

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 02, 2011

C-11-272657-1 State of Nevada
 vs
 Anthony Castaneda

May 02, 2011 9:00 AM Motion for Own Recognizance Release/Setting
Reasonable Bail

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES	Castaneda, Anthony	Defendant
PRESENT:	Geller, Warren, ESQ	Deputy Public Defender Attorney
	Monroe, Vicki Jean	Deputy District Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant present in custody. Arguments by Mr. Geller. Ms. Monroe argued regarding photographs on computer. Statement by Defendant. Statements by the Court. COURT ORDERED, Motion GRANTED with the following CONDITIONS:

1. Any law enforcement agencies may make unannounced visits to the Defendant's residence and search any computer on the premises.
2. Defendant is restricted from using any computer which connects to the internet.

COURT FURTHER ORDERED, trial date VACATED and RESET.

O.R.

11/21/11 9:00 AM CALENDAR CALL

11/28/11 1:30 PM JURY TRIAL

PRINT DATE: 05/06/2011

Page 1 of 1

Minutes Date: May 02, 2011

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES November 21, 2011

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

November 21, 2011 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Geller, Warren, ESQ Attorney
 State of Nevada Plaintiff
 Villegas, Victoria A. Attorney

JOURNAL ENTRIES

- CALENDAR CALL

Mr. Geller advised Deft. is not present, but believes he thinks it is Wednesday which is usual calendar call dates. Further, advised he is not ready for trial based on discovery issues. Warren Geller, sworn and testified regarding motion to continue. State concurred with discovery issues. Good cause showing, COURT ORDERED, trial date VACATED and matter CONTINUED for Deft. to be present, and later for status check on discovery and to reset trial.

O.R.

11/23/11 9:00 AM STATUS CHECK: DEFT'S PRESENCE

1/25/12 9:00 AM STATUS CHECK: DISCOVERY/RESET TRIAL

PRINT DATE: 11/21/2011

Page 1 of 1

Minutes Date:

November 21, 2011

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 23, 2011

C-11-272657-1 State of Nevada
 vs
 Anthony Castaneda

November 23, 2011 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Denise Trujillo

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT:	Castaneda, Anthony	Defendant
	Geller, Warren, ESQ	Attorney
	Raman, Jay	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: DEFT'S PRESENCE

Deft. present, out of custody. COURT directed Deft. to stay in contact with his counsel.

O.R.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES January 25, 2012

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

January 25, 2012 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Rue, Jeffrey T.	Attorney
	State of Nevada	Plaintiff
	Sweetin, James R.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISCOVERY/RESET TRIAL

Deft. not present. Mr. Rue advised Deft. has been snowed in out of state and requested matter be CONTINUED. There being no opposition, COURT SO ORDERED.

O.R.

CONTINUED TO: 2/1/12 9 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES February 01, 2012

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

February 01, 2012 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D	Attorney
	Castaneda, Anthony	Defendant
	State of Nevada	Plaintiff
	Sweetin, James R.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISCOVERY/RESET TRIAL

Deft. present at liberty. At request of Ms. Ballou, COURT ORDERED, matter SET for trial.

O.R.

11/19/12 9 AM CALENDAR CALL

11/26/12 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES November 19, 2012

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

November 19, 2012 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Kristen Brown

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
State of Nevada
Sweetin, James R.

Attorney for Deft.
Defendant
Plaintiff
Attorney for State

JOURNAL ENTRIES

- CALENDAR CALL

Deft. present at liberty. Erika Ballou sworn and testified as to why she is not prepared for trial. State announced ready but has no opposition to continuance. COURT ORDERED, trial date VACATED and trial SET for a FIRM SETTING. COURT ADMONISHED Deft. to stay in contact with his attorney and provide proof he was in the hospital.

O.R.

1/28/13 9 AM CALENDAR CALL

2/4/13 1:30 PM JURY TRIAL

PRINT DATE: 12/06/2012

Page 1 of 1

Minutes Date: November 19, 2012

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES January 28, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

January 28, 2013 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Andrea Davis/amd

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Sweetin, James R.

Attorney for Defendant
Defendant
Attorney for State of Nevada

JOURNAL ENTRIES

- Deft present at liberty. Motion to Continue Firm Trial Date FILED IN OPEN COURT. Ms. Ballou announced not ready; requested Trial date be continued. Court noted the Deft was instructed to provide proof he was in the hospital and admonished to stay in contact with counsel. State announced ready. Statements by Ms. Ballou regarding forensic report; requested if court will not continued trial that matter be set on a Tuesday. Court noted Deft cannot claim counsel is ineffective if the Deft is not staying in contact with counsel. Matter RECALLED. Mr. Piro present for Ms. Ballou on behalf of Deft and requested Trial date be set for Tuesday. COURT ORDERED, Trial date SET on Tuesday.

O.R.

2/5/13 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES February 05, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

February 05, 2013 9:00 AM Jury Trial - FIRM

HEARD BY: Ellsworth, Carolyn

COURTROOM:

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D & Jeffrey Rue
Castaneda, Anthony
State of Nevada
Thomas, Michelle L.

Attorneys for Deft.
Defendant
Plaintiff
Attorney for State

JOURNAL ENTRIES

- JURY TRIAL

IN THE ABSENCE OF THE JURY PANEL. In the absence of the Deft. Ms. Ballou FILED Motion for Discovery IN OPEN COURT and advised they just received some pertinent discovery on Thursday and renewed motion for continuance or a motion to suppress. Deft. present. Arguments by counsel regarding discovery. Upon Court's inquiry, Mr. Rue advised of the information they would be able to obtain if trial is continued. CONFERENCE AT THE BENCH. MATTER RECALLED. State advised they are now offering Deft. opportunity to plead to 4 counts, but will not allow an Alford plea. Deft. refused negotiations and advised he understood the consequences if found guilty. State advised they are not going to renew the their offer after today. COURT ORDERED, matter CONTINUED for discovery, but advised counsel this is going to be a very short setting. Mr. Rue advised there is still an outstanding issue with reports from 2 detectives. Court reiterated that discovery has to be done expediently. At request of State, Amended Information FILED IN OPEN COURT. Exhibits RETURNED to the State. State requested time to respond to discovery motion. COURT ORDERED, matter SET TOMORROW for trial setting and 2/11/3 for Discovery Motion.

PRINT DATE: 02/05/2013

Page 1 of 2

Minutes Date:

February 05, 2013

C-11-272657-1

BOND

2/6/13 9 AM STATUS CHECK: TRIAL SETTING

2/11/13 9 AM DEFT'S MOTION FOR DISCOVERY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES February 06, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

February 06, 2013 9:00 AM Status Check: Reset Trial
Date

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Rue, Jeffrey T.
State of Nevada
Thomas, Michelle L.

Attorney for Deft.
Defendant
Attorney for Deft.
Plaintiff
Attorney for State

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE

Deft. present at liberty. Counsel advised they can not go to trial the week of 2/19/13. Colloquy between Court and counsel regarding trial setting. COURT ORDERED, matter SET trial on a FIRM setting.

O.R.

4/22/13 9 AM CALENDAR CALL

4/29/13 1:30 PM JURY TRIAL

PRINT DATE: 02/08/2013

Page 1 of 1

Minutes Date:

February 06, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES February 11, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

February 11, 2013 9:00 AM Motion for Discovery

HEARD BY: Ellsworth, Carolyn COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Andrea Davis/amd

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Ballou, Erika D Attorney for Defendant
Thomas, Michelle L. Attorney for State of Nevada

JOURNAL ENTRIES

- Deft not present. Ms. Ballou requested Deft's presence be waived as the Deft lives out of state. There being no objection by the State, COURT ORDERED, Deft's presence WAIVED. As to Defendant's Motion for Discovery:

1. Any and all 911 calls relating to LVMPD Event # 100208-1406. Statements by Counsel. State advised it is unaware if this exists and noted it will turn over if discovered. There being no objection by State, COURT ORDERED, Motion GRANTED.
2. Any and all 311 calls relating to LVMPD Event # 100208-1406. There being no objection by State, COURT ORDERED, Motion GRANTED.
3. Any and all CAD logs relating to LVMPD Event # 100208-1406. There being no objection by State, COURT ORDERED, Motion GRANTED.
4. Any and all radio traffic relating to LVMPD Event # 100208-1406. Colloquy between Court and Counsel regarding radio traffic. Ms. Ballou advised she will withdraw this request. Mr. Rue noted they were unable to determine if the radio traffic was relevant under Brady without this request being made; noted there was a statement by the Defendant that was not provided to them. COURT ORDERED, Motion DENIED.
5. Any and all information relating to other suspects in LVMPD Event # 100208-1406. COURT ORDERED, Motion GRANTED and noted if the State has this information they are obligated to turn

PRINT DATE: 02/15/2013

Page 1 of 3

Minutes Date: February 11, 2013

it over to the Defense.

6. Any and all statements made by Anthony Castaneda, taped or otherwise. Statements by Ms. Ballou. COURT ORDERED, Motion GRANTED as unopposed.
7. Any and all statements made by Tami Hines, taped or otherwise. State advised they only know of statements made by Ms. Hines to the police. Statements by Ms. Ballou. COURT ORDERED, Motion GRANTED and noted if the State has any written, audio recordings, or oral statements containing any exculpatory or Brady material the State is obligated to turn it over to the Defense.
8. Any and all statements made by any other witness, taped or otherwise. COURT ORDERED, Motion GRANTED and noted if the State has any written, audio recordings, or oral statements containing any exculpatory or Brady material the State is obligated to turn it over to the Defense.
9. Any and all criminal history relating to Anthony Castaneda. COURT ORDERED, Motion DENIED as Deft can obtain his own criminal history.
10. Any and all relevant criminal history relating to Tami Hines. There being no objection by the State, COURT ORDERED, Motion GRANTED.
11. Any and all relevant criminal history relating to any other witness. There being no objection by the State, COURT ORDERED, Motion GRANTED of any known witnesses.
12. Any and all photographs relating to LVMPD Event # 100208-1406 (for the child pornographic images this is limited as outlined in the Stipulation and Order). There being no objection by the State, COURT ORDERED, Motion GRANTED as State has indicated it has already provided this material.
13. Any and all video surveillance relating to LVMPD Event # 100208-1406. COURT ORDERED, Motion pursuant to Brady and if the State does not have any material it doesn't have to produce.
14. Any and all officer and/or detective reports for LVMPD Event # 100208-1406. There being no objection by the State, COURT ORDERED, Motion GRANTED
15. Any and all officer and/or detective notes for LVMPD Event # 100208-1406. State noted there are notes but they are not privileged. COURT ORDERED, Motion GRANTED in that if the notes are a work product done in preparation for this matter it is excluded and if the notes contain any exculpatory or Brady material the State is obligated to turn it over to the Defense. State is to make an affirmative inquiry as to the existence of notes.
16. Any and all exculpatory evidence in the possession or constructive possession of the state. There being no objection by the State, COURT ORDERED, Motion GRANTED
17. Any and all information regarding any benefits afforded to any of the state's witnesses in exchange for their assured cooperation in the prosecution of the instant case. State advised there are no promises made to any witnesses except witness fees. There being no Objection by the State, COURT ORDERED, Motion GRANTED.
18. Any and all curriculum vitae of any experts the state intends to call at trial. There being no Objection by the State, COURT ORDERED, Motion GRANTED.
19. Any and all information regarding the compensation of any of the state's expert witness(es). State advised it does not believe any expert witnesses are being paid but noted it will look into the matter. COURT ORDERED, Motion GRANTED if State determines witnesses are being compensated.
20. any other reports, witness statements, affidavits, declarations, video, or other material the state is relying on in its case in chief. There being no Objection by the State, COURT ORDERED, Motion GRANTED. FURTHER, Court instructed Ms. Ballou to prepare the Order.

DISTRICT COURT
CLARK COUNTY, NEVADA

April 22, 2013

Felony/Gross Misdemeanor

COURT MINUTES

C-11-272657-1

State of Nevada

vs

Anthony Castaneda

April 22, 2013

9:00 AM

Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Dania Batiste; Athena Trujillo/amt

RECORDER: Lara Corcoran

REPORTER:

PARTIES
PRESENT:

Marc Schifalacqua, Deputy District Attorney, present for the State of Nevada.
Erika Ballou and John Piro, Deputy Public Defenders, present on behalf of Defendant
Castaneda.
Defendant Castaneda not present.

JOURNAL ENTRIES

COURT ORDERED, No Bail Bench Warrant to ISSUE. COURT FURTHER ORDERED, trial date
VACATED.

B. W. (O. R.)

PRINT DATE: 04/24/2013

Page 1 of 1

Minutes Date:

April 22, 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

May 01, 2013

Felony/Gross Misdemeanor

COURT MINUTES

C-11-272657-1

State of Nevada

vs

Anthony Castaneda

May 01, 2013

9:00 AM

Request

HEARD BY: Hardcastle, Kathy

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Dania Batiste/db

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Fattig, John T

Public Defender
Defendant
District Attorney

JOURNAL ENTRIES

- REQUEST: QUASHING OUTSTANDING BENCH WARRANT

Deft. present at liberty. Arguments by counsel. State opposed defense's request. COURT ORDERED, bench warrant QUASHED and FIRM TRIAL DATE set. Court noted this is the last continuance, as this matter has been continued several times.

O.R.

6/17/13 9:00 AM CALENDAR CALL

6/24/13 1:30 PM JURY TRIAL

PRINT DATE: 05/02/2013

Page 1 of 1

Minutes Date:

May 01, 2013

Felony/Gross Misdemeanor

COURT MINUTES

C-11-272657-1

State of Nevada

VS

vs
Anthony Castaneda

May 20, 2013

9:00 AM

Motion to Continue Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Fattig, John T
State of Nevada

Attorney
Defendant
Attorney
Plaintiff

JOURNAL ENTRIES

- STATE'S NOTICE OF HEARING MOTION AND MOTION TO MOVE TRIAL DATE

Deft. present at liberty. Colloquy between Court and counsel regarding trial setting. COURT ORDERED, matter SET for trial, firm setting.

O.R.

7/1/13 9 AM CALENDAR CALL

7/8/13 1:30 PM JURY TRIAL

PRINT DATE: 05/23/2013

Page 1 of 1

Minutes Date:

May 20, 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

July 01, 2013

Felony/Gross Misdemeanor COURT MINUTES

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 01, 2013 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Andrea Davis

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D	Attorney
	State of Nevada	Plaintiff
	Thomas, Michelle L.	Attorney
	Westbrook, P D.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL

Deft. present at liberty. Counsel announced ready. Mr. Westbrook advised he just got into this case, but noted Deft. stated he has some technical evidence that has not been turned over to the State. Further, he is going to sit down with him, and will provide anything necessary to the state as soon as possible so they can retain expert if needed. Counsel advised trial should take approximately 4 -5 days, 9 witnesses. State advised they have some scheduling issues and will be flying in some out of state witnesses on Wednesday. Counsel agreed that the "Hernandez" can be held prior to trial. COURT ORDERED, matter SET for trial.

O.R.

7/8/13 1:00 PM JURY TRIAL

M. ANTHONY / BALLOU & WESTBROOK

4-5 DAYS

PRINT DATE: 07/01/2013

Page 1 of 2

Minutes Date:

July 01, 2013

C-11-272657-1

2 OUT-OF-STATE WITNESSES
9 WITNESSES

PRINT DATE: 07/01/2013

Page 2 of 2

Minutes Date: July 01, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES July 08, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 08, 2013 1:00 PM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Chen, Alexander G.
State of Nevada
Thomas, Michelle L.
Westbrook, P. David

Attorney
Defendant
Attorney
Plaintiff
Attorney
Attorney

JOURNAL ENTRIES

- TRIAL BY JURY

IN THE ABSENCE OF THE JURY PANEL. Stipulation and Order FILED in OPEN COURT regarding evidence being admitted and sent back to the jury room, but not being shown during trial. Second Amended Information FILED in OPEN COURT to reflect the current District Attorney. State left courtroom. Hernandez hearing/cavass held. State present and stipulation put on record regarding not mentioning bestiality unless door is opened by Deft's. Mr. Westbrook moved for oral Motion in Limine regarding restricting State from mentioning the 400 images found on computer that were not charged. Arguments by counsel. Court believes it is important for State to show how photo's were found. Further arguments by counsel. Court doesn't know what witnesses are going to say but they will not be able to talk about prior bad acts. Mr. Westbrook objected to exhibit 71. State withdrew that exhibit and it will not be used or admitted during trial. IN THE PRESENCE OF THE JURY PANEL. Voir dire oath given and jury selection commenced.

PRINT DATE: 07/18/2013

Page 1 of 2

Minutes Date: July 08, 2013

C-11-272657-1

EVENING RECESS

CONTINUED TO: 7/9/13 9 AM

PRINT DATE: 07/18/2013

Page 2 of 2

Minutes Date: July 08, 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES July 09, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 09, 2013 9:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Chen, Alexander G.
State of Nevada
Thomas, Michelle L.
Westbrook, P. DavidAttorney
Defendant
Attorney
Plaintiff
Attorney
Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY PANEL. Jury selection continued. Twelve jurors and two alternates selected and sworn. Clerk read information and advised of Def't's pleas of NOT GUILTY. Court instructed jury as to trial procedure. Opening statements by counsel. IN THE ABSENCE OF THE JURY. Mr. Westbrook moved to suppress which may lead to miss-trial based on witness stating she lied and therefore committed perjury. Further believes State should prosecute witness and case dismissed. COURT doesn't find witness committed perjury. Further statements by Mr. Westbrook. COURT directed defense counsel to put in writing and submit by noon, and State can respond orally. FURTHER, Court advised counsel can NOT refer to witness as a "Perjurer".

EVENING RECESS

CONTINUED TO: 7/9/132 1 PM
PRINT DATE: 07/18/2013

Page 1 of 2

Minutes Date:

July 09, 2013

C-11-272657-1

PRINT DATE: 07/18/2013

Page 2 of 2

Minutes Date: July 09, 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES July 10, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 10, 2013 1:00 PM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Chen, Alexander G.
State of Nevada
Thomas, Michelle L.
Westbrook, P. David

Attorney
Defendant
Attorney
Plaintiff
Attorney
Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE ABSENCE OF THE JURY. Counsel filed stipulation in open court. Exclusionary rule invoked. IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheet. IN THE ABSENCE OF THE JURY. Mr. Chen requested clarification regarding other images found on computer. Arguments by counsel. Deft. will stipulate there was child pornography on his computer, just not how or who placed it there. COURT ORDERED, State will not mention amount of images found on computer. IN THE PRESENCE OF THE JURY Testimony resumed.

EVENING RECESS

CONTINUED: 7/10/13 9 AM

PRINT DATE: 07/18/2013

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Minutes Date:

July 10, 2013

C-11-272657-1

PRINT DATE: 07/18/2013

Page 2 of 2

Minutes Date: July 10, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

July 11, 2013

Felony/Gross Misdemeanor

COURT MINUTES

C-11-272657-1

State of Nevada

vs

Anthony Castaneda

July 11, 2013

9:00 AM

Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D

Castaneda, Anthony

Chen, Alexander G.

State of Nevada

Thomas, Michelle L.

Westbrook, P. David

Attorney

Defendant

Attorney

Plaintiff

Attorney

Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY. COURT read stipulation by counsel regarding exhibits 1 -15 to the jury. ~~IN THE ABSENCE OF THE JURY.~~ Mr. Westbrook advised he is concerned with testimony on analysis as the analysis was not done in this case and noted witness is guessing to the benefit of the State. Arguments by counsel. Mr. Westbrook requested he be allowed to call an expert as this is new information. Arguments by counsel. COURT advised they had the opportunity to notice experts. ~~IN THE PRESENCE OF THE JURY.~~ Testimony resumed. ~~IN THE ABSENCE OF THE JURY.~~ Jury instructions settled. Mr. Westbrook objected for record on not being allowed to call expert. Arguments by counsel regarding Mr. Westbrook's motion to dismiss. ~~IN THE PRESENCE OF THE JURY.~~ State rested. ~~IN THE ABSENCE OF THE JURY.~~ Deft. advised of his right to testify. ~~IN THE PRESENCE OF THE JURY.~~ Defense rested. ~~IN THE ABSENCE OF THE JURY.~~ Mr. Westbrook moved for miss-trial based on burden shifting. Arguments by counsel. COURT stated findings and ORDERED, Motion DENIED, as Court does not find this to be burden shifting.

PRINT DATE: 07/18/2013

Page 1 of 3

Minutes Date:

July 11, 2013

12:00 PM: Andrea Davis, Court Clerk present.

IN THE PRESENCE OF THE JURY. Continued testimony and exhibits (See worksheets).

IN THE ABSENCE OF THE JURY. Mr. Westbrook moved to extend the subpoena as to Witness Paul Ehlers as he may need to call him for his case in chief. Following further arguments by Counsel, COURT ORDERED, Witness Subpoena to be EXTENDED until tomorrow at noon; Mr. Ehlers to provide Ms. Anthony with his phone number for the State to notify him if he is going to be recalled to testify. Court advised Counsel Juror No. 2 was observed sleeping on numerous occasions throughout the trial. Arguments by counsel regarding whether Juror No. 2 should be dismissed and questioned by Court. Arguments by Mr. Westbrook regarding dismissing Juror No. 6 noting there was a language barrier. Upon inquiry from the Court as to proof of a language barrier, Mr. Westbrook stated Juror No. 6 did not seem to be paying attention during testimony. Further arguments by Counsel regarding Juror No. 4. and Juror No. 2. COURT advised counsel Juror No. 6 would not be questioned and would remain on the Jury panel and, ORDERED, Juror No. 2 brought into the courtroom for questioning. Juror No. 2 responded to questioned propounded by the Court regarding the number of times he had fallen asleep during the trial and if he had missed parts of witness testimony. CONFERENCE AT BENCH. Juror No. 2 is advised to wait outside of the courtroom. COURT advised it was inclined to replace Juror No. 2. State had no objection. Mr. Westbrook objected to dismissing the Juror. Further Arguments by Counsel. COURT ORDERED, Juror No. 2 REPLACED with Alternate Juror No. 1. Amended Jury List FILED IN OPEN COURT. Arguments by Counsel as to Motion to Dismiss regarding whether the witness perjured herself and whether the charges should be dismissed against the Defendant. COURT finds there was sufficient evidence to meet the bindover standards of evidence and there was no evidence of perjury and, ORDERED, motion DENIED. Colloquy regarding calendar, motions in limine, jury instructions, and Court schedule.

IN THE PRESENCE OF THE JURY. COURT advised Alternate Juror No. 1 to take the seat of Juror No. 6 and Juror is sworn. Continued testimony and exhibits (See worksheets).

IN THE ABSENCE OF THE JURY: Mr. Westbrook objected to the contents of the audio recording that were played for the jury; noted he had previously objected to mentioning the number of pictures the detective claimed were found on Defts. computer; stated there were stipulations in place that had been violated. Further, Mr. Westbrook moved for a Mistrial noting the jury has been misled by the contents of audio recording. State argued in opposition of Mr. Westbrook's motion noting there was no stipulation in place with respect to mentioning the number of pictures found; summarized which redactions were agreed upon by the parties. COURT stated FINDINGS and, ORDERED, Motion for Mistrial DENIED. Further arguments by counsel.

IN THE PRESENCE OF THE JURY. Continued testimony and exhibits (See worksheets). CONFERENCE AT BENCH. Court ADMONISHED the Jury and ORDERED them to return the following day at the time given and, ORDERED, Jury Trial CONTINUED.

C-11-272657-1

CONTINUED TO: 7/12/13 10:30 AM

PRINT DATE: 07/18/2013

Page 3 of 3

Minutes Date: July 11, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES July 12, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 12, 2013 10:30 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03B

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D

Castaneda, Anthony

Chen, Alexander G.

State of Nevada

Thomas, Michelle L.

Westbrook, P. David

Attorney

Defendant

Attorney

Plaintiff

Attorney

Attorney

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY. Testimony resumed. IN THE ABSENCE OF THE JURY. Mr. Westbrook submitted additional instructions based on testimony. Arguments by counsel. Court agrees with this except for the one line. Jury instructions settled, and Deft's and State's proposed instruction not given will be filed. IN THE PRESENCE OF THE JURY. COURT instructed jury. Closing statements by State. Upon Court's inquiry, jury advised they did not want to stay late for continued closing as they have other plans. COURT ORDERED, matter CONTINUED for continuing closing arguments.

EVENING RECESS

CONTINUED TO: 7/12/13 1 PM

PRINT DATE: 07/18/2013

Page 1 of 2

Minutes Date:

July 12, 2013

C-11-272657-1

PRINT DATE: 07/18/2013

Page 2 of 2

Minutes Date: July 12, 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES July 15, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 15, 2013 1:00 PM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- JURY TRIAL

IN THE ABSENCE OF THE JURY. Mr. Chen advised upon statement by Mr. Westbrook, he determined there was a small error on his power point regarding the date. Mr. Westbrook advised he tried to get a copy of the power point used by the State. Court advised he can not use their power point as it is not evidence but Court can advised jury of the error. Colloquy between Court and counsel regarding thumb drive and evidence. COURT advised counsel they need to confine their closing to the evidence. IN THE PRESENCE OF THE JURY. Court advised jury of error in the power point. Closing arguments continued. At 3:30 PM this date, jury retired to begin deliberations. Mr. Westbrook objected to State's closing as prosecutorial misconduct and moved to dismiss the case with prejudice. Arguments by counsel. COURT does not find there was prosecutorial misconduct and ORDERED, Motion DENIED.

EVENING RECESS

CONTINUED DELIBERATIONS: 7/16/13 9 AM

PRINT DATE: 07/18/2013

Page 1 of 1

Minutes Date:

July 15, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor **COURT MINUTES** **July 16, 2013**

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

July 16, 2013 **9:00 AM** **Jury Trial**

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Andrea Davis/amd

RECORDER: Lara Corcoran

PARTIES

PRESENT:

Ballou, Erika D
Castaneda, Anthony
Chen, Alexander G.
State of Nevada
Thomas, Michelle L.
Westbrook, P. David

Attorney for Defendant
Defendant
Attorney for State
Plaintiff
Attorney for State
Attorney for Defendant

JOURNAL ENTRIES

- JURY TRIAL

Jury deliberations continued.

IN THE ABSENCE OF THE JURY. COURT noted the PowerPoint presentation used during the Defense closing argument had a Tagalog phrase indicated which caused concern for the court and was translated to say that the Deft. was innocent. COURT advised counsel it did not warrant a mistrial and ADMONISHED Defense Counsel from directing arguments at a particular juror.

At 12:39 PM, jury returned to Court and clerk read verdict as follows:

As to CT 1 POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) - GUILTY
As to CT 2 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F)- GUILTY
As to CT 3 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY

PRINT DATE: 07/16/2013

Page 1 of 2

Minutes Date: July 16, 2013

As to CT 4 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 5 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 6 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 7 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 8 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 9 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 10 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 11 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 12 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 13 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 14 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY
As to CT 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) GUILTY

Jury Polled at the request of Mr. Westbrook; unanimous decision. Court thanked and excused the Jury. Arguments by counsel regarding whether Deft. should be remanded, whether bail should be modified, whether Deft. was a flight risk, and whether Deft. should have restrictions to internet access. COURT ORDERED, Deft. REMANDED; Bail MODIFIED to \$50,000.00 cash or surety, and matter referred to Division of Parole and Probation (P&P) for Presentence Investigation Report (PSI) with Psycho Sexual Report, and SET for Sentencing. Following further Arguments by Counsel, COURT FURTHER ORDERED, if Deft. posts Bond, Deft. is not to access the outside internet; however, closed system lines would be allowed through his employer. Statement by Deft regarding internet access and regarding whether he worked on site or from home. COURT FURTHER ORDERED, Deft. to turn over all computer equipment to his attorney pending the sentencing date; Deft. is to work from his employer's locations and an officer would be allowed to verify if the Deft. had removed all computer equipment from his house.

CUSTODY

10/14/2013 9:00 AM - SENTENCING

DISTRICT COURT
CLARK COUNTY, NEVADA

October 14, 2013

Felony/Gross Misdemeanor

COURT MINUTES

C-11-272657-1

State of Nevada

vs

Anthony Castaneda

October 14, 2013

9:00 AM

All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Ballou, Erika D

Castaneda, Anthony

State of Nevada

Thomas, Michelle L.

Westbrook, P. David

Attorney

Defendant

Plaintiff

Attorney

Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO VACATE COUNTS TWO THROUGH FIFTEEN...SENTENCING

Deft. present in custody. Court noted it did not sign an order shortening time, and it will hear arguments by will continue sentencing. State advised they did not receive motion and requested opportunity to reply in writing. COURT advised as response was due today, it can give State 2 days to respond. Mr. Westbrook requested O.R. release pending next hearing. COURT ORDERED, Motion DENIED. Mr. Westbrook FILED Motion to Reconsider Deft's Motion for Mistrial Due to Prosecutorial Misconduct in OPEN COURT. Colloquy between Court and counsel regarding "declaration" State advised they need a few weeks to reply to that motion. Mr. Westbrook stated he has no opposition to setting everything at the same time. COURT ORDERED, ALL MOTIONS CONTINUED, and upon Mr. Westbrook's inquiry, advised sentencing will happen after hearing of motions.

CUSTODY

PRINT DATE: 10/15/2013

Page 1 of 2

Minutes Date:

October 14, 2013

C-11-272657-1

CONTINUED TO: 10/28/13 9 AM

PRINT DATE: 10/15/2013

Page 2 of 2

Minutes Date: October 14, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2013

C-11-272657-1

State of Nevada

vs

Anthony Castaneda

October 28, 2013

9:00 AM

All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo; Teresa Slade/ts

RECORDER: Patti Slattery

PARTIES**PRESENT:**

Ballou, Erika D

Castaneda, Anthony

Chen, Alexander G.

Thomas, Michelle L.

Westbrook, P. David

Public Defender

Defendant

District Attorney

District Attorney

Public Defender

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO VACATE COUNTS TWO THROUGH FIFTEEN
FACTS.....DEFENDANT'S MOTION TO RECONSIDER DEFENDANT'S MOTION FOR MISTRIAL
DUE TO PROSECUTORIAL MISCONDUCT.....SENTENCING

Colloquy regarding State's motion to strike which was vacated in error. COURT ORDERED Motion to Strike RESET. Court noted it wants to rule on motions, then proceed with sentencing.

As to Defendant's Motion to Reconsider Motion for Mistrial, arguments by Counsel. COURT stated findings and ORDERED, Motion to Reconsider Motion for Mistrial DENIED, as there was sufficient evidence for a jury to come back with a verdict.

As to Defendant's Motion to Vacate Counts Two through Fifteen Facts, colloquy between Court and Counsel regarding whether or not there is one unit of production, the creation date of the images, and the State's request to strike Mr. Westbrook's statement regarding an expert. Court stated, it is making its rulings based on the evidence heard at trial and not from Mr. Westbrook's testimony. Further arguments by Counsel. COURT stated findings, as the legislative intent is to protect the victims and

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Page 1 of 2

Minutes Date: October 28, 2013

C-11-272657-1

ORDERED Motion to Vacate Counts DENIED.

Pursuant to State's request, and the fact that Court has not seen or ruled on the motion to strike,
COURT ORDERED Sentencing CONTINUED.

CUSTODY

10/30/13 9:00 AM STATE'S MOTION TO STRIKE....SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES October 30, 2013

C-11-272657-1 State of Nevada
vs
Anthony Castaneda

October 30, 2013 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- STATE'S MOTION TO STRIKE OFF OF PROOF REGARDING DEFT'S MOTION TO CALL A COMPUTER EXPERT TO REBUT DETECTIVE ELHER'S SURPRISE TRIAL TESTIMONY AS DEFT'S OFFER OF PROOF IMPROPERLY SUPPLEMENTS THE RECORD

Deft. present in custody. Court noted this appears to be a counter-motion and stated it listened to JAVS and advised what happened during trial in regards to Court's decision regarding their rebuttal expert. Further, can't come in after trial and file these types of motions, they may be put in a post conviction relief petition. Arguments by counsel. Court advised these motions can be filed, but they are not part of the trial record as they were filed after verdict was reached. Further arguments by counsel. COURT ORDERED, Motion DENIED. Mr. Westbrook corrected a mistake he made for the record.

DEFT CASTANADA ADJUDGED GUILTY of CT'S 1 THROUGH 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F). Statements by Deft. and counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$760 Psycho-sexual Assessment fee, \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to:

CT 1 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC);

CT 2 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)

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Minutes Date: October 30, 2013

MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 1;
 CT 3 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 2;
 CT 4 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 3;
 CT 5 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 4;
 CT 6 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 5;
 CT 7 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 6;
 CT 8 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 7;
 CT 9 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 8;
 CT 10 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 9;
 CT 11 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 10;
 CT 12 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 11;
 CT 13 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 12;
 CT 14 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 13;
 CT 15 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 14 with 160 DAYS credit for time served. SENTENCE SUSPENDED; placed on probation for a FIXED FIVE (5) YEARS under the following SPECIAL CONDITIONS:

1. Pursuant to NRS 176A.410, the following terms are imposed:

(a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any parole and probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime;

(b) Reside at a location only if:

(1) The residence has been approved by the parole and probation officer assigned to the defendant.
 (2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is license pursuant to Chapter 449 of NRS.

