

## POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while "Motion to correct illegal sentence" addresses only facial legality of sentence. State v. District Court, 100 Nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (Nev. 1996).

● Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

On June 5, 2012, O'Keefe asked the court to postpone his THIRD trial on the same offense of second-degree malice murder. This was his calendar call, for the third trial; case C250630.

● O'Keefe based this on his successful appeal to the United States Court of Appeals for the Ninth Circuit in his granted "WARRANT OF COA" on, namely, a double jeopardy violation on Mr. O'Keefe's first two trials on this same statutory offense and case C250630 after an acquittal by the Supreme Court of Nevada in his first direct appeal, Supreme Court Nevada case no. 53859. (SEE EXHIBIT "A")

We must remember that trial court instructional error is irrelevant for the purposes of double jeopardy; concerning mens rea rulings. The U.S. decision in Abney v. United States 431 U.S. 651 (1977) divest complete jurisdiction to the Federal Court ONLY!

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Concisely, the State of Nevada <sup>-CONT-</sup> had no subject matter jurisdiction. Additionally, the State district court was in contempt of the Warrant of COA issued. According to Gonzalez v. Thaler, 132 S.Ct. 641, id. at 648, "subject-matter jurisdiction can never be waived or forfeited. The objections may be REASSERTED AT ANY POINT in the litigation, and a valid objection may lead a Court midway through briefing to dismiss ... in its entirety." "[M]any months [years] of work on the part of the attorneys and the court may be wasted." Henderson v. Shinseki, 562 U.S. at \_\_\_, 131 S.Ct. at 1202. Courts, we have said, should not lightly attach those "drastic" consequences to limits Congress has enacted. Id. See Manner v. Gillespie, 967 F.2d 130. Simply put, the State district court was in LACK OF JURISDICTION to proceed on the same information, case, that the FEDERAL WARRANT, on the COA, called a double jeopardy violation. The state violated O'Hode's 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Constitutional Rights. Not until the merits of the 5<sup>th</sup> amendment violation was resolved could "any" court proceed. See Breder v. Estelle, 463 U.S. 880. The NINTH CIRCUIT COURT OF APPEALS did not have to STAY the matter. The Federal Court already had jurisdiction, per 28 U.S.C. § 1291; 2241(c)(3); 2253. and so on. In addition, when a requirement goes to subject-matter jurisdiction, courts are obligated to consider SEA STATE issues that the parties have disclaimed or not presented. • See United States v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed. 2d 860 (2002).

B. L. O'Hode  
BRIN L. O'HODE • 90244  
Defendant/ In Per SE

Theraby, pursuant to the facts and the law stated herein,  
Defendant, request that his sentence be modified/corrected as  
follows: An immediate vacatur issue striking the judgment  
in which the illegal sentence is issued wrongly. The  
entire 3rd trial proceedings must be declared as  
most for lack of Jurisdiction in which again that  
court appointed counsel failed to brief in the Direct Appeal  
No. 61631. This truly must only be construed AGAIN as  
ineffective counsel on appeal in violation of, Martinez v. Ryan,  
132 S.Ct. 1309 (2012).  
Dated: this 16 DAY OF January, 2014.

BY: Brian K. O'Keefe  
Brian K. O'Keefe 90244  
Defendant/propria person

# EXHIBIT A

UNITED STATES COURT OF APPEALS

9<sup>th</sup> CIRCUIT CASE NO. (12-15271)

GL

● WARRANT OF COA<sup>DD</sup>  
(3 pages)

ON, NAMELY, A DOUBLE JEOPARDY  
VIOLATION

NEVADA STATE CASE 08-C250630

COUNTY OF CLARK

# EXHIBIT A

004753



**FILED**

UNITED STATES COURT OF APPEALS

APR 13 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BRIAN KERRY O'KEEFE,

Petitioner - Appellant,

v.

DOUG GILLESPIE, Sheriff, et al.,

Respondents - Appellees.

No. 12-15271

D.C. No. 2:11-cv-02109-GMN-VCF  
District of Nevada,  
Las Vegas

ORDER

Before: PAEZ and CLIFTON, Circuit Judges.

After reviewing the underlying petition and concluding that it states at least one federal constitutional claim debatable among jurists of reason, namely, a double jeopardy violation, we grant the request for a certificate of appealability with respect to the following issues: (1) whether the district court properly determined that appellant's double jeopardy claim was unexhausted, and (2) whether appellant, as a state pre-trial detainee, was required to exhaust his claim in state court before filing his 28 U.S.C. § 2241 petition, *compare Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 489-91 (1973) (emphasizing that the § 2241 petitioner "exhausted all available state court remedies for consideration of [his speedy trial] constitutional claim") *with White v. Lambert*, 370 F.3d 1002, 1008 (9th Cir. 2004) ("If we were to allow White to proceed under 28 U.S.C. §

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2241, he would not be subject to . . . state court exhaustion requirements.”). See 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); see also 9th Cir. R. 22-1(e).

A review of this court’s docket reflects that the filing and docketing fees for this appeal remain due. Within 21 days of the filing date of this order, appellant shall either (1) pay to the district court the \$455.00 filing and docketing fees for this appeal and file in this court proof of such payment; or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed CJA Form 23. Failure to pay the fees or file a motion to proceed in forma pauperis shall result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1.

If appellant moves to proceed in forma pauperis, appellant may simultaneously file a motion for appointment of counsel.

The Clerk shall serve a copy of CJA Form 23 on appellant.—

If appellant pays the fees, the following briefing schedule shall apply: the opening brief is due June 25, 2012. There was no appearance by the appellees in the district court. The Clerk shall serve a copy of this order on the Office of the Attorney General, Grant Sawyer Bldg., 555 E. Washington Ave. Suite 3900, Las

Vegas, Nevada 89101, who is requested to enter a notice of appearance on behalf of appellees in this case. If Doug Gillespie, State of Nevada, and Attorney General are no longer the appropriate appellees in this case, counsel for appellees is directed to file simultaneously a motion to substitute party. *See* Fed. R. App. P. 43(c).

By July 25, 2012, appellees shall file an answering brief or a letter indicating that no answering brief will be filed. If appellees file an answering brief, the optional reply brief will be due 14 days after service of the answering brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

**CERTIFICATE OF SERVICE BY MAILING**

I, BRIAN KERRY O'KEEFE, hereby certify, pursuant to NRCP 5(b), that on this 16<sup>th</sup> day of JANUARY, 2014, I mailed a true and correct copy of the foregoing, "MOTION TO MODIFY... ILLEGAL SENTENCE" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

STEVEN CARLSON  
CLERK OF THE COURT  
200 LEWIS AVENUE, 3RD FLOOR  
LOTUS VEGAS, NV 89155-1600

NOTE: All participants of the electronic Filing system CM/ECF will be served by the clerk.

CC:FILE

DATED: this 16<sup>th</sup> day of JANUARY, 2014.

Respectfully Submitted,

Brian L O'Keefe  
BRIAN L. O'KEEFE # 90244  
90244 /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOUD

TO MODIFY ... ILLEGAL SENTENCE  
(Title of Document)

filed in District Court Case number C250630

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

B. O'K.  
Signature

1-16-14  
Date

Brian K. O'Keefe  
Print Name

PRO SE  
Title

BRAND KEY O'KEEFE  
[Box # 90244]

H. D. S. P.

P.O. Box 650

Indian Springs, NV 89070-0650

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LEGAL MAIL

Legal Mail

STEVEN GREENSON, Clerk of the Court  
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Case No. C250630

Dept. No. XVII

*Allen B. Johnson*

CLERK OF THE COURT

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

The State of Nevada

Plaintiff,

vs.

*Brian Terry O'Hara*

Defendant,

Case No. C250630

Dept No. XVII

Docket \_\_\_\_\_

**NOTICE OF MOTION**

YOU WILL PLEASE TAKE NOTICE, that MOTION TO MODIFY AND/OR  
CORRECT ILLEGAL SENTENCE

will come on for hearing before the above-entitled Court on the 27 day of Feb., 2014  
at the hour of 8:15 o'clock A. M. In Department XVII of said Court.

CC:FILE

DATED: this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY:

*Brian T. O'Hara*  
*Brian T. O'Hara* #9277  
/In Propria Personam

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CLERK OF THE COURT

1 **ORDR**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **GWYNNETH SMITH**  
6 **Deputy District Attorney**  
7 **Nevada Bar #013021**  
8 **200 Lewis Avenue**  
9 **Las Vegas, NV 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

**CASE NO: 08C250630**

13 **BRYAN O'KEEFE,**  
14 **aka, Brian Kerry O'Keefe, #1447732**

**DEPT NO: XVII**

15 **Defendant.**

16 **ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF MANDAMUS OR, IN**  
17 **THE ALTERNATIVE, WRIT OF CORAM NOBIS**

18 **ORDER DENYING DEFENDANT'S MOTION TO WAIVE FILING FEES FOR**  
19 **PETITION FOR WRIT OF MANDAMUS**

20 **ORDER DENYING DEFENDANT'S MOTION TO APPOINT COUNSEL**

21 **DATE OF HEARING: JANUARY 7, 2014**  
22 **TIME OF HEARING: 8:15 A.M.**

23 **THIS MATTER** having come on for hearing before the above entitled Court on the  
24 7th day of January, 2014, the Defendant not being present, IN PROPER PERSON, the  
25 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through  
26 GWYNNETH SMITH, Deputy District Attorney, without oral argument, based on the  
27 pleadings and good cause appearing therefor,

28 **///**

**///**

**///**

**RECEIVED BY**  
**DEPT 17 ON**  
**JAN 17 2014**

1 COURT ORDERED, Petition and Motions DENIED, without prejudice.

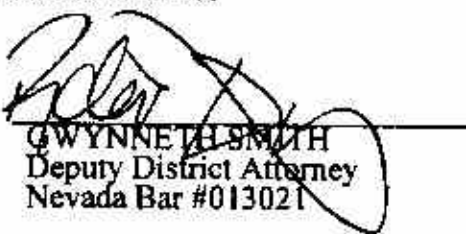
2 The allegations complained of in Defendant's Petition relate to Case Number  
3 C202793; therefore, the Petition and the Motions were filed under the wrong case number  
4 and Defendant will need to re-file said pleadings in Department XXIII so they may be heard  
5 before the appropriate Judge.

