EXHIBIT 1

MC
PP
DA

MICHAEL J. SCHOFIELD
INMATE No. 1679195
330 S. CASINO CENTER BLVD
LAS VEGAS NV 89101
DEFENDANT IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA	) Case No.:	C-13-287009-1
Plaintiff,	) Dept. No.:	6
vs.	) Docket No.:	
MICHAEL J SCHOFIELD	)	
Defendant	)	

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03/28/2014 01:21:53 PM

CLERK OF THE COURT

MOTION FOR NEW TRIAL

Comes NOW Defendant, Michael J. Schofield, in Proper Person, and respectfully moves this honorable Court to grant a New Trial.

This Motion is based upon all the records and files in this decesion/action. Points and Authorities, Affidavit of the Defendant, and any arguement adduced at the time of hearing of this motion.

Michael J. Schofield

Michael J. Schofield
Defendant in Proper Person

RECEIVED
MAR 27 2014
CLERK OF THE COURT

TO: District Attorney, Defendant in Proper Person

You and Each of You, will Please Take Notice that the undersigned will bring this Motion on for hearing before the District Court Dept. 6 on the 21 day of April, 2014, at 8:30 o'clock a.m/p.m. of said day.

Dated this 24 day of March, 2014

Michael J. Schofield
Defendant in Proper Person

Points And Athorities

It is resfectfully requested of this Court to grant this motion for New Trial for the reasons listed below:

1. Influencing testimony of witness by Prosecutor.

2. New medical evidence.

3. District Attorney's failure to disclose favorable evidence upon discovery.

4. Ineffective of Counsel by Prior Counsel.

Points And Athorities

I. Procedural Background

1. It has been revealed that state had prior knowledge of favorable medical evidence, that had Evidence been disclosed at or before trial this evidence would have altered the outcome of the trial.

2. New evidence that had not been avaliable until it had been discovered until after trial.

3. District Attorney tampered and influenced testimony from witness on evidence not produced at trial.

4. Prior Counsel was ineffective in his failure to not allow me to testify on my on behalf.

II. Arguement.

Defendant asserts that his right to a fair trial and his right to due process of law has been violated.

Furthermore, District Attorner has violated and abused his Position as an officer of the Court, in his blatant disregard of the rules of discovery and influencing/tampering of witness testimony.

The court notes that "a conviction obtained by the knowing used of tainted testimony is fundamentally unfair, and must be set aside, and newtrial granted if there is any reasonable likelihood that the tainted testimony could have affected the Judgement of the Jury." Agurs, 427 U.S., at 103, 96 S. Ct., 2397

Defendant was denied his due process of law that is garunteed by the 5th and 14th admendments of the united States Constitution. Defendant's failure to request favorable evidence does not leave State free of obligation to disclose evidence to defendant under Brady Law.

United States V. Bagley. 473 U.S. 667, 105

S.Ct. 3375. 87 L.Ed.2d 481 (1985) the Court disavowed any difference between "specific-request" and "general-or no-request" situations. Bagley held that failure. by State to disclose. evidence to defense whether it is favorable Or. not is material. and constitutional error results from its suppression by the State. "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the Proceeding would have been different." 434 473 U.S., at 682, 105 S.Ct., at 3385. Therefore, New Trial must be granted.

Prior Counsel was also ineffective in his obligation and his duty as my advocate. Defendant has an unqualified right to legal assistance that expresses loyalty to said defendant." The right to counsel is the right [also] to effective of Counsel." Cuyler V. Sullivan 100 S.Ct. 17-B (1980); and Frazier v. U.S. 18 F.3d 778 (9th Cir. 1994).

Futhermore. regarding the Jury finding of guilt on the charge of kidnapping is erroneos, that to not grant a New Trial would be a Mockery and a lost of trust in the Justice System. The Grandmother / Gaurdian of the Victim. stated she gave defendant Peermission

to take alleged victim/son. Insufficiency of the evidence occurs where the Prosecution has not Produced a minimum threshold of evidence upon which a conviction can be based. State v. Purcell. 110 Nev. 1389. 887 P.2d 276 (1994).

In a letter to the District Attorney dated MAY 1st. 2013 mother of defendant sent information to the district Attorney stating defendant suffers from mental / medical issues. This information was unknown to defendant until after trial. there must be a factual showing that the newly discovered evidence could not have been obtained through the due diligence Prior to trial. and that if it would have been discovered and Produced a different verdict if a new trial is granted. Burton V. State 84 Nev. 191. 437 P.2d 861. (1968). Hilt v. State, 91 Nev. 654, 541 P.2d 645. (1975)

This is an actuality that the Court must address. Anything short of a New trial would further a manifest of injustice and a loss of faith in the Justice System.

DATED THIS 24 day of March, 2014.

I, Michael J. Schofield, do solemnly swear, under the penalty of perjury, that the above testimony of evidence is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Michael J Schofield

MICHAEL J SCHOFIELD

Defendant IN PROPER PERSON

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UNITED STATES POSTAGE PITNEY BOWES
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MAILED FROM ZIP CODE 89101

MICHAEL SCHOFIELD #1679195
Name/ID
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS NEVADA 89101

LEGAL MAIL

EXHIBIT 2

Electronically Filed
04/04/2014 09:20:54 AM

CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120
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-

MICHAEL JOHN SCHOFIELD,
#1679195

Defendant.

CASE NO: C-13-287009-1

DEPT NO: VI

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: April 7, 2014
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARIA E. LAVELL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for New Trial.

This Opposition to Defendant's Motion for New Trial 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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POINTS AND AUTHORITIES

STATEMENT OF FACTS

On January 6, 2013, Defendant arrived at his mother and stepfather's home to pick up his son, Michael Schofield, Jr. ("Michael"), and take him to the store. Defendant's mother and stepfather had guardianship over Michael. The stepfather did not want Defendant to take Michael. Michael also did not want to go with Defendant. Defendant got upset. Defendant forcibly grabbed Michael around the neck, in a chokehold, and dragged him out of the house by his neck towards Defendant's vehicle. The stepfather tried to intervene, but Defendant pushed the stepfather away. Defendant then forcibly pushed Michael into the vehicle and started to hit him. Neighbors, who are off-duty police officers, witnessed the altercation and came over to help. They restrained Defendant, allowing Michael to escape, until patrol officers arrived. Michael had a hard time breathing and had red marks on his neck when the patrol officers arrived.

On January 29, 2013, the State filed an Information, charging Defendant with Count I – Burglary, Count II – Battery Constituting Domestic Violence – Strangulation, Count III – Child Abuse, Neglect, or Endangerment, and Count IV – First Degree Kidnapping. An Amended Information was filed on January 27, 2014, with the same charges. The six-day jury trial began on January 27, 2014. On February 3, 2014, the jury returned a guilty verdict on Count III – Child Abuse, Neglect, or Endangerment and Count IV – First Degree Kidnapping; Defendant was found not guilty on Count I and Count II. The Sentencing Hearing is scheduled for April 7, 2014. However, on March 28, 2014, Defendant filed the instant Motion for a New Trial in proper person.

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ARGUMENT

I. The State Does Not Have Any Knowledge of Medical Evidence That Would Have Altered the Outcome of the Trial

Defendant claims that his mother sent a letter, dated May 1, 2013, to the District Attorney's Office, which revealed that Defendant suffers from mental/medical issues. The District Attorney's Office never received any medical records associated with this crime and the State is not obligated to look into a Defendant's medical history. Therefore, the State did not fail to disclose medical evidence. Even if Defendant's mother sent a letter to the District Attorney's Office, a letter written by Defendant's mother does not constitute medical evidence. There is no indication that Defendant's mother is a physician or capable of diagnosing Defendant with any type of medical issue or mental disorder. Defendant, in his motion for a new trial, failed to specify what medical or mental issue he claims to suffer from beyond testifying at trial, over the State's objection, that he suffered from a seizure in the past. Even if Defendant suffers seizures, there was no medical evidence produced at trial that this was somehow related to Defendant's behavior when he committed the crimes in this case and, therefore, would not have altered the outcome of the trial. Therefore, the Court should deny Defendant's request for a new trial.

II. There Is No Newly Discovered Evidence

Defendant claims that there is newly discovered evidence, but he does not assert what the newly discovered evidence is specifically. The only evidence Defendant mentions in his motion is the alleged letter from his mother, stating Defendant suffers from medical/mental issues. Defendant claims the letter was dated on May 1, 2013, at least six (6) months prior to his trial. Again, this letter is not medical evidence. Defendant has previously stated that he suffers from seizures; Defendant would be aware of any treatment by physicians for his seizures or any other medical or mental issues. There is no new medical documentation of any medical or mental issues. Even if there is medical evidence, it would not have altered the outcome of the trial. Therefore, the Court should deny Defendant's request for a new trial.

III. The District Attorney Did Not Tamper or Influence Testimony of Witnesses

Defendant claims that the District Attorney tampered and influenced testimony from witnesses. Defendant did not provide any facts to support these claims. As such, Defendant's claims are baseless. Therefore, the Court should deny Defendant's request for a new trial.

IV. Defendant's Claim of Ineffective Assistance of Counsel Should be Denied

Defendant also claims that his trial counsel was ineffective for failing to allow Defendant to testify. "The United States Supreme Court has recognized that [the Defendant] has the ultimate authority to make certain fundamental decisions regarding the case, including the decision to testify." Lara v. State, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004). It was Defendant's decision whether or not to testify at his trial. Thus, there is no ineffective assistance of counsel claim. Therefore, the Court should deny Defendant's request for a new trial.

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CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to deny Defendant's Motion for New Trial.

DATED this 4th day of April, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 4th day of April, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL J. SCHOFIELD, #1679195
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV, 89101

BY /s/ E. Goddard
E. Goddard
Secretary for the District Attorney's Office

13F00320X/MEL/erg/L-1

EXHIBIT 3

DA
PP

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA) Case No.: C-13-287009-1
)
Plaintiff,) Dept. No.: 6
)
vs.) Docket No.: _____
)
MICHAEL JOHN SCHOFIELD)
)
Defendant)

DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO DEFENDANTS MOTION FOR NEW TRIAL

COMES NOW DEFENDANT, MICHAEL J. SCHOFIELD, IN PROPER PERSON, AND HEREBY SUBMITS THE DEFENDANT RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL.

THIS MOTION IS BASED ON ALL RECORDS AND FILES AS WELL AS POINTS AND AUTHORITIES IN THE MOTION FOR NEW TRIAL. IN ADDITION ANY ARGUMENT ADDUCED AT THE TIME OF THE HEARING OF THE MOTION FOR NEW TRIAL. THE DEFENDANT DISAGREES WITH THE STATES OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL AND BELIEVES DEFENDANT SHOULD BE GRANTED A NEW TRIAL

Michael J. Schofield
MICHAEL J. SCHOFIELD
DEFENDANT IN PROPER PERSON

STATEMENT OF FACTS

MY RESPONSE TO THE STATES OPPOSITION of DEFENDANT'S MOTION FOR NEWTRIAL, STATEMENT OF FACTS IS THAT ~~THERE~~ THEIR STATEMENT OF FACTS ARE NOT FACTS WHAT SO EVER. STARTING WITH MY SONS NAME BEING MICHAEL JOSHUA SCHOFIELD, TO THE STEPFATHERS DECLARATION. TO THE DEFENDANT PUSHING THE DEFENDANTS STEP FATHER, TO THE DEFENDANT HITTING THE VICTIM, HIS SON, IN THE VENICE. I HOPE TO HAVE THE MOTION FOR NEW TRIAL HEARD AND TO SHOW THAT THE POINTS BROUGHT UP AT THE HEARING AS WELL AS THOSE IN THE MOTION, WILL INSPIRE THE HONORABLE JUDGE TO GRANT A NEWTRIAL. I HOPE AND PRAY THAT THE HONORABLE JUDGE ALLOWS ME TO BE HEARD, TO PRODUCE JUSTICE, IN THIS CASE.

DATED THIS 8 day of APRIL, 2014.

I, MICHAEL J. SCHOFIELD, do solemnly swear, under the penalty of perjury, that the above RESPONSE to STATE OPPOSITION is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

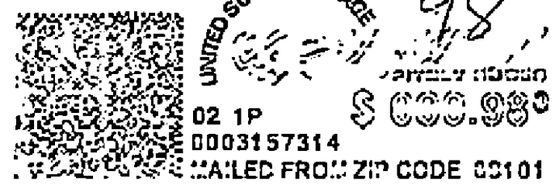
Respectfully submitted,

Michael J Schofield

MICHAEL J. SCHOFIELD

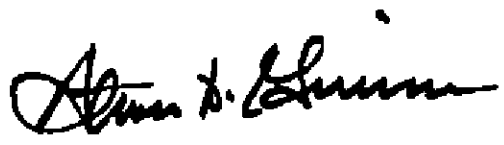
Defendant.

MICHAEL J. SCHOFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101



CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS NV 89101

EXHIBIT 4



RPLY
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120
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-

MICHAEL JOHN SCHOFIELD,
#1679195

Defendant.

CASE NO: C-13-287009-1

DEPT NO: VI

STATE'S REPLY TO DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: June 9, 2014
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARIA E. LAVELL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for New Trial.

This Reply to Defendant's Response to State's Opposition to Defendant's Motion for New Trial 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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POINTS AND AUTHORITIES

The Defendant points out correctly in his Response to the State's Opposition that there were some errors in the State's Opposition, specifically in the fact section. The State has corrected those errors in its reply, however, because the Defendant's Response does not dispute the State's legal arguments, the State stands on its Opposition.

STATEMENT OF FACTS

On January 6, 2013; Michael John Schofield (hereinafter the "Defendant") arrived at his mother and stepfather's home, in order to visit with his son Michael Joshua Schofield, (hereinafter "Michael"). The Defendant's mother, Patricia Duplissie, and step-father, Norman Duplissie, have legal guardianship over Michael and have had guardianship over him for years. Initially, he indicated to his mother and his son that he wanted to go outside and play ball with Michael which Michael agreed to do. Later he decided that he want to take Michael, in his vehicle, to the store. Michael did not want to go with the Defendant, and Patricia Duplissie did not want Michael to go. When Michael refused to go with the Defendant, the Defendant became angry and chased Michael into and around the house. Once he caught up to Michael, he placed Michael in a headlock, in such a way that it prevented Michael from breathing. Michael could not breathe nor catch his breath for some time after the incident and had injury on his neck where the Defendant had strangled him. While the Defendant was strangling Michael, Norman Duplissie attempted to stop the Defendant, telling him he was going to kill Michael but the Defendant refused to let go. At one point, Michael was able to break free from the Defendant but the Defendant grabbed onto him once again around the neck and drug him outside to his car. All the while, Norman and Patricia Duplissie were attempting to stop the Defendant. Once at the car, the Defendant forced Michael inside the car, however Michael successfully fought against the Defendant closing the door. While this was occurring, Patricia Duplissie was on the phone with 911 frantically asking for the police to respond in order to keep the Defendant from taking Michael. In the meantime, and prior to police arriving, two neighbors, both off-duty police detectives, responded and took control of the Defendant until uniformed officers arrived.

On January 29, 2013, the State filed an Information, charging Defendant with Count I – Burglary, Count II – Battery Constituting Domestic Violence – Strangulation, Count III – Child Abuse, Neglect, or Endangerment, and Count IV – First Degree Kidnapping. An Amended Information was filed on January 27, 2014, with the same charges. The six-day jury trial began on January 27, 2014. On February 3, 2014, the jury returned a guilty verdict on Count III – Child Abuse, Neglect, or Endangerment and Count IV – First Degree Kidnapping; Defendant was found not guilty on Count I and Count II. The Sentencing Hearing is scheduled for June 9, 2014. However, on March 28, 2014, Defendant filed the instant Motion for a New Trial in proper person.

ARGUMENT

I. The State Does Not Have Any Knowledge of Medical Evidence That Would Have Altered the Outcome of the Trial

Defendant claims that his mother sent a letter, dated May 1, 2013, to the District Attorney's Office, which revealed that Defendant suffers from mental/medical issues. The District Attorney's Office never received any medical records associated with this crime and the State is not obligated to look into a Defendant's medical history. Therefore, the State did not fail to disclose medical evidence. Even if Defendant's mother sent a letter to the District Attorney's Office, a letter written by Defendant's mother does not constitute medical evidence. There is no indication that Defendant's mother is a physician or capable of diagnosing Defendant with any type of medical issue or mental disorder. Defendant, in his motion for a new trial, failed to specify what medical or mental issue he claims to suffer from beyond testifying at trial, over the State's objection, that he suffered from a seizure in the past. Even if Defendant suffers seizures, there was no medical evidence produced at trial that this was somehow related to Defendant's behavior when he committed the crimes in this case and, therefore, would not have altered the outcome of the trial. Therefore, the Court should deny Defendant's request for a new trial.

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II. There Is No Newly Discovered Evidence

Defendant claims that there is newly discovered evidence, but he does not assert what the newly discovered evidence is specifically. The only evidence Defendant mentions in his motion is the alleged letter from his mother, stating Defendant suffers from medical/mental issues. Defendant claims the letter was dated on May 1, 2013, at least six (6) months prior to his trial. Again, this letter is not medical evidence. Defendant has previously stated that he suffers from seizures; Defendant would be aware of any treatment by physicians for his seizures or any other medical or mental issues. There is no new medical documentation of any medical or mental issues. Even if there is medical evidence, it would not have altered the outcome of the trial. Therefore, the Court should deny Defendant's request for a new trial.

III. The District Attorney Did Not Tamper or Influence Testimony of Witnesses

Defendant claims that the District Attorney tampered and influenced testimony from witnesses. Defendant did not provide any facts to support these claims. As such, Defendant's claims are baseless. Therefore, the Court should deny Defendant's request for a new trial.

IV. Defendant's Claim of Ineffective Assistance of Counsel Should be Denied

Defendant also claims that his trial counsel was ineffective for failing to allow Defendant to testify. "The United States Supreme Court has recognized that [the Defendant] has the ultimate authority to make certain fundamental decisions regarding the case, including the decision to testify." Lara v. State, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004). It was Defendant's decision whether or not to testify at his trial. Thus, there is no ineffective assistance of counsel claim. Therefore, the Court should deny Defendant's request for a new trial.

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CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to deny Defendant's Motion for New Trial.

DATED this 16th day of April, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 16th day of April, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL J. SCHOFIELD, #1679195
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV, 89101

BY /s/ E. Goddard
E. Goddard
Secretary for the District Attorney's Office

13F00320X/MEL/erg/L-1

EXHIBIT 5

8

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05/22/2014 02:30:40 PM

Steven D. Grierson
CLERK OF THE COURT

PP
DA

MICHAEL J SCHOFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101
DEFENDANT IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY
NEVADA

CASE NO. C-13-287009-1

STATE OF NEVADA
PLAINTIFF

DEPT NO. 6

DOCKET NO.

VS

MICHAEL J SCHOFIELD
DEFENDANT

DATE OF HEARING JUNE 9, 2014
TIME OF HEARING 8:30 A.M.

DEFENDANTS ADDENDUM REPLY TO STATES REPLY TO DEFENDANTS RESPONSE TO STATES OPPOSITION TO DEFENDANTS MOTION FOR NEW TRIAL

COMES NOW DEFENDANT IN PROPER PERSON AND HEREBY SUBMITS THE ATTACHED POINTS AND AUTHORITIES TO SUPPORT THE DEFENDANTS MOTION FOR NEW TRIAL. THIS ADDENDUM REPLY TO STATE REPLY TO DEFENDANTS RESPONSE TO STATES OPPOSITION TO DEFENDANTS MOTION FOR NEW TRIAL IS MADE AND BASED UPON ALL THE PAPERS AND PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES IN SUPPORT OF AND ANY ARGUMENT ADDUCED AT THE TIME OF THE HEARING OF THIS MOTION.

Michael Schofield

MICHAEL J SCHOFIELD
DEFENDENT IN PROPER PERSON

14

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MAY 22 2014
CLERK OF THE COURT

POINT AND AUTHORITIES

IN THE STATE'S REPLY TO THE DEFENDANTS RESPONSE TO THE STATES OPPOSITION TO THE DEFENDANT'S MOTION FOR NEW TRIAL, THE STATE ACKNOWLEDGES THAT IN THE DEFENDANTS RESPONSE, THE DEFENDANT CORRECTLY POINTS OUT ERRORS IN THE STATE'S OPPOSITION TO MOTION FOR NEW TRIAL, SPECIFICALLY IN THE STATES FACT SECTION OF ITS OPPOSITION TO MOTION FOR NEW TRIAL. THE STATE IN ITS REPLY CLAIMS TO HAVE CORRECTED THESE ERRORS. YET IN READING THE STATE'S REPLY, THE STATE DID NOT CORRECT THOSE ERRORS, BUT INSTEAD REPLACED THE ERRORS, WITH OTHER ERRORS, WHICH SHOULD NOT BE PART of A STATEMENT OF FACT. THE DEFENDANT IS NOT ONLY DISPUTING THE STATES STATEMENT OF FACTS, IN THE STATE'S REPLY, BUT ALSO THE STATES LEGAL ARGUMENT IN THE STATE'S REPLY. THE DEFENDANT WILL PRESENT STATEMENT OF FACTS AND LEGAL ARGUMENTS, SUPPORTING ITS MOTION FOR NEW TRIAL, IN A MORE THOROUGH WAY TO SHOW THAT JUSTICE WOULD BE PROPERLY SERVED IF THE HONORABLE JUDGE GRANTED A NEW TRIAL.

Michael Schofield

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

STATEMENT OF FACT

MICHAEL JOHN SCHOFIELD, (HEREINAFTER "THE DEFENDANT") WAS FOUND GUILTY OF COUNT III CHILD ABUSE, AND GUILTY OF COUNT IV FIRST DEGREE KIDNAPPING. THE DEFENDANT WAS FOUND NOT GUILTY OF COUNT I BURGLARY, AND NOT GUILTY OF COUNT II BATTERY DOMESTIC VIOLENCE — STRANGULATION.

IN THE STATES REPLY, THE STATE IMPLYS THAT PATRICIA DUPLISSIE CALLED 911 TO KEEP THE DEFENDANT FROM TAKING MICHAEL JOSHUA SCHOFIELD (HEREINAFTER "MICHAEL") TO THE STORE. PATRICIA DUPLISSIE CALLED 911 WHEN THE DEFENDANT PUT MICHAEL IN A HEADLOCK. PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, TESTIFIED UNDER OATH, ON THE WITNESS STAND, THAT SHE GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE. MICHAEL, THE DEFENDANT'S SON, TESTIFIED UNDER OATH, ON THE WITNESS STAND, THAT PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, GAVE THE DEFENDANT PERMISSON TO TAKE MICHAEL TO THE STORE. THE DEFENDANT, TESTIFIED UNDER OATH, ON THE WITNESS STAND, THAT PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE. BOTH PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, AND MICHAEL WERE WITNESSES FOR THE STATE. BOTH OF WHICH TESTIFIED UNDER OATH, ON THE WITNESS STAND, THAT PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE. THE STATE DID NOT PRODUCE ANY EVIDENCE TO DENY THAT CONSENT WAS GIVEN FROM THE LEGAL GUARDIAN TO THE DEFENDANT.

PATRICIA DUPLISSIE CALLED 911 WHEN THE DEFENDANT PUT MICHAEL IN A HEADLOCK. PATRICIA DUPLISSIE DID NOT CALL 911 BEFORE THE DEFENDANT PUT MICHAEL IN A HEADLOCK. BEING THAT PATRICIA DUPLISSIE, THE LEGAL GUARDIAN, MICHAEL JOHN SCHOFIELD, THE DEFENDANT, AND MICHAEL JOSHUA SCHOFIELD, THE DEFENDANT'S SON, ALL TESTIFIED UNDER OATH, ON THE WITNESS STAND, THAT PATRICIA DUPLISSIE GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE AND THAT THIS TESTIMONY STANDS UNREFUTED, IT MUST BE CONCLUDED THAT PATRICIA DUPLISSIE WOULD NOT HAVE CALLED 911 IF MICHAEL GOT IN THE CAR AND WENT TO THE STORE, AFTER JUST GIVING PERMISSION TO THE DEFENDANT TO TAKE MICHAEL TO THE STORE. IT MUST BE CONCLUDED THAT PATRICIA DUPLISSIE CALLED 911 BECAUSE THE DEFENDANT PUT MICHAEL IN A HEADLOCK. BEING THAT WITHOUT AUTHORITY OF LAW IS AN INTRINSIC ELEMENT OF FIRST DEGREE KIDNAPPING AND THAT THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID NOT HAVE CONSENT FROM THE LEGAL GUARDIAN, ON THIS FACT ALONE THE COURT SHOULD, IF NOT VACATE THE VERDICT, THEN THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL. JURY INSTRUCTION NO. 5 STATES: "THE DEFENDANT IS PRESUMED INNOCENT UNTIL THE CONTRARY IS

PROVED. THIS PRESUMPTION PLACES UPON THE
STATE THE BURDEN of PROVING BEYOND A
REASONABLE DOUBT EVERY ELEMENT OF THE CRIME
CHARGED. A REASONABLE DOUBT IS ONE BASED ON REASON.
DOUBT TO BE REASONABLE MUST BE ACTUAL, NOT
MERE POSSIBILITY OR SPECULATION. IF YOU HAVE
REASONABLE DOUBT AS TO THE GUILT OF THE
DEFENDANT, HE IS ENTITLED TO A VERDICT of NOT
GUILTY.' THE STATE MADE AN EFFORT TO DISCREDIT
THE TESTIMONY OF PATRICIA DuPLISSIE, SPENDING A
GOOD PORTION OF THE FIRST OF THE STATE'S TWO
CLOSING ARGUMENTS DEDICATED TO THIS CAUSE. JURY
INSTRUCTION NO. 8 IS ABOUT THE CREDIBILITY of A
WITNESS. IT STATES IN PART: 'IF YOU BELIEVE THAT A
WITNESS HAS LIED ABOUT ANY MATERIAL FACT IN THE CASE,
YOU MAY DISREGARD THE ENTIRE TESTIMONY OF THAT
WITNESS OR ANY PORTION OF HIS TESTIMONY WHICH
IS NOT PROVED BY OTHER EVIDENCE.' IF THE JURY
DISREGARDED PATRICIA DuPLISSIE'S TESTIMONY,
THIS PORTION OF PATRICIA DuPLISSIE'S TESTIMONY,
GIVING CONSENT TO THE DEFENDANT TO TAKE
MICHAEL TO THE STORE WAS CONFIRMED BY
BOTH THE DEFENDANT AND HIS SON MICHAEL, THE STATE
DID NOT REFUTE THE TESTIMONY OF ALL THREE TESTIFYING TO
THIS FACT. THIS IS AN EFFORT TO BRING THE BURDEN

OF PROOF ONTO THE DEFENDANT. DURING THE TRIAL, OUTSIDE THE PRESENSE of THE JURY, THE DEFENDANT OBJECTED TO JURY INSTRUCTION No. 10, IN THAT IT REMOVED A KEY ELEMENT OF FIRST DEGREE KIDNAPPING. SPECIFICALLY THAT CONSENT OF THE LEGAL GUARDIAN IS NOT A FACTOR IN DETERMINING if FIRST DEGREE KIDNAPPING DID OR DID NOT OCCUR. JURY INSTRUCTION NO. 10 READS: "EVERY PERSON WHO LEADS, TAKES, ENTICES, OR CARRIES AWAY, OR DETAINS, ANY MINOR, WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE THE MINOR FROM HIS PARENTS, GUARDIANS, OR ANY OTHER PERSON HAVING LAWFUL CUSTODY OF THE MINOR IS GUILTY OF FIRST DEGREE KIDNAPPING. A KIDNAPPING DOES NOT REQUIRE FORCE. THE DEFENDANTS CONCERN IS THAT THE JURY CAME TO THE SAME CONCLUSION THAT THE DEFENDANT DID IN READING THIS, EVEN THOUGH THE DEFENDANT DID HAVE CONSENT TO TAKE MICHAEL TO THE STORE, FROM THE LEGAL GUARDIAN, THAT CONSENT [redacted] OR [redacted] LACK of CONSENT WAS NOT AN ELEMENT OF THE CRIME. WHICH WOULD REMOVE THE BURDEN of THE STATE TO PROVE EVERY ELEMENT of THE CRIME. THIS ALONE WOULD BE GROUNDS FOR THE COURT TO GRANT THE DEFENDANT A NEW TRIAL. BEING THAT THE STATE DID NOT PROVE THE DEFENDANT DID NOT HAVE CONSENT BEYOND A REASONABLE DOUBT.

JURY INSTRUCTION NO. 10 SUBTRACTS MANY ASPECTS OF NRS 200.310(1) WHICH DEFINES FIRST DEGREE KIDNAPPING, ESPECIALLY THE MOST GRIEVOUS. AND INSTRUCTION NO 10 ADDS A SENTENCE TO THE INSTRUCTION THAT IS NOT IN NRS 200.310(1), WHICH READS: A PERSON WHO WILLFULLY SEIZES, CONFINES, INVEIGLES, ENTICES, DECOYS, ABDUCTS, CONCEALS, KIDNAPS, OR CARRIES AWAY A PERSON BY ANY MEANS WHATSOEVER WITH THE INTENT TO HOLD OR DETAIN, OR WHO HOLDS OR DETAINS, THE PERSON FOR RANSOM, OR REWARD, OR FOR THE PURPOSE OF COMMITTING SEXUAL ASSAULT, EXTORTION OR ROBBERY UPON OR FROM THE PERSON, OR FOR THE PURPOSE OF KILLING THE PERSON, OR TO EXACT FROM RELATIVES, FRIENDS OR ANY OTHER PERSON ANY MONEY OR VALUABLE THINGS FOR THE RETURN OR DISPOSITION OF THE KIDNAPPED PERSON, AND A PERSON WHO LEADS, TAKES, ENTICES, OR CARRIES AWAY OR DETAINS ANY MINOR WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE THE MINOR FROM HIS OR HER PARENTS, GUARDIANS, OR ANY OTHER PERSON HAVING LAWFUL CUSTODY OF THE MINOR OR WITH THE INTENT TO HOLD THE MINOR TO UNLAWFUL SERVICE, OR PERPETRATE UPON THE PERSON OF THE MINOR AN UNLAWFUL ACT IS GUILTY of FIRST DEGREE KIDNAPPING WHICH IS A CLASS 'A' FELONY.

AT NO POINT DID THE STATE PROVE THAT THE DEFENDANTS INTENT WAS TO KEEP, IMPRISON, OR CONFINE, HIS SON, MICHAEL. BOTH LEGAL GUARDIANS, NORMAN DUPLISSIE AND PATRICIA DUPLISSIE, AND THE DEFENDANT, AND MICHAEL, TESTIFIED, UNDER OATH, ON THE WITNESS STAND THAT THE DEFENDANT'S INTENT WAS TO GO TO THE STORE AND RETURN. THE CHARGE OF FIRST DEGREE KIDNAPPING REQUIRES AN INQUIRY OF THE SPECIFIC INTENT OF THE DEFENDANT. JURY INSTRUCTION NO. 11 STATES IN WHOLE: 'IT IS THE FACT, NOT THE DISTANCE, OF FORCIBLE MOVEMENT OF THE VICTIM, THAT CONSTITUTES KIDNAPPING'. THIS HELPS FURTHER DEFINE KIDNAPPING, WHICH IS ONE ELEMENT OF FIRST DEGREE KIDNAPPING. THE WORD KIDNAP IS ACTUALLY USED TO DESCRIBE ONE ELEMENT OF FIRST DEGREE KIDNAPPING IN NRS 200.310(1). TO USE THIS TERMINOLOGY JURY INSTRUCTION NO. 11 SHOULD READ 'THE FACT NOT THE DISTANCE OF FORCIBLE MOVEMENT, COMBINED WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE'. THIS JURY INSTRUCTION IS VERY MISLEADING TO THE JURY WHICH DID NOT HAVE THE OPTION OF FINDING GUILTY TO A LESSER DEGREE OF KIDNAP, YET WAS GIVEN A DEFINITION OF A LESSER DEGREE OF KIDNAPPING AS AN INSTRUCTION.

THERE IS A REASONABLE LIKELIHOOD THAT THE JURY APPLIED, JURY INSTRUCTION NO. 10 AND JURY INSTRUCTION NO. 11, IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN OF PROVING EVERY ELEMENT OF THE CRIME OF FIRST DEGREE KIDNAPPING, BEYOND A REASONABLE DOUBT. THIS CONCLUSION CAN BE MADE BASED ON THE FACT THE STATE DID NOT EVEN TRY TO PROVE, NOR DID THEY, THAT THE DEFENDANTS INTENT WAS TO KEEP, IMPRISON, OR CONFINE, HIS SON MICHAEL. THIS CAN ALSO BE CONCLUDED, THAT BASED ON THE TESTIMONY OF THREE WITNESSES, THAT ALL STATED, THAT AT VIRTUALLY THE SAME TIME DURING THE INCIDENT, THE LEGAL GUARDIAN GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE. THE CRIME OF FIRST DEGREE KIDNAPPING AND EVERY ELEMENT OF THAT CRIME WAS NOT PROVED BEYOND A REASONABLE DOUBT. BEING THAT THE VERDICT of guilty TO FIRST DEGREE KIDNAPPING [redacted] WAS CONTRARY TO LAW, THE COURT SHOULD GRANT THE DEFENDANT A NEW TRIAL. BEING THAT THE VERDICT OF GUILTY TO FIRST DEGREE KIDNAPPING WAS CONTRARY TO EVIDENCE THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL.

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STATE V. STANLEY, 4 NEV. 71, 4 NEV. 73, 1868, NEV. LEXIS 14 (1868) THE RIGHT TO GRANT NEW TRIALS BEING CONFERRED UPON THE DISTRICT COURTS, ITS EXCERCISE BY THEM IN ANY PARTICULAR CASE WILL BE PRESUMED TO BE CORRECT AND PROPER UNTIL THE CONTRARY IS SHOWN.

STATE V. CROCKETT 84 NEV. 516, 444 P. 2d 896 NEV. LEXIS 398 (1968) THE EXCERCISE BY THE TRIAL COURT OF THE RIGHT TO GRANT A NEW TRIAL WILL BE PRESUMED CORRECT AND PROPER BY THE APPELLATE COURT UNTIL THE CONTRARY IS SHOWN.

MYATT V. STATE 101 NEV. 761 P. 2d 720, 1985 NEV. LEXIS 509 (1985) WHERE THE EVIDENCE IS NOT SUFFICIENT TO JUSTIFY A RATIONAL JURY IN FINDING GUILT BEYOND A REASONABLE DOUBT, A JURY'S VERDICT WILL NOT BE UPHELD ON APPEAL; ACCORDINGLY, UNDER SUCH CIRCUMSTANCES, THE ADVISORY INSTRUCTION AUTHORIZED UNDER THIS SECTION IS PROPER.

LENZ V. STATE, 97 NEV. 65, 624 P. 2d 15, 1981 NEV LEXIS 434 (1981) THE GRANTING OF AN ADVISORY INSTRUCTION TO ACQUIT RESTS WITHIN THE SOUND DISCRETION OF THE COURT.

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BURKHART V. STATE 107 NEV. 797, 820 P.2d 757, 1991
LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH
WOULD HAVE ALLOWED THE JURY TO INFER WHAT
DEFENDANT INTENDED TO DO WITH THE VICTIM.
WADDINGTON V. SARAUSAD, 555 U.S. 179, 129,
S. Ct. 823, 172 L. Ed. 2d. 539 (2009)
DEFEDANT CHALLANGING THE CONSTITUTIONALITY
OF A JURY INSTRUCTION THAT QUOTES A STATE
STATUE MUST SHOW BOTH THE INSTRUCTION
WAS AMBIGUOUS AND THAT THERE WAS A "REASONABLE
LIKELIHOOD" THAT THE JURY APPLIED THE INSTRUCTION
IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN
OF PROVING EVERY ELEMENT OF THE CRIME
BEYOND A REASONABLE DOUBT. THE PERTINENT
QUESTION IS WHETHER "THE INSTRUCTION BY
ITSELF SO INFECTED THE ENTIRE TRIAL THAT
THE RESULTING CONVICTION VIOLATES DUE PROCESS."
JOHNSON V. US, 520 U.S. 461, 466-67, 117 S. Ct.
1544 (1997) (EXPLAINING ERRORS CAN BE
CORRECTED WHEN THERE IS (1) ERROR (2) THAT
IS PLAIN (3) THAT AFFECTS SUBSTANTIAL
RIGHTS (4) SERIOUSLY AFFECTS THE
FAIRNESS, INTEGRITY OR PUBLIC
REPUTATION OF JUDICIAL PROCEEDING).

WASHINGTON V STATE 98 NEV. 601; 655 P. 2d 531; 1982 NEV. LEXIS 542 No. 11294 DEC. 29, 1982 DEFENDANT CONTENDED THAT THE TRIAL COURT HAD AUTHORITY TO CONSIDER HIS MOTION FOR A NEW TRIAL. FURTHER NRS 176.515(3) DESCRIBED CONDITIONS THAT WERE TO HAVE BEEN MET FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE; HOWEVER NRS 176.515(4) RECOGNIZED THAT A MOTION FOR A NEW TRIAL MIGHT BASED ON "OTHER GROUNDS". THE COURT HELD THAT SUCH "OTHER GROUNDS" EXISTED WHEN THE TRIAL COURT DISAGREED WITH THE JURY'S VERDICT AFTER AN INDEPENDENT EVALUATION OF THE EVIDENCE. THEREFORE THE COURT CONCLUDED THAT THE TRIAL COURT OPERATED UNDER THE ERRONEOUS BELIEF THAT IT LACKED JURISDICTION TO RULE ON DEFENDANTS MOTION FOR A NEW TRIAL, AND THE JUDGE ERRED BY FAILING TO EXCERCISE HIS DISCRETION. THE COURT REVERSED THE TRIAL COURTS DENIAL of DEFENDANT MOTION FOR NEW TRIAL AND REMANDED THE CASE.

COBB V. POZZI 363 F. 3d 89, 116 (2d CIR 2004) AN ERRONEOUS JURY INSTRUCTIONS REQUIRES REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS.

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STATE V. VAN WINKLE, 6 NEV. 340
STATE V. JONES, 7 NEV. 408
STATE V. MILLS 12 NEV. 403
STATE V. BAUER 34 NEV. 305, 122 P. 76
HISTORICALLY, NEVADA HAS EMPOWERED THE TRIAL COURT IN A CRIMINAL CASE, WHERE THE EVIDENCE OF GUILT IS CONFLICTING, TO INDEPENDENTLY EVALUATE THE EVIDENCE AND ORDER ANOTHER TRIAL IF IT DOES NOT AGREE WITH THE JURY'S CONCLUSION THAT THE DEFENDANT HAS BEEN PROVEN GUILTY BEYOND A REASONABLE Doubt. THE JURY AND THE COURT MUST BE CONVINCED OF THE DEFENDANTS GUILT. If THE COURT IS NOT CONVINCED, It MAY PROTECT THE DEFENDANT TO THE EXTENT OF AUTHORIZING ANOTHER TRIAL BEFORE ANOTHER JURY. ACCORDINGLY, THE "TOTALITY OF THE EVIDENCE IS THE STANDARD FOR THE DISTRICT COURT TO USE IN DECIDING WHETHER TO GRANT A NEW TRIAL BASED ON AN INDEPENDANT EVALUATION OF CONFLICTING EVIDENCE.
NRS 175.535 THE GROUNDS FOR ANOTHER TRIAL.

ARGUMENT

I. STATE FAILURE TO DISCLOSE FAVORABLE EVIDENCE.

PATRICIA DUPUISSIE SENT A LETTER TO THE DISTRICT ATTORNYS OFFICE AND SENT A COPY OF THIS LETTER TO THE PUBLIC DEFENDERS OFFICE, ATTN: DAN JENKINS ON MAY 1, 2013. THE ENVELOPE IS DATED MAY 1, 2013. THE LETTERHEAD IS DATED MAY 1, 2013. THE LETTER STATES IN PART: "IN RECENT MONTHS BEFORE THE INCIDENT ON 1/6/13, MICHAEL JOHN (FATHER) HAS INCURRED SEVERAL MEDICAL INCIDENTS WHICH REQUIRED HOSPITALIZATION. ON ONE INCIDENT HE WAS DIAGNOSED WITH HAVING SEIZURES, WHICH REQUIRED MEDICATION. IT IS MY UNDERSTANDING THAT THIS SITUATION WAS SUPPORTED BY THE MEDICAL STAFF AT THE DETENTION CENTER AND IN FACT HE HAS BEEN HOUSED IN THE PSYCHIATRIC WARD. YOU MAY WISH TO REVIEW THIS SITUATION AND DETERMINE IF DIMINISHED MENTAL CAPACITY MAY BE AN ISSUE IN THIS CASE. I BELIEVE WE ALL WISH TO SEE JUSTICE DONE IN THIS MATTER. HOPEFULLY THE ABOVE INFORMATION MAY BE HELPFUL TO YOU IN ACCOMPLISHING THIS GOAL."

