone, you work for Griffin, right?

1 A Yes, sir.

2 Q That's mainly casino operations, gambling
3 related investigations?

4 A Yes, sir.

5 Q And that's almost exclusively, isn't it?

6 A Yes, sir.

7 Q And most of your working hours are, go
8 into that type investigation?

9 A Yes, sir.

10 Q Do you have a private investigation
11 service, also?

12 A No, sir. We work -- well, we're a
13 private investigating agency, but primarily I work as
14 casinoes and background investigation on employees.

15 Q All right. And you don't have any law
16 enforcement background?

17 A No, sir.

18 Q So basically, you're a person trained
19 for facts and so forth?

20 A Yes, sir.

21 Q All right. And this -- do you feel that
22 because of that background and because of the questions
23 I've asked you that you could sit here and be fair
24 and impartial?

25 A Yes, sir.

26 Q And with your training, you could sift
27 out the facts and try and arrive at a fair and just
28 verdict?

29 A Yes, sir.

30 Q You don't think that because you're
31 involved in this investigation with Griffin that that
32 would call you one way or the other towards law

1 enforcement or anything else?

2 A No, sir.

3 Q You'd be fair and impartial?

4 A Yes, sir.

5 MR. BUCHANAN: All right. Thank you.
6 I'll pass Mr. Stone for cause, your Honor.

7 MR. BLOXHAM: Pass Mr. Stone for cause,
8 your Honor.

9 THE COURT: Thank you, gentlemen.

10 At this time, the State may exercise
11 State's sixth peremptory challenge.

12 MR. BLOXHAM: State would waive that
13 peremptory challenge, your Honor.

14 THE COURT: Defendant may exercise the
15 defendant's sixth peremptory challenge.

16 MR. BUCHANAN: Just one moment.

17 Your Honor, we would thank and excuse
18 juror No. 4, Jo Ann Reid.

19 THE COURT: At this time, Mrs. Reid,
20 you may be excused. We thank you for your participation
21 in the jury selection process, your candor in answering
22 the questions. We'd ask you to report back to the
23 jury commissioner.

24 Miss Clerk, will you call one name
25 to fill the empty chair?

26 THE CLERK: Dean Wesley Ommen.

27 VOIR DIRE EXAMINATION OF DEAN WESLEY OMMEN
28 BY THE COURT:

29 Q Mr. Ommen, can you think of any reason why
30 you could not be a completely fair and impartial juror if
31 you are selected as one in this case?

32 A No, sir.

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1 THE COURT: Mr. Buchanan, pass
2 Mr. Ommen for cause?

3 MR. BUCHANAN: Yes, I do, your Honor.

4 THE COURT: Mr. Bloxham?

5 MR. BLOXHAM: Yes. We'd pass Mr. Ommen
6 for cause, your Honor.

7 THE COURT: Thank you. At this time,
8 the State may exercise the State's seventh peremptory
9 challenge.

10 MR. BLOXHAM: Yes, your Honor. We
11 would ask the Court to thank and excuse Mr. Ommen, and
12 thank him for his attendance today.

13 THE COURT: At this time, Mr. Ommen,
14 you may excused. We would thank you for your participation
15 in the jury selection process, your candor in answering
16 the questions. We'd ask you to report back to the
17 jury commissioner.

18 THE CLERK: Virginia K. Cionowicz.

19 VOIR DIRE EXAMINATION OF VIRGINIA K. CIONOWICZ
20 BY THE COURT:

21 Q Mrs. Cionowicz, do you know of any reason
22 why you could not be a completely fair and impartial
23 juror if you were selected as one in this case?

24 A No, sir.

25 THE COURT: Mr. Buchanan?

26 MR. BUCHANAN: Thank you, your Honor.

27 BY MR. BUCHANAN:

28 Q Mrs. Cionowicz, you've heard all the
29 questions?

30 A Yes, sir.

31 Q And you've heard -- at least I think I've
32 set forth what I'm trying to find in a juror.

1 Is there anything in this case
2 that bothers you, you think you'd be prejudiced one
3 way or the other?

4 A No, sir.

5 Q Fact it's a sexual case -- does that have
6 any more significance -- guilt or innocence -- based on
7 that than anything else?

8 A No.

9 Q All right. You know, I don't have too
10 many more questions I could ask. I've gone through the
11 gauntlet, I think, of what I'm trying to find in a juror.

12 And do you think you meet those
13 qualifications?

14 A I don't know.

15 Q All right. At least, you have some
16 hesitation. Then I'd go further. If you said yes, then
17 I would have had to stop.

18 All right. When you say you don't
19 know, that is, you're going to be called on to judge upon
20 the innocence or guilt of this young boy here, and it's
21 going to be up to you to decide, along with the other
22 jurors, if you are selected, his guilt or innocence.
23 And there's going to be a lot of testimony. Some of it
24 is not going to be pleasant, and some of it is going to
25 be in direct contradiction where you're going to have to
26 make a judgment between what one person had said and what
27 another person said happened.

28 And you feel that with your background
29 and experience and fact that you're a mother -- you have
30 I think two children, what -- thirty-eight and thirty-nine?

31 A The thirty-nine, he'll be forty next month.

32 Q All right. So you have two boys that are

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1 there. They've gone through life, and do you think now
2 you could sit in judgment upon this young boy here?

3 You've got to tell me one way or
4 the other. If you can't, then I'd like to know why not.

5 A I really don't know.

6 Q Well, as I say, I'm just trying to get
7 a fair and impartial jury. If you don't know, you think
8 then possibly you might get into this trial and hear
9 some things and some of the facts and circumstances of
10 this that would make you so you could not be fair and
11 impartial?

12 A Uh-huh. Yes, sir.

13 Q And so you don't know what's going to
14 happen and don't feel you could be fair and impartial
15 because of your background or whatever?

16 I'm just trying to maybe put words
17 in your mouth, but I'd like you to tell me and the Court
18 so we could either excuse you or keep you as a juror,
19 whatever.

20 A Well, to be honest with you, I don't
21 think I would be a very good jury because I'm very easy
22 to get upset, and I'm not supposed to get excited nor
23 upset.

24 Q Is that because of some health condition
25 you have?

26 A Yes.

27 Q And you feel if something, then, could
28 come here that might excite you or that might make you
29 mad or might do something, or because some heated
30 arguments between counsel or something, that that might
31 affect your health problem?

32 A Yes, sir.

1 MR. BUCHANAN: All right. Thank you.
2 I would ask, your Honor, that this
3 juror be excused, not so much for cause or impartiality
4 but just because of disability.
5 THE COURT: Would you stipulate to
6 excusing her, Mr. Bloxham?
7 MR. BLOXHAM: Yes, your Honor, I
8 believe so.
9 THE COURT: At this time, we would excuse
10 you, Mrs. Cionowicz. We thank you for your participation
11 here. We'd ask you to report back to the jury commissioner.
12 MS. CIONOWICZ: Thank you.
13 THE CLERK: Aafke Shannon.
14 VOIR DIRE EXAMINATION OF AAFKE SHANNON
15 BY THE COURT:
16 Q Mrs. Shannon, can you think of any reason
17 why you could not be a completely fair and impartial
18 juror if you were selected as one?
19 A No, I don't think so.
20 Q Did you -- how long ago did you serve on
21 a jury, ma'am?
22 A It's a long, long time ago. I don't even
23 remember what it was.
24 Q Was it here or --
25 A Yes, uh-huh.
26 THE COURT: Thank you.
27 You may examine, or do you pass
28 Mrs. Shannon for cause, Mr. Buchanan?
29 MR. BUCHANAN: If I might examine for
30 just a moment, your Honor.
31 BY MR. BUCHANAN:
32 Q All right, Mrs. Shannon. You have a child

1 eighteen. Is it a boy or girl?

2 A A girl.

3 Q All right. And that's almost the same
4 age the defendant here. Now, I might have examined the
5 women more in this case than I did the men because of
6 the fact that this is a sexual case.

7 A I noticed that.

8 Q And sometimes women might feel different
9 about sexual offenses than men do, and because this is
10 a sexual offense, do you feel that you'd be any more
11 prone to return a verdict of guilty?

12 A No. I really don't think one way or
13 another it would change things, because I also have
14 three sons.

15 Q All right. So you have three sons. How
16 old are they?

17 A Forty-five, thirty-four -- forty-two,
18 thirty-four and thirty-two.

19 Q All right. So then you have boys, and you
20 know how boys are and you know how -- you have eighteen
21 year old daughter?

22 A Right.

23 Q All right, but then knowing about the
24 sexual aspects of this case, would that have any bearing?

25 A No, I don't think so.

26 Q How about all the police officers that are
27 going to parade through. Do you think that will have any
28 bearing on your deliberations?

29 A No.

30 Q Do you think you could deliberate with ten
31 other men?

32 A I guess I can cope with it.

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1 Q If you're selected, then, you don't
2 know any reason at all. One of your sons were
3 sitting here --

4 A I beg your pardon?

5 Q One of your sons were sitting here --
6 and let's hope never is -- but if one of them was,
7 would you want a juror to sit in the same frame of
8 mind you are today to judge his guilt or innocence?

9 A I think so. I think I've learned a
10 little more about some of the boys and some of the
11 girls today.

12 MR. BUCHANAN: All right. Thank you.
13 We'd pass Miss Shannon, for cause,
14 your Honor.

15 MR. BLOXHAM: May I inquire briefly,
16 your Honor?

17 THE COURT: Yes.

18 BY MR. BLOXHAM:

19 Q Mrs. Shannon, now, Mr. Buchanan has made
20 a point of the person sitting next to him. You will
21 recognize, won't you, that although I'm sitting over
22 here alone with the empty chair, I'm really the State
23 of Nevada? You will keep that in mind as you deliberate,
24 won't you?

25 A Right.

26 Q And if the State proves the charges
27 beyond a reasonable doubt, you'd have no hesitation in
28 bringing back guilty verdicts as to all four counts;
29 is that correct?

30 A That's right.

31 MR. BLOXHAM: Thank you, your Honor.
32 I would pass Mrs. Shannon for cause.

1 THE COURT: Thank you. Defendant may
2 exercise defendant's seventh peremptory challenge.

3 MR. BUCHANAN: We'd waive our
4 seventh, your Honor.

5 THE COURT: The State may exercise
6 State's seventh peremptory challenge.

7 MR. BLOXHAM: State would waive
8 that peremptory challenge.

9 THE COURT: The defendant may exercise
10 defendant's eighth and final peremptory challenge.

11 MR. BUCHANAN: We'd waive our eighth
12 and final peremptory challenge and accept the jury
13 as constituted.

14 THE COURT: Thank you. Would the
15 ladies and gentlemen of the jury stand, raise you
16 right hands and be sworn?

17 (At this time, the members of
18 the jury were duly sworn by the clerk.)

19 THE COURT: Would counsel approach
20 the bench?

21 (At this time, counsel
22 approached the bench for a brief
23 discussion with the Court which
24 was not reported.)

25 THE COURT: Would you call the next
26 name as a possible alternate juror?

27 THE CLERK: Bernard L. Fishel.

28 THE COURT: Will you come up and take
29 the end chair on the top row, Mr. Fishel?

30 VOIR DIRE EXAMINATION OF BERNARD L. FISHEL
31 BY THE COURT:

32 Q You stated earlier you had a close family

1 relative or friend that had been a victim of a crime,
2 or was that you yourself?

3 A That was me, your Honor.

4 Q This was a robbery?

5 A No. I live in an apartment building.
6 They have a carport all around. I parked in back,
7 which I usually did. I was working part time.

8 There is a five-foot wall around
9 the entire thing. I came up the sidewalk, which is
10 about forty feet long then you make a left turn to the
11 back door.

12 I came halfway. Someone grabbed at
13 me, put an arm around my chest and said, "Don't turn
14 around. Give me your wallet or I'll shoot you."

15 Well, I jerked, which was --

16 MR. BUCHANAN: Your Honor, you know,
17 I don't particularly -- the story's interesting, but I
18 don't think we should go through the entire story. I
19 would -- I just would feel that that might not be --

20 THE COURT: This is true.

21 Q (By the Court) Then you were the victim
22 of a robbery; is that correct?

23 A Attempted robbery.

24 Q Attempted robbery. Do you feel that that
25 would cause you to be biased or prejudiced in this case?

26 A No. I -- I wouldn't say so.

27 Q Do you think that you could be completely'
28 fair and impartial both the State and the defendant?

29 A Yes, sir.

30 Q If a loved one of yours was on trial for
31 the crime of armed robbery, would you be satisfied in
32 having a person of your frame of mind seated on the jury?

1 A I would be impartial.
2 THE COURT: Okay. Do you pass
3 Mr. Fishel for cause, Mr. Buchanan?
4 MR. BUCHANAN: We'd pass him for
5 cause, your Honor.
6 THE COURT: Mr. Bloxham?
7 MR. BLOXHAM: Yes, your Honor.
8 THE COURT: State may exercise State's
9 first peremptory challenge, and only peremptory challenge,
10 against the alternate juror.
11 MR. BLOXHAM: We would waive that
12 peremptory challenge, your Honor.
13 THE COURT: Defendant may exercise
14 defendant's first and only peremptory challenge against
15 the alternate juror.
16 MR. BUCHANAN: Defendant would waive.
17 THE COURT: Would you stand at this time,
18 Mr. Fishel, and be sworn as the alternate juror?
19 MR. FISHEL: Yes.
20 (At this time, Bernard L. Fishel
21 was duly sworn as an alternate juror
22 by the clerk.)
23 THE COURT: Do you want two?
24 MR. BUCHANAN: We might as well have
25 two, your Honor. As I say, we can go through it
26 rather quickly.
27 THE COURT: Could we ask you to move
28 over one seat, Mr. Fishel?
29 Will you call a name for the next
30 alternate juror?
31 THE CLERK: Georgene Seager.
32

1 VOIR DIRE EXAMINATION OF GEORGENE SEAGER
2 BY THE COURT:

3 Q Mrs. Seager, you also earlier answered
4 the question that you had been a victim of a crime?

5 A Yes.

6 Q How long ago was this?

7 A About two years ago.

8 Q Was it a sex crime?

9 A No.

10 Q Was --

11 A It was robbery.

12 Q Were you a clerk in a store, or what?

13 A Well, she was injured quite badly. It
14 was in a parking lot of a casino.

15 Q This is a close friend of yours?

16 A My mother.

17 Q Your mother. Do you feel that you could
18 be fair and impartial in this case?

19 A I have a feeling I couldn't be.

20 Q So close to home. It's no reason, but
21 you feel that you'd rather not try. Is that right?

22 A Well, she had a lot of her teeth
23 knocked out, and just recently she's having to have
24 the remainder pulled, so this is sort of bringing back
25 two years.

26 THE COURT: Will counsel stipulate that
27 Mrs. Seager may be excused?

28 MR. BUCHANAN: Defense would so stipulate,
29 your Honor.

30 MR. BLOXHAM: State would so stipulate,
31 your Honor.

32 THE COURT: Thank you.

1 You may be excused at this time.
2 Thank you, Mrs. Seager.
3 THE CLERK: Marilyn Ann Plummer.
4 VOIR DIRE EXAMINATION OF MARILYN ANN PLUMMER
5 BY THE COURT:
6 Q Mrs. Plummer, can you think of any reason
7 why you could not be a completely fair and impartial
8 juror if you were called upon to replace on the jurors?
9 A No.
10 THE COURT: Mr. Buchanan, do you have
11 any questions?
12 MR. BUCHANAN: None, your Honor.
13 THE COURT: Pass her for cause?
14 MR. BUCHANAN: Pass her for cause.
15 THE COURT: Mr. Bloxham?
16 MR. BLOXHAM: Yes, your Honor. Pass
17 the prospective juror for -- or alternate juror for
18 cause.
19 THE COURT: Now, what we did is I
20 asked, allowed counsel their first peremptory challenge
21 before we decided there were going to be two, so if
22 counsel will stipulate, I will give you each one more
23 perempt.
24 MR. BUCHANAN: We would.
25 MR. BLOXHAM: State would so stipulate.
26 MR. BUCHANAN: We'd stipulate to that,
27 also, your Honor, and we'd waive.
28 THE COURT: State may exercise State's
29 first and only conditional perempt.
30 MR. BLOXHAM: We would waive that
31 peremptory challenge, your Honor.
32 THE COURT: The defendant may exercise

1 defendant's first and only additional perempt.

2 MR. BUCHANAN: We would waive it,
3 your Honor.

4 THE COURT: Thank you. Will the two
5 alternate jurors stand, please, raise your right hands
6 to be sworn as alternate jurors?

7 (At this time, the two
8 alternate jurors were duly
9 sworn by the clerk.)

10 THE COURT: 1:30 all right?

11 MR. BLOXHAM: Yes, your Honor.

12 MR. BUCHANAN: Your Honor, could it
13 be 1:45? I just have a few things at 1:30.

14 THE COURT: Okay. At this time, the
15 jury is selected, so when we recess, the remaining
16 members of the jury panel who are seated outside of the
17 rail may be excused. We would ask you to report back
18 to the jury commissioner.

19 The members that are the members of
20 the jury and the alternate jurors should return to this
21 courtroom at 1:45 p.m. this afternoon, and at that time,
22 the actual trial will commence.

23 During the time that we are in recess,
24 I would remind you, ladies and gentlemen, it is your duty
25 not to converse among yourselves or with anyone else on
26 any subject connected with this trial, or to read, watch
27 or listen to any report of or commentary on this trial
28 or any person connected with this trial by any medium
29 of information, including newspapers, television and
30 radio, and you are not to form or express an opinion on
31 any subject connected with this case until it is finally
32 submitted to you.

1 We'll be in recess until
2 1:45 p.m. this afternoon.

3 (The noon recess was
4 taken at this time.)

5 (The following proceedings were had
6 in open court, outside the presence of the jury.)

7 THE COURT: Is there something you wish
8 to put on the record in this case outside the presence
9 of the jury, Mr. Bloxham?

10 MR. BLOXHAM: Yes, your Honor. This
11 Court, I believe, on the 23rd of December, just last
12 week or so, ordered a blood typing to be done, or at
13 least that we could draw blood from the defendant to
14 be analyzed. That has not been done.

15 The rape kit involved in this
16 particular matter, the material taken from the victim
17 December 18, 1980 is being analyzed by the crime lab.
18 Richard Renner is doing that. I've talked to him, and
19 he indicates in the hair that was taken from the victim's
20 pelvic area, that they've uncovered one small blond type
21 hair that may or may not be linked to someone else, maybe
22 the victim's just kind of an abnormal hair. It may not
23 be. He did indicate it looked like it had been cut at
24 one time in the past, indicated it may not be a mustache
25 hair, did not appear to be a pubic hair.

26 Based on that, we'd ask the Court's
27 permission to have Richard Renner step down here and
28 take a sample of the defendant's hair -- I noticed he has
29 a small mustache -- for the purpose of analyzing that
30 with the particular hair found in the rape kit just to
31 see if there is a link-up. That would be our request,
32 your Honor. I think it would be helpful for the

1 determination of guilt or innocence in this case.

2 We'd make that request at this time.

3 MR. BUCHANAN: Your Honor, in light of
4 that, the only thing that I would ask -- and we'd have no
5 objection to it. Of course, we feel, No. 1, that this is
6 relatively late to do this, but we'd have no objection to
7 Mr. Renner coming down and taking a clip of that, but I
8 would like to have a report as soon as that is accomplished
9 one way or the other, condemning or -- acquitting the
10 defendant of any reason of that kind. That's all.

11 I mean, if he wants to take it,
12 we have no objection. Only thing we want is as soon
13 as that report is available, we would like to have a
14 copy of it prior to his testimony so we have some time
15 to look at it.

16 THE COURT: That sounds reasonable to me.
17 You can ask Mr. Renner to come down, and I want the
18 report forthwith.

19 MR. BLOXHAM: Okay. I think if
20 Detective Leonard would ask him to come down, I believe
21 he's standing by to come down, willing to come down and
22 take it. It wouldn't take any time at all.

23 One other matter, your Honor, out of
24 the presence of the jury, inasmuch as the defendant does
25 have a number of people apparently here on his behalf, if
26 the Court wouldn't mind cautioning them to not talk in
27 front of the jury. I know that the conditions are that
28 the jury is sitting right out in the hall, and I don't
29 know whether the Court admonished them or not, but we would
30 make that request -- the Court would caution any remarks
31 they would make, if there is a jury around, to not talk
32 about the case, and also that the jury might be also

1 instructed.

2 Additionally, I don't know whether
3 defendant intends to move to exclude witnesses, but we
4 would be, if he didn't, and many of these people that
5 are here I think are potential witnesses. They're family
6 members that we may or may not be calling in rebuttal
7 in this case.

8 MR. BUCHANAN: Well, they're not
9 subpoenaed. As far as I'm concerned, we've subpoenaed
10 other witness. They're all under subpoena. None of
11 these people are witnesses.

12 I have no objection to the Court
13 admonishing them not to discuss this case in the presence
14 of the jury, but they're here with -- they're the mother
15 and the sister and so forth of the defendant, and I think
16 they have a right to be in trial to hear the accusations
17 against their son, and as far as I'm concerned, not going
18 to be witnesses.

19 MR. BLOXHAM: Your Honor, we've
20 discovered certain evidence of a Linda White, Jessie White,
21 Shirley White, some other people with last name White that
22 we are trying to ascertain whether or not they would be
23 material witnesses. If any of the parties are named
24 White, we'd ask to know that, because we may have a motion
25 to exclude them.

26 DETECTIVE LEONARD: Mr. Renner is on his
27 way, sir.

28 MR. BUCHANAN: None of them.

29 THE COURT: If any of you that are
30 spectators here -- you should not discuss the case in front
31 of anyone who is a juror in the case or an alternate juror.
32 You shouldn't have any discussions with them at all. Our

1 facilities outside are crowded, and I would admonish
2 you not to do that.

3 MR. BUCHANAN: Your Honor, one other
4 thing, then, while we're still outside of the presence
5 of the jury, and the Court's just been told they have
6 this rape kit that they were analyzing. We would also
7 like to have a report of that as soon as possible. I
8 think we're entitled to it, and we were told this morning
9 it was going to be accomplished, and we decided -- we
10 said in chambers that we would go ahead, even though
11 it's being accomplished today. So we would like to have
12 a report of that, of any --

13 THE COURT: That's the same order. All
14 of the evidence will be furnished forthwith, immediately
15 on discovery, to the defendant.

16 MR. BLOXHAM: Yes, your Honor. We'll
17 certainly do that.

18 THE BAILIFF: Mr. Renner is here.

19 MR. BLOXHAM: Mr. Renner is present.

20 THE COURT: All right.

21 (At this time,
22 Richard Renner removed a
23 hair sample from the defendant.)

24 MR. BLOXHAM: Thank you, Mr. Renner for
25 coming down.

26 THE COURT: Would counsel waive the
27 reading of the witnesses when the Information is read?

28 MR. BUCHANAN: Yes, we would. We --
29 on the defense, we would waive the reading of the
30 Information, of the witnesses attached thereto at the
31 time of the reading of the Information to the jury.

32 MR. BLOXHAM: State would also waive those.

1 THE COURT: Thank you. Want to bring
2 in the jury?

3 (At this time, the jury
4 and alternate jurors entered
5 the courtroom.)

6 THE COURT: Miss Clerk, at this time will
7 you call the roll of the jurors and the alternate jurors?

8 (At this time, the clerk
9 called the roll of the jury and
10 alternate jurors, and all members
11 indicated their presence.)

12 THE COURT: Ladies and gentlemen, you are
13 informed that you may, if you wish, take notes during the
14 trial. However, do not rely on your respective notes if
15 there's conflict between them, because the reporter's
16 notes contain the complete authentic record of the case.

17 Now, did someone invoke the
18 exclusionary rule?

19 MR. BUCHANAN: I believe the State is
20 invoking the exclusionary rule, your Honor.

21 None of the people --

22 THE COURT: Mr. Bloxham, do you?

23 MR. BLOXHAM: Yes, your Honor.

24 THE COURT: If there is anyone present
25 who expects to be called as a witness in this case please
26 leave the room, remain available in the hallway, do not
27 discuss your testimony or the testimony of any other
28 witness with anyone except the parties to this suit and
29 their attorneys.

30 At this time, I'll ask the clerk to
31 read aloud the Infomation and state the pleas that were
32 made to each count thereof by the defendant or for and

1 on his behalf.

2 (At this time, the clerk
3 read aloud the Information and
4 stated the pleas made to each count
5 thereof by the defendant or for and
6 on his behalf.)

7 THE COURT: You may make the State's
8 opening statement at this time, Mr. Bloxham.

9 MR. BLOXHAM: Thank you, your Honor.

10 Ladies and gentlemen of the jury,
11 you have been involved in jury selection. You've all
12 been seated as jurors or alternate jurors in this particular
13 case, and the trial will proceed as follows:

14 The State is given an opportunity at
15 this time to make what's called an opening statement to
16 you. The defense is then given that opportunity, and then
17 the trial will proceed.

18 The evidence portion of the trial will
19 take place at that point. The evidence portion of the trial
20 will consist of the testimony that you will hear from the
21 witnesses from this witness stand and exhibits and
22 photographs that may or may not be admitted into evidence
23 that you will review and you will take back with you to
24 the jury room and use in your deliberations in reaching a
25 decision in this matter.

26 After the evidence portion of the trial,
27 the judge will instruct you -- generally this is the way it
28 proceeds. The judge will instruct you as to the law to be
29 applied, and then the State will be given an opportunity
30 to make a closing argument. The defense is given an
31 opportunity to do that, and then the State is given an
32 opportunity to respond to what they say.

1 The case is then submitted to you,
2 and you can deliberate and reach a decision on the case.

3 The reason that we're given an
4 opportunity now to make an opening statement is because
5 the evidence you hear during the evidence portion of the
6 trial will necessarily come in bits and pieces, generally.
7 Usually you don't have one big continuous story. Certain
8 witnesses can only testify generally to one or two little
9 pieces of evidence. They testify. You're supposed to
10 pick their testimony up and plug it into the great big
11 picture, figure out where it goes, and plug it in, see if
12 it's credible, see what it establishes for you when you
13 make your decision.

14 By giving an opportunity to make an
15 opening statement, we can pretty much tell you the big
16 picture, tell you the story that we intend to prove, and
17 then when the evidence comes out of the mouths of the
18 witnesses or through the exhibits, you can see how it
19 relates to the situation.

20 The State intends to prove the
21 following, and the evidence will show beyond a reasonable
22 doubt that the following occurred. Tina Cage was working
23 for the Stop and Go Market. She started working there
24 about about September of 1980.

25 Now, in December, she just got shifted
26 down to this one market. I think it's 732 North Eastern,
27 down off of Eastern and Bonanza, a Stop and Go Market.
28 She's put down there as the clerk. Her hours on the 17th
29 of December and the 18th of December, which is a Wednesday
30 night, Thursday morning, 1980 -- her hours were 11:00 p.m.
31 at night to 7:00 a.m.

32 She's the clerk. She handles the

1 register. She rings up the sales. She deposits money
2 in the safe. She's there alone.

3 And she goes to work that Wednesday
4 night, as usual, 11:00 o'clock. I believe her husband
5 takes her. Her husband's name is Scott. They've been
6 married a couple of years. He drops her off at work.

7 She went in, replaced the other
8 clerk. The other clerk goes on her way.

9 Now, between the hours of 11:00 p.m.
10 and approximately 12:00 p.m., Tina Cage is there, waits
11 on a few customers. She makes, I believe, three drops
12 into the safe. They have a policy you don't keep more
13 that 50 bucks in the register at any time. The clerk
14 doesn't have a key to the safe. The evidence will show
15 that she made approximately three drops into the safe
16 of various amounts of money, keep a register down.

17 She ordered a sandwich, and she's
18 eating the sandwich there. By the way, this is
19 December 18th, and it's cool, in the evening. She
20 wears her coat. She wears her coat to work, takes her
21 purse, puts her purse on the shelf and puts her coat
22 down. She's working there.

23 About midnight, the defendant
24 comes in, walks in. He buys some Zig-Zag papers, talks
25 to her briefly, leaves. Few minutes later, he enters
26 the store again. She thinks nothing of it. He goes back
27 to the beer cooler and picks out two Michelob beer bottles,
28 comes up, starts up to the counter, and just then, another
29 guy comes in -- a younger guy.

30 We need to distinguish between these
31 two people, as one of them is big, bigger. That's the
32 defendant. The other guy's shorter, about five-six,

1 I believe. He's a little younger, too. So we need to
2 distinguish between one and two.

3 Okay. The second guy comes in, and
4 he goes over to the soda fountain. They have a little
5 soda fountain for making your own sodas there, and he
6 starts making his own soda.

7 Anyway, the defendant Burkett is
8 walking up to the counter. She turns to ring up the beer.
9 She hits the key. The cash register opens automatically,
10 or all of the sudden, the second guy that came in grabbed
11 her, had a knife on her and started dragging her away
12 from the register.

13 He said, "Where's the back door?"
14 He's going to force her out the back door, and she says
15 there's no back door. He forced her out the front door.

16 Then he forced her over to the side
17 of the building where there's a '72 Ford Maverick that's
18 running. As she's being forced out the door, the other
19 guy, which is the defendant Burkett, is in the store a
20 little longer. Then he follows out, too, and they get in
21 the car.

22 She's forced in the car at knifepoint
23 by defendant No. 2 -- call him defendant No. 2. Defendant
24 No. 1 which is Burkett, is driving. He's the driver of
25 this Ford Maverick.

26 They go through the alley behind
27 732 North Eastern, and they get back on Bonanza Road.
28 They drove up Bonanza Road. They stopped and bought gas at a
29 self-serve type situation. Defendant Burkett's the one
30 that got out, put the gas in, goes in, pays for it.

31 Continues on the road. Stopped one
32 more time and bought I think it's Marlboro 100 cigarettes.

1 Okay. She's a smoker. She's smoking
2 these Marlboro 100s.

3 They continue. They leave and they go
4 out of town. They go out Lake Mead Boulevard, up over
5 Sunrise Mountain, if you're familiar with the area --
6 and this is about between 12:00 midnight and 1:00 a.m.

7 All along, she's being held with a
8 knife in her stomach and an arm around her neck or around
9 her, around her somehow, around her neck. Now, they get
10 up on Sunrise Mountain. They take a left into the desert
11 and drive off in the desert a ways where the two of the
12 sexual -- well, lets just say one of the sexual assaults
13 with defendant occurs.

14 After they stop the car, they took
15 her clothes off of her forcefully -- she did not consent
16 to it -- and the defendant No. 2, the younger guy, the
17 shorter man forced her out of the car, bending her in the
18 car over the passenger seat, over the front seat.

19 It's a long seat, bench seat, with
20 a break in the middle, and he forces anal intercourse
21 on her at that point. After he's -- he attempts this,
22 he's not very successful, so then he has sexual intercourse
23 with her vagina, against her will. This is defendant No. 2.

24 Defendant No. 1 then took her around
25 the back of the car and trys to kiss her and do things
26 like this with her. She's cold. She's shivering. And
27 then he forces her into the car and forces sexual
28 intercourse on her, against her will.

29 After this was completed, she wants to
30 leave. "Let me go. Let me go. You guys can get away.
31 Take me a couple hours to get back to town," so on,
32 pleading.

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1 But they won't let her go. They drive
2 back to the road. They went out further on Lake Mead
3 Boulevard. In other words, when they came back to the
4 road, instead of going back to Vegas, they went out
5 further.

6 And after a ways, they found another
7 dirt road. They went off into the desert again.

8 At this point, the defendant Burkett
9 forced anal intercourse on Tina Cage. At that point the
10 second defendant forced fellatio on Tina Cage, forced her
11 to have oral intercourse with him, or oral sex with him.

12 After this is concluded, when she's
13 allowed to dress, she's not given her underclothing, her
14 bra or panties. She's just given her blouse and her pants
15 that she's wearing.

16 And at this point, they are discussing
17 what to do with her, whether or not to kill her or whether
18 or not to let her go. And as this point, they do make a
19 half-hearted attempt to kill her, and you'll hear the
20 testimony from her concerning that.

21 A good -- good fortune or whatever,
22 she manages to escape with her life. They get soft or
23 whatever the case might be.

24 MR. BUCHANAN: To which I am going to
25 object, your Honor. This is only supposed to be evidence,
26 not feelings of the District Attorney or whatever --
27 only facts.

28 MR. BLOXHAM: Your Honor, I believe it's
29 couched in terms of what the evidence will show. I believe
30 it's proper opening statement.

31 MR. BUCHANAN: I don't think it is proper
32 opening statement. All he's supposed to show, trying to

1 show -- paint a picture to the jury, not come through
2 with sentiment or what's going to happen or what he
3 feels the case should be or what he should prove, only
4 what the evidence will show. It's just a picture of
5 what's going to happen, not his impressions or trying
6 to influence the jury at this point. They still
7 haven't heard the evidence.

8 THE COURT: The objection is overruled.

9 MR. BLOXHAM: Thank you, your Honor.

10 Continuing along, they drive back
11 to town. The evidence will show beyond a reasonable
12 doubt that they drive back to town, that once they
13 arrive in town, they drop Tina Cage off. It's now
14 approximately 3:00 a.m.

15 She immediately goes into a bar
16 where she's let off where there's a North Las Vegas
17 police officer, Metro is summoned, and she's then
18 immediately taken up, taken up to the detective
19 bureau where she's interviewed by Detective Leonard and
20 one of the other detectives, I believe.

21 The evidence will show that she
22 gives a statement at that time. She gives a very
23 detailed statement at that time, and I'll get to that
24 in just a second.

25 Continuing along, Detective Leonard
26 will testify that he took her over to Southern Nevada
27 Memorial Hospital where she's examined by the physician,
28 and she's then taken home or whatever.

29 The next day, she returns to the
30 Stop and Go, recovers her coat and purse, and in that
31 afternoon attends a physical lineup.

32 Now, a physical lineup is where they

1 have a number of people on a stand -- or show up, whatever
2 you want to call it -- and a witness looks at these people
3 and attempts to determine if they recognize any of them.
4 The evidence will show that that afternoon, which is now
5 the 19th of December, Tina Cage attended this lineup --
6 actually two lineups, because they had two suspects in
7 custody.

8 The first lineup involved a suspect,
9 younger suspect. She viewed the lineup, did not recognize
10 anyone. When she's asked, "Well, does anyone resemble
11 either of the persons involved in this," she says, "Yes.
12 No. 2 resembles him, but I don't think it's him."

13 MR. BUCHANAN: Your Honor, I don't think
14 they're going to prove this. This is immaterial. I'd
15 object to this during the trial of this, and I don't think
16 it's proper, again, opening statement. This is completely
17 immaterial to what the charge we are here for, talking
18 about someone else.

19 THE COURT: The objection is overruled.

20 MR. BLOXHAM: Thank you, your Honor.

21 Continuing along, the evidence will
22 show that there is a second lineup, and the defendant
23 Burkett is in the second lineup. She selects him. "No
24 doubt about it. That's the man."

25 Now, it's interesting to note --
26 let's back up a ways. Remember the statement that the
27 evidence will show this man approached the counter with
28 two Michelob bottles. We have an ID man named Mumpower
29 who will testify that he went to that store on the 18th
30 of December, morning hours. He's summoned, he's a lab
31 man. His training is in lifting latent fingerprints.

32 He examined those two Michelob bottles,

1 and he recovered a latent fingerprint. That latent
2 fingerprint belongs to that man. The evidence will show
3 that that man was -- his fingerprints were taken on the
4 19th of December. They were compared to the fingerprints
5 taken off the Michelob bottles, and they match. His
6 fingerprints were on the Michelob bottle according to
7 that particular evidence.

8 Okay. Additionally, I mentioned that
9 I'd get back to the description by Tina Cage. She will
10 testify -- and Detective Leonard will verify this -- that
11 right after this occurred on December 18th, the early
12 morning hours, she gives a very detailed description of
13 the two people involved in the incident, and also the car.

14 The description will be something --
15 or will be this. We feel like the evidence will show
16 that the No. 1 suspect, the older man, the taller man, was
17 six foot two -- or pardon me -- six foot 0 to six foot two,
18 about a hundred eight-five, beard. He had a spider web
19 tattoo on his right arm, had a tattoo of a marijuana leaf
20 on his right arm, and he had some kind of a forearm tattoo
21 on his left arm.

22 She'll describe him as wearing a
23 T-shirt with a round circle on it. She'll describe him
24 as wearing a vest of some sort and possessing a key ring
25 with the initials J.W. on it, orange in color. Also
26 describe him as smoking Camel cigarettes.

27 This is the description given right
28 after the events.

29 Okay. Second suspect she describes as
30 nineteen, twenty years old, five-six, hundred forty pounds,
31 wearing a Harley Davidson belt buckle on his belt, smoking
32 regular Camels, with a yellow Cricket lighter, and a heavy

1 jacket, wearing a heavy jacket.

2 She describes the car involved as
3 a '74, '75 Ford Maverick, medium blue in color, that
4 there was a quilt in the back seat. There was a plastic --
5 or pardon me -- a plastic console cover between, in the
6 area on the transmission hump, and whenever they had to
7 start the car, they had to get a battery out of the back
8 seat there to start the car up.

9 When she was left out of that car,
10 she left the Marlboro 100s. She -- and she didn't have
11 her bra or panties on. She described her panties in
12 detail for Detective Leonard.

13 Detective Leonard, armed with this
14 information, put out an attempt to locate. He will testify
15 to that -- attempt to locate this particular car, these
16 particular defendants.

17 The next day, which is December 19th --
18 the next day, December 19, Officer Smith's down in
19 North Las Vegas, who will testify for you, saw these
20 individuals on Las Vegas Boulevard North in a store.
21 He stopped him, inquired. He called another detective,
22 a Detective Singer, a detective -- or pardon me --
23 Officer Singer, who will come.

24 These men will testify when they
25 stopped these two individuals, that man right there had
26 a big spider web tattoo on his elbow, man right there had
27 a marijuana leaf tattoo on his arm, man right there had a
28 big tattoo on his forearm of his left arm. The man right
29 there had a key ring, J.W. on the key ring.

30 He'll testify that the second
31 individual had a Harley Davidson belt buckle and a heavy
32 jacket. They were driving a '72 Ford Maverick, green in

1 color, very dirty, dusty.

2 And he'll testify about the incident
3 that occurred. Detective Leonard will testify that after
4 this car was impounded, Detective Leonard also saw these
5 two individuals before they were booked. Detective Leonard
6 will testify that after the car's impounded, he got a
7 search warrant to search the car. What did he find in
8 the car? He'll testify that he found package of Camel
9 regular cigarettes, empty, He'll testify that he found
10 Marlboro 100s, empty. He'll testify that he found a
11 plastic console cover. He'll testify that he found a
12 quilt-like plastic covering in the back seat. He'll
13 testify he found some panties under the front seat.

14 Now, ladies and gentlemen, one last
15 bit of evidence that we'll be offering to you is at that
16 lineup, the second lineup, when the victim observed
17 defendant Burkett in a lineup, she exited the room,
18 which is the normal procedure, a representative of the
19 Public Defender's Office and the detective conducting
20 the lineup, which is Detective Leonard.

21 She identified Burkett. They went
22 back into the room. The Public Defender representative
23 communicated with defendant Burkett, and he immediately
24 said, "Did she identify my partner, too?"

25 Now, ladies and gentlemen, after you
26 hear the evidence from this witness stand and have exhibits
27 that we intend to offer and have admitted into evidence,
28 we will ask you to return a verdict of guilty as to all
29 four counts. Thank you very much for your attention.

30 THE COURT: Mr. Buchanan, you may make
31 an opening statement or reserve and make it at the
32 conclusion of the State's opening case.

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1 MR. BUCHANAN: Well, your Honor, I had
2 intended to make it at the close of the case, but because
3 of the length of this statement and what was said by the
4 prosecution, I think it's almost incumbent upon making
5 an opening statement now, so if I may, with the pleasure
6 of the Court.

7 Ladies and gentlemen:

8 As I know, some of you have been on
9 a jury before. It's really argument of counsel and so
10 forth, usually reserved to the end, but because of the
11 arguments -- or at least I felt argument -- of the counsel
12 at the beginning, I intend to make an opening statement.

13 When we come into a case like this,
14 of course, defense has a defense, and it's their burden
15 to go forward and exonerate the defendant. But what I
16 want to draw here and what we're going to try and show --
17 and I want to direct your attention to certain evidence
18 and testimony of what will come down during this case
19 so you can see exactly what to look for.

20 Now, number one, the defendant is
21 charged with crimes that you've heard -- first degree
22 kidnapping with use of a deadly weapon, robbery and use
23 of a deadly weapon in commission of a crime. We will show
24 this testimony of Tina Cage, who of course if the primary
25 victim -- and really what this whole case is going to come
26 down to will be the testimony of Tina Cage versus the
27 testimony of Joel Burkett sitting here. Everything else
28 is going to be window dressing.

29 When they parade these officers in,
30 there will be certain evidence and certain pieces of
31 evidence that they will bring in, and testimony, but it's
32 all going to be immaterial to the main charge. What your

1 decision is going to be is a determination of whether
2 Tina Cage is telling the truth and, or if she's lying,
3 what is her reason for lying and --

4 MR. BLOXHAM: Your Honor, Counsel --
5 may I interrupt? Counsel was very critical of me making
6 an argument, your Honor, stating what I intended to prove.
7 I think Counsel is turning that right around and arguing
8 to the jury.

9 MR. BUCHANAN: I think, your Honor, one
10 bite of the apple, two bites. That's what he did, and
11 that's the reason I'm making this opening statement. I'll
12 get on to what I intend to show.

13 THE COURT: Limit the statements to what
14 you intend to prove.

15 MR. BUCHANAN: All right. Thank you.
16 Now, what we're -- what I'm asking
17 you to look for during the evidence and the testimony of
18 Tina Cage, because that again will be the State's main
19 and predominant witness -- as I said, she's here charging
20 the defendant with first degree kidnapping and use of a
21 deadly weapon in commission of a crime. I want to direct
22 your attention -- we will show through Tina Cage either
23 on direct examination or in cross that, number one,
24 Joel Burkett -- this is, if you believe the State's case
25 completely -- Joel Burkett, number one, never had a knife,
26 never had a knife at Seven Eleven, never had a knife any
27 time during this whole event until sometime after all these
28 charges were over, only then. And I'm still going from
29 what the witnesses said, prior testimony -- will then
30 show that Joel Burkett had a knife.

31 Joel Burkett will come on and
32 completely deny those events. But I want you to pay

1 particular attention during the Tina Cage's testimony as
2 to whether or not the defendant, Joel Burkett, ever had
3 a knife.

4 And we will show through that testimony
5 that number one, the crime of robbery and the crime of
6 kidnapping, taking the evidence in the best light of the
7 State, did not happen.

8 We'd also direct your attention to
9 Tina Cage's testimony as to the robbery. And Tina Cage
10 cannot testify to any robbery. She cannot testify to
11 what happened to the money. She has no knowledge of that.
12 And of course you have to find these charges beyond a
13 reasonable doubt.

14 We will show through that person and
15 also other professional testimony, if they bring it
16 forward, that Tina Cage was not hurt, that there was
17 testimony -- that she will testify to certain fights and
18 certain allegations and assaults upon her, but yet she
19 has no bruises, no scars, nothing.

20 We will then present our case in
21 chief after their testimony, and we intend to show a
22 complete exoneration of the defendant from any involvement
23 in any of the crimes with which he's charged. We'd ask
24 your convenience again to wait until the entire deliberation
25 of this case and the entire submission of all the evidence
26 before arriving at any type of a verdict, because, as read
27 by this Information, certain counts -- anal intercourse,
28 sexual intercourse, kidnapping and so forth -- very, very
29 serious offenses. So we're just asking you for your
30 toleration and indulgence until the entire case is submitted,
31 because we do have evidence and witnesses that we intend
32 to bring forward that will change this entire story around.

1 And at this point, we won't bring
2 these, because our case will go relatively quickly after
3 they've presented their case. Thank you.

4 THE COURT: Thank you, Mr. Buchanan.

5 At this time, you may call the State's
6 first witness.

7 MR. BLOXHAM: State would call Tina Cage.

8 TINA CAGE

9 having been first duly sworn to tell the truth, the whole
10 truth and nothing but the truth, testified and said
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. BLOXHAM:

14 Q Ma'am, would you state your full name and
15 spell your last name for the record, please?

16 A Tina Marie Cage, C-a-g-e.

17 Q And it's Mrs. Cage; isn't that correct?

18 A Yes.

19 Q And Mrs. Cage, how long have you
20 been married?

21 A Approximately two and a half years.

22 Q What is your husband's name?

23 A Scott.

24 Q How old are you, Mrs. Cage?

25 A Twenty-one.

26 Q How long have you lived in Las Vegas?

27 A Four and a half, five years.

28 Q Now, I want to direct your attention to
29 December 17, 1980, a Wednesday, and December 18, 1980, a
30 Thursday.

31 Were you employed at that time?

32 A Yes.

1 Q And for whom were you employed?
2 A Stop and Go Markets.
3 Q Now, is that -- what store were you
4 working at on that particular day, if you were working?
5 A It was Store No. 759. It's located --
6 Q Do you know the address?
7 A Yes -- 732 North Eastern.
8 Q Is that located in Clark County, Nevada?
9 A Yes.
10 Q How long had you been working for
11 Stop and Go as of December 17, 1980?
12 A About three, four months.
13 Q When did you start, if you recall?
14 A Oh, at that store?
15 Q Well, any -- just working for Stop and Go.
16 A I started working for them September 6, 1980.
17 Q Okay. Now, did you work at different stores?
18 A Yes, a couple.
19 Q Now, on December 17, 1980, what shift did
20 you work?
21 A 11:00 p.m. to 7:00 a.m.
22 Q Okay. Was that December 17, 11:00 p.m.
23 to December 18, 7:00 a.m.?
24 A Yes.
25 Q Did you go over to that store that night
26 at 11:00 o'clock to start your shift?
27 A On the 17th, yes.
28 Q And how did you get over there?
29 A My husband dropped me off.
30 Q What did you do upon arriving at work?
31 A I just went in and relieved the other girl,
32 asked her, you know, it was busy -- you know, if it was slow.

1 And she said, well, it was an average night, nothing special.

2 So I relieved her, and I just waited on
3 the customers.

4 Q Okay. Now, what were your duties at
5 Stop and Go?

6 A Well, you wait on the customers, ring up
7 the purchases and take in their money and help them find
8 something if they need it, keep the store clean.

9 Q Were you alone at the time as far as
10 employees in the store?

11 A Yes.

12 Q Okay. Did you have money in your cash
13 register at that time?

14 A Yes..

15 Q Lawful money of the United States, right?

16 A Yes.

17 Q When you arrived at work, were you wearing
18 a coat?

19 A Yes, uh-huh.

20 Q And did you wear the coat throughout
21 your shift, or what did you do?

22 A No. When I came in, I took it off, set it
23 by the counter.

24 Q Did you have a purse?

25 A Yes.

26 Q And what if anything did you do with
27 your purse?

28 A Well, when I took my coat off, sat it
29 down. I put my purse underneath the counter. I put it
30 back a little farther.

31 Q Now, were you eating anything between
32 11:00 p.m. and 12:00 that night?

1 A Yes. I usually got up around 9:00, so
2 I didn't get a chance to eat dinner, so that night, I
3 ordered a sandwich from the sandwich shop right at 11:00,
4 and he brought it over about 11:30, 'cause they were
5 closing, so he said he'd bring me a sandwich over. I
6 was eating.

7 Q Did you pay for that sandwich?

8 A Yes.

9 Q And between this time period were you
10 eating on that sandwich?

11 A Yes.

12 Q Did you complete the sandwich, or not?

13 A No, I don't think so.

14 Q Now, during the period 11:00 p.m. to
15 12:00 p.m. or 12:00 midnight, did you make any drop into
16 the safe, money into the safe?

17 A Yes.

18 Q And why would you do that?

19 A Well, it's company policy you can't keep
20 a lot of money at night in the register.

21 Q Okay, so you made a couple of drops, or
22 one, or how many?

23 A I don't remember exactly -- two, three.
24 I don't know for sure.

25 Q Now, do you have a key to that safe?

26 A No.

27 Q So you made a couple of drops. And how is
28 a drop made? Is it just money stuffed in, or how does
29 it work?

30 A No. You take the money out, and you put
31 it in a numbered envelope, and you close the envelope and
32 put it down a chute that goes down to the bottom of the

1 safe, then you record the amount of the drop on a
2 balance sheet.

3 Q So you do record the amount on a sheet
4 that's kept; is that correct?

5 A Yes.

6 Q That's kept in the store?

7 A Right.

8 Q Now, did anything unusual occur around
9 midnight?

10 A Yes, it did.

11 Q Can you tell us what happened, please?

12 A Okay. Well, last time I remember looking
13 at the clock, it was around ten to 12:00, so I'd say
14 it was right around 12:00 o'clock.

15 A fellow came in and bought a
16 package of rolling papers, and I didn't think anything
17 of it, and so --

18 Q Do you know what kind of rolling paper
19 that was?

20 A Yes. They were Zig-Zags.

21 Q Okay, and what next?

22 A Okay. So he just left. I didn't think
23 anything of it.

24 And then maybe about ten, fifteen
25 minutes later, he came back in again, and he walked to
26 the back of the store, to the cooler. At about time he
27 got to the cooler, another fellow came in, and the first
28 one who came in brought two Michelobs up to the counter.

29 And I started to ring them up, and
30 just as I'd finished ringing them up, the next thing I
31 knew, I had a knife at my throat, and somebody was trying
32 to drag me out to the back room.

1 Q Okay. Did you see who had the knife?
2 A At that time, no, uh-uh.
3 Q Okay. Was it the first fellow who came
4 in and got the Michelobs?
5 A No.
6 MR. BUCHANAN: I'm going to object to
7 this until we have a foundation, who we're talking about.
8 Might as well get it straight right now.
9 Q Do you see either of the individuals who
10 came in that store that night in the courtroom today?
11 A Yes.
12 Q Could you identify where he's seated,
13 what he's wearing, please?
14 A Sitting right in front of me with a blue
15 shirt, brown corduroy jacket on.
16 MR. BLOXHAM: Okay. May the record
17 reflect identification of the defendant Burkett, your
18 Honor -- Joel Burkett?
19 THE COURT: Yes.
20 Q Now, you've identified defendant Burkett.
21 Was he the first one that came in, or the second one
22 that came in?
23 A First.
24 Q And is he the one that went back to the
25 beer cooler and brought the two Michelobs up?
26 A Yes.
27 Q Now, you've testified that someone had a
28 hold of you, and a knife?
29 A Uh-huh.
30 Q Where were they holding you, and where was
31 the knife?
32 A They had me up around my shoulders and my

1 neck -- well, one arm around my shoulders and the other
2 hand with the knife was right here around my neck and
3 chest, up here.

4 Q Okay. And what happened as they had, this
5 person had this arm around you and the knife? What
6 happened next?

7 A Well, he just brought it up really fast
8 and said, "Come on. We're going out the back door," and
9 trying to drag me in the back room.

10 And I said, "There's no back door."
11 So he says, "Okay. We're going out the front."

12 And he took me out the front of the
13 store.

14 Q Okay. And where did he take you after
15 going out the front of the store?

16 A We went out the front of the store, and
17 we went around the side of the building, and we had headed
18 down the parking lot, and I saw a car running there with
19 the doors open, and he says I had to get in the car.

20 Q Okay. You were forced in the car at
21 that time?

22 A Yes.

23 MR. BUCHANAN: I object to leading,
24 your Honor. At this point now it's pretty preliminary,
25 and I would ask that Counsel be admonished not to lead
26 this witness, because now he's testifying as to the
27 facts that she hasn't testified to, and we're objecting
28 to it.

29 THE COURT: The objection is sustained.

30 MR. BLOXHAM: Okay.

31 Q What happened as you were approaching
32 the car?

1 A We were going toward the car, and still
2 had the knife up by my throat, and I didn't say anything.
3 I didn't know what to say. And I could hear somebody
4 coming up behind us.

5 Q Okay. Now, did you enter the car, or did
6 you not?

7 A I eventually ended up there. I didn't go
8 of my own will.

9 Q Now, the person -- did you see the person
10 with the knife?

11 A Yes, uh-huh.

12 Q Where did he get in the car?

13 A Yes.

14 Q Where did he get in?

15 A He was right behind me. As I got in, he
16 was -- still had his arm around me, and we both kind of
17 like got in. I don't know how to say. I got in, and he
18 was there right behind me.

19 Q Okay. Now, was he seated in the passenger's
20 side, driver's side, the back seat, or where?

21 A He was on the passenger side.

22 Q Did anyone else enter the car at
23 that point?

24 A Yes.

25 Q Who was that?

26 A The defendant sitting in front of me.

27 Q Okay. Where did he enter the car at?

28 A On the driver's side.

29 Q Did you enter the car voluntarily?

30 A No, no way.

31 Q What happened next?

32 A They took off down the road next to the

1 store -- I'm not sure of the name of the street -- and
2 they cut through some apartments behind the store and
3 back up to Eastern Avenue, and we turned onto Eastern
4 heading south to Bonanza, and they turned up Bonanza.

5 And we went up Bonanza and I asked
6 them what they were going to do with me, and he told
7 me not to worry.

8 MR. BUCHANAN: To which I object until
9 we have foundation.

10 Q Okay. Now, you started to say one of
11 them said something.

12 Which one said what?

13 A Well, I asked the both of them -- I
14 didn't know who would answer. I just asked, asked them
15 what was going to happen to me.

16 And the defendant sitting here in
17 front of me told me not to worry, that they were just
18 going to stop and get gas and drop me back off in front
19 of the store.

20 THE COURT: At this time, we'll take
21 a recess.

22 During the recess, ladies and
23 gentlemen, I would remind you that it is your duty not
24 to converse among yourselves or with anyone else on any
25 subject connected with this trial, or, to read, watch, or
26 listen to any report of or commentary on this trial or
27 any person connected with this trial by any medium of
28 information, including newspapers, television and radio,
29 and you are not to form or express an opinion on any
30 subject connected with this case until it is finally
31 submitted to you.

32 We'll take a recess. It will be ten

1 to fifteen minutes.

2 (A brief recess was
3 taken at this time.)

4 THE COURT: Will counsel stipulate to
5 the presence of all members of the jury and the two
6 alternate jurors?

7 MR. BLOXHAM: State would stipulate,
8 your Honor. Defense counsel is not present.

9 THE COURT: Well, we'll wait just
10 a minute.

11 (At this time, Mr. Buchanan
12 entered the courtroom.)

13 THE COURT: Will counsel stipulate to
14 the presence of all members of the jury and the two
15 alternate jurors?

16 MR. BUCHANAN: Defense so stipulates,
17 your Honor.

18 THE COURT: You may continue direct
19 examination, Mr. Bloxham.

20 MR. BLOXHAM: Thank you.

21 DIRECT EXAMINATION CONTINUES

22 BY MR. BLOXHAM:

23 Q Now, Mrs. Cage, when you left the store
24 with this one person having a hold of you, and the knife,
25 was there anyone else in the store other than defendant
26 Burkett and the person who had forced you out?

27 A No.

28 Q When you left the store, what was the
29 condition of the cash register?

30 A I'm -- I'm not sure at the time I left.
31 I don't know.

32 Q Had you just hit the button and opened it,

1 or was it closed?

2 A It was open, yes.

3 Q It was open. Was there money in the
4 cash register?

5 A Yes.

6 Q Do you recall if there was paper currency
7 or coin?

8 A There was both.

9 Q Both?

10 A Uh-huh.

11 Q Do you have any kind of an estimation of
12 how much paper currency was in the cash register?

13 A Well, I remember a few minutes before all
14 this happened, I made a thirty-dollar drop, so just
15 guessing, I'd say there was maybe --

16 MR. BUCHANAN: To which I object to
17 guessing, your Honor -- not the question. Without a
18 foundation, I would ask that the answer be stricken or
19 not allowed to be answered, unless she has a firm
20 indication.

21 MR. BLOXHAM: May I ask an additional
22 question?

23 THE COURT: All right.

24 Q Had you counted the money in your register --
25 paper money in the register -- prior to your thirty-dollar
26 drop?

27 A Yes.

28 Q And based on the count and then the
29 thirty-dollar deduction, do you have an approximation of
30 how much paper currency was in your register?