(3) The defendant keeps the parole and probation officer assigned to the defendant informed of the defendant's current address.

(c) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the defendant and keep the parole and probation officer

informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the parole and probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Division of Parole and Probation.

(f) Submit to periodic tests, as requested by the parole and probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant.

(h) Abstain from consuming, possessing or having under his control any alcohol.

(i) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the Chief Parole and Probation Officer of the Chief Parole and Probation Officer's designee and a written agreement is entered into and signed in the manner set forth in NRS 176A.410(5).

(j) Not use aliases or fictitious names.

(k) Not obtain a post office box unless the defendant receives permission from the parole and probation officer assigned to the defendant.

(l) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of a sexual offense is present and permission has been obtained from the parole and probation officer assigned to the defendant in advance of each such contact.

(m) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(n) Not possess any sexually explicit material that is deemed inappropriate by the parole and probation officer assigned to the defendant.

(o) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the parole and probation officer assigned to the defendant.

(p) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the defendant.

(q) Inform the parole and probation officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, institution of higher education has the meaning ascribed to it in NRS 179D.045.

2. Register as a sex offender within the first 48 hours of leaving courthouse.

3. If P&P is approached that Deft. has found a job that requires internet usage, issue must be brought back before the Court to determine remedy.

4. Abide by any curfew imposed by P&P.

5. Attend counseling to address issues related to this charge.

6. Pay fees including the indigent defense fee.

Pursuant to statute a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation,

C-11-272657-1

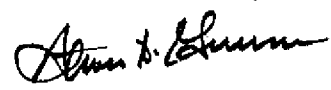
- parole or imprisonment and register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing.

NIC

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Minutes Date: October 30, 2013


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CASTANEDA,

Defendant.

CASE NO. C-11-272657-1

DEPT. V

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
THURSDAY, APRIL 21, 2011

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

APPEARANCES:

For the State:

SCOTT S. MITCHELL, ESQ.,
Chief Deputy District Attorney

For the Defendant:

WARREN J. GELLER, ESQ.,
Deputy Public Defender

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, APRIL 21, 2011

2 * * * * *

3 PROCEEDINGS

4 THE COURT: State of Nevada versus Anthony Castaneda, C272657-1.

5 MR. GELLER: Judge, we've received a copy of the Information. Today,
6 Mr. Castaneda is going to be pleading not guilty. Oh, Anthony. Sorry.

7 THE COURT: Okay. He's present in custody. Sir, did you receive a copy of
8 the Information stating the charges against you?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: Did you read through it and understand it?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: Do you want to waive a formal reading of the charges?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: How do you plead?

15 THE DEFENDANT: Innocent.

16 THE COURT: You do have a right to a trial within 60 days. Do you want to
17 waive or invoke that right? You want a speedy trial, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Speedy trial.

20 THE CLERK: Yes, your Honor. That'll be June 29th at 9:00 a.m., calendar
21 call. July 5th at 1:30 p.m., jury trial, Department 1.

22 THE COURT: Is that it for you, Mr. Geller?

23 MR. GELLER: That is. Thank you very much.

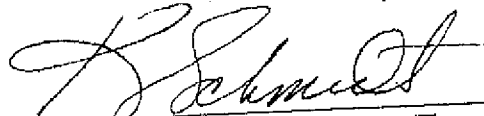
24 ///

1 THE COURT: Thank you.

2 (Whereupon, the proceedings concluded.)

3 * * * * *

4 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
5 certify that this is a rough draft transcript, expeditiously prepared, not proofread,
6 corrected, or certified to be an accurate transcript.

7 

8 Kiara Schmidt, Court Recorder/Transcriber

DISTRICT COURT
CLARK COUNTY, NEVADA

ROUGH DRAFT TRANSCRIPT

ANTHONY CASTANEDA,
Defendant.

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE
MONDAY, MAY 2, 2011

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE/SETTING OR,
IN THE ALTERNATIVE, FOR SETTING REASONABLE BAIL

APPEARANCES:

For the State:

VICKI MONROE, ESQ.
Deputy District Attorney

For the Defendant:

WARREN GELLER, ESQ.
Deputy Public Defender

RECORDED BY: BEVERLY SIGURNIK, COURT RECORDER

1 Las Vegas, Nevada - Monday, May 2, 2011, 11:48 a.m.

2 * * * * *

3 THE CLERK: Top of page 9, Anthony Castaneda, case number C272657. Defendant
4 is present, in custody.

5 MS. MONROE: And, Your Honor, I did not respond in writing. I was gonna respond
6 orally, if the Court has no issue.

7 THE COURT: Okay. This wasn't the one I just got a response on, okay, never mind.

8 MR. GELLER: Judge, I don't mind the State responding orally. It's not --

9 THE COURT: Okay.

10 MR. GELLER: -- important. You know, Judge, I don't want to keep rehashing the
11 things I already wrote in the motion, but I'm tempted to do that just a little bit just to
12 emphasize the fact that my client had had years advance notice that there were likely to be
13 charges. He didn't leave town or anything like that. And, as I mention in the motion, he's
14 55 years old. These are the only criminal charges to my knowledge, and I believe the State's
15 knowledge, that he's ever had. And, you know, if I were in Ms. Monroe's spot, I would
16 definitely be emphasizing how disturbing the nature of the images are and those sorts of
17 things, but there was no allegation ever, despite my client having living in close contact with
18 juveniles, that, you know, he ever victimized anyone throughout his entire life, and that was
19 something that I did get into with the police investigators at the preliminary hearing to make
20 sure that, you know, they do follow up on that sort of thing, and they were able to exclude
21 the possibility -- well, not the possibility, but they saw no evidence to suggest that my
22 client's ever harmed anyone at all.

23 I realize that this isn't so much of a bail factor for the Court. I will say this is a
24 technological crime allegation, and I'm educating myself about it as we go. My ability to
25 prepare is somewhat hampered insofar as the defendant's in custody. He was a network

1 engineer or I believe something -- yeah, a network engineer, so we like to communicate, and
2 when I have questions, and because he's housed where he is, I can't call in, so just for me to
3 ask a simple question to educate me in my preparation for a computer crimes case, it is a big
4 hassle.

5 Again, I realize that's not a factor, but it's something that I wanted to bring to
6 the Court's attention that would definitely help us in preparation of our case.

7 THE COURT: Okay.

8 MS. MONROE: Your Honor, I hear this all the time. He didn't run. It took them a
9 year to file the charges, and I don't know that that means anything. Maybe he never thought
10 anybody was gonna do anything. Maybe -- just because an FBI agent was present. But how
11 does the Court guarantee that Mr. Castaneda doesn't get a computer, get Online and
12 download more child porn? You know, unfortunately, I'm not just doing child homicides
13 now, now I'm getting to do child porn, and I am getting really sick of seeing photos of little
14 girls having penises stuck in their butts, and that's the kind of smut, if you will, that was
15 downloaded off this man's computer.

16 Now a [indiscernible] to his credit that the young girls that were living with
17 him that he didn't touch or do anything to, but how does this Court stop and make sure that
18 he doesn't do that? Is Mr. Geller gonna go over there and check his computer once a week
19 and make sure he doesn't download it? His son moved in three weeks right before the police
20 arrested him. He's blaming everyone else: They had access to my computers.

21 They didn't take all of his computers because not all of the computers had
22 child porn. They were downloaded in Tony's file, 50 photographs of child porn, and they
23 were admitted into evidence. If this Court wants to see what they look like, feel free
24 because --

25 THE COURT: No. I'll take your word for it.

1 MS. MONROE: -- they are disgusting. They're not videos. It's not bondage. It's
2 just little girls who -- and little boys -- who are shown in various acts of sexual activity with
3 adults. So how does the Court make sure that, whether it's just a technological crime, how
4 does the Court make sure that Mr. Castaneda doesn't go on doing this because the police
5 have programs that they use to find out who's downloading, and they do it on IP addresses.
6 And, as Mr. Geller said, we were both being educated I think in this prelim because I think
7 even Mr. Castaneda had more knowledge than Mr. Geller and I combined, but at least we did
8 have police detectives that work these crimes and they have programs. But IP addresses can
9 change and they don't always zero in on where they -- where the child porn is being
10 downloaded. They did zero in on Mr. Castaneda's IP address, which is how they find it, then
11 they go to Cox, and they look it up, and that's when they go and they serve their warrants,
12 and, lo and behold, they found child porn.

13 So that's the State's concern. Now, they say he can live with his son -- sorry,
14 Mr. Geller.

15 MR. GELLER: No, no.

16 MS. MONROE: They said he can live with his son, but his son moved in with him,
17 and is the son gonna come here to court today and say: Gee, Judge, I swear I won't let my
18 dad have access to computers. So if the Court is looking at letting him out, then I would ask
19 for house arrest because he does have some computers that the police left that they did not
20 take because there was not child porn. So I guess you could go into Starbucks, download on
21 wi-fi, and get what you want that way.

22 THE DEFENDANT: So could you.

23 MS. MONROE: So --

24 THE MARSHAL: Don't talk.

25 THE COURT: Go ahead.

1 MS. MONROE: So that's the position that the State's in. And while it's just I guess
2 it's certainly not the crime of breaking into someone's house or things along that line, it's
3 still a crime to have child porn, and that's what it is in this case. So if the Court wants to
4 look at it as, well, it's just child porn, it's not really as bad as somebody breaking into a
5 house, or some of the other crimes that you have here, you know, the Court is gonna do what
6 the Court wants to do. But my only concern is how does the Court make sure that Mr.
7 Castaneda doesn't go on downloading the child porn.

8 MR. GELLER: And, Judge, I think that --

9 THE COURT: Mr. Geller.

10 MR. GELLER: -- what Ms. Monroe alluded to is obviously it's access to the Internet
11 that would be the source of such a thing. Obviously, we dispute whether -- that he is, in fact,
12 guilty of this. You heard Ms. Monroe did indicate that he is, in fact, very sophisticated in
13 computers and I don't want to divulge all the details of our defense, but he's very
14 sophisticated in computers, and these were computers that everyone in the house had access
15 to, and that was testified at preliminary hearing, that there were a lot of people that were
16 living in the home and they were just under a folder that just said: Anthony's pics. Or, you
17 know, it was a very -- so it would be kinda like if I said: Oh, Ms. Monroe, you can borrow
18 my car. Here, take the keys. And I had a pound of cocaine sitting on the driver's seat. It's
19 possible, certainly is, and that's gonna be for the jury to decide.

20 But the point I'm getting at is, is for someone that's really sophisticated in
21 computers, to leave felony contraband right out in the open and let people borrow it, you
22 know, it casts some potential doubt, and we could go back and forth all day long about the
23 evidence that came out at the preliminary hearing. But I do think the strength of the State's
24 case is a factor. But to address the question that Your Honor asked specifically -- I apologize
25 I was going off tangent, and I think that's why Mr. Castaneda was a little bit frustrated

1 there -- if we just say that as a condition of his release he cannot get on the Internet, then he
2 has a lot of incentive not to because if there were ever an incidence where, you know, the
3 State could say, oh, he sent an E-mail, or anything like that, that suggests he got on the
4 Internet, he goes back in CCDC.

5 THE COURT: How about that plus he can't live anywhere there is a computer
6 capable of getting on the Internet?

7 MR. GELLER: That would be fine. We -- I'm sure we could ask his son just not to
8 have -- bring a computer into the house. I think he was a college student --

9 THE COURT: Are these desktop? Does the son have a desktop, laptop, what?

10 MR. GELLER: I believe the son has a laptop. You can speak to that, just that alone,
11 please.

12 THE DEFENDANT: Yes, my son has a laptop.

13 THE COURT: One computer?

14 THE DEFENDANT: Two.

15 THE COURT: Both laptops?

16 THE DEFENDANT: Yes.

17 THE COURT: What are they?

18 THE DEFENDANT: They're an Acer computer and a brand that starts with an "L"
19 that he got from his college.

20 THE COURT: Lenovo?

21 THE DEFENDANT: I don't think so.

22 THE COURT: Is the Acer one of those little --

23 THE DEFENDANT: No. It's a full size laptop.

24 THE COURT: About 15 or 17?

25 THE DEFENDANT: It's actually the wide format.

1 THE COURT: Seventeen?

2 THE DEFENDANT: H -- high definition format.

3 THE COURT: That's the Acer?

4 THE DEFENDANT: Yes.

5 THE COURT: And the other one, how big is it?

6 THE DEFENDANT: I think it's a standard, 14.

7 THE COURT: Fourteen. And you would be living with him in his home?

8 THE DEFENDANT: No, he would be living in my house.

9 THE COURT: All right. So presently is there a modem and a router there, wireless?

10 THE DEFENDANT: Yeah. May I mention something?

11 THE COURT: M-hmm.

12 THE DEFENDANT: During this four-year period, nine or ten computers passed
13 through my house.

14 THE COURT: I don't think you want to get into "passed." That's facts that he's
15 gonna want to use to defend you with. We don't want to get into that.

16 THE DEFENDANT: Okay.

17 THE COURT: So your son would be content for you to take out the modem and the
18 wireless router?

19 THE DEFENDANT: It's essential to -- it's what I work in also. It's what both of us
20 work in. We're both computer engineers.

21 THE COURT: Well --

22 MR. GELLER: Nonetheless, Judge --

23 THE COURT: You understand the problem though.

24 THE DEFENDANT: Yes, I understand, but --

25 THE COURT: Now, I'm not likely to put you in someplace where you have

1 continued access to the Internet. I'm just not likely to do that under these circumstances.
2 I'm gonna give you some indication --

3 THE DEFENDANT: I can turn off the Internet service for the house.

4 THE COURT: Well, not only -- when you say turn it off, you mean discontinue it?

5 THE DEFENDANT: Yeah.

6 THE COURT: With Cox or who?

7 THE DEFENDANT: It's with -- it's with Clearwire, Clear.

8 THE COURT: Clear?

9 THE DEFENDANT: Yeah.

10 THE COURT: You'd have to --

11 THE DEFENDANT: -- Cox ever.

12 THE COURT: You have the account with Clear?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Do you have the main home unit?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And do you have the telephone addition modem thing?

17 THE DEFENDANT: It is wireless.

18 THE COURT: But do you have your telephone service with them?

19 THE DEFENDANT: No.

20 THE COURT: Okay. So you don't have that. Do you have the little laptop thing that
21 sticks in?

22 THE DEFENDANT: No.

23 THE COURT: You just have the one.

24 THE DEFENDANT: Just have the home service.

25 THE COURT: Okay. You would have to get that out of the house and not have

1 access to it.

2 THE DEFENDANT: Shouldn't be a problem.

3 THE COURT: Does that operate as both a modem and a router then?

4 THE DEFENDANT: It's a radio modem.

5 THE COURT: Okay. So you don't have an additional router that attaches to that?

6 THE DEFENDANT: I have an additional router that attaches to that, but it couldn't

7 attach to the Internet without that radio modem.

8 THE COURT: You'd have to get that out of the house too.

9 THE DEFENDANT: The regular network modem?

10 THE COURT: Yeah.

11 THE DEFENDANT: Or network router?

12 THE COURT: The router, yep.

13 THE DEFENDANT: Okay.

14 THE COURT: Yep. It's limited, but your son can do his -- whatever he needs for
15 studies at a wi-fi spot or some such thing. The order would have to be there'll be no
16 capability of getting on the Internet present in the home, regardless of who it belongs to, or
17 how it got there, nothing. If that showed up, you go away to jail.

18 THE DEFENDANT: Okay.

19 THE COURT: You have that understanding?

20 THE DEFENDANT: M'hmm.

21 THE COURT: Okay.

22 THE DEFENDANT: How do I demonstrate this? Do you --

23 THE COURT: Well, somebody's -- you're gonna be subject --

24 THE RECORDER: You know, you're not being picked up at all.

25 THE COURT: You're gonna have to speak up a little bit. See that microphone?

1 THE DEFENDANT: Oh, I'm sorry.

2 THE COURT: Speak up a little bit.

3 THE DEFENDANT: How do I demonstrate this --

4 THE COURT: Well --

5 THE DEFENDANT: -- to the Court or to the PD?

6 THE COURT: -- if we do -- even intensive supervision, they don't go to the house,
7 do they?

8 MS. MONROE: No. House arrest may --

9 THE DEFENDANT: I'll be happy to --

10 MS. MONROE: -- they would --

11 THE DEFENDANT: -- turn it down.

12 MS. MONROE: -- be -- they could at least check on him or maybe make -- I don't
13 know if they go to the house, up to the jail.

14 MR. GELLER: I mean --

15 MS. MONROE: I mean, and that's the biggest problem. Maybe Mr. Geller --

16 THE COURT: The other thing we could do is simply make it a provision that he be
17 subject to --

18 MR. GELLER: Right.

19 THE COURT: -- unannounced visits by law enforcement for that specific purpose,
20 and if they drop in --

21 MS. MONROE: Well, I have a feeling that the FBI or Metro would be more than
22 happy with that order, that they could just drop in at any time.

23 THE COURT: Drop in and check.

24 THE DEFENDANT: Yeah, if --

25 THE COURT: You wouldn't mind that, would you?

1 THE DEFENDANT: I wouldn't mind that.

2 THE COURT: Okay. You understand that means that they're gonna undoubtedly
3 want to look at the computers.

4 THE DEFENDANT: But --

5 THE COURT: At least a spot check of the computers to see if there's any
6 additional --

7 THE DEFENDANT: -- Your Honor, I work as a computer engineer.

8 THE COURT: I'm sorry?

9 THE DEFENDANT: I work as a computer engineer --

10 THE COURT: Right.

11 THE DEFENDANT: -- contractor.

12 THE COURT: Right.

13 THE DEFENDANT: What if I get a job that's connected to the Internet?

14 THE COURT: You mean outside the home?

15 THE DEFENDANT: Yeah, I could -- that's what I do, you know.

16 THE COURT: I don't see how we can do that, Mr. Geller.

17 MR. GELLER: Well, yeah, Mr. Castaneda, you certainly can't work from inside
18 CCDC, so --

19 THE COURT: Yeah.

20 MR. GELLER: -- there are some compromises that will have to be made.

21 THE COURT: Yeah, that would have to be an additional condition. You'd be
22 restricted for the present -- from using any computer that is connected to the Internet,
23 whether it's wireless or direct wire, either way, and I understand that can impinge, but it's
24 the nature of the charges here, we have to.

25 THE DEFENDANT: Okay.

1 THE COURT: I know.

2 THE DEFENDANT: Basically --

3 THE COURT: Well, it might mean that you couldn't work. I don't know.

4 THE DEFENDANT: Yeah, yeah.

5 THE COURT: But that's what it would have to be.

6 MR. GELLER: We appreciate the opportunity. I know that he'll show up to his court
7 dates.

8 THE COURT: So are we clear now on what these conditions are? There's to be no
9 modem or router present in his home, and he's subject to unannounced visits by law
10 enforcement.

11 MS. MONROE: Well, I'd ask to go further than that. I think the unannounced visits
12 is fine, but I'd say that also that they can search the computers just because they have a way
13 of searching, doing a preliminary search, to see if there's any child porn downloaded.

14 THE COURT: Yeah.

15 MS. MONROE: So, I mean, to knock on the door and say, hey, we're here, isn't
16 gonna really accomplish much.

17 THE COURT: Right.

18 MS. MONROE: So I'm gonna ask that they can also search any computers.

19 THE COURT: Well, that's why -- that's why we discussed that, unannounced visits
20 and search of computers on premises.

21 MR. GELLER: Okay.

22 MS. MONROE: And for that way then they're gonna have to know -- he's gonna
23 have to make sure that -- we're gonna have to have an address where Metro can go, and then
24 if he starts moving around, then I'm gonna put it back on calendar.

25 THE COURT: Oh, no, no, no, you can't be moving around. Have you got an address

1 where you will be? What's the address?

2 THE DEFENDANT: 2205 Beverly Way, my house for three years.

3 THE COURT: Is it a house or an apartment?

4 THE DEFENDANT: It's a house.

5 THE COURT: Okay. That's the address. You don't move somewhere else unless
6 you, you tell Mr. Geller if, for some reason, you have to move, he's gonna have to take
7 appropriate action and so that we'd have a new address.

8 THE DEFENDANT: Okay.

9 MR. GELLER: Judge, the last --

10 THE COURT: Additionally --

11 MR. GELLER: Sorry.

12 THE COURT: -- and the final condition is that whether you're at home or not, you're
13 not to operate any computer that has access to the Internet.

14 THE DEFENDANT: Okay.

15 THE COURT: Okay.

16 MR. GELLER: Apologize, I keep interrupting.

17 THE COURT: Go ahead.

18 MR. GELLER: What I was gonna request -- and we appreciate the opportunity of his
19 release -- is originally Mr. Castaneda had invoked, because he was in custody.

20 THE COURT: Yeah.

21 MR. GELLER: I can tell you the likelihood that I'm gonna be able to educate myself
22 on all this computer technology stuff is slim by the invoke date, 'cause I was hoping Mr.
23 Castaneda, in light of the fact that you're being released, if you would waive your right to a
24 speedy trial now and we can set this in the ordinary course. It would give me a lot more time
25 to prepare your defense.

1 THE COURT: This -- what we're talkin' about is the statutory right to speedy trial.
2 We're not saying you give up forever your constitutional right to a speedy trial. That's
3 actually a whole different thing than this statutory 60-day rule we were -- we talk about.
4 You willing to waive your statutory 60-day right to get to trial in 60 days now that you'll be
5 released?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay.

8 MR. GELLER: Thank you.

9 THE COURT: Anything else??

10 MS. MONROE: Well, we'll need to set a new trial date 'cause our trial date presently
11 is set for July --

12 THE COURT: July.

13 MS. MONROE: -- the 5th, so I'm gonna ask that be vacated and that we get a trial
14 date setting in the ordinary course.

15 THE COURT: Ordinary course.

16 THE CLERK: September or November.

17 MS. MONROE: Does it matter?

18 MR. GELLER: I'd guess, all things being equal, I'd say November so hopefully I can
19 say that I'm ready right when we go. That'll give me a little more time.

20 THE COURT: What's the estimate for trial time; do we know? You gonna get the --

21 MS. MONROE: It's called the learning on the job I guess. You know, I --

22 THE COURT: Are we gonna get --

23 MS. MONROE: Well, I guess the Court only goes in the afternoons.

24 THE COURT: Well, four days a week.

25 MS. MONROE: We've only got 15 counts, so although there may be a bad act

1 because there were other photos. There were a total of about 50 I believe they said, so.

2 THE COURT: Are we gonna get the feebee dog and pony show? You're gonna have
3 your --

4 MS. MONROE: I bet we do.

5 THE COURT: You're gonna get your expert, you're gonna be feebees for experts?

6 MS. MONROE: I don't think we have any. We -- they didn't have listed, but we got
7 a really limited discovery, and I think that's what Mr. Geller's problem is. They don't give
8 out the pictures. They have to either redact 'em or he's gonna have to go and look at the
9 pictures at Metro. But right now the FBI is not involved. They were present during the
10 serving of the warrant, but --

11 THE COURT: Okay.

12 MS. MONROE: -- I don't believe --

13 THE COURT: All right.

14 MS. MONROE: -- they're involved in any way.

15 THE COURT: All right.

16 MS. MONROE: So I think all our witnesses are really the Metro officers that went
17 there and then the woman who reported the finding of it, the original finding of it.

18 THE COURT: Okay. All right.

19 MR. GELLER: But I think saying a week is probably erring on the side of caution
20 because I'm probably gonna have to confer with an expert on my end.

21 THE COURT: Sure.

22 MR. GELLER: 'Cause the State has their army of experts.

23 THE COURT: Well, I wouldn't --

24 MR. GELLER: I mean.

25 THE COURT: I wouldn't be --

1 MS. MONROE: It's not an army.
2 THE COURT: Actually I wouldn't be surprised, you know, especially if you get into
3 experts, I wouldn't be surprised. We probably won't make it in a week.
4 MR. GELLER: Right, so.
5 THE COURT: You're really talkin' about four days, four full days.
6 MS. MONROE: Probably four full days of trial, then you've got jury selection.
7 THE COURT: I'm sorry. Three full days.
8 MS. MONROE: If we can -- and it's only four preempts each, plus the one alternate,
9 so it's not gonna be like when we have eight preempts plus an alternate for a total of 18, I
10 think we --
11 THE COURT: Well, we're probably lookin' at --
12 MS. MONROE: -- could probably pick a jury in an afternoon and then probably get
13 started.
14 THE COURT: Okay. What dates?
15 THE CLERK: Calendar call'll be November 16th at 9 am, trial will be November --
16 never mind.
17 MS. MONROE: Is that gonna take us right into the week of Thanksgiving?
18 THE CLERK: Yeah, it would. I'm changing it.
19 MS. MONROE: Turkey.
20 THE COURT: We don't want to ruin --
21 THE CLERK: We could do it --
22 THE COURT: -- the jury's dinner anyway.
23 THE CLERK: -- after Thanksgiving.
24 MS. MONROE: Would that work for you, Mr. Geller, after Thanksgiving?
25 MR. GELLER: I believe so.

1 MS. MONROE: Okay.

2 THE CLERK: Calendar call'll be November 21st at 9 a.m., trial will be November
3 28th at 1:30 p.m.

4 MR. GELLER: Thank you very much, Judge.

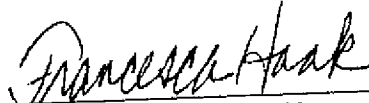
5 MS. MONROE: Thank you.

6 THE COURT: All right. Mr. Castaneda, stay in touch with your attorney when
7 you're released.

8 [Proceeding concluded at 12:06 a.m.]

9
10 * * *

11 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
12 acknowledge that this is a rough draft transcript, expeditiously prepared, not
13 proofread, corrected, or certified to be an accurate transcript.

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15 FRANCESCA HAAK
16 Recorder/Transcriber
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
CALENDAR CALL

For the State:

VICTORIA VILLEGAS, ESQ.
Deputy District Attorney

For the Defendant:

WARREN GELLER, ESQ.
Deputy Public Defender

Rough Draft Transcript

1
2 Las Vegas, Nevada - Monday, November 21, 2011, 10:04 a.m.

3 * * * * *

4 THE COURT: State of Nevada versus Anthony Castaneda, Case number C272657-1.

5 MS. VILLEGAS: Good morning, Your Honor. Victoria Villegas, on behalf of the
6 State, Bar number 2804.

7 MR. GELLER: Judge, Warren Geller, on behalf of the defendant. Judge, I don't
8 know for 100 percent sure, but I likely had told the defendant that his calendar call would
9 have been on a Wednesday, and so that may be my fault. I am in touch with him. We've
10 spoken several times. I informed him that I'd be requesting a continuance, and if we're
11 going to pass this to Wednesday, I certainly can file a written motion to that effect, if Your
12 Honor would like, the reason being is that during the preliminary hearing I had requested
13 some documents that the police had, and this is a case where my client is alleged to have
14 possessed child pornography. The documents the police had were the file transfer dates,
15 when those particular files were put on his computer. The problem was is they had little
16 thumbnail pictures of each photo depicted on there, and the police had to redact that to get
17 that out before they could turn it over to me, otherwise I'd be in possession of it.

18 And so I'm still waiting on that redaction to have those documents. That
19 would be the basis of our request for a continuance. But, again, Your Honor, if you wanted
20 me to put that in writing, I'd be happy to do that.

21 THE COURT: Yes. You know I request - I require you to comply with the Rule in
22 that regard.

23 MR. GELLER: Certainly, Judge.

24 THE COURT: Ms. Villegas.

25 MS. VILLEGAS: Right now, Judge, one is on Wednesday. I'm not gonna be here.

1 I'm gonna be out of town. Secondly, actually I inherited this case from Ms. Monroe, so it
2 was the first time I actually heard about him needing the discovery.

3 With respect to -- because of the sensitive nature of the materials or so, what I
4 would propose to counsel is for us to make an appointment with the detective who actually
5 handled the forensic analysis, go over there, and look at their computer equipment that would
6 have the information that he's looking for. So as opposed to resetting the trial, I would
7 actually ask to have a status check to get us the opportunity to actually view the documents
8 and the files or so 'cause it's gonna be voluminous, if anything, given the number of counts
9 in this case.

10 MR. GELLER: I certainly don't have a problem to a status check before resetting --

11 MS. VILLEGAS: Right.

12 MR. GELLER: -- a firm date. And, again, I mean, there were a lot of images, so we
13 can -- I can work out with Ms. Villegas the specifics of how we're getting all the
14 information, but each image had a lot of information, so I was hoping that maybe we could
15 be copied in some without the images rather than me handwriting everything down, but we
16 can take that up amongst ourselves.

17 THE COURT: All right. So instead of filing a motion, a written motion, you just
18 want to be sworn --

19 MR. GELLER: That would be great, Judge.

20 THE COURT: -- to testify to these things in lieu of your affidavit in support of your
21 motion.

22 MR. GELLER: Thank you, Judge, and in the future I'll have a written one filed.

23 THE CLERK: Are we doing it today?

24 THE COURT: Yep, we're doing it today.

25 **WARREN GELLER,**

1 [having been first duly sworn, testified as follows:]

2 MR. GELLER: Judge, I'm requesting a continuance in the matter of Anthony
3 Castaneda. The reason for that continuance is because I was waiting on some discovery
4 from the State, specifically the file creation and transfer dates associated with each image
5 that was outlined in the State's Criminal Information and prior to that the Criminal
6 Complaint in Justice Court.

7 This is actually the first time I was aware that Ms. Villegas had inherited the
8 case from a former prosecutor. I am also in touch with my client, so he'll be able to make
9 any future court appearances, and this is made in good faith and not for the purpose of delay.

10 THE COURT: All right. I'll accept those representations it appearing that there is
11 good cause in that discovery is not complete and, therefore, the defense is not ready to
12 proceed to trial at this time.

13 I'm not -- I'm gonna vacate the trial date today, but we'll set it on -- we won't
14 reset it. We'll set it for a status check.

15 Since your client -- you think your client may, in fact, show up on Wednesday?

16 MR. GELLER: If Your Honor would like him to, I certainly will tell him to do that,
17 if you'd like, just to see him in the abundance of caution so we --

18 THE COURT: Yes, I'd like --

19 MR. GELLER: -- know that he's --

20 THE COURT: -- to make --

21 MR. GELLER: Certainly.

22 THE COURT: -- sure that he is here since he is on OR and these are serious charges
23 obviously.

24 MR. GELLER: Sure thing.

25 THE COURT: So let's have him -- we'll continue it just for his appearance for

1 Wednesday. Ms. Villegas, although you'll be out of town, someone else obviously can cover
2 it for just that purpose. And then perhaps you could figure out a date that you'd like to see it
3 continued to for the status check, and --

4 MS. VILLEGAS: Given the fact that it's the holiday --

5 THE COURT: On Wednesday we'll --

6 MS. VILLEGAS: -- that's right.

7 THE COURT: -- reset it for a status check as to resetting the trial date.

8 MS. VILLEGAS: That's fine.

9 MR. GELLER: I think Ms. Villegas and I, if it's all right with the Court, would like a
10 date in January given that the holidays are approaching. I imagine some of the investigating
11 officers and detectives likely won't be available, and I also have a couple serious cases
12 before then, so my plate'll be pretty full, if that's all right with the Court.

13 THE COURT: You want to reset it for January or you mean you want a status check?

14 MR. GELLER: The status check in January, yes.

15 MS. VILLEGAS: Status check.

16 MR. GELLER: Yes.

17 THE COURT: January, all right, let's go ahead and set that now then.

18 MS. VILLEGAS: Can we get a mid-status -- mid-January status check?

19 THE CLERK: January 25th.

20 MS. VILLEGAS: Thank you.

21 THE CLERK: At 9.

22 THE COURT: Okay. And that status check will be for resetting the trial date.

23 THE CLERK: And then --

24 MS. VILLEGAS: It's for discovery and for resetting of trial, Judge.

25 THE COURT: I'm sorry?

1 MS. VILLEGAS: For discovery, to make sure he got what he needed.

2 THE COURT: Yes.

3 MS. VILLEGAS: And then resetting of trial at that point.

4 THE COURT: Right.

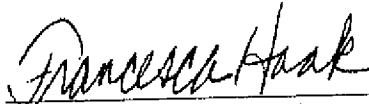
5 MR. GELLER: Thank you very much, Judge.

6 THE COURT: Thank you.

7 [Proceeding concluded at 10:09 a.m.]

