## EXHIBIT 1

ENO.1679195 CLARK COUNTY, NEVADA 330S. CASINO CENTER BLUD LAS VEGAS NV 89101 DEFENDANT IN PROPER PERSON MC C-13-287009-1 Case No.: STATE OF NEVADA PP DA Plaintiff. Dept. No.: Electronically Filed 03/28/2014 01:21:53 PM Docket No.: VS, LICHAEL J SCHOFIELD Defendant 8 CLERK OF THE COURT 9 10 MOTION FOR NEW TRIAL 11 12 Comes Now Defendant, Michael J. Schofield, 13 in Proper Person, and respectfully moves this honorable court to grant a New Trial. 15 16 This Motion is based upon all the records 17 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. Michald 21 Michael J. Schofield 23 CLERK OF THE COURT Defendant in Proper MAR 27 2014 Person

,	TO District Attacher Defendant in	
2	TO: District Attorney, Defendant in Proper Person	i 
3		•
4	You and Each of You, Will Please Take Notice that the undersigned will bring this Motion on for hearing before 21 the District Court Deft. 6 on the X	
5 ·	hring this Motion on for hearing hefore	
6	the District Court Deft 6 on the X	
7 8	day of APril, 2014, at 8:30 o'clock a.m/	
9	P.M. of said day.	
10	Dated this 24 day of marcha014	
11	LOTE CO TITO DOTO INCOMPONI	
12.	Michael Shaliel	
13	Michael J. Schofield	
14	Defendant in Proper	
15	Person	
17		
18	Points And Athorities	
19	Court to grant this motion for New Trial	
20	Court to grant this motion for New Irial	
21	for the reasons listed below:	
22	1. Influencing testimony of witness by	
23	Prosecutor.	
24	2. New medical Evidence.	
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3. District Attorners failure to disclose favorable evidence upon discovery.
4. Teffective of Counsel by Prior Counsel.

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Points And Athorities I. Procedural Background

- I. It has been revealed that state had frior 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 available until thad been discovered until after trial.
- 3. District Attorner tampered and influenced testimony from witness on evidence not produced at trial.

  4. Prior Counsel was ineffective in his failure to allow meto 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.

Further more. District Attorney 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 likeli hood that the tainted testimony could have affected the Judgement of the Jury."

Agurs, 427 U.S., at 103,96 S. Ct., 2397

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. Bagler. 473 U.S. 667, 105

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S.Ct. 3375, 87 L.Ed. 2d 481 (1985) the Court diso vowed any difference between is 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." H3H 473 U.S., at 682, 105 S.Ct., at 3385, Therefore, New Trial most 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 expressed loyalty to said defendant." The right to counsel is the right calso to effective of counsel." Cuxter V. Sullivan 100 s. C.t. 17-B (1980); and Frazier V. J.S. 18 F. 3d 778 (9th Cir. 1994).

Fully more regarding the Jury finding of guilt on the charge of kidnapping is error news, that to not grant a New Trial would be a Mockery and a lost of trust in the Justice System. The Grand mather / Gawrdian of the Jictim. Stated she gave defendant Permission

to take alleged victim 15on. Insufficiency of the evidence occurs where the Prosecution has not Droduced a minimum whreshold of evidence John Which a conviction can be based. State J. Purcell. 110 Nev. 1389. 887 P.2d 276 (1994). In a letter to the District Allerner dated may 1st. 2013 mother of defendant sent information to the pistrict Albriner Stating defendant Suffers from mental/medical issues- This information was unknown to detendant 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 whatifit would have been discovered and produced different verdict if a New trial is granted. Burton V. State 84 Nev. 1911. 437 P.2d 861, C196B) 1117. Steete, 91 Nev. 654, 541 P. 2d 645, (1975) This is an actuality what whe 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. solemnly swear, under the penalty of perjury, that the above ASTIMMIN OF EUR ENCE is accurate. correct, and true to the best of my knowledge. NRS 171.102 and NRS 208.165. Respectfully submitted,

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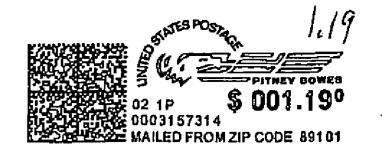
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MICHAEL J SCHOFIELD Defendant in PROPER PERSON

## MICHAEL SCHOPIELD#1679195

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



CLARK COUNTY CLERK OF COURT REGIONAL SUSTICE CENTER 200 LEWIS AVE, 3RD FLOOR LASVEGAS NEVADA 89101

## LEGAL MAIL



# EXHIBIT 2

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

1 **OPPS** STEVEN B. WOLFSON 2 **CLERK OF THE COURT** Clark County District Attorney Nevada Bar #001565 3 MARIA E. LAVELL Chief Deputy District Attorney Nevada Bar #010120 4 200 Lewis Avenue 5 Las Vegas, Nevada 89155-2212 (702) 671-2500 6 Attorney for Plaintiff DISTRICT COURT 8 CLARK COUNTY, NEVADA 9 THE STATE OF NEVADA, 10 Plaintiff, 11 -VS-CASE NO: C-13-287009-1 12 MICHAEL JOHN SCHOFIELD, DEPT NO: VI #1679195 13 Defendant. 14 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL 15 16 DATE OF HEARING: April 7, 2014 TIME OF HEARING: 8:30 AM 17 18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County 19 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 20 Trial. 21 22 This Opposition to Defendant's Motion for New Trial is made and based upon all the 23 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. 24 25 /// 26  $/\!/\!/$ 27 /// 28 /// W:\2013F\003\20\13F00320-OPPS-(SCHOFTELD\_MICHAEL\_JOHN)-001.DOCX

### **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 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 II—Burglary, Count III—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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1	CONCLUSION
2	For the foregoing reasons, the State respectfully requests this Court to deny Defendant'
3	Motion for New Trial.
4	DATED this 4 <sup>th</sup> day of April, 2014.
5	Respectfully submitted,
6	STEVEN B. WOLFSON
7	Clark County District Attorney Nevada Bar #001565
8	BY MO01: 5(10,000
9	MARIA E. LAVELL
10	Chief Deputy District Attorney Nevada Bar #010120
11	CERTIFICATE OF MAILING
12	I hereby certify that service of the above and foregoing was made this 4th day of April
13	2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:
14	MICHAEL L SCHOEIELD #1670105
15	MICHAEL J. SCHOFIELD, #1679195 CLARK COUNTY DETENTION CENTER 330 S. CASINO CENTER BLVD.
16	LAS VEGAS, NV, 89101
17	
18	BY /s/ E. Goddard E. Goddard
19	Secretary for the District Attorney's Office
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# EXHIBIT 3

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DISTRICT COURT
CLARK COUNTY, NEVADA

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Alun J. Column

CLERK OF THE COURT

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. 3			•
4	STATE OF NEVADA	Case No.: 0-13	287009-1
5	Plaintiff,	Dept. No.: 6	
	vs.	Docket No.:	
7	MICHAEL JOHN SCHOFIELD		
8	Defendant	, ) ,	
9		1	•
10	- H	•	•
11	LEFENDANT'S RESPONSE TO		
12	DEFENDANTS MOTION FO	<del></del>	<del></del>
13	COMES NOW DEFENDAN	T, MICHAEL S.	SCHOPIELD,
14	IN PROPER PERSON, AND HEI	ZEBY SUBMITS	THE DEFENDENT
15	RESPONSE TO STATES OP	POSITION TO DE	<i>fendants</i>
16	MOTION FOR NEW TRIAL.		
17	THIS MOTION IS BASEDON	ALL RECORDS AN	DHILES AS
18	WELL AS POINTS AND AWTH	RITIES IN THE M	LOTION FOIL
19	WISINTOIAL, INADDITION	ANY ARBUMED	-
. 20	THE TIME OF THE HEARING.	THE MOTIONS	TOR MEC
21	TRIAL, THE DEFENDANT DIS:	AGREES WITH Th	18 STATES
22	OPPOSITION TO DEFENDANTS MA	TIONFOR WEWTRIA	TO HOW PRIVEDED
23	DEFENDANT SHOULD BE GRANT	ED A NEW TRIP	
Ω 24		Michael Ja	hopers
汉 文 25 0		MICHAEL U.S DEFENDANTING	SCHOTIELD Pearse Person : 1
FTHE		TISLENDANI IN	100 01 10. 00 10
HE COURT	RECEIVED		
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CLERK OF THE COURT

## STATEMENT OF FACTS

My RESPONSE TO . THE STATES OPPOSITION OF DEF-ENDANT'S MOTION FOR NEWTRIAL, STATEMENT OF FACTS IS THAT PHERE STATEMENT OF FACTS ARE NOT FACTS WHAT SO EVER. STARTING WITH MY SONS NAME BEING MICHAEL JOSHUA SCHOFIELD, TO THE STEPFATHERS DECLARATION. TO THE DEFSUDANT PUSHING THE DEFENDANTS STEP FATHER, TO THE DEFENDANT HILLING THE VICTIMIHIS SON, IN THE VENICIE. I HOPE TO HAVE THE MOTION FOR NEW TRIAL HEARD AND TO SHOW THAT THE POINTS BROWGHT UP AT THE HEARING AS WELL AS THOSE IN THE MOTION, WILL INSPIRE THE HONORABLE JUDGE TO GRANT A NEWTRIAL. I HOPE AND PRAYTHAT THE HONORABLE SUDGE ALLOWS LIE TO BE HEARD, TO PRODUCE JUSTICE, IN THIS CASE. DATED THIS 3 day of APRIL, 2014. I, MICHAEL U. SCHOFIELD solemnly swear, under the penalty of perjury, that the above KESPOINSE to STATE OPPOSITION correct, and true to the best of my knowledge.

 $21 \mid | NRS 171.102$  and NRS 208.165.

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MICHAEL J. SCHOFIELD

Respectfully submitted

Defendant.

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



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



# EXHIBIT 4

Electronically Filed 04/16/2014 08:37:54 AM

**RPLY** STEVEN B. WOLFSON Clark County District Attorney CLERK OF THE COURT Nevada Bar #001565 3 MARIA E. LAVELL Chief Deputy District Attorney Nevada Bar #010120 4 200 Lewis Avenue 5 Las Vegas, Nevada 89155-2212 (702) 671-2500 6 Attorney for Plaintiff 7 DISTRICT COURT 8 CLARK COUNTY, NEVADA 9 THE STATE OF NEVADA, 10 Plaintiff, 11 -VS-CASE NO: C-13-287009-1 12 MICHAEL JOHN SCHOFIELD, DEPT NO: VI #1679195 13 Defendant. 14 15 STATE'S REPLY TO DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL 16 DATE OF HEARING: June 9, 2014 17 TIME OF HEARING: 8:30 AM 18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County 19 District Attorney, through MARIA E. LAVELL, Chief Deputy District Attorney, and hereby 20 submits the attached Points and Authorities in Opposition to Defendant's Motion for New 21 Trial. 22 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 23 24 Points and Authorities in support hereof, and oral argument at the time of hearing, if deemed 25 necessary by this Honorable Court. 26 ///· 27 /// 28 /// .W:\2013F\003\20\13F\00320-OPPS-(SCHOFIELD\_MICHAEL\_JOHN)-002 (2).DOCX

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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 (hereinaster 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 II—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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1	CONCLUSION
2	For the foregoing reasons, the State respectfully requests this Court to deny Defendant's
3	Motion for New Trial.
4	DATED this 16th day of April, 2014.
5	Respectfully submitted,
. 6	STEVEN B. WOLFSON
7	Clark County District Attorney Nevada Bar #001565
8	By $\bigcirc$
9	MARIA E. LAVELL Chief Deputy District Attorney Nevada Bar #010120
11	CERTIFICATE OF MAILING
12	I hereby certify that service of the above and foregoing was made this 16th day of April,
13	2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:
14	
15	MICHAEL J. SCHOFIELD, #1679195 CLARK COUNTY DETENTION CENTER
16	330 S. CASINO CENTER BLVD. LAS VEGAS, NV, 89101
17	
18	BY /s/ E. Goddard
19	E. Goddard Secretary for the District Attorney's Office
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# EXHIBIT 5

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**AA 1404** 

-PP DA CLERK OF THE COURT MICHAEL J SCHOFTELD \$1679195 STRICT 330 S. CASINO CENTER а ASVEGAS NEVADA 89101 DEFENDANT IN PROPERPERSON 1-13-287009-5 STATE OF NEVAL ocket No. PLAINTIFF ר 8 106, P3014 NATE OF HEARING Time of HEARING 10 SFENNAUT Ц KEPLY ıλ 13 14 15 ANT IN PROPER PERSON. AUN 16 17 18 KERLY J٥ TRIAL IS MADE AND BASED UPON ALL THE PAPERS AND PLEAKINGS ON FILE HERE IN, THE ATTACKED POINTS અ , AUTHORITIES IN SUPPORT OF AND ANY ARGUMENT გა ANSUCED AT THE TIME OF THE HEARING OF THIS MOTION. 25 RECEIVED MAY 2 2 2014 DEFENDENT IN PROPER PERSON 27 CLERK OF THE COURT

	POINT AND AUTHORITIES	<b>a</b> .
2	IN THE STATE'S REPLY TO THE DEFENDANTS	
3	RESPONSE TO THE STATES OPPOSITION TO THE	
	DEFENDANTS MOTIONFORNEW TRIAL, THE STATE ACKNOWLEDGES	
	THAT IN THE DEFENDANTS RESPONSE, THE DEFENDANT	<u> </u>
6	CORRECTLY POINTS OUT ERRORS IN THE STATE'S	<u></u> -
	OPPOSITION TO MOTION FOR NEW TRIAL, SPECIFICALLY IN	<b></b>
8_	THE STATES FACT SECTION OF ITS OPPOSITION TO MOTION	
9	FOR NEW TRIAL. THE STATE IN ITS REPLY CLAIMS TO	
10	HAVE CORRECTED THESE ERRORS. YET IN READING THE	
	STATES REPLY, THE STATE DID NOT CORRECT THOSE ERRORS,	_
12	BUT INSTEAL REPLACED THE ERRORS, WITH OTHER ERRORS.	<b>-</b> -
13	WHICH SHOULD NOT BE PART of A STATEMENT OF FACT.	
	THE DEFENDANT IS NOT ONLY DISPLEMING THE STATES	
	STATEMENT OF FACTS, IN THE STATE'S KEPLY, BUT	
.16	ALSO THE STATES LEGAL ARGUNEUT IN THE	
17	STATES REPLY. THE LEFENDANT WILL PRESENT.	<b>.</b>
	STATEMENT OF FACTS AND DEGAL ARGUMENTS,	
	Supporting its hotion for NEWTRIAL, IN A	<del></del>
	MORE THOROUGH WAY TO SHOW THAT JUSTICE	<del></del>
	WOULD BE PROPERLY SERVED IF THE HONORABLE.	
· _	JUNGE (SPANTED À NEW TRIAL.	
23	Meliae Pholosofiel	
24 25	MICHAEL J. SCHOFIELD	
30	DEFENDANTIN PROPER PERSON	
	AA	1405

STATEMENT OF FACT MICHAEL JOHN SCHOFIELD, (HEREINAFTER THE DEFENDANT) WAS FOUND GUILTY OF COUNTIL CHILD ABUSE, AND GUILTY OF COUNTY FIRST DEGREE KIDNAPPING. THE DEFENDANT WAS 5 FOUND NOT GUILTY OF COUNT I BURGLARY, AND MOT GUILTY of Count TI BATTERY DONESTIC VIOLENCE - STRANGULATION. IN THE STATES REPLY, THE STATE IMPLYS THAT PATRICIA DUPLISSIE 8 CALLED 911 TO KEEP THE DEFENDANT FROM TAKING MICHAEL 9 SCHULL SCHOFIELD (HERE IN AFTER "MICHAEL") TO THE STORE. PATRICIA 10 DUPLISSE CALLES 911 WHEN THE DEFENDANT PLOT MICHAEL IN A HEADLOCK. PATRICIA DURUSCIE, THE LEGAL GUARDIAN, TESTIFIED 13 (INDER ORTHON THE WITNESS STAND, THAT SHE GAVE THE DEFENDANT PERMISSION TO TAKE LICHAEL TO THE STORE. MICHAEL, THE DEFENDANTS It con, TERRIFIED UNDER OATH, ON THE WITHESS STAND, THAT PATRICIA 15 DuPLISTIE, THE DEGAL GUARDIAN, GAVE THE DEFENDANT PERMISSION 16 TO TAKE LICHAEL TO THE STORE. THE LEFENDANT, TESTIFIED UNDER 17 OATH, ON THE WITNESS STAND, THAT PATRICIA BUPLISSIFTHE DEGAL 18 GUARDAN, GAVE THE DEFENDANT PERMISSION TO TAKE MICHAEL 19 TO THE STORE. BOTH PATRICIA SuPUSSIE, THE LEGAL GUARDIAN, AND 20 MICHAEL WERE WITHESSES FOR THE STATE, BOTH OF WHICH TESTIFIEL UNDER CATHOUTHE WITHESS STAND, THAT PATRICIA 22 DUPLISSIE, THE LEGAL GUARDIAN, GAVE THE DEFENDANTYTO 23 TAKE LICHAEL TO THE STORE. THE STATE DID NOT PRODUCE 24 ANY EVIDENCE TO DENY THAT CONSENT WAS QUEN FROM 25 THE LEGAL GUARDIAN TO THE DEFENDANT. AA 1406

PATRICIA DUPLISSIE CALLED 911 WHEN THE LEFENDANT PLOT MICHAEL IN A HEADLOCK, PATRICIA DUPLISSIE DID NOT CALL 911 BEFORE THE DEFENDANT PUT MICHAEL IN A HEADLOCK. BEING THAT PATRICIA DUPLISSIE, THE LEGAL QUARDIAN, 5 MICHAEL JOHN SCHOFIELD, THE DEFENDANT, AND LUCHAEL LOSHUA SCHOFIELD, THE DEFENDANT'S SON, ALL TESTIFIED CLUDER OATH, ON THE WITNESS STAND, THAT PATRICIA 8 DuPLISSIE GAVE THE DEFENDANT PERMISSION TO TAKE 9 MICHAEL TO THE STORE AND THAT THIS TEST MONY 10 STANDS UNREFUTED, IT MUST BE CONCLUDED THAT PATRICIA SUPLISSIE WOULD NOT HAVE CALLED 911 IF MICHAEL GOT IN THE CAR AND WENT TO THE STORE, AFTER 13 JUST GIVING PERMISSION TO THE DEFENDANT TO TAKE 14 MICHAEL TO THE STORE. It MUST BE CONCLUDED THAT 15 PATRICIA DUPLISSIE CALLED 911 BECAUSE THE DEFENDANT 16 PUT MICHAEL IN A HEADLOCK. BEING THAT WITHOUT 17 AUTHORITY OF LAW IS AN INTRINSIC ELEMENT OF 18 FIRST DEGREE KIDNAPPING AND THAT THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT THE 20 DEFENDANT DO NOT HAVE CONSENT FROM THE LIEGAL GUARNAN, ON THIS FACT ALONE THE COURT SHOULD, It NOT VACATE THE VERDICT, THEN THE HONORABLE (LUDGE SHOULD GRANT THE DETENDANT A NEW TRIAL. JURY INSTRUCTION NO. 5 STATES: THE DETENDANT IS 25 PRESUMED INNOCENT UNTIL THE CONTRARY IS

PROVED, THIS PRESUMPTION PLACES UPON THE a STATE THE BURDEN OF PROVING BEYOND A. 3 REASONABLE DOUBT EVERY ELEMENT OF THE CRIME 4 CHARGEL A REASONABLE DOUBT IS ONE BASED ON KEASON. 5 Nouth to be REASONABLE MUST BE ACTUAL, NOT MERE POSSIBILITY OR SPECULATION. It you HAVE 7 KERSONABLE DOUBT AS TO THE QUILT OF THE 8 DEFENDANT, HE IS ENTITUED TO A VERDICT OF NOT 9 (GUILTY. THE STATE MADE AN EFFORT TO DISCREDIT 10 THE TESTIMONY OF PATRICIA DUPLISSIE, SPENDING A GOOD PORTION OF THE FIRST OF THE STATE'S TWO 12 CLOSING ARQUILENTS DEDICATED TO THIS CAUSE. JURY 13 INSTRUCTION NO. 8 IS ABOUT THE CREDIBILITY OF A 14 WITNESS. It STATES IN PART: "If you BELIEVE THAT A 15 WITNESS HAS LIED ABOUT ANY MATERIAL FACT IN THE CASE, 16 you way DISREGARD THE ENTIRE TESTIMONY OF THAT WITNESS OR ANY PORTION OF HISTESTIMONY WHICH 18 IS NOT PROVED BY OTHER EVIDENCE. IF THE GURY DISREGARDED PATRICIA DUPLISSIES TESTIMONY, 20 THIS PORTION OF PATRICIA BUPLISSIES TESTIMONY, 21 QIVING CONSENT TO THE DEFENDANT TO TAKE VICHAEL TO THE STORE WAS CONFIRMED BY 23 BOTH THE DEFENDANT AND HIS SON WICHAEL, THE STATE 24 DID NOT REFLUTE THE TESTIMONY OF ALL THREE TESTIFYING TO 25 THIS FACT. THIS IS AN EFFORT TO BRING THE BURDEN **AA 1408** 

OF PROOF ONTO THE DEFENDANT. BURING 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 KILDNAPPING. Specifically THAT CONSENT OF THE LEGAL GUARDIAN IS NOT A FACTOR IN DETERMINA IF FIRST DEGREE KIDNAPPING DID OR DID NOT OCCUR. JURY INSTRUCTION NO. 10READS: EVERY PERSON WHO LEADS, TAKES, ENTICES, OR CARRIES AWAY, OR LETAINS, ANY MINOR, WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE THE MINOR FROM 12 HIS PARENTS, QUARDIANS, OR ANY OTHER PERSON 13 HAVING LAWFUL CUSTODY OF THE MINOR IS GUILTY OF FIRST DEGREE KIDNAPPING. A KIDNAPPING DOES NOT REQUIRE FORCE. THE DEFENDANTS CONCERN 19 THAT THE GURY CAME TO THE SAME CONCLUSION THAT 17 THE DEFENDANT DO IN READING THIS, EVEN THOUGHTHE 18 DEFENDANT DID HAVE CONSENT TO TAKE MICHAEL TO THE 19 STORE FROM THE WEGAL QUARDIAN, THAT CONSENT WARRIOR 20 MACK OF CONSENT WAS NOT AN ELEMENT OF THE CRIME. WHICH WOULD REMOVE THE BURDEN OF THE STATE TO 22 PROVE EVERY ELEMENT OF THE CRIME. THIS ALONE WOULD BE 23 GROUNDS FOR THE COURT TO GRANT THE DEFENDANT A NEWTRIAL. 24 BEING THAT THE STATE DID NOT PROVE THE DEFENDANT DID NOTHANE 25 CONSENT BEYOND A REASONABLE DOUBT. **AA 1409** 

I JURY INSTRUCTION NO. 10 SUBTRACTS MANY ASPECTS OF 2 NRS200,310(1) WHICH DEFINES FIRST DEGREE KIDNAPPING, 3 ESPECIALLY THE MOST GRIEVOUS. AND INSTRUCTION NO 10 4 ALDS A SENTENCE TO THE INSTRUCTION THAT IS NOT IN 5 NRS 200.310(1), WHICH READS: A PERSON WHO WILLFULLY 6 SEIZES, CONFINES, INVEIGLES, ENTICES, DECOYS, ABDUCTS, CONCEALS, KILNAPS, OF CARRIES AWAY A PERSON BY ANY 8 MEANS WHATSOEVER WITH THE INTENT TO HOLD OR 9 DETAIN, OR WHO HOLDS OR BETAINS, THE PERSON FOR 10 RANSON, OR REWARD, OR FOR THE PURPOSE OF COMMITTING 11 SEXUAL ASSAULT, EXTORTION OR KOBBERY UPON OR 12 FROM THE PERSON, OR FORTHE PURPOSE OF KILLING 13 THE PERSON, OR TO EXACT FROM RELATIVES, FRIENDS 14 OR ANY OTHER PERSON ANY MONEY OR VALUABLE. 15 THINGS FOR THE KETURNOR DISPOSITION OF THE 16 MANAMAN KIDNAPPED PERSON, AND A PERSON WHO LEADS, TAKES, ENTICES, OR CARRIES AWAY 18 OR DETAINS ANY MINOR WITH THE INTENT TO KEEP, 19 IMPRISON, OR CONFINE THE MINOR FROM HIS OR 20 HER PARENTS, QUARDIANS, OR ANY OTHER PERSON HAVING LAWFUL CLUSTODY OF THE MINOR OR WITH THE INTENT TO HOLD THE MINOR TO UNLAWFUL 23 SERVICE, OR PERPETRATE UPON THE PERSON OF THE MINOR 24 AN UNLAWFUL ACT IS GUILTY OF FIRST DEGREEKIDNAPPING 25 WHICH IS A CLASS A FELONY. **AA 1410** 

KIDUAPPIUG DE AU INSTRUCTION. 40 33993 CLASSED A 70 UNITED A LISERS DEGREE OF KIDUAP, GET WAS BUEN A or prima guiant To yongo SHT SVAH ION CLIC HOLHON YAND, SHT OT PUNCARULAN WARN ZI KEEP, IMPRISON, GROONHUE. JHIS, SURY INSTRUCTION OI TUSTUI 3HTHMU Q3UIGUOD TUSUU BUOM 3UBIOSIOT 40.30WAIRICISHITION TOAT 3HIL GARGAMONE 11.0LY DOIS, DOIS, TREMINSTERMINETEN JURY WETRINGTION EAN MI PUNGALKIDUAGNING IN NAS 340 3815 DESCRIBED HULANTOA 21 GAULIN 51 CAOW 3HT, PUIGGANCIS 33,433 (172) 745 DU343 (13 HELPS FLRTHER LEFINE KILMAPPINGLUHICH IS ONE SIAT. PUNCTING PANTINES KIDNAPPING, THIS THE FACT, NOT THE DISTANCE, OF TOROIBLE MOVENEMENT 21 ti; 3 LOHW M 23TATS 11. ON NOTTOMENT HAND. TUACUSTSC SHT TO TUSTUI DIFIDIGE SHT TO MAUDINI UA 239 W PIRST DEGREEK WARPING REQUES AN THE SAME SAME SHIP OF OF SAW THSTUT ETMACISTAC SHTTAHT CLUATE 223UTICU 3HT LIO, HTAO ASCUN CISTICEST LISAHOIL CUA TUACUSTISC SHT LUAR CONFINE, HIS SOU, MICHAEL. BOTH LEGAL
CONFINE, HIS SOU, MICHAEL. BOTH LEGAL
CONFINESSE AND PATRICIA DILLIESSE DEFENDANTS INTENT WAS TO KEEP, INPRISON, OR. SHT TAHT 3VOSPQ STATE SHT CIL TUISQ ON TH

THERE IS A REASONABLE LIKELIHOOD THAT THE LURY APPLIED, GURY INSTRUCTION MO. 10. AMD GURY INSTRUCTION NO. II, IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN OF PROVING EVERY EUELIEUT OF THE CRIME OF FIRST DEGREE KIDNAPPING, DEYOND A REASONABLE DOUBT. THIS CONCLUSION CAN BEMADE 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, 12 THAT BASED ON THE TESTIMONY OF THREE WITNESSES, 13 THAT ALL STATED, THAT AT VIRTUALLY THE SAME TIME DURING THE INCIDENT, THE DEBAL QUARDIAN BAVE 15 THE DEFENDANT PERMISSION TO TAKE LUCHAEL TO 16 THE STORE. THE CRIME OF FIRST DEGREE KIDNAPPING 17 AND EVERY ELIENT OF THAT CRIME WAS NOT 18 PROVED BEYOND A REASONABLE DOUBT. BEING THAT 19 THE VERDICT OF QUILTY TO FIRST DEGREEKDNAPPING 20 MAS CONTRARY TO LAW, THE COURT SHOULD GRANT 21 THE DEFENDANT A NEW TRIAL BEING THAT THE VERDICT OF GUILTY TO FIRST DEGREEKIDNAPPING WAS CONTRARY TO EVIDENCE THE HONORABUE GUDGE  $\lambda$ 3 SHOULD GRANT THE LEFENDANT A NEW TRIAL 25 9

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1	STATE V. STANDEY, 4 NEV. 71, 4 NEV. 73, 1868, NEV.
2	LEXIS 14(1868)
3	THE RIGHT TO GRANT NEW TRIALS BEING
4	CONFERRED CLOON THE DISTRICT COURTS, It's
5	EXCERCISE BYTHEM IN ANY PARTICULAR CASE WILL BE
6	PRESUMED TO BE CORRECT AND PROPER UNTIL THE
17	CONTRARY IS SHOWN.
8	STATE V. (POCKETT 84NEV.516, 444.P. 22896NEV. LEXIS 398 (1968)
ġ	THE EXCERCISE BY THE TRIAL COURT OF THE RIGHT TO
10	GRANT A NEW TRIAL WILL BE PRESUMED CORRECT AND PROPER
[]	BY THE APPELLATE COURT UNTIL THE CONTRARY IS SHOWN.
Įα	MYATT V, STATE 101 NEV. 761P, 2d 720,1985 NEV. DEXIS 509(1985)
	WHERE THE EVILENCE IS NOT SUFFICIENT TO
14	JUSTIFY A RATIONAL JURY IN FINDING QUILT BEYOND
15	A KEASONABLE DOUBT, A JURY'S VERDICT WILL NOT BE
16	UPHELD ON APPEAL; ACCORDINGLY, UNDER SUCH.
17	CIRCUMSTANCES, THE ADVISORY INSTRUCTION.
18	AUTHORIZED UNDER THIS SECTION IS PROPER.
19	LENZ V. STATE, 97NEV. 65,624P. 2d 15,1981NEV DENS
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al.	TO ACQUIT RESTS WITHIN THE SOUND DISCRETION
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AA 141
24 REPUTATION OF JUDICIAL PROCEEDING).
23 FAIRNESS, INTEGRITY OR PUBLIC
22 RIGHTS (4) SERIOUSLY AFFECTS THE
21 19 PLAIN (3) THAT AFFECTS SUBSTANTIAL
20 COPRECTED WHEN THERE IS (1) ERROR (2) THAT
19 1544(1997)(EXPLAINING ERRORS CAN BE
18 JOHNSON V. US, 520 U.S. 461, 466-67, 1175. Ct.
17 THE RESULTING CONVICTION VIOLATES DUE PROCESS."
16 ITSELF SO INFECTED THE ENTIRE TRIAL THAT
15 QUESTION IS WHETHER "THE INSTRUCTION BY
14 BEYOND A REASONABLE DOUBT. THE PERTINENT
13 OF PROVING EVERY EDEMENT OF THE CRIME
12 IN A WAY THAT RELIEVED THE STATE OF It'S BURDEN
II LIKELIHOD", IHEL THE TORN TODIED THE INSTRUCTION
10 WAS AMBIQUOUS AND THAT THERE WAS A REASONABLE
9 STATUE MUST BOTH THE INSTRUCTION
8 OF A JURY INSTRUCTION THAT QUOTES A STATE
7 DEFEDANT CHALLANGING THE CONSTITUTIONALITY.
6 S.Ct. 823,172 L. Ed. 2d. 539(2009)
5 WADDINGTON V. SARAUSAD, 555 U.S. 179, 129,
4 DEFENDANT INTENDED TO DO WITH THE VICTIM.
3 WOULD HAVE ALLOWED THE JURY TO INFER WHAT
2 LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH
1 BURKHART V. STATE 107 NEV. 797, 820 P. 26 757, 1991