31 A Yes.

32 Q And what was that?

1 A About twenty, twenty-five dollars.
2 Q Okay. Thank you.
3 Now, you were driving, I believe your
4 testimony was, up Bonanza. Defendant Burkett was driving.
5 The other individual had a hold of you, or with a knife.
6 You went up Bonanza. Which direction
7 are you traveling -- east or west?
8 A West.
9 Q And where did you go from there?
10 A We went straight up Bonanza, and they pulled
11 off at the Seven Eleven on the corner of Maryland Parkway
12 and Bonanza to get gas.
13 Q Okay. Now, is this a self-service gas pump,
14 or is this an attendant gas pump?
15 A Self-service.
16 Q What occurred?
17 A The defendant sitting here went inside to
18 get gas, and the other person still was holding onto me
19 with a knife and said not to try anything crazy and you
20 wouldn't get hurt.
21 Q Okay. Now, did the defendant Burkett, after
22 paying for the gas, return to the car?
23 A Yes.
24 Q What happened after that?
25 A We took off from the gas station, started
26 driving again, and I asked them again what was going
27 to happen.
28 And he said -- the defendant sitting
29 here said that we were going to go back down by the store
30 and that they were going to drop me off.
31 Q Where did you drive to with these two people?
32 A We went down Washington Avenue, down towards

1 Eastern, and when we got there, everybody looked over
2 towards the store, and the defendant sitting here in
3 front of me asked the other fellow whether or not he
4 could see anybody there. And he -- the other fellow --
5 answered yes, so he said, "Well, I'm going to drive
6 around and think things out."

7 Q Could you see anybody at the store
8 yourself?

9 A No, uh-uh.

10 Q Where did -- the three of you are now in
11 this automobile, right?

12 A Yes.

13 Q Where did you go from there?

14 A We went straight down Washington to the
15 end of the street. I think it ends at Lamb. I think.

16 We turned off Lamb to Lake Mead
17 Boulevard, and we made a right on Lake Mead, heading out
18 towards the lake.

19 Q Were there any other stops in town?

20 A Yes. They stopped at the Circle K on
21 Lake Mead Boulevard to buy cigarettes.

22 Q Okay. And do you recall what kind of
23 cigarettes were purchased?

24 A Yes. I know they bought me a pack of
25 Marlboro 100s.

26 Q Did you ask for those Marlboro 100s?

27 A They offered to buy them.

28 Q Okay. Do you recall if they bought any
29 other kind of cigarettes?

30 A I believe they bought a pack of Camel
31 regulars.

32 Q You smoke, I take it?

1 A. Yes.
2 Q Were you smoking during this time?
3 A. Yes.
4 Q And were they smoking?
5 A. Yes.
6 Q Now, after purchasing these cigarettes,
7 who went in the store?
8 A. The defendant went in again -- Mr. Burkett.
9 Q And where were you seated when he went
10 in the store?
11 A. In the same place.
12 Q Did you park out front of the store?
13 Where was the car parked?
14 A. It was in front of the store, but kind
15 of off to the side.
16 Q What was your situation at that point?
17 A. Well, I was sitting there, and the
18 younger kid still had his arm around me with the knife,
19 and the other fellow here went in and got cigarettes and
20 was back out with them.
21 Q Okay. And did you folks, or did you
22 guys drive someplace from the Circle K?
23 A. Yes.
24 Q Where did you go?
25 A. They continued to go out
26 Lake Mead Boulevard towards the lake.
27 Q Okay. What happened as you went out
28 Lake Mead Boulevard towards the lake?
29 A. Soon as we got past the mountains,
30 Sunrise Mountain, out of view of the city, the defendant
31 sitting here asked if there were any roads to pull off
32 of the main highway.

1 Q Who was he asking that; do you know?
2 A I don't recall.
3 Q Okay.
4 A And eventually he found a dirt road to the
5 left side of the road, and he pulled back down the road,
6 they drove maybe half a mile or so down the road and
7 turned the car around and parked the car.
8 Q Turned the car around facing --
9 A Back towards the main road.
10 Q What happened when the car was parked?
11 A Okay. Stopped the car and shut off the
12 ignition, and the defendant went outside to go to the
13 bathroom outside.
14 Q Okay. This defendant here, defendant
15 Burkett?
16 A Yes, uh-huh.
17 Q What happened at that point?
18 A While he was outside, the other person that
19 isn't here started making advances on me, trying to kiss
20 me and trying to put his hand down my shirt, and I told
21 him -- and I asked him why he was doing that. I said,
22 you know, it was really foolish.
23 And he just told me to stay calm and
24 be quiet and I wouldn't get hurt.
25 Q Did you see the knife when these advances
26 were being made?
27 A No. I don't recall what happened to it.
28 Q You didn't see where it was placed or
29 whatever then?
30 A No.
31 Q Now, what happened as second person is
32 making these advances?

1 A. Okay. Well he came back from the car
2 and then --

3 Q When you say "he," who do you mean?

4 A. The defendant, Mr. Burkett, came back in
5 the car and sat down.

6 And then maybe 30 seconds after that,
7 they both started to take my shirt off and take my clothes
8 off, I guess. They both were doing --

9 Q Now, what were you wearing at the time?

10 A. I was wearing a cotton top, buttons down
11 the front, pair of Ditto jeans, sneakers.

12 Q Were you wearing a bra?

13 A. Yes.

14 Q And were you wearing underpants?

15 A. Yes.

16 Q Okay. Now, did you remove this clothing,
17 or did they?

18 A. They did.

19 Q Was it with your consent, or without
20 your consent?

21 A. Without.

22 Q Now, once your clothing was removed,
23 what happened?

24 A. They argued for a minute, or who was going
25 to get a hold of me first, and then the younger fellow,
26 who is -- he opened the door and he told me to stand up
27 outside the car and lean over.

28 And the defendant was sitting in the
29 front seat. He slid over to the side. He slid over to
30 the passenger side so I was between the door and him and
31 the car and they bent me over, and the other kid tried to
32 penetrate my anus with his penis, but he couldn't --

1 couldn't really go through with it 'cause I was moving
2 around too much 'cause it hurt.

3 Q What did he do at that point -- the
4 second individual?

5 A Well, he was trying to kiss me, but I was
6 moving around so much that he -- he told the other fellow
7 to cut it out.

8 Q Okay. Who was trying to kiss you?

9 A The defendant here.

10 Q The defendant in court today?

11 A Yes.

12 Q What about the second individual who's
13 trying to have anal intercourse? What did he do after
14 you say he was unable to?

15 A After he couldn't do that, he put his penis
16 in my vagina and proceeded to have sex.

17 Q Okay. Do you know whether or not he
18 ejaculated?

19 A Yes, he did.

20 Q Okay. What happened at that point?

21 A He got up and moved back to the side of
22 the car and I just stood up. I didn't know what to do.

23 And I was standing outside, and then
24 Mr. Burkett got out of the car and he told me to come
25 around back behind the car with him.

26 Took me around back behind the car
27 and leaned me up against the back of the car by the trunk
28 and he was trying to kiss me and stuff, but I was shivering
29 and shaking, and I asked him if I could put a coat or
30 something on 'cause I was freezing to death.

31 And so somehow or another, I got a
32 coat from one of the two. I don't remember which one.

1 Q Do you recall what kind of a coat
2 it was?

3 A Yes. It was Levi's jacket.

4 Q Okay. Did you put this Levi jacket on
5 through the arms, or what did you do with the Levi jacket?

6 A No. I just put it over my shoulders.

7 Q Okay. What happened at that point?

8 A Okay. Then the defendant, Mr. Burkett,
9 asked the other kid to get out of the car, because he
10 wanted us to go in the car 'cause I was cold or something.

11 The other kid got out of the car, and
12 he opened the door, and we got in the car.

13 Q Did you get in the front or the back seat?

14 A Front.

15 Q What happened? Now, this is just you and
16 the defendant Burkett got in the front seat; is that correct?

17 A Yes.

18 Q Were you still nude except the Levi jacket?

19 A And my shoes. Yes.

20 Q What happened at that point?

21 A Well, when we got in the car, I just -- the
22 way we got in, I just had to lay down on the front seat.
23 I mean the way we came in.

24 And he got down on top of me, and he
25 proceeded to have intercourse with me, also.

26 Q Now, you say you had to lay down. Were you
27 forced in the car, or did you get in?

28 A Well, when he -- when he opened the door,
29 when you lean over to get into the car, he was right
30 behind me, and I just -- like he didn't stop to let me
31 sit down. He just kept right on coming, so I was
32 laying down.

1 Q Okay. Now, you that then defendant
2 Burkett proceeded to what?

3 A Penetrate the vagina with -- with his penis,
4 have intercourse.

5 Q Now, was this with your consent, or
6 without your consent?

7 A Without.

8 Q At that time were you frightened, or
9 were you not frightened?

10 A I was scared to death.

11 Q Do you know whether defendant Burkett
12 ejaculated?

13 A Yes, he did.

14 Q What happened after this incident?

15 A Let's see. We both sat up in the -- we
16 were both still sitting in the car. We sat up and I
17 told him I had to go to the bathroom.

18 So I opened the door, and the other
19 fellow was outside, so I decided not to go to the
20 bathroom, and I sat back down in the car 'cause I was cold.

21 And the other fellow got back in, so
22 all three of us were sitting in the car again.

23 Q Okay. At any time did you put your
24 clothing back on?

25 A Yes. That was when I put it on, when I
26 came back in. I asked them --

27 Q Did you ask for your clothing, or did they
28 give it to you?

29 How did it work?

30 A I asked them if I could put it on. I was
31 asking them, "Are you going to let me go now?"

32 They just gave me my clothes, didn't

1 say much.

2 Q When you say clothes, did you also get
3 your bra and underpants?

4 A No. Just my shirt and slacks. I didn't
5 care whether I put my underwear back on.

6 Q Did you then put your top and your
7 slacks on?

8 A Yes.

9 Q Okay. What happened at that point now
10 that you're dressed, somewhat dressed and back in the car?

11 A Okay. Well, all three of us were sitting in
12 the front seat of the car, and I kept asking them -- I
13 said, "Are you going to let me go now?" I says, "You can
14 leave me out here."

15 I told him it would take me a while
16 to walk back to town and they could be long gone. And
17 defendant Burkett just told me to be quiet, he wanted to
18 think about it for a minute.

19 And then I don't remember which one
20 of them raised the subject of -- somebody said they
21 wanted --

22 MR. BUCHANAN: To which I object until
23 we have foundation.

24 MR. BLOXHAM: Your Honor, that should be
25 sufficient foundation. One of the two people said
26 something. We have the time, place, and everything else.
27 I would think that would be sufficient.

28 MR. BUCHANAN: Your Honor, I'd like to
29 know who said what. If the jury is going to try and
30 determine some of these facts, they're going to have to
31 know who did what, who said what, try to make an intelligent
32 determination of these offenses.

1 We're objecting to this "Someone
2 said it," some individual. We want to know who.

3 THE COURT: Do you know who said it?

4 THE WITNESS: I'm not sure. I'm
5 not sure.

6 THE COURT: The objection is overruled.

7 MR. BLOXHAM: Thank you.

8 Q What was said?

9 A They were talking about counting some money
10 that -- and defendant Burkett pulled some money out of
11 his pocket, and they started counting it.

12 Q And did Defendant Burkett say anything
13 about this money?

14 A No. He just counted it.

15 Q Did he mention how much was there,
16 anything like that?

17 Do you have any idea how much was there?

18 A He didn't count it out loud but -- he didn't
19 say how much was there, no.

20 Q Okay. Was there any kind of a discussion
21 about splitting that money up?

22 A Yes. The other fellow, the younger fellow,
23 who isn't on trial here today, asked how much of the money
24 he was going to get, and defendant Burkett just told him
25 to wait, that he'd get his share.

26 Q What happened at that point, Mrs. Cage?

27 A Okay. We sat there for a minute, and I
28 asked him if they were going to let me go, and they sat
29 there for a few minutes, didn't say too much, and then
30 all of a sudden defendant Burkett told the other fellow
31 to start the car. So to do that, he had to open the door
32 and get a battery out of the back seat of the car.

1 Q Okay. The second, younger, shorter
2 individual got a battery out of the back seat of the car?
3 A Uh-huh.
4 Q Did they raise the hood; do you know?
5 A Yes, yes. He had to go outside and raise
6 the hood, hook it up or something. I couldn't see what
7 he was doing.
8 Q Then was the car started?
9 A Yes.
10 Q Was the battery returned to the back seat,
11 or anything like that?
12 A I don't remember.
13 Q Now, the car is running again. What, if
14 anything occurred next?
15 A Okay. We -- all three of us, started
16 driving up the dirt road towards the main road again.
17 Q Where were you seated?
18 A In the -- on the front seat in between
19 the two of them.
20 Q Okay.
21 A In the middle. And when we got to the
22 main road and I -- I told them that if they made a right,
23 we'd be back in town.
24 And then they just looked at each
25 other, and then the other kid, who's not here told him to
26 make a left, so he made a left to go out towards Lake Mead,
27 farther out Lake Mead Drive.
28 Q Okay. Now, do you recall how far you drove
29 out further from this first spot?
30 A It was about three, four miles.
31 Q What happened at that point?
32 A Well, I just kept talking with them. I kept

1 trying to convince them to let me go.

2 And he just told me to -- just to
3 cool it. He got a little mad and turned up the radio,
4 so I was quiet.

5 And then all of a sudden he turned off
6 another dirt road on the left -- or the right hand side
7 of the road, I should say.

8 Q Okay. Did you, did the automobile then
9 leave the paved road over on the dirt section very far?

10 A Yes. We went back quite a while this time,
11 went back at least I'd say a mile.

12 Q What happened at that point -- the mile, then?

13 A Okay. Again they got far enough back, and
14 they turned the car around again and parked it and shut
15 it off.

16 Q And what happened then?

17 A And then I asked them again -- I said,
18 "Well, what are you going to do? You going to let me go?"

19 And he was little upset now. He just
20 told me to shut-up.

21 So nobody said anything for about
22 three, four minutes, and the other kid -- let's see. The
23 other kid who's not here, or whatever, is not on trial --
24 he asked him what he was going to do. He told him to hurry
25 up, make up his mind.

26 And then defendant Burkett, who's here --
27 he told him, "I don't know, but I think we'll undress her
28 one more time."

29 And then they both started unbuttoning
30 my blouse again and taking it off.

31 Q Had there been any threats at this point,
32 as far as your life, if you recall?

1 A. I think so.

2 MR. BUCHANAN: To which I object.

3 MR. BLOXHAM: Okay. Now, may I ask

4 a few other questions?

5 THE COURT: Because that is a conclusion,

6 you mean?

7 MR. BUCHANAN: That's correct,

8 your Honor.

9 THE COURT: The objection is sustained,

10 lack of foundation. It's a conclusion.

11 Q During this incident or this whole series

12 of events, was there communications back and forth between

13 you, defendant Burkett and this second individual?

14 A. Yes. Mostly between Burkett and I.

15 Q And what was the nature of the

16 conversation?

17 Were you trying to make any points?

18 Were you trying to get loose?

19 What were you doing?

20 A. I was just trying to keep everything, every --

21 everybody and myself calm, just trying to keep my head

22 together, as I say.

23 Q Okay. Now, you're at the second spot. The

24 car has been stopped and turned around, and defendant

25 Burkett said, "We'll undress her one more time."

26 What happened next?

27 A. Well, the both of them started taking my

28 clothes off again, and after they got them off, this time

29 Mr. Burkett got out of the car, opened the door.

30 And the younger fellow, who's not here --

31 well, he pulled my head down. Well, he had had his pants

32 zipped open, made me have oral sex with him.

335

1 And Mr. Burkett was standing outside,
2 and I was bent over, and he put his penis in my anus
3 and had --

4 Q Anal intercourse?

5 A Yeah.

6 MR. BUCHANAN: To which I object as
7 leading. She's going to testify, your Honor. Counsel
8 can't testify for her.

9 THE COURT: I think that's correct.
10 I think that the questions must not suggest the answers.

11 MR. BLOXHAM: Thank you, your Honor.

12 Q Were you nude at this time, or were you
13 not nude?

14 A Yes. except for I had my shoes on.
15 That's all.

16 Q Now, you indicate the second individual --
17 was he sitting in the passenger seat, or where was
18 he seated?

19 A You mean younger fellow?

20 Q Yes.

21 A He was -- when we stopped, he was sitting,
22 to my right on the passenger side.

23 Q And is he the one that -- who forced your
24 head down?

25 A The younger fellow that was to my right.

26 Q And what happened when he forced your
27 head down?

28 A Well, the other fellow already had the door
29 open, and he had my -- the other -- okay, now. Wait a
30 minute.

31 Q Okay. Let's get this clear.

32 A Mr. Burkett was outside of the door.

1 Q Did he exit the passenger door or the
2 driver's side door?

3 A The driver's side door.

4 Q He was driving when you stopped the car?

5 A Yes.

6 Q Okay. So he got out of the car?

7 A Uh-huh.

8 Q Defendant Burkett. What happened then?

9 A Okay. That's when the younger fellow
10 pulled my head down, and I had to -- to twist to keep
11 from -- I don't know -- pulling muscles or whatever,
12 but I had to twist so that my butt was facing out the
13 door. And --

14 Q Okay. YOUR rear end is facing out which
15 door -- passenger door?

16 A Driver's side door.

17 Q Driver's. Okay. What happened at
18 that point?

19 A Okay. The younger fellow -- well, he
20 pulled my head down and forced me to have oral sex with
21 him. About that time, Mr. Burkett was standing in my
22 behind and inserted his penis into my anus.

23 Q Was that with your consent, or without
24 your consent?

25 A Without.

26 Q Do you know whether or not defendant
27 Burkett ejaculated at that point?

28 A Yes, he did.

29 Q What happened at the conclusion of
30 this sexual assault?

31 A Okay. This time, I think -- I'm not sure,
32 but I think my clothes were right in the front, so I put

1 them back on, and --

2 Q Now, when you put your clothes back on,
3 did it include your bra and panties?

4 A No.

5 Q Just your top and your slacks. Is
6 that correct?

7 A Yes.

8 Q Okay. What happened after that?

9 A Okay. We were all back in, sitting in
10 the car, and nobody said anything for about five minutes.

11 And then Mr. Burkett asked the other
12 kid -- he goes, "Well, should we kill her, or what?"

13 And I told him, I said there was no
14 reason to kill me, that if they'd just let me out here,
15 you know, everything would be all right. I guess.

16 And he just kind of snickered or
17 laughed or whatever, and then he asked the other kid what
18 he thought, and the other fellow, who's not here, answered
19 he didn't know, or he didn't care, but he wished he'd
20 hurry up and make up his mind again.

21 So Mr. Burkett asked him where they
22 should bury me, and the other kid said, "Well, there's
23 a ravine down there." He said that they could cover me
24 with rocks and that they wouldn't find me for months.

25 Q What happened at that point?

26 A Everybody just sat there, didn't say
27 anything for a few minutes. Guess they were thinking
28 it over.

29 Q Was there, at any time defendant Burkett
30 display a knife?

31 A Yes.

32 Q When was that?

1 A Okay. We were sitting there for a few
2 minutes, and all of a sudden Mr. Burkett asked the other
3 fellow -- he said, "Okay. Give it to me."

4 And the other kid reached up above
5 the sun visor and pulled out a big hunting knife, and
6 gave it to Mr. Burkett.

7 Q That the defendant Burkett here?

8 A Yes.

9 Q Were you dressed at this time, or nude?

10 A Dressed.

11 Q What if anything did defendant Burkett do
12 with the knife when he received it?

13 A Okay. He sat there for a few minutes just
14 looking at it, and then I was pleading with him. I could
15 tell he was getting mad, so everybody just shut-up for
16 a minute.

17 And then all of a sudden he opened
18 his car door, but before he got out, he told the other
19 kid that he didn't want to do it in the car because he
20 didn't want to clean up the mess.

21 And then he opened the car door and
22 got out, and the other fellow, who's not here, tried to
23 push me out.

24 So I thought to myself I just
25 couldn't let them push me out of the car, so I looked
26 down on the floor for something to grab, anything, and
27 I grabbed an empty beer bottle.

28 And the other kid was trying to push
29 me out the door. He didn't see I had a hold of it, and
30 he got me right outside the door, and he saw it, and he
31 warned Mr. Burkett.

32 I tried to hit him with it, but I

1 didn't make it, and we struggled for a few minutes outside.

2 And then he had me around the neck
3 with the -- with the knife up here, around neck, and he
4 told me that was a dumb move.

5 And he said, "I knew you'd tell," or
6 something to that sort, and then we just wrestled around
7 for a minute.

8 And then he opened his car door and
9 he pushed me in, and he goes, to the other fellow -- he
10 told him to grab my neck. He goes, "We'll just break
11 her neck. That's it. She's dead."

12 And they had me around the neck. And
13 I don't know how. Somehow I managed to get away from him,
14 under his arm.

15 The other kid had a hold of my hair.
16 They had my arms pinned back there.

17 Mr. Burkett was kind of leaned over,
18 talking to me, with the knife about six or seven inches
19 from my throat. I just looked up at him, and I just told
20 him, "I just want to live. I just want to live."

21 Q What happened at that point?

22 A The younger kid whispered to Mr. Burkett.
23 I could hear him, and he said, "I don't think she'll tell.
24 I don't think she'll tell."

25 So nobody moved for, oh, maybe
26 30 seconds or so, and then all of a sudden he said,
27 "All right. Let her up."

28 Q Okay. At any time did the defendant
29 Burkett put that knife in your crotch area?

30 A Yes, he did.

31 Q When was that?

32 MR. BUCHANAN: Again, your Honor, leading.

1 THE COURT: Yes. That's a leading
2 question, and it suggests an answer, and it's the type
3 of question that, you know, is not proper, and I don't
4 want any more of that type.

5 MR. BLOXHAM: Your Honor, it's my
6 understanding --

7 THE COURT: Don't argue with me. The
8 objection is sustained.

9 MR. BLOXHAM: Thank you, your Honor.

10 Q When, if at any time -- when were you
11 threatened further with this knife?

12 A After he let me up, we all were sitting
13 in the front seat of the car again, and nobody said
14 anything. I was too scared to say anything.

15 And all of a sudden, Mr. Burkett put
16 the big buck knife between my legs, and he told me to
17 describe him and the car.

18 Q And what did you do, if anything?

19 A I described the car and he.

20 Q What if anything was said next?

21 A He looked over at his friend, and he said,
22 "Well, she can identify us. What do you think?"

23 And I don't remember, but I don't
24 think the kid said anything.

25 And then he had put the knife -- he
26 had the knife in his -- he went to put it like under his
27 belt, and I thought he was going to get me with it, so I
28 kind of like grabbed it, and he said, "You know, don't --
29 don't sweat it," or something like that. "I'm putting
30 it away."

31 And then he told his friend to start
32 up the car and that he was going to take me back into town.

1 Q How was the car started?

2 A The same procedure. He had to get out --
3 the younger kid. He was sitting in the passenger seat,
4 had to get out again and do something with the car. I
5 wasn't paying any attention what he did at that time.

6 Q The car was started then; is that correct?

7 A Yes.

8 Q And was the car driven from that area?

9 A Yes.

10 Q Who drove it?

11 A Mr. Burkett.

12 Q And where were you?

13 A I was in the front seat, in between them.

14 Q Okay. What happened as you're driving now?

15 A He just -- he asked me where I lived, that
16 he could drop me off where I lived. This is after we're
17 down Lake Mead.

18 Nobody said anything for about ten
19 minutes, and as we came down over the hill into town, he
20 asked me where I lived, and I told him that I lived in
21 North Las Vegas right off of Lake Mead Boulevard and that
22 he could drop me off there.

23 Q Were you residing there at the time?

24 A No.

25 Q Do you recall approximately what time it
26 was? Did you have any indication what time it was?

27 A The radio was playing. I think I remember
28 it was about 3:00 o'clock.

29 Q Okay. Were you subsequently released by
30 these two individuals?

31 A Yes.

32 Q Where at?

1 A On Webster Street, North Las Vegas.
2 Q Did you know the area?
3 A Yes.
4 Q And did you actually reside there at
5 one time?
6 A Yes, earlier.
7 Q But did you reside there at that time,
8 December 18th?
9 A No.
10 Q And when you were let off, what if anything
11 occurred?
12 A They opened the door and said, "Well, you
13 can turn us in or whatever you want to do."
14 And I just got out the door and ran
15 up the street. I knew there was a saloon up the street
16 where I could call somebody.
17 Q Do you know what the name of that saloon is?
18 A Yes. It's Bobo's.
19 Q Was it open?
20 A Yes.
21 Q What happened as you got to the saloon?
22 A Well, I ran in the front door. I was all
23 out of breath.
24 And there was a North Las Vegas police
25 car sitting out front, so there was an officer inside. And
26 I told him what happened -- that I was taken from the store --
27 and for him to call somebody.
28 Q And were you then approached by any officers
29 of Las Vegas Metropolitan Police Department?
30 A Yes, about ten or fifteen minutes later.
31 Q And what happened at that point?
32 A Couple of detectives took me down to the

1 police station.

2 Q Do you know if that's down in City Hall,
3 or just where it is?

4 A 4th and Stewart.

5 Q Okay. Did you meet with any detectives?

6 A Yes.

7 Q And who was that?

8 A Detective Leonard. I don't remember the
9 other one's name.

10 Q Did you give any statements at that point?

11 A Yes. They asked me what had happened, and
12 I told them what had happened.

13 Q Where was your husband, if you know?

14 A I met him. He was waiting for me at the
15 police station.

16 Q After meeting at the police station, did
17 Detective Leonard take you anywhere?

18 A After I gave all the statements, we went
19 to Southern Nevada Memorial Hospital where I was examined.

20 Q Now, before we move on, when you were at
21 the store that night, about midnight, did you keep anything
22 for your protection at that store?

23 A Yes.

24 Q What did you keep?

25 A I used to keep a big glass of ammonia right
26 next to the register, within reach.

27 Q Why was that?

28 A Because I'd been robbed a week earlier,
29 and someone had jumped over the counter, so I figured if
30 anybody was going to try something like that again, I'd
31 just splash them in the face with the ammonia.

32 Q Where were you working a week earlier when

1 you had a robbery occur?

2 A That was at 4150 Atlantic Avenue, near the
3 Showboat.

4 Q Why did you move from that store to this
5 store on Eastern?

6 A Well, they'd never caught the guy that
7 had robbed me, and I was afraid that he might come back
8 some night.

9 Q Were there any representations made to
10 you concerning the store on Eastern?

11 A Will you repeat that?

12 Q Did the Stop and Go representatives tell
13 you anything about the store on Eastern?

14 A They told me that it was a fairly safe store.

15 Q Had you seen either of these two guys prior
16 to December 18, 1980?

17 A No, never.

18 Q Not to your knowledge, anyway?

19 A No.

20 Q You didn't know these people?

21 A No.

22 Q Okay. Directing your attention now -- well,
23 let me ask it this way.

24 Did Detective Leonard show you any
25 photographs or any mug books at the police station on
26 December 18th?

27 A Yes.

28 Q And what if anything did you do when these
29 were shown to you?

30 A He told me to look through them, and he
31 told me, "If you see the guy point him out, and even if
32 you don't," he told me pick out a few that resemble him

1 so he could get an idea of what he looked like.

2 Q Were you able to identify anybody out of
3 the mug books as being one of the people involved in
4 this crime?

5 A No.

6 Q Now, did you pick out anybody who somewhat
7 resembled by chin or hair or anything like that?

8 A Yes.

9 Q Directing your attention to December 19,
10 the next day, did you have occasion to return to the
11 Stop and Go?

12 A Yes.

13 Q Why did you go back?

14 A To get my coat and my purse.

15 Q And did you meet someone there?

16 A The manager.

17 Q Who was that?

18 A Pat Seevers.

19 Q Now, directing your attention specifically
20 to December 19, 1980, at about 3:30 p.m., did you have
21 occasion to attend a physical lineup?

22 A Yes.

23 Q And did you attend more than one
24 physical lineup?

25 A Yes. There were two.

26 Q Where were these lineups conducted?

27 A Here in the courthouse building somewhere.
28 I don't know where. Auditorium somewhere.

29 Q Did you know who the detective was
30 conducting the lineup?

31 A Yes. That was Detective Leonard.

32 Q Now, directing your attention to the first

1 physical lineup, did you indicate anyone in that lineup
2 as being involved in this crime occurring on the 18th?

3 A First lineup?

4 Q Did you see anybody in the first lineup?

5 A The first lineup, I pointed out somebody
6 that resembled one of the people, but I wasn't -- I
7 wasn't too sure that it was anybody involved. But it
8 resembled him.

9 Q Do you remember which number that was?

10 A Yes. He was standing in position No. 2.

11 Q How about the second lineup? Did you
12 see anyone in the second lineup that you recognized from
13 the crime occurring on the 18th?

14 A Yes.

15 Q And who was that?

16 A Mr. Burkett there.

17 Q And he was in that lineup?

18 A Yes.

19 Q Now, the conducting of the lineup -- how
20 is it conducted?

21 A Well, they had them all line up when I
22 walked into the room, and I sat down right in front of
23 the screen, and they had them turn to every -- first to
24 the front and then to the side and then the back, and
25 then the side and then back to the front.

26 And they asked me if I wanted them
27 to do it again, and I said no, 'cause I knew who it was.

28 Q Did you, in the auditorium, indicate to
29 Detective Leonard who you selected, or outside, or where
30 did this identification occur?

31 A All right. After they asked me if I
32 wanted to see them again, he said to step outside, and

1 then Detective Leonard and the guess whoever was in
2 the lineup there -- Public Defender was out there and
3 they had a piece of paper I had to sign.

4 Q Okay. And did you at that point indicate
5 your identification?

6 A Yes.

7 Q Okay. Did you go back into the lineup
8 at all, or did you remain outside?

9 A I stayed outside.

10 Q Okay. Now, this is important.

11 MR. BUCHANAN: To which I object --
12 characterization of the question.

13 THE COURT: Sustained.

14 Q The early morning hours of December 18, 1980
15 when you were meeting at Metro with Detective Leonard, did
16 you give a description of the two people and the car?

17 A Yes.

18 Q And do you recall the description you gave
19 to Detective Leonard concerning the first individual?

20 A Yes.

21 Q And what was that description?

22 A It was approximately six foot,
23 six foot two, hundred and eighty-five pounds, sandy blond
24 hair, with a van dyke beard and mustache, spider web
25 tattoo on his right elbow, marijuana leaf on his right
26 forearm. The car was a '74, '75 Maverick.

27 Q Okay. Let's just stick with the first
28 subject.

29 Did you describe his clothes for
30 Detective Leonard?

31 A Yes.

32 Q How did you describe that?

1 A He was wearing a white T-shirt with
2 a black circle on it. It had some writing on it. I'm
3 not sure. I think it was a rock group. It -- he had
4 a black vest. It was either leather or vinyl. And
5 blue jeans.

6 Q Did you describe any other tattoos, other
7 than the spider web and marijuana leaf?

8 A Not that I remember, no.

9 Q Okay. Now, how about the second individual.
10 Did you describe that individual for Detective Leonard?

11 A Yes.

12 Q How did you describe that individual?

13 A Five foot six, dark hair, kind of medium
14 length, slim build, was wearing a button-up shirt, Levi
15 jacket, Levi pants, Harley-Davidson belt buckle.

16 Q How did you describe the car, if you
17 described the car for Detective Leonard?

18 A Yes, I did. I described it as a '74,
19 '75 Maverick. I wasn't sure of the year. I didn't know
20 that much about cars.

21 Medium shade of blue. Really dusty
22 and dirty. Two-door, black interior, with a bench seat
23 with a console in it.

24 I think I told them the heater didn't
25 work, or the interior light, I believe.

26 Q Okay. Did you describe anything about the
27 console?

28 A I just mentioned that it was a -- the kind
29 you could take out. You know, the black plastic.

30 Q Did you describe any kind of bedding
31 articles in the back seat?

32 A Yes. There was a small, white quilt,

1 sort of like -- like a -- something you'd find in a
2 baby's crib. Like a small, white blanket.

3 Q Okay. Now, did you have an opportunity
4 to observe the key ring or chain or whatever on
5 this automobile?

6 A Yes.

7 Q And did you describe that for
8 Detective Leonard?

9 A Yes.

10 Q How did you describe that?

11 A I told him it was one of those orange,
12 personalized key chains that had initials on it.

13 Q Do you recall the initials? It's been
14 a long time, hasn't it?

15 A Yes.

16 Q Okay. But you did give initials that
17 night; is that correct?

18 A Yes.

19 Q But do you recall what the initials were?

20 A I think it was J.W., not positive, but I
21 think it was J.W.

22 Q Now, let me ask you this. When you left
23 the car, did you leave anything in that car when you were
24 let out?

25 A Yes. My bra and panties were still in
26 the car, and my cigarettes.

27 Q Okay. And the cigarettes?

28 A Uh-huh.

29 Q Which were what kind, again?

30 A Marlboro 100s.

31 Q Now, did you describe those panties for
32 Detective Leonard?

1 A Yes, I did.

2 Q How did you describe them?

3 A I described the panties as being size 6 or 7,

4 white lace trim, with small pink and blue flowers on them;

5 and bra was plain white with a little bit of lace on top,

6 size 36.

7 Q Okay. Now, are you familiar with the

8 boundaries of Clark County, Mrs. Cage?

9 A Yes.

10 Q At any time during these events, did you

11 leave the area of Clark County, Nevada?

12 A No.

13 MR. BLOXHAM: Your Honor, may I approach

14 the witness?

15 THE COURT: Yes.

16 Q Mrs. Cage, I'm going to show you what's

17 been marked for identification purposes.

18 Mrs. Cage, showing you what's been

19 marked for identification purposes as State's Proposed

20 Exhibit 8 -- appears to be a photograph -- would you look

21 at that and see if you can identify that particular

22 photograph?

23 A Yes. That's behind the counter at the

24 Stop and Go where I was working that night.

25 Q Okay. Does that fairly and accurately

26 depict the Stop and Go market at 732 North Eastern on

27 December 18, 1980?

28 A Yes.

29 Q And what if anything can you see in that

30 photograph? And identify it.

31 A My coat's over in the corner. I don't

32 know. The gas pump, the register, all of it.

1 Q Okay. Is that the same coat you wore
2 to work that night?

3 A Yes.

4 Q Did that coat remain at that Stop and Go
5 when you left it the early morning hours of the
6 18th of December?

7 A Yes.

8 Q Showing you State's Proposed Exhibit 9,
9 I'd ask you the same question.

10 Can you identify that photograph?

11 A Yes. That's the register at the store.

12 Q Okay. And do you see any beer depicted
13 in the photograph?

14 A Yes. There's two bottles of Michelob
15 sitting right next to it.

16 Q Does that fairly and accurately depict
17 what you saw on December 18, 1980?

18 A Yes.

19 Q Showing you what's been marked for
20 identification purposes State's Proposed Exhibit 10,
21 I'd ask you the same question.

22 Can you identify that photograph?

23 A Yes. Behind the counter. I recognize
24 the bottle of Michelob, but I didn't see the Lowenbrau
25 or the flashlight there.

26 Q Showing you State's Proposed Exhibit 11,
27 I'd ask you the same question.

28 Can you identify what's depicted in
29 that photograph?

30 A Yes. It's my purse.

31 Q Does that fairly and accurately depict
32 the scene December 18, 1980?

1 A Yes.

2 Q Showing you State's Proposed Exhibit 12,
3 ask you the same question.

4 Can you identify that photograph?

5 A Yes. It's behind the counter where I set
6 my coat down.

7 Q Does that appear to be your coat?

8 A Yes.

9 Q Does that fairly and accurately depict the
10 Stop and Go that night, December 18, 1980?

11 A Yes.

12 MR. BLOXHAM: Thank you. Your Honor,
13 for the record, may we open State's Proposed Exhibit 1,
14 on the record, remove the contents?

15 THE COURT: Yes.

16 At this time, we'll take our recess.

17 During the time we are in recess,
18 ladies and gentlemen, I would remind you it is your duty
19 not to converse among yourselves or with anyone else on
20 any subject connected with this trial, or to read, watch
21 or listen to any report of or commentary on this trial or
22 any persons connected with this trial by any medium of
23 information, including newspapers, television and radio,
24 and you are not to form or express an opinion on any
25 subject connected with this case until it is finally
26 submitted to you.

27 We'll be in recess for ten, fifteen
28 minutes.

29 (A brief recess was
30 taken at this time.)

31 THE COURT: Will counsel stipulate to
32 the presence of all members of the jury and the

1 alternate jurors.

2 MR. BUCHANAN: Defense so stipulates,
3 your Honor.

4 MR. BLOXHAM: State so stipulates,
5 your Honor.

6 (At this time, the
7 witness resumed the stand.)

8 THE COURT: You may continue with
9 your direct examination, Mr. Bloxham.

10 MR. BLOXHAM: Thank you, your Honor.
11 May I approach the witness again?

12 THE COURT: Yes.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. BLOXHAM:

15 Q Miss Cage, showing you what's been marked
16 for identification purposes as State's Proposed Exhibit A,
17 I want to show you this particular item and ask you if you
18 can identify it.

19 THE COURT: It can't be A. What is
20 the number?

21 THE CLERK: 1A.

22 MR. BLOXHAM: I'm sorry. I thought I
23 said 1A. I apologize.

24 Q State's Proposed Exhibit 1A, and I'd ask
25 you to, if you can identify that?

26 A Yes, I can.

27 Q And what does it purport to be?

28 A It's a pair of my -- pair of underwear.

29 Q How can you be sure it's yours?

30 A I know what they look like. I bought them.

31 Q Okay. And when did you last see
32 State's Proposed Exhibit 1A?

1 A Night when I was kidnapped.
2 Q Okay. And are these the same ones that
3 were left in the car when you were let out?
4 A Yes.
5 Q I show you what's been marked for
6 identification purposes as State's Proposed Exhibit 2 --
7 and ask you to look at it and what it purports to be --
8 a vest of some sort.
9 Can you identify this?
10 A Yes. It looks like the one that
11 Mr. Burkett had on that night.
12 Q Mr. Burkett being the defendant here in
13 court. Is that right?
14 A Yes.
15 Q Showing you what's been marked for
16 identification purposes State's Proposed Exhibit 3 and
17 State's Proposed Exhibit 6, which appear to be two
18 knives, can you identify either one of these knives?
19 A Yes.
20 Q Do they look familiar at all?
21 A Uh-huh.
22 Q Which one?
23 A Both.
24 Q Looks familiar?
25 A Both of them.
26 Q Where did you see these knives or
27 similar knives?
28 A The people that kidnapped me had
29 both knives.
30 Q Did you see more than one knife?
31 A Yes.
32 Q When you were taken?

1 A Uh-huh.
2 Q And did you have an opportunity to
3 observe the knife being described by the person who
4 entered the store and forced you out of the store?
5 A Yes.
6 Q Which of these knives appears to be
7 similar to that knife?
8 A The larger one.
9 Q The larger one?
10 A Uh-huh.
11 Q And which appears to be, or how do you
12 recognize the other knife?
13 A I believe this is the knife that Mr. --
14 MR. BUCHANAN: Could we have it
15 identified, your Honor, at least, for the record?
16 Q Okay. Showing you State's Proposed Exhibit 3,
17 can you tell us if that appears familiar?
18 A Yes.
19 Q How does it appear familiar?
20 A Mr. Burkett wore a knife on his belt in
21 a case like that.
22 Q Does it appear to be the same or appear
23 to be a similar knife?
24 A Yes.
25 Q Showing you what is marked for identification
26 purposes as State's Proposed Exhibit 4, have you, can you
27 identify that at all?
28 A Yes. This is a key chain that he had
29 that was for the car, had the car keys on it.
30 Q And when you talk about "they," are you
31 talking about the individuals involved in the crime
32 December 18, 1980?

1 A Yes.

2 Q Showing you what's been marked for
3 identification purposes as State's Proposed Exhibit 7,
4 what does that appear to be?

5 A It's the belt buckle that the younger
6 kid had on his belt that night.

7 Q Showing you what's been marked for
8 identification purposes as State's Proposed Exhibit 5,
9 can you identify this at all?

10 A Yes. It's -- jacket that I had over my
11 shoulders.

12 Q Does it appear to be the same jacket
13 or a similar jacket?

14 A Similar, yes.

15 Q In fact, all of these items -- do they
16 appear to be the same or similar, as you've testified to?

17 A Yes.

18 MR. BLOXHAM: Your Honor, at this time
19 I'd ask the Court to direct Mr. Burkett to bare his
20 right arm so that we might have identification?

21 THE COURT: Would counsel approach
22 the bench?

23 (At this time, counsel
24 approached the bench for a brief
25 discussion with the Court which
26 was not reported.)

27 MR. BLOXHAM: At this time, your Honor,
28 we'd ask the Court to direct the defendant Burkett to
29 take off his jacket and roll up his sleeve on his right
30 arm and his left arm.

31 MR. BUCHANAN: We have no objection.

32 (Witness complied.)

1 MR. BLOXHAM: Okay. Could we have
2 Mr. Burkett stand and bare that apparent tattoo on his
3 right arm, your Honor?

4 Q Now, Mrs. Cage, directing your attention
5 to the defendant in court, can you see that from where
6 you're at, that apparent tattoo on the elbow?

7 A Yes, I can.

8 Q Have you seen that before?

9 A Yes.

10 Q When was that?

11 A The night I was kidnapped from the store.

12 MR. BLOXHAM: Okay. And could we have
13 Mr. Burkett lower his arm?

14 Q Directing you attention to his right arm,
15 apparent tattoo about at the joint -- can you see that?

16 A Yes, I can.

17 Q What does that purport to be, or appear
18 to be?

19 A Marijuana leaf.

20 Q And have you seen that before?

21 A Yes.

22 Q When was that?

23 A The same night that I was kidnapped from
24 the store.

25 Q Do you recall any of the other tattoos
26 that are apparently on defendant Burkett's arm?

27 A I couldn't really see his other arm.
28 I saw there was tattoos when he was driving, but it was
29 pretty dark, and I couldn't make out what they were.

30 MR. BLOXHAM: Thank you, thank you.

31 I believe that would conclude. We'd
32 pass the witness at this time, your Honor.

1 MR. BUCHANAN: All right. Thank you,
2 your Honor.

3 CROSS-EXAMINATION

4 BY MR. BUCHANAN:

5 Q All right. Now, Mrs. Cage, you're
6 21 years old at this time; is that correct?

7 A That's correct.

8 Q And you're married?

9 A Yes.

10 Q And you've been married for about
11 two and a half years?

12 A Yes.

13 Q All right. Now, at the time this
14 occurred, you were living in the Blue Moon Motel; is
15 that correct?

16 A Blue Angel.

17 Q Blue Angel Motel?

18 A Yes.

19 Q Is that with your husband?

20 A Yes.

21 Q And you had resided in this town for
22 approximately five years?

23 A About that. Four or five -- four and
24 a half, five years.

25 Q The Blue Angel Motel was down on
26 Fremont Street?

27 A Yes.

28 Q And you were living in a one-room
29 apartment or one-room, one-room motel room?

30 A Yes.

31 Q And that's with you and your husband?

32 A Yes.

1 Q And you had been married for two and
2 a half years?

3 A Yes.

4 Q And at this time, your husband was
5 unemployed; wasn't he?

6 A Yes.

7 Q And you were the only one working?

8 A Yes, that's correct.

9 Q And you were working late at night?

10 A Yes.

11 Q All right. Now, you had said that you
12 had slept or tried to sleep for approximately seven hours
13 prior to the time you went to work?

14 A Yes. I ususally slept pretty good during
15 the day.

16 Q All right. Now, on this date -- on the
17 17th of December, 1980 -- had you slept prior to going
18 to work?

19 A Yes.

20 Q And your husband was gone, too; wasn't he?

21 A You mean while I was sleeping or --

22 Q Yes.

23 A I don't know.

24 Q When you woke up, your husband wasn't there?

25 A I don't recall that, either.

26 Q And you don't recall that, but then you
27 testified previously that your husband drove you to work?

28 A Yes. He was there sometimes. I don't
29 remember what time I got up. Sometimes I'd go sleep early,
30 2:00 in the morning until 6:00 at night, and sometimes
31 I'd wait until like 7:00 or 4:00 in the afternoon and
32 then sleep up until 10:00 o'clock.

1 Q Now, you do recall --
2 A He was there to take me to work, yes.
3 Q And he took you to work about what time?
4 A It was about quarter to 11:00.
5 Q All right, and then you know where
6 he went?
7 A No.
8 Q All right. And how long had he
9 been unemployed?
10 A I don't know. Two months, maybe.
11 Q All right. But you -- you're marriage
12 wasn't on the best of relationships at that time; was it?
13 A Yes, it was.
14 Q All right. Were you seeing other men
15 during this time?
16 A No.
17 Q All right. Now, had you ever seen the
18 defendant, Joel Burkett, prior to when you first saw
19 someone come in the store?
20 A No.
21 Q Had you ever talked to him before?
22 A I have never seen him before in my life.
23 Q All right. You never went out with
24 him before?
25 A No.
26 Q And you had never recommended to him
27 that he go to work at the Stop and Go?
28 A No.
29 Q You never talked to him?
30 A No.
31 Q Never smoked marijuana with him or drank
32 beer with him before?

1 A No.

2 Q And so the first time, then, that you

3 saw someone is when they walked into that store on

4 the night in question at approximately ten minutes

5 to 12:00?

6 A Yes.

7 Q Now, is that the first time, this is --

8 we're talking about the first time that he ever came

9 into the store?

10 A You mean was that the first time I'd

11 ever seen him?

12 Q Yes.

13 A Yes, that's correct.

14 Q You said he came in and bought some

15 Zig-Zag papers?

16 A Yes.

17 Q What is Zig-Zag paper normally

18 bought for?

19 MR. BLOXHAM: Your Honor, I'm going

20 to object.

21 MR. BUCHANAN: If she knows.

22 MR. BLOXHAM: Speculation.

23 MR. BUCHANAN: If she knows.

24 MR. BLOXHAM: How does she know?

25 MR. BUCHANAN: She doesn't know, she

26 can say, your Honor. I think she has a right to state --

27 THE COURT: Well, there's a lack of

28 foundation here. The objection is sustained.

29 Q All right. You've been a clerk for

30 quite a while?

31 A Yes.

32 Q You had worked for Stop and Go for

1 approximately five months?

2 A. Yes, about that.

3 Q And you had seen a lot of people buy
4 Zig-Zag paper?

5 A. Yes.

6 Q What is Zig-Zag paper used for?

7 MR. BLOXHAM: I'm going to object again,
8 your Honor. How does she know? She's not personally
9 present.

10 THE COURT: Okay. We'll ask it
11 this way.

12 Do you know what they buy Zig-Zag
13 paper for?

14 THE WITNESS: The kids buy them to
15 smoke dope with, or whatever, whatever they want to
16 do with them. I don't care.

17 THE COURT: It's papers where you roll
18 your own, isn't it?

19 THE WITNESS: Yes.

20 Q All right. So now what time did he
21 first come in to buy these Zig-Zag papers?

22 A It was a little before midnight.

23 Q All right. And then how long was it
24 when the next time that he -- when you saw him?

25 A Ten, fifteen minutes.

26 Q Now, you're sure it was ten or
27 fifteen minutes?

28 A I could only guess, but I'm -- would
29 say ten or fifteen minutes, yes.

30 Q Now, you recall making a statement before?

31 A. Yes.

32 Q And you recall in that statement that you

1 made before that you said it was 45 minutes to an hour
2 that he came in a later time?

3 A It could have been. I don't -- I was
4 guessing at the time. I didn't -- the last time I
5 looked at the clock, it was ten to 12:00, is the last
6 time I saw a clock until I came to the police station.

7 Q All right. I show you your statement
8 that you made on 12/18 and ask if you recall what you
9 said on that statement?

10 A About the time, you mean?

11 Q Yes.

12 A Okay. Said -- okay. Then I guess
13 about 45 minutes or an hour later.

14 Q All right. Now, what is it -- 45 minutes,
15 of is it an hour later?

16 A I'm not sure.

17 Q All right. So you don't recall the time?

18 A No, not exactly.

19 Q All right. When the second person came in,
20 had you ever seen that person before?

21 A No.

22 Q And had he ever been in the store before,
23 to your knowledge?

24 A Not that I know.

25 Q Did you ever see Mr. Burkett talk to him
26 when he came into the store?

27 A No.

28 Q All right. Was Mr. Burkett or this other
29 person wearing a mask?

30 A Were they what?

31 Q Wearing a mask.

32 A No.

1 Q Did you see their car when they drove up?
2 A No. They looked like they were walking.
3 I know there were no cars parked in front of the store.
4 Q Oh you didn't see one?
5 A Or I couldn't see one, right.
6 Q At that point, this other person is the
7 one that -- that put this knife, as you describe it,
8 to your throat?
9 A Yes, that's right.
10 Q And Mr. Burkett did not touch you at
11 that time?
12 A No.
13 Q And Mr. Burkett did not make any motions
14 toward you at that time?
15 A No.
16 Q Mr. Burkett did not take you out of the
17 store?
18 A No, he did not.
19 Q Mr. Burkett did not try and take you to
20 the back of the store?
21 A No.
22 Q Mr. Burkett did not take you out to
23 the car?
24 A No.
25 Q Mr. Burkett did not force you into the
26 car?
27 A No, he didn't.
28 Q And Mr. Burkett did not kidnap you from
29 that store?
30 MR. BLOXHAM: I'm going to object,
31 your Honor -- call for a legal conclusion, under the
32 circumstances.

1 MR. BUCHANAN: I don't think that's
2 a legal conclusion. I think she can answer it,
3 your Honor.

4 THE COURT: The objection is sustained.

5 Q In any event, Mr. Burkett did not take
6 you from that store?

7 A That's correct.

8 Q Mr. Burkett did not force you into
9 that car?

10 A Yes.

11 Q At all times from the time this other
12 person came until you got into the car, according to
13 your testimony, Mr. Burkett never forced you or brandished
14 any weapon or had any type of weapon in his possession?

15 A You -- you mean when he was in the store,
16 I didn't see any weapon on him?

17 Q No. And you didn't see any weapon when
18 you got into the car on the outside; did you?

19 A No.

20 Q Then would it be a fair statement to say
21 that during the time that you were taken from the store
22 and placed into the car, Mr. Burkett never touched you?

23 A That's correct.

24 Q Mr. Burkett never threatened you?

25 A That's correct also.

26 Q And Mr. Burkett never ordered you to do
27 anything?

28 A Yes, that's correct.

29 Q All right. Now, isn't it also a fact that
30 during the time in the store, you never saw Mr. Burkett
31 at the cash register?

32 A Well, the last place I remember seeing him

1 was when he was standing right in front of the register
2 with the beer. He was standing right in front of me.

3 Q So the last time you saw him, he had
4 two beers, and they were in front of the cash register?

5 A Off to the side, yes.

6 Q And you never saw Mr. Burkett open the
7 cash register?

8 A No. I opened it when I rang it up.

9 Q All right. But you never saw Mr. Burkett
10 open the cash register?

11 A No.

12 Q You never saw Mr. Burkett take the cash
13 out of the cash register?

14 A No.

15 Q And to your knowledge, here today, you
16 can't state if any of the cash was in fact missing or
17 who if anyone took it?

18 A I didn't see anyone take it.

19 Q So then your answer would, "No. I could
20 not tell who if anyone took it"?

21 A I didn't see anyone take it. Right.

22 Q And you cannot state today whether or
23 not Mr. Burkett took that money from the cash register?

24 A I didn't see him take it, no.

25 Q And as far as you know, you don't know
26 where it went or what happened to it?

27 A I'll just tell you what I'm thinking.

28 Q You're thinking. Do you know, or do you
29 not know?

30 A No.

31 Q All right. And if any money was in fact
32 taken, when it was taken, it was not in your presence,

1 isn't that correct, because you -- if you're assuming
2 someone took the money, it had to be taken after you
3 already had left the store?

4 MR. BLOXHAM: Your Honor, I'm going
5 to object if counsel is getting to the legal definition
6 from within someone's presence.

7 MR. BUCHANAN: I think she's answered
8 that. We could argue that to the jury, your Honor. I
9 have to ask --

10 MR. BLOXHAM: He can ask if she has
11 personal knowledge it was taken from the store. I think
12 that covers what he's driving at.

13 MR. BUCHANAN: I can ask that question.

14 THE COURT: The objection is overruled.
15 You may answer the question.

16 Q All right. So no money was taken from
17 your presence?

18 A Right. I didn't see anybody take
19 any money.

20 Q And if any money was taken from that
21 cash register, which you don't know, it was not taken
22 while you were there or in the store?

23 A As far as I know, no.

24 Q All right. Now, then, you're taken outside
25 and you're into this car.

26 A Yes, that's correct.

27 Q All right. Again, then, Mr. Burkett comes
28 out and gets in the car, according to your testimony?

29 A That's right.

30 Q You then drive down the street?

31 A Yes.

32 Q You make one stop, get some gas?

1 A Yes.

2 Q At that point, Mr. Burkett gets out

3 of the car?

4 A Yes. He gets out.

5 Q Again, at that point, did he have

6 a knife?

7 A I don't know whether he did or not,

8 but the other fellow still had his arm around my shoulder

9 and the knife at my stomach. Yes.

10 Q I'm asking Mr. Burkett.

11 A At that time, no, he didn't have a

12 knife, I don't think.

13 Q And he went and got some gas?

14 A Yes. He went --

15 Q According to your testimony, you said that

16 he only put enough gas into it so that the tank was still

17 a quarter empty or just a quarter full, however you want

18 to look at it?

19 MR. BLOXHAM: Your Honor, I think the

20 question is somewhat misleading. According to her

21 testimony. I don't think she's testified as to the gas.

22 Q All right. How much gas did they put in

23 the car, if you know?

24 A I didn't see how much they put in when

25 we were at the gas station. I didn't notice the gas

26 gauge until we were on our way back from town after

27 everything had already happened.

28 Q All right. And what was the gas gauge

29 reading at that point?

30 A If I -- I think it was right around a

31 quarter of a tank.

32 Q All right. And how many miles do you think

1 you traveled during this from Bonanza and Maryland
2 Parkway out to Lake Mead and back?

3 A Probably, round trip, 20, 25 miles.
4 I don't know.

5 Q 20, 25 miles you'd use a gallon or
6 two of gas?

7 A I don't know.

8 Q If you know, if you know.

9 MR. BLOXHAM: Your Honor --

10 A I don't know.

11 Q All right, but in any event, then, the
12 car was not full of gas when you came back into town?

13 A No.

14 Q All right. Now, the next stop you made,
15 you requested some cigarettes; isn't that a fact?

16 A Well, I asked them for a cigarette, and
17 they were almost out, so he said that they were going
18 to stop and get some cigarettes, and they asked me what
19 kind of cigarettes I smoked.

20 Q So they offered to buy you -- you wanted
21 some cigarettes, and they made a stop at the Circle K
22 to buy some cigarettes for you?

23 A Well, it wasn't just for me. They needed
24 cigarettes, too.

25 Q So they got cigarettes, and they got you
26 cigarettes?

27 A Yes.

28 Q They gave you that pack of cigarettes;
29 isn't that correct?

30 A Yes, that's correct.

31 Q And in fact, Mr. Burkett went into the
32 Circle K and bought them himself?

1 A Yes, he did.

2 Q And he came back, and he gave you a

3 pack of cigarettes?

4 A Uh-huh, that's correct.

5 Q And in fact, he lighted the cigarette

6 for you; didn't he?

7 A I don't remember.

8 Q Well, didn't you also testify in your

9 description of the car that the cigarette lighter

10 didn't work?

11 A Yes, I did.

12 Q And so do you recall who then lit

13 your cigarette?

14 A At one time or another, I know the other

15 little fellow lit my cigarette, and I asked to use his

16 lighter. I don't remember if he lit my cigarettes

17 or not.

18 Q Little guy lit your cigarette. He had

19 one arm around you, one arm on the knife?

20 A This was after we were parked right out

21 there.

22 Q All right. After you were parked. All

23 right.

24 But, now, up to the time that he had

25 gone in and bought you cigarettes, given you cigarettes,

26 bought gas, at no time did Mr. Burkett ever stop you from

27 leaving the vehicle?

