

DC-9900048467-018
CR94-0345
STATE VS CHARLES JOSEPH MAKI Page
District Court 08/02/2013 11:49 AM
Washoe County 2515
CLERK

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

Electronically Filed
JOEY HASTINGS, CLERK
By TRACIE K. LINDEMAN
Deputy Clerk
Clerk of Supreme Court
CASE NO. CR94-0345

CHARLES JOSEPH MAKI
PETITIONER

v.

STEVEN KOSACH, Hon. Judge Etc.

DEPT. #8

2ND JUDICIAL DIST. COURT DEPT. 8

IN AND FOR THE COURT OF WASHOE
RESPONDENT

NOTICE OF APPEAL

NOTICE TO APPEAL CASE NO: CR94-0345, ON

WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS TO THE NEVADA SUPREME COURT, IS HEARD BY GIVEN THAT PETITIONER CHARLES JOSEPH MAKI IS APPEALING THIS ENTIRE CASE- CR94-0345 PURSUANT TO AND BY WAY OF WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS, N.R.S. 34.160, N.R.S. 34.170, N.R.S. 34.190 TO THE NEVADA SUPREME COURT FOR REVIEW AND ISSUE ORDER'D ALLOWING PETITIONER TO PROVE "HIS ACTUAL INNOCENCE", PURSUANT TO STATE VS. MITCHELL, 122 NV. 1269, 149 P.3D 33 (2006), IN THIS HONORABLE COURT ON OR ABOUT THE 12TH DAY OF APRIL 1994.

DATED THIS DAY 01 OF AUG 2003

RECEIVED

AUG 09 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

Charles J. Maki

CHARLES J. MAKI

1 **Code 1310**

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3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR94-0345

Dept. No. 8

11 **CHARLES JOSEPH MAKI,**

12 **Defendant.**

13 _____ /
14
15 **CASE APPEAL STATEMENT**

16 This case appeal statement is filed pursuant to N.R.A.C.P. 3(2).

17 1. This appeal is from an order entered by the Honorable Steven Kosach .

18 2. Appellant is Charles Joseph Maki. Appellant is representing himself in Proper
19 Person on appeal:

20 3. Appellant's address is:

21 Charles Joseph Maki #42820
22 Warm Springs Correctional Center
23 P O BOX 7000
24 Carson City, Nevada 89702

25 4. Respondent is the State of Nevada. Respondent is represented by: the Washoe
26 County District Attorney's Office

27 Terrance McCarthy, Esq.
28 P.O. Box 30083
Reno, NV 89520

5. Respondent's attorney is licensed to practice law in Nevada

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Judgment filed on April 12, 1994..
11. The case has been been the subject of a previous appeal to the Supreme Court Supreme Court No. 26049.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 20th day of August 2013.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Annie Smith
Annie Smith
Deputy Clerk

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR94-0345

DEPT. D8

HON. LIDIA STIGLICH

Report Date & Time

8/20/2013

10:13:06AM

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)

Case ID: CR94-0345

Case Type: CRIMINAL

Initial Filing Date: 2/10/1994

Parties

DA Terrence P. McCarthy, Esq. - 2745
DEFT CHARLES (D8) MAKI - @395470
APPD CHARLES MAKI - @395024

Charges

Charge No. Charge Code Charge Date Charge Description

Plea Information

Charge No. Plea Code Plea Date Plea Description

Release Information

Custody Status

Hearings

Department	Event Description	Sched. Date & Time	Disposed Date
1			
Event Extra Text:		Disposition:	

Agency Cross Reference

Code Agency Description Case Reference I.D.

Actions

Action Entry Date	Code	Code Description	Text
1/1/1994	1315	** Case Closed	
2/10/1994	1800	Information	
2/10/1994	1250	Application for Setting	
2/16/1994	MIN	***Minutes	CRIMINAL PROGRESS SHEET
2/16/1994	MIN	***Minutes	
2/18/1994	3700	Proceedings	
2/18/1994	1250	Application for Setting	
2/23/1994	4185	Transcript	

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)

Case ID: CR94-0345 **Case Type:** CRIMINAL **Initial Filing Date:** 2/10/1994

3/4/1994	2490	Motion ...	
3/4/1994	2490	Motion ...	
3/10/1994	2645	Opposition to Mtn ...	OPPOSITION TO STATE'S MOTION TO DETERMINE ADMISSIBILITY OF OUT OF COURT STATEMENTS OF CHILD SEX VICTIM
3/10/1994	2645	Opposition to Mtn ...	
3/11/1994	MIN	***Minutes	
3/18/1994	3980	Stip and Order...	
3/21/1994	2270	Mtn to Compel...	
3/25/1994	4185	Transcript	
3/25/1994	2480	Mtn to Suppress...	
3/31/1994	2645	Opposition to Mtn ...	
4/1/1994	MIN	***Minutes	
4/4/1994	2245	Mtn in Limine	
4/4/1994	2245	Mtn in Limine	
4/6/1994	4050	Stipulation ...	
4/11/1994	MIN	***Minutes	
4/11/1994	MIN	***Minutes	
4/11/1994	MIN	***Minutes	
4/11/1994	1930	Letters ...	
4/12/1994	1885	Jury Instructions	
4/12/1994	4235	Unused Verdict Form(s)...	
4/12/1994	4235	Unused Verdict Form(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	4245	Verdict(s)...	
4/12/1994	1880	Judgment	
4/12/1994	1890	Jury Question, Court Response	
5/2/1994	4500	PSI - Confidential	
5/9/1994	4185	Transcript	SUPPRESSION HEARING
5/12/1994	2610	Notice ...	
5/17/1994	MIN	***Minutes	
5/17/1994	1880	Judgment	
5/18/1994	3370	Order ...	
5/18/1994	3370	Order ...	
6/2/1994	4185	Transcript	SENTENCING
6/3/1994	3870	Request	

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)

Case ID: CR94-0345 **Case Type:** CRIMINAL **Initial Filing Date:** 2/10/1994

6/3/1994	2515	Notice of Appeal Supreme Court	
6/3/1994	1600	Designation Record on Appeal	
6/9/1994	2230	Mtn Trial Trans. Public Exp	
6/13/1994	3370	Order ...	
7/11/1994	1600	Designation Record on Appeal	
7/11/1994	4050	Stipulation ...	
7/11/1994	3370	Order ...	
8/30/1994	4185	Transcript	APRIL 11 & 12, 1994
11/7/1994	3980	Stip and Order...	
11/7/1994	3735	Receipt	
12/7/1994	3735	Receipt	
9/13/1995	3932	Seizure Order ...	
10/27/1995	1350	Certificate of Clerk	
10/27/1995	2855	Ord Dismiss Appeal/Remand	
10/27/1995	4145	Supreme Court Remittitur	
4/10/1996	2490	Motion ...	
4/10/1996	2610	Notice ...	
4/18/1996	4300	Withdrawal of Counsel	
7/11/1997	MIN	***Minutes	
7/18/1997	MIN	***Minutes	
4/23/2012	PAYRC	**Payment Received	A Payment of -\$.05 was made on receipt DCDC357287.
4/23/2012	PEND	**Pending Court Deposit	
4/23/2012	PAYVD	**Payment Voided	Receipt Number DCDC357265 has been voided.
6/13/2012	PAYRC	**Payment Received	A Payment of -\$.21 was made on receipt DCDC363705.
8/15/2012	PAYRC	**Payment Received	A Payment of -\$.05 was made on receipt DCDC372409.
9/19/2012	PAYRC	**Payment Received	A Payment of -\$.15 was made on receipt DCDC377095.
10/19/2012	PAYRC	**Payment Received	A Payment of -\$.11 was made on receipt DCDC381431.
12/13/2012	PAYRC	**Payment Received	A Payment of -\$1.61 was made on receipt DCDC388347.
8/2/2013	2515	Notice of Appeal Supreme Court	
8/2/2013	1600	Designation Record on Appeal	
8/2/2013	3860	Request for Submission	NO S1 DONE - REFERRED TO BOB BELL DOCUMENT TITLE: MOTION FOR APPOINTMENT OF COUNSEL PARTY SUBMITTING: CHARLES MAKI DATE SUBMITTED: 8-16-13 SUBMITTED BY: S HAMBRIGHT DATE RECEIVED JUDGE OFFICE: WRIT OF PROHIBITION/WRIT OF MANDAMUS
8/2/2013	4330	Writ of Mandamus	
8/2/2013	1215	Application Appoint Counsel	MOTION FOR APPOINTMENT OF COUNSEL
8/2/2013	1030	Affidavit in Support...	AFFIDAVIT IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL/WRIT OF PROHIBITION/WRIT OF MANDAMUS
8/20/2013	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANMITTAL - NOTICE OF APPEAL - Transaction 3934711 - Approved By: NOREVIEW : 08-20-2013:09:30:45
8/20/2013	1310E	Case Appeal Statement	Transaction 3934711 - Approved By: NOREVIEW : 08-20-2013:09:30:45
8/20/2013	NEF	Proof of Electronic Service	Transaction 3934720 - Approved By: NOREVIEW : 08-20-2013:09:32:45

12

DC-990039406-083
CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
NVC
04/12/1994 03:09 PM
1880
hnc

Case No. CR94-0345

Dept. No. 8

FILED
4/12/94
JUDI BAILEY, Clerk
By [Signature]
Deputy Clerk

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

STATE OF NEVADA,)	
)	
Plaintiff,)	Reporter: I. Zihn
)	
vs.)	J U D G M E N T
)	
CHARLES JOSEPH MAKI,)	
)	
Defendant.)	