8 * * *

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10 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
11 acknowledge that this is a rough draft transcript, expeditiously prepared, not
12 proofread, corrected, or certified to be an accurate transcript.

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14 FRANCESCA HAAK
15 Recorder/Transcriber
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
MONDAY, NOVEMBER 23, 2011

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
STATUS CHECK: DEFENDANT'S PRESENCE
(01/25/12 -- STATUS CHECK: DISCOVERY/RESET TRIAL)

APPEARANCES:

For the State:

JAY RAMAN, ESQ.
Deputy District Attorney

For the Defendant:

WARREN GELLER, ESQ.
Deputy Public Defender

RECORDED BY: DEBRA WINN, COURT RECORDER

1
2 Las Vegas, Nevada - Monday, November 23, 2011, 10:43 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

5 MR. GELLER: And he's present at liberty. I think he's gonna have to wait for the in
6 custodies.

7 THE COURT: Okay. That's all right.

8 THE MARSHAL: Sorry, Your Honor.

9 THE COURT: All right. Case number C272657-1, State of Nevada versus Anthony
10 Castaneda. This is on a status check for the defendant's presence and to -- he is present, out
11 of custody.

12 MR. GELLER: Your Honor, I think you indicated on Monday that we had set this for
13 a status check on some discovery that I was requesting, although Mr. Castaneda wasn't
14 present. I got in touch with him obviously, and he has now made it here. I believe Your
15 Honor indicated you just wanted to make sure that he was aware of his upcoming --

16 THE COURT: Right.

17 MR. GELLER: -- court dates.

18 THE COURT: And we resolved the discovery issue, and we've got a status check
19 looks like January.

20 MR. GELLER: That's right, Your Honor. There were some things I'm requesting
21 from the State, and we'll just see where we are at that time, if that's all right.

22 THE COURT: All right. So, Mr. Castaneda, make sure you keep in close contact
23 with your lawyer.

24 THE DEFENDANT: Always did, yeah.

25 THE COURT: All right?

1 THE DEFENDANT: Yeah. So I was here yesterday. I had the impression it was
2 Tuesday, so that --

3 THE COURT: Oh, okay.

4 THE DEFENDANT: -- I was sitting there watchin' TV. I could've been here, and I
5 just missed it, so.

6 THE COURT: Okay.

7 THE DEFENDANT: Sorry about that.

8 THE COURT: All right. Make sure -- the dates are really important, and if you don't
9 show up on an important date, like a calendar call, the Court'll issue a bench warrant for you,
10 so be very careful of the dates. Thank you.

11 MR. GELLER: Thank you, Your Honor.

12 THE CLERK: February 25th at 9 a.m., Monday -- sorry, Wednesday.

13 [Proceeding concluded at 10:46 a.m.]

14 * * *

15
16 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
17 acknowledge that this is a rough draft transcript, expeditiously prepared, not
18 proofread, corrected, or certified to be an accurate transcript.

19 
20 _____
21 FRANCESCA HAAK
22 Recorder/Transcriber
23
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
WEDNESDAY, JANUARY 25, 2012

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
STATUS CHECK: DISCOVERY/RESET TRIAL

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Deputy District Attorney

For the Defendant:

JEFFREY T. RUE, ESQ.
Deputy Public Defender

RECORDED BY: LARA CORCORAN, COURT RECORDER

1
2 Las Vegas, Nevada - Wednesday, January 25, 2012, 9:27 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

5 MR. SWEETIN: James Sweetin, for the State, Judge.

6 THE COURT: Good morning.

7 MR. SWEETIN: This was on today for a status check, discovery, and reset and trial
8 date. It's Mr. Geller's case now, discussed with the PD here.

9 Essentially, it's my understanding that the defendant's snowed in out of state
10 and he's not able to be here to reset the trial date. We have provided the discovery. We
11 would ask that the status check be moved to Monday so we can reset the trial date.

12 THE COURT: All right. Will he be here by Monday, Mr. Rue?

13 MR. RUE: We hope so. I mean, his flight was actually cancelled. He's in Iowa.
14 They are snowed in. They cancelled the flight. I would anticipate -- well, I would hope that
15 the weather would be better by then to where he could get out.

16 THE COURT: I'm not following the Midwest weather, so --

17 MR. RUE: No.

18 THE COURT: -- I don't know.

19 THE CLERK: February -- the 1st is actually a little bit better date.

20 THE COURT: The 1st, my clerk is saying, would be a better day 'cause our calendar
21 is just getting so jammed up.

22 MR. SWEETIN: That's fine with the State.

23 MR. RUE: That's fine, Your Honor.

24 THE COURT: Fine. He's gonna have to get a new flight anyway.

25 MR. RUE: Sure.

1 THE COURT: Or is he coming initially from Iowa, or was that a stop-over?

2 MR. RUE: No. He was working back there --

3 THE COURT: Okay.

4 MR. RUE: -- Judge, so, Your Honor, so he's coming back. Whatever day is best for
5 the Court, we'll manage.

6 THE COURT: All right. Very good, the 1st then.

7 THE CLERK: February 1st at 9.

8 MR. RUE: Thank you, Your Honor.

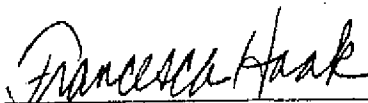
9 MR. SWEETIN: Thank you.

10 THE COURT: Thank you.

11 [Proceeding concluded at 9:29 a.m.]

12 * * *

13
14 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
15 acknowledge that this is a rough draft transcript, expeditiously prepared, not
16 proofread, corrected, or certified to be an accurate transcript.

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19 FRANCESCA HAAK
20 Recorder/Transcriber
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
WEDNESDAY, FEBRUARY 1, 2012

RECORDER'S ROUGHT DRAFT TRANSCRIPT
STATUS CHECK: DISCOVERY/RESET TRIAL

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
Deputy Public Defender

RECORDED BY: LARA CORCORAN, COURT RECORDER

1
2 Las Vegas, Nevada - Wednesday, February 1, 2012, 10:31 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.
5 This is on status check, discovery, and reset trial.

6 MS. BALLOU: This is Mr. Geller's case. He was gonna try and make it up before
7 the calendar started getting long, but we just need to reset the trial date.

8 THE COURT: Okay. Right. He was snowed out. You got stuck --

9 THE DEFENDANT: Need to believe.

10 THE COURT: -- huh? Okay. All right. So --

11 THE DEFENDANT: May I mention another thing? Around Thanksgiving my house
12 was burglarized, and two cars stolen, that kinda day, and all my research on getting my, you
13 know, my locations and custody -- custodian records --

14 MS. BALLOU: I don't know if these are things that he needs to be talking to his
15 attorney --

16 THE DEFENDANT: Oh, then I'm sorry, I'm sorry.

17 MS. BALLOU: -- about instead of to the Judge.

18 THE COURT: Right.

19 THE DEFENDANT: Yes. Okay.

20 MS. BALLOU: Okay. Do you want -- Warren'll be here.

21 THE DEFENDANT: Yeah, sure.

22 THE COURT: Okay.

23 MS. BALLOU: Do you just wanna put it in the file 'cause we just need to --

24 THE COURT: So when do you want to reset the trial?

25 MS. BALLOU: We just need to get a trial date.

1 MR. SWEETIN: Yeah, I don't know what your ordinary course is, Judge.

2 THE COURT: What's our ordinary course running now?

3 THE CLERK: November 26th or --

4 MS. BALLOU: Is that after Thanksgiving? When's Thanksgiving?

5 THE CLERK: Yes. The week after.

6 MS. BALLOU: Because, yeah, the week after would be fine I think.

7 THE CLERK: Is that okay?

8 THE COURT: Okay.

9 THE CLERK: Okay. November 26th at 9 -- I'm sorry, at 1:30 for jury trial;
10 November 19th at 9 a.m. for calendar call.

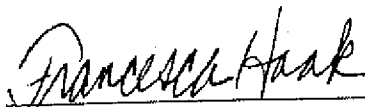
11 MS. BALLOU: Let me just make sure I got these correct. Calendar call November
12 19th at 9 a.m.; trial date November 26th at 1:30. Okay. Thank you.

13 THE COURT: Thank you.

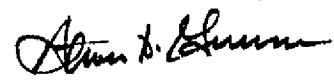
14 [Proceeding concluded at 10:33 a.m.]

15 * * *

16 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
17 acknowledge that this is a rough draft transcript, expeditiously prepared, not
18 proofread, corrected, or certified to be an accurate transcript.

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20 FRANCESCA HAAK
21 Recorder/Transcriber
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CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CASTANEDA,

Defendant.

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
MONDAY, NOVEMBER 19, 2012

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
CALENDAR CALL

APPEARANCES:

For the State:

JAMES SWEETIN, ESQ.
Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
Deputy Public Defender

RECORDED BY: LARA CORCORAN, COURT RECORDER

1
2 Las Vegas, Nevada - Monday, November 19, 2012, 9:34 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

5 MS. BALLOU: Your Honor, Mr. Castaneda is present. He is out of custody. This is
6 the date and time set for the calendar call. I am not ready, and I attempted to print my
7 motion for continuance this morning -- he's on his way up -- but my computer was acting not
8 fine, so I actually need to be sworn.

9 THE COURT: All right.

10 **ERIKA D. BALLOU,**

11 [having been first duly sworn, testified as follows:]

12 MS. BALLOU: Your Honor, my name is Erika Ballou, Bar number 8365 of the Clark
13 County Public Defender's Office. I am the Public Defender assigned to defend Mr.
14 Castaneda in this case. I was assigned this matter after Mr. Geller in our office left earlier
15 this year. Mr. Castaneda is out of custody, so I hadn't had an opportunity to speak with him
16 until recently. I do have now an investigator who is on the case. Mr. Castaneda has
17 informed me he was in the hospital for a while and that's why we hadn't been able to speak.

18 I do now have an investigator who is assigned to the case, but prior to August
19 our office did not have an investigator assigned to my team. I need to continue this for
20 continued investigation. Without this continuance I believe that I would be ineffective. This
21 is not for delay. This is the first time I will be asking for a continuance. It is my
22 understanding that Mr. Geller got a previous continuance on this matter.

23 I have spoken to Mr. Castaneda, and he also requests this continuance because
24 he has been in and out of the hospital and hasn't been able to speak with me. I've spoken to
25 Mr. Sweetin of the District Attorney's Office, and it's my understanding that he will not

1 oppose a continuance.

2 THE COURT: Is that accurate?

3 MR. SWEETIN: Judge, yeah, the State would expect to be ready. This is a short
4 case, probably about six witnesses, and Ms. Ballou did indicate to me that she would not
5 be -- she's not prepared to go forward on the case, so we would submit it to the Court's
6 discretion.

7 THE COURT: So do you have any proof that the defendant was in the hospital and
8 that's why he wasn't communicating with you?

9 MS. BALLOU: I don't. He has told me that.

10 THE DEFENDANT: Sunrise Hospital, just after Labor Day.

11 THE COURT: After Labor Day of when?

12 MS. BALLOU: This year. And I didn't get this case until earlier this year.

13 THE DEFENDANT: I've been in Iowa on computer contracts for IBM.

14 THE COURT: Okay. But the last -- I mean, there have been two continuances in this
15 case. The first one was on July of 2011; then it was continued again in November of '11.
16 And here we are a year later.

17 MS. BALLOU: And, again, I didn't realize that those were Mr. Geller's
18 continuances. I only saw one in the file, and now I notice that I'm late on one, that I missed
19 one.

20 THE COURT: Okay. So, I mean, you've had the case though quite a long time.

21 MS. BALLOU: I've had this case since I believe April.

22 THE COURT: Okay. So I want a firm setting for this and I'm not putting this off
23 another long time. I don't know how it got continued for a whole year as it was, but what
24 have we got coming up?

25 THE CLERK: For a firm setting --

1 THE COURT: Yeah.

2 THE CLERK: -- we would be in July.

3 THE COURT: No. Just I want to put it on -- 'cause if it's a short case it can go to
4 overflow. Can we have a February date?

5 THE CLERK: Yeah, we can -- if it can go to overflow, we can do the first week in
6 February if you want.

7 MS. BALLOU: Yep.

8 THE CLERK: February 4th at 1:30 for jury trial. January 28th at 9 a.m. for calendar
9 call.


10 MS. BALLOU: Thank you, Your Honor.

11 THE COURT: And stay in touch with your attorney, and provide her with the proof
12 that you were in the hospital so if this becomes an issue again I want to see them. All right.
13 Thank you.

14 [Proceeding concluded at 9:38 a.m.]

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16 * * *

17 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
18 acknowledge that this is a rough draft transcript, expeditiously prepared, not
19 proofread, corrected, or certified to be an accurate transcript.

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22 FRANCESCA HAAK
23 Recorder/Transcriber
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
MONDAY, JANUARY 28, 2013

RECORDER'S ROUGHT DRAFT TRANSCRIPT OF
CALENDAR CALL

For the State:

JAMES SWEETIN, ESQ.
Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
JOHN J. PIRO, ESQ.
Deputy Public Defenders

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 Las Vegas, Nevada - Monday, January 28, 2013, 9:21 a.m.

2 * * * * *

3 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

4 MS. BALLOU: Your Honor, if I may approach, I've prepared a motion to continue
5 the firm date trial setting that I had sent to your clerk last week, and I sent a courtesy copy
6 also to Mr. Sweetin, if I may approach to have that filed.

7 THE COURT: Yes, you may, and I did get the courtesy copy and read it.

8 [Ms. Ballou approaches the bench]

9 MS. BALLOU: And, Your Honor, I am sorry about that, but with the nature of the
10 charges, I just don't think that I am prepared, based on the amount of time that I've had, after
11 having met with Mr. Castaneda. I'd be asking for any time that the Court's calendar could
12 allow it, other than the 15th, when I have another trial set in this court of April.

13 THE COURT: Now, last time we were here you told me the reason you needed time
14 was because the case had been reassigned to you from Mr. Geller.

15 MS. BALLOU: Yes.

16 THE COURT: Of course Mr. Geller's been gone about a year now from the PD's
17 office, but, more importantly, the defendant wasn't staying in contact with you, and so, in
18 fact, at the end of that hearing I specifically told Mr. Castaneda to stay in contact with his
19 lawyer, and, furthermore, since his excuse was that he was in a hospital, to provide proof that
20 he was, in fact, in the hospital; did he provide that to you?

21 MS. BALLOU: I have not seen that.

22 THE DEFENDANT: Yeah, I didn't, but I --

23 THE COURT: All right.

24 THE DEFENDANT: -- can provide that. I'm sorry I didn't.

25 THE COURT: You know, this was a firm setting. How long is it gonna be? How

1 long, how many days for trial?

2 MR. SWEETIN: We would expect about six witnesses, none of which are out of
3 state, probably two to three days.

4 THE COURT: Okay. All right.

5 MS. BALLOU: And, Your Honor, I do need to make a record that I will be
6 ineffective going forward, if we are going forward next week. Mr. Rue needs to have a
7 Tuesday trial start.

8 THE COURT: Okay. All right. You'll need to hang around so we can see what the
9 rest of the calendar looks -- to see whether I'm going to be keeping this. A client can't
10 intentionally act to make his counsel ineffective and still be able to claim ineffective
11 assistance of counsel. That just doesn't work that way. I'm not particularly concerned that
12 that's gonna be a problem. He was advised, in no uncertain terms, to stay in contact with
13 you and that he needed to work on this. And your motion additionally says that you need
14 time to get a forensic expert. Well, that could have been done also on both.

15 MS. BALLOU: Well, Your Honor --

16 THE COURT: So if the reason you now know that is because you talked to him,
17 well, then it's his fault.

18 MS. BALLOU: And, Your Honor, I did get a forensic report from Mr. Sweetin last
19 week, which I did actually already have. But it's a two-page report with a cover sheet, and I
20 just -- I didn't believe that that was the correct forensic report, so.

21 THE COURT: All right. Again, this was a firm setting. There's been three prior
22 continuances on this, the last two were definitely defense continuances, so that's why I gave
23 you a firm setting. So hang around, like I say, so I know whether I'm going to be sending
24 this to overflow or not.

25 MS. BALLOU: And, Your Honor, I'm actually in Justice Court, so I'm gonna leave

1 this with Mr. Piro. And, again --

2 THE COURT: Okay.

3 MS. BALLOU: -- if we do have a start date, we do need a Tuesday for Mr. Rue's
4 calendar.

5 THE COURT: I've made that note.

6 MS. BALLOU: Thank you.

7 THE COURT: Thank you.

8 [Proceeding trailed at 9:26 a.m.]

9 [Proceeding recalled at 10:48 a.m.]

10 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.
11 No. We already did this. We're just back to figure out -- right, okay. Let's see.

12 MR. PIRO: John Piro, on behalf of Ms. Ballou, Your Honor.

13 THE COURT: Let's see. All right. So we're sending -- we will send to overflow, so
14 we can keep Castaneda here.

15 THE CLERK: And you're not gonna continue it then, right?

16 THE COURT: Castaneda, Tuesday, no, this is the -- this was a firm setting.

17 THE CLERK: February -- oh, no -- yeah, February 1st at 8:45 in Department --

18 THE COURT: Well, is that --

19 THE CLERK: That's for overflow.

20 THE COURT: No, no, no, Castaneda.

21 THE CLERK: Yeah.

22 THE COURT: We're sending --

23 THE CLERK: I thought you said we're sending it into overflow.

24 THE COURT: No. I'm sorry. We're sending Rodney Wilson to overflow.

25 THE CLERK: Oh. We're keeping this one?

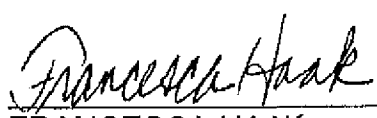
1 THE COURT: Yeah.
2 THE CLERK: Okay. Which one's Wilson? Page 8.
3 THE COURT: So the only --
4 THE CLERK: Oh, he went, okay, I'm sorry.
5 THE COURT: Yeah. So this one's what we're keeping.
6 THE CLERK: Okay.
7 THE COURT: And we need a Tuesday start.
8 THE CLERK: At 9 a.m.?
9 THE COURT: Yes.
10 THE CLERK: Okay. February 5th at 9 a.m. And this is -- I've got two to three days,
11 right?
12 THE COURT: Right.
13 THE CLERK: Six witnesses?
14 MR. SWEETIN: That's correct, about six to eight witnesses.
15 THE CLERK: Six to eight, and no out of states.
16 MR. SWEETIN: No.
17 THE COURT: All right.
18 MR. PIRO: Thank you, Your Honor.
19 THE COURT: Thank you.

20 [Proceeding concluded at 10:50 a.m.]

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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


FRANCESCA HAAK
Recorder/Transcriber

RTRAN

THE STATE OF NEVADA,

CASE NO. C-11-272657-1

Plaintiff,

DEPT. V

vs.

ROUGH DRAFT TRANSCRIPT

ANTHONY CASTANEDA,

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 5, 2013

RECORDER'S ROUGHT DRAFT TRANSCRIPT
JURY TRIAL – DAY 1

APPEARANCES:

For the State:

MICHELLE ANTHONY, ESQ.
Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
JEFFREY T. RUE, ESQ.
Deputy Public Defenders

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 Las Vegas, Nevada - Tuesday, February 5, 2013, 9:27 a.m.

2 * * * * *

3 [Out of the presence of the prospective jury]

4 THE COURT: Case number C-11-272657, State of Nevada versus Anthony
5 Castaneda. We are outside the presence of a jury. The defendant is not present. Both of his
6 counsel are present, as well as the Deputy District Attorney prosecuting the case, and the
7 defense counsel has asked to proceed on a few matters before the defendant arrives. He is in
8 line waiting to get into the courtroom.

9 MS. BALLOU: Your Honor, one of the issues we said in chambers last Friday when
10 we all met with you was about the negotiations and how that happened. The negotiations --
11 the offer was closed last Wednesday at close of business. On Thursday we got the forensic
12 report that's really technical and detailed and that I -- that both Mr. Geller before I had it had
13 asked for I believe a prelim, and then I had been asking Mr. Sweetin for, for a while. We got
14 that finally on Thursday.

15 When we got that, we then spoke to our client about some of the things that it
16 said, and at that point he was willing to take the negotiations. We told Ms. Anthony that --
17 she said that she thought that the matter was closed. We said we're still working on him
18 because of the fact that we had just gotten that forensic report.

19 THE COURT: Okay. The record will reflect the presence of the defendant now.

20 MS. BALLOU: Right.

21 MR. RUE: Thank you, Your Honor.

22 MS. BALLOU: On Friday morning we had spoken to Mr. Castaneda who had
23 thought about it overnight and all of the things that the forensic report, you know, told us
24 about, and he said that he was willing to take the negotiations. We told Ms. Anthony that.
25 She, at that point, told us that the offer had been closed and that she's unable to reextend it.

1 Later that day when I had done a file review with Ms. Anthony, I actually got
2 another officer report written by Officer Carpenter that made references to my client, to
3 statements made by my client to Officer Carpenter that are not referred to in any of the other
4 reports that we had no idea existed until Friday.

5 In chambers, when we were talking to you, and then we just started talking
6 about the trial, and we spoke to Ms. Anthony about who she was gonna call, and she said
7 Officer Carpenter, I think you may remember both Mr. Rue and myself were very surprised.
8 We're like: Who's that? What is that about?

9 And she's like: I just gave you that report. And we went over the file review.
10 We looked at it. It's got some statements that he made that we had no idea about and that are
11 very -- that are incriminating or could be construed as incriminating.

12 Again, that was after the calendar call. The report itself is dated 4/7/2010, so
13 from 4/7/2010 until the calendar call of January 30th is -- and I did a calculation on this --
14 1,030 days that the defense had never seen this. And if I remember the statute correctly,
15 which I didn't have a chance to look up beforehand, I believe all of the defendant's
16 statements are supposed to be turned over before preliminary hearing if I recall that.

17 THE COURT: If there's a request made, which I assume you did at his initial
18 hearings in Justice Court.

19 MS. BALLOU: And, Your Honor, I was not the deputy on that, and so I don't know
20 for a fact that that was done, but, again, because we feel that the State had the discovery duty
21 under the NRS statute and due process, we'd be renewing our motion for a continuance based
22 on the fact that we just got the FTK report on Thursday. I believe we got Eeler's [phonetic]
23 six-page summary of his FTK report on Wednesday. We'd been asking for it, and all we'd
24 ever received was Officer Ramirez's summary report which is basically -- it's a three-page
25 report. The first page is just a cover sheet. And that's what I had been getting from Mr.

1 Sweetin for a while, for a couple of months, when I had been asking for that, for the
2 forensics on this case.

3 Based on that, we'd be renewing our motion to continue or suppress Officer
4 Carpenter's testimony. Basically what we're saying is that, you know, that the fact that we
5 just got this report from Officer Carpenter basically is trial by ambush. We've already
6 announced not ready several times. The State has announced ready every time, if I'm
7 correct. I'm not sure about some of the first times when Mr. Geller had it. I do have that in
8 here. But they at least announced ready in November, and they announced ready in January,
9 without having gotten us all of the discovery that existed that we would have been able to try
10 and get an expert to review the forensics if we knew that it was more than a two-page report.

11 And I, you know, I didn't have time to file a written motion about suppressing
12 Officer Carpenter's testimony, but, you know, when the State announces ready, it's because
13 they've done all of their discovery duties, you know, based on the Nevada Supreme Court
14 case of Mozin [phonetic] versus Warden, which says that if, you know, that there's
15 transferred intent. If the police officers have these reports, then the State has these reports.

16 I know that none of this is Ms. Anthony's fault. The week-and-a-half that
17 she's had this case I've gotten more discovery than I'd gotten in the months previous. So
18 although none of this is Ms. Anthony's fault, I don't believe that we are ready to go forward.
19 Your Honor knows that in all of my cases I file a discovery motion; I didn't file that until I
20 filed it in open court this morning because I didn't realize that it hadn't been done by Mr.
21 Geller. There were some talks about, in some of the minutes, about discovery and things like
22 that, and so I thought I had seen a discovery motion. I did not. I filed a discovery motion
23 this morning.

24 So there are some serious issues in this case with going forward. And then
25 we've got some other -- a couple of things after I let Ms. Anthony go forward.

1 MS. ANTHONY: All right. So, Your Honor, I got the file after calendar call, which
2 Mr. Sweetin had announced ready and then it got set for trial. I hadn't seen the file prior to
3 that. The minute I got the file I called -- well, I let the Public Defenders know, look, I have
4 the case. I want to make sure that you have everything that I have. Let's go through it.
5 Let's do a file review, and, unfortunately, that didn't happen until -- sorry.

6 THE MARSHAL: That's okay. No. You're fine.

7 MS. ANTHONY: That didn't happen until right before we came and met in
8 chambers at 2:00, so I had been trying all along, and had that happened earlier, more of the
9 information would have come forward.

10 When I received the file I was told that everything had been turned over, so I
11 don't have information of exactly what was turned over, when, before me today. I didn't
12 know this motion orally was coming from the Public Defender's Office, or I would have
13 gone through, you know, exactly -- usually I, when I do discovery, I write on the top of my
14 discovery form what was turned over on what day so that I could address issues such as this,
15 so I don't know. But I do know that when I received the file from Mr. Sweetin he believed
16 that all of the discovery, minus the child pornography, had been turned over. Because this is
17 a child pornography case, and the only way that the State can turn that over is by stipulation
18 or by order of the Court, and that didn't happen until I want to say Wednesday or Thursday
19 of this week, and that was because that's when the Public Defender wanted it preparing for
20 trial.

21 And in regard to the rest of the information, it was my belief that they had it.
22 So when I went through the file review, I just went through my file step-by-step, do you have
23 this, do you have this, do you have this, and out of abundance of caution I provided it what I
24 believe to be again. I can't say whether she had it or she didn't have it. I would need to go
25 through all of the file and talk to SVU when they had it, when they didn't have it.

1 So as far as -- I kinda wanna go through them. As far as the forensic report
2 that they just got, that forensic report includes child pornography, and the only reason -- way
3 that they can get that is through stipulation. We also -- I also had the officer go through and
4 take child pornography out so I ended up with a second disk without it.

5 The next part of it is when they indicate that the defendant was willing to take
6 a plea. The plea was never an Alford plea, and that, to my knowledge, is all that the
7 defendant is willing to take, and the State's unwilling to accept an Alford plea. So while he
8 is willing to accept that, the State's not -- never offered an Alford plea.

9 The next part of it is Carpenter's report. In the event that they didn't have it
10 prior to me turning it over, the remedy isn't to suppress it. The remedy would be for a
11 continuance for them. So --

12 THE COURT: Well, what's in that report?

13 MS. ANTHONY: The report is a half a page --

14 MR. RUE: May I approach, Judge? I can --

15 THE COURT: Yes.

16 MR. RUE: -- provide it, Your Honor.

17 [Mr. Rue approaches the bench]

18 THE COURT: I mean, because the remedy isn't necessarily a continuance either if --
19 it depends on what's in here.

20 MS. ANTHONY: It's a --

21 THE COURT: Okay. So now you have it. Why would there be a need for
22 continuance? I mean --

23 MS. BALLOU: Well --

24 THE COURT: -- what would it -- what would you do, based upon this, that you
25 would need a continuance?

1 MR. RUE: I'd -- if I could address Your Honor.

2 THE COURT: Sure.

3 MR. RUE: With respect to Officer Carpenter's statement, we're not suggesting a
4 continuance at all. We're seeking suppression of that, and the reason why is because that's
5 not referenced in any other detective's report. Detective Toomey [sic], who is the main
6 detective on this --

7 MS. ANTHONY: Tooley.

8 MR. RUE: Tooley.

9 MS. ANTHONY: Tooley.

10 MR. RUE: I'm terrible with names. I apologize. -- references other discussions
11 outside the presence that my client has with a computer expert, but nowhere, anywhere, does
12 it mention that anywhere.

13 THE COURT: Okay. But --

14 MR. RUE: The first time we were made aware --

15 THE COURT: But the remedy is not suppression. How is the remedy -- what
16 authority do you have that the remedy is suppression? You come -- you filed a motion for
17 discovery the day of trial that really is, although it's couched in terms of Brady, it really
18 contains -- it's really a discovery motion. Now, it may have some cross over, but it's a
19 discovery motion, even though it's labeled a discovery -- even though it's, you know, it's
20 titled Motion for Discovery, but all your case law is as to Brady and its progeny, it's a
21 discovery motion. And what you argue in the motion is that, well, we need to do this
22 because we need to make a specific request for Brady material.

23 Now, all those cases that talk about the different standard of review if you
24 don't ask or you do you ask means -- say that you have to make a specific request, not a
25 general request, saying we want all these things. You have to have some idea. That's the

1 focus of all those cases. You just --

2 MS. BALLOU: The specific request --

3 THE COURT: And that's what I see is -- happens in all these motions, is that they're
4 just the kitchen sink. You ask for everything.

5 MS. BALLOU: The specific request starts on page 7, Your Honor.

6 THE COURT: That's where I am.

7 MS. BALLOU: Okay.

8 THE COURT: I'm right, right there. And so when I say specific requests, that would
9 be Brady material, okay, that's fine. Have you -- are there any of these things that you
10 haven't gotten?

11 MS. BALLOU: Not as far as I know, Your Honor. But, again, the statements made
12 by Anthony Castaneda, taped or otherwise, we just got that on Friday, the last -- the latest
13 one.

14 THE COURT: But on the one hand, you argue you should be able to bring a
15 discovery motion on the day of trial, but the State should not be able to give you a report that
16 they apparently did not have until it was given to you. You think that it should be
17 suppressed as opposed to a continuance, but you can't tell me -- I mean, there's no authority
18 for suppressing it 'cause it's --

19 MR. RUE: Well --

20 THE COURT: -- it's an admission. So it would have to be based upon the fact that it
21 wasn't turned over. I don't have anything that shows you made a discovery request and that
22 the rules on discovery are -- you know, I don't have the statutes in front of me, but you've
23 got to make a request at a certain time.

24 I realize that no one seems to comply with those statutory rules, but there are
25 rules on it. So now we're kind of at the point where we're saying all right, so let's assume

1 you made the request, and this wasn't timely filed, you've got it now, and so the remedy
2 would not be suppression. The remedy would be continuance. But why would you -- what
3 would you do? You've got it. What further investigation would you do, or based upon
4 getting this report late? That's --

5 MR. RUE: Well, we didn't notice the son as a witness in this case, and in there the
6 Officer Carpenter speaks about how this conversation was three party -- Anthony Castaneda,
7 his son, and Officer Carpenter. We have never -- we never spoke with his son about this
8 because we didn't get it until Friday. So there's one avenue in which we might have
9 explored, but for the fact that we're getting it on Friday.

10 THE COURT: Does the son live here?

11 THE DEFENDANT: He lives in San Diego, but he's willing to come here.

12 MR. RUE: So there's a complication. I would -- I will operate under the assumption
13 that we didn't make the request, and you're right, although you didn't say it, this discovery
14 motion may be untimely.

15 THE COURT: May be? Yeah.

16 MR. RUE: With that being said, we are talking about a statement, an incriminating
17 statement, by the defendant. I don't think the statutes and the constitution should be read
18 that the only way we get that, as defense attorneys, is upon request. I think that there is a
19 duty to provide that, whether we had filed a discovery motion or not. And this -- and I -- like
20 I said, like you, I don't have the statute in front of me. So I know it says: ...upon request.

21 But certain things should be provided for well in advance. I mean, the report
22 was made two, three years ago now, and we never received it until Friday where -- in
23 chambers where we talked about that.

24 THE COURT: All right. Will counsel approach.

25 [Bench conference begins at 9:28 a.m.]

1 [Bench conference ends at 9:34 a.m.]

2 [Recess taken at 9:34 a.m.]

3 [Proceedings resumed at 10:04 a.m.]

4 [Out of the presence of the prospective jury]

5 THE COURT: All right. Case number C-11-272657, State of Nevada versus
6 Anthony Castaneda. The record will reflect the presence of the defendant at liberty with his
7 counsel, as well as the Deputy District Attorney prosecuting the case. We are not in the
8 presence of a venire panel.

9 There has been a new offer extended, and I need to have that put on the record
10 because it's my understanding the defendant has rejected it.

11 MS. ANTHONY: That's correct, Your Honor. The new offer was four counts right
12 to argue and no Alford plea.

13 THE CLERK: And Alford plea?

14 MS. ANTHONY: No Alford plea.

15 THE COURT: No. No. And so he would be offered the opportunity to plead guilty
16 to four counts of the -- there are 15 counts --

17 MS. BALLOU: Yes, Your Honor.

18 THE COURT: -- currently charged?

19 MS. BALLOU: Yes, Your Honor.

20 THE COURT: Four counts, which would obviously -- the potential penalty is one to
21 six years, so you're looking at, if you are convicted, Mr. Castaneda, at 90 -- potential 90-year
22 sentence if you're convicted of all 15 counts, whereas, if you plead to the four counts, you're
23 looking at a potential of 24, and you're rejecting that offer.