1 WASHINGTON V STATE 98 NEV. 601:655 P. 2d
2 531;1982 NEV, LEXIS 542 NO, 11294 DEC, 29, 1982
3 DEFENDANT CONTENDED THAT THE TRIAL COURT HAD
4 AUTHORITY TO CONSIDER HIS MOTION FOR A NEW TRIAL.
5 FURTHER NRS 176.515(3) DESCRIBED CONDITIONS THAT
6 WERE TO HAVE BEEN WET FOR A NEWTRIAL BASED ON
7 NEWLY DISCOVERED EVIDENCE; HOWEVER NRS 176.515(4)
8 RECOGNIZED THAT A MOTION FOR A NEW TRIAL MIGHT BASED.
9 ON OTHER GROUNDS". THE COURT HELD THAT SUCH OTHER
10 GROWNDS' EXISTED WHEN THE TRIAL COURT DISAGREED.
II WITH THE JURY'S VERDICT AFTER AN INDEPENDENT
B EVALUATION OF THE ENDENCE. THERE FORE THE COURT
13 CONCLUDED THAT THE TRIAL COURT OPERATED UNDER
14 THE ERRONEOUS BELIEF THAT IT LACKED JURISDICTION
15 TO RULE ON DEFENDANTS MOTION FOR A NEW TRIAL,
16 AND THE GUDGE ERRED BY FAILING TO EXCERCISE
17 HIS DISCRETION. THE COURT REVERSED THE TRIAL
18 COURTS DENIAL OF DEFENDANT MOTION FOR NEW
19 TRIAL AND REMANDED THE CASE.
20 COBBV. POZZI 363 F. 3d 89,116(2d CIR 2004)
21 An Erroneous Jury Instructions
22 REQUIRES REVERSAL ON APPEAL UNLESS
23 THE ERROR IS HARNLESS.
24 ///
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JAIGT 400 ASHTONA 2012 DECIONADS DIT CEC. CTI 29UN S.B. CONFLICTING ENCE. 99 TO GOTTAU JANS TUA CURGA COUTE 10 UA UO BBAD JAIST (U3/) A TUARD) 00 COURT TO USE IN DECIDING WHETHER TO 61 TO BELLE BIT AND CHARACTE SHT SI 3DUSCIVE ଚା 3HT 70 YTURIOT 3HT, HILDUIGAODOH, HAUL ASHTOUR SAGT3 & JAIST ASHTOUR PUIS IACHTUR 91 TO INSTABBLE OF TURACUSTS (I SHT 91 TOSTOSA YALL LICADUIVUOD TOU 21 TAYLOD SHT 4I TIME SINACUSTRE CORDUNNOD 21 Doubt. THE JURY AND THE COURT MUST BE 'el BUBALLOZAZIA A CLUOPIZA YIZIZIA LISYONG LISZĀ ZAH TUROUSTRATTAHT VOIRNJDUOD 2' MAN, 3HT THIM 334RA TOURSACT AT PIE LAIST ASHTOLAY AS CAO GUA 3043 CIVIS ZHT STANJANS MITURGURGZOWI THE ENDENCE OF GLUETIE COLIFLICTING, TO 3-13HW, 32AD JAUMIDD A. UI JAWD JAIAT 3HT CISASWOGABEAH AGANSIN HALADIADIZIEIH Dr.9 sei, 205, V3N AS ASUAD V STATE 804, V3N T, 23NOW, 10 0. VAN WINKUE, 6, UEV, 340

ARGUNENT
a I. STATE FAILURE TO DISCLUSE FAVORABLE
3 ENIDENCE.
4 PATRICIA DUPLISSIE SENT A LETTER TOTHE
5 DISTRICT ATTORNYS OFFICE AND SENT A COPY
6 OF THIS LETTER TO THE PUBLIC DEFENDERS OFFICE,
7 ATN: DAN CENKING ON MAY 1, 2013. THE ENVELOPE IS
8 LATED MAY 1, 2013. THE LIETTER HEAD IS DATED
9 WAY 1, 2013. THE LETTER STATES IN PART: IN
10 RECENT MONTHS BEFORE THE INCIDENT ON 1/6/13,
11 MICHAEL SOME FATHER HAD INCURRED SEVERAL _
19 MEDICAL INCIDENTS WHICH REQUISED HOSPITALISATION.
13 ON ONE INCIDENT HE WAS DIAGNOSED WITH HAVING
14 SEIZURES, WHICH REQUIRED WEDICATION. It IS
15 MY UNDERSTANDING THAT THIS SITUATION WAS
16 SUPPORTED BY THE WEDICAL STAFF AT THE DETENTION
17 CENTER AND IN FACT HE HAS BEEN HOUSED IN THE
18 PSYCHLATRIC WARD, YOU MAY WISH TO KEVIEW THIS
19 SITUATION AND DETERMINE IF DIMINISHED MENTAL
20 CAPACITY WAY BE AN ISSUE IN THIS CASE. I
al Believe we All wish to See Justice
22 DONE IN THIS LIATTER. HOPEFULLY THE ABOVE
23 INFORMATION MAY BE HELPFUL TO YOU IN
24 Accomplishing THIS GOAL.
25 ///
14 AA 1417

LUACTAHTSOIVAH3DEIH UI JOIDAT TUAV3U3DA A US3D ZE 344 CLUOD JUBUL YASV TAHT ASCHOOL JANUAH 90 HE 3NZEI JASICISM A HTICN TUARUSTACT 3HT CISEDURGAICL 3NAY & 293 CACIO JARUSA SO ESUREI JASIOSA POUBOUPORIO ES BUBAGAD 39A OHOW BEATTHATE! ASTIBULISH WILL HAR CICL 348 TAHO, 293 BOCIL JATUSUL GO 23UZZI JADICZIL OR PUIZOUPAIO 40 3 LOAGAD UAIDIZAHQ A 30 ST MIAJD TOU Cic ASJI3 L A3H UI SIZENALT ADIGITAL EMONASHIAN-ASHED SHT SUBDOY OF BINTE SHT USHT, MASYODEIG 40 ASTIBUART UI ABITISU BATT BUISDBY TON OIG STAIR BIHT CUM LIALL 3HT NGHT TH3B ABITIZU SHT BUBDBY TON OIG STATE BHT RECORDED STATEMENT MADE BY ANH WITHESS. SO UNLESS 11 TO PROVIDE FORTHED IA 30 1440 2 A DOPY OF AND WRITTEN OR CETAPUDO EL SEUETISTISCI SATTEMENTO DA TULIAMENSO DEFENSE put in A REGUESST FIRM AND SHT 30UIZ. ASTIZL ENT 40 MGOD ZIH CIVIZDIZY 0} SLINICE, AND THE PUBLIC DEFENDER, DAN JENKINS PASVIJS JUBALIBY RELIGION POPULA BOLLABOR LECELLE SHER WHICH WAS SELIT VIA THE U.S. A.O. SHT TAHT 38 CRUDUNDA OT USUS 232 WASY MENGOTA TOURT AND THE HONDRADUS JUDGE, THE DIAMOD 3HT CARUSIM OF QUILLET MULLAUDITUSTULED OF GRAGOPA ARGUMENT I SECTION. ALSO SAME OF THESE EPROPS MAZINES SECTION AND IN THE STATES REPLY WULTIEOGGO ESTATE SHIT FINDS IN EMANA 343 JUNAU 343 JUNE

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BASED ON NOT HAVING ANY FOREKNOWLEDGE	91
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ATROOM ISSUES URBITAL INOOH	61
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1	ROBINSON V. CAIN, 510F. Supp. 2d 399(E.D.L.A. 2007)
2	Apply BRADY, THE FIFTH CIRCUIT HAS FOUND.
3	THAT EVEN IN ADMISSABLE EVIDENCE MAY BE
4_	MATERIAL UNDER BRADY AND THAT THE
<u>5</u>	INADMISSABILITY OF EVIDENCE UNDER STATE
6.	LAW IS NOT DISPOSITIVE ON THE ISSUE OF
7	MATERIALITY. INSTEAD THE QUESTION IS
8	"WHETHER THE DISCLOSURE OF THE
9	EVIDENCE WOULD HAVE CREATED A
10	REASONABLE PROBABILITY THAT THE
[]	PROCEEDING WOULD HAVE BEEN DIFFERENT"
1a	AND LIGHE SPECIFICALLY DOES THE
13	ENIDENCE "PUT THE WHOLE CASE IN A
<del>  4</del>  - <del></del>	DIFFERENT LIGHT AS TO UNDERLUNE
	THE CONFIDENCE IN THE VERDICT!
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	AA 1420

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40 SS SHOW TO BUD BOAN SYSG SUAH THON 93 324301130323399que 3HT", ptillahdusg 12 3UBAUGEA3Y A EAW 393HT J3HT3HW TO 90 WOTTAGSGIE UDD SOT BEAD BHT O3 CHANGY ы TI PUICAZUBINI QUA 38-14-1 343CU ଧା YAAATUOD 3HT OT TUBUUDAAA 2900 DB 20199 LI BHT TAHT OUR BRIGGE BUILD ZIH. 91 ADDICTION AFFECTED HIS BEHAVIOR DURING 91 PURCH THAT JAIGT TA MIAND BLOD. 11 PUTANGURE SOUBCING CARRAGURE STATE ଟା THE COURT DONOL WITH SUCH LINE "IDIGAZY 3HT UI 30U3GITUOD BUMAZQUN 340HW 3HT TUG OT USNAT 30 MOANOSA3Y OT 2A THOUT TUSA3 PHIGH A HOUR UI 32AD GINOD TI UBHUN BAIRBOIDENC GRITALUAN YTIJAMONTITIZMOD OT TOS/GINS 21 3043GIN3 BURAY QUAT, ZODOW ASHTO UIT, IZZZAZYYUL USBB SVAH CHUCCU PUICESDONG SHT 70 THURESY SHT CBROJDRIC USAG BOURD SHT LAH TAHI WILLIBADOSQ SUBAUDSA3J A ZI SA3HT USHUD (6006)101, 66.63, 2511 P2 (1,40,2 P61, P44, 8, 2) 222, JJ38, V 3 NOU)

1 NRS 51.115 STATELLENTS FOR PURPOSES OF	
2 MEDICAL DIAGNOSIS OF TREATMENT. STATEMENTS	- · ·
3 MADE FOR PURPOSES OF MEDICAL DIAGNOSIS OR	
4 TREATMENT AND DESCRIBING MEDICAL HISTORY, OR	
5 PAST, OR PRESENT SYMPTOMS, PAINS OF SENSATIONS,	
6 OR THE INCEPTION OR GENERAL CHARACTER OF THE	·
7 CAUSE OR EXTERNAL SOURCE THERE OF, ARE NOT	
8 INADMISSABLE UNDER THE HEARSAY RULE INSOFAR	, <b></b>
9 AS THEY WERE REASONABLY PERTINENT TO	
10 DIAGNOSIS OR TREATMENT.	· 
11 RULE 301, FED, R. EVID. (STATING THAT A PRESUMPTION	J
12 IMPOSES ON THE DARTY AGAINST WHOM IT IS DIRECTED	
13 THE BURDEN OF GOING FORWARD WITH EVIDENCE	
14 TO REBUT OR MEET THE PRESUMPTION, BUT DOES.	
15 NOT SHIFT TO SUCH PARTY THE BURDEN OF PROOF	
16 IN THE SENSE OF THE RISK OF NONDERSUASION")	
17 FOR EXAMPLE, IF IT IS SHOWN THAT A DERSON_	
18 MADE USE OF A RELIABLE MEANS OF	·— · · — ·
19 COMMUNICATION, A FACT FINDER CAN INFER,	-, <b></b>
20 THAT THE COMMUNICATION WAS RECEIVED.	
al Kendal V. GATES 215 F. 3d 825, 829-30 (8THC12200	
22 Smith V. Cummings, 445F. 3d1254, 1260 (10TH CIR, 200	<u> </u>
23 SULLIVAN V. FREEMAN 944F. 2d 334, 337 (7TH CIR 1991)	
24	
25	<del></del>
19	AA 1422

1_	IINEWRY DISCOVERED EVIDENCE
2	THE DEFENDANT WILL SHOW THAT THERE IS
3	NEWLY DISCOVERED EVIDENCE THAT WAS NOT
4	AVAILABLE TO THE DEFENDANT BEFORE OR DURING
5	TRIAL. THE NEWLY DISCOVERED EVIDENCE IS MEDICAL
6	REPORTS FROM GULY 2012, APPROXIMATELY SIX MONTHS
7_	PRIOR TO THE INCIDENT THAT TOOK PLACE ON JANUARY 6,2013.
8	THERE ARE TWO REPORTS AND A THIRD DOCUMENT,
	THAT APPEARS TO BE A DISCHARGE FORM, FROM St. ROSE
10	HOSPITAL, THAT LISTS MEDICATION TO BE TAKEN (KEPRA 500Mg)
<u></u>	TWICE DAILY, ONE REPORT IS AN URI DONE ON THE
إعر	DEFENDANTS BRAIN, It gives AN EXAM LATE of 7/3/12
13	TIME 2:06 PM PDT ACCOUNT NUMBER: 13-MR-12-018189
14	REPORT EXAM: WRIT OF THE BRAIN WITH AND WITHOUT
15	CONTRAST 7/03/12 ORDER PHYSICIAN: AKBAR, TANVEER
16	PRINTED BY: ACEVES, TANYARN PRINTED ON 7/4/12
	DICTATED BY: CHANG, SCOTT. THE OTHER REPORT IS A
18	Sheep LAD LEG OR ENECTROENCEPHALOGRAM.
	DATE OF PROCEDURE 7/3/12 REFERRING PHYSICIAN:
20	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
23	SINCE THE INCINENT THAT TOOK PLACE ON
24	JAN 6, 2013.
25	
	AA 1423

<u> </u>	THE SLEEP LAB EEG SAYS STUDY INDICATIONS:	
2	NEW ONSET SEIZURES AND CORRELATION	
3	CLINICALLY AND CRANIALLY MAGING IS ADVISED.	
4	THE DISTRICT Attorney IN HER REPLY SAYS:	
5	LEFENDANT WOULD BE AWARE OF ANY	
6	TREATMENT BY PHYSICIANS FOR HIS SEIZURES	
7	OR ANY OTHER MEDICAL OR MENTAL ISSUES.	
8	THE COULD NOT BE FURTHER FROM THE TRUTH, A	<del>-</del>
9	SUMPTON OF THE SEIZURES IS MEMORY LOSS.	-
10	THE DEFENDANT FINED A MOTION TO DISMISS THE	
	Public DEFENDER IN JULY 2013. THE MOTION STATES	
12	IN PART: DEFENDANT HAS A HISTORY OF SEIZURES-	
[3	AND EVELLHAD A LUEDICAL EPISODE. DEFENDANT	
14	REQUESTED HIS PUBLIC DEFENDER ADDRESS THIS ISSUE,	l
15	AS IT RELATES TO HIS DEFENSE, AND HE FAILED TO	
16	ADDRESS DEFENDANT'S MEDICAL HISTORY AT ALL.	<u> </u>
17	After THIS HEARING THE PUBLIC DEFENDER MADE	
18	AN Attorney VISIT TO C.C.D.C. AND PRESENTED NEDICAL	<u> </u>
19	RELEASE FORMS FOR THE DEFENDANT TO SIGN	
20	WHICH ARE DATED 7-24-13. THE DEFENDANT	
<u>al</u>	INFORMED THE PUBLIC DEFENDER AT THIS VISIT	
22	THAT THE AHORNEY COHN PARRIS WAS NOW	
23	· · · · · · · · · · · · · · · · · · ·	· •
24	JOHN PARRIS MADE AN AHORNEY VISIT TO THE	
25	DEFENDANT ON AUGUST 5, 2013.	
	21	AA 1424

1 AT THIS INITIAL MEETING, WHICH WAS THE FIRST	
2 TIME SPEAKING TO HIM, THE DEFENDANT EXPLAINED	·
3 THAT THE PUBLIC DEFENDER DID NOT INVESTIGATE	····
4 THE DEFENDANTS MEDICAL ISSUES (THE P.D.	
5 brought THE MEDICAL RELEASE FORMS TO THE DEFENDAN	u -
6 AFTER THE MOTION TO DISMUSS COUNSEL COURT DATE AND	-, <del></del>
7 After HE WAS NO LONGER REPRESENTING THE DETENDANT	)
8 JOHN PARRIS EXPRESSED TO THE DEFENDANT THAT HE	
9 WOULD INVESTIGATE THE MEDICAL/MENTAL HISTORY	<del></del>
10 OF THE DEFENDANT AND THE FACTS OF THE CASE	····
11 TO DISCUSS WITH THE DEFENDANT DEFENSE	
12 STRATEGIES! HE TOLD THE DEFENDANT HE WOULD	
13 VISITHUL AGAIN IN A COUPLE OF WEEKS. THE	
14 DEFENDANT DID NOT HEAR OR SEE THE AttorNEY	
15 AGRIN UNTIL LATE OCTOBER IN COURT FOR THE	
16 CALANDAR CALL. THE STATE REQUESTED A	<del></del> -
17 CONTINUANCE. THE Attorney PARRIS TOLD THE	
18 DEFENDANT HE WOULDVISIT HIMSOON. THE	<del></del>
19 DEFENDANT DID NOT HEAR OR SECTHE Attorney	
20 Again until A VIDEO VISIT ON JANUARY 22, 2014	
21 THE DAY BEFORE CALANDAR CALL. THE ATTORNEY 22 (SHUPARRIC NEVER ORESENTED THE DEFENDENT	
- OSTITION TO TO TO TO THE TOTAL TO THE TOTAL	
24 TO SIGN. IN SANUARY OF 2013 WHEN THE 25 DEFENDANT WAS HOUSEDIN THE PSYCH UNIT	
22	AA 1425

Ethnan owt PJSTAMIXOAGGA 2071 VOITASIB3M (9 39US138 EH QUINAT G3990TE TUAQU3734 3HT 11 . OTUI (3400) 30 01 TI TESEBUS CHUOW 3H TAHT TUB, PSUADITA UA TON 213H TAHT BEATE 3F1. EIOB, D MAANUAD UO EUDITOA 8 ETLADUSTISCAL HEALTH CONDITION AND THE DEFENDANTS STUACHOSTSC 3HT USSUM3 O NOMOSUNOD A 38 LINOD 393HT TAHT, 20,9003A HTLA3H JADIO3N 2TUA/U373/1 SHT OTUI YOOL (LINOHZ, PSUAGHA STUALUSTIZE 3HT TAHT , TUAQUISTISA SHT OT ASTESPEND TIVIN HOWRY 3HT VI 232VOH 38 LINOHZ TUALU373L 3HT TAHT ABUMASTISL OHW, ADTOOL HOPZG 3HT, D. L.D.D TH

HIS GEISURE MEDICATION. THE DEFENDANT DID YOOT 3H 71 TUAGUST3C 3HT CISKER TASBON, 21HT EUIV31/30/310LOGT PUIVAH TUA QU343C 3HT HTICU DID NOT LIVE WITH THE DEPENDANT ANY NORE. LUCE ZH TAHT TUAGUSA3CL 3HT OT UIAIQX3 OT CAH BROTHER THAT HE CAN NOT FIND HIS SOU. KOBERT 2H PUIJST, CUSITIOHDE TASBOY, ASHTOAB ZIH CBJUAD TUAQUETE DEFENDANT NOS SIH AST BUINDANT BATE DIVAG A VI QU 3 YOU TUAQU 373L 3HT E106 HANING A SEIZURE. ON THE MORNING Of LANUARY 6, DIAGNOSED WITH SEIZURES. ALSO DID NOT REMEMBER EU13A A3BURURA TOU OL TUALUSTZL BEING BEHÖBE THE INCLDENT THAT TOOK PLACE, BECAUSE

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· LIOTATE 36 BOLICE CLARRIVING ATA POLICE tic of downershing with police officers on Being 26 MADUSH ON MISTURDEAR ZAFI TURENS 73 L. SHT 99 JUSU3 3HT fo JADSA 2 TUA CUSTSO 3HT HTICL PLACE INSIDE THE HOUSE. WHICH WOLLD CORELATE 06 YOUT TUSGIDUI 3 JOHW 3HT TAHT TRIBUI OT G31STT 3H JJAD SUCH G AZHTOUL NO. PUNDAIG ZUO NUO ZHT ZAW 3H 3d NAN TAHT TJO PU ! JAJQ 3334 JUSHT THOUGHT 3H TAHT 2 plass to auis Thaquat30 3HT 21919 SEUAST ACTIVALL GLASSASSOUT MO SZZAIG GLANIZA TAHW TWOODA ABSULLS IS USRY CONFUSED ABOUT SHT WI TUAQU3f3 J 3HT 3 WIT 3 BU3f3 J 3HT U1 35R3 W TAHT THE INCIDENT. OF THEVERY FEW PHOUS CALL TRANSCRIPT THE INCIDENT AND SECUNE WHERE IN THE MIDST OF 23-47A JAD3A ON 21 3A3HT TOIG 3W221 UA TOU 21 TUBGIOUI 3HT fo ETOSGEA MARAS SHT fo WASSA ETLAGUSTEC SHT. SHOACASH CAG A PLUIDAL 40 BUIALQUED TURQUIS430 3HT 32NAD3B UOTADIO3M ASTUNOD 3HT A3VO 3MOZ MH TARONOAG 3HB CINA LIVED. THE DEFENDANT CALLED HIS MOTHER MICHAEL IS AT HER HOUSE, WHERE MICHAEL NOW USS SITI TATIT, MON JUAD OT TUALUSTED STIT GIST TAZBOM. BELSURE. NOBERT TOLD TAHT, 3003 CIU3 ZAW ZIHT TAHT 3V31J3B TOW

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 WHILLE 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, LINTIL After His REPRESENTATION OF THE DEFENDANT. THE DEFENDANT WAS THEN REPRESENTED by Att. JOHNPARRIS, STAPITESVAI GLUOW 3H TAHT THAT HE WOULD INVESTIGATE THE DEFENDANTS MEDICAL/MENTAL HEALTH RECORDS AT 12 C.C.D.C. BUT NEVER DID. THE DEFENDANT TRIED TO GET 13 BOTH AHORNEY'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 WITHESS STAND, BUT THE STATE OBJECTED BASEDON LACK OF PRIOR KNOWLEDGE AND THE DEFENDANT WAS NOT 20 ALLOWED TO CONTINUE WITH THIS TESTIMONY BECAUSE of LACK of MEDICAL EVIDENCE SUPPLIED TO THE DISTRICT Altorney. THE DEFENDANT WAS ESSENTIALLY FORCED TO REPRESENT HIMSELF MIDWAY THRU THE, JURYTRIAL. 24 THE DEFENDANT WAS TRYING DESPERATELY TO 25 OBTAIN MEDICAL EVIDENCE BEFORE THE TRIAL.

25

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. EVENWITH 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 AMY MEDICAL RECORDS OF THE DEFENDANTS AT THEIR HOUSE. THE MEDICAL REPORTS WERE DISCOVERED 12 IN THE BEGINNING OF MARCH 2014. THE DISTRICT ATTORNEY IN THE STATE'S REPLY COMMENTS: THERE IS NO MEMPHEDICAL DOCUMENTATION OF AMY MEDICAL OR MENTAL ISSUES. EVEN IF THERE IS MEDICALEVIDENCE, It would NOT HAVE ALTERED THE OUTCOME OF THE TRIAL, 18 THERE IS NO INDICATION THAT THE DISTRICT ATTORNEY 19 A PHYSICIAN CAPABLE Of DIAGNOSING MEDICAL CONDITIONS OF WENTAL DISORDERS, ESPECIALLY 20 WITHOUT SEEING THE WEDICAL EVIDENCE OR 22 DOCUMENTS. INLIGHT OF the NEWLY DISCOVERED MEDICAL  $\lambda$ 3 **3**牛 EVIDENCE, THE HONORABLIE JUDGE SHOULD GRANT THE LEFENDANT A NEWTRIAL.

l	INGEL EX REL. ESTATE OF INGLE V YELTON
a	439 F. 3 d 191,197 (4TH CIR 2006) (RULE 59(e)
3	MOTIONS WILL BE GRANTED IN THREE
4	CIRCULISTANCES: (1) TO ACCOLLUDDATE AN
5	INTERVENING CHANGE IN CONTROLLING LAW;
6	(2) TO ACCOUNT FOR NEW EVIDENCE NOT
7	AVAILABLE AT TRIAL;
8	(3) TO CORRECT A CLEAR ERROR OF LAWOR
9	PREVENT MANIFEST INJUSTICE)
10	NRS 176.515 COURT MAY GRANT A
11	NEW TRIAL OR MOTION TO VACATE.
12	JUDGEMENT IN CERTAIN CIRCUMSTANCES:
13	I. THE COURT MAY GRANTA NEW TRIAL
14	TO A DEFENDANT IF REQUIRED AS A
15	MATTER OF LAW OR ON THE GROUND OF
16	NEWLY DISCOVERED EVIDENCE.
17	
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III PROSECUTOR MISCONDUCT TAMPORING WITH WITNESS BY PROSECUTOR. THE D.A. WARIA E. LAVELL READTRANSCRIPTS OF PHONE CALLS TO NORMAN DUPLISSIE, A WITNESS FOR THE STATE, WITH THE LESIRED INTENT 5 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: "WARIA 10 11 BROUGHT UP THE FACT, SOMEWHERE DURING OUR MEETINGS THAT ALL OF YOUR TELEPHONE 12 CONVERSATIONS WERE BEING MONITORED AND THAT 13 SHE HAD COMPLETE TRANSCRIPTS of THESE. I 14 (5 BELIEVE THIS CONVERSATION TOOK PLACE IN THE FIRST PRETRIAL PREPERATION MEETING (OR CONVERSATION) WHICH TRANSPIRED MORETHAN A 17 18 YEAR AGO WHEN I TALKED TO HER PRIVATELY. ACCORDING TO HER, you AND your BROTHER BOBBY 20 HAD A CONVERSATION EARLY ON IN THE PROCESS 21 WHERE BY YOU SAID TO HIM THAT YOU SHOULD HAVE KILLED LITTLE MICHAEL WHILE YOU HAD 22 23 THE CHANCE. 24 /// 25

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 SHEPLANNING 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. PLOT THESE TOGETHER AND MARIA FEELS THAT YOU ARE A DANGER TO THE FAMILY. THESE WERE HER WORDS. I BELIEVE HER (0 ACTIONS AND COMMENTS WERE MADE TO PAINT A VERY DARK PICTURE OF YOU! NORMAN BRINGS 12 13 UP JAN. 25, 2014 AND STATES THAT MARIA AGAIN 14 BROUGHT UP THE PHONE, BUT HE DOES NOT GO INTO 15 DETAIL. HE ALSO STATES THAT HIS TESTIMONY 16 WAS CONSISTENT TO THAT WHICH HETESTIFIED 17 IN FRONT OF SUDGE SULLIVAN IN THE PRELIMINARY 18 HEARING AND THAT HE DOES NOT BELIEVE LIARIA 19 INFLUENCED HIS TESTIMONY, BUT ADDS THAT 20 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 WITHESS WAS TAMPORED WITH BEFORE THE PRELIM 25 HEARING SOTO 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 MUSCONDUCT. STATE V. GARNER 234 OR, App. 486, 228 P. 3 J 710 (2010) CUNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING LISTRIAL DUE TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (I) THE MISCONDUCT IS SO PREJUDICIAL THAT IT CANNOT BE CURED BY WEARS SHORT OF MISTRIAL (2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR EITHER INTENDED OR WAS INDIFFERENT TO THE 17 RESULTING MISTRIAL.) 18 Abuls, 427 U.S. AT 103,968, 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 24 THAT THE TAINTED TESTIMONY COULD HAVE ATTECTED THE SUDGENEUT OF the JURY.