No sufficient cause being shown by the State of Nevada as to why judgment should not be pronounced for the Defendant and against the State, the Court rendered judgment as follows:

That Charles Joseph Maki is Not Guilty of Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count I of the Information.

Dated this 12th day of April, 1994.

[Signature]
DISTRICT JUDGE

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
NVC
DC-990039406-087
JOSEPH MAKI 2 Pages
05/17/1994 03:16 PM
1880

No. CR94-0345

Dept. No. 8

FILED

JUD. BAILEY, Clerk

By L. H. HODD
Deputy Clerk

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

STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

)
) Reporter: I. Zihn
)
)
)

) J U D G M E N T
)
)
)

No sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Charles Joseph Maki is guilty of the crimes of Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Counts III, IV & V of the Information and Lewdness With A Child Under The Age Of Fourteen Years as charged in Counts VI, VII, VIII, IX & X of the Information and that he be punished by imprisonment in the Nevada State Prison for the term of Life with the possibility of parole on Count III; that he be punished by imprisonment in the Nevada State Prison for the term of Life with the possibility of parole on Count IV to run consecutive to Count III; that he be punished by imprisonment in the Nevada

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State Prison for the term of Life with the possibility of parole on Count V to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VI to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VII to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VIII to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count IX to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count X to run consecutive to Count III; and that he effect restitution in the amount of Five Hundred Twenty-Six Dollars (\$526.00). It is further ordered that the Defendant pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee. Defendant is given credit for one hundred eighteen (118) days time served.

Dated this 17th day of May, 1994.


DISTRICT JUDGE

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK

By: DEPUTY CLERK

CASE NO: CR94-0345

DEPT NO: 8

CHARLES JOSEPH MAKI
PETITIONER

V.

STEVEN KOSACH HONORABLE Judge ect.

2ND JUDICIAL DIST. COURT DEPT. 8

IN AND FOR THE COUNTY OF WASHOE
RESPONDENT

WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS

COMES NOW, CHARLES J. MAKI PETITIONER IN FORMA
PAUPERIS, WITH THE ASSISTANCE OF INMATE WITH LEGAL KNOWLEDGE
IN WRITING AND PREPARING THIS CAUSE OF ACTION COMPLAINS OF
RESPONDENT SUPRA, OF CONTINUING IRREPARABLY INJURED BY THE
CONDUCT OF THE RESPONDENT SUPRA UNLESS THIS HONORABLE NEVADA
SUPREME COURT ORDERS THE 2ND JUDICIAL DIST. COURT TO PREPARE
CERTIFIED COPY'S OF CASE # CR94-0345 IN ITS ENTIRETY FOR THIS HONORABLE
NV. SUPREME COURT TO REVIEW AND ISSUE PROPER ORDER FOR THE 2ND
JUDICIAL DIST. COURT FOR THE PURPOSE OF FURTHER PROCEEDINGS.

JURISDICTION

THIS WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS ALLEGED
PETITIONER'S DUE PROCESS AND EQUAL PROTECTION OF HIS RIGHTS
UNDER NEV. LAW AND THE UNITED STATES CONSTITUTION OF THE
FIRST, FOURTH, FIFTH, SIXTH, EIGHTH, NINTH AND THE 14TH AMENDMENT

(P. 1)

DC-9900048467-022
CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
NVC
08/02/2013 11 52 AM
4330
CLERK

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AUG 09 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

WERE VIOLATED BY THE ACTIONS OF HERIN - A BOLE NAMED DEFENDENT SUPRA, BY NOT ALLOWING PETITIONER WITH EFFECTIVE COUNSEL OVER THE PAST 18 YRS. TO PROVE "HIS ACTUAL INNOCENCE OF THE CRIME SEXUAL ASSAULT/LEWDNESS THAT HE NEVER COMMITTED."

JURISDICTION IN THIS WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS IS HEARD BY INVOKED PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; N.R.S. 34.190; N.R.S. 34.570; NEVADA RULES OF CIVIL PROCEDURE; NEVADA CONSTITUTION, ARTICLE #6, SUB. SECTION 6 ALSO BARNES V. EIGHTH JUDICIAL DIST. CT. FOR THE STATE OF NV., IN AND FOR CLARK COUNTY, 103 NV. 679, 748 P.2d. 483 (1987); MONTGOMERY V. PINCHAK, 294 F.3d 492, AT 499 (3RD CIR. 2002); FARMER V. HAAS, 990 F.2d 319, AT 322 (7TH CIR. 1993); PARHAN V. JOHNSON, 126 3d 454, AT 461 (3RD CIR. 1997); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 S. CT. 594 (1972)..

LEGAL AUTHORITY IN SUPPORT OF THIS PROCEEDING.

PLEADING FOR WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS IS THE RIGHT PROCEEDING TO BRING INTO THIS HONORABLE NV. S. CT.; FOR FURTHER BRIEFING, SHOWCAUSE HEARING WITH THE APPOINTMENT OF LEGAL COUNSEL PURSUANT TO N.R.S. 34.750 AND HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDYS AT LAW TO RE-ADDRESS THE GRAVE FUNDAMENTAL MISCARriage OF JUSTICE PURSUANT TO STATE V. MITCHELL, 122 NV. 1269, 149 P.3d 33 (2006).

PETITIONER REALLEGE AND INCORPORATES BY REFERENCE PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT TO SUPPORT OF THIS MOTION FOR APPOINTMENT OF COUNSEL SHOWING SUFFICIENT ENOUGH FACTUAL EVIDENCE TO OVERCOME ANY PROCEDURAL BARR TO ANY UNTIMELY OR SUCCESSIVE PETITION BY PETITIONER;

SHOWING HIS "ACTUAL INNOCENCE" OF THE CRIME SEXUAL ASSAULT/LEWDNESS AND ILLEGAL CONVICTION OF OVER 18 YRS AGO MUST BE REVERSED AND RETURNED BACK TO THE 2ND JUDICIAL DIST. CT. WITH INSTRUCTIONS FROM THIS HONORABLE NEVADA SUPREME COURT TO ALLOW WITH EFFECTIVE COUNSEL TO PROVE HIS ACTUAL INNOCENCE OF THE CRIME SEXUAL ASSAULT/LEWDNESS FOR WHICH HE WAS ARRESTED AND CONVICTED OVER 18 YRS AGO...

MATTERS OUTSIDE THE RECORD...

- ① my ATTORNEY REFUSED TO SEE OR DO ANY THING I ASKED FROM DAY ①.
- ② I FIRST MET my P.D. JANET C. SMUCK 15 MINUTES OR SO BEFORE my PRELIMINARY HEARING, the 1ST thing she said was ~~QUOTE~~ "QUOTE" I'm your LAWYER EVERYTHING WILL BE DONE my way PERIOD!
- ③ DURING OUR 10 MINUTES OF GETTING TO KNOW you I TRIED TO EXPLAIN WHAT I THOUGHT WAS THE REASON I WAS BROUGHT IN TO BE ARRESTED GARY MANESEE, THE ALLEGED VICTIM'S *STEPDAD DIDN'T LIKE ME, AS IN NOV. 93 HIS GIRL FRIEND BROKE UP WITH HIM AND MOVED IN WITH ME, UNTIL SHE COULD GET HER OWN PLACE - (SHE WAS A 21 DEALER FROM OUT OF STATE,) SHE BOUGHT ME CLOTHES ECT. ANYWAY HE MADE SO MUCH TROUBLE WITH HER SHE LEFT A LITTLE EARLIER THAN SHE EXPECTED, ON JAN 1ST / DEC. 31ST 93 NEW YRS EVE, my SISTER CAME OVER TO my APT. I LIVED IN A 4 PLEX TOP FLOOR, SHE WAS SAD AS SHE AND HER BOYFRIEND DENNIS RUBLE BROKE UP A COUPLE OF HOURS PRIOR, SO SHE CAME TO my PLACE, SHE SEEN GARY THE GIRL'S *DAD SHE'S MET HIM A FEW TIMES AS I'VE LIVED IN THIS APT. 9 MONTHS [NOW AWAITING A VERY LARGE SDIS SETTLEMENT FROM AN ON THE JOB INJURY WHERE I FELL 45 FT TO CONCRETE - AND WAS IN THE HOSPITAL 3 MONTHS - INCLUDING A BODY CAST 8 MONTHS, ECT] ANYWAY my SISTER

Simply ASK GARY IF HE WANTED TO HAVE SEX - (TO BE POLITE HERE,
AS I GUESS SHE WAS FEELING SHE NEEDED TO FEEL LIKE A WOMAN,
ON NEW YRS EVE, she spent alot of money on HERSELF, GARY SAID
YES BUT ONLY AFTER HE HAD A DRINK! I TOLD HIM LOOK USE MY BED
JUST CHANGE THE SHEETS. AGAIN HE SAID HE NEEDED A DRINK.
ABOUT 1 HR. GOES BY my SISTER AND I ARE GETTING A LITTLE BUZZ ON
OURSELVES, GARY COMES FROM NEXT DOOR WHERE HE LIVES AGAIN my
SISTER HITS ON HIM, TELLING HIM, NO STRANGERS JUST SEX! NOW HE SAYS
HE NEEDS SOMEONE TO WATCH HIS GIRLS - I ~~WANTED~~ SAID I WOULD
IF NEEDED BE, AGAIN HE SAID HE NEEDS ANOTHER DRINK. AWHILE LATER
my SISTER IS NOW SLEEPING ON my COUCH - GARY COME BACK, STATING
HE NOW WANTS SEX FROM my SISTER - I HIT HIM IN THE "FACE HARD"
TELLING HIM TO LEAVE - I WASN'T GOING TO LET HIM DISRESPECT my
SISTER NO MORE PERIOD! SO HE STARTS YELLING HOW FIRST IT WAS
HIS EX-GIRL FRIEND - NOW HE'S BLAMING me FOR THIS SITUATION
SAYING PAY BACK IS A BITCH - 2 WEEKS OR SO GO BY I WORKING
ON my TRUCK DRINKING BEER FOR ABOUT 8-9 HOURS WITH A FEW GUYS
AND 2 COPS COME BY AND TAKE ME AWAY. SEE! PAUL GRUBB'S
AFFIDAVIT EXHIBIT #3.