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And you understand that this offer is not going to be

1 renewed.

2 THE DEFENDANT: Yes.

3 THE COURT: All right. And you also understand that, although I'm gonna be
4 continuing this case because of the apparent late production of the officer's report by Officer
5 Carpenter, that it's gonna be a very short setting.

6 THE DEFENDANT: Yes.

7 THE COURT: All right. So you also know that the reason we're asking this is that
8 you will not be able to, should you be convicted later, bring this up, you know, with any
9 likelihood of that indicating ineffective assistance of counsel. Your counsel has spoken with
10 you on this offer?

11 THE DEFENDANT: Yes.

12 THE COURT: They've answered all your questions on this?

13 THE DEFENDANT: Yes.

14 THE COURT: And you've decided, nonetheless, to reject the offer.

15 THE DEFENDANT: Yes.

16 THE COURT: All right. All right. We're gonna put this on status check for
17 tomorrow, and --

18 THE DEFENDANT: Your Honor --

19 THE COURT: -- I'm leaning for February 19th trial date, if we can make that happen.

20 MR. RUE: Court's indulgence.

21 [Mr. Rue and the defendant conferring off the record]

22 MR. RUE: A couple things that -- just to sort of -- working out. We still had the
23 issue with the FTK and the NK's report from their experts, Detective -- I believe it's
24 Detective Eller's [phonetic] and Detective Ramirez.

25 MS. ANTHONY: Correct.

1 MR. RUE: We sorta got -- that sorta got lost in the shuffle here, and I apologize for
2 that. Mr. Geller had made the request for those at the preliminary hearing, and those are
3 items where we had two- and six-page reports, but not the data, not the analytical data, and it
4 was like an inch-and-a-half worth of paper. We received those late. And the reason why I
5 bring this up is because in the summary report it keeps referring to the FTK report.
6 Detective Eller keeps referring: See other report. See other report. And it was a real
7 complication with my investigator on, look, we need that other report. We can't find it.
8 Because the technical aspects of it are beyond my investigator and well beyond my
9 knowledge of computers.

10 THE COURT: Right. So if you're -- are you intending on retaining some type of
11 forensic --

12 MR. RUE: We don't know. We need -- least need to consult --

13 MS. BALLOU: Need to consult with someone.

14 MR. RUE: -- to see whether we have any leg to stand on and challenge this or not.
15 That may complicate the February 19th date.

16 THE COURT: All right. Well --

17 MS. ANTHONY: Can I address --

18 THE COURT: -- you can always set it and --

19 MS. ANTHONY: Can I --

20 MR. RUE: Sure.

21 THE COURT: I'm sorry?

22 MS. ANTHONY: I'm sorry, Your Honor. Can I address that?

23 THE COURT: Of course.

24 MS. ANTHONY: First of all, the preliminary hearing was held quite a while ago, and
25 in that preliminary hearing you are correct they did request it. However, it contains the child

1 pornography. The only way to get it is through a Court order and stipulation regarding the
2 child pornography. So, yes, while they got it late, but they got it after the Court order, so, I
3 mean --

4 MS. BALLOU: But --

5 MS. ANTHONY: -- my argument to this is, yes, they got it late, but it wasn't because
6 I was holding on to it and not turning it over. It's the child pornography, and that's part of
7 the issue here, is that the subject matter, and they knew all along that this report was out
8 there. These detectives, both of them, testified at the preliminary hearing, so it's not like we
9 were just hiding these experts, and we noticed them quite a while ago. So the fact that we're
10 gonna get a continuance for them to get an expert is not technically, you know, fair why they
11 said trial by ambush. I mean, that's not technically fair here.

12 MR. RUE: Well, I'm not saying trial by ambush at all. What I'm saying is they knew
13 about this report; we had requested it. Mr. -- we even asked Mr. Sweetin not too long before
14 Ms. Anthony became the attorney, and all we got was another -- somewhat of a report. The
15 way to cure the child pornography, as they did with one of the reports was, they X'd out
16 which did not allow us to see the pornography, but it gave us the raw data. We received that
17 on Wednesday I believe, and that was Ramirez's report. We -- I believe. And then we still
18 never received Eller's report until later. And the State is right, we didn't -- there was no
19 order dealing with the child pornography, but there were ways that they could have redacted
20 or taken out the picture as they did with one copy that we received, so we didn't even see the
21 picture, but we saw all the root analysis, the root tracking of it, when it was accessed, when it
22 was created, when it was modified, without the picture. It just is a blank square there where
23 the picture was, so it was -- it could have been made available to us. We didn't get -- it's
24 something that we can address tomorrow, Your Honor, if that's what you prefer.

25 THE COURT: Okay. Well, but the point is that this case has been continued many

1 times, and the Court is not going to let this case get continued for another year or even close
2 to that, and so I am intent on setting a short setting, and that means you need to do with, you
3 know, expeditiously, anything that you need to, you know, you want to consult with
4 somebody, then do it right now. I mean, you do it right away.

5 MR. RUE: Absolutely, Your Honor.

6 THE COURT: And if you need to retain somebody and you need to get authority to
7 hire somebody, again, you do that right away because I'm not gonna -- I don't want to hear:
8 Well, I didn't get around to it. Because we've had enough of that. So we'll -- it'll be on for
9 tomorrow. Like I say, I'm still -- I can set it on the 19th and we can try and make this happen
10 'cause I'm gonna be saying, okay, why isn't this done? What has been done?

11 MS. ANTHONY: And, Your Honor, I do have -- just clarification. I've spoken to the
12 defense. I do have an amended Information. Might as well go ahead and file it now. It just
13 includes some of the same language, just and/or -- 'cause some of the filed names are named
14 twice. They have -- the same file has two different names.

15 THE COURT: All right.

16 MS. ANTHONY: May I approach to file that?

17 THE COURT: Yes.

18 [Ms. Anthony approaches]

19 THE CLERK: Your Honor, do I return these exhibits to her in case it does go to
20 overflow?

21 THE COURT: Yes, let's return the exhibits.

22 THE CLERK: I've marked 'em but --

23 MS. ANTHONY: That's fine.

24 THE CLERK: -- I put everything in there.

25 THE COURT: And we should set this motion for discovery for a hearing.

1 MS. BALLOU: I was just about to ask do we want to do that tomorrow, or does the
2 State need time to respond?

3 MS. ANTHONY: At his point I need to put it in writing. I need to go through
4 everything placed on the record that they're making.

5 THE COURT: Yes.

6 MS. ANTHONY: I need to find from my end what is accurate.

7 THE COURT: Right. So how much time, if we set it in a week or, you know, like, a
8 week from yesterday; is that gonna be enough time to respond and --

9 MS. ANTHONY: I think so, Your Honor. I'll look into it. My only issue is I believe
10 Mr. Sweetin is in trial right now, and I think some of the information we get from -- will be
11 from him, but I'll make my best efforts to get it done and --

12 THE COURT: Okay. Yeah, well, you know, when trial recesses, you can ask.

13 MS. BALLOU: And, again, Your Honor, for the record, I don't think there's
14 anything in the discovery motion that Ms. Anthony has not provided to me at this point.

15 THE COURT: Okay. Yeah, I mean, some of them are pretty standard.

16 MS. BALLOU: Yes.

17 THE COURT: So if you get together and stipulate as to what has been provided, then
18 I don't have to spend a lot of time going through each of these things.

19 MS. BALLOU: Absolutely, Your Honor.

20 THE COURT: All right. Then we can also have a record that it's been provided and
21 you have it.

22 MS. BALLOU: Yes.

23 MR. RUE: And, Your Honor, can I approach and get my copy of the -- Detective
24 Carpenter's statement?

25 THE COURT: Yes.

1 MR. RUE: I apologize, Your Honor.

2 THE COURT: Sure.

3 [Mr. Rue approaches]

4 THE CLERK: Here's the copies of the amended Information.

5 THE COURT: That's where it's been. The Court's had all along. All right. All
6 right. Thank you. Court will be in recess.

7 MS. BALLOU: I'm sorry, did we get the date for the discovery motion?

8 THE CLERK: You're gonna give the calendar call?

9 THE COURT: We're gonna set it tomorrow.

10 THE CLERK: If that's what we're goin' for now.

11 THE COURT: Yep, the 11th.

12 THE CLERK: Okay.

13 THE COURT: We'll set it for the 11th.

14 THE CLERK: At 9.

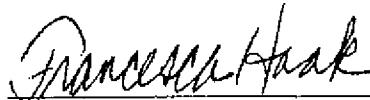
15 MS. BALLOU: Thank you, Your Honor.

16 THE COURT: Thank you.

17 [Proceeding concluded at 10:15 a.m.]

18 * * *

19 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
20 acknowledge that this is a rough draft transcript, expeditiously prepared, not
21 proofread, corrected, or certified to be an accurate transcript.

22 

23 FRANCESCA HAAK
24 Recorder/Transcriber
25

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 6, 2013

RECORDER'S ROUGHT DRAFT TRANSCRIPT
STATUS CHECK: RESET TRIAL DATE

For the State:

MICHELLE ANTHONY, ESQ.
Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
JEFFREY T. RUE, ESQ.
Deputy Public Defenders

RECORDED BY: LARA CORCORAN, COURT RECORDER

1
2 Las Vegas, Nevada - Wednesday, February 6, 2013, 11:54 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

5 MS. BALLOU: Your Honor, he stepped out. Mr. Rue stepped out too in the crowd.

6 [Proceeding trailed at 11:55 a.m.]

7 [Case recalled at 11:59 a.m.]

8 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

9 MS. BALLOU: He's present.

10 THE COURT: Defendant is present.

11 MS. BALLOU: He's out of custody, Your Honor. This on for the status check on the
12 trial date.

13 THE COURT: You said it, right.

14 MS. ANTHONY: Your Honor, I understand -- Michelle Anthony, on behalf of the
15 State. I understand that the Court was looking at trying to set it on February 19th. I went
16 back and I called all of my witnesses. I checked into all of them. Unfortunately, my lead
17 detective is unavailable February 18 through the 22nd. She also gave me a date of the 31st,
18 which apparently -- I don't know what date that was, but for the 18th to the 22nd, which is
19 when Your Honor was going to reset the trial date she's unavailable, so I can't be ready on
20 that date.

21 THE COURT: Okay.

22 MS. BALLOU: And, Your Honor, we looked at it outside, based on both Ms.
23 Anthony's schedule and what we believe to be the Court's calendar for the next two trial
24 stacks. It looks like April 29th in your next stack with a calendar call date of April 22nd.

25 THE COURT: All right. Is that a good one then for --

1 MS. ANTHONY: It appears --

2 THE COURT: -- as far as --

3 MS. ANTHONY: -- at this point to be, and that we tried to get it earlier, just --

4 MS. BALLOU: And, yeah, based on, you know, the trial schedules and your -- when
5 you're out of the --

6 THE COURT: All right.

7 MS. BALLOU: -- criminal stack.

8 THE COURT: Right. Yeah, okay.

9 THE CLERK: In this form?

10 THE COURT: I have to go to Judicial College too.

11 THE CLERK: There's something in March. Is that Judicial College on the 25th?

12 [The Court and staff conferring]

13 MS. BALLOU: And, Your Honor, I believe -- I believe you said that this would be
14 overflow eligible if you did need to go.

15 THE COURT: That's true.

16 MS. ANTHONY: Well, I would prefer it not to go to overflow, Your Honor.

17 MS. BALLOU: I'm just saying that she had said that for the 19th, she was possibly --

18 THE COURT: Right.

19 MS. BALLOU: -- going to send it to overflow. So I was just reminding her.

20 THE COURT: Right. But if we're gonna reset it, you know, to a date that's ahead,
21 and try and keep it a firm date, I'd rather keep it because I don't -- I never know whether
22 overflow could even cover a case, you know.

23 All right.

24 THE CLERK: You know, why don't we leave it, and if it's a problem, I can put it
25 back on calendar.

1 THE COURT: All right. We'll set it right now, and -- but if it's a issue --

2 MS. ANTHONY: And I have one more issue with the discovery motion.

3 THE COURT: Okay. What's the issue?

4 MS. ANTHONY: Oh, sorry. We set the discovery motion for February the 12th. I
5 actually have three or four really long motions in front of Judge Adair on that date.

6 MS. BALLOU: I thought it was the 11th because the 12th is Judge Adair.

7 MS. ANTHONY: Okay. So if it's the 11th then, I'm good. I thought it was the 12th.

8 THE CLERK: No. Tuesday we don't have criminal.

9 MS. ANTHONY: Okay.

10 MS. BALLOU: Yeah, I was like I had it down as discovery motion on the 11th at
11 9:00.

12 MS. ANTHONY: Okay. Thank you. Sorry.

13 THE COURT: Okay.

14 MS. BALLOU: So it is gonna be calendar call April 22nd at 9:30, trial April 29th at
15 1:30?

16 THE COURT: Right.

17 MS. BALLOU: And if there's a problem, you'll let us know, and we'll put it back on
18 calendar.

19 THE COURT: Correct. Thank you.

20 MS. BALLOU: And I'll have enough time to inform Mr. Castaneda.

21 THE COURT: Oh, yeah, if my JEA wasn't probably at lunch right now, we'd know
22 the date, but, unfortunately --

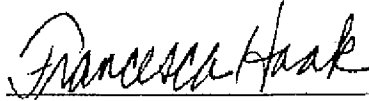
23 MS. BALLOU: Thank you.

24 THE COURT: -- we've gone to lunch. Okay. Thank you.

25 [Proceeding concluded at 12:03 a.m.]

* * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



FRANCESCA HAAK
Recorder/Transcriber

485

1 Las Vegas, Nevada - Monday, February 11, 2013, 10:31 a.m.

2 * * * * *

3 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

4 MS. BALLOU: And, Your Honor, I'd ask to waive his presence here this morning.

5 THE COURT: Does the State have an objection to that?

6 MS. ANTHONY: No, Your Honor.

7 THE COURT: All right. We'll waive his presence. I have the motion for discovery.
8 I've read it. Let's go through the itemized requests. Number one, any and all 911 calls;
9 defense has -- or the State has no objection to that because you've already produced it, is that
10 correct? All right. So --

11 MS. ANTHONY: I haven't produced them, but I don't believe they exist.

12 THE COURT: Oh, if they don't --

13 MS. ANTHONY: I will order them, and if they are, if they do exist, I will turn them
14 over.

15 MS. BALLOU: I don't believe they exist either --

16 THE COURT: All right.

17 MS. BALLOU: -- but that's just a standard request.

18 THE COURT: Right. And --

19 MS. ANTHONY: And it's one, two and three are the same.

20 THE COURT: Yes, all the same.

21 MR. RUE: Well, Your Honor, the only thing with the 911 is there's generally a CAD
22 report. I believe there might be a CAD report as to when officers went to the scene, and how
23 many officers were there, and who was there. That might be of relevance.

24 MS. ANTHONY: I'll order it. If it's there, I'll turn it over.

25 MR. RUE: Thank you, Your Honor.

1 THE COURT: All right.

2 MS. ANTHONY: I don't believe that it's gonna exist though.

3 THE COURT: All right. So one, two and three are granted. Number four, any and
4 all regular traffic. I'm not sure what you're looking for there.

5 MS. BALLOU: And, Your Honor, it's just a standard order, if -- or standard request,
6 if they had anything where they were making, you know, comments over the radio about
7 what was going on in this matter.

8 MS. ANTHONY: Your Honor, it's not a standard request, and in all of the cases,
9 there are -- there is radio traffic. You don't order them in every single case. I mean, whether
10 -- I mean, they're officers whose entire team, including FBI agents. I mean, that's over
11 broad and will take way too long to go through and then sit down and parse it out and send it
12 over to them. I don't believe anything in there is --

13 THE COURT: If there's anything that's material under Brady, and it's progeny, the
14 State will need to turn that over. Otherwise, you know, if it's not --

15 MS. ANTHONY: So I need to order -- so I just want to make sure I'm clear. I need
16 to order it and go through it all and then send it over?

17 THE COURT: The -- yep, I suppose the only way you can make a determination as
18 to whether there is anything material is to look at it. But you can inquire actually of the lead
19 investigator in the case, and have them pull all that for you.

20 MS. ANTHONY: I don't think it's going to work that way, but I'll have to go
21 through records and do -- the lead investigator won't have -- because it's all through
22 dispatch, she won't be able to do any of that, Your Honor. That's not -- it's not in her
23 custodial, so.

24 THE COURT: All right. Well, does the defense have any -- can you make any
25 showing of materiality, or are you just saying, because, you know, I'm really not thrilled

1 with getting these discovery motions that are saying, oh, this is just a standard, you know.
2 Motions are supposed to be tailored to the case. You're not supposed to --

3 MS. BALLOU: Your Honor, I'll withdraw that.

4 THE COURT: All right. Thank you.

5 MR. RUE: But, but, Your Honor, I mean --

6 THE COURT: But, Your Honor, yes, what?

7 MR. RUE: -- at some level we need to -- we don't know what's out there, so we can't
8 make a showing of things that we don't --

9 THE COURT: I understand that, but the case law on this type of request is replete
10 with how you're not entitled to go on a fishing expedition.

11 MR. RUE: I --

12 THE COURT: And to then make the State jump through a bunch of hoops to get
13 something that's not there. So you're --

14 MR. RUE: I'm not asking the State to jump through a jump of hoops. And, Ms.
15 Anthony has been more than diligent than -- and this is nothing to reflect her, but with
16 respect to requests, here's our dilemma. If we don't request it, then if something comes
17 back, they get to rely on the fact, well, you didn't request it because the statute says upon
18 request from defense counsel. That's why these are generally so broad and so general, is
19 because, unless we request -- request it in a general way --

20 THE COURT: But the statute, when you say the statute, the statute doesn't allow for
21 the discovery of this type of information anyway, I mean, the discovery statutes. This
22 motion is made under Brady. That's the --

23 MR. RUE: Understood.

24 THE COURT: -- Points and Authorities are all citing to Brady and its progeny, right?

25 MR. RUE: And it may not be relevant in this case, but if radio traffic suggested an

1 alternative suspect, statute wouldn't require them to provide it over, but Brady would.

2 THE COURT: Right.

3 MR. RUE: We don't -- we wouldn't know that unless we requested it --

4 THE COURT: Right.

5 MR. RUE: -- is, I guess, my point.

6 THE COURT: But you have -- you have seen all the discovery that's already been
7 proffered in this case, and there is absolutely no indication that there's an alternate suspect
8 for this kind of case --

9 MR. RUE: I've seen all --

10 THE COURT: -- correct?

11 MR. RUE: I've seen all discovery provided to the State.

12 THE COURT: Correct.

13 MR. RUE: But we know that there are two files. There is the detective's file, which
14 we don't get to see, and then there is the State's file, and that's why -- recall that's why this
15 case got continued, was because there was another report, a statement by the defendant that
16 was never provided to us that -- I mean, when I went to Ms. Anthony's office I didn't see it.
17 So there are two files. We get to see one, not the other, so this is somewhat of an inartful
18 way sometimes to pierce the other file. It'd be easier if we could see the detective's file, but
19 we don't get to, and that's -- I apologize for the complication, but that's somehow -- that's
20 why we do this.

21 THE COURT: Yeah, I understand. All right. So that's denied, but you've asked, so
22 the record's covered. All right. So let's see. Five, any and all information relating to other
23 suspects. There -- the State's indicating that there are no other suspects. If there is any
24 information as to other suspects, then you need to turn that over. So it's granted in that
25 regard.

1 Number six, any and all statements made by Anthony Castaneda taped or
2 otherwise; there's no objection, so that's granted.

3 Number seven, any and all statements made by Tammy Hines taped or
4 otherwise; and the response is that you've provided the materials. I assume -- I want to make
5 sure that's accurate because otherwise -- or otherwise -- could mean anything.

6 MS. ANTHONY: And that's my point. They have what I have. I've turned it over,
7 if she ever made any statements, and I'm not gonna know that.

8 THE COURT: Right.

9 MS. ANTHONY: I'm only gonna know what statements she's made to the officers
10 and to myself or to my office. I'm not gonna know if she's talking to somebody else out
11 there.

12 MS. BALLOU: And, yh, --

13 MS. ANTHONY: It's too broad.

14 MS. BALLOU: -- mostly what we're asking for is to the police, and, again, this is
15 based on the fact that sometimes we don't get everything, you know, when we get discovery,
16 just like we got the statement by Mr. Castaneda right before trial started. So I just want to
17 make sure we have everything that the police or that, you know, that Ms. Anthony have.

18 THE COURT: All right. And so if there are any recorded statements, either in
19 writing or by audio tape, those will be produced, and if there are statements, oral statements,
20 that are exculpatory or wildly inconsistent with what she's made previously stated, then the
21 State would be obligated to turn that over. So it's granted in that regard.

22 THE CLERK: And what was her name? Tammy what?

23 THE COURT: Tammy Hines, H-I-N-E-S.

24 Number eight, any and all statements made by any other witness, taped or
25 otherwise, and that's the same ruling, written statements as to other potential witnesses or

1 taped statements are to be turned over. If there are oral statements, the only way that those
2 need to be turned over is if, in fact, they are material to the defense or so -- and by that,
3 including anything so inconsistent with statements that may have been made in the --
4 previously that it will be considered Brady material.

5 MS. ANTHONY: I understand, Your Honor, and my only response to that was it says
6 any and all other witnesses. It's just not specific enough.

7 THE COURT: Right.

8 MS. ANTHONY: I do understand. If I have it, I will turn it over.

9 THE COURT: Right. It's limited to the witnesses that you know of though, I mean,
10 you know who your witnesses are, and so it's not the world.

11 Okay. Number nine, any and all criminal history relating to Anthony
12 Castaneda; that's denied. The defendant can obtain his own criminal history, both State and
13 through NCIC. You can -- there's a procedure for that, and it's on the Internet.

14 Number ten, any and all relevant criminal history relating to Tammy Hines. I
15 assume by that that you mean felony convictions that aren't ten years old or crimes of moral
16 turpitude or --

17 MS. BALLOU: Exactly.

18 THE COURT: -- involving her -- crimes that reflect on her truth or veracity.

19 MS. BALLOU: Correct.

20 THE COURT: The State doesn't have any objection to that, is that correct?

21 MS. ANTHONY: That's the law. Of course not.

22 THE COURT: Okay. So that's granted, and that's the same as to number 11, same
23 ruling. And, again, if those are any other known witness.

24 Number 12, any and all photographs relating to the event number and that's
25 limited as outlined in the stipulation and order. The State has no objection and has already

1 provided it, so that's granted.

2 Number 13, any and all video surveillance. The objection by the State is that
3 it's irrelevant. If there is video surveillance, and that video surveillance is material to this
4 defense pursuant to Brady and its progeny, then the State must --

5 MS. ANTHONY: Correct. My question to the defense is what type of video
6 surveillance? I mean, my officers aren't out taping this defendant's house. They're not
7 spying and they don't have cameras set in his house. Like, I don't even understand where
8 this request would come from.

9 THE COURT: Okay. Well, if you don't have it, then there's nothing to produce,
10 right, correct?

11 MS. ANTHONY: Correct.

12 THE COURT: Okay. This is just their shotgun motion that they're filing in every
13 case these days.

14 Number 14, any and all officer and/or detective reports for the event number.
15 There's no objection to that. The State indicates it's already provided the materials, so that's
16 granted.

17 Number 15, any and all officer and/or detective notes for the event number.
18 Again, there is no objection, but, well, there is an objection. The defendant is -- it's
19 indicated that the defendant's not entitled to any notes -- any and all notes taken by officers
20 or detectives because some notes are privileged. How so are you -- what --

21 MS. ANTHONY: There's some notes that --

22 THE COURT: -- privilege are you asserting?

23 MS. ANTHONY: There's some notes that happened that are between the State's
24 office and the detectives. It doesn't have to do with, you know, it's their notes. We've asked
25 them to do things, they're following up, but it's not exculpatory information.

1 THE COURT: All right. But if it's attorney-client privileged --

2 MS. ANTHONY: Correct.

3 THE COURT: -- then obviously if it's done, you know, are work product, really
4 work product --

5 MS. ANTHONY: Right.

6 THE COURT: -- it's really not attorney-client 'cause the police aren't your client.
7 But work product, if it was done in anticipation of preparation for this, then there's -- that's
8 excluded. If there are any notes that were taken by officers or detectives that they
9 maintained and they contain exculpatory or Brady and its progeny material, then those notes
10 do need to be turned over, and just make inquiry because vis-à-vis the investigating officers
11 of this case, the State obviously is charged with constructive possession of those. So
12 please --

13 MS. ANTHONY: Correct.

14 THE COURT: -- make an affirmative inquiry. Sometimes they do take case notes
15 and they keep 'em on the computer and they don't destroy them.

16 Number 16, any and all exculpatory evidence in the possession or constructive
17 possession of the State; that's granted. There's no objection to that.

18 Number 17, any and all information regarding any benefits accorded to any of
19 the State's witnesses in exchange for their assured cooperation in the prosecution of the
20 instant case. There's no objection to that. I assume that also that the State indicated that
21 there have been promises, that the only benefits will be the standard witness being required
22 by statute, is that correct?

23 MS. ANTHONY: Correct.

24 THE COURT: All right. Number 18, any and all curriculum vitae of any expert the
25 State intends to call at trial. There is no objection. That'll be granted.

1 Number 19, any and all information regarding compensation of any of the
2 State's expert witness. Again, I'm showing that's --

3 MS. ANTHONY: I don't think we are paying them. I will inquire into that, and I'll
4 let the defense know, but I don't think that she's being paid.

5 THE COURT: All right. And if there is, then that's granted.

6 Number 20, any other reports, witness statements, affidavits, declaration, video
7 or other material the State is relying on in its case in chief, and the State has no objection,
8 indicates it's already provided this information --

9 MS. ANTHONY: And the only --

10 THE COURT: -- so that's granted.

11 MS. ANTHONY: -- thing is the demonstrative evidence that I may not have -- I
12 mean, I may not have provided it 'cause I might not have prepared it yet.

13 THE COURT: Okay.

14 MS. ANTHONY: Demonstrative -- I'll let them know.

15 THE COURT: Well, it doesn't --

16 MS. BALLOU: Don't think I asked for that.

17 THE COURT: It doesn't -- she's not asking for demonstrative.

18 MS. ANTHONY: Okay.

19 THE COURT: All right. Just your evidence that you're relying on, not -- you're
20 talking about when you say demonstrative, do you mean, like, for your opening statement?

21 MS. ANTHONY: I have computer experts. It's going to take some bringing it down
22 for the jury.

23 THE COURT: Oh.

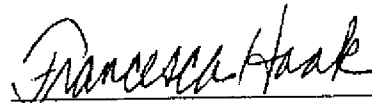
24 MS. ANTHONY: I mean, I've spent time myself listening to the computer experts
25 and -- okay, can you tell me that again. So for that reason, that's all.

1 THE COURT: All right. All right. Thank you. We've covered everything?
2 MS. BALLOU: Yes, Your Honor. Thank you.
3 THE COURT: All right. Thank you.
4 MS. BALLOU: And I will prepare the order.
5 THE COURT: All right. Thank you.

6 [Proceeding concluded at 10:47 a.m.]

7 * * *

8 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
9 acknowledge that this is a rough draft transcript, expeditiously prepared, not
10 proofread, corrected, or certified to be an accurate transcript.

11 

12 FRANCESCA HAAK
13 Recorder/Transcriber
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DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. C-11-272657-1

DEPT. V

ROUGH DRAFT TRANSCRIPT

Defendant.

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
MONDAY, APRIL 22, 2013

RECORDER'S ROUGHT DRAFT TRANSCRIPT
CALENDAR CALL

For the State:

MARC M. SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

For the Defendant:

ERIKA D. BALLOU, ESQ.
JOHN J. PIRO, ESQ.
Deputy Public Defenders

RECORDED BY: LARA CORCORAN, COURT RECORDER

1
2 Las Vegas, Nevada - Monday, April 22, 2013, 9:54 a.m.

3 * * * * *

4 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

5 MR. PIRO: John Piro, Your Honor, for Mr. Castaneda, which should be here today.

6 We are prepared to announce ready, Your Honor.

7 THE CLERK: Is he here?

8 THE COURT: All right. So have you talked to him?

9 MR. PIRO: Mr. Rue and I believe Ms. Ballou have been in contact with Mr.
10 Castaneda.

11 Maybe if you want to trail it, Your Honor, to the end of the calendar.

12 THE COURT: Yeah. They -- we did have quite a few jurors. I don't know how the
13 gate was doing, but it's 10. We'll trail it for a little while.

14 MR. PIRO: Thank you, Your Honor.

15 [Proceeding trailed at 9:54 a.m.]

16 [Case recalled at 11:07 a.m.]

17 THE COURT: Case number C272657, State of Nevada versus Anthony Castaneda.

18 MS. BALLOU: Your Honor, he's not present. I've had -- I have had contact with
19 him, and he's been at every other court appearance. I have no representations.

20 THE COURT: Okay. And no bail bench warrant.

21 MS. BALLOU: Thank you, Your Honor. And I would have called it earlier if I had
22 realized Mr. Schifalacqua was here on it. Sorry.

23 THE COURT: All right.

24 MR. SCHIFALACQUA: I was just covering. And trial date will be vacated
25 obviously.

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THE COURT: Yes.

MR. SCHIFALACQUA: Thank you very much.

[Proceeding concluded at 11:08 a.m.]

* * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



FRANCESCA HAAK
Recorder/Transcriber

ANTHONY CASTANEDA,) No. 64515
)
Appellant,)
)
vi.)
)
THE STATE OF NEVADA,)
)
Respondent.)

BY

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No. 64515

Electronically Filed
Jun 03 2014 08:48 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

v.

Respondent.

APPELLANT'S APPENDIX VOLUME II PAGES 249-498

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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JUL 16 2013

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

PINU

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA
VS
ANTHONY CASTANEDA

CASE NO.: C-11-272657-1

DEPARTMENT 5

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 16th day of July, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

1
2 The Defendant is presumed innocent unless the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation; neither may a conviction be based upon mere possibility or speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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15 Offered by Defendant
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INSTRUCTION NO. _____

You are here to determine whether the State has proved the guilt of the Defendant beyond a reasonable doubt from the evidence in the case. You are not called upon to determine the guilt 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 persons are also guilty of a crime.

*offered by Defendant
but not given*

Cindy Elliott

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2 In your deliberation you may not discuss or consider the subject of punishment, as
3 that is a matter which lies solely with the court. Your duty is confined to the determination
4 of whether the State has proved the guilt of the Defendant beyond a reasonable doubt.
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7 D Offered by Defendant
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11 *Curtis Elsworth*
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If evidence is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to his being found not guilty, it is your duty, under the law, to adopt that interpretation which will admit of the Defendant's being found not guilty, and reject that which points to his guilt. You will notice that this rule applies only when both of the two possible conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other unreasonable, it would be your duty to adhere to the reasonable deduction and reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to Defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

Offered by Defendant
but not given

Curly Elsworth

If evidence is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to his being found not guilty, it is your duty, under the law, to adopt that interpretation which will admit of the Defendant's being found not guilty, and reject that which points to his guilt. You will notice that this rule applies only when both of the two possible conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other unreasonable, it would be your duty to adhere to the reasonable deduction and reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to Defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

~~If the evidence supports two reasonable interpretations,
and one . one pointing to the guilt of the defendant, and
one pointing to~~

If the evidence supports two reasonable interpretations,
~~one that supports the claim that the Defendant is guilty,
and one that supports~~

- one that points ^{to} the Defendant being found guilty, and
- one that points to the defendant being found not guilty.

It is your duty to find the Defendant not guilty.

However, if one of the interpretations appears reasonable,
and the other unreasonable, you must reject the unreasonable.

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2 The crime of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
3 CONDUCT OF A CHILD is a specific intent crime. A specific intent, as the term applies,
4 means more than the general intent to commit the act. To establish specific intent, the State
5 must prove beyond a reasonable doubt that the Defendant knowingly did the act which the
6 law forbids, purposely intending to violate that law.

7 An act is "knowingly" done, if done voluntarily and intentionally, and not because of
8 mistake or accident or other innocent reason.

9 Specific intent is the intent to accomplish the precise act which the law prohibits.
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*offered by Defendant
but not given*

Cindy Elsworth

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2 Search warrants do not require "Proof Beyond a Reasonable Doubt." Search warrants
3 are merely an investigative tool. All that is required to obtain a search warrant is "Probable
4 Cause" as determined by a magistrate. "Probable Cause" can be based on slight or marginal
5 evidence.¹ Slight or marginal evidence is not sufficient for a conviction in a criminal trial.
6 The mere fact that a search warrant was issued in this case should in no way be considered as
7 proof of the defendant's guilt.
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Offered by Defendant
but not given.