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THERE ARE MANY ERRORS IN BOTH THE STATES OPPOSITION ARGUMENT I SECTION AND IN THE STATES REPLY ARGUMENT I SECTION. ALSO SOME OF THESE ERRORS APPEAR TO BE INTENTIONALLY TRYING TO MISLEAD THE COURT AND THE HONORABLE JUDGE. THE DISTRICT ATTORNEY REFUSES EVEN TO ACKNOWLEDGE THAT THE D.A. RECEIVED THIS LETTER, WHICH WAS SENT VIA THE U.S. POST OFFICE, AN EXTREMELY RELIABLE DELIVERY SERVICE, AND THE PUBLIC DEFENDER, DAN JENKINS RECEIVED HIS COPY OF THIS LETTER. SINCE THE DEFENSE PUT IN A REQUEST FOR DISCOVERY AND PERSUAINT TO NRS 174.245, THE DEFENSE IS OBLIGATED TO PROVIDE FOR THE D.A.'s office A COPY of ANY WRITTEN OR RECORDED STATEMENT MADE BY ANY WITNESS. SO UNLESS THE STATE DID NOT RECEIVE THE LETTER SENT THRU THE MAIL AND THE STATE DID NOT RECEIVE THE LETTER IN TRANSFER of DISCOVERY, THEN THE STATE DID RECEIVE THIS LETTER. FURTHERMORE, PATRICIA DuPLISSIE IN HER LETTER, DID NOT CLAIM TO BE A PHYSICIAN CAPABLE of DIAGNOSING MEDICAL ISSUES OR MENTAL DISORDERS. WHAT SHE DID SAY IN HER LETTER IS THAT THOSE WHO ARE CAPABLE OF DIAGNOSING MEDICAL ISSUES OR MENTAL DISORDERS HAVE DIAGNOSED THE DEFENDANT WITH A MEDICAL ISSUE OR MENTAL DISORDER THAT VERY WELL COULD HAVE BEEN A RELEVANT FACTOR IN HIS BEHAVIOR THAT DAY.

THE DISTRICT ATTORNEY IS MISLEADING THE COURT, WHEN IN THE STATE'S REPLY ARGUMENT I SECTION, THE DISTRICT ATTORNEY CLAIMS THAT THE DEFENDANT "FAILED TO SPECIFY WHAT MEDICAL CONDITION OR MENTAL ISSUES THE DEFENDANT CLAIMS TO SUFFER FROM BEYOND TESTIFYING AT TRIAL, OVER THE STATE'S OBJECTIONS." THIS IS A FALSE STATEMENT BY THE DISTRICT ATTORNEY. THE STATE'S OBJECTIONS WERE HEARD BY THE HONORABLE JUDGE. THE DEFENDANT WAS NOT ALLOWED TO COMPLETE HIS TESTIMONY ABOUT HIS MEDICAL ISSUES OR MENTAL DISORDER, WHEN THE STATE OBJECTED BASED ON NOT HAVING ANY FOREKNOWLEDGE OF MEDICAL OR MENTAL HEALTH ISSUES OF THE DEFENDANT.

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ROBINSON V. CAIN, 510 F. Supp. 2d 399 (E.D.L.A. 2007)
APPLY BRADY, THE FIFTH CIRCUIT HAS FOUND
THAT EVEN INADMISSABLE EVIDENCE MAY BE
MATERIAL UNDER BRADY AND THAT THE
INADMISSABILITY OF EVIDENCE UNDER STATE
LAW IS NOT DISPOSITIVE ON THE ISSUE OF
MATERIALITY. INSTEAD THE QUESTION IS
"WHETHER THE DISCLOSURE OF THE
EVIDENCE WOULD HAVE CREATED A
REASONABLE PROBABILITY THAT THE
PROCEEDING WOULD HAVE BEEN DIFFERENT"
AND MORE SPECIFICALLY DOES THE
EVIDENCE "PUT THE WHOLE CASE IN A
DIFFERENT LIGHT AS TO UNDERMINE
THE CONFIDENCE IN THE VERDICT."

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CONE V. BELL, 556 U.S. 449, 129 S.Ct. 1769
173 L.Ed.2d 701 (2009)
WHEN THERE IS A REASONABLE PROBABILITY
THAT, HAD THE EVIDENCE BEEN DISCLOSED, THE
RESULT OF THE PROCEEDING WOULD HAVE BEEN
DIFFERENT. IN OTHER WORDS, FAVORABLE
EVIDENCE IS SUBJECT TO CONSTITUTIONALITY
MANDATED DISCLOSURE WHEN IT "COULD
REASONABLY BE TAKEN TO PUT THE WHOLE
CASE IN SUCH A DIFFERENT LIGHT AS TO
UNDERMINE CONFIDENCE IN THE VERDICT."
IN CONE, THE COURT CONCLUDED THAT THE
STATE SUPPRESSED EVIDENCE SUPPORTING
CONE CLAIM AT TRIAL THAT HIS DRUG
ADDICTION AFFECTED HIS BEHAVIOR DURING
HIS CRIME SPREE AND THAT THE
PROSECUTORS ARGUMENT TO THE CONTRARY
WERE FALSE AND MISLEADING. IT
REMANDED THE CASE FOR CONSIDERATION
OF WHETHER THERE WAS A REASONABLE
PROBABILITY "THE SUPPRESSED EVIDENCE
MIGHT HAVE PERSUADED ONE OR MORE
JURORS."

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NRS 51.115 STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT. STATEMENTS MADE FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT AND DESCRIBING MEDICAL HISTORY, OR PAST, OR PRESENT SYMPTOMS, PAINS OR SENSATIONS, OR THE INCEPTION OR GENERAL CHARACTER OF THE CAUSE OR EXTERNAL SOURCE THERE OF, ARE NOT INADMISSABLE UNDER THE HEARSAY RULE INSOFAR AS THEY WERE REASONABLY PERTINENT TO DIAGNOSIS OR TREATMENT.

RULE 301, FED. R. EVID. (STATING THAT "A PRESUMPTION IMPOSES ON THE PARTY AGAINST WHOM IT IS DIRECTED THE BURDEN of going forward WITH EVIDENCE TO REBUT OR MEET THE PRESUMPTION, BUT DOES NOT SHIFT TO SUCH PARTY THE BURDEN of proof IN THE SENSE OF THE RISK of NONPERSUASION")

FOR EXAMPLE, IF IT IS SHOWN THAT A PERSON MADE USE OF A RELIABLE MEANS of COMMUNICATION, A FACT FINDER CAN INFER, THAT THE COMMUNICATION WAS RECEIVED.

KENDALL V. GATES 215 F. 3d 825, 829-30 (8TH CIR 2000)

SMITH V. CUMMINGS, 445 F. 3d 1254, 1260 (10TH CIR, 2006)

SULLIVAN V. FREEMAN 944 F. 2d 334, 337 (7TH CIR 1991)

II NEWLY DISCOVERED EVIDENCE

THE DEFENDANT WILL SHOW THAT THERE IS NEWLY DISCOVERED EVIDENCE THAT WAS NOT AVAILABLE TO THE DEFENDANT BEFORE OR DURING TRIAL. THE NEWLY DISCOVERED EVIDENCE IS MEDICAL REPORTS FROM JULY 2012, APPROXIMATELY SIX MONTHS PRIOR TO THE INCIDENT THAT TOOK PLACE ON JANUARY 6, 2013. THERE ARE TWO REPORTS AND A THIRD DOCUMENT, THAT APPEARS TO BE A DISCHARGE FORM, FROM ST. ROSE HOSPITAL, THAT LISTS MEDICATION TO BE TAKEN (KEPRA 500mg) TWICE DAILY. ONE REPORT IS AN MRI DONE ON THE DEFENDANTS BRAIN. IT GIVES AN EXAM DATE of 7/3/12 TIME 2:06 PM PDT ACCOUNT NUMBER: 13-MR-12-018189 REPORT EXAM: MRI of THE BRAIN WITH AND WITHOUT CONTRAST 7/03/12 ORDER PHYSICIAN: AKBAR, TANVEER PRINTED BY: ACEVES, TANYA RN PRINTED ON 7/4/12 DICTATED BY: CHANG, SCOTT. THE OTHER REPORT IS A SLEEP LAB/EEG OR ELECTROENCEPHALOGRAM. DATE of PROCEDURE 7/3/12 REFERRING PHYSICIAN: A. TANVEER, M.D., BUT IT ALSO HAS THE NAME STEPHEN P. RAPS, M.D. ON THE REPORT. I DO NOT SEE AN ACCOUNT #. THE DEFENDANT HAS BEEN INCARCURATED SINCE THE INCIDENT THAT TOOK PLACE ON JAN 6, 2013.

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THE SLEEP LAB | EEG SAYS STUDY INDICATIONS:
NEW ONSET SEIZURES AND CORRELATION
CLINICALLY AND CRANIALLY IMAGING IS ADVISED.
THE DISTRICT ATTORNEY IN HER REPLY SAYS:
"DEFENDANT WOULD BE AWARE OF ANY
TREATMENT BY PHYSICIANS FOR HIS SEIZURES
OR ANY OTHER MEDICAL OR MENTAL ISSUES."
THIS COULD NOT BE FURTHER FROM THE TRUTH. A
SYMPTOM OF THE SEIZURES IS MEMORY LOSS.
THE DEFENDANT FILED A MOTION TO DISMISS THE
PUBLIC DEFENDER IN JULY 2013. THE MOTION STATES
IN PART: "DEFENDANT HAS A HISTORY OF SEIZURES-
AND EVEN HAD A MEDICAL EPISODE. DEFENDANT
REQUESTED HIS PUBLIC DEFENDER ADDRESS THIS ISSUE,
AS IT RELATES TO HIS DEFENSE, AND HE FAILED TO
ADDRESS DEFENDANT'S MEDICAL HISTORY AT ALL."
AFTER THIS HEARING THE PUBLIC DEFENDER MADE
AN ATTORNEY VISIT TO C.C.D.C. AND PRESENTED MEDICAL
RELEASE FORMS FOR THE DEFENDANT TO SIGN
WHICH ARE DATED 7-24-13. THE DEFENDANT
INFORMED THE PUBLIC DEFENDER AT THIS VISIT
THAT THE ATTORNEY JOHN PARRIS WAS NOW
REPRESENTING THE DEFENDANT. THE ATTORNEY
JOHN PARRIS MADE AN ATTORNEY VISIT TO THE
DEFENDANT ON AUGUST 5, 2013.

AT THIS INITIAL MEETING, WHICH WAS THE FIRST TIME SPEAKING TO HIM, THE DEFENDANT EXPLAINED THAT THE PUBLIC DEFENDER DID NOT INVESTIGATE THE DEFENDANTS MEDICAL ISSUES (THE P.D. BROUGHT THE MEDICAL RELEASE FORMS TO THE DEFENDANT AFTER THE MOTION TO DISMISS COUNSEL COURT DATE AND AFTER HE WAS NO LONGER REPRESENTING THE DEFENDANT) JOHN PARRIS EXPRESSED TO THE DEFENDANT THAT HE WOULD INVESTIGATE THE MEDICAL/MENTAL HISTORY OF THE DEFENDANT AND THE FACTS OF THE CASE TO DISCUSS WITH THE DEFENDANT 'DEFENSE STRATEGIES'. HE TOLD THE DEFENDANT HE WOULD VISIT HIM AGAIN IN A COUPLE OF WEEKS. THE DEFENDANT DID NOT HEAR OR SEE THE ATTORNEY AGAIN UNTIL LATE OCTOBER IN COURT FOR THE CALANDAR CALL. THE STATE REQUESTED A CONTINUANCE. THE ATTORNEY PARRIS TOLD THE DEFENDANT HE WOULD VISIT HIM SOON. THE DEFENDANT DID NOT HEAR OR SEE THE ATTORNEY AGAIN UNTIL A VIDEO VISIT ON JANUARY 22, 2014 THE DAY BEFORE CALANDAR CALL. THE ATTORNEY JOHN PARRIS NEVER PRESENTED THE DEFENDANT WITH MEDICAL RELEASE FORMS FOR THE DEFENDAUT TO SIGN. IN JANUARY of 2013 WHEN THE DEFENDANT WAS HOUSED IN THE PSYCH. UNIT

AT C.C.I.C., THE PSYCH DOCTOR, WHO DETERMINED THAT THE DEFENDANT SHOULD BE HOUSED IN THE PSYCH UNIT SUGGESTED TO THE DEFENDANT, THAT THE DEFENDANTS ATTORNEY, SHOULD LOOK INTO THE DEFENDANTS MEDICAL HEALTH RECORDS, THAT THERE COULD BE A CONNECTION BETWEEN THE DEFENDANTS MEDICAL HEALTH CONDITION AND THE DEFENDANTS ACTIONS ON JANUARY 6, 2013. HE STATED THAT HE IS NOT AN ATTORNEY, BUT THAT HE WOULD SUGGEST IT BE LOOKED INTO.

THE DEFENDANT STOPPED TAKING HIS SEIZURE MEDICATION FOR APPROXIMATELY TWO MONTHS BEFORE THE INCIDENT THAT TOOK PLACE, BECAUSE THE DEFENDANT DID NOT REMEMBER BEING DIAGNOSED WITH SEIZURES. ALSO DID NOT REMEMBER HAVING A SEIZURE. ON THE MORNING of JANUARY 6, 2013 THE DEFENDANT WOKE UP IN A PANIC STATE, LOOKING FOR HIS SON MICHAEL. THE DEFENDANT CALLED HIS BROTHER, ROBERT SCHOFIELD, TELLING HIS BROTHER THAT HE CAN NOT FIND HIS SON. ROBERT HAD TO EXPLAIN TO THE DEFENDANT THAT HIS SON, DID NOT LIVE WITH THE DEFENDANT ANY MORE. WITH THE DEFENDANT HAVING TROUBLE BELIEVING THIS, ROBERT ASKED THE DEFENDANT IF HE TOOK HIS SEIZURE MEDICATION. THE DEFENDANT DID

NOT BELIEVE THAT THIS WAS EVIDENCE, THAT THE DEFENDANT HAS A SEIZURE. ROBERT TOLD THE DEFENDANT TO CALL MOM, THAT HIS SON MICHAEL IS AT HER HOUSE, WHERE MICHAEL NOW LIVED. THE DEFENDANT CALLED HIS MOTHER AND SHE BROUGHT HIM SOME OVER THE COUNTER MEDICATION BECAUSE THE DEFENDANT COMPLAINED of HAVING A BAD HEADACHE. THE DEFENDANTS RECALL of THE EARLY ASPECTS of THE INCIDENT IS NOT AN ISSUE BUT THERE IS NO RECALL AFTER THE INCIDENT AND SOMEWHERE IN THE MIDST of THE INCIDENT. OF THE VERY FEW PHONE CALL TRANSCRIPTS THAT WERE IN THE DEFENSE FILE THE DEFENDANT IN THE PHONE CALLS IS VERY CONFUSED ABOUT WHAT ACTUALLY TOOK PLACE. ON TWO SEPERATE PHONE CALL TRANSCRIPTS THE DEFENDANT KIND of REPLYS THAT HE THOUGHT THEY WERE PLAYING BUT THAT MAYBE HE WAS THE ONLY ONE PLAYING. ON ANOTHER PHONE CALL HE TRIED TO INSIST THAT THE WHOLE INCIDENT TOOK PLACE INSIDE THE HOUSE. WHICH WOULD CORELATE WITH THE DEFENDANTS RECALL of THE EVENT. THE DEFENDANT HAS ABSOLUTELY NO MEMORY of CONVERSING WITH POLICE OFFICERS OR BEING IN A POLICE CAR OR ARRIVING AT A POLICE STATION.

THE DEFENDANT STOPPED TAKING THE SEIZURE MEDICATION BECAUSE THE DEFENDANT DID NOT REMEMBER BEING DIAGNOSED WITH SEIZURES. THE DEFENDANT WAS REPRESENTED AT FIRST BY P.D. DAN JENKINS, WHO WHILE REPRESENTING THE DEFENDANT DID NOT INVESTIGATE THE MEDICAL/MENTAL HEALTH RECORDS AVAILABLE AT C.C.D.C. IN SPITE of THE INSISTANCE OF THE DEFENDANT TO DO SO, UNTIL AFTER HIS REPRESENTATION of THE DEFENDANT. THE DEFENDANT WAS THEN REPRESENTED by Att. JOHN PARRS, WHO TOLD THE DEFENDANT THAT HE WOULD INVESTIGATE THE DEFENDANTS MEDICAL/MENTAL HEALTH RECORDS AT C.C.D.C. BUT NEVER DID. THE DEFENDANT TRIED TO GET BOTH ATTORNEY'S TO INVESTIGATE HIS MEDICAL/MENTAL HEALTH RECORDS AT C.C.D.C. BUT TO NO AVAIL. THE DEFENDANT TRIED TO BRING UP HIS MEDICAL/MENTAL CONDITION DURING HIS TESTIMONY ON THE WITNESS STAND, BUT THE STATE objected BASED ON LACK of PRIOR KNOWLEDGE AND THE DEFENDANT WAS NOT ALLOWED TO CONTINUE WITH THIS TESTIMONY BECAUSE of LACK of MEDICAL EVIDENCE SUPPLIED TO THE DISTRICT ATTORNEY. THE DEFENDANT WAS ESSENTIALLY FORCED TO REPRESENT HIMSELF MIDWAY THRU THE JURY TRIAL. THE DEFENDANT WAS TRYING DESPERATELY TO OBTAIN MEDICAL EVIDENCE BEFORE THE TRIAL.

AND AFTER THE TRIAL. BEING INCARCURATED ACCESS TO INFORMATION IS SEVERLY LIMITED. MEDICAL/MENTAL HEALTH RECORDS ARE NOT ALLOWED TO BE OBTAINED FROM C.C.D.C. WHILE BEING INCARCURATED THERE. EVEN WITH SELF REPRESENTATION AN INMATE CAN NOT OBTAIN HIS OWN MEDICAL RECORDS. THE NEWLY DISCOVERED EVIDENCE WAS NOT AVAILABLE BEFORE OR DURING THE TRIAL. THE REPORTS WERE FOUND AT PATRICIA DUPLISSIE AND NORMAN DUPLISSIES HOUSE. WHO INSISTED THAT THEY DID NOT HAVE ANY MEDICAL RECORDS of THE DEFENDANTS AT THEIR HOUSE. THE MEDICAL REPORTS WERE [redacted] DISCOVERED IN THE BEGINNING of MARCH 2014. THE DISTRICT ATTORNEY IN THE STATE'S REPLY COMMENTS: 'THERE IS NO NEW MEDICAL DOCUMENTATION OF ANY MEDICAL OR MENTAL ISSUES. EVEN IF THERE IS MEDICAL EVIDENCE, IT WOULD NOT HAVE ALTERED THE OUTCOME of THE TRIAL.' THERE IS NO INDICATION THAT THE DISTRICT ATTORNEY IS A PHYSICIAN CAPABLE of DIAGNOSING MEDICAL CONDITIONS OR MENTAL DISORDERS, ESPECIALLY WITHOUT SEEING THE MEDICAL EVIDENCE OR DOCUMENTS.

IN Light of the NEWLY DISCOVERED MEDICAL EVIDENCE, THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL.

INGEL EX REL. ESTATE OF INGLE V YELTON
439 F. 3d 191, 197 (4TH CIR 2006) (RULE 59(e) MOTIONS WILL BE GRANTED IN THREE CIRCUMSTANCES: (1) TO ACCOMMODATE AN INTERVENING CHANGE IN CONTROLLING LAW; (2) TO ACCOUNT FOR NEW EVIDENCE NOT AVAILABLE AT TRIAL; (3) TO CORRECT A CLEAR ERROR OF LAW OR PREVENT MANIFEST INJUSTICE.")

NRS 176.515 COURT MAY GRANT A NEW TRIAL OR MOTION TO VACATE JUDGEMENT IN CERTAIN CIRCUMSTANCES:

1. THE COURT MAY GRANT A NEW TRIAL TO A DEFENDANT IF REQUIRED AS A MATTER OF LAW OR ON THE GROUND OF NEWLY DISCOVERED EVIDENCE.

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III PROSECUTOR MISCONDUCT

TAMPORING WITH WITNESS BY PROSECUTOR. THE D.A. MARIA E. LAVELL READ TRANSCRIPTS OF PHONE CALLS TO NORMAN DUPLISSIE, A WITNESS FOR THE STATE, WITH THE DESIRED INTENT TO INFLUENCE TESTIMONY. THE DISTRICT ATTORNEY USING EVIDENCE THAT WAS NOT PRODUCED AT TRIAL OR EVIDENCE THAT WAS DETERMINED NOT ADMISSABLE EVIDENCE. IN A WRITTEN STATEMENT BY NORMAN DUPLISSIE, HE WRITES IN PART: "MARIA BROUGHT UP THE FACT, SOMEWHERE DURING OUR MEETINGS THAT ALL of YOUR TELEPHONE CONVERSATIONS WERE BEING MONITORED AND THAT SHE HAD COMPLETE TRANSCRIPTS of THESE. I BELIEVE THIS CONVERSATION TOOK PLACE IN THE FIRST PRETRIAL PREPERATION MEETING (OR CONVERSATION) WHICH TRANSPIRED MORE THAN A YEAR AGO WHEN I TALKED TO HER PRIVATELY. ACCORDING TO HER, YOU AND YOUR BROTHER BOBBY HAD A CONVERSATION EARLY ON IN THE PROCESS WHEREBY YOU SAID TO HIM THAT YOU SHOULD HAVE KILLED LITTLE MICHAEL WHILE YOU HAD THE CHANCE.

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SHE MENTIONED THAT THIS COULD BE GROUNDS TO PURSUE AN ATTEMPTED MURDER CHARGE BUT THAT SHE WAS NOT GOING TO FOLLOW THIS COURSE OF ACTION NOR WAS SHE PLANNING TO USE THIS INFORMATION IN COURT. MARIA WAS ALSO SHOCKED TO HEAR HOW YOU TALKED TO YOUR MOTHER OVER THE PHONE. THIS WAS IN A LATER PHONE CONVERSATION. PUT THESE TOGETHER AND MARIA FEELS THAT YOU ARE A DANGER TO THE FAMILY. THESE WERE HER WORDS. I BELIEVE HER ACTIONS AND COMMENTS WERE MADE TO PAINT A VERY DARK PICTURE OF YOU. NORMAN BRINGS UP JAN. 25, 2014 AND STATES THAT MARIA AGAIN BROUGHT UP THE PHONE, BUT HE DOES NOT GO INTO DETAIL. HE ALSO STATES THAT HIS TESTIMONY WAS CONSISTENT TO THAT WHICH HE TESTIFIED IN FRONT OF JUDGE SULLIVAN IN THE PRELIMINARY HEARING AND THAT HE DOES NOT BELIEVE MARIA INFLUENCED HIS TESTIMONY, BUT ADDS 'THAT THIS DOES NOT NECESSARILY MEAN THAT HER INTENTIONS WERE NOT TO DO OTHERWISE.' THE DEFENDANTS CONTENTION WOULD BE THAT THE TRANSCRIPTS WERE READ BEFORE THAT TRIAL SO THE WITNESS WAS TAMPERED WITH BEFORE THE PRELIM HEARING SO TO CONTAMINATE THAT TESTIMONY AS WELL.

PEOPLE V MARTINEZ, 47 CAL. 4TH 911, 105
CAL. RPTR. 3d 131, 224 P. 3d 877 (2010)
UNDER STATE LAW, PROSECUTOR MISCONDUCT
IS REVERSIBLE ERROR WHERE THE PROSECUTOR
USES "DECEPTIVE OR REPREHENSIBLE METHODS
TO PERSUADE EITHER THE COURT OR THE JURY"
AND IT IS REASONABLY PROBABLE THAT A RESULT
MORE FAVORABLE TO THE DEFENDANT WOULD
HAVE BEEN REACHED WITHOUT THE MISCONDUCT.
STATE V. GARNER 234 OR. APP. 486, 228 P. 3d 710 (2010)
(UNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING
MISTRIAL DUE TO PROSECUTORIAL MISCONDUCT IS BARRED)
WHEN (1) THE MISCONDUCT IS SO PREJUDICIAL THAT IT
CANNOT BE CURED BY MEANS SHORT OF MISTRIAL
(2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS
IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR
EITHER INTENDED OR WAS INDIFFERENT TO THE
RESULTING MISTRIAL)
AGURS, 427 U.S. AT 103. 96 S. Ct. 2397
THE COURT NOTES THAT A CONVICTION OBTAINED
BY THE KNOWING USE OF TAINTED TESTIMONY IS
FUNDAMENTALLY UNFAIR, AND MUST BE SET ASIDE,
AND NEW TRIAL GRANTED IF THERE IS ANY LIKELIHOOD
THAT THE TAINTED TESTIMONY COULD HAVE AFFECTED
THE JUDGEMENT of the JURY.

IV INEFFECTIVE COUNSEL

'INEFFECTIVE COUNSEL BY PRIOR COUNSEL.'

IN THE DEFENDANTS MOTION FOR NEW TRIAL, POINTS AND AUTHORITIES I PROCEDURAL BACKGROUND #4 IS IMPROPERLY WRITTEN. IT SHOULD READ: 'PRIOR COUNSEL WAS INEFFECTIVE WHEN IN FORCING THE DEFENDANT TO EITHER GIVE UP HIS RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS RIGHT TO EFFECTIVE COUNSEL.' WHEN THE DEFENDANT INSISTED THAT HE WANTED TO TAKE THE STAND, ATTORNEY JOHN PARRIS, TOLD THE DEFENDANT "If YOU TAKE THE STANDS, I WILL ASK YOU TWO YES OR NO QUESTIONS, THEN TURN YOU OVER TO THE D.A. AND LET HER TEAR YOU APART." BY STATING THAT HE WILL LET HER TEAR ME APART, HE WOULD NOT BE GIVING ME EFFECTIVE COUNSEL IF I TOOK THE STAND. ESSENTIALLY FORCING ME TO EITHER GIVE UP MY RIGHT TO TAKE THE STANDS AND TESTIFY ON MY OWN BEHALF OR TO GIVE UP MY RIGHT TO EFFECTIVE COUNCIL ACTING IN THE ROLE AS AN ADVOCATE. HE DID NOT IMPLY THAT HE WOULD BE ASKING ONLY TWO YES OR NO QUESTIONS AS A WAY OF PROVIDING SOUND DEFENSE STRATEGY, BUT INSTEAD AS A WEAPON TO PREVENT ME FROM TAKING THE STAND WHICH WAS TAKING AWAY MY RIGHT TO CHOOSE TO TAKE STAND

THIS CONVERSATION TOOK PLACE RIGHT AFTER THE DEFENDANT, FIRST READ THE JURY INSTRUCTIONS. FROM THE ONSET THE DEFENDANT WANTED TO TAKE THE STAND. THE DEFENDANT DID NOT TAKE THE STAND AT THE PRELIMINARY HEARING, ALLOWING THE PUBLIC DEFENDER TO INFLUENCE THE DEFENDANT TO NOT TAKE THE STAND. THE DEFENDANT DID NOT WANT TO MAKE THAT MISTAKE AGAIN. I LET JOHN PARRIS KNOW THIS, BUT HE CONTINUALLY TRIED TO GET ME TO NOT TAKE THE STAND. HE ACTUALLY NEVER EVEN ASKED ME MY VERSION of WHAT TOOK PLACE AND HE NEVER PREPARED FOR ME TO TAKE THE STAND. I WANTED TO TAKE THE STAND TO STATE MY INTENT BELIEVING THAT I WAS THE ONLY PERSON WHO COULD SAY WHAT MY INTENT WAS. JOHN PARRIS TOLD ME THAT INTENT WAS NOT A PART of THE CRIMES I WAS CHARGED WITH. WHEN THE DEFENDANT READ THE JURY INSTRUCTIONS, WHICH MADE IT CLEAR THAT INTENT WAS AN ELEMENT of THE CRIMES I WAS CHARGED WITH, I LET JOHN PARRIS KNOW THAT HE COULD NOT TALK ME OUT OF TAKING THE STAND. THAT I WANTED TO TAKE THE STAND TO CLARIFY TO THE JURY WHAT MY INTENT WAS. AT THAT POINT HE MADE THE STATEMENT "IF YOU TAKE THE STAND I WILL ASK YOU TWO YES OR NO QUESTIONS THEN TURN YOU OVER TO THE D.A. AND LET HER TEAR YOU APART."

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THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL ON THIS ACT ALONE. THE DEFENDANT ASSERTS THAT HE WAS FORCED TO EITHER GIVE UP HIS RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. DUE TO WHOLLY INADEQUATE ACTIONS of HIS RETAINED ATTORNEY. FURTHER, COUNSELS ACTIONS COMPORT TO NOTHING MORE THAN A VIOLATION OF DEFENDANTS DUE PROCESS RIGHTS. DEFENDANT HAS AN UNQUALIFIED RIGHT TO LEGAL ASSISTANCE, THAT EXPRESSES LOYALTY TO SAID DEFENDANT. THEREFORE, DEFENDANT CONTENDS THAT ALTHOUGH THE DEFENDANT HAD COUNSEL, THE ACTIONS of COUNSEL HAVE CREATED UNFAIR PREJUDICE AND OBSTACLES WHICH DO NOT COMPORT THE FAIR PROCEDURES OWED TO THE DEFENDANT.

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CUYLER V. SULLIVAN 100 S. Ct. 17-8 (1980)

FRAZIER V. U.S. 18 F. 3d 778 (9TH CIR 1994)

"THE RIGHT TO COUNSEL IS THE RIGHT ALSO TO EFFECTIVE ASSISTANCE of COUNSEL."

ANDERS V. CALIFORNIA 87 S. Ct. 1396 @ 1480 (1967)

THUS, THE ADVERSIAL PROCESS PROTECTED BY THE SIXTH AMENDMENT REQUIRES THAT THE ACCUSED HAVE "COUNSEL ACTING IN THE ROLE OF AN ADVOCATE".

GALLEGO V. U.S., 174 F. 3d 1196, 1197 (11TH CIR 1999)

A CRIMINAL DEFENDANT HAS A FUNDAMENTAL CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OR HER OWN BEHALF AT TRIAL. THIS IS RIGHT IS PERSONAL TO THE DEFENDANT AND CANNOT BE WAIVED EITHER BY THE TRIAL COURT OR BY DEFENSE COUNSEL. WHERE COUNSEL HAS REFUSE TO ACCEPT THE DEFENDANTS DECISION TO TESTIFY AND REFUSED TO CALL HIM TO THE STAND, OR WHERE DEFENSE COUNSEL NEVER INFORMED THE DEFENDANT OF HIS RIGHT TO TESTIFY AND THAT THE FINAL DECISION BELONGS TO THE DEFENDANT ALONE, DEFENSE COUNSEL HAS NOT ACTED WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEY'S IN CRIMINAL CASES, AND THE DEFENDANT HAS NOT RECIEVED REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL.

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'INEFFECTIVE COUNSEL BY PRIOR COUNSEL' ALSO INCLUDES TWO SEPERATE CONFLICTS OF INTEREST. INDEPENDENTLY EACH WOULD BE SUFFICIENT GROUNDS FOR A NEW TRIAL. BOTH CONFLICTS OF INTEREST EXISTED PRIOR TO REPRESENTATION AND BOTH CONFLICTS REQUIRED ATTORNEY JOHN PARRIS TO EITHER DECLINE REPRESENTATION OR DEFENDANT GIVE INFORMED CONSENT, CONFIRMED IN WRITING. THE FIRST CONFLICT OF INTEREST IS THAT NORMAN DUPLISSIE, THE LEGAL GUARDIAN of MICHAEL, AND A WITNESS FOR THE STATE, WAS THE SOURCE FROM WHICH THE ATTORNEY JOHN PARRIS WAS PAID. ALTHOUGH THE DEFENDANT WAS AWARE THAT NORMAN DUPLISSIE PAID JOHN PARRIS TO REPRESENT THE DEFENDANT, THERE WAS NEVER A CONVERSATION BETWEEN THE DEFENDANT ON THIS MATTER, LET ALONE ANY INFORMATION GIVEN TO THE DEFENDANT ABOUT SIGNIFICANT RISKS THAT THIS WOULD ENTAIL. INCLUDING BUT NOT LIMITED TO CROSS-EXAMINATION of NORMAN DUPLISSIE AND CROSS-EXAMINATION of MICHAEL [redacted]. THE SECOND CONFLICT OF INTEREST IS THAT JOHN PARRIS PREVIOUSLY REPRESENTED FOR 'FREE' THE D.A. MARIA E. LAVELL, WHO IS ASSIGNED TO MY CASE ALTHOUGH THE ATT. PARRIS WAS RETAINED IN LATE JULY 2013 WHICH WAS APPROXIMATELY 6 MONTHS PRIOR TO THE JURY TRIAL, AND THE D.A. WAS MARIA LAVELL WHEN HE TOOK THE CASE, HE DID NOT TELL THE DEFENDANT UNTIL 5 MINUTES BEFORE SELECTING THE JURY.

COLES V. ARIZONA CHARLIES 973 F. Supp. 971, 975 (D. NEV 1997) HOLDING THAT ANY DOUBTS AS TO THE EXISTENCE OF A CONFLICT OF INTEREST SHOULD BE RESOLVED IN DISQUALIFICATION.

U.S. V. SHWAYDER 312 F. 3d 1109, 1117 (9TH CIR 2002) (CONCLUDING THAT THE DEFENDANTS WAIVER OF CONFLICT OF INTEREST WAS NOT VALID WHERE HE WAS NOT ADEQUATELY INFORMED OF THE SIGNIFICANCE OF THE CONFLICTS THAT MIGHT ARISE.

CLARK V. STATE 108 NEV 324, 326, 831 P. 2d 1374, 1376 (1992) (HOLDING THAT AN ACTUAL CONFLICT OF INTEREST WHICH ADVERSELY AFFECTS A LAWYERS PERFORMANCE WILL RESULT IN A PRESUMPTION OF PREJUDICE TO THE DEFENDANT)

IN RE PUCCINELLI, 67 NEV. 645, 224 P. 2d 318 (1950) AN ATTORNEY WHO REPRESENTED BOTH THE PLAINTIFF AND THE DEFENDANT IN A DISTRICT COURT ACTION WITHOUT PRIOR DISCLOSURE OF HIS APPOINTMENT WAS PROPERLY SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF NINE MONTHS.

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RYAN V EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, 123 NEV. 419, 168 P. 3d 703 (2007) A WAIVER of CONFLICT-FREE REPRESENTATION ENTAILS THE WAIVER of CERTAIN IMPORTANT RIGHTS AT TRIAL, ON APPEAL, AND IN POST CONVICTION PROCEEDINGS, INCLUDING WAIVER of THE RIGHT TO SEEK A MISTRIAL BASED ON ANY CONFLICTS ARISING FROM THE DUAL REPRESENTATION. CONSEQUENTLY, WE NOW REQUIRE ATTORNYS TO ADVISE CRIMINAL DEFENDANTS of THEIR RIGHT TO CONSULT WITH INDEPENDENT COUNSEL TO ADVISE THEM ON THE POTENTIAL CONFLICT of INTEREST AND THE CONSEQUENCES of WAIVING THE RIGHT TO CONFLICT-FREE REPRESENTATION. THE ATTORNEY MUST ADVISE THE CLIENTS TO SEEK THE ADVICE of INDEPENDENT COUNSEL BEFORE THE ATTORNEY ENGAUGES IN THE DUAL REPRESENTATION. IF THE CLIENTS CHOOSE NOT TO SEEK THE ADVICE of INDEPENDANT COUNSEL, THE CLIENTS MUST EXPRESSLY WAIVE THE RIGHT TO DO SO, BEFORE AGREEING TO ANY WAIVER of CONFLICT-FREE REPRESENTATION. IF THE ATTORNEY FAILS TO ADVISE CRIMINAL DEFENDANTS of THEIR RIGHT TO SEEK THE ADVICE of INDEPENDENT COUNSEL, THE CLIENTS WAIVER of CONFLICT-FREE REPRESENTATION ARE INEFFECTIVE UNLESS AND UNTIL THE ATTORNEY ADVISES THE CLIENTS TO DO.

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RULES OF PROFESSIONAL CONDUCT RULE 1.7

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) EXCEPT AS PROVIDED IN PARAGRAPH (b), A LAWYER SHALL NOT REPRESENT A CLIENT IF THE REPRESENTATION INVOLVES A CONCURRENT CONFLICT OF INTEREST. A CONCURRENT CONFLICT OF INTEREST EXISTS IF:

(1) THE REPRESENTATION OF ONE CLIENT WILL BE DIRECTLY ADVERSE TO ANOTHER CLIENT;

(2) THERE IS SIGNIFICANT RISK THAT THE REPRESENTATION OF ONE OR MORE CLIENTS WILL BE MATERIALLY LIMITED BY THE LAWYER'S RESPONSIBILITIES TO ANOTHE CLIENT, A FORMER CLIENT OR A THIRD PERSON OR BY A PERSONAL INTEREST OF THE LAWYER.

(b) NOTWITHSTANDING THE EXISTANCE OF A CONCURRENT CONFLICT OF INTEREST UNDER PARAGRAPH (a) A LAWYER MAY REPRESENT A CLIENT IF: (1) THE LAWYER REASONABLY BELIEVES THAT THE LAWYER WILL BE ABLE TO PROVIDE COMPETENT AND DILIGENT REPRESENTATION TO EACH AFFECTED CLIENT (2) THE REPRESENTATION IS NOT PROHIBITED BY LAW; (3) THE REPRESENTATION DOES NOT INVOLVE THE ASSERTION OF A CLAIM BY ONE CLIENT AGAINST ANOTHER CLIENT REPRESENTED BY THE LAWYER IN THE SAME LITIGATION OR OTHER PROCEEDING BEFORE A TRIBUNAL; AND (4) EACH AFFECTED CLIENT GIVES INFORMED CONSENT, CONFIRMED IN WRITING.

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LOYALTY AND INDEPENDANT JUDGEMENT ARE ESSENTIAL ELEMENTS IN THE LAWYERS RELATIONSHIP TO A CLIENT. A CONFLICT of INTEREST MAY EXIST BEFORE REPRESENTATION IS UNDERTAKEN, IN WHICH EVENT THE REPRESENTATION MUST BE DECLINED, UNLESS THE LAWYER OBTAINS THE INFORMED CONSENT of EACH CLIENT UNDER THE CONDITIONS of PARAGRAPH (b) - INFORMED CONSENT, CONFIRMED IN WRITING. - IGNORANCE CAUSED BY A FAILURE TO INSTITUTE SUCH PROCEDURES WILL NOT EXCUSE A LAWYER'S VIOLATION OF THIS RULE.

LOYALTY TO A CURRENT CLIENT PROHIBITS UNDERTAKING REPRESENTATION DIRECTLY ADVERSE TO THAT CLIENT WITHOUT THE CLIENT'S INFORMED CONSENT, CONFIRMED IN WRITING. THUS, ABSENT CONSENT, A LAWYER MAY NOT ACT AS AN ADVOCATE IN ONE MATTER AGAINST A PERSON THE LAWYER REPRESENTS IN SOME OTHER MATTER, EVEN WHEN THE MATTERS ARE WHOLLY UNRELATED. THE CLIENT AS TO WHOM THE REPRESENTATION IS DIRECTLY ADVERSE IS LIKELY TO FEEL BETRAYED, AND THE RESULTING DAMAGE TO THE CLIENT - LAWYER RELATIONSHIP IS LIKELY TO IMPAIR THE LAWYER'S ABILITY TO REPRESENT THE CLIENT EFFECTIVELY.

