IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER PIGEON,	)	SUPREME COURT NO. 67083
	)	
Appellant,	)	
	)	
vs.	)	**APPEAL**
	)	
STATE OF NEVADA,	)	
	)	
Respondent.	)	DISTRICT COURT NO. C-290261
	)	
	)	

APPELLANT'S REPLY BRIEF

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PIGEON offers the following by way of reply to the State's Answering Brief filed on May 13, 2015.

I

FACTUAL DISCREPANCIES

The following assertions made by the state are not supported by the portions of the record cited by the state or any other portions which PIGEON is able to locate.

> Additionally, the footage showed Pigeon masturbating in the store on May 15, 2013. [1]
>
> He eventually entered the school, because he "was going to look in the hallway briefly to see if [C.C.] might not be there."[2]
>
> In 2009 and 2011, Pigeon was discharged as competent while taking two anti-psychotic medications.[3]

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[1] Ans.Brf./7. This is disputed. The actual footage was not preserved by the state, so the only evidence of what the footage depicted was an officer's testimony. PIGEON asserts that testimony was improperly admitted. He contends that the actual video was exculpatory and clearly showed he was not masturbating.

[2] Ans.Brf./8. He also went to the school to get a drink of water as he had just jogged 3-4 miles. (PA/4/667)

[3] Ans.Brf./12. Pigeon was discharged in 2012 as competent while taking anti-psychotic medications – just one year before the events in question in this case. (PA/2/285)

> Dr. Bradley explained that although Pigeon needed medications in order to reach levels of competency during his previous two Lakes Crossing stays, in 2013 medication was unnecessary…[4]
> Dr. Harder testified that Pigeon believed he was better than everyone else but did not exhibit paranoia.[5]
>
> Dr. Harder did not make the specific finding that Pigeon could not understand what he did was wrong…[6]

Further factual discrepancies shall be discussed in connection with the issues to which they pertain.

II

SUMMARY OF THE ARGUMENT

The state argues that all cites in the opening brief to federal court decisions should be disregarded because they are not binding on this Court.[7] This is absurd. This Court is not bound by any authority and is free to overrule even its own prior decisions. Even decisions rendered by the United States Supreme Court are subject to interpretation by this Court. We are not dealing here with motion practice. This is an appeal where the appellant is free to argue that the law should

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[4] Ans.Brf./12. Medication was recommended. (PA/2/285) Dr. Bradley admitted that he never even discussed Pigeon's impression of Candace's feelings toward him, or how Pigeon intended to defend his case. (PA/2/281-282)

[5] Ans.Brf./13. Dr. Harder testified, "Grandiosity, yes. Paranoia, I'm not sure if he was really ***that*** paranoid. (PA/2/291)(emphasis added)

[6] Ans.Brf./14/fn 6. Dr. Harder diagnosed Pigeon as suffering from a delusion that Candace was in love with him when that was not true. (PA/2/297:20-22) Accordingly, if Pigeon believed that Candace was in love with him, he did not understand that there was anything wrong with his attentions toward her.

[7] Ans.Brf./8.

be changed, and where this Court itself has relied on out-of-state authority in support of its decisions. To the extent that the state objects to a certain authority as irrelevant or inappropriate, PIGEON will address those objections, individually.

III

ARGUMENT ISSUES

A. COMPETENCY ISSUE

The state takes issue with PIGEON's assertions regarding his comprehension of his illness and says that such references were not supported by the record and constitute an improper distraction from the facts.[8] PIGEON assumes this refers to his statements regarding his perception that since he had excelled in the past, he did not believe that he could possibly be mentally ill.[9] However, this is precisely what PIGEON stated.

> THE DEFENDANT: Yeah. I have two college degrees, I was an officer in the Army also. I'm completely literate. It's ridiculous that they say I'm incompetent.[10]

> THE DEFENDANT: I went to Notre Dame, Your Honor, I –
> THE COURT: Say what?
> THE DEFENDANT: I went to Notre Dame.
> THE COURT: Okay. Well, I know a lot –
> THE DEFENDANT: I have a business degree, I was – I'm a composer, and I was an architect at Drexel University also.
> THE COURT: See, I don't know what the reasons for the doctor's decisions are. And frankly the competent –

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8 Ans.Brf./11.
9 Op.Brf./11.
10 PA/2/212.