IV INEFFECTIVE COUNSEL
2 'INEFFECTIVE COUNSEL BY PRIOR COUNSEL.'
3 IN THE DEFENDANTS MOTION FOR NEW TRIAL,
4 POINTS AND AUTHORITIES I PROCEDURAL
5 BACKGROUND#4 IS IMPROPERLY WRITTEN: IT SHOULD
6 READ: PRIOR COUNSEL WAS INEFFECTIVE WHEN IN
7 FORCING THE DEFENDANT TO EITHER QIVE UP HIS
8 RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP
9 HISRIGHT TO EFFECTIVE COUNSEL. WHEN THE
10 DEFENDANT INSISTED THAT HEWANTED TO TAKE THE
11 STAND, ATTORNEY GOHN PARRIS, TOLD THE
12 DEFENDANT "IF YOU TAKE THE STAND, I WILL
13 ASK you Two YESOR NO COULESTIONS, THEN TURN
14 you over TO THE D.A. AND LET HERTEAR YOU
15 APART. "BY STATING THAT HE WILL LET HER TEAR
16 ME APART, HE WOULD NOT BE GIVING ME EFFECTIVE
17 COUNSEL IF I TOOK THE STAND, ESSENTIALLY
18 FORCING ME TO EITHER GIVE UP MY RIGHT TO TAKE
19 THE STAND AND TESTIFY ON MY OWN BEHALFOR
20 TO QUEUPMY RIGHT TO EFFECTIVE COUNCIL ACTING IN
21 THE ROWE AS AN ADVOCATE. HE DID NOT IMPLY THAT HE WOULD
22 BE ASKING ONLY TWO YES OR NO QUESTIONS AS A WAY OF
23 PROVIDING SOUND DEFENCE STRATEGY, BUT INSTEAD AS A
24 WEAPON TO PREVENT ME FROM TAKING THE STAND
25 WHICH WAS TAKING AWAY MY RIGHT TO CHOOSE TO TAKE STAND 31
AA 14

Le 94 Se ", JARAA JOU AAZI AZH TZU 478 auf A. O 3HT OT ASVO NON UANT U3HT EUOMESUD ON ઇત SO 234 OWT NOW YEA JUIN I GUATS 3HT 3NAT JOY 23 9II, TUBUSTATE SHT SCAN 3/1 TUIDG TAHT TA, EAW 18 TUSTUI PUN TAHON MAN, 3HT OF VAISA JO OF GUATE 3HT 80 SLAT OF CETURA ITART. CUATE SHT PUILAT TO TUO BUT 61 THE COULD USH TART WOLLY EISBAPT UHO I I I 81 HTIW GIBBAHD ZAW I ZIMBD 3HT 40 TUBUSUB UA LI LUSTRUCTIOUS, WHICH LADE IT QUEAR THAT INTEUT MAND 3HT GASA TUAGUSTS 3HT USHW, HTIW G3DJAHD ZAWIZZZMIGD SHT 40 TAAQ A TOU ZAW TUSTUIT TAHT 3M GJOT ZIASAP WHOL . ZAW TUSTUI MY TAHW HAR OLMOD OHUS UOSASQ PUNO SHIT SAW I TAHIT PUIUS 1/3 CA THSTAIN, IM STATE OT CHATE 3HT 3NAT OF COTMAN I GUATE 3HT SHAT OT 3 LAG DE GRAPAGE PRESER DEPORTED TO HOW GRUD, HE ACTUALLY UEVER EVEN AGKED ME MY VERSION OF SHT3 YATTON OT 3M TER OT CE MANUITURD 3H TENO, 21HT WON'S NOT WART TO LET METAKE AGAIN. I LET LOHN PARRIS CIG TUA CUSTS OF THE SHT SUM OF TUA CUSTS OF 3HT AEARING, ALLOWING THE PUBLIC DEFENDERTO INFLUENCE JARUMUSAG SHT TA CUATE SHT SYAT TOU CIL TUALUS TEL SHT, CHATS SHT SNAT OT (BTUAM) TUACUST3CL SHT T3200 3 DEFENDANT FROST READTHE JURY INSTRUCTIONS. FRONTHE 3HT A3TEA THOLY SDALP PLACE RIGHT AFTER THE

i	THE HONORABUE JUDGE SHOULD GRANT	
2	THE DEFENDANT A NEW TRIAL ON THIS ACT	
3	ALONE, THE DEFENDANT ASSERTS THAT HE	<del></del>
4	WAS FORCED TO EITHER GIVE UP HIS RIGHT TO	<del></del>
5_	TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS	
6	RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.	
7_	DUE TO WHOLLY INADEQUATE ACTIONS OF HIS	
8	RETAINED ATTORNEY, FURTHER, COUNSELS ACTIONS	
9	COMPORT TO NOTHING MORE THAN A VIOLATION	
10	OF DEFENDANTS DUE PROCESS RIGHTS. DEFENDANT	
11	HAS AN UNQUALIFIED RIGHT TO LEGAL ASSISTANCE, THAT EXPRESSES LOYALTY TO SAID DEFENDANT.	
12	THAT EXPRESSES LOYALTY TO SAID DEFENDANT.	
13	THERE FORE, DEFENDANT CONTENDS THAT ALTHOUGH	
14	THE DEFENDANT HAD COUNSEL, THE ACTIONS OF	<del></del> _
15	COUNSEL HAVE CREATED UNFAIR PREJUDICE	<del></del> :
16	AND OBSTACLES WHICH DO NOT COMPORT	
17	THE FAIR PROCEDURES OWED TO THE DEFENDANT.	
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24	. ///	<del></del>
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	33	AA 1436

1	CUYLER V. SULLIVAN 100 S. Ct. 17-8 (1980)	
a	FRAZIER V. U.S. 18F. 3d 778 (9TH CIR 1994)	
3	"THE RIGHT TO COUNSEL IS THE RIGHT ALSO TO	
4	EFFECTIVE ASSISTANCE OF COUNSEL."	
5	ANDERS V. CALIFORNIA 878, Ct. 1396 \$1480 (1967)	
6	THUS, THE ADVERSIAL PROCESS PROTECTED BY	
7	THE SIXTH AMENDMENT RECOURES THAT THE	
8	ACCUSED HAVE "COUNGEL ACTING IN THE RODE	
9	OF AN ADVOCATE".	
10	GALLEGO V. U.S. 174F. 36/196,1197 (11 TH CIR1999)	
U	A CRIMINAL DEFENDANT HAS A FUNDAMENTAL	
12	CONSTITUTIONAL RIGHT TO TESTIFY IN HISORHER	
<u>(3</u>	OWN BEHALF AT TRIAL, THIS IS RIGHT IS PERSONAL TO	
4	THE DEFENDANT AND CANNOT BE WAIVED EITHER BY	
15	THE TRIAL COURT OR BY DEFENSE COUNSEL, WHERE	·
16	COUNSEL HAS REFUSE TO ACCEPT THE DEFENDANTS	
17	DECISION TO TESTIFY AND REFUSED TO CALL HIM	<del></del> -
18	TO THE STAND, OR WHERE DEFENSE COUNSEL	<u></u>
19	NEVER INFORMED THE LEFENDANT OF HIS RIGHT	
20	TO TESMFY AND THAT THE FINAL DECISION BELONGS	
21	TO THE D'EFENDANT ALONE, DEFENSE COUNSEL	
22		<del></del>
23		
24		
25	NOT RECIEVED REASONABLY EFFECTIVE	·
26		
2	· · · · · · · · · · · · · · · · · · ·	
L	34	AA 1437

'INEFFECTIVE COUNSEL BY PRIOR COUNSEL'ALSO INCLUDES TWO SEPERATE CONFLICTS OF INTEREST. INDEPENDENTLY EACH WOULD BE SUFFICIENT GROWNIS FOR A NEW TRIAL, BOTH CONFLICTS OF INTEREST EXISTED PRIOR TO REPRESENTATION AND BOTH CONFLICTS REQUIRED Albrusy JOHN PARRIS TO EITHER DECLINE REPRESENTATION OR DEFENDANT GIVE INFORMED CONSENT, CONFIRMED IN WRITING. THE FIRST CONFLICT OF INTEREST IS THAT NORMAN SuPLISSIE, THE LEGAL GUARDIAN OF MICHAEL, AND A 10 WITNESS FOR THE STATE, WAS THE SOURCE FROM WHICH THE Altorney Sohn Parris was paid, ALTHOUGH THE DEFENDANT 12 WAS AWARE THAT MORMAN DUPLISSIE PAID JOHN PARRIS TO REPRESENT THE DEFENDANT, THERE WAS NEVER A CONVERSATION BETWEEN THE LEFENDANT ON THIS MATTER, LET, ALONE ANY INFORMATION GIVEN TO THE DEFENDANT ABOUT SIGNIFICANT RISKS THAT THIS WOULD ENTAIL. INCLUDING BUT NOT 17 LIMITED TO CROSS-EXAMINATION OF WORMANDUPLISSIE AND 18 CROSS-EXAMINATION OF MICHAEL AMORD. THE SECOND CONFLICT OF INTEREST IS THAT JOHN PARRIS PREVIOUSLY REPRESENTED 20 FOR FREE' THE D.A. MARIAE. LAVELL, WHO IS ASSIGNED TO MY CASE 21 ALTHOUGH THE Att. PARRISWAS RETAINED IN LATE GULY 2013 22 WHICH WAS APPROXIMATELY GMONTHS PRIOR TO THE JURY TRIAL, 23 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.

1 COLES V. ARIZONA CHARLIES 973 F. Supp. 971,975
2 (D. NEV1997)
3 HOLDING THAT ANY DOUBTS AS TO THE EXISTENCE
4 OF A CONFLICT OF INTEREST SHOULD BE RESOLVED
5 IN DISQUALIFICATION.
6 U.S. V. SHWAYDER 312F. 301109,1117(9TH CIR2002)
7 (CONCLUDING THAT THE SEFENDANTS WAIVER OF
8 CONFLICT OF INTEREST WAS NOT VALID WHERE
9 HEWAS NOT ADEQUATELY INFORMED OF THE
10 SIGNIFICANCE OF THE CONFLICTS THAT LUGHT ARISE.
11 CLARK V. STATE 108 NEV324, 326, 831 P. 2d
12 1374,1376(1992)
13 (HOLDING THAT AN ACTUAL CONFLICT OF
14 INTEREST WHICH ANVERSELY AFFECTS A
15 LAWYERS PERFORMANCE WILL RESULT IN A
16 PRESUMPTION OF PREJUDICE TO THE
17 DEFENDANT
18 re Puccinelli, 67 NEV. 645, 224 P. 28318 (1950)
19 AN ATTORNEY WHO REPRESENTED BOTH THE
20 PLAINTIFF AND THE DEFENDANT IN A DISTRICT
21 COURT ACTION WITHOUT PRIOR DISCLOSURE
22 OF HIS APPOINTINENT WAS PROPERLY
23 _SUSPENDED FROM THE PRACTICE OF LAW
24 FOR A PERIOD OF NINE MONTHS.
a5 ///
36 AA 1439

1 RYAN V EIGHTH SUDICIAL DISTRICT COURT OF NEVADA
123 NEV. 419, 168 P. 3d 703 (2007)
3 A WAIVER OF CONFLICT - FREE REPRESENTATION ENTAINS
_ ·
4 THE WAIVER OF CERTAIN IMPORTANT RIGHTS AT TRIAL,
5 ON APPEAL, AND IN POST CONVICTION PROCEEDINGS,
6 INCLUDING WAIVER OF THE RIGHT TO SEEK A MISTRIAL
BASED ON ANY CONFlicts ARISING FROM THE DUAL
8 REPRESENTATION. CONSEQUENTLY, WE NOW
9 REQUIRE Attornys TO ADVISE CRIMINAL DEFENDANTS
10 OF THEIR RIGHT TO CONSULT WITH INDEPENDENT
11 COUNSEL TO ADVISE THEMON THE POTENTIAL CONFlict
12 of INTEREST AND THE CONSEQUENCES OF WAIVING
13 THE RIGHT TO CONFLICT-FREE REPRESENTATION.
14 THE AHDRNEY LUST ADVISE THE CLIENTS TO SEEK
15 THE ADVICE OF INDEPENDENT COUNSEL BEFORE
16 THE ATTORNEY ENGAUGES IN THE DUAL REPRESENTATION. 17 If THE CLIENTS CHOOSE NOT TO SEEK THE ADVICE OF
18 INDEPENDANT COUNSEL, THE CLIENTS MUST EXPRESSIY
19 WAIVE THE RIGHT TO DO SO, BEFORE AGREEING TO ANY WAIVER OF
20 CONFLICT-FREE REPRESENTATION. If THE AHORNEY FAILS TORON
21 READVISE CRIMINAL DEFENDANTS OF THEIR RIGHT TO SEEK
22 THE ADVICE OF INDEPENDENT COUNSEL, THE CLIENTS WAIVER OF
23 CONFLICT- FREE REPRESENTATION ARE INEFFECTIVE UNLESS AND
24 CUTIL THE AHORNEY ADVISES THE CLIENTS TO DO.
25 ///
37 AA 1440

1 RULES OF PROFESSIONAL CONDUCT RULE 1.7
2 CONFLICT OF INTEREST: CURRENT CLIENTS
3 (a) EXCEPT AS PROVIDED IN PARAGRAPH (b), A LAWYER
4 SHALL NOT REPRESENT A CLIENT IF THE REPRESENTATION
5 INVOLVES A CONCURRENT CONFLICT OF INTEREST. A
6 CONCURRENT CONFLICT OF INTEREST EXISTS IF:
7 (i) THE REPRESENTATION OF ONE CLIENT WILL BE DIRECTLY
8 ANVERSE TO ANOTHER CLIENT;
9 (2) THERE IS SIGNIFICANT RISK THAT THE REPRESENTATION
10 OF ONE OR MORE CHENTS WILL BE MATERIALLY LIMITED
11 BY THE LAWYER'S RESPONSIBILITIES TO ANOTHE CLIENT,
12 A FORMER CLIENT OR A THIRD PERSON OF BYA
13 PERSONAL INTEREST OF THE LAWYER.
14 (b) NOT WITHSTANDING THE EXISTANCE OF A CONCURRENT
15 CONFLICT OF INTEREST CUDER PARAGRAPH (2) A
16 LAWYER LIAY REPRESENT A CLIENT IF: (1) THE LAWYER
17 REASONABLY BELIEVES THAT THE LAWYER WILL BE ABLE TO
18 PROVIDE COMPETENT AND DINGENT REPRESENTATION TO EACH Affects)
19 CLIENT (2) THE REPRESENTATION IS NOT PROHIBITED BY LAWS (3) THE
20 REPRESENTATION YOES NOT INVOLVE THE ASSERTION OF A CLAIM
21 BY ONE CLIENT AGAINST ANOTHER CLIENT REPRESENTED BY
22 THE LAWYER IN THE SAME LITIGATION OR OTHER PROCEEDING
23 BEFORE A TRIBUNAL; AND (4) EACH 24 AFFECTED (LIENT LIVES INFORMED
25 CONSENT, CONFIRMED IN WRITING.
27 ///
38
AA 144

1	LOYALTY AND INDEPENDANT JUDGEMENT ARE
2	ESSENTIAL ELEMENTS IN THE LAWYERS RELATIONSHIP
3	TO A CLIENT. A CONFLICT OF INTEREST MAY EXIST BEFORE
4	REPRESENTATION IS UNDERTAKEN, IN WHICH EVENT THE
	REPRESENTATION MUST BE DECLINED, UNLESS THE LAWYER
6	OBTAINS THE INFORMED CONSENT OF EACH CLIENT UNDER
7	THE CONDITIONS OF PARAGRAPH (b) - INFORMED CONSENT,
8	CONFIRMED IN WRITING - I GNORANCE CAUSED BY A
9	CONFIRMED IN WRITING - I GNORANCE CAUSED BY A FAILURE TO INSTITUTE SUCH PROCEDURES WILL NOT
10	EXCUSE A LAWYER'S VIOLATION OF THIS KULE.
11	LOYALTY TO A CUPLENT CLIENT PROHIBITS
12-	UNDERTAKING REPRESENTATION DIRECTLY ADVERSE
13	TO THAT CLIENT WITHOUT THE CLIENT'S INFORMED
4	CONSENT, CONFIRMED IN WRITING. THUS, ABSENT
15	CONSENT, A LAWYER LLAY NOT ACT AS AN ADVOCATE
16	IN ONE MATTER AGAINST A PERSON THE LAWYER
17 -	REPRESENTS IN SOME OTHER MATTER, EVEN WHEN
J	THE MATTERS ARE WHOLLY UNRELATED. THE CLIENT
19 	AS TO WHOM THE REPRESENTATION IS DIRECTLY
ľ	ADVERSE IS LIKELY TO FEEL BETRAYED, AND THE
	KESULTING DAMAGE TO THE CLIENT-LAWYER
22	KELATIONSHIP IS LIKELY TO IMPAIR THE LAWYER'S
23	ABILITY TO REPRESENT THE CLIENT
24 25	EFFECTIVELY.
	<i>//_</i>
	AA 14

1	IN ADDITION, THE CLIENT ON WHOSE BEHALF THE
a	ALVERSE REPRESENTATION IS UNDERTAKEN REASONABLY
	MAY FEAR THAT THE LAWYER WILL PURSUE THAT CLIENTS
	CAGE LESS EFFECTIVELY, OUT OF DEFERENCE TO THE
	OTHER OLIENT, I.E., THAT THE REPRESENTATION MAY bE
•	MATERIALLY LIMITED BY THE LAWYER'S INTEREST
7_	IN RETAINING THE CURRENT CLIENT. IN ADDITION
8	TO CONFLICTS WITH OTHER CURRENT CLIENTS,
9	A LAWYER'S DUTIES OF LOYALTY AND INDEPENDENCE
10_	MAY be MATERIALLY LIMITED BY RESPONSIBILITIES
	TO FORMER CLIENTS. THE LAWYER'S OWN INTERESTS
1a	SHOULD NOT BE PERMITTED TO HAVE AN ADVERSE
13	EFFECT ON REPRESENTATION OF A CLUENT.
14	A LAWYER MAY BE PAIN FROM A SOURCE OTHER
15	THAN THE CLIENT, INCLUDING A CO-CLIENT, IF
16	THE CLIENT IS INFORMED OF THAT FACT AND THE
[7]	ARRANGEMENT DOES NOT COMPROMISE THE LAWYER'S
18	MAY OF LOYALTY OR INDEPENDANT JUDGENENT TO
19	THE CLIENT, IF ACCEPTANCE OF THE PAYMENT
90	FROM ANY OTHER SOURCE PRESENTS A SIGNIFICANT
<u>ا</u> ا	RISK THAT THE LAWYER'S REPRESENTATION OF THE CLIENT
22.	WILL BE MATERIALLY LIMITED BY THE LAWYERS
ત્રર	OWN INTEREST IN ACCOMODATING THE PERSON PAYING
.a4 -	THE LAWYER'S LEES OR BY THE LAWYER'S
25 	RESPONSIBILITY TO A PAYER WHO IS ALSO A.  AA 1443
···	AA 1443

1 CO-CLIENT, THEN THEN LAWYER MUST COMPLY
2 WITH THE REQUIREMENTS OF PARAGRAPH (6), before
3 ACCEPTING THE REPRESENTING, INCLUDING
4 DETERMINING WHETHER THE CONFLICT IS CONSENTABLE,
5 AND, If SO, THAT THE CLIENT HAS ALEQUATE 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 (6) 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 QUENT, TO EXPLAIN THE RISKS AND ADVANTAGES,
17 17 ANY OF REPRESENTATION BURDENED WITH A CONFLICT OF
18 INTEREST, AS WELLAS REASONABLY AVAILABLE ALTERNATIVES,
19 AND TO AFFORD THE CLIENT A REASONABLE OPPORTUNITY TO
20 CONSIDER THE RISKS AND ALTERNATIVES AND TORAISE QUESTIONS
21 AND CONCERNS. RATHER THE WRITING IS REQUIRED IN OPDER
22 TO IMPRESS UPON THE CLIENTS THE SERIOUSNESS OF THE
23 DECISION THE CLIENT IS BEING ASKED TO MAKE AND TO AND
24 DESPUTES OR AMBIGUITIES THAT MIGHT LATER
25 Occur in the Absence of Awriting.
4\ AA 1444

1 FURTHERMORE "INEFFECTIVE COUNSEL BY PRIOR COUNSEL"
2 THE DEFENDANT RECIEVED REPRESENTATION OF A DEFICIENT
3 PERFORMANCE THAT FALLS BELOW AN OBJECTIVE STANDARD OF
4 REASONABLEVESS. SOME OF HIS ACTIONS BE INDIVIDUALLY
5 CONSIDERED SUFFICIENT TO CONCLUDE HIS COUNSEL WAS
6 INEFFECTIVE, OTHER ACTIONS OR LACK THERE OF WOULD BE A
7 CUMULATIVE EFFECT of MUTIPLE ERRORS WHICH VIOLATES A
8 DEFENDANTS CONSTITUTIONAL RIGHT TO A FAIRTRIAL, THE AHORNEY
9 JOHN PARRIS DID NOT CONSUCT ASEQUATE PRE-TRIAL INVESTIGATION
10 TO PREPARE A DEFENSE, HE DID NOT LOOKINTO MEDICAL
11 EVIDENCE OR INTERVIEW POTENTIAL WITNESSES, HE DID
12 NOT CROSS EXAMINE WITNESSES, AND HIS CROSS EXAMINATION
13 OF OTHERS WAS VERY LACKING, BASICALLY REPEATING THE
14 QUESTIONS OVER THAT THE DISTRICT AHORNEY ASKED ALREADY.
15 HIS OPENING STATEMENT WAS TO COMPLIMENT THE STATE
16 ON QIVING A GOOD OPENING STATEMENT AND A DESCRIPTION
17 OF WHAT AN OPENING STATEMENT SHOULD CONTAIN,
18 TOWNSHAM ROM WHICH BY HIS OWN DEFINITION OF A
19 GOOD OPENING STATEMENT HIS WOULD NOT HAVE PASSED AS
20 A GOOD OPENING STATEMENT. FOLLOWED BY AN INSTRUCTION
21 TO THE JURY TO WAIT TO HEAR ALL THE EVIDENCE BEFORE
22 COMING TO A CONCLUSION. YET HIS INTENTION WAS
23 TO NOT PRESENT A DEFENSE. HE DID NOT PREPARE
24 GURY INSTRUCTIONS AND HE DID NOT REQUEST FOR THE
25 JURY TO HAVE THE OPMON OF A LESSER INCLUDED
26 offense.
27 ///
42 AA 144

•

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 WAS EVIDENCE TO PRESENT A LEFENSE. WARNER V STATE, 102 NEV. 635, 729 P. 22 1359 (1986) FAILURE TO CONTACT WITNESSES, INEFFECTIVE 8 RESISTANCE OF COUNSEL WITNESSES NEVER 9 CONTACTED. THE COURT REVERSED AND CONCLUDED THAT TRIAL COUNSEL'S FAILURE TO INVESTIGATE 16 AND LACK Of PREPERATION FOR TRIAL LEFT THE lα INNATE WITHOUT & DEFENSE AT TRIAL. THE 13 COURT REVERSED THE JUDGEMENT OF CONVICTION 14 AND REMANDED THE CASE FOR A NEW TRIAL. PROFESSIONAL RULES OF CONDUCT RULE 1 15 COMPETENCE: A LAWYER SHALL PROVIDE 16 COMPETENT REPRESENTATION TO A CLIENT, 17 COMPETENT REPRESENTATION REQUIRES THE 18 19 LEGAL KNOWLEDGE, SKILL, THURIOUGHNESS, AND 20 PREPERATION KEASONABLY NECESSARY FOR THE 21 REPRESENTATION PROFESSIONAL RULES OF CONDUCT RULE 3 22 23 Dilligence: LAWYER SHALLACT WITH REASONABLE 24 DILLIGENCE AND PROMPTNESS IN REPRESENTING 25 A CLIENT.

SANBORN V. STATE 107 NEV. 399; 812 p. 2d 1279; 1991 NEV. LEX 107 SANBORNS OWN TESTIMONY WAS STRONGLY DEVALUED BY THE ABSENCE OF CORROBORATIVE EVILLENCE THAT WOULD HAVE BEEN PRESENTED BY DILLIGENT AND EFFECTIVE COUNSEL, SANBORN INSISTS THAT BEFORE TRIAL, HE HAD PROVIDED HIS AHORNEY 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 10 EMPHASIZES HIS COUNSELS FAILURE TO CONDUCT ALEQUATE PRE-TRIAL INVESTIGATION AND TO 13 PRESENT TRIAL EVIDENCE. SANBORNS DEFENSE. WAS CLEARLY PREJUDICED BY HIS COUNSELS FAILURE TO DEVELOP AND PRESENT EVIDENCE THAT WOULD HAVE COPROBORATED SANBORNS TESTIMONY BECAUSE OF COUNSELS LACK OF DUE DILIGENCE SAMBORN WAS DEPRIVED 18 Of THE OPPORTUNITY TO PRESENT TESTIMONY 20 MATERIAL TO HIS LEFENSE. 21 22 23 24

	THE DEFENDANT FIRST WET ATTORNEY	
2	LOHN PARRIS ON AUGUST 5TH 2013. AT THE	
3	END OF THE ATTORNEY VISIT, THE AHORNEY PARRIS TOLD	<del></del>
4	THE DEFENDANT HE WOULD SEE HIM AGAIN IN A COUPLE	
5	OF WEEKS. OUTSIDE SEEING THE ATTORNEY IN THE COURT	
6	ROOM, THE DEFENDANT DID NOT SEE THE ATTORNEY	·
7	AGAIN UNTIL 6 MONTHS LATER, LESS THAN A WEEK	
8	BEFORE JURY SELECTION AND TRIAL WAS TO BEGIN.	<u>.</u>
	AT THE INITIAL CONSULTATION THE AHORNEY PARRIS WAS INFORM	<u></u>
10	BY THE DEFENDANT THAT THE DEFENDANT WAS NOT HAPPY	چے محسن میسور
11	WITH THE SERVICE PROVIDED BY P.D. DAN JENKINS BECAUSE	
12	THE PUBLIC DEFENDER WOULD NOT OR DID NOT LOOKINTO	
13	THE DEFENDANTS LLEDICAL CONDITION, ALSO BECAUSE THE	
	PUBLIC DEFENDER SEEMED TO HAVE NOT ENOUGH TIME TO	
15	DEDICATE TO THE DEFENDANT CASE TO PROPERLY DEFEND HIM.	
16	THE DEFENDANT BRIEFLY EXPLAINED HIS MEDICAL	<del>_</del>
17	CONDITION AND THE EVENTS OF THE DAY OF THE INCIDENT	
18	AND THE PEOPLE WHO COULD VERIFY THIS TO THE ALBRNEY.	
19	THE AHORNEY EXPLAINED TO THE DEFENDANT THAT THE	
20 	Attorney would Look into THESE CIRCUMSTANCES AND	
21	GET BACK WITH THE DEFENDANT ABOUT WHAT THE BEST	
	DEFENSE STRATEGY IS OR THE OPTIONS AVAILABLE AND ALSO	<b></b> -
23	DETERMINE IF WE NEEDED TO SEEK EXPERT ANALYSIS.	
24	WHATE CHARLE SURFIE SERVENING PRINCE SERVENING SERVENING THE GALANT VALUE IND	<u> </u>
25	MANAGEMENT THATESA PARTICIPATION PARTICIPATION STATEMENT	
		A 1448

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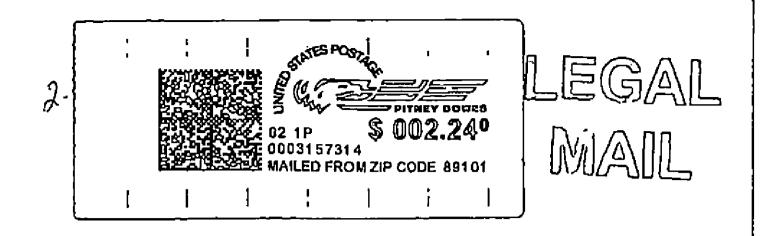
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<del></del>
1 THIS SHOULD NOT BE VIEWED AS HUDSIGHT
2 BECAUSE THE DEFENDANT WAS IN COMPLETE
3 DISAGREENENT WITH THE AHDRNEY AS THE EVENTS
4 WERE TAKING PLACE, WHICH INCLUDES DURING
5 THE JURY SELECTION PROCESS, THE OPENING STATEMENT,
6 His Cross Examination of Norman DuPLISTIE, PATRICIA
7 DUPLISSIE, HIS ASSOSIATES CROSSEXAMINATION OF MICHAEL,
8 HIS LACK OF PREPAREDNESS TO CROSS EXAMINE THE
9 EXPERT WITHESS, WHICH HE CHOOSE NOT TO CROSS
10 EXAMINE, HIS DECISION TO NOT PRESENT OR
11 INTERVIEW ROBERT SCHOFIELD, HIS CHOICE NOTTO
12 LOOK INTO LIEDICAL RECORDS, THE ATTORNY NOT
13 TELLING THE DEFENDANT THAT HE WILL NOT BE
14 PRESENTING A DEFENSE, NOT BRINGING THE
15 DEFENSE CASE FILE WITH HIM TO THE TRIAL, THE
16 AHORNEY NOTHANING A CLOSING ARGUNENT
17 STATEMENT PREPARED, HIS ASSOCIATE CURITING
18 IT WHILE THE STATE PRESENTED THEIR WILLIAM
19 CLOSING STATEMENT, THE ASSOCIATES UNWILLINGUESS
20 TO OPERATE THE TELEPROMPTER DURING CLOSING
21 ARQUINENT, DECIEVING THE CLIENT ABOUT TRIAL
22 STRATERY PRIOR TO THE START OF TRIAL, AND
23 ESSENTIALLY LEHING THE DEFENDANT KNOW THAT THE
24 DETENDANT HAS NO KOLE IN CHOOSING HOW DETENDANT
25 WILL BE REPRESENTED.
46 AA 1449

1 THERE HAS BEEN THREE CIRCUMSTANCES IN MY CASE	·
2 IN WHICH ERRORS HAVE BEEN MADE IN THE TRANSFERRING	
3 OF LEGAL DOCUMENTS IN THIS CASE. THEY ARE () THE	
4 STATE CLAIMS TO HAVE NOT RECEIVED A LEHER FROM	
5 PATRICIA DUPLISSIE, OR RECEIVED A COPY OF THIS LETTER	
6 IN THE EXCHANGE OF DISCOVERY @ THE AttorNEY COHN	
7 PARRIS DELIVERED TO THE DEFENDENT THE DEFENSE	
8 CASE FILE-NOT USING A DELIVERY SERVICE-THE DEFENDANT	, 
9 RECEIVED THE DEFENSE CASE FILE ON MARCH 19,2014	
10 WITH NU POST DATE AHACHED, THIS FILE IS MISSING	
11 NUMEROUS ITEMS THAT WOULD BE BENEFICIAL TO THE	
12 DEFENDANT TO HAVE. FOR INSTANCE THE 911 TRANSCRIPT,	
13 THE PHONE TRANSCRIPTS THAT THE D.A. READ TO	
14 MORNAN BUPLISSIE, EXHIBIT#16, ANY AND ALL POLICE	
15 REPORTS OF THE DEFENDANTS PREVIOUS ENCOUNTERS	
16 WITH LAW ENFORCEMENT, ANY WORK WHATSOEVER THAT	
17 THE AHORNEY DID TO CONTRIBUTE TO THE DEFENSE OF	
18 THE DEFENDANT, INCLUDING INTERVIEWS WITH POTENTIAL	<u></u>
19 WITNESSES OR ACTUAL WITNESSES, HIS CONTRIBUTION TO	
20 JURY INSTRUCTIONS, ETC. (3) COURT TRANSCRIPTS OF THE	
21 JURY SELECTION AND JURY TRIAL NEVER RECEIVED BY	
22 THE DEFENDANT. DUE TO THIS THE DEFENDANT DOES NOT	<del></del>
23 FEEL CONFIDENT THAT THE EXHIBITS WILL REACH THEIR	
24 DESIRED DESTINATION, FOR THIS REASON THE DEFENDANT	
25 WILL BRINGTHE EXHIBITS TO COURT WITH HIMON	
26 UAY 28,2014,	·
27	
47	AA 1450

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MICHAEL J. SCHOFIELD #1679195 330 S. CASINO CENTER LAS VEGAS NEUADA &9101



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

AA 1452

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### EXHIBIT 6

1	-10 del
MC PP	MICHAEL J. SCHOFIELD DISTRICT CLERKOFTHE COURT
DA 6	INMATE #1679195 CLARK COUNTY
•	330.S. CASINO CENTER WEVALA
4	LAS VEGAS NEVADA 89101
5	DEFENDANT IN PROPER PERSON
6	CRSENO. C-13-287009-1
7	STATE OF NEVALA DEPT NO. 6
-8	PLAINTIFF LOCKETT NO.
9	VS
10	MICHAEL J. SCHOFIELD
11	DEFENDANT DATED JUNE 5, 2014
12	
13	DEFENDANTS AMENGUN II TO MOTION
14	FOR NEW TRIAL
15	COMES NOW DEFENDANT IN PROPER PERSON
<i>ما</i> ا	AND HEREBY SUBMITS THE ATTACHED EXHIBITS
17_	TO Support THE REFENDANTS MOTION FOR NEWTRIAL,
18	DEFENDANTS RESPONSE TO OPPOSITION, DEFENDANTS
19	ADDENDUM REPLY.
20	Mchael Jschofield
21	MICHAEL J. SCHOFIELD
22	DEFENDANT IN PROPER PERSON  RECEIVED  RECEIVED
23	RECEIVED
77	<del></del>
25	CLERK OF THE COURT

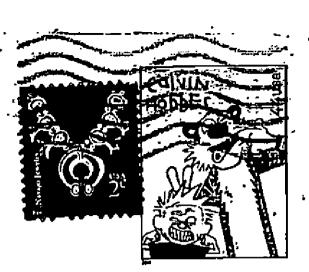
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Patricia Duplissie. 1111 Aspen Breeze Ave. Las Vegas, NV 89123

Copy of LETTER TO THE D.A. LAS VEGAS NV 890 LAS VEGAS NV 890

02 MAY 2013 PM 5 L 02 MAY 2013 PM 5 L



Clark County Public Referder
309 South 3nd Steel
309 South 3nd Steel

2nd floor
Las Vegas, NV 89155

Las Vegas, NV 89155

EXHIBIT A

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

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

Attn: Dan Jenkins

Re: Michael John Schofield Case #13F00320X/C287009

May 1<sup>st</sup> 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 1<sup>st</sup> degree and the charge of kidnapping in the 1<sup>st</sup> 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 1<sup>st</sup> degree should be dropped or at least reduced to a 2<sup>nd</sup> degree status.