6 DATED this 22 day of January, 2014.

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8   
9 DISTRICT JUDGE

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

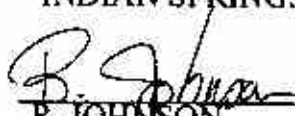
13 BY

14   
15 GWYNETH SMITH  
16 Deputy District Attorney  
17 Nevada Bar #013021  
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1 CERTIFICATE OF SERVICE

2 I certify that on the 27th day of January, 2014, I mailed a copy of the foregoing  
3 Order to:

4 BRYAN O'KEEFE,  
5 aka, Brian Kerry O'Keefe #90244  
6 HIGH DESERT STATE PRISON  
7 P.O. BOX 650  
8 INDIAN SPRINGS, NV 89018

9 BY   
10 R. JOHNSON  
11 Secretary for the District Attorney's Office  
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28 rj/M-1

*Allen L. Johnson*  
CLERK OF THE COURT

1 Brian Kelly O'Keefe # 90244  
2 High Desert State Prison  
3 PO Box 650  
4 22010 Cold Creek Road  
5 Indian Springs, Nevada 89018-0650  
6 Petitioner In Pro Se

PP  
DA

7 IN THE EIGHTH JUDICIAL DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 \* \* \* \* \*

10 Brian O'Keefe

11 Petitioner,

12 -vs-

13 State of Nevada, et al.,  
14 CLARK COUNTY  
Respondents.

Case No. 08-C250630

XVII  
EX-PARTE

MOTION TO EXTEND PRISON  
COPYWORK LIMIT

15 COMES NOW, Petitioner, Brian O'Keefe, in pro se,  
16 and submits his Motion to Extend Prison Copywork Limit, moving  
17 the Court to order the Nevada Department of Corrections ("NDOC")  
18 to extend his copywork limit for the narrow purposes of the  
19 instant 08-C250630 proceedings.

20 This motion is based upon NDOC Administrative Regulation  
21 ("AR") 722; all papers and documents on file herein; and the  
22 following points and authorities.

23 POINTS AND AUTHORITIES

24 Petitioner is an indigent prisoner, as demonstrated by the  
25 Motion for Leave to Proceed In Forma Pauperis on record herein.  
26 NDOC AR 722.12(4) allows Petitioner to accrue a \$100.00 debt  
27 against his account towards legal copywork which, once reached,  
28 prohibits him from accumulating any further indebtedness for

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CLERK OF THE COURT

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CLERK OF THE COURT

1 such copywork. "Exceptions to this rule would be a court order  
2 received directly from the courts..." Id. The AR therefore  
3 gives this Court authority to issue an order allowing Petitioner  
4 to exceed his copywork limit.

5 Petitioner has reached or exceeded the \$100.00 limit of AR  
6 722.12. As such, NDOC has prohibited him at this time from  
7 receiving any further legal copywork in the instant proceeding  
8 unless the Court issues an order allowing him to do so.

9 Petitioner's grounds have merit. As such, he is entitled  
10 to relief in the instant <sup>C25630</sup> proceedings; however, he  
11 requires copywork services in order to litigate his instant  
12 petition. In addition to his originals of all pleadings,  
13 motions and other documents in this case, he will need copies to  
14 serve upon Respondents per FRCP 5, LR 5-1 and LR 7-2.  
15 Additionally, he will require a copy of same for his own  
16 records. See e.g., Gluth v. Kangas 951 F.2d 1504, 1510 (9th Cir.  
17 1991) (a reasonable amount of copywork for prisoners is found in  
18 that required to file, serve opponents and maintain copy for  
19 inmate's records).

20 Petitioner does not herein seek a blanket order for  
21 unlimited copywork, but seeks only a reasonable allowance of  
22 copywork for documents relevant to the instant proceeding,  
23 including, but not limited to, supplemented/amended pleadings,  
24 motions, responses, replies, notices, etc. Id.

25 As Petitioner's liberty is at the heart of these  
26 proceedings, he should be provided an extension of his copywork  
27 limitation in order to render him reasonably capable of fairly  
28 litigating this <sup>08-CZ5630</sup> action.



1  
2 **CONCLUSION**

3 For the reasons set forth above, the Court should direct  
4 the NDOC to extend Petitioner's copywork limitations towards the  
5 allowance of receiving copies of documents pertinent to the  
6 instant <sup>08-024630</sup> ~~proceedings~~ proceedings.

7 Dated this 22<sup>ND</sup> day of JANUARY, 2014.

8 Brian K. O'Hara  
9 Brian K. O'Hara # 90244  
10 High Desert State Prison  
11 PO Box 650  
22010 Cold Creek Road  
Indian Springs, Nevada 89018-0650  
Petitioner In Pro Se

12 **CERTIFICATE OF SERVICE**

13 I do certify that I mailed a true and correct copy of the  
14 foregoing to the below address on this 22<sup>ND</sup> day of  
15 JANUARY, 2014, by placing same in the hands of  
16 prison law library staff for posting in the U.S. Mail:

17 STEVEN GRIFFIN, CLERK OF THE COURT  
18 200 LEWIS AVE., 3<sup>RD</sup> FLOOR  
19 LAS VEGAS, NV. 89155-1160

20  
21 Brian K. O'Hara  
22 Brian K. O'Hara # 90244  
23 Petitioner In Pro Se  
24  
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H. D. S. P.  
P.O. Box 650  
Indian Springs, W. 85370-0650

# CONFIDENTIAL

LECENT-MATH

STEVEN GREENGLASS,  
200 LEWIS AVENUE, 3<sup>RD</sup> FLOOR  
LAS VEGAS, NV. 89155-1160

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DISTRICT COURT  
CLARK COUNTY, NEVADA

**BRIAN O'KEEFE, aka,  
Brian Kerry O'Keefe, #1447732**  
**Defendant.**

DATE OF HEARING: FEBRUARY 11, 2014  
TIME OF HEARING: 8:15 AM

11

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 BRIAN O'KEEFE, aka, Brian Kerry O'Keefe (hereinafter "Defendant") was charged  
4 by way of Information on December 19, 2008, with one (1) count of Murder With Use of a  
5 Deadly Weapon (Open Murder) (Felony - NRS 200.010, 200.030, 193.165).<sup>1</sup>

6 Defendant proceeded to trial on March 17, 2009. On March 20, 2009, the jury returned  
7 a verdict of guilty on the charge of Second Degree Murder With Use of a Deadly Weapon.  
8 Defendant appealed to the Nevada Supreme Court and on April 7, 2010, the Court reversed  
9 and remanded his case for a new trial; Remittitur issued May 3, 2010.

10 Defendant proceeded to trial for a second time on August 23, 2010. On September 2,  
11 2010, this Court declared a mistrial on account of the jury being hopelessly deadlocked in  
12 deliberations at a ten (10) to two (2) vote.

13 On October 3, 2011, Defendant filed a Motion to Dismiss Appointed Counsel and for  
14 Faretta Hearing. This Court conducted the Faretta Canvass on December 16, 2011, and  
15 dismissed Defendant's counsel allowing him to represent himself; Mr. Maningo was appointed  
16 as stand-by counsel. Defendant proceeded to trial for a third time on June 11, 2012. On June  
17 15, 2012, the jury returned a verdict of guilty of Second Degree Murder With Use of a Deadly  
18 Weapon.

19 On August 28, 2012, this Court sentenced Defendant as follows: to a MAXIMUM of  
20 THREE (300) MONTHS and a MINIMUM of ONE HUNDRED TWENTY (120) MONTHS  
21 in the Nevada Department of Corrections (NDOC), plus a CONSECUTIVE term of a  
22 MAXIMUM of TWENTY (20) YEARS and a MINIMUM of EIGHT (8) YEARS for use of  
23 a deadly weapon, with ONE THOUSAND THREE HUNDRED NINETY-FOUR (1,394)  
24 DAYS credit for time served. Defendant filed a Pro Per Notice of Appeal on August 31, 2012.  
25 Defendant's Judgment of Conviction was filed September 5, 2012. Lance Maningo, Esq.  
26 confirmed as appellate counsel on September 6, 2012, and filed a Notice of Appeal on  
27 September 13, 2012. The Nevada Supreme Court affirmed Defendant's Judgment of  
28

<sup>1</sup> An Amended Information was also filed February 10, 2009, with the same charge.

1 Conviction on April 10, 2013, and denied rehearing on June 13, 2013. Remittitur issued July  
2 23, 2013.

3 On December 6, 2013, Defendant filed a Petition for Writ of Mandamus or, in the  
4 Alternative, Writ of Coram Nobis. He also filed a Motion to Appoint Counsel. The State filed  
5 its Response on December 31, 2013. The Court denied the Petition and Motion without  
6 prejudice as the allegations therein related to another of Defendant's cases, Case Number  
7 04C202793. The written Order was filed on January 28, 2014.

8 On January 21, 2014, Defendant filed the instant (Ex-Parte) "Motion for  
9 Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant Indigent and  
10 Granting Forma Pauperis". The State responds as follows.

11 ARGUMENT

12 Defendant claims that he is entitled to \$302.68, to be credited to his account at High  
13 Desert State Prison for copy costs during his instant case due to this Court's ruling that he was  
14 indigent and permitted to proceed In Forma Pauperis. Defendant also cites to this Court's  
15 minutes of December 16, 2011, asserting that they show this Court agreed to the  
16 reimbursement.