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IN ADDITION, THE CLIENT ON WHOSE BEHALF THE
ADVERSE REPRESENTATION IS UNDERTAKEN REASONABLY
MAY FEAR THAT THE LAWYER WILL PURSUE THAT CLIENT'S
CASE LESS EFFECTIVELY, OUT OF DEFERENCE TO THE
OTHER CLIENT, i.e., THAT THE REPRESENTATION MAY BE
MATERIALLY LIMITED BY THE LAWYER'S INTEREST
IN RETAINING THE CURRENT CLIENT. IN ADDITION
TO CONFLICTS WITH OTHER CURRENT CLIENTS,
A LAWYER'S DUTIES of LOYALTY AND INDEPENDENCE
MAY BE MATERIALLY LIMITED BY RESPONSIBILITIES
TO FORMER CLIENTS. THE LAWYER'S OWN INTERESTS
SHOULD NOT BE PERMITTED TO HAVE AN ADVERSE
EFFECT ON REPRESENTATION OF A CLIENT.
A LAWYER MAY BE PAID FROM A SOURCE OTHER
THAN THE CLIENT, INCLUDING A CO-CLIENT, if
THE CLIENT IS INFORMED of THAT FACT AND THE
ARRANGEMENT DOES NOT COMPROMISE THE LAWYER'S
DUTY of LOYALTY OR INDEPENDANT JUDGEMENT TO
THE CLIENT. If ACCEPTANCE of THE PAYMENT
FROM ANY OTHER SOURCE PRESENTS A SIGNIFICANT
RISK THAT THE LAWYER'S REPRESENTATION OF THE CLIENT
WILL BE MATERIALLY LIMITED BY THE LAWYER'S
OWN INTEREST IN ACCOMODATING THE PERSON PAYING
THE LAWYER'S FEES OR BY THE LAWYER'S
RESPONSIBILITY TO A PAYER WHO IS ALSO A

1 CO-CLIENT, THEN THEN LAWYER MUST COMPLY
2 WITH THE REQUIREMENTS OF PARAGRAPH (b), before
3 ACCEPTING THE REPRESENTING, INCLUDING
4 DETERMINING WHETHER THE CONFLICT IS CONSENTABLE,
5 AND, IF SO, THAT THE CLIENT HAS ADEQUATE INFORMATION
6 ABOUT THE MATERIAL RISKS of THE REPRESENTATION.
7 INFORMED CONSENT REQUIRES THAT EACH AFFECTED
8 CLIENT BE AWARE OF THE RELEVANT CIRCUMSTANCES AND
9 of THE MATERIAL AND REASONABLY FORSEEABLE WAYS
10 THAT THE CONFLICT COULD HAVE ADVERSE EFFECTS ON
11 THE INTERESTS OF THAT CLIENT PARAGRAPH (b) RULE 1.7
12 PROFESSIONAL RULES of CONDUCT, REQUIRES THE
13 LAWYER TO OBTAIN THE INFORMED CONSENT of THE CLIENT,
14 CONFIRMED IN WRITING, THE REQUIREMENTS of A WRITING
15 DOES NOT SUPPLANT THE NEED IN MOST CASES for THE LAWYER
16 TO TALK WITH THE CLIENT, TO EXPLAIN THE RISKS AND ADVANTAGES,
17 IF ANY, of REPRESENTATION BURDENED WITH A CONFLICT OF
18 INTEREST, AS WELL AS REASONABLY AVAILABLE ALTERNATIVES,
19 AND TO AFFORD THE CLIENT A REASONABLE OPPORTUNITY TO
20 CONSIDER THE RISKS AND ALTERNATIVES AND TO RAISE QUESTIONS
21 AND CONCERNS. RATHER THE WRITING IS REQUIRED IN ORDER
22 TO IMPRESS UPON THE CLIENTS THE SERIOUSNESS OF THE
23 DECISION THE CLIENT IS BEING ASKED TO MAKE AND TO AVOID
24 DISPUTES OR AMBIGUITIES THAT MIGHT LATER
25 OCCUR IN THE ABSENSE OF A WRITING.

FURTHERMORE 'INEFFECTIVE COUNSEL BY PRIOR COUNSEL', THE DEFENDANT RECIEVED REPRESENTATION of A DEFICIENT PERFORMANCE THAT FALLS BELOW AN OBJECTIVE STANDARD of REASONABLENESS. SOME of HIS ACTIONS BE INDIVIDUALLY CONSIDERED SUFFICIENT TO CONCLUDE HIS COUNSEL WAS INEFFECTIVE, OTHER ACTIONS OR LACK THERE of WOULD BE A CUMULATIVE EFFECT of MULTIPLE ERRORS WHICH VIOLATES A DEFENDANTS CONSTITUTIONAL RIGHT TO A FAIR TRIAL. THE Attorney JOHN PARRIS DID NOT CONDUCT ADEQUATE PRE-TRIAL INVESTIGATION TO PREPARE A DEFENSE, HE DID NOT LOOK INTO MEDICAL EVIDENCE OR INTERVIEW POTENTIAL WITNESSES, HE DID NOT CROSS EXAMINE WITNESSES, AND HIS CROSS EXAMINATION OF OTHERS WAS VERY LACKING, BASICALLY REPEATING THE QUESTIONS OVER THAT THE DISTRICT Attorney ASKED ALREADY. HIS OPENING STATEMENT WAS TO COMPLIMENT THE STATE ON GIVING A GOOD OPENING STATEMENT AND A DESCRIPTION OF WHAT AN OPENING STATEMENT SHOULD CONTAIN, [redacted] WHICH BY HIS OWN DEFINITION of A GOOD OPENING STATEMENT HIS would NOT HAVE PASSED AS A GOOD OPENING STATEMENT. FOLLOWED BY AN INSTRUCTON TO THE JURY TO WAIT TO HEAR ALL THE EVIDENCE BEFORE COMING TO A CONCLUSION. YET HIS INTENTION WAS TO NOT PRESENT A DEFENSE. HE DID NOT PREPARE JURY INSTRUCTIONS AND HE DID NOT REQUEST FOR THE JURY TO HAVE THE OPTION of A LESSER INCLUDED offense.

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BURGEON V STATE, 102 NEV. 43, 714 P. 2d 576 (1986)
REJECTS THE STATES CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS SOUND STRATEGY. THERE WAS SUFFICIENT EVIDENCE TO PRESENT A DEFENSE.

WARNER V STATE, 102 NEV. 635, 729 P. 2d 1359 (1986)
FAILURE TO CONTACT WITNESSES, INEFFECTIVE ASSISTANCE OF COUNSEL WITNESSES NEVER CONTACTED. THE COURT REVERSED AND CONCLUDED THAT TRIAL COUNSEL'S FAILURE TO INVESTIGATE AND LACK OF PREPERATION FOR TRIAL LEFT THE INMATE WITHOUT A DEFENSE AT TRIAL. THE COURT REVERSED THE JUDGEMENT OF CONVICTION AND REMANDED THE CASE FOR A NEW TRIAL.

PROFESSIONAL RULES OF CONDUCT RULE 1
COMPETENCE: A LAWYER SHALL PROVIDE COMPETENT REPRESENTATION TO A CLIENT. COMPETENT REPRESENTATION REQUIRES THE LEGAL KNOWLEDGE, SKILL, THOROUGHNESS, AND PREPERATION REASONABLY NECESSARY FOR THE REPRESENTATION

PROFESSIONAL RULES OF CONDUCT RULE 3
DILLIGENCE: LAWYER SHALL ACT WITH REASONABLE DILLIGENCE AND PROMPTNESS IN REPRESENTING A CLIENT.

SANBORN V. STATE 107 NEV. 399; 812 p.2d 1279; 1991 NEV. LEX 107

SANBORNS OWN TESTIMONY WAS STRONGLY DEVALUED BY THE ABSENSE OF CORROBORATIVE EVIDENCE THAT WOULD HAVE BEEN PRESENTED BY DILLIGENT AND EFFECTIVE COUNSEL. SANBORN INSISTS THAT BEFORE TRIAL, HE HAD PROVIDED HIS ATTORNEY WITH A LIST of POTENTIAL WITNESSES WHO WERE PREPARED TO TESTIFY. WE REJECT THE STATE'S CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS A SOUND STRATEGY. SANBORN PRIMARILY EMPHASIZES HIS COUNSELS FAILURE TO CONDUCT ADEQUATE PRE-TRIAL INVESTIGATION AND TO PRESENT TRIAL EVIDENCE. SANBORNS DEFENSE WAS CLEARLY PREJUDICED BY HIS COUNSELS FAILURE TO DEVELOP AND PRESENT EVIDENCE THAT WOULD HAVE CORROBORATED SANBORNS TESTIMONY BECAUSE OF COUNSELS LACK of DUE DILIGENCE SANBORN WAS DEPRIVED OF THE OPPORTUNITY TO PRESENT TESTIMONY MATERIAL TO HIS DEFENSE.

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THE DEFENDANT FIRST MET ATTORNEY JOHN PARRIS ON AUGUST 5TH 2013. AT THE END OF THE ATTORNEY VISIT, THE ATTORNEY PARRIS TOLD THE DEFENDANT HE WOULD SEE HIM AGAIN IN A COUPLE OF WEEKS. OUTSIDE SEEING THE ATTORNEY IN THE COURT ROOM, THE DEFENDANT DID NOT SEE THE ATTORNEY AGAIN UNTIL 6 MONTHS LATER, LESS THAN A WEEK BEFORE JURY SELECTION AND TRIAL WAS TO BEGIN. AT THE INITIAL CONSULTATION THE ATTORNEY PARRIS WAS INFORMED BY THE DEFENDANT, THAT THE DEFENDANT WAS NOT HAPPY WITH THE SERVICE PROVIDED BY P.D. DAN JENKINS BECAUSE THE PUBLIC DEFENDER WOULD NOT OR DID NOT LOOK INTO THE DEFENDANTS MEDICAL CONDITION, ALSO BECAUSE THE PUBLIC DEFENDER SEEMED TO HAVE NOT ENOUGH TIME TO DEDICATE TO THE DEFENDANT CASE TO PROPERLY DEFEND HIM. THE DEFENDANT BRIEFLY EXPLAINED HIS MEDICAL CONDITION AND THE EVENTS OF THE DAY OF THE INCIDENT AND THE PEOPLE WHO COULD VERIFY THIS TO THE ATTORNEY. THE ATTORNEY EXPLAINED TO THE DEFENDANT THAT THE ATTORNEY WOULD LOOK INTO THESE CIRCUMSTANCES AND GET BACK WITH THE DEFENDANT ABOUT WHAT THE BEST DEFENSE STRATEGY IS OR THE OPTIONS AVAILABLE AND ALSO DETERMINE IF WE NEEDED TO SEEK EXPERT ANALYSIS.

THIS SHOULD NOT BE VIEWED AS HINDSIGHT BECAUSE THE DEFENDANT WAS IN COMPLETE DISAGREEMENT WITH THE ATTORNEY AS THE EVENTS WERE TAKING PLACE, WHICH INCLUDES DURING THE JURY SELECTION PROCESS, THE OPENING STATEMENT, HIS CROSS EXAMINATION OF NORMAN DUPLISSIE, PATRICIA DUPLISSIE, HIS ASSOSIATES CROSS EXAMINATION OF MICHAEL, HIS LACK OF PREPAREDNESS TO CROSS EXAMINE THE EXPERT WITNESS, WHICH HE CHOOSE NOT TO CROSS EXAMINE, HIS DECISION TO NOT PRESENT OR INTERVIEW ROBERT SCHOFIELD, HIS CHOICE NOT TO LOOK INTO MEDICAL RECORDS, THE ATTORNY NOT TELLING THE DEFENDANT THAT HE WILL NOT BE PRESENTING A DEFENSE, NOT BRINGING THE DEFENSE CASE FILE WITH HIM TO THE TRIAL, THE ATTORNEY NOT HAVING A CLOSING ARGUMENT STATEMENT PREPARED, HIS ASSOCIATE WRITING IT WHILE THE STATE PRESENTED THEIR [redacted] CLOSING STATEMENT, THE ASSOCIATES UNWILLINGNESS TO OPERATE THE TELEPROMPTER DURING CLOSING ARGUMENT, DECIEVING THE CLIENT ABOUT TRIAL STRATEGY PRIOR TO THE START of TRIAL, AND ESSENTIALLY LETTING THE DEFENDANT KNOW THAT THE DEFENDANT HAS NO ROLE IN CHOOSING HOW DEFENDANT WILL BE REPRESENTED.

THERE HAS BEEN THREE CIRCUMSTANCES IN MY CASE IN WHICH ERRORS HAVE BEEN MADE IN THE TRANSFERRING OF LEGAL DOCUMENTS IN THIS CASE. THEY ARE ① THE STATE CLAIMS TO HAVE NOT RECEIVED A LETTER FROM PATRICIA DUPLISSIE, OR RECEIVED A COPY OF THIS LETTER IN THE EXCHANGE OF DISCOVERY ② THE ATTORNEY JOHN PARRIS DELIVERED TO THE DEFENDANT THE DEFENSE CASE FILE - NOT USING A DELIVERY SERVICE - THE DEFENDANT RECEIVED THE DEFENSE CASE FILE ON MARCH 19, 2014 WITH NO POST DATE ATTACHED, THIS FILE IS MISSING NUMEROUS ITEMS THAT WOULD BE BENEFICIAL TO THE DEFENDANT TO HAVE. FOR INSTANCE THE 911 TRANSCRIPT, THE PHONE TRANSCRIPTS THAT THE D.A. READ TO NORMAN DUPLISSIE, EXHIBIT #16, ANY AND ALL POLICE REPORTS OF THE DEFENDANTS PREVIOUS ENCOUNTERS WITH LAW ENFORCEMENT, ANY WORK WHATSOEVER THAT THE ATTORNEY DID TO CONTRIBUTE TO THE DEFENSE of THE DEFENDANT, INCLUDING INTERVIEWS WITH POTENTIAL WITNESSES OR ACTUAL WITNESSES, HIS CONTRIBUTION TO JURY INSTRUCTIONS, ETC. ③ COURT TRANSCRIPTS OF THE JURY SELECTION AND JURY TRIAL NEVER RECEIVED BY THE DEFENDANT. DUE TO THIS THE DEFENDANT DOES NOT FEEL CONFIDENT THAT THE EXHIBITS WILL REACH THEIR DESIRED DESTINATION. FOR THIS REASON THE DEFENDANT WILL BRING THE EXHIBITS TO COURT WITH HIM ON MAY 28, 2014.

THE DEFENDANT HOPES AND PRAYS THAT THE HONORABLE JUDGE WILL CONSIDER THE CIRCUMSTANCES TO THIS CASE AND COME TO THE SAME CONCLUSION THAT THE DEFENDANT HAS, THAT A FAIR TRIAL WAS NOT PREVIOUSLY PRODUCED, AND FOR JUSTICE TO BE PROPERLY SERVED A NEW TRIAL SHOULD BE GRANTED TO THE DEFENDANT.

DATED THIS 20TH DAY OF MAY, 20 14.

I, MICHAEL J. SCHOFIELD, DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE ABOVE REPLY MOTION IS ACCURATE, CORRECT, AND TRUE TO THE BEST OF MY KNOWLEDGE.

NRS 171.102 AND NRS 208.165

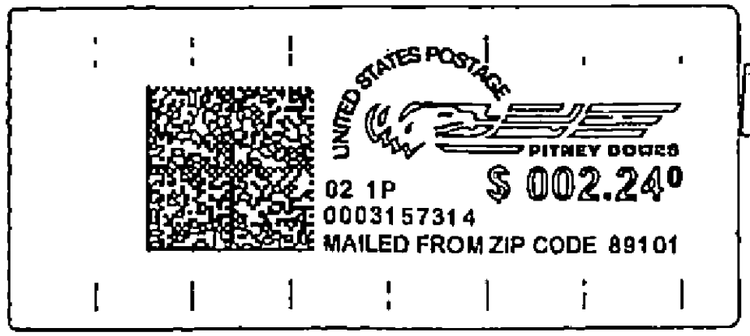
RESPECTFULLY SUBMITTED

Michael J. Schofield

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

MICHAEL J. SCHOFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101



LEGAL MAIL

CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS NEVADA 89101

AA 145

LEGAL

MAIL

EXHIBIT 6

MC
PP
DA
MICHAEL J. SCHOFIELD
INMATE #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101
DEFENDANT IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY
NEVADA

CASE NO. C-13-287009-1

STATE of NEVADA
PLAINTIFF

DEPT NO. 6

DOCKET NO. —

VS

MICHAEL J. SCHOFIELD
DEFENDANT

DATED JUNE 5, 2014

DEFENDANTS ADDENDUM II TO MOTION FOR NEW TRIAL

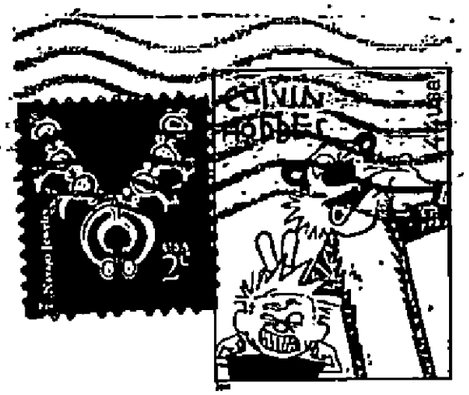
COMES NOW DEFENDANT IN PROPER PERSON AND HEREBY SUBMITS THE ATTACHED EXHIBITS TO SUPPORT THE DEFENDANTS MOTION FOR NEW TRIAL, DEFENDANTS RESPONSE TO OPPOSITION, DEFENDANTS ADDENDUM REPLY.

Michael J. Schofield
MICHAEL J. SCHOFIELD
DEFENDANT IN PROPER PERSON

I STATE FAILURE TO DISCLOSE
FAVORABE EVIDENCE

Patricia Duplissie.
1111 Aspen Breeze Ave.
Las Vegas, NV 89123

LAS VEGAS NV 890
LAS VEGAS NV 890
02 MAY 2013 PM 5 L
02 MAY 2013 PM 5 L



Copy of
LETTER TO
THE D.A.

Dan J.

Clark County Public Defender
309 South 3rd Street
2nd floor
Las Vegas, NV 89155

89101

EXHIBIT A

Patricia Duplissie
1111 Aspen Breeze Ave.
Las Vegas, NV 89123
(702) 837-2576

Clark County Public Defender
309 South 3rd Street
2nd floor
Las Vegas, NV 89155

Attn: Dan Jenkins

Re: Michael John Schofield
Case #13F00320X/C287009

May 1st 2013

Dear Mr. Jenkins

I am writing this letter in order to share my feelings on the above mentioned case as well as to render clarification on a few points which I understand came before the court in the most recent session.

I certainly understand the severity of the crime committed and expect my son Michael John Schofield to be held responsible for his actions. The domestic battery and the child abuse charges were witnessed by family members and these are fully supported as being appropriate. However, we fail to understand the charge of burglary in the 1st degree and the charge of kidnapping in the 1st degree.

Since Michael was voluntarily allowed into our home on 1/6/2013 we see no reason for the burglary charge. He did not force his way in nor did he threaten anyone in the household in any manner upon entry. We believe this charge should be dropped.

With regard to the kidnapping charge in the first degree I feel that this was more of a disciplinary action on the part of the father (Michael John) toward his son (Michael Joshua) rather than a kidnapping. It is true that the son did not wish to accompany his father to Wal-Mart and that the father was too violent in attempting to accomplish this. There was no weapon involved and the understanding I have is that if Michael Joshua did accompany his father that they would return in a short period of time. For these reasons I believe that kidnapping in the 1st degree should be dropped or at least reduced to a 2nd degree status.

It was alleged in court that Michael John had an assigned day each week where he was allowed to visit with Michael Joshua. This is not true. Since we assumed guardianship of Michael Joshua in 2001 we have tried our best to maintain a normal relationship between father and son insofar as possible. We felt that as long as the father was not impaired that he could see his son on a request basis.

In recent months before the incident on 1/6/2013, Michael John (father) had incurred several medical incidents which required hospitalization. On one incident he was diagnosed with having seizures which required medication. It is my understanding that this situation was supported by the medical staff at the Detention Center and in fact he has been housed in the Psychiatric Ward. You may wish to review this situation and determine if diminished mental capacity may be an issue in this case.

I believe we all wish to see justice done in this matter. Hopefully the above information may be helpful to you in accomplishing this goal.

Sincerely,

Patricia Duplissie

Patricia Duplissie

EXHIBIT B

OFFICE OF THE DISTRICT ATTORNEY
CLARK COUNTY, NEVADA

CLARK COUNTY
District Attorney

DISCOVERY DIVISION
DA ADMINISTRATION

REQUEST FOR DISCOVERY

DISCOVERY INFORMATION

☐ APPOINTED COUNSEL
☐ RETAINED COUNSEL
☐ PUBLIC DEFENDER/SPECIAL PUB DEF
☐ PRO PER

Request Date: _____ Clerk's Initials: _____

Juvenile/efile pages @ $.25 ea _____

# of Pages hard copy @ $.50 ea 96 Date: 11/[illegible] Case #: [illegible]

Duplication of Video/CD/Tapes/Disk @ $25.00 ea 1 Printed Pictures @ $1.00 ea _____

Defendant: [illegible] Dept: XXI Next Court Date: _____

Amount Due: 73.00 Bates Stamp: _____ to _____

ATTORNEY INFORMATION email address: _____

Bar #: _____ Name: [illegible] Phone: _____

Signature: [signature] Date: 12 [illegible]

PROMISE OF RECIPROCAL DISCOVERY

I am the attorney for the named Defendant. In executing this request for discovery, I acknowledge receipt of the discovery provided by the State and the State's Request for Discovery and promise to comply with all requirements of NRS 174.089 and 174.295.

Payment For Copies: Make all checks payable to: **CLARK COUNTY TREASURER.**
Remit To: District Attorney's Office, 200 Lewis Ave 3rd Floor, ATTN: Discovery, Las Vegas, NV 89155-2212. Upon signing, in consideration of the copying services provided, Attorney agrees to be liable for the above costs and for such other costs for copies provided in this case, notwithstanding any right of Attorney to collect such costs from Defendant or Third Parties. Attorneys who do not accept this liability must make arrangements to pre-pay or copy discovery at the Office of the District Attorney under supervision upon their own portable copiers.

DISCOVERY PROVIDED BY STATE

The State has provided written or recorded statements or confessions made by the Defendant, any written or recorded statements made by any witness, results of physical or mental examinations and of scientific tests or experiments in connection with the case which are within the possession or custody of the prosecuting attorney. Additional discovery will be furnished when available pursuant to NRS 174.295. It may be obtained at the 3rd floor reception area of the Office of the District Attorney. Prior to any trial, it is the responsibility of defense counsel to make an appointment with the Deputy District Attorney assigned to prosecute this case to verify that all available discovery materials have been provided. The parties agree that, pursuant to NRS 174.234 (1) and (2), the attached documents constitute service and filing of the Notice of Witnesses required by said statute. Please note that the address of any witness employed by the LVMPD is 400 S. Martin Luther King Blvd, LV, NV 89101. The address of the NHP is 4615 West Sunset Rd, LV, NV 89112

STATE'S REQUEST FOR DISCOVERY

Defendant agrees to accept this document as constituting a sufficient request for discovery under NRS 174.245 in compliance with NRS 174.285. Pursuant to NRS 174.245, the State hereby requests that the Defendant provide to the Office of the District Attorney to inspect and copy or photograph any: (a) written or recorded statement made by any witness within the possession, custody or control of the Defendant or Defendant's counsel, the existence of which is known, or by the exercise of due diligence may become known, to the Defendant or Defendant's counsel; and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the Defendant or Defendant's counsel, and (c) books, papers, documents, tangible objects, or copies of portion thereof, that Defendant intends to introduce into evidence as set forth in NRS 174.245. The Defendant agrees to provide such documents within 30 days of receiving the attached documents or 30 days prior to trial (whichever is sooner) and provides additional documents as they become available pursuant to NRS 174.295.

REV. 04/12

12-143806

EXHIBIT C

REGIONAL JUSTICE CENTER
200 LEWIS AVE
3RD FLOOR
DIST 6.
JUDGE CADISH

FILED
JUL 19 10 21 AM '13
CLERK OF THE COURT

MICHAEL J. SCHOFIELD
Inmate No. 1679195
330 S. Casino Center Blvd.
Las Vegas. NV 89101
Defendant in Proper Person

JOHN PARRIS ESQ
324 S. 3RD ST. BLDG 1
(702) 382-0905

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA.
Plaintiff.
vs.
MICHAEL J. SCHOFIELD.
Defendant.

Case No. C-13-287009-1
Dept No. 21
CASE NO C-13-287009-1

HD: August 13, 2013
Time: 9:30 AM

MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL

COMES NOW Defendant. MICHAEL J. SCHOFIELD. in Proper Person. and respectfully moves this honorable court to appoint other counsel to represent this Defendant.

This Motion is based upon all the records and files in this action. Points and Authorities. Affidavit of the Defendant. and any argument adduced at the time of hearing of this Motion.

MICHAEL J. SCHOFIELD
Defendant in Proper Person

NEVADA RULES of APPELLATE PROCEDURE
RULE 4(A)(7) (AVOIDING $250 FILING FEE)
RULE 4(B)(1)(A) 30 DAYS TO FILE AMENDED NOTICE of APPEAL.
RULE 4(B)(5)(B) 20 DAYS to FILE
FORM 1 IN THE APPENDIX of FORMS IS Suggested form of a NOTICE of APPEAL.
RULE 4(B)(3)

NOTICE OF MOTION

TO: DISTRICT ATTORNEY. Defendant in Proper Person

YOU AND EACH OF YOU. WILL PLEASE TAKE NOTICE that the undersigned will bring this MOTION on for hearing before the District Court Dept. XXI on the 13 day of Aug. 2013. at 9:30 o'clock a.m./p.m. of said day.

DATED this 19 day of July, 2013.

MICHAEL J. SCHOFIELD
Defendant in Proper Person

POINTS AND AUTHORITIES

It is respectfully requested of this court to grant this motion to dismiss counsel for the reasons listed below:

1. Defendant has not had reasonable contact with the appointed attorney.

2. Counsel spoke with defendant in jail only once. for 15 minutes. and did not appear at the first hearing. He send someone else to ask for a continuance.

3. He refused to allow Defendant to testify at the preliminary hearing.

4. He fails and refuses to return phone calls.

5. Defendant has a history of seizures - and even had a medical episode. Defendant requested his attorney address this issue. as it relates to his defense. and he failed to address Defendant's medical history at all. He did not contact relatives. or even name Defendant's mother as a witness. and she was present during the alleged incident that resulted in these charges.

POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

Since the Public Defender. Dan Jenkins. was appointed counsel on or about March. 2013. Defendant has been prejudiced and suffered manifest injustice based on counsel's refusal or failure to:

1. Communicate and/or visit with said Defendant at the Clark County Detention Center.

24 25 26 27 28 29 30 31
1 2 3 4 5 6 7 8
9

2. Investigate. as to client's oral/written requests any defense that may help to mitigate or reduce his sentence.

3. Talk to Defendant at any length as to Defendant's feelings. and Defendant fears he will be forced to take a plea because the public defender is not prepared. He did not appear at the first hearing (arraignment): nor the second. He has only accomplished a continuance in this matter.

4. Thoroughly take investigative measures in this case. and subsequently not using all available resources to assist in obtaining a fair trial - at which Defendant believes the charges should be dismissed.

II. ARGUMENT

Defendant asserts he is being denied his right to effective representation due to wholly inadequate actions of his court appointed counsel. Further. counsel's innate action comport to nothing more than a violation of defendant's due process rights.

Counsel has not returned any of the Defendant's phone calls: Defendant has left numerous messages with voice mail. secretary and/or office clerks. Witnesses have not been interviewed.

Defendant has an unqualified right to legal assistance that expresses loyalty to said defendant. "The right to counsel is the right [also] to effective assistance fo counsel." Cuyler v. Sullivan 100 S.Ct. 17-8 (1980): and Frazier v. U.S. 18 F. 3d 778 (9th Cir. 1994)! Thus. the adversarial process protected by the sixth amendment requires that the accused have "counsel acting in the role of an advocate." Anders v. California. 87 S.Ct. 1396 & 1480 (1967).

A party whose counsel is unable to provide effective or adequate assistance is no better than one who has no counsel at all; and any appeal(s) would be futile in its gesture. Evitts v. Lucey 105 S.Ct. 830 (1985); Douglas v. California. 83 S.Ct 814 (1963).

Therefore. Defendant contends that although counsel has been appointed in this case. the actions of counse. or lack thereof. have created unfair prejudice and obstacles which do not comport the fair procedures owed to the defendant.

The plurality opinion in Evitts and Douglas. infra. made it very clear that:

"There is lacking that equality demanded by the fourteenth amendment. where the "rich man" enjoys the benefit of the law being righteously practiced: in that. counsels' examination step-by-step

(into the record of the case), and research of the law, and a marshaling of the facts, arguments in his behalf is done as should befit an advocate of defense; while the indigent, so burdened by a preliminary determination that his case is without merit, is forced to shift for himself." 105 S.Ct. At 842; 83 S.Ct at 816-17.

Notwithstanding the strong policy favoring autonomy, "ethical, professional and constitutional principals" establish counsel's standards owed to his client. See: American Bar Association (ABA), and Professional Responsibility Code (CPR).

So, clearly, a conflict of interest now exist between counsel/client (defendant), as all faith and trust has been diminished as a result of counsel's actions or lack thereof, and a "showing" of conflict of interest requires no showing of prejudice. Cuyler v. Sullivan, 100 S.Ct., at 1717.

The law addresses itself to actualities. Adjudiciation is not a mere mechanical process, nor does it compel either (or determination) Griffin v. Illinois. 76 S.Ct. 585 592-594 (1956).

Therefore, fundamental fairness requires the abolition of prejudice which defendant is presently suffering. This is an actuality that the law must address. Anything short of abdication would further a manifest of injustice. The "effectiveness (in assistance) of counsel" is an individual's most fundamental right, for without it, every other right Defendant has to asset become affected.

Dated this 9 day of July, 2013.

MICHAEL J. SCHOFIELD
Defendant in Proper Person

II Newly Discovered Evidence

EXHIBIT E

DISCHARGE

Make a copy for patient

We want every patient who stays with us to be informed about their home medications. Please keep this list of medications for your records. If you still have any medication questions, please call our **PharmAssist** Hotline to schedule a private consultation with a St. Rose Dominican Hospitals Pharmacist at (702) 616-5596

	Name of Medication	Dose / Strength	Route	Frequency	[redacted]	Next dose due	Continue at Home?
1	Tylenol	1 tabs	oral	As needed		7/4/12 if needed	YES/NO
2	Ibuprofen	1 tabs	oral	As needed		7/5/12	YES/NO
3	Keppra	500mg	oral	twice a day		7/4/12 pm	YES/NO
4							YES/NO
5							YES/NO
6							YES/NO
7							YES/NO
8							YES/NO
9							YES/NO
10							YES/NO
11							YES/NO
12							YES/NO
13							YES/NO
14							YES/NO
15							YES/NO
16							YES/NO
17							YES/NO
18							YES/NO

n-patient medications should be added for a complete list of Discharge Medications. Indicate whether to continue or liscontinue in-patient medications upon discharge.
his list of medications was created in consultation with your physician and/or derived from your physician's discharge orders.

[redacted]

DATE 7/4/12 *TIME* 1800

Please share this list with all your doctors.

Healthcare facilities: For medication questions, call St. Rose Dominican Hospitals Pharmacy at:
Siena (702) 616-5540 • Rose de Lima (702) 616-4540 • San Martin (702) 492-8540

St. Rose Dominican Hospitals
A member of CHW

MEDICATION RECONCILIATION

09 (05/11) MEDREC

PATIENT IDENTIFICATION

Pt#: 33014697 MR#: 689494
SCHOFIELD ,MICHAEL J
10/03/1965 , M 46 07/02/12
ADR: AKBAR TANVEER Rm: MED
PDR: Bd: 0360P
EOS

EXHIBIT F

NOT PERMANENT PART OF PATIENT RECORD:

MRI Brain W&WO Contrast SCHOFIELD, MICHAEL J - 689494

* Final Report *

Result type:	MRI Brain W&WO Contrast
Result Date:	03 July 2012 14:06
Result status:	Auth (Verified)
Result Title:	MR Brain wo+w Contrast
Source of Report:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Verified By:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Encounter info:	33014697, SRDHM, Observation, 07/03/12 -

* Final Report *

MR Brain wo+w Contrast

Patient Name: SCHOFIELD, MICHAEL J
Patient Medical Record Number: 689494

Account Number: 13-MR-12-018189 Exam: MR Brain wo+w Contrast
Exam Date and Time: 7/3/2012 2:06:16 PM PDT Ordering Physician: Akbar , Tanveer

Report
EXAM: MRI of the Brain With and Without Contrast 07/03/12

COMPARISON: Head CT 07/02/12. MRI brain 08/10/09.

HISTORY: Possible seizure. Motor vehicle accident.

TECHNIQUE: Sagittal T1. Coronal and FLAIR. Axial T1, T2, FLAIR, diffusion, ADC and gradient. Post Gadolinium axial and coronal T1. 15 cc of ProHance was used.

FINDINGS: The study is somewhat limited secondary to motion

There is no midline shift or hydrocephalus. No evidence of an acute infarct. No obvious hemorrhage.

As noted on the prior MRI, there is a venous angioma within the right frontal lobe medially. This is adjacent to the right frontal horn. There is no extraaxial fluid collection.

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

MRI Brain W&WO Contrast

SCHOFIELD, MICHAEL J - 689494

* Final Report *

The mastoids are clear. The orbits are unremarkable.

There is evidence of some mucosal thickening of the ethmoid and sphenoid sinuses.

IMPRESSION: 1. Study limited by motion.

2. No acute infarct or hemorrhage.

3. As before, venous angioma of the right frontal lobe.

4. Mild paranasal sinus disease.

432487
cja
-

FINAL
Dictated by: Chang, Scott
Signed by: Chang, Scott
** Electronic Signature **
Transcribed by: JA, T: 07/03/2012 22:17,S: 07/04/2012 09:57

FINAL

Completed Action List:
* VERIFY by Contributor_system, SRDHRAD on 03 July 2012 14:06
* Order by Contributor_system, SRDHRAD

EXHIBIT G

NOT PERMANENT PART OF PATIENT RECORD:

Sleep Lab/EEG

SCHOFIELD, MICHAEL J - 689494

Result type:	Sleep Lab/EEG
Result Date:	03 July 2012 17:04
Result status:	Auth (Verified)
Result Title:	09
Source of Report:	Contributor_system, SRDHTRAN on 03 July 2012 17:04
Encounter info:	33014697, SRDHM, Observation, 07/03/12 -

Electroencephalogram
DATE OF PROCEDURE: 07/03/2012

DOB: 10/03/1965

REFERRING PHYSICIAN: A. Tanveer, MD

STUDY INDICATIONS: New-onset seizure.

A routine 21-channel digital EEG is performed in accordance with the 10-20 international system of electrode placement. Continuous eye movement and electrocardiographic channel monitors are included. Recording time was approximately 21.5 minutes during awake, drowsy and asleep states.

Waking background activity is fairly well-organized. There is a 9-10 Hz alpha rhythm with predominates over the posterior channels and is generally reactive and attenuates with eye opening. Background activity is frequently interrupted by eye blink and other eye movement artifacts, as well as other muscle potential artifacts.

Focal slow waves are infrequently noted over the posterior right frontal and anterior temporal head regions. Rarely, slow waves appears to phase - reverse over the F8 and/or T4 electrodes. No other clear epileptiform activity is noted.

Photic stimulation produced a symmetric driving response at lowest flash frequencies.

There is a normal transition from wakefulness to drowsiness. A prolonged interval of slow wave sleep is identified. No sleep abnormalities are noted.

Normal sinus rhythm predominates on the ECG channel.

IMPRESSION: Abnormal routine awake, drowsy, asleep, and stimulated tracing which identifies subtle features of right posterior frontal and/or anterior

NOT PERMANENT PART OF PATIENT RECORD:

Sleep Lab/EEG

SCHOFIELD, MICHAEL J - 689494

temporal electrocortical
dysfunction. An interictal epileptiform focus is not conclusively demonstrated, but cannot be entirely excluded. Correlation clinically and with cranial imaging is advised.

Stephen P Raps, MD

SPR / MedQ
D: 07/03/2012 17:04:39
T: 07/04/2012 09:32:20
Job #: 17432

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

III PROSECUTOR MISCONDUCT

EXHIBIT F

To Michael John Schofield May 2, 2014

Dear Michael,

Today you called and requested certain information concerning my dealings with the assistant States Attorney, Maria Lavelle.

While I am happy to relate events as I recall them you must understand that many conversations I had with Ms Lavelle happened many months ago and I cannot repeat them verbatim but rather provide an idea as to content only as I recall them.

Early on in the process Maria telephoned to explain the process of the preliminary proceedings in which Michael Joshua and I would be subpoenaed to testify. I believe at that time you were using a public defender. I do recall that Ms. Lavelle told me that Michael and I would testify separately without the other in the courtroom so that neither of us could be accused of tainting the others testimony. I believe this testimony was given before Judge Sullivan.

As I recall, Maria had two other telephone conversations with mom and me between my initial testimony and January of 2014. Both of these calls were conducted over our speaker phone so both mom and I heard the entire conversations. I have no idea of the dates on which these occurred. While I am unable to separate the conversations, the primary reason for them were to discuss the First Degree Kidnapping charge and to try to determine the terms of the eventual sentencing.

Both mom and I were and continue to be opposed to First Degree Kidnapping and we discussed that at length with Maria. As to sentencing, the original information told to us was that because everyone's main consideration was slanted toward the safety of Michael Joshua that Maria would probably ask for something in the 5 to 10 year range with the possibility of time off on the back end for good behavior. In our minds, we thought you were looking at about six years to be actually served.

Maria brought up the fact somewhere during our meetings that all of your telephone conversations were being monitored and that she had complete

transcripts of these. I believe this conversation took place in the first pretrial preparation meeting (or conversation) which transpired more than a year ago when I talked with her privately. According to her, you and your brother Bobby had a conversation early on in the process whereby you said to him that you should have killed little Michael while you had the chance. She mentioned that this could be grounds to pursue an attempted murder charge but that she was not going to follow this course of action nor was she planning to use this information in court.

Maria was also shocked to hear how you talked to your mother over the phone. This was in a later phone conversation. Put these things together and Maria feels that you are a danger to the family. These were her words. I believe that her actions and comments were made to paint a very dark picture of you.

On Saturday, January 25, 2014, mom, Michael Joshua and I were invited to appear at Maria Leville's office to discuss the upcoming jury trial. Each of us were interviewed separately. Mom told me after her interview that Maria had asked her if she was aware of your criminal record. Mom said that she thought she did and Maria waved a file folder at her and said that she had all of your records going back to Chicago. I believe that this was brought up to suggest that she had the ammunition to put you away for some time.

Two other individuals were present at my interview and I do not know their names. Apparently they both worked for the States Attorney's Office. I had met the female participant at the pre trial events but I had never seen the male participant before. During the meeting, Maria briefed me on the procedure and told me that once again, our testimony would be separate and apart from each other. She once again brought up the telephone transcripts which she pointed at as a pile of printouts on her desk. While I glanced at the file (pile of papers) I did not read any of them nor can I attest to the fact that they were in fact telephone transcripts. She did however refer to her understanding that mom must be a very religious person. I was taken back by this comment and said that she wasn't particularly religious even though she had attended Catholic school. Maria responded that she too had attended Catholic school. (After the interview mom and I discussed this matter and mom told me that she had been sending you excerpts from Joel Osteen's book. We both feel that this was Maria's way of letting me know that your mail was being closely monitored, a fact I already knew.) Most of

the interview pertained to procedure.

I do not believe Maria influenced my testimony at trial since to my knowledge, it was the same as the testimony I provided at the pre trial before Judge Sullivan. This does not necessarily mean that her intensions were not to do otherwise. I have written a letter to the sentencing judge questioning the rationale for the First Degree Kidnapping charge. I intend to speak at your sentencing, but understand that I cannot question either the verdict already rendered or the sentence which will be imposed. I intend to ask for leniency for the sake of your mother and son.

On April 9, 2014, the day of your scheduled sentencing, Marie called mom out into the hallway and told her that the sentence she was going to request was to be longer than we originally understood and that a sentence would be requested for each of the two violations that you were found guilty of. In addition, each of the sentences requested would be served consecutively and not concurrently. This would significantly increase prison time and is a drastic deviation from the original information that Maria provided. Both mom and I were shocked and disappointed by this turn of events.

I hope this information will be helpful to you even though I am unable to provide dates, times and specific dialog used between myself and Maria Lavelle.