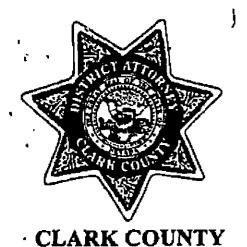
It was alleged in court that Michael John had an assigned day each week where he was allowed to visit with Michael Joshua. This is not true. Since we assumed guardianship of Michael Joshua in 2001 we have tried our best to maintain a normal relationship between father and son insofar as possible. We 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, Latraca Duplisiu

Patricia Duplissie



### EXHIBIT B

#### OFFICE OF THE DISTRICT ATTORNEY CLARK COUNTY, NEVADA

**DISCOVERY DIVISION DA ADMINISTRATION** 

#### REQUEST FOR DISCOVERY

District Attorney ☐ APPOINTED COUNSEL DISCOVERY INFORMATION ☐ RETAINED COUNSEL Request Date: \_\_\_\_\_ Clerk's Initials: \_\_\_\_\_\_ ☐ PUBLIC DEFENDER/SPECIAL PUB DEF Juvenile/efile pages @ \$.25 ca \_\_\_\_\_ # of Pages hard copy @ \$.50 ea 99 Date: ////: Case #: \_\_\_\_\_\_ Duplication of Video/CD/Tapes/Disk @ \$25.00 ea \_\_\_\_\_ Printed Pictures @ \$1.00 ea \_\_\_\_\_ Amount Due: 7.00 Bates Stamp: to\_\_\_\_\_ ATTORNEY INFORMATION email address: 
 Bar #:
 Name:
 0.70 / 7-22.5
 Phone:

 Signature:
 0.00 / 0.00 / 0.00 / 0.00
 Date:
 13 7.10 / 0.00

#### 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

#### <u>STATE'S REQUEST FOR DISCOVERY</u>

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

	III EXHIBIT (	ł
<u> </u>	ILEGIONIAL JUSTICE CENTER	ļ
	200 LEWIS AVE	
1	MICHAEL J. SCHOFIELD	
2	Inmate No. 1679195 330 S. Casino Center Blvd. Las Vegas NV 89101  DIST 6.	
3	Las Vegas, NV 89101 Defendant in Proper Person  UDGE (ADISE)	
4	Las Vegas. NV 89101 Defendant in Proper Person  Las Vegas. NV 89101  Defendant in Proper Person  Las Vegas. NV 89101  Defendant in Proper Person  Las Vegas. NV 89101	
J	JOHN PARRIS ESQ CLERK OF THE COURT ON THE DISTRICT COURT	
نَّ ا	(1 105) COS 0 100	
7	IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA	, 
8	THE STATE OF NEVADA.	
ō.	- アープログル 2011 - 1011	
10	1 CASENO C-13-287009-1	
11	) )	·
12	MICHAEL J. SCHOFIELD. J. D.: August 13, 2013	
13	Defendant.	
14	MOTION TO DISMISS COUNSEL AND	
15	APPOINTMENT OF ALTERNATE COUNSEL	
16	COMES NOW Defendant, MICHAEL J. SCHOFIELD, in Proper Person, and respectfully	
17	moves this honorable court to appoint other counsel to represent this Defendant.	
18	This Motion is based upon all the records and files in this action. Points and Authorities.	
19	Affidavit of the Defendant, and any argument adduced at the time of hearing of this Motion.	
20		
	MICHAEL J-SCHOFFED	
<b>:</b> :	Defendant in Proper Person	
22	MENINA DILLES OF ADDELLATE PROCESURE	
23	NEVADA RULES OF APPELATE PROCEDURE RULE 4 (A)(7) (ANOIDING 2501 FILING FEE)	
24		
25	RULE 4(B)(1)(A) 30 DAYS TOFILE PAINDED NOT OF APPEAL.	RE.
26	RULE 4 (B)(1)(A) DO DAYS 101 102 OF APPEAL.	
27	RULE 4 (B)(5)(B) 20 DAYS to FILE	
28	<del></del> ,	
	FORM 1 IN THE APPENDIX OF FORMS IS	
	Suggestin form of A NOTICE of PPPEDI.	
11	Rule 4 (B)(3)	

AA 1461

#### **NOTICE OF MOTION**

TO: DISTRICT ATTORNEY, Defendant in Proper Person

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YOU AND EACH OF YOU. WILL PLEASE TAKE NOTICE that the undersigned will bring this MOTION on for hearing before the District Court Dept. YXX on the 13 day of Avg. 2013. at 2013. at 2013. at 2013. at 2013.

DATED this Aday of Older 2013.

MICHAEL J. SCHOFFELD

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.

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- 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.

#### H. 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." <u>Cuvler v. Sullivan</u> 100 S.Ci. 17-8 (1980); and <u>Frazier v. U.S.</u> 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." <u>Anders v. California</u>, 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

AA 1463

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(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 tack thereof, and a "showing" of conflict of interest requires no showing of prejudice. <u>Cuyler v. Sullivan</u>, 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) <u>Griffin v. Illinois</u>. 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.

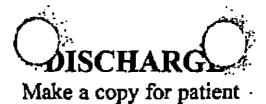
Dated this day of \_\_\_\_\_\_. 2013.

MICHAEL J. SCHOFIELD Defendant in Proper Person

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	II NEWLY DISCOVERED EVIDENCE	
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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		
						itinue Iome?
1	TURK	1 1/11/5	0.74	As naded		SNC
2	Multiplaneum	1 1/10	lid	AS MORACA		SNC
3	Keppra	500mg	oral	twice a day	7/4/12 YE	SNO
4						S/NO
5					YE	S/NO
6					YE	S/NO
7					YE	S/NO
8	·	1			YE	S/NO
9					YE	S/NO
10					YE	S/NO
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n-patient medications should be added for a complete list of Discharge Medications. Indicate whether to continue or liscontinue in-patient medications upon discharge.

This list of medications was created in consultation with your physician and/or derived from your physician's discharge orders.



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

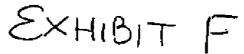
PATIENT IDENTIFICATION

St. Rose Dominican Hospitals

**MEDICATION RECONCILIATION** 

Page 2 of 2 Chart Copy Pt#: 33014697 MR#: 689494 SCHOFIELD ,MICHAEL J 07/02

10/03/1965 , M 46 ADR: AKBAR TANVEER PDR: 07/02/12 Rm: MED Bd: 0360P



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 Contributor\_system, SRDHRAD on 03 July 2012 14:06

Verified By: 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 7/3/2012 2:06:16 Ordering

Akbar, Tanveer

Time:

PM PDT

Physician:

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 extraoxial fluid collection,

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Aceves, Tanya RN

Printed on:

07/04/12 11:24

Page 1 of 2 (Continued)

#### ' 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 ethracid 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

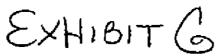
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#### **Completed Action List:**

\* VERIFY by Contributor\_system, SRDHRAD on 03 July 2012 14:06 \* Order by Contributor\_system, SRDHRAD

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Page 2 of 2 (End of Report)



#### NOT FERMANENT 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 prelonged 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

Printed by:

Aceves, Tanya RN

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07/04/12 11:24

Page 1 of 2 (Continued)

#### NOT RERMANENT 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: Printed on: Aceves, Tanya RN 07/04/12 11:24

Page 2 of 2 (End of Report)

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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. <u>I believe</u> 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.

-4.1,

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.

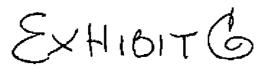
On April 9, 2014, the day of your scheduled sentencing, Marie called mom out into the hallway and told her that the sentence she was going to request was to be longer than we originally understood and that a sentence would be requested for each of the two violations that you were found guilty of. In 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

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#### **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		Visitor Last Name	Visitor First Name	Visitor Middle Name
1	0001679195	LVMPD-NT-7E-19-5; :	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	ĽEG	PD	JENKINS	DANIEL	NULL
3	0001679195	LVMPD-NT-7E-19-S; :	SCHOFIELD	MICHAEL	05-Aug-13 14:55:00	LEG	ATT	PARRIS	ЈОНИ	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

04/05/11317:00 PM 375189 Confirmation #: Visitation Time:04/05/13 7:00 PM-7:25 PM Status:Completed Inmate ID inmate Name Inmate Station Inmate Housing 0001679195 Schofield, Michael John NT-2-4 NT-7E:2W Visitor Station Visitation Center VS-44 Clark County Visitation Relationship To Inmate Check-in Time Check-out Time Visitor ID Visitor Name 6:16 PM FPUD-64169 Parent Patricia Duplissie R8ED-65482 Michael J Schofield Child 6:16 PM 04/21/13 1:00 PM 380842 Visitation Time:04/21/13 1:00 PM-1:25 PM Confirmation #: Status:Completed Inmate ID Inmate Name Inmate Station Inmate Housing 0001679195 Schofield, Michael John NT-2-5 NT-7E:2W **Visitor Station** Visitation Center VS-12 Clark County Visitation Visitor Name Relationship To Inmate Check-in Time Visitor ID Check-out Time 12:32 PM FPUD-64169 Patricia Duplissie Parent Child 12:32 PM R8ED-65482 Michael J Schofield 05/11/13 8:00 AM Confirmation #: Status:Completed Visitation Time: 05/11/13 8:00 AM-8:25 AM 390465 Inmate Name Inmate Housing Inmate Station Inmate ID 0001679195 Schofield, Michael John NT-2-4 NT-7E:2W Visitor Station Visitation Center VS-05 Clark County Visitation Visitor Name Relationship To Inmate Check-in Time Check-out Time Visitor ID FPUD-64169 Patricia Duplissie Parent 7:38 AM Child 7:38 AM R8ED-65482 Michael J Schofield 08/20/13 10:00 AM Status:Completed Confirmation #: 435306 Visitation Time:08/20/13 10:00 AM-10:25 AM Inmate Name **Inmate Station** Inmate Housing Inmate ID 0001679195 Schofield, Michael John NT-9EF-1 NT-7E:2W Visitor Station Visitation Center VS-35 Clark County Visitation Check-out Time Relationship To Inmate Check-in Time Visitor ID Visitor Name 9:33 AM FPUD-64169 Patricia Duplissie Parent R8ED-65482 Michael J Schofield Child 9:33 AM n 1/04/13 9:30 AM Visitation Time: 11/04/13 9:30 AM-9:55 AM Confirmation #: 470595 Status:Completed Inmate ID inmate Name Inmate Station Inmate Housing 0001679195 Schofield, Michael John ST-4L-2 NT-7E:2W Visitation Center Visitor Station VS-03 Clark County Visitation Visitor ID Visitor Name Relationship To Inmate Check-in Time Check-out Time FPUD-64169 Parent 9:12 AM Patricia Duplissie R8ED-65482 Michael J Schofield Child 9:12 AM

Report Time: 4/4/2014 9:11 AM

Page 2 of 4

14/11/13/9:30 AM Confirmation #: Visitation Time: 11/11/13 9:30 AM-9:55 AM 472146 Status:Completed Inmate ID Inmate Name Inmate Station Inmate Housing Schofield, Michael John 0001679195 ST-4L-1 NT-7E:2W Visitation Center Visitor Station **VS-17** Clark County Visitation **Visitor Name** Relationship To Inmate Visitor ID Check-in Time Check-out Time FPUD-64169 9:15 AM Parent Patricia Duplissie R8ED-65482 Michael J Schofield Child 9:15 AM H1/16/13 1:00 PM Confirmation #: 474023 Visitation Time:11/16/13 1:00 PM-1:25 PM Status:Completed Inmate Name Inmate Station Inmate Housing Inmate ID 0001679195 Schofield, Michael John ST-4L-1 NT-7E:2W Visitation Center Visitor Station VS-16 Clark County Visitation Relationship To Inmate Visitor ID Check-in Time Check-out Time Visitor Name Robert F Schofield PD4G-64170 12:39 PM Sibling or Half Sibling LEUD-78714 Rosa Schofield Brother-in-Law or Sister-in-12:39 PM 111/29/13 10:00 AM Visitation Time: 11/29/13 10:00 AM-11:05 AM 481396 Status:Completed Confirmation #: Inmate Station Inmate Name Inmate Housing Inmate ID NT-3B-5 0001679195 Schofield, Michael John NT-7E:2W Visitor Station Visitation Center VS-27 Clark County Visitation Check-out Time Relationship To Inmate Check-in Time Visitor ID Visitor Name Parent 9:48 AM FPUD-64169 Patricia Duplissie 112/23/13 10:00 AM Confirmation #: 491648 Status:Completed Visitation Time: 12/23/13 10:00 AM-10:25 AM Inmate Station Inmate Name Inmate Housing Inmate ID Schofield, Michael John NT-3B-1 0001679195 NT-7E:2W Visitation Center Visitor Station VS-12 Clark County Visitation Visitor ID Relationship To Inmate Check-in Time Check-out Time Visitor Name Parent FPUD-64169 Patricia Duplissie 9:45 AM R8ED-65482 Michael J Schofield Child 9:45 AM 01/22/14 2:04 PM Visitation Time:01/22/14 2:04 PM-2:34 PM Confirmation #: 506242 Status:Completed Inmate Name Inmate ID **Inmate Station** Inmate Housing 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitor Station **Visitation Center** VS-56 (Priv.) Clark County Visitation Check-in Time Visitor ID Visitor Name Relationship To Inmate Check-out Time P38S-1554 John Parris 2:05 PM Attorney

Report Time: 4/4/2014 9:11 AM

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C3/04/14 10:00 AM Confirmation #: 523816 Status:Completed Visitation Time:03/04/14 10:00 AM-10:25 AM Inmate Station Inmate ID Inmate Name Inmate Housing 0001679195 Schoffeld, Michael John NT-7EF-1 NT-7E:2W Visitor Station **Visitation Center** VS-41 Clark County Visitation Relationship To Inmate Check-in Time Check-out Time Visitor ID Visitor Name Patricia Duplissie Parent 9:50 AM FPUD-64169 Michael J Schofield Child 9:50 AM R8ED-65482 D3/09/14 10:00 AM Visitation Time:03/09/14 10:00 AM-10:25 AM Confirmation #: 525063 Status:Completed Inmate Station Inmate ID Inmate Name Inmate Housing 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitor Station Visitation Center VS-28 Clark County Visitation Relationship To Inmate Visitor Name Check-in Time Check-out Time Visitor ID FPUD-64169 Parent 9:55 AM Patricia Duplissie R8ED-65482 Michael J Schofield Child 9:55 AM D3/21/14 12:13 PM Confirmation #: 532444 Status:Completed Visitation Time:03/21/14 12:13 PM-1:03 PM Inmate Name Inmate Station Inmate Housing Inmate ID Schofield, Michael John NT-7EF-1 0001679195 NT-7E:2W Visitation Center Visitor Station VS-59 (Priv., Dual) Clark County Visitation Relationship To Inmate Visitor ID <u>Vis</u>itor Name Check-in Time **Check-out Time** Probation Officer M5HI-132 12:13 PM Robert Farley 04/02/14 7:30 PM Confirmation #: Visitation Time:04/02/14 7:30 PM-7:55 PM 537904 Status:Completed Inmate Name Inmate Station Inmate ID Inmate Housing 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitation Center Visitor Station VS-61 (Priv., Dual, ADA) **Clark County Visitation** 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 Visitation Time:04/02/14 8:00 PM-8:25 PM Status:Completed Inmate Station Inmate ID Inmate Name Inmate Housing 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitation Center Visitor Station VS-05 Clark County Visitation Visitor ID Relationship To Inmate Visitor Name Check-in Time Check-out Time PD4G-64170 Robert F Schofield Sibling or Half Sibling 7:57 PM Brother-in-Law or Sister-in-LEUD-78714 Rosa Schofield 7:57 PM

Report Time: 4/4/2014 9:11 AM

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Philip J. Kohn, Public Defender • Daron B. Richards, Assistant Public Delander

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239 S Triff St - Second Floor - PO Box 552810 : Les Vegas NV Box 54785

ST13-254 (SOT) AST · 5889-324 (SOT)



**Resouti**W

Phillip J. Kohn, Public Defender • Daren B. Richards, Aszistem Public Defender

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### EXHIBIT 7

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

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

Attn: Dan Jenkins

Re: Michael John Schofield Case #13F00320X/C287009

May 1<sup>st</sup> 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 1<sup>st</sup> degree and the charge of kidnapping in the 1<sup>st</sup> 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 1<sup>st</sup> degree should be dropped or at least reduced to a 2<sup>nd</sup> 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

Latricia Duplisse

## EXHIBIL 8

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. <u>I believe</u> 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

### 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

Exam Date and 7/3/2012 2:06:16 Ordering

Contrast

Time:

PM PDT

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 angloma within the right frontal lobe medially. This is adjacent to the right frontal horn. There is no extraoxial fluid collection.

Printed by:

Aceves, Tanya RN

Printed on:

07/04/12 11:24

Page 1 of 2 (Continued) ' 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 ethracid 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

Page 2 of 2 (End of Report)

## EXHIBIT 10

```
Great. Okay. It says, "Every
 1
              THE DEFENDANT:
   person who takes, leads, entices or carries away --
 2
 3
              THE COURT: Right.
 4
              THE DEFENDANT: -- or detains any minor with the
 5
    intent to keep, imprison or confine the minor from his
 6
   parents --
              THE COURT:
                         Right.
 8
              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,
10
    "Did willfully, unlawfully, feloniously and without authority
11
12
    of law."
13
              THE COURT:
                          Yes.
14
              THE DEFENDANT: That is the major flaw because if
15
   you have the authority of law, which would be the parent,
16
   permission to take the child, then that -- it says every
17
   person and it does not mention that in this jury instruction.
18
              THE COURT: The jury instruction correctly reflects
19
   Nevada law.
              THE DEFENDANT: It does? It doesn't state the
20
21
   authority of law.
              THE COURT: Okay, I've ruled. What's your next
22
23
    issue?
                              This is --
24
              THE DEFENDANT:
25
              THE COURT: I'm not having an argument with it.
```

## EXHIBIT 11

```
mom and her -- and Norman bought me a car, and --
 1
 2
              THE COURT:
                          Okay, sorry, the question was about why
3
   you had given them guardianship, so I think you answered
 4
    that.
 5
              THE WITNESS: Okay.
 6
              MS. LAVELL: Your Honor, do you want us to do
7
    follow-ups on each individual question or at the end?
 8
              THE COURT: At the end.
 9
             MS. LAVELL: Okay.
              THE COURT: Okay. Were you ever officially
10
   diagnosed with seizure disorder?
11
              THE WITNESS: Yeah, I take -- when -- right --
12
13
   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
14
15
   got here --
16
              THE COURT: So is that -- just the question is
   whether you were diagnosed with seizure disorder?
17
18
                            I take medication for -- I took
              THE WITNESS:
19
   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
20
21
    going to a doctor to get it.
                                  So I don't even know what
22
    doctor gave -- did -- some doctor did prescribe me Depakote.
23
              THE COURT: And it's your understanding that that's
    for a seizure disorder?
24
25
              THE WITNESS:
                            Yes.
```

Verbatim Digital Reporting, LLC ◆ 303-798-0890

## EXHIBIL 18

1 THE COURT: Okay. Were you ever officially 2 diagnosed with memory loss? 3 THE WITNESS: I was in the process of going to, I 4 think, it was a psychiatrist somewhere by St. Rose Hospital, 5 and that was trying to find out what -- why was it that I would have a complete -- like I can remember my phone number 7 as a child or my address, but some of -- or things exactly 8 what they were, I thought -- I think I could, and --9 THE COURT: Did you get to a point that you 10 actually had a diagnosis? 11 No. What they were doing is they THE WITNESS: 12 were sending me for a PET scan to find out where there would 13 be --14 THE COURT: Okay. 15 THE WITNESS: -- possibly something that would --THE COURT: 16 Okay. THE WITNESS: -- spot, specks or something on the 17 brain because of boxing and --18 19 THE COURT: Okay. 20 THE WITNESS: -- and here what they --21 THE COURT: But you never got the diagnosis? 22 THE WITNESS: The diagnosis from in here was that 23 he suspected that I --24 Your Honor, I'm going to object at MS. LAVELL: this point. He's either gotten a diagnosis or he hasn't 25

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## 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,

Electronically Filed Mar 20 2015 08:24 a.m. Tracie K. Lindeman Clerk of Supreme Court

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)

TITLE	DATE FILED /DATE OF TRANSCRIPT	VOLUME	PAGE
Amended Information	1/27/2014	I	0020
Amended Notice of Appeal	8/26/2014	VII	1564
Defendant's Addendum II to Motion for New Trial	6/12/2014	VI	1309
Defendant's Addendum Reply to State's Reply to Defendant's Response to State's Opposition to Defendant's Motion for New Trial	5/22/2014	V	1244
Defendant's Motion for New Trial	3/28/2014	V	1224
Defendant's Motion to Vacate Verdict	5/30/2014	VI	1294
Defendant's Notice of Appeal	3/6/2014	V	1217
Defendant's Petition for Writ of Habeas Corpus	3/7/2013	Ι	0005
Defendant's Reply to State's Opposition to Defendant's Motion to Vacate Verdict	7/3/2014	VII	1545
Defendant's Response to State's Opposition to Defendant's Motion for New Trial	4/15/2014	V	1236
Information	1/29/2013	Ι	0001
Judgment of Conviction	7/28/2014	VI	1563
Jury Instructions	2/3/2014	V	1186
Jury Trial Transcripts, Day 1	1/27/2014	I	0023

Jury Trial Transcripts, Day 2	1/28/2014	I	0186
Jury Trial Transcripts, Day 3	1/29/2014	II	0456
Jury Trial Transcripts, Day 4	1/30/2014	III	0637
Jury Trial Transcripts, Day 5	1/31/2014	IV	0934
Jury Trial Transcripts, Day 6	2/3/2014	V	01178
Order Denying Defendant's Petition for Writ of Habeas Corpus	5/6/2013	I	0018
Order for Issuance of Writ of Habeas Corpus	3/18/2013	I	0014
State's Opposition to Defendant's Motion for New Trial	4/4/2014	V	1231
State's Opposition to Defendant's Motion to Vacate Verdict	6/19/2014	VI	1339
State's Reply to Defendant's Addendum and Second Addendum to Defendant's Motion for New Trial	6/26/2014	VI	1358
State's Reply to Defendant's Response to State's Opposition to Defendant's Motion for New Trial	04/16/2014	V	1239
Verdict	2/3/2014	V	1215
Writ of Habeas Corpus	3/19/2013	I	0016

AT NO POINT DID THE STATE PROVETHAT THE a DEPENDANTS 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 DEFEDANTS 7 INTENT WAS TO GO TO THE STORE AND RETURN. THE 8 CHARGE OF FIRST DEGREEKIDMAPPING 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 13 HELPS FURTHER DEFINE KIDNAPPING, WHICH IS ONE ELEMENT OF FIRST DEGREE KIDNAPPING. THE WORD KIDNAPIS ACTUALLY USED TO DESCRIBE ON E 16 ELEMENT OF FIRST DEGREEKIDNAPPING IN NRS 200,310(1). TO USE THIS TERMINOLOGY JURY INSTRUCTION NO.11 SHOULD READ THE FACT NOT THE DISTANCE OF FORCIBLEHOVENENT, COMBINED WITH THE INTENT TO KEEP, IMPRISON, OR CONFINE: THIS, JURY INSTRUCTION IS VERY MISLIEADING TO THE CURY WHICH DID NOT 22 HAVE THE OPTION OF FINDING QUILTY TO A 23 LESSER DEGREE OF KIDNAP, YET WAS GIVEN 24 A DEFINITION OF A LESSER DEGREE OF JAPPING AS AN INSTRUCTION. **AA 1251** 

THERE IS A REASONABLE LIKELIHOOD THAT THE LURY APPLIED, JURY INSTRUCTION NO. 10 AND, JURY 2 INSTRUCTION NO. 11, IN A WAY THAT RELIEVED THE STATE OF ITS BURDEN OF PROVING EVERY EVENENT OF THE CRIME OF FIRST DEGREE KIDNAPPING, DEYOND A REASONABLE DOUBT. THIS CONCLUSION CAN BEMADE 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, 10 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 LICHAEL TO 16 THE STORE. THE CRIME OF FIRST DEGREE KIDNAPPING 17 AND EVERY ELEMENT OF THAT CRIME WAS NOT 18 PROVED BEYOND A REASONABLE DOUBT. BEING THAT 19 THE VERDICT OF QUILTY TO FIRST DEGREE KIDNAPPING 20 COURT SHOULD GRANT 21 THE DEFENDANT A NEW TRIAL BEING THAT THE VERDICT OF GUILTY TO FIRST DEGREEKIDNAPPING WAS CONTRARY TO EVIDENCE THE HONORABLE SUDGE 23 SHOULD GRANT THE LEFENDANT A NEWTRIAL. 24 25

	AA 1253
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೩೩	<u> </u>
aa	OF THE COURT.
21	TO ACQUIT RESTS WITHIN THE SOUND DISCRETION
90	434(198) THE GRANTING OF AN ADVISORY INSTRUCTION
19	LENZ V. STATE, 97NEV. 65,624P. 2d 15,1981NEULENS
18	AUTHORIZED UNDER THIS SECTION IS PROPER.
17	CIRCUMSTANCES, THE ADVISORY INSTRUCTION_
16	UPHELD ON APPEAL; ACCORDINGLY, UNDER SUCH
15	A REASONABLE DOUBT, A JURY'S VERDICT WILL NOT BE
14	JUSTIFY A RATIONAL JURY IN FINDING QUILT BEYOND
13	WHERE THE EVIDENCE IS NOT SUFFICIENT TO
la	MYATT V. STATE 101 NEV. 761P, 2d 720, 1985 NEV. LEXIS 509 (1985)
11	BY THE APPELLATE COURT UNTIL THE CONTRARY IS SHOWN.
10	GRANT A NEW TRIAL WILL BE PRESUMED CORRECT AND PROPER
9	THE EXCERCISE BY THE TRIAL COURT OF THE RIGHT TO
8	STATE V. (POCKETT 84NEV. 516, 444 P. 26896NEV. LEXIS 398 (1968)
	CONTRARY IS SHOWN.
	PRESUMED TO BE CORRECT AND PROPER UNTIL THE
5	EXCERCISE BYTHEM IN ANY PARTICULAR CASE WILL BE
4	CONFERRED UPON THE DISTRICT COURTS, Its
3	THE RIGHT TO GRANT NEW TRIALS BEING
a	LEXIS 14(1868)
1	STATE V. STANLEY 4 NEV. 71, 4 NEV. 73, 1868, NEV.
	en e

1 BURKHART V. STATE 107 NEV. 797, 820 P. 26 757, 1991 2 LEXIS 173 (1991) THERE WAS NO TESTIMONY WHICH 3 WOULD HAVE ALLOWED THE JURY TO INFER WHAT 4 DEFENDANT INTENDED TO DO WITH THE VICTIM. 5 WADDINGTON V. SARAUSAD, 555 U.S. 179, 129, 6 S.Ct. 823,172 L. Ed. 2d. 539(2009) DEFEDANT CHALLANGING THE CONSTITUTIONALITY 8 OF A JURY INSTRUCTION THAT QUOTES A STATE STATUE LUST BOTH THE INSTRUCTION 10 WAS AMBIQUOUS AND THAT THERE WAS A "REASONABLE LIKELIHOD" THAT THE JURY APPLIED THE INSTRUCTION IN A WAY THAT RELIEVED THE STATE OF It'S BURDEN OF PROVING EVERY EDEMENT OF THE CRIME BEYOND A REASONABLE DOUBT. THE PERTINENT QUESTION IS WHETHER "THE INSTRUCTION BY 15 ITSELF SO INFECTED THE ENTIRE TRIAL THAT 16 THE KESWITHIS CONVICTION VIOLATES DUE PROCESS. 17 SOHNSON V. US, 520 U.S. 461, 466-67, 1175, Ct. 18 1544(1997) (EXPLAINING ERRORS CAN BE 19 CORRECTED WHEN THERE IS (DERROR (2) THAT 20 19 PLAIN (3) THAT AFFECTS SUBSTANTIAL 21 RIGHTS (4) SERIOUSLY AFFECTS THE 22 FAIRNESS, INTEGRITY OR PUBLIC 23 REPUTATION OF, WIDICIAL PROCEEDING) 24 25

WASHINGTON V STATE 98 NEV. 601:655 P. 2d 531;1982 NEV. LEXIS 542 NO.11294 DEC. 29,1982 3 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 WET FOR A NEWTRIAL 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 10 GROUNDS' EXISTED WHEN THE TRIAL COURT DISAGREED WITH THE JURY'S VERDICT AFTER AN INDEPENDENT 12 EVALUATION OF THE EVIDENCE. THERE FORE 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 18 TRIAL AND REMANDED THE CASE 19 COBBV. POZZI 363 F. 3d 89,116 (2d CIR 2004) 20 An ERRONEOUS, JURY INSTRUCTIONS. 21 REQUIRES REVERBAL ON APPEAL UNLESS 22 THE ERROR IS HARMLESS. 23 24

12

1 STATE V. VAN WINKLE, 6NEV. 340
2 STATE V. JONES, 7 NÉV. 408
3 STATE V. MILLS 12 NEV. 403
4 STATE V. BAUER 34 NEV. 305, 122 P.76
5 HISTORICALLY, NEVADA HAS ÉMPOWERED
6 THE TRIAL COURT IN A CRIMINAL CASE, WHERE
7 THE EVIDENCE OF GUILTIS CONFLICTING, TO
8 INDEPENDENTLY EVALUATE THE EVIDENCE AND
9 ORDER ANOTHER TRIAL IF It DOES NOT AGREE WITH
10 THE JURY'S CONCLUSION THAT THE DEFENDANT
II HAS BEEN PROVEN GUILTY BEYOND A KEASONABLE
12 bould. THE JURY AND THE COURT MUST BE
13 CONVINCED OF THE DEFENDANTS GUILT. IT
14 THE COURT IS NOT CONVINCED, It MAY PROTECT
15 THE DEFENDANT TO THE EXTENT OF
16 ALCHORIZING ANOTHER TRIAL BEFORE ANOTHER
17 JURY, ACCORDINGLY, THE "TOTALITY OF THE
18 EVIDENCE IS THE STANDARD FOR THE DISTRICT
19 COURT TO USE IN DECIDING WHETHER TO
20 GRANT A NEW TRIAL BASED ON AN
21 INDEPENDANT EVALUATION OF
22 CONFLICTING EVIDENCE.
23 NRS 175.535 THE GROUNDS FOR ANOTHER
24 TRIAL.
25

1	ARGUMENT	
2	I. STATE FAILURE TO DISCLUSE FAVORABLE	
3	ENDENCE.	-
4	PATRICIA SuPLISSIE SENT A LETTER TO THE	
5	DISTRICT ATTORNYS OFFICE AND SENT A COPY	
6	OF THIS LETTER TO THE PUBLIC DEFENDERS OFFICE,	
7	ATTN: DAN JENKINS ON MAY 1, 2013. THE ENVELOPE IS	
	DATED MAY 2, 2013. THE LETTER HEAD IS DATED	
	MAY 1, 2013. THE DETTER STATES IN PART: IN	
10	RECENT MONTHS BEFORE THE INCIDENT ON 1/6/13,	₩ III -
II.	MICHAEL SOM (FATHER) HAD INCURRED SEVERAL _	
la	MEDICAL INCIDENTS WHICH REQUIRED HOSPITALIZATIO	<u>V.</u>
13	ON ONE INCIDENT HE WAS DIAGNOSED WITH HAVING	
14	SEIZURES, WHICH REQUIRED MEDICATION. It IS	<del>-</del>
15	MY UNDERSTANDING THAT THIS SITUATION WAS	<del>_</del> ,
16	SUPPORTED BY THE MEDICAL STAFF AT THE DETENTION	J
17	CENTER AND IN FACT HE HAS BEEN HOUSED IN THE	
18	PSYCHIATRIC WARD, YOU MAY WISH TO REVIEW THIS	
	SITUATION AND DETERMINE IF DIMINISHED MENTAL	<u> </u>
20	CAPACITY MAY BE AN ISSUE IN THIS CASE. I	- <del></del>
<u>al</u>	BELIEVE WE ALL WISH TO SEE JUSTICE	
<u>aa</u>		
23		<del>*</del>
24		
25		AA 1257
	14	

THERE ARE MANY EPRORS IN BOTH THE STATES OPPOSITION 2 ARQUMENT I SECTION AND IN THE STATES REPLY 3 ARQUMENT I SECTION. ALSO SOME OF THESE ERRORS APPEAR TO BE INTENTIONALLY TRYING TO LUBLEAD THE 5 COURT AND THE HONORABLE SUDGE. 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 8 SERVICE, AND THE PUBLIC DEFENDER, DAN JENKINS RECEIVED HIS COPY OF THIS DETTER. SINCE THE DEFENSE PUT IN A REQUEST FOR DISCOVERY AND 10 11 PERSUAINT TO NRS 174 245, THE DEFENSE IS OBLIGHTED 13 JOPROVIDE FOR THE D.A. SOFFICE A COPY OF ANY WRITTEN OR 14 RECORDED STATEMENT MADE BY ANY WITNESS. SO COLLEGS
15 THE STATE DID NOT RECEIVE THE LETTER SENT THRU THE 16 MAIL AND THE STATE DID NOT RECEIVE THE LETTER IN TRANSFER 17 of DISCOVERY, THEN THE STATE DID RECEIVE THIS LEHER. 18 FURTHERMORE, PATRICIA DUPLISSIE IN HER DETTER, DID NOT CLAIM TO BE A PHYSICIAN CAPABLE OF DIAGNOSING 20 LEDICAL ISSUES OF LIENTAL DISORDERS. WHAT SHE DID SAY IN HER LETTER IS THAT THOSE WHO ARE CAPABLE 22 OF DIAGNOSING MEDICALISSUES OR MENTAL DISORDERS 23 HAVE DIAGNOSED THE DEFENDANT WITH A MEDICAL ISSUE 24 OR MENTAL DISORDER THAT VERY WELL COULD HAVE 25 BEEN A RELEVANT FACTOR IN HIS BEHAVIOR THAT DAY.