Cathy Ellsworth

¹ Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 179 (1980)

INSTRUCTION NO. _____

Search warrants do not require "Proof Beyond a Reasonable Doubt." Search warrants are merely an investigative tool. All that is required to obtain a search warrant is "Probable Cause" as determined by a magistrate. "Probable Cause" ^{is not the standard in} ~~can be based on slight or marginal~~ ^{this case. Probable Cause} evidence. ~~Slight or marginal evidence~~ is not sufficient for a conviction in a criminal trial. The mere fact that a search warrant was issued in this case should in no way be considered as proof of the defendant's guilt.

INSTRUCTION NO. _____

A valid search warrant was obtained in this case. In order for a judge to issue a valid search warrant, it must be demonstrated that the officer seeking the search warrant has probable cause to believe that evidence of a crime may be found in the place or thing to be searched. Probable cause to search is not the same as proof of guilt beyond a reasonable doubt. The mere fact that a valid search warrant was issued is insufficient, ~~by itself~~, to convict a defendant. ~~You may consider evidence, if any, found~~

JUL 16 2013

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA
VS
ANTHONY CASTANEDA

CASE NO.: C-11-272657-1
DEPARTMENT 5

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 16th day of July, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

INSTRUCTION NO. _____

A valid search warrant was obtained in this case. In order for a judge to issue a valid search warrant, it must be demonstrated that the officer seeking the search warrant has probable cause to believe that evidence of a crime may be found in the place or thing to be searched. Probable cause to search is not the same as proof of guilt beyond a reasonable doubt. The mere fact that a valid search warrant was issued is insufficient, by itself, to convict a defendant.

Offered by State &
Not Given

Cindy Ellsworth

JUL 16 2013

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

1 INST

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO: C-11-272657-1

10 -vs-

DEPT NO: V

11 ANTHONY CASTANEDA,

12 Defendant.

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon 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.

1
2 A Second Amended Information is but a formal method of accusing a person of a
3 crime and is not of itself any evidence of his guilt.

4 In this case, it is charged in a Second Amended Information that on or between
5 November 25, 2008 and April 7, 2010, the Defendant committed the offense of
6 POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A
7 CHILD (Category B Felony - NRS 200.700, 200.730).

8 It is the duty of the jury to apply the rules of law contained in these instructions to the
9 facts of the case and determine whether or not the Defendant is guilty of the offense charged.

10 COUNT 1

11 did, then and there, feloniously, knowingly and willfully, have in his possession a
12 film, photograph, or other visual presentation depicting a person under the age of 16 years as
13 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
14 in or simulate sexual conduct, to-wit: Image File Name: 2 girls01.jpg, described as: Image
15 depicts two nude prepubescent female children. One child is lying on her stomach with her
16 buttocks in the air. There is a nude adult male who is penetrating the child's genitals with his
17 penis and his left thumb in between the child's buttocks. The other child is positioned to the
18 left of the first child and has her left arm draped around the first child. The second child's left
19 hand is on the first child's right buttock's cheek. The second child's head is positioned over
20 the buttocks' of the first child. The second child has her mouth open with what appears to be
21 ejaculate dripping out.

22 COUNT 2

23 did, then and there, feloniously, knowingly and willfully, have in his possession a
24 film, photograph, or other visual presentation depicting a person under the age of 16 years as
25 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
26 in or simulate sexual conduct, to-wit: Image File Name: girlondick06.bmp, described as:
27 Image depicts a prepubescent female child pictured from the neck up. There is an adult

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1 male's penis next to the child's mouth. There is ejaculate coming from the penis and on the
2 child's mouth, chin and cheek.

3 COUNT 3

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: girlondick08.jpg, described as:
8 Image depicts a partial view of a nude adult male and a prepubescent female child from the
9 neck up. The adult male has his left hand on his penis and has the tip of his penis inserted
10 into the child's mouth. The child has her hands on either side of the penis.

11 COUNT 4

12 did, then and there, feloniously, knowingly and willfully, have in his possession a
13 film, photograph, or other visual presentation depicting a person under the age of 16 years as
14 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
15 in or simulate sexual conduct, to-wit: Image File Name: NEW-22.JPG, described as: Image
16 depicts an adult male penetrating the vagina of a prepubescent child. The image appears to
17 be shot from a close distance and neither shows the heads nor the majority of either person's
18 torso.

19 COUNT 5

20 did, then and there, feloniously, knowingly and willfully, have in his possession a
21 film, photograph, or other visual presentation depicting a person under the age of 16 years as
22 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
23 in or simulate sexual conduct, to-wit: Image File Name: 2girls.jpg, described as: Image
24 depicts two nude prepubescent children and a nude adult male, standing, visible from the
25 lower stomach down. The children are positioned on either side of the adult male. Both
26 children are performing fellatio on the adult male.

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1 COUNT 6

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: euro-002.jpg, described as: This
6 image has 6 images depicting a prepubescent female child with blonde hair. The first image
7 depicts the child laying on a bed with pink pants pulled down to her knees and a black dog
8 collar around her neck. The second image depicts the child nude, holding her legs open
9 exposing her genitals. The third image depicts the child on the bed leaning against a nude
10 adult male who has his arm placed around the child. The fourth image depicts an adult male
11 straddling the child with his penis next to her mouth. The fifth image depicts the child on her
12 stomach with the adult male placing his penis between the cheeks of the child's buttocks.
13 The last image depicts the adult male penetrating the child's vagina with his penis. The child
14 is positioned on her back with her hands covering her eyes.

15 COUNT 7

16 did, then and there, feloniously, knowingly and willfully, have in his possession a
17 film, photograph, or other visual presentation depicting a person under the age of 16 years as
18 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
19 in or simulate sexual conduct, to-wit: Image File Name: new-05.jpg and/or new-01.jpg,
20 described as: This image has 7 images within. The first image depicts 3 clothed prepubescent
21 female children standing with their arms around each others shoulders. Two of the images
22 show a prepubescent female child (different child in each image) performing fellatio on an
23 adult male. One image depicts a nude prepubescent female child lying on her back with her
24 legs spread open. There is a second prepubescent female child with her mouth near the first
25 child's vagina. Another image depicts a nude prepubescent female child lying face down on
26 a bed with her buttocks raised up exposing her genitals. One image depicts a female child
27 lying on the bed with what appears to be ejaculate on her face. Another image depicts an
28 adult male inserting his penis into the vagina of a prepubescent child.

1 COUNT 8

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: new-35.jpg, described as: This
6 image depicts a nude prepubescent female child performing fellatio on an adult male. Also,
7 the child is inserting a pink phallic shaped device into her vagina.

8 COUNT 9

9 did, then and there, feloniously, knowingly and willfully, have in his possession a
10 film, photograph, or other visual presentation depicting a person under the age of 16 years as
11 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
12 in or simulate sexual conduct, to-wit: Image File Name: GIRL69.jpg, described as: This
13 image depicts a nude adult male lying on his back with a nude prepubescent female child
14 lying, face down, on his stomach in the opposite direction. The adult has his penis inside the
15 child's mouth and is performing cunnilingus on the child.

16 COUNT 10

17 did, then and there, feloniously, knowingly and willfully, have in his possession a
18 film, photograph, or other visual presentation depicting a person under the age of 16 years as
19 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
20 in or simulate sexual conduct, to-wit: Image File Name: new-43.jpg, described as: Image
21 depicts a prepubescent female child with long blonde hair seen from the neck up. The child's
22 hands are positioned on either side of an adult's penis. The adult has his penis inserted into
23 the mouth of the child.

24 COUNT 11

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: NEW-47.jpg, described as: Image

1 depicts prepubescent female child with her hands on an adult penis and the penis is next to
2 the prepubescent female's mouth.

3 COUNT 12

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: EURO-001.jpg and/or
8 EURO013.jpg described as: This image has 5 images depicting a prepubescent female child
9 with darker blonde hair. The first image depicts the child with an adult penis in her mouth
10 and an adult hand on the penis. The second image depicts the child nude with her hands
11 around an adult penis and the child's mouth is on the penis. The third image depicts the
12 child on all fours with her buttocks facing the camera. The child is nude with her buttocks
13 and genitalia exposed. The fourth image depicts the child lying on her back with an adult
14 male straddling the child and his penis is in the child's mouth. The fifth image depicts a
15 close up of an adult penis and the penis is penetrating the anal opening of the child.

16 COUNT 13

17 did, then and there, feloniously, knowingly and willfully, have in his possession a
18 film, photograph, or other visual presentation depicting a person under the age of 16 years as
19 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
20 in or simulate sexual conduct, to-wit: Image File Name: new-33.jpg and/or
21 girlondick32.bmp described as: Image depicts 2 prepubescent children with their faces and
22 mouths near or touching an adult male penis. The image is a picture of the children from the
23 neck up.

24 COUNT 14

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: carved image unnamed file.jpg

1 and/or new-38.jpg, described as: This image is of a prepubescent Asian female child
2 positioned in front of a Caucasian adult male with the adult male penis touching the child's
3 mouth with what appears to be ejaculate dripping from the penis. Also noted on the adult
4 male's abdominal area are the words CP REAL.

5 COUNT 15

6 did, then and there, feloniously, knowingly and willfully, have in his possession a
7 film, photograph, or other visual presentation depicting a person under the age of 16 years as
8 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
9 in or simulate sexual conduct, to-wit: Image File Name: new-44.jpg, described as: This
10 image depicts the head and face of a prepubescent female with an adult male positioned in
11 front of her and his penis is inserted into the child's mouth.

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INSTRUCTION NO. 4

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a Defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

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2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider
10 evidence of motive or lack of motive as a circumstance in the case.

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INSTRUCTION NO. 6

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2 The Defendant is presumed innocent unless and until the contrary is proved. This
3 presumption places upon the State the burden of proving beyond a reasonable doubt every
4 material element of the crime charged and that the Defendant is the person who committed
5 the offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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You are here to determine whether or not the Defendant is guilty or not guilty from the evidence in the case. You are not called upon 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 persons are also guilty.

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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case.
12 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation
13 as evidence and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

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2 A person who knowingly and willfully has in his possession for any purpose any film,
3 photograph or other visual presentation depicting a person under the age of 16 years to the
4 subject of a sexual portrayal, or engaging in or simulating, or assisting others to engage in or
5 simulate sexual conduct, that person is guilty of Possession of Visual Presentation Depicting
6 Sexual Conduct of a Child.

7 "Sexual conduct" includes sexual intercourse, lewd exhibition of the genitals, fellatio,
8 masturbation, or the penetration of any part of a person's body, or of any object manipulated
9 or inserted by a person into the genital or anal opening of the body of another.

10 "Sexual portrayal" means the depiction of a person in a manner which appeals to the
11 prurient interest in sex and which does not have serious literary, artistic, political or scientific
12 value.

13 "Prurient" means provoking lustful thoughts over and beyond those that would be
14 characterized as normal.

15 Fellatio is touching, however slight, of the penis by the mouth or tongue of another
16 person.

17 Digital penetration is the placing of one or more fingers of the perpetrator into the
18 anal or vaginal opening of another person.

19 If you find that the Defendant did not knowingly or willfully have in his possession
20 for any purpose a film, photograph or other visual presentation depicting a person under the
21 age of 16 years to the subject of a sexual portrayal, or engaging in or simulating, or assisting
22 other^s to engage in or simulate sexual conduct, you must find him not guilty.

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2 The law recognizes two kinds of possession; actual possession and constructive
3 possession. A person who knowingly has direct physical control over a thing, at a given
4 time, is then in actual custody.

5 A person who, although not in actual possession has both power and intention, at a
6 given time, to exercise dominion and control over a thing, either directly or through another
7 person or persons, is then in constructive possession of it.

8 Possession may also be exclusive or joint. Joint possession occurs when two or more
9 persons have the right or ability to maintain control or dominion over the property.

10 You may find that the element of possession as that term is used in these instructions
11 is present if you find beyond a reasonable doubt that the Defendant had actual or
12 constructive possession, either alone or jointly with another person.

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2 An act is done knowingly if the Defendant realized what he was doing and did not act
3 through ignorance, mistake or accident. You may consider the evidence of the Defendant's
4 acts and words, along with all the other evidence, in deciding whether the Defendant acted
5 knowingly.

6 If you find that the Defendant committed the act charged under ignorance or mistake
7 of fact, you must find him not guilty.
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INSTRUCTION NO. 14

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Mere presence at the scene of the crime or knowledge that a crime is being committed is not sufficient to establish that a Defendant is guilty of an offense, unless you find beyond a reasonable doubt that the Defendant was a participant.

INSTRUCTION NO. 15

The parties stipulate that State's Exhibits 1 through 15 are photographs, or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct.

The parties further stipulate that the names of the files listed in Counts 1 through 15 and to the description of those files as listed in each count of the Second Amended Information.

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If the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

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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 from the evidence which you feel are justified in the light of common experience, 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.

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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 whether the Defendant is guilty or not guilty.

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INSTRUCTION NO. 19

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2 It is a constitutional right of a Defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 Defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in 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 foreperson and then return with it to this room.

1
2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his/her counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is
10 not at liberty to supplement the evidence.
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2 Now you will listen to the arguments of counsel who will endeavor to aid you to
3 reach a proper verdict by refreshing in your minds the evidence and by showing the
4 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is
5 your duty to be governed in your deliberation by the evidence as you understand it and
6 remember it to be and by the law as given to you in these instructions, with the sole, fixed
7 and steadfast purpose of doing equal and exact justice between the Defendant and the State
8 of Nevada.

GIVEN:


DISTRICT JUDGE

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUL 16 2013

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY CASTANEDA,

Defendant.

CASE NO: C-11-272657-1
DEPT NO: V

VERDICT

We, the jury in the above entitled case, find the Defendant ANTHONY CASTANEDA, as follows:

COUNT 1 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

COUNT 2 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

1 **COUNT 3** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
2 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
5 SEXUAL CONDUCT OF A CHILD

6 ☐ Not Guilty

7
8 **COUNT 4** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
9 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
12 SEXUAL CONDUCT OF A CHILD

13 ☐ Not Guilty

14
15 **COUNT 5** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
16 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD

20 ☐ Not Guilty

21
22 **COUNT 6** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
23 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

24 *(please check the appropriate box, select only one)*

25 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
26 SEXUAL CONDUCT OF A CHILD

27 ☐ Not Guilty

28

1 **COUNT 7** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
2 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
5 SEXUAL CONDUCT OF A CHILD

6 ☐ Not Guilty

7
8 **COUNT 8** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
9 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
12 SEXUAL CONDUCT OF A CHILD

13 ☐ Not Guilty

14
15 **COUNT 9** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
16 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD

20 ☐ Not Guilty

21
22 **COUNT 10** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
23 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

24 *(please check the appropriate box, select only one)*

25 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
26 SEXUAL CONDUCT OF A CHILD

27 ☐ Not Guilty

28

1 **COUNT 11** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
2 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
5 SEXUAL CONDUCT OF A CHILD

6 ☐ Not Guilty

7
8 **COUNT 12** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
9 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
12 SEXUAL CONDUCT OF A CHILD

13 ☐ Not Guilty

14
15 **COUNT 13** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
16 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD

20 ☐ Not Guilty

21
22 **COUNT 14** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
23 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

24 *(please check the appropriate box, select only one)*

25 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
26 SEXUAL CONDUCT OF A CHILD

27 ☐ Not Guilty

28

1 **COUNT 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL**
2 **CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

3 *(please check the appropriate box, select only one)*

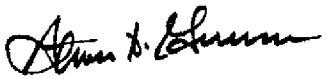
4 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
5 SEXUAL CONDUCT OF A CHILD

6 ☐ Not Guilty

7 DATED this 16 day of July, 2013

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CLERK OF THE COURT

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 v.
12 ANTHONY CASTANEDA,
13 Defendant.

CASE NO. C-11-272657-1
DEPT. NO. V
DATE: October 14, 2013
TIME: 9:00 a.m.

14 MOTION TO VACATE COUNTS TWO THROUGH FIFTEEN

15 FACTS

16 Anthony Castaneda was found guilty by a jury on July 16, 2013 of fifteen counts of
17 "POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A
18 CHILD," in violation of NRS 200.730. The State alleged one charge for each of the fifteen images
19 of child pornography recovered from Mr. Castaneda's computer network. The State established
20 that the computer network belonged to Mr. Castaneda, but was unable to establish when or by
21 what manner the images were placed on Mr. Castaneda's computer network, or who put them
22 there. There was evidence to suggest that Castaneda may have downloaded the prohibited images
23 to his computer network unknowingly, as part of a "batch download" of files that consisted
24 primarily of pornographic images that are legal under Nevada law. The download of prohibited
25 images may have occurred, according to the State's police witnesses, sometime in 2007 or 2008.
26 The "batch download" process was referred to by the technical name, "site mirroring" at trial. "Site
27 Mirroring," by its very definition, is a blind, computer-automated activity.
28

LEGAL ARGUMENT

1
2 I. THE PLAIN LANGUAGE OF NRS 200.730, WILSON v. STATE, DOUBLE
3 JEOPARDY, FUNDAMENTAL FAIRNESS, AND BOTH STATE AND FEDERAL
4 TO BE VACATED.

5 A. NRS 200.730 Prohibits Multiple Convictions Under the Facts of this Case

6 NRS 200.730 reads as follows:

7 **200.730. Possession of visual presentation depicting sexual conduct**
8 **of person under 16 years of age unlawful; penalties**

9 A person who knowingly and willfully has in his or her possession for
10 any purpose any film, photograph or other visual presentation
11 depicting a person under the age of 16 years as the subject of a sexual
12 portrayal or engaging in or simulating, or assisting others to engage in or
13 simulate, sexual conduct:

14 1. For the first offense, is guilty of a category B felony and shall be
15 punished by imprisonment in the state prison for a minimum term of not
16 less than 1 year and a maximum term of not more than 6 years, and may
17 be further punished by a fine of not more than \$5,000.

18 2. For any subsequent offense, is guilty of a category A felony and shall
19 be punished by imprisonment in the state prison for a minimum term of
20 not less than 1 year and a maximum term of life with the possibility of
21 parole, and may be further punished by a fine of not more than \$5,000.

22 [Emphasis added].

23 Housed within the section of the Nevada Revised Statutes entitled "**Pornography**
24 **Involving Minors,**" the central element of NRS 200.730 is "possession." Since the core element
25 or "unit of prosecution" for NRS 200.730 is possession, Castaneda can only be convicted of one
26 count for possessing "any film, photograph or other visual presentation," even if multiple items
27 were held at the same time. This is true *regardless* of the number of pictures seized from
28 Castaneda's computer network. As more fully explained below, this is the only constitutionally
acceptable interpretation of NRS. 200.730. Allowing Castaneda to be convicted of multiple
charges under this statute would violate Double Jeopardy, Fundamental Fairness, redundancy
principles, both State and Federal due process, and the basic principles of statutory construction.

1 U.S. Const. Amend. V, Amend XIV; Nev. Const. Art. 1, Sec. 8; Glegola v. State, 110 Nev. 344,
2 871 P.2d 950 (1994)(Intention of legislature, where clear, must be honored in interpretation of
3 language); Demosthenes v. Williams, 97 Nev. 611, 637 P.2d 1203 (1981)(Statutory ambiguities
4 must be resolved in favor of the defendant).

5 The Nevada Supreme Court has not *specifically* ruled whether a defendant can receive
6 multiple convictions under NRS 200.730 for the possession of numerous digital images on
7 computer disks. However, the Court has decided this question in a case involving another statute
8 within the "Pornography Involving Minors" section: NRS 200.710, which prohibits the use of a
9 minor "in producing pornography or as subject of sexual portrayal in performance." The Nevada
10 Supreme Court determined that the unit of prosecution for NRS 200.710 was the number of
11 "performances," rather than the number of individual photographs or images the defendant took or
12 possessed from the performances. Casteel v. State, 122 Nev. 356, 131 P.3d 1(2006); Wilson v.
13 State, 121 Nev. 345, 114 P.3d 285 (2005). In making this determination, the Court noted that:

14 " . . . the intent of the Legislature in passing NRS. 200.700 to 200.760,
15 inclusive, was to criminalize the use of children in the production of
16 child pornography, not to punish a defendant for multiple counts of
17 production dictated by the number of images taken of one child, on one
18 day, all at the same time. **If the Legislature intended this statute to
19 punish a party for every individual photograph produced of a sexual
20 performance, it certainly could have effectuated that intent in the
21 statute.**"

22 Wilson, at 294. (emphasis added). The Wilson Court reached this analysis when interpreting the
23 definition of a "performance" under NRS 200.700, which defines a "performance" as: "any play,
24 film, photograph, computer generated image, electronic representation, dance or other visual
25 presentation." The Court then applied this same analysis to every statute listed between NRS
26 200.700 and NRS 200.760.

27 Obviously, NRS 200.730 sits right in the *middle* of NRS 200.700 - NRS 200.760. Thus,
28 this court must apply the Wilson analysis to NRS 200.730.

1 Under Wilson, since NRS 200.730's unit of prosecution is "possession" of "any film,
2 photograph or other visual presentation," Castaneda may only be convicted of a single crime for all
3 the items he possessed on the same day at the same time. Thus, his convictions under counts 2-15
4 of the State's Information must be vacated.

5 **B. Castaneda's Multiple Convictions Violate Double Jeopardy, Redundancy and**
6 **Fundamental Fairness under both Nevada and Federal Law**

7
8 1. Double Jeopardy

9 The State did not attempt to prove beyond a reasonable doubt when or how the prohibited
10 files were originally placed on Castaneda's computer network, who saved the files on the network,
11 or where the files originated. The State's experts admitted that information was unknown. For
12 purposes of Castaneda's convictions in this case, his "possession" of the files was established on
13 April 5, 2011, the day Mr. Castaneda's computer network was seized and impounded by police.

14 It is important to establish the date of these charges because of a recent change in Nevada's
15 Double Jeopardy law. In Jackson v. State, 291 P.3d 1274 (2012), the Nevada Supreme Court
16 departed from a quarter-century of Nevada law by determining that fact-based redundancy analysis
17 between two different statutes, as detailed in cases like Skiba v. State, 114 Nev. 612 (1998) and
18 Salazar v. State, 119 Nev. 224, 70 P.3d 751 (2003), is now "disfavored" under Nevada's Double
19 Jeopardy law. The Jackson Double Jeopardy test appears, for all intents and purposes, to be a strict
20 "Blockburger" analysis.¹

21 Of course, Jackson does not apply to this case for several reasons. First, it was decided in
22 2012, *after* the crimes alleged in this case, so applying the new law to this case would be
23 impermissible under judicial *ex post facto* law. See Stevens v. Warden, 114 Nev. 1217, 961 P.2d
24 945 (1998). Thus, the court's analysis of Jackson can end here.

25
26 ¹ For the record, the defendant in Jackson has filed a Writ of Certiorari challenging the Nevada
27 Supreme Court's decision. The writ survived its initial review and the United States Supreme Court
28 ordered the State of Nevada to file an answering brief. On September 30th, the Court began
reviewing the matter in conference. The Court's decision could come down any time, although the
government shutdown may delay the matter.

1 Second, Jackson's new rules for Double Jeopardy analysis do not apply because we are not
2 comparing two statutes in this case. There is one statute, and, under Wilson v. State, supra, 121
3 Nev. 345, there can only be one conviction.

4 Finally, even if the Jackson case were applied, the court would still be required to vacate all
5 but one of the charges. For purposes of Double Jeopardy analysis, Jackson examines the question
6 of whether multiple convictions are allowed by applying "statutory construction with a
7 constitutional overlay." Jackson at 1277. That process was already completed for our purposes
8 when the Wilson court addressed the statutory scheme encompassing **NRS 200.730** and ruled that
9 the legislature did not intend multiple convictions for multiple images. See Wilson, supra, 114
10 P.3d at 294. Multiple convictions under the facts of this case are simply not permitted.

11 2. Traditional Nevada Redundancy/Double Jeopardy Analysis

12 Under the pre-Jackson standard governing this case, "redundant" convictions violate The
13 Double Jeopardy Clause of the Fifth Amendment, and Article 1, Section 8, of the Nevada
14 Constitution protect a criminal defendant from: (1) a second prosecution after conviction on the
15 charges; (2) a subsequent prosecution following an acquittal; and, (3) multiple punishments for
16 the same offense. Garcia v. State, 121 Nev. 327, 341-45, 13, P.3d 836, 845 (2005)(finding
17 redundant convictions in violation of the Fifth Amendment Double Jeopardy Clause); Miranda v.
18 State, 114 Nev. 385, 956 P.2d 1377 (1998)(double jeopardy under the Nevada constitution
19 requires a narrow construction). Nevada "embraces a more expansive interpretation of
20 constitutional rights than federal law." Wilson v. State, 123 Nev. 587, 595, 170 P.3d 975, 980
21 (2007).

22 Again, the case at bar does not involve a question of whether convictions for the same act
23 under two different statutes violates double jeopardy, but rather, whether the "same act" can be
24 divided into separate violations under the same statute. This type of inquiry requires the Court to
25 look at the language of **NRS 200.730** to determine the "unit of prosecution," resolving any
26 ambiguity in favor of the defendant. Bell v. United States, 349 U.S. 81 (1955).

27 When considering whether convictions arising out of the same act under the same statute
28 are redundant and in violation of double jeopardy under either the Fifth Amendment to the United

1 States Constitution or Article 1, §8 of the Nevada Constitution, this Court begins with an
2 examination of the wording of the statute to determine the unit of prosecution and the purpose of
3 the statute. Wilson v. State, 121 Nev. 345, 356, 114 P.3d 285, 292-294 (2005); see also, Casteel v.
4 State, 122 Nev. 356, 131 P.3d 1 (2006).

5 The issue is whether the gravamen of the charged offense is the same such that it can be
6 said that the legislature did not intend multiple convictions. "Redundancy does not, of necessity,
7 arise when a defendant is convicted of numerous charges arising from a single act." Skiba v. State,
8 114 Nev. 612, 616 n.4, 959 P.2d 959, 961 n.4 (1998)(disfavored, in part, by Jackson, supra). "The
9 question is whether the material or significant part of each charge is the same even if the offenses
10 are not the same. Thus, where a defendant is convicted of two offenses that, as charged, punish the
11 exact same illegal act, the convictions are redundant..." Salazar v. State, 119 Nev. 224, 70 P.3d
12 751 (2003)(disfavored, in part, by Jackson, supra).

13 In Salazar, when deciding a double jeopardy claim, this Court held that although battery
14 with use of a deadly weapon with substantial bodily harm and mayhem with a deadly weapon were
15 separate offenses under the Blockburger test and while "...the state may bring multiple charges
16 based upon a single incident, we will reverse 'redundant convictions that do not comport with
17 legislative intent.'" Salazar, citing State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836 (1997)
18 (quoting Albitre v. State, 103 Nev. 281, 283, 738 P.2d 1307 (1987)); see also, Braunstein v. State,
19 118 Nev. 68, 79, 40 P.3d 413, 421 (2002)(where this Court noted that it will reverse a conviction
20 when a defendant receives multiple convictions based on a single act).

21 As previously noted, when applying the Wilson analysis to **NRS 200.730**, the unit of
22 prosecution under **NRS 200.730** is "possession" of "any film, photograph or other visual
23 presentation," which means that Castaneda may only be convicted of one violation of **NRS**
24 **200.730** for all items he possessed on the same day at the same time. To convict and punish
25 Castaneda for *each* image on his computer network (which the jury considered as individual
26 pictures), would violate double jeopardy.

27 ...

28 ...

1 3. Fundamental Fairness

2 Going forward after Jackson, barring another change in the law, redundancy analysis will
3 no longer be part of the Double Jeopardy test in Nevada. However, that does *not* mean redundancy
4 analysis is dead. The principles barring redundancy, as outlined in Salazar, Albitre, Skiba and
5 other Redundancy cases, are still an indispensable part of Fifth Amendment Law, even after
6 Jackson. However, rather than reviewing these principles under the Double Jeopardy Clause, they
7 will now be reviewed under the Fundamental Fairness requirement of the Fifth Amendment and
8 Nevada's Due Process provisions.

9 There is a very good reason why the majority of jurisdictions, Nevada included, adopted
10 some form of factual redundancy analysis in addition to the strict Blockburger test: Blockburger
11 wasn't getting the job done. Strict reliance on a mechanical, statutory-comparison test was causing
12 daily injustices throughout our system of jurisprudence. State and Federal courts responded by
13 adopting a variety of tests to ensure fairness by reviewing the factual underpinnings of charges.
14 Today, most jurisdictions employ a fact-based test along with traditional Double Jeopardy
15 analysis. See, e.g., State v. Swick, 279 P.3d 747, 755 (N.M. 2012); State v. Lanier, 192 Ohio
16 App.3d, 762, 950 N.E.2d 600, 603 (2011); United States v. Chipps, 410 F.3d 438, 447 (8th
17 Cir.2005)(Impulse Test); United States v. Ansaldi, 372 F.3d 118, 124 (2d Cir.), cert. denied, 543
18 U.S. 949, 125 S.Ct. 364, 160 L.Ed.2d 266 and cert. denied, 543 U.S. 960, 125 S.Ct. 430, 160
19 L.Ed.2d 324 (2004)(Impulse Test); United States v. Hope, 545 F.3d 293, 296 (2008)(Moments of
20 Possession); Rofkar v. State, 273 P.3d 1140 (Alaska 2012)(citations omitted)(Same Conduct/Hybrid
21 Test).

22 A fact-based test is still required in Nevada because to hold otherwise would violate the
23 due process right to fundamental fairness. The constitution requires our procedures to "comport
24 with deepest notions of what is fair and right and just to satisfy Due Process." Solesbee v.
25 Balkcom, 339 U.S. 9, (1950). In this case, Castaneda received 15 separate convictions for one act
26 of possession. He did not create these images. He did not distribute these images. According to the
27 State's witnesses, these same images have been floating around the Internet for years. And they
28 still exist on *countless* computer networks all over the world today. To uphold Castaneda's

1 redundant convictions for possessing this group of images would be fundamentally unfair and
2 violate Castaneda's due process rights under both the Nevada and United States constitutions.

3 C. Interpreting NRS 200.730 to allow a conviction for each image would render
4 the statute unconstitutional.

5 In this case, the State believes that Castaneda can be convicted of *every* prohibited image
6 he simultaneously possessed. If NRS 200.730 is interpreted in this manner, the statute is vague
7 and overbroad.

8 First, the State's interpretation of NRS 200.730 would lead to absurd results. For example,
9 under the State's theory, a person with one magazine containing several pictures, or a stack of
10 individual photographs would be treated differently than a person with a **video**.

11 Film is nothing more than a series of still images. Possession of a video, which is
12 comprised of *thousands* of still photos, counts as one violation, no matter the length of the film,
13 the number of images on the film, or the number of subjects. By contrast, under the State's
14 theory, a person could be convicted of four counts from a *single picture* that shows four subjects.
15 Even more absurd, if a person printed three "screen-captures" from a prohibited video, the State
16 would have him charged with three *separate* violations, even though possessing the video in its
17 entirety could only result in a single conviction.

18 In Anthony Lee R. v. State, 113 Nev. 1406, 952 P.2d 1 (1997) the Nevada Supreme Court
19 held that:

20 ...the plain meaning of the statute's words are presumed to reflect the
21 legislature's intent in enacting the statute. Nevertheless, statutory
22 language should not be read to produce absurd or unreasonable results.

23 Id. at 6. Allowing Castaneda's 14 redundant convictions to stand would be unreasonable and
24 absurd as a matter of law, and render NRS 200.730 unconstitutional.

25 A statute is "vague" if, among other things, it allows the people who enforce it unfettered
26 discretion. Silvar v. Eighth Judicial Dist. Court, 122 Nev. 289 (2006). Absent adequate guidelines,
27 a criminal statute may permit a standardless sweep, which would allow police, prosecutors, and
28 juries to "pursue their personal predilections." Silvar at 293. In this case, the State has chosen to

1 interpret **NRS 200.730** to allow multiple convictions for the simultaneous possession of a series of
2 digital photograph files. Castaneda interprets the statute to authorize *one* violation, which would be
3 consistent with the legislative intent of the statutory scheme as a whole, and the Wilson Court's
4 unambiguous finding that the statutes listed in "**NRS 200.700 to 200.760**," were never intended to
5 punish defendants for "for every individual photograph." Wilson, supra, 114 P.3d at 294.

6 This honorable court is required to adopt the defendant's interpretation because it would
7 avoid absurd results, it is consistent with the plain language of **NRS 200.730**, and the law requires
8 that any ambiguity in a statute be resolved in favor of the defendant. See Application of Laiola, 83
9 Nev. 186, 426 P.2d 726 (1967). Any other finding would render **NRS 200.730** unconstitutionally
10 vague and overbroad and require all 15 of Mr. Castaneda's convictions to be vacated.

11 CONCLUSION

12 For the foregoing reasons, Mr. Castaneda respectfully requests that 14 of his 15 convictions
13 be vacated.

14 DATED this 1st day of October, 2013.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17 By: /s/ P David Westbrook
18 P. DAVID WESTBROOK, #9278
19 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 14th day of October, 2013, at 9:00 a.m.