Norman Duplissie

IV INEFFECTIVE COUNSEL

EXHIBIT 6

Visitors

ID Number : '%1679195%' , Start Date : '06-JAN-2013' , End Date : '04-APR-2014'

04-APR-14

	ID Number	Living Unit	Inmate Last Name	Inmate First Name	Start Date & Time	Visit Type	Rel Type	Visitor Last Name	Visitor First Name	Visitor Middle Name
1	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	30-May-13 15:03:00	LEG	PD	JENKINS	DANIEL	NULL
2	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	24-Jul-13 14:37:00	LEG	PD	JENKINS	DANIEL	NULL
3	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	05-Aug-13 14:55:00	LEG	ATT	PARRIS	JOHN	NULL
4	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	06-Aug-13 12:35:00	LEG	PD	JENKINS	DANIEL	NULL
5	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	25-Jan-14 09:30:00	LEG	ATT	PARRIS	JOHN	NULL
6	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	25-Jan-14 09:30:00	LEG	ATT	MATSUDA	JESS	YOICHI
7	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	26-Jan-14 15:11:00	LEG	ATT	PARRIS	JOHN	NULL

04/05/13 7:00 PM

Confirmation #: 375189 **Status:**Completed **Visitation Time:**04/05/13 7:00 PM-7:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-4	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-44

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	6:16 PM	
R8ED-65482	Michael J Schofield	Child	6:16 PM	

04/21/13 1:00 PM

Confirmation #: 380842 **Status:**Completed **Visitation Time:**04/21/13 1:00 PM-1:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-5	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-12

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	12:32 PM	
R8ED-65482	Michael J Schofield	Child	12:32 PM	

05/11/13 8:00 AM

Confirmation #: 390465 **Status:**Completed **Visitation Time:**05/11/13 8:00 AM-8:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-4	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-05

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	7:38 AM	
R8ED-65482	Michael J Schofield	Child	7:38 AM	

08/20/13 10:00 AM

Confirmation #: 435306 **Status:**Completed **Visitation Time:**08/20/13 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-9EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-35

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:33 AM	
R8ED-65482	Michael J Schofield	Child	9:33 AM	

11/04/13 9:30 AM

Confirmation #: 470595 **Status:**Completed **Visitation Time:**11/04/13 9:30 AM-9:55 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-2	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-03

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:12 AM	
R8ED-65482	Michael J Schofield	Child	9:12 AM	

11/11/13 9:30 AM

Confirmation #: 472146 **Status:**Completed **Visitation Time:**11/11/13 9:30 AM-9:55 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-17

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:15 AM	
R8ED-65482	Michael J Schofield	Child	9:15 AM	

11/16/13 1:00 PM

Confirmation #: 474023 **Status:**Completed **Visitation Time:**11/16/13 1:00 PM-1:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-16

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	12:39 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	12:39 PM	

11/29/13 10:00 AM

Confirmation #: 481396 **Status:**Completed **Visitation Time:**11/29/13 10:00 AM-11:05 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-3B-5	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-27

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:48 AM	

12/23/13 10:00 AM

Confirmation #: 491648 **Status:**Completed **Visitation Time:**12/23/13 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-3B-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-12

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:45 AM	
R8ED-65482	Michael J Schofield	Child	9:45 AM	

01/22/14 2:04 PM

Confirmation #: 506242 **Status:**Completed **Visitation Time:**01/22/14 2:04 PM-2:34 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-56 (Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
P38S-1554	John Parris	Attorney	2:05 PM	

03/04/14 10:00 AM

Confirmation #: 523816 **Status:**Completed **Visitation Time:**03/04/14 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-41

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:50 AM	
R8ED-65482	Michael J Schofield	Child	9:50 AM	

03/09/14 10:00 AM

Confirmation #: 525063 **Status:**Completed **Visitation Time:**03/09/14 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-28

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:55 AM	
R8ED-65482	Michael J Schofield	Child	9:55 AM	

03/21/14 12:13 PM

Confirmation #: 532444 **Status:**Completed **Visitation Time:**03/21/14 12:13 PM-1:03 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-59 (Priv., Dual)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
M5HI-132	Robert Farley	Probation Officer	12:13 PM	

04/02/14 7:30 PM

Confirmation #: 537904 **Status:**Completed **Visitation Time:**04/02/14 7:30 PM-7:55 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-61 (Priv., Dual, ADA)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	6:58 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	6:58 PM	

04/02/14 8:00 PM

Confirmation #: 537906 **Status:**Completed **Visitation Time:**04/02/14 8:00 PM-8:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-05

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	7:57 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	7:57 PM	

309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89155-2610
(702) 455-4685 · Fax (702) 455-5112

Philip J. Kohn, Public Defender · Darren B. Richards, Assistant Public Defender

AUTHORIZATION FOR USE AND/OR DISCLOSURE OF CONFIDENTIAL RECORDS AND/OR PROTECTED HEALTH INFORMATION

Name: _____ Case# _____

Address: _____ Phone: _____

Social Security: _____ DOB: _____

I _____ hereby authorize _____

to have unrestricted communication with the Clark County Public Defenders Office.

This release includes phone calls, visitations, release of confidential information and protected health information to/from the above named agencies. The purpose of this release is for providing advocacy and disposition services for the client's legal defense. I hereby release the holder of such information from liability if any, arising from the disclosure of otherwise confidential information. You are specifically authorized to photocopy the following records and to release copies to the above mentioned representative. Records may include but are not limited to:

_____ Medical History and Treatment
_____ Employment Records
_____ Parole Records
_____ Probationary Records
_____ Client's entire file
_____ Financial Records
_____ Educational Records
_____ Correctional Records
_____ Judicial Records (including juvenile)
_____ Other _____

USE AND REDISCLOSURE: I understand that I may revoke this authorization at any time, by written request, except to the extent that action has been taken in reliance to it. I understand that the information used and disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected. This consent, if not withdrawn, will automatically expire according to the following specification of date, event, or condition: one year or disposition of current case. A reproduced copy of this authorization shall be as valid as the original. This information may also be provided to any subsequent attorney who represents me for the previously outlined purposes or to facilitate an appeal.

Note: The confidentiality of psychiatric, drug and/or alcohol abuse and HIV records is required and no information from these specific records shall be transmitted to anyone else without written consent or authorization as provided under Federal Regulation 42 CFR 2. Regulations prohibit any further disclosure without specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information is not sufficient for this purpose. I give consent to the release of any or all records containing the following diagnoses for the intended purposes and conditions as stated above:

_____ HIV Related Records
_____ Drug/Alcohol Treatment Records
_____ Other: _____
_____ Psychiatric/Psychological Records
_____ Client's entire file
_____ Other: _____

_____ _____
Client Signature Date

_____ _____
Witness Date

SIGN HERE

EXHIBIT H

309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89155-2610
(702) 455-4685 · Fax (702) 455-5112

Philip J. Kohn, Public Defender · Daren B. Richards, Assistant Public Defender

AUTHORIZATION FOR USE AND/OR DISCLOSURE OF CONFIDENTIAL RECORDS AND/OR PROTECTED HEALTH INFORMATION

Name: MICHAEL J. SCHOFIELD Case# _____

Address: [redacted] Phone: [redacted]

Social Security: 353-70-2354 DOB: 10-3-1965

I _____ hereby authorize Michael Schofield

to have unrestricted communication with the Clark County Public Defender's Office.

This release includes phone calls, visitations, release of confidential information and protected health information to/from the above named agencies. The purpose of this release is for providing advocacy and disposition services for the client's legal defense. I hereby release the holder of such information from liability if any, arising from the disclosure of otherwise confidential information. You are specifically authorized to photocopy the following records and to release copies to the above mentioned representative. Records may include but are not limited to:

_____ Medical History and Treatment	_____ Financial Records
_____ Employment Records	_____ Educational Records
_____ Parole Records	_____ Correctional Records
_____ Probationary Records	_____ Judicial Records (including juvenile)
_____ Client's entire file	_____ Other _____

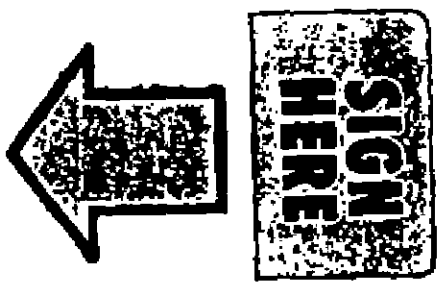
USE AND REDISCLOSURE: I understand that I may revoke this authorization at any time, by written request, except to the extent that action has been taken in reliance to it. I understand that the information used and disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected. This consent, if not withdrawn, will automatically expire according to the following specification of date, event, or condition: one year or disposition of current case. A reproduced copy of this authorization shall be as valid as the original. This information may also be provided to any subsequent attorney who represents me for the previously outlined purposes or to facilitate an appeal.

Note: The confidentiality of psychiatric, drug and/or alcohol abuse and HIV records is required and no information from these specific records shall be transmitted to anyone else without written consent or authorization as provided under Federal Regulation 42 CFR 2. Regulations prohibit any further disclosure without specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information is not sufficient for this purpose. I give consent to the release of any or all records containing the following diagnoses for the intended purposes and conditions as stated above:

_____ HIV Related Records	_____ Psychiatric/Psychological Records
_____ Drug/Alcohol Treatment Records	_____ Client's entire file
_____ Other: _____	_____ Other: _____

_____ 7-24-13
Client Signature Date

_____ _____
Witness Date



DATED THIS 5TH DAY of JUNE, 2014,

I MICHAEL J. SCHOFIELD, DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE ABOVE EXHIBITS ARE ACCURATE, CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE

RESPECTFULLY SUBMITTED

Michael J. Schofield

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

EXHIBIT 7

Patricia Duplissie
1111 Aspen Breeze Ave.
Las Vegas, NV 89123
(702) 837-2576

Clark County Public Defender
309 South 3rd Street
2nd floor
Las Vegas, NV 89155

Attn: Dan Jenkins

Re: Michael John Schofield
Case #13F00320X/C287009

May 1st 2013

Dear Mr. Jenkins

I am writing this letter in order to share my feelings on the above mentioned case as well as to render clarification on a few points which I understand came before the court in the most recent session.

I certainly understand the severity of the crime committed and expect my son Michael John Schofield to be held responsible for his actions. The domestic battery and the child abuse charges were witnessed by family members and these are fully supported as being appropriate. However, we fail to understand the charge of burglary in the 1st degree and the charge of kidnapping in the 1st degree.

Since Michael was voluntarily allowed into our home on 1/6/2013 we see no reason for the burglary charge. He did not force his way in nor did he threaten anyone in the household in any manner upon entry. We believe this charge should be dropped.

With regard to the kidnapping charge in the first degree I feel that this was more of a disciplinary action on the part of the father (Michael John) toward his son (Michael Joshua) rather than a kidnapping. It is true that the son did not wish to accompany his father to Wal-Mart and that the father was too violent in attempting to accomplish this. There was no weapon involved and the understanding I have is that if Michael Joshua did accompany his father that they would return in a short period of time. For these reasons I believe that kidnapping in the 1st degree should be dropped or at least reduced to a 2nd degree status.

It was alleged in court that Michael John had an assigned day each week where he was allowed to visit with Michael Joshua. This is not true. Since we assumed guardianship of Michael Joshua in 2001 we have tried our best to maintain a normal relationship between father and son insofar as possible. We felt that as long as the father was not impaired that he could see his son on a request basis.

In recent months before the incident on 1/6/2013, Michael John (father) had incurred several medical incidents which required hospitalization. On one incident he was diagnosed with having seizures which required medication. It is my understanding that this situation was supported by the medical staff at the Detention Center and in fact he has been housed in the Psychiatric Ward. You may wish to review this situation and determine if diminished mental capacity may be an issue in this case.

I believe we all wish to see justice done in this matter. Hopefully the above information may be helpful to you in accomplishing this goal.

Sincerely,

Patricia Duplissie

Patricia Duplissie

EXHIBIT 8

EXHIBIT F

To Michael John Schofield May 2, 2014

Dear Michael,

Today you called and requested certain information concerning my dealings with the assistant States Attorney, Maria Lavelle.

While I am happy to relate events as I recall them you must understand that many conversations I had with Ms Lavelle happened many months ago and I cannot repeat them verbatim but rather provide an idea as to content only as I recall them.

Early on in the process Maria telephoned to explain the process of the preliminary proceedings in which Michael Joshua and I would be subpoenaed to testify. I believe at that time you were using a public defender. I do recall that Ms. Lavelle told me that Michael and I would testify separately without the other in the courtroom so that neither of us could be accused of tainting the others testimony. I believe this testimony was given before Judge Sullivan.

As I recall, Maria had two other telephone conversations with mom and me between my initial testimony and January of 2014. Both of these calls were conducted over our speaker phone so both mom and I heard the entire conversations. I have no idea of the dates on which these occurred. While I am unable to separate the conversations, the primary reason for them were to discuss the First Degree Kidnapping charge and to try to determine the terms of the eventual sentencing.

Both mom and I were and continue to be opposed to First Degree Kidnapping and we discussed that at length with Maria. As to sentencing, the original information told to us was that because everyone's main consideration was slanted toward the safety of Michael Joshua that Maria would probably ask for something in the 5 to 10 year range with the possibility of time off on the back end for good behavior. In our minds, we thought you were looking at about six years to be actually served.

Maria brought up the fact somewhere during our meetings that all of your telephone conversations were being monitored and that she had complete

transcripts of these. I believe this conversation took place in the first pretrial preparation meeting (or conversation) which transpired more than a year ago when I talked with her privately. According to her, you and your brother Bobby had a conversation early on in the process whereby you said to him that you should have killed little Michael while you had the chance. She mentioned that this could be grounds to pursue an attempted murder charge but that she was not going to follow this course of action nor was she planning to use this information in court.

Maria was also shocked to hear how you talked to your mother over the phone. This was in a later phone conversation. Put these things together and Maria feels that you are a danger to the family. These were her words. I believe that her actions and comments were made to paint a very dark picture of you.

On Saturday, January 25, 2014, mom, Michael Joshua and I were invited to appear at Maria Leville's office to discuss the upcoming jury trial. Each of us were interviewed separately. Mom told me after her interview that Maria had asked her if she was aware of your criminal record. Mom said that she thought she did and Maria waved a file folder at her and said that she had all of your records going back to Chicago. I believe that this was brought up to suggest that she had the ammunition to put you away for some time.

Two other individuals were present at my interview and I do not know their names. Apparently they both worked for the States Attorney's Office. I had met the female participant at the pre trial events but I had never seen the male participant before. During the meeting, Maria briefed me on the procedure and told me that once again, our testimony would be separate and apart from each other. She once again brought up the telephone transcripts which she pointed at as a pile of printouts on her desk. While I glanced at the file (pile of papers) I did not read any of them nor can I attest to the fact that they were in fact telephone transcripts. She did however refer to her understanding that mom must be a very religious person. I was taken back by this comment and said that she wasn't particularly religious even though she had attended Catholic school. Maria responded that she too had attended Catholic school. (After the interview mom and I discussed this matter and mom told me that she had been sending you excerpts from Joel Osteen's book. We both feel that this was Maria's way of letting me know that your mail was being closely monitored, a fact I already knew.) Most of

the interview pertained to procedure.

I do not believe Maria influenced my testimony at trial since to my knowledge, it was the same as the testimony I provided at the pre trial before Judge Sullivan. This does not necessarily mean that her intensions were not to do otherwise. I have written a letter to the sentencing judge questioning the rationale for the First Degree Kidnapping charge. I intend to speak at your sentencing, but understand that I cannot question either the verdict already rendered or the sentence which will be imposed. I intend to ask for leniency for the sake of your mother and son.

On April 9, 2014, the day of your scheduled sentencing, Marie called mom out into the hallway and told her that the sentence she was going to request was to be longer than we originally understood and that a sentence would be requested for each of the two violations that you were found guilty of. In addition, each of the sentences requested would be served consecutively and not concurrently. This would significantly increase prison time and is a drastic deviation from the original information that Maria provided. Both mom and I were shocked and disappointed by this turn of events.

I hope this information will be helpful to you even though I am unable to provide dates, times and specific dialog used between myself and Maria Lavelle.

Norman Duplissie

EXHIBIT 9

EXHIBIT F

NOT PERMANENT PART OF PATIENT RECORD:

MRI Brain W&WO Contrast

SCHOFIELD, MICHAEL J - 689494

* Final Report *

Result type:	MRI Brain W&WO Contrast
Result Date:	03 July 2012 14:06
Result status:	Auth (Verified)
Result Title:	MR Brain wo+w Contrast
Source of Report:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Verified By:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Encounter info:	33014697, SRDHM, Observation, 07/03/12 -

* Final Report *

MR Brain wo+w Contrast

Patient Name: SCHOFIELD, MICHAEL J
Patient Medical Record Number: 689494

Account Number: 13-MR-12-018189 Exam: MR Brain wo+w Contrast
Exam Date and Time: 7/3/2012 2:06:16 PM PDT Ordering Physician: Akbar , Tanveer

Report
EXAM: MRI of the Brain With and Without Contrast 07/03/12

COMPARISON: Head CT 07/02/12. MRI brain 08/10/09.

HISTORY: Possible seizure. Motor vehicle accident.

TECHNIQUE: Sagittal T1. Coronal and FLAIR. Axial T1, T2, FLAIR, diffusion, ADC and gradient. Post Gadolinium axial and coronal T1. 15 cc of ProHance was used.

FINDINGS: The study is somewhat limited secondary to motion

There is no midline shift or hydrocephalus. No evidence of an acute infarct. No obvious hemorrhage.

As noted on the prior MRI, there is a venous angioma within the right frontal lobe medially. This is adjacent to the right frontal horn. There is no extraaxial fluid collection.

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

NOT PERMANENT PART OF PATIENT RECORD:

MRI Brain W&WO Contrast

SCHOFIELD, MICHAEL J - 689494

* Final Report *

The mastoids are clear. The orbits are unremarkable.

There is evidence of some mucosal thickening of the ethmoid and sphenoid sinuses.

IMPRESSION: 1. Study limited by motion.

2. No acute infarct or hemorrhage.

3. As before, venous angioma of the right frontal lobe.

4. Mild paranasal sinus disease.

432487
cja

FINAL
Dictated by: Chang, Scott
Signed by: Chang, Scott
** Electronic Signature **
Transcribed by: JA, T: 07/03/2012 22:17,S: 07/04/2012 09:57

FINAL

Completed Action List:
* VERIFY by Contributor_system, SRDHRAD on 03 July 2012 14:06
* Order by Contributor_system, SRDHRAD

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

EXHIBIT 10

THE DEFENDANT: Great. Okay. It says, "Every person who takes, leads, entices or carries away --

THE COURT: Right.

THE DEFENDANT: -- or detains any minor with the intent to keep, imprison or confine the minor from his parents --

THE COURT: Right.

THE DEFENDANT: -- guardians or any other person having lawful custody of the minor is guilty of -- in the first degree." The Count IV first degree kidnapping says, "Did willfully, unlawfully, feloniously and without authority of law."

THE COURT: Yes.

THE DEFENDANT: That is the major flaw because if you have the authority of law, which would be the parent, permission to take the child, then that -- it says every person and it does not mention that in this jury instruction.

THE COURT: The jury instruction correctly reflects Nevada law.

THE DEFENDANT: It does? It doesn't state the authority of law.

THE COURT: Okay, I've ruled. What's your next issue?

THE DEFENDANT: This is --

THE COURT: I'm not having an argument with it.

EXHIBIT 11

mom and her -- and Norman bought me a car, and --

THE COURT: Okay, sorry, the question was about why you had given them guardianship, so I think you answered that.

THE WITNESS: Okay.

MS. LAVELL: Your Honor, do you want us to do follow-ups on each individual question or at the end?

THE COURT: At the end.

MS. LAVELL: Okay.

THE COURT: Okay. Were you ever officially diagnosed with seizure disorder?

THE WITNESS: Yeah, I take -- when -- right -- while I'm here, I take Keppra, and I don't know why they decided they would give me Keppra here. I think when I first got here --

THE COURT: So is that -- just the question is whether you were diagnosed with seizure disorder?

THE WITNESS: I take medication for -- I took Depakote and -- before I came -- was in jail, and now I take -- but if you want to know the truth, I don't remember ever going to a doctor to get it. So I don't even know what doctor gave -- did -- some doctor did prescribe me Depakote.

THE COURT: And it's your understanding that that's for a seizure disorder?

THE WITNESS: Yes.

EXHIBIT 12

THE COURT: Okay. Were you ever officially diagnosed with memory loss?

THE WITNESS: I was in the process of going to, I think, it was a psychiatrist somewhere by St. Rose Hospital, and that was trying to find out what -- why was it that I would have a complete -- like I can remember my phone number as a child or my address, but some of -- or things exactly what they were, I thought -- I think I could, and --

THE COURT: Did you get to a point that you actually had a diagnosis?

THE WITNESS: No. What they were doing is they were sending me for a PET scan to find out where there would be --

THE COURT: Okay.

THE WITNESS: -- possibly something that would --

THE COURT: Okay.

THE WITNESS: -- spot, specks or something on the brain because of boxing and --

THE COURT: Okay.

THE WITNESS: -- and here what they --

THE COURT: But you never got the diagnosis?

THE WITNESS: The diagnosis from in here was that he suspected that I --

MS. LAVELL: Your Honor, I'm going to object at this point. He's either gotten a diagnosis or he hasn't

EXHIBIT 13

INSTRUCTION NO. 10

Every person who leads, takes, entices, or carries away, or detains, any minor, with the intent to keep, imprison, or confine the minor from his parents, guardians, or any other person having lawful custody of the minor is guilty of kidnapping in the first degree.

A kidnapping does not require force.

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 65193

MICHAEL J. SCHOFIELD,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

APPEAL

From the Eighth Judicial District Court, Clark County
District Court Case No. C-13-287009-1

APPELLANT'S APPENDIX – VOLUME VI

Karen K. Wong
(NV Bar No. 13284)

Wong Appellate Law
9484 S. Eastern Ave., #408
Las Vegas, NV 89012
(702) 830-6080

Attorney for Defendant

APPELLANT'S APPENDIX OF DOCUMENTS
(Alphabetical Index)

AT NO POINT DID THE STATE PROVE THAT THE DEFENDANTS INTENT WAS TO KEEP, IMPRISON, OR CONFINE, HIS SON, MICHAEL. BOTH LEGAL GUARDIANS, NORMAN DUPLISSIE AND PATRICIA DUPLISSIE, AND THE DEFENDANT, AND MICHAEL, TESTIFIED, UNDER OATH, ON THE WITNESS STAND THAT THE DEFEDANT'S INTENT WAS TO GO TO THE STORE AND RETURN. THE CHARGE OF FIRST DEGREE KIDNAPPING REQUIRES AN INQUIRY OF THE SPECIFIC INTENT OF THE DEFENDANT. JURY INSTRUCTION NO. 11 STATES IN WHOLE: 'IT IS THE FACT, NOT THE DISTANCE, OF FORCIBLE MOVEMENT OF THE VICTIM, THAT CONSTITUTES KIDNAPPING'. THIS HELPS FURTHER DEFINE KIDNAPPING, WHICH IS ONE ELEMENT OF FIRST DEGREE KIDNAPPING. THE WORD KIDNAP IS ACTUALLY USED TO DESCRIBE ONE ELEMENT OF FIRST DEGREE KIDNAPPING IN NRS 200.310(1). TO USE THIS TERMINOLOGY JURY INSTRUCTION NO. 11 SHOULD READ 'THE FACT NOT THE DISTANCE of FORCIBLE MOVEMENT, COMBINED WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE'. THIS JURY INSTRUCTION IS VERY MISLEADING TO THE JURY WHICH DID NOT HAVE THE OPTION OF FINDING GUILTY TO A LESSER DEGREE OF KIDNAP, YET WAS GIVEN A DEFINITION OF A LESSER DEGREE of KIDNAPPING AS AN INSTRUCTION.

THERE IS A REASONABLE LIKELIHOOD THAT THE JURY APPLIED, JURY INSTRUCTION NO. 10 AND JURY INSTRUCTION NO. 11, IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN OF PROVING EVERY ELEMENT OF THE CRIME OF FIRST DEGREE KIDNAPPING, BEYOND A REASONABLE DOUBT. THIS CONCLUSION CAN BE MADE BASED ON THE FACT THE STATE DID NOT EVEN TRY TO PROVE, NOR DID THEY, THAT THE DEFENDANT'S INTENT WAS TO KEEP, IMPRISON, OR CONFINE, HIS SON MICHAEL. THIS CAN ALSO BE CONCLUDED, THAT BASED ON THE TESTIMONY OF THREE WITNESSES, THAT ALL STATED, THAT AT VIRTUALLY THE SAME TIME DURING THE INCIDENT, THE LEGAL GUARDIAN GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL TO THE STORE. THE CRIME OF FIRST DEGREE KIDNAPPING AND EVERY ELEMENT OF THAT CRIME WAS NOT PROVED BEYOND A REASONABLE DOUBT. BEING THAT THE VERDICT of guilty TO FIRST DEGREE KIDNAPPING [redacted] WAS CONTRARY TO LAW, THE COURT SHOULD GRANT THE DEFENDANT A NEW TRIAL. BEING THAT THE VERDICT OF GUILTY TO FIRST DEGREE KIDNAPPING WAS CONTRARY TO EVIDENCE THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL.

///

STATE V. STANLEY, 4 NEV. 71, 4 NEV. 73, 1868, NEV. LEXIS 14 (1868) THE RIGHT TO GRANT NEW TRIALS BEING CONFERRED UPON THE DISTRICT COURTS, ITS EXCERCISE BY THEM IN ANY PARTICULAR CASE WILL BE PRESUMED TO BE CORRECT AND PROPER UNTIL THE CONTRARY IS SHOWN.

STATE V. CROCKETT 84 NEV. 516, 444 P. 2d 896 NEV. LEXIS 398 (1968) THE EXCERCISE BY THE TRIAL COURT OF THE RIGHT TO GRANT A NEW TRIAL WILL BE PRESUMED CORRECT AND PROPER BY THE APPELLATE COURT UNTIL THE CONTRARY IS SHOWN.

NYATT V. STATE 101 NEV. 761 P. 2d 720, 1985 NEV. LEXIS 509 (1985) WHERE THE EVIDENCE IS NOT SUFFICIENT TO JUSTIFY A RATIONAL JURY IN FINDING GUILT BEYOND A REASONABLE DOUBT, A JURY'S VERDICT WILL NOT BE UPHELD ON APPEAL; ACCORDINGLY, UNDER SUCH CIRCUMSTANCES, THE ADVISORY INSTRUCTION AUTHORIZED UNDER THIS SECTION IS PROPER.

LENZ V. STATE, 97 NEV. 65, 624 P. 2d 15, 1981 NEV LEXIS 434 (1981) THE GRANTING OF AN ADVISORY INSTRUCTION TO ACQUIT RESTS WITHIN THE SOUND DISCRETION OF THE COURT.

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BURKHART V. STATE 107 NEV. 797, 820 P.2d 757, 1991 LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH WOULD HAVE ALLOWED THE JURY TO INFER WHAT DEFENDANT INTENDED TO DO WITH THE VICTIM. WADDINGTON V. SARAUSAD, 555 U.S. 179, 129, S.Ct. 823, 172 L.Ed. 2d. 539 (2009) DEFEDANT CHALLANGING THE CONSTITUTIONALITY OF A JURY INSTRUCTION THAT QUOTES A STATE STATUE MUST SHOW BOTH THE INSTRUCTION WAS AMBIGUOUS AND THAT THERE WAS A "REASONABLE LIKELIHOOD" THAT THE JURY APPLIED THE INSTRUCTION IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN OF PROVING EVERY ELEMENT OF THE CRIME BEYOND A REASONABLE DOUBT. THE PERTINENT QUESTION IS WHETHER "THE INSTRUCTION BY ITSELF SO INFECTED THE ENTIRE TRIAL THAT THE RESULTING CONVICTION VIOLATES DUE PROCESS." JOHNSON V. US, 520 U.S. 461, 466-67, 117 S.Ct. 1544 (1997) (EXPLAINING ERRORS CAN BE CORRECTED WHEN THERE IS (1) ERROR (2) THAT IS PLAIN (3) THAT AFFECTS SUBSTANTIAL RIGHTS (4) SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDING).

WASHINGTON V STATE 98 NEV. 601; 655 P. 2d 531; 1982 NEV. LEXIS 542 No. 11294 DEC. 29, 1982 DEFENDANT CONTENDED THAT THE TRIAL COURT HAD AUTHORITY TO CONSIDER HIS MOTION FOR A NEW TRIAL. FURTHER NRS 176.515(3) DESCRIBED CONDITIONS THAT WERE TO HAVE BEEN MET FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE; HOWEVER NRS 176.515(4) RECOGNIZED THAT A MOTION FOR A NEW TRIAL MIGHT BASED ON "OTHER GROUNDS". THE COURT HELD THAT SUCH "OTHER GROUNDS" EXISTED WHEN THE TRIAL COURT DISAGREED WITH THE JURY'S VERDICT AFTER AN INDEPENDENT EVALUATION OF THE EVIDENCE. THEREFORE THE COURT CONCLUDED THAT THE TRIAL COURT OPERATED UNDER THE ERRONEOUS BELIEF THAT IT LACKED JURISDICTION TO RULE ON DEFENDANTS MOTION FOR A NEW TRIAL, AND THE JUDGE ERRED BY FAILING TO EXCERCISE HIS DISCRETION. THE COURT REVERSED THE TRIAL COURTS DENIAL of DEFENDANT MOTION FOR NEW TRIAL AND REMANDED THE CASE.

COBB V. POZZI 363 F. 3d 89, 116 (2d CIR 2004) AN ERRONEOUS JURY INSTRUCTIONS REQUIRES REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS.

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STATE V. VAN WINKLE, 6 NEV. 340
STATE V. JONES, 7 NEV. 408
STATE V. MILLS 12 NEV. 403
STATE V. BAUER 34 NEV. 305, 122 P. 76
HISTORICALLY, NEVADA HAS EMPOWERED THE TRIAL COURT IN A CRIMINAL CASE, WHERE THE EVIDENCE of GUILT IS CONFLICTING, TO INDEPENDENTLY EVALUATE THE EVIDENCE AND ORDER ANOTHER TRIAL IF it DOES NOT AGREE WITH THE JURY'S CONCLUSION THAT THE DEFENDANT HAS BEEN PROVEN GUILTY BEYOND A REASONABLE Doubt. THE JURY AND THE COURT MUST BE CONVINCED OF THE DEFENDANTS GUILT. If THE COURT IS NOT CONVINCED, It MAY PROTECT THE DEFENDANT TO THE EXTENT OF AUTHORIZING ANOTHER TRIAL BEFORE ANOTHER JURY. ACCORDINGLY, THE "TOTALITY OF THE EVIDENCE IS THE STANDARD FOR THE DISTRICT COURT TO USE IN DECIDING WHETHER TO GRANT A NEW TRIAL BASED ON AN INDEPENDANT EVALUATION OF CONFLICTING EVIDENCE.
NRS 175.535 THE GROUNDS FOR ANOTHER TRIAL.

ARGUMENT

I. STATE FAILURE TO DISCLOSE FAVORABLE EVIDENCE.

PATRICIA DuPLISSIE SENT A LETTER TO THE DISTRICT ATTORNYS OFFICE AND SENT A COPY OF THIS LETTER TO THE PUBLIC DEFENDERS office, ATTN: DAN JENKINS ON MAY 1, 2013. THE ENVELOPE IS DATED MAY 1, 2013. THE LETTERHEAD IS DATED MAY 1, 2013. THE LETTER STATES IN PART: "IN RECENT MONTHS BEFORE THE INCIDENT ON 1/6/13, MICHAEL SAHN (FATHER) HAD INCURRED SEVERAL MEDICAL INCIDENTS WHICH REQUIRED HOSPITALIZATION. ON ONE INCIDENT HE WAS DIAGNOSED WITH HAVING SEIZURES, WHICH REQUIRED MEDICATION. IT IS MY UNDERSTANDING THAT THIS SITUATION WAS SUPPORTED BY THE MEDICAL STAFF AT THE DETENTION CENTER AND IN FACT HE HAS BEEN HOUSED IN THE PSYCHIATRIC WARD. YOU MAY WISH TO REVIEW THIS SITUATION AND DETERMINE IF DIMINISHED MENTAL CAPACITY MAY BE AN ISSUE IN THIS CASE. I BELIEVE WE ALL WISH TO SEE JUSTICE DONE IN THIS MATTER. HOPEFULLY THE ABOVE INFORMATION MAY BE HELPFUL TO YOU IN ACCOMPLISHING THIS GOAL."

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THERE ARE MANY ERRORS IN BOTH THE STATES OPPOSITION ARGUMENT I SECTION AND IN THE STATES REPLY ARGUMENT I SECTION. ALSO SOME OF THESE ERRORS APPEAR TO BE INTENTIONALLY TRYING TO MISLEAD THE COURT AND THE HONORABLE JUDGE. THE DISTRICT ATTORNEY REFUSES EVEN TO ACKNOWLEDGE THAT THE D.A. RECEIVED THIS LETTER, WHICH WAS SENT VIA THE U.S. POST OFFICE, AN EXTREMELY RELIABLE DELIVERY SERVICE, AND THE PUBLIC DEFENDER, DAN JENKINS RECEIVED HIS COPY OF THIS LETTER. SINCE THE DEFENSE PUT IN A REQUEST FOR DISCOVERY AND PERSUAINT TO NRS 174.245, THE DEFENSE IS OBLIGATED TO PROVIDE FOR THE D.A.'S OFFICE A COPY OF ANY WRITTEN OR RECORDED STATEMENT MADE BY ANY WITNESS. SO UNLESS THE STATE DID NOT RECEIVE THE LETTER SENT THRU THE MAIL AND THE STATE DID NOT RECEIVE THE LETTER IN TRANSFER OF DISCOVERY, THEN THE STATE DID RECEIVE THIS LETTER. FURTHERMORE, PATRICIA DUPLISSIE IN HER LETTER, DID NOT CLAIM TO BE A PHYSICIAN CAPABLE OF DIAGNOSING MEDICAL ISSUES OR MENTAL DISORDERS. WHAT SHE DID SAY IN HER LETTER IS THAT THOSE WHO ARE CAPABLE OF DIAGNOSING MEDICAL ISSUES OR MENTAL DISORDERS HAVE DIAGNOSED THE DEFENDANT WITH A MEDICAL ISSUE OR MENTAL DISORDER THAT VERY WELL COULD HAVE BEEN A RELEVANT FACTOR IN HIS BEHAVIOR THAT DAY.

THE DISTRICT ATTORNEY IS MISLEADING THE COURT, WHEN IN THE STATE'S REPLY ARGUMENT I SECTION, THE DISTRICT ATTORNEY CLAIMS THAT THE DEFENDANT "FAILED TO SPECIFY WHAT MEDICAL CONDITION OR MENTAL ISSUES THE DEFENDANT CLAIMS TO SUFFER FROM BEYOND TESTIFYING AT TRIAL, OVER THE STATE'S OBJECTIONS." THIS IS A FALSE STATEMENT BY THE DISTRICT ATTORNEY. THE STATE'S OBJECTIONS WERE HEARD BY THE HONORABLE JUDGE. THE DEFENDANT WAS NOT ALLOWED TO COMPLETE HIS TESTIMONY ABOUT HIS MEDICAL ISSUES OR MENTAL DISORDER, WHEN THE STATE OBJECTED BASED ON NOT HAVING ANY FOREKNOWLEDGE OF MEDICAL OR MENTAL HEALTH ISSUES OF THE DEFENDANT.

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ROBINSON V. CAIN, 510 F. Supp. 2d 399 (E.D.L.A. 2007)
APPLY BRADY, THE FIFTH CIRCUIT HAS FOUND
THAT EVEN INADMISSABLE EVIDENCE MAY BE
MATERIAL UNDER BRADY AND THAT THE
INADMISSABILITY OF EVIDENCE UNDER STATE
LAW IS NOT DISPOSITIVE ON THE ISSUE OF
MATERIALITY. INSTEAD THE QUESTION IS
"WHETHER THE DISCLOSURE OF THE
EVIDENCE WOULD HAVE CREATED A
REASONABLE PROBABILITY THAT THE
PROCEEDING WOULD HAVE BEEN DIFFERENT"
AND MORE SPECIFICALLY DOES THE
EVIDENCE "PUT THE WHOLE CASE IN A
DIFFERENT LIGHT AS TO UNDERMINE
THE CONFIDENCE IN THE VERDICT."

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CONE V. BELL, 556 U.S. 449, 129 S.Ct. 1769
173 L.Ed.2d 701 (2009)
WHEN THERE IS A REASONABLE PROBABILITY
THAT, HAD THE EVIDENCE BEEN DISCLOSED, THE
RESULT OF THE PROCEEDING WOULD HAVE BEEN
DIFFERENT. IN OTHER WORDS, FAVORABLE
EVIDENCE IS SUBJECT TO CONSTITUTIONALITY
MANDATED DISCLOSURE WHEN IT "COULD
REASONABLY BE TAKEN TO PUT THE WHOLE
CASE IN SUCH A DIFFERENT LIGHT AS TO
UNDERMINE CONFIDENCE IN THE VERDICT."
IN CONE, THE COURT CONCLUDED THAT THE
STATE SUPPRESSED EVIDENCE SUPPORTING
CONE CLAIM AT TRIAL THAT HIS DRUG
ADDICTION AFFECTED HIS BEHAVIOR DURING
HIS CRIME SPREE AND THAT THE
PROSECUTORS ARGUMENT TO THE CONTRARY
WERE FALSE AND MISLEADING. IT
REMANDED THE CASE FOR CONSIDERATION
OF WHETHER THERE WAS A REASONABLE
PROBABILITY "THE SUPPRESSED EVIDENCE
MIGHT HAVE PERSUADED ONE OR MORE
JURORS."
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NRS 51.115 STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT. STATEMENTS MADE FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT AND DESCRIBING MEDICAL HISTORY, OR PAST, OR PRESENT SYMPTOMS, PAINS OR SENSATIONS, OR THE INCEPTION OR GENERAL CHARACTER OF THE CAUSE OR EXTERNAL SOURCE THERE OF, ARE NOT INADMISSABLE UNDER THE HEARSAY RULE INSOFAR AS THEY WERE REASONABLY PERTINENT TO DIAGNOSIS OR TREATMENT.

RULE 301, FED. R. EVID. (STATING THAT "A PRESUMPTION IMPOSES ON THE PARTY AGAINST WHOM IT IS DIRECTED THE BURDEN of going FORWARD WITH EVIDENCE TO REBUT OR MEET THE PRESUMPTION, BUT DOES NOT SHIFT TO SUCH PARTY THE BURDEN of proof IN THE SENSE OF THE RISK of NONPERSUASION")

FOR EXAMPLE, IF IT IS SHOWN THAT A PERSON MADE USE OF A RELIABLE MEANS of COMMUNICATION, A FACT FINDER CAN INFER, THAT THE COMMUNICATION WAS RECEIVED.

KENDALL V. GATES 215 F. 3d 825, 829-30 (8TH CIR 2000)

SMITH V. CUMMINGS, 445 F. 3d 1254, 1260 (10TH CIR, 2006)

SULLIVAN V. FREEMAN 944 F. 2d 334, 337 (7TH CIR 1991)

II NEWLY DISCOVERED EVIDENCE

THE DEFENDANT WILL SHOW THAT THERE IS NEWLY DISCOVERED EVIDENCE THAT WAS NOT AVAILABLE TO THE DEFENDANT BEFORE OR DURING TRIAL. THE NEWLY DISCOVERED EVIDENCE IS MEDICAL REPORTS FROM JULY 2012, APPROXIMATELY SIX MONTHS PRIOR TO THE INCIDENT THAT TOOK PLACE ON JANUARY 6, 2013. THERE ARE TWO REPORTS AND A THIRD DOCUMENT, THAT APPEARS TO BE A DISCHARGE FORM, FROM ST. ROSE HOSPITAL, THAT LISTS MEDICATION TO BE TAKEN (KEPRA 500mg) TWICE DAILY. ONE REPORT IS AN MRI DONE ON THE DEFENDANTS BRAIN. IT GIVES AN EXAM DATE of 7/3/12 TIME 2:06 PM PDT ACCOUNT NUMBER: 13-MR-12-018189 REPORT EXAM: MRI of THE BRAIN WITH AND WITHOUT CONTRAST 7/03/12 ORDER PHYSICIAN: AKBAR, TANVEER PRINTED BY: ACEVES, TANYA RN PRINTED ON 7/4/12 DICTATED BY: CHANG, SCOTT. THE OTHER REPORT IS A SLEEP LAB/EEG OR ELECTROENCEPHALOGRAM. DATE of PROCEDURE 7/3/12 REFERRING PHYSICIAN: A. TANVEER, M.D., BUT IT ALSO HAS THE NAME STEPHEN P. RAPS, M.D. ON THE REPORT. I DO NOT SEE AN ACCOUNT #. THE DEFENDANT HAS BEEN INCARCURATED SINCE THE INCIDENT THAT TOOK PLACE ON JAN 6, 2013.