1	THE DISTRICT ATTORNEY IS MISLEADING THE
2	COURT, WHEN IN THE STATE'S REPLY ARGUMENT I
3	SECTION, THE DISTRICT ATTORNEY CLAIMS THAT
4	THE SEFENDANT FAILED TO SPECIFY WHAT
5	LEDICAL CONDITION OR MENTAL ISSUES THE
6	DEFENDANT CLAIMS TO SUFFER FROM BEYOND
7	TESTIFULIA AT TRIAL, OVER THE STATE'S
8_	TESTIFYING AT TRIAL, OVER THE STATE'S OBJECTIONS? THIS IS A FALSE STATEMENT
9	BY THE DISTRICT ATTORNEY. THE STATE'S
10	OBJECTIONS WERE HEARD BY THE HONORABLE
11	SUNCE. THE DEFENDANT WAS NOT
12	ALLOWED TO COMPLETE HIS TESTIMONY
13	ABOUT HIS LEDICAL ISSUES OF MENTAL
14	DISORDER, WHEN THE STATE OBJECTED
15	BASED ON NOT HAVING ANY FOREKNOWLEDGE
16	OF MEDICAL OR MENTAL HEALTH ISSUES
(7	OF THE BEFENDANT.
18	
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al	
22	
23	
24	
25	AA 1259
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19		
18		
17		•
16		
15	THE CONFIDENCE IN THE VERDICT!	<del>-</del> -
14	DIFFERENT LIGHT AS TO UNDERLINE	
13	EVIDENCE "PUT THE WHOLE CASE IN A	
12	AND HORE SPECIFICALLY DOES THE	
( )	PROCEEDING WOULD HAVE BEEN DIFFERENT"	
10	REASONABLE PROBABILITY THAT THE	<del>-</del> · · · +
9	EVIDENCE WOULD HAVE CREATED A	
8	"WHETHER THE DISCLOSURE OF THE	
7	MATERIALITY. INSTEAD THE QUESTION IS	
6	LAW IS NOT DISPOSITIVE ON THE ISSUE OF	<b></b>
5	INADMISSABILITY OF EVIDENCE UNDER STATE	
4	MATERIAL UNDER BRADY AND THAT THE	
3	THAT EVEN INADMISSABLE EVIDENCE MAY BE	<b></b> ·
2	Apply BRADY, THE FIFTH CIRCUIT HAS FOUND.	<del>-</del>
	ROBINSON V. CAIN, 510F. Supp. 2d399(E.D.L.A.2007)	<u></u>
		<del>.</del> .

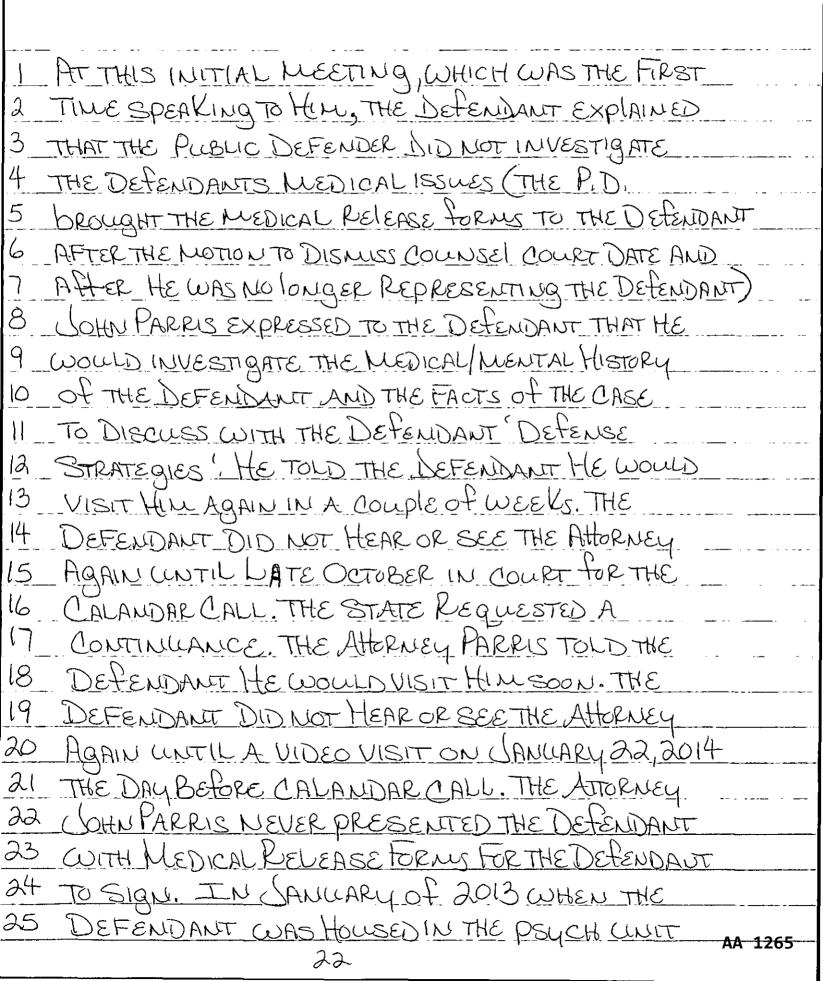
CONE V. BELL, 556 U.S.449, 129 S.Ct. 1769 173 L. Ed. 2d. 701 (2009) WHEN THERE IS A REASONABLE PROBABILITY THAT, HAS THE EVIDENCE BEEN DISCLOSED, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. IN OTHER WORDS, FAVORABLE EVIDENCE IS SUBJECT TO CONSTITUTIONALITY MANDATED DISCLOSURE WHEN IT "COULD KERSONABLY 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 12 STATE SUPPLESSED EVIDENCE SUPPORTING 13 CONE CLAIM AT TRIAL THAT HIS DRUG 14 ADDICTION AFFECTED HIS BEHAVIOR DURING 15 HIS CRIME SPREE AND THAT THE 16 PROSECUTORS ARQUMENT TO THE CONTRARY 17 WERE FALSE AND MISHEADING. IT 18 KELLANDED THE CASE FOR CONSIDERATION 19 OF WHETHER THERE WAS A REASONABLE 20 PROBABILITY "THE SUPPRESSED EVIDENCE 21 MIGHT HAVE PERSUADED ONE OR MORE 22 23 JUROPS 25

1 NRS 51.115 STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OF TREATMENT. STATEMENTS MADE FOR PURPOSES OF MEDICAL DIAGNOSIS OR 4 TREATMENT AND DESCRIBING MEDICAL HISTORY, OR PAST, OR PREBENT SYMPTOMS, PAINS OF SENSATIONS, 6 OR THE INCEPTION OR GENERAL CHARACTER OF THE 7 CAUSE OR EXTERNAL SOURCE THERE OF, ARE NOT INADMISSABLE CLUDER THE HEARSAY RULE INSOFAR AS THEY WERE REASONABLY PERTINENT TO DIAGNOSIS OR TREATMENT. 10 RULE 301, FED. R. EVID. (STATING THAT A PRESUMPTION  $\prod$ IMPOSES ON THE PARTY AGAINST WHOM IT IS DIRECTED 13 THE BURDEN OF GOING FORWARD WITH EVIDENCE 14 TO REBUT OR MEET THE PRESUMPTION, BUT DOES NOT SHIFT TO SUCH PARTY THE BURDEN OF PROOF 15 IN THE SENSE OF THE RISK OF NONDERSUASION) 16 FOR EXAMPLE, IF It IS SHOWN THAT A PERSON 17 MADE USE OF A RELIABLE MEANS OF 18 COMMUNICATION, A FACT FINDER CAN INFER, 19 THAT THE COMMUNICATION WAS RECEIVED. 20 KENDALL V. GATES 215 F. 3 d 825, 829-30 (8THC1R2000) al Smith V. Cummings, 445F. 3d1254, 1260 (10TH CIR, 2006) 22 SULLIVAN V. FREEMAN 944F. 2d 334, 337 (7TH CIR 1991) 23 24 25 AA 1262

 	TENEWRY DISCOVERED EVIDENCE
2	THE DEFENDANT WILL SHOW THAT THERE IS
3	NEWLY DISCOVERED EVIDENCE THAT WAS NOT
4	AVAILABLE TO THE DEFENDANT BEFORE OR DURING
5	TRIAL. THE NEWLY DISCOVERED EVIDENCE IS MEDICAL
	REPORTS FROM GULY 2012, APPROXIMATELY SIX MONTHS
7 _	PRIOR TO THE INCIDENT THAT TOOK PLACE ON JANUARY 6,2013.
8	THERE ARE TWO REPORTS AND A THIRD DOCUMENT,
9	THAT APPEARS TO BE A DISCHARGE FORM, FROM St. ROSE
10	HOSPITAL, THAT LISTS MEDICATION TO BE TAKEN (KEPRA 500Mg)
11	TWICE DAILY, ONE REPORT IS AN WRI DONE ON THE
12	DEFENDANTS BRAIN, It gIVES AN EXAM DATE of 7/3/12
13	TIME 2:06 PM PDT ACCOUNT NUMBER: 13-MR-12-018189
14	REPORT EXAM: URI OF THE BRAIN WITH AND WITHOUT
15	CONTRACT 7/03/12 ORDER PHYSICIAN: AKBAR, TANVEER
16	PRINTED BY: ACEVES, TANYARN PRINTED ON 7/4/2
17	DICTATED BY: CHANG, SCOTT. THE OTHER KEPORT IS A
18	SLEEP LAB (EEB OR ELECTROENCEPHALOGRAM.
19	DATE of PROCEDURE 7/3/12 REFERRING PHYSICIAN:
20	A. TANVEER, M.D., BUT IT ALSO HAS THE NAME STEPHEN
21	P. RAPS, M.D. ON THE REPORT. I DO NOT SEE AN
22	ACCOUNT # THE DEFENDANT HAS BEEN INCARCURATED
23	SINCE THE INCIDENT THAT TOOK PLACEON
24	
25	AA 1263
	20

	THE CLEEP LAB [EEG SAYS STUDY INDICATIONS:
2	NEW ONSET SEIZURES AND CORRELATION
3	CLINICALLY AND CRANIALLY MAGING IS ADVISED.
4	THE DISTRICT Attorney IN HER REPLY SAYS:
5	"DEFENDANT WOULD BE AWARE OF ANY
6	TREATMENT BY PHYSICIANS FOR HIS SEIZURES
7_	OR ANY OTHER MEDICAL OR MENTAL ISSUES.
8	THE COULD NOT BE FURTHER FROM THE TRUTH, A
9	Symptom of THE SEIZURES IS MEMORY LOSS.
10	THE DEFENDANT FINED A MOTION TO DISMISS THE
11	Public DEFENDER IN JULY 2013. THE MOTION STATES
12	IN PART: DEFENDANT HAS A HISTORY OF SEIZURES-
13	AND EVEN HAD A MEDICAL EPISODE. DEFENDANT
14	REQUESTED HIS PUBLIC DEFENDER ADDRESS THIS ISSUE,
15	AS IT RELATES TO HIS DETENSE, AND HE FAILED TO
16	ADDRESS DEFENDANT'S MEDICAL HISTORY AT ALL.
17	ATTER THIS HEARING THE PUBLIC DETENDER MADE
18	AN Attorney VISIT TO C.C.D.C. AND PRESENTED MEDICAL
19	RELEASE FORMS FOR THE DEFENDANT TO SIGN
20	WHICH ARE DATED 7-24-13. THE DETEMBANT
al	INFORMED THE DUBLIC DEFENDER AT THIS VISIT
22	THAT THE AHORNEY COHN PARRY WAS NOW
23	REPRESENTING THE DEFENDANT. THE AHORNEY
24	JOHN MARRIS MADE AN AHORNEY VISIT TO THE
25	DEFENDANT ON AUGUST 5, 2013.  AA 1264
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AT C.C.D.C., THE PSYCH DOCTOR, WHO LETERLINED THAT THE LEFENDANT SHOULD BE HOUSED IN THE PSYCHUNIT SUGGESTED TO THE DEFENDANT, THAT THE DEFENDANTS AtTORNEY, SHOULD LOOK INTO THE DEFENDANTS MEDICAL HEALTH RECORDS, THAT THERE COULD BEA CONNECTION BETWEEN THE DEFENDANTS WEDICAL HEALTH CONDITION AND THE SEFENDANTS 8 ACTIONS ON JANUARY 6, 2013. HE STATED THAT HE IS 9 NOT AN ATTORNEY, BUT THAT HE WOULD SUGGEST IT BE LOOKED INTO. 10 11 THE DEFENDANT STOPPED TAKING HIS SEIZURE la MEDICATION FOR APPROXIMATELY TWO MONTHS 13 BEFORE THE INCIDENT THAT TOOK PLACE, BECAUSE THE LEFENDANT DID NOT REMEMBER BEING 14 15 DIAGNOSED WITH SEIZURES. ALSO DID NOT REMEMBER 16 HAVING A SEIZURE. ON THE MORNING OF SANUARY 6, 2013 THE DEFENDANT WOKE UP IN A PANIC STATE, 17 Looking for His son MICHAEL. THE DEFENDANT 18 19 CALLED HIS BROTHER, ROBERT SCHOFIELD, TELLING HIS 20 BROTHER THAT HE CAN NOT FIND HIS SON. ROBERT HAD TO EXPLAIN TO THE DEFENDANT THAT HIS SON, al DID NOT LIVE WITH THE DEFENDANT ANY MORE. 22 WITH THE DEFENDANT HAVING TROUBLE bELIEVING 23 THIS, ROBERT ASKED THE DEFENDANT IF HE TOOK 24 HIS SEIZURE MEDICATION. THE DEFENDANT DID 25

MOT BELIEVE THAT THIS WAS EVIDENCE, THAT 1 THE DEFENDANT HAD A SEIZURE. ROBERT TOLD 2 THE DEFENDANT TO CALL MOM, THAT HIS SON 3 4 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 OUT THERE IS NO RECALL AFTER 10 11 THE INCIDENT AND SOMEWHERE IN THE MIDST OF THE INCIDENT, OF THE VERY FEW PHONE CALL TRANSCRIPTS 12 THAT WERE IN THE DEFENSE FINE THE DEFENDANT 13 14 IN THE PHONE CALLS IS VERY CONFUSED ABOUT WHAT 15 ACTUALLY TOOK PLACE. ON TWO SEPERATE PHONE CALL TRANSCRIPTS THE DEFENDANT KIND OF REPLYS THAT HE 16 THOUGHT THEY WERE PLAYING BUT THAT MAUBE HE WAS 17 18 THE ONLY ONE PLAYING. ON ANOTHER PHONE CALL HE 19 TRIED TO INSIST THAT THE WHOLE INCIDENT TOOK 20 PLACE INSIDE THE HOUSE. WHICH WOULD CORELATE 21 WITH THE DEFENDANTS RECALL OF THE EVENT. THE DEFENDANT HAS ABSOLUTELY NO MEMORY 22 23 of Conversing WITH Police officers or Being IN A police CAR OR ARRIVING AT A POLICE 25 STATION.

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THE DEFENDANT STOPPED TAKING THE SEIZURE MEDICATION BECAUSE THE DEFENDANT DID NOT 2 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 8 THE INSISTANCE OF THE DEFENDANT TO DO SO, LINTIL After His REPRESENTATION OF THE DEFENDANT. THE DEFENDANT WAS THEN REPRESENTED by Alt. LOHNPARRIS, 10 STAPITESUMI GLUOW 3H TAHT THAT THA GUSTS SHT GIOT OHW 11 THE DETENDANTS MEDICAL/MENTAL HEALTH RECORDS AT 12 C.C.D.C. BUT NEVER DID. THE DEFENDANT TRIED TO GET 13 14 BOTH AHORNEY'S TO INVESTIGATE HIS MEDICAL MENTAL 15 HEALTH RECORDS AT C.C.D.C. BUT TO NO AVAIL. THE 16 DEFENDANT TRIED TO BRING UP HIS MEDICAL MENTAL CONDITION DURING HIS TESTIMONY ON THE WITNESS 18 STAND, BUT THE STATE ObjectED BASEDON LACK OF 19 PRIOR KNOWLEDGE AND THE DEFENDANT WAS NOT ALLOWED TO CONTINUE WITH THIS TESTIMONY BECAUSE of LACK of MEDICAL EVIDENCE SUPPLIED TO THE DISTRICT 21 AHORNEY. THE DEFENDANT WAS ESSENTIALLY FORCED TO 22 23 REPRESENT HIMSELF, MIDWAY THRU THE JURYTRIAL. 24 THE DEFENDANT WAS TRYING DESPERATELY TO 25 OBTAIN MEDICAL EVIDENCE BEFORE THE TRIAL. **AA 1268** 

AND AFTER THE TRIAL BEING INCARCURATED ACCESS TO INFORMATION IS SEVERLY LIMITED. J MEDICAL/MENTAL HEALTH RECORDS ARE NOT ALLOWED TO BE OBTAINED FROM C.C.D.C. WHILE BEING INCARCURATED THERE. EVENWITH SELF REPRESENTATION AN INMATE CAN NOT OBTAIN HIS OWN MEDICAL RECORDS. THE NEWLY DISCOVERED EVIDENCE WAS NOT AVAILABLE 8 BEFORE OR DURING THE TRIAL. THE REPORTS WERE YOUND AT PATRICIA DUPLISSIE AND MORMAN DUPLISSIES HOUSE. WHO INSISTED THAT THEY DID NOT HAVE AMY MEDICAL 10 RECORDS OF THE DEFENDANTS AT THEIR HOUSE. 11 THE MEDICAL REPORTS WERE DISCOUERED 12 IN THE BEGINNING OF MARCH 2014. THE DISTRICT 13 14 ATTORNEY IN THE STATE'S REPLY COMMENTS: THERE IS 15 NO NEW MEDICAL DOCUMENTATION OF ANY MEDICAL OR 16 MENTAL ISSUES. EVEN IF THERE IS MEDICALEVIDENCE, 17 It would not HAVE ALTERED THE OUTCOME OF THE TRIAL. 18 THERE IS NO INDICATION THAT THE DISTRICT ATTORNEY 13 A PHYSICIAN CAPABLE OF DIAGNOSING MEDICAL 19 20 CONDITIONS OF MENTAL DISORDERS, ESPECIALLY al WITHOUT SEEING THE MEDICAL EVIDENCE OR 22 DOCUMENTS. INLIGHT OF the NEWLY DISCOVERED MEDICAL 23 24 EVIDENCE, THE HONORABLIE JUDGE SHOULD GRANT 25 THE LEFENDANT A NEWTRIAL.

26

1	INGEL EX REL. ESTATE OF INGLE V YELTON
2	439 F. 3d 191,197 (4THCIR 2006) (RULE 59(e)
3	MOTIONS WILL BE GRANTED IN THREE
4	CIRCUMSTANCES: (1) TO ACCOMMODATE AN
5	INTERVENING CHANGE IN CONTROLLING LAW;
6	(2) TO ACCOUNT FOR NEW EVIDENCE NOT
7	AVAILABLE AT TRIAL;
8	(3) TO CORRECT A CLEAR ERROR OF LAWOR
9	PREVENT MANIFEST INJUSTICE.)
10	NRS 176.515 COURT MAY GRANT A
11	NEW TRIAL OR MOTION TO VACATE
12	JUDGEMENT IN CERTAIN CIRCUMSTANCES:
13	1. THE COURT MAY GRANTA NEW TRIAL
14	TO A DEFENDANT IF REQUIRED AS A
15	MATTER OF LAW OR ON THE GROUND OF
16	NEWLY DISCOVERED EVIDENCE.
17	
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AA 1270

III PROSECUTOR MISCONDUCT TAMPORING WITH WITNESS BY PROSECUTOR. 2 THE D.A. MARIA E. LAVELL READTRANSCRIPTS OF PHONE CALLS TO NORMAN Suplissie, 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 8 ADMISSABLE EVIDENCE, IN A WRITTEN STATEMENT By NORMAN DUPLISSIE, HEWRITES IN PART: "MARIA 10 11 BROUGHT UP THE FACT, SOMEWHERE DURING OUR MEETINGS THAT ALL OF YOUR TELEPHONE 12 CONVERSATIONS WERE BEING MONITORED AND THAT 13 14 SHE HAD COMPLETE TRANSCRIPTS of THESE. I 15 BELIEVE THIS CONVERSATION TOOK PLACE IN THE FIRST PRETRIAL PREPERATION MEETING (OR CONVERSATION) WHICH TRANSPIRED MORETHAN A 17 18 YEAR AGO WHEN I TALKED TO HER PRIVATELY. According to HER, you AND your BROTHER BOBBY 19 HAD A CONVERBATION EARLY ON IN THE PROCESS 20 WHERE BY YOU SAID TO HIM THAT YOU SHOULD 21 HAVE KILLED LITTLE MICHAEL WHILE YOU HAD  $\lambda a$ 23 THE CHANCE. 24

AA 1271

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 SHEPLANNING 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. PLOT 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 CUAS CONSISTENT TO THAT WHICH HE TESTIFIED IN FRONT of SUDGE SULLIVAN IN THE PRELIMINARY 18 HEARING AND THAT HE DOES NOT BELIEVE LARIA 19 INFLUENCED HIS TESTIMONY, BUT ADDS THAT 20 THIS DOES NOT NECESSARILY MEAN THAT HER 21 INTENTIONS WERE NOT TO DO OTHERWISE. THE DEFENDANTS CONTENTION WOULD BE THAT THE TRANSCRIPTS WERE READ BEFORE THAT TRIAL SO THE 24 WITNESS WAS TAMPORED WITH BEFORE THE PRELIM 25 HEARING SOTO CONTAMINATE THAT TESTIMONY AS WELL. 29

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PEOPLE V MARTINEZ, 47 CAL. 4TH 911, 105 CAL. Rptr. 3d 131,224 P. 3d 877 (2010) 2 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 8 MORE FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN REACHED WITHOUT THE MISCONDUCT. STATE V. GARNER 234 OR. App. 486, 228 P. 3 & 710(2010) 10 11 (UNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING LISTRIAL DUE TO PROSECUTORIAL MISCONDUCT IS BARRED la 13 WHEN (I) THE MISCONDUCT IS SO PREJUDICIAL THAT IT 14 CANNOT BE CURED BY MEANS SHORT OF MISTRIAL (2) THE PROSECUTOR KNEW THAT THE CONDUCT WAS 16 IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR 17 EITHER INTENDED OR WAS INDIFFERENT TO THE 18 RESULTING MISTRIAL.) 19 AGURS, 427 U.S. AT 103,968, Ct, 2397 THE COURT NOTES THAT A CONVICTION OBTAINED BY THE KNOWING USE OF TAINTED TESTIMONY IS 22 FUNDAMENTALLY UNFAIR, AND MUST BE SET ASIDE, AND NEW TRIAL GRANTED IF THERE IS ANY LIKELIHOOD 24 THAT THE TAINTED TESTIMONY COULD HAVE ATTECTED 25 THE JUDGENENT OF the JURY. **AA 1273** 

IV INEFFECTIVE COUNSEL 'INEFFECTIVE COUNSEL BY PRIOR COUNSEL. 2 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 QIVE UP HIS RIGHT TO TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HISRIGHT TO EFFECTIVE COUNSEL. WHEN THE 10 DEFENDANT INSISTED THAT HE WANTED TO TAKE THE STAND, ATTORNEY GOHN PARRIS, TOLD THE DEFENDANT "IF YOU TAKE THE STAND, I WILL ASK you Two YESOR NO COLLESTIONS, THEN TURN 13 you over to THE D.A. AND LET HER TEAR YOU APART. "BY STATING THAT HE WILL DET HER TEAR 15 ME APART, HE WOULD NOT BE QIVING ME EFFECTIVE 16 COUNSEL IF I TOOK THE STAND, ESSENTIALLY 17 FORCING ME TO EITHER GIVE UP MY RIGHT TO TAKE 18 THE STAND AND TESTIFY ON MY OWN BEHALFOR 19 TO QUEUP MY RIGHT TO EFFECTIVE COUNCIL ACTING IN THE ROLE AS AN ADVOCATE. HE DID NOT IMPLY THAT HE WOULD 22 BE ASKING ONLY TWO YES OR NO QUESTIONS AS A WAY OF 23 PROVIDING SOUND DEFENSE STRATEGY, BUT INSTEAD AS A 24 WEAPON TO PREVENT ME FROM TAKING THE STAND 25 WHICH WAS TAKING AWAY MY RIGHT TO CHOOSE TO TAKE STANDA