17 First, Defendant misconstrues this Court's previous statement. The minutes from  
18 December 16, 2011, do not reflect that this Court agreed to reimburse Defendant for any costs  
19 at a later date. Rather, they show Defendant inquired about an order to extend his copy limit  
20 and the Court instructed him to file a motion:

21 12/16/2011 8:45 AM  
22 DEFENDANT'S MOTION TO WITHDRAW COUNSEL AND  
23 FARETTA CANVASS . . . FARETTA CANVASS Christopher  
24 Lalli, Chief Deputy District Attorney, and Liz Mercer, Deputy  
25 District Attorney, present on behalf of the State; Lance Maningo,  
26 Esq., present on behalf of Deft. O'Keefe, who is also present.  
27 Upon Court's inquiry, Deft. stated that he still wants to represent  
28 himself in this matter. Court conducted a Faretta Canvass and  
FINDS, Deft. competent to WAIVE his constitutional right to be  
represented by counsel. COURT FURTHER FINDS, that Deft. is  
WAIVING such right, freely, knowingly, and voluntarily.  
Colloquy regarding stand-by counsel and an investigator.  
COURT ORDERED, Deft.'s pro se Motion to Withdraw Counsel  
is GRANTED. Mr. Maningo shall be APPOINTED as STAND-  
BY COUNSEL; he advised Investigator, Craig Retke, has already

See Court's Minutes of December 16, 2011.

1. Any person who desires to prosecute or defend a civil action may:

(b) Submit a statement or otherwise indicate to the court that the person is a client of a program for legal aid.

(a) The clerk of the court.

(2) To file or issue any necessary writ, process, pleading or paper without charge.

3. If the person is required to have proceedings reported or recorded, or if the court determines that the reporting, recording or transcription of proceedings would be helpful to the adjudication or appellate review of the case, the court shall order that the reporting, recording or transcription be performed at the expense of the county in which the action is pending but at a reduced rate as set by the county.

100



NRS 12.015. Applications to Proceed In Forma Pauperis are most often seen in the criminal law context when defendants file Petitions for Writs of Habeas Corpus (Post-Conviction). As noted in NRS 12.015(2)(a) – (b), the primary purpose of allowing a plaintiff or defendant to proceed In Forma Pauperis is to waive the fees, costs, and charges so that they can file their documents with the court. Beyond the court fees, a civil litigant proceeding In Forma Pauperis is only entitled to reimbursement for their statutorily allowed costs if they prevail in their civil action. NRS 12.015(4). Even then they must demonstrate that they are entitled to the costs pursuant to Nevada law. Id.; NRS §§18.005-18.180, inclusive. Defendant has not met any of these requirements.

Finally, while there is a constitutional right to access to the courts there is no such right to convenient document preparation. Inmates have a constitutionally protected right of meaningful access to courts. Bounds v. Smith, 430 U.S. 817, 818, 820-821, 824 (1977). However, "various resources, documents, and supplies merely provide the instruments for reasonable access, and are not protected in and of themselves." Orloff v. United States, 335

1 F.3d 652, 656 (7th Cir. 2003) (arrogated on other grounds by Clark v. United States, 360 F.  
2 App'x 660, 662 (7th Cir. 2009)).

3 Therefore, Defendant has provided no legal basis for his request. This failure should  
4 be interpreted as an admission that the motion is not meritorious. EDCR 3.20. Additionally,  
5 as the State has demonstrated above, there is no legal basis for Defendant's request. Thus, his  
6 motion should be denied.

7 **CONCLUSION**

8 Based on the foregoing, the State respectfully requests that Defendant's (Ex-Parte)  
9 "Motion for Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant  
10 Indigent and Granting Forma Pauperis" be DENIED.

11 DATED this 7th day of February, 2014.

12 Respectfully submitted,

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

15  
16 BY

*Barbara Scholastica for*  
17 H. LEON SIMON  
18 Chief Deputy District Attorney  
Nevada Bar #000411

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# **EXHIBIT 1**

004775

**ADMINISTRATIVE REGULATION  
722**

**INMATE LEGAL ACCESS**

**Supersedes:** AR 722 (Temporary, 07/20/11)  
**Effective Date:** 06/17/12

**AUTHORITY:** NRS 209.131; 208.165

**RESPONSIBILITY:**

The Warden at each institution is responsible to:

- A. Ensure that inmates have access to the judicial process by providing for reasonable access to the law libraries, inmate library assistants, and legal mailings.
- B. Designate an employee to manage the inmate law library.
- C. Designate an employee to coordinate legal issues with the Attorney General Office.

The Chief of Inmate Banking Services is responsible for fiscal management of the law libraries statewide.

**722.01 INMATE ACCESS TO LAW LIBRARIES**

1. Department will provide access to relevant and up-to-date state and federal constitutional, statutory, and case-law materials; and applicable court rules, procedures, practice treatises, and digests.
  - A. Specific books, materials, and processes are to be determined in consultation with the office of the Attorney General.
  - B. Research materials may be limited to those required for criminal appeals and conditions of confinement.
  - C. Any other materials which are provided by law libraries beyond these requirements are a courtesy, and no liberty or court access interest arises in providing any such additional materials.
  - D. When requesting supplies or services, inmates are required to identify the case number of the active litigation on which the inmate is working.

- E. If the case number is not yet available (new litigation), this will be noted on the request.
- 2. Inmates are required to identify "new litigation" or the assigned case number upon entering the Law Library and when requesting services, resource materials, and legal supplies.
- 3. Automated resource systems may be substituted for hard bound book libraries with the approval of the Attorney General.
- 4. When reference materials contained on the Approved Publication List are unavailable at the Law Library, the Law Library Supervisor will attempt to get copies from another Law Library location.
  - A. If this attempt is not successful; the inmate can request copies from the Supreme Court Law Library by completing the "Nevada Supreme Court Law Library Order Form" DOC-3512 and send the completed form to Inmate Banking Services.
  - B. The copy provided will be for check out.
  - C. The Department will charge a fee for copies provided. The Department shall inform the requester of the amount of the fee prior to making any copies..
- 5. Access to legal supplies and resource materials should be provided to inmates in segregation similar to the access afforded to inmates in the general population.
  - A. Segregated inmates should be provided necessary assistance for effective access, i.e., inmate library assistants.
  - B. Segregated inmates may be provided access to loose leaf materials, i.e. statutes, regulations, directives, etc.
  - C. Specific procedures and/or statutes requested by segregated inmates should be copied by the law library and taken to the segregated inmates upon request.
  - D. The copies belong to the law library, must be checked out by the inmate, and returned to the law library.
  - E. An inmate who does not return copies will be subject to disciplinary action.
- 6. At a minimum, staff at each institution with a law library should:
  - A. Conduct inventories of books and legal materials on an annual basis.
  - B. Forward a copy of the inventory to the Department's designee .
  - C. Maintain a perpetual inventory of all books and supplies.



- D. Additional inventories may be requested as determined by the Department's designee or Attorney General's office.
  - E. Maintain appropriate logs on the use of law libraries by inmates.
  - F. Maintain logs as to what legal supplies are ordered and what supplies are given to indigent inmates.
  - G. Maintain a log indicating the number of photocopies provided to each inmate.
  - H. Staff will maintain these logs.
7. Copies of legal documents requested by inmates may be made for a nominal fee.
- A. Inmates are not constitutionally entitled to free copy work.
  - B. Indigent inmates may request limited copies that will be charged to the inmate's Departmental charge account.
  - C. The indigent inmate must sign a brass slip to reimburse the State when sufficient funds are accrued in an inmate's PPF.
  - D. Inmates can only accrue a maximum of \$100 debt for copy work expenses for all cases, not per case.
  - E. Carbon paper should be made available to any inmate who requests this item for legal purposes, however, carbon paper may have restrictions placed on its issuance by the Warden for security purposes.
  - F. The Department will charge a fee for copies provided. The Department shall inform the requester of the amount of the fee prior to making any copies..
  - G. An applicable fee will be charged per page for any copies which requires staff to conduct research or pull files to make copies. Such cases would be found when a staff person has to locate the inmate file, take the document from the file, copy the document, reassemble the file and then give the inmate a copy.
8. Copy machines located in law libraries are not to be used for any copy work other than for inmates who have current litigation regarding criminal appeals, habeas corpus, conditions of confinement and divorce or child support issues.
- A. Only legal materials may be copied.
9. The Warden will assign an employee to manage the institution law library if no Law Library Supervisor is available.

- A. The Warden should appoint one person, Caseworker II or above, to act as the litigation liaison to coordinate and assist the Attorney General's Office in defending the institution and personnel in lawsuits.
  - B. This requirement may be subjected to appropriate budgeting and staffing levels.
10. Each institution should establish procedures specific to their institution for the operation of their law library.
- A. The law library should be open a sufficient number days and at times to serve the inmates.
  - B. Inmates should be advised of the law library hours of operation.
  - C. No changes in the hours of operation of the law library, absent exigent circumstances, are authorized. Documentation will be made on the length of the closure and the reasons for the closure.
  - D. Procedures for pick up and delivery of law library requests and legal mail for segregated inmates should be included for each institution.
11. The institution's supporting camps and centers will obtain services through the institution's law library.
- A. The Warden will designate an employee at a camp or center to coordinate legal services.
  - B. Inmates at a camp or center are responsible to advise the Legal Coordinator of their need for legal materials.
  - C. The Coordinator will process and coordinate all requests for supplies and reference materials pursuant to camp operational procedures.
12. Inmates found in possession of legal materials belonging to the law library without proper authorization are subject to disciplinary action.
- A. All materials belonging to the law library should be clearly stamped to identify them as State property or printed on pink paper.
13. The Department shall not supply out-of-state inmates housed within the Department with forms, documents, or legal materials from the sending state unless these materials are provided to the Department by the sending state.

#### **722.02 LEGAL ASSISTANCE BY INMATES**

- 1. Where possible, inmate library assistants assigned to law libraries should be directly supervised by staff.

2. Inmate law library assistant duties may include the following:
  - A. Assisting other inmates to locate legal reference materials;
  - B. Assisting inmates in the disciplinary process;
  - C. Making regular visits to segregation areas in order to fill requests for supplies and reference materials.
3. Inmate law library assistants assigned to service segregated housing units are to:
  - A. Aid inmates in obtaining legal materials and supplies;
  - B. Assist in doing basic research for the segregated inmates in support of their petitions, suits, and other actions;
  - C. Inmate library assistants are not required to prepare and draft documents but are expected to assist segregated inmates in preparing their own documents;
  - D. Personal issues such as family law and bankruptcy matters are the responsibility of the inmate filing such claims; inmate library assistants need not help in these areas;
  - E. Provide an inventory of the law library, an index of Department ARs, and an index of forms available at the law library.
4. Inmate library assistants assigned to segregated housing units are to be allowed to visit the units five days per week, absent exceptional circumstances, at times designated by the Warden.
  - A. Unit staff are to insure that the inmate library assistants have immediate access to the unit at the designated times and that there are no excessive delays.
  - B. If the situation arises where the Library Assistant must be removed from the unit, the senior unit officer will immediately notify the shift supervisor and advise him of the situation.
  - C. Any delay of the inmate library assistants will be documented in the unit log and a written report submitted to the Warden and the Shift Supervisor.
5. Inmates in segregation who have questions or concerns regarding inmate library assistant services should direct them in writing to the Law Library Supervisor.
6. Inmate library assistants are not permitted to appear in state or federal courts on behalf of another inmate, except by specific order from a judge or magistrate, in each case.