28 A You mean when he stopped at the stores?

29 Q Right.

30 A He just told me before he got out not to

31 try anything stupid or --

32 Q That was out in the road, but I'm talking

1 about when he got out to buy gas.

2 A Yes. He told me that too, when he got
3 out. I can't remember which one of them said. They said,
4 "Don't try anything stupid and you won't get hurt."

5 Q All right, but Mr. Burkett didn't stop you
6 from getting out of the car. He went in to buy gas.

7 Isn't that correct?

8 A Yes, that's correct.

9 Q Isn't it a fact Mr. Burkett didn't stop
10 you from getting out of the car when you went to the
11 Circle K -- in fact, he went in, bought you cigarettes?

12 A Well, yes, I guess. He went in the store.

13 Q So he wasn't holding you in the car at
14 that time, either?

15 A No.

16 Q All right. And so then you drive out,
17 according to your testimony -- out Bonanza towards
18 Lake Mead?

19 A Out Lake Mead Boulevard towards the lake.

20 Q All right. Now, you get out there, and
21 you go through these scenes that you've described, which
22 are certain sexual activities. Is that correct?

23 A That's right.

24 Q Now, at no time when this sexual activity
25 took place did Mr. Burkett ever have a weapon. Isn't
26 that true?

27 A I didn't recall seeing one.

28 Q And at no time when he had -- according
29 to your testimony, again -- sexual intercourse, did he
30 have a weapon with him at that time?

31 A No.

32 Q And when you said he had anal intercourse

1 with you, at no time did he have a weapon with him
2 either; did he?

3 A Not that I could see, no.

4 Q All right. So during both of these
5 sexual advances, did he have any type of weapon or
6 brandished a weapon to you?

7 A No.

8 Q And in fact, at one time, I think you're
9 statement was, you said that you were cold?

10 A Yes.

11 Q And you said you can't recall who gave
12 you a coat, but isn't it a fact, according to your
13 testimony and previous statements, that Mr. Burkett gave
14 you a Levi jacket?

15 A Well, I saw a statement, I'd remember, but
16 I don't remember. I don't recall today who gave me the
17 jacket.

18 Q And at no time did Mr. Burkett, up to that
19 time, ever attempt to -- according to your testimony, now --
20 ever attempt to put a hand on you, or any kind of
21 physical force?

22 A That's right. They told me as long as I
23 stayed calm, that I wouldn't get hurt.

24 Q All right. And so then your answer would
25 be, "Yes. Mr. Burkett never laid a hand on me or
26 threatened me or brandished me with a knife from that
27 time that we left the store until the time of these
28 sexual advances"?

29 A Yes, I --

30 Q All right. And if fact, he bought you
31 cigarettes and other things.

32 All right. Now, you've gone and said

1 that -- in one of your statements -- that this had
2 happened to you before?

3 A That's correct.

4 Q And isn't it a fact, though, and as you've
5 testified here today, that you were actually robbed a
6 few weeks before, actually four or five days before in
7 another store?

8 A Yes. When they asked me that question,
9 I assumed they asked me if I'd ever been raped before.

10 Q Any event, your answer today is different
11 than what it was then?

12 A How do you mean? I don't --

13 Q So you misunderstood the question?

14 A (Witness nodded.)

15 Q But in fact, you had been robbed four or
16 five days earlier?

17 A Yes.

18 Q And in that circumstance, certain money
19 again was missing from Stop and Go.

20 A Yes, that's correct.

21 Q And in fact, they never caught the person
22 or persons connected with that robbery; did they?

23 A No, they never did.

24 Q And at that point, your husband was still
25 unemployed?

26 A Yes, he was.

27 Q And what were you making a shift at the
28 Stop and Go?

29 A A shift. I don't know. I was making
30 three sixty-five an hour. I don't know what that comes
31 out to.

32 Q That was just barely enough for you and

1 your husband to subsist on?

2 A That's right.

3 Q Fact, you were living in that run-down
4 motel on Fremont Street?

5 MR. BLOXHAM: I'm going to object to
6 that characterization, your Honor.

7 Q You were living in a hotel, the
8 Blue Angel Motel on Fremont Street?

9 A That's correct.

10 Q A rather older establishment?

11 A That's correct.

12 Q Not in the best of shape?

13 A No.

14 Q It's not the nicest living conditions?

15 A No.

16 Q All right. Now, can you ever recall at
17 the lineup that whenever you went there, you did not
18 identify this other person? Is that correct?

19 A That's correct. I wasn't positive that --
20 like I see just like -- like somebody that resembled him
21 in the first lineup, the younger person. Yes.

22 Q You couldn't identify one person?

23 A That's correct.

24 Q But you could identify this person?

25 A That's correct.

26 Q This all occurred at night, right?

27 A You mean the robbery and all that?

28 Q Uh-huh.

29 A Yes. That was night, at night. Yes.

30 Q Isn't it a fact when you first came to
31 the police and you made your description and you told
32 them about this spider and everything else, isn't it

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1 a fact that you said that the person was 30 years old.

2 A That's correct.

3 Q Now, does this person look 30 years old
4 to you?

5 A He -- well, the way he looked then, he
6 did, he had longer hair and a beard.

7 Q How old would you say he is?

8 A 25. I don't know.

9 Q Do you think he looks 30?

10 A He could, yes.

11 Q Do you think he looks more like 19?

12 A No.

13 Q You wouldn't say he's 19?

14 A No.

15 Q Your other description of him as far as
16 clothes and so forth -- you were pretty explicit. Is
17 that correct?

18 A I did the best I could.

19 Q You remember belt buckle?

20 A Yes.

21 Q And you remembered cigarette lighters?

22 A Uh-huh.

23 Q You remembered key chains with initials
24 on them?

25 A Yes.

26 Q And you remember all these things?

27 A That's correct.

28 Q And yet it was still dark out?

29 A Yes, it was dark.

30 Q And in fact, your testimony before, at
31 least what you've said before is the interior light of
32 the car didn't work?

1 A That's right.

2 Q And so we can assume that out there
3 on Lake Mead or wherever it was on this night in question
4 that it was very dark?

5 A Yes. It was very dark.

6 Q And yet all during this time, you
7 memorized all these different things?

8 A Well, the tattoos on his arm and the
9 key chain and like when we were driving through town.
10 The streetlights. You could pretty much see if you're
11 driving at night in town. The streetlights. You can see.

12 Like I said, I couldn't see his left
13 arm that well, but you -- I could see his right arm and
14 the key pad that was in the ignition.

15 Q All during this time, this night in
16 question, did you ever meet any of his other friends?

17 A No.

18 Q Did you ever stop at anybody's house
19 and have a conversation with any other people?

20 A No.

21 Q And you never talked to Mr. Burkett before
22 about the fact that before this incident, that he should
23 go to work for Seven Eleven, that they were looking
24 for people?

25 A No.

26 Q And did you ever know whether Mr. Burkett
27 ever made an application to the same store you were
28 working at?

29 A No. He could have. I didn't know. I've
30 never met him before.

31 Q So then your testimony would be that you
32 didn't encourage him to make application to work at the

1 Seven Eleven?
2 A Before all this happened, you mean?
3 Q Yes.
4 A No. I'd never talked to him, seen him
5 or heard of him.
6 Q Never saw him before this night?
7 A Absolutely not.
8 Q Never talked to any of his friends who
9 might have been at a party out on Bonanza?
10 A No.
11 Q And all these things were done without
12 your own knowledge or consent?
13 A You mean the robbery and everything?
14 Q Yes.
15 A Yes. I went to work that night. I
16 intended to stay there.
17 Q All right. And you didn't smoke marijuana
18 cigarettes on this, this night?
19 When everyone was smoking in the car,
20 did you have any marijuana cigarettes?
21 A I didn't smoke any, no.
22 Q Did someone else roll some cigarettes?
23 A Not that I recall.
24 Q Marijuana cigarettes?
25 A Not while I was there.
26 Q Did you have any beer that they bought?
27 A They had beer, yes.
28 Q Did you have any of it?
29 A No.
30 Q You didn't have any beer, didn't have
31 any cigarettes?
32 A I had cigarettes, yes.

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1 Q All right. Now, after this event, what
2 you've described, you came into town. You went into a
3 bar.

4 A That's correct.

5 Q You happened to see a policeman from
6 North Las Vegas?

7 A Yes.

8 Q And you related this incident about a
9 person 30 years old, and the rest of the description?

10 A Yes.

11 Q I'm assuming that after that, you went
12 to the hospital?

13 A Well, we went to the police station first.

14 Q Police station downtown?

15 A Uh-huh.

16 Q And from there you went to the hospital?

17 A Yes.

18 Q All right. Now, at that point, did you
19 ever have any type of examination for rape and so forth?

20 A Yes.

21 Q And were you examined?

22 A Yes.

23 Q Did you have any other contusions,
24 abrasions, bruises, marks?

25 A No, not that I know of.

26 Q And so when the doctor examined you, you
27 recall his name?

28 A No, I don't.

29 Q All right. But when the doctor examined
30 you, he saw no bruises on your neck?

31 A No, he didn't.

32 Q He saw no bruises on your arm?

1 A No.
2 Q He saw no bruises on your body?
3 A No.
4 Q He saw no contusions?
5 And by that, I mean scrapes or
6 roughnesses or so forth.
7 A No.
8 Q And your skin is rather tender, and, you
9 know, you're a young girl, 21 years old. Is that right?
10 A That's correct.
11 Q Now, you've testified at this hearing
12 that you had a time when someone had their arms around
13 your neck?
14 A Yes, that's correct.
15 Q And by your struggling and by force
16 and so forth, you managed to extradiate your neck from
17 this grip?
18 A That's right.
19 Q That you had a struggle with someone
20 out there when you had a beer bottle and you tried to
21 hit them?
22 A That's right.
23 Q You had other struggles where people
24 were pulling your hair and went on your neck, according
25 to your testimony?
26 A Yes, that's right.
27 Q And you had no clothes on during the
28 time that this event occurred?
29 A Well, you mean when I was struggling?
30 Q Yes.
31 A No. I had my clothes on when we were
32 struggling.

1 Q All during all of this time and all of
2 this period, you had no bruises or any kind of marks
3 on you that could be detected or examined by a doctor,
4 or in any way harmed?

5 A From what they could see, no. I had
6 some sore muscles and some pulled-out hair, but they
7 couldn't see that.

8 Q They couldn't see it, and when you were
9 examined, he saw absolutely nothing wrong with you?

10 A That's correct.

11 Q And in regard to the sexual intercourse,
12 there was no bleeding of any type from any mistreatment
13 or anything else?

14 A I don't know. I didn't ask him.

15 Q And there was nothing that would indicate
16 that there was any physical assault upon your body other
17 than the fact of your statement that you had had sex or
18 had been sexually attacked?

19 A Would you repeat that again?

20 Q Well, in other words, aside from your
21 complaint to the police department, as far as a doctor
22 could detect upon examination of you and your body --

23 MR. BLOXHAM: I'm going to object,
24 your Honor. He's asking what the doctor knows. This
25 woman doesn't know what the doctor knows.

26 MR. BUCHANAN: I'm just asking a
27 question.

28 THE COURT: The objection is overruled.

29 Q So then from the doctor, when you went to
30 the hospital, the doctor's examination of you, he could
31 not tell that you had been sexually abused other than the
32 fact that you said you had sexual intercourse against

1 your will?

2 A Yes, that's correct.

3 Q In other words, there was nothing to give
4 them indications that you had been in a struggle or the
5 rest of the ordeal to which you had testified to?

6 A Well, he just asked me if -- you know, if
7 I was hurt anywhere or cut or anything, and I said no.

8 Q Let me ask you one other question. Might
9 be personal, and I'm not trying to embarrass you or
10 anything.

11 Did at any time, according to this,
12 according to your testimony, and during this sexual
13 assault, did the defendant, Mr. Burkett here, ever
14 perform cunnilingus upon yourself -- in other words,
15 ever put his head or body or so forth close to your vagina?

16 A No, not that I can remember.

17 Q So then, your testimony would be that that
18 during these sexual events, that none of that, that type
19 of activity, occurred?

20 A That's correct.

21 MR. BUCHANAN: All right. I have
22 nothing further.

23 REDIRECT EXAMINATION

24 BY MR. BLOXHAM:

25 Q Mrs. Cage, how long did you reside at
26 Blue Angel Motel?

27 A I think about one month.

28 Q And why was it that you were residing
29 there, if there is any specific reason?

30 A We were in between switching apartments,
31 changing.

32 Q Waiting for an apartment to come open?

1 A Yes.

2 Q And you were living there with your
3 husband; is that correct?

4 A Yes, that's right.

5 Q Have you and your husband ever been
6 separated?

7 A No.

8 Q Now, a question was asked concerning one
9 of the statements that you made earlier concerning 45 minutes
10 to an hour elapsed between when defendant Burkett first
11 came in the store and when he returned.

12 Was that statement made soon after
13 it happened? I mean that morning, December 18th?

14 A Yes. It was right after they brought me
15 down to the police station.

16 Q Okay. And were you upset at that time,
17 or were you pretty calm?

18 A I was pretty upset.

19 Q Were you, were you just narrowing in on
20 one or two items, or were you giving a great, big,
21 explanation to everything?

22 Were you answering specific questions?

23 A I -- I don't know what you mean, just
24 certain questions.

25 Q Was that in response to a specific question
26 how long? Do you recall?

27 A He just asked me about how long did it take
28 in between times I saw them.

29 Q Did you have occasion to attend a
30 preliminary hearing December 9, 1981?

31 A Yes.

32 Q Did you also make statements concerning

1 how long transpired at that point?

2 A Yes.

3 MR. BLOXHAM: Your Honor, may I
4 approach the witness?

5 THE COURT: Yes.

6 Q Referring to Page 7, could I have you
7 review Page 7, Line 1, down to 7.

8 I'd ask you if that's your testimony
9 January 9, 1981?

10 A Yes, it is.

11 Q That was under oath; is that correct?

12 A Yes, it is.

13 Q And what did you say at that point?

14 What was your testimony then?

15 A I said he came back about 15 minutes later.

16 Q Okay. In other words, December 9, your
17 statement was that he came in the store and then returned
18 15 minutes later, something like that?

19 A Yes.

20 Q Now, I misunderstood, or perhaps I didn't
21 misunderstand.

22 Your testimony was they said for you
23 to stay calm and you wouldn't get hurt. Is that correct?

24 A Yes.

25 Q This was prior to the sexual assault?

26 A Yes.

27 Q Did defendant Burkett at all say that?

28 A Yes.

29 Q Okay. Was there general discussion all
30 during this whole time?

31 A Yes. We -- I tried to keep calm and talk
32 to them, trying to talk me -- trying to talk them into

1 letting me go. Yes.

2 Q Okay. Now, during this general discussion,
3 did defendant Burkett mention to you certain facts about
4 his past history?

5 A He mentioned that he had been in
6 trouble before.

7 Q Okay. Did -- based on all of these
8 factors, is that how you arrived at your explanation
9 of his age?

10 A It had something to do with it, yes.

11 Q Or was it just physically looking at him?

12 A No. The way he acted, his build,
13 everything.

14 Q Okay.

15 A Seemed he was older.

16 Q Now, the question was that you had, whether
17 or not you had tender skin.

18 Are you unusually susceptible to
19 bruises, if you know?

20 A No.

21 MR. BUCHANAN: I object to the answer.

22 I don't know whether "no" means she is or she isn't,
23 and I object to the form of the question.

24 Q Do you bruise easily?

25 A No.

26 Q You noticed no bleeding after these events?

27 A No.

28 MR. BLOXHAM: I have no further questions,
29 your Honor.

30 THE COURT: Any recross?

31 MR. BUCHANAN: Maybe just one or two,
32 your Honor, if I may.

1 RECROSS EXAMINATION

2 BY MR. BUCHANAN:

3 Q You said 15 minutes, the preliminary
4 hearing, at that statement?

5 A Yes.

6 Q You said one hour in the statement you
7 made on the 19th?

8 A Yes.

9 Q And you're saying 15 minutes today?

10 A That's correct.

11 Q Wouldn't your recollection of the events
12 be more specific of the 18th, the day after you made,
13 after this occurred?

14 A Well, when they were interviewing me, it
15 was about 4:00 o'clock in the morning, and I was pretty
16 shook up, and I was trying to sort everything out.

17 I just told them what I thought
18 had happened.

19 Q And your recollection at that time would
20 have been much better than it is today?

21 A I could have been. I don't know.

22 Q So you can't state --

23 A I don't know. I had -- at the time they
24 took the statement, I just told them what --

25 Q What you thought happened?

26 A That's correct.

27 Q You've had an opportunity to review your
28 statements, your preliminary hearing transcript prior to
29 coming to court. Haven't you?

30 A What do you mean?

31 Q You've read them?

32 A Yes, I've read them.

1 Q You read your transcript in Justice Court?
2 In other words, the District Attorney
3 got you ready to come in and testify?
4 This is his job.
5 A Well, yes. He let me read it over, yes.
6 Q And you read it over?
7 A That's correct.
8 Q So you testified today what you read over
9 and what you recalled. Is that correct?
10 A Well, I read it over, yes, and it helped
11 me remember a few things that I'd forgotten. Yes.
12 Q You prepared, and you came into that court
13 with that in your mind and refreshed from what was
14 said before?
15 A That's right.
16 Q And you read your statement?
17 A Yes.
18 Q And you read your transcript?
19 A Yes.
20 Q And you had discussions with the
21 District Attorney?
22 A We talked a little while, yes.
23 Q And that's the basis of your testimony
24 today, as well as your recollection?
25 A Well, both, yes.
26 Q But there are variances in both your
27 testimony and your statements? You agree with that?
28 A Probably. 'Cause I'd forgotten a lot
29 of things since.
30 Q Statements like the statement about not
31 happening before as a misinterpretation?
32 A Yes.

1 Q And your statement about the one hour
2 fifteen minutes are different interpretations now?

3 A It's -- well, yes. It could have been
4 15 minutes. It could have been an hour. I'm not sure.

5 Q In other words, then there are variances
6 in your stories, and you're just not sure about it.

7 A That is correct.

8 MR. BUCHANAN: Thank you. Nothing
9 further.

10 MR. BLOXHAM: Could I ask just one area,
11 your Honor?

12 THE COURT: Yes.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. BLOXHAM:

15 Q These items we showed you -- the knives
16 and the other things -- have you seen those at all from
17 December 18th until today?

18 A No.

19 MR. BLOXHAM: Okay. Thank you.

20 Nothing further, your Honor.

21 MR. BUCHANAN: Now, just one. I'm
22 staying within the bounds, your Honor.

23 FURTHER RECROSS EXAMINATION

24 BY MR. BUCHANAN:

25 Q Those knives that you've identified as
26 Exhibits 3 -- you can't state that those are the same
27 knives, can you?

28 A I'd say they look very, very similar to
29 the ones they had with them, yes.

30 Q They look similar to the ones they had
31 with them, but you can't state to this jury today that
32 those knives that they had there are those knives that

1 have been marked as Proposed Exhibit 3 are in fact the
2 same knives as you allege happened on that night,
3 no question?

4 MR. BLOXHAM: I believe there's two
5 knives, your Honor -- 3 and 6. Just referring to 3.

6 Q All right. Exhibit 3. Can you state
7 who had that knife, if your testimony is correct.

8 A Which one was item -- the big one or the
9 little one?

10 Q All right. This is item 6, which I say
11 would be the big one, uh-huh.

12 A Okay. That one there is the one that the
13 younger fellow when he came in the store. That's the
14 one he put to my throat, and that's the one that he had
15 in his hand when he threatened to kill me.

16 Q All right. And the item 3?

17 A That one there I believe he was wearing
18 on his belt.

19 Q Who is "he"?

20 A Mr. Burkett.

21 Q All right. And that's the little, this
22 little knife?

23 A Uh-huh.

24 Q All right. Can you positively identify
25 these knives as being the same ones that you saw on that
26 night, or just assuming because they're here in court that
27 these are in fact the same weapons?

28 A I only think -- could I size that? Okay.
29 It was pretty dark out, but I remember
30 how big they were. I may not remember what color, but I
31 remember what they look like.

32 Q You can't see through this. Can you even

1 state what color the handle is?

2 A It's black.

3 Q And could you see that? Can you state
4 anything about the blade, any particular thing about the
5 blades that haven't been unsheathed here?

6 A Big knife's a big, long knife with the --
7 a groove in the tip, a regular hunting knife.

8 That's just a plain silver skinning
9 knife, doesn't have a groove in it, I think.

10 Q Do you know whether it has a groove
11 in it?

12 A I'm not certain, no.

13 Q Never saw this knife outside this sheath,
14 did you?

15 A I saw it earlier.

16 Q You mean today?

17 A No, not today.

18 MR. BUCHANAN: All right. Nothing
19 further.

20 THE COURT: Anything further,
21 Mr. Bloxham?

22 MR. BLOXHAM: No, your Honor.

23 THE COURT: You may step down,
24 Mrs. Cage. Thank you.

25 We'll take our evening recess at
26 this time. We'll be in recess until 10:00 a.m. tomorrow
27 morning.

28 During the time we are in recess,
29 ladies and gentlemen, I would remind you it is your duty
30 not to converse among yourselves or with anyone else on
31 any subject connected with this trial, or to read, watch
32 or listen to any report of or commentary on this trial

1 or any person connected with this trial by any medium
2 of information, including newspapers, television and
3 radio, and you are not to form or express an opinion on
4 any subject connected with this case until it is finally
5 submitted to you.

6 We'll be in recess until 10:00 a.m.
7 tomorrow morning.

8 * * * * *

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3
ORIGINAL

1 CASE NO. C52190

2 DEPARTMENT SEVEN

3
4
5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
8
9

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

VOLUME II

13 JOEL BURKETT, aka)
14 RAYMOND HAIRE,)

15 Defendant.)
16

17 REPORTER'S TRANSCRIPT

18 OF

19 JURY TRIAL

20
21 BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE

22 Thursday, April 30, 1981
23

24 APPEARANCES:

25 For the State:

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Las Vegas, Nevada

26
27
28 For the Defendant:

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29
30
31
32 Reported by: CONSTANCE KROON, CSR, No. 75

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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 30, 1981, 10:40 A.M.

2 * * * * *

3
4 (The following proceedings
5 were had in open court, outside the
6 presence of the jury.)

7 MR. BLOXHAM: Your Honor, at this time,
8 outside of the presence of the jury, I'd like to file
9 in open court a motion, notice of motion to endorse
10 names to the Information. I've supplied Mr. Buchanan
11 a copy of this this morning and briefly mentioned to
12 him what it's about.

13 The two names that we'd ask to be
14 endorsed on the Information are those of Eugene Falcone
15 and Marvel Courtney, both detectives with the robbery
16 division of the Metropolitan Police Department, and I
17 would expect to call them to testify for the
18 following reasons:

19 There was a robbery at a
20 Seven Eleven at Atlantic and Olive -- or Stop and Go.
21 I'm sorry -- Atlantic and Olive around December 11, about
22 a week before this particular robbery that this case
23 involves. The clerk at that store was Tina Cage.

24 Now, it's my understanding that
25 they had an undercover camera that took pictures of the
26 robbery. I understand they're not good, but they do
27 show a black man by the register with it open, and
28 Tina Cage either down or lower, or whatever.

29 I believe it's important for us
30 to put this evidence on because when Mr. Buchanan was
31 cross examining Tina Cage he pointed out the fact that
32 her husband was unemployed for two months. She was living

1 in the Blue Angel Motel, which he categorized as a
2 run-down place, that here she has two robberies
3 within a week's period -- you know, drawing the inference,
4 "Hey, here's a girl who needs money. Three fifty an
5 hour, as brought out. She needs money. She's got to
6 get money somehow, and she's staged two robberies."
7 Basically that's what his evidence goes to.

8 Now, I would point out to the Court
9 173, Nevada Revised Statutes 173.045, which controls
10 the names endorsed to an Information, and read in part --
11 it says "But this shall not preclude the calling of
12 witnesses whose names or materiality of those of whose
13 testimony are first learned by the District Attorney or
14 the Attorney General upon the trial."

15 That's what we have here. I didn't
16 consider that very important until this trial started,
17 until we had cross examination of Tina Cage, and now
18 it becomes material, in my opinion, to show that a robbery
19 did in fact occur -- flesh it out a little bit, if you will,
20 the robbery that occurred a week prior.

21 I would ask the Court to grant our
22 motion. I have an order prepared, if your Honor sees
23 fit to grant us a motion to put in our case in chief
24 testimony from these two officers.

25 MR. BUCHANAN: Well, your Honor, we
26 of course object, and we object strenuously. What he's
27 doing now is not adding names to the Information. He's
28 assuming or inferring that I've destroyed his witness
29 on cross examination and is now through these witnesses
30 only trying to come back and rehabilitate her.

31 He's saying that his witness now, and
32 by filing this motion, is not reliable; and now he's

1 coming back and trying to impeach or -- or try to
2 rehabilitate his own witness.

3 That's not new evidence.

4 That's not something that can be brought back, or
5 something he should have known or should not have known
6 and comes back and now is material. He's doing this
7 only on his own inference, and I don't feel it's proper
8 to come in during a trial and bring a witness to
9 rehabilitate your own witness when she hasn't been
10 impeached.

11 There were just some questions
12 asked, and now, counsel is inferring in his own mind
13 what those questions related to. He's taking the place
14 of a jury and trying to come in now and rehabilitate
15 a witness who hasn't been impeached.

16 And we'd object to it. We don't
17 think it's proper. We don't think it's material, and
18 for the purpose of rehabilitating his own witness, we
19 think it's highly improper and prejudicial.

20 THE COURT: Yes. The objection
21 is sustained.

22 MR. BLOXHAM: Your Honor, could the
23 Court then expand a little bit and explain for my
24 edification if this would be possibly proper rebuttal
25 evidence, or would the Court rather wait until the
26 time came for that?

27 THE COURT: May or may not, but there
28 is no evidence that she robbed the store or that her
29 husband robbed the store.

30 MR. BLOXHAM: Okay.

31 THE COURT: And otherwise, I could
32 negate every fact of life in every case if I were to

1 expand this case that far.

2 MR. BLOXHAM: Okay. Thank you,
3 your Honor.

4 THE COURT: Anything further outside
5 the presence of the jury?

6 MR. BLOXHAM: No, your Honor.

7 THE COURT: Want to bring them in?

8 (At this time, the
9 jury and alternate jurors
10 entered the courtroom.)

11 THE COURT: Miss Clerk, will you call
12 the roll of the jury and the alternate jurors?

13 (At this time, the
14 clerk called the roll of the jury
15 and alternate jurors, and all members
16 indicated their presence.)

17 THE COURT: You may call the State's
18 next witness.

19 MR. BLOXHAM: Your Honor, the State
20 would call Donald Thornton.

21 DONALD THORNTON,
22 having been first duly sworn to tell the truth, the whole
23 truth and nothing but the truth, testified and said
24 as follows:

25 DIRECT EXAMINATION

26 BY MR. BLOXHAM:

27 Q Sir, would you state your full name,
28 please, and spell the last name for the record.

29 A Donald J. Thornton, T-h-o-r-n-t-o-n.

30 Q And Mr. Thornton, you are employed by
31 the Las Vegas Metropolitan Police Department; is
32 that correct?

1 A Correct.
2 Q And what it -- how long have you been
3 so employed, sir?
4 A Approximately two years seven months.
5 Q And what is your current position and
6 assignment?
7 A I'm a correctional officer assigned to
8 jail detail.
9 Q Were you so assigned on December 19, 1980?
10 A Yes.
11 Q And were you on duty at that time?
12 A Yes.
13 Q Did you have occasion to prepare a
14 fingerprint exemplar on that date?
15 A Yes.
16 Q Now, can you tell us what a fingerprint
17 exemplar is?
18 A Host --
19 MR. BUCHANAN: I object that until we
20 have a foundation that this person is an expert
21 criminologist.
22 MR. BLOXHAM: Your Honor, that's part
23 of the way you ask, is do you know what one is, how do
24 you prepare one.
25 MR. BUCHANAN: We're objecting to the
26 foundation. This person is -- I understand that this
27 person will be trying to introduce an exemplar. That's
28 one thing, but to have this person now come in and be
29 a criminologist and explain what an exemplar is, and
30 fingerprint ridges and other matters, is highly irregular,
31 unless they have a foundation for his expertise, and also,
32 I think they have a foundation for him taking an exemplar.

1 MR. BLOXHAM: Your Honor, there's no
2 questions about fingerprint ridges or whatever. May I
3 withdraw the question, ask an additional question,
4 your Honor?

5 THE COURT: All right.

6 Q Mr. Thornton, do you know what a
7 fingerprint exemplar is?

8 A Yes.

9 Q Have you taken fingerprint exemplars
10 in the past?

11 A Yes.

12 Q Approximately how many fingerprint exemplars
13 have you taken?

14 A I would say at least 50 to 60, maybe more.

15 Q Have you testified in court before
16 concerning fingerprint exemplars?

17 A Once.

18 Q Okay. Now, what is a fingerprint
19 exemplar, sir?

20 A It's where you roll the fingers, individual
21 fingers of a person's hand on the card. You take your
22 four fingers, push them down, your thumb, and on the back
23 of it you take a palm print.

24 Q Okay. Are these fingers inked as
25 they're --

26 A Yes.

27 Q Okay. Now, are they put on a card, or
28 what are they put on?

29 A They're put on a special card which we
30 call S.P.C. card, one for the right hand and one for
31 the left hand.

32 Q Is the taking of a fingerprint exemplar

1 difficult?

2 A No.

3 Q Is it fairly routine?

4 A Yes.

5 Q I'll ask you again, did you have occasion
6 to prepare a fingerprint exemplar on December 19, 1980?

7 A Yes.

8 Q And do you see anyone in the courtroom
9 today upon whom you prepared a fingerprint exemplar card?

10 A The defendant.

11 Q Okay. Could you tell us where he's
12 seated, what he's wearing, please?

13 A Sitting right over here with a brown
14 jacket, black shirt, and I believe Levi's on.

15 Q Okay. Now, at our request, have you
16 brought something to court with you today?

17 A The S.P.C. card I rolled on that day.

18 Q Where did you receive this?

19 A From Detective Mumpower out in the hall,
20 and I --

21 Q There are two cards, is that correct?

22 A Yes. One's the right hand, one's the
23 left hand.

24 MR. BLOXHAM: May we have this marked
25 State's next in order, your Honor?

26 Q Officer Thornton, showing you what's been
27 marked for identification purposes as State's Proposed
28 Exhibit 13, can you identify that, sir?

29 A Yes, sir. These are the S.P.C. cards that
30 I rolled on December 19, 1980, signified by my initials
31 and my P number.

32 Q Are your initials and P number on both cards?

1 A Yes.
2 Q And is there a signature on those cards?
3 A There is a signature of Raymond Haire.
4 Q Okay. Do you see the person who signed
5 Raymond Haire?
6 Did he sign that in your presence?
7 A Yes, sir.
8 Q Do you see that person in the
9 courtroom today?
10 A The defendant.
11 Q Okay. And that's the same man you've
12 identified earlier seated here by Mr. Buchanan?
13 A Yes, yes.
14 MR. BLOXHAM: Okay. I have no further
15 questions at this time, your Honor.
16 MR. BUCHANAN: No questions.
17 MR. BLOXHAM: We'd ask the Court if
18 we could have Officer Thornton remain outside briefly
19 in case there are further questions with our next witness,
20 your Honor, and then to be excused.
21 THE COURT: You may step down,
22 Officer Thornton, Thank you.
23 MR. BLOXHAM: Our next witness is
24 Officer Mumpower.
25 FRED P. MUMPOWER,
26 having been first duly sworn to tell the truth, the whole
27 truth and nothing but the truth, testified and said
28 as follows:
29 DIRECT EXAMINATION
30 BY MR. BLOXHAM:
31 Q Sir, would you state your full name and
32 spell the last name for the record, please?

1 A Fred P. Mumpower, M-u-m-p-o-w-e-r.
2 Q And it's Officer Mumpower? Is that
3 your title?
4 A Yes, that's correct, sir.
5 Q You're employed by the Las Vegas Metropolitan
6 Police Department; is that correct?
7 A I am.
8 Q And how long have you been so
9 employed, sir?
10 A I've been with the Las Vegas Metropolitan
11 Police Department since the consolidation, I think it
12 was 1973.
13 Prior to that, I was with
14 Clark County Sheriff's Department, and then prior to
15 that I was with Los Angeles County Sheriff's Department
16 for approximately 13 years.
17 Q So what is your current assignment and
18 position, sir?
19 A I am a police officer with a Specialist 3
20 rating. I am attached to the criminal identification
21 section.
22 Q What are your duties in the criminal
23 identification section?
24 A That is -- takes in fingerprinting,
25 photography, firearms, tool marks, shoe prints, actually
26 actually anything that's concerned with identification.
27 Q Okay. Have you received special training
28 in the area of listing latent fingerprints?
29 A Yes, I have.
30 Q What is that training?
31 A I had a -- I went to Los Angeles
32 City College some years back and took up fingerprinting.

1 I also attended a fingerprint course, FBI, in El Monte,
2 California.

3 I've also been certified by the
4 International Association for Identification as a latent
5 fingerprint examiner.

6 Q Okay. As an examiner. Okay.

7 Now, what's a latent fingerprint,
8 Officer Mumpower?

9 A A true latent fingerprint is hidden or
10 not seen.

11 Q Okay. Now, have you lifted latent
12 fingerprints in the past?

13 A Yes, I have.

14 Q Approximately how many times, if
15 you know?

16 A It would be many thousands.

17 Q Okay. Now, as you process a crime scene,
18 how do you go about trying to find latent fingerprints?

19 A Well, one of the first things you're
20 trying to do, try to determine what a person has touched
21 or handled or where the person has been.

22 At that time, you use the black
23 fingerprint dust, which is made commercially, and use of
24 a brush. And then after obtaining or finding a print,
25 you lift it with a plastic type tape and place it onto
26 a card with a white background.

27 Q That one of your duties with your
28 employment as looking for and lifting latent fingerprints?

29 A That's correct.

30 Q Okay. How is a fingerprint left when
31 somebody touches something? Do you know?

32 A It can be left by moisture or oils, or

1 actually person puts their hand through their hair,
2 they'll pick up oils, which happens quite a bit, or it
3 can be left in dust itself, or paints, or whatever.

4 Q Now, have you testified in court before
5 in Nevada concerning the lifting the latent fingerprints?

6 A Yes, I have.

7 Q And approximately how many times?

8 Now, that's as an expert.

9 A That would have been many times. I don't
10 recall the amount.

11 Q And have you also testified, have you also
12 received training in comparison of fingerprints, or would
13 that be exactly what you've just talked about, too?

14 A Yes, sir, it is.

15 Q Lifting and comparing?

16 A Lifting and comparison, yes.

17 Q Have you also qualified in court in the
18 area as an expert in the comparison of latent fingerprints
19 with exemplars and things like that?

20 A Yes, I have.

21 Q Okay. Would that also be many times?

22 A Many times.

23 MR. BLOXHAM: Your Honor, I'd ask the
24 Court to recognize Officer Mumpower as an expert in the
25 area of lifting latent fingerprints, and also in the
26 comparison of latent fingerprints with exemplars.

27 MR. BUCHANAN: Your Honor, I don't think
28 the problem is a court recognizing him. I think it's
29 only the province of the Court not to allow his testimony,
30 and then I object when he went to testify.

31 And I don't think it's the Court's
32 province to declare him an expert until they hear the

1 testimony, if I object to his qualifications. Then the
2 Court would recognize him, not until.

3 THE COURT: Are you going to object?

4 MR. BUCHANAN: Am I?

5 THE COURT: Yes.

6 MR. BUCHANAN: Am I going to object?

7 No.

8 THE COURT: Okay. Go ahead.

9 MR. BLOXHAM: Thank you.

10 Q Do you also take photographs at
11 a scene?

12 A Yes, I do.

13 Q Okay. Now, I want to direct your attention
14 to December 18, 1980 at approximately 1:28 a.m..

15 Did you have occasion to go to
16 732 North Eastern?

17 A Yes, I did.

18 Q That a Stop and Go market at that
19 location?

20 A It is.

21 Q Did you go alone, or were you with
22 someone?

23 A I was with someone.

24 Q Who was that?

25 A That was identification officer
26 David Ruffino.

27 Q Okay. Were photographs taken at
28 this scene?

29 A They were.

30 Q To your knowledge?

31 A They were.

32 Q Did you also process the scene for

1 fingerprints?

2 A I did.

3 Q Now, upon processing the scene for
4 fingerprints, were you yourself able to recover any
5 latent fingerprints?

6 A Yes, I was.

7 Q And fingerprints which you later compared
8 with others and arrived at a match?

9 A I did.

10 Q Do you recall where you recovered any
11 latent fingerprints that were later compared?

12 A Yes. I obtained fingerprints from a
13 Michelob beer bottle which was sitting on the counter
14 of the Stop and Go. I also obtained fingerprints from
15 the interior of the front, which would be the west door
16 of the location.

17 MR. BLOXHAM: Okay. Now, may I approach
18 the witness, your Honor?

19 THE COURT: Yes.

20 Q Officer Mumpower, showing you what's been
21 marked for identification purposes as State's Proposed
22 Exhibits 8, 9, 10, 11, and 12, I'd ask you to look at
23 all five of these photographs and ask you if you can
24 identify those particular photographs?

25 A Yes, I can.

26 Q And did you take those photographs, or
27 were they taken in your presence?

28 A They were -- either I took them or they
29 were taken in my presence.

30 Q You can recognize the items?

31 A Yes., I can.

32 Q In fact, you see the Michelob beer bottle

1 in those photographs that you lifted a latent print from?

2 A Yes, I do.

3 Q And which photograph is that?

4 A Which we have as, marked as -- for
5 identification, marked for identification No. 9.
6 Also No. 10.

7 Q And in that appears to be a Michelob,
8 two Michelob beer bottles in one and one in the other;
9 is that correct?

10 A That's correct.

11 Q Is that where you lifted a latent?

12 A That's correct.

13 Q I also want to show you what's been
14 marked for identification purposes as State's Exhibit 14,
15 ask you if you can identify that?

16 A Yes. This is a photograph showing the
17 location of the --

18 Q Does that photograph fairly and accurately
19 depict what, the location that night?

20 A Yes, it does.

21 Q Showing you State's Proposed Exhibit 15,
22 I would ask you if you can identify that photograph?

23 A Yes. This is a photograph shooting towards
24 the counter area showing the beer bottles sitting on the
25 checkout counter.

26 Q Does it fairly and accurately depict what
27 you saw that night?

28 A Yes, it does.

29 Q That morning, I should say.

30 A Yes, sir.

31 MR. BLOXHAM: At this time, your Honor,
32 we would move to admit State's Proposed Exhibits 8 through

1 12, and 14 and 15.

2 MR. BUCHANAN: May I see them, both
3 those, just for a second?

4 MR. BLOXHAM: While Mr. Buchanan is
5 reviewing those, your Honor, may I ask the witness if
6 he brought something else to court with him today that
7 we might have marked while we're doing that?

8 MR. BUCHANAN: We have no objection
9 to these, 8 through 12.

10 THE COURT: State's Exhibits 8 through
11 12 for identification will be received in evidence as
12 State's Exhibits numbered 8 through 12.

13 What about 14 and 15?

14 MR. BUCHANAN: No objection.

15 THE COURT: State's Exhibits 14 and 15
16 for identification will be received in evidence as
17 State's Exhibits numbered 14 and 15.

18 MR. BLOXHAM: Thank you, your Honor.

19 Q Officer Mumpower, did you bring something
20 else with you to court today at our request?

21 A Yes. I brought a latent fingerprint.

22 MR. BLOXHAM: Okay. May we have this
23 marked, your Honor?

24 Q Officer Mumpower, showing you what's been
25 marked for identification purposes as State's Proposed
26 Exhibit 16, can you identify that, sir?

27 A Yes, I can.

28 Q And what is it?

29 A My -- I have my signature on the card.

30 Q Okay. And what does it purport to be?

31 A This is a lift of a fingerprint which was
32 taken from a Michelob beer bottle which was sitting on a

1 northeast checkout counter of the Stop and Go market.

2 Q Is that the same latent print that you
3 testified you lifted from that beer bottle, I believe
4 in Photos 9 and 10 or 10 and 11, that you've just
5 identified for the Court?

6 A Yes, it is.

7 Q Okay. Now, I want to show you State's
8 Proposed Exhibit 13 and ask you if you've ever seen that?

9 A Yes, yes, I have.

10 Q What does it appear to be?

11 A This is a fingerprint card bearing
12 fingerprints of a Raymond Haire.

13 Q Okay. Now, those are what are called
14 exemplar cards; is that correct?

15 A Yes, sir.

16 Q Now, have you ever done any comparison
17 between the exemplar card, State's Proposed Exhibit 13,
18 and State's Proposed Exhibit 16, the latent print that
19 you recovered from the Michelob beer bottle at the
20 Stop and Go?

21 A Yes, I have.

22 Q And as a result of that, this comparison,
23 do you have an opinion?

24 A Yes, I do.

25 Q What is that opinion?

26 A The fingerprint which I've lifted from
27 the Michelob beer bottle which is sitting on the
28 checkout counter at the Stop and Go was identified as
29 the left index finger of a Raymond Haire.

30 MR. BLOXHAM: Okay. We would move at
31 this time, your Honor, to admit State's Proposed
32 Exhibits 13 and 16.

1 MR. BUCHANAN: No objection.
2 THE COURT: State's Exhibits 13
3 and 16 for identification will be received in evidence
4 as State's Exhibits 13 and 16.
5 Q Officer Mumpower, do any two people
6 have the same fingerprints?
7 A Not if made by separate fingers.
8 Q Pardon me?
9 A I'm sorry. I didn't -- will you repeat
10 that question?
11 Q Any two people in the world that would
12 come up with the same fingerprints?
13 A Not that I know of, no.
14 Q Okay. And as you've testified, this is
15 your opinion that the same fingerprint that you lifted
16 off the Michelob beer bottle is the same as that
17 exemplar card -- right, left index finger?
18 A That's correct.
19 Q Now, are you sure, are you positive?
20 How would you categorize your opinion?
21 MR. BUCHANAN: Object to the form
22 of that question. It's trying to rehabilitate his own
23 witness and trying to get a degree of certainty. He's
24 already testified that that is one and the same.
25 MR. BLOXHAM: Your Honor, I think we
26 have a right to say, "Well, how sure are you?"
27 He said, "I have an opinion. It's the
28 same one." I think we have a right to know.
29 THE COURT: The objection is sustained.
30 Q Is there a standard that you use to
31 determine and make your opinion?
32 A Yes. It's done by points of comparison.

1 Q Okay. And were there sufficient points
2 of comparison between these fingerprints for you to
3 give your opinion the same person touched the Michelob
4 beer bottle?

5 A Oh, yes.

6 MR. BLOXHAM: Thank you. No further
7 questions, your Honor.

8 THE COURT: Cross examination?

9 MR. BUCHANAN: Thank you, your Honor.

10 CROSS EXAMINATION

11 BY MR. BUCHANAN:

12 Q All right. Now, Officer Mumpower, you
13 are a trained criminologist; is that correct?

14 Do you consider yourself a
15 trained criminologist?

16 A Well, I don't know whether I'm a
17 criminologist. I've been engaged in the field quite
18 a bit, but --

19 Q All right. Now, you have -- you went
20 to the Stop and Go as depicted in State's Proposed
21 Exhibit 14?

22 A Yes, sir.

23 Q And that is a Stop and Go you went to
24 to take care of all this fingerprint identification?

25 A Yes.

26 Q Now, there are also some photographs
27 here of State's Exhibit 15, which shows the front of
28 that counter area; is that correct?

29 A Yes, sir.

30 Q Now, there's also another picture, which
31 is State's Exhibit 9, which shows the cash register; is
32 that correct?

1 A Yes, sir.
2 Q Now, that's the rear of the counter
3 stand in the Stop and Go; is that right?
4 A That's correct.
5 Q All right. Now, I'm assuming you went to
6 this location because of the fact that you went there to
7 investigate what was considered to be a robbery?
8 A That's correct.
9 Q All right. At that location, you -- you
10 didn't go immediately to the beer bottle and take
11 just one latent print and say, "That's it"?
12 A No, sir.
13 Q All right. So you went in there and I
14 can assume from those photographs, the location of the
15 cash register, when you arrived there, was the cash
16 register drawer in the same condition as it is right now?
17 A The best of my recollection, it
18 was. I'm --
19 Q Think hard, now. Was the cash register
20 drawer open or closed?
21 A Well, the photographs were taken showing
22 the way we saw the scene at that time.
23 Q All right. Then we can assume, then,
24 that the location of the -- of the store as it is right
25 now, it would show that the cash register drawer is
26 open, as depicted in that photograph, No. 12?
27 A Yes. The best of my recollection, it
28 was that way.
29 Q All right. So I can assume that if you
30 go to a Stop and Go or a Seven Eleven, the first place
31 you're going to take prints is off of the cash drawer?
32 A Yes. We attempt that. Yes, sir.

1 Q Now, I'm assuming that you went to this
2 location, and the cash drawer being opened, as depicted
3 in Photo No. 12, that you've just said is the same
4 condition, that you and your black dust and your little --
5 what do you call it -- brush or whatever it is, try to
6 extract latent fingerprints from the area of the
7 cash register?

8 A I would say so. Yes, sir.

9 Q And do you recall, to your knowledge,
10 whether or not you lifted any latent prints of the
11 cash register?

12 A To my recollection, no.

13 Q All right. Were there prints on there?

14 A If they would have been there, I would
15 have lifted them.

16 Q All right. And you would also have gone
17 to the side of the cash register drawer?

18 A That's correct.

19 Q You would go to the cash register drawer?

20 A That's correct.

21 Q And you would lift whatever you could
22 find?

23 A That's correct.

24 Q So the only fingerprint, the only latent
25 fingerprint that you could identify is that what you've
26 lifted from a beer bottle, which is State's Exhibit 16?

27 A That's correct.

28 Q Now, I'm looking at State's Exhibit 16,
29 which has a -- what appear to be a smudged extraction of
30 a latent fingerprint.

31 A Are you speaking of the one that's
32 marked?

1 Q Yes.

2 A It's -- it is smudged in certain areas
3 of the print, yes.

4 Q All right. Now, how many points of
5 comparison did you get on this photograph, or on
6 this latent?

7 A I obtained 10 points of comparison.

8 Q What does the FBI normally say --
9 8 points are sufficient?

10 A Yes, sir.

11 Q And 16, though, is normally what the
12 FBI goes on for any latent fingerprints. Isn't
13 that correct?

14 A No, sir.

15 Q You're saying that 8 is the standard
16 to --

17 A That depends upon who's doing the
18 identification of the prints. I myself just like --
19 as far as England, I think they require 17 points of
20 comparison, but through the International Association
21 for the Identification, the requirement is what amount
22 satisfies the person that is making the comparison.

23 Q Okay. So in England, it's 17. And
24 the FBI, it's 16?

25 A No, sir. I don't think that's correct.

26 Q What do you think the FBI's comparison --

27 A At one time, it was 12, and I think
28 they've dropped it below that now.

29 Q All right. But let's say it's 12, then,
30 the FBI, and it's 8 for yourself?

31 A No. I didn't say it was 8 for us.

32 Q All right. But in any event, because

1 of the 8 points of comparison on this, you've determined
2 that the photograph, or the fingerprint on the beer
3 bottle and the defendant here are the same?

4 A I stated 10 points of comparison, sir.

5 Q Oh, 10 points. Okay. So you feel
6 10 points are sufficient to make an identification?

7 A To me it is. Yes, sir.

8 Q All right. Now, I'm assuming also on
9 the back of the counter area -- it shows a purse back
10 there. Is that correct?

11 A That's correct.

12 Q And did you take any latent fingerprints
13 off the purse?

14 A No, I didn't.

15 Q Did you take any latent fingerprints off
16 the back of the counter?

17 A No, sir.

18 Q Back around the cash register?

19 A No, sir. I didn't obtain any.

20 Q Did you try to obtain any?

21 A Officially did, yes.

22 Q Is this crime kind of fuzzy in your
23 mind or --

24 A No. I just -- general area, as you
25 stated before -- I processed usually everything within
26 the area of a register, anything on the counters,
27 anything I think a person could have touched.

28 Q All right. Then from your investigation
29 of the crime scene and from the location of this exemplar
30 that you found on the beer bottle, as State's Exhibit 16,
31 that beer bottle was in a location as shown on State's
32 Exhibit 12, that photograph?

1 A That's correct.
2 Q And that would be on the other side of
3 the counter?

4 A That's correct.

5 Q Now, so then it would be fair to say
6 that you never found any fingerprints of Raymond Haire
7 or Joel Burkett on the other side of the counter or
8 on the cash register drawer?

9 A That's correct.

10 Q And as a criminologist, then, because
11 you don't have any concrete evidence, you cannot put
12 Joel Burkett behind the cash register or at the cash
13 register drawer?

14 MR. BLOXHAM: I'm going to object,
15 your Honor. This man's called to testify as to
16 fingerprints, where he found them, what happened.
17 He's not asked to give conclusions of who did what,
18 and when.

19 I think the question is improper.

20 MR. BUCHANAN: I think that's a proper
21 question, your Honor.

22 THE COURT: The objection is sustained.

23 MR. BUCHANAN: We have nothing further.

24 MR. BLOXHAM: I do have some additional,
25 if I could, please.

26 REDIRECT EXAMINATION

27 BY MR. BLOXHAM:

28 Q Now, Officer Mumpower, everytime somebody
29 touches something, do they leave a fingerprint that can
30 be lifted and identified?

31 A No, they don't.

32 Q In fact, would it surprise you if my hands

1 were down on my desk right now and I lifted, would it
2 surprise you to come and dust and find nothing, or
3 nothing identifiable?

4 A That could happen, yes. .

5 Q Isn't it true that many times you'll
6 find partial prints that you just have to discard and
7 discard and discard until you finally find one with
8 sufficient quality and ridges and everything to make
9 a comparison?

10 A That's correct.

11 Q You did process around the cash register.
12 I believe I heard that testimony.

13 A (Witness nodded.)

14 Q There was testimony of 10 points of
15 comparison. Was it possible there were more points,
16 or did you stop counting at 10?

17 A No. I counted 10 points.

18 Q Okay. And you say that's sufficient
19 under this kind of a print.

20 Do prints differ because of ridges
21 and all the spirals and everything else?

22 A Well, yes. That's what makes up the
23 prints. Patterns can be like a loop type or whatever,
24 but the characteristics within the print is different.

25 Q You did find other prints at that
26 location; is that correct?

27 A Yes, I did.

28 Q Where were these found?

29 A Well, I lifted --

30 Q I you can recall.

31 A Yes. I can recall some of it. I obtained
32 fingerprints from the interior of the front door area,

1 and I think I -- was a palm print obtained from there
2 by myself, and I know that Officer Ruffino obtained
3 prints from other items.

4 Q Have you processed a lot of
5 crime scenes?

6 A Yes, sir, I have.

7 Q And was this crime scene any different
8 than a lot of public areas with, you know, numerous
9 prints?

10 A Well, you run into that quite a bit
11 where many people can handle certain areas, yes.

12 Q How long have you been in the police
13 force or in doing police work, sir?

14 A Over 20 years.

15 Q Over 20 years. Do you have an opinion --
16 or let me ask you this.

17 How sure are you that that print
18 on the exemplar card -- or pardon me -- the print that
19 you lifted off the beer bottle is the same one from
20 the exemplar card?

21 MR. BUCHANAN: To which we object.
22 That's outside the scope of redirect examination.
23 We didn't try and impeach this witness.

24 MR. BLOXHAM: Your Honor, I think
25 that's totally what the questions were directed at --
26 how many points, how sure are you as a criminalist.
27 This guy here, there and everywhere else.

28 I think that's exactly what we
29 need to now ask.

30 THE COURT: The objection is overruled.

31 MR. BLOXHAM: Thank you.

32 Q How sure are you, sir?

1 A There's no doubt.
2 Q No doubt in your mind?
3 A No, sir.
4 MR. BLOXHAM: Thank you. No further
5 questions.
6 MR. BUCHANAN: Just one or two.
7 RECROSS EXAMINATION
8 BY MR. BUCHANAN:
9 Q All right. There's no doubt in your
10 mind that you can place Joel Haire with that beer bottle
11 on the other side of the counter? Is that correct?
12 A That's correct, sir.
13 Q And there is no possible way that you
14 can put Joel Haire by fingerprints obtained by
15 Officer Ruffino or yourself on the other side of the
16 counter or in the cash register?
17 A That's correct.
18 MR. BUCHANAN: Nothing further.
19 MR. BLOXHAM: Nothing further,
20 your Honor.
21 THE COURT: You may step down.
22 Thank you, Officer Mumpower.
23 MR. BLOXHAM: May we excuse
24 Officer Thornton, who is outside, too?
25 THE COURT: That all right with you,
26 Mr. Buchanan?
27 MR. BUCHANAN: Yes, fine. We don't
28 need either one.
29 MR. BLOXHAM: Our next witness would
30 be George Williams.
31 MR. BUCHANAN: There's two photographs
32 I gave to the jury. I can pick them up and give them

1 back to the clerk.

2 MR. BLOXHAM: Have you photographs?
3 I would ask the jury be allowed to see them all, not
4 just selective, the two that were selected like that.
5 May we pass the other five to them, if there are going
6 to be photographs?

7 MR. BUCHANAN: No objection. I wish
8 for them to see the crime scene.

9 THE COURT: The exhibits may be passed
10 to the jury at any time. However, one counsel can't
11 pass the exhibits to the jury and then pass the witness
12 for the other counsel to question at the time the jury
13 is looking at the exhibits. But you can pass the
14 exhibits to the jury anytime you want.

15 MR. BLOXHAM: Yes, your Honor. May we
16 pass them at this time and have the next witness stand
17 at ease?

18 THE COURT: That's what I've just
19 said. Yes.

20 MR. BLOXHAM: Your Honor, at this time
21 we'd call George Williams as our next witness.

22 Mr. Williams, if you'd take the
23 stand, please. Remain standing.

24 GEORGE WILLIAMS,
25 having been first duly sworn to tell the truth, the whole
26 truth and nothing but the truth, testified and said
27 as follows:

28 DIRECT EXAMINATION

29 BY MR. BLOXHAM:

30 Q Sir, would you state your full name and
31 spell the last name for the record?

32 A George Michael Williams, W-i-l-l-i-a-m-s.

1 Q Mr. Williams, where are you employed?
2 A With Big Five Sporting Goods, inside of
3 Wonder World.
4 Q Okay. Have you been a security guard
5 in the past?
6 A Yes, I have.
7 Q Where was that?
8 A In security police in the Air Force for
9 ten and a half years.
10 Q Did you also work at the MGM?
11 A Yes, I did, for --
12 Q What was your function there?
13 A Security guard at the MGM.
14 Q Sir, directing your attention to
15 December 18, 1980 at approximately 12:05 a.m., or
16 12:00 a.m., 12:00 midnight I should say, 12:00 midnight,
17 did you have occasion to go to the Stop and Go located
18 at 732 North Eastern here in Clark County, Nevada?
19 A Yes, I did.
20 Q Sir, did you go into the store when you
21 went there?
22 A Yes, I did.
23 Q Can you tell us, kind of what you
24 observed? Did you go more than once?
25 A Yes. I -- first time I went, I stopped
26 in just to get a -- something to eat.
27 Q Let's talk about that time. You -- was
28 this about midnight?
29 A About midnight.
30 Q December 18?
31 A 12:05, something like that.
32 Q Okay. And you entered the store?

1 A Right.
2 Q What did you observe when you entered
3 the store?
4 A As I entered the store, when I went in
5 to get the burrito, I asked the clerk where they were,
6 and she told me where they were, so I went back and
7 got one, came back to the microwave, stuck it in the
8 microwave.
9 And there was this guy standing
10 there. He was cooking, also, and clerk was still at
11 her counter, you might as well say, and she was setting
12 there eating a sandwich.
13 Q Was this clerk by the cash register?
14 A Yes, she was. She was just sitting
15 right behind the counter with the cash register.
16 Q Do you know that clerk's name by
17 any chance?
18 A No, I didn't.
19 Q Did you see that clerk yesterday at
20 any time?
21 A Just out in the hallway during the
22 court is all.
23 Q Did that clerk enter this particular
24 courtroom in the afternoon a couple of times?
25 A Yes, she did.
26 Q Can you describe that clerk at all
27 for us?
28 A Just a -- about five foot two or three
29 inch with long I guess you'd say brown or blondish
30 looking hair, with glasses.
31 Q And to your knowledge, did she enter
32 and testify in this proceeding?