1 THIS CONVERSATION TOOK PLACE RIGHT AFTER THE
2 DEFENDANT, FIRST READ THE JURY INSTRUCTIONS. FROM THE
3 ONSET THE DEFENDANT WANTED TO TAKE THE STAND. THE
4 DEFENDANT DID NOT TAKE THE STAND AT THE PRELIMINARY
5 HEARING, ALLOWING THE PUBLIC DEFENDER TO INFLUENCE
6 THE DEFENDANT TO NOT TAKE THE STAND. THE DEFENDANT DID
7 NOTWANT TO MAKE THAT MISTAKE AGAIN. I LET JOHN PARRIS
8 KNOW THIS, BUT HE CONTINUALLY TRIED TO GET ME TO NOT TAKE THE
9 STAND. HE ACTUALLY NEVER EVEN ASKED ME MY VERSION OF
10 WHAT TOOK PLACE AND HE NEVER PREPARED FOR ME TO TAKE
11 THE STAND. I WANTED TO TAKE THE STAND TO STATE MY INTENT
12 BELIEVING THAT I WAS THE ONLY PERSON WHO COULD SAY
13 WHAT MY INTENT WAS. JOHN PARRIS TOLD ME THAT
14 INTENT WAS NOT A PART OF THE CRIMES I WAS
15 CHARGED WITH, WHEN THE DEFENDANT READ THE JURY
16 INSTRUCTIONS, WHICH MADE IT CLEAR THAT INTENT WAS
17 AN ELEMENT OF THE CRIMES I WAS CHARGED WITH,
18 I LET JOHN PARRIS KNOW THAT HE COULD NOT TALK
19 WE OUT OF TAKING THE STAND. THAT I WANTED TO TAKE
20 THE STAND TO CLARIFY TO THE JURY WHAT MY INTENT
21 WAS. AT THAT POINT HE MADE THE STATEMENT "IF
22 YOU TAKE THE STAND I WILL ASK YOU TWO YES OR
23 NO QUESTIONS THEN TURN YOU OVER TO THE D. A. AND
24 LET HERTEAR YOU APART."
25 ///
26 ///
27 /// AA 1275
32

i	THE HONORABLE JUDGE SHOULD GRANT
2	THE DEFENDANT A NEW TRIAL ON THIS ACT
3	ALONE, THE DEFENDANT ASSERTS THAT HE
4	WAS FORCED TO EITHER GIVE UP HIS RIGHT TO
5	TESTIFY ON HIS OWN BEHALF OR TO GIVE UP HIS
6	RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
7	DUE TO WHOLLY INADEQUATE ACTIONS OF HIS
8_	RETAINED ATTORNEY, FURTHER, COUNSELS ACTIONS
9	COMPORT TO NOTHING MORE THAN A VIOLATION
10	OF DEFENDANTS DUE PROCESS KIGHTS. DEFENDANT
11	HAS AN UNQUALIFIED RIGHT TO LEGAL ASSISTANCE,
12	THAT EXPRESSES LOYALTY TO SAID DEFENDANT.
13	THERE FORE, DEFENDANT CONTENDS THAT ALTHOUGH
14	THE DEFENDANT HAD COUNSEL, THE ACTIONS OF
15	COUNSEL HAVE CREATED UNFAIR PREJUDICE
16	AND OBSTACLES WHICH DO NOT COMPORT
17	THE FAIR PROCEDURES OWED TO THE DEFENDANT.
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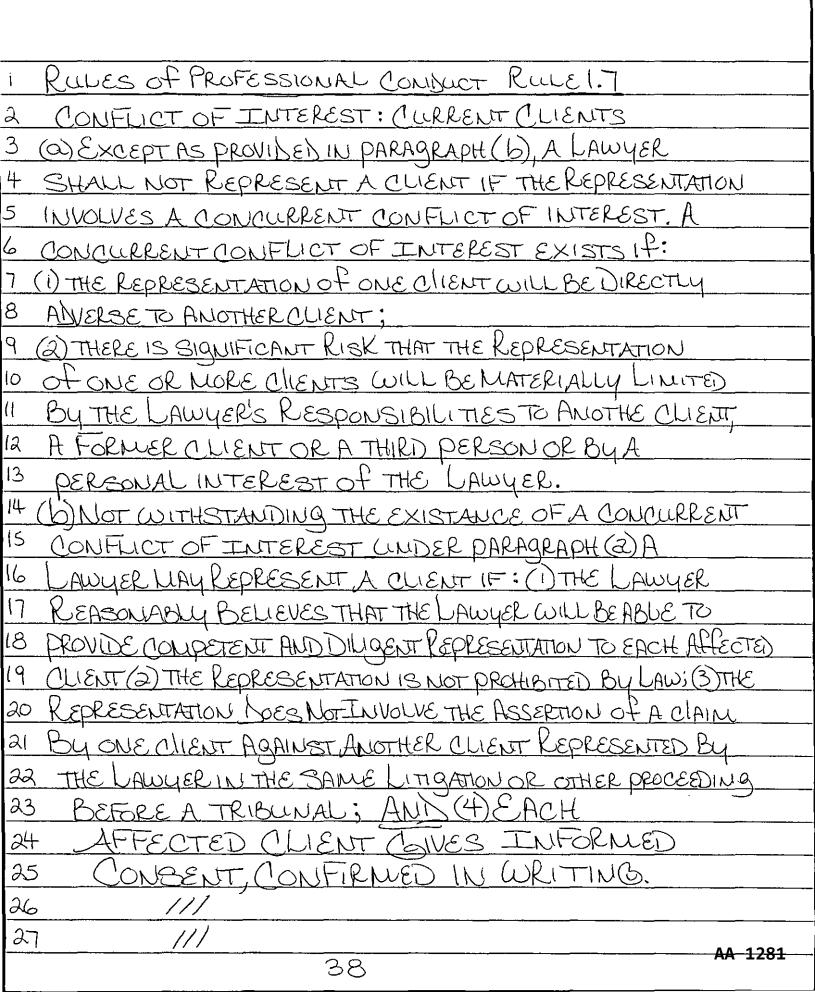
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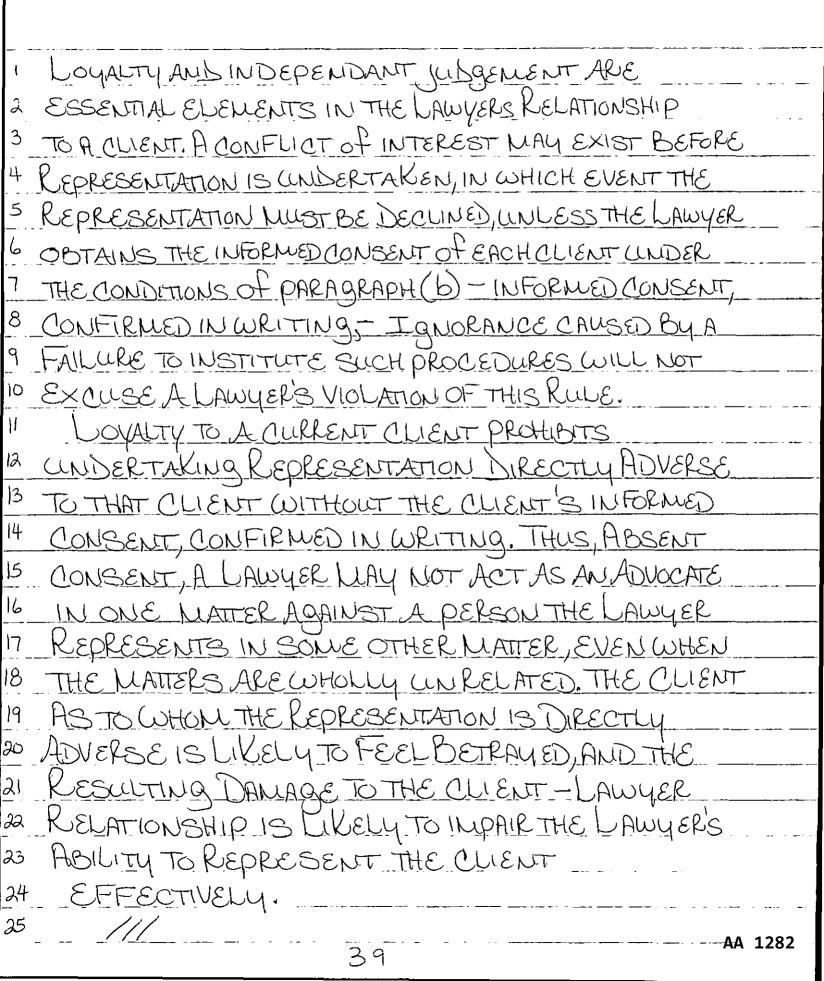
(LUYLER V. SULLIVAN 100 S. C+. 17-8 (1980) FRAZIER V. CL.S. 18 F. 3d 778 (9TH CIR 1994) a "THE RIGHT TO COUNSEL IS THE RIGHT ALSO TO EFFECTIVE ASSISTANCE OF COUNSEL. ANDERS V. CALIFORNIA 878, Ct. 1396 \$1480 (1967) THUS, THE ADVERSIAL PROCESS PROTECTED BY THE SIXTH AMENDMENT REQUIRES THAT THE ACCUSED HAVE "COUNSEL ACTING IN THE ROLE OF AN ADVOCATE". 8 (GALLEGO V. U.S., 174F. 36/196,1197(11 TH CIR1999) 10 A CRIMINAL REFENDANT HAS A FUNDAMENTAL 11 12 CONSTITUTIONAL RIGHT TO TESTIFY IN HISORHER OWN BEHALF AT TRIAL. THIS IS RIGHT IS PERSONAL TO ાઉ 14 THE DEFENDANT AND CANNOT BE WAIVED EITHER BY THE TRIAL COURT OR BY DEFENSE COUNSEL, WHERE COUNSEL HAS REFUSE TO ACCEPT THE DEFENDANTS 16 17 DECISION TO TESTIFY AND REFUSED TO CALL HIM 18 TO THE STAND, OR WHERE DEFENSE COUNSEL NEVER INFORMED THE LEFENDANT OF HIS RIGHT 20 TO TESMFY AND THAT THE FINAL DECISION BELONGS 21 TO THE DEFENDANT ALONE, DEFENSE COUNSEL 22 HAS NOT ACTED WITHIN THE RANGE OF COMPETENCE DEMANDED OF ATTORNEY'S IN 23 24 CRIMINAL CASES, AND THE DEFENDANT HAS 25 NOT RECIEVED REASONABLY EFFECTIVE 26 ASSISTANCE OF COUNSEL. 27 34

'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 KEPRESENTATION AND BOTH CONFLICTS REQUIRED AHORNEY JOHNPARRIS TO EITHER DECLINE REPRESENTATION OR DEFENDANT GIVE INFORMED CONSENT, CONFIRMED IN WRITING. THE FIRST CONFLICT OF INTEREST IS THAT NORMAN Suprissie, THE LEGAL GUARDIAN OF MICHAEL, AND A 10 WITHESS FOR THE STATE, WAS THE SOURCE FROM WHICH THE Altorney SohnParris Was PAID. ALTHOUGH THE DEFENDANT 12 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 17 LIMITED TO CROSS-EXAMINATION OF WORMANDUPLISSIE AND 18 CROSS-EXAMINATION OF MICHAEL AMORD. THE SECOND CONFLICT OF INTEREST IS THAT JOHNPARRIS PREVIOUSLY REPRESENTED 20 FOR FREE' THE D.A. MARIA E. LAVELL, WHO IS ASSIGNED TO MY CASE 21 ALTHOUGH THE AH. PARRISWAS RETAINED IN LATE GULY 2013 22 WHICH WAS APPROXIMATELY GMONTHS PRIOR TO THE JURY TRIAL, 23 AND THE D. A. WAS MARIA L'AVELL WHEN HE TOOK THE CASE, HE At DID NOT TELL THE DEFENDANT UNTIL 5 MINUTES 25 BEFORE SELECTING THE JURY. **AA 1278** 

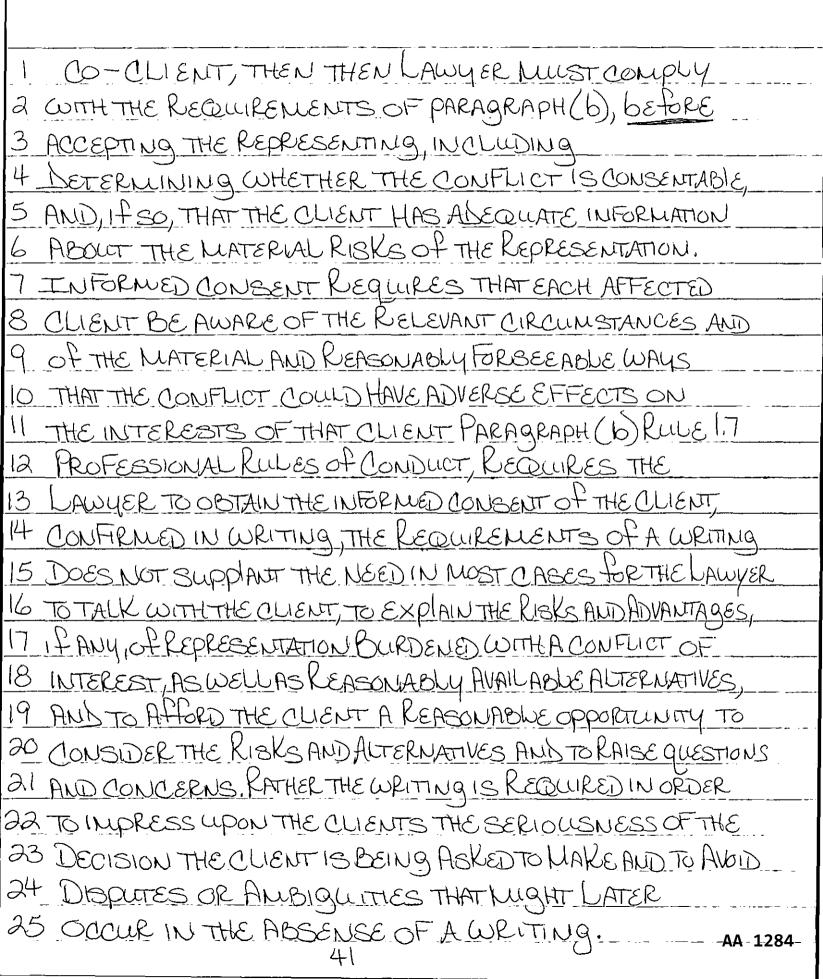
COLES V. ARIZONA CHARLIES 973 F. Supp. 971,975 (D. NEV1997) HOLDING THAT ANY DOUBTS AS TO THE EXISTENCE OF A CONFLICT OF INTEREST SHOULD BE RESOLVED IN DISQUALIFICATION. U.S. V. SHWAYDER 312F. 311109,1117(9THC1R2002) CONCLUDING THAT THE SEFENDANTS WAIVER OF CONFLICT OF INTEREST WAS NOT VALID WHERE 8 HEWAS NOT ADEQUATELY INFORMED OF THE 9 SIGNIFICANCE OF THE CONFLICTS THAT LUIGHT ARISE. 10 CLARK V. STATE 108 NEV324, 326, 831 P. 2d 11 1374,1376(1992) 12 13 HOLDING THAT AN ACTUAL CONFLICT OF 14 INTEREST WHICH ADVERSELY AFFECTS A AWYERS PERFORMANCE WILL RESULT IN A 15 PRESUMPTION OF PREJUDICE TO THE 16 17 DEFENDANT) re Puccinelli, 67 NEV. 645, 224 P. 26318 (1950) 18 AN ATTORNEY WHO REPRESENTED BOTH THE 19 PLAINTIFF AND THE DEFENDANT IN A DISTRICT 20 COURT ACTION WITHOUT PRIOR DISCLOSURE 21 OF HIS APPOINTMENT WAS PROPERLY 22 SUSPENDED FROM THE PRACTICE OF LAW 23 FOR A PERIOD OF MINE MONTHS. 24 25 AA -1279 --36

1 RYAN V EIGHTH SUDICIAL DISTRICT COURT OF NEVADA,
2 123 NEV. 419, 168 P. 3d 703 (2007)
3 A WAIVER OF CONFLICT - FREE REPRESENTATION ENTAILS
4 THE WAIVER OF CERTAIN IMPORTANT RIGHTS AT TRIAL,
5 ON APPEAL, AND IN POST CONVICTION PROCEEDINGS,
6 INCLUDING WAIVER OF THE RIGHT TO SEEK A MISTRIAL
7 BASED ON ANY CONFlicts ARISING FROM THE DUAL
8 REPRESENTATION. CONSEQUENTLY, WE NOW
9 REQUIRE Attornys TO ADVISE CRIMINAL DEFENDANTS
10 OF THEIR RIGHT TO CONSULT WITH INDEPENDENT
11 COUNSEL TO ADVISE THEM ON THE POTENTIAL CONFlict
12 of INTEREST AND THE CONSEQUENCES OF WAIVING
13 THE RIGHT TO CONFLICT-FREE REPRESENTATION.
14 THE AHDRNEY LUST ADVISE THE CLIENTS TO SEEK
15 THE ADVICE OF INDEPENDENT COUNSEL BEFORE
16 THE ATTORNEY ENGAUGES IN THE DUAL REPRESENTATION.
17 IF THE CLIENTS CHOOSE NOT TO SEEK THE ADVICE OF
18 INDEPENDANT COUNSEL, THE CLIENTS MUST EXPRESSIY
19 WAIVE THE RIGHT TO DO SO, BEFORE AGREEING TO ANY WAIVER OF
20 CONFLICT-FREE REPRESENTATION, If THE AHORNEY FAILS TORON
21 SERADVISE CRIMINAL DEFENDANTS OF THEIR RIGHT TO SEEK
22 THE ADVICE OF INDEPENDENT COUNSEL, THE CLIENTS WAIVER OF
23 CONFLICT-FREE REPRESENTATION ARE INEFFECTIVE UNLESS AND
24 CINTIL THE AHORNEY ADVISES THE CLIENTS TO DO.
25 /// AA -128
37





I IN ADDITION, THE CLIENT ON WHOSE BEHALF THE
2 ALVERSE REPRESENTATION IS UNDERTAKEN KEASONABLY
3 WAY FEAR THAT THE LAWYER WILL PURSUE THAT CLIENTS
4 CABE LESS EFFECTIVELY, OUT OF DEFERENCE TO THE
S OTHER CLIENT, I.E. THAT THE REPRESENTATION MAY bE
6 MATERIALLY LIMITED BY THE LAWYER'S INTEREST
7 IN RETAINING THE CURRENT CLIENT. IN ADDITION.
8 TO CONFLICTS WITH OTHER CURRENT CLIENTS,
9 A LAWYER'S DUTIES OF LOYALTY AND INDEPENDENCE
10 MAY BE MATERIALLY LIMITED BY RESPONSIBILITIES_
11 TO FORMER CLIENTS. THE LAWYER'S OWN INTERESTS
12 SHOULD NOT BE PERMITTED TO HAVE AN ADVERSE
13 EFFECT ON REPRESENTATION OF A CLIENT.
14 A LAWYER MAY BE PAIL FROM A SOURCE OTHER
15 THAN THE CLIENT, INCLUDING A CO-CLIENT, IT
16 THE CLIENT IS INFORMED OF THAT FACT AND THE
17 ARRANGEMENT DOES NOT COMPROMISE THE LAWYER'S
18 NOT DOYALTY OR INDEPENDANT, JUDGEMENT TO
19 THE CUENT, IF ACCEPTANCE OF THE PAYMENT
20 FROM ANY OTHER SOURCE PRESENTS A SIGNIFICANT
21 KISK THAT THE LAWYERS KEPRESENTATION OF THE CLIENT
22 WILL BE MATERIALLY LIMITED BYTHE LAWYER'S
23 OWN INTEREST IN ACCOMODATING THE PERSON PAYING
24 THE LAWYER'S FEES OR BY THE LAWYER'S
25 RESPONSIBILITY TO A PAYER WHO IS ALSO A AA 128
40



FURTHERMORE "INEFFECTIVE COUNSEL BY PRIOR COUNSEL" THE DEFENDANT RECIEVED REPRESENTATION OF A DEFICIENT PERFORMANCE THAT FALLS BELOW AN OBJECTIVE STANDARD OF REASONABLEVESS. 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 MUTIPLE ERRORS WHICH VIOLATES A DEFENDANTS CONSTITUTIONAL RIGHT TO A FAIRTRIAL. THE AHORNEY COMPARRIS DID NOT CONDUCT ADEQUATE PRE-TRIAL INVESTIGATION TO PREPARE A DEFENSE, HE DID NOT LOOKINTO MEDICAL 10 EVIDENCE OR INTERVIEW POTENTIAL WITNESSES, HE DID 11 12 NOT CROSS EXAMINE WITNESSES, AND HIS CROSS EXAMINATION 13 OF OTHERS WAS VERY LACKING, BASICALLY REPEATING THE QUESTIONS OVER THAT THE DISTRICT AHORNEY ASKED ALREADY. 14 HIS OPENING STATEMENT WAS TO COMPLIMENT THE STATE 15 ON GIVING A GOOD OPENING STATEMENT AND A DESCRIPTION 16 17 OF WHAT AN OPENING STATEMENT SHOULD CONTAIN, MANAGEMENT MAN WHICH BY HIS OWN DEFINITION OF A 18 19 GOOD OPENING STATEMENT HIS WOULD NOT HAVE PASSED AS 20 A GOOD OPENING STATEMENT, FOLLOWED BY AN INSTRUCTION 21 TO THE JURY TO WAIT TO HEAR ALL THE EVIDENCE BEFORE COMING TO A CONCLUSION. YET HIS INTENTION WAS aa TO NOT PRESENT A DEFENSE. HE DID NOT PREPARE 23 24 JURY INSTRUCTIONS AND HE DID NOT REQUEST FOR THE Sury TO HAVE THE OPTION OF A LESSER INCLUDED 25 3ZU3Fto 26 27 AA-1285 42

BURGEON V STATE, 102 NEV. 43, 714 P. 20576 (1986) REJECTS THE STATES CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS SOUND STRATEGY. THERE WAS SUFFICIENT WITH EVIDENCE TO PRESENT A LEFENSE. WARNER V STATE, 102 NEV. 635,729 P. 201359(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, THUROUGHNESS, AND PREPERATION REASONABLY NECESSARY FOR THE 20 REPRESENTATION PROFESSIONAL RULES OF CONDUCT RULE 3 DIlligence: LAWYER SHALLACT WITH REASONABLE 23 DILLIGENCE AND PROMPTHESS IN REPRESENTING 25 A CLIENT.

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**AA 1286** 

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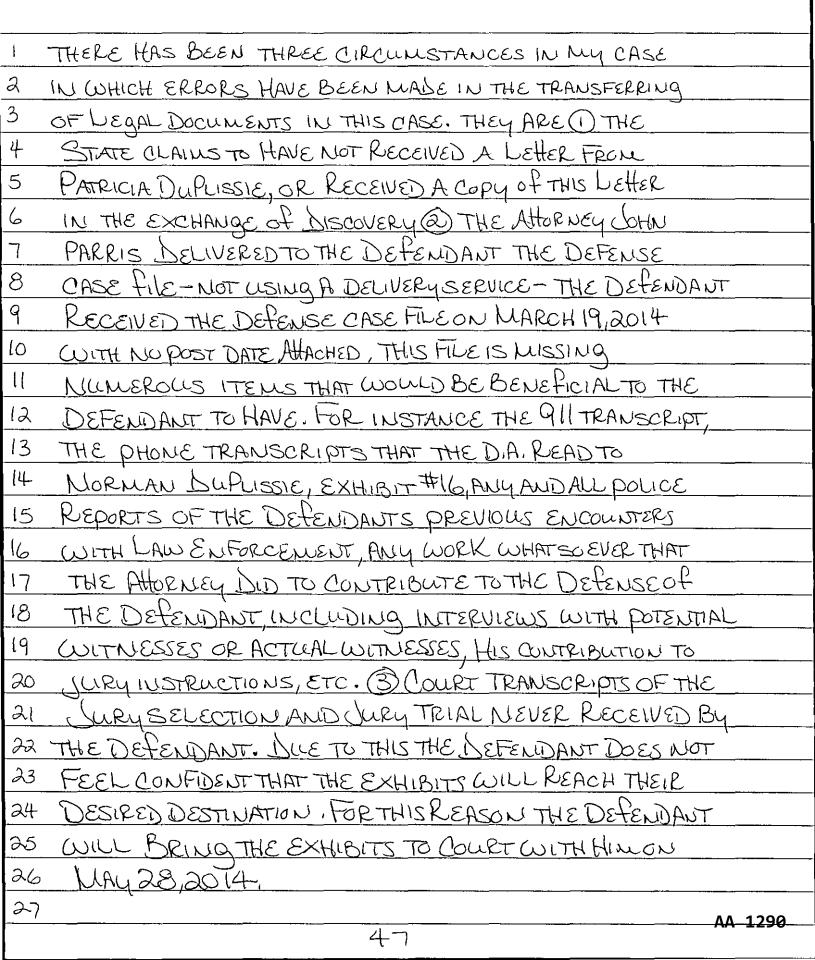
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SANBORN V. STATE 107 NEV. 399; 812 p. 2d 1279; 1991 NEV. LEX 107 SANBORNS OWN TESTIMONY WAS STRONGLY DEVALUED BY THE ABSENCE OF CORROBORATIVE EVILENCE THAT WOULD HAVE BEEN PRESENTED BY DILLIGENT AND EFFECTIVE COUNSEL, SANBORN INSISTS THAT BEFORE TRIAL, HE HAD PROVIDED HIS AHORNEY WITH A LIST OF POTENTIAL WITNESSES WHO WERE PREPARED 8 TO TESTIFY. WE REJECT THE STATE'S CLAIM THAT COUNSELS FAILURE TO PRESENT A DEFENSE WAS A SOUND STRATEGY. SANBORN PRIMARILY 10 11 EMPHASIZES HIS COUNSELS FAILURE TO CONDUCT ALECQUATE PRE-TRIAL INVESTIGATION AND TO 12 PRESENT TRIAL EVIDENCE. SAUBORNS DEFENSE 13 14 WAS CLEARLY PREJUDICED BY HIS COUNSELS 15 FAILURE TO DEVELOP AND PRESENT EVIDENCE THAT WOULD HAVE COPROBORATED SANBORNS 17 TESTIMONY BECAUSE OF COUNSELS LACK OF DUE DILIGENCE SANBORN WAS DEPRIVED 18 19 Of THE OPPORTUNITY TO PRESENT TESTIMONY 20 MATERIAL TO HIS REFENSE. 21 22 23 /// 24 25

1	THE DEFENDANT FIRST MET ATTORNEY
2	LOHN PARRIS ON AUGUST 5TH 2013. AT THE
3	END OF THE ATTORNEY VISIT, THE AHORNEY PARRIS TOLD
4	THE DEFENDANT HE WOULD SEE HIM AGAIN IN A COUPLE
5	OF WEEKS. OUTSIDE SEEING THE ATTORNEY IN THE COURT
6	ROOM, THE DEFENDANT DID NOT SEE THE ATTORNEY
7	Again until 6 Months LATER, LESS THAN A WEEK
8	BEFORE JURY SELECTION AND TRIAL WAS TO BEGIN.
G.	AT THE INITIAL CONSULTATION THE AHORNEY PARRIS WAS INFORMED
10	BY THE DEFENDANT, THAT THE DEFENDANT WAS NOT HAPPY
11	WITH THE SERVICE PROVIDED BY P.D. DAN JENKINS BECAUSE
12	THE PUBLIC DEFENDER WOULD NOT OR DID NOT LOOKINTO
13	THE DEFENDANTS MEDICAL CONDITION, ALSO BECAUSE THE
14	PUBLIC DEFENDER SEEMED TO HAVE NOT ENOUGH TIME TO
15	DEDICATE TO THE DEFENDANT CASE TO PROPERLY DEFEND HIM.
16	THE DEFENDANT BRIEFLY EXPLAINED HIS MEDICAL
17	CONDITION AND THE EVENTS OF THE DAY OF THE INCIDENT
18	AND THE PEOPLE WHO COULD VERIFY THIS TO THE AMBRNEY.
19	THE AHDRUEY EXPLAINED TO THE DEFENDANT THAT THE
20	Attorney would Look into THESE CIRCUMSTANCES AND
21	GET BACK WITH THE DEFENDANT ABOUT WHAT THE BEST
22	DEFENSE STRATEGY IS OR THE OPTIONS AVAILABLE AND ALSO
23	DETERMINE IF WE NEEDED TO SEEK EXPERT ANALYSIS.
24	THERE CHALLE SEETHE SELVENAPORTHUR SERVENAPORTHUR SELVENA SELVENA SELVENA SELVENA SELVENA SELVENA
25	CHESTANIA THANKS HATCHERING PARTICIPALITY STANDARD STANDS MINING AND 1288

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THIS SHOULD NOT BE VIEWED AS HUDSIGHT BECAUSE THE DEFENDANT WAS IN COMPLETE DEAGREENENT WITH THE Albency AS THE EVENTS WERE TAKING PLACE, WHICH INCLUDES DURING THE JURY SELECTION PROCESS, THE OPENING STATEMENT, HIS CROSS EXAMINATION OF NORMAN DUPLISHE, PATRICIA DUPLISSIE, HIS ASSOSIATES CROSSEXAMINATION 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 10 IIINTERVIEW ROBERT SCHOFIELD, HIS CHOICE NOT TO LOOKINTO MEDICAL RECORDS, THE ATTORNY NOT 12 TELLING THE DEFENDANT THAT HE WILL NOT BE 13 PRESENTING A DEFENSE, NOT BRINGING THE 14 DEFENSE CASE FILE WITH HIM TO THE TRIAL, THE AHORNEY NOTHANING A CLOSING ARGUMENT 16 STATEMENT PREPARED, HIS ASSOCIATE CURITING 17 18 IT WHILE THE STATE PRESENTED THEIR 19 CLOSING STATEMENT, THE ASSOCIATES UNWILLINGNESS TO OPERATE THE TELEPROMPTER DURING CLOSING 20 ARQUMENT, DECIEVING THE CLIENT ABOUT TRIAL 21 STRATEGY PRIOR TO THE START OF TRIAL, AND 22 ESSENTIALLY LEHING THE DEFENDANT KNOW THAT THE  $\lambda 3$ DETENDANT HAS NO ROLE IN CHOOSING HOW DETENDANT 24 25 WILL BE REPRESENTED. **AA 1289** 



1	THE DEFENDANT HOPES AND PRAYS THAT
2	THE HONORABLE JUDGE WILL CONSIDER
3	THE CIRCUMSTANCES TO THIS CASE AND COME
4	TO THE SAME CONCLUSION THAT THE
5	DEFENDANT HAS, THAT A FAIR TRIAL
6	WAS NOT PREVIOUSLY PRODUCED, AND
7	FOR JUSTICE TO BE PROPERLY SERVED
රි	A NEW TRIAL SHOULD BE GRANTED TO
9	THE DEFENDANT.
10	NATES THIS 20TH DAY OF
11	MAY, 2014.
12	I, MICHAEL J. SCHOFIELD, LO
13	SOLEMNLY SWEAR, UNDER THE PENALTY OF
14	PERJURY, THAT THE ABOVE
15	REPLY MOTION IS ACCUPATE,
16	CORRECT, AND TRUE TO THE BEST OF MY
17	KNOWLEDGE.
18	NRS 171.102 AND NRS 208.165
19	RESPECTFULLY SUBMITTED
20	Michael John Showidal
21	MICHAEL J. SCHOFIELD
22	DEFENDANT IN PROPER PERSON
23	·
24	
25	
26	
27	——————————————————————————————————————

WICHAEL S. SCHOFIELD #1679195 330 S. CASINO CENTER LAS VEGAS NEVADA 199101



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

Layler to

## LEGAL

AA 1294

MC PP

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	DA COMPANIES	
	CLERK OF THE COURT	
1	MICHAEL J. SCHOFIELD	<del></del>
<u>)                                    </u>	INNATE No. 1679195	·
3	330 S. CASINO (ENTER BLVD	
+	LAS VEGAS NEVADA 89101	
5		
, ,	THE DISTRICT COURT	
7	CLARK COUNTY NEVASA	
3		
9	THE STATE OF NEVALA CASENO. C-13-287009-1	
٥	PLAINTIFF DEPT No. 6	
H	V.S.	
a	MICHAEL S. SCHOFIELD 6-23-14 @ 8:30am	
3	DEFENDANT	
14		
5	MOTION TO VACATE VERLICT	
6	Cones Now DEFENDANT, MICHAEL J.	
7	SCHOFIELL IN PROPER PERSON, AND	
8	RESPECTFULLY MOVES THIS HONORABLE COURT TO	
19	VACATE VERDICT OF COUNTY OF FIRST	
20	DEGREE KIDNAPPING.	
al	THIS MOTION IS BASEN UPON AN RECORD	
ಎಎ	AND FINES IN THIS ACTION. POINTS AND AUTHORITIES,	
23		
24		
<u>25</u>		
26		
77	MAY 3 0 2016 LEFENDANT IN PROPER PERSON	-
	CLERK OF THE COURT	ΔΔ 1294

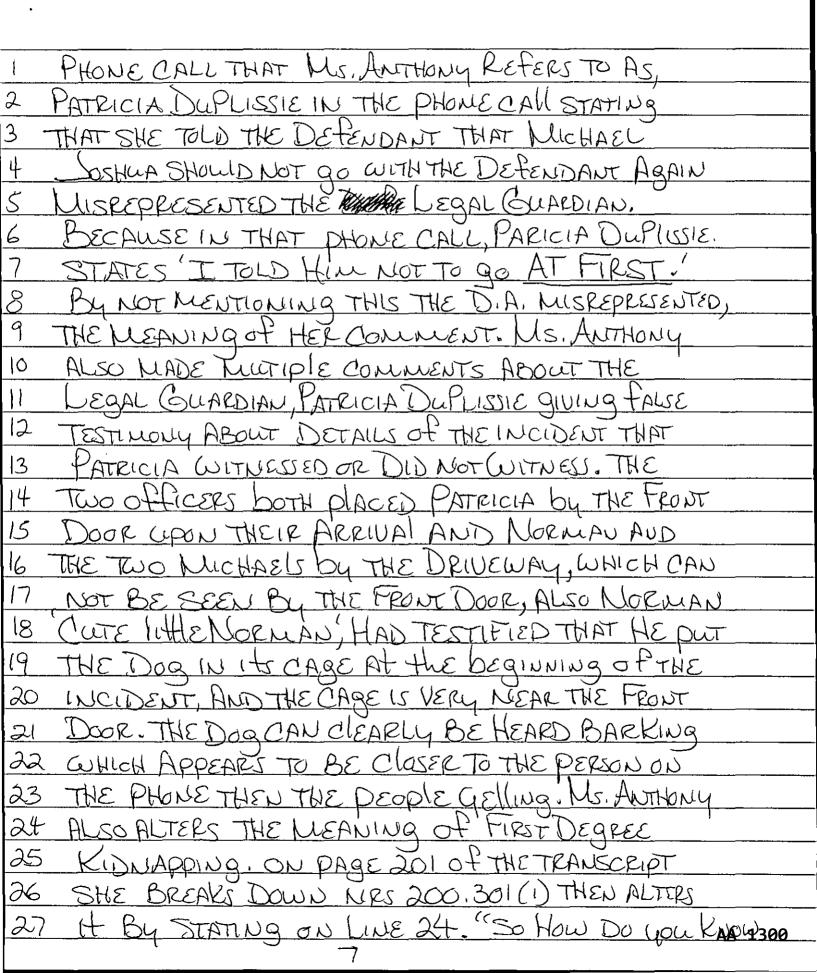
TO: DISTRICT ATTORNEY, DEFENDANT IN PROPER PERSON JOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING HIS MOTION ON FOR HEARING BEFORE THE SISTRICT COURT DEPT 6 ON THE DAY of June AT 8:30 O'CLOCK A.M. OF SAIS DAY. 8 SATEL THIS 26TH DAY OF MAY 2014 10 LICHAEL S. SCHOFIELD DEFENDANT IN PROPER PERSON 14 IT IS RESPECTFULLY REQUESTED OF THIS COURT 15 TO GRANT THIS MOTION TO VACATE VERDICT OF 16 BUILTY OF FIRST BEGREE KILNIAPPING FOR THE REASONS LISTED BELOW: 18 1. INSUFFICIENT EVIDENCE. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT EVERY 20 ELEMENT OF FIRST DEGREE KINNAPPING. 21 22 JURY INSTRUCTIONS WERE ERRONEOUS. 2. PROSECUTOR MISCONBUCT. 23 24 25 26 27 **AA 1295** 