④ my LAWYER TOLD ME RIGHT OFF I WAS LYING!

⑤ WE GOTO PRELIM - I TOLD HER TO ASK SPECIFIC QUESTIONS, SHE
REFUSED. I ASKED HER WHERE WAS D.N.A. - RAPE KIT - ANY PHYSICAL
EVIDENCE AT ALL - she SAID IT WASN'T NECESSARY IN NEVADA!

⑥ I TOLD HER I WAS HELD 6 DAYS WITHOUT GOING TO ARRANGEMENT
she SAID IN NV. ITS LEGAL!

⑦ AFTER THE ALLEGED VICTIMS SAID I DID NOTHING TO EM AND
DET. STEGHMIER STATED I HAD NO TATTOES ECT IN PELLIC AREA

AS DID ALLEGED VICTIMS - (I) WANTED PHOTOS TAKEN TO SHOW I HAD ①

(A VERY LARGE COLOR FULL ONE) FROM MY BELLY BUTTON TO MY SCROTUM.
AFTER HER SAYING I DIDN'T; BECAUSE NOBODY NEW I HAD IT IN THERE
TESTIMONY I SHOWED HER - (PART OF IT); FINALLY SHE SAID OK! IT WAS
"MY ACE IN HOLE".

(8.) I HAD TO CALL HER OFFICE (SMUCKS) SHE HARDLY EVER SEEN ME
I TOLD HER TO GO TO SEE SOME PEOPLE I KNEW WOULD SPEAK IN MY BEHALF

A CARLA - I HELPED RAISE HER SON, NO HER 20 YRS.

B GALE THOMAS - EX GIRL FRIEND 2 YRS - 2 KIDS 1 BOY 1 GIRL

C LINDA STALING - NURSE I DATED FROM HOSPITAL - WASHOE MED 2 BOYS

D KEN DANIELS - GOOD FRIEND FOR YRS FAMILY MAN 5 KIDS BOYS/GIRLS

E PAUL GRUBBS LIVED IN APT. BELOW ME. WITH STEPSON JOHN

F SISTER - ESTHER CHONG.

A) CARLA TOLD ME THAT MRS. SMUCK AND HER INVESTIGATOR DID GO TO
HER HOUSE, BUT SAT OUTSIDE - ACROSS THE STREET FOR ABOUT 20 MIN.
THEN LEFT. (I ASKED MRS. SMUCK ABOUT THIS, SHE SAID SHE WENT TO SEE
CARLA AND CARLA WAS DRUNK - AND SHE DIDN'T WANT HER COMING TO COURT.
I TOLD MRS. SMUCK SHE'S A DAM LIAR AS CARLA DON'T, NOR EVER DRANK
IN 20 YRS I KNEW HER!

B) GAIL THOMAS IS A KENO RUNNER AT KARL'S SILVER CLUB IN SPARKS NV.
MRS. SMUCK TOLD ME SHE DIDN'T HAVE TIME TO GO SEE HER AT WORK
IN THE DAYTIME, THAT IF GAIL WANTED TO TALK TO HER, TO CALL HER OFFICE
GAIL TOLD ME SHE TRIED 2-3 TIMES AND SAID NO MORE.

C) LINDA STALING WAS MY NURSE AT WASHOE MEDICAL IN RENO NV,
FOR ABOUT 45 DAYS. WE DATED ABOUT 6 MONTHS AFTER I GOT OUT OF HOSPITAL.
I SPOKE WITH LINDA ON THE PHONE - MRS. SMUCK DID SEE LINDA "BUT"
ACCORDING TO LINDA SPOKE MAINLY ABOUT HER JOB AS A P.O. VERY
LITTLE ABOUT ME. LINDA SAID SHE CAME TO COURT - BUT SMUCK TOLD
HER IT WASN'T REALLY NECESSARY AND LEFT. LINDA WAS UPSET AT HER.

D) KEN DANIELS, SAID SHE CAME AND LEFT A CARD ON HIS DOOR
HE CALLED 4-5 TIMES HE FINALLY WENT TO SEE HER, SHE TOLD HIM
HIS TESTIMONY WAS NOT NEEDED, KEN TOLD ME HE WAS GOING TO
SHOW UP ANYWAY, AND HE DID!

E) PAUL GROBB SEE EXHIBIT #3 ITS SELF EXPLANATORY.

F) MY SISTER SPOKE TO MRS. SMUCK A COUPLE OF TIMES - DID NOT
LIKE HER AT ALL, MY SISTER BROUGHT MY CLOTHES FOR TRIAL AND
P.D. SMUCK REFUSED TO LET HER GIVE E'M TO ME - SO MRS. SMUCK
DRESSED ME IN PANTS 2" TO SHORT, NO BELT AND SOME 1970 BRIGHT
PURPLE BALLOON SLEEVE SHIRT I LOOKED LIKE A DAM RETARDED DOWN
FOR COURT. / / / / / / / / / /

9) FOR THE NEXT COUPLE OF MONTHS MRS. SMUCK SEEM ME I
THINK TWICE IN JAIL - I SPOKE TO HER ON PHONE 2 MAY BE 3 TIMES
HER INVESTIGATOR TOOK 12 PHOTOS OF ME TOP - BOTTOM NAKED -
WE ARGUED ALOT SHE ALWAYS LIED TO ME - BUT SHE SAID SHE DID
GO TALK TO THE ALLEGED VICTIMS AND THEY WOULD NOT LIE! NOW
SHE WONT TALK TO ANYONE WHO TALK GOOD ABOUT ME, WHO KNOW I
WOULDN'T DO ANY CRAP LIKE THE STATE SAID I DID. AS I GOT 2 DAUGHTERS
MY SELF - YET SHE'LL GO AND HELP THE ALLEGED VICTIMS OUT.
SOMETHING JUST DON'T SEEM RIGHT HERE!!

10) ONE DAY MRS. SMUCK COMES TO JAIL, AND TELLS ME SHE IS GOING
TO COURT IN MY BEHALF I DON'T NEED TO GO - BUT I DECIDED I'M GOING
MY WAY - ONCE THERE I HEAR HER TELL THE JUDGE HOW I WISH TO
CHANGE MY PLEA TO "GUILTY" - "NO-WAY" I TELL THE JUDGE!
I WANT A TRIAL, SO MRS. SMUCK YELLS AT ME HOW SHE GOT THE BEST
DEAL SHE COULD GET ME, I YELL BACK AT HER - [I DON'T WANT A DEAL].
AND TELL THE JUDGE I WANT A DIFFERENT ATTORNEY AGAIN -
JUDGE TELLS ME NO SHE'S DOING PROPER WORK CORRECTLY - AND SMUCK

TELLS ME NOW I'M STUCK WITH HER PERIOD. SHE DON'T WANT TO GO TO TRIAL - AND THE HELL WITH ME.

(11) TRUE TO HER WORDS SHE DID AS LITTLE AS POSSIBLE, I ASKED HER TO DO D.N.A. - NO - FIND AN EXPERT FOR ME NO - IS ANYONE GOING TO COME TO COURT FOR ME [SHE SAID NO] BUT I KNOW EVERYONE IS COMING - ALL SHE DID IS GO THRU THE LEAST OF MOTIONS POSSIBLE.

(12) DAY OF TRIAL EVERYONE IS IN THE HALLWAY - I TOLD HER I NEW THEY WOULD SHOW UP - SHE SAID TOUGH SHIT - THEIR NOT COMING IN BECAUSE THE D.A. REFUSES TO LET E'M COME IN. I TOLD HER B.S: THERE^x MY WITNESSES NOT HIS, SHE TELLS ME TOUGH SHE DON'T WANT TO GO TO TRIAL.