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THE SLEEP LAB | EEG SAYS STUDY INDICATIONS:
NEW ONSET SEIZURES AND CORRELATION
CLINICALLY AND CRANIALLY IMAGING IS ADVISED.
THE DISTRICT ATTORNEY IN HER REPLY SAYS:
'DEFENDANT WOULD BE AWARE OF ANY
TREATMENT BY PHYSICIANS FOR HIS SEIZURES
OR ANY OTHER MEDICAL OR MENTAL ISSUES.'
THIS COULD NOT BE FURTHER FROM THE TRUTH. A
SYMPTOM OF THE SEIZURES IS MEMORY LOSS.
THE DEFENDANT FILED A MOTION TO DISMISS THE
PUBLIC DEFENDER IN JULY 2013. THE MOTION STATES
IN PART: 'DEFENDANT HAS A HISTORY of SEIZURES-
AND EVEN HAD A MEDICAL EPISODE. DEFENDANT
REQUESTED HIS PUBLIC DEFENDER ADDRESS THIS ISSUE,
AS IT RELATES TO HIS DEFENSE, AND HE FAILED TO
ADDRESS DEFENDANT'S MEDICAL HISTORY AT ALL.'
AFTER THIS HEARING THE PUBLIC DEFENDER MADE
AN ATTORNEY VISIT TO C.C.D.C. AND PRESENTED MEDICAL
RELEASE FORMS FOR THE DEFENDANT TO SIGN
WHICH ARE DATED 7-24-13. THE DEFENDANT
INFORMED THE PUBLIC DEFENDER AT THIS VISIT
THAT THE ATTORNEY JOHN PARRIS WAS NOW
REPRESENTING THE DEFENDANT. THE ATTORNEY
JOHN PARRIS MADE AN ATTORNEY VISIT TO THE
DEFENDANT ON AUGUST 5, 2013.

AT THIS INITIAL MEETING, WHICH WAS THE FIRST TIME SPEAKING TO HIM, THE DEFENDANT EXPLAINED THAT THE PUBLIC DEFENDER DID NOT INVESTIGATE THE DEFENDANTS MEDICAL ISSUES (THE P.D. BROUGHT THE MEDICAL RELEASE FORMS TO THE DEFENDANT AFTER THE MOTION TO DISMISS COUNSEL COURT DATE AND AFTER HE WAS NO LONGER REPRESENTING THE DEFENDANT) JOHN PARRIS EXPRESSED TO THE DEFENDANT THAT HE WOULD INVESTIGATE THE MEDICAL/MENTAL HISTORY OF THE DEFENDANT AND THE FACTS OF THE CASE TO DISCUSS WITH THE DEFENDANT 'DEFENSE STRATEGIES'. HE TOLD THE DEFENDANT HE WOULD VISIT HIM AGAIN IN A COUPLE OF WEEKS. THE DEFENDANT DID NOT HEAR OR SEE THE ATTORNEY AGAIN UNTIL LATE OCTOBER IN COURT FOR THE CALANDAR CALL. THE STATE REQUESTED A CONTINUANCE. THE ATTORNEY PARRIS TOLD THE DEFENDANT HE WOULD VISIT HIM SOON. THE DEFENDANT DID NOT HEAR OR SEE THE ATTORNEY AGAIN UNTIL A VIDEO VISIT ON JANUARY 22, 2014 THE DAY BEFORE CALANDAR CALL. THE ATTORNEY JOHN PARRIS NEVER PRESENTED THE DEFENDANT WITH MEDICAL RELEASE FORMS FOR THE DEFENDANT TO SIGN. IN JANUARY of 2013 WHEN THE DEFENDANT WAS HOUSED IN THE PSYCH UNIT

AT C.C.D.C., THE PSYCH DOCTOR, WHO DETERMINED THAT THE DEFENDANT SHOULD BE HOUSED IN THE PSYCH UNIT SUGGESTED TO THE DEFENDANT, THAT THE DEFENDANTS ATTORNEY, SHOULD LOOK INTO THE DEFENDANTS MEDICAL HEALTH RECORDS, THAT THERE COULD BE A CONNECTION BETWEEN THE DEFENDANTS MEDICAL HEALTH CONDITION AND THE DEFENDANTS ACTIONS ON JANUARY 6, 2013. HE STATED THAT HE IS NOT AN ATTORNEY, BUT THAT HE WOULD SUGGEST IT BE LOOKED INTO.

THE DEFENDANT STOPPED TAKING HIS SEIZURE MEDICATION FOR APPROXIMATELY TWO MONTHS BEFORE THE INCIDENT THAT TOOK PLACE, BECAUSE THE DEFENDANT DID NOT REMEMBER BEING DIAGNOSED WITH SEIZURES. ALSO DID NOT REMEMBER HAVING A SEIZURE. ON THE MORNING of JANUARY 6, 2013 THE DEFENDANT WOKE UP IN A PANIC STATE, LOOKING FOR HIS SON MICHAEL. THE DEFENDANT CALLED HIS BROTHER, ROBERT SCHOFIELD, TELLING HIS BROTHER THAT HE CAN NOT FIND HIS SON. ROBERT HAD TO EXPLAIN TO THE DEFENDANT THAT HIS SON, DID NOT LIVE WITH THE DEFENDANT ANY MORE. WITH THE DEFENDANT HAVING TROUBLE BELIEVING THIS, ROBERT ASKED THE DEFENDANT IF HE TOOK HIS SEIZURE MEDICATION. THE DEFENDANT DID

NOT BELIEVE THAT THIS WAS EVIDENCE, THAT THE DEFENDANT HAD A SEIZURE. ROBERT TOLD THE DEFENDANT TO CALL MOM, THAT HIS SON MICHAEL IS AT HER HOUSE, WHERE MICHAEL NOW LIVED. THE DEFENDANT CALLED HIS MOTHER AND SHE BROUGHT HIM SOME OVER THE COUNTER MEDICATION BECAUSE THE DEFENDANT COMPLAINED of HAVING A BAD HEADACHE. THE DEFENDANTS RECALL of THE EARLY ASPECTS of THE INCIDENT IS NOT AN ISSUE BUT THERE IS NO RECALL AFTER THE INCIDENT AND SOMEWHERE IN THE MIDST of THE INCIDENT. OF THE VERY FEW PHONE CALL TRANSCRIPTS THAT WERE IN THE DEFENSE FILE THE DEFENDANT IN THE PHONE CALLS IS VERY CONFUSED ABOUT WHAT ACTUALLY TOOK PLACE. ON TWO SEPERATE PHONE CALL TRANSCRIPTS THE DEFENDANT KIND of REPLYS THAT HE THOUGHT THEY WERE PLAYING BUT THAT MAYBE HE WAS THE ONLY ONE PLAYING. ON ANOTHER PHONE CALL HE TRIED TO INSIST THAT THE WHOLE INCIDENT TOOK PLACE INSIDE THE HOUSE. WHICH WOULD CORELATE WITH THE DEFENDANTS RECALL of THE EVENT. THE DEFENDANT HAS ABSOLUTELY NO MEMORY of CONVERSING WITH POLICE OFFICERS OR BEING IN A POLICE CAR OR ARRIVING AT A POLICE STATION.

THE DEFENDANT STOPPED TAKING THE SEIZURE MEDICATION BECAUSE THE DEFENDANT DID NOT REMEMBER BEING DIAGNOSED WITH SEIZURES. THE DEFENDANT WAS REPRESENTED AT FIRST BY P.D. DAN JENKINS, WHO WHILE REPRESENTING THE DEFENDANT DID NOT INVESTIGATE THE MEDICAL/MENTAL HEALTH RECORDS AVAILABLE AT C.C.D.C. IN SPITE of THE INSISTANCE OF THE DEFENDANT TO DO SO, UNTIL AFTER HIS REPRESENTATION of THE DEFENDANT. THE DEFENDANT WAS THEN REPRESENTED by Att. JOHN PARRIS, WHO TOLD THE DEFENDANT THAT HE WOULD INVESTIGATE THE DEFENDANTS MEDICAL/MENTAL HEALTH RECORDS AT C.C.D.C. BUT NEVER DID. THE DEFENDANT TRIED TO GET BOTH ATTORNEY'S TO INVESTIGATE HIS MEDICAL/MENTAL HEALTH RECORDS AT C.C.D.C. BUT TO NO AVAIL. THE DEFENDANT TRIED TO BRING UP HIS MEDICAL/MENTAL CONDITION DURING HIS TESTIMONY ON THE WITNESS STAND, BUT THE STATE objected BASED ON LACK of PRIOR KNOWLEDGE AND THE DEFENDANT WAS NOT ALLOWED TO CONTINUE WITH THIS TESTIMONY BECAUSE of LACK of MEDICAL EVIDENCE SUPPLIED TO THE DISTRICT ATTORNEY. THE DEFENDANT WAS ESSENTIALLY FORCED TO REPRESENT HIMSELF MIDWAY THRU THE JURY TRIAL. THE DEFENDANT WAS TRYING DESPERATELY TO OBTAIN MEDICAL EVIDENCE BEFORE THE TRIAL.

AND AFTER THE TRIAL. BEING INCARCURATED ACCESS TO INFORMATION IS SEVERLY LIMITED. MEDICAL/MENTAL HEALTH RECORDS ARE NOT ALLOWED TO BE OBTAINED FROM C.C.D.C. WHILE BEING INCARCURATED THERE. EVEN WITH SELF REPRESENTATION AN INMATE CAN NOT OBTAIN HIS OWN MEDICAL RECORDS. THE NEWLY DISCOVERED EVIDENCE WAS NOT AVAILABLE BEFORE OR DURING THE TRIAL. THE REPORTS WERE FOUND AT PATRICIA DUPLISSIE AND NORMAN DUPLISSIES HOUSE. WHO INSISTED THAT THEY DID NOT HAVE ANY MEDICAL RECORDS of THE DEFENDANTS AT THEIR HOUSE. THE MEDICAL REPORTS WERE [redacted] DISCOVERED IN THE BEGINNING of MARCH 2014. THE DISTRICT ATTORNEY IN THE STATE'S REPLY COMMENTS: 'THERE IS NO NEW MEDICAL DOCUMENTATION OF ANY MEDICAL OR MENTAL ISSUES. EVEN IF THERE IS MEDICAL EVIDENCE, IT WOULD NOT HAVE ALTERED THE OUTCOME of THE TRIAL.' THERE IS NO INDICATION THAT THE DISTRICT ATTORNEY IS A PHYSICIAN CAPABLE of DIAGNOSING MEDICAL CONDITIONS OR MENTAL DISORDERS, ESPECIALLY WITHOUT SEEING THE MEDICAL EVIDENCE OR DOCUMENTS.

IN LIGHT of THE NEWLY DISCOVERED MEDICAL EVIDENCE, THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL.

INGEL EX REL. ESTATE OF INGLE V YELTON
439 F. 3d 191, 197 (4TH CIR 2006) (RULE 59(e)
MOTIONS WILL BE GRANTED IN THREE
CIRCUMSTANCES: (1) TO ACCOMMODATE AN
INTERVENING CHANGE IN CONTROLLING LAW;
(2) TO ACCOUNT FOR NEW EVIDENCE NOT
AVAILABLE AT TRIAL;
(3) TO CORRECT A CLEAR ERROR OF LAW OR
PREVENT MANIFEST INJUSTICE.")
NRS 176.515 COURT MAY GRANT A
NEW TRIAL OR MOTION TO VACATE
JUDGEMENT IN CERTAIN CIRCUMSTANCES:
1. THE COURT MAY GRANT A NEW TRIAL
TO A DEFENDANT IF REQUIRED AS A
MATTER OF LAW OR ON THE GROUND OF
NEWLY DISCOVERED EVIDENCE.

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III PROSECUTOR MISCONDUCT

TAMPORING WITH WITNESS BY PROSECUTOR. THE D.A. MARIA E. LAVELL READ TRANSCRIPTS OF PHONE CALLS TO NORMAN DUPLISSIE, A WITNESS FOR THE STATE, WITH THE DESIRED INTENT TO INFLUENCE TESTIMONY. THE DISTRICT ATTORNEY USING EVIDENCE THAT WAS NOT PRODUCED AT TRIAL OR EVIDENCE THAT WAS DETERMINED NOT ADMISSABLE EVIDENCE. IN A WRITTEN STATEMENT BY NORMAN DUPLISSIE, HE WRITES IN PART: "MARIA BROUGHT UP THE FACT, SOMEWHERE DURING OUR MEETINGS THAT ALL OF YOUR TELEPHONE CONVERSATIONS WERE BEING MONITORED AND THAT SHE HAD COMPLETE TRANSCRIPTS OF THESE. I BELIEVE THIS CONVERSATION TOOK PLACE IN THE FIRST PRETRIAL PREPERATION MEETING (OR CONVERSATION) WHICH TRANSPIRED MORE THAN A YEAR AGO WHEN I TALKED TO HER PRIVATELY. ACCORDING TO HER, YOU AND YOUR BROTHER BOBBY HAD A CONVERSATION EARLY ON IN THE PROCESS WHEREBY YOU SAID TO HIM THAT YOU SHOULD HAVE KILLED LITTLE MICHAEL WHILE YOU HAD THE CHANCE.

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SHE MENTIONED THAT THIS COULD BE GROUNDS TO PURSUE AN ATTEMPTED MURDER CHARGE BUT THAT SHE WAS NOT GOING TO FOLLOW THIS COURSE OF ACTION NOR WAS SHE PLANNING TO USE THIS INFORMATION IN COURT. MARIA WAS ALSO SHOCKED TO HEAR HOW YOU TALKED TO YOUR MOTHER OVER THE PHONE. THIS WAS IN A LATER PHONE CONVERSATION. PUT THESE TOGETHER AND MARIA FEELS THAT YOU ARE A DANGER TO THE FAMILY. THESE WERE HER WORDS. I BELIEVE HER ACTIONS AND COMMENTS WERE MADE TO PAINT A VERY DARK PICTURE OF YOU. NORMAN BRINGS UP JAN. 25, 2014 AND STATES THAT MARIA AGAIN BROUGHT UP THE PHONE, BUT HE DOES NOT GO INTO DETAIL. HE ALSO STATES THAT HIS TESTIMONY WAS CONSISTENT TO THAT WHICH HE TESTIFIED IN FRONT OF JUDGE SULLIVAN IN THE PRELIMINARY HEARING AND THAT HE DOES NOT BELIEVE MARIA INFLUENCED HIS TESTIMONY, BUT ADDS THAT THIS DOES NOT NECESSARILY MEAN THAT HER INTENTIONS WERE NOT TO DO OTHERWISE. THE DEFENDANTS CONTENTION WOULD BE THAT THE TRANSCRIPTS WERE READ BEFORE THAT TRIAL SO THE WITNESS WAS TAMPERED WITH BEFORE THE PRELIM HEARING SO TO CONTAMINATE THAT TESTIMONY AS WELL.

PEOPLE V MARTINEZ, 47 CAL. 4TH 911, 105 CAL. RPTR. 3d 131, 224 P. 3d 877 (2010) UNDER STATE LAW, PROSECUTOR MISCONDUCT IS REVERSIBLE ERROR WHERE THE PROSECUTOR USES "DECEPTIVE OR REPREHENSIBLE METHODS TO PERSUADE EITHER THE COURT OR THE JURY" AND IT IS REASONABLY PROBABLE THAT A RESULT MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT. STATE V. GARNER 234 OR. APP. 486, 228 P. 3d 710 (2010) (UNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING MISTRIAL DUE TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (1) THE MISCONDUCT IS SO PREJUDICIAL THAT IT CANNOT BE CURED BY MEANS SHORT OF MISTRIAL (2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR EITHER INTENDED OR WAS INDIFFERENT TO THE RESULTING MISTRIAL.) AGURS, 427 U.S. AT 103. 96 S. Ct. 2397 THE COURT NOTES THAT A CONVICTION OBTAINED BY THE KNOWING USE OF TAINTED TESTIMONY IS FUNDAMENTALLY UNFAIR, AND MUST BE SET ASIDE, AND NEW TRIAL GRANTED IF THERE IS ANY LIKELIHOOD THAT THE TAINTED TESTIMONY COULD HAVE AFFECTED THE JUDGEMENT of the JURY.

IV INEFFECTIVE COUNSEL

'INEFFECTIVE COUNSEL BY PRIOR COUNSEL.'

IN THE DEFENDANTS MOTION FOR NEW TRIAL, POINTS AND AUTHORITIES I PROCEDURAL BACKGROUND #4 IS IMPROPERLY WRITTEN. IT SHOULD READ: 'PRIOR COUNSEL WAS INEFFECTIVE WHEN IN FORCING THE DEFENDANT TO EITHER GIVE UP HIS RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS RIGHT TO EFFECTIVE COUNSEL.' WHEN THE DEFENDANT INSISTED THAT HE WANTED TO TAKE THE STAND, ATTORNEY JOHN PARRIS, TOLD THE DEFENDANT "IF YOU TAKE THE STANDS, I WILL ASK YOU TWO YES OR NO QUESTIONS, THEN TURN YOU OVER TO THE D.A. AND LET HER TEAR YOU APART." BY STATING THAT HE WILL LET HER TEAR ME APART, HE WOULD NOT BE GIVING ME EFFECTIVE COUNSEL IF I TOOK THE STAND. ESSENTIALLY FORCING ME TO EITHER GIVE UP MY RIGHT TO TAKE THE STANDS AND TESTIFY ON MY OWN BEHALF OR TO GIVE UP MY RIGHT TO EFFECTIVE COUNCIL ACTING IN THE ROLE AS AN ADVOCATE. HE DID NOT IMPLY THAT HE WOULD BE ASKING ONLY TWO YES OR NO QUESTIONS AS A WAY OF PROVIDING SOUND DEFENSE STRATEGY, BUT INSTEAD AS A WEAPON TO PREVENT ME FROM TAKING THE STAND WHICH WAS TAKING AWAY MY RIGHT TO CHOOSE TO TAKE STAND

THIS CONVERSATION TOOK PLACE RIGHT AFTER THE DEFENDANT, FIRST READ THE JURY INSTRUCTIONS. FROM THE ONSET THE DEFENDANT WANTED TO TAKE THE STAND. THE DEFENDANT DID NOT TAKE THE STAND AT THE PRELIMINARY HEARING, ALLOWING THE PUBLIC DEFENDER TO INFLUENCE THE DEFENDANT TO NOT TAKE THE STAND. THE DEFENDANT DID NOT WANT TO MAKE THAT MISTAKE AGAIN. I LET JOHN PARRIS KNOW THIS, BUT HE CONTINUALLY TRIED TO GET ME TO NOT TAKE THE STAND. HE ACTUALLY NEVER EVEN ASKED ME MY VERSION of WHAT TOOK PLACE AND HE NEVER PREPARED FOR ME TO TAKE THE STAND. I WANTED TO TAKE THE STAND TO STATE MY INTENT BELIEVING THAT I WAS THE ONLY PERSON WHO COULD SAY WHAT MY INTENT WAS. JOHN PARRIS TOLD ME THAT INTENT WAS NOT A PART of THE CRIMES I WAS CHARGED WITH. WHEN THE DEFENDANT READ THE JURY INSTRUCTIONS, WHICH MADE IT CLEAR THAT INTENT WAS AN ELEMENT of THE CRIMES I WAS CHARGED WITH, I LET JOHN PARRIS KNOW THAT HE COULD NOT TALK ME OUT OF TAKING THE STAND. THAT I WANTED TO TAKE THE STAND TO CLARIFY TO THE JURY WHAT MY INTENT WAS. AT THAT POINT HE MADE THE STATEMENT "IF YOU TAKE THE STAND I WILL ASK YOU TWO YES OR NO QUESTIONS THEN TURN YOU OVER TO THE D.A. AND LET HER TEAR YOU APART."

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THE HONORABLE JUDGE SHOULD GRANT THE DEFENDANT A NEW TRIAL ON THIS ACT ALONE. THE DEFENDANT ASSERTS THAT HE WAS FORCED TO EITHER GIVE UP HIS RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. DUE TO WHOLLY INADEQUATE ACTIONS of HIS RETAINED ATTORNEY. FURTHER, COUNSELS ACTIONS COMPORT TO NOTHING MORE THAN A VIOLATION OF DEFENDANTS DUE PROCESS RIGHTS. DEFENDANT HAS AN UNQUALIFIED RIGHT TO LEGAL ASSISTANCE, THAT EXPRESSES LOYALTY TO SAID DEFENDANT. THEREFORE, DEFENDANT CONTENDS THAT ALTHOUGH THE DEFENDANT HAD COUNSEL, THE ACTIONS of COUNSEL HAVE CREATED UNFAIR PREJUDICE AND OBSTACLES WHICH DO NOT COMPORT THE FAIR PROCEDURES OWED TO THE DEFENDANT.

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CUYLER V. SULLIVAN 100 S. Ct. 17-8 (1980)
FRAZIER V. U.S. 18 F. 3d 778 (9TH CIR 1994)
"THE RIGHT TO COUNSEL IS THE RIGHT ALSO TO
EFFECTIVE ASSISTANCE of COUNSEL."
ANDERS V. CALIFORNIA 87 S. Ct. 1396 & 1480 (1967)
THUS, THE ADVERSIAL PROCESS PROTECTED BY
THE SIXTH AMENDMENT REQUIRES THAT THE
ACCUSED HAVE "COUNSEL ACTING IN THE ROLE
OF AN ADVOCATE".
GALLEGO V. U.S., 174 F. 3d 1196, 1197 (11TH CIR 1999)
A CRIMINAL DEFENDANT HAS A FUNDAMENTAL
CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OR HER
OWN BEHALF AT TRIAL. THIS IS RIGHT IS PERSONAL TO
THE DEFENDANT AND CANNOT BE WAIVED EITHER BY
THE TRIAL COURT OR BY DEFENSE COUNSEL. WHERE
COUNSEL HAS REFUSE TO ACCEPT THE DEFENDANTS
DECISION TO TESTIFY AND REFUSED TO CALL HIM
TO THE STAND, OR WHERE DEFENSE COUNSEL
NEVER INFORMED THE DEFENDANT OF HIS RIGHT
TO TESTIFY AND THAT THE FINAL DECISION BELONGS
TO THE DEFENDANT ALONE, DEFENSE COUNSEL
HAS NOT ACTED WITHIN THE RANGE OF
COMPETENCE DEMANDED OF ATTORNEY'S IN
CRIMINAL CASES, AND THE DEFENDANT HAS
NOT RECIEVED REASONABLY EFFECTIVE
ASSISTANCE OF COUNSEL.
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'INEFFECTIVE COUNSEL BY PRIOR COUNSEL' ALSO INCLUDES TWO SEPERATE CONFLICTS OF INTEREST. INDEPENDENTLY EACH WOULD BE SUFFICIENT GROUNDS FOR A NEW TRIAL. BOTH CONFLICTS OF INTEREST EXISTED PRIOR TO REPRESENTATION AND BOTH CONFLICTS REQUIRED ATTORNEY JOHN PARRIS TO EITHER DECLINE REPRESENTATION OR DEFENDANT GIVE INFORMED CONSENT, CONFIRMED IN WRITING. THE FIRST CONFLICT OF INTEREST IS THAT NORMAN DUPLISSIE, THE LEGAL GUARDIAN of MICHAEL, AND A WITNESS FOR THE STATE, WAS THE SOURCE FROM WHICH THE ATTORNEY JOHN PARRIS WAS PAID. ALTHOUGH THE DEFENDANT WAS AWARE THAT NORMAN DUPLISSIE PAID JOHN PARRIS TO REPRESENT THE DEFENDANT, THERE WAS NEVER A CONVERSATION BETWEEN THE DEFENDANT ON THIS MATTER, LET ALONE ANY INFORMATION GIVEN TO THE DEFENDANT ABOUT SIGNIFICANT RISKS THAT THIS WOULD ENTAIL. INCLUDING BUT NOT LIMITED TO CROSS-EXAMINATION of NORMAN DUPLISSIE AND CROSS-EXAMINATION of MICHAEL [redacted]. THE SECOND CONFLICT OF INTEREST IS THAT JOHN PARRIS PREVIOUSLY REPRESENTED FOR 'FREE' THE D.A. MARIA E. LAVELL, WHO IS ASSIGNED TO MY CASE ALTHOUGH THE ATT. PARRIS WAS RETAINED IN LATE JULY 2013 WHICH WAS APPROXIMATELY 6 MONTHS PRIOR TO THE JURY TRIAL, AND THE D.A. WAS MARIA LAVELL WHEN HE TOOK THE CASE, HE DID NOT TELL THE DEFENDANT UNTIL 5 MINUTES BEFORE SELECTING THE JURY.

COLES V. ARIZONA CHARLIES 973 F. Supp. 971, 975 (D. NEV 1997) HOLDING THAT ANY DOUBTS AS TO THE EXISTENCE OF A CONFLICT OF INTEREST SHOULD BE RESOLVED IN DISQUALIFICATION.

U.S. V. SHWAYDER 312 F. 3d 1109, 1117 (9TH CIR 2002) (CONCLUDING THAT THE DEFENDANTS WAIVER OF CONFLICT OF INTEREST WAS NOT VALID WHERE HE WAS NOT ADEQUATELY INFORMED OF THE SIGNIFICANCE OF THE CONFLICTS THAT MIGHT ARISE.

CLARK V. STATE 108 NEV 324, 326, 831 P. 2d 1374, 1376 (1992) (HOLDING THAT AN ACTUAL CONFLICT OF INTEREST WHICH ADVERSELY AFFECTS A LAWYERS PERFORMANCE WILL RESULT IN A PRESUMPTION OF PREJUDICE TO THE DEFENDANT)

RE PUCCINELLI, 67 NEV. 645, 224 P. 2d 318 (1950) AN ATTORNEY WHO REPRESENTED BOTH THE PLAINTIFF AND THE DEFENDANT IN A DISTRICT COURT ACTION WITHOUT PRIOR DISCLOSURE OF HIS APPOINTMENT WAS PROPERLY SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF NINE MONTHS.

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RYAN V EIGHTH JUDICIAL DISTRICT COURT OF NEVADA,
123 NEV. 419, 168 P. 3d 703 (2007)
A WAIVER of CONFLICT-FREE REPRESENTATION ENTAILS
THE WAIVER of CERTAIN IMPORTANT RIGHTS AT TRIAL,
ON APPEAL, AND IN POST CONVICTION PROCEEDINGS,
INCLUDING WAIVER of THE RIGHT TO SEEK A MISTRIAL
BASED ON ANY CONFLICTS ARISING FROM THE DUAL
REPRESENTATION. CONSEQUENTLY, WE NOW
REQUIRE ATTORNYS TO ADVISE CRIMINAL DEFENDANTS
of THEIR RIGHT TO CONSULT WITH INDEPENDENT
COUNSEL TO ADVISE THEM ON THE POTENTIAL CONFLICT
of INTEREST AND THE CONSEQUENCES of WAIVING
THE RIGHT TO CONFLICT-FREE REPRESENTATION.
THE ATTORNEY MUST ADVISE THE CLIENTS TO SEEK
THE ADVICE of INDEPENDENT COUNSEL BEFORE
THE ATTORNEY ENGAUGES IN THE DUAL REPRESENTATION.
IF THE CLIENTS CHOOSE NOT TO SEEK THE ADVICE of
INDEPENDANT COUNSEL, THE CLIENTS MUST EXPRESSLY
WAIVE THE RIGHT TO DO SO, BEFORE AGREEING TO ANY WAIVER of
CONFLICT-FREE REPRESENTATION. IF THE ATTORNEY FAILS TO
ADVISE CRIMINAL DEFENDANTS of THEIR RIGHT TO SEEK
THE ADVICE of INDEPENDENT COUNSEL, THE CLIENTS WAIVER of
CONFLICT-FREE REPRESENTATION ARE INEFFECTIVE UNLESS AND
UNTIL THE ATTORNEY ADVISES THE CLIENTS TO DO.
///

RULES of PROFESSIONAL CONDUCT RULE 1.7

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) EXCEPT AS PROVIDED IN PARAGRAPH (b), A LAWYER SHALL NOT REPRESENT A CLIENT IF THE REPRESENTATION INVOLVES A CONCURRENT CONFLICT OF INTEREST. A CONCURRENT CONFLICT OF INTEREST EXISTS if:

(1) THE REPRESENTATION of ONE CLIENT will BE DIRECTLY ADVERSE TO ANOTHER CLIENT;

(2) THERE IS SIGNIFICANT RISK THAT THE REPRESENTATION of ONE OR MORE CLIENTS will BE MATERIALLY LIMITED BY THE LAWYER'S RESPONSIBILITIES TO ANOTHE CLIENT, A FORMER CLIENT OR A THIRD PERSON OR BY A PERSONAL INTEREST of THE LAWYER.

(b) NOTWITHSTANDING THE EXISTANCE OF A CONCURRENT CONFLICT OF INTEREST UNDER PARAGRAPH (a) A LAWYER MAY REPRESENT A CLIENT IF: (1) THE LAWYER REASONABLY BELIEVES THAT THE LAWYER will BE ABLE TO PROVIDE COMPETENT AND DILIGENT REPRESENTATION TO EACH AFFECTED CLIENT (2) THE REPRESENTATION IS NOT PROHIBITED BY LAW; (3) THE REPRESENTATION DOES NOT INVOLVE THE ASSERTION of A CLAIM BY ONE CLIENT AGAINST ANOTHER CLIENT REPRESENTED BY THE LAWYER IN THE SAME LITIGATION OR OTHER PROCEEDING BEFORE A TRIBUNAL; AND (4) EACH AFFECTED CLIENT GIVES INFORMED CONSENT, CONFIRMED IN WRITING.

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LOYALTY AND INDEPENDANT JUDGEMENT ARE ESSENTIAL ELEMENTS IN THE LAWYERS RELATIONSHIP TO A CLIENT. A CONFLICT of INTEREST MAY EXIST BEFORE REPRESENTATION IS UNDERTAKEN, IN WHICH EVENT THE REPRESENTATION MUST BE DECLINED, UNLESS THE LAWYER OBTAINS THE INFORMED CONSENT of EACH CLIENT UNDER THE CONDITIONS of PARAGRAPH (b) - INFORMED CONSENT, CONFIRMED IN WRITING.- IGNORANCE CAUSED BY A FAILURE TO INSTITUTE SUCH PROCEDURES WILL NOT EXCUSE A LAWYER'S VIOLATION OF THIS RULE.

LOYALTY TO A CURRENT CLIENT PROHIBITS UNDERTAKING REPRESENTATION DIRECTLY ADVERSE TO THAT CLIENT WITHOUT THE CLIENT'S INFORMED CONSENT, CONFIRMED IN WRITING. THUS, ABSENT CONSENT, A LAWYER MAY NOT ACT AS AN ADVOCATE IN ONE MATTER AGAINST A PERSON THE LAWYER REPRESENTS IN SOME OTHER MATTER, EVEN WHEN THE MATTERS ARE WHOLLY UNRELATED. THE CLIENT AS TO WHOM THE REPRESENTATION IS DIRECTLY ADVERSE IS LIKELY TO FEEL BETRAYED, AND THE RESULTING DAMAGE TO THE CLIENT - LAWYER RELATIONSHIP IS LIKELY TO IMPAIR THE LAWYER'S ABILITY TO REPRESENT THE CLIENT EFFECTIVELY.

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IN ADDITION, THE CLIENT ON WHOSE BEHALF THE ADVERSE REPRESENTATION IS UNDERTAKEN REASONABLY MAY FEAR THAT THE LAWYER WILL PURSUE THAT CLIENTS CASE LESS EFFECTIVELY, OUT OF DEFERENCE TO THE OTHER CLIENT, i.e., THAT THE REPRESENTATION MAY BE MATERIALLY LIMITED BY THE LAWYER'S INTEREST IN RETAINING THE CURRENT CLIENT. IN ADDITION TO CONFLICTS WITH OTHER CURRENT CLIENTS, A LAWYER'S DUTIES of LOYALTY AND INDEPENDENCE MAY BE MATERIALLY LIMITED BY RESPONSIBILITIES TO FORMER CLIENTS. THE LAWYER'S OWN INTERESTS SHOULD NOT BE PERMITTED TO HAVE AN ADVERSE EFFECT ON REPRESENTATION OF A CLIENT.

A LAWYER MAY BE PAID FROM A SOURCE OTHER THAN THE CLIENT, INCLUDING A CO-CLIENT, if THE CLIENT IS INFORMED of THAT FACT AND THE ARRANGEMENT DOES NOT COMPROMISE THE LAWYER'S DUTY of LOYALTY OR INDEPENDANT JUDGEMENT TO THE CLIENT. If ACCEPTANCE of THE PAYMENT FROM ANY OTHER SOURCE PRESENTS A SIGNIFICANT RISK THAT THE LAWYER'S REPRESENTATION OF THE CLIENT WILL BE MATERIALLY LIMITED BY THE LAWYER'S OWN INTEREST IN ACCOMODATING THE PERSON PAYING THE LAWYER'S FEES OR BY THE LAWYER'S RESPONSIBILITY TO A PAYER WHO IS ALSO A

CO-CLIENT, THEN THEN LAWYER MUST COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (b), before ACCEPTING THE REPRESENTING, INCLUDING DETERMINING WHETHER THE CONFLICT IS CONSENTABLE, AND, IF SO, THAT THE CLIENT HAS ADEQUATE INFORMATION ABOUT THE MATERIAL RISKS of THE REPRESENTATION. INFORMED CONSENT REQUIRES THAT EACH AFFECTED CLIENT BE AWARE OF THE RELEVANT CIRCUMSTANCES AND of THE MATERIAL AND REASONABLY FORSEEABLE WAYS THAT THE CONFLICT COULD HAVE ADVERSE EFFECTS ON THE INTERESTS OF THAT CLIENT PARAGRAPH (b) RULE 1.7 PROFESSIONAL RULES of CONDUCT, REQUIRES THE LAWYER TO OBTAIN THE INFORMED CONSENT of THE CLIENT, CONFIRMED IN WRITING, THE REQUIREMENTS of A WRITING DOES NOT SUPPLANT THE NEED IN MOST CASES FOR THE LAWYER TO TALK WITH THE CLIENT, TO EXPLAIN THE RISKS AND ADVANTAGES, IF ANY, of REPRESENTATION BURDENED WITH A CONFLICT OF INTEREST, AS WELL AS REASONABLY AVAILABLE ALTERNATIVES, AND TO AFFORD THE CLIENT A REASONABLE OPPORTUNITY TO CONSIDER THE RISKS AND ALTERNATIVES AND TO RAISE QUESTIONS AND CONCERNS. RATHER THE WRITING IS REQUIRED IN ORDER TO IMPRESS UPON THE CLIENTS THE SERIOUSNESS OF THE DECISION THE CLIENT IS BEING ASKED TO MAKE AND TO AVOID DISPUTES OR AMBIGUITIES THAT MIGHT LATER OCCUR IN THE ABSENSE OF A WRITING.

FURTHERMORE 'INEFFECTIVE COUNSEL BY PRIOR COUNSEL', THE DEFENDANT RECIEVED REPRESENTATION of A DEFICIENT PERFORMANCE THAT FALLS BELOW AN OBJECTIVE STANDARD of REASONABLENESS. SOME of HIS ACTIONS BE INDIVIDUALLY CONSIDERED SUFFICIENT TO CONCLUDE HIS COUNSEL WAS INEFFECTIVE, OTHER ACTIONS OR LACK THERE of WOULD BE A CUMULATIVE EFFECT of MULTIPLE ERRORS WHICH VIOLATES A DEFENDANTS CONSTITUTIONAL RIGHT TO A FAIR TRIAL. THE ATTORNEY JOHN PARRIS DID NOT CONDUCT ADEQUATE PRE-TRIAL INVESTIGATION TO PREPARE A DEFENSE, HE DID NOT LOOK INTO MEDICAL EVIDENCE OR INTERVIEW POTENTIAL WITNESSES, HE DID NOT CROSS EXAMINE WITNESSES, AND HIS CROSS EXAMINATION OF OTHERS WAS VERY LACKING, BASICALLY REPEATING THE QUESTIONS OVER THAT THE DISTRICT ATTORNEY ASKED ALREADY. HIS OPENING STATEMENT WAS TO COMPLIMENT THE STATE ON GIVING A GOOD OPENING STATEMENT AND A DESCRIPTION OF WHAT AN OPENING STATEMENT SHOULD CONTAIN, WHICH BY HIS OWN DEFINITION of A GOOD OPENING STATEMENT HIS WOULD NOT HAVE PASSED AS A GOOD OPENING STATEMENT. FOLLOWED BY AN INSTRUCTION TO THE JURY TO WAIT TO HEAR ALL THE EVIDENCE BEFORE COMING TO A CONCLUSION. YET HIS INTENTION WAS TO NOT PRESENT A DEFENSE. HE DID NOT PREPARE JURY INSTRUCTIONS AND HE DID NOT REQUEST FOR THE JURY TO HAVE THE OPTION of A LESSER INCLUDED offense.

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BURGEON V STATE, 102 NEV. 43, 714 P. 2d 576 (1986)
REJECTS THE STATES CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS SOUND STRATEGY. THERE WAS SUFFICIENT EVIDENCE TO PRESENT A DEFENSE.

WARNER V STATE, 102 NEV. 635, 729 P. 2d 1359 (1986)
FAILURE TO CONTACT WITNESSES, INEFFECTIVE ASSISTANCE OF COUNSEL WITNESSES NEVER CONTACTED. THE COURT REVERSED AND CONCLUDED THAT TRIAL COUNSEL'S FAILURE TO INVESTIGATE AND LACK OF PREPERATION FOR TRIAL LEFT THE INMATE WITHOUT A DEFENSE AT TRIAL. THE COURT REVERSED THE JUDGEMENT OF CONVICTION AND REMANDED THE CASE FOR A NEW TRIAL.

PROFESSIONAL RULES OF CONDUCT RULE 1
COMPETENCE: A LAWYER SHALL PROVIDE COMPETENT REPRESENTATION TO A CLIENT. COMPETENT REPRESENTATION REQUIRES THE LEGAL KNOWLEDGE, SKILL, THOROUGHNESS, AND PREPERATION REASONABLY NECESSARY FOR THE REPRESENTATION

PROFESSIONAL RULES OF CONDUCT RULE 3
DILLIGENCE: LAWYER SHALL ACT WITH REASONABLE DILLIGENCE AND PROMPTNESS IN REPRESENTING A CLIENT.

SANBORN V. STATE 107 NEV. 399; 812 p.2d 1279; 1991 NEV. LEX 107

SANBORNS OWN TESTIMONY WAS STRONGLY DEVALUED BY THE ABSENSE OF CORROBORATIVE EVIDENCE THAT WOULD HAVE BEEN PRESENTED BY DILLIGENT AND EFFECTIVE COUNSEL. SANBORN INSISTS THAT BEFORE TRIAL, HE HAD PROVIDED HIS ATTORNEY WITH A LIST OF POTENTIAL WITNESSES WHO WERE PREPARED TO TESTIFY. WE REJECT THE STATE'S CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS A SOUND STRATEGY. SANBORN PRIMARILY EMPHASIZES HIS COUNSELS FAILURE TO CONDUCT ADEQUATE PRE-TRIAL INVESTIGATION AND TO PRESENT TRIAL EVIDENCE. SANBORNS DEFENSE WAS CLEARLY PREJUDICED BY HIS COUNSELS FAILURE TO DEVELOP AND PRESENT EVIDENCE THAT WOULD HAVE CORROBORATED SANBORNS TESTIMONY BECAUSE OF COUNSELS LACK of DUE DILIGENCE SANBORN WAS DEPRIVED OF THE OPPORTUNITY TO PRESENT TESTIMONY MATERIAL TO HIS DEFENSE.

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THE DEFENDANT FIRST MET ATTORNEY JOHN PARRIS ON AUGUST 5TH 2013. AT THE END OF THE ATTORNEY VISIT, THE ATTORNEY PARRIS TOLD THE DEFENDANT HE WOULD SEE HIM AGAIN IN A COUPLE OF WEEKS. OUTSIDE SEEING THE ATTORNEY IN THE COURT ROOM, THE DEFENDANT DID NOT SEE THE ATTORNEY AGAIN UNTIL 6 MONTHS LATER, LESS THAN A WEEK BEFORE JURY SELECTION AND TRIAL WAS TO BEGIN. AT THE INITIAL CONSULTATION THE ATTORNEY PARRIS WAS INFORMED BY THE DEFENDANT, THAT THE DEFENDANT WAS NOT HAPPY WITH THE SERVICE PROVIDED BY P.D. DAN DENKINS BECAUSE THE PUBLIC DEFENDER WOULD NOT OR DID NOT LOOK INTO THE DEFENDANTS MEDICAL CONDITION, ALSO BECAUSE THE PUBLIC DEFENDER SEEMED TO HAVE NOT ENOUGH TIME TO DEDICATE TO THE DEFENDANT CASE TO PROPERLY DEFEND HIM. THE DEFENDANT BRIEFLY EXPLAINED HIS MEDICAL CONDITION AND THE EVENTS OF THE DAY OF THE INCIDENT AND THE PEOPLE WHO COULD VERIFY THIS TO THE ATTORNEY. THE ATTORNEY EXPLAINED TO THE DEFENDANT THAT THE ATTORNEY WOULD LOOK INTO THESE CIRCUMSTANCES AND GET BACK WITH THE DEFENDANT ABOUT WHAT THE BEST DEFENSE STRATEGY IS OR THE OPTIONS AVAILABLE AND ALSO DETERMINE IF WE NEEDED TO SEEK EXPERT ANALYSIS.