> THE DEFENDANT: They're just being ridiculous, they're always ridiculous.[11]

The state cites *Calvin*[12] for the proposition that a district court's determination of competency is a question of fact that is entitled to deference on review. However, in *Calvin*, the court rendered findings which specifically stated that it was basing its ruling on the *Dusky* standard.[13] It indicated that it had reviewed volumes of evidentiary documents. In the case at bar, the district court rendered no findings and did not state the basis for its conclusion that PIGEON was competent to stand trial. This determination was inconsistent with the rule stated in *Calvin* that a defendant is "incompetent to stand trial if he *either* is not of sufficient mentality to be able to understand the nature of the criminal charges against him *or* he is not able to aid and assist his counsel in the defense interposed upon the trial…."[14] In this case, Dr. Harder testified that PIGEON was suffering from a fixed delusion which could interfere with his ability to aid counsel in his defense.[15] He testified that, "…I do have some concerns about his ability to assist counsel…"[16]

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11 PA/2/214.

12 *Calvin v. State,* 122 Nev. 1178 (2006).

13 *Dusky v. United States*, 362 U.S. 402 (1960); *Calvin, Supra,* at 1181.

14 *Calvin, Supra,* at 1183. The state acknowledges this testimony. Ans.Brf./13.

15 PA/2/292-293.

16 PA/2/297.

Dr. Harder also testified that PIGEON's delusions would keep him from understanding what he did was wrong or how to keep from incriminating himself.[17]

Therefore, according to both the rule of *Dusky* and rule of *Calvin*, PIGEON was not competent to stand trial in this case without at least being on anti-psychotic medication.

B. SELF-REPRESENTATION ISSUE

On the issue of whether PIGEON was competent to represent himself, the state argues that the trial judge was in a better position to judge PIGEON's competency than this Court. However, the trial judge who decided that PIGEON was competent to represent himself without assistance of counsel was not the same judge who heard testimony at the competency hearing.[18] The trial judge never heard the testimony of the two psychiatrists, and a transcript of the competency hearing was not prepared until after trial.[19] The trial judge did not understand the extent of PIGEON's mental illness when he granted PIGEON's request to represent himself.

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[17] PA/2/297:1-9. PIGEON incorrectly cited to PA/2/294 for this proposition in its opening brief, as pointed out by the state in its answering brief. Ans.Brf./14/fn. 6. PIGEON apologizes for this mistake.

[18] PA/2/272.

[19] PA/2/272.

> THE COURT: See, I don't know what the reasons for the doctor's decisions are. And frankly the competent –
> THE DEFENDANT: They're just being ridiculous, they're always ridiculous.[20]

The state is arguing that the test enunciated in *Hymon*[21] in 2005 controls in determining whether a defendant who has been found competent to assist counsel (under *Dusky*) is also competent to represent himself unassisted by counsel. The *Hymon* test requires only that the waiver of counsel is knowing, voluntary, and intelligent.[22] However, a different test was enunciated by the United States Supreme Court three years after *Hymon,* in the case of *Indiana* v. *Edwards,* [23] where the Court stated that where a defendant has been found competent to stand trial under *Dusky*, that defendant may still be forced to accept legal representation where the defendant is not competent to conduct trial proceedings by himself.[24]

The trial judge in this case used the wrong test. He used the "voluntary and knowing" test enunciated in *Hymon* in 2005 instead of the "ability to conduct trial proceedings by himself" test enunciated by the United States Supreme Court in *Edwards* in 2008. The trial court said, "…you first must knowingly and voluntarily waive and give up your right to the assistance of an attorney."[25]

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20 PA/2/214.
21 *Hymon v. State,* 121 Nev. 200 (2005).
22 *Hymon v. State, supra* at 212.
23 *Indiana v. Edwards,* 554 U.S. 164 (2008).
24 *Indiana v. Edwards, supra* at 178 (2008).
25 PA/2/316.