- A. Inmate library assistants may only assist inmates at the institution where they are assigned, except by specific order from a judge or magistrate.
- B. Inmate library assistants / Counsel Substitutes may not charge for services rendered to other inmates.
- C. Inmate library assistants may not represent themselves to others as an attorney or a representative of an attorney.
- D. Inmate library assistants may not solicit litigation.
- E. Inmate library assistants may not post memoranda.
- F. Inmate library assistants may not violate Nevada law or standing rules of the American or Nevada Bar Associations concerning limitations on persons not licensed to practice law.

#### **722.03 NOTARY SERVICES FOR INMATES**

- 1. Nevada Revised Statute 208.165 provides that an inmate may execute any instrument by signing a declaration, under penalty of perjury, with the same legal effect as a notarized oath. Therefore, inmates do not require the services of a notary public to execute any Nevada instrument as provided in this procedure. Federal Statute 28 USC § 1746 also provides for unsworn declaration in all federal jurisdictions.
- 2. All institutions and facilities should have a sufficient number of notaries to insure timely notarization of any legal instruments otherwise requiring a notarized signature.

#### **722.04 INMATE ACCESS TO THE JUDICIAL PROCESS**

- 1. Inmates may retain attorneys or their authorized representatives, obtain assistance from institutional inmate library assistants, obtain services from the Public Defender's Office and obtain services from legal aid agencies.
- 2. Forms required by state and federal courts should be provided without charge to inmates, for preparation and processing of their legal documents.
- 3. Legal supplies will only be provided once per month to indigent inmates. Legal supplies are defined as follows:
  - A. White Bond paper, "8 1/2" by 11", 20 to 50 sheet packets.
  - B. Paper, 8 1/2" by 11", 20 to 50 sheet packets.
  - C. Carbon paper, issued on exchange only, max of 5 sheets.
  - D. Envelopes:

4" by 9", individual or packet of 5;  
9" by 12" individual;  
10" by 15", individual.

E. Pens and pencils, one per month or exchanged for a used one. Red pens are not allowed in the Law Library for any purpose.

F. Fire proof box, one per indigent inmate, when needed.

G. Convenience items including file folders, fasteners, tape, etc., will not be provided to any inmate at State expense.

4. Charges for the above supplies and quantities listed will be determined by each institution or facility based on current canteen prices.

A. An indigent inmate will fill out a brass slip for the cost of supplies.

5. Supply quantities are to be issued based on legitimate inmate needs for active litigation, on a case-by-case basis. The burden of proof is the responsibility of the inmate.

6. Each institution or facility is to insure that the above listed items are also available for sale in their canteens.

A. Should any of the above items not be available for sale in the canteen, until such time as the items are stocked, the items are to be issued through the law library with the inmate completing a brass slip prior to receiving the materials.

7. Inmate loss of canteen privileges due to a sanction imposed under AR 707 will be allowed to purchase legal supplies and stamps through the canteen while undergoing this sanction.

8. Inmates may assist each other in the preparation of legal documents and may act as Counsel Substitutes under Departmental policies.

A. Inmates may not receive compensation for providing legal assistance at any time.

9. Legal opinions, books, papers and forms used by one inmate to assist another may be in possession of the inmate giving assistance, with the written permission of the owner.

10. When an inmate other than an inmate library assistant is helping another inmate, all papers must be returned when either inmate is released; when either inmate is transferred to another institution; or when administrative action such as placement in disciplinary segregation prevents direct communication between the two inmates. The only exception is if the inmates are active codefendants or co-plaintiffs on a current case being litigated.

11. Any inmate assisting in the preparation of legal documents must clearly identify themselves as an inmate and document this by writing "inmate" before their name and follow with their prison identification number.

12. Inmate assistance in preparing legal documents is limited to individuals within the prison system, or as otherwise prohibited by statute or professional rule.

13. Inmates may retain personal legal materials in their cells in fire-proof boxes as noted in AR 711 Property.

A. Legal boxes should be clearly marked "Legal Materials."

B. Legal boxes should only include materials for current litigations, or materials for "new litigation."

C. Materials which exceed the statute of limitations from an incident date may not be retained for "new litigation."

D. Materials for a civil case may not be retained past the appeal date, unless appeal has been taken. Law Library Supervisors may verify that an appeal has been filed by checking the appeal log.

E. Legal boxes should be limited to three per inmate.

F. Legal box contents should be periodically reviewed for contraband by designated staff.

G. Inmates who require more than three legal boxes may appeal the limitation using the grievance process.

#### **722.05 INMATE REPRESENTATIVES AT PAROLE BOARD HEARINGS**

1. An inmate may, at his own expense, have a representative present with whom he may confer.

2. An inmate may speak on his own behalf or have his representative speak in his behalf.

A. For inmates of medium custody and above, inmate representatives are limited to an inmate library assistant or approved visitor, including legal representative.

B. For inmates of minimum custody and below, inmate representatives are limited to the same as medium custody and above or any inmate representative housed at the same facility.

3. It is the inmate's responsibility to:

A. Notify their designated representative of date, time, and location of their hearing.

B. Review their case with their representative prior to their scheduled hearing.



C. Notify institution of the representative's identity at least five (5) working days prior to their Parole Board hearing.

## **722.06 ATTORNEYS**

1. Attorney, and their legal representatives retained by the inmate or his family shall be permitted visits.
  - A. Department staff should assist inmates in making confidential contact with attorneys and legal representatives.
  - B. Attorneys or legal representatives shall be required to furnish proper identification for visits by presenting evidence that they are members of a state bar.
2. Any inmate has the right to consult with an attorney or legal representative subject to restrictions for the security of the institution and safety of the inmate population and staff.
3. Staff may not ask an attorney or legal representative to state the subject matter of the lawsuit or the interview.
4. As a condition of visiting an inmate, attorneys or legal representatives should be subjected to a search of his personal belongings and materials for the purpose of ascertaining if contraband is present.
5. An act by an attorney which violates Department regulations or operational procedures, and which threatens the security, good order, or discipline of the institution is grounds for the Warden to limit or deny the attorney's privileged visitation and correspondence rights.
6. Acts by an attorney which may warrant such limitation or denial include, but are not limited to, the following:
  - A. False statements as to the attorney's identification or qualification;
  - B. A plan, attempt, or act to introduce contraband into the institution;
  - C. A conspiracy to commit or attempt to commit, or the actual commission of an act of violence within institution;
  - D. Encouraging an inmate to violate the law, Department regulations, or operational procedures.
7. Unless the breach of regulations is extreme or repetitive, limitation rather than denial of visitation or correspondence rights is proper, especially when the inmate is confronted with a court deadline.



- A. The Warden may refer the matter to the Nevada Bar Association through the Attorney General's office.
  - B. The attorney may appeal the limitation or denial of attorney visits or correspondence rights by the Warden to the Deputy Director.
  - C. The inmate affected may appeal through the grievance process.
8. Prison officials may require an attorney or legal representative to show that the inmate or his family requested a visit. Written confirmation by the inmate or his family will be deemed sufficient to make a showing.
9. The Department should refuse admission to anyone who fails to comply with its regulations. When there is doubt concerning the identity of an attorney, the institution shall refer the matter to the Warden who in turn shall confer with the Attorney General's office.
10. Visits between an attorney and client are confidential.
- A. An attorney may make recordings during their visits.
  - B. All recording devices must be provided by the attorney and approved in advance by the Warden or designee.
  - C. No recording devices will be left with the inmate.
  - D. Recordable CDs are not an acceptable medium for inmate recordings.
  - E. The institution should provide an area which meets the security needs of the institution, where the attorney and client may confer in private.
11. An inmate may refuse an attorney/client interview, provided:
- A. The inmate's denial should be communicated to the attorney or representative in writing, signed by the inmate.
  - B. The communication should be a statement by the inmate that the attorney/client interview had been requested by the inmate or the inmate's family.
12. Attorneys need not be placed on an approved visiting list.
- A. Attorneys and their representatives may be permitted to visit more than one individual inmate during normal visiting hours, consistent with the security needs of the institution.
  - B. Attorneys should notify the institution 24 hours in advance of the intended visit.
  - C. The Warden or designee may approve any exceptions to this policy.

13. Attorneys or their representatives, who come in their professional capacity and ask to see an incarcerated family member must have the Warden's permission. The Warden may consult with the Attorney General's office before rendering a decision.

14. Institutions and facilities should develop procedures to ensure that after hours legal visit requests may be scheduled under special circumstances,

15. Diplomatic representatives will have the same right, and follow the same procedures as outlined for attorneys/representatives.

#### **722.07 NOTICE OF APPEALS**

1. Each institution and facility will maintain a permanent Notice of Appeals Log (DOC-4508) for the purpose of documenting appeals filed by inmates.

2. The Law Library Supervisor or Legal Coordinator will maintain the log for accepting the Notice of Appeals.

3. Operational procedures should include specifics regarding how all inmates, including those in segregation, can contact the Law Library Supervisor.

4. The permanent Notice of Appeals log should contain the following information:

A. Inmates name and number;

B. Date of receipt;

C. Time of receipt;

D. Case number;

E. Court of jurisdiction;

F. Printed name and signature of the staff member receiving the notice;

G. Printed name and signature the inmate filing the appeal; and

H. Date and time the appeal is forwarded to the mailroom.

5. An inmate wishing to file a notice of appeal will present the Law Library Supervisor with the notice of appeal, (original and file copy), two completed envelopes, (one to the Court and one to the Attorney General's office) and his identification card.