POINTS AND AUTHORITIES I. PROCEBURAL BACKGROUND 2 3 1 INSUFFICIENT EVILENCE. THE STATE NOT PROVE BEYOND A REASONABLE DOUBT EVERY ELEVENT OF FIRST NEGREE KILNAPPING. THE BURLEN OF PROVING EVERY ELEMENT OF THE CRIME CHARGED IS PLACED UPON THE STATE. THE STATE DID NOT PROVE BEYOND A REASONABLE 8 OUST THAT THE DEFENDANT TOOK WITH THE KEEP HIS SON, MICHAEL LOSHUA 10 SCHOFIELD. IN PROVING FIRST DEGREE 11 KINLAPPING IT IS NOT ENOUGH TO PROVE THAT 12 13 THE REFERDANT'S INTENTION WAS TO TAKE HIS SON. IN FIRST DEGREE KIDNAPPING IT 14 15 MUST BE PROVED THAT THE 16 INTENTION WAS TO TAKE HIS SON, COMBINED 17 WITH THE INTENTION TO KEEP HIS SON. THIS 18 BEING THE CASE THE STATE DIDNOT PROVE 19 BEYOND A REASONABLE ! 20 DEFENDANT IS GUILTY OF EVERY ELEMENT THE CRIME OF FIRST I JEGREE 21 22 THEREFORE THE VERDICT OF GUILTY OF FIRST EGREE KISNAPPING SHOULD BE VACATED 23 24 BY THE HONORABLE JUDGE. 25 27 **AA 1296** 3

2. JURY INSTRUCTIONS WERE ERRONEOUS. JURY INSTRUCTION NUMBER 11 REALS: IT IS THE FACT, NOT THE DISTANCE, OF FORCEBUE MOVEMENT OF THE VICTIM THAT CONSTITUTES KIDNAPPING. 4 THIS JURY INSTRUCTION HELPS FURTHER DEFINE KISNAPPING. YET IT DOES NOT DEFINE FIRST DEGREE KILLIAPPING. D.A. LAVELL, IN THE FINAL CLOSING ARQUMENT GIVEN BY THE STATE ON FRIDAY 8 (ANUARY 31, 2014 REFERS TO THIS JURY INSTRUCTION 9 NUMBER 11, ON PAGE 235 LINE 13 THRULINE 20 OF 10 THE COURT TRANSCRIPTS. BEYOND REFERING TO THE 11 JURY INSTRUCTION AS A STATUE, THE D.A. STATES: "YOU WILL HAVE A JURY INSTRUCTION THAT SAYS 12 13 DISTANCE IS IRRELEVANT. AND NOTHING IN THE 14 STATUE BAYSTHAT HE HAD TO PERMANETLY 15 KEEP HIM. IF HE HAS TAKEN HIM TO THE STORE 16 17 AND BROUGHT HIM BACK, GUESS WHAT! HE STILL KISNAPPED THAT KIS." I'N THAT THE D.A. 18 REFERRED TO THE JURY INSTRUCTION NUMBER 11 NOT SAYING ANYTHING ABOUT INTENT TO KEEP, <u>20</u> It would THEN BE UNDERSTOOD THAT JURY 22 INSTRUCTION NUMBER 1 WAS PLACED IN THE JURY 23 INSTRUCTIONS TO NESCRIBE FIRST DEGREE KIDNAPPING 24 AND BEING THAT IT IS WISSING AN ELEMENT OF FIRST 25 DEGREE KIDNAPPING, THE JURY INSTRUCTION 26 NUMBER 11 IS CONSIDERED ERRONEOUS. 27 AA 1297

THE D.A. EXPLAINS TO THE LURY THAT, "IP THE DEFENDANT HAS TAKEN HIS SON TO THE STORE AND BROUGHT HIS SON BACK, HESTILL KINDAPPED 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 Country or NOT Country of KIDNAPPING. BEING THAT THE D.A. USED LANGUAGE CONSISTENT WITH THE LANGUAGE USED IN CURYINSTRUCTION NUMBER ELEVEN, WHICH IS 'KIDNAPPING INSTEAD OF FIRST DEGREE KIDNAPPING IN JURY INSTRUCTION NUMBER ELEVEN THAT WHICH CONSTITUTES KIDNAPPING, IN THE J.A. CLOSING ARQUMENT I ASK you TO FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING. THIS FURTHER HELPS 12 MAKE GURY INSTRUCTION NUMBER ELEVEN EPPONEOUS. 13 By MAKING THE INTENT TO KEEP AFFER TAKING HIS SON IRRELEVANT IN ITS BEFINITION OF WHAT CONSTITUTES 15 16 KINAPPING, AND THE S.A. USING SURY INSTRUCTION NUMBER ELEVEN TO BETERMINE GUILT OF FIRST DEGREE KIDNAPPING 17 JURY INSTRUCTION NUMBER ELEVEN IS THEN EPPONEOUS. 18 THE DEFENDANT IS CHARGED WITH AND HAS BEEN FOUND GUILTY OF FIRST NEGREE'IN WHICH INTENT TO KEEP AFFER TAKING IS AN ELEMENT OF THE CRIME AND THAT NOT ONLY JURY INSTRUCTION 21 zг NUMBER ELEVEN ONITS THIS ELEMENT, BUT THE S.A. REFERS TO 23 THIS JURY INSTRUCTION IN HER FINAL ARQUMENT AND EVEN GOES SO 24 FAR AS TO SAY ACCORDING TO THIS JURY INSTRUCTION, TO KEEP IS NOT AN ELEMENT OF THE CRIME COMMITTED. BASED ON 25 THIS THE HONORPHUE, JUNGE SHOULD VACATE THE VERDICT OF 26 Country To FIRST DEGREE KINGAPPING 27 AA 1298

3. PROSECUTOR MISCONDUCT THE PROSECUTORS USED REPREHENSIBLE METHODS TO a PERSUADE THE LURY AND IT IS REASONABLY PROBABLE THAT 4 A RESULT THE FAVORABLE TO THE DEFENDANT WOULD 5 HAVE BEEN REACHED WITHOUT THE MISCONDUCT. PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVILLENCE, CONSTRUCT A MORE DRAMATIC VERSION 7 OF THE EVENTS, AND THEN DEFEND AGAINST A 8 9 PRESECUTORIAL MISCONDUCT CLAIM BY MAINTAINING 10 THE STATEMENTS ARE FACT BASED, WHERE THE 11 PROSECUTOR MISREPRESENTS A WITNESS TESTIMONY la COURTS HAVE CONDEMPLED SUCH ANTICS AS THEATRICS. 13 THE LEGAL GUARDIANS of MICHAEL JOSHUA SCHOFIELD 14 WERE IN CONSTANT CONTACT WITH THE D.A 15 REGARDING THIS CASE. NORMAN DUPLISSIE NOT JUST PATRICIA DUPLISSIE HAD RELATED TO THE D.A. THAT 16 THEY AS WELL AS MICHAEL COSHUA SCHOFIED THE CHILD 17 18 THEY ARE WEGALGUARDIANS of AND THE VICTIMINTHIS 19 CASE All BELIEVED THAT THE DEFENDANT WAS NOT Country of FIRST DEGREE KIDNAPPING, SO LUCHSO 20 alTHAT NORMAN DUPLISIE NOT PATRICIA DUPLISIE PAID FOR A PRIVATE AHDENEY IN HOPES OF GEHING <del>2</del>2 23 18 DEFENDANT BEHER REPRESENTATION, SO FOR THE 24 DISTRICT HTORNEY US. HNTHONY TO SPEAK FOR THE HAMILY IN THE FIRST OF THE TWO 25 Closing ARGUNEUT WAS INAPPROPRIATE AND 26 മ്പ MISLEADING TO THE JURY. PATRICIA DUPLISIE IN THE 1299

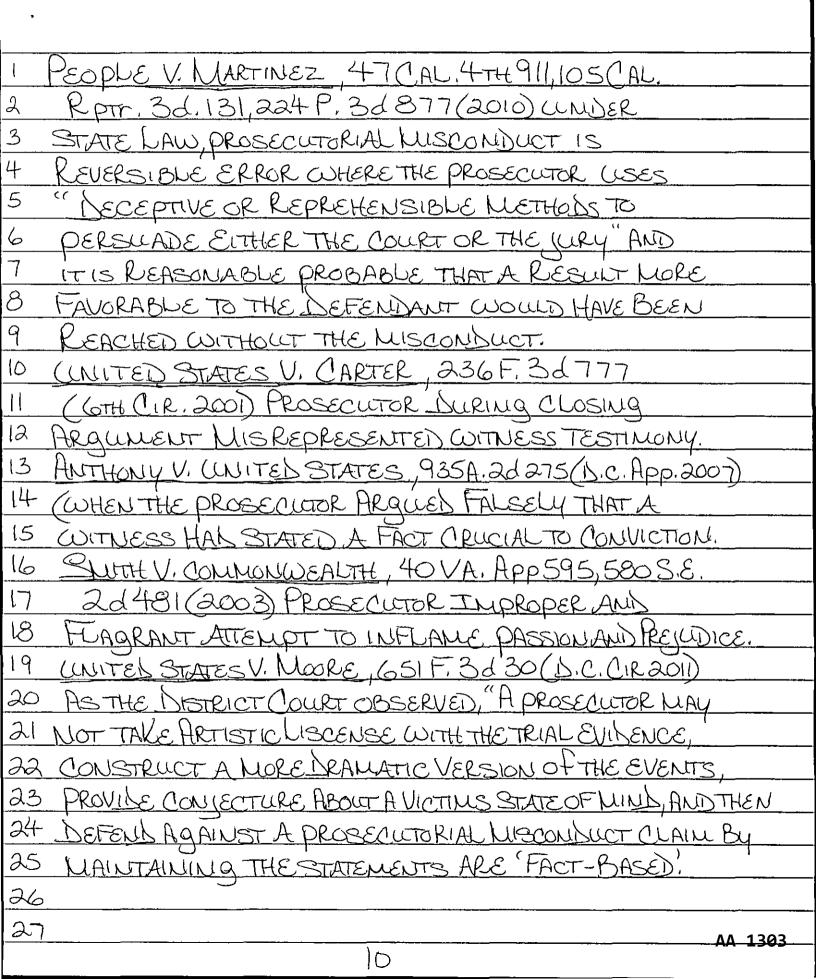


THAT THE DEFENDANT INTENDED TO TAKE, WHICH 2 IS NOT PART OF NRS 200,301(1) OR JURY INSTRUCTION NUMBER TEN. EVEN THE SHORT 4 VERSION OF NRS 200.301(1) WHICH THE STATE USED IN THE JURY INSTRUCTION NUMBER TEN, WHICH ADDS A LINE TO THE STATUS THAT IS NOT PART of it, KIDNAPPING DOES NOT REQUIRE FORCE! රි THE JURY INSTRUCTION AND THE NRS FOR FIRST DEGREE KIDNAPPING DO NOT SAY INTENDED TO TAKE, BUT SAY TAKE WITH THE INTENT TO KEEP. 9 10 11 THE SECOND CLOSING ARGUMENT GOES EVEN FARTHER IN STATING THAT INTENT TO KEEP IS NOT A PART 12 OF THE CRIME. THE D.A. LAVELLEVEN USES A 13 DESCRIPTION OF ANOTHER EXAMPLE OF A KIDNAP SCENERIO WHICH ALSO DOES NOT DESCRIBE A 16 FIRST DEGREE KIDNAPPING SCENE. D.A. LAUELL ALSO AHACKED THE DEFENDANT IN HER CLOSING ABOUT 17 BEING OUT OF CONTROL THAT HE HAS A HORRIFIC 18 TEMPER WHICH SHE REPEATED TWICE. YET NOT ANOTHER PERSON AT THE SCENE WOULD SAY THAT 20 THE DETENDANT AHACKED ANY OF THEM 21 PHYSICALLY. THE DEFENDANT WAS, AS THE POLICE Д3 OFFICER WHO ARRIVED ON THE SCENE RESISTING 24 BUT NOT TO THE POINT OF GEHING A RESISTING ЭS ARREST CHARGE, THAT THE PHYSICAL ALTERCATION 26 HAD CEASED BEFORE HER APRIVAL AND THE 27 LE OFFICER WEIGHBOR SAID THAT THE DETENDANT 301

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 6 DEFENDANT. THE HONORABLE JUDGE DID NOT QIVE THE DEFENDANT A CONTEMPT OF COURT CHARGE FOR HIS ACTIONS DURING TRIAL NOR DID THE DEFENDANT RECIEVE CHARGES FOR BEING PUT 10 IN A RESTRAINING DEVICE AT C.C.D.C. 1) ARGUMENT 12 BURKHART V STATE 107 NEV. 797, 820 P. 2d 757, 13 1991 LEXIS 173 (1991) THERE WAS NO TESTIMONY 14 15 WHICH WOULD HAVE ALLOWED THE JURY TO INFER WHAT THE DEFENDENT INTENDED TO DOWHHTHE VICTIM. 16 COBB V POZZI 363 F. 3d89,116(2dC1R2004) 18 AN ERRONEOUS JURY INSTRUCTIONS REQUIRES 19 REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS. (JOHNSON V. U.S. 520 U.S. 461, 466-67, 1178. Ct. 1544 (1997) 20 EXPLAINING ERRORS CAN BE CORRECTED WHENE 21 THERE IS (DERROR (2) THAT IS PLAIN (3) THAT Affects 22 SUBSTANTIAL RIGHTS (4) SERIOUSLY Affects THE 23 24 FAIRNESS, MILLE INTEGRITY OR PUBLIC REPUTATION 25 OF JUDICIAL PROCESDING 26

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**AA** 1302



SPICER V. ROSSEHI, 150F. 3d642, 644 (7TH CIR. 1998) ("LUST AS COUNSEL MAY NOT EXPRESS HIS BELIEFS 2 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 3 d 413 (8 TH CIR 1995) IT IS IMPROPER TO ARGUE YOUR PERSONAL BELIEFS 8 ABOUT THE HONESTY OF WITNESSES, THOUGH YOU MAY ARQUE THAT THE EVILENCE SHOWS THAT PARTICULAR WITNESSES ARE CREDIBLE OR IN CREDIBLE. YOU MAY 10 11 NOT APPEAL TO THE CURY'S SYMPATHY, PREJUDICE, 12 OR PASSION 13 REELV. PHILASELPHIA, BETHLEHEM & NEWENGLAND 14 R.R.Co., 939 F. 2d 128, 133-34 (3R) (1R.1991) ("THE REMARKS OF COUNSEL (ARE) REQUIRED TO BE 16 CONFINEL TO THE EVILENCE ALMITTED IN THE CASE. 17 KEVERSIBLE ERROR IS COMMITTED WHEN COUNSEL'S 18 CLOSING ARQUINENT TO THE JURY INTRODUCES 19 EXTRANEOUS LIATTER THAT HAS A REASONABLE 20 PROBABILITY OF INFLUENCING THE VERNICT." STATE V. CARNER 2340R. App. 486,228 P. 3d 710 (2010) 22 CUNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING MISTRIAL DUE 23 TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (1) THE MISCONDUCT 24 IS SO PREJUDICIAL THAT IT CANNOT BE CURED BY MEANS SHORT 25 OF UISTRIAL; WITHE PROSECUTOR KNEW THAT THE CONDUCT WAS 26 IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR ENTHER INTENDED OR WAS INDIFFERENT TO THE RESULTING MISTRIAL) **(4)** 

FURTHER MORE, THE S.A. DECLINED KNOW EDGE OF MEDICAL CONDITIONS OF THE DEFENDANT AND RECIEVING A LEHERTHAT NOT ONLY TOUCHED & UPON THAT ISSUE BUT ALSO EXPRESSED THE DESIRE OF PATRICIA DUPLISSIES TO SEE HERSON THE DEFENDANT PUNISHED FOR THE CRIME (S) THE BELIEVED HE COMMITTED ON HER GRANDSON. THE b. A. ALSO CLAIMED TO HAVE LISTENED TO HUNDREDS OF HOURS OF PHONE CALLS & AND COULD ONLY USE THE FIRST <u>8</u> couple of DAYS IN JAILAS ANY SORT OF EUIDENCE. THE D.A. THRU HEARING THESE PHONE CALLS MUST OF HAVE HEARD 10 THE DEFENDANTS SON WHO IS THE VICTUM CRYING TO THE DEPENDANT THAT HE MISSES HIM. THE TWO MICHAELS 12 13 PUTTING THIS BEHIND THEM AS MUCH AS POSSIBLE, THE 14 D.A. HAD NO RIGHT TO SAY THAT THE LOVE AND FORGIVENESS 15 THAT THEY SHARE IS IRRELEVANT. AND THE D.A. S HAD 16 NO RIGHT TO SPEAK FOR THE FAMILY OF THE DEFENDANT 17 AND WHAT THEIR THOUGHTS WERE ON JANUARY 6,2013 18 AND FOLLOWING THAT DAY, THE D.A. MISREPRESENTED 19 THE VICTIL'S GRANDMOTHER IN THEIR CLOSING WHEN THEY 20 STATED SHE IS TRYING TO PROTECT THE DEFENDANT AND 21 NOT THE GRANDSON, WHEN THE VICTUMS GRANDWOTHER 22 HAS DEDICATED HER RETIREMENT YEARS TO RAISING 23 HIM AND WHO CALLED 911 TO PROTECT THE GRANDSON 24 FROM WHAT SHE THOUGHT WAS IMPROPER PHYSICAL DISCIPLINARY REACTION BY HEROWN SON. SHE HAS NOT SHYED AWAY FROM DISAGREEING WITH HER SON ON RECORDED PHONE CALLS ABOUT LETTING THE AA 1305 25 26 27

REFENDANT KNOW THAT SHE BELIEVED THE DEFENDANT SHOULD BE PUNCHED 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 LIEAU THAT YOU DID NOT DO ANYTHING WRONG. AND BELIEVES THE DEFENDANT HAS MOONE ELSE TO BLAME FOR THE MESS HE IS IN. THIS EVELT HAS TORE OUR FAMILY APART. THE DISTRICT ATTORNEYS OFFICE OR THE D.A. ONTHIS CASE SHOULD NOT TRY TO SAY THAT THEY ARE REPRESENTING THE VICTIMOR THE VICTIMS JEGAL GUARDIANS. ALL FOUR OF THE WITHESSES DO NOT BELIEVE THE DEFENDANT IS GUILTY OF KIDNAPPING. ALL 4 BELIEVE THE DEFENDANT IS CHILTY OF CHILD ABUSE. I DO NOT SEE HOW THE COURT COULD, After ISTENING TO HOW THE D.A. MUNIPULATED THE LAW, TO CONVINCE A JURY WHO IS NOT PRACTICED IN LAW ALLOW THE VERDICT OF BUILTY TO FIRST DEGREE KIDNAPPINGISTAND. I HOPE AND PRAY THAT YOUR HONORABLE SUDGE WILL CONSIDER THE SHORTCOMINGS THAT EXIST IN THE STATES BURDEN TO PROVE EVERY ELEMENT OF THE CRIME CHARGED WHICH IS FIRST DEGREE LIDNAPPING AND CONCLUDE THAT GUSTICE WOULD BE PROPERLY SERVED WITH A BEHER RESOLUTION THAN HAS OCCUPRED. **AA 1306** 

THE STATE WAS GIVEN THE OPPORTUNITY TO PRESENT A FAIR TRUAL BUT INSTEAD USE DECEPTIVE 2 METHODS TO PROVE THEIR CASE. IN MUSUSING, JURY INSTRUCTIONS IMPROPERLY MAKING SAID, JURY INSTRUCTION EPRONEOUS. AND IN NOT SHOWING ANY EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS INTENT WAS TO KEEP MICHAEL SOSHUA SCHOFIELD A FFER TAKING Him THE VERDICT OF GUILTY OF FIRST DEGREE KIDNAPPING රි SHOULD BE VACATED by THE HONORABLE SUDGE. I HOPE AND PRAY THIS MOTION WILL BE HEARD. 10 LATES THIS 26TH DAY OF WAY, 2014 12 I MICHAEL J. SCHOFIELD, LO SOLEMNLY SWEAR, 13 14 CUNSELTHE PENALTY OF PERJURY, THAT THE ABOVE 15 MOTION IS ACCURATE, CORRECT, AND TRUE TO THE 16 BEST of My KNOWLEGGE (7 RESPECTFULLY SUBMITTED 18 19 20 21 LICHAEL CL. SCHOFIELT 22 EFENIAUTIN PROPER PERSON 23 24 25 26

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MCHAEL L.S. SCHOFIELL #1679195 330 S. CASINO CENTER BLVD LRS VEGAS NEVADA 101



LLARK COUNTY CLEEK of COLFT REGIONAL JUSTICE CENTER 200 DEWIS AVE, 3RD FLOOR LAS VEGAS NIV B9101 

,	No & Lleum	_
MC PP	MICHAEL J. SCHOFIELD DISTRICT CLERKOFTHE COURT	
$\Gamma \Lambda$	INMATE #1679195 CLARK COUNTY	
` _	330_S. CASINO CENTER NEVALA	
4	LAS VEGAS NEVADA 89101	_
<u> </u>	DEFENDANT IN PROPER PERSON	_
6	CASENO. C-13-287009-1	
7	STATE OF NEVALA DEPT NO. 6	
3	PLAINTIFF LOCKETT NO	
Ą	<u>VS</u>	
0	MICHAEL J. SCHOFIELD	
(	DEFENDANT DATED JUNE 5, 2014	
2		_
3	DEFENDANTS AMENGUM II TO MOTION	-
4	FOR NEWTRIAL	_
5	COMES NOW DEFENDANT IN PROPER PERSON	
<i>ط</i>	AND HEREBY SUBMITS THE ATTACHED EXHIBITS	
<u>7</u> _	TO SUPPORT THE REFENDANTS MOTION FOR NEWTRIAL,	<del></del> -
8	DEFENDANTS RESPONSE TO OPPOSITION, DEFENDANTS	
9	ADDENDUM REPLY.	-
70 <sup>-</sup>	Michael Glahofield	-
21	MICHAEL J. SCHOFIELD	
22	DEFENDANT IN PROPER PERSON	-
13	DEFENDANT IN PROPER TERSON  RECEIVED	
24	Ö = 0 10N 1.2 2014	
25	CLERK OF THE COURT AA 1309	)

I STATE FAILURE TO DISCLOSE FAUORABE EVIDENCE
FAUORABE EUIDENCE

ュ

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

COPY OF LETTER TO THE D.A. LAS VEGAS NV 890 LAS VEGAS NV 890

02 MAY 2013 PM 5 L 02 MAY 2013 PM 5 L



Clark County Public Referder
309 South 3rd Steel
2 nd Horr
Las Vegas, NV 89155
Las Vegas, NV 89155

EXHIBIT A

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

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

Attn: Dan Jenkins

Re: Michael John Schofield Case #13F00320X/C287009

May 1<sup>st</sup> 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 1<sup>st</sup> degree and the charge of kidnapping in the 1<sup>st</sup> 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 1<sup>st</sup> degree should be dropped or at least reduced to a 2<sup>nd</sup> 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



EXHIBIT B

# OFFICE OF THE DISTRICT ATTORNEY CLARK COUNTY, NEVADA

DISCOVERY DIVISION DA ADMINISTRATION

### REQUEST FOR DISCOVERY

DISCOVERY INFORMATION	☐ APPOINTED COUNSEL
	☐ RETAINED COUNSEL
Request Date: Clerk's Initials:	□ PUBLIC DEFENDER/SPECIAL PUB DEF
Juvenile/efile pages @ \$.25 ea	☐ PRO PER
# of Pages hard copy @ \$.50 ea Date: Cas	se #:
Duplication of Video/CD/Tapes/Disk @ \$25.00 ea Pri	inted Pictures @ \$1.00 ea
Defendant: 1994 See Total See Dept: 18	Next Court Date:
Amount Due: 7.400 Bates S	stamp: to
ATTORNEY INFORMATION email address:	
Bar #: Name: Name:	Phone:
Signature: Alds dell	Date:
PROMISE OF RECIPROCAL DISCOVERY  I am the attorney for the named Defendant. In executing this request for discovery, I acknow the State's Request for Discovery and promise to comply with all requirements of NRS 17.	

Payment For Copies: Make all checks payable to: CLARK COUNTY TREASURER.

Remit To: District Attorney's Office, 200 Lewis Ave 3<sup>rd</sup> 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

	i. EXHIBLT C	ł
•	EXHIBIT C RESIONAL JUSTICE CENTER 200 LEWIS AVE	
1	MICHAEL J. SCHOFIELD 200 LEWIS AVE	
2	MICHAEL J. SCHOFIELD Inmate No. 1679195 330 S. Casino Center Blvd. Las Vegas NV 89101  DIST 6	
3	Las Vegas, NV 89101 Defendant in Proper Person  Las Vegas, NV 89101  Defendant in Proper Person  Las Vegas, NV 89101  Defendant in Proper Person  Las Vegas, NV 89101  Defendant in Proper Person	
4 5		
Ű	JOHNPARKIS ESQ CLERK OF THE COURT  70 3383 -0905  IN THE DISTRICT COURT	
7	IN THE DISTRICT COURT  703) 382-0905 IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA	
8	THE STATE OF NEVADA.	
ō.	THE STATE OF NEVADA.    Crose Work General 2870 69-4 - 7   Plaintiff.   Dept No. 21	
1.0	VS. CASENO C-13-287009-1	
11 12	MICHAEL J. SCHOFIELD. 17. August 13, 2013	
1.3	MICHAEL J. SCHOFIELD.  Defendant.  Defendant.  Time: 9:30 Am	
14	MOTION TO DISMISS COUNSEL AND	
15	APPOINTMENT OF ALTERNATE COUNSEL	
1.6	COMES NOW Defendant, MICHAEL J. SCHOFIELD. in Proper Person, and respectfully moves this honorable court to appoint other counsel to represent this Defendant.	
17	This Motion is based upon all the records and files in this action. Points and Authorities.	ļ ļ
18	Affidavit of the Defendant, and any argument adduced at the time of hearing of this Motion.	
19	$\{$	
20 21	MICHAEL L-SCHOFIELD Lociendent in Proper Person	
22	Marion Division of Acoustinas Donnarios	
23	NEVADA RULES OF APPELLATE PROCEDURE	
24	PAINOSO NOT	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
25 26	RULE 4 (A)(7) (ANOIDING 250 FILING FEE) RULE 4 (B)(1)(A) 30 DAYS TO FILE OP APPEAL.	~ ზ
27	RULE 4 (B)(5)(B) 20 DAYS to FILE	
28	FORM 1 INTHE APPENDIX OF FORMS IS	
	Suggestion form of A Notice of APPEAL. RULE 4(B)(3)	AA 1

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#### 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. XXX on the 13 day of Aux. 2013. at \_\_\_\_\_\_o'clock a.m/p.m. of said day.

DATED this May of Oly . 2013.

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.



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- 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." <u>Cuvler v. Sullivan</u> 100 S.Ct. 17-8 (1980); and <u>Frazier v. U.S.</u> 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." <u>Anders v. California</u>, 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 tack thereof, and a "showing" of conflict of interest requires no showing of prejudice. <u>Cuyler v. Sullivan</u>, 100 S.Ct., at 1717.

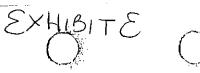
The law addresses itself to actualities. Adjudiciation is not a mere mechanical process, nor does it compel either (or determination) <u>Griffin v. Illinois</u>. 76 S.Ct. 585 592-594 (1956).

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 Oday of . 2013.

Defendant in Proper Person

1	II NEWLY DISCOVERED EVIDENCE	
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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 /	Route	Frequency		
		Strength		ł		Next dose Continue due at Home?
1	TUNG	1.1(10)_	0.01	As maded		7/4/12 YESNO
2	titility (taletin	1/1/2	tral	AS MORAL		7/5/12 (YES) WC
3	Keppra	500mg	cral	twice a day		7/4/12 (YES)NO
4						YES/NO
5						YES/NO
6						YES/NO
7						YES/NO
8						YES/NO
9						YES/NO
10						YES/NO
11		1				YES/NO
12						YES/NO
13						YES/NO
14						YES/NO
15						YES/NO
16					是《《《》	YES/NC
17						YES/NC
18						YES/NC

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.



Please share this list with all your doctors.

Healthcare facilities: For medication questions, call St. Rose Dominican Hospitals Pharmacy at: Sicna (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

Page 2 of 2

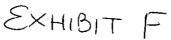
33014697 MR#: 689494

SCHOFIELD , MICHAEL J 10/03/1965 , M 46 ADR: AKBAR TANVEER

PDR:

07/02/12 Rm: MED

Bd: 0360P E05AA 1320



#### 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: Result Title:

Auth (Verified) MR Brain wo+w Contrast

Source of Report:

Contributor system, SRDHRAD on 03 July 2012 14:06 Contributor system, SRDHRAD on 03 July 2012 14:06

Verified By: 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

Time:

Exam Date and 7/3/2012 2:06:16 Ordering

Akbar, Tanveer

PM PDT Physician:

Report

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

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 extraoxial fluid collection.

Printed by:

Aceves, Tanya RN

Printed on:

07/04/12 11:24

Page 1 of 2 (Continued)

#### '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 ethracid 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: Printed on: Aceves, Tanya RN

07/04/12 11:24

Page 2 of 2 (End of Report) ' NOT FERMANENT 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

Printed by:

Aceves, Tanya RN

Printed on:

07/04/12 11:24

Page 1 of 2 (Continued)

· NOT RERMANENT 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: Printed on: Aceves, Tanya RN 07/04/12 11:24

Page 2 of 2 (End of Report)

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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. <u>I believe</u> 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.

. 1

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.