(13) AS TRIAL TRANSCRIPTS WILL SHOW P.D. SMUCK DID NOTHING FOR ME AT ALL IN MY 3 1/2 HR TRIAL, WHEN I MADE A COMMENT TO HER IN REGARDS TO A WITNESS LYING THE JUDGE ORDERED MY MOUTH DUCK TYPED IN FRONT OF JURY PR. D.A. SAYING I WAS INTERRUPTING HIS QUESTIONING - P.D. SMUCK JUST SAT THERE PERIOD - I WAS TOLD BY JUDGE TO SHUT UP AND JUST WRITE NOTES TO HER, YET EVERY TIME I WROTE TO HER SHE'D PUSH IT AWAY - SHE REFUSED TO ASK ANY RELEVANT QUESTIONS - TRIED NOT TO SHOW THE PHOTO OF MY TATTOO - MATTER OF FACT, THE D.A. TOOK MY PHOTO FROM HER, GAVE IT TO DET. STECHMIER WHO SHOWED THE GIRL'S IN HALLWAY WHO IN TURN CAME BACK IN ON REBUTAL AND AFTER STATING IN PRELIM. / AND TRIAL NO TATTOOS ALL THE SUDDEN NO ABT IT, SHE NEVER ~~OBJ~~ OBJECTS OULE. I'M CONVICTED...

(14) AT SENTENCING SAME THING DOES NOTHING - I GOT RECORDS ECT. SHE WON'T USE WON'T CALL REBUTAL WITNESS TELLS JUDGE I'VE GOT MANY ~~ERRORS~~ ERRORS IN MY P.T.P. REPORT BUT WILL ADDRESS THEM LATER - WHICH IS UNTRUE. SHE LIED TO COURT, AS WHEN I'M SENTENCED I'LL NEVER SEE HER AGAIN - SHE NEVER EVEN TOLD JUDGE TO DISMISS COURT ~~AS~~ AS JURY COULD DECIDE ON IT, THEREFOR COUNSEL FOR PETITIONER

REFUSED TO OBJECT THE D.A. AND THE JUDGES DECISION TO DISMISS THE COUNT THE JURY COULD NOT FIND ME GUILTY ON, NOR DID COUNSEL FOR PETITIONER MOVE FOR A MISTRIAL OR RAISE ANY OF THESE ISSUES WHICH ARE FACTUAL MATTERS OUTSIDE OF THE PETITIONERS APPEAL TO SHOW ACTUAL INNOCENCE THAT PETITIONERS NEVER COMMITTED THIS CRIME SEXUAL ASSAULT/LEWDNESS.

CONCLUSION

THEREFORE PETITIONER RESPECTFULLY SUBMITTS THIS INTIRE WRIT OF PROHIBITION/WRIT OF MANDAMUS, MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT IN SUPPORT AND ATTACHED EXHIBITS WITH THE ASSISTANCE OF FIRMATE OF LEGAL KNOWLEDGE IN PREPARING THIS INTIRE PLEADING TO BE REVIEWED BY THE NEVADA SUPREME COURT AND TO ORDER THE 2ND JUDICIAL DISTRICT COURT TO PREPARE PETITIONERS ENTIRE CASE # CR94-0345 AND TO HAVE IT FORWARDED TO NEVADA SUPREME COURT SO THAT THIS HONORABLE COURT CAN MAKE THIS RULING PURSUANT TO N.R.S. 34.160; N.R.S. 34.170 AND N.R.S. 34.190 WHICH GIVES THE NEVADA SUPREME COURT JURISDICTION TO ENTERTAIN PETITIONERS WRIT OF PROHIBITION/WRIT OF MANDAMUS ON APPEAL FROM THE DEFENDANT 2ND JUDICIAL DIST. COURT FOR A RULING.

DATED THIS 101 OF AUG, 2003

RESPECTFULLY SUBMITTED

CHARLES J. MAKI

charl J. make

VERIFICATION

" PETITIONER HAS READ COMPLETELY THE FOREGOING
MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT
OF MOTION APPOINTING COUNSEL, WRIT OF PROHIBITION/WRIT
OF HABEAS CORPUS, NOTICE OF APPEAL, DESIGNATION OF RECORD
ON APPEAL" AND HEREBY VERIFY THAT THE MATTER AND
ALLEGATIONS OF ALLEGED HEREIN BY PETITIONER WITH THE
ASSISTANCE OF INMATE WHO HAS LEGAL KNOWLEDGE,
ARE TRUE AND CORRECT EXCEPT TO THOSE MATTER AND ALLEGATIONS
ON INFORMATION AND BELIEF, PETITIONER BELIEVES THOSE
MATTERS AND ALLEGATIONS THAT ARE OUTSIDE OF THE OFFICIAL
COURT RECORD CASE # CR 94-0345 TO BE TRUE AND CORRECT..

PETITIONER FURTHER, CERTIFIES UNDER THE
PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 THAT
ALL THE FOREGOING ABOVE HEREIN MENTIONED TO THE BEST
OF PETITIONER'S MEMORY AFTER 18 PLUS YEARS IS TRUE
AND CORRECT..

EXECUTED IN CARSON CITY, NV, ON THIS 01
DAY OF AUG, 2003.

RESPECTFULLY, SUBMITTED

CHARLES J. MAKI

Charles J. Maki

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO N.R.C.P. RULE 5 (B), PETITIONER HEREBY
P. 9

CERTIFY'S THAT HE IS THE ABOVE NAMED PETITIONER
THAT HEREIN AND THAT ON THIS 01 DAY OF AUG 20013
PETITIONER DEPOSITED INTO THE U.S. MAIL ROOM AT
NORTHERN NEVADA CORR. CENTER. CARSON CITY NV. 89702-7000
A TRUE AND CORRECT COPY'S OF THE FOREGOING (MOTIONS, FOR
APPOINTMENT OF COUNSEL, AFFIDAVIT TO SUPPORT OF APPOINTMENT
OF COUNSEL, WRIT OF PROHIBITION/WRIT OF MANDAMUS, NOTICE
OF APPEAL, DESIGNATION OF RECORD ON APPEAL, ALL THE FOREGOING
IN CASE # CR 94-0345 ARE BEING APPEALED TO THE NEVADA
SUPREME COURT.), ADDRESSED TO THE FOLLOWING:

CLERK OF THE COURT FOR
THE 2ND JUDICIAL DIST. COURT IN
AND FOR WASHOE COUNTY, 75 COURT ST.
RENO, NV. 89501

DICK SAMICK, DISTRICT ATTORNEY
FOR THE 2ND JUDICIAL DIST. COURT
IN AND FOR WASHOE COUNTY, 75 COURT ST.
RENO, NV. 89501

Charles J. Maki

CHARLES J. MAKI

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, WRIT OF
PROHIBITION/WRIT OF MANDAMUS, APPOINTMENT OF COUNSEL, AFFIDAVIT OF SUPPORT,
DESIGNATION OF RECORD ON APPEAL AND NOTICE OF APPEAL
(Title of Document)

filed in case number: CR99-0345



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: ~~2009~~ AUG 15TH 2013

Charles Joseph Maki
(Signature)

CHARLES Joseph Maki
(Print Name)

N/A
(Attorney for)

EXHIBITS

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 1

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 30904

Consolidated with:

Counsel

Karla K. Butko, Verdi, NV, as counsel for Appellant

Attorney General Frankie Sue Del Papa/Carson City, Carson City, NV, as counsel for Respondent

Washoe County District Attorney Richard A. Gammick, Reno, NV \ Gary H. Hatlestad, Deputy District Attorney,
Terrence P. McCarthy, Deputy District Attorney, as counsel for Respondent

Case Information

Panel: NNP00A

Panel Members: Shearing/Agosti/Leavitt

Disqualifications:

Case Status: Closed

Category: Criminal Appeal

Type: Post-Conviction

Submitted: On Briefs

Date Submitted: 05/28/98

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Supreme Court Cases:

District Court Case Information

Case Number: CR940345

Case Title: STATE VS. MAKI

Judicial District: Second

Division:

County: Washoe Co.

Sitting Judge: Steven R. Kosach

Replaced By:

Notice of Appeal Filed: 08/18/97

Appeal

Judgment Appealed From Filed: 07/24/97

Docket Entries

<u>Date</u>	<u>Docket Entries</u>
08/20/97	Filing Fee waived: Criminal.
08/20/97	Filed Certified Copy of Notice of Appeal. Appeal docketed in the Supreme Court this day.
08/25/97	Received document from district court clerk. Copy of the district court order filed January 29, 1997. Mr. Hardy's motion to withdraw as counsel for petitioner is granted. Petitioner's motion for new counsel is also granted. Mr. Joseph Plater, Esq., is appointed to represent petitioner.
08/28/97	Filed Certified Copy of Notice of Appeal (Second notice filed by proper person appellant from same judgment.)
08/29/97	Filed Certified Copy of Notice of Appeal. Filed on August 26, 1997 by attorney Joseph Plater.
10/03/97	Receipted for 8/28/97 entry and mailed docketing statement to counsel for appellant.