A. The Law Library Supervisor should verify the inmate identity.

- B. The Law Library Supervisor should ensure that the requirements of AR 722.08, Outgoing Legal Mail are met before processing the notice of appeal;
  - C. The inmate's name, number, and institution return address must be included on the return address on the outside of the envelope or package.
  - D. The word "confidential" must be included on the face of the envelope.
  - E. The inmate will then show the Notice of Appeal to the Law Library Supervisor. The document must be entitled "Notice of Appeal."
  - F. Staff will not read the contents of the Notice of Appeal, only the cover sheet to verify that it is in fact a Notice of Appeal and to get the other information necessary to complete the log.
  - G. Once the log is completed, the inmate, in the presence of the Law Library Supervisor who completed the log, will seal the envelope.
  - H. The inmate will then give the sealed envelopes back to the Law Library Supervisor who will then sign & date the flap of the envelope.
  - I. The Law Library Supervisor will keep the sealed Notice of Appeal envelope in his possession and personally place it in the outgoing mail the same day of receipt.
6. Completed logs will be forwarded to the Warden's office for permanent storage.

#### **722.08 OUTGOING LEGAL MAIL AND CORRESPONDANCE**

1. Correspondents are responsible for the contents of mail sent in or out of the institution.
  - A. Inmates will provide their correspondents with appropriate instructions for compliance.
2. Violation of laws regulating mail shall be referred to postal authorities and other law enforcement officials.
3. Violations of the law, the policies governing the Department of Corrections' mail regulations or any approved institutional mail procedures may result in the temporary suspension or denial of correspondence between those involved in the violations.
4. All outgoing mail must conform to the addressing requirements of AR 750, Inmate General Correspondence.
5. All legal mail is privileged correspondence.
6. Outgoing legal or privileged mail may be censored per AR 722.10.
7. The legal mail must be addressed to an attorney or legal representative.

- A. The word "confidential" must be included on the face of the envelope or the mail will be processed as general correspondence.
  - B. Indigent or Indigent at the moment legal mail may be scanned, but not read, prior to sealing the envelope.
  - C. If the mail is not legal in nature the mail will not be processed.
8. Mail addressed to the Governor, Attorney General, or Secretary of State will be inspected before the envelope is sealed, then initialed by the staff.
9. Legal mail will not be held in the institution longer than 24 hours before transmittal, excluding weekends and holidays.
10. All legal mail must be sent via the U.S. Postal Service unless ordered otherwise by the Court.
11. There is no limit to the amount of legal postage an indigent inmate or indigent at the moment inmate may accumulate for legal postage.
- A. This policy should extend only to the pursuit of civil rights, habeas corpus, or post-conviction litigation actions.
  - B. This policy shall extend only to first-class mail for all legal mail unless the Court requires certification.
  - C. Both indigent and indigent at the moment inmates must sign a brass slip to ensure the State is reimbursed once the funds are available.
12. Locations served by the State Mailroom are to separate legal mail with a note that the legal mail is to be charged full rate and not pre-sort rate.

#### **722.09 INCOMING LEGAL MAIL**

1. Incoming legal mail must meet the address requirements of AR 750.
2. Legal mail received for inmates housed in other institution or facilities should be forwarded by way of the U.S. mail to the inmate.
  - A. Inter Departmental mail will not be used for this purpose.
3. Legal mail received for inmates who are no longer supervised by the Department will be immediately returned to sender or forwarded, provided an address is available.

4. Legal mail will be held by staff for a maximum of 24 hours excluding weekends and holidays. Staff should make a reasonable effort to deliver legal mail if:

A. The inmate is housed outside an institution or facility under Department staff supervision, using the example of a hospital; and

B. The staff is aware the inmate will be absent for no longer than one working day, mail is to be immediately forwarded to the inmate.

5. Incoming correspondence will be treated as legal mail only if the envelope clearly identifies an attorney, legal representative, or other privileged correspondent in the return address.

6. Incoming legal/privileged mail will be opened, scanned and inspected for contraband in the presence of the inmate recipient, unless the inmate waives this process in writing.

7. Incoming legal or privileged mail may be censored per 722.10.

8. Incoming packages of lengthy documents from legal/ privileged correspondents should be opened and inspected in the same manner as legal correspondence.

A. Any other package must meet the requirements of AR 711.

9. Recordable CDs or DVDs are not an acceptable medium for inmate legal mail unless delivered directly from a Nevada court, subject to verification of content.

#### **722.10 CENSORSHIP OF LEGAL MAIL**

1. Legal correspondence cannot be monitored.

2. Incoming or Outgoing legal or privileged mail may be censored if there is reasonable suspicion that it contains evidence of impending criminal activity or activity that is a threat to the safety or security of the institution, or contains contraband.

A. The Attorney General's Office should be contacted prior to the censorship of legal or privileged mail.

B. A minimum of two staff will be present when outgoing legal mail is censored.

C. If there is a safety, security, or criminal issue the opening of the correspondence may be videotaped and the tape placed into evidence.

D. Cash and personal checks will be removed and returned to the sender.

E. Money Order and cashier's checks made to the inmate will be removed and credited to the inmate's account.

- F. Contraband found will be removed and held as evidence for disciplinary action.
- G. Items removed from incoming legal/ privileged mail should be placed into evidence.
- H. A written report of censorship should be provided to the Warden within 24 hours of the incident.
- I. The sender of inappropriate items and the inmate recipient will be notified of the confiscation.
- J. The Notification of Mail Censorship Form should be completed and distributed as required on the form.
- K. The inmate may appeal this censorship through the grievance process.


#### **722.11 LEGAL TELEPHONE CALLS**

1. Inmates should use the unit or yard telephones for legal calls.
2. All legal calls should be collect or debit calls.
3. Institutional telephones, including but not limited to law library telephones, will not be used for inmates to make legal calls except under exceptional circumstances, and approved on a case-by-case basis by the Associate Warden or Facility Manager or above.
4. Legal calls placed for inmates on institutional phones by staff should have the number dialed by the staff member to insure it is a legal call; observe the inmate throughout the call, but not listen to the call.
5. There is no limit on the number of legal telephone calls placed by inmates to their legal representatives.
6. Time limits may be imposed on such calls to insure all inmates have access to telephones, and to minimize operational disruptions.
7. Inmates are not permitted to telephone Division of Parole and Probation, Board of Parole Commissioners, Nevada Department of Corrections employees, or the Office of the Attorney General, without receiving prior approval from the agency receiving the call.

#### **APPLICABILITY**

1. This AR requires an Institutional Operational Procedure.
2. This AR requires an audit.

REFERENCES: ACA Standards 4-4256; 4-4262; 4-4264; 4-4433; 4-4438

  
James G. Cox, Director

5/30/12  
Date



PP  
DA

BRIAN KERRY O'KEEFE  
Petitioner / In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018  
BAC # 90244

Alison L. Johnson  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA  
Plaintiff,  
vs.  
BRIAN O'KEEFE  
Defendant.

Case No. 08 C250630  
Dept. No. XVII  
Docket \_\_\_\_\_

PROSE "REPLY" to STATE'S OPPOSITION TO DEFENDANT'S (EXHIBIT)  
C MOTION FOR REIMBURSEMENT OF INCIDENTAL COSTS SUBSEQUENT  
THE COURT DECLARING DEFENDANT INNOCENT AND GRANTING FORMAL PRUDENCE

COMES NOW, petitioner, BRIAN O'KEEFE, herein above respectfully  
moves this Honorable Court for an open mind to the state's one sided  
view of a "MISER" with relic beliefs in the actual practices  
of how charges are assessed and instantly deducted once money

This Motion is made and based upon the accompanying Memorandum of Points and Authorities. I appears!

DATED: this 18<sup>th</sup> day of February, 2014

BY: Brian O'Keefe  
Brian O'Keefe # 90244  
Defendant/In Propria Personam

RECEIVED

FEB 21 2014

CLERK OF THE COURT

RECEIVED

FEB 24 2014

CLERK OF THE COURT

• POINTS AND AUTHORITIES

(STATEMENT  
OF CASE)

MR. O'Keefe has truly undergone (2) trials [unfair] with the State District Court in "WALT OF JURISDICTION".

Not only did the State violate O'Keefe's State and Federal Due Process, 5th Amendment and 14th, now they deprive me by taking petitioner's hygiene and minuscule personal funds.

However, the Court should consider the following: (N.R.S. 12.015)

a.) he granted the application for ~~former~~ papers based on the fraudulent determination of being indigent;

b.) NRS 12.015 (2)(x)(1) [reads] ... to allow the person to commence or defend the action WITHOUT COSTS;

c.) Webster's New Pocket Dictionary (2007 Houghton Mifflin Harcourt Publishing Company) DEFINITIONS OF;

1.) WITHOUT (adv.) - 2. "WITH NONE OF"

2.) COST(S) (noun) - 1. "A PRICE"

2. "A LOSS OR PENALTY"

3.) COST(S) (verb) - 1. "TO REQUIRE A SPECIFIED PAYMENT"

d.) all the proceedings were part of the direct attack up to and including "Certiorari" to the U.S. Supreme Court, O'Keefe v. Nevada, case # 13-6031 Concluding Oct 15 2013.

e.) The state is correct in the fact that legal postage is unlimited, HOWEVER, he fails to mention that the state runs their [LEGAL] bar tabs and the first instance of any defendant getting any funds, i.e. birthday anniversary, Christmas;

The state deducts the account tab for not only legal mailing but for copies charged at 10 cents a copy. Realizing certain motions require copies made and mailing to additional parties, i.e., Attorney General, NINTA COURT, U.S. SUPREME COURT.

f.) The state should have respected the "Status Quo ORDER", being the COA on NANCY, DOUBLE JEOPARDY VIOLATION, which was the indicator of an INTEREST and JURISDICTION (see page 28, SECTION 510(2); SOLERA GARDEN). The COA became "paradigmatic"; also noting for the state district court that the 9th CIRCUIT doesn't have SIGNATURE PAGES! NOTE, I asked!!!

see The Authority of FLANAGAN v. UNITED STATES.

465 US 239, 79 LEd 2d 288, 101 S.Ct. 1651,

dictates double jeopardy rights are, "Stricter". Apparently, the state didn't get that memo...