1 A Yes, she did.

2 Q Now, your testimony is that you started

3 to cook a burrito, and the clerk was eating a sandwich

4 at the cash register. Is that right?

5 A Right.

6 Q What else did you observe if anything?

7 A There was another guy. Like I said,

8 he was setting there. He was cooking, also. And

9 there was a --

10 Q When you say setting --

11 A Standing, actually, there with me when

12 I was cooking.

13 Q Now, is this a microwave oven?

14 A Yes, it is.

15 Q And did you notice that person?

16 A No, I didn't.

17 Q What happened?

18 A We just stood there and was talking,

19 you know, and then I heard a bell.

20 Q You were talking. Were you talking

21 to this man who was also by the microwave?

22 A Yes, I was.

23 Q Then what happened?

24 A Then the bell or whatever you -- on

25 door kind of dinged. I just turned around, and there

26 was another guy come in. I didn't see his face or

27 nothing. And he was standing towards the back. When

28 I looked around, all I could see was just a guy standing

29 at the counter, and then I just turned back around and

30 started finishing my burrito.

31 Q Then you cooked your burrito?

32 A Yes.

1 Q Do you know how long it took to cook
2 this burrito?

3 A About two minutes, minute and a half,
4 something like that.

5 Q Okay. Now, once your burrito was cooked,
6 what did you do?

7 A I went up to the counter, paid for it,
8 and left.

9 Q Did this same girl ring up your burrito?

10 A Yes, she did.

11 Q Was there anyone talking to the girl
12 when you walked up and paid for your burrito?

13 A No, no one.

14 Q No one was talking to her, and you did
15 see her eating a sandwich?

16 A Right.

17 Q When you pulled in that first time,
18 into the parking lot, was the parking lot full?

19 A No, it wasn't.

20 Q Where did you park?

21 A Right in front of the door.

22 Q Right in front of the door. Does it
23 have a regular Stop and Go front parking lot?

24 A Yes, it does. It's just four, five or
25 six, I guess you'd say parking slots right in front
26 of it.

27 Q Okay. Then I take it you paid for your
28 burrito and left?

29 A Right.

30 Q Okay. Now, when you left the store,
31 do you recall who was in the store?

32 A As far as I remember, just the clerk

1 was still there, and that's it.

2 Q When you say you left the store, where
3 did you go?

4 A Next door to the Cabaret Apartments to
5 see some friends.

6 Q Did you drive?

7 A Yes, I did.

8 Q Now, is this just a short distance away?

9 A Yes. It's just right next door. There's
10 just a block wall separating.

11 Q You got in your car, and you left?

12 A Right.

13 Q Did you go into the Cabaret Apartments?

14 A I drove through, and I seen the lights
15 on at my friend's house, so I figured, well, I'll just
16 go back to the Stop and Go, grab a six-pack of beer and
17 go back, sit down with him.

18 Q With your friend?

19 A Friends at the Cabaret Apartments.

20 Q Your testimony is you then went back to
21 the Stop and Go?

22 A Right.

23 Q The same Stop and Go?

24 A The same Stop and Go.

25 Q I assume you drove in the parking lot?

26 A Yes, I did -- same spot.

27 Q What was the condition of the parking lot?

28 A It was empty. There was -- there was
29 no cars around except mine when I pulled in there.

30 Q Okay. Now, you pulled in the parking
31 lot. What if anything happened next?

32 A When I pulled up, I noticed there was

1 two guys going around as I pulled in to the left.

2 They were going around the corner.

3 One was a tall guy, maybe six foot,
4 six foot two. One -- he had kind of sandyish, long hair,
5 and then the other guy was a short guy. All I could tell
6 was he had dark hair.

7 And the tall one had on like either
8 a -- light pants or -- and a dark like jacket on.

9 Q Could you see their faces?

10 A No, I couldn't,

11 Q Were you really looking?

12 A Not really. I just glanced over,
13 walked in.

14 Q Saw them going off the side road on
15 that side?

16 A Yes. It's -- it goes back around to
17 the Cabaret Apartments, also.

18 Q Okay. Now, then what did you do?

19 You parked and you saw this,
20 and what did you do?

21 A I just walked inside and turned to
22 the left, going back towards the freezer where the
23 beer is, grabbed a six-pack, come up and sat it down
24 on the counter.

25 And I kind of leaned over, looked,
26 and the sandwich was still there, but there was no clerk.

27 Q Okay. Now, this time that you left,
28 the first time, until you came back, approximately
29 how long passed, how many minutes or --

30 A I'd say five minutes at the most.

31 Q What kind of beer did you buy, or were
32 you going to buy?

1 I don't know whether you bought it.
2 A Lowenbrau.
3 Q I'm going to show you State's Exhibit 9
4 and ask you if you can identify that particular
5 photograph?
6 A Yes, I can.
7 Q And what is that?
8 A That's my beer.
9 Q Does it appear to be a six-pack
10 of Lowenbrau?
11 A Yes, it is.
12 Q Anything by the six-pack of Lowenbrau?
13 A The two Michelobs.
14 Q Did you place that Lowenbrau on the
15 counter?
16 A Yes, I did.
17 Q Place the Michelobs on the counter?
18 A No, I didn't.
19 Q I show you State's Exhibit 15.
20 I'd ask you the same question.
21 Can you identify what that is?
22 A Yes. It's same thing.
23 Q That's your Lowenbrau?
24 A Sure is.
25 Q Thank you. What did you do now?
26 Evidently no clerk, or you saw
27 no clerk behind the counter. What did you do?
28 A Well, I figured she might in like the
29 stock room back there, so the door was open where the
30 microwave is over there, and I went over there, and I
31 hollered, you know, back there.
32 No answer, so I went back into there,

1 and that's where their restroom is. So I went back
2 there. Restroom was open. There was no one back.

3 And you can walk all the way back
4 into there, so I walked all the way back around into
5 where the freezer is. I checked back there. There was
6 no one back there.

7 So I figured maybe, you know, she
8 was out throwing trash away, so I went right around,
9 and the trash compactor's on the lefthand side of the
10 store, so I went around there. Then I went all the
11 way around the store, and there was no clerk.

12 And then I came back into the store,
13 and I went to the freezer again from the inside and
14 opened above, and, you know, maybe she was back in a
15 corner or something, and hollered. There was still
16 no clerk.

17 And then two women came up, and
18 they asked me, you know, if they -- if they -- I could
19 take the money for them for some merchandise. I said
20 no. I said, "There's no clerk here."

21 So I just asked them to go over
22 in a corner and stand, and then I called Metro.

23 Q Okay. Did Metro, a unit, come to
24 the scene?

25 A There was two of them.

26 Q Approximately how long until
27 they arrived?

28 A No more than ten, fifteen minutes they
29 were there.

30 Q So then they came?

31 A Yes.

32 Q You said you saw somebody talking to

1 the clerk the first time you were at the Stop and Go?

2 A Yes, I did.

3 Q Did that person stand and talk to the
4 clerk a long time?

5 A Not really. It was just he was standing
6 there. He came in, and just like his back to -- was to --
7 you know, to us, to me and the other Mexican guy that
8 was standing there.

9 Q Mexican guy was doing what?

10 A He was cooking, also, when I was.

11 Q That's the other individual that was
12 cooking in the microwave?

13 A Right.

14 Q So you didn't -- did you notice
15 his face?

16 A No. He had his back to us, and I
17 just didn't pay no attention, really. I just kind of
18 turned around, you know, seen him there, and that was it.

19 Q Do you recall whether or not the cash
20 register drawer was open the second time you went back?

21 A To my recollection, it wasn't open.
22 It was like a dollar something rung up on the -- in
23 green letters was all I seen.

24 Q Okay, but you don't recall it
25 being open?

26 A No.

27 Q And are you just going from memory or
28 are you --

29 A I'm just -- I don't remember it
30 being open.

31 MR. BLOXHAM: Okay. No further
32 questions, your Honor.

1 THE COURT: Cross examination?
2 MR. BUCHANAN: Thank you, your Honor.

3 CROSS EXAMINATION
4 BY MR. BUCHANAN:

5 Q All right. Now, Mr. Williams, you're
6 a security guard?

7 A Yes.

8 Q And you've had some experience in
9 police work, at least?

10 A Yes.

11 Q You've worked at the MGM, a few
12 other places.

13 All right. Now, you made a rather
14 detailed report of this to the police; didn't you?

15 A Pretty much, yes.

16 Q Fact, a very detailed report, and it
17 was some six pages long?

18 A Yes.

19 Q And it was very explicit as to what
20 you observed. And being the trained police officer, we
21 have to assume that that was relatively effective, and
22 be more than just a regular lay person, or say those
23 two women that walked in, correct?

24 A Correct.

25 Q All right. Now, you observed, or you
26 described the first person that you saw in there as
27 a Mexican or Spanish origin, light beard, approximately
28 five seven or five six, maybe a hundred fifty?

29 A Right.

30 Q Correct?

31 A He was the one standing with me when we
32 were at the microwave.

1 Q You were both cooking?
2 A Right.
3 Q Okay. And when you left, he was
4 still there?
5 A Yes.
6 Q All right. And you left for five
7 minutes to go over to the apartments. When you decided
8 to go get a six-pack and then go socialize?
9 A Right.
10 Q Had you been drinking prior to that?
11 A Yes, I had.
12 Q You had some beers before?
13 A That's right.
14 Q You went back to get six more?
15 A Right.
16 Q Could that five minutes have been
17 ten minutes, fifteen minutes, twenty minutes, or was
18 it just five minutes?
19 A It was approximately around five minutes
20 time I pulled out of the parking lot, went around the
21 Cabaret Apartments and came back.
22 Q All right. So then whenever you
23 observed or when you left, then the Mexican guy, or the
24 person you described of Mexican descent was still
25 talking to the clerk?
26 A He wasn't, no.
27 Q He was still in the store?
28 A He was still over at the microwave.
29 Q He was still at the microwave cooking?
30 A Right.
31 Q Do you remember whether he just put
32 the thing in or --

1 A No. He was cooking something. And then
2 I put my burrito in. Then we went back and got something
3 else, and I paid for mine and left.

4 Q He was still cooking whatever it was
5 in the microwave?

6 A Right.

7 Q When you left, he was cooking at
8 the microwave?

9 A As far as -- he was still standing there
10 when I left.

11 Q All right. And then you say you left,
12 and you saw two people walking around the side of the
13 store?

14 A Right.

15 Q All right. Now, isn't it a fact you
16 described the second person that you observed -- and
17 again, I'm going by your trained observations as a
18 security guard -- as having observed a tall guy with
19 either an Afro or bushy like an Afro?

20 A It was sort of -- like I said, it was
21 either curly or whatever you want, Afro, like blond hair.

22 Q So in other words -- in other words,
23 it wouldn't be slicked back?

24 A No. It wouldn't be out to here
25 (demonstrating), either. It was just kind of like
26 a regular guy with curly hair, you might as well say,
27 or an Afro.

28 Q Curly hair out like an Afro we're
29 describing as someone with hair that sticks out more
30 than normal person?

31 A Well, to me.

32 Q Two or three inches?

1 A Yes.
2 Q Okay. And now, you didn't say anything
3 in there about sandy.
4 A Well, that's all I could recollect,
5 It was either sandy, blondish hair.
6 Q But it was an Afro?
7 A Curly, Afro, whatever you want to
8 call it.
9 Q The other person that was not at that,
10 that person was not that tall?
11 A No, he wasn't. The second guy was just
12 a short, like, dark hair.
13 Q And the guy that you noticed had a
14 jacket or windbreaker?
15 A The tall guy did, yes.
16 Q Okay. What do you -- what do you
17 call windbreaker? What --
18 A Well, to me, he just had on like a
19 short jacket, to his waist, like, you know, no --
20 Q Okay. Windbreaker would be a nylon
21 windbreaker, like a Rebel jacket, or something
22 like that?
23 A Yeah, I guess.
24 Q And that would be a windbreaker, a
25 kind of hair to the waist.
26 Anything else you observed?
27 Did you see his pants?
28 A As far as I can recollect, it was like
29 light brownish or beige pants.
30 Q Okay. Light beige pants and windbreaker
31 and an Afro hairdo?
32 A Right.

1 Q Anything else?
2 A That's all I could recollect on that.
3 Q All right. Now, as you left and as you
4 went around that store to that side, you saw -- did you
5 see any other cars?
6 A No, I didn't
7 Q So there were no cars parked at the side?
8 A Right.
9 Q And you didn't hear any car running?
10 A No.
11 Q And that's all you observed?
12 A That's it.
13 Q And did you see this person with the
14 Afro hair come, and the slacks and the windbreaker, go
15 to the store?
16 A No, I didn't.
17 Q And you don't know whether those two
18 people kept on walking, went into the store, or where
19 they went?
20 A Right. They went around a corner, and
21 that's the last I seen of them.
22 Q You can't identify those persons?
23 You never saw them, and you don't
24 know who they are and can't identify them to this day?
25 A No.
26 Q So when you left in your car and you
27 pulled out, you left the store, you heard no car running?
28 A No car was running when I left.
29 Q All right. You didn't see any car
30 parked around the side?
31 A No.
32 Q And there were no cars there at all?

1 A No.
2 Q And you left for approximately
3 five minutes?
4 A Right.
5 Q All right. Now, you came back in five
6 minutes. Again you saw no car?
7 A That's correct.
8 Q You didn't see the Mexican with
9 the burrito?
10 A Right.
11 Q You didn't see the guy with the Afro
12 hairdo and the windbreaker?
13 A He wasn't in the store. No.
14 Q And you didn't see the short guy that
15 you said was with the guy with the Afro?
16 A No, not in the store.
17 Q And no cars at all?
18 A Right.
19 Q So you enter the store and got a
20 Lowenbrau six-pack?
21 A That's correct.
22 Q Came back to the counter and saw
23 no one?
24 A That's correct.
25 Q All right. Now, did you happen to look
26 over at the cash register?
27 A No. I just kind of leaned over like that,
28 and I thought -- the way the counter's built there's
29 like a -- a case here, and I just kind of leaned around
30 to see if she might be around where the picture windows
31 there is, and she wasn't there.
32 Q Did you notice -- your own knowledge --

1 whether or not the cash register drawer was open
2 or closed?

3 A No. I don't recollect if it was open
4 or closed.

5 Q All right. And so that five minutes --
6 could it have been longer or shorter?

7 Time sometimes has a fleeting way
8 of going.

9 A It could have been longer. It could
10 have been shorter. It was approximately five minutes
11 it takes you to drive from the Seven Eleven around to
12 the Cabaret Apartments and back.

13 Q Okay, so we're saying five minutes.

14 A Approximately five minutes, yes.

15 Q And during that period of time, you
16 observed at least three people?

17 A Only two.

18 Q Well, the guy inside, the Mexican.
19 The two outside would be three.

20 A Mexican guy was still there when -- he
21 was the one standing there talking to me.

22 Q Okay. So that's three. The Mexican, the
23 two outside are three.

24 Am I right or wrong?

25 A That's right.

26 Q So you did see three people?

27 A Yes.

28 Q You don't know what those three
29 people did?

30 A No, I don't.

31 Q You don't know how long those three
32 people stayed there?

1 A No, I don't.
2 Q You don't know whether the cash register
3 was open or closed?
4 A No, I don't.
5 Q You don't know what happened to
6 the clerk?
7 A That's right. All I know, she was gone.
8 Q And all you know is she was gone, and you
9 don't know what these other three people did or what
10 they -- where they went or what they did?
11 A No, I don't.
12 MR. BUCHANAN: Thank you. Nothing
13 further.
14 REDIRECT EXAMINATION
15 BY MR. BLOXHAM:
16 Q Mr. Williams, these two people you saw
17 going around the side of the building -- were either
18 one of them that Mexican individual you had seen in
19 the store earlier?
20 A No, he wasn't.
21 Q Okay. Now, when you entered the parking
22 lot the second time --
23 A I --
24 Q When you drove back in the second time,
25 did you enter from the side around which these guys were
26 walking, or --
27 A No. I pulled straight in.
28 Q From the Eastern?
29 A Eastern Avenue.
30 Q Okay. And on the other side of Eastern,
31 there's a road?
32 A Yes. A road that goes down and then

1 comes into the back or to the side of the Cabaret
2 Apartments.

3 Q That's kind of where they were
4 walking, huh?

5 A Right.

6 Q When you pulled in from Eastern, not
7 going by where these guys were walking, were you
8 listening for a car to be running?

9 A Not really.

10 Q Just going in and stopping at the
11 Seven Eleven -- I'm sorry -- Stop and Go, weren't you?

12 A That's right.

13 Q Now, I also notice on your report that
14 you gave at the time when you described these two people,
15 didn't you also say the taller one was a guy, and you
16 weren't sure whether or not the other one was a girl or
17 a guy, but you thought it was a guy?

18 A Right.

19 Q You said shoulder length hair, kind of
20 like an Afro. You weren't really describing that as
21 an Afro?

22 A No, I wasn't. It was just --

23 Q You only saw their backs?

24 A That's all I seen.

25 Q Weren't really looking to be identifying
26 people?

27 A No, I wasn't.

28 Q Kind of after something happened, just
29 searching your memory to see what you can draw out of it?

30 A That's right.

31 Q You noticed the taller guy was wearing a
32 dark colored top?

1 A That's correct.
2 MR. BLOXHAM: I have no further
3 questions. Thank you.
4 THE COURT: Any recross?
5 MR. BUCHANAN: Nothing further.
6 THE COURT: You may step down,
7 Mr. Williams. Thank you.
8 MR. BLOXHAM: Your Honor, our next
9 witness is Richard Davies.
10 RICHARD DAVIES,
11 having been first duly sworn to tell the truth, the whole
12 truth and nothing but the truth, testified and said
13 as follows:
14 DIRECT EXAMINATION
15 BY MR. BLOXHAM:
16 Q Sir, would you state your full name,
17 spell the last name for the record?
18 A Richard James Davies, D-a-v-i-e-s.
19 Q Mr. Davies, for whom are you employed?
20 A Stop and Go Markets.
21 Q And what is your position?
22 A I'm a district representative.
23 Q And what do your duties include as
24 a district representative?
25 A I handle eight stores under my
26 jurisdiction that I oversee and manage.
27 Q Okay. Now, one of those stores located
28 at 732 North Eastern?
29 A Yes, it is.
30 Q And do you have another store at
31 Atlantic and Olive?
32 A Yes.

1 Q You manage, or you're over those?
2 A Yes.
3 Q Okay. Is the Stop and Go known by --
4 any other corporate name?
5 A Yes. National Convenience Stores.
6 Q Okay. Now, is the store at
7 732 North Eastern designated by number?
8 A Yes. It's No. 759.
9 Q That's located in Clark County, Nevada;
10 is that correct?
11 A Yes.
12 Q And do you know a Tina Cage?
13 A Yes, I do.
14 Q Now, do you know whether or not Tina Cage
15 was assigned to the store at 732 North Eastern on
16 December 17, December 18, 1980 from 11:00 p.m. to
17 7:00 a.m.?
18 A Yes, she was.
19 Q And are you familiar with the assignments,
20 how they're made.
21 A Yes.
22 Q Who had assigned Tina Cage to that store?
23 A I did.
24 Q And had Tina Cage worked at another store
25 a week prior to that?
26 A Yes, she did.
27 Q What was the other store?
28 A Store No. 150 on 1220 East Atlantic.
29 Q How long had Tina Cage, if you know --
30 approximately how long had Tina Cage worked for
31 Stop and Go?
32 When did she start, if you know?

1 A She had worked probably about a total of
2 about three months for us.
3 Q On December --
4 A On December, probably about two, two
5 months now.
6 Q So you're saying she started in October
7 or so?
8 A Yes. Something like that.
9 Q You don't recall?
10 A I don't recall the exact, no.
11 Q Had you ever met Tina Cage's husband?
12 A No. Not prior to this, no.
13 Q And did you meet him after?
14 A I met him the night of the incident.
15 Q Did you ever, did you know whether
16 or not she had children?
17 A No, I didn't.
18 Q You didn't know.
19 Now, this store, 732 North Eastern --
20 did you have occasion to go to that store on
21 December 18, 1980?
22 A Yes.
23 Q And why did you go there?
24 A I was -- I got a telephone call from the
25 Metropolitan Police Department that had told me that the
26 store was left unoccupied and open.
27 Q Did you then go to that location?
28 A Yes.
29 Q What did you observe when you arrived
30 at that location?
31 A Well, it -- it appeared normal, with
32 the exception that there was no employee on duty.

1 Q Okay. Approximately what time did you
2 get to the store, if you know?

3 A About 12:30.

4 Q Do you recall what time you were called?

5 A Yes. It was about between midnight and
6 12:10, something like that.

7 Q When you arrived there, were there
8 police officers?

9 A Yes.

10 Q And did you have occasion to look in
11 the cash register?

12 A Yes.

13 Q What if anything did you observe?

14 A In the cash register, there was
15 just change. There was no currency.

16 Q Okay. And does the cash register have
17 areas for currency?

18 A Yes.

19 Q And when you say currency, you mean
20 paper money; is that right?

21 A Right, uh-huh.

22 Q Did you notice anything else behind
23 the counter?

24 A Behind the counter there was -- you
25 mean out of the ordinary?

26 Q Well, what if anything did you notice
27 behind the counter?

28 A Okay. Behind the counter there was --
29 there was a dollar bill sitting on the floor. There
30 was a magazine that was opened. There was a half-eaten
31 sandwich and just -- that was about the only thing
32 I recall.

1 Q Do you recall seeing any purses?
2 MR. BUCHANAN: To which I object.
3 Leading.
4 THE COURT: The objection is sustained.
5 Q What if anything else did you see
6 behind the counter?
7 A Well, there was a -- there was a jacket.
8 I didn't know who's it was at the time, because I --
9 you know, I wasn't familiar with her attire.
10 Q Okay, okay. Was there anything on the
11 counter, to your recollection?
12 A On what counter are you referring?
13 Q By the cash register.
14 A Oh, yes. There was some Michelob beer,
15 and there was also some Lowenbrau.
16 Q Okay. Now, what did you do upon arriving
17 at the Stop and Go other than making these observations?
18 What, if anything?
19 A Well, I walked around the store to see if
20 I could find her anywhere.
21 Q Did you make any phone calls?
22 A Yes. I called -- called the
23 store manager.
24 Q Who is that?
25 A Pat SeEVERS.
26 Q And what happened then?
27 A She came down to the store at that time,
28 and she -- she did a cash count after the police were
29 done with their, their work at -- behind the counter
30 there.
31 Q So she did a cash accounting type thing?
32 A Yes, uh-huh.

1 Q In your presence?
2 A Yes.
3 Q Okay. Now, is there any kind of policy
4 for the store as far as how much money to keep in
5 the register?
6 A Yes.
7 Q And what kind of policy do you have?
8 A No more than \$50.
9 Q Okay. Now, were you aware of a prior
10 robbery concerning Tina Cage?
11 A Yes.
12 Q A week earlier?
13 A Yes.
14 Q And which store was that?
15 A That was on the store at Atlantic,
16 store No. 150.
17 Q Okay. And do you recall or do you
18 know whether or not that store has a security system
19 of any sort, the one on Atlantic and Olive?
20 A Yes, yes.
21 MR. BUCHANAN: To which I object.
22 This is immaterial, not relevant to the issue at hand,
23 and no other inference to any other crime -- it would
24 be immaterial and prejudicial. We'd object to it.
25 THE COURT: Well, the objection is
26 overruled.
27 MR. BLOXHAM: Thank you.
28 Q What kind of security system, if any,
29 is Atlantic and Olive?
30 A It has a -- a camera.
31 Q Is it a hidden camera?
32 A It's partially hidden. It's in what

1 appears to be a speaker.

2 Q Do you know how that's activated?

3 A Yes.

4 Q How is that activated?

5 A It has a contact within the register
6 that is a certain bill is pulled, that the camera is --
7 it automatically goes off.

8 Q Do you know whether or not photos were
9 taken during that robbery?

10 MR. BUCHANAN: To which I object until
11 we have a foundation as to what, whether he's present,
12 who he knows, and so forth.

13 MR. BLOXHAM: Do you know. I think that
14 would cover it.

15 THE COURT: You can answer that question
16 yes or no.

17 Q Do you know? Yes or no answer.

18 Do you know whether or not photos
19 were taken of that prior robbery?

20 A Yes, photos were taken.

21 Q Thank you. Did Stop and Go conduct their
22 own independent investigation concerning these two
23 robberies?

24 A Yes, we did.

25 Q And, as a result, was Tina Cage fired?

26 MR. BUCHANAN: To which I object.
27 That's --

28 MR. BLOXHAM: That is leading, perhaps,
29 your Honor.

30 MR. BUCHANAN: Leading, immaterial, and
31 it's also hearsay.

32 Investigations -- this is way far

1 afield. I can't see the materiality of where we're
2 going here with this witness. He's asking questions
3 of hearsay nature.

4 Investigations -- I can't cross
5 examine or have access to those investigations or know
6 what they turned up. They're not privy to me. I don't
7 see how we can go in and ask this person for hearsay
8 examinations and documentations.

9 MR. BLOXHAM: May I withdraw the
10 question and ask some further questions, your Honor?

11 THE COURT: Yes.

12 MR. BLOXHAM: Thank you.

13 Q Are you the -- or who would hire and
14 fire the employees such as Tina Cage?

15 A I do.

16 Q Does Tina Cage still work for
17 Stop and Go?

18 A No, she doesn't.

19 Q What was the nature of her separation?

20 A She quit.

21 Q Do you recall when approximately?

22 A It was in January sometime.

23 Q Did she receive any shift changes after
24 this occurred?

25 A Yes. She worked in another store after,
26 759 for about three weeks, I believe.

27 Q Was that --

28 A That was on a day shift.

29 Q Now, is there any kind of a procedure
30 for recommending employees for the Stop and Go?

31 MR. BUCHANAN: I'm going to object
32 to this unless we're -- again, your Honor, unless we

1 go figure that Tina Cage is that person. And we're going
2 with this materiality. That hasn't been raised.

3 How can this person go into that,
4 of what Tina Cage is? If he's trying to rehabilitate
5 his own witness, we object to it.

6 MR. BLOXHAM: May we approach the
7 bench, your Honor?

8 THE COURT: Yes.

9 (At this time, counsel
10 approached the bench for a brief
11 discussion with the Court which
12 was not reported.)

13 Q Mr. Davies, if I'm an employee for
14 Stop and Go and I recommend someone as an employee to
15 you, and you hire them, what happens, if anything?

16 A The employee that recommends them has
17 their name on the application that is hired, receives
18 \$50 as a bonus.

19 Q That's kind of an incentive?

20 A Yes.

21 Q Are you familiar with that store at
22 732 North Eastern as far as the entrys and -- exits
23 and entrys?

24 A Yes.

25 Q Does it have a back door?

26 A It has one, but it's bolted off. You
27 can't get out.

28 MR. BLOXHAM: Okay. I have no further
29 questions.

30 THE COURT: Do you have extensive cross,
31 Mr. Buchanan?

32 MR. BUCHANAN: Just be a couple minutes.

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THE COURT: Okay.

CROSS EXAMINATION

BY MR. BUCHANAN:

Q All right, Mr. Davies. You said Tina Cage worked there for approximately two months prior to December 17th?

A Yes.

Q And worked there for approximately one month later, in January of 1981?

A This is not all at the same store.

Q All right, but she worked for Stop and Go?

A Yes.

Q For approximately three months?

A Yes.

Q That was her total length of employment?

A Yes.

Q During that three months, she has or was a victim, or was at least involved in two robberies of two different stores?

A Yes.

Q And she worked there for three, three months. That's rather a high average for an employee, isn't it?

A I'm not aware of any averages. It's out of the ordinary.

Q So it's extremely out of the ordinary that Tina Cage worked for Stop and Go for three months, would have been the victim of two robberies in such a short period of time?

A It's -- it has happened before, but it's not --

Q All right. And at this time, you say

1 it's the policy of Stop and Go that if someone recommends --
2 let's say Tina Cage recommended Joel Burkett for
3 employment at Stop and Go, that she would receive \$50
4 if he was hired and turned out to be an employee?

5 A Uh-huh.

6 Q And so she'd be looking for extra money
7 if she did refer somebody and they were hired?

8 A Yes.

9 Q And then after she was, or after this
10 person was hired, if she came forward and said, "Well,
11 I recommended this guy. He was hired. Give me 50,"
12 you'd just fork it out, right?

13 A Yeah.

14 MR. BUCHANAN: Nothing further.

15 MR. BLOXHAM: May I ask that a
16 little further?

17 REDIRECT EXAMINATION

18 BY MR. BLOXHAM:

19 Q You mean if that, if they -- is there
20 a provision on the employment application to make the
21 recommendation?

22 A They have to have their name on the
23 application.

24 Q Okay. In order to get the \$50?

25 A Yes.

26 Q So in other words, before the application
27 is completed and turned in by prospective employee, the
28 recommending employee should have their name on the
29 application?

30 A Yes.

31 Q Talking about this first robbery that
32 Mr. Buchanan referred to, and how out of the ordinary

1 and everything else, did you have occasion to interview
2 Tina Cage right after that first robbery?

3 A The next day I talked to her, yes.

4 Q Did you observe any injuries to
5 Tina Cage?

6 A She had her fingers --

7 MR. BUCHANAN: To which I object.
8 That's completely irrelevant, immaterial, not involved
9 in the robbery. Now we're talking a day after. That's
10 completely irrelevant.

11 What bearing does that have on
12 this case? I can see none.

13 THE COURT: I don't have any idea.

14 MR. BUCHANAN: I'm objecting to it
15 as immaterial, and it's not relevant to the issue
16 we're talking about. We're talking about December 17th.

17 THE COURT: The objection is overruled.

18 MR. BLOXHAM: Overruled?

19 THE COURT: Yes.

20 MR. BLOXHAM: Thank you.

21 Q You did observe some injuries to
22 Tina Cage, then?

23 A Yes.

24 Q You indicated a hand?

25 A Yes. She had some fingers bandaged up.

26 Q Did you notice anything about her head?

27 MR. BUCHANAN: Object, leading. You know,
28 your Honor, I hate --

29 THE COURT: The objection is sustained.

30 MR. BLOXHAM: Mr. Buchanan is going to
31 argue --

32 THE COURT: The objection is sustained.

1 MR. BLOXHAM: Okay. Thank you.
2 No further questions.

3 THE COURT: It signifies the answer.
4 I don't want those any more.

5 MR. BUCHANAN: If I might just ask
6 one question, since we're in on it.

7 RECROSS EXAMINATION

8 BY MR. BUCHANAN:

9 Q You are aware, of course, that I've
10 subpoenaed members of your staff? Is that correct?

11 A Yes.

12 Q And they've received a subpoena from
13 myself to bring certain records to the Court this
14 afternoon?

15 A Yes.

16 Q And one of those records happens to be
17 the application of Joel Burkett. Is that correct?

18 A Yes.

19 Q And Joel Burkett did in fact make
20 application to work at that same Stop and Go that
21 Tina Cage worked at. Isn't that correct?

22 A I can't answer that, no. I don't know.

23 Q But that record's been subpoenaed and
24 to be brought by --

25 A If it is -- if it is actually in the
26 office, it will be brought in.

27 MR. BUCHANAN: All right. Nothing
28 further.

29 MR. BLOXHAM: Nothing further.

30 THE COURT: You may step down,
31 Mr. Davies.

32 Would counsel approach the bench?

1 (At this time, counsel
2 approached the bench for a brief
3 discussion with the Court which
4 was not reported.)
5 THE COURT: We'll take our noon
6 recess at this time. We'll be in recess until 1:45 p.m.
7 this afternoon.
8 During the time we are in recess,
9 I would remind you, ladies and gentlemen, it is your
10 duty not to converse among yourselves or with anyone
11 else on any subject connected with this trial, or to read,
12 or to listen to any report of or commentary on this trial
13 or any person connected with this trial by any medium of
14 information, including newspaper, television and radio,
15 and you are not to form or express an opinion on any
16 subject connected with this case until it is finally
17 submitted to you.
18 (Noon recess.)
19 (At 1:50 p.m., the jury
20 and alternate jurors returned
21 to the courtroom.)
22 THE COURT: Will counsel stipulate to
23 the presence of all members of the jury and the two
24 alternate jurors?
25 MR. BUCHANAN: Defense would so stipulate,
26 your Honor.
27 MR. BLOXHAM: State would so stipulate,
28 your Honor.
29 THE COURT: You may call the State's
30 next witness.
31 MR. BLOXHAM: The State would call
32 Pat SeEVERS.

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PATRICIA LEE SEEVERS,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

DIRECT EXAMINATION

BY MR. BLOXHAM:

Q Ma'am, would you state your full name and spell the last name for the record, please?

A You want me to stand? Oh, I sit down? Would you repeat that, please?

Q Would you state your full name, please, and spell the last name?

A Patricia Lee SeEVERS, S-e-e-v like in Victor e-r-s.

Q Okay. Mrs. SeEVERS, isn't it?

A Mrs., yes.

Q Mrs. SeEVERS, what is your occupation?

A Store manager.

Q For which company?

A Stop and Go Markets.

Q How long have you been so employed with Stop and Go Markets?

A Four and a half years.

Q Okay. And which -- do you have more than one store? You have just one store that you manage?

A Just one store.

Q Where is that located?

A 732 North Eastern.

Q That's here in Clark County, Nevada; isn't that correct?

A Yes, sir.

Q Now, do you know a young lady by the

1 name of Tina Cage?
2 A Yes.
3 Q And did you have occasion, or how is
4 it that you know Tina Cage?
5 A We -- she worked for me in my store.
6 Q Okay. Did you have occasion to go to
7 that store at 732 North Eastern on December 18, 1980?
8 A Yes.
9 Q And why was it that you went there?
10 A My district rep called me that night.
11 Q Okay. Who is the district rep that
12 called you?
13 A Richard Davies.
14 Q And pursuant, after talking to him on
15 the phone, did you go to that store?
16 A Yes.
17 Q Approximately what time was it, if you
18 recall, that you arrived at the store?
19 You may not recall. I don't know.
20 A It was while after midnight.
21 Q Okay. And when you arrived there, what
22 did you observe, if anything?
23 A Well, I got out of my car, and the --
24 there was other cars there, police cars and so forth.
25 And then, as I approached the front
26 door, I told him who I was, and they said that I'd have
27 to wait.
28 Q Okay.
29 A And I waited outside.
30 Q Were the police officers inside?
31 A Yes.
32 Q Now, at some time did you enter that store?

1 A Yes.
2 Q And what did you do when you entered?
3 A I went inside. And my job is, after a
4 burglary or robbery, is to count all the cash.
5 Q Okay. Was Richard Davies there at
6 the store?
7 A Yes.
8 Q Did you count the money in the store at
9 that time?
10 A Yes, sir.
11 Q Where is money kept in that store?
12 A In the register and in the safe.
13 Q Do the employees generally have a key
14 to the safe?
15 A No, sir. I do.
16 Q Did you observe the register that
17 morning of December 18, 1980?
18 A Yes.
19 Q And was there any money inside the
20 register?
21 Did you notice if there was any
22 money inside the register?
23 A Coins.
24 Q Coins. Was there any paper money?
25 A I don't believe so.
26 Q Okay. Now, did you observe anything
27 unusual, or did you -- what did you observe around the
28 cash register, if anything?
29 A Well, as I went behind there, I noticed
30 that there was a sandwich on a paper plate, half-eaten,
31 partly eaten sandwich, and a jacket. I believe the
32 register drawer was open.

1 I think I found a paper dollar on --
2 on the floor.

3 Q Okay. Did you observe anything belonging
4 to Tina Cage that you knew belonged to Tina Cage?

5 A Well, I wasn't for sure that that was
6 her jacket, but I assumed it was because the --

7 Q Was there anything else that you noticed
8 that may have belonged to Tina Cage?

9 A Her purse was on the floor. A purse.
10 I wasn't sure that that was her's until the officers
11 told me it was.

12 Q Okay. Do you know whether Tina Cage
13 had taken any security measures at that time when she
14 was working as a clerk?

15 A Well, her --

16 Q Do you understand my question?

17 A No, not quite.

18 Q Had you and Tina Cage had discussions
19 before about what to do if there was a robbery?

20 Well, let me --

21 A See, it's -- it's hard for me to
22 remember, 'cause I try to go over with all our, you know,
23 the people that work with me to keep. Okay?

24 Q Did you see a cup on the counter there
25 near the counter of the cash register?

26 A Not right away.

27 Q Come a time when you observed a cup?

28 A Yes.

29 Q What was in the cup, if you know?

30 A It smelled like ammonia.

31 Q Did that surprise you that that cup
32 was there?

**PLEADING
CONTINUES
IN NEXT
VOLUME**

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

JOEL BURKETT aka RAYMOND HAIRE,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C052190
SC No: 63661

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT

JOEL BURKETT # 16111,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

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Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

052190

5126-80F

P

JAN 16 2 35 PM '81

LORETTA BOWMAN
CLERK

BY

Cheryl Strong

Electronically Filed

Sept 12 2013 8:26 a.m.

Tracie K. Lindemen

Clerk of Supreme Court

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAYMOND HAIRE AKA
JOEL BURKETT (TRUE NAME)

Defendant,

JUSTICE COURT

CASE NO. 5126-80F

STATE VS. HAIRE, RAYMOND aka Joel Burkett

CHARGE BURGLARY WITH INTENT TO COMMIT A FELONY; ROBBERY; FIRST
~~XXXX~~ DEGREE KIDNAPING; USE OF A DEADLY WEAPON IN COMMISSION OF A
 CRIME and SEXUAL ASSAULT

DATE, JUDGE
 OFFICERS OF
 COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

12-23-80 J. McGROARTY M. Bowers DA L. Colucci CR L. Hawkins CLK	TIME SET FOR BAIL HEARING Deft. PRESENT in court *IN CUSTODY* Bail Set: First Degree Kidnaping: 100,000/200,000 Robbery W/Use of a Deadly Weapon: 20,000/40,000 Sexual Assault: 5,000/10,000 EACH COUNT Possession of Controlled Substance: 1,000/2,000 DEFT. REMANDED TO THE CUSTODY OF THE SHERIFF	Electronically Filed Sept 13 2013 8:26 a.m. Tracie K. Lindemen Clerk of Superior Court MICROFILMED JAN 06 1981 sl
12-24-80 D. WHITE JR. G. Diamond DA R. Olson CR B. Mitchell CLK	INITIAL ARRAIGNMENT Deft. PRESENT in court *IN CUSTODY* ADVISED/WAIVES Motion to CONTINUE by Deft. to secure counsel (PD) Motion GRANTED DEFT. REMANDED TO THE CUSTODY OF THE SHERIFF	12-26-80 1:30 Dept. #5 MICROFILMED JAN 06 1981 sl
12-26-80 E. WHITE JR. G. Diamond DA R. Olson CR B. Mitchell CLK G. Lieberman PD (CONFIRMS)	CONTD. ARRAIGNMENT Deft. PRESENT in court *IN CUSTODY* TRUE NAME: Joel Burkett PH Set DEFT. REMANDED TO THE CUSTODY OF THE SHERIFF	1-9-81 9:00 Dept. #5 MICROFILMED JAN 06 1981 sl
1-9-81 E. White, JR M. Harmon, DA Wm. Henry, PD P. DeGagne, CR A. Johnson, CLK	TIME SET FOR PRELIMINARY HEARING Deft. PRESENT IN COURT IN CUSTODY Motion by State and Defense to exclude witnesses— Motion Granted. (All spectators cleared from court room through testimony of Mrs. Cage.) <u>STATES WITNESSES:</u> TINA CAGE RICHARD DAVIES Defense motion to Dismiss Counts #1 & #2 — Argument by State as to Count. (No argument on	
	Count #1. State submits to court) Further argument by Defense. Motion to Dismiss Count #1 GRANTED. Motion to Dismiss Count #2 — DENIED. Defendant Bound Over to District Court as charged on Counts #2, #3, #4, & #5. Appearance Date Set. Deft. remanded to the custody of the sheriff.	1-20-81 9 am Dept. #7 in DISTRICT COURT aj

MINUTES — CRIMINAL

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP,
2 IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA.

3 THE STATE OF NEVADA,)

4 Plaintiff,)

5 vs.)

6 RAYMOND HAIRE aka
7 Joel Burkett,)

8 Defendant.)

CASE NO.

DOCKET NO.

CRIMINAL COMPLAINT

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
28
43

9 Personally appeared before the undersigned Notary Public
10 this day R. D. LEONARD, of LAS VEGAS, in the County of Clark,
11 State of Nevada, who, being first duly sworn, complains and says
12 that RAYMOND HAIRE aka Joel Burkett, the Defendant above named,
13 has committed the crimes of BURGLARY WITH INTENT TO COMMIT A
14 FELONY (Felony - NRS 205.060); ROBBERY (Felony - NRS 200.380);
15 FIRST DEGREE KIDNAPING (Felony - NRS 200.310); USE OF A DEADLY
16 WEAPON IN COMMISSION OF A CRIME (Felony - NRS 193.165); and
17 SEXUAL ASSAULT (Felony - NRS 200.364, 200.366) in the manner
18 following to-wit: That the said Defendant, on or about the
19 18th day of December, 1980, at and within the County of Clark,
20 State of Nevada,

21 COUNT I - Burglary With Intent to Commit a Felony

22 did then and there wilfully, unlawfully, and feloniously
23 enter, with intent to commit a felony, to-wit: Robbery, as set
24 forth in Count II below, that certain building occupied by
25 NATIONAL CONVENIENCE STORES, INC., a corporation dba Stop 'N Go
26 #759, located at 732 North Eastern Avenue, Las Vegas, Clark
27 County, Nevada.

28 COUNT II - Robbery & Use of a Deadly Weapon in Commission of
29 a Crime

30 did then and there wilfully, unlawfully and feloniously take
31 personal property from the person of TINA CAGE, or in her
32 presence, by means of force or violence or fear of injury to, and

CRIMINAL
DEPT. V

MICROFILMED
EARLE W. WHITE, JR. JAN 06 1981

Docket 63661 Document 2013-27035

5126-80F

without the consent and against the will of the said TINA CAGE,
to-wit: lawful money of the United States belonging to NATIONAL
CONVENIENCE STORES, INC., a corporation dba Stop 'N Go #759, 732
North Eastern Avenue, Las Vegas, Clark County, Nevada
the rightful possession of TINA CAGE, Defendant using a deadly
weapon to-wit: a knife, during the commission of said crime.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

COUNT III- First Degree Kidnaping & Use of a Deadly Weapon in
Commission of a Crime

did wilfully, unlawfully, feloniously, and without authority
of law, seize, confine, inveigle, entice, decoy, abduct, conceal,
kidnap, or carry away TINA CAGE, a human being, with the intent
to hold or detain the said TINA CAGE against her will and without
her consent for the purpose of committing Sexual Assault upon the
said TINA CAGE, said Defendant using a deadly weapon, to-wit: a
knife, during the commission of said crime.

COUNT IV - Sexual Assault

did then and there wilfully, unlawfully and feloniously
sexually assault and subject TINA CAGE, a female person, to
sexual penetration, to-wit: sexual intercourse, by inserting his
penis in the vagina of the said TINA CAGE, against her will.

COUNT V - Sexual Assault

did then and there wilfully, unlawfully and feloniously
sexually assault and subject TINA CAGE, a female person, to
sexual penetration, to-wit: anal intercourse, by inserting his
penis in the anus of the said TINA CAGE, against her will.

All of which is 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. Said Complainant, therefore,

.....
.....
.....
.....


MICROFILMED
JAN 06 1981

5126-80F

1 prays that a Warrant be issued for the arrest of the said
2 Defendant in order that said Defendant may be dealt with
3 according to law.

4
5 R.D. Leonard Electronically Filed
6 R. D. LEONARD Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

7 Subscribed and sworn to before me this 24th day of December, 1980.

8
9  Peggy J. Reid
10 PEGGY J. REID Notary Public in and for said
11 Notary Public-State of Nevada County and State.
12 COUNTY OF CLARK
13 My Appointment Expires July 26, 1983
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29 80F5126/sm
30 LVMPD DR#80-95384
31 Burg; Robbery; 1°
Kidnap; UDW & Sexual
Assault - F

MICROFILMED
JAN 06 1981

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

AFFIDAVIT FOR ARREST

STATE OF NEVADA
COUNTY OF CLARK

ss: HAIRE, RAYMOND

5B BRUCE A. SINGER
says:

1. That he is a police officer with the Las Vegas Metropolitan Police Department, Las Vegas, Clark County, Nevada, being so employed for a period of 16 years (months).

2. That Affiant learned the following facts and circumstances which lead Affiant to believe that RAYMOND HAIRE committed (or was committing) the offense of ROBBERY, KIDNAP & SEXUAL ASSAULT at the location of _____

3. That the offense occurred at approximately _____ hours on the _____ day of _____, 19 _____.

4. THAT NORTH LAS VEGAS POLICE OFFICER R. S. SMITH #197 WHILE INSIDE OF NEVADA CYCLE PARTS AT 2560 L.V.B.M. OBSERVED THE ABOVE LISTED SUSPECT ALSO INSIDE THE SAME STORE.

5. THAT OFC. SMITH RECOGNIZED THE SUSPECT AS THE SAME SUSPECT LISTED ON A POLICE HOT SHEET.

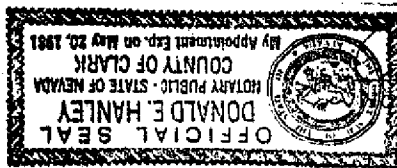
6. THAT OFC SMITH RECOGNIZED CERTAIN TATTOOS ON THE ABOVE LISTED SUSPECT ALONG WITH A PHYSICAL DISCREPTION LISTED ON THE HOT SHEET.

7. THAT N. LAS VEGAS P.D. NOTIFIED METRO AND AFFIANT RESPONDED.

Wherefore, affiant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Affiant Bruce A. Singer

(SEAL) Subscribed and sworn to before me this 19 day of Dec, 1980.



Donald E. Hanley
Notary Public in and for said State and County

First Appearance: Date 12-22-80 Time 8:00 Court: Justice ☒ Municipal ☐ Juvenile ☐
Standard Bail ☒ "OR" Release ☐ Probable Cause: Yes ☒ No ☐ Judge dm

5126-80F

RECORDED
JAN 06 1991

8. THAT AFFIANT THEN OBTAINED AN UP-TO-DATE "HOT SHEET" WHICH LISTED THE SUSPECT PHYSICAL DESCRIPTION AND OUTSTANDING FEATURES.

9. THAT THE OUTSTANDING FEATURES WERE A SPIDER WEB TATTOO ON THE RIGHT ELBOW ALONG WITH A MARIJUANA LEAF TATTOO ON THE RIGHT FOREARM.

Electronically Filed

Sept 13 2013 8:26 a.m.

Tracie K. Lindeman

Clerk of Supreme Court

10. THAT THE HOT SHEET FURTHER DESCRIBED THE SUSPECT AS A WHITE MALE, 6'1"-6'2", 185 POUNDS, BLOND HAIR.

11. THAT THE SUSPECT LISTED ABOVE FIT THE DESCRIPTION RIGHT DOWN TO THE TATTOOS.

12. THAT AFFIANT DID DETERMINE THAT THE SUSPECT LISTED ABOVE WAS IN-DEED THE SAME SUSPECT DESCRIBED ON THE HOT SHEET.

13. THAT ALL OF THE ABOVE OCCURRED WITHIN THE COUNTY OF CLARK, LAS VEGAS, NEV.

MICROFILMED

JAN 06 1981

Wherefore, affiant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Affiant

Bruce A. Sengier

(SEAL)

Subscribed and sworn to before me this 19 day of Dec, 1980.

Notary Public in and for said State and County

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
AFFIDAVIT FOR ARREST

STATE OF NEVADA
COUNTY OF CLARK

ss: HAIRE, RAYMOND

5B Bruce A. Singer, being first duly sworn, deposes and says:

1. That he is a police officer with the Las Vegas Metropolitan Police Department, Las Vegas, Clark County, Nevada, being so employed for a period of 16 years (months).

2. That Affiant learned the following facts and circumstances which lead Affiant to believe that RAYMOND HAIRE committed (or was committing) the offense of Robbery, Kidnap & Sexual Assault at the location of _____

3. That the offense occurred at approximately _____ hours on the _____ day of _____, 19 _____.

4. THAT NORTH LAS VEGAS POLICE OFFICER R. S. SMITH #197 WHILE INSIDE OF NOVADA CYCLE PARTS AT 2560 L.V.B.M. OBSERVED THE ABOVE LISTED SUSPECT ALSO INSIDE THE SAME STORE.

5. THAT OFC. SMITH RECOGNIZED THE SUSPECT AS THE SAME SUSPECT LISTED ON A POLICE HOT SHEET.

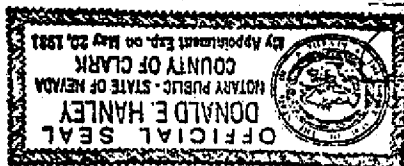
6. THAT OFC. SMITH RECOGNIZED CERTAIN TATTOOS ON THE ABOVE LISTED SUSPECT ALONG WITH A PHYSICAL DISCREPTION LISTED ON THE HOT SHEET.

7. THAT N. LAS VEGAS P.D. NOTIFIED METRO AND AFFIANT RESPONDED.

Wherefore, affiant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Affiant Bruce A. Singer

(SEAL) Subscribed and sworn to before me this 19 day of Dec, 1981



Donald E. Hanley
Notary Public in and for said State and County

First Appearance: Date 12-20-81 Time 8:00 Court: Justice ☒ Municipal ☐ Juvenile ☐
Standard Bail ☒ "OR" Release ☐ Probable Cause: Yes ☒ No ☐ Judge Smx

8. THAT AFFIANT THEN OBTAINED AN UP-TO-DATE
"HOT SHEET" WHICH LISTED THE SUSPECT PHYSICAL
DISCREPTION AND OUTSTANDING FEATURES.

9. THAT THE OUTSTANDING FEATURES WERE A SPIDER
WEB TATOO ON THE RIGHT ELBOW ALONG WITH A
MARIJUNA LEAF TATOO ON THE RIGHT FOREARM.

10. THAT THE HOT SHEET FURTHER DESCRIBED THE
SUSPECT AS A WHITE MALE, 6'1"-6'2", 185 POUNDS,
HAIR

Electronically Filed
Sept 13 2013 8:26 a.m.
Trevor K. Lindemen
Clerk of Supreme Court

11. THAT THE SUSPECT LISTED ABOVE FIT THE DESCRIPTION
RIGHT DOWN TO THE TATOOS.

12. THAT AFFIANT DID DETERMINE THAT THE SUSPECT
LISTED ABOVE WAS IN-DEED THE SAME SUSPECT
DESCRIBED ON THE HOT SHEET.

13. THAT ALL OF THE ABOVE OCCURRED WITHIN
THE COUNTY OF CLARK, LAS VEGAS, NEV.

MICROFILMED
JAN 06 1981

Wherefore, affiant prays that a finding be made by a magistrate that probable cause exists to
hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for
trial (if charges are a misdemeanor).

Affiant

Bruce A. Sengier

(SEAL)

Subscribed and sworn to before me this 19 day of Dec, 1980.

Notary Public in and for said State and County

BAIL SETTING NOTICE

5126-
80F

Haire, Raymond
surname name

Electronically Filed
HAS BEEN ARRESTED
Sept 13 2013 8:26 a.m.

Tracie K. Lindemen
Clerk of Supreme Court

ON THE CHARGE(S):

1. 1st deg. kid. w/ deadly weapon
2. Robbery w/ use of deadly weapon
3. sexual assault
4. PPS

ARREST DATE:

12-1-19-180

ARRAIGNMENT DATE:

12-12-19-180

ARRESTING OFFICER(S):

Singer
surname

1732
p.#

Metro
department

surname

p.#

department

Arnette Lesko
COURT INTAKE OFFICER

12-1-18-180

F4

100,000/200,000
BAIL AMOUNT

John S. Mc Gowan
JUDGE

MICROFILMED
JAN 06 1981

STATE OF NEVADA

Plaintiff,

vs

FIRST APPEARANCE
AND
NOTICE OF ARRAIGNMENT5126-
80FRAYMOND HAIRE
DR# 80-95384 ID# 609533Electronically Filed
Sept 13 2013 8:26 a.m.

Tracie K. Lindamen

Clerk of Supreme Court

1. You have been arrested for violation of:
a. NRS 200.320 b. CHARGES 1st. deg. Kidnapping w/ Deadly Weapon
2. You have the right to remain silent. Anything you say may be used against you in a court of law. You have the right to have an attorney present during any questioning. If you cannot afford to hire an attorney, one will be furnished for you free of charge. If you waive these rights, you may revoke that waiver at any point of the questioning.
3. If you remain in custody, you have the right to a probable cause hearing, which will be held in Justice Court within 48 hours of your arrest, excluding weekends and holidays.
4. You have a right to an arraignment, which will be held in Justice Court on 12-29-80 at 1:30 p.m. If you remain in custody, your arraignment date will be held sooner if possible.
5. You have the right to a preliminary hearing and one will be ordered for you at your arraignment. You will be allowed reasonable time and opportunity to consult with counsel.
6. You have a right to have bail set to secure your release from custody. The court has established a bail schedule and according to that schedule your bail has been set at \$ 51C
100,000/200,000
7. Do you have an attorney? Yes No.
Can you afford to hire an attorney? Yes No.
Do you want the court to appoint an attorney as provided by NRS 171.188? Yes No. If your answer is "no", you will not be allowed to delay court proceedings for lack of counsel. You must have your attorney present in court at each proceeding, including the arraignment date noted above.
8. Please sign above the line marked "DEFENDANT" to indicate that you understand the information contained above.

DEFENDANT

Annette Lesko
Court Intake Officer12-19-80 at _____ a.m. p.m.

J.P. _____

D.A. _____

DEF. ATTY. _____

Date _____

MICROFILMED

JAN 06 1981

() Defendant () Present () Not Present
 () Court Orders, Defendant Released
 () Bail Exonerated

10

STATE OF NEVADA

Plaintiff,

vs

FIRST APPEARANCE
AND
NOTICE OF ARRAIGNMENT

Raymond Haile
DR# 80-95384 ID# 609533

5126-
80F
Electronically Filed
Sept 13 2013 8:26 a.m.

Tracie K. Lindeman
Clerk of Supreme Court

1. You have been arrested for violation of:
a. NRS 200.380 b. CHARGES Robbery w/ use of deadly weapon
2. You have the right to remain silent. Anything you say may be used against you in a court of law. You have the right to have an attorney present during any questioning. If you cannot afford to hire an attorney, one will be furnished for you free of charge. If you waive these rights, you may revoke that waiver at any point of the questioning.
3. If you remain in custody, you have the right to a probable cause hearing, which will be held in Justice Court within 48 hours of your arrest, excluding weekends and holidays.
4. You have a right to an arraignment, which will be held in Justice Court on 12-29-80 at 1:30 p.m. If you remain in custody, your arraignment date will be held sooner if possible.
5. You have the right to a preliminary hearing and one will be ordered for you at your arraignment. You will be allowed reasonable time and opportunity to consult with counsel.
6. You have a right to have bail set to secure your release from custody. The court has established a bail schedule and according to that schedule your bail has been set at \$ 20,000.
7. Do you have an attorney? Yes No.
Can you afford to hire an attorney? Yes No.
Do you want the court to appoint an attorney as provided by NRS 171.188? Yes No. If your answer is "no", you will not be allowed to delay court proceedings for lack of counsel. You must have your attorney present in court at each proceeding, including the arraignment date noted above.
8. Please sign above the line marked "DEFENDANT" to indicate that you understand the information contained above.