Thursday, October 22, 2009 12:07 PM

②

EXHIBIT-1-

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 2

* 10/08/97	Filed Order. Appellant shall within 10 days of the date of this order file and serve a docketing statement and a transcript request form or certificate of no transcript request, or show cause why sanctions should not be imposed upon counsel. Appellant shall have 100 days from the date of this order to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31 (a)(1). We caution attorney Plater that failure to comply with this order in a timely manner may result in the imposition of sanctions against counsel.
10/21/97	Filed Docketing Statement.
* 10/27/97	Filed Request for Transcripts of Proceedings. Court reporter: Isolde Zihn. *
01/22/98	Filed Motion and Order. That appellant shall have to and including February 17, 1998, to file the opening brief.
02/19/98	Filed Motion to Extend Time. To file opening brief.
02/25/98	Filed Clerk's Order. Granting the motion filed February 19, 1998. The opening brief shall be served and filed on or before March 3, 1998.
03/05/98	Filed Motion to Extend Time. To file opening brief.
03/09/98	Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief shall be served and filed on or before March 12, 1998.
03/16/98	Received Brief. Appellant's opening brief. (Mailed on: 3/12/98.)
03/16/98	Received Appendix. Appellant's appendix I and II. (Mailed on: 3/12/98.)
03/25/98	Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief and appendix provisionally submitted on March 16, 1998, shall be filed, forthwith.
03/25/98	Filed Brief. Appellant's opening brief
03/25/98	Filed Appendix. Appellant's appendix, Volume I and II.
* 03/27/98	Filed Order. Court reporter Zihn shall have 20 days from the date of this order to complete the requested transcript and to provide the clerk of this court with a certificate acknowledging delivery of the completed transcript and a certified copy of the transcript, or show cause why sanctions should not be imposed in accordance with NRAP 13(b).
* 04/09/98	Received Letter. From court reporter Isolde Zihn. She was not the reporter in this matter.
04/23/98	Filed Brief. Respondent's answering brief. (Mailed on: 4/22/98.)
* 05/05/98	Filed Order. <u>Court reporter Zihn has responded to our March 27, 1998, order by way of letter. It appears that the transcript requested by appellant was completed on February 10, 1998, by court reporter Stephanie Koetting; however, a copy of the transcript was not filed in this court. Furthermore, it appears that appellant has improperly included the transcript in appellant's appendix. We decline to strike appellant's nonconforming appendix at this time, as it does not appear that appellant's error will hinder this court's review of this matter. We admonish appellant's counsel to be more mindful in the future to the procedures for prosecuting appeals as contained in the Nevada Rules of Appellate Procedure</u>
05/28/98	Filed Brief. Appellant's reply brief. (Mailed on: 5/27/98.)
05/28/98	Case submitted on briefs this day.
02/02/00	Filed Motion. To be relieved as counsel of record.

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 3

03/07/00	Filed Order. Of remand for designation of counsel. Appellant's counsel of record Joseph R. Plater has filed a motion to be relieved as counsel of record in this appeal. We grant the motion. We remand this matter to the district court for the limited purpose of securing new appellant counsel. If indigent, the district court shall have 30 days to appoint counsel for appellant. Otherwise, the district court shall order that, within 30 days appellant must retain counsel and counsel must enter an appearance in the district court. Within 5 days from the appointment or appearance of counsel, the district court clerk shall: (1) transmit to this court a copy of the district court's written or minute order; and (2) serve a copy of this order of remand on appellant's counsel. Thereafter, counsel shall have 10 days to enter an appearance with the clerk of this court. Within 15 days from the date on which counsel is required to enter an appearance in this court, counsel shall file a motion requesting permission to file a supplemental brief, if counsel deems supplemental briefing necessary.	
04/13/00	Filed Notice. Of appearance of counsel. Karla K. Butko appointed as counsel for appellant.	
04/17/00	Filed Notice. Amended notice of appearance of counsel. Karla K. Butko appointed as counsel for appellant. (Copy of order appointing counsel filed in district court on 3/20/00 attached.)	
06/14/00	Filed Motion to Extend Time. to File Appellant's Supplemental Opening Brief.	00-10134
06/14/00	Received Supplemental Brief.	00-10135
07/07/00	Filed Order Granting Motion We grant appellant's June 14, 2000, motion. The clerk of this court shall file the supplemental brief provisionally submitted with the motion on June 14, 2000. The State shall have 30 days from the date of this order within which to file a supplemental answering brief.	00-11584
07/07/00	Filed Supplemental Brief. Appellant's Supplemental Opening Brief.	00-10135
07/27/00	Filed Supplemental Brief. Respondent's Supplemental Answering Brief.	00-13069
10/10/00	Filed Order of Affirmance. Having concluded that Maki has not demonstrated error, ... we affirm the judgment of the district court." NNP00A-MS/DA/ML	00-17847
11/07/00	Issued Remittitur.	00-17948
11/07/00	Processing status update: Remittitur Issued/Case Closed.	
11/29/00	Filed Remittitur. Received by County Clerk on November 9, 2000.	00-17948

NOTE:
FINAL PAGE
OF ORDER

00 NOV -9 A9:29

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,

No. 30904

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 10 2000

J. Richards

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On May 17, 1994, appellant Charles Joseph Maki was convicted, pursuant to a jury verdict, of three counts of sexual assault of a child under age fourteen and five counts of lewdness with a child under age fourteen. Maki was sentenced to serve consecutive terms of life imprisonment with the possibility of parole, along with lesser terms of imprisonment. This court dismissed Maki's direct appeal. [See Maki v. State, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995)].

On May 9, 1996, Maki filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel filed supplemental points and authorities in support of the petition. After holding an evidentiary hearing, the district court denied Maki's petition. This appeal followed.

Maki claims that he demonstrated that he received ineffective assistance of counsel and that the district court erred in denying him relief. To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense. See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102

EXHIBIT 2-2

(1996). We conclude that Maki has not shown that the district court erred in denying him relief on his claims. We will address each claim in turn.

Maki first argues that his trial counsel was ineffective for failing to request independent physical and psychological/psychiatric examinations of the two victims. However, the evidence adduced at the post-conviction hearing demonstrates that counsel acted reasonably in deciding not to request independent examinations.¹ Trial counsel testified that she did not request independent physical examinations of the victims, in part because she was satisfied with the examinations that had been performed and reported to the defense. Trial counsel cited several reasons why she did not request independent psychological or psychiatric examinations. Having reviewed the documents before this court, we conclude that the reasons cited by counsel are legitimate.

For example, one reason counsel cited was that she was informed that the State would not call an expert witness in psychiatry or psychology. Counsel also explained that she had not received any information that the victims had received counseling or been seen by a psychiatrist. These facts are relevant both to the reasonableness of counsel's decision and to the question of whether Maki would have been entitled to an examination upon request. See *Keeney v. State*, 109 Nev. 220, 224-26, 850 P.2d 311, 314-15 (1993). Maki has not shown that the State employed an expert witness in psychology or

¹We note that the district court found trial counsel's testimony at the evidentiary hearing to be "more credible" than Maki's testimony, which the court characterized as "in large part incredible and unworthy of belief." We defer to these factual findings. See *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (indicating that a district court's factual findings regarding claims of ineffective assistance of counsel are generally entitled to deference).

psychiatry.²

In ruling that counsel acted reasonably, we are cognizant of Maki's claims that the victims expressed uncertainty and made inconsistent statements about the relevant events prior to trial. However, we emphasize that the victims' allegations were at least partially corroborated by Maki's own incriminating admissions that he had engaged in sexual misconduct with the victims. An important factor in determining the need for independent psychological or psychiatric examinations is whether there is "little or no" corroborative evidence. See Keeney, 109 Nev. at 226, 850 P.2d at 315.

Accordingly, we conclude that Maki failed to overcome the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." See Strickland, 466 U.S. at 689. Maki has not demonstrated that counsel acted unreasonably, let alone that he would have been entitled to independent examinations of the victims had counsel requested such examinations. See Keeney, 109 Nev. at 224, 850 P.2d at 314 ("Generally, a psychological examination of a sexual assault victim should be permitted if the defendant has presented a compelling reason therefor.").

Additionally, Maki has another hurdle to overcome. To properly demonstrate prejudice he must show a reasonable probability that counsel's deficient performance affected the outcome of the proceedings. Maki argues, without citation to supporting authority, that prejudice should be presumed. given the amount of time that has passed and the difficulty of showing what independent examinations would have yielded. We reject

²Maki notes that a nurse testified about behavioral problems that one of the victims was experiencing and the possible source of those problems. It also appears that the nurse concluded that this victim was sexually abused, although that finding appears to be primarily based on the physical examination. Maki has not shown that the nurse was qualified as an expert in psychology or psychiatry; nor could her testimony be reasonably viewed in this light.

this argument. Maki was required to show that such evaluations had a reasonable probability of affecting the outcome of the proceedings. He failed to do so.

Maki next claims that his counsel was ineffective, at trial, for failing to more effectively cross-examine the victims to reveal allegedly inconsistent and exculpatory prior statements. We question whether this issue was properly presented in the district court.³ In post-conviction cases, this court will generally decline to review issues not properly raised in the district court. See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995); Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Further, Maki has not included a complete copy of the trial transcript in the documents submitted to this court, or even the full portion of the transcript detailing the trial testimony of the victims. Accordingly, it is impossible to properly evaluate Maki's claim. Under these circumstances, the deficiency should be resolved against Maki. It is his responsibility to provide the materials necessary for appellate review. See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

Maki also argues that his counsel was ineffective for failing to properly cross-examine the victims on tattoos in Maki's genital area, which apparently extended downward from Maki's lower abdomen. It is similarly impossible to properly evaluate this claim because of Maki's failure to include all relevant portions of the trial transcript. We further note that the documents before this court, particularly the post-conviction evidentiary hearing transcript, reflect that trial

³The issue of the victims' prior statements was discussed, and testimony adduced on this point, at the post-conviction evidentiary hearing. However, the discussion and testimony appear to have been related to Maki's claim that counsel should have requested independent examinations of the victims. At one point the State asked to "exclude everything [regarding the victims' inconsistencies] that was raised at trial, because by that point it was far too late to seek examination." Post-conviction counsel responded, "That's fine."

counsel did present pictures to the jury showing Maki's tattoos and that counsel argued this issue to the jury. Counsel indicated that an important point of the defense was that the victims would have mentioned the tattoos, on their own, had they observed Maki's genital area.