> THE COURT: We've had you go to Competency Court. The Competency Court has found you competent to – and I find specifically that you are competent to waive your constitutional right to be represented by an attorney according to Rule 254 [sic], Subsection 4(b), that you are waiving your right to counsel freely, voluntarily, and knowingly…[26]

Not only did the trial court use the wrong test, it was operating under the erroneous assumption that the "Competency Court has determined that he is able to assist counsel…"[27] However, the competency court never made such a finding. It merely stated, "I'm going to enter an order finding Mr. Pigeon competent to proceed with trial…"[28] No reason was ever given for the competency court's determination, no findings were rendered, and no mention of the standard used for making the determination was ever discussed. So, it is not clear that the competency court ever found PIGEON able to assist counsel. Indeed, Dr. Harder testified that PIGEON was not able to assist counsel in his defense.

> Q. Can that type of fixed delusion interfere with the ability of a defendant to aid his counsel in his defense?
> A. Well, of course.[29]

So, we have a situation here where PIGEON who had not even been properly deemed (by the competency court) competent to assist an attorney with his defense, was nevertheless found able (by the trial court) to conduct his defense by himself! Nevertheless, even if the competency court had found PIGEON

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26 PA/2/323-324.
27 PA/2/315.
28 PA/2/312.
29 PA/2/293.

competent within the meaning of *Dusky* (able to assist his attorney in his defense), given the competency issue, the trial court was still required to determine whether PIGEON was able to conduct trial proceedings on his own. The trial court never considered that. It only considered whether PIGEON's decision was knowing and voluntary within the meaning of *Hymon*, a test which is no longer valid in a competency case such as this. The district court in allowing PIGEON to represent himself used the "voluntary and knowing" test enunciated in *Hymon*. However, that was not the appropriate test to use in this case where competency had also been an issue. Dr. Harder testified that he felt that PIGEON was incapable of even assisting his attorney with his defense,[30] which leads to the conclusion that if he could not even *assist* in his own defense, he was certainly not able to conduct a defense *unassisted*.

> Q. Can that type of fixed delusion interfere with the ability of a defendant to aid his counsel in his defense?
> A. Well, of course.[31]

As noted in the opening brief, it was the trial court's duty to ensure that PIGEON was afforded his due process rights through a fair trial,[32] and that duty was breached by allowing PIGEON to self-represent without conducting the appropriate inquiry pursuant to *Edwards*.

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30 PA/2/293.
31 PA/2/293.
32 *State v. Dahl,* 776 N.W.2d 37, 45 (N.D. 2009).

> THE COURT: See, I don't know what the reasons for the doctor's decisions are. And frankly the competent –
> THE DEFENDANT: They're just being ridiculous, they're always ridiculous.[33]

It was the court's duty to know the reasons for the doctors' decisions and what they had opined. Given the conflict that could arise with an attorney challenging his client's request for his withdrawal, in this case where the Court knew that competency had been an issue, it should have requested a transcript of the competency hearing before deciding that PIGEON was competent to represent himself. This would have assured that the safeguards enunciated by the Supreme in *Edwards* were met, and that the *government's* interest in ensuring the integrity and efficiency of the trial was satisfied. As it was, the trial court decided that PIGEON was competent to stand trial without the assistance of counsel without even knowing that PIGEON was an unmedicated paranoid schizophrenic or that the competency court had not even properly found PIGEON competent to stand trial within the meaning of *Dusky*.

C. LEWDNESS ISSUE

Testimony Should Have Been Excluded

The state asserts that PIGEON used the wrong legal basis for objecting to the officer's testimony regarding what was on the video tape, arguing that since the best evidence objection was not preserved at trial, it cannot be argued for the first

[33] PA/2/214.

time on appeal. It is not entirely true that PIGEON failed to make the correct objection. PIGEON objected that it should not be admitted because it was hearsay.[34] But, he had previously objected on the basis that the video was not available,[35] which is actually an objection based on the Best Evidence Rule.