Annette Lesko
Court Intake Officer

12-19-80 at _____ a.m. p.m.

x Raymond Haile
DEFENDANT

MICROFILMED
JAN 06 1981

J.P. _____ D.A. _____ DEF. ATTY. _____

Date _____

() Defendant () Present () Not Present
() Court Orders, Defendant Released
() Bail Exonerated

STATE OF NEVADA

Plaintiff,

vs

ct.
FIRST APPEARANCE
AND
NOTICE OF ARRAIGNMENT

Raymond Haire

DR# 80-95384 ID# 009533

5126-
Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1. You have been arrested for violation of:
a. NRS 200-366 b. CHARGES Sexual Assault
2. You have the right to remain silent. Anything you say may be used against you in a court of law. You have the right to have an attorney present during any questioning. If you cannot afford to hire an attorney, one will be furnished for you free of charge. If you waive these rights, you may revoke that waiver at any point of the questioning.
3. If you remain in custody, you have the right to a probable cause hearing, which will be held in Justice Court within 48 hours of your arrest, excluding weekends and holidays.
4. You have a right to an arraignment, which will be held in Justice Court on 12-29-80 at 1:30 p.m. If you remain in custody, your arraignment date will be held sooner if possible.
5. You have the right to a preliminary hearing and one will be ordered for you at your arraignment. You will be allowed reasonable time and opportunity to consult with counsel.
6. You have a right to have bail set to secure your release from custody. The court has established a bail schedule and according to that schedule your bail has been set at \$ 5,000.
7. Do you have an attorney? Yes No.
Can you afford to hire an attorney? Yes No.
Do you want the court to appoint an attorney as provided by NRS 171.188? Yes No. If your answer is "no", you will not be allowed to delay court proceedings for lack of counsel. You must have your attorney present in court at each proceeding, including the arraignment date noted above.
8. Please sign above the line marked "DEFENDANT" to indicate that you understand the information contained above.

Annette Lesko
Court Intake Officer

12-19-80 at _____ a.m. p.m.

Raymond Haire
DEFENDANT

MICROFILMED
JAN 06 1981

J.P. _____ D.A. _____ DEF. ATTY. _____

Date _____

() Defendant () Present () Not Present
() Court Orders, Defendant Released
() Bail Exonerated

STATE OF NEVADA

Plaintiff,

vs

ct. 2
FIRST APPEARANCE
AND
NOTICE OF ARRAIGNMENT

RAYMOND HAIRE
DR# 80-95384 ID# 609533

5126-
80F
Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

1. You have been arrested for violation of:
a. NRS 200.366 b. CHARGES Sexual Assault
2. You have the right to remain silent. Anything you say may be used against you in a court of law. You have the right to have an attorney present during any questioning. If you cannot afford to hire an attorney, one will be furnished for you free of charge. If you waive these rights, you may revoke that waiver at any point of the questioning.
3. If you remain in custody, you have the right to a probable cause hearing, which will be held in Justice Court within 48 hours of your arrest, excluding weekends and holidays.
4. You have a right to an arraignment, which will be held in Justice Court on 12-29-80 at 1:30 p.m. If you remain in custody, your arraignment date will be held sooner if possible.
5. You have the right to a preliminary hearing and one will be ordered for you at your arraignment. You will be allowed reasonable time and opportunity to consult with counsel.
6. You have a right to have bail set to secure your release from custody. The court has established a bail schedule and according to that schedule your bail has been set at \$ 5,000.
7. Do you have an attorney? Yes No.
Can you afford to hire an attorney? Yes No.
Do you want the court to appoint an attorney as provided by NRS 171.188? Yes No. If your answer is "no", you will not be allowed to delay court proceedings for lack of counsel. You must have your attorney present in court at each proceeding, including the arraignment date noted above.
8. Please sign above the line marked "DEFENDANT" to indicate that you understand the information contained above.

Annette Lesko
Court Intake Officer

12-19-80 at _____ a.m. p.m.

J.P. _____ D.A. _____ DEF. ATTY. _____

Date _____

() Defendant () Present () Not Present
() Court Orders, Defendant Released
() Bail Exonerated

STATE OF NEVADA

12-29-80
ARRAIGNMENT DATE

Plaintiff

AFFIDAVIT OF FINANCIAL CONDITION

vs.

Defendant

512680F

Raymond Naire

ADDRESS: 725 Bruce
L.V.

BEST POINT OF CONTACT OR REFERENCE:

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

TELEPHONE:

DESCENT: CAUCASIAN NEGRO CHICANO OTHER:

DOB: 11-9-58
SOC. SEC. # 440-30-5711

AGE: 22 HEIGHT: 6'2" WEIGHT: 184# PLACE OF BIRTH: Calif.

EDUCATION: 11th grade PRIOR PUBLIC DEFENDER SERVICE:

CHARGE(S) - YEAR: NO

CHARGE(S): (FELONY-GROSS MISDEMEANOR ONLY) CO-DEFENDANTS:

#1 1st deg kidnapping w/ deadly weapon sic
#2 Robbery w/ use of deadly weapon BAIL: 20,000
#3 Serious Assault 4th BAIL: 20,000
PCS 1,000

RESIDENCY IN CLARK COUNTY:

TIME AT PRESENT ADDRESS:

TIME AT PREVIOUS ADDRESS:

3 weeks months years 2 weeks months years 22 weeks months years

Homeowner Rent

Homeowner Rent

EMPLOYMENT/OCCUPATION:

TAKE HOME PAY:

TIME ON PRESENT JOB:

unemployed per Day Week Month Months Years

ADDRESS OF EMPLOYMENT:

SUPERVISOR:

TEL:

OTHER INFORMATION:

OTHER INCOME (SOCIAL SECURITY PAYMENT-NIC-RETIREMENT BENEFITS-ETC.):

CASH ON HAND OR IN BANK:

PROPERTY:

RENT: family per week month MORTGAGE PAYMENTS per month

OTHER DEBTS:

FAMILY:

Single ☒ Married ☐ Divorced ☐ Separated ☐

Number of Children: 0

Alimony or child support payments: 0 per month

Income from spouse: 0 per month

OTHER INFORMATION:

MICROFILMED
JAN 06 1981

HAVE YOU TALKED TO AN ATTORNEY ON THIS CASE OR ANY OTHER CASE NOW PENDING BEFORE THE COURT?
yes ☐ no ☒

ATTORNEY'S NAME AND ADDRESS:

I, THE UNDERSIGNED DEFENDANT, UNDER PENALTY OF PERJURY, DECLARE THAT THE ABOVE FACTS ARE TRUE AND COR-

RECT DATED THIS 19 DAY OF Dec 1980
X Raymond Naire
DEFENDANT

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 19
DAY OF Dec
1980

Annette Lesko
NOTARY PUBLIC

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA, PLAINTIFF,
VS.

RAYMOND HAIRE AKA
JOEL BURKETT (TRUE NAME)

DEFENDANT

CASE NO. 5126 Electronically Filed
Docket No. Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

PROCEEDINGS

Personally Appeared Before this Court 24th day of DECEMBER
1980. R.D. LEONARD in Las Vegas, who being first duly
sworn, complains and says: That the Defendant above named on or about
the 18th day of DECEMBER, 1980, Las Vegas, State of Nevada,
committed the crime of BURGLARY WITH INTENT TO COMMIT A FELONY; ROBBERY;
FIRST DEGREE KIDNAPING; USE OF A DEADLY WEAPON IN COMMISSION
OF A CRIME; AND SEXUAL ASSAULT

Warrant issued
Defendant in Court, Complaint read to HIM and HE was advised
of HIS rights including the right to services of Counsel. Defendant
stated HIS true name as JOEL BURKETT

ARRAIGNED: DECEMBER 24, 1980

BAIL SET AT: \$130,000/\$260,000 TOTAL BAIL SET PER JUDGE MCGROARTY ON 12-23-80.

PRELIMINARY HEARING: JANUARY 9, 1981

JUDGE PRESIDING: E. WHITE, JR

DISTRICT ATTORNEY: M. HARMON

PUBLIC DEFENDER ~~and/or~~ ATTORNEY: WM. HENRY, PD

COURT REPORTER: P. DEGAGNE

CRIMINAL CLERK: A. JOHNSON

WITNESSES FOR STATE: TINA CAGE

RICHARD DAVIES

WITNESSES FOR DEFENSE: NONE

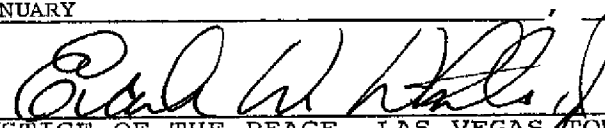
EVIDENCE FOR STATE: NONE

EVIDENCE FOR DEFENSE: NONE

DISPOSITION: DEFENDANT BOUND OVER TO DISTRICT COURT ON COUNTS #2, #3, #4, & #5.

DISTRICT COURT TRIAL DATE: JANUARY 20, 1981 9 am in Dept. #7

DATED THIS 15th DAY OF JANUARY 1981


JUSTICE OF THE PEACE, LAS VEGAS TOWNSHIP

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

CASE NO. 5126-

DOCKET NO. 80F

STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
RAYMOND HAIRE AKA)
JOEL BURKETT (TRUE NAME))
)
)
Defendant)

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

**COMMITMENT
and
ORDER TO APPEAR**

An Order having been made this day by me, that

RAYMOND HAIRE AKA JOEL BURKETT (TRUE NAME)

be held to answer upon the charge of

BURGLARY WITH INTENT TO COMMIT A FELONY; ROBBERY;
FIRST DEGREE KIDNAPING; USE OF A DEADLY WEAPON IN
COMMISSION OF A CRIME; & SEXUAL ASSAULT

Committed in said Township and County, on or about the 18th day of DECEMBER, A.D. 1980

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive

HIM into custody, and detain HIM until HE be legally discharged, and that
HE be admitted to bail in the sum of \$130,000/\$260,000 (TOTAL) Dollars,

and be committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant _____ is/~~are~~ commanded to appear in
Department #7 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 9:00
A.M., on the 20th day of JANUARY, 1981, for arraignment and further proceedings on the
within charge 8.

DATED this 15th day of JANUARY, 1981.


JUSTICE OF THE PEACE FOR SAID TOWNSHIP

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Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the case of:

THE STATE OF NEVADA

Plaintiff

vs.

HAIRE, RAYMOND aka

JOEL BURKETT (TRUE NAME)

Defendant

CASE NO. 5126

DOCKET NO. 80F

Witness my hand this 15th day of JANUARY, 19 81


Justice of the Peace,

Las Vegas Township

Robert J. Miller
District Attorney
Clark County Courthouse
Las Vegas, Nevada

CASE NO. C-52190
DEPT. NO. VII

In the Eighth Judicial District Court of the
State of Nevada,
in and for the County of Clark.

FILED

JAN 19 1981
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Electronically Filed
Jan 13 2013 8:26 a.m.
Tracie L. Lindeman
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

— vs —

JOEL BURKETT aka
Raymond Haire,

Defendant.

INFORMATION

ROBBERY (Felony - NRS 200.380);
FIRST DEGREE KIDNAPING (Felony -
NRS 200.310); USE OF A DEADLY
WEAPON IN COMMISSION OF A CRIME
(Felony - NRS 193.165) and SEXUAL
ASSAULT (Felony - NRS 200.364,
200.366)

STATE OF NEVADA }
COUNTY OF CLARK } ss:

ROBERT J. MILLER, District Attorney within and for the County of Clark, State
of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JOEL BURKETT aka Raymond Haire

the Defendant above named, on or about the 18th day of December,
1980, 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, ~~xxx~~

COUNT I - Robbery & Use of Deadly Weapon in Commission of a Crime

did then and there wilfully, unlawfully and feloniously take
personal property from the person of TINA CAGE, or in her presence,
by means of force or violence or fear of injury to, and without the
consent and against the will of the said TINA CAGE, to wit: lawful

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(R)

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1 money of the United States belonging to NATIONAL CONVENIENCE
2 STORES, INC., a corporation dba Stop 'N Go #759, 732 North
3 Eastern Avenue, Las Vegas, Clark County, Nevada, being in the
4 rightful possession of TINA CAGE, Defendant using a deadly weapon
5 to-wit: a knife, during the commission of said crime.

6 COUNT II - First Degree Kidnaping & Use of Deadly
7 Commission of a Crime

8 did wilfully, unlawfully, feloniously, and without authority
9 of law, seize, confine, inveigle, entice, decoy, abduct, conceal,
10 kidnap, or carry away TINA CAGE, a human being, with the intent
11 to hold or detain the said TINA CAGE against her will and without
12 her consent for the purpose of committing Sexual Assault upon the
13 said TINA CAGE, said Defendant using a deadly weapon, to wit: a
14 knife, during the commission of said crime.

15 COUNT III - Sexual Assault

16 did then and there wilfully, unlawfully and feloniously
17 sexually assault and subject TINA CAGE, a female person, to
18 sexual penetration, to wit: sexual intercourse, by inserting
19 his penis in the vagina of the said TINA CAGE, against her will.

20 COUNT IV - Sexual Assault

21 did then and there wilfully, unlawfully and feloniously
22 sexually assault and subject TINA CAGE, a female person, to
23 sexual penetration, to wit: anal intercourse, by inserting his
24 penis in the anus of the said TINA CAGE, against her will.

25 ROBERT J. MILLER
26 District Attorney

27 By Melwyn T. Harmon
28 MELWYN T. HARMON
29 Chief Deputy District Attorney

1 The names of witnesses known to the District Attorney at
2 the time of filing this information are as follows:

3 BROOK, M. #181
4 LVMPD - Detective

5 BURKETT, THEODORE
6 725 N. Bruce, LVN

7 CAGE, TINA
8 Blue Angel Motel, Rm. 250
9 or
10 Stop 'N Go Market
11 732 No. Eastern, LVN

12 DAVIES, RICHARD
13 3675 Cambridge, #225
14 or
15 557 E. Sahara, Suite 223
16 LVN

17 DUSTIN, P. #577
18 LVMPD - Detective

19 GIVENS, M. #1575
20 LVMPD - Patrol

21 HENNING, T. #1997
22 LVMPD - Patrol

23 HUBBS, M. #1979
24 LVMPD - Jail

25 KINGSBURY, N. #1107
26 LVMPD - Lab

27 LEONARD, R. #471
28 LVMPD - Detective

29 LUKE, R. #488
30 LVMPD - Detective

31 MINGS, P. #507
32 LVMPD - Detective

33 MOSER, M. E. #1224
34 LVMPD - Lab

35 MUMPOWER, F. P. #372
36 LVMPD - Lab

37 RAFFERTY, D. #174
38 LVMPD - Patrol

39 RENNER, R. #754
40 LVMPD - Lab

ROBEY, G. #351
LVMPD - Detective

RUFFINO, D. #1502
LVMPD - Lab

SEEVERS, PAT
Stop 'N Go Market
732 No. Eastern, LVN

SIGRETTO, M. R. #175
LVMPD - Lab

SINGER, B. #1732
LVMPD - Patrol

SMITH, R. S. #197
NLVPD

THORNTON, DONALD J.
LVMPD #1619

WILLIAMS, GEORGE
4245 Sunrise, LVN

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

-3-

80F5126X/1b
LVMPD 80-95384
Rob & 1° Kidnap w/wpn
and Sex. Assault - F

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FILED

JOEL T. BURKETT

JAN 21 12 23 PM '81

CLARK COUNTY JAIL

CASE NO. 5126

LORETTA BOWMAN
CLERK

4F-012

DOCKET NO. 80 F

BY *Joel De Zille*

JANUARY 14, 1981

52190

SUPPLEMENTARY STATEMENT FOR

WRIT OF HABEUS CORPUS, DATED

1/14/81.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

Ret m VII

2-5-81

(P)

9:00 AM

I, Joel T. Burkett that the charges against me of Robbery & use of a deadly weapon be dropped.

I, contend that during my preliminary hearing held on 1/9/81 before the honorable Judge Earl White Jr., there was no statement or testimony by the victims of the robbery which implicated any participation of any kind on my part to both the Robbery or use of a deadly weapon.

This contention shall be proven by examining the court record of the victims testimony on 1/9/81.

I am requesting that the court testimony be examined & reviewed to uphold my contention & honor this writ of Habeas Corpus.

IA KA RAYMOND Hayes

Michael A. Coloma
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Michael A. Coloma
My Appointment Expires May 14, 1984

Joel T. Burkett
1, 14, 81.

1-14-81

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(P)

1 CASE NO. 5126

2 DOCKET NO. 80 F

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

7 IN AND FOR THE COUNTY OF CLARK

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

8
9 In the Matter of the Application)

10 of JOEL T. BURKETT)

11 for a Writ of Habeas Corpus.)

POINTS AND AUTHORITIES
IN SUPPORT OF
WRIT OF HABEAS CORPUS

12
13 The delay in arraigning the petitioner in the case at
14 hand does not meet the prompt arraignment requirements of N.R.S.
15 171.178 and Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33
16 L.Ed.2d 101 (1972), as made applicable to the states under the
17 Fourteenth Amendment. Klopper v. North Carolina, 386 U.S. 213,
18 87 S.Ct. 988, 18 L.Ed.2d 1 (1967).

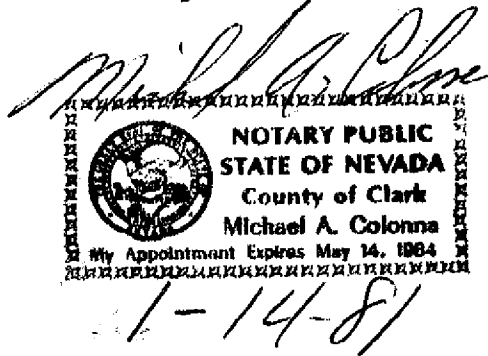
19 In the 1973 United States Supreme Court Opinion of
20 Moore v. Arizona, _____ U.S. _____, 94 S.Ct. 188, 381 L.Ed.2d
21 183 (1973), the court expressly stated that an affirmative demon-
22 stration of prejudice was not necessary to prove a denial of the
23 constitutional right to a speedy trial. Therefore, the following
24 statement from Tellis v. Sheriff, 85 Nev. 557, 459 P.2d 364 (1969),
25 has been expressly overruled by the Moore decision, supra:

26 "The passage of time per se does not
27 constitute a deprivation of the defendant's
28 rights. There must be a showing of prejudice
29 by the defendant; that some essential element
30 of his defense was lost to him or minimized
31 and that he was thereby deprived of due process
32 of law." 85 Nev. at 560.

1 Furthermore, prejudice to a defendant caused by an undue
2 delay in the proceedings against him is not limited to the possi-
3 ble prejudice to his defense on the merits. Moore case, supra,
4 at 186. An unreasonable delay in the proceedings may impair a
5 defendant's liberty whether he is free on bail or not. It may
6 further disrupt a defendant's employment, drain his financial
7 resources, curtail his associations, subject him to public oblo-
8 quy, and create anxiety in the defendant himself, his family, and
9 his friends. 38 L.Ed.2d at 186.

10 DATED this 14 day of January, 1981.

11
12 Joel T. Burkett
13 (Attorney's or firm name)
14 (Address)
15 Attorney for Defendant



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Tracie K. Lindemen
Clerk of Supreme Court

41
ROBERT J. MILLER
District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101

FILED

JAN 23 1 33 PM '81

LORETTA BOWMAN, CLERK

BY: *Coleen Dickson*

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

1 CASE NO. C52190
2 DEPT. NO. VII
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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK.
8

9 In the Matter of the Application)
10 of JOEL T. BURKETT) MOTION TO DISMISS PRO PER
11 for a Writ of Habeas Corpus) PETITION FOR WRIT OF
12) HABEAS CORPUS

13 COMES NOW, JOHN MCCARTHY, Sheriff of Clark County, Nevada,
14 respondent, through his counsel, ROBERT J. MILLER, District
15 Attorney of Clark County, by Chief Deputy MELVYN T. HARMON, in
16 obedience to a pro per petition for a writ of habeas corpus
17 made returnable on the 5th day of February, 1981, at the hour
18 of 9:00 o'clock a.m. before the above entitled Court and moves
19 to dismiss the said petition for writ of habeas corpus on the
20 grounds that the petition does not contain the waiver and con-
21 sents required by NRS 34.375(1) (b).

22 This motion is based upon the entire record of these pro-
23 ceedings, the points and authorities attached hereto and argu-
24 ment of counsel.

25 DATED this 22nd day of January, 1981.

26 ROBERT J. MILLER
27 District Attorney

28 By: *Melvin T. Harmon*
29 MELVIN T. HARMON
30 Chief Deputy District Attorney
31
32

POINTS AND AUTHORITIES

A petition for writ of habeas corpus is not cognizable in district court unless the waiver and consents required by NRS 34.375(1)(b) are contained within the petition Sheriff v. Marshall, 96 Nev. Adv. Op. 75 (Filed 1980):

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Sept 13, 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

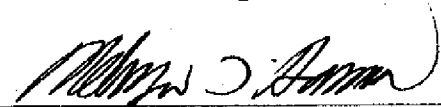
"On December 26, 1979, respondent filed a pretrial petition for a writ of habeas corpus. The petition challenged probable cause. The petition did not contain the waiver and consents required by NRS 34.375(1)(b). Such a petition may not be considered. Sheriff v. Chumphol, 95 Nev. 818, 603 P.2d 690 (1979); NRS 34.375(1); 34.380(4)(a). Nevertheless, the district court granted the petition and the state has appealed.

We do not reach the merits of the appeal because the habeas petition was not cognizable in the district court. Accordingly, we reverse. This proceeding is remanded to the district court with instructions to dismiss the petition. See Sheriff v. Chumphol, supra."

Accordingly, defendant's pro per petition for writ of habeas corpus should be dismissed.

Respectfully submitted,

ROBERT J. MILLER
District Attorney

By 
MELVYN T. HARMON
Chief Deputy District Attorney

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RECEIPT OF A COPY of the foregoing MOTION TO DISMISS PRO
PER PETITION FOR WRIT OF HABEAS CORPUS and Points and Authorities
is hereby acknowledged this 23rd day of January, 1981.

CLARK COUNTY PUBLIC DEFENDER
Attorney for Defendant
JOEL T. BURKETT
Tracie K. Lindemen
Clerk of Supreme Court

By Morgan D. Horvath
309 South Third St., #226
Las Vegas, Nevada 89101

Joel T. Burkett
JOEL T. BURKETT,
Clark County Jail

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X

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CASE NO. 5126

DOCKET NO. 80 F

FILED

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LORETTA BOWMAN

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

BY Linda D. Lindem Electronically Filed

IN AND FOR THE COUNTY OF CLARK

Sept 13 2013 8:26 a.m.

Tracie K. Lindem

Clerk of Supreme Court

52198

In the Matter of the Application)

of JOEL T. BURKETT)

for a Writ of Habeas Corpus.)

POINTS AND AUTHORITIES
IN SUPPORT OF
WRIT OF HABEAS CORPUS

Return VII

2-5-81

Q

9:00 AM

The delay in arraigning the petitioner in the case at hand does not meet the prompt arraignment requirements of N.R.S. 171.178 and Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), as made applicable to the states under the Fourteenth Amendment. Klopfer v. North Carolina, 386 U.S. 213, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967).

In the 1973 United States Supreme Court Opinion of Moore v. Arizona, _____ U.S. _____, 94 S.Ct. 188, 381 L.Ed.2d 183 (1973), the court expressly stated that an affirmative demonstration of prejudice was not necessary to prove a denial of the constitutional right to a speedy trial. Therefore, the following statement from Tellis v. Sheriff, 85 Nev. 557, 459 P.2d 364 (1969), has been expressly overruled by the Moore decision, supra:

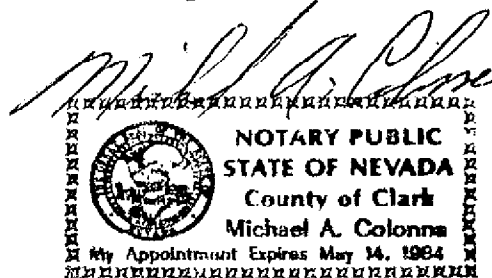
"The passage of time per se does not constitute a deprivation of the defendant's rights. There must be a showing of prejudice by the defendant; that some essential element of his defense was lost to him or minimized and that he was thereby deprived of due process of law." 85 Nev. at 560.

Furthermore, prejudice to a defendant caused by an undue delay in the proceedings against him is not limited to the possible prejudice to his defense on the merits. Moore case, supra, at 186. An unreasonable delay in the proceedings may impair a defendant's liberty whether he is free on bail or not. It may further disrupt a defendant's employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in the defendant himself, his family, and his friends. 38 L.Ed.2d at 186.

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Tracie K. Lindemen
Clerk of Supreme Court

DATED this 14 day of JANUARY, 1981.

Joel T. Burkett
(Attorney's or firm name)
(Address)
Attorney for Defendant



1-14-81

FILED

JAN 26 8 07 AM '81

LORETTA BOWMAN

CLERK

BY *John DeWitt*

JOEL T. BURKETT

CLARK COUNTY JAIL

45-C12

JANUARY 14, 1981

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

CASE NO. 5126
DOCKET NO. 80 F

SUPPLEMENTARY STATEMENT FOR
WRIT OF HABEUS CORPUS, DATED
1/14/81.

I, Joel T. Burkett that the charges
against me of Robbery & use of a
deadly weapon be dropped.

I, contend that during my pre-
liminary hearing held on 1/9/81
before the honorable Judge Earl
White Jr., there was no statement
or testimony by the victims of the
robbery which implicated any
participation of any kind on
my part to both the Robbery or
use of a deadly weapon.

This contention shall be
proven by examining the court
record of the victims testimony
on 1/9/81.

I am requesting that the
court testimony be examined &
renewed to uphold my contention
& honor this writ of Habeus Corpus.

A K A RAYMOND HARRIS

Michael A. Colonna
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Michael A. Colonna
My Appointment Expires May 14, 1984
1-14-81

Joel T. Burkett
1, 14, 81.

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ROBERT J. MILLER
District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101

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FEB 10 11 33 AM '81

LORETTA BOWMAN
CLERK

BY

[Signature]

1 CASE NO. C52190

2 DEPT. NO. VII

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
IN AND FOR THE COUNTY OF CLARK.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

In the Matter of the Application)
of JOEL BURKETT)
for a Writ of Habeas Corpus)

ORDER

THIS MATTER having come on for hearing before the above
entitled Court on the 5th day of February, 1981, Defendant being
present, in custody, with his counsel, Public Defender WILLIAM
HENRY, respondent being represented by Clark County District
Attorney ROBERT J. MILLER, through Deputy District Attorney
BRUCE S. DICKINSON, and the matter being heard and arguments
presented,

IT IS ORDERED that defendant's pro per motion for writ of
habeas corpus shall be, and it is hereby, denied.

DATED this 9 day of February, 1981.

[Signature]
DISTRICT JUDGE

ROBERT J. MILLER
District Attorney

[Signature]
BRUCE S. DICKINSON
Deputy District Attorney

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LORETTA HOWMAN
CLERK
BY *Jina Sever*

CASE NO. **CS2190**

Electronically Filed
Sept 13 2013 8:26 a.m.
Facie K. Lindemen
Clerk of Supreme Court

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,
VS.
JOEL BURKETT,
Defendant.

CASE NO. 5126
DOCKET NO. 80-F
D.A. NO. 80-F-5126

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE EARLE W. WHITE, JR., JUSTICE OF THE PEACE
FRIDAY, JANUARY 9, 1981

APPEARANCES:

For the State:

MELVYN T. HARMON, ESQ.
Deputy District Attorney

For the Defendant:

WILLIAM P. HENRY, ESQ.
Deputy Public Defender

Reported by: Paul DeGagne, CSR

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I N D E X

<u>PLAINTIFF'S WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Dire</u>
Tina Cage					
By Mr. Harmon	4		36		
By Mr. Henry		29			
Richard Davies					
By Mr. Harmon	37				
By Mr. Henry		41			

Voir
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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

160

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 9, 1981, 9:00 A.M.

2 * * * * *

3
4 THE COURT: This is the time set for the preliminary
5 hearing in case number 5126-80F, the State of Nevada versus
6 Raymond Haire also known as Joel Burkett. The record will
7 show the presence of the defendant together with his counsel,
8 Mr. Henry, and Mr. Harmon representing the State.

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Tracie K. Lindeman
Clerk of Supreme Court

9 Mr. Harmon, call your first witness, please.

10 MR. HARMON: Tina Cage.

11 MR. HENRY: Defense would move to exclude witnesses,
12 your Honor.

13 THE COURT: There has been a motion to exclude
14 witnesses and the motion is granted. All witnesses who are
15 here on the case of the State versus Raymond Haire also known
16 as Joel Burkett are excluded from the courtroom and are
17 admonished not to discuss their testimony with any other
18 person until we have completed this preliminary hearing.

19 MR. HARMON: Your Honor, may counsel approach the
20 bench?

21 THE COURT: You may.

22 (Discussion at the bench.)

23 THE COURT: There has been a request made and the
24 reasons stated that the courtroom be cleared for the testimony
25 of this witness. I am going to ask the bailiff that the
26 entire courtroom be cleared of spectators.

27 A SPECTATOR: Your Honor, I would like to stay. I
28 am the defendant's mother.

29 MR. HARMON: Your Honor, I would imagine that
30 in particular the motion would apply to her.

31 THE SPECTATOR: I came all the way from California
32 to hear this hearing today.

-3-

1 THE COURT: Ma'am, it will be my order that the
2 courtroom be cleared.

3 MR. HENRY: This only applies as to the witness who
4 is about to testify; is that correct?

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

5 THE COURT: Just as to this witness?

6 MR. HARMON: Oh, yes, just as to this witness.

7 THE COURT: Just as to this witness and then we will
8 allow any of the spectators back in.

9
10 TINA CAGE,
11 called as a witness by the State, having been first duly sworn,
12 testified as follows:

13 THE CLERK: Will you state your name and spell your
14 last name, please.

15 THE WITNESS: Tina Cage, C-a-g-e.

16
17 DIRECT EXAMINATION

18 BY MR. HARMON:

19 Q Is it Miss or Mrs. Cage?

20 A Mrs.

21 Q Mrs. Cage, are you employed at this time?

22 A Yes.

23 Q Where do you work?

24 A Stop 'N Go.

25 Q Where is the Stop 'N Go Market located that you work
26 at?

27 A It is on the corner of Maryland Parkway and Stewart.

28 Q How long have you worked there?

29 A Two weeks.

30 Q Did you formerly work at the Stop 'N Go Market
31 located at 732 North Eastern Avenue?

32 A Yes.

1 Q Is that in Las Vegas, Clark County, State of Nevada?
2 A Yes.
3 Q What number Stop 'N Go Market was that?
4 A 759.
5 Q How long did you work at the Stop 'N Go Market
6 situated at 732 North Eastern Avenue?
7 A About five days, I think.
8 Q What type of work did you do at the Stop 'N Go
9 Market located on Eastern Avenue?
10 A I was a clerk.
11 Q Were you employed as a clerk at that store on
12 December 18, 1980?
13 A Yes.
14 Q Do you remember being there shortly after midnight
15 on December 18, 1980?
16 A No.
17 Q What time did you begin your employment on
18 December 18, 1980?
19 A 11:00 o'clock p.m.
20 Q That would have been a Thursday?
21 A Right.
22 Q At 11:00 o'clock p.m.?
23 A Uh-huh.
24 Q Was that your answer?
25 A Yes.
26 Q How long was your shift to be?
27 A I worked until 7:00 a.m.
28 Q Sometime after you came to work at 11:00 o'clock
29 p.m. on December 18, 1980 did something unusual happen?
30 A Yes.
31 Q Tell us what happened.
32 A Well, I came to work at 11:00 and I asked the relief

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Sept 13 2013 8:26 a.m.
Patrick Lindeman
Clerk of Supreme Court

1 girl if she was busy and how things were going that night.

2 She said, you know, it was fairly busy but nothing to-- I

3 don't know. It was average. Okay. So, she left and I

4 continued to just run the counter and help the customers

5 I would say about-- The last time I looked at

6 the clock it said 10 to 12:00. This man came in and he bought

7 a pack of rolling papers. I didn't think anything of it. He

8 left, and about 15 minutes later--

9 Q Describe the man who came in and bought a package
10 of rolling papers.

11 A He was about six foot, six foot two, blonde hair
12 and wearing a white T-shirt, black leather or plastic vest,
13 jeans. He had a Van-dyke.

14 Q A Van-dyke what?

15 A Mustache and beard. I don't know how to describe it.

16 Q Mustache and beard?

17 A Well, partial. It was just on his chin.

18 Q Did this person come in by himself?

19 A The first time, yes.

20 Q Look around the courtroom and state whether that
21 person is present at this time.

22 A Yes, he is present.

23 Q Will you point to him and describe how he is dressed.

24 A He is wearing a striped shirt, white T-shirt,
25 handcuffs.

26 MR. HARMON: Your Honor, may the record show that
27 the witness has identified the defendant, Joel Burkett?

28 THE COURT: It may.

29 BY MR. HARMON:

30 Q You say this was about 10 minutes to 12:00?

31 A That was the last time I looked at the clock. I
32 would say five or ten minutes had passed since then.

1 Q So, it was close to midnight?
2 A Yes.
3 Q Were you the sole employee at the Stop 'N Go Market at
4 the time the defendant came in the first time? Electronically Filed
5 A Yes. I work alone. Sept 13 2013 8:26 a.m.
6 Q Did you see him again sometime after that? Tracie K. Lindemen
7 A Yes. He came back in about 15 minutes later. Clerk of Supreme Court
8 Q Can you estimate approximately what time that would
9 be?
10 A Probably about five or ten after 12:00, quarter after.
11 Q That would now be December 19, 1980?
12 A Yes.
13 Q Was he by himself or was he with someone else at
14 that time?
15 A He walked in the door and a few minutes later--
16 well, not a few minutes. Maybe 30 seconds or so later another
17 kid walked in behind him, but I didn't know they were together
18 at the time.
19 Q Were any other customers in the store at this time?
20 A The second time he came in?
21 Q Yes.
22 A No.
23 Q Were you still the sole employee of the Stop 'N Go
24 Market?
25 A Yes.
26 Q What happened shortly after midnight?
27 A He came in and went back to the back cooler where
28 the beer is kept. He went in and got two beers.
29 Q When you say he who are you talking about?
30 A The defendant.
31 Q The man whom you previously identified?
32 A Yes.

1 Q What did he get?

2 A He got two bottles of Michelob out of the cooler.

3 About the time he was halfway up the aisle the other kid came
4 in and I just gave him a glance. I didn't think anything of it.

5 Q You say another kid came in. Will you describe him?
6 person.

7 A He was about five foot five, five foot six. He
8 was a young kid, 17 or 18. He had brown hair and was wearing
9 a Levi jacket. He walked over to the drink center and looked
10 like any other kid that comes in the store.

11 Q What did the defendant, Mr. Burkett, do with the
12 two bottles of Michelob?

13 A As far as I remember, he left them on the counter.

14 Q On the counter where?

15 A By the cash register.

16 Q What happened after the young kid, as you described
17 him, came in?

18 A He walked over by the drink center which is located
19 on the right side of the counter where the register is. I
20 just glanced over and didn't think anything of it. He was going
21 to get a soda, so about that time the other fellow brought his
22 beer up to the counter--

23 Q By the other fellow you are indicating the defendant,
24 Mr. Burkett?

25 A Yes. Anyway, he brought his beer up to the counter
26 and I started to ring it up. The next thing I knew I had a
27 knife at me and the kid was trying to drag me in the back room
28 asking me where the back door was.

29 Q It was the younger person who had the knife?

30 A Yes.

31 Q Where did he have the knife?

32 A In his hand.

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Clerk of Supreme Court

1 Q What was he doing with it?

2 A Holding it up near my throat on my chest.

3 Q What happened then?

4 A He headed toward the back room. He asked me where
5 the back door was and I said there wasn't one. He asked me where
6 "We are going out the front then."

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Clerk of Supreme Court

7 Q This is still the younger of the two?

8 A Yes. And he proceeded to drag me out the front door.

9 Q What was Mr. Burkett, the defendant, doing at this
10 time? Could you see?

11 A I couldn't really see what he was doing.

12 Q Where was he at the time you last observed him
13 before the knife was produced?

14 A Standing by the front by the cash register.

15 Q With the Michelobs?

16 A Yes.

17 Q And the other fellow was dragging you out the door
18 you say?

19 A Yes.

20 Q This was out the front door of the Stop 'N Go
21 Market?

22 A Yes.

23 Q What happened then?

24 A About that time the other fellow that is here, I
25 could hear him coming up behind us and the car doors were
26 open and he said I had to get in the car.

27 Q By the other fellow that is here you are again
28 referring to the defendant whom you have already identified?

29 A Yes.

30 Q Did you see a car at that time?

31 A I saw a car about the time we went around the side
32 of the store. I couldn't see it from inside the store. I saw

1 it after he had taken me out the door.

2 Q Are you able to give any type of description of
3 the car?

4 A Yes.

5 Q Describe the car as you remember it.

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Clerk of Supreme Court

6 A The way I saw it it was about a 1974 Maverick. I am
7 not too good on years, but I believe it was a 1974 Maverick
8 two-door and it was sitting there running. I didn't notice
9 the license plate.

10 Q What happened at this time?

11 A The kid pushed me in the car and they both got in
12 the car and shut the doors and took off down the street.

13 Q Where were you placed into the vehicle?

14 A On the front seat.

15 Q At the time you were placed into the front seat was
16 the knife still visible in the hand of the second subject, the
17 younger of the two?

18 A Yes. He had one arm around my shoulder and the
19 other arm had the knife at my stomach.

20 Q Where did he get into the car?

21 A He got in right behind me. He pushed me in the car
22 and got in behind me.

23 Q Was that on the driver's or passenger's side?

24 A Passenger's side.

25 Q Did a second person get into the vehicle also?

26 A Yes.

27 Q Who is that?

28 A The fellow sitting over there. He got in on the
29 driver's side.

30 MR. HARMON: Your Honor, may the record again show
31 that she is pointing to the defendant, Mr. Burkett?

32 THE COURT: It may.

1 BY MR. HARMON:

2 Q So, he drove the vehicle?

3 A Yes.

4 Q Where were you taken?

5 A They started going down the street on the side of
6 the store. I don't know the name of the street. They turned
7 into an apartment complex and the fellow again asked-- he asked
8 the other kid if he could get out this way. I presume he was
9 talking about getting back on the main street.

10 Q You say he asked the other kid. Who is he?

11 A The fellow sitting over there.

12 Q The defendant who is in court?

13 A Yes.

14 Q Before you left the Stop 'N Go Market did this
15 younger fellow say anything at the time he pulled the knife?

16 A No.

17 Q Did you ever see any money removed from the cash
18 register at the Stop 'N Go Market either on December 18 or
19 December 19, 1980?

20 A You mean did I ever see anybody take it out?

21 Q Yes.

22 A No.

23 Q Did anyone tell you they were going to take any
24 money? By they I mean either the defendant who is in court or
25 the younger subject?

26 A No.

27 Q Did you give anyone permission either on December 18,
28 1980 or December 19, 1980 to remove any property or money from
29 the Stop 'N Go Market located at 732 North Eastern Avenue?

30 A No.

31 Q Did you consent to go with these two people in this
32 1974 Maverick that you have referred to?

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1 A Absolutely not.

2 Q Where were you taken?

3 A They came back out on Eastern Avenue and made a left
4 on Eastern to Bonanza. They went up Bonanza and at that time
5 I asked them what they were going to do with me. They said they
6 were going to get some gas and drop me off by the store.

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7 They went up Bonanza to a 7-Eleven on the
8 cross street of Maryland Parkway and stopped to get gas.

9 Q At the time you were driven to this location was
10 any weapon displayed?

11 A Yes. The other fellow who isn't here still had
12 his arm around me and the knife was still at my stomach.

13 Q Were you able to give any type of description of
14 the knife this other fellow had?

15 A When he had it in his hand he was wearing a jacket
16 and the only thing I could see was the blade. He had the
17 handle like under his-- he was carrying it so I could only see
18 the blade of it coming out from under his jacket.

19 Q Are you able to describe the blade?

20 A Yes. It was a fairly thick blade like a hunting
21 knife. It was fairly large.

22 Q About how long was the blade?

23 A About five or six inches.

24 Q Did the two subjects in fact get gasoline?

25 A Yes.

26 Q Who did that? Did they both get out of the car?

27 A No. The defendant over there got out of the car
28 and went into the store.

29 Q Did the second younger subject remain with you?

30 A Yes.

31 Q Did he continue to display the weapon?

32 A Yes.

1 Q What happened after gas was obtained?

2 A They pulled out of the 7-Eleven and went over some
3 small street-- They pulled straight out of the 7-Eleven and
4 went back down toward-- I am trying to think. They went down
5 the side street and they ended up on Washington going east.
6

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7 Q You are saying they. Are you referring to the
8 defendant and this younger person again?

9 A Yes.

10 Q Who was driving at this time?

11 A The defendant sitting over there.

12 Q Eventually were you taken east on Lake Mead Boulevard?

13 A Yes.

14 Q Describe what happened then.

15 A Okay. They started driving out Lake Mead Boulevard
16 toward the lake. I again asked them what was going on and what
17 they were going to do with me. The defendant sitting over
18 there said he just wanted to think things over. We were just
19 going to keep driving for awhile.

20 So, he pulled out on Lake Mead and we got up
21 over the hill out of view of the city. He was looking around
22 for roads to pull off the side of the street or off the main
23 road. He finally came across one and we drove back on a dirt
24 road maybe a half a mile to the end of the road. He turned
25 the car around. There was like a turn around at the end of
26 the road and he turned the car around and parked it and shut the
27 motor off.

28 Then they sat there for a minute and the
29 defendant went outside to go to the bathroom. At that time the
30 younger kid started making advances on me trying to put his
31 hand in my shirt.

32 Q At this time was any type of weapon displayed by
either subject?

1 A At this time I don't know what happened. I assumed
2 the kid put the knife in his pocket because he was using both
3 of his hands.

4 Q What did the kid start to do?

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5 A He started to unbutton my blouse and he
6 put his hand underneath my shirt.

7 Q Had you given your consent to come to this particular
8 location with these two people?

9 A No.

10 Q Why had you gone along with him in the car?

11 A I had no choice. I was dragged into the car with
12 a knife at my throat. What am I supposed to do?

13 Q Did you consent to the advances being made by the
14 subject who is not present in court?

15 A No.

16 Q What did he do?

17 A Well, he tried to get my blouse off and I tried to
18 tell him, you know, "This isn't necessary. I mean, what are
19 you doing this for?" He just told me to relax and be calm and
20 he said, "You are not going to get hurt." About that time the
21 other defendant who is sitting here in the courtroom came back
22 in and they both started trying to take my shirt off. I tried
23 to talk them out of it and they just told me to stay calm. He
24 says, "You are not going to get hurt if you just stay calm."

25 MR. HENRY: Pardon me, ma'am.

26 Your Honor, when she testifies as to conversations
27 could we have her attribute that to either one person or the
28 other?

29 MR. HARMON: Sure.

30 THE COURT: Yes.

31 BY MR. HARMON:

32 Q Are you able to remember who said what in regards to

1 the testimony you just offered?

2 A Well, both of them said it at one time or another.
3 I mean, they both told me not to get too scared, that they
4 weren't going to hurt me.

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5 Q At the time this was happening were you
6 if the defendant, Mr. Burkett, had any type of weapon on his
7 person?

8 A No.

9 Q Did there come a time when your clothes were removed?

10 A Yes.

11 Q Explain how that happened.

12 A When all three of us were sitting in the front seat
13 each one of them-- well, they unbuttoned my shirt and took my
14 shirt off and then they--

15 A You are saying they again. Were they both doing this?

16 A They both took my shirt off, yes. Then I can't
17 remember which one, but one of them took my bra off and then I
18 think it was the other fellow, the kid, that unzipped my pants
19 and unsnapped them and they started to tug them down.

20 Q What happened then?

21 A Well, they took them off and they sat for a minute
22 and argued over who was going to get ahold of me first and then--

23 Q Where were you physically located at the time?

24 A Still seated in the middle between the two of them
25 in the front seat of the car.

26 Q Were you still wearing your underwear?

27 A No.

28 Q At this time you were totally nude?

29 A Yes.

30 Q What happened after the conversation had been
31 completed about who would get at you first?

32 A The other kid who is not here opened the door and

1 told me to get out of the car. I got out of the car and he
2 told me to bend over so that my head was in the front seat
3 and my butt was sticking out the back door.

4 Q What happened then?

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5 A He tried to penetrate my-- he tried to penetrate my
6 anus with his penis.

7 Q Do you know if there was actually penetration?

8 A Slightly, but he couldn't complete what he was
9 trying to do.

10 Q Did there come a time when the defendant who is
11 present in court had any sexual penetration?

12 A Yes.

13 Q When was that?

14 A That was after the other kid who is not here was
15 through.

16 Q You say the person who is not here tried to
17 penetrate your anus. Did he have any other type of sexual
18 penetration?

19 A Yes. After he couldn't penetrate the anus he went
20 for the vagina.

21 Q Where did that happen?

22 A That was-- I was still in the same position.

23 Q Did the other person succeed in penetrating your
24 vagina?

25 A Yes.

26 Q And this is with what?

27 A His penis.

28 Q Did you give your permission to have him do that?

29 A No.

30 Q Where was the defendant, Mr. Burkett, at that time?

31 A He was sitting in the front seat.

32 Q What happened after the sexual intercourse that you

1 just described occurred with the second younger person who is
2 not present?

3 A After he was through he walked away. Then I was
4 shivering pretty bad half because I was scared and half because
5 I was cold. I asked him if there was a coat I could put on
6 because I was freezing.

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7 Q Who did you ask that?

8 A I am not sure.

9 Q You asked for a coat. Was there a response?

10 A Yes. I believe-- I am not absolutely sure, but I
11 believe that the defendant sitting here gave me a jean jacket
12 to put on.

13 Q Did you put the jacket on?

14 A Yes.

15 Q What happened then?

16 A Well, I had it over my shoulders. Then the defendant
17 asked me to step around behind the car with me. He leaned
18 me up against the back of the car and started kissing me. I
19 was shivering and shaking so bad and by this time the other
20 kid was sitting in the front seat of the car and he asked the
21 other kid to leave the car so that him and I could go in the
22 car.

23 Q Did the other fellow leave the car?

24 A Yes, after about five minutes.

25 Q What happened then?

26 A We both went into the front seat of the car and he
27 started kissing me again. He told me to lean back and he put--
28 I put the jacket down by the door so I wouldn't break my
29 neck or hurt my head or anything and I laid down on the front
30 seat of the car and he laid down on top of me and proceeded
31 to penetrate.

32 Q Who is he that you are referring to now?

46

1 A The defendant sitting in the courtroom.

2 Q The person you have already identified?

3 A Yes.

4 Q What type of penetration occurred at this time of
5 your body by the defendant?

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Clerk of Supreme Court

6 A He put his penis into my vagina.

7 Q Did you consent to that action?

8 A No.

9 Q Why did you permit him to do it?

10 A I didn't think there was any possible way of
11 getting away from him.

12 Q Can you estimate about what time it was at the time
13 this occurred?

14 A It was probably-- I am only guessing, but I would
15 say about maybe 1:00, 1:15.

16 Q Was there anyone else in this area besides yourself,
17 the defendant and the second younger subject you have
18 described?

19 A You mean was there anybody out there with me?

20 Q Yes.

21 A No.

22 Q What happened after the sexual conduct by the
23 defendant occurred which you have just described?

24 A I opened the door and I got up out of the car. I
25 had to go to the bathroom and I changed my mind and went back
26 into the car. I asked him if I could put my clothes on and
27 he threw my clothes at me.

28 Q Who did that?

29 A The defendant sitting here in the courtroom.

30 Q What happened then?

31 A Well, he gave me my clothes and I put them on. I put my
32 shirt and pants on. I did not put my underwear on. We sat

1 in the front seat of the car and I asked him what was going to
2 happen now.

3 Q Do you know what happened to your underwear?

4 A They were in the car somewhere, but I didn't know exactly. I assume they went in the back seat.
5 don't know exactly. I assume they went in the back seat.
6

7 Q What garments are you referring to specifically
8 when you speak of your underwear?

9 A My bra and my panties.

10 Q What happened after you got the outer garments on?

11 A I put those on and everybody sat in the front seat
12 again, myself in the middle, the defendant sitting here in
13 the driver's side and the younger kid was sitting in the
14 passenger's seat. I asked him if he was going to let me go
15 now or what he was going to do and he said he was going to
16 think about it for a minute.

17 Q Who said that?

18 A The defendant.

19 Q He said he wanted to think about it for awhile?

20 A He said he wanted to think it over, yes.

21 Q Were you taken to another location then?

22 A After a few minutes, yes.

23 Q Will you explain where it was you were taken.

24 A He pulled back onto the main road. I believe it
25 is called North Shore Road. I told him to make a right and he
26 would be back in town. He asked his friend on my right which
27 way. He told him to make a left and they turned left towards
28 Lake Mead.

29 Q Did there come a time when the vehicle was stopped
30 a second time?

31 A Yes.

32 Q Can you explain the circumstances of that happening?

A Yes. When he pulled off the dirt road from the

1 first time and proceeded to turn left I asked him, you know,
2 to let me out here.

3 Q Are you referring to the defendant?

4 A Right. I asked him to let me out right here. I
5 told him it would be fine. I said it would take me two hours
6 to walk back to town and by then they could be long gone. He
7 said he wanted to think it over. He said if he let me go at
8 all, it would be someplace where I would be safe.

9 Q What happened then?

10 A He said he wanted to still think things over and he
11 turned up the radio real loud. We drove for maybe a mile,
12 a mile and a half, and then he turned off onto another dirt
13 road on the right side of the road.

14 Q Did you stop at that location?

15 A He drove down the road quite a ways this time. It
16 was about a mile back.

17 Q The defendant, Mr. Burkett, is still driving?

18 A Yes.

19 Q What happened after he stopped the car?

20 A All right. They pulled down the dirt road and
21 turned it around, turned the car around so it was facing the
22 same way we came in. They shut the car off and I asked him
23 what was going to happen.

24 Q You asked who what was going to happen?

25 A I asked the defendant.

26 Q What did you ask him as opposed to the other
27 defendant?

28 A I asked him if he was going to let me go or kill me
29 or what was going to go on. I wanted to know what was going to
30 happen to me.

31 Q Why did you ask him as opposed to the other person?

32 A He seemed to be the person in control of the

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1 situation.

2 Q Did he reply to your question?

3 A He said he still wanted to think it over. He
4 mentioned something about something happening before and that
5 he let somebody else go and he had done some time for that.
6 He thought I would do the same thing and he was kind of
7 skeptical about letting me go.

8 Q Were any additional sexual advances made at the
9 location you were at at this time?

10 A Yes.

11 Q Describe what happened.

12 A After we talked for a minute and he was talking to
13 his friend, just chatter, he said to his friend, "I think we
14 ought to undress her one more time."

15 Q Who is he who you are talking about?

16 A The defendant sitting here in the courtroom.

17 Q Were you undressed again?

18 A Yes.

19 Q By whom?

20 A Both of them.

21 Q What happened after you were undressed?

22 A The younger kid who is not here now pulled my head
23 down to his penis and made me have oral sex while my butt was
24 facing out the door.

25 Q At this time did his penis penetrate your mouth?

26 A Yes.

27 Q Did you give permission for that to happen?

28 A No.

29 Q What happened after that occurred?

30 A While he was doing that the defendant sitting here
31 in the courtroom positioned my butt out the door again and
32 proceeded to penetrate my anus with his penis.

1 Q Are you sure actual penetration occurred?

2 A Yes.

3 Q Did you consent to that conduct by the defendant?

4 A No, sir.

5 Q Why did you permit him to do it?

6 A There was nothing I could do to get out of it.

7 Q Either at that time or subsequently were threats

8 made?

9 A They were discussing whether or not they were going
10 to kill me, yes.

11 Q When did that discussion occur?

12 A Just before he said, "We ought to undress her one
13 more time."

14 Q What was the discussion and, if you can, indicate
15 who said what.

16 A Okay. The defendant sitting here in the courtroom
17 did most of the talking. The conversation mainly was between
18 them and I would ask him if he was going to let me go and
19 such and such. He goes, "Well, I could let you go or I could
20 do something other"-- He said, "I could fix you so you can't
21 say anything out here or I could let you go." At that point
22 I didn't know what to say. I was quiet for a few minutes.
23 After the assaults the defendant sitting here in the courtroom--

24 Q You are referring to the sexual assaults that you
25 have described?

26 A Yes. After that was over and when I put my clothes
27 back on the defendant sitting here asked the other one who is
28 not here his opinion on whether or not they should kill me.
29 The kid just replied, "I don't know."

30 Q Did the defendant indicate how you were to be killed,
31 if that was to happen?

32 A He didn't mention particularly, but after seeing the

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1 knives I assumed that they were going to stab me to death.

2 Q You did see knives?

3 A Yes.

4 Q At what point did you first see the defendant
5 Mr. Burkett, with a knife?

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6 A We were sitting in the front seat of the car and he
7 told the other fellow who is not here to go ahead and give it
8 to him and the other kid pulled a big buck knife out from under
9 the sun visor and handed it to him.

10 Q Was this before or after the sexual assaults?

11 A After.

12 Q What happened then with the buck knife?

13 A He held it in his hand for a few minutes.

14 Q Who held it?

15 A The defendant sitting here in the courtroom.

16 Q Where are you physically located at this time?

17 A I am still sitting in the front seat of the car
18 between both of them. The defendant was sitting on my left side
19 in the driver's seat.

20 Q What happened after he held it?

21 A He held it for a few minutes and him and his partner
22 there were discussing where they were going to bury me. I kept
23 telling them that there was no sense in killing me. I said--
24 I kept asking them why. At this point he started to get a
25 little angry and told me to quit pleading with him. He said to
26 his partner that he didn't want to kill me in the car.

27 Q Who said this?

28 A The defendant sitting here said to the other fellow
29 that he didn't want to kill me in the car because he didn't
30 want a mess in the car.

31 Q What happened then?

32 A Then I kept talking to him, you know, trying to keep

1 him calm because he seemed to be getting a little upset. I
2 kept saying, "Why do you have to kill me? I mean, there is no
3 sense to it." He asked his partner-- he goes, "Well, what do
4 you think." The kid didn't say anything, so the defendant
5 sitting here in the courtroom opened the car door and got out
6 and motioned for me to follow him.

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7 I thought to myself that I wasn't going to go
8 outside. The other kid that was with him who is not here
9 started to push me out of the car. I was hanging onto the
10 steering wheel trying not to get out. He finally pushed me out
11 of the car. As he pushed me out the car I tried to knock
12 down the defendant. I had to fight. I couldn't just let him
13 stab me to death.

14 Q What happened then?

15 A He grabbed me around the neck.

16 Q Who grabbed you around the neck?

17 A The defendant sitting here grabbed me around the neck
18 and I could see the knife in his hand. He told me--

19 Q Was this the buck knife you referred to?

20 A Yes. He told me, "That was a real stupid move." He
21 said, "I knew you would tell," or something of that sort. We
22 struggled for a few minutes outside the car and then he still
23 had his-- the defendant sitting in the courtroom still has his
24 arm around my neck and he kind of shoved me in the car. The
25 other fellow who isn't here grabbed my hair and they were
26 trying to snap my neck.

27 The defendant sitting here in the courtroom
28 said, "Snap her neck and that is it. She is dead." I managed
29 somehow-- I don't know how-- to get my head underneath his arm
30 and out of his grip. The other kid then grabbed my hair and
31 they pinned me down in the front seat of the car. The defendant
32 sitting here in the courtroom had the knife raised above me

53

1 right above my throat. I was looking right up at it and I
2 just pleaded with him. I said, "Why kill me? I just want to
3 live."

4 He just looked at me for a few minutes and I
5 just kept saying, "I just want to live. I want to live." That's all I said.
6 that time the other fellow who is not here whispered in the
7 defendant's ear who is sitting here. He said, "I don't think
8 she will tell. I don't think she will tell." He stopped for
9 a minute and thought and said, "Let her sit up."

10 Q At any time during the exchange you just described
11 did the defendant place the knife anywhere near your crotch
12 area?