Maki also claims that his prior counsel was ineffective for failing to more effectively argue that certain statements made by Maki to police were erroneously admitted pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Because the *Miranda* issue was fully litigated in the district court and on direct appeal, Maki's claim is barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975). Although Maki attempts to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered issues pursuant to *Miranda*, and this court reviewed the complete transcript of the police interview in resolving these issues.⁴ Maki may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *See Hall*, 91 Nev. at 316, 535 P.2d at 799.

Maki next claims that trial and appellate counsel were ineffective for failing to raise issues of duplicative and redundant charges and sufficiency of the evidence. Maki specifically notes that at the preliminary hearing one of the victims testified that an incident involving digital penetration occurred at the same time as one of the incidents in which Maki placed his penis in her vagina. He contends that this constituted only one sexual assault and therefore counsel should have sought dismissal of the digital penetration charge.

⁴This court held that Maki "was not 'in custody' before he was read his *Miranda* warnings" and that, after Maki was read the warnings and invoked his rights, police failed to scrupulously honor Maki's invocation of his right to remain silent. This court noted, however, that only one incriminating statement made after Maki invoked his rights was admitted at trial, and concluded that admission of this statement was harmless error.

[The trial transcript and analysis of all the evidence in relation to all the charges are necessary to properly resolve this and Maki's even less specific contentions of insufficient evidence and other duplicative charges.⁵] Again, it was Maki's responsibility to provide the materials necessary for our review as well as relevant authority and cogent argument.⁶ See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *Jacobs*, 91 Nev. at 158, 532 P.2d at 1036.

Maki next claims that appellate counsel was ineffective for failing to argue that the district court erred in failing to sanction the State or grant Maki a continuance, after the State disclosed evidence, shortly before trial, concerning physical examinations of the victims. Again, Maki has failed to include pertinent documents in the appendix on appeal. Maki has not included transcripts of the proceedings concerning the State's disclosure of the report and Maki's motion for the continuance. Thus, it is impossible to determine whether the district court acted improperly.

For the reasons cited above, and after further review

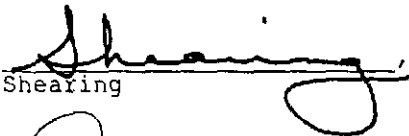
⁵We are not persuaded by Maki's specific contention that counsel was ineffective for failing to challenge the charge of digital penetration prior to trial. A victim did testify that the incident of digital penetration occurred "[w]hen he was doing the same thing in our room," meaning "[w]hen he was putting his penis inside" of her. However, a reasonable reading of this victim's testimony does not necessarily suggest that the digital penetration occurred simultaneously with the other charged offense, but simply that the two incidents were part of the same molestation episode. We emphasize that the trial transcript could clarify the relationship between the act of digital penetration and the other offenses. We also note that the jury did not return guilty verdicts on each of the charges of sexual assault, and thus the question of prejudice is also speculative.

⁶We also note that Maki has failed to include specific citation to the appendix indicating how these claims were raised in the district court in the post-conviction proceedings. Indeed, Maki's argument on these claims in the supplemental opening brief is quite general and arguably insufficient to even state a valid claim.

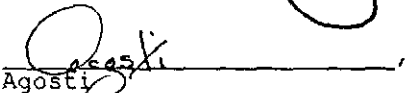
of the briefs and appendix, we conclude that Maki has not shown that he is entitled to relief. In closing, however, we admonish Maki's former appellate counsel, Joseph R. Plater, and his current counsel, Karla K. Butko. On several occasions, counsel failed to cite to relevant portions of the appendix and discuss how issues were raised in the district court, discussed at the post-conviction evidentiary hearing (if applicable), and resolved by the district court. The critical issue to be resolved in a post-conviction appeal is whether the district court erred in denying the post-conviction petition. Counsel should not relegate to this court the task of parsing the record to resolve appellate claims. See NRAP 28.

Having concluded that Maki has not demonstrated error, we affirm the judgment of the district court.

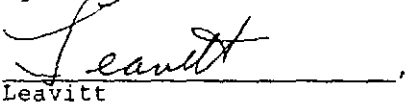
It is so ORDERED.


Shearing

J.


Agosti

J.


Leavitt

J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Joseph R. Plater
Karla K. Butko
Washoe County Clerk

PAUL GRUBBS
AFFIDAVIT

PAGE #1

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully competent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricature and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phonr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

26  EXHIBIT-3

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Paul Grubb
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth
NOTARY PUBLIC



JOHN HUTH
NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPL. EXP. Dec. 3, 1995

STAMP

1
2
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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10

11
12 CHARLES J. MAKI,

13 *Petitioner,*

14 vs.

15 GEORGE GRIGAS, *et al.*

16 *Respondents.*
17

2:01-cv-0268-RLH-PAL

ORDER

18 This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents'
19 motion (#72) to dismiss on the basis of lack of complete exhaustion as to all claims.

20 ***Background***

21 Petitioner Charles Maki seeks to set aside his 1994 conviction, following a jury verdict,
22 for three counts of sexual assault on a child under the age of fourteen years and five counts
23 of lewdness with a child under the age of fourteen years. He was sentenced to three life
24 sentences with the possibility of parole and five ten year terms, with all such sentences and
25 terms to run consecutively. #25, Ex. 1.

26 ***Governing Law***

27 Under 28 U.S.C. § 2254(b)(1)(A), a habeas petitioner first must exhaust his state court
28 remedies on a claim before presenting that claim to the federal courts. To satisfy this

12

EXHIBIT 4- 45

EXHIBIT 8

1 exhaustion requirement, the claim must have been fairly presented to the state courts
2 completely through to the highest court available, in this case the Supreme Court of Nevada.
3 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329
4 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
5 federal constitutional guarantee and must also state the facts that entitle the petitioner to relief
6 on the federal constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir.
7 2000). That is, fair presentation requires that the petitioner present the state courts with both
8 the operative facts and the federal legal theory upon which his claim is based. *E.g., Kelly v.*
9 *Small*, 315 F.3d 1063, 1066 (9th Cir. 2003). The exhaustion requirement accordingly insures
10 that the state courts, as a matter of federal-state comity, will have the first opportunity to pass
11 upon and correct alleged violations of federal constitutional guarantees. *See, e.g., Coleman*
12 *v. Thompson*, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55, 115 L.Ed.2d 640 (1991).

13 **Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g)**

14 Respondents contend that a number of ineffective assistance claims were not
15 exhausted because petitioner failed to present the claims to the Supreme Court of Nevada
16 on a counseled appeal from the denial of state post-conviction relief. Respondents contend
17 that, *inter alia*, the following claims were not exhausted:

18 1. That he was denied effective assistance of counsel because:

19

20 b.) His trial counsel failed to allow him to testify;

21 c.) His trial counsel had a conflict of interest because she had a prior
22 experience with sexual assault, with counsel telling him that she
23 therefore did not want to represent him but would "go through the
24 motions;"

25

26 e.) At sentencing, his counsel failed to discredit the testimony of a
27 State witness and failed to present effective mitigating evidence;

28 ////

1 f.) His appellate counsel failed to raise specified errors on direct
2 appeal, including:

3 (1) a claim of error based on the trial court's decision
4 denying his request for a new attorney, based on
5 an alleged conflict of interest destroying their ability
6 to communicate;

7

8 (3) a claimed violation of N.R.S. 171.178.

9 g.) He was not arraigned within 72 hours of his arrest.

10 Petitioner responds that "there were many habeas corpus briefs filed by different
11 attorneys in Maki's behalf along with his own habeas corpus" and "[t]he present grounds have
12 all been before the Nevada Supreme Court and were taken from the briefs them selves [sic]."
13 #74, at 2. However, petitioner does not provide any specific record citations showing that any
14 of these claims were presented to the Supreme Court of Nevada in the briefs filed on appeal
15 from the denial of post-conviction relief. The Court has independently reviewed the appellate
16 briefs, and they do not contain any of the foregoing claims. See #54, Exhs. 57, 59 & 63.
17 Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g) therefore are not exhausted.

18 **Ground 1(d)**

19 In Ground 1(d), petitioner alleges that his trial counsel failed to exploit, during direct
20 examination, the victims' alleged ignorance of a large multi-colored tattoo in Maki's pubic
21 area. Argument regarding this allegation was set forth within another claim in petitioner's
22 supplemental opening brief on appeal from the denial of post-conviction relief. See #53, Ex.
23 63, at 3. The Supreme Court of Nevada further treated the claim as one included within the
24 claims on appeal. See #53, Ex. 65, at 4. However, significantly, the state high court held on
25 the counseled appeal that "[i]t is . . . impossible to properly evaluate this claim because of
26 Maki's failure to include all relevant portions of the trial transcript." *Id.* Ground 1(d) therefore
27 was not fairly presented to the Supreme Court of Nevada on appeal from the denial of post-
28 conviction relief and the claim thus is not exhausted.