> THE DEFENDANT: Objection, Your Honor.
> THE COURT: Basis.
> THE DEFENDANT: This tape isn't even in existence. And there were no witnesses that claimed anything in the store that hasn't already been purported by those same witnesses.[36]

However, even if PIGEON did not make the legally correct best evidence objection, that does not mean that the issue cannot be raised on appeal for the first time. As the state admits, this Court may address constitutional issues raised for the first time on appeal where it is demonstrated that fundamental rights are implicated.[37] In such cases, the plain error standard is applied which requires that (1) there was an error, (2) that the error is plain, and (3) that the error affected substantial rights.[38] To show that the error affected substantial rights, the defendant must show actual prejudice or a miscarriage of justice.[39] In this case, PIGEON contends that the actual video would have shown that he was not masturbating, but that his hands were merely in his pockets. Therefore, admission

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34 PA/3/558-559.
35 PA/3/557.
36 PA/3/557.
37 *Wilkins v. State,* 96 Nev. 367, 372 (1980).
38 *Green v. State,* 119 Nev. 542, 545 (2003).
39 *Green, supra,* at 545.

of the officer's contrary testimony was erroneous and plain. But for the officer's testimony, there was absolutely no evidence of lewdness. All other evidence by every other witness indicated that PIGEON was simply watching Candace. Accordingly, the absence of the actual video deprived PIGEON of his due process right to a fair trial.

In addition, the test for erroneous consideration of evidence which should have been excluded under the Best Evidence Rule, must also be met. That test was already discussed in the Opening Brief. PIGEON would just add that the state was the only entity with the ability to obtain an accurate copy of the video and it was therefore incumbent upon the state to make sure that the copy was readable before the original was destroyed. If this Court does not put that burden on the state, then any time a video is exculpatory, the state would be able to claim that the recording was no good, and put on witnesses to testify to whatever it wants. If the state wants to use testimony regarding a video, it should first have to show that it made an accurate, readable copy of the video, that a copy of that video was provided to the defense, and that thereafter the video was lost through no fault of the state. The defense would then have to provide its copy of the video, or accept the testimony of the state regarding the contents of the video.

Lewdness Was Not Proven

The state claims that PIGEON's assertion that he was back behind some shelving when he was allegedly masturbating, is not supported by any cites to the record.[40] The testimony by the store employee was that on the 16th (the day after the alleged masturbation) he observed PIGEON at the end of the chip aisle watching Candace.[41] However, this observation must have been the previous day (alleged masturbation day) because both PIGEON and Candace stated that on the 16th, PIGEON walked in and sat at the video machines.[42] He didn't buy anything that day.[43] The officer stated in the recorded statement that was read to the jury that on the 15th (alleged masturbation day) he observed PIGEON on the video standing over by the coolers getting a drink.[44] This is consistent with the store employee's testimony that PIGEON was at the end of the chip aisle. So, using common sense, putting that testimony together, on the 15th (alleged masturbation day) PIGEON was standing at the end of the chip aisle between the end of that shelving and the coolers when the officer stated that he saw him masturbating on the video. Indeed, no one else except the police officer ever testified to observing PIGEON masturbating in the store – not even the store employee who was actually present

40 Ans.Brf./24.
41 PA/3/484.
42 PA/1/72; PA/3/527.
43 PA/4/666.
44 PA/1/72.

and watching PIGEON over by the chip aisle, and who presumably saw the same video as the officer!

The state argues that PIGEON was at all times looking at Candace while he was allegedly masturbating, and therefore, he was masturbating in her presence.[45] However, that was not the testimony. The testimony was that PIGEON was looking in the direction of Candace,[46] not that he was in her presence or that she or anyone else was able to see him. The testimony was that he was between the chip aisle and the cooler *looking in her direction*. It is unfortunate that the state did not offer any photos to show the layout of the mini mart and elicit testimony from the officer using those photos as to exactly where PIGEON was standing when the alleged masturbation occurred.