DATED this 1st day of October, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ P David Westbrook
P. DAVID WESTBROOK, #9278
Deputy Public Defender

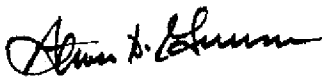
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 2nd day of October, 2013, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdany.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office

1 **PHILIP J. KOHN, PUBLIC DEFENDER**
2 Nevada Bar #0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant


CLERK OF THE COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 ANTHONY CASTANEDA)

12 Defendant.)
13

Case No. C272657

Dept No. V

14 **OFFER OF PROOF REGARDING DEFENDANT'S MOTION TO CALL A COMPUTER**
15 **EXPERT TO REBUT DETECTIVE EHLERS' SURPRISE TRIAL TESTIMONY**

16 **I. PROCEDURAL HISTORY**

17 According to court minutes, on July 11, 2013, Castaneda's attorney, David Westbrook,
18 requested leave of the court to call a computer expert to rebut testimony provided by State witness,
19 Detective Paul Ehlers. The details of the defense motion (subject to verification by the transcript
20 once it has been produced), were as follows:

- 21
- 22 1) Westbrook said that Detective Ehlers testified to matters not contained in
23 his report, including but not limited to, his claims that:
 - 24 a) Mr. Castaneda's computers contained Norton antivirus, Symantec
and Spybot software;
 - 25 b) Ehlers did a "visual check" for viruses; and
 - 26 c) The carved files in unallocated space on Mr. Castaneda's hard
27 drive provided proof that Castaneda viewed child pornography and
28 manually manipulated and/or deleted some of the suspect picture-
files in this case.

1 2) Westbrook said that much of Ehlers testimony was inconsistent with basic
2 principles of computer science, and that he could not counter Ehlers'
3 spurious claims without an expert.

4 3) Finally, Westbrook said that he was surprised by Ehlers' testimony.
5 Westbrook could not possibly have prepared for the testimony because
6 Ehlers testified outside the scope of his reports. Furthermore, Westbrook
7 could not have anticipated that a "computer expert" would offer testimony
8 that so clearly deviated from the basic scientific principles of his field. The
9 only way to safeguard Castaneda's 5th, 6th and 14th Amendment rights to
10 due process, fundamental fairness, to present a defense, and to confront
11 the witnesses against him would be to allow the defense to call an expert
12 in rebuttal.

13 The defense motion for leave to call a rebuttal expert was denied. Westbrook requested
14 permission to supplement the record with a written summary of the proffered expert testimony. The
15 court granted this request.

16 Following trial, Westbrook contacted Computer Forensic Expert, Leon Mare.¹ Mr. Mare
17 reviewed the JAVS recordings of Detective Ehlers' trial testimony. As anticipated, Mr. Mare would
18 have directly rebutted several key claims Detective Ehlers made at trial. Mr. Mare's memo is
19 attached for the court's review. Mr. Castaneda requests that this honorable court review the memo
20 and enter it into the record as a defense or court exhibit. See Exhibit A: "Digital Forensic Expert,
21 Leon Mare's Review of Detective Ehlers' Trial Testimony."

22 DATED this 7th day of October, 2013

23 **PHILIP J. KOHN, PUBLIC DEFENDER**
24 Nevada Bar #0556
25 309 South Third Street, Suite 226
26 Las Vegas, Nevada 89155

27 BY /s/DAVID WESTBROOK
28 DAVID WESTBROOK
Deputy Public Defender, #9278

¹ See Exhibit B, Curriculum Vitae of Leon Mare.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 7th day of
October, 2013, by Electronic Filing to:

District Attorneys Office

E-Mail Address:

PDMotions@ccdav.com

alexander.chen@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

EXHIBIT A:
DIGITAL FORENSIC EXPERT, LEON MARE'S REVIEW OF
DETECTIVE EHLERS' TRIAL TESTIMONY

<u>DETECTIVE EHLERS</u>	<u>EXPERT, LEON MARE</u>
For a graphics viewing program to change a file access date, it has to be manually pointed at the subject files.	<u>This is wrong.</u> Once opened, it is common for graphics viewing programs to <u>automatically</u> search the computer for graphic files and catalogue them. If a file is catalogued, the access dates are changed. It is not necessary to "manually" point the program at a file.
It is not reasonable based on the evidence to assume that the files were accessed by an automated process.	When multiple access dates are changed within a matter of a few seconds, as in this case, it is <u>far more likely than not</u> that the files were accessed by an <u>automated process</u> rather than direct human action.
Three years after the fact and with no written record of my investigation, I remember that Castaneda's computer had security software and that the virus definitions were updated. Castaneda had Spybot, Norton and Symantec installed.	It is <u>implausible</u> to the point of absurdity to believe that the Detective would "remember" whether virus definitions were updated three years after the fact. In fact, the process of discovering that information is very complicated and would have to have been <u>documented</u> if it had actually been done.
Detective Ramirez's computer operates with different protocols than my computer.	<u>That is not accurate.</u> The Metro systems can have different user <i>preferences</i> , but not different protocols.
I did a visual inspection for the presence of viruses and determined there was no virus on the computer.	It is <u>impossible</u> , within any degree of scientific accuracy, to determine whether a virus is on a computer based solely on a "visual inspection." A visual inspection for viruses cannot be done and I am aware of no "expert" in the field of computer forensics who would even attempt such a thing.

<u>DETECTIVE EHLERS (Continued)</u>	<u>EXPERT, LEON MARE (Continued)</u>
"Access" and "Last Modified" dates are reliable for determining whether a user knowingly viewed a file.	<u>This is not accurate.</u> Without other evidence, it is <u>virtually impossible</u> to tell whether a user viewed a file or exercised manual control over a file simply from a change to a "last modified" or "accessed" date.
Four files, on two different computers, were accessed within two seconds. Two files were accessed simultaneously. I do not believe this is evidence that an automated process was accessing these files. There are indications that files were interacted with by a human being.	There is <u>no way</u> a human being accessed four files within two seconds on two different computers.
The carved files in unallocated space demonstrate proof that a human being knowingly and intentionally deleted copies of the subject files through a manual process.	<u>That is not accurate.</u> For example, one of the most common ways for a "carved file" to end up in unallocated space is for a Temporary Internet File to be purged, which normally happens through either an automated process, or a manual process that is invisible to the user, namely, the user pushes a button that says "Delete Temporary Internet Files." The files in the Temporary Internet Folder are deleted, but the files are never actually <i>shown</i> to the user before being purged to unallocated space.

Curriculum Vitae (Resume) for
Adrian Leon Mare', Digital Forensic Expert

Adrian Leon Mare'

O: 702-435-8885

W: 888-355-3888

C: 702-443-1844

Web: www.ExpertDataForensics.com

Email: leon.mare@ExpertDataForensics.com

Location: 2675 S Jones Suite 207A, Las Vegas NV 89147

Mailing Address: PO Box 35006, Las Vegas NV 89133

Professional Summary

- Knowledge, training and experience in computer forensic investigator, electronic evidence discovery, data recovery and analysis, consulting and expert witness services for criminal and civil cases.
- Over ten (10) years of progressive technical experience in designing, implementing, structuring, supporting, administrating, upgrading, documenting and maintaining networking environments.
- Especially proficient in troubleshooting, audits, consulting, user support, customer relations, network topology, digital forensics, data recovery, backup strategies, designing, planning and implementation of network and wireless environments.
- Over ten (10) years in law enforcement.

Education

- August 2002 B.Sci- (Information Technology) Accreditation
- ACE Certified EnCase, MCSE, MCP, MCP+I, WLANFE, WLANSE, MCSA, NT-CIP, MCSE+I, Nti Forensics

Associations

- Member of: (DIA) Defense Investigators Association of California
- Member of: (NSPI) Nevada Society of Professional Investigators
- Member of: Nevada Board of Private Investigators

Certifications

- 2011 KrollOntrack Data Recovery Certification
- 2010 Window Forensics Vista
- 2010 Mobile Phone Examiner (Analysis)
- 2009 Mac Forensic Certification
- 2009 ACE Certified Examiner (Access Data)
- 2009 Access Data Internet Forensics
- 2009 Access Data Forensics
- 2009 Access Data Transition 2.2
- 2009 Access Data Registry
- 2008 Private Investigator License from State of Nevada Lic#1498
- 2007 Digital Investigations CEIC 2007 Encase
- 2006 Encase Computer Forensics, Southern Nevada Community College
- 2006 Advance Internet Forensics, Southern Nevada Community College
- 2006 Advanced Computer Forensics, Southern Nevada Community College

- 2005 FTK Forensics Certificate
- 2005 Managing & Maintaining MS Server 2003
- 2005 Basic Computer Forensics, Southern Nevada Community College
- 2004 "Nti" – Oregon, Computer Forensics Certification
- 2003 Cisco Wireless LAN Field Engineer / Cisco Wireless LAN Support Specialist
- 2003 Cisco Public Access Design Specialist
- 2003 Cisco Wireless LAN Design Specialist
- 2003 Microsoft Certified Systems Administrator - Windows 2000 with Messaging.
- 2001 Microsoft Certified Systems Engineer + Internet.
- 2001 Microsoft Certified Systems Engineer – W2K.
- 2001 Cisco Certified Network Associate.
- 1999 Microsoft Certified Systems Engineer – NT4.0.
- 1999 Microsoft Certified Professional + Internet.
- 1998 Microsoft Certified Professional.
- 2003 Managing a Windows 2000 Environment.
- 2003 Installing, Configuring, and Administering Microsoft Exchange 2000 Server.
- 2001 Implementing and Supporting Microsoft Internet 5.0 by using the Internet Explorer Administration Kit.
- 2001 Implementing and Supporting Microsoft Proxy Server 2.0.
- 2001 Designing a Microsoft Windows 2000 Directory Services Infrastructure.
- 2001 Implementing and Administering a Windows 2000 Network Infrastructure.
- 2001 Implementing and Administering a Microsoft 2000 Directory Services Infrastructure.
- 2001 Installing, Configuring, and Administering Microsoft Windows 2000 Server.
- 2001 Installing, Configuring, and Administering Microsoft Windows 2000 Professional.
- 2000 Implementing and Supporting Microsoft Exchange Server 5.5.
- 1998 Network Essentials.
- 1998 Implementing and Supporting Microsoft Internet Information Server 4.0
- 1997 Internet, working and Supporting Microsoft TCP/IP on Windows NT 4.0.
- 1999 Implementing and Supporting Server 4.0 in the Enterprise.
- 1998 Implementing and Supporting NT 4.0 Workstation.
- 1998 Implementing and Supporting NT Server 4.0.
- 1997 Novell 312 Server and Workstation
- 1996 Information Technology Microcomputer System Administration.
- 1986 Senior National Higher Certification in Studies of Law & Criminal Procedures and Evidence.
- 1983 Diploma in Investigation of Crime.
- 1983 Diploma in Law of Criminal Procedure & Evidence
- 1983 National Certificate

Software/Hardware

X-Ways, Helix, Encase, Paraben, Access Data, F-Response, FTK, Nti, Cellebrite, MS Office and Servers, DHCP, IIS 4, 5 & 6, Cisco 3660 Router, LANs, WANs, VPN, Novell 3.12 & Novell 4.0, SQL Server 6.5 & 7, TCP/IP, NetBEUI, Cabling, Servers, Hubs, Routers, Microsoft Windows 3.1, 95, NT, 98, 2000 & XP, MS Exchange 5.5, 2000 & 2003, Windows for Workgroups, Microsoft Access, Intel Switches, Win2k, FTP, Cisco Switches, Visio, cc:Mail, Microsoft Office 97, 2000, XP & 2003, Ghost Backup Software, Novell 4.11, Net Census, DOS, NT3.51 Workstation, Compaq ROMPaq, basic HTML, Abacus, TimeSlips, Quick Books products, Sonic FireWall. Installation & Configuration, Norton Antivirus Corporate Edition Version 9, Microsoft Virtual PC & VM Ware.

Experience

- August 1st 2012 ICS of Nevada, LLC - NV Private Investigator
- PRIVATE INVESTIGATION NV Lic1498
- February 1st 2006 Expert Data Forensics - Digital Forensic Expert
- PROPRIETOR, DIGITAL FORENSIC INVESTIGATION SPECIALIST

Experience with: Civil, Criminal, Domestic & Defense

- Seizure and imaging of data for Forensic Purposes
- Investigation of Data from Computers, Cell Phones, PDA's, Pen Drives, Compact Disks, Zip Disks, Thumb Drives, Portable Storage Devices, All Manner of Digital Camera Storage Cards, Tape Backup, RAID Sets.
- Court Approved methods for Chain of Custody
- Determining Legal Access to a computer or network
- Gathering eDiscovery, eEvidence for Court Procedures
- Recovery of deleted computer files and data
- Data recovery when a hard drive has been reformatted or re-partitioned
- In many cases, decryption when a file has been encrypted
- Determination of web sites that have been visited
- Determination of what files have been downloaded
- Determination of when files were last accessed
- Determination of when files were deleted
- Discovery of attempts to fabricate, conceal or destroy evidence
- Discovery of faxes sent or received on a computer
- Discovery of email messages and attachments even if previously deleted
- Analysis of Computers and Data in Criminal Investigations
- Onsite Seizure of Computer Data in Criminal Investigations
- Analysis of Computers and Data in Civil Litigation
- Onsite seizure of Computer Data in Civil Litigation
- Analysis of Company Computers to Determine Activity
- Assistance in Preparing Electronic Discovery Requests
- Reporting in a Comprehensive and Readily Understandable Manner
- Computer Forensics on Both PC and Mac Platforms
- Litigation Summery
- Federal criminal: In 2006 the United States Federal Public Defender contracted Mr. Mare's services on an ongoing basis as computer consultant, data forensic investigator and expert witness in various cases involving child exploitation.
- Law firms nationwide, hire Mr. Mare in a variety of matters ranging from family law, civil, criminal and defense.
- Corporate matters: various corporations have hired Mr. Mare's services for matters involving; embezzlement, partnership disputes, infringement on intellectual property, copyright and patents, tax and workman's compensation.
- Civil matters: Mr Mare has experience in litigation process involving divorce, child custody, infidelity domestic disputes

Articles/Media

Published Work (eForensic Focus electronic newsletter):

- How to Catch a Cheating Husband or Wife
- Hiring a Computer Forensic Investigator
- Computer Forensics and Child Exploitation
- Computer Forensics and White Collar Crime
- Computer Forensics and Family Law
- How a Cell Phone or PDA Can Help Crack Your Next Case
- Forensic Imaging & Hard Drive Cloning
- How Unallocated File Space Can Help Your Case
- Are You Properly Preserving Digital Evidence for Your Case?
- What Are Computer Forensic Experts?

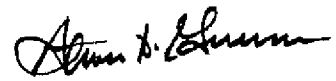
Fox5 News Interviews with Expert Adrian Leon Mare (available on website):

- Hacking
- Cell Phone Spyware
- Removing Data from Hard Drives
- Connecticut Shooting Protocol for Recovery of Computer Data

<http://www.fox5vegas.com/story/20378453/officials-probe-gunmans-history-to-paint-a-crystal-clear-picture>

Chanel 8 Interviews with Expert Adrian Leon Mare (available on website)

- Internet & Child Pornography


CLERK OF THE COURT

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

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

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)

12 ANTHONY CASTANEDA,)

13 Defendant.)

CASE NO. C-11-272657-1

DEPT. NO. V

DATE: October 14, 2013
TIME: 9:00 a.m.

14 **MOTION TO RECONSIDER DEFENDANT'S MOTION FOR MISTRIAL**
15 **DUE TO PROSECUTORIAL MISCONDUCT**

16 COMES NOW, the Defendant, ANTHONY CASTANEDA, by and through P. DAVID
17 WESTBROOK, Deputy Public Defender, respectfully requests that the Court reconsider his
18 earlier, pre-verdict motion for mistrial due to prosecutorial misconduct.

19 This Motion is made based upon all the papers and pleadings on file herein, the attached
20 Declaration of Counsel, Memorandum of Points and Authorities in support hereof, the post-verdict
21 interview with jurors, and oral argument at the time set for hearing this Motion.

22 DATED this 9th day of October, 2013.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 By: /s/ P David Westbrook
26 P. DAVID WESTBROOK, #9278
27 Deputy Public Defender
28

DECLARATION

P. DAVID WESTBROOK, attorney for Anthony Castaneda, makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. Immediately following trial in the instant case, Deputy District Attorney, Michelle Anthony and I spoke to four members of the jury regarding the trial process, their impressions of the case, and the basis for their verdict. The participating jurors were: Matthew Howard, Renee Losey, Reham Ahmed and Jury Foreman: James Eberle.

3. During our conversation, I noted that the jury was out for quite a long time, and asked what their main issues of contention were. Mr. Eberle said two things that are directly relevant to the prosecutorial misconduct, burden shifting, and misstatements of evidence that formed the basis for my mistrial motion.

4. Mr. Eberle said that the jury was troubled by the lack of police investigation in the case. They felt the police should have checked for viruses, tried to determine where the files came from, and examined the computers of Tammy Hines and her boyfriend, the State witnesses who claimed to have "found" the thumbdrive that started the entire investigation. In the end, however, Mr. Eberle said, "we looked back at the instructions on reasonable doubt, and it said that we could not '**speculate**' about how the files got there, and there was **no evidence** that it was a virus or something like that. We could only consider the evidence that *was* presented."

5. Mr. Eberle also said that, in the recorded interview with the detective, Mr. Castaneda was the first to say anything about "child pornography." The jury felt this was proof of knowledge. I then told Mr. Eberle and the other assembled jurors that the recording was **not** the first contact police had with Castaneda. When they arrived at his house with the search warrant, the police *informed* him they would be searching his computers for child pornography. Mr. Eberle was crestfallen. He said that if the jury had known that the police told Castaneda they were searching for child pornography, it would have caused them to deliberate for a lot longer, and it

1 may have resulted in a verdict of **not guilty**. According to Eberle, the jury had really placed a lot
2 of emphasis on that erroneous factual conclusion. They considered it a "smoking gun."

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my information and belief. (NRS 53.045).

5 EXECUTED this 9th day of October, 2013.

6
7 /s/ P David Westbrook
P. DAVID WESTBROOK, #9278

POINTS AND AUTHORITIES
STATEMENT OF FACTS/PROCEDURAL HISTORY

During the State's closing argument, the defense made approximately 25 objections. Most of these objections fell into two categories: 1) that the prosecution was constantly **misstating the evidence**, and 2) that the prosecution was **shifting the burden of proof**, mainly by repeatedly responding to defense theories with the phrase, "but there was **no evidence** of [insert theory]."

Most of the defense objections were overruled,¹ and the defense motion for mistrial due to prosecutorial misconduct was denied. The defense brings this Motion to Reconsider the mistrial ruling because the jury debriefing provided overwhelming evidence that the State's misconduct **changed the verdict in this case.**

LEGAL ARGUMENT

Prosecutors may not undermine the defense by making inappropriate and unfair characterizations. Riley v. State, 107 Nev. 205, 212, 808 P.2d 551, 556 (1991). In this case, the prosecution's multiple misstatements of evidence confused the jury and improperly disparaged the defense theories of the case. A prosecutor may not make statements unsupported by the evidence adduced at trial. Guy v. State, 108 Nev. 770, 780, 839 P.2d 578, 585 (1992); Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987). The Nevada Supreme Court rejects this "scorched earth" approach to advocacy:

The use of these kinds of remarks, these kinds of "foul blows" and this kind of behavior on the part of a prosecuting office is in all respects a "no-win" approach to trial advocacy. If the state has a strong case, it is not necessary, and if it was a close one, such misconduct is gross injustice to the defendant.

Yates v. State, 103 Nev. 200, 205 (1987)(citing State v. Citty, 50 Nev. 256, 259, 256 P. 793, 794 (1927)).

¹ The one notable exception coming when the State accused the defense of arguing that the Child Pornography files may have been downloaded by iTunes. The Court overruled defendant's first objection to the State's comments, but sustained the second and corrected the prosecutor's mischaracterization.

1 We do not have to guess whether this jury was confused by these misstatements of the
2 evidence because **they told us**. For example, the defense objected numerous times to the State's
3 use of Castaneda's recorded police interview. Among other things, the defense noted that the State
4 was using comments out of context and misrepresenting the clear meaning and intent of
5 Castaneda's words. It should be no surprise, based on the State's misstatements of evidence, that
6 the jury was under the impression that Castaneda admitted knowledge of the existence of child
7 pornography. The State confused the issue in its closing. When confronted with the knowledge
8 that the police informed Castaneda they were searching his computers for child pornography upon
9 their arrival, the jurors were crestfallen. They realized that their decision was based in part on a
10 complete misunderstanding. The defense contends that the State **created** this misunderstanding
11 with its improper arguments and inaccurate characterizations of the evidence.

12 The State's burden shifting also directly impacted the jury's verdict. "It is error even to
13 *intimate* to the jury that any burden of persuasion rests upon the defendant on the trial of the
14 general issue (guilt or innocence)." Phillips v. State, 86 Nev. 720, 722, 475 P.2d 671, 672
15 (1970)(citation omitted)(emphasis added). During the closing arguments in this case, the State did
16 far more than merely "intimate."

17 Throughout the presentation of evidence, the defense pointed out shortcomings in the
18 police investigation. For example:

- 19 • The police couldn't say when, who, or from where the files were originally
20 downloaded or if, in fact, they were "downloaded" at all.
- 21 • The police didn't search the computers of Tammy Hines or her boyfriend, even
22 though the "modified" date on one of the key files had been **changed** while the
23 drive was in their **exclusive possession**.
- 24 • Although the police "experts" verified that it would have been possible for the
25 prohibited files to have been downloaded by a virus or other automated process, the
26 police never ran a virus-scanning program to check for the presence of a virus.
27 They also failed to check the virus scanner logs to see if a virus had been cleaned
28 from the system.

1 Each one of these shortcomings is a **reasonable doubt**. They are examples of the State
2 failing to meet its burden of proof. Unfortunately for Mr. Castaneda, the State was able to employ
3 an effective strategy for dealing with these holes: "blame the defendant." The process went
4 something like this:

5 **Defense:** The police claim that the "accessed" dates were changed because Castaneda
6 viewed the files. But a virus-scanner can cause access dates to change. And
7 a virus can download files on its own. The police can't rule out this
8 possibility because they didn't even consider it. They never even ran a virus
scan.

9 **State:** But there is **no evidence** the files were altered by a virus scanner. There was
10 **no evidence** a virus was on the computer.

11 **Defense:** The State's own evidence shows that one of the files was modified while in
12 the possession of Tammy Hines and her boyfriend. This should provide
you a reasonable doubt about whether the files belonged to Castaneda or his
former roommates.

13 **State:** But there is **no evidence** that Tammy or her boyfriend downloaded the files.

14 **Defense:** The files could have been downloaded unintentionally by a "site-mirroring"
15 program. Castaneda told the police this, but they never followed up to verify
16 his information.

17 **State:** But there is **no evidence** the files were downloaded by a site-mirroring
18 program.

19 The thing is, the defense is not charged with the burden of providing "evidence," the State
20 is. However, the State was permitted, over and over, to shift the burden of proof to the defendant
21 by decrying the lack of evidence to support the defendant's contentions. This is classic burden
22 shifting. And, it worked.

23 The jurors said they were "bothered" by these holes in the State's case. However, because
24 the State was allowed to return time and again to the mantra, "but there's no evidence," the jury
25 was conditioned to believe that their reasonable doubts were invalid because the defense had failed
26 to provide enough evidence to support them. There is no functional difference between saying,
27 "but there's no evidence to support the defense theory," as the State did here, and "the defendant
28 did not provide evidence to support his theory." There was certainly no difference to this jury. The

1 State's misconduct violated Castaneda's 5th, 6th and 14th Amendment rights to due process and a
2 fair trial, as well as his rights under Article 1, Section 8 of the Nevada constitution. A mistrial in
3 this case is a "manifest necessity." See Glover v. Eighth Judicial Dist. Court, 125 Nev. 691, 702,
4 220 P.3d 684, 692 (2009).²

5 The irony of the State's "there is no evidence" argument is that it is factually inaccurate:

- 6 • The State failed to rule out automated processes as the source of the pictures and as the
7 cause of changes to the "access" dates. That is "evidence" of Castaneda's innocence.
- 8 • The State failed to rule out Castaneda's roommates as a source for the files. In fact, the only
9 real proof of a human being accessing or "viewing" the suspect pictures occurred when the
10 files were in the exclusive possession of Castaneda's roommates. That is "evidence" of
11 Castaneda's innocence.
- 12 • The State's expert, Detective Ehlers, claimed that the carved files proved that Castaneda
13 viewed the files, something he *never* said in his reports or prior testimony. However, if the
14 defense had been permitted to call its rebuttal expert, that so-called "proof" would have
15 been blown out of the water and replaced with the one thing the jury obviously needed to
16 hear: **direct testimony from a defense expert**. See Defendant's "Offer of Proof," filed
17 October 7, 2013.

18 For the foregoing reasons, and in the interests of justice and fundamental fairness,
19 Castaneda respectfully requests that his motion for a mistrial be reconsidered and granted.

20 DATED this 9th day of October, 2013.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: /s/ P David Westbrook
24 P. DAVID WESTBROOK, #9278
25 Deputy Public Defender

26 ² The jury's comments also exposed a major, constitutionally significant flaw in one of our commonly-used
27 instructions: "Doubt to be reasonable must be actual, not mere possibility or speculation." The State's case left the jury
28 with a lot of important, unanswered questions. However, the State convinced the jury that a lack of proof should be
construed against the defense. Then, due to the language of this instruction, the jury felt that they "couldn't speculate"
about the holes in the State's case. They could only consider the evidence before them and, because the defense didn't
"prove" its theory, they had no choice but to vote guilty. The instruction also violated Castaneda's due process and
Sixth Amendment rights. Defense counsel did not see the issue when settling instructions, but clearly should have. To
the extent this prejudices Mr. Castaneda, defense counsel will readily admit fault in any future proceedings on this
matter.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 11th day of
October, 2013, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdany.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

OCT 14 2013

BY: 
DENISE TRUJILLO, DEPUTY

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8
9 Plaintiff,
10
11 v.
12 ANTHONY CASTANEDA,
13 Defendant.

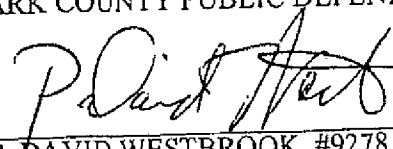
CASE NO. C-11-272657-1
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**MOTION TO RECONSIDER DEFENDANT'S MOTION FOR MISTRIAL
DUE TO PROSECUTORIAL MISCONDUCT**

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19 interview with jurors, and oral argument at the time set for hearing this Motion.
20

21
22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24 By: 
25 P. DAVID WESTBROOK, #9278
26 Deputy Public Defender
27
28

DECLARATION

P. DAVID WESTBROOK, attorney for Anthony Castaneda, makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. Immediately following trial in the instant case, Deputy District Attorney, Michelle Anthony and I spoke to four members of the jury regarding the trial process, their impressions of the case, and the basis for their verdict. The participating jurors were: Matthew Howard, Renee Losey, Reham Ahmed and Jury Foreman: James Eberle.

3. During our conversation, I noted that the jury was out for quite a long time, and asked what their main issues of contention were. Mr. Eberle said two things that are directly relevant to the prosecutorial misconduct, burden shifting, and misstatements of evidence that formed the basis for my mistrial motion.

4. Mr. Eberle said that the jury was troubled by the lack of police investigation in the case. They felt the police should have checked for viruses, tried to determine where the files came from, and examined the computers of Tammy Hines and her boyfriend, the State witnesses who claimed to have "found" the thumbdrive that started the entire investigation. In the end, however, Mr. Eberle said, "we looked back at the instructions on reasonable doubt, and it said that we could not 'speculate' about how the files got there, and there was **no evidence** that it was a virus or something like that. We could only consider the evidence that was presented."

5. Mr. Eberle also said that, in the recorded interview with the detective, Mr. Castaneda was the first to say anything about "child pornography." The jury felt this was proof of knowledge. I then told Mr. Eberle and the other assembled jurors that the recording was not the first contact police had with Castaneda. When they arrived at his house with the search warrant, the police *informed* him they would be searching his computers for child pornography. Mr. Eberle was crestfallen. He said that if the jury had known that the police told Castaneda they were searching for child pornography, it would have caused them to deliberate for a lot longer, and it

1 may have resulted in a verdict of **not guilty**. According to Eberle, the jury had really placed a lot
2 of emphasis on that erroneous factual conclusion. They considered it a "smoking gun."

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my information and belief. (NRS 53.045).

5 EXECUTED this 9th day of October, 2013.

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7 P. DAVID WESTBROOK, #9278
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POINTS AND AUTHORITIES
STATEMENT OF FACTS/PROCEDURAL HISTORY

During the State's closing argument, the defense made approximately 25 objections. Most of these objections fell into two categories: 1) that the prosecution was constantly **misstating the evidence**, and 2) that the prosecution was **shifting the burden of proof**, mainly by repeatedly responding to defense theories with the phrase, "but there was **no evidence** of [insert theory]."

Most of the defense objections were overruled,¹ and the defense motion for mistrial due to prosecutorial misconduct was denied. The defense brings this Motion to Reconsider the mistrial ruling because the jury debriefing provided overwhelming evidence that the State's misconduct **changed the verdict in this case.**

LEGAL ARGUMENT

Prosecutors may not undermine the defense by making inappropriate and unfair characterizations. Riley v. State, 107 Nev. 205, 212, 808 P.2d 551, 556 (1991). In this case, the prosecution's multiple misstatements of evidence confused the jury and improperly disparaged the defense theories of the case. A prosecutor may not make statements unsupported by the evidence adduced at trial. Guy v. State, 108 Nev. 770, 780, 839 P.2d 578, 585 (1992); Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987). The Nevada Supreme Court rejects this "scorched earth" approach to advocacy:

The use of these kinds of remarks, these kinds of "foul blows" and this kind of behavior on the part of a prosecuting office is in all respects a "no-win" approach to trial advocacy. If the state has a strong case, it is not necessary, and if it was a close one, such misconduct is gross injustice to the defendant.

Yates v. State, 103 Nev. 200, 205 (1987)(citing State v. Cyty, 50 Nev. 256, 259, 256 P. 793, 794 (1927)).

¹ The one notable exception coming when the State accused the defense of arguing that the Child Pornography files may have been downloaded by iTunes. The Court overruled defendant's first objection to the State's comments, but sustained the second and corrected the prosecutor's mischaracterization.

1 We do not have to guess whether this jury was confused by these misstatements of the
2 evidence because **they told us**. For example, the defense objected numerous times to the State's
3 use of Castaneda's recorded police interview. Among other things, the defense noted that the State
4 was using comments out of context and misrepresenting the clear meaning and intent of
5 Castaneda's words. It should be no surprise, based on the State's misstatements of evidence, that
6 the jury was under the impression that Castaneda admitted knowledge of the existence of child
7 pornography. The State confused the issue in its closing. When confronted with the knowledge
8 that the police informed Castaneda they were searching his computers for child pornography upon
9 their arrival, the jurors were crestfallen. They realized that their decision was based in part on a
10 complete misunderstanding. The defense contends that the State **created** this misunderstanding
11 with its improper arguments and inaccurate characterizations of the evidence.

12 The State's burden shifting also directly impacted the jury's verdict. "It is error even to
13 *intimate* to the jury that any burden of persuasion rests upon the defendant on the trial of the
14 general issue (guilt or innocence)." Phillips v. State, 86 Nev. 720, 722, 475 P.2d 671, 672
15 (1970)(citation omitted)(emphasis added). During the closing arguments in this case, the State did
16 far more than merely "intimate."

17 Throughout the presentation of evidence, the defense pointed out shortcomings in the
18 police investigation. For example:

- 19 • The police couldn't say when, who, or from where the files were originally
20 downloaded or if, in fact, they were "downloaded" at all.
- 21 • The police didn't search the computers of Tammy Hines or her boyfriend, even
22 though the "modified" date on one of the key files had been **changed** while the
23 drive was in their **exclusive possession**.
- 24 • Although the police "experts" verified that it would have been possible for the
25 prohibited files to have been downloaded by a virus or other automated process, the
26 police never ran a virus-scanning program to check for the presence of a virus.
27 They also failed to check the virus scanner logs to see if a virus had been cleaned
28 from the system.

1 Each one of these shortcomings is a **reasonable doubt**. They are examples of the State
2 failing to meet its burden of proof. Unfortunately for Mr. Castaneda, the State was able to employ
3 an effective strategy for dealing with these holes: "blame the defendant." The process went
4 something like this:

5 **Defense:** The police claim that the "accessed" dates were changed because Castaneda
6 viewed the files. But a virus-scanner can cause access dates to change. And
7 a virus can download files on its own. The police can't rule out this
8 possibility because they didn't even consider it. They never even ran a virus
scan.