13 A This was after he let me up.

14 Q What happened in connection with that?

15 A After he let me up we were all sitting again in
16 the front seat. I am still in the middle. He sat there for a
17 minute with the knife in his hand thinking--

18 Q You are referring to whom again?

19 A The defendant sitting here in the courtroom. We
20 sat there for a few minutes and I guess he was thinking things
21 over. Then he put the buck knife between my legs and told me
22 to describe him. I looked over at him and I described him as
23 six foot, blonde hair, mustache, white T-shirt, jeans. He
24 looked over-- The defendant sitting here looked over at the
25 other fellow who is not here and said, "She can describe us.
26 What do you think?" The kid didn't say a word so he sat there
27 for a few more minutes and nobody did anything. We just sat
28 there.

29 After a few minutes of thinking the defendant
30 sitting here looked over at the other fellow and said, "I am
31 going to let her go." He said, "Does that hurt your feelings?"
32 and the other fellow replied, "Not really."

1 Q Were you subsequently let go?

2 A A short time after that, yes.

3 Q Explain how that happened.

4 A After he said that he looked at me and said
5 told you I wasn't going to hurt you, so I am going

6 go." They started up the car and drove back into town.

7 Q Where were you let out of the car?

8 A He told me that he would let me out near my house,
9 but--

10 Q Who is he?

11 A The defendant sitting in the courtroom told me he
12 would drop me off by my house. As were going down Lake Mead--
13 I had no intentions of him dropping me off in front of my
14 house. I remembered some apartment complex down there by the
15 Winchell's Donuts by Lake Mead, so I told him to make a left
16 there. He turned left and I pointed out some apartments.
17 They drove a short distance past there and the other fellow who
18 is not here opened the door and they let me out.

19 Q Where did you go?

20 A I ran up the street to a saloon. I saw a North
21 Las Vegas police car up there and I went in the saloon.

22 Q Did you report to an officer inside what happened?

23 A I told him I was kidnapped, yes.

24 Q Did you leave any garments inside the Maverick
25 driven by the defendant, Mr. Burkett?

26 A Yes.

27 Q What did you leave?

28 A As far as I know, my underwear was still in there,
29 bra and panties.

30 Q Can you estimate about what time it was when you
31 were let out of the vehicle by the two men?

32 A On the radio on the way into town I think it said

1 quarter after 3:00.

2 Q That is a.m.?

3 A Yes.

4 Q The date is now December 19, 1980?

5 A Yes.

6 Q Did all that you have testified to occur in
7 Clark County, State of Nevada?

8 A Yes.

9 Q Throughout the period of time you were held in the
10 vehicle were you there with your permission?

11 A No.

12 Q Digressing just momentarily, before you were removed
13 from the store did you observe money to be in the cash
14 register?

15 A Yes.

16 Q Can you give us any type of indication as to how
17 much money belonging to Stop 'N Go Market was in the cash
18 register?

19 MR. HENRY: Object. Leading.

20 THE COURT: He is asking for an estimate.

21 MR. HENRY: He is also talking about who owned the
22 money.

23 MR. HARMON: That part might be leading, yes.

24 THE COURT: All right. Sustained on that basis.

25 BY MR. HARMON:

26 Q Can you estimate how much money was in the cash
27 register?

28 A Well, we were supposed to make regular drops of money
29 into the safe. I had just dropped \$30 worth of tens in there,
30 so I would say as an estimate there might have been maybe \$30
31 in there.

32 Q What is the basis of your estimate that there might

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1 have been \$30?

2 A Well, I always keep-- I keep my singles real low.
3 I never keep more than \$40 worth of singles or \$25 worth of
4 fives at any time.

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5 Q Is there some sort of store policy?

6 A Yes. You are supposed to keep under \$50 at night.

7 Q Prior to the other fellow who is not present in
8 court coming around and putting the knife to your throat do you
9 know in fact that there was money in the cash register?

10 A Yes.

11 Q Was that coins or currency?

12 A There was both.

13 Q Do you know if there were coins?

14 A Yes, there were coins.

15 Q Do you know if there were other denominations?

16 A There were ones and fives, yes.

17 Q Who did this money belong to?

18 A Stop 'N Go.

19 Q Stop 'N Go Market?

20 A Yes.

21 Q Do you know if that is also a corporation?

22 A Yes, I think it is. I am not sure.

23 Q Do you know what the name of the corporation is?

24 A National Convenience Stores, I think. I am not sure.

25 Q You say there were ones and fives?

26 A Yes.

27 Q Were there any larger denominations?

28 A No. I had just dropped the ten dollar bills.

29 Q After this happened did you ever have occasion to go
30 back to the store and examine the condition of the cash
31 register?

32 A You mean before everything was cleaned up and all that?

1 Q Yes.
2 A No.
3 MR. HARMON: That concludes direct.
4 THE COURT: Mr. Henry?
5 MR. HENRY: Thank you, your Honor.
6

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7 CROSS-EXAMINATION

8 BY MR. HENRY:

9 Q Ma'am, before this preliminary hearing began you
10 were sitting out in the courtroom, weren't you?

11 A Yes.

12 Q And you were sitting out there when a man was
13 brought in in chains and put in the jury box, weren't you?

14 A No. I did not come in until about two minutes
15 before they brought us up here.

16 Q When you came in and sat down did you look around
17 the courtroom?

18 A Yes.

19 Q And you saw a man sitting in the jury box in chains,
20 didn't you?

21 A Yes.

22 Q And there was only one man sitting in the jury box
23 in chains?

24 A That's correct.

25 Q In fact he was the only man in the courtroom in
26 chains; isn't that correct?

27 A Yes.

28 Q And that person is the defendant who is sitting to
29 my left; is that correct?

30 A Yes.

31 Q That is one and the same person as the one you have
32 constantly identified this morning?

1 A That's correct.

2 Q And you saw that man on December 23, 1980 in the
3 auditorium of the Sheriff's Department during a line-up,
4 didn't you?

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5 A Yes.

6 Q He was placed or you viewed him in a line-up with
7 other men that was conducted by Metropolitan Police Department
8 officers?

9 A That's correct.

10 Q At the time of that line-up did you identify anyone
11 in the line-up as being one of the perpetrators of the assaults
12 against you?

13 A Yes, I did.

14 Q And who did you identify?

15 A The same man sitting right here in the courtroom.

16 Q Later on were you asked to fill out a form or to
17 write down your identification?

18 A Yes.

19 Q And you were asked to do this by a Metropolitan
20 Police detective?

21 A Yes.

22 Q He presented a form to you?

23 A Yes.

24 Q Did you choose the position of the defendant in
25 the line-up?

26 A Yes.

27 Q Did you comment on how certain you were as to your
28 identification?

29 A Yes, I did.

30 Q What words did you use in your written comment?

31 A The exact words are, "I am almost absolutely positive
32 that this is the suspect."

1 Q Between the time of the assaults on your person
2 and the line-up on the 23rd of December had you been shown
3 any photographs of possible suspects by the Metropolitan
4 Police officers?

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5 A Yes.

6 Q When was this?

7 A This was--

8 Q Perhaps you could answer by stating how many days
9 after you reported the offense.

10 A I think it was the same afternoon before the
11 line-up. It was earlier in the day.

12 Q Where did this viewing of photographs take place?

13 A The police department.

14 Q Would that be in the city hall?

15 A Yes.

16 Q As opposed to the courthouse where you viewed the
17 line-up?

18 A Right.

19 Q Were you shown stacks of photographs affixed to
20 pages in a book?

21 A Well, I looked through the mug books and he also
22 brought in a small file with maybe six or seven pictures on it.

23 Q Initially in reporting this to the police you
24 referred to an older man and a younger man; is that correct?

25 A Yes.

26 Q Here today you are identifying the defendant as
27 being the older man; is that correct?

28 A That's correct.

29 Q When you were shown mug books were they split up
30 between the possible suspect who was the older man and the
31 possible suspect who was the younger man?

32 A I am not sure.

1 Q In looking through any of these mug books did you
2 identify any photographs as being the older man who assaulted
3 you?

4 A I picked out a few pictures but I made it clear I
5 wasn't him. It was just people that resembled him
6

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7 Q Did you pick out any pictures as depicting the
8 younger man?

9 A One or two, I think, yes.

10 Q Did you tell the police, "This is the man"?

11 A No. I told them, "This just resembles him."

12 Q Did the police have you mark the photographs that
13 you identified as resembling the perpetrators?

14 A I didn't have to write anything down. We were
15 talking about it. Like I picked out two pictures and he said,
16 "What do you think about this one?" I said, "His mouth and
17 his chin resembles him." He said, "What do you like about the
18 other one?" I said, "Well, his profile is similar."

19 Q But in each case you made it clear that was not the
20 man but just similar; is that correct?

21 A That he just resembled him, yes.

22 Q And you did not mark the photographs in any fashion
23 as resembling the man?

24 A No.

25 Q Did you see the officer mark the photographs or
26 take any notes as to which photographs you had chosen as
27 resembling the suspects?

28 A He made some notes on the-- He made like a copy
29 of the pictures and made some notes on them. I can't remember
30 what he wrote.

31 Q He xeroxed off the photographs that you had chosen?

32 A Yes.

Q You have already told us that you attended a line-up

1 in which the defendant was displayed and you chose the defendant
2 as being one of the perpetrators. Isn't it true that there
3 were two line-ups, one of which the defendant appeared in and
4 another of which he did not appear in?

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5 A That's correct.

6 Q And the line-ups were broken down in terms of one
7 line-up was supposed to possibly contain the older man and
8 the other line-up was to possibly contain the younger man?

9 A That's correct.

10 Q Isn't it true that as to the line-up that contained
11 the younger man you told the authorities that there was no
12 one in there that you recognized as being the younger
13 perpetrator?

14 A That's correct. I didn't recognize him.

15 Q Did you state, however, that there was someone
16 that appeared to be similar?

17 A Yes.

18 Q Did you fill out a form as to the line-up containing
19 or possibly containing the younger man?

20 A The same form as for the other one, yes.

21 Q And did you write down your comments?

22 A Yes.

23 Q What words did you use?

24 A I believe it said, "The number 2 person in the
25 line-up resembles one of the suspects, but I am almost positive
26 it is not him," or something similar to that.

27 Q Did you affix your signature to these documents?

28 A Yes, I did.

29 MR. HENRY: Your Honor, although we have a deputy
30 present, somehow we did not get copies of those documents. I
31 would ask the Court to direct counsel for the State perhaps
32 later to make copies and forward them to us.

1 MR. HARMON: That is fine.

2 THE COURT: Mr. Harmon I am sure would have no
3 objection to making copies of line-ups held on the 23rd made
4 available.

5 MR. HENRY: Thank you.

6 MR. HARMON: Your Honor, contrary to what counsel
7 suggested, I think it was December the 19th.

8 THE COURT: It was the 19th that the line-up was
9 held.

10 MR. HARMON: Yes.

11 MR. HENRY: That is correct, yes.

12 BY MR. HENRY:

13 Q When you came into the courtroom today and saw the
14 defendant sitting in chains did you remember him from the
15 line-up?

16 A Yes.

17 Q Is your identification of him today based on seeing
18 him in the line-up?

19 A No. It is based on what happened to me.

20 Q If you had not had the opportunity to view him in a
21 line-up, would you be as sure of your identification today?

22 A Yes, I would.

23 Q At some point I believe you testified you had
24 conversation with the older person who assaulted you wherein
25 he said that he let someone go before and he had done ten years
26 for it?

27 A That's correct.

28 Q Do you remember any further details as to that
29 conversation? Specifically, did he say that he had been
30 involved in a sexual assault before?

31 A He didn't mention the nature of what had happened.
32 He just--

1 Q From the context of the conversation were you able to
2 draw an inference as to what offense he was referring to when he
3 said he had done ten years?

4 A No. I had no idea.

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5 Q However, he did state that he had done ten
6 years in prison?

7 A Yes.

8 Q And he stated that was as a result of having released
9 someone who he committed a crime against?

10 A Would you repeat that again?

11 Q From the context of the conversation did you draw
12 the inference that he felt he had done ten years in prison
13 because he had released a person who he had committed a crime
14 against and that person then testified against him?

15 A Yes.

16 Q I believe you said that the older of the persons
17 who assaulted you came into your store twice; is that correct?

18 A Yes.

19 Q The first time he came in the store did he purchase
20 anything?

21 A Yes.

22 Q What was that?

23 A He bought a \$.59 pack of rolling papers.

24 Q How long was he in the store?

25 A Maybe two minutes.

26 Q How much time passed before he came back?

27 A My guess is-- I am not sure, but I think it was
28 about 20 minutes, 15, 20 minutes.

29 Q Did he walk in with the younger person with him
30 the second time?

31 A No. The other fellow came in after he did.

32 Q How long was the older fellow in the store before the

1 younger person came in?

2 A Under a minute maybe. It was just long enough for
3 him to walk to the back of the store to the cooler. About that
4 time the other fellow came in.

5 Q How long after that was it before the younger person
6 approached you and placed a knife against your throat?

7 A From the time the other fellow came in until the
8 time he was at me?

9 Q Yes.

10 A About a minute or not even-- Yes. About a minute
11 I would say.

12 Q How long have you been in Las Vegas, ma'am?

13 A Almost five years.

14 Q And how old are you?

15 A Twenty-one.

16 MR. HENRY: Thank you, ma'am.

17 I have no further questions, your Honor.

18 MR. HARMON: I just have a couple of questions on
19 redirect, your Honor.

20
21 REDIRECT EXAMINATION

22 BY MR. HARMON:

23 Q Mrs. Cage, in regards to the defendant who is present
24 in court, when these offenses occurred did you observe any
25 type of marking anywhere on his body?

26 A He had tatoos on his arms.

27 Q Describe the tatoos.

28 A He had a lot of them on his forearms. I decided if
29 I was going to remember any of them I would just pick out one
30 or two so that I could describe them really well. I remembered
31 a spiderweb on his right elbow and a small marijuana leaf on
32 his right forearm.

1 MR. HENRY: One question, if I might.

2 Ma'am, have you ever been a victim of a similar
3 crime before?

4 THE WITNESS: No.

5 MR. HARMON: Objection. Well, she has
6 does exceed the scope of redirect.

7 THE COURT: Yes, it does.

8 MR. HENRY: Thank you.

9 THE COURT: She may be excused. You may let her
10 out the chambers and then let her out the door. Make it clear
11 that it is spectators only and witnesses are still excluded.
12 Everyone but the witnesses can come back in.

13 MR. HARMON: Richard Davies will be the next witness.

14 THE COURT: He is the other one witness you have?

15 MR. HARMON: Yes, your Honor.

16
17 RICHARD DAVIES,

18 called as a witness by the State, having been first duly sworn,
19 testified as follows:

20 THE CLERK: Will you state your name and spell your
21 last name, please.

22 THE WITNESS: Richard Davies, D-a-v-i-e-s.

23
24 DIRECT EXAMINATION

25 BY MR. HARMON:

26 Q Mr. Davies, where are you employed?

27 A Stop 'N Go Markets.

28 Q What are the nature of your duties with Stop 'N Go
29 Markets?

30 A I am a district representative. I control eight
31 stores.

32 Q You say you control eight stores?

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1 A Correct.

2 Q Does that include a Stop 'N Go Market numbered 759
3 and located at 732 North Eastern Avenue?

4 A Yes, it does.

5 Q Is that store in Clark County, State of Nevada?
6 A Yes.

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7 Q Were you the district manager in control of that
8 particular store on December 18, 1980?

9 A Yes.

10 Q The markets do business as Stop 'N Go. Is it a
11 corporation?

12 A Yes, it is.

13 Q What is the corporate name?

14 A National Convenience Stores.

15 Q Did you have occasion during the early morning hours
16 of either December 18 or December 19, 1980 to go to the
17 Stop 'N Go Market number 759 located at 732 North Eastern
18 Avenue?

19 A Yes, I did.

20 Q Do you remember on what date that was?

21 A It was the morning, a Thursday morning. I believe
22 it was the 19th.

23 Q Approximately what time did you go to the Stop 'N Go
24 Market at 732 North Eastern?

25 A I believe I arrived there about 12:30 a.m.

26 Q Was there any employee on duty at about 12:30 a.m.?

27 A No, there wasn't.

28 Q What was your purpose in going to the market at that
29 time?

30 A Well, I had been called by the police department
31 saying that the store was open and there was nobody there. I
32 had to go up there to, you know, see what happened to my

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1 employee and make sure everything was secure.

2 Q When you went inside did you have occasion to
3 examine the cash register?

4 A Yes, I did.

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5 Q What was the condition of the cash register?

6 A It was empty except for change.

7 Q Was there any currency at all?

8 A Not in the register.

9 Q Who would any monies belong to that are located in
10 the cash register at a Stop 'N Go Market?

11 A It would belong to the company.

12 Q That would be National Convenience Stores, Inc.,
13 a corporation?

14 A Yes.

15 Q What did you do after you discovered that there was
16 no employee on duty and no money except for coin in the cash
17 register?

18 A Could you repeat the question?

19 Q Yes. What did you do after you arrived and discovered
20 that there was not an employee on duty and there wasn't any
21 currency in the cash register?

22 A I just walked the store to see if I could see a
23 sign of what was going on. I was searching in the back rooms and
24 the cooler.

25 Q Were you able to locate your employee anywhere on
26 the premises?

27 A No, sir.

28 Q Did you have occasion sometime after to sign a
29 crime report with representatives of the Las Vegas Metropolitan
30 Police Department?

31 A Yes.

32 Q And that crime report was signed in connection with

1 what type of offense?

2 A Well, originally it was just robbery and kidnap,
3 I believe.

4 Q Approximately how much money was missing from the
5 cash register?

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6 A I called the store manager down and she did a cash
7 count of the safe and all currency in the store.

8 Q Who is the store manager?

9 A Pat Seevers.

10 Q Will you spell the last name, please.

11 A S-e-e-v-e-r-s.

12 MR. HENRY: Is that a V or a B as in Bob?

13 THE WITNESS: V.

14 BY MR. HARMON:

15 Q Approximately how much money was missing?

16 MR. HENRY: Objection. That calls for hearsay.
17 Testimony has been that the store manager, Pat Seevers, did
18 the count.

19 MR. HARMON: May I pursue the foundation?

20 THE COURT: Yes. Proceed.

21 BY MR. HARMON:

22 Q Were you present at the time this was done?

23 A Yes.

24 Q Are you familiar with the procedure whereby the
25 amount of loss was determined?

26 A Yes.

27 Q What was the procedure used to determine the amount
28 missing?

29 A Okay. A reading is taken on the cash register. The
30 coins left in the register were counted and all change in the
31 drop safe where the majority of the money is kept was counted.
32 We deduct from that a standard change fund of the store to

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1 determine how much money was there. Of course, the cash
2 register reading determines how much should be there. That is
3 the procedure.

4 Q What was the amount missing?

5 A About \$20.

6 MR. HARMON: That concludes direct, your Honor.

7 THE COURT: Mr. Henry, you may cross-examine.

8 MR. HENRY: Thank you, your Honor.

9 May I have the Court's indulgence a minute?

10 THE COURT: Fine.

11
12 CROSS-EXAMINATION

13 BY MR. HENRY:

14 Q Sir, you arrived at the store at approximately
15 12:30 a.m.; is that correct?

16 A Yes.

17 Q And you arrived there as a result of being called,
18 didn't you?

19 A Yes.

20 Q When you got there there were police officers present;
21 is that correct?

22 A Yes, sir.

23 Q You say it was approximately 12:30 a.m. that you
24 arrived; is that correct?

25 A Yes.

26 Q Assuming for the moment that it was exactly 12:30 a.m.,
27 what time would it have been that you originally received the
28 call?

29 A I believe it was about 10 after 12:00.

30 Q And the Stop 'N Go Store holds itself open to the
31 public; is that correct?

32 A Yes.

1 Q And the door was unlocked when you arrived?
2 A Yes.
3 Q That would be normal operating procedure; is that
4 correct?
5 A Yes.
6 Q It was open 24 hours a day?
7 A Yes.
8 Q In fact the front wall facing the street and the
9 parking lot is glass?
10 A Yes.
11 Q Were there any signs of forcible entry on the cash
12 register?
13 A No.
14 Q And the cash register indeed can be opened by just
15 pressing the key; isn't that correct?
16 A Yes.
17 Q You have no way of knowing personally how long that
18 register was left unattended before you arrived on the scene,
19 do you?
20 A No, sir.
21 Q And the register is located toward the front of the
22 store, isn't it?
23 A Yes.
24 Q So, the register and the counter are clearly visible
25 through the glass wall that is the front of the store?
26 A Yes. I may clarify that the cash register is
27 probably visible through the first two windows only.
28 Q And the inside of the store was brightly lit when
29 you first arrived; is that right?
30 A Yes.
31 Q There are bright lights on the front of the store
32 illuminating the walk just in front of the store; isn't that true?

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1 A Yes.

2 Q So that the interior of the store is clearly visible
3 from the street?

4 A Yes.

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5 MR. HENRY: Thank you. I have no further questions.

6 MR. HARMON: No redirect, your Honor.

7 THE COURT: Thank you, Mr. Davies.

8 MR. HARMON: Your Honor, the State rests.

9 THE COURT: Mr. Henry, the State is resting.

10 MR. HENRY: Your Honor, I would inform the Court that
11 I have advised my client as to his right to make a statement
12 either sworn or unsworn. I have advised him not to do so. He has
13 informed me he would take that advice. The defendant would not
14 call any other witnesses and the defense would rest and ask to
15 be heard as to motions to dismiss.

16 THE COURT: All right.

17 MR. HENRY: First of all, your Honor, if I might
18 direct the Court's attention to Count II, Robbery with the Use
19 of a Deadly Weapon in the Commission of a Crime, the
20 testimony of Mrs. Cage is that she arrived for work around 11:00
21 o'clock. She is not sure at what time she was abducted. It
22 was sometime thereafter, perhaps around 12:00, but she certainly
23 wasn't precisely sure. Sometime after that from this record
24 it would appear somehow the police became aware that the store
25 was unattended and perhaps something had happened and they
26 called the store representative. This is a store that holds
27 itself open to the public and indeed is about as open as could
28 be with a glass wall, glass door and cash register up front.

29 Your Honor, I would submit that as to Counts III,
30 IV, and V alleging sexual assault and first degree kidnapping
31 that the State has met its burden; however, I would suggest that
32 as to Count II there is insufficient evidence. In essence, if

1 the State would urge the Court to bindover on Robbery with Use
2 of a Deadly Weapon, it would be urging this Court to say that
3 these fellows were there, abducted this woman and committed
4 sexual assaults against her person and then sometime thereafter
5 it was discovered that money was missing, money that had been
6 available to all the public during the interim. It would be
7 saying that because the Court deduced from the evidence that
8 they committed the sexual assaults the Court should find they
9 probably committed the robbery with use.

10 I would suggest, your Honor, that that is
11 impermissible, that classically at law this is what may not be
12 done, especially since there is nothing to corroborate that
13 inference or allegation. The State's witness testified that
14 she saw no money taken. Nothing was said to her about money
15 being taken or a robbery. There was no testimony about hearing
16 the drawer open. Indeed, her testimony is she was grabbed and
17 dragged from the store just about instantly and both fellows
18 went outside with her.

19 I would suggest that although I would not
20 disagree with the allegation that the State has met its burden
21 as to the last three counts, certainly it has not met its
22 burden as to Count II.

23 As to Count I, your Honor, as it is framed it
24 relies on Count II. Even if it didn't, this problem with
25 charging burglary with intent to commit a felony, referring to
26 a public place, 7-Elevens or Stop 'N Gos, is one that is
27 constantly before the Courts, and the Court has heard my argument
28 before. I would just suggest for purposes of the record that
29 the law in the State of Nevada is that the State may not in
30 effect bootstrap themselves backwards. They have to show the
31 intent at the time of entry. This is classically done when
32 someone goes in with a stocking mask and a shotgun in their arms.

1 When they come through the door like that you can infer the
2 intent. Perhaps if in this case there was some testimony that
3 these fellows had handcuffs or something, you could then infer
4 an intent when they came in the door. But the testimony is that
5 they were inside doing things that customers normally do
6 at least two minutes before the younger fellow, the one that is
7 not before the Court, approached the victim.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 For that reason I would suggest that as plead
9 Count I should not survive this proceeding because of the
10 failure to prove Count II. Even if the State moved to amend
11 Count I to incorporate Counts III, IV and V, it hasn't met its
12 burden to show intent at the time of entry.

13 The way we are seeing these burglaries with
14 intent now is just stretching the purpose behind making this
15 sort of thing a very serious crime beyond all limits so that
16 it no longer has any purpose. I would ask the Court not to do
17 that, but to maintain the purpose for making burglary a serious
18 crime.

19 I would submit it on that.

20 THE COURT: Mr. Harmon?

21 MR. HARMON: Your Honor, I think the entire criminal
22 complaint is properly plead. I will, however, submit Count I
23 without any argument and leave it to the Court's discretion.
24 But I do not think it is improper to suggest that these fellows
25 entered with the intent to rob. I think a reasonable inference
26 from the evidence the Court has heard is that that is what they
27 came there for.

28 As the Court knows, the cases in this State
29 concerning the burden of proof at a preliminary hearing don't
30 say that the State must show that the only inference is that of
31 establishing criminal conduct, but we don't have to negate all
32 inferences. Of course, one inference is that after Mrs. Cage

1 was forcibly removed from the store some other citizen came in
2 and rifled the cash register. Perhaps that is even reasonable.
3 But, your Honor, my point is it is equally reasonable and,
4 as a matter of fact, I think more so to say that the defendant
5 who was last observed with two bottles of Michelob Tracie K. Lindemen
6 counter area at the time the other subject comes around behind Clerk of Supreme Court
7 the counter, grabs this lady behind the neck, puts a knife to
8 her throat and asks her where the back door is, she says that
9 there is no back door and he drags her out and she is placed
10 in the car and the other individual comes along-- When you put
11 this together with the time frame which is that Mr. Davies
12 believes that he was first contacted at about 12:10 a.m. and
13 the witness says the defendant first came into the store at
14 about 10 minutes to 12:00 and then it was a few minutes after
15 that, which would put us shortly after midnight that he comes
16 in the second time and then the crime actually began, that
17 the reasonable inference is not that it was somebody who just
18 by happenstance came along and found the store unattended,
19 but that these two fellows who came in there and forcefully
20 removed the clerk in the counter area are the people responsible
21 for removing ones and fives belonging to the Stop 'N Go Store
22 from the cash register.

23 Thank you.

24 MR. HENRY: Your Honor, certainly the State doesn't
25 have to negate all possible inferences but the one that results
26 in an inference of criminal conduct; however it must show to the
27 Court that the inference that it sponsors is a reasonable
28 inference and more likely than other natural inferences. I
29 would suggest that it hasn't done that here.

30 It is interesting that Mr. Harmon doesn't
31 address himself as to Count II. He said he would leave that to
32 the discretion of the Court--

1 MR. HARMON: No. Count I.

2 THE COURT: Count I.

3 MR. HENRY: But in Count II, Robbery with Use of a
4 Deadly Weapon, most of his argument referred to the kidnapping
5 and the sexual assaults. The one inference he talked about was
6 the men coming in and taking her out and dragging her out in
7 the desert.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemann
Clerk of Supreme Court

8 All I am suggesting, your Honor, is that the
9 one inference that the State cannot sponsor in a criminal
10 proceeding is that because they have proven that this man has
11 committed crimes A, B and C, because of that it makes it more
12 likely that he committed crime D. In this situation it is a
13 general proposition of law that is impermissible. In this
14 situation where we have a store that is brightly lit with a
15 cash register that can be viewed from the street and is left
16 unattended and is easy to get into I would just suggest that
17 the State hasn't met its burden.

18 THE COURT: All right, gentlemen, I am prepared to
19 rule. The motion to dismiss Count I will be granted without
20 further comment. With respect to Count II, Robbery and Use of
21 a Deadly Weapon in the Commission of a Crime, as I view and
22 recall the evidence, the cashier was accosted with a knife,
23 taken toward the back of the store and asked where the back door
24 was. Upon finding out that there was no back door she was
25 taken out the front door. At that time this defendant was right
26 there at the counter and he had just come back in the store the
27 second time with the other person coming in a minute later.
28 Her testimony was that she was outside and around the building
29 by the time she heard the defendant coming up behind her. With
30 all that evidence it is by no means an unreasonable inference
31 that she was held by a knife at that time and that the cash
32 register was emptied of its bills at that time. Accordingly,

1 the motion to dismiss as to Count II is denied.

2 Would you stand, please, Mr. Burkett.

3 It appearing to me from the complaint on file
4 herein that a crime has been committed, to wit: Count III, ^{Electronically Filed}
5 Robbery and Use of a Deadly Weapon in the Commission of a Crime; ^{Sept 13 2013 8:26 a.m.}
6 Count III, First Degree Kidnapping and Use of a Deadly Weapon ^{Trade K. Lindner;}
7 in the Commission of a Crime; Count IV, Sexual Assault; Count V, ^{Clerk of Supreme Court}
8 Sexual Assault, and there being sufficient evidence and cause
9 to believe that the defendant named herein, Joel Burkett, has
10 committed said offenses, I hereby order said defendant to be
11 held to answer said charges in the Eighth Judicial District Court
12 of the State of Nevada, in and for the County of Clark.


13 THE CLERK: January 20, 9:00 a.m., Department VII.

14 MR. HENRY: Thank you, your Honor.

15 MR. HARMON: Thank you.

16 * * * * *

17 ATTEST: Full, true and accurate transcript of proceedings.

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19 
20 PAUL DE GAGNE, CSR
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FILED

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DEBORA BOWMAN
CLERK
[Signature]

CASE NO. C52190

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VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

* * * *

THE STATE OF NEVADA,
Plaintiff,

vs.

RAYMOND HAIRE aka JOEL
BURKETT,
Defendant.

NOTICE OF MOTION AND MOTION
FOR CONTINUANCE

COMES NOW, Defendant, RAYMOND HAIRE aka JOEL BURKETT, by
and through his attorney, JAMES L. BUCHANAN II, and moves this
Honorable Court to continue the Calendar Call and trial in this
matter due to the fact that Defendant's Attorney has just been
substituted in and needs ample time to prepare for such trial.

This Motion is made and based upon all the files and
pleadings in this matter as well as the affidavit of the Defendant's
Attorney, JAMES L. BUCHANAN II, attached hereto and made a part of
this motion.

DATED this 10th day of March, 1981.

[Signature]

JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101
Attorney for Defendant

///
///
///

JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

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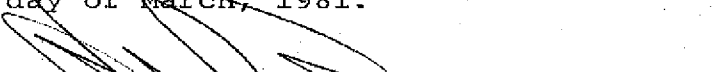
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YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for Continuance on for hearing this ^{12th} ~~11th~~ day of March, 1981, in the ~~Clerk of Supreme Court~~ ^{Tracie K. Lindemen} Court, in Department No. VII, or as soon thereafter as counsel may be heard.

day of March, 1981.



JAMES A. BUCHANAN II
202 East Carson Suite 220

JAMES L. BUCHANAN II, being first duly sworn, deposes and says:

That he has just been substituted in and the Defendant's family has just retained affiant;

WHEREFORE, Affiant prays that this Honorable Court grant

///

- 2 -

1 a short continuance of the Calendar Call and Trial so that the
2 Affiant herein can properly prepare a defense.

3
4
5
6 JAMES L. BUCHANAN II

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

7 SUBSCRIBED AND SWORN to before me
8 this 10th day of March, 1981.

9
10 *Lynn A. Azevedo*
11 NOTARY PUBLIC



Notary Public - State of Nevada
CLARK COUNTY
Lynn A. Azevedo
My Appointment Expires Feb. 23, 1988

14 RECEIPT OF COPY of the above and foregoing Notice of
15 Motion and Motion for Continuance is hereby acknowledged this 10th
16 day of March, 1981.

17
18
19 *Robert J. Miller*
20 ROBERT J. MILLER
21 District Attorney
22 Clark County Courthouse
23 Las Vegas, Nevada 89101
24
25
26
27
28
29
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31
32

JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE #20
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 882-9103

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FILED

CASE NO. 052190

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LORETTA BOWMAN
CLERK
BY *E. J. [Signature]*

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

* * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

SUBSTITUTION OF ATTORNEYS

RAYMOND HAIRE aka JOEL
BURKETT,

Defendant.

RAYMOND HAIRE aka JOEL BURKETT, Defendant in the above-entitled action, hereby substitutes JAMES L. BUCHANAN II, Attorney at Law, in the place and stead of the Clark County Public Defender, as his counsel in the above-entitled action.

DATED this 6 day of March, 1981.

Raymond Haire
RAYMOND HAIRE aka JOEL BURKETT

I HEREBY CONSENT to the substitution of JAMES L. BUCHANAN II as the attorney for the Defendant, RAYMOND HAIRE aka JOEL BURKETT, in the above-entitled matter in my place and stead.

DATED this _____ day of March, 1981.

William P. Henry
CLARK COUNTY PUBLIC DEFENDER
D. [Signature]

JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 220
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

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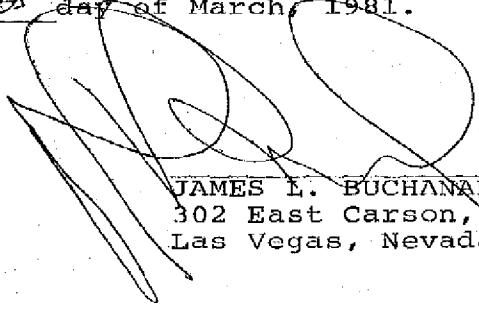
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Docket 63661 Document 2013-27035

1 I HEREBY AGREE to be substituted in the place of the Clark
2 County Public Defender in the above-entitled matter as the attorney
3 for the Defendant, RAYMOND HAIRE aka JOEL BURKETT.

4 DATED this 10th day of March, 1981.


Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court


JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101

10 ///

11 ///

12 RECEIPT OF COPY of the above and foregoing Substitution
13 of Attorneys is hereby acknowledged this 10th day of March, 1981.


ROBERT J. MILNER
District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101

32
JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-0103

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ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada

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LORETTA BOWMAN CLERK

BY *[Signature]* DEPUTY

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

1 CASE NO. C52190
2 DEPT. NO. VII
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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
8

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

MOTION TO COMPEL BLOOD SAMPLE FROM

12 RAYMOND HAIRE aka)
13 JOEL BURKETT,)
14 Defendant.)

RAYMOND HAIRE aka JOEL BURKETT,

DEFENDANT

15 COMES NOW, THE STATE OF NEVADA, by ROBERT J. MILLER, District
16 Attorney, through BOOKER T. EVANS, Chief Deputy, and moves this
17 Honorable Court to grant the State's motion to compel a blood
18 sample from this Defendant.

19 The taking of a blood sample is a search and seizure subject
20 to the protection of the Fourth Amendment of the United States
21 Constitution. *Schmerber v. California*, 384 U.S. 757, 86 S.Ct.
22 1826 16 L.Ed. 2d 908 (1966)

23 Where such searches involve an intrusion beyond the body's
24 surface, there must be an indication that in fact the evidence
25 sought will be found. *Schmerber*, 384 U.S. at 770.

26 It is therefore necessary that the State make a showing of
27 probable cause to justify such an intrusion.

28 In the Preliminary Hearing held February 3, 1981, the victim,
29 Mrs. Tina Marie Cage, identified the defendant, RAYMOND HAIRE
30 aka JOEL BURKETT, as one of the two persons who abducted her and
31 subjected her to sexual penetration. (PH-5).

32 Subsequently a "Rape Kit" was taken and intact spermatozoa

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1 were found on vaginal smears taken from the victim.

2 The State of Nevada is seeking a blood sample from the
3 Defendant in order to facilitate a comparison with blood found
4 during the examination of the victim.

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Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

5 If the defendant raises the issue of self-incrimination
6 available under the fifth amendment, it should be noted that
7 "...the privilege protects an accused only from being compelled
8 to testify against himself or otherwise provide the state with
9 evidence of a testimonial or communicative nature; and the with-
10 drawal of blood and use of the analysis does not involve com-
11 pulsion to these ends." Schmerber v. State, 384 U.S. 757 (1966)

12 Wherefore, the State of Nevada prays that this Honorable
13 Court will grant the aforestated motion and issue an order
14 compelling the defendant to give a blood sample.

15 Respectfully submitted,

16 ROBERT J. MILLER
17 District Attorney

18 *Randall F. Evans*
19 BY *for* BOOKER T. EVANS
Chief Deputy District Attorney

20 RECEIPT OF A COPY of the foregoing
21 Motion to Compel Blood Sample from
22 RAYMOND HAIRE aka JOEL BURKETT,
23 Defendant, is hereby acknowledged
24 this 20th day of April, 1981,
25

26 BY *James L. Buchanan II/lw*
27 JAMES L. BUCHANAN, II
Attorney for Defendant
28 302 E. Carson Ave. #920
29 Las Vegas, Nevada
30
31
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ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada

FILED

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LORETTA BOWMAN
CLERK

BY *[Signature]*

1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

7 IN AND FOR THE COUNTY OF CLARK :

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 RAYMOND HAIRE aka
13 JOEL BURKETT,)

14 Defendant.)

NOTICE OF MOTION

15 TO: RAYMOND HAIRE aka JOEL BURKETT Defendant, and

16 TO: Your Attorney of Record: JAMES L. BUCHANAN, II

17 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that the
18 State respectfully moves this Court to consider the following
19 motion.

20 THIS MOTION, will be heard in the Eighth Judicial District
21 Court on Thursday, April 23, 1981, at 9:00 o'clock,
22 A. M. or as soon thereafter as possible.

23 DATED this 20th day of April, 1981.

24 ROBERT J. MILLER
25 DISTRICT ATTORNEY

26 BY *[Signature]*
27 BOOKER T. EVANS
28 Chief Deputy District Attorney

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ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada

— FILED IN OPEN COURT —

April 23 19 *81*

LORETTA BOWMAN, CLERK

Elizabeth Lucero
Deputy

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

1 CASE NO. C52190

2 DEPT. NO. VII

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

7 IN AND FOR THE COUNTY OF CLARK

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

ORDER

12 RAYMOND HAIRE aka)

13 JOEL BURKETT,)

14 Defendant.)

15 THIS CAUSE having come on for hearing before the above
16 entitled Court on the 23rd day of April, 1981, plaintiff being
17 represented by JAMES L. BUCHANAN, II, ESQ., the plaintiff being
18 represented by ROBERT J. MILLER, District Attorney, through
19 BOOKER T. EVANS, Chief Deputy, and the Court having considered
20 the matter, and good cause appearing therefor,

21 IT IS HEREBY ORDERED that RAYMOND HAIRE aka JOEL BURKETT
22 give a blood sample to a medical representative of the Las Vegas
23 Metropolitan Police Dept., and that said sample be transported to
24 Richard Renner or his designee for purposes of analysis and
25 comparison.

26 DATED this 23 day of April, 1981.

27
28 *Paul J. Christensen*
DISTRICT JUDGE

29
30 *Randall T. Need*
31 BOOKER T. EVANS
32 Chief Deputy District Attorney

50
In the District Court

of APR 24 4 34 PM '81
The Eighth Judicial District of the State of Nevada in and for the County of Clark

THE STATE OF NEVADA

Plaintiff

vs.

RAYMOND HAIRE aka

JOEL BURKETT,

Defendant

No. C52190
Electronically Filed
Sept 13 2013 8:26 a.m.
Dept. Tracie K. Lindemen
Clerk of Supreme Court

SUBPOENA

THE STATE OF NEVADA, sends greetings to:

JAMES DeLANEY

4375 Wyoming

Las Vegas, Nevada

YOU ARE COMMANDED, that all and singular business and excuse being laid aside, to attend and appear before the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, at the Courtroom of said Court, at the city of Las Vegas, said County and State, on Thursday, the 30th day of April, A. D. 19 81, at 2:00 o'clock P. M., of said day, then and there to testify at witness on behalf of the Defendant, RAYMOND HAIRE aka JOEL BURKETT in a criminal action prosecuted by the State of Nevada against RAYMOND HAIRE aka JOEL BURKETT

the above named Defendant

Given under my hand and Seal of the said Court this day of April 19 81

LORETTA BOWMAN

Clerk.

Deputy.

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Docket 63661 Document 2013-27035

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I, LYNN A. WAITE, do hereby certify that I personally served the within Subpoena upon JAMES DeLANEY in the County of Clark, Las Vegas, Nevada, on the 24th day of April, 1981.

Lynn A. Waite
LYNN A. WAITE


OFFICIAL SEAL
JAMES L. BUCHANAN D
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF CLARK
 My Comm. Expires Feb. 23, 1979

~~NOTARY PUBLIC~~

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ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada

FILED

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ORETTA BOWMAN
CLERK
BY *[Signature]*
Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

1 CASE NO. C52190

2 DEPT. NO. VII

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

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

ORDER

12 RAYMOND HAIRE aka)

13 JOEL BURKETT,)
14 Defendant.)

15 THIS CAUSE having come on for hearing before the above
16 entitled Court on the 23rd day of April, 1981, plaintiff being
17 represented by JAMES L. BUCHANAN, II, ESQ., the plaintiff being
18 represented by ROBERT J. MILLER, District Attorney, through
19 BOOKER T. EVANS, Chief Deputy, and the Court having considered
20 the matter, and good cause appearing therefor,

21 IT IS HEREBY ORDERED that RAYMOND HAIRE aka JOEL BURKETT
22 give a blood sample to a medical representative of the Las Vegas
23 Metropolitan Police Dept., and that said sample be transported to
24 Richard Renner or his designee for purposes of analysis and
25 comparison.

26 DATED this 23 day of April, 1981.

27
28 *[Signature]*
29 DISTRICT JUDGE

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31 *[Signature]*
32 BOOKER T. EVANS
Chief Deputy District Attorney

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CASE NO. CA2190
DEPARTMENT SEVEN

FILED
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LORETTA BOWMAN
CLERK
BY *Coyen Brown*

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK
* * * * *

THE STATE OF NEVADA)
PLAINTIFF,)
VS.)
JOEL BURKETT aka)
Raymond Haire)
DEFENDANT,)

J U R Y

- | | |
|----------------------------------|--------------------------|
| 1. FRANCIS BURNS | 7. GLADE D. WAITE |
| 2. PATTY PRUITT | 8. LES EUGENE LAWSON |
| 3. FRANKLIN ELROY DIERINGER | 9. FREDDIE D. STONE |
| 4. AAFKE SHANNON | 10. DAVID H. SWEENEY |
| 5. RICHARD P. LANG | 11. JOHN BEN FRESQUEZ |
| 6. FRANK DENNIS COLMENAR | 12. STEVE RICHARD BULGER |
| ALTERNATES: A. BERNARD L. FISHEL | |
| B. MARILYN ANN PLUMMER | |

(R)

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1 Robert J. Miller
2 District Attorney
3 Clark County Courthouse
4 Las Vegas, Nevada

5 CASE NO. C52190

6 DEPT. NO. VII

— FILED IN OPEN COURT —

APR 30 1981, 19

LORETTA BOWMAN, CLERK

By

Elizabeth Lucero
Deputy

7 In the Eighth Judicial District Court of the
8 State of Nevada,
9 in and for the County of Clark.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

10 THE STATE OF NEVADA,

11 Plaintiff,

12 — vs —

13 JOEL BURKETT aka
14 Raymond Haire,

15 Defendant.

16 MOTION AND NOTICE OF MOTION
17 TO ENDORSE NAMES ON
18 INFORMATION

19 To: Defendants above named, and

20 To: Your Counsel of Record: (JAMES L. BUCHANAN)

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that, on

22 Thursday, the 30th day of April, 19 81,

23 at the hour of 10:00 o'clock, A.M., or as soon thereafter as Counsel can be heard,

24 in the Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will

25 move the Court for leave to endorse upon Information heretofore filed herein the names

26 of the following witnesses:

27 Name

Address

28 M. COURTNEY #99

LVMPD - Detective

29 E. FALCONE #808

LVMPD - Detective

30 DATED this 30th day of April, 19 81

31 ROBERT J. MILLER
32 District Attorney.

By

Ronald C. Bloxham

Deputy

RONALD C. BLOXHAM

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Docket 63661 Document 2013-27035

AFFIDAVIT IN SUPPORT OF MOTION

1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

4 RONALD C. BLOXHAM, being first duly sworn,
deposes and says:

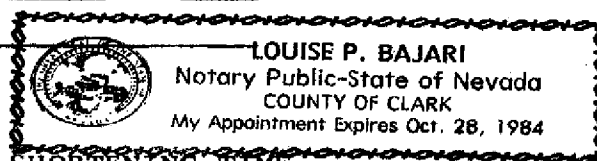
5 That he is a Deputy District Attorney of Clark County
6 Nevada; that Information has heretofore been filed in the within
7 action; that since the filing of said Information Affiant has
8 learned that the testimony of the person or persons named in the
9 Motion to Endorse Names on Information, which this Affidavit
10 supports, is necessary and material to the prosecution of the
11 within criminal action; that such facts were unknown to Affiant
12 at the time of filing Information herein.

13 WHEREFORE, Affiant prays that the Court enter an Order
14 for endorsement of names on Information, in accordance with
15 NRS 173.045.

Ronald C. Bloxham
Deputy District Attorney

16 Subscribed and sworn to before me
17 this 30th day of April, 19 81.

Louise P. Bajari



ORDER SHORTENING TIME

23 Upon application of RONALD C. BLOXHAM on behalf
24 of the Clark County District Attorney, Attorney for Plaintiff,
25 and good cause appearing therefor,

26 IT IS HEREBY ORDERED that the time for hearing the above
27 and foregoing Motion be, and the same is hereby shortened to the
28 30th day of April, 19 81, at the hour of
29 10:00 o'clock, A.M.

30 DATED this 30th day of April, 1981.

31
32 *Ronald C. Bloxham*
Deputy District Attorney
RONALD C. BLOXHAM

DISTRICT JUDGE.

-2-

DA-40

POINTS AND AUTHORITIES IN SUPPORT OF MOTION
TO ENDORSE NAMES ON INFORMATION

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

1. After filing the Information the District Attorney
endorse thereon the names of such other witnesses which shall
become known to him before the trial as the Court prescribes.
Such amendment may be made at any time after defendant pleads
when it can be done without prejudice to the substantial rights
of the defendant. NRS 173.045.

2. The granting on the morning of the trial of a motion to
add names of witnesses to a first degree murder Information was
not error where the defendant's attorney learned the names of
such witnesses three days before trial, this being a reasonable
time to prepare for the defense. State v. Teeter, 65 Nev. 584,
612 (1948); Dalby v. State, 81 Nev. 517 (1965).

3. Any prejudice resulting to defendant because the
District Attorney was permitted to add names on the Information
after the jury had been sworn, he having known these names before
trial, was cured by the court's granting defendant a continuance
(three days) to prepare to meet the testimony of these witnesses.
State v. Monahan, 50 Nev. 27, 35 (1926); Gallegos v. State, 84
Nev. 608 (1968).

4. Failure to endorse a name does not preclude calling any
witness whose name or materiality of testimony is first learned
at the time of trial NRS 173.045.

5. Defects or imperfections of form are immaterial.
NRS 173.100. Minor defects in an Information, including
typographical errors, may be disregarded where the intent is
clear and the rights of the defendant are not prejudiced.
22 CJS 955, Sec. 377.

60
1 CASE NO. C52190
2 DEPARTMENT NO. VII

FILED IN OPEN COURT —
MAY 4 1981 @ 7:30 p.m.
LORETTA BOWMAN, CLERK
By *Elizabeth* Electronically Filed
Sept 13 2018 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

9 THE STATE OF NEVADA,)
10)
11) Plaintiff,)
12)

13 vs.)

14)
15) JOEL BURKETT aka)
16) Raymond Haire,)
17)

INSTRUCTIONS TO THE JURY
INSTRUCTION NO. I

18 MEMBERS OF THE JURY:

19 It is now my duty as judge to instruct you in the
20 law that applies to this case. It is your duty as jurors to
21 follow these instructions and to apply the rules of law to the
22 facts as you find them from the evidence.

23 You must not be concerned with the wisdom of any rule
24 of law stated in these instructions. Regardless of any opinion
25 you may have as to what the law ought to be, it would be a
26 violation of your oath to base a verdict upon any other view
27 of the law than that given in the instructions of the Court.

28 GIVEN:

29
30 *Carl Christensen*
31 DISTRICT JUDGE
32

100
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INSTRUCTION NO. 2

If in these instructions any rule, direction or idea is repeated or stated in different ways, no emphasis is intended by me and none may be inferred by you. For that reason you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

GIVEN:

Carl Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

101

49

1 An Information is but a formal method of accusing a
2 person of a crime and is not of itself any evidence.
3

4 In this case it is charged in an Information that on
5 or about the 18th day of December, 1980, the defendant
6 the following offenses:

7 Count I: did then and there wilfully, unlawfully and felon-
8 iously take personal property from the person of TINA CAGE, or in
9 her presence, by means of force or violence or fear of injury to,
10 and without the consent and against the will of the said TINA CAGE,
11 to wit: lawful money of the United States belonging to NATIONAL
12 CONVENIENCE STORES, INC., a corporation dba Stop 'N Go #759, 732
13 North Eastern Avenue, Las Vegas, Clark County, Nevada, being in
14 the rightful possession of TINA CAGE, defendant using a deadly
15 weapon, to wit: a knife, during the commission of said crime.

16 Count II: did wilfully, unlawfully, feloniously, and without
17 authority of law, seize, confine, inveigle, entice, decoy, abduct,
18 conceal, kidnap, or carry away TINA CAGE, a human being, with the
19 intent to hold or detain the said TINA CAGE against her will and
20 without her consent for the purpose of committing Sexual Assault
21 upon the said TINA CAGE, said defendant using a deadly weapon,
22 to wit: a knife, during the commission of said crime.

23 Count III; did then and there wilfully, unlawfully, and
24 feloniously sexually assault and subject TINA CAGE, a female per-
25 son, to sexual penetration, to wit: sexual intercourse, by
26 inserting his penis in the vagina of the said TINA CAGE, against
27 her will.

28 Count IV: did then and there wilfully, unlawfully and felon-
29 iously sexually assault and subject TINA CAGE, a female person, to
30 sexual penetration, to wit: anal intercourse, by inserting his
31 penis in the anus of the said TINA CAGE, against her will.

32 It is the duty of the jury to apply the rules of law

1 contained in these instructions to the facts of the case and
2 determine whether or not the defendant is guilty of one or more
3 of the offenses charged.

4 Each charge and the evidence pertaining to it should be
5 considered separately. The fact that you may find a
6 guilty or not guilty as to one of the offenses charged should
7 not control your verdict as to any other offense charged.

8 GIVEN:

9
10 
11 DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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INSTRUCTION NO. 4

In order to convict the defendant of Robbery, all of the elements of the crime of Robbery must be proven beyond a reasonable doubt.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

The elements of the crime of Robbery are as follows:

1. An unlawful taking of personal property:
2. from the person of another, or in his or her presence;
3. against that person's will;
4. by means of force, or by means of violence, or by fear of injury to his or her person;
5. with the intent to permanently deprive the owner of the property.

GIVEN:

Carl F. Christensen
DISTRICT JUDGE

1
2
3 In order to convict the defendant of the crime of Robbery,
4 With the Use of a Deadly Weapon all of the elements Electronically Filed
Sept 18, 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
5 of Robbery With the Use of a Deadly Weapon must be proven beyond
6 a reasonable doubt.

7 The element of the crime of Robbery With Use of a Deadly
8 Weapon are as follows:

- 9 1. An unlawful taking of personal property;
10 2. from the person of another, or in his presence;
11 3. against that person's will;
12 4. by means of force, or by means of violence,
13 or by fear of injury to his or her person;
14 5. with the intent to permanently deprive the
15 owner of the property;
16 6. with the use of a deadly weapon in the
17 commission of the crime.

18 GIVEN:

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20 DISTRICT JUDGE
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INSTRUCTION NO. 6

In order to prove the crime of Robbery or Robbery with Use of a Deadly Weapon, all of the necessary elements must be proven.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

The element of "unlawful taking" is met if personal property is taken from the person or presence of another. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

GIVEN:

Carl Christensen
DISTRICT JUDGE

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INSTRUCTION NO. 7

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of likely to produce, death or great bodily harm.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

GIVEN:


DISTRICT JUDGE

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INSTRUCTION NO. 8

Every person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present for absent, and every person who, directly or indirectly, counsels, encourages, hires, commands, induces, or otherwise procures another to commit a crime, is a principal, and shall be proceeded against and punished as such.

GIVEN:

Carey Christensen
DISTRICT JUDGE

108

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INSTRUCTION NO. 9

When two or more persons participate in committing a crime with the use of a deadly weapon and only one of the persons used the deadly weapon, it is not necessary for the State to prove both persons used a deadly weapon because one who aids and abets another to commit a crime with the use of a deadly weapon is equally guilty as a principal.

GIVEN:

Carey Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

109

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INSTRUCTION NO. 10

Every person who shall willfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap or carry away any person by any means whatsoever with the intent to detain, or who holds or detains any person for the purpose of committing sexual assault, shall be deemed guilty of kidnapping in the first degree.

GIVEN:

Carl Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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INSTRUCTION NO. 11

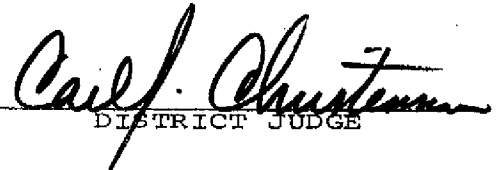
You are instructed that if you find the defendant guilty of First Degree Kidnapping, you must also determine whether or not a deadly weapon was used in the commission of this crime.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

If you find that a First Degree Kidnapping did occur and that a deadly weapon was used in committing the First Degree Kidnapping, the proper verdict would be First Degree Kidnapping with Use of a Deadly Weapon.

If you find that a First Degree Kidnapping did occur but that a deadly weapon was not used in the commission of the crime, the proper verdict would be First Degree Kidnapping.

GIVEN:


DISTRICT JUDGE

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INSTRUCTION NO. 12

As pertains to this case, Sexual Assault is defined as follows:

Any person who subjects another person to sexual penetration against that person's will is guilty of sexual penetration.

Electronically Filed
Sept. 13, 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Sexual penetration means any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another.

GIVEN:


DISTRICT JUDGE

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INSTRUCTION NO. 13

The Court instructs the Jury that to constitute the crime of Sexual Assault, it is necessary, in addition to the other elements set forth in these Instructions, that penetration be proved beyond a reasonable doubt to have actually taken place. Any sexual penetration, however slight, is sufficient to complete the crime. Proof of emission is not necessary.

GIVEN:


DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemeyer
Clerk of Supreme Court

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INSTRUCTION NO. 14

When a woman yields in sexual intercourse to a male aggressor, if her yielding has been induced by fear that it is necessary to save her from violence or other physical harm, and that it offers hope of so doing, her conduct in such circumstances does not constitute consent.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

GIVEN:


DISTRICT JUDGE

114 62

INSTRUCTION NO. 15

The Court instructs the Jury that it is your province to determine the credibility of each witness, including the woman who testified that she was sexually assaulted. Her testimony creates in your minds a satisfactory conviction and belief, beyond a reasonable doubt of the defendant's guilt, it is sufficient of itself without other corroborating circumstances or evidence to justify a verdict of guilty of sexual assault.

GIVEN:

Carl Christensen
DISTRICT JUDGE

415 63

INSTRUCTION NO. 16

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

GIVEN:

Carl F. Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

116 ~~64~~

INSTRUCTION NO. 17

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

GIVEN:

Carl Christensen
DISTRICT JUDGE

117

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INSTRUCTION NO. 18

The defendant is presumed to be innocent until the contrary is proved. This presumption places upon the burden of proving beyond a reasonable doubt every element of the crime charged and that the defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual and substantial, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the defendant, he is entitled to a verdict of not guilty.

GIVEN:

Cecil Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13-2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

118

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INSTRUCTION NO. 19

You are here to determine the guilt or innocence of the defendant from the evidence in the case. You are to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the defendant, you should so find, even though you may believe one or more other persons are also guilty.

GIVEN:

Carl Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13, 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

119

INSTRUCTION NO. 20

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel. Electronically Filed
Sept 12, 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence, and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must also be disregarded.

GIVEN:


DISTRICT JUDGE

120

INSTRUCTION NO. 21

The law recognizes two classes of evidence. Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court
direct evidence, and the other is circumstantial evidence.