D. AGGRAVATED STALKING ISSUE

For a person to be convicted of aggravated stalking, it must be proven that the victim was placed in reasonable fear of death or substantial bodily harm. There was absolutely no evidence, and the state does not cite to any evidence which would in any way suggest that Candace was ever in fear of substantial bodily harm or death. She and PIGEON were at all times in public places with other people around – at a public bus stop, on a crowded public bus,[47] and in a public mini

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45 Ans.Brf./23-24.
46 PA/3/561:6-7.
47 PA/3/529:21-24.

mart[48] which the state concedes was probably crowded at the time of day that PIGEON and Candace were there.[49] The most that PIGEON ever did was stand in front of Candace to tell her she was beautiful, and lightly touch her on the hand.[50]

E. LURING A CHILD ISSUE

The state argues that the evidence supported the conviction for luring Candace with the intent to engage in sexual contact without the permission of her parents because (1) he followed her and spoke to her to tell her she looked nice,[51] (2) PIGEON admitted he was sometimes aroused while on the same bus as Candace,[52] and (3) PIGEON wanted to have sex with Candace if her parents consented.[53] PIGEON at no time lured or attempted to lure Candace anywhere. The evidence is clear that he believed he was in love with her and that she loved him. He wanted to meet her parents and get to know Candace better with the intention of one day marrying her. PIGEON at all times denied any intention to kidnap Candace or lure her anywhere.

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48 PA/3/526:25.
49 Ans.Brf./24.
50 PA/3/535.
51 Ans.Brf./26.
52 Ans.Brf./26.
53 Ans.Brf./26.

A. I think she's attractive. Maybe in a few years I wouldn't mind marrying her.[54]

Q. …Um, do you know where she lives at?
A. No. I do not.
Q. You ever follow her home from school?
A. No.[55]

Q. Okay. You said before that if you had parental permission you would have sex with her?
A. Marry, yes. And have sex.
Q1. You'd marry her?
A. Yes.[56]

Q1. Okay. So what if it was with the intention of marrying her and having sex with her in the park if she wanted to have sex?
A. I wouldn't have sex with her in the park.[57]
Q1. ….What if she keeps turning you away?
A. Well, then I'd leave her alone.[58]

Q. With her parental permission, you were saying, you did want to marry and have sex with her. Is that right?
A. That's correct.
Q. Okay.
A. Only with permission and of course, marriage.[59]

PIGEON made it clear time and again and never varied from his stated purpose which was to get to know Candace and hopefully gain her parents' permission to marry her. There was never any indication of any other intention. There was no evidence that PIGEON had any intention of luring Candace

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54 PA/1/23.
55 PA/1/25.
56 PA/1/46.
57 PA/1/47.
58 PA/1/50.
59 PA/4/668.

anywhere for any purpose, illicit or otherwise, or that he ever attempted to do so. There was absolutely no evidence to support the conviction for luring.

F. ATTEMPTED KIDNAPPING ISSUE

PIGEON cited to the *Burkhart* case[60] to support its position that PIGEON did nothing toward accomplishing the act of kidnapping to support an attempt charge. The state argues that *Burkhart* does not apply because it involved a charge of attempted second degree kidnapping and this case involves a charge of attempted first degree kidnapping. However, the issue which is analogous is whether or not there was a sufficient over act toward kidnapping to support the **attempt** charge. In *Burkhart* this Court held that momentarily grabbing the jacket of a young child was not sufficient especially where there was no evidence that the defendant had any way of transporting the child. The case at bar is analogous. Even less egregious was PIGEON's momentary touch of Candace's hand. Candace was not a small child, she was a 12-year-old who was able to and did run away. The touching occurred in a public place. Unlike the defendant in *Burkhart* who had a bicycle, PIGEON did not even have that rudimentary form of transportation. There was no way for him to subdue and transport a 12-year-old girl anywhere.

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60 *Burkhart v. State*, 107 Nev. 797 (1991).

The state refers to the fact that on one occasion, PIGEON sat in the park across the street from the school in the hopes of seeing Candace, and asserts that this is a fact that PIGEON was trying to hide form this Court. It is not relevant. PIGEON did not merely sit in the park, lying in wait, as the state implies. He actually walked right up to the school and attempted to go into the hallway in plain view of school authorities and all the other students that he knew would be there. He also wanted to get a drink of water, as mentioned above. There was nothing surreptitious or sinister about this. The state asserts that PIGEON's act of walking right onto school grounds to get a drink of water and talk to Candace constituted an act in furtherance of an intent to kidnap Candace. [61] This is really so absurd as to really be incredible. PIGEON had no car. He had no bike or other means of transportation. So, to accept the state's argument, one has to believe that PIGEON was planning to drag a 12-year-old girl off the school grounds in full view of other students and faculty and then carry her away kicking and screaming.