1 **Grounds 2(a) and 2(b)**

2 In its prior order (#71), the Court *sua sponte* questioned whether Grounds 2(a) and 2(b)
3 were completely exhausted. In these claims, petitioner alleges:

4

5 2. That he was denied effective assistance of appellate counsel because
6 his appellate counsel failed to raise on direct appeal:

7 a.) A claim of error based upon the state trial court's failure to
8 sanction the State or grant a continuance to allow the defense to
9 obtain expert psychological and psychiatric evidence to rebut late-
10 breaking physical examination evidence by the State;

11 b.) Substantially the same claim of error based on the trial court's
12 failure to sanction the State or grant a continuance to allow the
13 defense to have an expert review evidence revealed shortly
14 before trial that one of the victims had been subjected to more
15 physical abuse than she had reported against petitioner.

16 Respondents do not include Grounds 2(a) and 2(b) in the present motion to dismiss.
17 However, similar to its holding on Ground 1(d), the Supreme Court of Nevada held as follows
18 as to Grounds 2(a) and 2(b) on the counseled post-conviction appeal:

19 Again, Maki has failed to include pertinent documents in
20 the appendix on appeal. Maki has not included transcripts of the
21 proceedings concerning the State's disclosure of the report and
Maki's motion for the continuance. Thus, it is impossible to
determine whether the district court acted improperly.

22 #53, Ex. 65, at 6. It would appear to this Court that if claims were presented to the state high
23 court in such a defective manner that it was impossible for that court to review the claims, the
24 claims were not fairly presented. Petitioner therefore will be required to show cause why
25 Grounds 2(a) and 2(b) should not be found to be unexhausted.

26 **Ground 3**

27 Respondents include Ground 3 in the present motion to dismiss, but the Court
28 dismissed this claim in its prior order as noncognizable in federal habeas. #71, at 12 & 13.

1 IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED
2 such that the Court finds that Grounds 1(b), 1(c), 1(d), 1(e), 1(f)(1), 1(f)(3) & 1(g) are not
3 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and
4 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire
5 petition, or seek other appropriate relief.

6 IT FURTHER IS ORDERED that, within twenty (20) days of entry of this order,
7 petitioner shall SHOW CAUSE in writing why Grounds 2(a) and 2(b) should not be found to
8 be unexhausted.

9 DATED this 12th day of June, 2006.

10
11 
12 _____
13 ROGER L. HUNT
14 United States District Judge
15
16
17
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28

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

2/16/94

ARRAIGNMENT

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender, Janet Schmuck.

TRUE NAME: CHARLES JOSEPH MAKI.

Copy of Information handed to the Defendant; reading waived. Defendant waived time in which to enter a plea; entered a plea of Not Guilty to the offenses charged in the Information. Defendant did waive the 60-day rule.

COURT ORDERED: Matter continued for trial by jury; Defendant was remanded to the custody of the sheriff.

4/1/94

9:00 a.m.

Motion to

Confirm

4/11/94

Jury

Trial

CR94-0345 DC-9900039406-057
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 02/16/1994 02 12 PM MIN
Washoe County JY05-

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

03/11/94

EVIDENTIARY MOTIONS

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

S. Hopper

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender Janet Cobb Schmuck. Counsel Greco addressed the Court and reviewed the contents of the video tape for the evidentiary motion.

Detective James Stegmair was called by Counsel Greco, sworn and testified.

State's Exhibit A was marked for identification; offered and ordered admitted.

The video tape was played for the Court.

Witness was further direct examined; cross examined; re-direct examined.

Counsel Greco presented arguments for the allowance of the video tape.

Counsel Schmuck presented arguments to not allow the video tape.

COURT ORDERED: Motion to allow the video tape into evidence during trial is granted.

Counsel Greco moved to release State's Exhibit A to the District Attorney's office; no objections; SO ORDERED.

Counsel Schmuck addressed the Court regarding discovery of the Saint's examination; COURT ORDERED GRANTED. Defendant was remanded to the custody of the Sheriff.

04/01/94

9:00 a.m.

Motion to
confirm

04/11/94

10:00 a.m.

Jury Trial

CR94-0345
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 03/11/1994 02 12 PM
Washoe County MTN
DC-9900039406-056
ivoc.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

4/1/94

MOTION TO CONFIRM TRIAL DATE/MOTION TO SUPPRESS

HONORABLE

Deputy District Attorney Dan Greco was present

STEVEN R.

for the State. Defendant present with counsel,

4/11/94

KOSACH

Deputy Public Defender, Janet Schmuck. James

Jury

DEPT. NO. 8

Roundtree was present for the State Division of

Trial

L. Romero

Parole and Probation.

(Clerk)

Respective counsel addressed the Court.

I. Zihn

Counsel for the defendant addressed the Court

(Reporter)

and moved to withdraw the defendant's former

plea of Not Guilty to Sexual Assault On A Child

Under The Age of Fourteen Years and Lewdness

With A Child Under the Age of Fourteen Years as

charged in Counts I, V, VI, & IX of the

Information and enter pleas of Guilty. Counsel

for the defendant stated the negotiations.

The defendant addressed the Court and stated

that he was innocent. The Court interrogated

the Defendant and did not accept his pleas of

guilty.

COURT ORDERED: Trial date of 4/11/94 confirmed.

At 9:50 a.m. Court ordered recess.

At 10:15 a.m. Court reconvened with all parties

present.

Counsel for the defendant presented argument for

her motion to suppress.

Counsel for the State presented arguments

against the defendant's motion.

Tape of the defendant's confession played for

the Court.

COURT ORDERED: Motion to suppress denied.

Defendant was remanded to the custody of the

sheriff.

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
MIN
1000

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Page 1
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MIN
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CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
MTN
DC-9900039406-063
1 Page
04/11/1994 02 13 PM
JY057

CASE NO. CR94-0345

STATE OF NEVADA

-VS-

CHARLES JOSEPH MAKI

TRIAL DATE April 11, 1994

JUDGE Steven Kosach

DEPT. NO. 8

CLERK L. Romero

REPORTER I. Zihn

D..A. Dan Greco

DEFT'S ATTY. Janet Schmuck

Court Appointed
Public Defender XX

VERDICTS Count I: Not Guilty; Count II: Hung; Counts III-X; Guilty

SENTENCING DATE May 13, 1994

PAGE 1

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

4/11/94
HONORABLE
STEVEN R.
KOSACH
DEPT. NO. 8
L. Romero
(Clerk)
I. Zihn
(Reporter)JURY TRIAL

Plaintiff, State of Nevada, was being represented by Deputy District Attorney, Dan Greco. The defendant, Charles Joseph Maki, was present with counsel, Deputy Public Defender, Janet Cobb Schmuck.

Counsel Schmuck presented her motions in limine to exclude any evidence as to the defendant's prior convictions and/or bad acts. COURT ORDERED: Motions granted.

Counsel Schmuck addressed the Court as to the pictures from the SAINTS exam. Counsel Schmuck moved for a continuance or in the alternative, that the pictures not be admitted.

Opposition and argument by counsel Greco.

COURT ORDERED: Motion for continuance denied. Motion for the admittance of the pictures taken under advisement.

At 10:45 a.m. the prospective jurors were brought into the courtroom. Court addressed the prospective jurors. Roll of the prospective jurors was called. Court explained the elements to the prospective jurors. Prospective jurors were sworn to answer questions touching upon their qualifications to serve as trial jurors in this case.

The Information was read by the Clerk.

Jurors were polled and questioned by the Court.

At 12:00 Court ordered recess. Prospective jurors admonished.

At 12:10 p.m. Court reconvened with all parties and prospective jurors present.

Following the process of jury selection, the persons listed below were sworn to try this case:

Marianne Dortch	Jill Young
Terry Bradley	Randall Reed
Merrilee Soileau	Vincent Cordi
Joe Sambrano	James Roets
Loretta McNabb	Patricia Hedges-Johnson
Leann Morgan	Sharon Suarez
Nancy Fritz-Alternate	

At 12:50 p.m. Court ordered recess. Jurors were admonished and excused.

At 2:20 p.m. Court reconvened with all parties present. Court noted that the Jury was present.

State's exhibits 1, 2 & 3 were marked for identification.

Defendant's exhibits A-F were marked for identification.

Counsel Greco presented opening statements.

Counsel Schmuck presented opening statements.

At 2:42 p.m. the jurors were admonished and excused. Outside the presence of the jury. Desiree Menees was called by counsel Greco; sworn and testified. Counsel Greco moved for competency; no objections; SO ORDERED.

At 2:45 p.m. the jury was brought back into the courtroom.

Desiree Menees, heretofore sworn, resumed the stand. Counsel

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DC-9900039406-059
STATE VS CHARLES JOSEPH MAKI 5 Pages
District Court 04/11/1994 02:13 PM
Washoe County MTN

Greco continued with direct examination. Cross examination by counsel Schmuck. Redirect examination; recross examination and excused.

At 2:20 p.m. the jurors were admonished and excused. Outside the presence of the jury, Summer Menees was called by counsel Greco; sworn and testified. Counsel Greco moved for competency; no objections; SO ORDERED.

The jury was brought back into the courtroom. Summer Menees, heretofore sworn, resumed the stand. Counsel Greco continued with direct examination; cross examination.

Gary Menees was called by counsel Greco; sworn and testified; cross examined; redirect examined and excused.

At 4:20 p.m. Jurors were admonished and excused. Court ordered recess.