[redacted]

THIS SHOULD NOT BE VIEWED AS HINDSIGHT BECAUSE THE DEFENDANT WAS IN COMPLETE DISAGREEMENT WITH THE ATTORNEY AS THE EVENTS WERE TAKING PLACE, WHICH INCLUDES DURING THE JURY SELECTION PROCESS, THE OPENING STATEMENT, HIS CROSS EXAMINATION of NORMAN DUPLISSIE, PATRICIA DUPLISSIE, HIS ASSOSIATES CROSS EXAMINATION of MICHAEL, HIS LACK of PREPAREDNESS TO CROSS EXAMINE THE EXPERT WITNESS, WHICH HE CHOOSE NOT TO CROSS EXAMINE, HIS DECISION TO NOT PRESENT OR INTERVIEW ROBERT SCHOFIELD, HIS CHOICE NOT TO LOOK INTO MEDICAL RECORDS, THE ATTORNY NOT TELLING THE DEFENDANT THAT HE WILL NOT BE PRESENTING A DEFENSE, NOT BRINGING THE DEFENSE CASE FILE WITH HIM TO THE TRIAL. THE ATTORNEY NOT HAVING A CLOSING ARGUMENT STATEMENT PREPARED, HIS ASSOCIATE WRITING IT WHILE THE STATE PRESENTED THEIR [redacted] CLOSING STATEMENT, THE ASSOCIATES UNWILLINGNESS TO OPERATE THE TELEPROMPTER DURING CLOSING ARGUMENT, DECIEVING THE CLIENT ABOUT TRIAL STRATEGY PRIOR TO THE START of TRIAL, AND ESSENTIALLY LETTING THE DEFENDANT KNOW THAT THE DEFENDANT HAS NO ROLE IN CHOOSING HOW DEFENDANT WILL BE REPRESENTED.

THERE HAS BEEN THREE CIRCUMSTANCES IN MY CASE IN WHICH ERRORS HAVE BEEN MADE IN THE TRANSFERRING OF LEGAL DOCUMENTS IN THIS CASE. THEY ARE ① THE STATE CLAIMS TO HAVE NOT RECEIVED A LETTER FROM PATRICIA DUPLISSIE, OR RECEIVED A COPY of THIS LETTER IN THE EXCHANGE of DISCOVERY ② THE ATTORNEY JOHN PARRIS DELIVERED TO THE DEFENDANT THE DEFENSE CASE FILE - NOT USING A DELIVERY SERVICE - THE DEFENDANT RECEIVED THE DEFENSE CASE FILE ON MARCH 19, 2014 WITH NO POST DATE ATTACHED, THIS FILE IS MISSING NUMEROUS ITEMS THAT WOULD BE BENEFICIAL TO THE DEFENDANT TO HAVE. FOR INSTANCE THE 911 TRANSCRIPT, THE PHONE TRANSCRIPTS THAT THE D.A. READ TO NORMAN DUPLISSIE, EXHIBIT #16, ANY AND ALL POLICE REPORTS OF THE DEFENDANTS PREVIOUS ENCOUNTERS WITH LAW ENFORCEMENT, ANY WORK WHATSOEVER THAT THE ATTORNEY DID TO CONTRIBUTE TO THE DEFENSE of THE DEFENDANT, INCLUDING INTERVIEWS WITH POTENTIAL WITNESSES OR ACTUAL WITNESSES, HIS CONTRIBUTION TO JURY INSTRUCTIONS, ETC. ③ COURT TRANSCRIPTS OF THE JURY SELECTION AND JURY TRIAL NEVER RECEIVED BY THE DEFENDANT. DUE TO THIS THE DEFENDANT DOES NOT FEEL CONFIDENT THAT THE EXHIBITS WILL REACH THEIR DESIRED DESTINATION. FOR THIS REASON THE DEFENDANT WILL BRING THE EXHIBITS TO COURT WITH HIM ON MAY 28, 2014.

THE DEFENDANT HOPES AND PRAYS THAT THE HONORABLE JUDGE WILL CONSIDER THE CIRCUMSTANCES TO THIS CASE AND COME TO THE SAME CONCLUSION THAT THE DEFENDANT HAS, THAT A FAIR TRIAL WAS NOT PREVIOUSLY PRODUCED, AND FOR JUSTICE TO BE PROPERLY SERVED A NEW TRIAL SHOULD BE GRANTED TO THE DEFENDANT.

DATED THIS 20TH DAY OF MAY, 20 14.

I, MICHAEL J. SCHOFIELD, DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE ABOVE REPLY MOTION IS ACCURATE, CORRECT, AND TRUE TO THE BEST OF MY KNOWLEDGE.

NRS 171.102 AND NRS 208.165

RESPECTFULLY SUBMITTED

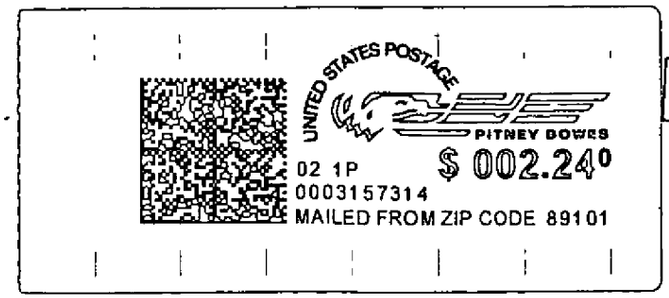
Michael J. Schofield

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

MICHAEL J. SCHOFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101

2.



LEGAL MAIL

CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS NEVADA 89101

LEGAL
MAIL

9

MC
PP
DA

MICHAEL J. SCHOFIELD
INMATE No. 1679195
330 S. CASINO CENTER BLVD
LAS VEGAS NEVADA 89101

THE DISTRICT COURT
CLARK COUNTY NEVADA

THE STATE OF NEVADA — PLAINTIFF
V.S.
MICHAEL J. SCHOFIELD — DEFENDANT

CASE No. C-13-287009-1
DEPT No. 6

6-23-14 @ 8:30am

MOTION TO VACATE VERDICT

COMES NOW DEFENDANT, MICHAEL J. SCHOFIELD, IN PROPER PERSON, AND RESPECTFULLY MOVES THIS HONORABLE COURT TO VACATE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING.

THIS MOTION IS BASED UPON ALL RECORDS AND FILES IN THIS ACTION. POINTS AND AUTHORITIES, AFFIDAVIT OF THE DEFENDANT, AND ANY ARGUMENT ADDUCE AT THE TIME OF THE HEARING of THIS MOTION

Michael Schofield
MICHAEL J SCHOFIELD
DEFENDANT IN PROPER PERSON

14

TO: DISTRICT ATTORNEY, DEFENDANT IN PROPER PERSON

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING THIS MOTION ON FOR HEARING BEFORE THE DISTRICT COURT DEPT 6 ON THE 23 ~~9TH~~ DAY of JUNE AT 8:30 O'CLOCK A.M. of SAID DAY.

DATED THIS 26TH DAY OF MAY 2014.

Michael Schofield

MICHAEL S. SCHOFIELD
DEFENDANT IN PROPER PERSON

POINTS AND AUTHORITIES

IT IS RESPECTFULLY REQUESTED OF THIS COURT TO GRANT THIS MOTION TO VACATE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING FOR THE REASONS LISTED BELOW:

1. INSUFFICIENT EVIDENCE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF FIRST DEGREE KIDNAPPING.

2. JURY INSTRUCTIONS WERE ERRONEOUS.

3. PROSECUTOR MISCONDUCT.

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POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

1. INSUFFICIENT EVIDENCE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF FIRST DEGREE KIDNAPPING. THE BURDEN OF PROVING EVERY ELEMENT OF THE CRIME CHARGED IS PLACED UPON THE STATE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK WITH THE INTENT TO KEEP HIS SON, MICHAEL JOSHUA SCHOFIELD. IN PROVING FIRST DEGREE KIDNAPPING IT IS NOT ENOUGH TO PROVE THAT THE DEFENDANT'S INTENTION WAS TO TAKE HIS SON. IN FIRST DEGREE KIDNAPPING IT MUST BE PROVED THAT THE DEFENDANTS INTENTION WAS TO TAKE HIS SON, COMBINED WITH THE INTENTION TO KEEP HIS SON. THIS BEING THE CASE THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF THE CRIME OF FIRST DEGREE KIDNAPPING. THEREFORE THE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING SHOULD BE VACATED BY THE HONORABLE JUDGE.

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2. JURY INSTRUCTIONS WERE ERRONEOUS.
JURY INSTRUCTION NUMBER 11 READS: "IT IS THE FACT, NOT THE DISTANCE, OF FORCEBLE MOVEMENT OF THE VICTIM THAT CONSTITUTES KIDNAPPING." THIS JURY INSTRUCTION HELPS FURTHER DEFINE KIDNAPPING. YET IT DOES NOT DEFINE FIRST DEGREE KIDNAPPING. D.A. LAVELL, IN THE FINAL CLOSING ARGUMENT GIVEN BY THE STATE ON FRIDAY JANUARY 31, 2014 REFERS TO THIS JURY INSTRUCTION NUMBER 11, ON PAGE 235 LINE 13 THRU LINE 20 of THE COURT TRANSCRIPTS. BEYOND REFERING TO THE JURY INSTRUCTION AS A STATUE, THE D.A. STATES: "YOU WILL HAVE A JURY INSTRUCTION THAT SAYS DISTANCE IS IRRELEVANT. AND NOTHING IN THE STATUE SAYS THAT HE HAD TO PERMANETLY KEEP HIM. IF HE HAS TAKEN HIM TO THE STORE AND BROUGHT HIM BACK, GUESS WHAT? HE STILL KIDNAPPED THAT KID." IN THAT THE D.A. REFERRED TO THE JURY INSTRUCTION NUMBER 11 NOT SAYING ANYTHING ABOUT INTENT TO KEEP, IT WOULD THEN BE UNDERSTOOD THAT JURY INSTRUCTION NUMBER 11 WAS PLACED IN THE JURY INSTRUCTIONS TO DESCRIBE FIRST DEGREE KIDNAPPING AND BEING THAT IT IS MISSING AN ELEMENT OF FIRST DEGREE KIDNAPPING, THE JURY INSTRUCTION NUMBER 11 IS CONSIDERED ERRONEOUS.
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THE D.A. EXPLAINS TO THE JURY THAT, "IF THE DEFENDANT HAD TAKEN HIS SON TO THE STORE AND BROUGHT HIS SON BACK, HE STILL KIDNAPPED HIS SON." AND THEN THE D.A. STATES: "I ASK YOU TO FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING." WHICH AGAIN THE D.A. IS ASKING THE JURY TO DETERMINE GUILTY OR NOT GUILTY OF KIDNAPPING. BEING THAT THE D.A. USED LANGUAGE CONSISTENT WITH THE LANGUAGE USED IN JURY INSTRUCTION NUMBER ELEVEN, WHICH IS 'KIDNAPPING' INSTEAD OF 'FIRST DEGREE KIDNAPPING' IN JURY INSTRUCTION NUMBER ELEVEN 'THAT WHICH CONSTITUTES KIDNAPPING', IN THE D.A. CLOSING ARGUMENT 'I ASK YOU TO FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING'. THIS FURTHER HELPS MAKE JURY INSTRUCTION NUMBER ELEVEN ERRONEOUS. BY MAKING THE INTENT TO KEEP AFTER TAKING HIS SON IRRELEVANT IN ITS DEFINITION OF WHAT CONSTITUTES KIDNAPPING, AND THE D.A. USING JURY INSTRUCTION NUMBER ELEVEN TO DETERMINE GUILT OF FIRST DEGREE KIDNAPPING JURY INSTRUCTION NUMBER ELEVEN IS THEN ERRONEOUS. THE DEFENDANT IS CHARGED WITH AND HAS BEEN FOUND GUILTY OF FIRST DEGREE KIDNAP IN WHICH INTENT TO KEEP AFTER TAKING IS AN ELEMENT OF THE CRIME AND THAT NOT ONLY JURY INSTRUCTION NUMBER ELEVEN OMITS THIS ELEMENT, BUT THE D.A. REFERS TO THIS JURY INSTRUCTION IN HER FINAL ARGUMENT AND EVEN GOES SO FAR AS TO SAY ACCORDING TO THIS JURY INSTRUCTION, TO KEEP IS NOT AN ELEMENT OF THE CRIME COMMITTED. BASED ON THIS THE HONORABLE JUDGE SHOULD VACATE THE VERDICT OF GUILTY TO FIRST DEGREE KIDNAPPING.

3. PROSECUTOR MISCONDUCT

THE PROSECUTORS USED REPREHENSIBLE METHODS TO PERSUADE THE JURY AND IT IS REASONABLY PROBABLE THAT A RESULT ~~FAVORABLE~~ MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT. A PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVIDENCE, CONSTRUCT A MORE DRAMATIC VERSION OF THE EVENTS, AND THEN DEFEND AGAINST A PROSECUTORIAL MISCONDUCT CLAIM BY MAINTAINING THE STATEMENTS ARE FACT BASED, WHERE THE PROSECUTOR MISREPRESENTS A WITNESS TESTIMONY COURTS HAVE CONDEMNED SUCH ANTICS AS THEATRICS. THE LEGAL GUARDIANS of MICHAEL JOSHUA SCHOFIELD, WERE IN CONSTANT CONTACT WITH THE D.A. REGARDING THIS CASE. NORMAN DUPLISSIE NOT JUST PATRICIA DUPLISSIE HAD RELATED TO THE D.A. THAT THEY AS WELL AS MICHAEL JOSHUA SCHOFIELD THE CHILD THEY ARE LEGAL GUARDIANS of AND THE VICTIM IN THIS CASE ALL BELIEVED THAT THE DEFENDANT WAS NOT GUILTY of FIRST DEGREE KIDNAPPING, SO MUCH SO THAT NORMAN DUPLISSIE NOT PATRICIA DUPLISSIE PAID FOR A PRIVATE ATTORNEY IN HOPES of GETTING THE DEFENDANT BETTER REPRESENTATION. SO FOR THE DISTRICT ATTORNEY MS. ANTHONY to SPEAK FOR THE DEFENDANTS FAMILY IN THE FIRST of THE TWO CLOSING ARGUMENTS WAS INAPPROPRIATE AND MISLEADING TO THE JURY. PATRICIA DUPLISSIE IN THE

PHONE CALL THAT MS. ANTHONY REFERS TO AS,
PATRICIA DUPLISSIE IN THE PHONE CALL STATING
THAT SHE TOLD THE DEFENDANT THAT MICHAEL
JOSHUA SHOULD NOT GO WITH THE DEFENDANT AGAIN
MISREPRESENTED THE [redacted] LEGAL GUARDIAN.
BECAUSE IN THAT PHONE CALL, PARICIA DUPLISSIE.
STATES 'I TOLD HIM NOT TO GO AT FIRST.'
BY NOT MENTIONING THIS THE D.A. MISREPRESENTED,
THE MEANING of HER COMMENT. MS. ANTHONY
ALSO MADE MULTIPLE COMMENTS ABOUT THE
LEGAL GUARDIAN, PATRICIA DUPLISSIE GIVING FALSE
TESTIMONY ABOUT DETAILS of THE INCIDENT THAT
PATRICIA WITNESSED OR DID NOT WITNESS. THE
TWO officers both placed PATRICIA by THE FRONT
DOOR UPON THEIR ARRIVAL AND NORMAN AND
THE TWO MICHAELS by THE DRIVEWAY, WHICH CAN
NOT BE SEEN BY THE FRONT DOOR, ALSO NORMAN
'CUTE LITTLE NORMAN', HAD TESTIFIED THAT HE PUT
THE DOG IN ITS CAGE At the beginning of THE
INCIDENT, AND THE CAGE IS VERY NEAR THE FRONT
DOOR. THE DOG CAN CLEARLY BE HEARD BARKING
WHICH APPEARS TO BE CLOSER TO THE PERSON ON
THE PHONE THEN THE PEOPLE GELLING. MS. ANTHONY
ALSO ALTERS THE MEANING of FIRST DEGREE
KIDNAPPING. ON PAGE 201 of THE TRANSCRIPT
SHE BREAKS DOWN NRS 200.301(1) THEN ALTERS
IT BY STATING ON LINE 24. "SO HOW DO YOU KNOW

THAT THE DEFENDANT INTENDED TO TAKE, WHICH IS NOT PART of NRS 200.301(1) OR JURY INSTRUCTION NUMBER TEN. EVEN THE SHORT VERSION of NRS 200.301(1) WHICH THE STATE USED IN THE JURY INSTRUCTION NUMBER TEN, WHICH ADDS A LINE TO THE STATUE THAT IS NOT PART of it, 'KIDNAPPING DOES NOT REQUIRE FORCE'. THE JURY INSTRUCTION AND THE NRS for FIRST DEGREE KIDNAPPING DO NOT SAY INTENDED TO TAKE, BUT SAY TAKE WITH THE INTENT TO KEEP. THE SECOND CLOSING ARGUMENT GOES EVEN FARTHER IN STATING THAT INTENT TO KEEP IS NOT A PART of THE CRIME. THE D.A. LAVELL EVEN USES A DESCRIPTION of ANOTHER 'EXAMPLE' of A KIDNAP SCENERIO WHICH ALSO DOES NOT DESCRIBE A FIRST DEGREE KIDNAPPING SCENE. D.A. LAVELL ALSO ATTACKED THE DEFENDANT IN HER CLOSING ABOUT BEING OUT of CONTROL THAT HE HAS A HORRIFIC TEMPER WHICH SHE REPEATED TWICE. YET NOT ANOTHER PERSON AT THE SCENE WOULD SAY THAT THE DEFENDANT ATTACKED ANY of THEM PHYSICALLY. THE DEFENDANT WAS, AS THE POLICE OFFICER WHO ARRIVED ON THE SCENE RESISTING BUT NOT TO THE POINT of getting A RESISTING ARREST CHARGE, THAT THE PHYSICAL ALTERCATION HAD CEASED BEFORE HER ARRIVAL AND THE MALE OFFICER NEIGHBOR SAID THAT THE DEFENDANT

WAS NEVER TOOK TO THE GROUND. THE PROSECUTORS COMMENTS WERE IMPROPER AND A FLAGRANT Attempt to INFLAME PASSION AND PREJUDICE. ESPECIALLY BRINGING UP INCIDENTS WHICH WERE NOT PART of THE INCIDENT AND WERE THEIR WERE NO CHARGES brought AGAINST THE DEFENDANT. THE Honorable Judge DID NOT GIVE THE DEFENDANT A CONTEMPT of COURT CHARGE FOR His ACTIONS During TRIAL NOR DID THE DEFENDANT RECIEVE CHARGES FOR BEING put IN A RESTRAINING DEVICE AT C.C.D.C.

II ARGUMENT

BURKHART V STATE 107 NEV. 797, 820 P. 2d 757, 1991 LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH WOULD HAVE ALLOWED THE JURY TO INFER WHAT THE DEFENDENT INTENDED TO DO WITH THE VICTIM.

COBB V POZZI 363 F. 3d 89, 116 (2d CIR 2004) AN ERRONEOUS jury INSTRUCTIONS REQUIRES REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS. JOHNSON V. U.S. 520 U.S. 461, 466-67, 117 S. Ct. 1544 (1997) (EXPLAINING ERRORS CAN BE CORRECTED WHEN THERE IS (1) ERROR (2) THAT IS plain (3) THAT AFFECTS SUBSTANTIAL Rights (4) SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDING).

PEOPLE V. MARTINEZ, 47 CAL. 4TH 911, 105 CAL. RPTR. 3d. 131, 224 P. 3d 877 (2010) UNDER STATE LAW, PROSECUTORIAL MISCONDUCT IS REVERSIBLE ERROR WHERE THE PROSECUTOR USES "DECEPTIVE OR REPREHENSIBLE METHODS TO PERSUADE EITHER THE COURT OR THE JURY" AND IT IS REASONABLE PROBABLE THAT A RESULT MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT.
UNITED STATES V. CARTER, 236 F. 3d 777 (6TH CIR. 2001) PROSECUTOR DURING CLOSING ARGUMENT MISREPRESENTED WITNESS TESTIMONY.
ANTHONY V. UNITED STATES, 935 A. 2d 275 (D.C. APP. 2007) (WHEN THE PROSECUTOR ARGUED FALSELY THAT A WITNESS HAD STATED A FACT CRUCIAL TO CONVICTION.
SMITH V. COMMONWEALTH, 40 VA. APP 595, 580 S.E. 2d 481 (2003) PROSECUTOR IMPROPER AND FLAGRANT ATTEMPT TO INFLAME PASSION AND PREJUDICE.
UNITED STATES V. MOORE, 651 F. 3d 30 (D.C. CIR 2011) AS THE DISTRICT COURT OBSERVED, "A PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVIDENCE, CONSTRUCT A MORE DRAMATIC VERSION OF THE EVENTS, PROVIDE CONJECTURE ABOUT A VICTIMS STATE OF MIND, AND THEN DEFEND AGAINST A PROSECUTORIAL MISCONDUCT CLAIM BY MAINTAINING THE STATEMENTS ARE 'FACT-BASED'.

SPICER V. ROSSETTI, 150 F.3d 642, 644 (7TH CIR. 1998)
("JUST AS COUNSEL MAY NOT EXPRESS HIS BELIEFS
REGARDING THE HONESTY OF THE OPPOSING PARTY'S
WITNESSES... HE MAY NOT EXPRESS HIS BELIEFS
REGARDING OPPOSING COUNSELS OPINION of HONESTY
MOSES V. UNION PACIFIC R.R., 64 FED 3d 413 (8TH CIR 1995)
IT IS IMPROPER TO ARGUE YOUR PERSONAL BELIEFS
ABOUT THE HONESTY OF WITNESSES, THOUGH YOU MAY
ARGUE THAT THE EVIDENCE SHOWS THAT PARTICULAR
WITNESSES ARE CREDIBLE OR IN CREDIBLE. YOU MAY
NOT APPEAL TO THE JURY'S SYMPATHY, PREJUDICE,
OR PASSION.
REES V. PHILADELPHIA, BETHLEHEM & NEW ENGLAND
R.R. CO., 939 F.2d 128, 133-34 (3RD CIR. 1991)
("THE REMARKS OF COUNSEL (ARE) REQUIRED TO BE
CONFINED TO THE EVIDENCE ADMITTED IN THE CASE.
REVERSIBLE ERROR IS COMMITTED WHEN COUNSEL'S
CLOSING ARGUMENT TO THE JURY INTRODUCES
EXTRANEOUS MATTER THAT HAS A REASONABLE
PROBABILITY OF INFLUENCING THE VERDICT."
STATE V. GARNER 234 OR. APP. 486, 228 P.3d 710 (2010)
(UNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING MISTRIAL DUE
TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (1) THE MISCONDUCT
IS SO PREJUDICIAL THAT IT CAN NOT BE CURED BY MEANS SHORT
OF MISTRIAL; (2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS
IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR EITHER INTENDED
OR WAS INDIFFERENT TO THE RESULTING MISTRIAL)

FURTHERMORE, THE D.A. DECLINED KNOWLEDGE of MEDICAL CONDITIONS of THE DEFENDANT AND RECIEVING A LETTER THAT NOT ONLY TOUCHED UPON THAT ISSUE BUT ALSO EXPRESSED THE DESIRE OF PATRICIA DUPLISSIES TO SEE HER SON THE DEFENDANT PUNISHED FOR THE CRIME(S) SHE BELIEVED HE COMMITTED ON HER GRANDSON. THE D.A. ALSO CLAIMED TO HAVE LISTENED TO HUNDREDS of HOURS of PHONE CALLS AND COULD ONLY USE THE FIRST COUPLE of DAYS IN JAIL AS ANY SORT of EVIDENCE. THE D.A. THRU HEARING THESE PHONE CALLS MUST of HAVE HEARD THE DEFENDANTS SON WHO IS THE VICTIM CRYING TO THE DEFENDANT THAT HE MISSES HIM. THE TWO MICHAELS PUTTING THIS BEHIND THEM AS MUCH AS POSSIBLE. THE D.A. HAD NO RIGHT TO SAY THAT THE LOVE AND FORGIVENESS THAT THEY SHARE IS IRRELEVANT. AND THE D.A.'S HAD NO RIGHT TO SPEAK FOR THE FAMILY of THE DEFENDANT AND WHAT THEIR THOUGHTS WERE ON JANUARY 6, 2013 AND FOLLOWING THAT DAY. THE D.A. MISREPRESENTED THE VICTIM'S GRANDMOTHER IN THEIR CLOSING WHEN THEY STATED SHE IS TRYING TO PROTECT THE DEFENDANT AND NOT THE GRANDSON, WHEN THE VICTIMS GRANDMOTHER HAS DEDICATED HER RETIREMENT YEARS TO RAISING HIM AND WHO CALLED 911 TO PROTECT THE GRANDSON FROM WHAT SHE THOUGHT WAS IMPROPER PHYSICAL DISCIPLINARY REACTION BY HER OWN SON. SHE HAS NOT SHYED AWAY FROM DISAGREEING WITH HER SON ON RECORDED PHONE CALLS ABOUT LETTING THE

DEFENDANT KNOW THAT SHE BELIEVED THE DEFENDANT SHOULD BE PUNISHED FOR GOING TO FAR AND TURNING PUNISHMENT INTO ABUSE. SHE HAS ALSO LET THE DEFENDANT KNOW THAT JUST BECAUSE SHE GAVE HIM PERMISSION TO TAKE THE GRANDSON TO THE STORE DOES NOT MEAN THAT YOU DID NOT DO ANYTHING WRONG. AND BELIEVES THE DEFENDANT HAS NO ONE ELSE TO BLAME FOR THE MESS HE IS IN. THIS EVENT HAS TORE OUR FAMILY APART. THE DISTRICT ATTORNEYS OFFICE OR THE D.A. ON THIS CASE SHOULD NOT TRY TO SAY THAT THEY ARE REPRESENTING THE VICTIM OR THE VICTIMS LEGAL GUARDIANS. ALL FOUR of THE WITNESSES DO NOT BELIEVE THE DEFENDANT IS GUILTY of KIDNAPPING. ALL 4 BELIEVE THE DEFENDANT IS GUILTY of CHILD ABUSE. I DO NOT SEE HOW THE COURT COULD, AFTER LISTENING TO HOW THE D.A. MANIPULATED THE LAW, TO CONVINCE A JURY WHO IS NOT PRACTICED IN LAW, ALLOW THE VERDICT of GUILTY TO FIRST DEGREE KIDNAPPING TO STAND. I HOPE AND PRAY THAT YOUR HONORABLE JUDGE WILL CONSIDER THE SHORTCOMINGS THAT EXIST IN THE STATES BURDEN TO PROVE EVERY ELEMENT OF THE CRIME CHARGED WHICH IS FIRST DEGREE KIDNAPPING AND CONCLUDE THAT JUSTICE WOULD BE PROPERLY SERVED WITH A BETTER RESOLUTION THAN HAS OCCURRED.

THE STATE WAS GIVEN THE OPPORTUNITY TO PRESENT A FAIR TRIAL BUT INSTEAD USE DECEPTIVE METHODS TO PROVE THEIR CASE. IN MISUSING JURY INSTRUCTIONS IMPROPERLY MAKING SAID JURY INSTRUCTION ERRONEOUS. AND IN NOT SHOWING ANY EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS INTENT WAS TO KEEP MICHAEL JOSHUA SCHOFIELD AFTER TAKING HIM THE VERDICT of GUILTY of FIRST DEGREE KIDNAPPING SHOULD BE VACATED by THE HONORABLE JUDGE. I HOPE AND PRAY THIS MOTION WILL BE HEARD.

DATED THIS 26TH DAY OF MAY, 2014.

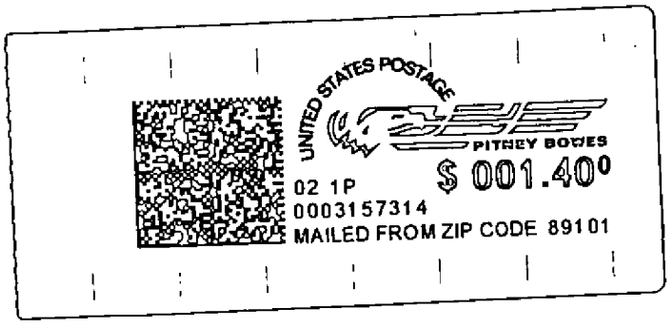
I MICHAEL J. SCHOFIELD, DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE ABOVE MOTION IS ACCURATE, CORRECT, AND TRUE TO THE BEST of MY KNOWLEDGE.

RESPECTFULLY SUBMITTED

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

MICHAEL J. SCHOFIELD #1679195
330 S. CASINO CENTER BLVD
LAS VEGAS NEVADA 89101



CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS NV 89101

MC
PP
DA
MICHAEL J. SCHOFIELD
INMATE #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101
DEFENDANT IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY
NEVADA

CASE NO. C-13-287009-1
DEPT NO. 6
DOCKET NO. —

STATE of NEVADA
PLAINTIFF

VS

MICHAEL J. SCHOFIELD
DEFENDANT

DATED JUNE 5, 2014

DEFENDANTS ADDENDUM II TO MOTION FOR NEW TRIAL

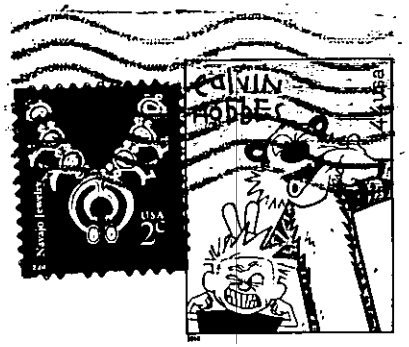
COMES NOW DEFENDANT IN PROPER PERSON AND HEREBY SUBMITS THE ATTACHED EXHIBITS TO SUPPORT THE DEFENDANTS MOTION FOR NEW TRIAL, DEFENDANTS RESPONSE TO OPPOSITION, DEFENDANTS ADDENDUM REPLY.

Michael J. Schofield
MICHAEL J. SCHOFIELD
DEFENDANT IN PROPER PERSON

I STATE FAILURE TO DISCLOSE
FAVORABE EVIDENCE

Patricia Duplissie
1111 Aspen Breeze Ave.
Las Vegas, NV 89123

LAS VEGAS NV 890
LAS VEGAS NV 890
02 MAY 2013 PM 5 L
02 MAY 2013 PM 5 L



Copy of
LETTER TO
THE D.A.

Dan J.

Clark County Public Defender
309 South 3rd Street
2nd floor
Las Vegas, NV 89155

89101

EXHIBIT A

Patricia Duplissie
1111 Aspen Breeze Ave.
Las Vegas, NV 89123
(702) 837-2576

Clark County Public Defender
309 South 3rd Street
2nd floor
Las Vegas, NV 89155

Attn: Dan Jenkins

Re: Michael John Schofield
Case #13F00320X/C287009

May 1st 2013

Dear Mr. Jenkins

I am writing this letter in order to share my feelings on the above mentioned case as well as to render clarification on a few points which I understand came before the court in the most recent session.

I certainly understand the severity of the crime committed and expect my son Michael John Schofield to be held responsible for his actions. The domestic battery and the child abuse charges were witnessed by family members and these are fully supported as being appropriate. However, we fail to understand the charge of burglary in the 1st degree and the charge of kidnapping in the 1st degree.

Since Michael was voluntarily allowed into our home on 1/6/2013 we see no reason for the burglary charge. He did not force his way in nor did he threaten anyone in the household in any manner upon entry. We believe this charge should be dropped.

With regard to the kidnapping charge in the first degree I feel that this was more of a disciplinary action on the part of the father (Michael John) toward his son (Michael Joshua) rather than a kidnapping. It is true that the son did not wish to accompany his father to Wal-Mart and that the father was too violent in attempting to accomplish this. There was no weapon involved and the understanding I have is that if Michael Joshua did accompany his father that they would return in a short period of time. For these reasons I believe that kidnapping in the 1st degree should be dropped or at least reduced to a 2nd degree status.

It was alleged in court that Michael John had an assigned day each week where he was allowed to visit with Michael Joshua. This is not true. Since we assumed guardianship of Michael Joshua in 2001 we have tried our best to maintain a normal relationship between father and son insofar as possible. We felt that as long as the father was not impaired that he could see his son on a request basis.

In recent months before the incident on 1/6/2013, Michael John (father) had incurred several medical incidents which required hospitalization. On one incident he was diagnosed with having seizures which required medication. It is my understanding that this situation was supported by the medical staff at the Detention Center and in fact he has been housed in the Psychiatric Ward. You may wish to review this situation and determine if diminished mental capacity may be an issue in this case.

I believe we all wish to see justice done in this matter. Hopefully the above information may be helpful to you in accomplishing this goal.

Sincerely,

Patricia Duplissie

Patricia Duplissie

EXHIBIT B

OFFICE OF THE DISTRICT ATTORNEY
CLARK COUNTY, NEVADA

CLARK COUNTY
District Attorney

DISCOVERY DIVISION
DA ADMINISTRATION

REQUEST FOR DISCOVERY

DISCOVERY INFORMATION

☐ APPOINTED COUNSEL
☐ RETAINED COUNSEL
☐ PUBLIC DEFENDER/SPECIAL PUB DEF
☐ PRO PER

Request Date: _____ Clerk's Initials: _____

Juvenile/efile pages @ $.25 ea _____

# of Pages hard copy @ $.50 ea 94 Date: [illegible] Case #: [illegible]

Duplication of Video/CD/Tapes/Disk @ $25.00 ea 1 Printed Pictures @ $1.00 ea _____

Defendant: [illegible] Dept: XXI Next Court Date: _____

Amount Due: 7.00 Bates Stamp: _____ to _____

ATTORNEY INFORMATION **email address:** _____

Bar #: _____ Name: [illegible] Phone: _____

Signature: _____ Date: 13 Jan 11

PROMISE OF RECIPROCAL DISCOVERY

I am the attorney for the named Defendant. In executing this request for discovery, I acknowledge receipt of the discovery provided by the State and the State's Request for Discovery and promise to comply with all requirements of NRS 174.089 and 174.295.

Payment For Copies: Make all checks payable to: **CLARK COUNTY TREASURER.**
Remit To: District Attorney's Office, 200 Lewis Ave 3rd Floor, ATTN: Discovery, Las Vegas, NV 89155-2212. Upon signing, in consideration of the copying services provided, Attorney agrees to be liable for the above costs and for such other costs for copies provided in this case, notwithstanding any right of Attorney to collect such costs from Defendant or Third Parties. Attorneys who do not accept this liability must make arrangements to pre-pay or copy discovery at the Office of the District Attorney under supervision upon their own portable copiers.

DISCOVERY PROVIDED BY STATE

The State has provided written or recorded statements or confessions made by the Defendant, any written or recorded statements made by any witness, results of physical or mental examinations and of scientific tests or experiments in connection with the case which are within the possession or custody of the prosecuting attorney. Additional discovery will be furnished when available pursuant to NRS 174.295. It may be obtained at the 3rd floor reception area of the Office of the District Attorney. Prior to any trial, it is the responsibility of defense counsel to make an appointment with the Deputy District Attorney assigned to prosecute this case to verify that all available discovery materials have been provided. The parties agree that, pursuant to NRS 174.234 (1) and (2), the attached documents constitute service and filing of the Notice of Witnesses required by said statute. Please note that the address of any witness employed by the LVMPD is 400 S. Martin Luther King Blvd, LV, NV 89101. The address of the NHP is 4615 West Sunset Rd, LV, NV 89112

STATE'S REQUEST FOR DISCOVERY

Defendant agrees to accept this document as constituting a sufficient request for discovery under NRS 174.245 in compliance with NRS 174.285. Pursuant to NRS 174.245, the State hereby requests that the Defendant provide to the Office of the District Attorney to inspect and copy or photograph any: (a) written or recorded statement made by any witness within the possession, custody or control of the Defendant or Defendant's counsel, the existence of which is known, or by the exercise of due diligence may become known, to the Defendant or Defendant's counsel; and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the Defendant or Defendant's counsel, and (c) books, papers, documents, tangible objects, or copies of portion thereof, that Defendant intends to introduce into evidence as set forth in NRS 174.245. The Defendant agrees to provide such documents within 30 days of receiving the attached documents or 30 days prior to trial (whichever is sooner) and provides additional documents as they become available pursuant to NRS 174.295.

REV. 04/12

EXHIBIT C

REGIONAL JUSTICE CENTER
200 LEWIS AVE
3RD FLOOR
DIST 6.
JUDGE CADISH

FILED
JUL 19 10 32 AM '13
CLERK OF THE COURT

MICHAEL J. SCHOFIELD
Inmate No. 1679195
330 S. Casino Center Blvd.
Las Vegas, NV 89101
Defendant in Proper Person

JOHN PARRIS ESQ
324 S. 3RD ST. BLDG 1
(702) 382-0905

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff.

vs.

MICHAEL J. SCHOFIELD,
Defendant.

Case No. C-13-287009-1
Dept No. 21
CASE NO C-13-287009-1

HD: August 13, 2013
Time: 9:30 AM

MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL

COMES NOW Defendant, MICHAEL J. SCHOFIELD, in Proper Person, and respectfully moves this honorable court to appoint other counsel to represent this Defendant.

This Motion is based upon all the records and files in this action, Points and Authorities, Affidavit of the Defendant, and any argument adduced at the time of hearing of this Motion.

MICHAEL J. SCHOFIELD
Defendant in Proper Person

NEVADA RULES of APPELLATE PROCEDURE
RULE 4(A)(7) (AVOIDING $250 FILING FEE)
RULE 4(B)(1)(A) 30 DAYS TO FILE AMENDED NOTICE of APPEAL
RULE 4(B)(5)(B) 20 DAYS to FILE
FORM 1 IN THE APPENDIX of FORMS IS SUGGESTED form of A NOTICE of APPEAL.
RULE 4(B)(3)

NOTICE OF MOTION

TO: DISTRICT ATTORNEY, Defendant in Proper Person

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring this MOTION on for hearing before the District Court Dept. XXI on the 13 day of Aug., 2013, at 9:30 o'clock a.m./p.m. of said day.

DATED this 12 day of July, 2013.

MICHAEL J. SCHOFIELD
Defendant in Proper Person

POINTS AND AUTHORITIES

It is respectfully requested of this court to grant this motion to dismiss counsel for the reasons listed below:

1. Defendant has not had reasonable contact with the appointed attorney.

2. Counsel spoke with defendant in jail only once, for 15 minutes, and did not appear at the first hearing. He send someone else to ask for a continuance.

3. He refused to allow Defendant to testify at the preliminary hearing.

4. He fails and refuses to return phone calls.

5. Defendant has a history of seizures - and even had a medical episode. Defendant requested his attorney address this issue, as it relates to his defense, and he failed to address Defendant's medical history at all. He did not contact relatives, or even name Defendant's mother as a witness, and she was present during the alleged incident that resulted in these charges.

POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

Since the Public Defender, Dan Jenkins, was appointed counsel on or about March, 2013, Defendant has been prejudiced and suffered manifest injustice based on counsel's refusal or failure to:

1. Communicate and/or visit with said Defendant at the Clark County Detention Center.

24 25 26 27 28 29 30 31
1 2 3 4 5 6 7 8
9

2. Investigate, as to client's oral/written requests any defense that may help to mitigate or reduce his sentence.

3. Talk to Defendant at any length as to Defendant's feelings, and Defendant fears he will be forced to take a plea because the public defender is not prepared. He did not appear at the first hearing (arraignment); nor the second. He has only accomplished a continuance in this matter.

4. Thoroughly take investigative measures in this case, and subsequently not using all available resources to assist in obtaining a fair trial - at which Defendant believes the charges should be dismissed.

II. ARGUMENT

Defendant asserts he is being denied his right to effective representation due to wholly inadequate actions of his court appointed counsel. Further, counsel's innate action comport to nothing more than a violation of defendant's due process rights.

Counsel has not returned any of the Defendant's phone calls: Defendant has left numerous messages with voice mail, secretary and/or office clerks. Witnesses have not been interviewed.