G. BURGLARY ISSUE

The state has argued in its answering brief that as long as PIGEON had an intent to do some felonious act when he entered the mini mart that that would constitute the necessary intent required for burglary, apparently even if the intended act was not going to take place inside the mini mart. It states that

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[61] Ans.Brf./29.

PIGEON entered the mini mart with the intent to "commit the kidnapping and luring discussed above."[62] We must look at the acts "discussed above" to discern what the state is arguing.

As to the kidnapping, the acts "discussed above" were sitting in the park and then walking onto the school grounds to get some water and talk to Candace. So, if that is the felonious intent, then the state is saying that PIGEON committed burglary by walking into the mini mart with the intent to kidnap Candace later that day at a different location.

As to the luring acts "discussed above" those involve PIGEON telling Candace that she looked nice, being aroused sometimes when on the same bus as Candace, wanting to have sex with Candace if he was married to her with her parents' consent, and masturbating in the convenience store. The state argues that all those events taken together show PIGEON's intent to lure Candace away. However, PIGEON never lured Candace from inside the mini mart to outside the mini mart nor exhibit any intent to do so. She always left the mini mart of her own accord with the purpose of going to school, which is where she went. There was never any contact inside the mini mart which purpose was to lure Candace anywhere.

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[62] Ans.Brf./30.

All PIGEON ever did inside the mini mart was to watch Candace and tell her one time that she looked nice. He never so much as touched her inside the mini mart.

The problem with the scenarios argued by the state in the context of the burglary conviction is that burglary requires entry into a building with the intent at the time of entrance to commit a felony ***therein***.[63] It is not enough that a person enters a building with the intent to commit a felony somewhere else at some future time. PIGEON contends that the evidence does not support the conviction for burglary because there was no evidence that PIGEON intended when he walked into the mini mart to lure or kidnap Candace from the mini mart.

In this case, according to the state's own allegations, it merely asserts that when PIGEON entered the mini mart, he had some vague intention to lure or kidnap Candace away to some undisclosed location by some unspecified means. There is no indication, however, anywhere in the evidence that PIGEON ever attempted to lure Candace away from the mini mart or that he made any move to kidnap her from the mini mart. Certainly there was no evidence and it strains credulity to infer that he intended when he walked into the mini mart to lure

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63 The offense of burglary is complete when the house or other building is entered with the specific intent to commit larceny or any felony **therein.** *Sheriff, Clark County v. Stevens*, 97 Nev. 316, 317-318 (1981); A burglary is complete upon the trespassory entrance into a building or vehicle with the intent to commit a felony, larceny, assault, or battery **therein.** *Stowe v. State*, 109 Nev. 743, 745 (1993). (emphasis added)

Candace from the mini mart or kidnap her from that establishment in full view of the patrons and employees who were also there at all times. Whatever he intended to do at some other location at some other point in time, does not support the conviction for burglary of the mini mart.

H. DOUBLE JEOPARDY/REDUNDANCY ISSUE

The state argues that the two charges for failing to register as a sex offender were for (1) failing to initially register by January 7, 2013 when he moved from the 8th Street address, and then (2) failing to register between April 22, 2013 and May 17, 2013 when he was arrested.[64] The evidence does not support these two separate offenses. PIGEON had a storage unit continuously since 2001.[65] He moved out of the 8th Street address on January 5, 2013, but failed to register as a sex offender within 48 hours – by January 7, 2013. From that date until he was arrested, PIGEON was homeless. Sometimes he stayed at St. Vincent's.[66] Sometimes he stayed out all night at the casinos.[67] Sometimes he stayed at the storage facility.[68] PIGEON failed to register the one time after he left the 8th Street address. From that time until the date of his arrest, his situation did not change, and therefore, a second charge for failing to register for an arbitrary time period

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64 Ans.Brf./31.
65 PA/4/661.
66 PA/1/49, 65.
67 PA/1/65.
68 PA/1/65-66.

between April 22, 2013 and May 17, 2013 was not based on any evidence of a change in circumstance or address. It was redundant, and should be dismissed.