9 **State:** But there is **no evidence** the files were altered by a virus scanner. There was
10 **no evidence** a virus was on the computer.

11 **Defense:** The State's own evidence shows that one of the files was modified while in
12 the possession of Tammy Hines and her boyfriend. This should provide
13 you a reasonable doubt about whether the files belonged to Castaneda or his
former roommates.

14 **State:** But there is **no evidence** that Tammy or her boyfriend downloaded the files.

15 **Defense:** The files could have been downloaded unintentionally by a "site-mirroring"
16 program. Castaneda told the police this, but they never followed up to verify
his information.

17 **State:** But there is **no evidence** the files were downloaded by a site-mirroring
18 program.

19 The thing is, the defense is not charged with the burden of providing "evidence," the State
20 is. However, the State was permitted, over and over, to shift the burden of proof to the defendant
21 by decrying the lack of evidence to support the defendant's contentions. This is classic burden
22 shifting. And, it worked.

23 The jurors said they were "bothered" by these holes in the State's case. However, because
24 the State was allowed to return time and again to the mantra, "but there's no evidence," the jury
25 was conditioned to believe that their reasonable doubts were invalid because the defense had failed
26 to provide enough evidence to support them. There is no functional difference between saying,
27 "but there's no evidence to support the defense theory," as the State did here, and "the defendant
28 did not provide evidence to support his theory." There was certainly no difference to this jury. The

1 State's misconduct violated Castaneda's 5th, 6th and 14th Amendment rights to due process and a
2 fair trial, as well as his rights under Article 1, Section 8 of the Nevada constitution. A mistrial in
3 this case is a "manifest necessity." See Glover v. Eighth Judicial Dist. Court, 125 Nev. 691, 702,
4 220 P.3d 684, 692 (2009).²

5 The irony of the State's "there is no evidence" argument is that it is factually inaccurate:

- 6 • The State failed to rule out automated processes as the source of the pictures and as the
7 cause of changes to the "access" dates. That is "evidence" of Castaneda's innocence.
- 8 • The State failed to rule out Castaneda's roommates as a source for the files. In fact, the only
9 real proof of a human being accessing or "viewing" the suspect pictures occurred when the
10 files were in the exclusive possession of Castaneda's roommates. That is "evidence" of
11 Castaneda's innocence.
- 12 • The State's expert, Detective Ehlers, claimed that the carved files proved that Castaneda
13 viewed the files, something he *never* said in his reports or prior testimony. However, if the
14 defense had been permitted to call its rebuttal expert, that so-called "proof" would have
15 been blown out of the water and replaced with the one thing the jury obviously needed to
16 hear: **direct testimony from a defense expert.** See Defendant's "Offer of Proof," filed
17 October 7, 2013.

18 For the foregoing reasons, and in the interests of justice and fundamental fairness,
19 Castaneda respectfully requests that his motion for a mistrial be reconsidered and granted.

20 DATED this 9th day of October, 2013.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: 

24 P. DAVID WESTBROOK, #9278
25 Deputy Public Defender

26 ² The jury's comments also exposed a major, constitutionally significant flaw in one of our commonly-used
27 instructions: "Doubt to be reasonable must be actual, not mere possibility or speculation." The State's case left the jury
28 with a lot of important, unanswered questions. However, the State convinced the jury that a lack of proof should be
construed against the defense. Then, due to the language of this instruction, the jury felt that they "couldn't speculate"
about the holes in the State's case. They could only consider the evidence before them and, because the defense didn't
"prove" its theory, they had no choice but to vote guilty. The instruction also violated Castaneda's due process and
Sixth Amendment rights. Defense counsel did not see the issue when settling instructions, but clearly should have. To
the extent this prejudices Mr. Castaneda, defense counsel will readily admit fault in any future proceedings on this
matter.

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
above and foregoing Motion on for hearing before the Court on the 14th day of October, 2013, at
9:00 a.m.

DATED this 9th day of October, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 

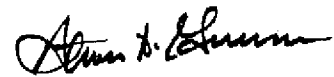
P. DAVID WESTBROOK, #9278
Deputy Public Defender

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this _____ day
of October, 2013, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdancv.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office


CLERK OF THE COURT

1 **OPPS**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MICHELLE ANTHONY**
6 **Deputy District Attorney**
7 **Nevada Bar #009919**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ANTHONY CASTANEDA,
13 #2799593

14 Defendant.

CASE NO: C-11-272657-1

DEPT NO: V

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO VACATE**
16 **COUNTS TWO THROUGH FIFTEEN**

17 **DATE OF HEARING: October 28, 2013**
18 **TIME OF HEARING: 9:00 A.M.**

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through MICHELLE ANTHONY, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion To Vacate
22 Counts Two Through Fifteen.

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

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FACTS

On July 16, 2013, a jury found Defendant. Anthony Castaneda, guilty of fifteen counts of Possession of Visual Presentation Depicting Sexual Conduct of a Child. See Exhibit I, Amended Information. Of the fifteen images of child pornography some were found on the Defendant's USB stick, some images were found on the Defendant's Shuttle computer and some were found on Defendant's HP laptop. No device had all fifteen child pornography images. The file creation date is the date that the child pornography was placed onto the device. The fifteen images of child pornography do not have the exact same creation dates. These dates include 11/25/08, 12/10/08, 8/09/07, 8/11/07, and 8/13/07. The State's experts testified a person would have to physically move child pornography images onto the Defendant's USB stick and that downloads would not automatically be placed on the USB stick. Possession of each image is a separate crime and as such Defendant was found guilty of all fifteen counts.

POINTS AND AUTHORITIES

I. THE JURY'S DECISION TO FIND THE DEFENDANT GUILTY OF FIFTEEN COUNTS OF POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD SHOULD NOT BE VACATED.

A. The facts of the instant case support convictions of all fifteen counts.

Convictions for each of the fifteen counts of possession of child pornography in the instant case should remain. The instant case further supports convictions for each and every child pornography image that was charged and the jury returned a guilty verdict. In the instant case, there are fifteen different images that do not have the same victim in every image. These images were not taken on the same date. Additionally, there is more than one sexual act that was depicted in the images. The Second Amended Information attached as Exhibit I lists the description and file name for each image.

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1 There were greater than eighty images of child pornography seized from the
2 Defendant's shuttle computer, HP laptop and USB stick. It should be noted that the
3 sampling of images taken from these three items were charged in this case which depict
4 multitudes of different children in a multitude of different lewd poses. In fact, every one of
5 the charged images represents a separate child or group of children.

6 One of the first things the Court needs to look at when dealing with a case in which a
7 defendant is charged with multiple violations of the same statute is to look at the statute in
8 question to decide what act constitutes the crime. Where the statute in question makes the
9 individual act of possession of contraband to be the crime, separate charges are proper and
10 permissible.

11 Jackson v. State, 291 P.3d 1274 (2012), stated "if Congress or a state legislature has
12 created mutually exclusive alternative offense, thereby prohibiting multiple punishment for
13 what are separate offenses under Blockburger, that prohibition controls." In Blockburger v.
14 United States, 284 U.S. 299 (1932), the United States Supreme Court clearly stated, "The
15 test is whether the individual acts are prohibited or the course of action which they
16 constitute." *Id.*

17 Moreover, as the Blockburger court went on to hold, if the individual acts are the
18 target of the law, then separate indictments and prosecutions are permissible, even if the acts
19 together constitute a common course of action. *Id.* See also United States v. Gardner, 65
20 F.3d 82 (8th Cir. 1995); Thomas v. Kerby, 44 F.3d 884 (10th Cir. 1995). Obviously, the
21 United States Supreme Court has enunciated a rule of law that states that where a statute
22 makes a certain act a crime, each and every time a person commits that act then that person
23 has committed a separate crime. As such, charging a person with each crime that that person
24 has committed based upon each of the individual acts that that person has committed is
25 perfectly proper.

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1 This same rule of law was applied in the cases of United States v. Gallardo, 915 F.2d
2 149 (5th Cir. 1990) and United States v. Cipollone, 951 F.2d 1057 (9th Cir. 1991).
3 Interestingly enough, in both of those cases the defendant's convictions on multiple charges
4 involving child pornography were upheld. *Id.*

5 In Gallardo, *supra*, the defendant was convicted on four separate charges involving
6 mailing photographs of minors engaged in sexually explicit conduct. Three of the charges
7 arose out of three envelopes that the defendant mailed on one day at the same time. *Id.* The
8 defendant had asserted that because he mailed all three envelopes at the same time the acts
9 amounted simply to a single transaction and thus a single offense within the language of the
10 statute in question, that being 18 U.S.C. 2252 (a)(1). 18 U.S.C. 2252 (a)(1) makes it a crime
11 to knowingly transport or ship in interstate commerce any child pornography. *Id.*

12 In deciding that the defendant's separate convictions for the three envelopes that he
13 mailed on one day, at the same time, were proper, the Court held that the statute in question
14 made it a crime to engage in the act of transporting child pornography and therefore each
15 separate use of the mail to transport the child pornography should constitute a separate
16 crime. *Id.* Specifically, the Court held that the act of either transporting or shipping was the
17 central focus of the statute and the defendant engaged in three separate acts of transporting
18 and therefore the three separate charges and convictions were proper. *Id.*

19 Likewise, the Ninth Circuit, in Cipollone, *supra*, also upheld multiple convictions of a
20 defendant involving child pornography charges. In Cipollone, the defendant had pled guilty
21 to two counts of knowingly distributing and receiving child pornography in violation of 18
22 U.S.C. 2252 (a)(2). *Id.* Thereafter, the defendant had asserted that the two charges should
23 be grouped together as one for sentencing because they resulted from one continuous course
24 of conduct. *Id.* The defendant's motion was denied in the lower courts and he was
25 sentenced on both counts and he ultimately appealed his sentences to the Ninth Circuit. *Id.*

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1 In upholding the defendant's sentences on both counts, the Ninth Circuit specifically
2 referred to and relied on Gallardo, *supra* and its language which states that it was the act that
3 is the central focus of the statute which is what needs to be looked at in deciding if the
4 multiple charges were appropriate. Specifically, the Cipollone Court stated that although the
5 defendant's charges resulted from the same type of conduct, the charges involved separate
6 photographs or video tapes of different minors and were therefore not to be grouped
7 together. Id.

8 In sum, it should be abundantly clear to this Court that in dealing with a case in which
9 a defendant is charged with multiple violations of the same statute, this Court's primary
10 focus should be to look at the statute in question to see what act constitutes the crime.
11 Wilson v. State, 121 Nev. 345, 114 P.3d 285 (2005), has decided the very issue the Defense
12 is trying to raise in the instant case. In Wilson, a minor was posed in sexual positions and
13 the defendant took four photographs of the minor. The Defense argued that the photographs
14 were all taken of the same victim, on the same day, during one sexual performance. During
15 the analysis of NRS 200.700 the court focused on the term "performance." As a result, the
16 Defense argued that his client could not be convicted of all four counts of production of child
17 pornography because it was one performance. The Wilson court agreed that one
18 performance can only result in one conviction. Defense is trying use the analysis for NRS
19 200.700 to the statute in question in the instant case which is NRS 200.730. However, the
20 court in Wilson affirmed his convictions on all four counts for possession of child
21 pornography for each photograph that was taken during the production of child pornography.
22 Thus, a conviction for each photograph was upheld. Moreover, if the statute makes it a
23 crime to commit an individual act as opposed to a course of action or performance, then
24 separate charges for each individual act committed by a defendant is permissible.

25 NRS 200.730 makes it a crime to commit the individual act of possessing an item of
26 contraband, that being child pornography, and therefore separate charges for each individual
27 act of possession of child pornography are appropriate. Since the law clearly states that this
28 Court's primary focus should be to look at the statute in question to see what act constitutes

1 the crime, this Court should now turn to NRS 200.730 and examine that statute. A very
2 simple review of that statute will reveal that it makes the individual act of possession of an
3 item of contraband, that being child pornography, a crime and therefore each violation, or
4 each individual act of possession, is a separate and distinct crime.

5 NRS 200.730 very clearly states,

6 A person who knowingly and wilfully has in his possession
7 for any purpose any film, photograph or other visual
8 presentation depicting a person under the age of sixteen years
9 as a subject of a sexual portrayal or engaging in or simulating
or assisting others to engage in or simulate, sexual conduct . . .
is guilty of a category B felony . . .

10 The statute makes it a crime to possess any film, photograph or other visual
11 presentation depicting child pornography. Equally clear, is the fact that that statute makes it
12 a crime for each individual act of possessing such a film or a photograph or other type of
13 visual presentation, like a video tape. The statute is very clear in stating that the singular act
14 of possessing a singular film, photograph or other item of child pornography is a crime.
15 There is no vagueness in this statute. It does not allege that the crime is committed by a
16 course of conduct or by possessing a certain number of items; rather the statute very clearly
17 proscribes any possession of any singular film, photograph or other type of visual
18 presentation of child pornography.

19 Because NRS 200.730 very clearly proscribes any individual act of possessing an
20 individual item of child pornography, each act of possession is therefore a separate crime
21 which can be charged separately. As the United States Supreme Court stated in
22 Blockburger, supra, if the individual acts are the target of the law, then separate charges are
23 permissible, even if the acts together constitute a common course of action. As such, under
24 NRS 200.730, if a person possesses a number of items of child pornography which may
25 represent a common course of action to possess child pornography, he may be charged with
26 each individual act of possession of child pornography since the individual act is the target
27 of the law.

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1 Defendant cites to the case of Casteel v. State, 122 Nev. 356, 131 P.3d 1 (2006), in
2 support of his erroneous assertion that the State can only charge Defendant with one count of
3 possession of a visual presentation depicting sexual conduct of a person under 16 years of
4 age. Unlike the facts of this case, Casteel dealt with the production of child pornography in
5 violation of NRS 200.710. Initially, Casteel was charged with 12 counts of production of
6 child pornography and convicted of the same. In concluding that the State's exhibits
7 illustrated only four counts, the Nevada Supreme Court reversed the other eight counts,
8 stating:

9 As noted above, the jury convicted Casteel of 12 counts of
10 production of child pornography in violation of NRS 200.710,
11 1 count for each photograph introduced into evidence. On
12 appeal, Casteel argues that not all 12 of his convictions for
13 production of child pornography can stand because the State
14 failed to prove that he took the pictures during separate
15 sexual performances. We agree. In Wilson v. State, a panel
16 of this court held that NRS 200.710 cannot be used "to punish
a defendant for multiple counts of production dictated by the
number of images taken of one child, on one day, all at the
same time." 121 Nev. 345, ---, 114 P.3d 285, 294 (2005),
cert denied, --- U.S. ---, 126 S.Ct. 751, 163 L.Ed.2d 585
(2005). Upon review of the State's exhibits, we conclude that
the State's exhibits establish 4 counts of production of child
pornography. [PN16]

17 Id.

18 Neither Casteel nor Wilson, *supra*, are controlling in this case. While our Nevada
19 Supreme Court has ruled that the State must prove that each image taken during a
20 Defendant's production of child pornography was the result of a separate performance, and
21 not the result of images of the same child produced on one day, all at the same time,

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25 ¹ The jury found Casteel guilty of 12 counts of using a minor in the production of pornography. We conclude
26 that count 15 was established by Ex. 18, count 16 was established by Ex. 26, and count 20 was established by
27 Ex. 19. The remaining exhibits (numbered 15, 16, 17, 20, 21, 22, 23, 24, and 25) together establish only one
count. Thus, on remand, the district court shall vacate all but one of the remaining counts numbered 13, 14,
17, 18, 19, 21, 22, 23, and 24.

1 The Defendant was found to be in possession of approximately eighty images of nude
2 children under the age 16. As previously stated above, police located these images on
3 Defendant's Shuttle computer, HP laptop computer, and USB stick. From these items
4 detectives took a sampling of fifteen pornographic images.

5 As previously outlined by the State, it should be clear that this Court's primary focus
6 is to look at the statute in question to see whether the statute prohibits an individual act or a
7 course of action. See Blockburger, *supra*. Also as previously outlined, it should be
8 abundantly clear to this Court that the statute in question, that being NRS 200.730, makes the
9 individual act of possession of child pornography to be a crime, as opposed to making any
10 type of course of action a crime. As such, the instant Defendant can very clearly be charged
11 or each individual act of possession of child pornography that he has committed.

12 The instant situation is directly analogous to the aforementioned examples of
13 possessing controlled substances or being an ex-felon in possession of a firearm. Clearly,
14 NRS 453.336 makes it a crime to commit the individual act of possessing a controlled
15 substance. As such, each and every individual act of possession of a controlled substance is
16 chargeable as a separate, individual crime. Therefore, if a defendant commits the individual
17 act of possessing cocaine and the individual act of possessing marijuana and the individual
18 act of possessing heroin and the individual act of possessing methamphetamine, that
19 defendant can properly be charged with four separate violations of the same statute, that
20 being NRS 453.336. Likewise, NRS 202.360 makes it a crime to be an ex-felon and commit
21 the individual act of possessing "any firearm." As such, if an ex-felon possesses a rifle, a
22 shotgun and a pistol, or even if he possess 3 pistols that are exactly the same, that defendant
23 can properly be charged with three separate violations of the same statute, that being NRS
24 202.360.

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1 Clearly, in both of the aforementioned statutes, the statutory language prohibits the
2 individual act of possession; that is what constitutes the crime. Because of that, each
3 individual act of possession is chargeable as a separate and distinct crime. Likewise, the
4 statute in the instant case, NRS 200.730 prohibits the individual act of possession of child
5 pornography and as such, each separate act of possession is chargeable as a separate and
6 distinct crime.

7 Quite simply, the State must prove, for the Defendant to be found guilty of the first
8 charge of possession of child pornography, that the Defendant possessed an individual item
9 of child pornography, i.e. a photograph of a naked child under the age of 16 years depicted in
10 a sexual portrayal. To prove the Defendant guilty of the second and subsequent charges of
11 possession of child pornography, the State does not need to prove the Defendant guilty of the
12 first charge but they need to prove the Defendant guilty of each second and subsequent
13 charge, by proving that the Defendant possessed each second and subsequent individual item
14 of child pornography.

15 So, to prove charge number one, possession of child pornography, the State is going
16 to need to prove that the Defendant possessed an individual item of child pornography. That
17 is an additional fact that we do not need to prove in order to prove each second and
18 subsequent charge of possession of child pornography. Likewise, to prove each second and
19 subsequent charge of possession of child pornography the State will need to prove the
20 Defendant possessed a second or subsequent item of child pornography, which is an
21 additional fact that the State does not need to prove in the first charge. In sum, since the
22 State charged 15 separate charges of possession of a visual presentation depicting sexual
23 conduct of a child under 16 years of age, all based upon 15 separate and distinct individual
24 images; in order to prove each charge, the State proved that a particular visual presentation
25 depicting sexual conduct of a child under 16 exists. Proving the existence of each individual
26 piece for each count, each piece involving a different victim or victim's engaged in a
27 different lewd exhibition, is an additional fact that does not have to be proven in any of the
28 other counts.

1 Again, the situation is directly analogous to the previous example of an ex-felon
2 being in possession of a firearm. Pursuant to NRS 202.360, if an ex-felon possess five
3 separate Glock 9mm handguns, he can be convicted of five separate counts of an ex-felon in
4 possession of a firearm. Each one of those separate and distinct handguns would be the basis
5 of a charge and the State would have to prove the existence of each one of those handguns in
6 each one of the charges. However, to prove charge #1, the State would not have to prove the
7 existence of gun #2 and so on. As such, proving the existence of gun #1 in charge #1 would
8 be an additional fact that would not need to be proven in each of the other charges. Like the
9 instant statute, NRS 202.360 makes it a crime to individually possess "any firearm" therefore
10 the possession of each and any firearm is a crime, even if each firearm is exactly the same.
11 This is because each and every firearm is a separate and distinct item of contraband
12 according to the statute.

13 Likewise, NRS 200.730 makes it a crime to individually possess "any film,
14 photograph or other visual presentation". As such, each and every possession of any film,
15 photograph or otherwise is a separate and distinct crime whether the photographs are all of
16 the same person or, as in the instant case, photographs or videos of a multitude of different
17 young children in a multitude of different lewd poses.

18 All in all, the State would submit that it is abundantly clear that the charges that the
19 Defendant faces in relation to NRS 200.730 all deal with separate and distinct individual acts
20 of possession of separate and distinct individual items of child pornography and are therefore
21 proper. Additionally, it should be abundantly clear to this Court that each act of possession
22 requires proof of an additional fact that the others do not, and therefore all of the charges are
23 proper.

24 B. Convictions on all fifteen counts do not violate Double Jeopardy, Redundancy and
25 Fundamental Fairness under Nevada or Federal law.

26 Each image of child pornography is a separate and distinct action and can be charged
27 separately. See Wilson v. State, 121 Nev. 345, 114 P.3d 285 (2005). In the instant case, the
28 parties stipulated that the images were children. Due to this stipulation and agreement of the

parties, the State did not bring in witnesses to identify the victims in each of the images. The child victims in each of these photographs are victims separate and apart from each other. These children are known victims of child pornography through the National Center for Missing and Exploited Children. These children are not related and the only connection these child victims have with one another is that their images are being distributed and possessed unlawfully.

1. Double Jeopardy was not violated.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This Clause applies to the states through the Due Process Clause of the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 794, 89 S. Ct. 2056, 2062 (1969). It is well established that the Double Jeopardy Clause protects against three distinct abuses: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 2076 (1969). Only the third of these protections is at issue in this case.

The protection against "multiple punishments" prohibits the State from "punishing twice, or attempting a second time to punish criminally, for the same offense." Helvering v. Mitchell, 303 U.S. 391, 399, 58 S. Ct. 630, 633 (1938). The multiple-punishment prong of the Double Jeopardy Clause is normally triggered only when a sovereign attempts to criminally punish a defendant twice for the same offense. Helvering, 303 U.S. at 399, 58 S. Ct. at 633. Defendant has raised issue with the third protection in the instant case. The issue becomes whether or not Defendant can be found guilty of fifteen counts of child pornography for fifteen different images. Defense wants this Court to believe that this is one act. If the Defendant were in possession of fifteen different stolen cars belonging to different people he could be charged and convicted of fifteen counts of possession of stolen vehicle. The instant case is no different. Each image had its own file name. These images were found in different locations which included the Defendant's USB stick, Defendant's

1 main computer the Shuttle and the Defendant's HP laptop computer. This is not the same
2 act as Defendant wants this Court to believe. Most importantly, Wilson states that Wilson's
3 four convictions for child pornography do not violate the Double Jeopardy Clause. Wilson
4 at 370.

5 2. NRS 200.730 is not fundamentally unfair and is not unconstitutional.

6 Defendant contends that NRS 200.730 is unconstitutionally overbroad and should,
7 therefore, be held invalid. Statutes are presumed to be valid, and the burden is on the
8 challenger to make a clear showing of their unconstitutionality. Childs v. State, 107 Nev.
9 584, 587, 816 P.2d 1079. A law is vague if it fails to give fair notice of the conduct
10 proscribed or fails to provide explicit standards for those who enforce it, thereby allowing
11 arbitrary and discriminatory enforcement. Childs, at 587. When interpreting a statute,
12 legislative intent "is the controlling factor." Robert E. v. Justice Court, 99 Nev. 443, 445,
13 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute's
14 plain meaning; when a statute "is clear on its face, a court can not go beyond the statute in
15 determining legislative intent." *Id.*; see also Catania, 120 Nev. at 1033, 102 P.3d at 590
16 ("We must attribute the plain meaning to a statute that is not ambiguous."). But when "the
17 statutory language lends itself to two or more reasonable interpretations," the statute is
18 ambiguous, and we may then look beyond the statute in determining legislative intent.
19 Catania, 120 Nev. at 1033, 102 P.3d at 590. To interpret an ambiguous statute, we look to
20 the legislative history and construe the statute in a manner that is consistent with reason and
21 public policy. Crest Basin Water Network v. State Eng'r, 126 Nev. —, —, 234 P.3d
22 912, 918 (2010); see also Moore v. State, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006)
23 (looking to legislative history to determine legislative intent behind ambiguous statute);
24 Robert E., 99 Nev. at 445-48, 664 P.2d at 959-61 (looking to legislative history, reason, and
25 public policy to determine legislative intent behind ambiguous statute).

26 Senate Bill No. 277 which was sponsored by Senator Wiener dated March 18, 2011,
27 shows Nevada's intentions regarding the protection of the State's children. "The Legislature
28 has taken a strong stance with regard to protecting children from the harmful effects of child

1 pornography and in doing so has enacted several statutes which impose severe penalties for
2 persons who violate Nevada's child pornography laws." *Id.* The legislature has consistently
3 enhanced the penalties for possession of child pornography.

4 Furthermore, the Nevada Attorney General's Office believes section 200.730 of the
5 Nevada Revised Statutes, prohibiting the possession of visual depictions of the sexual
6 conduct of minors, is constitutional. 1987 Nev. Op. Atty. Gen. 85 (Nev.A.G.), 1987 Nev.
7 Op. Atty. Gen. No. 11, 1987 WL 275513.

8 Based upon the State's arguments above, NRS 200.730 is not unconstitutional and
9 Defendant's argument must fail.

10 CONCLUSION

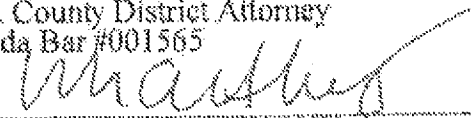
11 For the foregoing reasons, the State respectfully requests that Defendant's fifteen
12 convictions remain.

13 DATED this 16th day of October, 2013.

14 Respectfully submitted,

15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

17 BY


18 MICHELLE ANTHONY
19 Deputy District Attorney
Nevada Bar #009919

20 CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of the above and foregoing was made this 16th day of
22 October, 2013, by facsimile transmission to:

23 ERIKA BALLOU,
24 DEPUTY PUBLIC DEFENDER
FAX NO. (702) 455-5112

25 BY

/s/ E. Goddard

26 E. Goddard
27 Secretary for the District Attorney's Office

28 MA/erg/L-1

EXHIBIT 1

1 AINFO
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE ANTHONY
6 Deputy District Attorney
7 Nevada Bar #009919
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUL 8 - 2013

BY Denise Trujillo
DENISE TRUJILLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY CASTANEDA,
#2799593

Defendant.

Case No: C-11-272657-1
Dept No: V

SECOND AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, 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 ANTHONY CASTANEDA, the Defendant above named, having committed the crime of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730) in the manner following, to-wit: That the said Defendant, on or between November 25, 2008 and April 7, 2010, 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,

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1 COUNT 1

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: 2 girls01.jpg, described as: Image
6 depicts two nude prepubescent female children. One child is lying on her stomach with her
7 buttocks in the air. There is a nude adult male who is penetrating the child's genitals with his
8 penis and his left thumb in between the child's buttocks. The other child is positioned to the
9 left of the first child and has her left arm draped around the first child. The second child's left
10 hand is on the first child's right buttock's cheek. The second child's head is positioned over
11 the buttocks' of the first child. The second child has her mouth open with what appears to be
12 ejaculate dripping out.

13 COUNT 2

14 did, then and there, feloniously, knowingly and willfully, have in his possession a
15 film, photograph, or other visual presentation depicting a person under the age of 16 years as
16 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
17 in or simulate sexual conduct, to-wit: Image File Name: girlondick06.bmp, described as:
18 Image depicts a prepubescent female child pictured from the neck up. There is an adult
19 male's penis next to the child's mouth. There is ejaculate coming from the penis and on the
20 child's mouth, chin and cheek.

21 COUNT 3

22 did, then and there, feloniously, knowingly and willfully, have in his possession a
23 film, photograph, or other visual presentation depicting a person under the age of 16 years as
24 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
25 in or simulate sexual conduct, to-wit: Image File Name: girlondick08.jpg, described as:
26 Image depicts a partial view of a nude adult male and a prepubescent female child from the
27 neck up. The adult male has his left hand on his penis and has the tip of his penis inserted
28 into the child's mouth. The child has her hands on either side of the penis.

1 COUNT 4

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: NEW-22.JPG, described as: Image
6 depicts an adult male penetrating the vagina of a prepubescent child. The image appears to
7 be shot from a close distance and neither shows the heads nor the majority of either person's
8 torso.

9 COUNT 5

10 did, then and there, feloniously, knowingly and willfully, have in his possession a
11 film, photograph, or other visual presentation depicting a person under the age of 16 years as
12 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
13 in or simulate sexual conduct, to-wit: Image File Name: 2girls.jpg, described as: Image
14 depicts two nude prepubescent children and a nude adult male, standing, visible from the
15 lower stomach down. The children are positioned on either side of the adult male. Both
16 children are performing fellatio on the adult male.

17 COUNT 6

18 did, then and there, feloniously, knowingly and willfully, have in his possession a
19 film, photograph, or other visual presentation depicting a person under the age of 16 years as
20 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
21 in or simulate sexual conduct, to-wit: Image File Name: euro-002.jpg, described as: This
22 image has 6 images depicting a prepubescent female child with blonde hair. The first image
23 depicts the child laying on a bed with pink pants pulled down to her knees and a black dog
24 collar around her neck. The second image depicts the child nude, holding her legs open
25 exposing her genitals. The third image depicts the child on the bed leaning against a nude
26 adult male who has his arm placed around the child. The fourth image depicts an adult male
27 straddling the child with his penis next to her mouth. The fifth image depicts the child on her
28 stomach with the adult male placing his penis between the cheeks of the child's buttocks.

1 The last image depicts the adult male penetrating the child's vagina with his penis. The child
2 is positioned on her back with her hands covering her eyes.

3 COUNT 7

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: new-05.jpg and/or new-01.jpg,
8 described as: This image has 7 images within. The first image depicts 3 clothed prepubescent
9 female children standing with their arms around each others shoulders. Two of the images
10 show a prepubescent female child (different child in each image) performing fellatio on an
11 adult male. One image depicts a nude prepubescent female child lying on her back with her
12 legs spread open. There is a second prepubescent female child with her mouth near the first
13 child's vagina. Another image depicts a nude prepubescent female child lying face down on
14 a bed with her buttocks raised up exposing her genitals. One image depicts a female child
15 lying on the bed with what appears to be ejaculate on her face. Another image depicts an
16 adult male inserting his penis into the vagina of a prepubescent child.

17 COUNT 8

18 did, then and there, feloniously, knowingly and willfully, have in his possession a
19 film, photograph, or other visual presentation depicting a person under the age of 16 years as
20 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
21 in or simulate sexual conduct, to-wit: Image File Name: new-35.jpg, described as: This
22 image depicts a nude prepubescent female child performing fellatio on an adult male. Also,
23 the child is inserting a pink phallic shaped device into her vagina.

24 COUNT 9

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: GIRL69.jpg, described as: This

1 image depicts a nude adult male lying on his back with a nude prepubescent female child
2 lying, face down, on his stomach in the opposite direction. The adult has his penis inside the
3 child's mouth and is performing cunnilingus on the child.

4 COUNT 10

5 did, then and there, feloniously, knowingly and willfully, have in his possession a
6 film, photograph, or other visual presentation depicting a person under the age of 16 years as
7 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
8 in or simulate sexual conduct, to-wit: Image File Name: new-43.jpg, described as: Image
9 depicts a prepubescent female child with long blonde hair seen from the neck up. The child's
10 hands are positioned on either side of an adult's penis. The adult has his penis inserted into
11 the mouth of the child.

12 COUNT 11

13 did, then and there, feloniously, knowingly and willfully, have in his possession a
14 film, photograph, or other visual presentation depicting a person under the age of 16 years as
15 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
16 in or simulate sexual conduct, to-wit: Image File Name: NEW-47.jpg, described as: Image
17 depicts prepubescent female child with her hands on an adult penis and the penis is next to
18 the prepubescent female's mouth.

19 COUNT 12

20 did, then and there, feloniously, knowingly and willfully, have in his possession a
21 film, photograph, or other visual presentation depicting a person under the age of 16 years as
22 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
23 in or simulate sexual conduct, to-wit: Image File Name: EURO-001.jpg and/or
24 EURO013.jpg described as: This image has 5 images depicting a prepubescent female child
25 with darker blonde hair. The first image depicts the child with an adult penis in her mouth
26 and an adult hand on the penis. The second image depicts the child nude with her hands
27 around an adult penis and the child's mouth is on the penis. The third image depicts the
28 child on all fours with her buttocks facing the camera. The child is nude with her buttocks

1 and genitalia exposed. The fourth image depicts the child lying on her back with an adult
2 male straddling the child and his penis is in the child's mouth. The fifth image depicts a
3 close up of an adult penis and the penis is penetrating the anal opening of the child.

4 COUNT 13

5 did, then and there, feloniously, knowingly and willfully, have in his possession a
6 film, photograph, or other visual presentation depicting a person under the age of 16 years as
7 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
8 in or simulate sexual conduct, to-wit: Image File Name: new-33.jpg and/or
9 girlondick32.bmp described as: Image depicts 2 prepubescent children with their faces and
10 mouths near or touching an adult male penis. The image is a picture of the children from the
11 neck up.