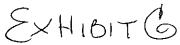
I do not believe Maria influenced my testimony at trial since to my knowledge, it was the same as the testimony I provided at the pre trial before Judge Sullivan. This does not necessarily mean that her intensions were not to do otherwise. I have written a letter to the sentencing judge questioning the 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

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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		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	ΑП	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 #: Visitation Time:04/05/13 7:00 PM-7:25 PM 375189 Status:Completed Inmate ID **Inmate Name** Inmate Station Inmate Housing 0001679195 Schofield, Michael John NT-2-4 NT-7E:2W Visitor Station **Visitation Center** VS-44 Clark County Visitation **Visitor Name** Visitor ID Relationship To Inmate Check-in Time **Check-out Time** FPUD-64169 Patricia Duplissie Parent 6:16 PM R8ED-65482 Child Michael J Schofield 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 VS-12 Clark County Visitation 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 VS-05 Clark County Visitation Visitor ID Visitor Name Relationship To Inmate Check-in Time Check-out Time FPUD-64169 Patricia Duplissie 7:38 AM Parent 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-7F:2W **Visitation Center** Visitor Station VS-35 Clark County Visitation 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 VS-03 Clark County Visitation Visitor ID Visitor Name Relationship To Inmate Check-in Time Check-out Time

Parent

Child

Report Time: 4/4/2014 9:11 AM

Patricia Duplissie

Michael J Schofield

FPUD-64169

R8ED-65482

9:12 AM

9:12 AM

34/11/13/9:30 AM Visitation Time: 11/11/13 9:30 AM-9:55 AM Confirmation #: 472146 Status:Completed Inmate Station Inmate Housing Inmate ID Inmate Name 0001679195 Schofield, Michael John ST-4L-1 NT-7E:2W Visitation Center Visitor Station **VS-17** Clark County Visitation Relationship To Inmate Check-in Time Check-out Time Visitor Name Visitor ID 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 Name Inmate Station Inmate Housing Inmate ID 0001679195 Schofield, Michael John ST-4L-1 NT-7E:2W Visitation Center Visitor Station VS-16 Clark County Visitation Relationship To Inmate Check-in Time Check-out Time **Visitor ID** Visitor Name 12:39 PM PD4G-64170 Robert F Schofield Sibling or Half Sibling LEUD-78714 Rosa Schofield Brother-in-Law or Sister-in-12:39 PM 11/29/13 10:00 AM 481396 Status:Completed Visitation Time:11/29/13 10:00 AM-11:05 AM Confirmation #: Inmate ID Inmate Name Inmate Station Inmate Housing 0001679195 Schofield, Michael John NT-3B-5 NT-7E:2W Visitor Station **Visitation Center** VS-27 Clark County Visitation Relationship To Inmate **Visitor ID** Visitor Name Check-in Time Check-out Time FPUD-64169 Patricia Duplissie Parent 9:48 AM 1.2/23/13 10:00 AM Confirmation #: 491648 Status:Completed Visitation Time: 12/23/13 10:00 AM-10:25 AM **Inmate Station** Inmate ID Inmate Housing Inmate Name 0001679195 Schofield, Michael John NT-3B-1 NT-7E:2W **Visitation Center Visitor Station** VS-12 Clark County Visitation 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

Inmate Name

Inmate ID 0001679195 Schofield, Michael John

**Visitation Center** Clark County Visitation

Visitor ID P38S-1554

Visitor Name John Parris

Relationship To Inmate

Attorney

Status:Completed

**Inmate Station** 

Visitor Station VS-56 (Priv.)

NT-7EF-1

Check-in Time 2:05 PM

Inmate Housing

NT-7E:2W

Visitation Time:01/22/14 2:04 PM-2:34 PM

Check-out Time

Report Time: 4/4/2014 9:11 AM

C3/04/14 10:00 AM 21 Gonfirmation #: Status:Completed Visitation Time: 03/04/14 10:00 AM-10:25 AM 523816 Inmate Station Inmate Housing Inmate ID Inmate Name 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitor Station Visitation Center VS-41 Clark County Visitation Check-out Time Visitor ID **Visitor Name** Relationship To Inmate Check-in Time FPUD-64169 Patricia Duplissie Parent 9:50 AM Michael J Schofield Child 9:50 AM R8ED-65482 03/09/14 10:00 AM Status:Completed Visitation Time:03/09/14 10:00 AM-10:25 AM Confirmation #: 525063 Inmate Station Inmate Housing Inmate ID Inmate Name 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitor Station **Visitation Center** VS-28 Clark County Visitation Check-out Time **Visitor ID Visitor Name** Relationship To Inmate Check-in Time Parent 9:55 AM FPUD-64169 Patricia Duplissie 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) Relationship To Inmate Check-in Time **Check-out Time** Visitor ID Visitor Name M5HI-132 Probation Officer 12:13 PM Robert Farley 04/02/14 7:30 PM Confirmation #: Status:Completed Visitation Time:04/02/14 7:30 PM-7:55 PM 537904 Inmate Station Inmate ID Inmate Name Inmate Housing 0001679195 Schofield, Michael John NT-7EF-1 NT-7E:2W Visitor Station **Visitation Center** VS-61 (Priv., Dual, ADA) Clark County Visitation Relationship To Inmate Visitor Name Check-in Time Visitor ID 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 NT-7EF-1 Schofield, Michael John NT-7E:2W **Visitation Center Visitor Station** VS-05 Clark County Visitation Visitor ID **Visitor Name** Relationship To Inmate Check-in Time Check-out Time Robert F Schofield Sibling or Half Sibling PD4G-64170 7:57 PM

Brother-in-Law or Sister-in-

7:57 PM

Report Time: 4/4/2014 9:11 AM

Rosa Schofield

LEUD-78714



309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89100-2010 (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#
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to have unrestricted communication with the	e Clark County Pul	blic Defenders Office.
to/from the above named agencies. The per- for the client's legal defense. I hereby relea disclosure of otherwise confidential informa-	upose of this release use the holder of such stion. You are speci	itial information and protected health information is for providing advocacy and disconition services a information from liability if any; arising from the fically authorized to photocopy the following ive. Records may include but are not limited to:
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if not withdrawn, will automatically expire t	secording to the follo duced copy of this au	the recipient and no longer protected. This consent raying specification of date, event, or condition: one otherization shall be as valid as the original. This no represents me for the proviously outlined
Note: The confidentiality of psychiatric, dra from these specific records shall be transmit index Federal Regulation 42 CFR 2. Regulation to whom it pertains. A general a	ned to anyone else w ations prohibit any fr suthorization for the the release of any or	use and HIV records is required and no information rithout written consent or authorization as provided or ther disclosure without specific written consent or release of medical or other information is not real records containing the following diagnoses for
HIV Related Records	Psychiatr	ric/Psychological Records
Drug/Alcohol Treatment Records	Client's	
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EUEAN SPAGER, CHAY - STEVE SUDLAK, VICH CHAY

LAWRIENCE BROWN III - TOM COLLING - LAWRIENCE WEERLY - CHAIR GIURCHIGLIANI - MARY BETH SCOM

DON BURNETTE, COUNTY MARIES\*

EXHIBIT H



309 S Third St · Second Floor · PO Box 552610 · Las Vegas NV 89155-2010 (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

Address:    Photos	RECORDS AND/OR PR		EALTH	INFORMATI	UN
Social Security. 353-70-2354 DOB: 10-3-1965  I hereby authorize  to have unrestricted communication with the Clark County Public Defender Affine.  This release includes phone calls, visitations, release of confidential information and protected health information to for the client's legal defense. I hereby release the holder of such information from liability if any, arising from the disclosure of charwise 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 Correctional Records  Parele Records Correctional Records  Parele Records Indicated Records Indicated Records Indicated Records (including juvenile)  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 disclose pursuant to this surhorization may be subject to re-disclosure by the recipient and no longer protected. This continuous if not withdrawn, will automatically expire seconding to the following specification of date, event, or conditions if not withdrawn, will automatically expire seconding to the following specification of date, event, or conditions information may also be provided to any subsequent attenties 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 informatific person when it perstains. 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 information is not sufficient for this purpose. I give consent to the release of any or all records containing the information is not intered purposes and conditions as stated above:	Name: MICHAEL J. Sci	HOFIELD	~ <u></u>		
Interpretation of current case. A reproduced copy of this authorization at any time, by written request, if no this withdrawn, will authorize this subnorization may be subject to redisclosure by the recipient and no longer protected. This prepagate to the subnorization from the file of the previous of the subnorization from the file of the previous of the subnorization from the file of the protect of the control of the previous of the subnorization from the file of the protect of the file of the previous of the subnorization from the file of the protect of the file of the fil	Address:		Phone:		
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BOARD OF COUNTY COMMISSIONERS

SUSAN BRAGER, Chid . STEVE SISOLAK, Vice Chid

LAWRENCE BROWN III . TOM COLLING . LAWRENCE WEERLY . CHRIS GRINCHIGLIAN: . MARY BETH SCOW

DON BURNETTE, County Manager

රි DATEL 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 & Scholield MICHAEL J. SCHOFIELD DEFENDANT IN PROPER PERSON **AA 1336** 

MICHAEL J. SCHOFIELD#1679195 330 S. CASINO CENTER LASVEGAS NEUADA 89101

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CLARK COUNTY CLERK OF COURT REGIONAL JUSTICE CENTER JOOLEMIS AND BRDFLOOK LAS VEGAS NEUADA B9101

1	RPLY	Alun D. Column
2	STEVEN B. WOLFSON Clark County District Attorney	CLERK OF THE COURT
3	Nevada Bar #001565  MARIA E. LAVELL Chief Denuty District Atternacy	
4	Chief Deputy District Attorney Nevada Bar #010120	
5	200 Lewis Avenue Las Vegas, Nevada 89155-2212	
6	(702) 671-2500 Attorney for Plaintiff	
7	DICTOR	
8		CT COURT NTY, NEVADA
9	THE STATE OF NEVADA,	
10	Plaintiff,	
11	-vs-	CASE NO: C-13-287009-1
12	MICHAEL JOHN SCHOFIELD,	DEPT NO: VI
13	#1679195	
14	Defendant.	
15	STATE'S OPPOSITION TO DEFENDA	ANT'S MOTION TO VACATE VERDICT
16		NG: JULY 14, 2014
17	I IME OF HEA	RING: 8:30 A.M.
18	COMES NOW, the State of Nevada	, by STEVEN B. WOLFSON, Clark County
19	District Attorney, through MARIA E. LAVE	LL, Chief Deputy District Attorney, and hereby
20	submits the attached Points and Authorities i	n Opposition to Defendant's Motion To Vacate
21	Verdict.	•
22	This Opposition to Defendant's Motio	n to Vacate Verdict is made and based upon all
23	the papers and pleadings on file herein, the at	tached Points and Authorities in support hereof,
24	and oral argument at the time of hearing, if de	eemed necessary by this Honorable Court.
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27	<i>'</i> ///	
28	///	
		W:\2013F\003\20\13F00320-OPPS-(SCHOFIELDMICHAEL_JOHN)-003.DOCX

# **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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1	In DePasquale v. State, 106 Nev. 843, 803 P.2d 218 (1990), the Defendant was	
2	convicted of First Degree Murder and sentenced to death. Eight (8) days after the final verdict,	
3	he filed a Motion for New Trial, which the trial Court declined to hear. On appeal to the	
4	Nevada Supreme Court, the Defendant argued that the District Court erred in declining to	
5	exercise jurisdiction over the motion. The Nevada Supreme Court held that since the	
6	Defendant missed by one day the deadline imposed by NRS 176.515(4), the District Court did	
7	not err in failing to hear the motion. Id. at 851, 803 P.2d at 223. Since the Defendant clearly	
8	missed the deadline, this Court should deny this motion as being untimely.	
9	CONCLUSION	
10	For the foregoing reasons, the State respectfully requests this Court to DENY	
11	Defendant's Motion to Vacate Verdict.	
12	DATED this 19th day of June, 2014.	
13	Respectfully submitted,	
14 15	STEVEN B. WOLFSON Clark County District Attorney Nevada Bar #001565	
16	$\sim$	
17 18	BY MARIA E. LAVELL Chief Deputy District Attorney Nevada Bar #010120	
19	CERTIFICATE OF MAILING	
20	I hereby certify that service of the above and foregoing was made this 19 <sup>th</sup> day of June,	
21	2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:	
22	MICHAEL J. SCHOFIELD, #1679195	
23	CLARK COUNTY DETENTION CENTER 330 S. CASINO CENTER BLVD. LAS VEGAS, NV, 89101	
24		
25	BY /s/ E. Goddard  E. Goddard	
26	Secretary for the District Attorney's Office	
27	13F00320X/MEL/erg/L-1	
28		

# EXHIBIT 1

1 TO: DISTRICT ATTORNEY, DEFENDANT IN	
2 PROPER PERSON	
3 YOU AND EACH OF YOU, WILL PLEASE TAKE	
4 NOTICE THAT THE UNDERSIGNED WILL BRING	
5 THIS MOTION ON FOR HEARING BEFORE THE	
6 DISTRICT COURT DEPT 6 ON THE JEDDAY	
7 of June AT 8:30 O'CLOCK A.M. OF SAIN DAY.	-
PATEL THIS 26TH DAY OF MAY 2014.	•
10 Uchaelleholiele	
MICHAEL S. SCHOFIELD	
12 DEFENDANT IN PROPER PERSON	
13	
14 POINTS AND AUTHORITIES	
15 IT IS RESPECTFULLY REQUESTED OF THIS COURT	
16 TO GRANT THIS MOTION TO VACATE VERDICT OF	
17 COULTY OF FIRST DEGREE KINNAPPING FOR THE	
18 REASONS LISTED BELOW!	
19 1. INSUFFICIENT EVINENCE. THE STATE DID NOT	
20 PROVE BEYOND A REASONABLE DOUBT EVERY 21 ELEMENT OF FIRST DEGREE KUNAPPING.	
22 2. JURY INSTRUCTIONS WERE ERRONEOUS.	
23 3. PROSECUTOR LISCONSUCT.	
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AA	13.45

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1 POINTS AND AUTHORITIES	
2 I. PROCEKURAL BACKGROUNS	
3 1. INSUFFICIENT EVILENCE. THE STATE DO	
4 NOT PROVE BEYOND A REASONABLE DOUBT EVERY	
5 ELEMENT OF FIRST DEGREEKINNAPPING. THE	
6 BURLEN OF PROVING EVERY ELEMENT OF THE	
7 CRIME CHARGED IS PLACED UPON THE STATE.	
8 THE STATE DID NOT PROVE BEYOND A REASONABLE	
9 NOUST THAT THE SEFENDANT TOOK WITH THE	
10 INTENT TO KEEP HIS SON, MICHAEL LOSHUA	
11 SCHOFIELD. IN PROVING FIRST DEGREE	
12 KINLAPPING IT IS NOT ENOUGH TO PROVE THAT	
13 THE REFENDANT'S INTENTION WAS TO TAKE	·
14 HIS SON. IN FIRST DEGREE KIDNAPPING IT	
15 MUST BE PROVED THAT THE DEFENDANTS	
16 INTENTION WAS TO TAKE HIS SON, COMBINED	
17 WITH THE INTENTION TO KEEP HIS SON. THIS	<del></del>
18 BEING THE CASE THE STATE DIDNOT PROVE	
19 BEYOND A REASONABLE I CUST THAT THE	<del></del>
20 NEFENDANT IS GUILTY OF EVERY ELEMENT	
al OF THE CRIME OF FIRST DEGREE KINNAPPING.	
22 THEREFORE THE VERDICT OF GUILTY OF FIRST	
23 LEGREE KILMAPPING SHOULD BE VACATED	
24 BY THE HONORABLE JULGE.	
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1 THE D.A. EXPLAINS TO THE JURY THAT, "IF THE DEFENDANT	
2 HAN TAKEN HIS SON TO THE STORE AND BROUGHT HIS SON BACK,	
3 HESTILL KINLAPPED HIS SON. "AND THEN THE D.A. STATES: "I	
4 ASK you to FOLLOW THE LAW AS IT PERTAINS TO KIDNAPPING."	
5 WHICH AGAIN THE D.A. IS ASKING THE JURY TO DETERMINE	
6 COULTY OF WOT COULTY OF KIDNAPPING, BEING THAT THE D.A.	
7 CLEEN LANGUAGE CONSISTENT WITH THE LANGUAGE USED IN	
8 JURY INSTRUCTION NUMBER ELEVEN, WHICH IS 'KIDNAPPING'	
9 INSTEAD OF FIRST DEGREE KINAPPING IN JURY INSTRUCTION	
10 NUMBER ELEVEN THAT WHICH CONSTITUTES KINNAPPING, IN	
11 THE J.A. CLOSING ARQUINENT I ASK you TO FOLLOW THE	
12 LAW AS IT PERTAINS TO KIMAPPING. THIS FURTHER HELPS	<del>-</del>
13 LIAKE LURY INSTRUCTION NUMBER ELEVEN ERPONEOUS.	
14 By MAKING THE INTENT TO KEEP After TAKING HIS SON	
15 IRRELEVANT IN ITS DEFINITION OF WHAT CONSTITUTES	
16 KINAPPING, AND THE S.A. USING JURY INSTRUCTION NUMBER	
17 ELEVEN TO BETERMINE GUILT OF FIRST DEGREE KIDNAPPING	
18 JURY INSTRUCTION NUMBER ELEVEN IS THEN EPPONEOUS.	·
19 THE DEFENDANT IS CHARGED WITH AND HASBEEN FOUND GUILTY	
20 OF FIRST NEGREEVIN WHICH INTENT TO KEEP AFTER TAKING	
21 IS AN ELEMENT OF THE CRIME AND THAT NOT ONLY JURY INSTRUCTION	
22 NUMBER ELEVEN OLUTS THIS ELEMENT, BUT THE D.A. REFERS TO	
23 THIS JURY INSTRUCTION IN HER FINAL ARGUMENT AND EVEN GOES SO	
FAR AS TO SAY ACCORDING TO THIS JURY INSTRUCTION, TO KEEP	
25 IS NOT AN ELEMENT OF THE CRIME COMMITTED. BASED ON	
THIS THE HONOR PHUE JUNGE SHOULD VACATE THE VERDICT OF	
27 Coulty to FIRST DEGREE KINGAPPING.	
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1 3. PROSECUTOR WISCONBUCT
2 THE PROSECUTORS USED REPREHENSIBLE METHODS TO
3 PERSUADE THE LURY AND IT IS REASONABLY PROBABLE THAT
4 A RESULT ME FAVORABLE TO THE DEFENDANT WOULD
5 HAVE BEEN REACHED WITHOUT THE MISCONDUCT. A
6 PROSECUTOR MAY NOT TAKE ARTISTIC LISCENSE WITH THE
7 TRIAL EUINEUCE CONSTRUCT A MORE DRAMATIC VERSION
8 OF THE EVENTS, AND THEN DEFEND AGAINST A
9 PROSECUTORIAL MISCONDUCT CLAIM BY MAINTAINING
10 THE STATEMENTS ARE FACT BASED, WHERE THE
11 PROSECUTOR MUSREPRESENTS A WITNESS TESTIMONY
12 COURTS HAVE CONDEMNED SUCH ANTICS AS THEATRICS.
13 THE LEGAL GUARDIANS OF MICHAEL JOSHUA SCHOFIELD,
14 WERE IN CONSTANT CONTACT WITH THE D.A.
15 REGARDING THIS CASE. WORMAN DUPLISSIE NOT JUST
16 PATRICIA DUPLISSIE HAD RELATED TO THE D.A. THAT
17 THEY AS WELL AS MICHAEL COSHUA SCHOFIED THE CHILD
WHTHI MITSIV 3HT QUA for WAIDAAN SUAPSIM 18HT 81
19 CLASE ALL BELIEVED THAT THE DEFENDANT WAS NOT
20 CHILTY OF FIRST DEGREE KIDNAPPING, SO LUCHSO
21 THAT NORMAN DUPLISSIE NOT PATRICIA DUPLISSIE
22 PAID FOR A PRIVATE AHDRNEY IN HOPES OF GEHING
23 THE DEFENDANT BEHER REPRESENTATION, SO FOR THE
24 DISTRICT AttorNEY W. ANTHONY to SPEAK FOR THE
25 DEFENDANTS FAMILY IN THE FIRST OF THE TWO
26 Closing Arguneus WAS IN APPROPRIATE AND
27 MISTEADING TO THE JURY. PATRICIA DUPINSIE IN THE
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I WAS NEVER TOOK TO THE GROUND. THE PROSECUTORS		
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12 II ARGUMENT		
13 BURKHART V STATE 107 NEV. 797, 820 P. 2d 757,		
14 1991 LEXIS 173(199) THERE WAS NO TESTLUONY		
15 WHICH WOULD HAVE ALLOWED THE JURY TO INFER		
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17 (10BB V POZZI 363 F. 3d89,116(2dC1R2004)		
18 AN ERRONEOUS JURY INSTRUCTIONS REQUIRES		
19 REVERSAL ON APPEAL UNLESS THE ERROR IS HARMLESS.		
20 JOHNSON V. U.S., 520 U.S. 461, 466-67, 1175. Ct. 1544 (1997)		
21 (EXPLAINING ERRORS CAN BE CORRECTED WHENE		
22 THERE IS (DERROR (2) THAT IS PLAIN (3) THAT Affects		
23 SUBSTANTIAL RIGHTS (4) SERIOUSLY AFFECTS THE		
24 FAIRNESS, MILLIE INTEGRITY OR PUBLIC REPUTATION		
25 OF JUDICIAL PROCEEDING).		
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<u>AA.</u> 1352		

1 PEOPLE V. MARTINEZ, 47 CAL, 4TH 911, 105 CAL.
2 Rpm. 3d. 131, 224 P. 3d 877 (2010) UNDER
3 STATE LAW, PROSECUTORIAL MISCONDUCT IS
4 REVERSIBLE ERROR WHERE THE PROSECUTOR USES
5 " DECEPTIVE OR REPREHENSIBLE METHODS TO
6 PERSUADE EITHER THE COURT OR THE JURY AND
7 IT IS REASONABLE PROBABLE THAT A RESULT MORE
8 FAVORABLE TO THE DEFENDANT WOULD HAVE BEEN
9 REACHED WITHOUT THE MISCONDUCT.
10 UNITED STATES V. CARTER, 236 F. 36777
11 (6TH (IR. 2001) PROSECUTOR DURING CLOSING
12 ARQUMENT MISREPRESENTED WITNESS TESTIMONY.
13 ANTHONY V. UNITED STATES, 935A. 2d 275 (J.C. App. 2007)
14 (WHEN THE PROSECUTION ARQUED FALSELY THAT A
15 WITNESS HAL STATED A FACT CRUCIAL TO CONVICTION.
16 SWITH V. COMMONWEALTH, 40 VA. APP 595,580 S.E.
17 2d481(2003) PROSECUTOR IMPROPER AND
18 FLAGRANT ATTEMPT TO INFLAME PASSION AND PREJUDICE.
19 UNITED STATES V. MOORE, 651 F. 3d 30 (S.C. CIRADI)
20 AS THE DISTRICT COURT OBSERVED, "A PROSECUTOR MAY
21 NOT TAKE ARTISTIC LISCENSE WITH THE TRIAL EVILENCE,
22 CONSTRUCT A MORE DRAMATIC VERSION OF THE EVENTS,
23 PROVINE CONJECTURE ABOUT A VICTIMS STATE OF LIND, AND THEN
24 DEFEND AGAINST A PROBECUTORIAL LUBCONDUCT CLAIN BY
25 MAINTAINING THE STATEMENTS ARE FACT-BASED!
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AA 1353

1 SPICER V. ROSSEtti, 150F. 3d642, 644 (7TH (1R.1998)
2 ("LUST AS COUNSEL MAY NOT EXPRESS HIS BELIEFS
3 REGARDING THE HONESTY OF THE OPPOSING PARTY'S
4 WITNESSES HE MAY NOT EXPRESS HIS BELIEFS
5 REGARDING OPPOSING COUNSELS OPINION OF HONESTY
6 MOSES V. UNION PACIFIC R.R., 64FED 3d43(8HCIR1995)
7 IT IS IMPROPER TO ARGUE YOUR PERSONAL BELIEFS
8 ABOUT THE HONESTY OF WITNESSES, THOUGH YOU MAY
9 ARQUE THAT THE EVILENCE SHOWS THAT PARTICULAR
10 WITNESSES ARE CREDIBLE OR IN CREDIBLE. YOU MAY
11 NOT APPEAL TO THE JURY'S SYMPATHY, PREJUDICE,
12 OR PASSION.
13 REED V. PHILASELPHIA, BETHLEHELL & NEWENGLAND
14 R.R.Co., 939 F. 2d 128, 133-34 (3RS (1R.1991)
15 ("THE REMARKS OF COUNSEL (ARE) REQUIRED TO BE
16 CONFINEL TO THE EVILENCE ALMITTED IN THE CASE.
17 REVERSIBLE ERROR IS COMMITTED WHEN COUNSEL'S
18 CLOSING ARGUNENT TO THE JURY INTRODUCES
19 EXTRANGOUS LIATTER THAT HAS A REASONABLE
20 PROBABILITY OF INFLUENCING THE VERNICT."
21 STATE V. CARNER 234OR, APP. 486,228 P. 3d710(2010)
22 CUNDER THE OREGON CONSTITUTION, RETRIAL FOLLOWING MISTERAL DUE
23 TO PROSECUTORIAL MISCONDUCT IS BARRED WHEN (1) THE MISCONDUCT
24 IS SO PREJUDICIAL THAT IT CANNOT BE CURED BY WEARS SHORT
25 OF LISTRIALIENTHE PROSECUTOR KNEW THAT THE CONDUCT WAS
26 IMPROPER AND PREJUDICIAL (3) THE PROSECUTOR ENTHER INTENDED 27 OR WAS INDIFFERENT TO THE RESULTING MISTRIAL)
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SEFENDANT 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 the permission to TAKE THE GRANDSON TO THE STORE DOES NOT LUCAUTHAT YOU DID NOT DO FuyTHING WRONG. AND BELIEVES THE DEFENDANT AS NOONE ELSE TO BLAME FOR THE MESS HE IS IN. THIS EVENT HAS TORE OUR FAMILY APART. THE DISTRICT ATTORNEYS OFFICE OR THE D.A. ONTHIS CASE SHOULD NOT TRY TO SAY THAT THEY ARE KEPRESENTING THE VICTIMOR THE VICTIMS JEGAL GUARDIANS. ALL FOUR OF THE WITNESSES DO NOT BELIEVE THE DEFENDANT IS CHURTY OF IDNAPPING. ALL 4 BELIEVE THE DEFENDANT IS LUITY OF CHILD ABUSE. I DO NOT SEE HOW THE COURT COULD, AFTER LISTENING TO HOW THE D.A. MUNIPULATED THE LAW, TO CONVINCE A, JURY WHO IS NOT PRACTICED IN LAW ALLOW THE VERDICT OF LUCTU TO FIRST DEGREE KIDNAPPING STAND. I HOPE AND PRAY THAT YOUR HONDRABLE JUDGE WILL COUSIDER THE SHORTCOMINGS THAT EXIST IN THE STATES BURDEN TO PROVE EVERY ELEMENT OF THE CRIME CHARGED WHICH IS FIRST DEGREE IDNAPPING AND CONCLUDE THAT CUSTICE WOULD BE PROPERLY SERVED WITH A BEHER RESOLUTION THAN HAS OCCURRED. AA 1356

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3 NETHODS TO PROVE THEIR CASE. IN MISUSING JURY		
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6 BEYOND A REASONABLE DOUBT THAT THE DEFENDANTS INTENT		
7 WAS TO KEEP MICHAEL JOSHUA SCHOFIELD A FFER TAKING		
8 HIM THE VERDICT OF GUILTY OF FIRST DEGREE KIDWAPPING		
9 SHOULD BE VACATED by THE HONORABLE JUDGE. I HOPE		
10 AND PRAY THIS MOTION WILL BE HEARD.		
il '		
12 DATES THIS 26TH DAY OF WAY, 2014.		
13 I MICHAEL C. SCHOFIELD, LO SOLEMNLY SWEAR,		
14 UNIVERTHE PENALTY OF PERJURY, THAT THE ABOVE		
15 MOTION IS ACCURATE, CORRECT, AND TRUE TO THE		
16 BESTOFMY KNOWLEGGE.		
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18 RESPECTFULLY SUBMITTED		
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20 Maria a la		
21 LICHAEL (SCHOFIELD)		
22 DEFENDANTIN DROPER PERSON		
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<b>**</b> (14)		
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1 2 3 4 5 6	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	Electronically Filed 06/26/2014 08:32:54 AM  CLERK OF THE COURT
7 8		CT COURT NTY, NEVADA
9	THE STATE OF NEVADA,	
10	Plaintiff,	-
11	-vs-	CASE NO: C-13-287009-1
12	MICHAEL JOHN SCHOFIELD, #1679195	DEPT NO: VI
13 14	Defendant.	
15	STATE'S REPLY TO DEFENDANT'S ADDENDUM AND SECOND ADDENDUM FOR MOTION FOR A NEW TRIAL	
16 17		NG: JULY 14, 2014 RING: 8:30 A.M.
18	COMES NOW, the State of Nevada	, by STEVEN B. WOLFSON, Clark County
19	District Attorney, through MARIA E. LAVE	LL, Chief Deputy District Attorney, and hereby
20	submits the attached Points and Authorities i	n Reply to Defendant's Addendum and Second
21	Addendum for Motion for a New Trial.	
22	This Reply is made and based upon a	all the papers and pleadings on file herein, the
23	attached Points and Authorities in support hereof, and oral argument at the time of hearing, i	
24	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.

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

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).

#### The Defense Has Not Shown That There Was Any Newly Discovered a. **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. 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>U.S. v. Wright</u>, 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 <u>Sanborn</u>, and his motion on the ground of newly discovered evidence should be denied. <u>McLemore</u> 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, <u>Evans v. State</u>, 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 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. <u>Defendant Was Not Denied Effective Assistance Of Counsel</u>

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

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." <u>Jackson v. Warden</u>, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting <u>McMann v. Richardson</u>, 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.

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. <u>Homick v. State</u>, 112 Nev. 304, 310, 913 P.2d 1280, 1285 (1996) (citing <u>Lenz v. State</u>, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); <u>Davis v. State</u>, 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." <u>Donovan v. State</u>, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing <u>Cooper v. Fitzharris</u>, 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." <u>Donovan</u>, 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. <u>Trial Counsel Was Not Ineffective For Advising The Defendant Not To Take The Stand At Trial</u>

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.\frac{1}{2} \text{ and in the decision of the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the decision of the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the decision of the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is no ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is not ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is not ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is not ineffective assistance of counsel claim as to this.\frac{1}{2} \text{ and in the case} is not ineffect

# 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.

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  $6^{th}$ .

(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. <u>Doleman v. State</u>, 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:<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> 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.

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

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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 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).<sup>3</sup>

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).

<sup>&</sup>lt;sup>3</sup> "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. <u>Doleman v. State</u>, 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. <u>Jury Instruction Number Ten and Jury Instruction Number 11 Were Neither Misleading Nor Ambiguous</u>

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 <u>Crawford v. State</u>, 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 <u>Vallery v. State</u>, 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. <u>Barron v. State</u>, 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:

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

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. <u>Bolden v. State</u>, 97 Nev. at p. 73, 624 P.2d at p. 20; <u>Keeney v. State</u>, 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

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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.

### 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<sup>4</sup>. 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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<sup>&</sup>lt;sup>4</sup> 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** 1 For the foregoing reasons, the State respectfully requests this Court deny Defendant's 2 Motion for a New Trial in its entirety. 3 DATED this 26th day of June, 2014. 4 Respectfully submitted, 5 STEVEN B. WOLFSON Clark County District Attorney Nevada Bar #001565 6 BY 8 Chief Deputy District Attorney Nevada Bar #010120 9 10 CERTIFICATE OF MAILING 11 I hereby certify that service of the above and foregoing was made this 26th day of June, 12 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to: 13 MICHAEL J. SCHOFIELD, #1679195 14 CLARK COUNTY DETENTION CENTER 330 S. CASINO CENTER BLVD. 15 LAS VEGAS, NV, 89101 16 17 BY/s/ E. Goddard E. Goddard 18 Secretary for the District Attorney's Office 19 20 21 22 23 24 25 26 13F00320X/MEL/erg/L-1 27 28