I. CRUEL AND UNUSUAL PUNISHMENT/HABITUAL ISSUE

PIGEON was sentenced to seven life sentences **without possibility of parole** for telling a 12-year-old girl that she was pretty on two occasions, and lightly touching her hand on one occasion. This is shocking. PIGEON has already argued these issues and will not repeat those arguments here other than to respond to the state's contention that there was no evidence of judicial bias in this case.

> THE COURT: Mr.Pigeon, I'm trying to be calm with you. You have the right to argue in a minute, not interrupting.
> THE DEFENDANT: Yes, I understand but I think this man's a criminal, and I question what this Court does.
> THE COURT: I understand. You called me a criminal.
> THE DEFENDANT: Yes, I did.[69]

> THE COURT: -- that we are lucky to have caught this when we did so that little girl wasn't violated. I saw your bedroom in that storage unit. I'm sure that's where you were headed. Thank you. Please take him out.[70]

There was no evidence that PIGEON ever intended or had the ability to transport Candace anywhere, much less across town to his storage unit. The court's reference to the pictures of the storage unit makes it seem as though it was some den of iniquity. This Court can judge for itself. Those photos are included in the appendix at PA/4/599-612. It shows a picture of a man, a military veteran of

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69 PA/4/809.
70 PA/4/826.

this country, who at age 51 was reduced to the few possessions he maintained in a storage unit where he sometimes slept. He had no evil intent. He is not an evil person. He is not a child molester. But, he DOES suffer from a very serious mental disorder (a fact which the sentencing judge never knew) which makes him believe in his heart of hearts that Candace loves him. For this disease which PIGEON cannot help and but for the grace of God has each of us, he was sentenced to seven life sentences without possibility of parole. His sentence is actually more onerous than the one being served by Charles Manson who actually comes up for parole periodically. It is absolutely unconscionable. Is this really the best we can do with a person such as Mr. Pigeon?

J. MISCONDUCT ISSUE

PIGEON asserts that there was prosecutor misconduct when the district attorney argued to the jury during closing that it was illegal for a 51-year-old man to marry a 12-year-old girl, when that was not true. The state argues that the prosecutorial misconduct in this case was harmless error because the state referred the jury to the proper jury instruction which provides that a 12-year-old can be married with her guardian's consent.[71] It does not support this assertion with any cite to the record, and this Court is therefore free to disregard it.[72]

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71 Ans.Brf./41.

72 *Maresca v. State,* 103 Nev. 669, 673 (1987).

IV

CONCLUSION

PIGEON's convictions should be reversed because (1) he was not competent to stand trial, (2) even if he was competent to stand trial, he was not competent to conduct trial proceedings without assistance of counsel, (3) the convictions are not supported by the evidence, (4) the sentence constitutes cruel and unusual punishment, (5) the habitual determination was erroneous, (6) and the case was infected with prosecutorial misconduct.

Respectfully submitted,

Dated this 15th day of June, 2015.

/s/ Sandra L. Stewart
SANDRA L. STEWART, Esq.
Attorney for Appellant

V

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this reply brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 14.4.3 For Mac with Times New Roman 14-point. I further certify that this reply brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because it either does not exceed 15 pages or it contains no more than 7,000 words.

DATED: June 15, 2015

/s/ Sandra L. Stewart
SANDRA L. STEWART, Esq.
Appellate Counsel for
CHRISTOPHER PIGEON

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the:

APPELLANT'S REPLY BRIEF

by mailing a copy on June 15, 2015 via first class mail, postage thereon fully prepaid, to the following:

CHRISTOPHER PIGEON
INMATE NO. 90582
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P.O. BOX 650
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and by e-filing the original with the Nevada Supreme Court, thereby providing a copy to the following:

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/s/ Sandra L. Stewart
SANDRA L. STEWART