12 COUNT 14

13 did, then and there, feloniously, knowingly and willfully, have in his possession a
14 film, photograph, or other visual presentation depicting a person under the age of 16 years as
15 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
16 in or simulate sexual conduct, to-wit: Image File Name: carved image unnamed file.jpg
17 and/or new-38.jpg, described as: This image is of a prepubescent Asian female child
18 positioned in front of a Caucasian adult male with the adult male penis touching the child's
19 mouth with what appears to be ejaculate dripping from the penis. Also noted on the adult
20 male's abdominal area are the words CP REAL.

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1 COUNT 15

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: new-44.jpg, described as: This
6 image depicts the head and face of a prepubescent female with an adult male positioned in
7 front of her and his penis is inserted into the child's mouth.

8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY
Nevada Bar #001565

10
11 BY Michelle Anthony
12 MICHELLE ANTHONY
13 Deputy District Attorney
14 Nevada Bar #009919
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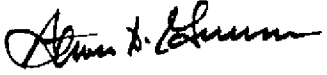
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CLERK OF THE COURT

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STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY CASTANEDA,
#2799593

Defendant.

CASE NO: C-11-272657-1

DEPT NO: V

**MOTION TO STRIKE OFFER OF PROOF REGARDING DEFENDANT'S
MOTION TO CALL A COMPUTER EXPERT TO REBUT DETECTIVE
ELHERS' SURPRISE TRIAL TESTIMONY AS DEFENDANT'S OFFER
OF PROOF IMPROPERLY SUPPLEMENTS THE RECORD**

DATE OF HEARING: OCTOBER 28, 2013
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Deputy District Attorney, and files this Notice of Motion and Motion to Strike Offer of Proof Regarding Defendant's Motion to Call a Computer Expert to Rebut Detective Elhers' Surprise Trial Testimony as Defendant's Offer of Proof Improperly Supplements the Record.

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.

///

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION TO STRIKE DEFENDANT'S OFFER OF PROOF**

3
4 Defendant's Offer of Proof seeks to supplement the record but fails to cite or provide
5 evidence of any authority to do so. The Nevada Supreme Court has stated that "[c]ontentions
6 unsupported by specific argument or authority should be summarily rejected....." See State
7 v. Haberstroh, 119 Nev. 173, 187, 69 P.3d 676, 685-86 (2003) (citing, Mazzan v. Warden,
8 116 Nev. 48, 75, 993 P.2d 25, 42 (2000)). After Defendant's Motion for Leave to call a
9 rebuttal witness was denied during trial, Defendant requested permission to supplement the
10 record with a written summary of the proffered expert testimony. Defendant states that the
11 district court granted his request to supplement the record with a written summary but
12 provides no court transcripts or evidence to reflect the district court's ruling. In addition,
13 Defendant fails to cite any statute or precedent that would allow him to supplement the
14 record after a jury verdict has been issued.

15 It is clear that Defendant's Offer of Proof seeks to supplement the record with
16 evidence. The Nevada Supreme Court has repeatedly held that, "... in determining cases,
17 a[n] [appellate] court must confine its consideration to the facts reflected in the record and
18 the necessary and reasonable inferences drawn therefrom." Phillips v. State, 105 Nev. 631,
19 782 P.2d 381 (1989); A Minor v. State, 85 Nev. 323, 454 P.2d 895 (1969); Lee v. Sheriff, 85
20 Nev. 379, 455 P.2d 623 (1969); Anderson v. State, 81 Nev. 477, 406 P.2d 532 (1965).
21 Because Defendant's Offer of Proof improperly tries to supplement the record, the State
22 respectfully requests that Defendant's Offer of Proof be stricken.

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DATED this 18th day of October, 2013.

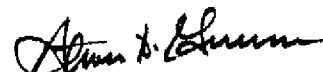
BY /s/ Alexander Chen

CERTIFICATE OF ELECTRONIC FILING

ERIK A BALLOU,
DEPUTY PUBLIC DEFENDER
P. DAVID WESTBROOK,
DEPUTY PUBLIC DEFENDER
FAX NO. (702) 455-5112

E. Goddard
Secretary for the District Attorney's Office

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CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ALEXANDER CHEN
6 Deputy District Attorney
7 Nevada Bar #010539
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 ANTHONY CASTANEDA
14 #2799593

15 Defendant.

CASE NO: C-11-272657-1

DEPT NO: V

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER**
17 **DEFENDANT'S MOTION FOR MISTRIAL DUE TO**
18 **PROSECUTORIAL MISCONDUCT**

19 DATE OF HEARING: October 28, 2013
20 TIME OF HEARING: 9:00 A.M.

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
22 through ALEXANDER CHEN, Deputy District Attorney, and hereby submits the attached
23 Points and Authorities in Opposition to Defendant's Motion to Reconsider Defendant's
24 Motion for Mistrial Due to Prosecutorial Misconduct.

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

28 ///

///

1 POINTS AND AUTHORITIES

2 FACTS

3 For the purposes of this motion, Anthony Castaneda (hereinafter "Defendant") went
4 to jury trial before this Court on fifteen charges of Possession of a Visual Presentation
5 Depicting Sexual Conduct of a Child. Trial commenced on July 8, 2013 and concluded on
6 July 13, 2013. The jury came back with a verdict of guilty on all counts.

7 LAW AND ARGUMENT

8 The Nevada Supreme Court has held that "[A] mistrial is the equivalent to no trial. It
9 is a nugatory proceeding." Carlson v. Locatelli, 109 Nev. 257, 260 (1993). According to
10 Webster's Dictionary, "nugatory" is defined as "of no force or effect."

11 Once a jury has returned a verdict, it is inappropriate for a district court to grant a
12 mistrial. Carlson v. Locatelli, 109 Nev. at 260.

13 In this case, the jury reached a verdict on July 16, 2013. The verdict was that the
14 Defendant was guilty of all counts. The jury has since been excused and there is no active
15 trial in which to grant a mistrial. Given that the jury has already returned a verdict, the time
16 has passed for this Court to grant a mistrial.

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1 CONCLUSION

2 Based upon the foregoing, the State respectfully requests that this Court denies the
3 Defendant's request for the Court to declare a mistrial after a verdict has already been
4 reached.

5 DATED this 18th day of October, 2013.

6 Respectfully submitted,
7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

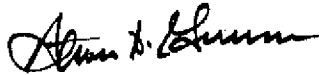
10 BY /s/ Alexander Chen
11 ALEXANDER CHEN
12 Deputy District Attorney
13 Nevada Bar #010539

14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of the above and foregoing was made this 18th day of
16 October, 2013, by electronic filing to:

17 ERIKA BALLOU,
18 DEPUTY PUBLIC DEFENDER
19 P. DAVID WESTBROOK,
20 DEPUTY PUBLIC DEFENDER
21 FAX NO. (702) 455-5112

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25
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CLERK OF THE COURT

1 **PHILIP J. KOHN, PUBLIC DEFENDER**

2 Nevada Bar #0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 -vs-)

10 ANTHONY CASTANEDA)

11 Defendant.)
12)
13)

Case No. C-11-272657-1

Dept No. V

Date: 10/28/13

Time: 9:00 AM

14 **MEMORANDUM CONCERNING PREVIOUSLY FILED OFFER OF PROOF AND**
15 **MOTION TO RECONSIDER DEFENDANT'S MOTION TO CALL AN EXPERT WITNESS**
16 **IN REBUTTAL**

17 **FACTS**

18 On October 14, 2013, the Court asked defense counsel to provide a basis for the filing of the
19 "offer of proof" concerning the previously denied motion to call a rebuttal expert. In response,
20 defense counsel said he informed the court during trial of his intent to file a written offer of proof
21 should Mr. Castaneda be convicted, and that the court granted permission. In addition, defense
22 counsel explained that offers of proof are a matter of court record and a motion requesting
23 permission to file is not required. Defense counsel also noted that the Supreme Court requires
24 specific offers of proof in many situations and will penalize parties on appeal for failing to file one.
25 Defense counsel was unable at that time to cite a specific rule. After reviewing the JAVS recordings
26 in this case, defense counsel offers the following:
27
28

1 As the Court will recall, defense counsel made a Motion to call a rebuttal expert during the
2 testimony of the State's witness, Detective Ehlers. Some detail was discussed at the bench, and the
3 jury was eventually sent out of the courtroom. Defense counsel then briefly questioned Detective
4 Ehler's on *voir dire*, then expanded on the motion, citing specific issues with the testimony.

5 Bench conferences are not recorded in Department V, so objections discussed at the bench
6 must be detailed on the record when the trial schedule allows.¹ In this case, details concerning
7 several defense objections, proposed jury instructions, and motions were placed on the record
8 outside the presence of the jury on 7/12/13. The record concerning the defense motion to call an
9 expert witness in rebuttal was made at 2:44:40.

10
11 Defense counsel began the record by referencing the earlier bench conference and stating the
12 intent to file a written offer of proof, which would include a statement by one or more defense
13 computer experts. The court responded by saying, "alright." (JAVS 7/12/13 at 2:45:11).

14
15 The court then directed counsel to make an additional oral record of the basis of the motion
16 to call a rebuttal expert. The Court was concerned that some of the earlier arguments were made at
17 the bench and had not yet been placed on the record.

18 Counsel repeated the details of the argument on the record, including specific concerns that
19 1) Detective Ehlers was testifying outside of his report; 2) Ehler's definitions of computer terms like
20 "access" and "modified" were incomplete and misleading; 3) that Ehler's testimony that the presence
21 of "fragmented files in unallocated space" was proof of an intentional act on Castaneda's part was
22 scientifically inaccurate, and that an unbiased expert witness would testify as such.

23
24 During the oral offer of proof, defense counsel said two more times that he intended to file a
25 written offer of proof to supplement the record if Mr. Castaneda was convicted. The reasons for
26 waiting to file the offer of proof until after the jury rendered a verdict were practical matters of time
27

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¹ Of course, perfecting the record in open court is good practice anyway, regardless of whether bench conferences are recorded.

1 and expense. Had Mr. Castaneda been acquitted, retaining an expert would have been unnecessary.

2 The State did not object to the filing of a written offer of proof, and there was no indication
3 on the JAVS record that such an offer would be disallowed.

4 **LEGAL ARGUMENT AND MOTION TO RECONSIDER**

5 Courts do not have the discretion to deny the filing of "offers of proof," or any supplemental
6 evidence offered by a party. NRS 398.165 reads as follows:

7 A record **must** be kept of all proceedings. The record **must** include:

- 8
- 9 1. All pleadings, motions and rulings;
 - 10 2. **All evidence received or considered;**
 - 11 3. **All matters officially noticed;**
 - 12 4. Questions, **offers of proof**, objections and rulings thereon;
 - 13 5. Findings of fact and exceptions thereto; and
 - 14 6. The decision rendered in the proceeding.

15 **NRS 398.165** (emphasis added).

16 Thus, the report of Mr. Castaneda's proposed rebuttal expert must be accepted into evidence
17 as a court exhibit. In addition, considering the profound constitutional underpinnings of this issue
18 and the fact that Mare's statements are completely consistent with defense counsel's oral record at
19 trial, it is well within the Court's discretion to use this evidence as a basis to reconsider the earlier
20 denial of Defendant's motion to call an expert witness in rebuttal. This evidence would have directly
21 refuted the State's contention that Castaneda possessed these files with knowledge and intent, which
22 was the primary issue in controversy in this case.

23 Castaneda requests, pursuant to **EDCR 2.24**, that the Court reconsider its decision to exclude
24 his rebuttal expert. The Court always has the power and responsibility to act to correct a manifest
25 injustice, even *sua sponte*, if a defendant's fundamental constitutional rights are in jeopardy. Here,
26 Castaneda's rights to due process, to confront the witnesses against him, and to offer a defense were
27 violated. See U.S. Const. amend V, VI, XIV; Nev. Const. art. 1, § 8, 15. This was already a close
28

1 case, even without the proffered expert witness. Given Mr. Mare's report, there can be no question
2 that his testimony, if credited by the jury, would have resulted in an acquittal.

3 Mr. Castaneda therefore requests, in the interests of justice and fundamental fairness, that
4 this Honorable Court reconsider the motion to call a rebuttal expert. Since a verdict has already been
5 rendered in this case, the court's decision to reverse the earlier ruling will result, by necessity, in a
6 new trial.
7

8 DATED this 21st day of October, 2013

9 **PHILIP J. KOHN, PUBLIC DEFENDER**

10 Nevada Bar #0556
11 309 South Third Street, Suite 226
12 Las Vegas, Nevada 89155

13 BY /s/DAVID WESTBROOK

14 DAVID WESTBROOK
15 Deputy Public Defender, #9278
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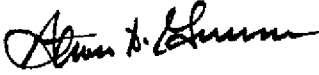
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 21st day of
October, 2013 by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdavn.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office


CLERK OF THE COURT

1 NOASC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11)
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Plaintiff,
v.
ANTHONY CASTANEDA,
Defendant.

CASE NO. C-11-272657-1

DEPT. NO. V

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

DAVID ROGER, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
DEPARTMENT NO. V OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Anthony Castaneda, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from the judgment against said Defendant heard on the 30th day of October, 2013, whereby he was found guilty of CT'S 1 THROUGH 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F) and sentenced to, in addition to the \$25.00 Administrative Assessment fee, \$760.00 Psycho-sexual Assessment fee, \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to: CT 1 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC); CT 2 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 1; CT 3 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 2; CT 4 - a

1 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
2 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 3; CT 5 - a
3 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
4 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 4; CT 6 - a
5 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
6 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 5; CT 7 - a
7 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
8 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 6; CT 8 - a
9 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
10 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 7; CT 9 - a
11 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) M
12 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 8; CT 10 - a
13 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
14 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 9; CT 11 - a
15 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
16 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 10; CT 12 - a
17 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
18 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 11; CT 13 - a
19 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
20 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 12; CT 14 - a
21 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
22 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 13; CT 15 -a
23 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)
24 MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 14 with 160
25 DAYS credit for time served. SENTENCE SUSPENDED; placed on probation for a FIXED FIVE
26 (5) YEARS under the following SPECIAL CONDITIONS: 1. Pursuant to NRS 176A.410, the
27 following terms are imposed: (a) Submit to a search and seizure of his person, residence or vehicle
28 or any property under his control, at any time of the day or night, without a warrant, by any parole

1 and probation officer or any peace officer, for the purpose of determining whether the defendant
2 has violated any condition of probation or suspension of sentence or committed any crime; (b)
3 Reside at a location only if: (1) The residence has been approved by the parole and probation
4 officer assigned to the defendant. (2) If the residence is a facility that houses more than three
5 persons who have been released from prison, the facility is a facility for transitional living for
6 released offenders that is license pursuant to Chapter 449 of NRS. (3) The defendant keeps the
7 parole and probation officer assigned to the defendant informed of the defendant's current address.
8 (c) Accept a position of employment or a position as a volunteer only if it has been approved by
9 the parole and probation officer assigned to the defendant and keep the parole and probation
10 officer informed of the location of his position of employment or position as a volunteer. (d) Abide
11 by any curfew imposed by the parole and probation officer assigned to the defendant. (e)
12 Participate in and complete a program of professional counseling approved by the Division of
13 Parole and Probation. (f) Submit to periodic tests, as requested by the parole and probation officer
14 assigned to the defendant, to determine whether the defendant is using a controlled substance. (g)
15 Submit to periodic polygraph examinations, as requested by the parole and probation officer
16 assigned to the defendant. (h) Abstain from consuming, possessing or having under his control any
17 alcohol. (i) Not have contact or communicate with a victim of the sexual offense or a witness who
18 testified against the defendant or solicit another person to engage in such contact or
19 communication on behalf of the defendant, unless approved by the Chief Parole and Probation
20 Officer of the Chief Parole and Probation Officer's designee and a written agreement is entered
21 into and signed in the manner set forth in NRS 176A.410(5). (j) Not use aliases or fictitious names.
22 (k) Not obtain a post office box unless the defendant receives permission from the parole and
23 probation officer assigned to the defendant. (l) Not have contact with a person less than 18 years of
24 age in a secluded environment unless another adult who has never been convicted of a sexual
25 offense is present and permission has been obtained from the parole and probation officer assigned
26 to the defendant in advance of each such contact. (m) Comply with any protocol concerning the
27 use of prescription medication prescribed by a treating physician, including, without limitation,
28 any protocol concerning the use of psychotropic medication. (n) Not possess any sexually explicit

1 material that is deemed inappropriate by the parole and probation officer assigned to the defendant.
2 (o) Not patronize a business which offers a sexually related form of entertainment and which is
3 deemed inappropriate by the parole and probation officer assigned to the defendant. (p) Not
4 possess any electronic device capable of accessing the Internet and not access the Internet through
5 any such device or any other means, unless possession of such a device or such access is approved
6 by the parole and probation officer assigned to the defendant. (q) Inform the parole and probation
7 officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at
8 an institution of higher education or changes the date of commencement or termination of his
9 enrollment at an institution of higher education. As used in this paragraph, institution of higher
10 education has the meaning ascribed to it in NRS 179D.045. 2. Register as a sex offender within the
11 first 48 hours of leaving courthouse. 3. If P&P is approached that Deft. has found a job that
12 requires internet usage, issue must be brought back before the Court to determine remedy. 4. Abide
13 by any curfew imposed by P&P. 5. Attend counseling to address issues related to this charge. 6.
14 Pay fees including the indigent defense fee. Pursuant to statute a special SENTENCE OF
15 LIFETIME SUPERVISION is imposed to commence upon release from any term of probation,
16 parole or imprisonment and register as a sex offender in accordance with NRS 179D.460 within 48
17 hours after sentencing. NIC, See Exhibit A attached hereto (no judgment of conviction filed to
18 date).

19 DATED this 25th day of November, 2013.

20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22 By: /s/ Howard S. Brooks
23 HOWARD S. BROOKS, #3374
24 Deputy Public Defender
25 309 S. Third Street, Ste. 226
26 Las Vegas, Nevada 89155
27 (702) 455-4685
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Anthony Castaneda
370 E. Harmon #H-305,
Las Vegas, NV 89169.

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

By: /s/ Joel Rivas
Employee of the Public Defender's Office

I hereby certify that service of the foregoing, was made this 25th day of November, 2013

District Attorneys Office
E-Mail Address:
PDMotions@ccdany.com

Jennifer.Garcia@ccdany.com

Eileen.Davis@ccdany.com

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EXHIBIT A

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor	COURT MINUTES	October 30, 2013
<hr/>		
C-11-272657-1	State of Nevada vs Anthony Castaneda	
<hr/>		

October 30, 2013 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- STATE'S MOTION TO STRIKE OFF OF PROOF REGARDING DEFT'S MOTION TO CALL A COMPUTER EXPERT TO REBUT DETECTIVE ELHER'S SURPRISE TRIAL TESTIMONY AS DEFT'S OFFER OF PROOF IMPROPERLY SUPPLEMENTS THE RECORD

Deft. present in custody. Court noted this appears to be a counter-motion and stated it listened to JAVS and advised what happened during trial in regards to Court's decision regarding their rebuttal expert. Further, can't come in after trial and file these types of motions, they may be put in a post conviction relief petition. Arguments by counsel. Court advised these motions can be filed, but they are not part of the trial record as they were filed after verdict was reached. Further arguments by counsel. COURT ORDERED, Motion DENIED. Mr. Westbrook corrected a mistake he made for the record.

DEFT CASTANADA ADJUDGED GUILTY of CT'S 1 THROUGH 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F). Statements by Deft. and counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$760 Psychosexual Assessment fee, \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to:

CT 1 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC);

CT 2 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)

PRINT DATE: 11/14/2013

Page 1 of 4

Minutes Date: October 30, 2013

MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 1;
 CT 3 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 2;
 CT 4 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 3;
 CT 5 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 4;
 CT 6 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 5;
 CT 7 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 6;
 CT 8 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 7;
 CT 9 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 8;
 CT 10 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 9;
 CT 11 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 10;
 CT 12 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 11;
 CT 13 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 12;
 CT 14 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 13;
 CT 15 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 14 with 160 DAYS credit for time served. SENTENCE SUSPENDED; placed on probation for a FIXED FIVE (5) YEARS under the following SPECIAL CONDITIONS:

1. Pursuant to NRS 176A.410, the following terms are imposed:

(a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any parole and probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime;

(b) Reside at a location only if:

(1) The residence has been approved by the parole and probation officer assigned to the defendant.
 (2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is license pursuant to Chapter 449 of NRS.

(3) The defendant keeps the parole and probation officer assigned to the defendant informed of the defendant's current address.

(c) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the defendant and keep the parole and probation officer

informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the parole and probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Division of Parole and Probation.

(f) Submit to periodic tests, as requested by the parole and probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant.

(h) Abstain from consuming, possessing or having under his control any alcohol.

(i) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the Chief Parole and Probation Officer of the Chief Parole and Probation Officer's designee and a written agreement is entered into and signed in the manner set forth in NRS 176A.410(5).

(j) Not use aliases or fictitious names.

(k) Not obtain a post office box unless the defendant receives permission from the parole and probation officer assigned to the defendant.

(l) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of a sexual offense is present and permission has been obtained from the parole and probation officer assigned to the defendant in advance of each such contact.

(m) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(n) Not possess any sexually explicit material that is deemed inappropriate by the parole and probation officer assigned to the defendant.

(o) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the parole and probation officer assigned to the defendant.

(p) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the defendant.

(q) Inform the parole and probation officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, institution of higher education has the meaning ascribed to it in NRS 179D.045.

2. Register as a sex offender within the first 48 hours of leaving courthouse.

3. If P&P is approached that Deft. has found a job that requires internet usage, issue must be brought back before the Court to determine remedy.

4. Abide by any curfew imposed by P&P.

5. Attend counseling to address issues related to this charge.

6. Pay fees including the indigent defense fee.

Pursuant to statute a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation,

C-11-272657-1

- parole or imprisonment and register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing.

NIC

State of Nevada
DEPARTMENT OF PUBLIC SAFETY
Division of Parole and Probation
Carson City, NV 89706

File #: V14-1449

Required to pay \$25 Administrative Assessment Fee
and all other Court ordered Fees to the County Clerk's
Office, 200 Lewis Ave., Las Vegas, NV, 89155.
Electronically Filed

Criminal Case No. C-11-272657-1

THE STATE OF NEVADA Plaintiff,
vs.
CASTANEDA, Anthony, Defendant

PROBATION AGREEMENT AND RULES
ORDER ADMITTING DEFENDANT TO PROBATION
AND FIXING THE TERMS THEREOF

12/26/2013 02:04:04 PM

Alvin L. Quinn

CLERK OF THE COURT

DEFENDANT is guilty of the Crime of CTS 1 through 15 - Possession of Visual Presentation Depicting Sexual Conduct of a Child, Category B Felonies. DEFENDANT shall pay a \$760 Psychosexual Fee, \$150 Indigent Defense Civil Assessment Fee, and \$150 DNA Analysis Fee including testing to determine genetic markers. DEFENDANT is sentenced to a term of imprisonment in the Nevada Department of Corrections for CTS 1 through 15 - 72/28 months to run concurrent (*ALL COUNTS - see next page**) with 160 days credit for time served. Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for a fixed period of 5 years under the following conditions:

1. **Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
2. **Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
3. **Intoxicants:** You shall not consume any alcoholic beverages *whatsoever*. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
5. **Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
6. **Search:** You shall submit your person, property, place of residence, vehicle or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
7. **Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
8. **Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
9. **Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
10. **Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
11. **Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
12. **Financial Obligation:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.
13. **Special Conditions:** ordered by the Court as summarized in the attached addendum and incorporated herein by reference.

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 23rd day of December, 2013, in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

Carolyn Ellsworth
District Judge Carolyn Ellsworth

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union, and I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

Anthony Castaneda
Probationer Anthony CASTANEDA/Date

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

APPROVED *C. W.*

/dsy

PROBATION AGREEMENT SPECIAL CONDITIONS ADDENDUM

File # V14-1449

Criminal Case No. C-11-272657-1

CASTANEDA, Anthony

Defendant

- * CT 1 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NV DEPARTMENT OF CORRECTIONS (NDC);
CT 2 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 1
CT 3 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 2
CT 4 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 3
CT 5 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 4
CT 6 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 5
CT 7 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 6
CT 8 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 7
CT 9 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 8
CT 10 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 9
CT 11 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 10
CT 12 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 11
CT 13 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 12
CT 14 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 13
CT 15 - a MAXIMUM OF SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS IN NDC CONCURRENT TO CT 14

Special Conditions of your probation:

1. Pursuant to NRS 176A.410 Required terms and conditions for sex offenders (see attached a-g);
2. Register as a sex offender within the first 48 hours of leaving courthouse;
3. If P&P is approached that Deft has found a job that requires internet usage, issue must be brought back before the Court to determine remedy;
4. Abide by any curfew imposed by P&P;
5. Attend counseling to address issues related to this charge;
6. Pay fees including the indigent defense fee.

FURTHER:

A special Sentence of Lifetime Supervision is imposed to commence upon release from any term of probation, parole or imprisonment, and register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing.

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.


Probationer Anthony CASTANEDA/Date

APPROVED 

/dsy

FILED

DEC 31 2013

John J. Ballou
CLERK OF COURT

1 JOC
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 ANTHONY CASTANEDA #2799593,
13 Defendant.

CASE NO: C-11-272657-1

DEPT NO: V

C-11-272657-1
JOC
Judgment of Conviction
3314300

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)



16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 -
18 POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCTS
19 OF A CHILD (Category B Felony), in violation of NRS 200.700, 200.730; thereafter, on
20 the 30th day of October, 2013, the Defendant was present in court for sentencing with his
21 counsel, ERIKA D. BALLOU, ESQ., and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
23 addition to the \$25.00 Administrative Assessment Fee, \$760 Psycho-sexual Assessment fee,
24 \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing
25 to determine genetic markers, the Defendant is sentenced as follows: to: CT 1 - a
26 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT

27 ///

28 ///

1 (28) MONTHS in the Nevada Department of Corrections (NDC); CT 2 - a MAXIMUM of
2 SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in
3 the Nevada Department of Corrections (NDC) CONCURRENT TO 1; CT 3 - a MAXIMUM
4 of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS
5 in the Nevada Department of Corrections (NDC) CONCURRENT TO 2; CT 4 - a
6 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
7 (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 3; CT
8 5 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY
9 EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT
10 TO 4; CT 6 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of
11 TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC)
12 CONCURRENT TO 5; CT 7 - a MAXIMUM of SEVENTY TWO (72) MONTHS and
13 MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections
14 (NDC) CONCURRENT TO 6; CT 8 - a MAXIMUM of SEVENTY TWO (72) MONTHS
15 and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
16 Corrections (NDC) CONCURRENT TO 7; CT 9 - a MAXIMUM of SEVENTY TWO (72)
17 MONTHS and MINIMUM of TWENTY EIGHT (28) M MONTHS in the Nevada
18 Department of Corrections (NDC) CONCURRENT TO 8; CT 10 - a MAXIMUM of
19 SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in
20 the Nevada Department of Corrections (NDC) CONCURRENT TO 9; CT 11 - a
21 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
22 (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 10;
23 CT 12 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY
24 EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT
25 TO 11; CT 13 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of
26 TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC)
27 CONCURRENT TO 12; CT 14 - a MAXIMUM of SEVENTY TWO (72) MONTHS and
28 MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections

1 (NDC) CONCURRENT TO 13; CT 15 -a MAXIMUM of SEVENTY TWO (72) MONTHS
2 and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
3 Corrections (NDC) CONCURRENT TO 14 with 160 DAYS credit for time served.
4 SENTENCE SUSPENDED; placed on probation for a FIXED FIVE (5) YEARS under the
5 following SPECIAL CONDITIONS:

6 1. Pursuant to NRS 176A.410, the following terms are imposed:

7 (a) Submit to a search and seizure of his person, residence or vehicle or any property
8 under his control, at any time of the day or night, without a warrant, by any parole and
9 probation officer or any peace officer, for the purpose of determining whether the defendant
10 has violated any condition of probation or suspension of sentence or committed any crime;

11 (b) Reside at a location only if: (1) The residence has been approved by the parole and
12 probation officer assigned to the defendant. (2) If the residence is a facility that houses more
13 than three persons who have been released from prison, the facility is a facility for
14 transitional living for released offenders that is license pursuant to Chapter 449 of NRS. (3)
15 The defendant keeps the parole and probation officer assigned to the defendant informed of
16 the defendant s current address.

17 (c) Accept a position of employment or a position as a volunteer only if it has been
18 approved by the parole and probation officer assigned to the defendant and keep the parole
19 and probation officer informed of the location of his position of employment or position as a
20 volunteer.

21 (d) Abide by any curfew imposed by the parole and probation officer assigned to the
22 defendant.

23 (e) Participate in and complete a program of professional counseling approved by the
24 Division of Parole and Probation.

25 (f) Submit to periodic tests, as requested by the parole and probation officer assigned
26 to the defendant, to determine whether the defendant is using a controlled substance.

27 (g) Submit to periodic polygraph examinations, as requested by the parole and
28 probation officer assigned to the defendant.

1 (h) Abstain from consuming, possessing or having under his control any alcohol.

2 (i) Not have contact or communicate with a victim of the sexual offense or a witness
3 who testified against the defendant or solicit another person to engage in such contact or
4 communication on behalf of the defendant, unless approved by the Chief Parole and
5 Probation Officer of the Chief Parole and Probation Officer's designee and a written
6 agreement is entered into and signed in the manner set forth in NRS 176A.410(5).

7 (j) Not use aliases or fictitious names.

8 (k) Not obtain a post office box unless the defendant receives permission from the
9 parole and probation officer assigned to the defendant.

10 (l) Not have contact with a person less than 18 years of age in a secluded environment
11 unless another adult who has never been convicted of a sexual offense is present and
12 permission has been obtained from the parole and probation officer assigned to the defendant
13 in advance of each such contact.

14 (m) Comply with any protocol concerning the use of prescription medication
15 prescribed by a treating physician, including, without limitation, any protocol concerning the
16 use of psychotropic medication.

17 (n) Not possess any sexually explicit material that is deemed inappropriate by the
18 parole and probation officer assigned to the defendant.

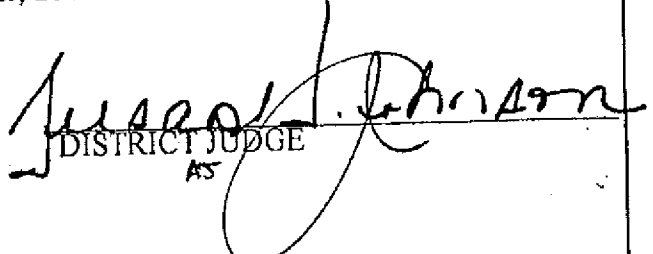
19 (o) Not patronize a business which offers a sexually related form of entertainment and
20 which is deemed inappropriate by the parole and probation officer assigned to the defendant.

21 (p) Not possess any electronic device capable of accessing the Internet and not access
22 the Internet through any such device or any other means, unless possession of such a device
23 or such access is approved by the parole and probation officer assigned to the defendant.

24 (q) Inform the parole and probation officer assigned to the defendant if the defendant
25 expects to be or becomes enrolled as a student at an institution of higher education or
26 changes the date of commencement or termination of his enrollment at an institution of
27 higher education. As used in this paragraph, institution of higher education has the meaning
28 ascribed to it in NRS 179D.045.

- 1 2. Register as a sex offender within the first 48 hours of leaving courthouse.
- 2 3. If P&P is approached that Deft. has found a job that requires internet usage, issue must be
- 3 brought back before the Court to determine remedy.
- 4 4. Abide by any curfew imposed by P&P.
- 5 5. Attend counseling to address issues related to this charge.
- 6 6. Pay fees including the indigent defense fee. Pursuant to statute a special SENTENCE OF
- 7 LIFETIME SUPERVISION is imposed to commence upon release from any term of
- 8 probation, parole or imprisonment and register as a sex offender in accordance with NRS
- 9 179D.460 within 48 hours after sentencing.

10 DATED this 31st day of December, 2013.

11
12 
13 DISTRICT JUDGE
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27 cmj
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 21, 2011

C-11-272657-1 State of Nevada
 vs
 Anthony Castaneda

April 21, 2011 9:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level
Arraignment

COURT CLERK: Phyllis Irby

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Castaneda, Anthony	Defendant
	Geller, Warren, ESQ	Attorney
	Mitchell, Scott	Attorney
	Steven	
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. CASTANEDA ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE.
COURT ORDERED, matter set for trial.

CUSTODY

6-29-11 9:00 AM CALENDAR CALL (DEPT. I)

7-05-11 1:30 PM JURY TRIAL (DEPT. I)

PRINT DATE: 04/26/2011

Page 1 of 1

Minutes Date: April 21, 2011