GOT MY MONEY, DUGH!

## • CONCLUSION

The Court should explain to the state that if i never got a penny placed on my books his argument would have merit.

However, he fails to divulge the prison deducts immediately every single penny in the negative as soon as any positive funds hit an inmate's books.

I thought it was clear that indigent meant impoverished, needy, no means. Additionally, the court legally determined i was such and granted my petition for forma pauperis. This status includes all incidental costs.

If doesnt matter what it was for, get it. If still was a cost.

Maybe the state and court could then send me some birthday money, which is coming up on MARCH 14 if the court denies my motion.

Hon. Judge, I need some soap and more. T.T. for tat! Premising all this will be,

Exhibits 5:10-14 Submitted

Respectfully Judge  
Be Left

**CERTIFICATE OF SERVICE BY MAILING**

1. Brian Henry O'Keefe, hereby certify, pursuant to NRCP 5(b), that on this 18<sup>th</sup>  
day of February, 20 14, I mailed a true and correct copy of the foregoing, "Pro se  
"Reply" to State's Opposition... Granting Form Pauperis  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

STEVEN CORREIA  
CLERK OF THE COURT  
200 LEWIS AVENUE  
3RD FLOOR  
LAS VEGAS, NV 89155-1160

PLEASE • All users of the electronic filing system,  
NOTE • CM/ECF, will be served by the clerk using  
CC:FILE THAT PERSPECTIVE SYSTEM.

DATED: this 18<sup>th</sup> day of FEB., 20 14

Brian H. O'Keefe  
Brian O'Keefe # 90244  
Petitioner's / In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Pro SE

CE RENEAL & Estate OPP. ... Duplicates

(Title of Document)

filed in District Court Case number 08 0250630

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Brian K. O'Keefe  
Signature

2-18-14  
Date

Brian K. O'Keefe  
Print Name

Pro SE  
Title



BRAND O'HARE  
H.B.S.P.  
P.O. BOX 650  
Indian Springs, NV. 89070-0650

BRAND O'HARE  
ZIP 89101  
011012602491

2061051  
FIRST CLASS MAIL  
02/20/2014  
US POSTAGE  
\$60.69

TELEPHONE

LEGAL MAIL

LEGAL MAIL

STEVEN G. HARRIS, Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV. 89155-1160  
CONFIDENTIAL



**RECEIVED**

**FEB 19 2014**

**HIGH DESERT STATE PRISON  
LAW LIBRARY**

**CERTIFICATE OF SERVICE BY MAILING**

I, Brian O'Keefe, hereby certify, pursuant to NRCP 5(b) that on this 24<sup>th</sup>  
day of November, 2013, I mailed a true and correct copy of the foregoing "ET PAK RETURN TO APPL. COUNCIL"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, Fully prepaid,  
addressed as follows:

Regional Justice Center  
Clerk of Court  
200 E. LEWIS AVE.  
LAS VEGAS, NV. 89155

DATED: THIS 24<sup>th</sup> day of November, 2013

B. O'Keefe  
90245 /In Propria Persona  
High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89018

MC  
PP  
DA

48

Electronically Filed  
12/13/2013 12:07:15 PM

Brian Kerry O'Keefe  
#9244 / In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018

Allen J. Johnson  
CLERK OF THE COURT

EIGHTH  
DISTRICT COURT  
CLARK COUNTY, NEVADA

Brian Kerry O'Keefe  
Plaintiff,  
vs.  
D.W. NEWMAN, WARDEN, et al.  
Respectfully  
STATE OF NEVADA, Real Party  
in Interest

Judge M. Villani  
Case No. 0250630  
Dept. No. XVII  
Docket  
(2) EXHIBITS A & B

EX PARTE MOTION FOR REIMBURSEMENT OF LEGAL  
COST OF FOREVER CANNASED DEFENDANT  
to Above INSTANT CASE.

COMES NOW, BRIAN KERRY O'KEEFE, herein above respectfully  
moves this Honorable Court for an ORDER OF REIMBURSEMENT  
to ostensibly the "OFFICE OF APPOINTED COUNSEL" or by  
"CLARK COUNTY CLERK'S OFFICE", IN ABSENTIA.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 1<sup>st</sup> day of December, 2013

BY: Brian K O'Keefe  
Brian K O'Keefe #9244  
Defendant/In Propria Personam

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DEC 13 2013

CLERK OF THE COURT

004701

1 On December 16, 2001 Mr. O'Keefe's Motion for  
2 Voluntary Dismissal Under Fed. Rule 37 SE was  
3 heard in Dept- 17 by the Honorable M. Villari  
4

5 Mr. O'Keefe was found to object to his 3rd  
6 trial on the same offense after trial court  
7 instructional error, which is irrelevant for the purposes  
8 of dbl. jeopardy.

9 Mr. O'Keefe was granted  
10 to proceed Pro SE subsequent Federal court. Additionally,  
11 Judge Villari made in the record that all costs  
12 involved could be waived. Therefore Mr. O'Keefe  
13 has diligently calculated the cost involved in  
14 this instant case WHICH DOES NOT END  
15 UNTIL ALL APPEALS have been EXHAUSTED.

16 The third trial was under a limited and  
17 general jurisdiction, basically the starting point  
18

19 Enclosed and attached is the County of Clark  
20 ~~County~~ C.C.D.C. Prisoner 25, EXHIBIT A.  
21 TRUST ACCOUNT STATEMENT LEGAL COPIES (\$0.20) and  
22 LEGAL POSTAGE (\$16.32) was my pretrial bill, total  
23 of \$ 56.52.

24 MY PRISON STATEMENT shows LEGAL  
25 COPIES (\$ 185.20) and LEGAL POSTAGE (\$ 60.96) total  
26 of \$ 246.16 COMBINED TOTAL subsequent  
27 Certifiers to the U.S. is \$ 302.68 SEE EXHIBIT B  
28 [U.S. CASE # 13-6021]

1 CONCLUSION  
2 IN EX PARTE.

3 MR. O'Keefe humbly requests the Honorable  
4 Villani to ORDER WHICHEVER department he feels  
5 best suited, to cut a check for REIMBURSEMENT OF  
6 COSTS, WITH A GRAND TOTAL OF \$ 202.68  
7 to be placed upon INMATES PRISON ACCOUNT,  
8 ACCRUED IN THE INSTANT CASE CASE 630 still on appeal.  
9 ALSO, MR O'KEEFE REQUESTS this to be  
10 in abstratia.

11  
12 SINCERELY, HARRY HELDRAES  
13 & YOUNGKINS!

14 Respectfully,

15 B. L. O'K / # 902441

16 BRIAN O'KEEFE

17  
18 EXECUTION OF INSTRUMENT BY PRISONER

19  
20 PURSUANT to N.R.S. 208.165, I hereby declare  
21 under the penalty of perjury that the contents of  
22 the above are true and correct to the best of my  
23 knowledge.

24 By: B. L. O'K /

25 DATED this 1<sup>st</sup> day DECEMBER 2013.

CERTIFICATE OF SERVICE BY MAILING

I, Brian Kelly O'Leary, hereby certify, pursuant to NRCP 5(b), that on this 3<sup>rd</sup> day of December, 2013, I mailed a true and correct copy of the foregoing, "MOTION FOR REIMBURSEMENT OF LEGAL COSTS... TO ABANDON INSTANT CASE" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows: (WITH EXHIBITS A & B)

CLERK OF THE COURT  
201 LEGAL AVE, 3<sup>RD</sup> FLOOR  
LAS VEGAS NV 89155

● ANY NECESSARY PARTY SHOULD BE NOTIFIED BY THE CLERK INVOLVING THE ON/EXF SYSTEM.  
CC:FILE NOTE, THIS HOWEVER IS EX-PARTE.

DATED: this 1<sup>st</sup> day of December, 2013.

THANK YOU,  
Brian O'Leary  
Brian O'Leary # 90244  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

EX PARTE MOTION FOR REIMBURSEMENT - - ABOVE CASE.  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

Bill Clark  
Signature

12-1-13  
Date

Brain O'Keefe  
Print Name

Pro SE  
Title



BRANT O'NEILL  
[#90244]

H.D.S. P.

P.O. BOX 650

INDIAN SPRINGS, NV 89076-0650

198

1973913

STEPHEN GREENSON,  
CLERK of the COURT  
200 LEWIS AVENUE, 3rd Floor  
LAS VEGAS, NV. 89155  
ATTN: FOR DEPT 17  
THE HONORABLE M. VILLER

00478

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LAW LIBRARY



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CLERK OF THE COURT

RSPN  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
LIZ MERCER  
Chief Deputy District Attorney  
Nevada Bar #010681  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,  
#1447732

Defendant.

CASE NO: 08C250630

DEPT NO: XVII

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR A WRIT OF MANDAMUS  
OR IN THE ALTERNATIVE WRIT OF CORAM NOBIS AND RESPONSE TO MOTION  
TO APPOINT COUNSEL

DATE OF HEARING: January 7, 2014  
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through LIZ MERCER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis and Defendant's Motion to Appoint Counsel.

This Response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Brian Kerry O'Keefe (hereinafter "Defendant") was charged by way of Information  
4 on December 19, 2008, with one count of Murder With Use of a Deadly Weapon (Open  
5 Murder) (Felony - NRS 200.010, 200.030, 193.165).<sup>1</sup>

6 Defendant proceeded to trial on March 17, 2009. On March 20, 2009, the jury  
7 returned a verdict of guilty on the charge of Second Degree Murder With Use of a Deadly  
8 Weapon. Defendant appealed to the Nevada Supreme Court and on April 7, 2010, the Court  
9 reversed and remanded his case for a new trial; Remittitur issued May 3, 2010.

10 Defendant proceeded to trial for a second time on August 23, 2010. On September 2,  
11 2010, this Court declared a mistrial on account of the jury being hopelessly deadlocked in  
12 deliberations at a 10 to 2 vote.

13 On October 3, 2011, Defendant filed a Motion to Dismiss Appointed Counsel and for  
14 Faretta Hearing. This Court conducted the Faretta Canvass on December 16, 2011, and  
15 dismissed Defendant's counsel allowing him to represent himself; Mr. Maningo was  
16 appointed as stand-by counsel. Defendant proceeded to trial for a third time on June 11,  
17 2012. On June 15, 2012, the jury returned a verdict of guilty of Second Degree Murder With  
18 Use of a Deadly Weapon.