Defendant has an unqualified right to legal assistance that expresses loyalty to said defendant. "The right to counsel is the right [also] to effective assistance fo counsel." Cuyler v. Sullivan 100 S.Ct. 17-8 (1980); and Frazier v. U.S. 18 F. 3d 778 (9th Cir. 1994)! Thus, the adversarial process protected by the sixth amendment requires that the accused have "counsel acting in the role of an advocate." Anders v. California, 87 S.Ct. 1396 & 1480 (1967).

A party whose counsel is unable to provide effective or adequate assistance is no better than one who has no counsel at all; and any appeal(s) would be futile in its gesture. Evitts v. Lucey 105 S.Ct. 830 (1985); Douglas v. California, 83 S.Ct 814 (1963).

Therefore, Defendant contends that although counsel has been appointed in this case, the actions of counse, or lack thereof, have created unfair prejudice and obstacles which do not comport the fair procedures owed to the defendant.

The plurality opinion in Evitts and Douglas, infra, made it very clear that:

"There is lacking that equality demanded by the fourteenth amendment, where the "rich man" enjoys the benefit of the law being righteously practiced; in that, counsels' examination step-by-step

(into the record of the case). and research of the law. and a marshaling of the facts. arguments in his behalf is done as should befit an advocate of defense; while the indigent. so burdened by a preliminary determination that his case is without merit. is forced to shift for himself." 105 S.Ct. At 842; 83 S.Ct at 816-17.

Notwithstanding the strong policy favoring autonomy. "ethical. professional and constitutional principals" establish counsel's standards owed to his client. See: American Bar Association (ABA). and Professional Responsibility Code (CPR).

So. clearly. a conflict of interest now exist between counsel/client (defendant). as all faith and trust has been diminished as a result of counsel's actions or lack thereof. and a "showing" of conflict of interest requires no showing of prejudice. Cuyler v. Sullivan. 100 S.Ct.. at 1717.

The law addresses itself to actualities. Adjudiciation is not a mere mechanical process. nor does it compel either (or determination) Griffin v. Illinois. 76 S.Ct. 585 592-594 (1956).

Therefore. fundamental fairness requires the abolition of prejudice which defendant is presently suffering. This is an actuality that the law must address. Anything short of abdication would further a manifest of injustice. The "effectiveness (in assistance) of counsel" is an individual's most fundamental right. for without it. every other right Defendant has to asset become affected.

Dated this 9 day of July. 2013.

MICHAEL J. SCHOFIELD
Defeadent in Proper Person

II Newly Discovered Evidence

EXHIBIT E

DISCHARG

Make a copy for patient

We want every patient who stays with us to be informed about their home medications. Please keep this list of medications for your records. If you still have any medication questions, please call our **PharmAssist** Hotline to schedule a private consultation with a St. Rose Dominican Hospitals Pharmacist at (702) 616-5596

	Name of Medication	Dose / Strength	Route	Frequency		Next dose due	Continue at Home?
1	Tylenol	1 tab	oral	As needed		7/4/12 if needed	YES/NO
2	Multivitamin	1 tab	oral	As needed		7/5/12	YES/NO
3	Keppra	500mg	oral	twice a day		7/4/12 pm	YES/NO
4							YES/NO
5							YES/NO
6							YES/NO
7							YES/NO
8							YES/NO
9							YES/NO
10							YES/NO
11							YES/NO
12							YES/NO
13							YES/NO
14							YES/NO
15							YES/NO
16							YES/NO
17							YES/NO
18							YES/NO

n-patient medications should be added for a complete list of Discharge Medications. Indicate whether to continue or liscontinue in-patient medications upon discharge.
'his list of medications was created in consultation with your physician and/or derived from your physician's discharge orders.

DATE 7/4/12 TIME 1800

Please share this list with all your doctors.

Healthcare facilities: For medication questions, call St. Rose Dominican Hospitals Pharmacy at:
Siena (702) 616-5540 • Rose de Lima (702) 616-4540 • San Martín (702) 492-8540

St. Rose Dominican Hospitals
A member of CHW

MEDICATION RECONCILIATION

PATIENT IDENTIFICATION

Pt#: 33014697 MR#: 689494
SCHOFIELD ,MICHAEL J
10/03/1965 , M 46
ADR: AKBAR TANVEER
PDR:
07/02/12
Rm: MED
Bd: 0360P
E05

MEDREC

EXHIBIT F

NOT PERMANENT PART OF PATIENT RECORD:

MRI Brain W&WO Contrast

SCHOFIELD, MICHAEL J - 689494

* Final Report *

Result type:	MRI Brain W&WO Contrast
Result Date:	03 July 2012 14:06
Result status:	Auth (Verified)
Result Title:	MR Brain wo+w Contrast
Source of Report:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Verified By:	Contributor_system, SRDHRAD on 03 July 2012 14:06
Encounter info:	33014697, SRDHM, Observation, 07/03/12 -

* Final Report *

MR Brain wo+w Contrast

Patient Name: SCHOFIELD, MICHAEL J
Patient Medical Record Number: 689494

Account Number: 13-MR-12-018189 Exam: MR Brain wo+w Contrast
Exam Date and Time: 7/3/2012 2:06:16 PM PDT Ordering Physician: Akbar , Tanveer

Report
EXAM: MRI of the Brain With and Without Contrast 07/03/12

COMPARISON: Head CT 07/02/12. MRI brain 08/10/09.

HISTORY: Possible seizure. Motor vehicle accident.

TECHNIQUE: Sagittal T1. Coronal and FLAIR. Axial T1, T2, FLAIR, diffusion, ADC and gradient. Post Gadolinium axial and coronal T1. 15 cc of ProHance was used.

FINDINGS: The study is somewhat limited secondary to motion

There is no midline shift or hydrocephalus. No evidence of an acute infarct. No obvious hemorrhage.

As noted on the prior MRI, there is a venous angioma within the right frontal lobe medially. This is adjacent to the right frontal horn. There is no extraaxial fluid collection.

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

' NOT PERMANENT PART OF PATIENT RECORD:

MRI Brain W&WO Contrast

SCHOFIELD, MICHAEL J - 689494

* Final Report *

The mastoids are clear. The orbits are unremarkable.

There is evidence of some mucosal thickening of the ethmoid and sphenoid sinuses.

IMPRESSION: 1. Study limited by motion.

2. No acute infarct or hemorrhage.

3. As before, venous angioma of the right frontal lobe.

4. Mild paranasal sinus disease.

432487
cja

*** F I N A L ***
Dictated by: Chang, Scott
Signed by: Chang, Scott
* * Electronic Signature * *
Transcribed by: JA, T: 07/03/2012 22:17,S: 07/04/2012 09:57

FINAL

Completed Action List:
* VERIFY by Contributor_system, SRDHRAD on 03 July 2012 14:06
* Order by Contributor_system, SRDHRAD

Printed by: Aceves, Tanya RN
Printed on: 07/04/12 11:24

EXHIBIT 6

NOT PERMANENT PART OF PATIENT RECORD:

Sleep Lab/EEG

SCHOFIELD, MICHAEL J - 689494

Result type:	Sleep Lab/EEG
Result Date:	03 July 2012 17:04
Result status:	Auth (Verified)
Result Title:	09
Source of Report:	Contributor_system, SRDHTRAN on 03 July 2012 17:04
Encounter info:	33014697, SRDHM, Observation, 07/03/12 -

Electroencephalogram
DATE OF PROCEDURE: 07/03/2012

DOB: 10/03/1965

REFERRING PHYSICIAN: A. Tanveer, MD

STUDY INDICATIONS: New-onset seizure.

A routine 21-channel digital EEG is performed in accordance with the 10-20 international system of electrode placement. Continuous eye movement and electrocardiographic channel monitors are included. Recording time was approximately 21.5 minutes during awake, drowsy and asleep states.

Waking background activity is fairly well-organized. There is a 9-10 Hz alpha rhythm with predominates over the posterior channels and is generally reactive and attenuates with eye opening. Background activity is frequently interrupted by eye blink and other eye movement artifacts, as well as other muscle potential artifacts.

Focal slow waves are infrequently noted over the posterior right frontal and anterior temporal head regions. Rarely, slow waves appears to phase - reverse over the F8 and/or T4 electrodes. No other clear epileptiform activity is noted.

Photic stimulation produced a symmetric driving response at lowest flash frequencies.

There is a normal transition from wakefulness to drowsiness. A prolonged interval of slow wave sleep is identified. No sleep abnormalities are noted.

Normal sinus rhythm predominates on the ECG channel.

IMPRESSION: Abnormal routine awake, drowsy, asleep, and stimulated tracing which identifies subtle features of right posterior frontal and/or anterior

temporal electrocortical
dysfunction. An interictal epileptiform focus is not conclusively demonstrated, but cannot be entirely excluded. Correlation clinically and with cranial imaging is advised.

Stephen P Raps, MD

SPR / MedQ
D: 07/03/2012 17:04:39
T: 07/04/2012 09:32:20
Job #: 17432

III PROSECUTOR MISCONDUCT

EXHIBIT F

To Michael John Schofield May 2, 2014

Dear Michael,

Today you called and requested certain information concerning my dealings with the assistant States Attorney, Maria Lavelle.

While I am happy to relate events as I recall them you must understand that many conversations I had with Ms Lavelle happened many months ago and I cannot repeat them verbatim but rather provide an idea as to content only as I recall them.

Early on in the process Maria telephoned to explain the process of the preliminary proceedings in which Michael Joshua and I would be subpoenaed to testify. I believe at that time you were using a public defender. I do recall that Ms. Lavelle told me that Michael and I would testify separately without the other in the courtroom so that neither of us could be accused of tainting the others testimony. I believe this testimony was given before Judge Sullivan.

As I recall, Maria had two other telephone conversations with mom and me between my initial testimony and January of 2014. Both of these calls were conducted over our speaker phone so both mom and I heard the entire conversations. I have no idea of the dates on which these occurred. While I am unable to separate the conversations, the primary reason for them were to discuss the First Degree Kidnapping charge and to try to determine the terms of the eventual sentencing.

Both mom and I were and continue to be opposed to First Degree Kidnapping and we discussed that at length with Maria. As to sentencing, the original information told to us was that because everyone's main consideration was slanted toward the safety of Michael Joshua that Maria would probably ask for something in the 5 to 10 year range with the possibility of time off on the back end for good behavior. In our minds, we thought you were looking at about six years to be actually served.

Maria brought up the fact somewhere during our meetings that all of your telephone conversations were being monitored and that she had complete

transcripts of these. I believe this conversation took place in the first pretrial preparation meeting (or conversation) which transpired more than a year ago when I talked with her privately. According to her, you and your brother Bobby had a conversation early on in the process whereby you said to him that you should have killed little Michael while you had the chance. She mentioned that this could be grounds to pursue an attempted murder charge but that she was not going to follow this course of action nor was she planning to use this information in court.

Maria was also shocked to hear how you talked to your mother over the phone. This was in a later phone conversation. Put these things together and Maria feels that you are a danger to the family. These were her words. I believe that her actions and comments were made to paint a very dark picture of you.

On Saturday, January 25, 2014, mom, Michael Joshua and I were invited to appear at Maria Leville's office to discuss the upcoming jury trial. Each of us were interviewed separately. Mom told me after her interview that Maria had asked her if she was aware of your criminal record. Mom said that she thought she did and Maria waved a file folder at her and said that she had all of your records going back to Chicago. I believe that this was brought up to suggest that she had the ammunition to put you away for some time.

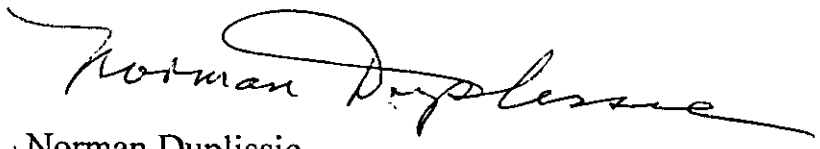
Two other individuals were present at my interview and I do not know their names. Apparently they both worked for the States Attorney's Office. I had met the female participant at the pre trial events but I had never seen the male participant before. During the meeting, Maria briefed me on the procedure and told me that once again, our testimony would be separate and apart from each other. She once again brought up the telephone transcripts which she pointed at as a pile of printouts on her desk. While I glanced at the file (pile of papers) I did not read any of them nor can I attest to the fact that they were in fact telephone transcripts. She did however refer to her understanding that mom must be a very religious person. I was taken back by this comment and said that she wasn't particularly religious even though she had attended Catholic school. Maria responded that she too had attended Catholic school. (After the interview mom and I discussed this matter and mom told me that she had been sending you excerpts from Joel Osteen's book. We both feel that this was Maria's way of letting me know that your mail was being closely monitored, a fact I already knew.) Most of

the interview pertained to procedure.

I do not believe Maria influenced my testimony at trial since to my knowledge, it was the same as the testimony I provided at the pre trial before Judge Sullivan. This does not necessarily mean that her intensions were not to do otherwise. I have written a letter to the sentencing judge questioning the rationale for the First Degree Kidnapping charge. I intend to speak at your sentencing, but understand that I cannot question either the verdict already rendered or the sentence which will be imposed. I intend to ask for leniency for the sake of your mother and son.

On April 9, 2014, the day of your scheduled sentencing, Marie called mom out into the hallway and told her that the sentence she was going to request was to be longer than we originally understood and that a sentence would be requested for each of the two violations that you were found guilty of. In addition, each of the sentences requested would be served consecutively and not concurrently. This would significantly increase prison time and is a drastic deviation from the original information that Maria provided. Both mom and I were shocked and disappointed by this turn of events.

I hope this information will be helpful to you even though I am unable to provide dates, times and specific dialog used between myself and Maria Lavelle.



Norman Duplissie

IV INEFFECTIVE COUNSEL

EXHIBIT 6

Visitors

ID Number : '%1679195%' , Start Date : '06-JAN-2013' , End Date : '04-APR-2014'

04-APR-14

	ID Number	Living Unit	Inmate Last Name	Inmate First Name	Start Date & Time	Visit Type	Rel Type	Visitor Last Name	Visitor First Name	Visitor Middle Name
1	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	30-May-13 15:03:00	LEG	PD	JENKINS	DANIEL	NULL
2	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	24-Jul-13 14:37:00	LEG	PD	JENKINS	DANIEL	NULL
3	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	05-Aug-13 14:55:00	LEG	ATT	PARRIS	JOHN	NULL
4	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	06-Aug-13 12:35:00	LEG	PD	JENKINS	DANIEL	NULL
5	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	25-Jan-14 09:30:00	LEG	ATT	PARRIS	JOHN	NULL
6	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	25-Jan-14 09:30:00	LEG	ATT	MATSUDA	JESS	YOICHI
7	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	26-Jan-14 15:11:00	LEG	ATT	PARRIS	JOHN	NULL

04/05/13 7:00 PM

Confirmation #: 375189 **Status:**Completed **Visitation Time:**04/05/13 7:00 PM-7:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-4	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-44

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	6:16 PM	
R8ED-65482	Michael J Schofield	Child	6:16 PM	

04/21/13 1:00 PM

Confirmation #: 380842 **Status:**Completed **Visitation Time:**04/21/13 1:00 PM-1:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-5	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-12

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	12:32 PM	
R8ED-65482	Michael J Schofield	Child	12:32 PM	

05/11/13 8:00 AM

Confirmation #: 390465 **Status:**Completed **Visitation Time:**05/11/13 8:00 AM-8:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-2-4	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-05

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	7:38 AM	
R8ED-65482	Michael J Schofield	Child	7:38 AM	

08/20/13 10:00 AM

Confirmation #: 435306 **Status:**Completed **Visitation Time:**08/20/13 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-9EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-35

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:33 AM	
R8ED-65482	Michael J Schofield	Child	9:33 AM	

11/04/13 9:30 AM

Confirmation #: 470595 **Status:**Completed **Visitation Time:**11/04/13 9:30 AM-9:55 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-2	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-03

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:12 AM	
R8ED-65482	Michael J Schofield	Child	9:12 AM	

11/11/13 9:30 AM

Confirmation #: 472146 **Status:**Completed **Visitation Time:**11/11/13 9:30 AM-9:55 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-17

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:15 AM	
R8ED-65482	Michael J Schofield	Child	9:15 AM	

11/16/13 1:00 PM

Confirmation #: 474023 **Status:**Completed **Visitation Time:**11/16/13 1:00 PM-1:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	ST-4L-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-16

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	12:39 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	12:39 PM	

11/29/13 10:00 AM

Confirmation #: 481396 **Status:**Completed **Visitation Time:**11/29/13 10:00 AM-11:05 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-3B-5	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-27

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:48 AM	

12/23/13 10:00 AM

Confirmation #: 491648 **Status:**Completed **Visitation Time:**12/23/13 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-3B-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-12

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:45 AM	
R8ED-65482	Michael J Schofield	Child	9:45 AM	

01/22/14 2:04 PM

Confirmation #: 506242 **Status:**Completed **Visitation Time:**01/22/14 2:04 PM-2:34 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-56 (Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
P38S-1554	John Parris	Attorney	2:05 PM	

03/04/14 10:00 AM

Confirmation #: 523816 **Status:**Completed **Visitation Time:**03/04/14 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-41

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:50 AM	
R8ED-65482	Michael J Schofield	Child	9:50 AM	

03/09/14 10:00 AM

Confirmation #: 525063 **Status:**Completed **Visitation Time:**03/09/14 10:00 AM-10:25 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-28

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
FPUD-64169	Patricia Duplissie	Parent	9:55 AM	
R8ED-65482	Michael J Schofield	Child	9:55 AM	

03/21/14 12:13 PM

Confirmation #: 532444 **Status:**Completed **Visitation Time:**03/21/14 12:13 PM-1:03 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-59 (Priv., Dual)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
M5HI-132	Robert Farley	Probation Officer	12:13 PM	

04/02/14 7:30 PM

Confirmation #: 537904 **Status:**Completed **Visitation Time:**04/02/14 7:30 PM-7:55 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-61 (Priv., Dual, ADA)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	6:58 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	6:58 PM	

04/02/14 8:00 PM

Confirmation #: 537906 **Status:**Completed **Visitation Time:**04/02/14 8:00 PM-8:25 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0001679195	Schofield, Michael John	NT-7EF-1	NT-7E:2W

Visitation Center	Visitor Station
Clark County Visitation	VS-05

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
PD4G-64170	Robert F Schofield	Sibling or Half Sibling	7:57 PM	
LEUD-78714	Rosa Schofield	Brother-in-Law or Sister-in-	7:57 PM	

309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89155-2610
(702) 455-4685 · Fax (702) 455-5112

Philip J. Kohn, Public Defender · Daren B. Richards, Assistant Public Defender

AUTHORIZATION FOR USE AND/OR DISCLOSURE OF CONFIDENTIAL RECORDS AND/OR PROTECTED HEALTH INFORMATION

Name: _____ Case# _____

Address: _____ Phone: _____

Social Security: _____ DOB: _____

I _____ hereby authorize _____

to have unrestricted communication with the Clark County Public Defenders Office.

This release includes phone calls, visitations, release of confidential information and protected health information to/from the above named agencies. The purpose of this release is for providing advocacy and disposition services for the client's legal defense. I hereby release the holder of such information from liability if any; arising from the disclosure of otherwise confidential information. You are specifically authorized to photocopy the following records and to release copies to the above mentioned representative. Records may include but are not limited to:

_____ Medical History and Treatment
_____ Employment Records
_____ Parole Records
_____ Probationary Records
_____ Client's entire file
_____ Financial Records
_____ Educational Records
_____ Correctional Records
_____ Judicial Records (including juvenile)
_____ Other _____

USE AND REDISCLOSURE: I understand that I may revoke this authorization at any time, by written request, except to the extent that action has been taken in reliance to it. I understand that the information used and disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected. This consent, if not withdrawn, will automatically expire according to the following specification of date, event, or condition: one year or disposition of current case. A reproduced copy of this authorization shall be as valid as the original. This information may also be provided to any subsequent attorney who represents me for the previously outlined purposes or to facilitate an appeal.

Note: The confidentiality of psychiatric, drug and/or alcohol abuse and HIV records is required and no information from these specific records shall be transmitted to anyone else without written consent or authorization as provided under Federal Regulation 42 CFR 2. Regulations prohibit any further disclosure without specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information is not sufficient for this purpose. I give consent to the release of any or all records containing the following diagnoses for the intended purposes and conditions as stated above:

_____ HIV Related Records
_____ Drug/Alcohol Treatment Records
_____ Other: _____
_____ Psychiatric/Psychological Records
_____ Client's entire file
_____ Other: _____

_____ _____
Client Signature Date

_____ _____
Witness Date

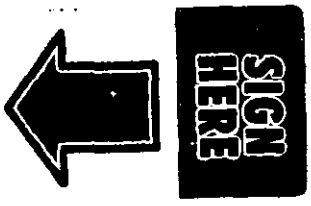


EXHIBIT H

309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89155-2610
(702) 455-4685 · Fax (702) 455-5112

Philip J. Kohn, Public Defender · Daren B. Richards, Assistant Public Defender

AUTHORIZATION FOR USE AND/OR DISCLOSURE OF CONFIDENTIAL RECORDS AND/OR PROTECTED HEALTH INFORMATION

Name: MICHAEL J. SCHOFIELD Case# _____

Address: [illegible] Phone: [illegible]

Social Security: 353-70-2354 DOB: 10-3-1965

I _____ hereby authorize Michael Schofield

to have unrestricted communication with ~~the Clark County Public Defenders Office~~.

This release includes phone calls, visitations, release of confidential information and protected health information to/from the above named agencies. The purpose of this release is for providing advocacy and disposition services for the client's legal defense. I hereby release the holder of such information from liability if any, arising from the disclosure of otherwise confidential information. You are specifically authorized to photocopy the following records and to release copies to the above mentioned representative. Records may include but are not limited to:

_____ Medical History and Treatment	_____ Financial Records
_____ Employment Records	_____ Educational Records
_____ Parole Records	_____ Correctional Records
_____ Probationary Records	_____ Judicial Records (including juvenile)
_____ Client's entire file	_____ Other _____

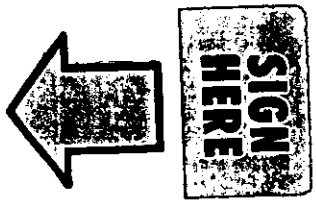
USE AND REDISCLOSURE: I understand that I may revoke this authorization at any time, by written request, except to the extent that action has been taken in reliance to it. I understand that the information used and disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected. This consent, if not withdrawn, will automatically expire according to the following specification of date, event, or condition: one year or disposition of current case. A reproduced copy of this authorization shall be as valid as the original. This information may also be provided to any subsequent attorney who represents me for the previously outlined purposes or to facilitate an appeal.

Note: The confidentiality of psychiatric, drug and/or alcohol abuse and HIV records is required and no information from these specific records shall be transmitted to anyone else without written consent or authorization as provided under Federal Regulation 42 CFR 2. Regulations prohibit any further disclosure without specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information is not sufficient for this purpose. I give consent to the release of any or all records containing the following diagnoses for the intended purposes and conditions as stated above:

_____ HIV Related Records	_____ Psychiatric/Psychological Records
_____ Drug/Alcohol Treatment Records	_____ Client's entire file
_____ Other: _____	_____ Other: _____

_____ 7-24-13
Client Signature Date

_____ _____
Witness Date



DATED THIS 5TH DAY of JUNE, 2014,
I MICHAEL J. SCHOFIELD, DO SOLEMNLY
SWEAR, UNDER THE PENALTY OF PERJURY, THAT
THE ABOVE EXHIBITS ARE ACCURATE, CORRECT
AND TRUE TO THE BEST OF MY KNOWLEDGE

RESPECTFULLY SUBMITTED

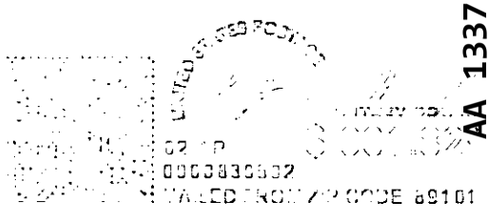
Michael J. Schofield

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

MICHAEL J. SCHOFIELD #1679195
330 S. CASINO CENTER
LAS VEGAS NEVADA 89101

1.82



AA 1337

CLARK COUNTY CLERK of COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE 3RD FLOOR
LAS VEGAS NEVADA 89101

Electronically Filed
06/19/2014 08:28:49 AM

CLERK OF THE COURT

RPLY
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120
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-

MICHAEL JOHN SCHOFIELD,
#1679195

Defendant.

CASE NO: C-13-287009-1

DEPT NO: VI

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO VACATE VERDICT

DATE OF HEARING: JULY 14, 2014
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARIA E. LAVELL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Vacate Verdict.

This Opposition to Defendant's Motion to Vacate Verdict 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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POINTS AND AUTHORITIES

STATEMENT OF FACTS

PROCEDURAL HISTORY

On January 8, 2013, Michael John Schofield, (hereinafter the "Defendant"), was charged by way of Criminal Complaint of the following: COUNT 1: BURGLARY (FELONY - NRS 205.060); COUNT 2: BATTERY CONSTITUTING DOMESTIC VIOLENCE – STRANGULATION (FELONY - NRS 200.481; 200.485; 33.018); COUNT 3: CHILD ABUSE, NEGLECT, OR ENDANGERMENT (FELONY - NRS 200.508(1); COUNT 4: FIRST DEGREE KIDNAPPING (NRS 200.310; 200.320) and, COUNT 5: BATTERY CONSTITUTING DOMESTIC VIOLENCE (MISDO - NRS 200.481; 200.485; 33.018). A Preliminary Hearing was held on January 23, 2013, after which the Defendant was bound over to answer to counts 1-4. A jury trial commenced on January 27, 2014 and the jury reached a verdict on February 3, 2014. The Defendant was found guilty of COUNT 3: CHILD ABUSE, NEGLECT, OR ENDANGERMENT and COUNT 4: FIRST DEGREE KIDNAPPING. The Defendant's sentencing date was set for April 7, 2014.

On March 28, 2014, the Defendant filed a MOTION FOR A NEW TRIAL and on April 4, 2014, the State filed its Opposition. On April 15, 2014, the Defendant filed his RESPONSE TO THE STATE'S OPPOSITION and the State filed its Reply on April 16, 2014. On May 22, 2014, the Defendant filed an ADDENDUM REPLY TO STATE'S REPLY. Then on June 12, 2014, the Defendant filed a SECOND ADDENDUM TO MOTION FOR A NEW TRIAL. The State's response to both the Addendum and Second Addendum will be filed at a later date.

On May 30, 2014, the Defendant filed a MOTION TO VACATE VERDICT (EXHIBIT 1). The State's Opposition follows:

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ARGUMENT

I. THE DEFENDANT'S MOTION IS UNTIMELY AND THEREFORE SHOULD BE DENIED

In the Defendant's instant motion it appears he is asking that this Honorable Court grant a motion for a judgment of acquittal. Pursuant to NRS 175.381(2), a motion for a judgment of acquittal must be made within seven days after the jury is discharged or within such time as the Court may fix during that period. It is important to note the statutory use of the language "must." This language expressly mandates that such a Motion be filed within the seven day time period unless the Court, during that seven-day period, fixes some other time period. In the instant case, the jury was discharged after returning their guilty verdict on February 3, 2014. The seven-day period ended on February 10, 2014. The Defendant did not file the instant Motion until May 30, 2014 some one hundred and nine days after the jury was discharged. This filing was well beyond the statutorily mandated seven-day period. Moreover, this matter was never back before the Court during that seven-day period for the Defendant to request an extension within that seven-day period in order to file a Motion to Vacate Verdict. Therefore, the Defendant's Motion is untimely and must be denied. The State would further submit that the statutory language of NRS 175.381, insofar as it outlines the time period for filing the Motion, is identical to NRS 176.515, the statute that deals with the filing of a Motion for New Trial, which the Defendant did in fact file. As such, the applicable case law interpreting NRS 176.515 and its mandatory time period for the filing of Motions is analogous to NRS 175.381.

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In DePasquale v. State, 106 Nev. 843, 803 P.2d 218 (1990), the Defendant was convicted of First Degree Murder and sentenced to death. Eight (8) days after the final verdict, he filed a Motion for New Trial, which the trial Court declined to hear. On appeal to the Nevada Supreme Court, the Defendant argued that the District Court erred in declining to exercise jurisdiction over the motion. The Nevada Supreme Court held that since the Defendant missed by one day the deadline imposed by NRS 176.515(4), the District Court did not err in failing to hear the motion. Id. at 851, 803 P.2d at 223. Since the Defendant clearly missed the deadline, this Court should deny this motion as being untimely.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court to DENY Defendant's Motion to Vacate Verdict.

DATED this 19th day of June, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 19th day of June, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL J. SCHOFIELD, #1679195
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV, 89101

BY /s/ E. Goddard
E. Goddard
Secretary for the District Attorney's Office

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EXHIBIT 1

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MC
PP
DA

CLERK OF THE COURT

MICHAEL J. SCHOFIELD
INMATE No. 1679195
330 S. CASINO CENTER BLVD
LAS VEGAS NEVADA 89101

THE DISTRICT COURT
CLARK COUNTY NEVADA

THE STATE OF NEVADA — CASE No. C-13-287009-1
PLAINTIFF — DEPT No. 6

V.S.

MICHAEL J. SCHOFIELD — 6-23-14 @ 8:30am
DEFENDANT

MOTION TO VACATE VERDICT

COMES NOW DEFENDANT, MICHAEL J. SCHOFIELD, IN PROPER PERSON, AND RESPECTFULLY MOVES THIS HONORABLE COURT TO VACATE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING.

THIS MOTION IS BASED UPON ALL RECORDS AND FILES IN THIS ACTION. POINTS AND AUTHORITIES, AFFIDAVIT OF THE DEFENDANT, AND ANY ARGUMENT ADDUCE AT THE TIME OF THE HEARING OF THIS MOTION

Michael Schofield
MICHAEL J SCHOFIELD
DEFENDANT IN PROPER PERSON

RECEIVED
MAY 30 2014
CLERK OF THE COURT

(1)

TO: DISTRICT ATTORNEY, DEFENDANT IN PROPER PERSON

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING THIS MOTION ON FOR HEARING BEFORE THE DISTRICT COURT DEPT 6 ON THE 23 ~~9TH~~ DAY of JUNE AT 8:30 O'CLOCK A.M. OF SAID DAY.

DATED THIS 26TH DAY OF MAY 2014.

Michael Schofield

MICHAEL S. SCHOFIELD

DEFENDANT IN PROPER PERSON

POINTS AND AUTHORITIES

IT IS RESPECTFULLY REQUESTED OF THIS COURT TO GRANT THIS MOTION TO VACATE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING FOR THE REASONS LISTED BELOW:

1. INSUFFICIENT EVIDENCE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF FIRST DEGREE KIDNAPPING.

2. JURY INSTRUCTIONS WERE ERRONEOUS.

3. PROSECUTOR MISCONDUCT.

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POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUNDS

1. INSUFFICIENT EVIDENCE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT EVERY ELEMENT OF FIRST DEGREE KIDNAPPING. THE BURDEN OF PROVING EVERY ELEMENT OF THE CRIME CHARGED IS PLACED UPON THE STATE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK WITH THE INTENT TO KEEP HIS SON, MICHAEL JOSHUA SCHOFIELD. IN PROVING FIRST DEGREE KIDNAPPING IT IS NOT ENOUGH TO PROVE THAT THE DEFENDANT'S INTENTION WAS TO TAKE HIS SON. IN FIRST DEGREE KIDNAPPING IT MUST BE PROVED THAT THE DEFENDANTS INTENTION WAS TO TAKE HIS SON, COMBINED WITH THE INTENTION TO KEEP HIS SON. THIS BEING THE CASE THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF THE CRIME OF FIRST DEGREE KIDNAPPING. THEREFORE THE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING SHOULD BE VACATED BY THE HONORABLE JUDGE.

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2. JURY INSTRUCTIONS WERE ERRONEOUS.

JURY INSTRUCTION NUMBER 11 READS: "IT IS THE FACT, NOT THE DISTANCE, OF FORCEBLE MOVEMENT OF THE VICTIM THAT CONSTITUTES KIDNAPPING." THIS JURY INSTRUCTION HELPS FURTHER DEFINE KIDNAPPING. YET IT DOES NOT DEFINE FIRST DEGREE KIDNAPPING. D.A. LAVELL, IN THE FINAL CLOSING ARGUMENT GIVEN BY THE STATE ON FRIDAY JANUARY 31, 2014 REFERS TO THIS JURY INSTRUCTION NUMBER 11, ON PAGE 235 LINE 13 THRU LINE 20 of THE COURT TRANSCRIPTS. BEYOND REFERING TO THE JURY INSTRUCTION AS A STATUE, THE D.A. STATES: "YOU WILL HAVE A JURY INSTRUCTION THAT SAYS DISTANCE IS IRRELEVANT. AND NOTHING IN THE STATUE SAYS THAT HE HAD TO PERMANETLY KEEP HIM. IF HE HAS TAKEN HIM TO THE STORE AND BROUGHT HIM BACK, GUESS WHAT? HE STILL KIDNAPPED THAT KID." IN THAT THE D.A. REFERRED TO THE JURY INSTRUCTION NUMBER 11 NOT SAYING ANYTHING ABOUT INTENT TO KEEP, IT WOULD THEN BE UNDERSTOOD THAT JURY INSTRUCTION NUMBER 11 WAS PLACED IN THE JURY INSTRUCTIONS TO DESCRIBE FIRST DEGREE KIDNAPPING AND BEING THAT IT IS MISSING AN ELEMENT OF FIRST DEGREE KIDNAPPING, THE JURY INSTRUCTION NUMBER 11 IS CONSIDERED ERRONEOUS.

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THE D.A. EXPLAINS TO THE JURY THAT, "IF THE DEFENDANT HAS TAKEN HIS SON TO THE STORE AND BROUGHT HIS SON BACK, HE STILL KIDNAPPED HIS SON." AND THEN THE D.A. STATES: "I ASK YOU TO FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING." WHICH AGAIN THE D.A. IS ASKING THE JURY TO DETERMINE GUILTY OR NOT GUILTY OF KIDNAPPING. BEING THAT THE D.A. USED LANGUAGE CONSISTENT WITH THE LANGUAGE USED IN JURY INSTRUCTION NUMBER ELEVEN, WHICH IS 'KIDNAPPING' INSTEAD OF 'FIRST DEGREE KIDNAPPING' IN JURY INSTRUCTION NUMBER ELEVEN 'THAT WHICH CONSTITUTES KIDNAPPING', IN THE D.A. CLOSING ARGUMENT 'I ASK YOU TO FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING'. THIS FURTHER HELPS MAKE JURY INSTRUCTION NUMBER ELEVEN ERRONEOUS. BY MAKING THE INTENT TO KEEP AFTER TAKING HIS SON IRRELEVANT IN ITS DEFINITION OF WHAT CONSTITUTES KIDNAPPING, AND THE D.A. USING JURY INSTRUCTION NUMBER ELEVEN TO DETERMINE GUILT OF FIRST DEGREE KIDNAPPING JURY INSTRUCTION NUMBER ELEVEN IS THEN ERRONEOUS. THE DEFENDANT IS CHARGED WITH, AND HAS BEEN FOUND GUILTY OF FIRST DEGREE KIDNAP IN WHICH INTENT TO KEEP AFTER TAKING IS AN ELEMENT OF THE CRIME AND THAT NOT ONLY JURY INSTRUCTION NUMBER ELEVEN OMITS THIS ELEMENT, BUT THE D.A. REFERS TO THIS JURY INSTRUCTION IN HER FINAL ARGUMENT AND EVEN GOES SO FAR AS TO SAY ACCORDING TO THIS JURY INSTRUCTION, TO KEEP IS NOT AN ELEMENT OF THE CRIME COMMITTED. BASED ON THIS THE HONORABLE JUDGE SHOULD VACATE THE VERDICT OF GUILTY TO FIRST DEGREE KIDNAPPING.

3. PROSECUTOR MISCONDUCT

THE PROSECUTORS USED REPREHENSIBLE METHODS TO PERSUADE THE JURY AND IT IS REASONABLY PROBABLE THAT A RESULT ~~FAVOR~~ MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT. A PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVIDENCE, CONSTRUCT A MORE DRAMATIC VERSION OF THE EVENTS, AND THEN DEFEND AGAINST A PROSECUTORIAL MISCONDUCT CLAIM BY MAINTAINING THE STATEMENTS ARE FACT BASED, WHERE THE PROSECUTOR MISREPRESENTS A WITNESS TESTIMONY COURTS HAVE CONDEMNED SUCH ANTICS AS THEATRICS. THE LEGAL GUARDIANS of MICHAEL JOSHUA SCHOFIELD, WERE IN CONSTANT CONTACT WITH THE D.A. REGARDING THIS CASE. NORMAN DUPLISSIE NOT JUST PATRICIA DUPLISSIE HAD RELATED TO THE D.A. THAT THEY AS WELL AS MICHAEL JOSHUA SCHOFIELD THE CHILD THEY ARE LEGAL GUARDIANS of AND THE VICTIM IN THIS CASE All BELIEVED THAT THE DEFENDANT WAS NOT GUILTY of FIRST DEGREE KIDNAPPING, SO MUCH SO THAT NORMAN DUPLISSIE NOT PATRICIA DUPLISSIE PAID FOR A PRIVATE ATTORNEY IN HOPES of GETTING THE DEFENDANT BETTER REPRESENTATION, SO FOR THE DISTRICT ATTORNEY MS. ANTHONY to SPEAK FOR THE DEFENDANTS FAMILY IN THE FIRST of THE TWO CLOSING ARGUMENTS WAS INAPPROPRIATE AND MISLEADING TO THE JURY. PATRICIA DUPLISSIE IN THE

PHONE CALL THAT MS. ANTHONY REFERS TO AS,
PATRICIA DUPLISSIE IN THE PHONE CALL STATING
THAT SHE TOLD THE DEFENDANT THAT MICHAEL
JOSHUA SHOULD NOT GO WITH THE DEFENDANT AGAIN
MISREPRESENTED THE ~~MOTHER~~ LEGAL GUARDIAN.
BECAUSE IN THAT PHONE CALL, PARICIA DUPLISSIE.
STATES 'I TOLD HIM NOT TO GO AT FIRST.'
BY NOT MENTIONING THIS THE D.A. MISREPRESENTED,
THE MEANING OF HER COMMENT. MS. ANTHONY
ALSO MADE MULTIPLE COMMENTS ABOUT THE
LEGAL GUARDIAN, PATRICIA DUPLISSIE GIVING FALSE
TESTIMONY ABOUT DETAILS OF THE INCIDENT THAT
PATRICIA WITNESSED OR DID NOT WITNESS. THE
TWO OFFICERS BOTH PLACED PATRICIA BY THE FRONT
DOOR UPON THEIR ARRIVAL AND NORMAN AUD
THE TWO MICHAELS BY THE DRIVEWAY, WHICH CAN
NOT BE SEEN BY THE FRONT DOOR, ALSO NORMAN
'CUTE LITTLE NORMAN', HAD TESTIFIED THAT HE PUT
THE DOG IN ITS CAGE AT THE BEGINNING OF THE
INCIDENT, AND THE CAGE IS VERY NEAR THE FRONT
DOOR. THE DOG CAN CLEARLY BE HEARD BARKING
WHICH APPEARS TO BE CLASER TO THE PERSON ON
THE PHONE THEN THE PEOPLE GELLING. MS. ANTHONY
ALSO ALTERS THE MEANING OF FIRST DEGREE
KIDNAPPING. ON PAGE 201 of THE TRANSCRIPT
SHE BREAKS DOWN NRS 200.301(1) THEN ALTERS
IT BY STATING ON LINE 24. "SO HOW DO YOU KNOW

THAT THE DEFENDANT INTENDED TO TAKE, WHICH IS NOT PART of NRS 200.301(1) OR JURY INSTRUCTION NUMBER TEN. EVEN THE SHORT VERSION of NRS 200.301(1) WHICH THE STATE USED IN THE JURY INSTRUCTION NUMBER TEN, WHICH ADDS A LINE TO THE STATUE THAT IS NOT PART of it, 'KIDNAPPING DOES NOT REQUIRE FORCE'. THE JURY INSTRUCTION AND THE NRS for FIRST DEGREE KIDNAPPING DO NOT SAY INTENDED TO TAKE, BUT SAY TAKE WITH THE INTENT TO KEEP. THE SECOND CLOSING ARGUMENT GOES EVEN FARTHER IN STATING THAT INTENT TO KEEP IS NOT A PART of THE CRIME. THE D.A. LAVELL EVEN USES A DESCRIPTION of ANOTHER 'EXAMPLE' of A KIDNAP SCENERIO WHICH ALSO DOES NOT DESCRIBE A FIRST DEGREE KIDNAPPING SCENE. D.A. LAVELL ALSO ATTACKED THE DEFENDANT IN HER CLOSING ABOUT BEING OUT of CONTROL THAT HE HAS A HORRIFIC TEMPER WHICH SHE REPEATED TWICE. YET NOT ANOTHER PERSON AT THE SCENE WOULD SAY THAT THE DEFENDANT ATTACKED ANY of THEM PHYSICALLY. THE DEFENDANT WAS, AS THE POLICE OFFICER WHO ARRIVED ON THE SCENE RESISTING BUT NOT TO THE POINT of GETTING A RESISTING ARREST CHARGE, THAT THE PHYSICAL ALTERCATION HAD CEASED BEFORE HER ARRIVAL AND THE MALE OFFICER NEIGHBOR SAID THAT THE DEFENDANT

WAS NEVER TOOK TO THE GROUND. THE PROSECUTORS COMMENTS WERE IMPROPER AND A FLAGRANT Attempt to INFLAME PASSION AND PREJUDICE. ESPECIALLY BRINGING UP INCIDENTS WHICH WERE NOT PART of THE INCIDENT AND WERE THEIR WERE NO CHARGES brought AGAINST THE DEFENDANT. THE HONORABLE JUDGE DID NOT GIVE THE DEFENDANT A CONTEMPT of COURT CHARGE FOR HIS ACTIONS DURING TRIAL NOR DID THE DEFENDANT RECIEVE CHARGES FOR BEING put IN A RESTRAINING DEVICE AT C.C.D.C.