At 4:30 p.m. Court reconvened with all parties present.

Kathy Peele was called by counsel Greco; sworn and testified; cross examination; redirect examination; recross examination and excused.

State's exhibits 4 & 5 were marked for identification; offered into evidence; objections; overruled; ordered admitted and so marked.

At 5:30 p.m. Jurors were admonished and excused. Court ordered recess.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE 3

APPEARANCES-HEARING

4/12/94
HONORABLE
STEVEN R.
KOSACH
DEPT. NO. 8
L. Romero
(Clerk)
I. Zihn
(Reporter)

JURY TRIAL CONTINUED

At 10:00 a.m. Plaintiff, State of Nevada, was being represented by counsel, Deputy District Attorney, Dan Greco. Defendant, Charles Joseph Maki, was present with counsel, Deputy Public Defender, Janet Cobb Schmuck.

Court noted that the jury was present.

Detective Jim Stegmaier was called by counsel Greco; sworn and testified.

State's exhibit 2 previously marked for identification was offered into evidence; no objections; ordered admitted and so marked. State's exhibit 2 was played for the jury.

State's exhibit 3 previously marked for identification was offered into evidence; objections; overruled; ordered admitted and so marked, State's exhibit 3 was played for the jury.

Cross examination by counsel Schmuck. Redirect examination. State rested.

At 11:30 a.m. Jurors were admonished and excused. Court ordered recess.

At 1:30 p.m. Court reconvened with all parties present. Court noted that the jury was present.

Michael O'Brien called by counsel Schmuck; sworn and testified. Defendant's exhibits A-F previously marked for identification were offered into evidence; no objections; ordered admitted and so marked.

Danielle Johnson was called by counsel Schmuck; sworn and testified; cross examined.

Defense rested.

Summer Menees, heretofore sworn, was called to the stand as a rebuttal witness by counsel Greco. Counsel Greco began direct examination.

Desiree Menees, heretofore sworn, was called to the stand as a rebuttal witness by counsel Greco. Counsel Greco began direct examination.

At 1:52 p.m. Jurors were admonished and excused. Outside the presence of the jury, Counsel Greco addressed the Court stating that he had hearsay evidence that he wanted to present through the witness, Gary Menees. Opposition and argument by counsel Schmuck. Counsel Greco withdrew his request.

At 1:55 p.m. the jury entered the courtroom. Court noted that the jury was present.

State rested.

At 2:00 p.m. Jurors were admonished and excused. Court and counsel met in chambers to discuss and settle jury instructions.

At 2:45 p.m. in chambers, Court and counsel settled on jury instructions 1-33.

At 3:00 p.m. All parties were present. Court noted that the jury was present.

Court read instructions 1-33.

4/12/94

JURY TRIAL CONTINUED

Cont'd
HONORABLE
STEVEN R.
KOSACH
DEPT. NO. 8
L. Romero
(Clerk)
I. Zihn
(Reporter)

Counsel Greco presented closing arguments.
Counsel Schmuck presented closing arguments.
Counsel Greco presented rebuttal arguments.
At 4:05 p.m. the Bailiff was sworn to take the jury into deliberation.
At 11:30 p.m. All parties were present. The jury entered the courtroom. Court noted that the jury was present.
The following verdicts were read by the Clerk:

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, not guilty of Count I: Sexual Assault On a Child Under The Age of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count III: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count IV: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count V: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count VI: Lewdness With A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

4/12/94

JURY TRIAL CONTINUED

Cont'd
HONORABLE
STEVEN R.
KOSACH
DEPT. NO. 8
L. Romero
(Clerk)
I. Zihn
(Reporter)

We, the jury in the above entitled matter, find the defendant,
Charles Joseph Maki, guilty of Count VII: Lewdness With A Child
Under The Age of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant,
Charles Joseph Maki, guilty of Count VIII: Lewdness With A
Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant,
Charles Joseph Maki, guilty of Count IX: Lewdness With A Child
Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

We, the jury in the above entitled matter, find the defendant,
Charles Joseph Maki, guilty of Count X: Lewdness With A Child
Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi
Foreman

At 11:36 p.m. the Jury was thanked and excused. Sentencing was
set for May 13, 1994 at 9:00 a.m.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

05/17/94
HONORABLE
STEVEN R.
KOSACH
DEPT. NO. 8
S. Hopper
(Clerk)
I. Zihn
ReporterENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender Janet Cobb Schmuck. Officer Robert Tucker was present for the State Dept of Parole and Probation.

Counsel Greco addressed the Court and reviewed motion for other bad acts evidence to be admitted. Counsel Schmuck addressed the Court regarding motion as entered and presented objections with arguments thereto; Counsel Greco presented response.

COURT ORDERED: Motion for other bad acts evidence to be admitted granted.

Joslyn Coombs was called by Counsel Greco, sworn and testified.

During testimony under direct examination, court took recess and ordered Defendant's mouth taped shut.

Witness was further direct examined.

State's Exhibit 1 was marked for identification and offered; objections and arguments presented thereto; COURT ORDERED ADMITTED.

Witness was further direct examined; cross examined; re-direct examined and excused.

Counsel Schmuck addressed the Court regarding P.S.I. corrections and presented arguments regarding sentencing; presented letters from the Defendant to the Court.

Counsel Greco presented arguments for sentencing.

Officer Tucker addressed the Court.

Defendant addressed the Court after tape was removed.

COURT ORDERED: Judgment entered. The Defendant is sentenced to Life with the possibility of Parole in the Nevada State Prison for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count III of the Information; sentenced to Life with the Possibility of Parole in the Nevada State Prison to run consecutive to Count III for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count IV of the Information; sentenced to Life with the Possibility of Parole in the Nevada State Prison to run consecutive to Count III for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count V of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as

DC-990039406-060
CR94-0345
STATE VS CHARLES
JOSEPH MAKI 2 Pages
District Court
Washoe County
05/17/1994 02:17 PM
JYOC
MTN

CASE NO. CR94-0345

STATE OF NEVADA -VS- CHARLES MAKI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

05/17/94

Cont'd.

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -

CONTINUED

charged in Count VI of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count VII of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count IX of the Information; and, sentenced to two (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count X of the Information. Defendant is hereby given credit for one hundred eighteen (118) days time served. The Defendant is to pay the Twenty-Five Dollar (\$25.00) administrative assessment fee. Defendant was remanded to the custody of the Sheriff.

DATE, JUDGE
OFFICERS OF**COURT PRESENT****APPEARANCES - HEARING****CONT'D TO**

7/11/97

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

D. Phipps

(Reporter)

POST CONVICTION HEARING

Deputy District Attorney Terry McCarthy was present for the State. Defendant was present with counsel, Joe Plater.

Counsel Plater addressed the Court as to the matter of the continuance previously granted by the Court. Counsel Plater further asked leave of the Court to have the defendant housed at the Washoe County Jail until Friday, July 18. Response by the State.

COURT ORDERED: Matter to be heard on July 18, 1997. Defendant to be housed at the Washoe County Jail. Defendant was remanded to the custody of the sheriff.

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
MTN
DC-9900039406-055
1 Page
07/11/1997 02:12 PM
JND

**DATE, JUDGE
OFFICERS OF****COURT PRESENT**

7/18/97

HONORABLE
STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero
(Clerk)S. Koetting
(Reporter)**APPEARANCES-HEARING****POST CONVICTION HEARING**

Petitioner, Charles J. Maki, was present with counsel, Joe Plater. Respondent, E.K. McDaniel, Warden of a Nevada State Prison, was not present being represented by counsel, Deputy District Attorney, Terry McCarthy.

Counsel Plater moved for the rule of exclusion; SO ORDERED.

Charles J. Maki was called by counsel Plater; sworn and testified; cross examined; redirect examined; recross examined.

State's A, B.1 and B.2 were marked for identification; exhibits B.1 & B.2 were offered into evidence; no objections; ordered admitted and so marked.

At 11:15 a.m. Court ordered recess.

At 11:30 a.m. Court reconvened with all parties present.

Michael Ray Freed was called by counsel Plater; sworn and testified; cross examined.

Janet Cobb Schmuck was called by counsel Plater; sworn and testified.

At 12:00 Court ordered recess.

At 2:00 p.m. Court reconvened with all parties present.

Janet Cobb Schmuck, previously sworn, resumed the stand. Counsel Plater continued with direct examination; cross examination; redirect examination..

State's exhibit A, previously marked for identification, was offered into evidence; ordered admitted and so marked.

At 3:10 p.m. Court ordered recess.

At 3:25 p.m. Court reconvened with all parties present.

Counsel McCarthy placed two stipulations on the record.

Exhibits 1-4 were marked for identification; stipulated into evidence.

Closing arguments presented by respective counsel.

COURT ORDERED: Petition for post conviction relief denied.

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STATE VS CHARLES JOSEPH MAKI
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1 **Code 1350**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR94-0345

11 **CHARLES JOSEPH MAKI,**

Dept. No. 8

12 **Defendant.**
13 _____/

14
15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of
17 Nevada, County of Washoe; that on the 20th day of August, 2013, I electronically filed the
18 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

21 Dated this 20th day of August, 2013
22

23 **JOEY ORDUNA HASTINGS**
24 **CLERK OF THE COURT**

25 By /s/ Annie Smith
26 Annie Smith
27 Deputy Clerk
28