19 On August 28, 2012, this Court sentenced Defendant as follows: to a MAXIMUM of  
20 THREE (300) MONTHS and a MINIMUM of ONE HUNDRED TWENTY (120)  
21 MONTHS in the Nevada Department of Corrections (NDC), plus a CONSECUTIVE term of  
22 a MAXIMUM of TWENTY (20) YEARS and a MINIMUM of EIGHT (8) YEARS for use  
23 of a deadly weapon, with ONE THOUSAND THREE HUNDRED NINETY-FOUR (1,394)  
24 DAYS credit for time served. Defendant filed a Pro Per Notice of Appeal on August 31,  
25 2012. Defendant's Judgment of Conviction was filed September 5, 2012. Lance Maningo,  
26 Esq. confirmed as appellate counsel on September 6, 2012, and filed a Notice of Appeal on  
27 September 13, 2012. The Nevada Supreme Court affirmed Defendant's Judgment of  
28

<sup>1</sup> An Amended Information was also filed February 10, 2009, with the same charge.

1 Conviction on April 10, 2013, and denied rehearing on June 13, 2013. Remittitur issued July  
2 23, 2013.

3 On December 6, 2013, Defendant filed the instant Petition for Writ of Mandamus or,  
4 in the Alternative, Writ of Coram Nobis. He also filed a Motion to Appoint Counsel. The  
5 State responds to both as follows.

### 6 ARGUMENT

#### 7 **I. DEFENDANT IS NOT ENTITLED TO RELIEF FROM A PETITION FOR** 8 **WRIT OF MANDAMUS**

9 NRS 34.160 and 34.170 control the authority of courts to issue Writs of Mandamus  
10 and provide:

11 **NRS 34.160 Writ may be issued by Supreme Court and**  
12 **district courts; when writ may issue.**

13 The writ may be issued by the Supreme Court, a district court or  
14 a judge of the district court, to compel the performance of an act  
15 which the law especially enjoins as a duty resulting from an  
16 office, trust or station; or to compel the admission of a party to  
17 the use and enjoyment of a right or office to which the party is  
18 entitled and from which the party is unlawfully precluded by  
19 such inferior tribunal, corporation, board or person. When issued  
20 by a district court or a judge of the district court it shall be made  
21 returnable before the district court.

18 **NRS 34.170 Writ to issue when no plain, speedy and**  
19 **adequate remedy in law.**

20 This writ shall be issued in all cases where there is not a plain,  
21 speedy and adequate remedy in the ordinary course of law. It  
22 shall be issued upon affidavit, on the application of the party  
23 beneficially interested.

21 NRS 34.160, NRS 34.170.

22 However, a petition for writ of mandamus is an extraordinary remedy meant to  
23 compel **an inferior tribunal** to exercise its judgment and render a decision where a failure  
24 of justice would result from a delay or refusal to act. State v. Eighth Judicial Dist. Ct.  
25 (Hedland), 116 Nev. 127, 133, 994 P.2d 692, 696 (2000) (emphasis added). A writ of  
26 mandamus is available to compel the performance of an act that the law requires as a duty  
27 resulting from an office, trust or station or to control an arbitrary or capricious exercise of  
28 discretion. See NRS 34.160; Walker v. Eighth Judicial Dist. Court ex rel. County of Clark,

1 120 Nev. 815, 819, 101 P.3d 787, 790 (2004). A court may only issue a Writ of Mandamus  
2 to compel the performance of an act "by an inferior state tribunal, corporation, board, or  
3 person." Mineral County v. State, Dept. of Conservation & Natural Res., 117 Nev. 235,  
4 242-43, 20 P.3d 800, 805 (2001) (emphasis added). A district court may not issue a Writ of  
5 Mandamus to itself or any other district court. See Lewis v. Smart, 619 P.2d 1212, 96 Nev.  
6 846 (1980). Here, Defendant is requesting this district court to issue a Writ of Mandamus to  
7 itself, an act which is not procedurally possible. Thus, even if this court wished to entertain  
8 Defendant's Petition, it could not do so for lack of jurisdiction.

## 9 II. DEFENDANT IS NOT ENTITLED TO RELIEF FROM A WRIT OF 10 CORAM NOBIS

11 The Nevada Supreme Court recently reviewed Writs of Coram Nobis in Nevada and  
12 defined their extremely limited use:

13 Although we do not attempt to precisely define the realm of  
14 factual errors that may give rise to a writ of coram nobis, that  
15 realm is limited to errors involving facts that were not known  
16 to the court, were not withheld by the defendant, and would  
17 have prevented entry of the judgment. For example, a factual  
18 error does not include claims of newly discovered evidence  
19 because these types of claims would not have precluded the  
20 judgment from being entered in the first place. See Hyung Joon  
21 Kim, 90 Cal.Rptr.3d 355, 202 P.3d at 453; Commonwealth v.  
22 Morris, 281 Va. 70, 705 S.E.2d 503, 506 (Va.), cert. denied, 565  
23 U.S. —, 132 S.Ct. 115, 181 L.Ed.2d 39 (2011). And legal  
24 errors fall entirely outside the scope of the writ. See, e.g., Hyung  
25 Joon Kim, 90 Cal.Rptr.3d 355, 202 P.3d at 446; State v. Diaz,  
26 283 Neb. 414, 808 N.W.2d 891, 896 (2012). A writ of coram  
27 nobis is the forum to correct only the most egregious factual  
28 errors that would have precluded entry of the judgment of  
conviction had the error been known to the court at the time.

A writ of coram nobis is not, however, the forum to relitigate  
the guilt or innocence of the petitioner. We have long  
emphasized the importance of the finality of judgments, and we  
are gravely concerned that recognizing this writ, even in the very  
limited form that we do today, will result in a proliferation of  
state challenges to convictions long since final. See Jackson v.  
State, 115 Nev. 21, 23 n. 2, 973 P.2d 241, 242 n. 2 (1999);  
Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269  
(1984). Given these concerns, we hold that any error that was  
reasonably available to be raised while the petitioner was in  
custody is waived, and it is the petitioner's burden on the face of  
his petition to demonstrate that he could not have reasonably  
raised his claims during the time he was in custody.



1 Trujillo v. State, 129 Nev. Adv. Op. 75, 310 P.3d 594, 601-02 (2013). As Defendant's  
2 claims are not issues of fact which would have prevented entry of judgment they are not  
3 cognizable in a Petition for Writ of Coram Nobis and he is not entitled to relief.

4 **III. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

5 In Coleman v. Thompson, 501 U.S. 722, 752 (1991), the United States Supreme  
6 Court ruled that the Sixth Amendment provides no right to counsel in post-conviction  
7 proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada  
8 Supreme Court similarly observed that "[t]he Nevada Constitution . . . does not guarantee a  
9 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's  
10 right to counsel provision as being coextensive with the Sixth Amendment to the United  
11 States Constitution." McKague specifically held that with the exception of cases in which  
12 appointment of counsel is mandated by statute<sup>2</sup>, one does not have "[a]ny constitutional or  
13 statutory right to counsel at all" in post-conviction proceedings. *Id.* at 164.

14 The Nevada Supreme Court has observed that a petitioner "must show that the  
15 requested review is not frivolous before he may have an attorney appointed." Peterson v.  
16 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS  
17 177.345(2)). As demonstrated above, the Defendant has not met that burden in the instant  
18 case and is not entitled to the appointment of counsel.

19 Furthermore, to the extent that Defendant relies on citations to NRS 171.118 and  
20 178.397, these statutes pertain to pre-trial proceedings, not post-conviction proceedings, and  
21 have no application to the instant matter. Thus, Defendant's Motion should be denied.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

<sup>2</sup> See NRS 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death].



1 CONCLUSION

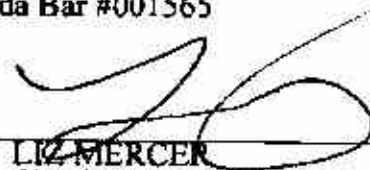
2 Based on the foregoing, the State respectfully requests that Defendant's Petition for a  
3 Writ of Mandamus or in the Alternative Writ of Coram Nobis and Defendant's Motion to  
4 Appoint Counsel be DENIED.

5 DATED this 31<sup>st</sup> day of December, 2013.

6 Respectfully submitted,

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

10 BY


11   
12 LIZ MERCER  
13 Chief Deputy District Attorney  
14 Nevada Bar #010681

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 31st day  
15 of December, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 BRIAN O'KEEFE #90244  
17 HIGH DESERT STATE PRISON  
18 P.O. BOX 650  
19 INDIAN SPRINGS, NEVADA 89070-0650

20 BY

21   
22 J. Robertson  
23 Secretary for the District Attorney's Office  
24  
25  
26  
27

28 08F23348X/SK/LM/JR FOR RJ/M-I

MC  
PP  
DA

Brian Kerry O'Keefe  
Defendant/ In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018

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JAN 05 2014

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Brian Kerry O'Keefe

Plaintiff,

vs.

Bellon & Manning, LTD  
Defendant,

Honorable M. Villari

Case No. C250630

Dept No. XVII 080250630

Docket \_\_\_\_\_

EX PARTE

**MOTION FOR PRODUCTION OF DOCUMENTS, (SPECIFIC)  
PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT**

Date of Hearing: 02/04/14

Time of Hearing: 8:15 AM

"ORAL ARGUMENT REQUESTED, Yes \_\_\_ No ✓"

COMES NOW, Defendant, Brian O'Keefe, proceeding in proper person,

hereby moves this Honorable Court for its ORDER for the production of all documents, papers,  
pleadings and tangible property in the possession of: Bellon and Manning,

LTD. (Lance Manning)

This Motion is made and based upon all papers and pleadings on file with the Clerk of the Court  
which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
Affidavit of Defendant.