II ARGUMENT

BURKHART V STATE 107 NEV. 797, 820 P. 2d 757, 1991 LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH WOULD HAVE ALLOWED THE JURY TO INFER WHAT THE DEFENDENT INTENDED TO DO WITH THE VICTIM. COBB V POZZI 363 F. 3d 89, 116 (2d CIR 2004) AN ERRONEOUS JURY INSTRUCTIONS REQUIRES REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS. JOHNSON V. US, 520 U.S. 461, 466-67, 117 S. Ct. 1544 (1997) (EXPLAINING ERRORS CAN BE CORRECTED WHEN THERE IS (1) ERROR (2) THAT IS PLAIN (3) THAT AFFECTS SUBSTANTIAL RIGHTS (4) SERIOUSLY AFFECTS THE FAIRNESS, ~~THE~~ INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDING).

PEOPLE V. MARTINEZ, 47 CAL. 4TH 911, 105 CAL. RPTR. 3d. 131, 224 P. 3d 877 (2010) UNDER STATE LAW, PROSECUTORIAL MISCONDUCT IS REVERSIBLE ERROR WHERE THE PROSECUTOR USES "DECEPTIVE OR REPREHENSIBLE METHODS TO PERSUADE EITHER THE COURT OR THE JURY" AND IT IS REASONABLE PROBABLE THAT A RESULT MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT.

UNITED STATES V. CARTER, 236 F. 3d 777 (6TH CIR. 2001) PROSECUTOR DURING CLOSING ARGUMENT MISREPRESENTED WITNESS TESTIMONY.

ANTHONY V. UNITED STATES, 935 A. 2d 275 (D.C. APP. 2007) (WHEN THE PROSECUTOR ARGUES FALSELY THAT A WITNESS HAS STATED A FACT CRUCIAL TO CONVICTION.

SMITH V. COMMONWEALTH, 40 VA. APP 595, 580 S.E. 2d 481 (2003) PROSECUTOR IMPROPER AND FLAGRANT ATTEMPT TO INFLAME PASSION AND PREJUDICE.

UNITED STATES V. MOORE, 651 F. 3d 30 (D.C. CIR 2011) AS THE DISTRICT COURT OBSERVED, "A PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVIDENCE, CONSTRUCT A MORE DRAMATIC VERSION OF THE EVENTS, PROVIDE CONJECTURE ABOUT A VICTIMS STATE OF MIND, AND THEN DEFEND AGAINST A PROSECUTORIAL MISCONDUCT CLAIM BY MAINTAINING THE STATEMENTS ARE 'FACT-BASED'.

SPICER V. ROSSETTI, 150 F.3d 642, 644 (7TH CIR. 1998)
("JUST AS COUNSEL MAY NOT EXPRESS HIS BELIEFS
REGARDING THE HONESTY OF THE OPPOSING PARTY'S
WITNESSES... HE MAY NOT EXPRESS HIS BELIEFS
REGARDING OPPOSING COUNSELS OPINION of HONESTY
MOSES V. UNION PACIFIC R.R., 64 FED 3d 413 (8TH CIR 1995)
IT IS IMPROPER TO ARGUE YOUR PERSONAL BELIEFS
ABOUT THE HONESTY OF WITNESSES, THOUGH YOU MAY
ARGUE THAT THE EVIDENCE SHOWS THAT PARTICULAR
WITNESSES ARE CREDIBLE OR INCREDIBLE. YOU MAY
NOT APPEAL TO THE JURY'S SYMPATHY, PREJUDICE,
OR PASSION.
REED V. PHILADELPHIA, BETHLEHEM & NEW ENGLAND
R.R. Co., 939 F.2d 128, 133-34 (3RD CIR. 1991)
("THE REMARKS OF COUNSEL (ARE) REQUIRED TO BE
CONFINED TO THE EVIDENCE ADMITTED IN THE CASE.
REVERSIBLE ERROR IS COMMITTED WHEN COUNSEL'S
CLOSING ARGUMENT TO THE JURY INTRODUCES
EXTRANEOUS MATTER THAT HAS A REASONABLE
PROBABILITY OF INFLUENCING THE VERDICT."
STATE V. GARNER 234 OR. APP. 486, 228 P.3d 710 (2010)
(UNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING MISTRIAL DUE
TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (1) THE MISCONDUCT
IS SO PREJUDICIAL THAT IT CAN NOT BE CURED BY MEANS SHORT
OF MISTRIAL; (2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS
IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR EITHER INTENDED
OR WAS INDIFFERENT TO THE RESULTING MISTRIAL)

FURTHERMORE, THE D.A. DECLINED KNOWLEDGE of MEDICAL CONDITIONS of THE DEFENDANT AND RECIEVING A LETTER THAT NOT ONLY TOUCHED UPON THAT ISSUE BUT ALSO EXPRESSED THE DESIRE OF PATRICIA DUPLISSIES TO SEE HERSON THE DEFENDANT PUNISHED FOR THE CRIME(S) SHE BELIEVED HE COMMITTED ON HER GRANDSON. THE D.A. ALSO CLAIMED TO HAVE LISTENED TO HUNDREDS of HOURS of PHONE CALLS AND COULD ONLY USE THE FIRST COUPLE of DAYS IN JAIL AS ANY SORT of EVIDENCE. THE D.A. THRU HEARING THESE PHONE CALLS MUST of HAVE HEARD THE DEFENDANTS SON WHO IS THE VICTIM CRYING TO THE DEFENDANT THAT HE MISSES HIM. THE TWO MICHAELS PUTTING THIS BEHIND THEM AS MUCH AS POSSIBLE. THE D.A. HAD NO RIGHT TO SAY THAT THE LOVE AND FORGIVENESS THAT THEY SHARE IS IRRELEVANT. AND THE D.A.'S HAD NO RIGHT TO SPEAK FOR THE FAMILY of THE DEFENDANT AND WHAT THEIR THOUGHTS WERE ON JANUARY 6, 2013 AND FOLLOWING THAT DAY. THE D.A. MISREPRESENTED THE VICTIM'S GRANDMOTHER IN THEIR CLOSING WHEN THEY STATED SHE IS TRYING TO PROTECT THE DEFENDANT AND NOT THE GRANDSON, WHEN THE VICTIMS GRANDMOTHER HAS DEDICATED HER RETIREMENT YEARS TO RAISING HIM AND WHO CALLED 911 TO PROTECT THE GRANDSON FROM WHAT SHE THOUGHT WAS IMPROPER PHYSICAL DISCIPLINARY REACTION BY HER OWN SON. SHE HAS NOT SHYED AWAY FROM DISAGREEING WITH HERSON ON RECORDED PHONE CALLS ABOUT LETTING THE

DEFENDANT KNOW THAT SHE BELIEVED THE DEFENDANT SHOULD BE PUNISHED FOR GOING TO FAR AND TURNING PUNISHMENT INTO ABUSE. SHE HAS ALSO LET THE DEFENDANT KNOW THAT JUST BECAUSE SHE GAVE HIM PERMISSION TO TAKE THE GRANDSON TO THE STORE DOES NOT MEAN THAT YOU DID NOT DO ANYTHING WRONG. AND BELIEVES THE DEFENDANT HAS NO ONE ELSE TO BLAME FOR THE MESS HE IS IN. THIS EVENT HAS TORE OUR FAMILY APART. THE DISTRICT ATTORNEYS OFFICE OR THE D.A. ON THIS CASE SHOULD NOT TRY TO SAY THAT THEY ARE REPRESENTING THE VICTIM OR THE VICTIMS LEGAL GUARDIANS. ALL FOUR OF THE WITNESSES DO NOT BELIEVE THE DEFENDANT IS GUILTY of KIDNAPPING. ALL 4 BELIEVE THE DEFENDANT IS GUILTY OF CHILD ABUSE. I DO NOT SEE HOW THE COURT COULD, AFTER LISTENING TO HOW THE D.A. MANIPULATED THE LAW, TO CONVINCE A JURY WHO IS NOT PRACTICED IN LAW ALLOW THE VERDICT of GUILTY TO FIRST DEGREE KIDNAPPING TO STAND. I HOPE AND PRAY THAT YOUR HONORABLE JUDGE WILL CONSIDER THE SHORTCOMINGS THAT EXIST IN THE STATES BURDEN TO PROVE EVERY ELEMENT OF THE CRIME CHARGED WHICH IS FIRST DEGREE KIDNAPPING AND CONCLUDE THAT JUSTICE WOULD BE PROPERLY SERVED WITH A BETTER RESOLUTION THAN HAS OCCURRED.

THE STATE WAS GIVEN THE OPPORTUNITY TO PRESENT A FAIR TRIAL BUT INSTEAD USE DECEPTIVE METHODS TO PROVE THEIR CASE. IN MISUSING JURY INSTRUCTIONS IMPROPERLY MAKING SAID JURY INSTRUCTION ERRONEOUS. AND IN NOT SHOWING ANY EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS INTENT WAS TO KEEP MICHAEL JOSHUA SCHOFIELD AFTER TAKING HIM THE VERDICT of GUILTY of FIRST DEGREE KIDNAPPING SHOULD BE VACATED by THE HONORABLE JUDGE. I HOPE AND PRAY THIS MOTION WILL BE HEARD.

DATED THIS 26TH DAY OF MAY, 2014.

I MICHAEL J. SCHOFIELD, DO SOLEMNLY SWEAR, UNDER THE PENALTY OF PERJURY, THAT THE ABOVE MOTION IS ACCURATE, CORRECT, AND TRUE TO THE BEST of MY KNOWLEDGE.

RESPECTFULLY SUBMITTED

MICHAEL J. SCHOFIELD

DEFENDANT IN PROPER PERSON

RPLY
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL JOHN SCHOFIELD,
#1679195

Defendant.

CASE NO: C-13-287009-1

DEPT NO: VI

STATE'S REPLY TO DEFENDANT'S ADDENDUM AND SECOND ADDENDUM FOR MOTION FOR A NEW TRIAL

DATE OF HEARING: JULY 14, 2014
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARIA E. LAVELL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Reply to Defendant's Addendum and Second Addendum for Motion for a New Trial.

This Reply 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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POINTS AND AUTHORITIES

STATEMENT OF FACTS

PROCEDURAL HISTORY

On January 8, 2013, Michael John Schofield, (hereinafter the "Defendant"), was charged by way of criminal complaint of the following: COUNT 1: BURGLARY (FELONY – NRS 205.060); COUNT 2: BATTERY CONSTITUTING DOMESTIC VIOLENCE – STRANGULATION (FELONY - NRS 200.481; 200.485; 33.018); COUNT 3: CHILD ABUSE, NEGLECT, OR ENDANGERMENT (FELONY - NRS 200.508(1); COUNT 4: FIRST DEGREE KIDNAPPING (NRS 200.310; 200.320) and, COUNT 5: BATTERY CONSTITUTING DOMESTIC VIOLENCE (MISDO - NRS 200.481; 200.485; 33.018). A Preliminary Hearing was held on January 23, 2013, after which the Defendant was bound over to answer to counts 1-4. A jury trial commenced on January 27, 2014 and the jury reached a verdict on February 3, 2014. The Defendant was found guilty of COUNT 3: CHILD ABUSE, NEGLECT, OR ENDANGERMENT and COUNT 4: FIRST DEGREE KIDNAPPING. The Defendant's sentencing date was set for April 7, 2014.

On March 28, 2014, the Defendant filed a MOTION FOR A NEW TRIAL (EXHIBIT 1) and on April 4, 2014, the State filed its Opposition. (EXHIBIT 2). On April 15, 2014, the Defendant filed his Response to the State's Opposition (EXHIBIT 3) and the State filed its Reply on April 16, 2014. (EXHIBIT 4). On May 22, 2014, the Defendant filed an ADDENDUM REPLY TO STATE'S REPLY. (EXHIBIT 5). Then on June 12, 2014, the Defendant filed a SECOND ADDENDUM TO MOTION FOR A NEW TRIAL. (EXHIBIT 6). The State's Reply to both the Addendum and Second Addendum follows. The State's previous Opposition, Response and Reply to Defendant's Motion for a New Trial is incorporated herein.

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ARGUMENT

N.R.S. 176.515(1) allows this Honorable Court to grant the Defendant a new trial if required as a matter of law or if there is newly discovered evidence. The Defendant alleges that he is entitled to a new trial as a matter of law and as a result of newly discovered evidence. The grant or denial of a new trial is within the trial Court's discretion and will not be reversed absent its abuse. McCabe v. State, 98 Nev. 604, 655 P.2d 536 (1982). As will be shown below, the Defendant clearly has not met his burden. Therefore, the motion for new trial should be denied.

I. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE

To establish a basis for a new trial on this ground, the evidence must be (1) newly discovered; (2) material to the defense; (3) such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; (4) non-cumulative; (5) such as to render a different result probable upon retrial; (6) not only an attempt to contradict, impeach or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and (7) the best evidence the case admits. Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991) (If any one of these criteria is absent, the Defendant is not entitled to a new trial and the trial Court should deny the motion for a new trial.). McLemore v. State, 94 Nev. 237, 577 P.2d 871 (1978). See U.S. v. Wright, 625 F.2d 1017, 1019 (1st Cir. 1980).

a. The Defense Has Not Shown That There Was Any Newly Discovered Evidence

Criteria 1: The evidence must be: newly discovered. The Defendant asserts that the fact that he has had seizures in the past is "newly" discovered evidence. He argues that it is "newly" discovered because he forgot he had seizures *because* of the seizures. (See ADDENDUM p. 21, lines 4-9). This is belied by his own written motion. The Defendant

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writes in his ADDENDUM that he alerted both of his attorney's about his purported medical condition in July of 2013, some six months before trial. (ADDENDUM p. 21, lines 10-25; p. 22, lines 1-8). Therefore, this is not newly discovered evidence.

Where evidence was known at trial and not probed does not fall into the category of newly discovered evidence: "A lack of due diligence in obtaining evidence does not constitute a basis for granting a new trial on the grounds of newly-discovered evidence." U.S. v. Wright, 189 F.Supp 720, 722 (W.D.Penn. 1960) (citations omitted). The Fifth Circuit Court of Appeals states:

> Newly discovered evidence is evidence that could not have been discovered with due diligence at the time of trial. Luhrsen v. Vantage S.S. Corp., 5th Cir. 1975, 514 F.2d 105; U.S. V. Slutsky, 2d cir. 1975, 514 F.2d 1222. Hence, a number of Courts have held that, where a party fails to call a witness who was available during trial, the testimony of that witness cannot be considered newly discovered evidence. U.S. v. La Vallee, 2d Cir. 1974, 504 F.2d 580; U.S. v. Mello, 1st Cir. 1972, 469 F.2d 356; U.S. v. Produm, 2d Cir. 1971, 451 F.2d 1015, Baker v. U.S., 1970 139 U.S.App. D.C. 126, 430 F.2d 499; Rodriquez v. U.S., 5th Cir. 1967, 373 F.2d 17. U.S. v. Beasley, 582 F.2d 337, 339, (5th Cir. 1978). (emphasis added).

Since the Defendant was aware of what he purports to be a medical condition before trial, as were his attorney's, he cannot now use this as a basis for a new trial. Because this was not "newly discovered evidence" the State need not go any further in addressing the remaining criteria set forth in Sanborn, and his motion on the ground of newly discovered evidence should be denied. McLemore at 577.

II. THE DEFENDANT FAILED TO SHOW THAT THERE WAS AN ERROR IN THE TRIAL AND/OR THE ALLEGED ERROR WAS PREJUDICAL AND, THEREFORE; HE IS NOT ENTITLED TO A NEW TRIAL AS A MATTER OF LAW

To establish a basis for a new trial on the grounds set forth below, the Defendant must demonstrates that: (1) there was error in the trial; and (2) the alleged error influenced the jury in a manner which was prejudicial to Defendant. See, Evans v. State, 112 Nev. 1172, 1200, 926 P.2d 265, 283 (1996).

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a. The State Did Not Commit Prosecutorial Misconduct

A prosecutor may not intimidate witnesses to achieve a conviction. Rippo v. State, 113 Nev. 1239, 1251, 946 P.2d 1017, 1025 (1997). A prosecutor may not attempt to dissuade witnesses from testifying; nor can a prosecutor attempt to influence the content of a witness's testimony. Steese v. State, 114 Nev. 479, 960 P.2d 321, 328 (1998). In order to prevail on a claim predicated upon prosecutorial misconduct, the burden lies upon Defendant to show how that misconduct prejudiced him. Cunningham v. State, 113 Nev. 897, 944 P.2d 261, 267 (1997). See Walker v. State, 113 Nev. 853, 944 P.2d 762, 774 (1998) ("If the issue of guilt or innocence is close, if the State's case is not strong, prosecutorial misconduct will probably be considered prejudicial. Where evidence of guilt is overwhelming even aggravated prosecutorial misconduct may be harmless error.").

The Defendant first argues that the State committed prosecutorial misconduct because it did not disclose favorable evidence, specifically a letter that his mother Patricia Duplissie provided to the defense and possibly to the State prior to trial. (ADDENDUM p. 14). In the letter attached to the defense ADDENDUM, Patricia Duplissie writes in part, that at some time prior to the incident, the Defendant had, "...several medical incidents that required hospitalization," and "[o]n one incident he was diagnosed with having seizures which required medication." (EXHIBIT 7). First of all, there is nothing in this letter to suggest that Patricia Duplissie witnessed any seizures or was aware of any medical conditions beyond what the Defendant has told her. Next, it is unclear who the Defendant believes the State was required to "disclose" this information to since it was provided to the defense attorney by Patricia Duplissie according to the Defendant's own statement. (ADDENDUM p. 14). Finally, this letter was neither exculpatory nor was it material.

Next the Defendant asserts that the State tampered with a witness, specifically the Defendant's step-father Norman Duplissie, during a pre-trial conference. (ADDENDUM, p. 28-29). The Defendant attempts to support this allegation via a letter from Norman Duplissie. (EXHIBIT 8).

In the Defendant's ADDENUM, he writes that, "Maria E. Lavell read transcripts of phone calls to Norman Duplissie, to influence testimony." (ADDEMDUM p. 28). The State did not have any phone calls transcribed so could not have read them to Norman Duplissie. It should be noted that nowhere in Norman Duplissie's letter does he write that the State read him any transcriptions. (See State's EXHIBIT 8). Further, at no time did the State attempt to influence Norman Duplissie's testimony or cause him or anyone else to change their testimony. Nor *did* the State influence or cause Mr. Duplissie to change his testimony. Mr. Duplissie wrote in his letter that, "I do not believe that Maria influenced my testimony at trial since to my knowledge, it was the same testimony I provided at the pretrial before Judge Sullivan." (See EXHIBIT 8, page 3).

Here the Defendant has not shown any behavior by the State that would constitute prosecutorial misconduct and therefore was in no way prejudiced. See Cunningham. The Defendant's allegations that the State committed prosecutorial misconduct are without merit and therefore his motion should be denied as to this.

b. Defendant Was Not Denied Effective Assistance Of Counsel

In order to assert a claim for ineffective assistance of counsel the Defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-687, 104 S.Ct. 2052, 2063-2064 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the Defendant must show (1) that counsel's performance was deficient, meaning that counsel's representation fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the Defendant, meaning that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different; [a] reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068; Warden v. Lyons, 100 Nev.

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430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

The United States Supreme Court has held that there is a strong presumption that defense counsel's actions are reasonably effective and that claims must be judged without the distorting effects of hindsight:

> Every effort [must be made] to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time . . . . A Court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Strickland, 466 U.S. at 689-690.

In considering whether trial counsel has met this standard, the Court should first determine whether counsel made a "sufficient inquiry into the information that is pertinent to his client's case." Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066). "Once such a reasonable inquiry has been made by counsel, the Court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066). "Finally, counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

Based on the above precedent, the Court begins with the presumption of effectiveness and then must determine whether or not the Defendant has demonstrated by "strong and convincing proof" that counsel was ineffective. Homick v. State, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) (citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); Davis v. State, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a Court in considering

allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)). This analysis does not mean that the Court "should second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711.

In essence, the Court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S.Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992), citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066; see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Even if a Defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694).

Finally, a Court may consider the two prongs of Strickland test for ineffective assistance of counsel in any order and need not consider both if the Defendant makes an insufficient showing on either one. McNelton, 115 Nev. at 403, 990 P.2d at 1268 (citing Strickland, 466 U.S. at 697).

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1. Trial Counsel Was Not Ineffective For Advising The Defendant Not To Take The Stand At Trial

The Defendant alleges his trial counsel was ineffective for advising him not to testify at trial. (ADDENDUM p. 31). The Nevada Supreme Court has recognized that [the Defendant] has the ultimate authority to make certain fundamental decisions regarding the case, including the decision to testify." Lara v. State, 120 Nev. 177, 182, 87 P.3d 528, 531 (2004). It was trial counsel's responsibility to advise the Defendant against taking the stand if he believed it would be detrimental to the case, however; it was Defendant's decision whether or not to testify at his trial. Thus, there is no ineffective assistance of counsel claim as to this.[1]

2. The Decision Not To Introduce Medical Evidence Regarding The Defendant At Trial Is A Tactical One

Next, the Defendant alleges his trial counsel was ineffective for failing to introduce medical evidence regarding the Defendant. (ADDENDUM, p. 21) The Defendant asserts that this evidence would prove that he had seizures in the past and memory loss and presumably wanted to present a defense that he had a seizure at the time of the incident so was not in his right mind. (ADDENDUM, p. 21-25). This assertion does not hold water.

First, the documents that the Defendant presented in his SECOND ADDENDUM do not support that he ever had seizures. Rather, Defendant's Exhibit F relates to a "MR Brian wo+w Contrast" and simply notes in the section titled "HISTORY" that the Defendant had a "*possible* seizure," (emphasis added). (EXHIBIT 9). This report was dated July 3, 2012, some six months prior to the events that led to the Defendant's conviction.

Next, there was no information contained in the discovery and later presented at trial by the witnesses that even suggest that the Defendant was somehow not in control of his actions and in need of medical assistance during the incident at issue. On the contrary, all the evidence supports that his actions were deliberate. Therefore the State would have argued it was irrelevant.

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[1] It should be noted that the Defendant fired trial counsel mid-way through the trial and did in fact testify.

Additionally, the Defendant himself testified at trial and said he did not have a seizure at the time of the incident. Specifically, he said the following:

> "And my memory was -- has been doing – playing – creating quite a problem for my life. I have seizures, but not the – they're different kind of seizures than maybe – I don't fall down and bite my tongue or that kind of thing. I do things that I don't recall doing. And I don't ever remember having a seizure ever. And I don't – *I wouldn't try to say that this was a seizure neither because I do have recall of what happened on the – on January 6th.*

(emphasis added). (See Trial Transcript (hereinafter "TT-31") January 31, 2014, p 68, lines 14-22). (EXHIBIT 10).

Presumably, after speaking with the Defendant and reviewing the discovery provided by the State, trial counsel determined that this was not a viable defense. Such a tactical decision is unreviewable on a claim of ineffective assistance of counsel absent extraordinary circumstances. Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996). Since none existed, there is no ineffective assistance of counsel claim as to this.

Moreover, it is highly unlikely that trial counsel would have been able to find an "expert" that could have credibly claimed that the Defendant was unaware of his actions at the time he committed these crimes given the above.

Even though the State did not receive any medical documentation to support the claims the Defendant noted in his ADDENDUM, and on some occasions, over the State's objection, the Defendant did get to make the jury aware of his purported medical issues. Beyond what was stated above, the Defendant testified, without objection, that his "seizures" cause complete memory loss to the point that he doesn't even remember seizing, so he knows he did not have a seizure at the time of the incident because he remembers the events of the day in question.

Further, the Defendant testified that he has been diagnosed with seizures although based on the documentation attached to his ADDENDUM, specifically what is now State's EXHIBIT 9, this does not appear to be true. The following colloquy took place between the Court and the Defendant as a result of a juror's question, over the State's objection:[2]

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[2] It should be noted that because the State had not been provided any medical documentation supporting any diagnosis, the State objected to this question however was over ruled.

THE COURT: Okay. Were you ever officially diagnosed with seizure disorder?
THE WITNESS: Yeah, I take – when – right—while I'm here, I take Keppra, and I don't know why they would give me Keppra here. I think when I first got here.
THE COURT: So is that - - just the question is whether you were diagnosed with seizure disorder?
THE WITNESS: I take medication for – I took Depakote and – before I came – was in jail, and now I take – but if you want to know the truth, I don't remember ever going to a doctor to get it. So I don't even know what doctor gave – did – some doctor did prescribe me Depakote.
THE COURT: And it's your understanding that that's for a seizure disorder?
THE WITNESS: Yes.

(See TT-31 p. 162, line 10-25). (EXHIBIT 11).

Also, in addition to mentioning his "memory loss" dozens of times throughout his testimony, with and without objection, the following colloquy took place between the Court and the Defendant, as a result of a juror's question, over the State's objection:

THE COURT: Okay. Where you ever officially diagnosed with memory loss?
THE WITNESS: I was in the process of going to, I think, it was a psychiatrist somewhere by St. Rose Hospital, and that was trying to find out what -- why was it that I would have a complete -- like I can remember my phone number as a child or my address, but some of -- or things exactly what they were, I thought - - I think I could, and
THE COURT Did you get to the point that you actually had a diagnosis?
THE WITNESS: No.

(See TT-31 p. 163, line 1-11). (EXHIBIT 12).[3]

Because the Defendant testified his actions were not as a result of a seizure and was allowed to address his purported memory loss and seizures and the jury heard the testimony and had an opportunity to deliberate, regarding the testimony, the Defendant has not demonstrated prejudice and shown a reasonable probability that, but for counsel's decision not to try and introduce medical information as a defense to the Defendant's actions, the result of the trial would have been different, there is no ineffective assistance of counsel claim as to this. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687).

[3] "I don't remember" is not a defense.

3. The State Is Aware That Defense Counsel Interviewed Witnesses In Preparation For Trial

The Defendant claims trial counsel was ineffective because he did not interview witnesses. (ADDENDUM, p. 42). The State has personal knowledge that this is not a true because the State was advised by both Patricia Duplissie, the Defendant's mother and Norman Duplissie, the Defendant's step father, that prior to meeting with the State for their pretrial conferences, they met with the Defendant's attorney at his office. Therefore the Defendant's assertions are unfounded.

4. The Decision As To The Questioning Of Witnesses At Trial And Opening Statements Is A Tactical One

The Defendant asserts that his attorney was ineffective because he did not ask sufficient questions on cross examination nor make an adequate opening argument. (ADDENDUM, p. 42).

Such a tactical decision is unreviewable on a claim of ineffective assistance of counsel absent extraordinary circumstances. Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996). Since none exist, there is no ineffective assistance of counsel claim as to this.

c. Jury Instruction Number Ten and Jury Instruction Number 11 Were Neither Misleading Nor Ambiguous

The Defendant alleges that this Honorable Court did not give the proper Jury Instructions as to the charge of first degree kidnapping. The Defendant alleges that Instruction Number 10 and Instruction Number 11 were misleading and confused the jury. (ADDENDUM p. 6-8). First, as to Jury Instruction number 10, the Defendant argues that the Instruction should have include all the elements for first degree kidnapping as laid out in NRS 200.310. And second, the Instruction should have included language to the effect of "without the guardian's consent." (ADDENDUM p. 6-7). As to Jury Instruction number 11, the Defendant argues the Instruction should have contained some of the same language contained in Instruction 10, in order to make it clear to the jury. (ADDENDUM p. 8). The Defendant's argument is without merit as the instructions given were proper and it is within the discretion of the District Court to select proper Jury Instructions. The selection and usage of Jury

Instructions is within the sound discretion of the District Court. It is the Defendant's burden to demonstrate an abuse of discretion. The Jury Instructions proffered were in conformity with the law and the Defendant has not shown an abuse of discretion.

The Nevada Supreme Court has consistently held that the District Courts have broad discretion in the selection and usage of Jury Instructions. In Crawford v. State, ___ Nev.___ 96 P.3d 751 (2004) the Court held, "The District Court has broad discretion in settling Jury Instructions; consequently, we review a District Court's decision regarding Jury Instructions for an abuse of discretion or judicial error. An abuse of discretion occurs if the District Court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Id. at 754.

This is the proper standard by which the Court should review the selection and use of Jury Instructions. Other cases indicate that the Defendant does not have a right to the Jury Instruction of his choice. "A Defendant has no absolute right to have his own instruction given, particularly when the law encompassed in that instruction is fully covered by another instruction. Milton v. State, 111 Nev. 1487, 1492, 908 P.2d 684, 687 (1995) (citing Stroup v. State, 110 Nev. 525, 529, 874 P.2d 769, 771 (1994))." Hardaway v. State, 112 Nev. 1208, 1210, 926 P.2d 288 (1996)

Allowing District Courts broad discretion allows them to instruct juries as to the law while avoiding confusing lay jurors. The Court has mandated in Vallery v. State, 118 Nev. 357, 46 P.3d 66 (2002), that "[j]ury instructions should be clear and unambiguous." Id. at 76-77. Avoiding repetition and additional instructions that are already adequately included in other instructions is included in this mandate. The only current requirement placed on Jury Instructions in Nevada is that they correctly state the law and avoid repetition. Barron v. State, 105 Nev. 767, 783 P.2d 444 (1989)

1. Jury Instruction Number 10 Contained the Language in NRS 200.310 Which Was Specific to What the Defendant Was Accused of

As it pertains to First Degree Kidnapping, NRS 200.310 states:

> 1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.

NRS 200.310(1).

During trial, the Defendant requested that the language in Jury Instruction 10 be changed to add "without authority of law." (TT – 31, p. 2, line 10-25; p. 3 line 1-21). (EXHIBIT 16). The Court declined to add this language stating that the way it read was a correct statement of the law. (TT-31, p. 3, line 22-23). (See EXHIBIT 16)

In the instant case, we were dealing with an individual who took a child from his guardians against the child's will, without consent of the guardians, and over the guardians' objections. There was no evidence deduced at trial that this was done for the purpose of collecting a ransom or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person. Therefore all of that language was unnecessary and, if left in, *would* be confusing to the jury. Given the facts in the instant case, the following Jury Instruction was given and numbered "10":

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> Every person who leads, takes, entices, or carries away, or detains, any minor, with the intent to keep, imprison, or confine the minor from his parents, guardians, or any other person having lawful custody of the minor is guilty of kidnapping in the first degree.
>
> A kidnapping does not require force.

(EXHIBIT 13)

This instruction was given properly and reflected the elements of first degree kidnapping as it applied to the facts of the instant case. It was neither misleading nor ambiguous.

2. Jury Instruction Number 11 was a Correct Statement of the Law

The Defendant also takes issue with the following Jury Instruction which was given and numbered "11":

> It is the fact, not the distance, of forcible movement of the victim that constitutes kidnapping.

See Langford v. State, 95 Nev. 631, 600 P.2d 231 (1979) (EXHIBIT 14).

The Defendant argues that this instruction should have contained language similar to the language in Jury Instruction 10. Reasoning that without the additional language, it was misleading. (ADDENDUM p. 8). This particular issue was not raised at trial but even if it had been, because the requested information is contained in Jury Instruction number 10, the Court would not be obliged to add the now desired language since it is contained in Instruction 10. See Milton at 1492.

The U.S. Supreme Court elaborated in Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475 (1991) that:

> "[I]t must be established not merely that the instruction is undesirable, erroneous, or even universally condemned, but that it violated some [constitutional right]. It is well established that the instruction may not be judged in artificial isolation, but must be considered in the context of the instructions as a whole and the trial record."

Id. at 72 (citations removed).

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Jury Instruction number 2 directed the jurors to "consider all the instructions as a whole and regard each in the light of all the others." (EXHIBIT 15). The Defendant can't simply presume the jurors were confused by Instructions 10 and/or 11 and/or failed to follow instruction number 2 simply because he did not get the verdict he was hoping for.

In his ADDENDUM, the Defendant argues that the jury could have believed that someone could commit the crime of first degree kidnapping even if they had consent from the guardian to take the child. (ADDENDUM, p. 9). There is nothing in the record to show that the jury was either confused or rendered a verdict inconsistent with the evidence. The fact that the jury did not raise any questions regarding Jury Instructions Number 10 and/or 11 further supports an absence of ambiguity with regard to those Jury Instructions. Instruction Number 10 accurately sets forth the elements that must be met in order to establish a finding of First Degree Kidnapping. Jury Instruction number 11 is a correct statement of the law.

d. <u>There was More Then Sufficient Evidence to Find The Defendant Guilty Of First Degree Kidnapping</u>

The Defendant argues that the fact that the jury found him guilty of kidnapping even after his mother Patricia Duplissie, his son, the victim Michael Joshua and he himself testified that he had consent to take Michael proves that Jury Instruction number 10 needed to include the language "without consent." (ADDENDUM, p. 4). The claim borders on the absurd. The evidence adduced at trial was more than sufficient to support the jury's finding that the Defendant took the victim without the guardian's consent and against their will. Further, although not necessary to the charge, he did so by means of force. The reality is that the jury simply did not believe the Defendant had consent to take Michael Joshua.

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When reviewing for insufficiency of the evidence, the Supreme Court's sole inquiry is whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979); Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984). In assessing the sufficiency of the evidence, a reviewing Court may not re-weigh the evidence. Davis v. State, 110 Nev. 1107, 1116, 881 P.2d 657, 663 (1994).

Determinations of credibility and the weight to be given items of evidence are within the sole province of the trier of fact. Bolden v. State, 97 Nev. at p. 73, 624 P.2d at p. 20; Keeney v. State, 109 Nev. 220, 230-231, 850 P.2d 311, 318 (1993).

At trial, the State clearly showed that the Defendant kidnapped Michael Joshua, a minor and kept him from his legal guardians until others intervened. Patricia Duplissie, the Defendant's mother and the legal guardian of Michael Joshua, testified at trial that she told Michael Joshua that he should go to the store with the Defendant and in her mind that was the same as giving the Defendant permission to take Michael Joshua (See Trial Transcript (hereinafter "TT-29") January 29, 2014, p. 133-135). (EXHIBIT 17). She testified that although she has never called 911 before, on the day in question, she did not call 911 because the Defendant was taking Michael Joshua against her will but because they were making a "commotion." (TT-29, p 155). (EXHIBIT 18). She was never able to clearly explain what sort of commotion they were making that caused her to call 911 except to say she was afraid they would damage the curio cabinet in her dining area and wanted them to go outside. (TT-29, p. 137-138) (EXHIBIT 19). (TT-29, p. 141-142) (EXHIBIT 20). (TT, p.156-159). (EXHIBIT 21). The 911 call, which was admitted into evidence at trial as State's Exhibit 15 told a much different story. In the phone call to 911 Patricia Duplissie stated that the Defendant was trying to take Michael Joshua against her will and that he had pushed her husband Norman Duplissie in the process. She stated that the Defendant did not have custody of Michael Joshua and was not even supposed to be at their house. She was clearly in distress when she made the call and was pleading for police to respond quickly. Additionally, the State

admitted two jail calls during trial which were marked as State's 16. In one of these calls Patricia Duplissie is heard telling the Defendant he did not have the right to take Michael Joshua.

The jury was able to observe Patricia Duplissie on the stand and evaluate her testimony and credibility. Additionally, they were able to hear the contradictions between her testimony at trial and the calls she made at or near the time of the event. See Bolden at 73. They obviously determined the Defendant did not have her permission to take Michael Joshua. Additionally, Norman Duplissie, the Defendant's step-father and Michael Joshua's other legal guardian testified that he did not give the Defendant permission to take Michael Joshua and in fact tried to physically stop him, however all his attempts to stop the Defendant failed. (See Trial Transcript (hereinafter "TT-30") January 30, 2014, p. 69-76). (EXHIBIT 22). Based on the 911 call, the jail calls and testimony by the remaining State's remaining witnesses, including but not limited to, the victim Michael Joshua, the State presented more than enough evidence for any rational trier of fact to have found the essential elements of the crime of kidnapping beyond a reasonable doubt." See Jackson at 307.

e. There was No Conflict Of Interest

The Defendant claims first that he should receive a new trial because his trial counsel had previously represented the prosecuting attorney and next that his trial counsel was paid by Norman Duplissie, the Defendant's step father and a State's witness, thereby creating a conflict of interest. (ADDENDUM, p. 35)

The Nevada Supreme Court stated, "Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." Clark v. State, 108 Nev. 324,326, 831 P.2d 1374 (1992) citing Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991). In the present case, Defendant fails to allege any circumstances yielding a situation conducive to counsel developing divided loyalties. Moreover, the United States Supreme Court held in Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708 (1980) that "[t]he possibility of a conflict of interest is insufficient

to impugn a criminal conviction. In order to establish a violation of the Sixth Amendment, a Defendant must show that an actual conflict of interest adversely affected his lawyer's performance."

1. There Was No Conflict Of Interest Resulting From The Fact That Defense Counsel Previously Assisted The Prosecuting Attorney

On two occasions, prior to trial, and prior to the trial counsel being appointed to represent the Defendant, the prosecuting attorney received two traffic citations. One for exceeding the posted speed limit (eleven miles) and one for expired registration. The prosecuting attorney provided copies of each citation on different days to trial counsel who in turn faxed them to the appropriate Court. Because the prosecuting attorney had immediately renewed the vehicle registration upon receiving the citation, this ticket was dismissed. The second ticket was reduced to illegal parking and the prosecuting attorney paid a fine. Trial counsel at no time had to actually appear in Court for these tickets and the prosecuting attorney did not pay him a fee for his assistance. This assistance ceased prior to trial counsel being retained by the Defendant. (See Trial Transcript (hereinafter "TT-27") January 27, 2014, p. 3-9). (EXHIBIT 23)

Here the Defendant does not provide any evidence, beyond his mere assertions, that a conflict of interest actually existed. Further, he does not point to any particular event during trial to support his assertions that there was a conflict. See Cuyler at 350.

Finally, although the Defendant initially waived the conflict and trial began, he later re-raised the issue at which time this Honorable Court determined that there was in fact no conflict of interest. (See Trial Transcript (hereinafter "TT-28") January 28, 2014, p. 58-59). (EXHIBIT 24). As such, Defendant's arguments are without merit and do not entitle him to relief.

2. There Was No Conflict Of Interest Resulting From The Fact That Defense Counsel Was Paid By A State's Witness

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The Defendant next argues that there was a conflict of interest because Norman Duplissie, his step-father and a witness for the State, paid defense council for his representation. (ADDENDUM, p. 35). It should be noted that this was at the Defendant's request[4]. This is the first time the Defendant has raised this issue. He only now asserts in his Addendum that this presented a conflict but similar to his assertion above, he does not provide any evidence, beyond his mere assertions that a conflict of interest actually existed. Further, he does not point to any particular event during trial to support his assertions that there was in fact a conflict. See Cuyler at 350.

f. The State Did Not Charge the Defendant with Second Degree Kidnapping

The State did not charge the Defendant with second degree kidnapping so will not address his arguments as to that issue.

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[4] The Defendant made numerous requests via jail calls that his parents pay for private counsel. The Defendant has copies of all the jail calls he made.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court deny Defendant's Motion for a New Trial in its entirety.

DATED this 26th day of June, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
MARIA E. LAVELL
Chief Deputy District Attorney
Nevada Bar #010120

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 26th day of June, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

MICHAEL J. SCHOFIELD, #1679195
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV, 89101

BY /s/ E. Goddard
E. Goddard
Secretary for the District Attorney's Office

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