Direct evidence consists of the testimony of a witness who, with any of his own physical senses, perceived an act or occurrence, and who relates what was perceived.

All evidence that is not direct evidence is circumstantial evidence and, insofar as it shows any act or occurrence or any circumstance or fact tending to prove or disprove by reasonable inference one side or the other of an issue, it may be considered by you in arriving at a verdict.

The law makes no distinction between direct and circumstantial evidence, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof.

GIVEN:

Carl Christensen
DISTRICT JUDGE

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INSTRUCTION NO. 22

The degree of credit due a witness should be determined by his or her manner upon the stand, his or her fears, motives, interest, or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness, or any portion of his testimony which is not proved by other evidence.

GIVEN:

Carl J. Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13, 2013 8:26 a.m.
Tracie K. Lindem
Clerk of Supreme Court

122

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INSTRUCTION NO. 23

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give an opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.

GIVEN:

Carol Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13, 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

123

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INSTRUCTION NO. 24

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

GIVEN:

Carl F. Christensen
DISTRICT JUDGE

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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INSTRUCTION NO. 25

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the Court. Your duty is confined to the determination of the guilt or innocence of the defendant.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

GIVEN:

Carl Christensen
DISTRICT JUDGE

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INSTRUCTION NO. 26

When you retire to consider your verdict, select one of your number to act as foreman, who will preside over your deliberation and will be your spokesman here in Supreme Court

During your deliberation you will have all the exhibits which were admitted into evidence, these written instructions, and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreman, and then return with it to this room.

GIVEN:

Carl Christensen
DISTRICT JUDGE

126

INSTRUCTION NO. 27

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, please reduce your request to writing signed by the foreman. Remember, the Court is not at liberty to supplement the evidence.

I caution you, with regard to any message or question you might have, that you should never state or specify your numerical division at the time.

GIVEN:

Carl Christensen
DISTRICT JUDGE

127

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INSTRUCTION NO. 28

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence, and by showing application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be, and by the law as given you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

Electronically Filed
Sept 13, 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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(R)

In the District Court

FILED
MAY 4 4 00 PM '81

The Eighth Judicial District of the State of Nevada in and for the County of Clark

THE STATE OF NEVADA

Plaintiff

vs.

RAYMOND HAIRE aka

JOEL BURKETT,

Defendant

BY

LORETTA BOWMAN
CLERK

No.

652190

Electronically Filed

Dept.

Sept 13 2013 8:26 a.m.

Tracie K. Lindemen

Clerk of Supreme Court

SUBPOENA

THE STATE OF NEVADA, sends greetings to:

JAMES PAUL MCGLAMEY

4375 Wyoming

Las Vegas, Nevada

YOU ARE COMMANDED, that all and singular business and excuse being laid aside, to attend and appear before the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, at the Courtroom of said Court, at the city of Las Vegas, said County and State, on Thursday, the 30th day of April, A. D. 19 81, at 2:00 o'clock P.M., of said day, then and there to testify at witness on behalf of the Defendant, RAYMOND HAIRE aka JOEL BURKETT in a criminal action prosecuted by the State of Nevada against RAYMOND HAIRE aka JOEL BURKETT

the above named Defendant.

Given under my hand and Seal of the said Court this 23 day of April, 19 81.

LORETTA BOWMAN

Clerk.

By

Deputy.

CC-25

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(R)
[CE44]

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Docket 63661 Document 2013-27035

STATE OF NEVADA
COUNTY OF CLARK ss

I hereby certify and return that I received the within subpoena on the 25th

April

, A. D. 19 81

JAMES PAUL McGLAMEY, a

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

at Sun Valley & Boulder Highway in the County of Clark, State of Nevada, by showing
him the within subpoena, personally, and informing him
of the contents thereof, on this 27th day of April 81, A. D. 19 81

SUBSCRIBED AND SWORN TO BEFORE ME THIS

DAY OF APR 28 1981 19

Terrie La Rue
NOTARY PUBLIC, CLARK COUNTY, NEVADA



Notary Public - State of Nevada
CLARK COUNTY
Terrie La Rue
My Commission Expires July 20, 1981

Sheriff of Clark County.

By

Kary Sargent

Deputy.

A.G.R. DETECTIVES
726 South Casino Center Blvd.
Las Vegas, Nevada 89101

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In the District Court

FILED
MAY 4 4 00 PM '81

of

The Eighth Judicial District of the State of Nevada In and for the County of Clark

THE STATE OF NEVADA

Plaintiff

vs.

RAYMOND HAIRE aka

JOEL BURKETT,

Defendant

LORETTA BOWMAN

BY

No.

Electronically Filed

Sept 13 2013 8:26 a.m.

Dept. No.

Tracie K. Lindemen

Clerk of Supreme Court

SUBPOENA

DUCES TECUM *

THE STATE OF NEVADA, sends greetings to:

Custodian of Records

National Convenience Stores, Inc.

d/b/a Stop N Go #759

732 North Eastern Avenue

Las Vegas, Nevada

YOU ARE COMMANDED, that all and singular business and excuse being laid aside, to attend and appear before the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, at the Courtroom of said Court, at the city of Las Vegas, said County and State, on Thursday, the 30th day of April, A. D. 19 81, at 2:00 o'clock P.M., of said day, then and there to testify at witness on behalf of the Defendant, RAYMOND HAIRE aka JOEL BURKETT in a criminal action prosecuted by the State of Nevada against RAYMOND HAIRE aka JOEL BURKETT

the above named Defendant...

Given under my hand and Seal of the said Court this 23 day of

April 19 81

* AND BRING WITH YOU a copy of all job applications and/or any and all records of an applicant named RAYMOND HAIRE also known as JOEL BURKETT.

LORETTA BOWMAN

Clerk.

Deputy.

CC-25

47 (R)

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STATE OF NEVADA
COUNTY OF CLARK ss

I hereby certify and return that I received the within subpoena on the 24th April, A. D. 1981, and that I personally served the same upon TANYA CRANE, Custodian of Records National Convenience Stores, Inc. dba Stop N Go,

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

at 557 E. Sahara Ave. in the County of Clark, State of Nevada, by showing her the within subpoena, personally, and informing her of the contents thereof, on this 27th day of April, A. D. 1981.

SUBSCRIBED AND SWORN TO BEFORE ME THIS
DAY OF APR 28 1981
Terrie La Rue
NOTARY PUBLIC, CLARK COUNTY, NEVADA



Notary Public-State of Nevada
CLARK COUNTY
Terrie La Rue
My Commission Expires July 20, 1981

Sheriff of Clark County.
By *Kerry Sargent* Deputy.

A.G.R. DETECTIVES
726 South Casino Center Blvd.
Las Vegas, Nevada 89101

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CASE NO. C52190
DEPT. NO. VII

— FILED IN OPEN COURT —

MAY 4 1981 @ 7:30 p.m.

LORETTA BOWMAN, CLERK

By *Elizabeth* Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,
Plaintiff,
-vs-
JOEL BURKETT
aka Raymond Haire,
Defendant.

V E R D I C T

We, the Jury in the above entitled case, find the
Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of ROBBERY WITH
USE OF A DEADLY WEAPON, Count I.

DATED this 4 day of May, 1981.

Steve R. Bulger
FOREMAN

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CASE NO. C52190
DEPT. NO. VII

— FILED IN OPEN COURT —
MAY 4 1981 7:30 P.M.

LORETTA BOWMAN, CLERK
By *Elizabeth J. ...* Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman Deputy
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,)
Plaintiff,)
-vs-)
JOEL BURKETT)
Aka Raymond Haire,)
Defendant.)

VERDICT

We, the Jury in the above entitled case, find the
Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of FIRST DEGREE
KIDNAPPING WITH USE OF A DEADLY WEAPON, Count II.

DATED this 4 day of May, 1981.

Steve M. Bulger
FOREMAN

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CASE NO. C52190
DEPT. NO. VII

FILED IN OPEN COURT
MAY 4 1981 2:30 P.M.

LORETTA BOWMAN, CLERK
By *Elizabeth* Electronically Filed
Sept 13 2013 5:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,)
Plaintiff,)
-vs-)
JOEL BURKETT)
aka Raymond Haire,)
Defendant.)

VERDICT

We, the Jury in the above entitled case, find the
Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of SEXUAL
ASSAULT, Count III.

DATED this 4 day of May, 1981.

Steve B. Bulger
FOREMAN

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1 CASE NO. C52190

2 DEPT. NO. VII

— FILED IN OPEN COURT

MAY 4 1981

@ 7:30 p.m.

LORETTA BOWMAN, CLERK

By

Elizabeth Luero

Electronically Filed

Sept 18, 2013 8:26 a.m.

Tracie K. Lindemen

Clerk of Supreme Court

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

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JOEL BURKETT)
13 aka Raymond Haire,)

14 Defendant.)

15 VERDICT

16
17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of SEXUAL
19 ASSAULT, Count IV.

20 DATED this 4 day of May, 1981.

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23 *Steve P. Bulger*
24 FOREMAN

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1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

8
9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 JOEL BURKETT)
13 aka Raymond Haire,)
14 Defendant.)

15 VERDICT

16
17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of ROBBERY,
19 Count I.

20 DATED this ____ day of _____, 1981.

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FOREMAN
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1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:06 a.m.
Tracie K. Lindgren
Clerk of Supreme Court

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF CLARK.

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JOEL BURKETT)

13 Aka Raymond Haire,)

14 Defendant.)

15
16 VERDICT

17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, NOT GUILTY, Count I.

19 DATED this _____ day of _____, 1981.

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FOREMAN

1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:06 a.m.
Tracie K. Linderen
Clerk of Supreme Court

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF CLARK.

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JOEL BURKETT)

13 aka Raymond Haire,)

14 Defendant.)

15 VERDICT

17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, NOT GUILTY, Count IV.

19 DATED this ____ day of _____, 1981.

22 _____
FOREMAN

1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

8
9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 JOEL BURKETT)
13 aka Raymond Haire,)
14 Defendant.)

15
16 VERDICT

17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, NOT GUILTY, Count III.

19 DATED this ____ day of _____, 1981.

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1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

8
9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 JOEL BURKETT)
13 aka Raymond Haire,)
14 Defendant.)

15
16 VERDICT

17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, NOT GUILTY, Count II.

19 DATED this _____ day of _____, 1981.

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FOREMAN
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1 CASE NO. C52190

2 DEPT. NO. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

8
9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 JOEL BURKETT)
13 Aka Raymond Haire,)
14 Defendant.)

15 VERDICT

16
17 We, the Jury in the above entitled case, find the
18 Defendant, JOEL BURKETT aka Raymond Haire, GUILTY of FIRST DEGREE
19 KIDNAPPING, Count II.

20 DATED this _____ day of _____, 1981.

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FOREMAN
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FILED

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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
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May 14 11 33 AM '01
LORITA BOWMAN
BY *Sharon*

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

9 THE STATE OF NEVADA,)
10)
11) Plaintiff,)
12)

11 VS)

12 JOEL BURKETT)
13)
14) Defendant,)

14 DOB: 11-9-58)

15 UPON EX-PARTE APPLICATION of the Department of Adult Parole
16 and Probation, by and through R. Gray, Investigating
17 Officer of said Department, Defendant Joel Burkett was
18 convicted of an adult felony/~~gross misdemeanor~~ on the 4th day
19 of May, 1981, in Department VII of the Eighth
20 Judicial District Court, and in order to make a fair recommenda-
21 tion for sentencing of Defendant Joel Burkett the
22 Department of Adult Parole and Probation requests permission to
23 view the juvenile records of Joel Burkett and to have
24 copies made of pertinent documents.

25 IT IS HEREBY ORDERED that R. Gray of the State of
26 Nevada Department of Adult Parole and Probation be permitted to
27 view the complete juvenile records of Joel Burkett and to
28 have copies made of those documents pertinent to the sentencing
29 of Joel Burkett.

30 DATED this 12th day of May, 1981.

31
32 *[Signature]*
33 JOHN F. MENDOZA DISTRICT JUDGE

34 *[Signature]*
Edward J. Coyle, Supervisor, Court Services Unit
Department of Adult Parole and Probation

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Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
140 - 150
WILL FOLLOW VIA
U.S. MAIL**

1 CASE NO. C52190

2 DEPT. NO. VII

3 DOCKET

FILED

JUN 15 2 56 PM '81

LORETTA BOWMAN

CLERK Electronically Filed
BY Nita Nataro 6/15/81 2:56 a.m.

Tracie K. Lindemen

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE ~~Clerk of Supreme Court~~

7 IN AND FOR THE COUNTY OF CLARK

8 * * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

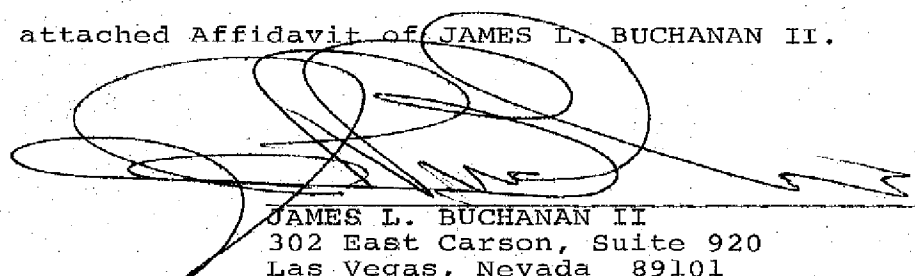
12 RAYMOND HAIRE aka)
13 JOEL BURKETT,)

14 Defendant.)

POINTS AND AUTHORITIES,
NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
ATTORNEY OF RECORD

15 COMES NOW, JAMES L. BUCHANAN II, attorney for RAYMOND
16 HAIRE aka JOEL BURKETT, Defendant in the above-entitled matter, and
17 moves this Honorable Court pursuant to Rule 46 of the Supreme
18 Court Rules to allow him to withdraw as attorney of record for
19 RAYMOND HAIRE aka JOEL BURKETT because final determination of the
20 matter has been reached.

21 This Motion is made and based on all the files, papers
22 and pleadings on file herein together with the following Points and
23 Authorities and the attached Affidavit of JAMES L. BUCHANAN II.

24 
25
26
27 JAMES L. BUCHANAN II
28 302 East Carson, Suite 920
Las Vegas, Nevada 89101

29 NOTICE OF MOTION

30 TO: ROBERT J. MILLER, District Attorney:

31 PLEASE TAKE NOTICE that the undersigned will bring the
32 above and foregoing Motion to Withdraw as Attorney of Record on for

32 one
JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

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Docket 63661 Document 2013-27035

1 hearing on the 18th day of June, 1981, at the hour of 9:00 A.M.
2 in the above-entitled Court, in Department No. VII or as soon
3 thereafter as counsel may be heard.

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101

POINTS AND AUTHORITIES

Supreme Court Rule 46 provides as follows:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.

2. Upon the order of the court or judge thereof on the application of the attorney or client.

After judgment or final determination, an attorney may withdraw as attorney of record at any time upon the attorney's filing a withdrawal, with or without the client's consent.

Respectfully submitted,

JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

JAMES L. BUCHANAN II, being first duly sworn, deposes and says:

That he is an attorney duly licensed to practice law in the State of Nevada.

That he is the attorney of record for RAYMOND HAIRE aka JOEL BURKETT, Defendant in the above-entitled action.

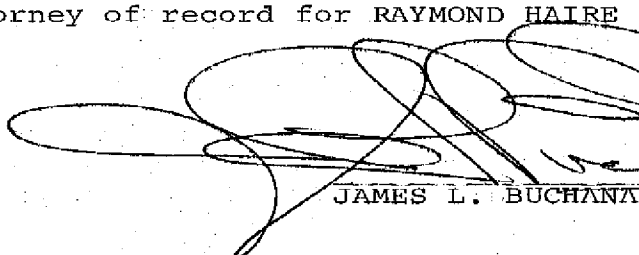
JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

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Docket 63661 Document 2013-27035

1 That the above-entitled action has reached a final deter-
2 mination and your Affiant therefore requests that he be allowed to
3 withdraw as attorney of record for RAYMOND HAIRE aka JOEL BURKETT.
4

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court


JAMES L. BUCHANAN II

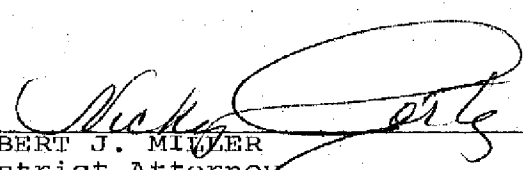
8 SUBSCRIBED AND SWORN to before me
9 this 12th day of June, 1981.



Notary Public-State of Nevada
CLARK COUNTY
Lynn A. Azevedo
My Appointment Expires Feb. 23, 1983

10
11 
12 NOTARY PUBLIC

13 RECEIPT OF COPY of the above and foregoing Notice of
14 Motion, Points and Authorities and Motion to Withdraw as Attorney
15 of Record is hereby acknowledged this 15th day of June, 1981.
16

17
18 
19 ROBERT J. MILLER
20 District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101
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JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

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1 CASE NO. C52190

2 DEPT. NO. VII

FILED

JUN 19 4 30 PM '81

LORETTA BOWMAN
CLERK

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

8 * * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

NOTICE OF APPEAL

12 RAYMOND HAIRE aka JOEL)
13 BURKETT,)

14 Defendant.)

15 TO: THE STATE OF NEVADA;

16 ROBERT J. MILLER, District Attorney;

17 EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA:

18 NOTICE IS HEREBY GIVEN that RAYMOND HAIRE aka JOEL
19 BURKETT, Defendant in the above-entitled action, appeals to the
20 Supreme Court of the State of Nevada, from the sentence entered
21 against him on June 2, 1981.

22 DATED this 19 day of June, 1981

23
24
25
26 JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101

27 RECEIPT OF COPY of the above and foregoing Notice of
28 Appeal is hereby acknowledged this 19th day of June, 1981.

29
30 for James Tustelard
31 ROBERT J. MILLER
District Attorney
Clark County Courthouse
32 Las Vegas, Nevada 89101

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FILED

1 CASE NO. C52190

JUN 22 2 20 PM '81

2 DEPT. NO. VII

ORELIA BOWMAN

3 BY

CLERK
Adella Logan

Electronically Filed

Sept 13 2013 8:26 a.m.

Tracie K. Lindemen

Clerk of Supreme Court

4 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF CLARK

6 * * * *

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

O R D E R

10 RAYMOND HAIRE aka)
11 JOEL BURKETT,)

12 Defendant.)
13)
14)

15 This matter having come on for hearing on this 18th
16 day of June, 1981, in the above-entitled Court, in Department No.
17 VII with the Honorable Carl J. Christensen presiding and upon
18 the Motion to Withdraw as Attorney of Records of the Defendant's
19 Attorney, JAMES L. BUCHANAN II, and good cause appearing therefor,

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
21 Motion to Withdraw as Attorney of Record is hereby granted and the
22 Court appoints EARL T. AYERS, as the Attorney for said Defendant.

23 IT IS FURTHER ORDERED that prior to this Order being
24 filed, that the Defendant's Attorney, JAMES L. BUCHANAN II, file a
25 Notice of Appeal to preserve the Appellant's rights.

26 DATED this 22 day of June, 1981.

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Carl J. Christensen
DISTRICT JUDGE

JAMES L. BUCHANAN II
302 East Carson, Suite 920
Las Vegas, Nevada 89101

JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 920
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
(702) 582-9103

-1-

133
Docket 63661 Document 2013-27035

FILED

JUN 24 1 38 PM '81

CASE NO. C52190

DEPT. NO VII

JORELLA BOWMAN
CLERK

Robert J. Miller

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

* * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
RAYMOND HAIRE aka)
JOEL BURKET,)
)
Defendant.)

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 23rd day of June, 1981, she deposited a copy of the Order entered in the above-entitled case on June 22, 1981, in the U.S. Mails, in a sealed envelope, postage prepaid, addressed to:

ROBERT J. MILLER
District Attorney
Clark County Courthouse
Las Vegas, NV 89101

Earl T. Ayers
2770 S. Maryland Pkwy, #500
Las Vegas, NV 89109

Lynn A. Waite
Secretary to James L. Buchanan II

JAMES L. BUCHANAN II
ATTORNEY AT LAW
SUITE 220
FIRST NATIONAL BANK
BUILDING
302 EAST CARSON
LAS VEGAS
NEVADA 89101
TELEPHONE
(702) 382-9103

[Stamp]

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FILED

JUL 2 2 38 PM '81

1 CASE NO. C52190
2 DEPARTMENT SEVEN

LORETTA BOWMAN
CLERK

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Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

8
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10 THE STATE OF NEVADA,)
11 Plaintiff,)
12 vs.)
13 JOEL BURKETT, aka)
14 RAYMOND HAIRE,)
15 Defendant.)

REPORTER'S TRANSCRIPT

16
17
18 BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE
19 Thursday, April 23, 1981

20
21 APPEARANCES:

22 For the State: BRUCE DICKINSON, ESQ.
23 GREGORY DIAMOND, ESQ.
Deputy District Attorneys

24 For the Defendant: JAMES BUCHANAN, ESQ.
25 Attorney at Law

26
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32 Reported by: CONSTANCE KROON, CSR, 75

1 LAS VEGAS, CLARK COUNTY, NEVADA, THURSDAY, APRIL 23, 1981

2 * * * * *

3
4 THE COURT: Case No. C52190, the State of Nevada
5 versus Joel Burkett. Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court
6

7 The record will show the presence of the
8 defendant, in custody; together with counsel, James Buchanan;
9 Bruce Dickinson and Gregory Diamond, Deputy District Attorneys
10 representing the State of Nevada.

11 MR. BUCHANAN: Your Honor, the defendant's
12 ready to go to trial. I would like to have it, if possible,
13 Wednesday, in view of the conflict Monday and Tuesday, if
14 that's possible.

15 MR. DICKINSON: Our information indicates
16 this would be a two and a half day trial. Wednesday --
17 could start Wednesday morning. That would be fine with the
18 State. We do have a motion on to compel a blood sample from
19 the defendant.

20 MR. BUCHANAN: We have no objection to that,
21 the way we're proceeding with the case, so if they want us to
22 take a blood sample --


23 THE COURT: The State's motion to compel
24 blood samples is granted.

25 The case is set down to start in this
26 Department Wednesday at 10:00 a.m.

27 MR. BUCHANAN: Thank you very much, your Honor.

28 * * * * *

29 ATTEST: Full, true and accurate transcript
30 of the proceedings had.

31 
32 CONSTANCE KROON, CSR, No. 75

1 CASE NO. C52190

2 DEPT. NO. VII

FILED

JUL 23 11 59 PM '81

LORETTA BOWMAN
CLERK

BY *[Signature]* Electronically Filed
Sept 13 2013 8:26 a.m.

Tracie K. Lindemen
Clerk of Supreme Court

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

7 IN AND THE FOR THE COUNTY OF CLARK

8 THE STATE OF NEVADA)

9 Plaintiff,)

10 vs.)

11 RAYMOND HAIRE aka Joel)
12 Burkett,)

13 Defendant.)

14 BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE

15 THURSDAY, FEBRUARY 5, 1981, 9:00 A.M.

16
17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 APPEARANCES:

19 For the State:

BRUCE DICKINSON, ESQ.
Deputy District Attorney

21 For the Defendant:

WILLIAM HENRY, ESQ.
Deputy Public Defender

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28 REPORTED BY: Constance Kroon, C.S.R. No. 75

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 5, 1981, 9:00 A.M.

2 * * * * *

3
4 THE COURT: Case number C52190, the State of Nevada and
5 Haire. Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

6 The record will show the presence of the defendant, in
7 custody; the presence of counsel, Bruce Dickinson -- excuse me -- Bill Henry,
8 Deputy District Attorney representing the State of Nevada -- Bruce Dickinson,
9 Deputy District Attorney representing the State of Nevada.

10 MR. HENRY: Your Honor, for the record, I'm a Deputy Public
11 Defender.

12 THE COURT: What did I say? I apologize if I said it wrong.

13 MR. HENRY: I just want to make sure the record is correct --
14 don't want a record indicating the District Attorney is representing the same
15 people they're prosecuting.

16 THE COURT: Yes. The record will show that Bill Henry is a
17 Deputy Public Defender representing the defendant.

18 Thank you, Mr. Henry. Do I have it right now?

19 MR. HENRY: I think so.

20 THE COURT: Okay.

21 MR. HENRY: This is defendant's proper person petition for writ
22 of habeas corpus, and the State's motion to dismiss same.

23 THE COURT: Do you have anything further you wanted to add at
24 this time, Mr. Burkett?

25 THE DEFENDANT: Yes. I'd like to add that I got a petition for
26 the D.A. about a week ago, and he's asking for the writ of habeas corpus to be
27 dismissed. And the reason it's not filed right is because I'm on the fourth
28 floor, and due to my status in the jail, I can't go to the law library.

29 And, you know, I didn't know the proper status on it. I
30 tried to tell them, you know, I had to fill it out right, but they just wasn't
31 going for it, man, you know.

32 THE COURT: Is that the only response that we're going to have

1 to the writ is that it doesn't have the waivers?

2 MR. DICKINSON: Your Honor, that was the response that Mel
3 Harmon filed in this case. Yes, it is.

4 THE COURT: The Court finds that the writ is without merit,
5 even if the petition for a writ had contained the waiver and consent required
6 by N.R.S. 34.3751 (d). Therefore, the Court in this particular matter does
7 not take cognizance of the objection and motion to dismiss filed by Deputy
8 District Attorney Mr. Harmon.

9 However, after a review of the writ on the merits, the
10 Court finds it does not have merit. The petition for writ of habeas corpus is
11 denied, and the writ is discharged.

12 THE DEFENDANT: Your Honor, could I ask you one more thing?

13 THE COURT: Sure.

14 THE DEFENDANT: Could I ask for bail reduction at this time?

15 THE COURT: What is your bail presently set at?

16 THE DEFENDANT: \$141,000.00.

17 THE COURT: Motion for bail reduction is denied.

18 * * * * *

19 ATTEST: Full, true and accurate transcript of proceedings.

20 *Constance Kroon*
21 CONSTANCE KROON, C.S.R. NO. 75
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FILED

JUL 24 9 05 AM '81

LORETTA BOWMAN
CLERK

BY *Jinda Sevier*

CASE NO. C52190

DEPT. NO. VII

ORIGINAL

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND THE FOR THE COUNTY OF CLARK

THE STATE OF NEVADA)

Plaintiff,)

vs.)

RAYMOND HAIRE aka Joel
Burkett,)

Defendant.)

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE

TUESDAY, JANUARY 20, 1981, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the State:

DAVID SCHWARTZ, ESQ.
Deputy District Attorney

For the Defendant:

PETER CHRISTIANSEN, ESQ.
Deputy Public Defender

REPORTED BY: Constance Kroon, C.S.R. No. 75

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1 LAS VEGAS, NEVADA TUESDAY JANUARY 20, 1981, 9:00 A.M.

2 * * * * *

3
4 THE COURT: Case number C52190, the State of Nevada vs. Raymond
5 Haire. Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

6 The record will show the presence of the defendant, in
7 custody; the presence of counsel, Peter Christiansen, Deputy Public Defender;
8 David Schwartz, Deputy District Attorney representing the State of Nevada.

9 At this time, Mr. Christiansen, would you hand the
10 defendant a conformed, true copy of the information filed in this case on
11 January 19, 1980?

12 Does the defendant waive the reading of the information
13 out loud in open court, together with the names of witnesses that are attached
14 to it?

15 MR. CHRISTIANSEN: Your Honor, he'd waive the reading out loud,
16 and the list of witnesses.

17 THE COURT: Do you understand this waiver and join with counsel
18 in making it, Mr. Haire?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is your true name Raymond Haire?

21 THE DEFENDANT: Yes.

22 THE COURT: What is your age?

23 THE DEFENDANT: Raymond Haire. Real name's Joel Burkett.

24 THE COURT: Your real name is Joel Burkett?

25 THE DEFENDANT: Yes, aka Raymond Haire.

26 THE COURT: Okay. The record will show the defendant has
27 stated his true name to be Joel Burkett. Hereafter, the proceeding will be
28 had against the defendant under the name of Joel Burkett, stated by him to be
29 his true name.

30 What is your age, Mr. Burkett?

31 THE DEFENDANT: Nineteen.

32 THE COURT: What is the extent of your formal education?

1 THE DEFENDANT: Eighth grade.

2 THE COURT: Do you know how to read and write in the English
3 language?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the nature of the charges
6 contained in all four counts of the information in this case against you?
Clerk of Supreme Court

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Joel Burkett, what is your plea to Count I of the
9 information in this case wherein you are charged with the crime of robbery and
10 use of a deadly weapon in commission of a crime, felony: guilty or not
11 guilty?

12 THE DEFENDANT: Not guilty.

13 THE COURT: Joel Burkett, what is your plea to Count II of the
14 information in this case wherein you are charged with the crime of first
15 degree kidnapping and use of a deadly weapon in commission of a crime, felony:
16 guilty or not guilty?

17 THE DEFENDANT: Not guilty.

18 THE COURT: Joel Burkett, what is your plea to Count III of the
19 information in this case wherein you are charged with the crime of sexual
20 assault, a felony: guilty or not guilty?

21 THE DEFENDANT: Not guilty.

22 THE COURT: Joel Burkett, what is your plea to Count IV of the
23 information in this case wherein you are charged with the crime of sexual
24 assault, a felony: guilty or not guilty?

25 THE DEFENDANT: Not guilty.

26 THE COURT: This case is set down for trial before a jury at
27 10:00 o'clock a.m. on Monday, March 16, 1981. The defendant and counsel are
28 directed to appear in court on Thursday, March 12, 1981 at the hour of 9:00.

29 Recognizance of the defendant will continue. The matter
30
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Clerk of Supreme Court

1 is set over to March 3rd.

2 * * * * *

3 ATTEST: Full, true and accurate transcript of proceedings.

4 *Constance*
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Clerk of Supreme Court

CONSTANCE KROON, C.S.R. NO. 75

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LORETTA BOWMAN
CLERK

BY *Cheryl Strong*

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

ORIGINAL

CASE NO. C52190
DEPT. NO. VII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND THE FOR THE COUNTY OF CLARK

THE STATE OF NEVADA)
)
Plaintiff,)
)
vs.)
)
JOEL BURKETT aka Raymond)
Haire,)
)
Defendant.)

BEFORE THE HONORABLE CARL J. CHRISTENSEN, DISTRICT JUDGE

TUESDAY, JUNE 2, 1981, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the State: RONALD C. BLOXHAM, ESQ.
Deputy District Attorney
For the Defendant: JAMES BUCHANAN, ESQ.
For the Department of
Parole and Probation: FREDERIC L. BAIRD

REPORTED BY: Constance Kroon, C.S.R. No. 75

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1 LAS VEGAS, NEVADA, TUESDAY, JUNE 2, 1981, 9:00 A.M.

2 * * * * *

3
4 THE COURT: Case number C52190, the State of Nevada, Joel
5 Burkett, also known as Raymond Haire. Electronically Filed
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Tracie K. Lindemen
Clerk of Supreme Court

6 The record will show the presence of the defendant in
7 custody; the presence of counsel, James Buchanan; Ron Bloxham, Deputy District
8 Attorney representing the State of Nevada.

9 This is the time set for the entry of judgment and
10 imposition of sentence. Is the defendant ready to proceed at this time? Mr.
11 Haire, have you read over the -- Mr. Burkett, have you read over the report?
12 What is your right name? Raymond Haire, isn't it?

13 THE DEFENDANT: Joel Burkett.

14 THE COURT: Okay. Mr. Burkett, have you read over the report
15 by the Department of Parole and Probation?

16 THE DEFENDANT: Yes, sir, I have.

17 THE COURT: Do you know of any legal cause or reason why
18 judgment should not be pronounced against you at this time?

19 THE DEFENDANT: Well, there's a few lies in there.

20 MR. BUCHANAN: We have no legal reason for judgment not be
21 imposed at this time, your Honor. We have some comments on the contents of
22 the probation report.

23 THE COURT: We'll get back to that.

24 Joel Burkett, by virtue of your verdict of the jury
25 finding you guilty, you are hereby adjudged guilty to Count I, the crime of
26 robbery and use of a deadly weapon in commission of a crime.

27 The Court hereby finds you guilty under Count II of the
28 crimes of first degree kidnapping and use of a deadly weapon in commission of
29 a crime.

30 The Court finds you guilty under Count III of the crime of
31 sexual assault, a felony.

32 The Court finds you guilty under Count IV of the crime of

1 sexual assault, a felony.

2 Does the Department of Parole and Probation have anything
3 further to state at this time?

4 MR. BLOXHAM: Your Honor, we don't have a representative from
5 the Department of Parole and Probation here at this time.

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Clerk of Supreme Court

6 (At this time, Mr. Baird entered the courtroom).

7 MR. BLOXHAM: Yes, we do.

8 THE COURT: Your name, sir?

9 MR. BAIRD: Frederic L. Baird.

10 THE COURT: Frederic L. Baird?

11 MR. BAIRD: Yes, sir.

12 THE COURT: The record will show the presence of Frederic L.
13 Baird of the Department of Parole and Probation.

14 Do you have anything further to state at this time in the
15 Joel Burkett case?

16 MR. BAIRD: Submitted, your Honor.

17 THE COURT: Does the District Attorney have any statements to
18 make?

19 MR. BLOXHAM: Yes, your Honor. We would like to make a few
20 statements.

21 First of all, your Honor, on page 6 of the report, bottom
22 paragraph, it talks about the victim. There was an attempt made on the 26th
23 of May to contact the victim and have a statement of the victim included in
24 the report. I notice the report was prepared the 27th of May. They made a
25 phone call to the victim's mother-in-law asking the mother-in-law to have the
26 victim get a hold of them.

27 I can inform the Court that the victim has no phone; that
28 the mother-in-law lives clear across town; and I can assure you that if the
29 victim were contacted and asked for a statement, that she would provide one.
30 I don't believe it would stop sentencing today, though, because this Court did
31 hear the trial. This Court did hear the victim's testimony from the stand.

32 Your Honor, as I approach this sentencing, I have to look

1 at the defendant, and I have to compare him to a mad dog, your Honor, but
2 there are some differences between the defendant Burkett and a mad dog. Your
3 Honor, a mad dog has no choice in the way he acts. Joel Burkett, your Honor,
4 has purposefully decided and chosen to act in the manner which

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5 Your Honor, a mad dog has no respect for other people's
6 property. Joel Burkett has purposefully determined in the past to commit the
7 crimes of grand larceny, petty larceny, burglary, robbery, auto theft,
8 possession of stolen property. Your Honor, a mad dog has no respect for the
9 people's dignity. Joel Burkett has purposefully determined on his own to
10 ignore other people's dignity. The sex crimes he stands convicted of today
11 bears record of that.

12 Your Honor, on page 10 of the report, it reflects that
13 Joel Burkett shows no concern nor no sympathy for the victim in this
14 particular crime -- very vicious crime. Your Honor, Mr. Burkett, Joel
15 Burkett, has no respect for human life, just like a made dog.

16 Your Honor, the testimony this Court heard from the stand
17 from the victim as to the facts of the case, what happened out in the desert,
18 this victim -- I don't believe the defendant was bluffing when he attempted to
19 find a place to bury the victim. Talked to his companion about killing the
20 victim.

21 You know, there's an argument to be made -- well, he was
22 just bluffing so she wouldn't report the crime. Your Honor, from the
23 testimony that was adduced from the stand, I believe Joel Burkett was totally
24 willing and totally prepared to go through with that killing, and only because
25 of the other person present did the killing not occur.

26 Your Honor, Mr. Buchanan will argue to the Court, I am
27 sure, that this young man -- he's nineteen years old, he's never convicted of
28 any other adult crimes.

29 Your Honor, there's a good reason for that. This young
30 man turned eighteen in the California Youth Authority. He turned nineteen in
31 the California Youth Authority. He escaped November 29, 1980, and he was
32 apprehended here in Las Vegas for these crimes December 19, 1980. He just

1 didn't have a chance.

2 Your Honor, talking about the California Youth Authority.
3 His own statement reflected in the parole and probation report is he committed
4 so many crimes, he'd been convicted of so many charges down ~~Electronically Filed~~
5 even remember them all. He couldn't even list them all for the parole and
6 probation people. Sept 13 2013 8:26 a.m.
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7 Your Honor, as this Court considers sentencing, it takes
8 into account the character of the defendant, and it also takes into account
9 the nature of the crime committed. This Court heard the testimony of
10 Detective Leonard. He went over to the house where the defendant Burkett was
11 staying, and he obtained some items.

12 One thing the Court may or may not have been aware of is
13 the detective obtained some photographic albums, some photo albums from that
14 house. I'd like, if I could, at this time to have the Court either review the
15 photo albums, or at least a couple of the photographs reflecting Joel Burkett
16 in the photo albums, pictures that come from the California Youth Authority
17 while he was in there, if the Court is so inclined.

18 MR. BUCHANAN: Your Honor, we'd object to that. We haven't had
19 the chance to review it. It's not in the probation report, hasn't been looked
20 at by Parole and Probation. And I know what they're trying to show. They're
21 trying to show this Nazi stuff and pictures.

22 I've seen them before, but I don't think that should be
23 brought before sentencing. We don't come forth knowing that was going to be
24 offered. I'd never seen the entire photograph album. It's been in custody.

25 There have been certain pictures that have been shown me
26 by Detective Leonard, and I've seen those, and I don't feel they're
27 appropriate at this time, and I feel they'd be prejudicial.

28 MR. BLOXHAM: Your Honor, the reason that I offer them is
29 there's a couple of statements made in the report such as the guard in
30 California has indicated this man is a member of the Nazi white power group in
31 California, things like this. This supports and corroborates those
32 statements.

1 I just don't want to have this Court reading over the
2 report and saying, well, a number of these things are uncorroborated. We have
3 some corroboration for some of the statements in the report. We offer them,
4 if the Court chooses. If not, fine. We could move forth with

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Clerk of Supreme Court

5 THE COURT: I choose not.

6 MR. BLOXHAM: Okay, fine. Thank you.

7 Your Honor, what do we have when we consider the nature of
8 the crime, the background of the defendant? We have a very violent, violent
9 individual. His answer to all of these charges against him is, well, he's
10 bitter toward the jury. He's bitter toward the victim. There's people that
11 are conspiring to put him in jail and keep him there.

12 Your Honor, he blames everyone except who's really to
13 blame, and that's himself.

14 Your Honor, Parole and Probation has done a good job in
15 evaluating this defendant, comparing his background, looking at the crime,
16 putting it all together, making a recommendation. They've made a very good
17 recommendation. In fact, they recommended the maximum, with the exception of
18 concurrent and consecutive time.

19 My understanding, they recommended thirty years on the
20 robbery, consecutive to double life on the kidnapping, which are consecutive
21 to each other, but then, as to the sexual assaults, concurrent -- two sexual
22 assaults to the kidnapping and robbery.

23 We'd ask the Court to consider that as the minimum, the
24 minimum recommendation to be considered. The State asks that that be imposed,
25 and we also ask the Court to consider perhaps a heavier sentence due to his --
26 the defendant's -- background, and the serious nature of this crime.

27 Thank you, your Honor.

28 THE COURT: Mr. Burkett, your attorney will have an opportunity
29 to address this Court in your behalf. At this time, do you wish to make a
30 statement in your own behalf or present any information in mitigation of
31 punishment before sentence is pronounced?

32 THE DEFENDANT: Yes, your Honor. You know, he's saying that

1 they -- you know, the Probation Department checked me out real good.

2 Well, they said that -- on page 8 -- I got three brothers
3 in the California prison. I ain't even got three brothers, man, and -- and
4 they're saying that I stole a radio in the jail and I was ^{Electronically Filed} the
5 radio. And I didn't steal a radio. They're going to say that kind of ^{Sept 13 2013 8:26 a.m.}
6 stipulation against me, and I want to say I didn't steal, and I can prove it. ^{Tracie K. Lindeman}
^{Clerk of Supreme Court}

7 Got in the front that he's appointed to me. He's not
8 appointed to me. So this Probation Department, they don't know nothing, man,
9 they don't know nothing. They're going on what Detective Leonard said. This
10 is supposed to be a P & P report, not from a detective that's got something
11 against me, you know.

12 And he's talking about this girl getting up on the stand.
13 She got right up on the stand and said I didn't even kidnap and rob her.

14 That's all I got to say, man.

15 THE COURT: Mr. Buchanan?

16 MR. BUCHANAN: Well, your Honor, I must say this report is
17 probably one of the most negative I've ever read. And of course, as we know,
18 during the trial there was some testimony or at least some evidence brought
19 that when he came down here, that he was going to make a big disturbance.
20 There was also some evidence brought out during the trial, or at least some
21 conversation, that he was a very violent person and had to be watched very
22 carefully.

23 But none of these things ever occurred. He's been in the
24 Clark County Jail now since November. He's never had any incidents up there
25 as far as fights or anything else, violence.

26 This Nazi white supremacy they've talked about over in
27 California -- didn't see none of this.

28 Now he appears and he appeared on the stand and he -- this
29 morning, there was this statement that Guy asked me for some kind of leniency
30 the Court could make. But when I talked to him and when I see him, I see an
31 eighteen-year-old boy who has not had quite as much bravado and macho as he
32 does here in Court and as he did on the stand and as he did this night.

1 We went through a long jury trial on this. There was some
2 evidence we presented, what I thought was a good case, as the jury evidently
3 didn't believe he and his witnesses as to what happened. He's still
4 protesting his innocence and stating that in the probation ^{Electronically Filed} has
5 gone down that that girl was not kidnapped, she went voluntarily, and the
6 rest. ^{Sept 13 2013 8:26 a.m.}
^{Tracie K. Lindeman}
^{Clerk of Supreme Court}

7 We thought, of course, there was some evidence that the
8 jury could have believed. They were out some five or six hours, and evidently
9 they thought something.

10 Anyway, he stands here now with these counts that can go
11 to life. Now, of course, we're not asking the Court for probation, because
12 it's not even available, but before the Court gives some horrendous sentence,
13 some stacked case back to back, life, robbery with use and so forth, I'd like
14 to take into consideration that he is only nineteen, that at this point in his
15 life, he has a lot of violence in himself, and he's shown that in the past.
16 He'll probably show that for a while in the future.

17 But as they teach you in law school, they teach you in
18 psychology and psychiatric evaluation of prisoners, after a while that burns
19 out. Now, how long it will take Joel Burkett to burn out in the Nevada State
20 Prison -- that's one thing. But for the Court to impose some horrendous
21 sentence on the first time that this person has been before the Court as an
22 adult and being sentenced, we'd ask the Court to take that into consideration.

23 Now, this Court can stack a couple of these cases and make
24 sure that he stays in prison for around five to ten years. I think ten years
25 would have to be about the minimum that he could stay, under the case law
26 here.

27 So what I'm asking the Court is not to stack these and go
28 the life as they've recommended in the parole and probation report, but to
29 give him some of these five-year terms back to back, which would insure that
30 he is not eligible for probation for around ten years. In ten years, he'll be
31 twenty-nine years old, and he'll spend most of the best years of his life in
32 prison. And that, of course, will be at least a great inducement to come out

1 and be a worthwhile citizen; but to take somebody at nineteen to twenty-nine
2 and put them in prison I feel is punishment enough.

3 Now, at that point also they're going to have an
4 evaluation of this prisoner in jail, see whether or not he ^{Electronically Filed} so
5 forth and whether or not he can be given probation, so they ^{Sept 13 2013 8:26 a.m.} have a good
6 indication. But I'd ask the Court to take into consideration ^{Tracie K. Lindemeyer} the fact that he
7 is nineteen, the fact that he is a violent person, but I think that can be
8 corrected in prison, or at least thwarted over ten years, which is a long
9 enough time for anyone, and to do it.

10 His parents have been here. His mother and family sat
11 through the whole trial. His father's in the courtroom today. They've stood
12 behind him, and -- and he has a problem with this Court, so I'd ask the Court
13 to give him whatever leniency it can in the sentencing.

14 To characterize him as a mad dog, I don't know. Maybe his
15 background, his upbringing, his treatment with the youth authorities, in being
16 kicked out of school when he was in seventh grade contributed to all of this.
17 But I think at this point that the Court can at least give him some leniency
18 on his first offense.

19 THE COURT: Joel Burkett, in accord with the law of the State
20 of Nevada, this Court does now sentence you to confinement for fifteen years
21 in the Nevada State Prison for the crime of robbery in Count I; and does also
22 sentence you to fifteen years in the Nevada State Prison for use of a deadly
23 weapon in commission of a crime.

24 These two fifteen-year sentences under Count I shall run
25 consecutively to each other.

26 Joel Burkett, in accord with the law of the State of
27 Nevada, this Court does now sentence you to confinement for life in the Nevada
28 State Prison for the crime of first degree kidnapping as set forth in Count II
29 of the information in this case.

30 The Court imposes an additional sentence of life in the
31 Nevada State Prison under Count II for use of a deadly weapon in commission of
32 a crime.

1 These two sentences shall run concurrently -- excuse me --
2 shall run consecutively to each other and shall run consecutively to the
3 fifteen-year sentences imposed under Count I.

4 Joel Burkett, in accord with the law
5 Nevada, this Court does now sentence you to confinement for
6 State Prison for the crime of sexual assault, a felony, as set forth in Count
7 III.

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemier
Clerk of Supreme Court

8 The Court also sentences you to confinement for life in
9 the Nevada State Prison for the crime of sexual assault, a felony, as set
10 forth in Count IV.

11 These two life sentences shall run consecutively to each
12 other but shall run concurrently with the sentences imposed in Count II of the
13 information in this case.

14 MR. BUCHANAN: Thank you, your Honor.

15 MR. BLOXHAM: Your Honor, credit for time served I believe is
16 reflected as 165 days. Is that correct?

17 THE COURT: The defendant is given credit for time served in
18 the sum of 165 days.

19 MR. BLOXHAM: Your Honor, am I to understand that Count I, Count
20 II are consecutive to each other, concurrent to three and four? That's just
21 for clarification, for my sake.

22 MR. BUCHANAN: I think the sentencing was proper.

23 THE COURT: Fifteen, fifteen, life, life. And then you've got
24 two more lifes to run concurrently with those counts.

25 We'll be in recess at this time for a few minutes.

26 * * * * *

27 ATTEST: Full, true and accurate transcript of proceedings.

28 *Constance Kroon*
29 CONSTANCE KROON, C.S.R. NO. 75

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LORETTA BOWMAN
CLERK

By *Tracie K. Lindemen*

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

CASE NO. C52190
DEPT. NO. VII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,
Plaintiff,
v.
JOEL BURKETT aka
Raymond Haire,
Defendant.

JUDGMENT OF CONVICTION
(Jury Trial)

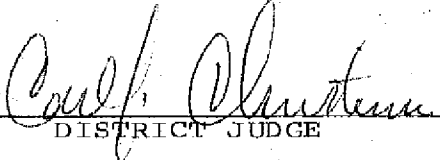
WHEREAS, on the 20th day of January, 1981, the Defendant JOEL BURKETT aka Raymond Haire, entered a plea of not guilty to the crimes of Robbery with Use of a Deadly Weapon in Commission of a Crime, Count I; First Degree Kidnaping with Use of a Deadly Weapon in Commission of a Crime, Count II; Sexual Assault, Count III; and Sexual Assault, Count IV, committed on the 18th day of December, 1980, in violation of NRS 200.380; 193.165; 200.310; 200.364 and 200.366, and the matter having been tried before a jury, and the defendant being represented by counsel and having been found guilty of the crimes of Robbery with Use of a Deadly Weapon, Count I; First Degree Kidnaping with Use of a Deadly Weapon, Count II; Sexual Assault, Count III; and Sexual Assault, Count IV; and

WHEREAS, thereafter, on the 2nd day of June, 1981, the defendant being present in Court with his counsel, JAMES L. BUCHANAN, and DONALD C. BLOXHAM, Deputy District Attorney, also being present, the above entitled Court did adjudge Defendant

1 guilty thereof by reason of said trial and verdict and sentenced
2 Defendant to serve a term in the Nevada State Prison as follows:
3 Count I: Fifteen years for Robbery and an additional fifteen (15)
4 years for Use of a Deadly Weapon in Commission of a Crime, to be
5 served consecutively.
6 Count II: Life with Possibility of Parole and an additional term
7 of Life with the Possibility of Parole for Use of a Deadly Weapon
8 in Commission of a Crime, to be served consecutively. Count II
9 is to be served consecutive to Count I.
10 Count III: Life with Possibility of Parole.
11 Count IV: Life with Possibility of Parole.
12 Counts III and IV to be served concurrent to the sentences imposed
13 in Counts I and II.
14 Defendant granted credit for time served of 165 days.

15 THEREFORE, the Clerk of the above entitled Court is hereby
16 directed to enter this Judgment of Conviction as part of the
17 record in the above entitled matter.

18 DATED this 28 day of July, 1981, in the City of Las Vegas,
19 County of Clark, State of Nevada.

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22 DISTRICT JUDGE
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81-52190X/1b
LVMPD 80-95384
Rob; 1° Kidnap; UDW;
2 cts. of S/A - F

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LORETTA BOWMAN

CLERK

BY

[Signature]

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

CASE NO. C 52190
DEPT. NO. VII

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

THE STATE OF NEVADA,
Plaintiff,
vs.
RAYMOND HAIRE aka
JOEL BURKETT,
Defendant.

MOTION FOR ORDER EXTENDING
TIME FOR FILING DESIGNATION
OF RECORD ON APPEAL

COMES NOW, EARL T. AYERS, court-appointed Counsel
for the defendant herein and moves this Honorable Court for
an Order extending the time for filing the Designation of Record
on Appeal herein for the reasons that he was court-appointed
to represent the defendant herein on his appeal and was not
his trial counsel, that he has not been able to review the trial
transcript and the file of the defendant herein to determine
what matters should be appealed and he has not had an opportunity
to talk to the defendant herein about the appeal.

SMITH, MAURER & AYERS

BY:

[Signature]

EARL T. AYERS
2770 S. Maryland Pkwy., #500
Las Vegas, NV 89109
Attorneys for Defendant

O R D E R


Good cause appearing,

IT IS ORDERED, ADJUDGED AND DECREED that the court-

1 appointed counsel, EARL T. AYERS, for the defendant herein,
2 shall have up to and including the 31st day of August, 1981,
3 to file his Designation of Record on Appeal in the above-entitled
4 matter.

5 DATED this 29 day of July, 1981.

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Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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7 
8 CARL J. CHRISTENSEN
DISTRICT COURT JUDGE

9 Submitted by:

10 SMITH, MAURER & AYERS

11 BY: Earl T. Ayers
12 EARL T. AYERS
13 2770 S. Maryland Pkwy., #500
14 Las Vegas, NV 89109
Attorneys for Defendant

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1 CASE NO. C 52190

2 DEPT. VII

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3 GRETIA BOWMAN
4 CLERK

5 BY Arline Davis Electronically Filed
6 Sept 13 2013 8:26 a.m.
7 Tracie K. Lindemen
8 Clerk of Supreme Court

9 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF CLARK

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 JOEL BURKETT a/k/a)
15 RAYMOND HAIRE,)

16 Defendant,)

DESIGNATION OF RECORD
ON APPEAL

17 Defendant, JOEL BURKETT, hereby designates the complete
18 record for appeal, together with the transcript of the trial,
19 including the voir dire of the jury, plaintiff's and defendant's
20 proposed jury instructions, and all exhibits used at trial.

21 DATED this 19th day of August, 1981.

22 SMITH, MAURER & AYERS

23 BY: Earl T. Ayers

24 EARL T. AYERS
25 2770 S. Maryland Pkwy., #500
26 Las Vegas, NV 89109
27 Attorneys for Defendant

28 RECEIPT OF A COPY of the above and foregoing Designa-
29 tion of Record on Appeal is hereby acknowledged this 20th
30 day of August, 1981.

31 ROBERT MILLER, DISTRICT ATTORNEY

32 BY: James T. Rutland

200 E. Carson
Las Vegas, NV 89101

FILED

AUG 20 2 32 PM '81

LORETTA BOWMAN
CLERK

BY *Arline Davis*

1 CASE NO. C 52190

2 DEPT. VII

Electronically Filed
Sept 13 2013 8:26 a.m.
Tracie K. Lindemen
Clerk of Supreme Court

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

7 IN AND FOR THE COUNTY OF CLARK

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

ORDER FOR TRANSCRIPT

12 JOEL BURKETT a/k/a)

13 RAYMOND HAIRE,)

14 Defendant.)

15 It appearing to this Court that, EARL T. AYERS,
16 was appointed by this Court to represent the above named defendant
17 for his appeal, and that a Notice of Appeal in the captioned
18 matter has been filed, and good cause appearing therefor,

19 IT IS HEREBY ORDERED, that the Court Reporter for
20 the trial in the captioned matter, to-wit: CONSTANCE KROON,
21 be and hereby is ordered to prepare an original and three
22 copies of the complete transcript of the trial in the captioned
23 matter, including voir dire of the jury, said trial having
24 been heard before the above entitled court on May 4, 1981.

25 DATED this 20 day of August, 1981.

26 *Paul J. Christensen*
27 DISTRICT COURT JUDGE

28 SMITH, MAURER & AYERS

29 BY: *Earl T. Ayers*
30 EARL T. AYERS
31 2770 S. Maryland Pkwy., #500
32 Las Vegas, NV 89109
Attorneys for Defendant

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1 CASE NO. **C52190**

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CLERK OF SUPREME COURT

BY *Jinda Severn*
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Sept 13 2013 8:26 a.m.

Tracie K. Lindemen
Clerk of Supreme Court

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5 IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
6 COUNTY OF CLARK, STATE OF NEVADA
7

8 THE STATE OF NEVADA,)
9 Plaintiff,)
10 VS.)
11 JOEL BURKETT,)
12 Defendant.)
13

CASE NO. 5126
DOCKET NO. 80-F
D.A. NO. 80-F-5126

14
15 REPORTER'S TRANSCRIPT
16 OF
17 PRELIMINARY HEARING
18

19 BEFORE THE HONORABLE EARLE W. WHITE, JR., JUSTICE OF THE PEACE
20 FRIDAY, JANUARY 9, 1981
21

22 APPEARANCES:

23 For the State: MELVYN T. HARMON, ESQ.
24 Deputy District Attorney
25 For the Defendant: WILLIAM P. HENRY, ESQ.
26 Deputy Public Defender
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28
29

30 Reported by: Paul DeGagne, CSR
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I N D E X

<u>PLAINTIFF'S WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	Electronically Filed Sept 13 2013 8:26 a.m. Tracie K. Lindemen Clerk of Supreme Court
Tina Cage				
By Mr. Harmon	4		36	
By Mr. Henry		29		
Richard Davies				
By Mr. Harmon	37			
By Mr. Henry		41		

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 9, 1981, 9:00 A.M.

2 * * * * *

3 Electronically Filed
4 Sept 13 2013 8:26 a.m.
5 Francis C. Lindeman
6 Clerk of Supreme Court

7 THE COURT: This is the time set for the hearing in case number 5126-80F, the State of Nevada versus
8 Raymond Haire also known as Joel Burkett. The record will
9 show the presence of the defendant together with his counsel,
10 Mr. Henry, and Mr. Harmon representing the State.

11 Mr. Harmon, call your first witness, please.

12 MR. HARMON: Tina Cage.

13 MR. HENRY: Defense would move to exclude witnesses,
14 your Honor.

15 THE COURT: There has been a motion to exclude
16 witnesses and the motion is granted. All witnesses who are
17 here on the case of the State versus Raymond Haire also known
18 as Joel Burkett are excluded from the courtroom and are
19 admonished not to discuss their testimony with any other
20 person until we have completed this preliminary hearing.

21 MR. HARMON: Your Honor, may counsel approach the
22 bench?

23 THE COURT: You may.

24 (Discussion at the bench.)

25 THE COURT: There has been a request made and the
26 reasons stated that the courtroom be cleared for the testimony
27 of this witness. I am going to ask the bailiff that the
28 entire courtroom be cleared of spectators.

29 A SPECTATOR: Your Honor, I would like to stay. I
30 am the defendant's mother.

31 MR. HARMON: Your Honor, I would imagine that
32 in particular the motion would apply to her.

THE SPECTATOR: I came all the way from California
to hear this hearing today.

-3-

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1 THE COURT: Ma'am, it will be my order that the
2 courtroom be cleared.

3 MR. HENRY: This only applies as to the witness who
4 is about to testify; is that correct?

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Clerk of Supreme Court

5 THE COURT: Just as to this witness?

6 MR. HARMON: Oh, yes, just as to this witness.

7 THE COURT: Just as to this witness and then we will
8 allow any of the spectators back in.

9
10 TINA CAGE,
11 called as a witness by the State, having been first duly sworn,
12 testified as follows:

13 THE CLERK: Will you state your name and spell your
14 last name, please.

15 THE WITNESS: Tina Cage, C-a-g-e.

16
17 DIRECT EXAMINATION

18 BY MR. HARMON:

19 Q Is it Miss or Mrs. Cage?

20 A Mrs.

21 Q Mrs. Cage, are you employed at this time?

22 A Yes.

23 Q Where do you work?

24 A Stop 'N Go.

25 Q Where is the Stop 'N Go Market located that you work
26 at?

27 A It is on the corner of Maryland Parkway and Stewart.

28 Q How long have you worked there?

29 A Two weeks.

30 Q Did you formerly work at the Stop 'N Go Market
31 located at 732 North Eastern Avenue?

32 A Yes.

1 Q Is that in Las Vegas, Clark County, State of Nevada?
2 A Yes.
3 Q What number Stop 'N Go Market was that?
4 A 759.
5 Q How long did you work at the Stop 'N Go Market
6 situated at 732 North Eastern Avenue?
7 A About five days, I think.
8 Q What type of work did you do at the Stop 'N Go
9 Market located on Eastern Avenue?
10 A I was a clerk.
11 Q Were you employed as a clerk at that store on
12 December 18, 1980?
13 A Yes.
14 Q Do you remember being there shortly after midnight
15 on December 18, 1980?
16 A No.
17 Q What time did you begin your employment on
18 December 18, 1980?
19 A 11:00 o'clock p.m.
20 Q That would have been a Thursday?
21 A Right.
22 Q At 11:00 o'clock p.m.?
23 A Uh-huh.
24 Q Was that your answer?
25 A Yes.
26 Q How long was your shift to be?
27 A I worked until 7:00 a.m.
28 Q Sometime after you came to work at 11:00 o'clock
29 p.m. on December 18, 1980 did something unusual happen?
30 A Yes.
31 Q Tell us what happened.
32 A Well, I came to work at 11:00 and I asked the relief

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Clerk of Supreme Court

1 girl if she was busy and how things were going that night.

2 She said, you know, it was fairly busy but nothing to-- I

3 don't know. It was average. Okay. So, she left and I
4 continued to just run the counter and help the customers.
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5 I would say about-- The last time I looked at
6 the clock it said 10 to 12:00. This man came in and he bought
7 a pack of rolling papers. I didn't think anything of it. He
8 left, and about 15 minutes later--

9 Q Describe the man who came in and bought a package
10 of rolling papers.

11 A He was about six foot, six foot two, blonde hair
12 and wearing a white T-shirt, black leather or plastic vest,
13 jeans. He had a Van-dyke.

14 Q A Van-dyke what?

15 A Mustache and beard. I don't know how to describe it.

16 Q Mustache and beard?

17 A Well, partial. It was just on his chin.

18 Q Did this person come in by himself?

19 A The first time, yes.

20 Q Look around the courtroom and state whether that
21 person is present at this time.

22 A Yes, he is present.

23 Q Will you point to him and describe how he is dressed.

24 A He is wearing a striped shirt, white T-shirt,
25 handcuffs.

26 MR. HARMON: Your Honor, may the record show that
27 the witness has identified the defendant, Joel Burkett?

28 THE COURT: It may.

29 BY MR. HARMON:

30 Q You say this was about 10 minutes to 12:00?

31 A That was the last time I looked at the clock. I
32 would say five or ten minutes had passed since then.

1 Q So, it was close to midnight?
2 A Yes.
3 Q Were you the sole employee at the Stop 'N Go Market at
4 the time the defendant came in the first time?
5 A Yes. I work alone.
6 Q Did you see him again sometime after that?
7 A Yes. He came back in about 15 minutes later.
8 Q Can you estimate approximately what time that would
9 be?
10 A Probably about five or ten after 12:00, quarter after.
11 Q That would now be December 19, 1980?
12 A Yes.
13 Q Was he by himself or was he with someone else at
14 that time?
15 A He walked in the door and a few minutes later--
16 well, not a few minutes. Maybe 30 seconds or so later another
17 kid walked in behind him, but I didn't know they were together
18 at the time.
19 Q Were any other customers in the store at this time?
20 A The second time he came in?
21 Q Yes.
22 A No.
23 Q Were you still the sole employee of the Stop 'N Go
24 Market?
25 A Yes.
26 Q What happened shortly after midnight?
27 A He came in and went back to the back cooler where
28 the beer is kept. He went in and got two beers.
29 Q When you say he who are you talking about?
30 A The defendant.
31 Q The man whom you previously identified?
32 A Yes.

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1 Q What did he get?

2 A He got two bottles of Michelob out of the cooler.

3 About the time he was halfway up the aisle the other kid came in and I just gave him a glance. I didn't think anything of it.

4 Q You say another kid came in. Will you describe that person.

5 A He was about five foot five, five foot six. He
6 was a young kid, 17 or 18. He had brown hair and was wearing
7 a Levi jacket. He walked over to the drink center and looked
8 like any other kid that comes in the store.

9 Q What did the defendant, Mr. Burkett, do with the
10 two bottles of Michelob?

11 A As far as I remember, he left them on the counter.

12 Q On the counter where?

13 A By the cash register.

14 Q What happened after the young kid, as you described
15 him, came in?

16 A He walked over by the drink center which is located
17 on the right side of the counter where the register is. I
18 just glanced over and didn't think anything of it. He was going
19 to get a soda, so about that time the other fellow brought his
20 beer up to the counter--

21 Q By the other fellow you are indicating the defendant,
22 Mr. Burkett?

23 A Yes. Anyway, he brought his beer up to the counter
24 and I started to ring it up. The next thing I knew I had a
25 knife at me and the kid was trying to drag me in the back room
26 asking me where the back door was.

27 Q It was the younger person who had the knife?

28 A Yes.

29 Q Where did he have the knife?

30 A In his hand.

1 Q What was he doing with it?
2 A Holding it up near my throat on my chest.
3 Q What happened then?
4 A He headed toward the back room. He asked Eric K. Lindgren
5 the back door was and I said there wasn't one. He said, Clerk of Supreme Court
6 "We are going out the front then."
7 Q This is still the younger of the two?
8 A Yes. And he proceeded to drag me out the front door.
9 Q What was Mr. Burkett, the defendant, doing at this
10 time? Could you see?
11 A I couldn't really see what he was doing.
12 Q Where was he at the time you last observed him
13 before the knife was produced?
14 A Standing by the front by the cash register.
15 Q With the Michelobs?
16 A Yes.
17 Q And the other fellow was dragging you out the door
18 you say?
19 A Yes.
20 Q This was out the front door of the Stop 'N Go
21 Market?
22 A Yes.
23 Q What happened then?
24 A About that time the other fellow that is here, I
25 could hear him coming up behind us and the car doors were
26 open and he said I had to get in the car.
27 Q By the other fellow that is here you are again
28 referring to the defendant whom you have already identified?
29 A Yes.
30 Q Did you see a car at that time?
31 A I saw a car about the time we went around the side
32 of the store. I couldn't see it from inside the store. I saw

1 it after he had taken me out the door.

2 Q Are you able to give any type of description of
3 the car?

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Clerk of Supreme Court

4 A Yes.

5 Q Describe the car as you remember it.

6 A The way I saw it it was about a 1974 Maverick. I am
7 not too good on years, but I believe it was a 1974 Maverick
8 two-door and it was sitting there running. I didn't notice
9 the license plate.

10 Q What happened at this time?

11 A The kid pushed me in the car and they both got in
12 the car and shut the doors and took off down the street.

13 Q Where were you placed into the vehicle?

14 A On the front seat.

15 Q At the time you were placed into the front seat was
16 the knife still visible in the hand of the second subject, the
17 younger of the two?

18 A Yes. He had one arm around my shoulder and the
19 other arm had the knife at my stomach.

20 Q Where did he get into the car?

21 A He got in right behind me. He pushed me in the car
22 and got in behind me.

23 Q Was that on the driver's or passenger's side?

24 A Passenger's side.

25 Q Did a second person get into the vehicle also?

26 A Yes.

27 Q Who is that?

28 A The fellow sitting over there. He got in on the
29 driver's side.

30 MR. HARMON: Your Honor, may the record again show
31 that she is pointing to the defendant, Mr. Burkett?

32 THE COURT: It may.

1 BY MR. HARMON:

2 Q So, he drove the vehicle?

3 A Yes.

4 Q Where were you taken?

5 A They started going down the street on the side of
6 the store. I don't know the name of the street. They turned
7 into an apartment complex and the fellow again asked-- he asked
8 the other kid if he could get out this way. I presume he was
9 talking about getting back on the main street.

10 Q You say he asked the other kid. Who is he?

11 A The fellow sitting over there.

12 Q The defendant who is in court?

13 A Yes.

14 Q Before you left the Stop 'N Go Market did this
15 younger fellow say anything at the time he pulled the knife?

16 A No.

17 Q Did you ever see any money removed from the cash
18 register at the Stop 'N Go Market either on December 18 or
19 December 19, 1980?

20 A You mean did I ever see anybody take it out?

21 Q Yes.

22 A No.

23 Q Did anyone tell you they were going to take any
24 money? By they I mean either the defendant who is in court or
25 the younger subject?

26 A No.

27 Q Did you give anyone permission either on December 18,
28 1980 or December 19, 1980 to remove any property or money from
29 the Stop 'N Go Market located at 732 North Eastern Avenue?

30 A No.

31 Q Did you consent to go with these two people in this
32 1974 Maverick that you have referred to?

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1 A Absolutely not.

2 Q Where were you taken?

3 A They came back out on Eastern Avenue and made a left
4 on Eastern to Bonanza. They went up Bonanza and at Trademark Center
5 I asked them what they were going to do with me. Clerk of Supreme Court
6 were going to get some gas and drop me off by the store.

7 They went up Bonanza to a 7-Eleven on the
8 cross street of Maryland Parkway and stopped to get gas.

9 Q At the time you were driven to this location was
10 any weapon displayed?

11 A Yes. The other fellow who isn't here still had
12 his arm around me and the knife was still at my stomach.

13 Q Were you able to give any type of description of
14 the knife this other fellow had?

15 A When he had it in his hand he was wearing a jacket
16 and the only thing I could see was the blade. He had the
17 handle like under his-- he was carrying it so I could only see
18 the blade of it coming out from under his jacket.

19 Q Are you able to describe the blade?

20 A Yes. It was a fairly thick blade like a hunting
21 knife. It was fairly large.

22 Q About how long was the blade?

23 A About five or six inches.

24 Q Did the two subjects in fact get gasoline?

25 A Yes.

26 Q Who did that? Did they both get out of the car?

27 A No. The defendant over there got out of the car
28 and went into the store.

29 Q Did the second younger subject remain with you?

30 A Yes.

31 Q Did he continue to display the weapon?

32 A Yes.

1 Q What happened after gas was obtained?

2 A They pulled out of the 7-Eleven and went over some
3 small street-- They pulled straight out of the 7-Eleven and
4 went back down toward-- I am trying to think. They went down
5 the side street and they ended up on Washington going
6

7 Q You are saying they. Are you referring to the
8 defendant and this younger person again?

9 A Yes.

10 Q Who was driving at this time?

11 A The defendant sitting over there.

12 Q Eventually were you taken east on Lake Mead Boulevard?

13 A Yes.

14 Q Describe what happened then.

15 A Okay. They started driving out Lake Mead Boulevard
16 toward the lake. I again asked them what was going on and what
17 they were going to do with me. The defendant sitting over
18 there said he just wanted to think things over. We were just
19 going to keep driving for awhile.

20 So, he pulled out on Lake Mead and we got up
21 over the hill out of view of the city. He was looking around
22 for roads to pull off the side of the street or off the main
23 road. He finally came across one and we drove back on a dirt
24 road maybe a half a mile to the end of the road. He turned
25 the car around. There was like a turn around at the end of
26 the road and he turned the car around and parked it and shut the
27 motor off.

28 Then they sat there for a minute and the
29 defendant went outside to go to the bathroom. At that time the
30 younger kid started making advances on me trying to put his
31 hand in my shirt.

32 Q At this time was any type of weapon displayed by
either subject?

1 A At this time I don't know what happened. I assumed
2 the kid put the knife in his pocket because he was using both
3 of his hands.

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4 Q What did the kid start to do?

5 A He started to unbutton my blouse and he started to
6 put his hand underneath my shirt.

7 Q Had you given your consent to come to this particular
8 location with these two people?

9 A No.

10 Q Why had you gone along with him in the car?

11 A I had no choice. I was dragged into the car with
12 a knife at my throat. What am I supposed to do?

13 Q Did you consent to the advances being made by the
14 subject who is not present in court?

15 A No.

16 Q What did he do?

17 A Well, he tried to get my blouse off and I tried to
18 tell him, you know, "This isn't necessary. I mean, what are
19 you doing this for?" He just told me to relax and be calm and
20 he said, "You are not going to get hurt." About that time the
21 other defendant who is sitting here in the courtroom came back
22 in and they both started trying to take my shirt off. I tried
23 to talk them out of it and they just told me to stay calm. He
24 says, "You are not going to get hurt if you just stay calm."

25 MR. HENRY: Pardon me, ma'am.

26 Your Honor, when she testifies as to conversations
27 could we have her attribute that to either one person or the
28 other?

29 MR. HARMON: Sure.

30 THE COURT: Yes.

31 BY MR. HARMON:

32 Q Are you able to remember who said what in regards to

1 the testimony you just offered?

2 A Well, both of them said it at one time or another.

3 I mean, they both told me not to get too scared, t
4 weren't going to hurt me.

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5 Q At the time this was happening were you
6 if the defendant, Mr. Burkett, had any type of weapon on his
7 person?

8 A No.

9 Q Did there come a time when your clothes were removed?

10 A Yes.

11 Q Explain how that happened.

12 A When all three of us were sitting in the front seat
13 each one of them-- well, they unbuttoned my shirt and took my
14 shirt off and then they--

15 A You are saying they again. Were they both doing this?

16 A They both took my shirt off, yes. Then I can't
17 remember which one, but one of them took my bra off and then I
18 think it was the other fellow, the kid, that unzipped my pants
19 and unsnapped them and they started to tug them down.

20 Q What happened then?

21 A Well, they took them off and they sat for a minute
22 and argued over who was going to get ahold of me first and then--

23 Q Where were you physically located at the time?

24 A Still seated in the middle between the two of them
25 in the front seat of the car.

26 Q Were you still wearing your underwear?

27 A No.

28 Q At this time you were totally nude?

29 A Yes.

30 Q What happened after the conversation had been
31 completed about who would get at you first?

32 A The other kid who is not here opened the door and

1 told me to get out of the car. I got out of the car and he
2 told me to bend over so that my head was in the front seat
3 and my butt was sticking out the back door.

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4 Q What happened then?

5 A He tried to penetrate my-- he tried to penetrate my
6 anus with his penis.

7 Q Do you know if there was actually penetration?

8 A Slightly, but he couldn't complete what he was
9 trying to do.

10 Q Did there come a time when the defendant who is
11 present in court had any sexual penetration?

12 A Yes.

13 Q When was that?

14 A That was after the other kid who is not here was
15 through.

16 Q You say the person who is not here tried to
17 penetrate your anus. Did he have any other type of sexual
18 penetration?

19 A Yes. After he couldn't penetrate the anus he went
20 for the vagina.

21 Q Where did that happen?

22 A That was-- I was still in the same position.

23 Q Did the other person succeed in penetrating your
24 vagina?

25 A Yes.

26 Q And this is with what?

27 A His penis.

28 Q Did you give your permission to have him do that?

29 A No.

30 Q Where was the defendant, Mr. Burkett, at that time?

31 A He was sitting in the front seat.

32 Q What happened after the sexual intercourse that you

1 just described occurred with the second younger person who is
2 not present?

3 A After he was through he walked away. Then I was
4 shivering pretty bad half because I was scared and half because
5 I was cold. I asked him if there was a coat I could put on
6 because I was freezing.

7 Q Who did you ask that?

8 A I am not sure.

9 Q You asked for a coat. Was there a response?

10 A Yes. I believe-- I am not absolutely sure, but I
11 believe that the defendant sitting here gave me a jean jacket
12 to put on.

13 Q Did you put the jacket on?

14 A Yes.

15 Q What happened then?

16 A Well, I had it over my shoulders. Then the defendant
17 asked me to step around behind the car with me. He leaned
18 me up against the back of the car and started kissing me. I
19 was shivering and shaking so bad and by this time the other
20 kid was sitting in the front seat of the car and he asked the
21 other kid to leave the car so that him and I could go in the
22 car.

23 Q Did the other fellow leave the car?

24 A Yes, after about five minutes.

25 Q What happened then?

26 A We both went into the front seat of the car and he
27 started kissing me again. He told me to lean back and he put--
28 I put the jacket down by the door so I wouldn't break my
29 neck or hurt my head or anything and I laid down on the front
30 seat of the car and he laid down on top of me and proceeded
31 to penetrate.

32 Q Who is he that you are referring to now?

1 A The defendant sitting in the courtroom.
2 Q The person you have already identified?
3 A Yes.
4 Q What type of penetration occurred at this time of
5 your body by the defendant?
6 A He put his penis into my vagina.
7 Q Did you consent to that action?
8 A No.
9 Q Why did you permit him to do it?
10 A I didn't think there was any possible way of
11 getting away from him.
12 Q Can you estimate about what time it was at the time
13 this occurred?
14 A It was probably-- I am only guessing, but I would
15 say about maybe 1:00, 1:15.
16 Q Was there anyone else in this area besides yourself,
17 the defendant and the second younger subject you have
18 described?
19 A You mean was there anybody out there with me?
20 Q Yes.
21 A No.
22 Q What happened after the sexual conduct by the
23 defendant occurred which you have just described?
24 A I opened the door and I got up out of the car. I
25 had to go to the bathroom and I changed my mind and went back
26 into the car. I asked him if I could put my clothes on and
27 he threw my clothes at me.
28 Q Who did that?
29 A The defendant sitting here in the courtroom.
30 Q What happened then?
31 A Well, he gave me my clothes and I put them on. I put my
32 shirt and pants on. I did not put my underwear on. We sat

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Clerk of Supreme Court

1 in the front seat of the car and I asked him what was going to
2 happen now.

3 Q Do you know what happened to your underwear?

4 A They were in the car somewhere, but I don't know exactly. I assume they went in the back seat.

6 Q What garments are you referring to specifically
7 when you speak of your underwear?

8 A My bra and my panties.

9 Q What happened after you got the outer garments on?

10 A I put those on and everybody sat in the front seat
11 again, myself in the middle, the defendant sitting here in
12 the driver's side and the younger kid was sitting in the
13 passenger's seat. I asked him if he was going to let me go
14 now or what he was going to do and he said he was going to
15 think about it for a minute.

16 Q Who said that?

17 A The defendant.

18 Q He said he wanted to think about it for awhile?

19 A He said he wanted to think it over, yes.

20 Q Were you taken to another location then?

21 A After a few minutes, yes.

22 Q Will you explain where it was you were taken.

23 A He pulled back onto the main road. I believe it
24 is called North Shore Road. I told him to make a right and he
25 would be back in town. He asked his friend on my right which
26 way. He told him to make a left and they turned left towards
27 Lake Mead.

28 Q Did there come a time when the vehicle was stopped
29 a second time?

30 A Yes.

31 Q Can you explain the circumstances of that happening?

32 A Yes. When he pulled off the dirt road from the

1 first time and proceeded to turn left I asked him, you know,
2 to let me out here.

3 Q Are you referring to the defendant?

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4 A Right. I asked him to let me out right here.
5 told him it would be fine. I said it would take me two hours
6 to walk back to town and by then they could be long gone. He
7 said he wanted to think it over. He said if he let me go at
8 all, it would be someplace where I would be safe.

9 Q What happened then?

10 A He said he wanted to still think things over and he
11 turned up the radio real loud. We drove for maybe a mile,
12 a mile and a half, and then he turned off onto another dirt
13 road on the right side of the road.

14 Q Did you stop at that location?

15 A He drove down the road quite a ways this time. It
16 was about a mile back.

17 Q The defendant, Mr. Burkett, is still driving?

18 A Yes.

19 Q What happened after he stopped the car?

20 A All right. They pulled down the dirt road and
21 turned it around, turned the car around so it was facing the
22 same way we came in. They shut the car off and I asked him
23 what was going to happen.

24 Q You asked who what was going to happen?

25 A I asked the defendant.

26 Q What did you ask him as opposed to the other
27 defendant?

28 A I asked him if he was going to let me go or kill me
29 or what was going to go on. I wanted to know what was going to
30 happen to me.

31 Q Why did you ask him as opposed to the other person?

32 A He seemed to be the person in control of the

1 situation.

2 Q Did he reply to your question?

3 A He said he still wanted to think it over. Electronically Filed
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4 mentioned something about something happening before and that
5 he let somebody else go and he had done some time for that.
6 He thought I would do the same thing and he was kind of
7 skeptical about letting me go.

8 Q Were any additional sexual advances made at the
9 location you were at at this time?

10 A Yes.

11 Q Describe what happened.

12 A After we talked for a minute and he was talking to
13 his friend, just chatter, he said to his friend, "I think we
14 ought to undress her one more time."

15 Q Who is he who you are talking about?

16 A The defendant sitting here in the courtroom.

17 Q Were you undressed again?

18 A Yes.

19 Q By whom?

20 A Both of them.

21 Q What happened after you were undressed?

22 A The younger kid who is not here now pulled my head
23 down to his penis and made me have oral sex while my butt was
24 facing out the door.

25 Q At this time did his penis penetrate your mouth?

26 A Yes.

27 Q Did you give permission for that to happen?

28 A No.

29 Q What happened after that occurred?

30 A While he was doing that the defendant sitting here
31 in the courtroom positioned my butt out the door again and
32 proceeded to penetrate my anus with his penis.

1 Q Are you sure actual penetration occurred?

2 A Yes.

3 Q Did you consent to that conduct by the defendant?
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4 A No, sir.

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5 Q Why did you permit him to do it?

6 A There was nothing I could do to get out of it.

7 Q Either at that time or subsequently were threats
8 made?

9 A They were discussing whether or not they were going
10 to kill me, yes.

11 Q When did that discussion occur?

12 A Just before he said, "We ought to undress her one
13 more time."

14 Q What was the discussion and, if you can, indicate
15 who said what.

16 A Okay. The defendant sitting here in the courtroom
17 did most of the talking. The conversation mainly was between
18 them and I would ask him if he was going to let me go and
19 such and such. He goes, "Well, I could let you go or I could
20 do something other"-- He said, "I could fix you so you can't
21 say anything out here or I could let you go." At that point
22 I didn't know what to say. I was quiet for a few minutes.
23 After the assaults the defendant sitting here in the courtroom--

24 Q You are referring to the sexual assaults that you
25 have described?

26 A Yes. After that was over and when I put my clothes
27 back on the defendant sitting here asked the other one who is
28 not here his opinion on whether or not they should kill me.
29 The kid just replied, "I don't know."

30 Q Did the defendant indicate how you were to be killed,
31 if that was to happen?

32 A He didn't mention particularly, but after seeing the

1 knives I assumed that they were going to stab me to death.

2 Q You did see knives?

3 A Yes.

4 Q At what point did you first see the defendant
5 Mr. Burkett, with a knife?

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6 A We were sitting in the front seat of the car and he
7 told the other fellow who is not here to go ahead and give it
8 to him and the other kid pulled a big buck knife out from under
9 the sun visor and handed it to him.

10 Q Was this before or after the sexual assaults?

11 A After.

12 Q What happened then with the buck knife?

13 A He held it in his hand for a few minutes.

14 Q Who held it?

15 A The defendant sitting here in the courtroom.

16 Q Where are you physically located at this time?

17 A I am still sitting in the front seat of the car
18 between both of them. The defendant was sitting on my left side
19 in the driver's seat.

20 Q What happened after he held it?

21 A He held it for a few minutes and him and his partner
22 there were discussing where they were going to bury me. I kept
23 telling them that there was no sense in killing me. I said--
24 I kept asking them why. At this point he started to get a
25 little angry and told me to quit pleading with him. He said to
26 his partner that he didn't want to kill me in the car.

27 Q Who said this?

28 A The defendant sitting here said to the other fellow
29 that he didn't want to kill me in the car because he didn't
30 want a mess in the car.

31 Q What happened then?

32 A Then I kept talking to him, you know, trying to keep

1 him calm because he seemed to be getting a little upset. I
2 kept saying, "Why do you have to kill me? I mean, there is no
3 sense to it." He asked his partner-- he goes, "Well, what do
4 you think." The kid didn't say anything, so the defendant
5 sitting here in the courtroom opened the car door and got out
6 and motioned for me to follow him.

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7 I thought to myself that I wasn't going to go
8 outside. The other kid that was with him who is not here
9 started to push me out of the car. I was hanging onto the
10 steering wheel trying not to get out. He finally pushed me out
11 of the car. As he pushed me out the car I tried to knock
12 down the defendant. I had to fight. I couldn't just let him
13 stab me to death.

14 Q What happened then?

15 A He grabbed me around the neck.

16 Q Who grabbed you around the neck?

17 A The defendant sitting here grabbed me around the neck
18 and I could see the knife in his hand. He told me--

19 Q Was this the buck knife you referred to?

20 A Yes. He told me, "That was a real stupid move." He
21 said, "I knew you would tell," or something of that sort. We
22 struggled for a few minutes outside the car and then he still
23 had his-- the defendant sitting in the courtroom still has his
24 arm around my neck and he kind of shoved me in the car. The
25 other fellow who isn't here grabbed my hair and they were
26 trying to snap my neck.

27 The defendant sitting here in the courtroom
28 said, "Snap her neck and that is it. She is dead." I managed
29 somehow-- I don't know how-- to get my head underneath his arm
30 and out of his grip. The other kid then grabbed my hair and
31 they pinned me down in the front seat of the car. The defendant
32 sitting here in the courtroom had the knife raised above me

1 right above my throat. I was looking right up at it and I
2 just pleaded with him. I said, "Why kill me? I just want to
3 live."

4 He just looked at me for a few minutes and I
5 just kept saying, "I just want to live. I want to live." At
6 that time the other fellow who is not here whispered in the
7 defendant's ear who is sitting here. He said, "I don't think
8 she will tell. I don't think she will tell." He stopped for
9 a minute and thought and said, "Let her sit up."

10 Q At any time during the exchange you just described
11 did the defendant place the knife anywhere near your crotch
12 area?

13 A This was after he let me up.

14 Q What happened in connection with that?

15 A After he let me up we were all sitting again in
16 the front seat. I am still in the middle. He sat there for a
17 minute with the knife in his hand thinking--

18 Q You are referring to whom again?

19 A The defendant sitting here in the courtroom. We
20 sat there for a few minutes and I guess he was thinking things
21 over. Then he put the buck knife between my legs and told me
22 to describe him. I looked over at him and I described him as
23 six foot, blonde hair, mustache, white T-shirt, jeans. He
24 looked over-- The defendant sitting here looked over at the
25 other fellow who is not here and said, "She can describe us.
26 What do you think?" The kid didn't say a word so he sat there
27 for a few more minutes and nobody did anything. We just sat
28 there.

29 After a few minutes of thinking the defendant
30 sitting here looked over at the other fellow and said, "I am
31 going to let her go." He said, "Does that hurt your feelings?"
32 and the other fellow replied, "Not really."

1 Q Were you subsequently let go?

2 A A short time after that, yes.

3 Q Explain how that happened.

4 A After he said that he looked at me and said, "I am going to let you
5 told you I wasn't going to hurt you, so I am going to let you
6 go." They started up the car and drove back into town.

7 Q Where were you let out of the car?

8 A He told me that he would let me out near my house,
9 but--

10 Q Who is he?

11 A The defendant sitting in the courtroom told me he
12 would drop me off by my house. As were going down Lake Mead--
13 I had no intentions of him dropping me off in front of my
14 house. I remembered some apartment complex down there by the
15 Winchell's Donuts by Lake Mead, so I told him to make a left
16 there. He turned left and I pointed out some apartments.
17 They drove a short distance past there and the other fellow who
18 is not here opened the door and they let me out.

19 Q Where did you go?

20 A I ran up the street to a saloon. I saw a North
21 Las Vegas police car up there and I went in the saloon.

22 Q Did you report to an officer inside what happened?

23 A I told him I was kidnapped, yes.

24 Q Did you leave any garments inside the Maverick
25 driven by the defendant, Mr. Burkett?

26 A Yes.

27 Q What did you leave?

28 A As far as I know, my underwear was still in there,
29 bra and panties.

30 Q Can you estimate about what time it was when you
31 were let out of the vehicle by the two men?

32 A On the radio on the way into town I think it said

1 quarter after 3:00.

2 Q That is a.m.?

3 A Yes.

4 Q The date is now December 19, 1980?

5 A Yes.

6 Q Did all that you have testified to occur in
7 Clark County, State of Nevada?

8 A Yes.

9 Q Throughout the period of time you were held in the
10 vehicle were you there with your permission?

11 A No.

12 Q Digressing just momentarily, before you were removed
13 from the store did you observe money to be in the cash
14 register?

15 A Yes.

16 Q Can you give us any type of indication as to how
17 much money belonging to Stop 'N Go Market was in the cash
18 register?

19 MR. HENRY: Object. Leading.

20 THE COURT: He is asking for an estimate.

21 MR. HENRY: He is also talking about who owned the
22 money.

23 MR. HARMON: That part might be leading, yes.

24 THE COURT: All right. Sustained on that basis.

25 BY MR. HARMON:

26 Q Can you estimate how much money was in the cash
27 register?

28 A Well, we were supposed to make regular drops of money
29 into the safe. I had just dropped \$30 worth of tens in there,
30 so I would say as an estimate there might have been maybe \$30
31 in there.

32 Q What is the basis of your estimate that there might

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1 have been \$30?

2 A Well, I always keep-- I keep my singles real low.
3 I never keep more than \$40 worth of singles or \$25 worth of
4 fives at any time.

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5 Q Is there some sort of store policy?

6 A Yes. You are supposed to keep under \$50 at night.

7 Q Prior to the other fellow who is not present in
8 court coming around and putting the knife to your throat do you
9 know in fact that there was money in the cash register?

10 A Yes.

11 Q Was that coins or currency?

12 A There was both.

13 Q Do you know if there were coins?

14 A Yes, there were coins.

15 Q Do you know if there were other denominations?

16 A There were ones and fives, yes.

17 Q Who did this money belong to?

18 A Stop 'N Go.

19 Q Stop 'N Go Market?

20 A Yes.

21 Q Do you know if that is also a corporation?

22 A Yes, I think it is. I am not sure.

23 Q Do you know what the name of the corporation is?

24 A National Convenience Stores, I think. I am not sure.

25 Q You say there were ones and fives?

26 A Yes.

27 Q Were there any larger denominations?

28 A No. I had just dropped the ten dollar bills.

29 Q After this happened did you ever have occasion to go
30 back to the store and examine the condition of the cash
31 register?

32 A You mean before everything was cleaned up and all that?

1 Q Yes.

2 A No.

3 MR. HARMON: That concludes direct.

4 THE COURT: Mr. Henry?

5 MR. HENRY: Thank you, your Honor.

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6
7 CROSS-EXAMINATION

8 BY MR. HENRY:

9 Q Ma'am, before this preliminary hearing began you
10 were sitting out in the courtroom, weren't you?

11 A Yes.

12 Q And you were sitting out there when a man was
13 brought in in chains and put in the jury box, weren't you?

14 A No. I did not come in until about two minutes
15 before they brought us up here.

16 Q When you came in and sat down did you look around
17 the courtroom?

18 A Yes.

19 Q And you saw a man sitting in the jury box in chains,
20 didn't you?

21 A Yes.

22 Q And there was only one man sitting in the jury box
23 in chains?

24 A That's correct.

25 Q In fact he was the only man in the courtroom in
26 chains; isn't that correct?

27 A Yes.

28 Q And that person is the defendant who is sitting to
29 my left; is that correct?

30 A Yes.

31 Q That is one and the same person as the one you have
32 constantly identified this morning?

1 A That's correct.

2 Q And you saw that man on December 23, 1980 in the
3 auditorium of the Sheriff's Department during a line-up
4 didn't you? Electronically Filed
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5 A Yes.

6 Q He was placed or you viewed him in a line-up with
7 other men that was conducted by Metropolitan Police Department
8 officers?

9 A That's correct.

10 Q At the time of that line-up did you identify anyone
11 in the line-up as being one of the perpetrators of the assaults
12 against you?

13 A Yes, I did.

14 Q And who did you identify?

15 A The same man sitting right here in the courtroom.

16 Q Later on were you asked to fill out a form or to
17 write down your identification?

18 A Yes.

19 Q And you were asked to do this by a Metropolitan
20 Police detective?

21 A Yes.

22 Q He presented a form to you?

23 A Yes.

24 Q Did you choose the position of the defendant in
25 the line-up?

26 A Yes.

27 Q Did you comment on how certain you were as to your
28 identification?

29 A Yes, I did.

30 Q What words did you use in your written comment?

31 A The exact words are, "I am almost absolutely positive
32 that this is the suspect."

1 Q Between the time of the assaults on your person
2 and the line-up on the 23rd of December had you been shown
3 any photographs of possible suspects by the Metropolitan
4 Police officers?

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5 A Yes.

6 Q When was this?

7 A This was--

8 Q Perhaps you could answer by stating how many days
9 after you reported the offense.

10 A I think it was the same afternoon before the
11 line-up. It was earlier in the day.

12 Q Where did this viewing of photographs take place?

13 A The police department.

14 Q Would that be in the city hall?

15 A Yes.

16 Q As opposed to the courthouse where you viewed the
17 line-up?

18 A Right.

19 Q Were you shown stacks of photographs affixed to
20 pages in a book?

21 A Well, I looked through the mug books and he also
22 brought in a small file with maybe six or seven pictures on it.

23 Q Initially in reporting this to the police you
24 referred to an older man and a younger man; is that correct?

25 A Yes.

26 Q Here today you are identifying the defendant as
27 being the older man; is that correct?

28 A That's correct.

29 Q When you were shown mug books were they split up
30 between the possible suspect who was the older man and the
31 possible suspect who was the younger man?

32 A I am not sure.

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1 Q In looking through any of these mug books did you
2 identify any photographs as being the older man who assaulted
3 you?

4 A I picked out a few pictures but I made it clear it
5 wasn't him. It was just people that resembled him. Electronically Filed
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6 Q Did you pick out any pictures as depicting the
7 younger man?

8 A One or two, I think, yes.

9 Q Did you tell the police, "This is the man"?

10 A No. I told them, "This just resembles him."

11 Q Did the police have you mark the photographs that
12 you identified as resembling the perpetrators?

13 A I didn't have to write anything down. We were
14 talking about it. Like I picked out two pictures and he said,
15 "What do you think about this one?" I said, "His mouth and
16 his chin resembles him." He said, "What do you like about the
17 other one?" I said, "Well, his profile is similar."

18 Q But in each case you made it clear that was not the
19 man but just similar; is that correct?

20 A That he just resembled him, yes.

21 Q And you did not mark the photographs in any fashion
22 as resembling the man?

23 A No.

24 Q Did you see the officer mark the photographs or
25 take any notes as to which photographs you had chosen as
26 resembling the suspects?

27 A He made some notes on the-- He made like a copy
28 of the pictures and made some notes on them. I can't remember
29 what he wrote.

30 Q He xeroxed off the photographs that you had chosen?

31 A Yes.

32 Q You have already told us that you attended a line-up

1 in which the defendant was displayed and you chose the defendant
2 as being one of the perpetrators. Isn't it true that there
3 were two line-ups, one of which the defendant appeared in and
4 another of which he did not appear in?

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5 A That's correct.

6 Q And the line-ups were broken down in terms of one
7 line-up was supposed to possibly contain the older man and
8 the other line-up was to possibly contain the younger man?

9 A That's correct.

10 Q Isn't it true that as to the line-up that contained
11 the younger man you told the authorities that there was no
12 one in there that you recognized as being the younger
13 perpetrator?

14 A That's correct. I didn't recognize him.

15 Q Did you state, however, that there was someone
16 that appeared to be similar?

17 A Yes.

18 Q Did you fill out a form as to the line-up containing
19 or possibly containing the younger man?

20 A The same form as for the other one, yes.

21 Q And did you write down your comments?

22 A Yes.

23 Q What words did you use?

24 A I believe it said, "The number 2 person in the
25 line-up resembles one of the suspects, but I am almost positive
26 it is not him," or something similar to that.

27 Q Did you affix your signature to these documents?

28 A Yes, I did.

29 MR. HENRY: Your Honor, although we have a deputy
30 present, somehow we did not get copies of those documents. I
31 would ask the Court to direct counsel for the State perhaps
32 later to make copies and forward them to us.

1 MR. HARMON: That is fine.

2 THE COURT: Mr. Harmon I am sure would have no
3 objection to making copies of line-ups held on the
4 available.

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5 MR. HENRY: Thank you.

6 MR. HARMON: Your Honor, contrary to what counsel
7 suggested, I think it was December the 19th.

8 THE COURT: It was the 19th that the line-up was
9 held.

10 MR. HARMON: Yes.

11 MR. HENRY: That is correct, yes.

12 BY MR. HENRY:

13 Q When you came into the courtroom today and saw the
14 defendant sitting in chains did you remember him from the
15 line-up?

16 A Yes.

17 Q Is your identification of him today based on seeing
18 him in the line-up?

19 A No. It is based on what happened to me.

20 Q If you had not had the opportunity to view him in a
21 line-up, would you be as sure of your identification today?

22 A Yes, I would.

23 Q At some point I believe you testified you had
24 conversation with the older person who assaulted you wherein
25 he said that he let someone go before and he had done ten years
26 for it?

27 A That's correct.

28 Q Do you remember any further details as to that
29 conversation? Specifically, did he say that he had been
30 involved in a sexual assault before?

31 A He didn't mention the nature of what had happened.
32 He just--

1 Q From the context of the conversation were you able to
2 draw an inference as to what offense he was referring to when he
3 said he had done ten years?

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4 A No. I had no idea.

5 Q However, he did state that he had done ten years in
6 prison?

7 A Yes.

8 Q And he stated that was as a result of having released
9 someone who he committed a crime against?

10 A Would you repeat that again?

11 Q From the context of the conversation did you draw
12 the inference that he felt he had done ten years in prison
13 because he had released a person who he had committed a crime
14 against and that person then testified against him?

15 A Yes.

16 Q I believe you said that the older of the persons
17 who assaulted you came into your store twice; is that correct?

18 A Yes.

19 Q The first time he came in the store did he purchase
20 anything?

21 A Yes.

22 Q What was that?

23 A He bought a \$.59 pack of rolling papers.

24 Q How long was he in the store?

25 A Maybe two minutes.

26 Q How much time passed before he came back?

27 A My guess is-- I am not sure, but I think it was
28 about 20 minutes, 15, 20 minutes.

29 Q Did he walk in with the younger person with him
30 the second time?

31 A No. The other fellow came in after he did.

32 Q How long was the older fellow in the store before the

1 younger person came in?

2 A Under a minute maybe. It was just long enough for
3 him to walk to the back of the store to the cooler. Electronically Filed
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4 time the other fellow came in.

5 Q How long after that was it before the younger person
6 approached you and placed a knife against your throat?

7 A From the time the other fellow came in until the
8 time he was at me?

9 Q Yes.

10 A About a minute or not even-- Yes. About a minute
11 I would say.

12 Q How long have you been in Las Vegas, ma'am?

13 A Almost five years.

14 Q And how old are you?

15 A Twenty-one.

16 MR. HENRY: Thank you, ma'am.

17 I have no further questions, your Honor.

18 MR. HARMON: I just have a couple of questions on
19 redirect, your Honor.

20
21 REDIRECT EXAMINATION

22 BY MR. HARMON:

23 Q Mrs. Cage, in regards to the defendant who is present
24 in court, when these offenses occurred did you observe any
25 type of marking anywhere on his body?

26 A He had tatoos on his arms.

27 Q Describe the tatoos.

28 A He had a lot of them on his forearms. I decided if
29 I was going to remember any of them I would just pick out one
30 or two so that I could describe them really well. I remembered
31 a spiderweb on his right elbow and a small marijuana leaf on
32 his right forearm.

1 MR. HENRY: One question, if I might.

2 Ma'am, have you ever been a victim of a similar
3 crime before?

4 THE WITNESS: No.

5 MR. HARMON: Objection. Well, she has answered. It
6 does exceed the scope of redirect.

7 THE COURT: Yes, it does.

8 MR. HENRY: Thank you.

9 THE COURT: She may be excused. You may let her
10 out the chambers and then let her out the door. Make it clear
11 that it is spectators only and witnesses are still excluded.
12 Everyone but the witnesses can come back in.

13 MR. HARMON: Richard Davies will be the next witness.

14 THE COURT: He is the other one witness you have?

15 MR. HARMON: Yes, your Honor.

16
17 RICHARD DAVIES,

18 called as a witness by the State, having been first duly sworn,
19 testified as follows:

20 THE CLERK: Will you state your name and spell your
21 last name, please.

22 THE WITNESS: Richard Davies, D-a-v-i-e-s.

23
24 DIRECT EXAMINATION

25 BY MR. HARMON:

26 Q Mr. Davies, where are you employed?

27 A Stop 'N Go Markets.

28 Q What are the nature of your duties with Stop 'N Go
29 Markets?

30 A I am a district representative. I control eight
31 stores.

32 Q You say you control eight stores?

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1 A Correct.

2 Q Does that include a Stop 'N Go Market numbered 759
3 and located at 732 North Eastern Avenue? Electronically Filed
4 A Yes, it does. Sept 13 2013 8:26 a.m.
5 Q Is that store in Clark County, State of Tracie K. Lindemen
6 A Yes. Clerk of Supreme Court

7 Q Were you the district manager in control of that
8 particular store on December 18, 1980?

9 A Yes.

10 Q The markets do business as Stop 'N Go. Is it a
11 corporation?

12 A Yes, it is.

13 Q What is the corporate name?

14 A National Convenience Stores.

15 Q Did you have occasion during the early morning hours
16 of either December 18 or December 19, 1980 to go to the
17 Stop 'N Go Market number 759 located at 732 North Eastern
18 Avenue?

19 A Yes, I did.

20 Q Do you remember on what date that was?

21 A It was the morning, a Thursday morning. I believe
22 it was the 19th.

23 Q Approximately what time did you go to the Stop 'N Go
24 Market at 732 North Eastern?

25 A I believe I arrived there about 12:30 a.m.

26 Q Was there any employee on duty at about 12:30 a.m.?

27 A No, there wasn't.

28 Q What was your purpose in going to the market at that
29 time?

30 A Well, I had been called by the police department
31 saying that the store was open and there was nobody there. I
32 had to go up there to, you know, see what happened to my

1 employee and make sure everything was secure.

2 Q When you went inside did you have occasion to
3 examine the cash register? Electronically Filed
4 A Yes, I did. Sept 13 2013 8:26 a.m.
5 Q What was the condition of the cash register? Tracie K. Lindemen
6 A It was empty except for change. Clerk of Supreme Court
7 Q Was there any currency at all?
8 A Not in the register.
9 Q Who would any monies belong to that are located in
10 the cash register at a Stop 'N Go Market?
11 A It would belong to the company.
12 Q That would be National Convenience Stores, Inc.,
13 a corporation?
14 A Yes.
15 Q What did you do after you discovered that there was
16 no employee on duty and no money except for coin in the cash
17 register?
18 A Could you repeat the question?
19 Q Yes. What did you do after you arrived and discovered
20 that there was not an employee on duty and there wasn't any
21 currency in the cash register?
22 A I just walked the store to see if I could see a
23 sign of what was going on. I was searching in the back rooms and
24 the cooler.
25 Q Were you able to locate your employee anywhere on
26 the premises?
27 A No, sir.
28 Q Did you have occasion sometime after to sign a
29 crime report with representatives of the Las Vegas Metropolitan
30 Police Department?
31 A Yes.
32 Q And that crime report was signed in connection with

1 what type of offense?

2 A Well, originally it was just robbery and kidnap,
3 I believe.

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Sept 13 2013 8:26 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

4 Q Approximately how much money was missing
5 cash register?

6 A I called the store manager down and she did a cash
7 count of the safe and all currency in the store.

8 Q Who is the store manager?

9 A Pat Seevers.

10 Q Will you spell the last name, please.

11 A S-e-e-v-e-r-s.

12 MR. HENRY: Is that a V or a B as in Bob?

13 THE WITNESS: V.

14 BY MR. HARMON:

15 Q Approximately how much money was missing?

16 MR. HENRY: Objection. That calls for hearsay.
17 Testimony has been that the store manager, Pat Seevers, did
18 the count.

19 MR. HARMON: May I pursue the foundation?

20 THE COURT: Yes. Proceed.

21 BY MR. HARMON:

22 Q Were you present at the time this was done?

23 A Yes.

24 Q Are you familiar with the procedure whereby the
25 amount of loss was determined?

26 A Yes.

27 Q What was the procedure used to determine the amount
28 missing?

29 A Okay. A reading is taken on the cash register. The
30 coins left in the register were counted and all change in the
31 drop safe where the majority of the money is kept was counted.
32 We deduct from that a standard change fund of the store to

1 determine how much money was there. Of course, the cash
2 register reading determines how much should be there. That is
3 the procedure.

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Clerk of Supreme Court

4 Q What was the amount missing?

5 A About \$20.

6 MR. HARMON: That concludes direct, your Honor.

7 THE COURT: Mr. Henry, you may cross-examine.

8 MR. HENRY: Thank you, your Honor.

9 May I have the Court's indulgence a minute?

10 THE COURT: Fine.

11
12 CROSS-EXAMINATION

13 BY MR. HENRY:

14 Q Sir, you arrived at the store at approximately
15 12:30 a.m.; is that correct?

16 A Yes.

17 Q And you arrived there as a result of being called,
18 didn't you?

19 A Yes.

20 Q When you got there there were police officers present;
21 is that correct?

22 A Yes, sir.

23 Q You say it was approximately 12:30 a.m. that you
24 arrived; is that correct?

25 A Yes.

26 Q Assuming for the moment that it was exactly 12:30 a.m.,
27 what time would it have been that you originally received the
28 call?

29 A I believe it was about 10 after 12:00.

30 Q And the Stop 'N Go Store holds itself open to the
31 public; is that correct?

32 A Yes.

1 Q And the door was unlocked when you arrived?

2 A Yes.

3 Q That would be normal operating procedure, is that
4 correct?

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Tracie K. Lindemen
Clerk of Supreme Court

5 A Yes.

6 Q It was open 24 hours a day?

7 A Yes.

8 Q In fact the front wall facing the street and the
9 parking lot is glass?

10 A Yes.

11 Q Were there any signs of forcible entry on the cash
12 register?

13 A No.

14 Q And the cash register indeed can be opened by just
15 pressing the key; isn't that correct?

16 A Yes.

17 Q You have no way of knowing personally how long that
18 register was left unattended before you arrived on the scene,
19 do you?

20 A No, sir.

21 Q And the register is located toward the front of the
22 store, isn't it?

23 A Yes.

24 Q So, the register and the counter are clearly visible
25 through the glass wall that is the front of the store?

26 A Yes. I may clarify that the cash register is
27 probably visible through the first two windows only.

28 Q And the inside of the store was brightly lit when
29 you first arrived; is that right?

30 A Yes.

31 Q There are bright lights on the front of the store
32 illuminating the walk just in front of the store; isn't that true?

1 A Yes.

2 Q So that the interior of the store is clearly visible
3 from the street?

4 A Yes.

5 MR. HENRY: Thank you. I have no further questions.

6 MR. HARMON: No redirect, your Honor.

7 THE COURT: Thank you, Mr. Davies.

8 MR. HARMON: Your Honor, the State rests.

9 THE COURT: Mr. Henry, the State is resting.

10 MR. HENRY: Your Honor, I would inform the Court that
11 I have advised my client as to his right to make a statement
12 either sworn or unsworn. I have advised him not to do so. He has
13 informed me he would take that advice. The defendant would not
14 call any other witnesses and the defense would rest and ask to
15 be heard as to motions to dismiss.

16 THE COURT: All right.

17 MR. HENRY: First of all, your Honor, if I might
18 direct the Court's attention to Count II, Robbery with the Use
19 of a Deadly Weapon in the Commission of a Crime, the
20 testimony of Mrs. Cage is that she arrived for work around 11:00
21 o'clock. She is not sure at what time she was abducted. It
22 was sometime thereafter, perhaps around 12:00, but she certainly
23 wasn't precisely sure. Sometime after that from this record
24 it would appear somehow the police became aware that the store
25 was unattended and perhaps something had happened and they
26 called the store representative. This is a store that holds
27 itself open to the public and indeed is about as open as could
28 be with a glass wall, glass door and cash register up front.

29 Your Honor, I would submit that as to Counts III,
30 IV, and V alleging sexual assault and first degree kidnapping
31 that the State has met its burden; however, I would suggest that
32 as to Count II there is insufficient evidence. In essence, if

1 the State would urge the Court to bindover on Robbery with Use
2 of a Deadly Weapon, it would be urging this Court to say that
3 these fellows were there, abducted this woman and committed
4 sexual assaults against her person and then sometimes later
5 it was discovered that money was missing, money that is entirely
6 available to all the public during the interim. It would be
7 saying that because the Court deduced from the evidence that
8 they committed the sexual assaults the Court should find they
9 probably committed the robbery with use.

10 I would suggest, your Honor, that that is
11 impermissible, that classically at law this is what may not be
12 done, especially since there is nothing to corroborate that
13 inference or allegation. The State's witness testified that
14 she saw no money taken. Nothing was said to her about money
15 being taken or a robbery. There was no testimony about hearing
16 the drawer open. Indeed, her testimony is she was grabbed and
17 dragged from the store just about instantly and both fellows
18 went outside with her.

19 I would suggest that although I would not
20 disagree with the allegation that the State has met its burden
21 as to the last three counts, certainly it has not met its
22 burden as to Count II.

23 As to Count I, your Honor, as it is framed it
24 relies on Count II. Even if it didn't, this problem with
25 charging burglary with intent to commit a felony, referring to
26 a public place, 7-Elevens or Stop 'N Gos, is one that is
27 constantly before the Courts, and the Court has heard my argument
28 before. I would just suggest for purposes of the record that
29 the law in the State of Nevada is that the State may not in
30 effect bootstrap themselves backwards. They have to show the
31 intent at the time of entry. This is classically done when
32 someone goes in with a stocking mask and a shotgun in their arms.

1 When they come through the door like that you can infer the
2 intent. Perhaps if in this case there was some testimony that
3 these fellows had handcuffs or something, you could then infer
4 an intent when they came in the door. But the testimony is that
5 they were inside doing things that customers normally do for
6 at least two minutes before the younger fellow, the one that is
7 not before the Court, approached the victim.

8 For that reason I would suggest that as plead
9 Count I should not survive this proceeding because of the
10 failure to prove Count II. Even if the State moved to amend
11 Count I to incorporate Counts III, IV and V, it hasn't met its
12 burden to show intent at the time of entry.

13 The way we are seeing these burglaries with
14 intent now is just stretching the purpose behind making this
15 sort of thing a very serious crime beyond all limits so that
16 it no longer has any purpose. I would ask the Court not to do
17 that, but to maintain the purpose for making burglary a serious
18 crime.

19 I would submit it on that.

20 THE COURT: Mr. Harmon?

21 MR. HARMON: Your Honor, I think the entire criminal
22 complaint is properly plead. I will, however, submit Count I
23 without any argument and leave it to the Court's discretion.
24 But I do not think it is improper to suggest that these fellows
25 entered with the intent to rob. I think a reasonable inference
26 from the evidence the Court has heard is that that is what they
27 came there for.

28 As the Court knows, the cases in this State
29 concerning the burden of proof at a preliminary hearing don't
30 say that the State must show that the only inference is that of
31 establishing criminal conduct, but we don't have to negate all
32 inferences. Of course, one inference is that after Mrs. Cage

1 was forcibly removed from the store some other citizen came in
2 and rifled the cash register. Perhaps that is even reasonable.
3 But, your Honor, my point is it is equally reasonable and
4 as a matter of fact, I think more so to say that the defendant
5 who was last observed with two bottles of Michelob in the
6 counter area at the time the other subject comes around behind
7 the counter, grabs this lady behind the neck, puts a knife to
8 her throat and asks her where the back door is, she says that
9 there is no back door and he drags her out and she is placed
10 in the car and the other individual comes along-- When you put
11 this together with the time frame which is that Mr. Davies
12 believes that he was first contacted at about 12:10 a.m. and
13 the witness says the defendant first came into the store at
14 about 10 minutes to 12:00 and then it was a few minutes after
15 that, which would put us shortly after midnight that he comes
16 in the second time and then the crime actually began, that
17 the reasonable inference is not that it was somebody who just
18 by happenstance came along and found the store unattended,
19 but that these two fellows who came in there and forcefully
20 removed the clerk in the counter area are the people responsible
21 for removing ones and fives belonging to the Stop 'N Go Store
22 from the cash register.

23 Thank you.

24 MR. HENRY: Your Honor, certainly the State doesn't
25 have to negate all possible inferences but the one that results
26 in an inference of criminal conduct; however it must show to the
27 Court that the inference that it sponsors is a reasonable
28 inference and more likely than other natural inferences. I
29 would suggest that it hasn't done that here.

30 It is interesting that Mr. Harmon doesn't
31 address himself as to Count II. He said he would leave that to
32 the discretion of the Court--

1 MR. HARMON: No. Count I.

2 THE COURT: Count I.

3 MR. HENRY: But in Count II, Robbery with Use of a
4 Deadly Weapon, most of his argument referred to the kidnapping
5 and the sexual assaults. The one inference he talked about was
6 the men coming in and taking her out and dragging her out in
7 the desert.

8 All I am suggesting, your Honor, is that the
9 one inference that the State cannot sponsor in a criminal
10 proceeding is that because they have proven that this man has
11 committed crimes A, B and C, because of that it makes it more
12 likely that he committed crime D. In this situation it is a
13 general proposition of law that is impermissible. In this
14 situation where we have a store that is brightly lit with a
15 cash register that can be viewed from the street and is left
16 unattended and is easy to get into I would just suggest that
17 the State hasn't met its burden.

18 THE COURT: All right, gentlemen, I am prepared to
19 rule. The motion to dismiss Count I will be granted without
20 further comment. With respect to Count II, Robbery and Use of
21 a Deadly Weapon in the Commission of a Crime, as I view and
22 recall the evidence, the cashier was accosted with a knife,
23 taken toward the back of the store and asked where the back door
24 was. Upon finding out that there was no back door she was
25 taken out the front door. At that time this defendant was right
26 there at the counter and he had just come back in the store the
27 second time with the other person coming in a minute later.
28 Her testimony was that she was outside and around the building
29 by the time she heard the defendant coming up behind her. With
30 all that evidence it is by no means an unreasonable inference
31 that she was held by a knife at that time and that the cash
32 register was emptied of its bills at that time. Accordingly,

1 the motion to dismiss as to Count II is denied.

2 Would you stand, please, Mr. Burkett.

3 It appearing to me from the complaint on file
4 herein that a crime has been committed, to wit: Count III, Robbery and Use of a Deadly Weapon in the Commission of a Crime,
5 Count III, First Degree Kidnapping and Use of a Deadly Weapon
6 in the Commission of a Crime; Count IV, Sexual Assault; Count V,
7 Sexual Assault, and there being sufficient evidence and cause
8 to believe that the defendant named herein, Joel Burkett, has
9 committed said offenses, I hereby order said defendant to be
10 held to answer said charges in the Eighth Judicial District Court
11 of the State of Nevada, in and for the County of Clark.
12

13 THE CLERK: January 20, 9:00 a.m., Department VII.

14 MR. HENRY: Thank you, your Honor.

15 MR. HARMON: Thank you.

16 * * * * *

17 ATTEST: Full, true and accurate transcript of proceedings.
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20 PAUL DE GAGNE, CSR
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