DATED: this 2<sup>nd</sup> day of JAN., 2014

LVMPD  
(2) FORM 8 611 2nd

BY: B. Loh 90244  
Brian K O'Keefe #  
Defendant/In Propria Personam

PRELIMINARY HEARING TRANSCRIPTS  
C207835

004714

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JAN 09 2014

CLERK OF THE COURT

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JAN 13 2014

CLERK OF THE COURT

## POINTS AND AUTHORITIES

The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

"An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property which belong to or were prepared for that client."

As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s) of record, were appointed by the Court to represent the defendant, who was an indigent, in Case Number, C2 36630, in Department No. XVII.

N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and deliver to the defendant in his/her possession, which states:

"A client who, after demand therefore and payment of the fee due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers, Documents, pleadings and other property."

In numerous cases throughout this great land, the courts have held attorneys to a high degree of professional responsibility and integrity. This carried from the time of hiring to and through the attorney's termination of employment.

Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a "... prompt accounting of all his client's ... property in his possession." This is echoed in Canon 2 of the Code of Professional Responsibility of the American Bar Association, which states in pertinent part EC 2-32: "A lawyer should protect the welfare of his client by ... delivering to the client all papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with applicable laws on the subject.

In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce  
6 and deliver to the Defendant all documents and personal property in his/their possession belonging to  
7 him or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers.  
8 The attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

10  
11 DATED: this 2<sup>nd</sup> day of January, 2014

12  
13 BY: Brian L. O'Kall  
14 Brian L. O'Kall # 90244  
15 Defendant/In Propria Persona

16  
17 (3 items)

BAC #90244

18 The Battery Domestic Violence L.V.M. -  
19 P.D. Forms 611 (misdemeanor events)

20  
21 (2) EVENTS  
22 and • (040402-3158 - April 2, 2004)  
23 • (040403-1089 - April 3, 2004)

24  
25 NOTE: OFFICER PRICE WROTE 040402-3158,  
26

27 OFFICER RUMBY WROTE 040403-1089  
28

[PRELIMINARY HEARING TRANSCRIPTS - C207835] 004716

**CERTIFICATE OF SERVICE BY MAILING**

I, Brian O'Leary, hereby certify, pursuant to NRC 5(b), that on this 2<sup>nd</sup>  
day of JANUARY, 2014, I mailed a true and correct copy of the foregoing, "EX PARTE MOTION FOR PRODUCTION (SPECIFIC) ... Defendant"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Steven Carlson, Clerk of Court  
200 LEWIS AVE. 3<sup>RD</sup> FLOOR  
LAS VEGAS, NV 89155

NOTE: The Clerk will serve participants utilizing the  
CM/ECF System - BELCON AND MAXIMO LTD.

CC:FILE

DATED: this 2<sup>nd</sup> day of JANUARY, 2014.

Brian O'Leary  
90241 /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

004717

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding EX PARTE

MOTION FOR PROTECTION (SPECIFIC) ... DEFENDANT  
(Title of Document)

filed in District Court Case number C250630

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

B. O'Keefe  
Signature

January 2, 2014  
Date

Brian H. O'Keefe  
Print Name

PRO SE  
Title

004718

Print Bear Office

[BAC #90244]

H.D.S.P.

P.O. Box 650

Indian Springs, NV 89070-0650

LEGAL MAIL

CONFIDENTIAL

Steven Carlson  
Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

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HIGH DESERT STATE PRISON  
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Electronically Filed  
01/13/2014 11:28:26 AM

*Brian O'Keefe*  
902441 In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018

*Alvin L. Johnson*  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

*Brian O'Keefe*  
petitioner,  
vs.  
*Deller and Manasco, LTD.*  
respondent

08C250630  
Case No. C250630  
Dept No. XVII  
Docket \_\_\_\_\_

**NOTICE OF MOTION**

YOU WILL PLEASE TAKE NOTICE, that NOTION FOR PRODUCTION OF  
DOCUMENTS (SPECIFIC) ... OF DEFENDANT  
will come on for hearing before the above-entitled Court on the 04 day of February, 2014,  
at the hour of 8:15 o'clock A. M. In Department 17, of said Court.

CC: FILE

DATED: this 2<sup>nd</sup> day of JANUARY, 2014

*C207835*  
*PRELIMINARY HEARING TRANSCRIPTS*

BY

*Brian O'Keefe*  
*Brian O'Keefe* #902441  
/In Propria Personam

*(C.V.M.P.D. FORM 611's*

*(2) events • 040402-3158*  
*• 040403-1089*

RECEIVED

JAN 13 2014

CLERK OF THE COURT

CLERK OF THE COURT

JAN 1 0 2014

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004721

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JAN 15 2014

HIGH DESERT STATE PRISON  
LAW LIBRARY

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01/21/2014 02:27:19 PM

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Allen L. Okun*  
CLERK OF THE COURT

BRIAN KERRY O'KEEFE  
#90244 / In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018

BRIAN KERRY O'KEEFE  
Plaintiff,  
vs.  
OFFICE OF APPOINTED COUNSEL;  
STATE OF NEVADA; et al.  
Respondent.

Date: 02/11/14  
Time: 8:15 AM

Case No. 08-C250630  
Dept. No. XVII  
Docket \_\_\_\_\_

EX-PARTE  
MOTION FOR REIMBURSEMENT OF  
INCIDENTAL COSTS SUBSEQUENT  
THE COURT DECLARING DEFENDANT IN ADJUDICATION  
AND GRANTING FORMA PAUPERIS

COMES NOW, BRIAN KERRY O'KEEFE, herein above respectfully  
moves this Honorable Court for an ORDER totaling \$302.68  
paid by the State of Nevada, County of Clark,  
to the INMATE'S PRISON ACCOUNT AT HIGH DESERT.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED this 15<sup>th</sup> day of January, 2014

BY: B. L. Okun  
BRIAN L. OKUN # 90244  
Defendant/In Propria Personam

SEE  
COPY OF ORDER ATTACHED  
FOR JUDGE VILLANI

RECEIVED

JAN 17 2014

CLERK OF THE COURT

JAN 21 2014  
CLERK OF THE COURT

004722

STATEMENT OF CASE -  
POINTS AND AUTHORITIES

Subsequent the ending of the SECOND TRIAL, being declared a mistrial by the Court, Ms. Palm was then appointed by the trial Court for Mr. O'Keefe was found and declared indigent by the Court.

Noting Christopher Lalli, Chf Dep DA, was present on behalf of the State with Patricia Palm, Esq.

• See EXHIBITS "A" ORDER GRANTING EX PARTE MOTION DEFENSE COSTS - (FILED JULY 1, 2010)

• See EXHIBITS "B" COURT MINUTES Sept. 14, 2010

• See EXHIBITS "C" COURT MINUTES December 16, 2011

• See EXHIBITS "D" CLARK COUNTY DETENTION CENTER TRUST ACCOUNT STATEMENT

• See EXHIBITS "E" NEVADA Dept. of Corrections (#90244) Nevada INMATE BANK SYSTEM

ON December 16, 2011, subsequent FARETTA CARRIERS, the Court directed Mr. O'Keefe to file the appropriate Motion which Mr. O'Keefe informed the Court he would temporarily cover costs and submit at later date after defendant was granted forma pauperis.

1 With the pretrial, trial and Finalization  
2 now of the DIRECT APPEAL ending with  
3 Certification to the U.S. Supreme Court, Case #  
4 13-6031 Mr. O'Keefe has totally added  
5 the costs totaling \$302.68.

6 According to  
7 N.R.S. 12.015(1), the Trial Court, Judge M.  
8 Villari was satisfied that Mr. O'Keefe was  
9 unable to pay costs and granted his MOTION  
10 to Proceed IN FORMA PAUPERIS and ordered:  
11 (2) the clerk of the court:

12 (1) To allow the  
13 person to commence or defend the action without costs;  
14

### 15 • CONCLUSION

16 Mr. O'Keefe wishes the HONORABLE COURT to  
17 ORDER the OFFICE OF APPOINTED COUNSEL OR, ANY  
18 CORRESPONDING Department of the COUNTY of CLATSOP to  
19 repay incidental costs accrued.  
20

21 Nothing additionally,  
22 Mr. O'Keefe sent a prior incomplete motion that  
23 was Filed on December 13, 2013.

24 This EX PARTE Motion  
25 SHOULD SATISFY the HONORABLE COURT to ORDER  
26 REPAYMENT to the defendant. WITH  
27 ORDER ATTACHED FOR SIGNATURE.

Respectfully,  
B. O'Keefe  
Dec. 30, 2014  
Jan 15, 2015

**CERTIFICATE OF SERVICE BY MAILING**

I, Brian Henry Olate, hereby certify, pursuant to NRCP 5(b), that on this 31<sup>st</sup> day of December, 2013, I mailed a true and correct copy of the foregoing, "EX PARTE MOTION FOR REIMBURSEMENT . . . DEFENDANT INDIGENT" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven Anderson, Clerk of the Court  
200 LEVINE AVE., 3<sup>RD</sup> FLOOR  
CAR VERDE, NEVADA 89018

ALL PARTICIPANTS OF THE ELECTRONIC FILING SYSTEM, CM/ECF, shall be served by the  
CC:FILE

CLERK BHO

DATED: this 31<sup>st</sup> day of December, 2013.

15th JANUARY 2014

Brian Olate  
Brian Olate # 90244  
An Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding EX PARTE

MOTION . . . DEFENDANT INDIGENT  
(Title of Document)

filed in District Court Case number C250630

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

B. L. K. J.  
Signature

01-15-14  
12-31-13 BFO  
Date

Brian O'Keefe  
Print Name

DAO SE  
Title



# EXHIBIT A

OLD  
ORDER  
SHOWING  
Petitioner  
INDIGENT

# EXHIBIT A

1 **ORDR**  
2 **PATRICIA PALM, ESQ.**  
3 **Nevada Bar No. 6009**  
4 **PALM LAW FIRM, LTD.**  
5 **1212 Casino Center Blvd.**  
6 **Las Vegas, NV 89104**  
7 **Phone: (702) 386-9113**  
8 **Fax: (702) 386-9114**  
9 **Email: patricia.palmlaw@gmail.com**  
10 **Attorney for Defendant: Brian K. O'Keefe**

**FILED**

**JUL 1 8 51 AM '18**

*Ann L. Blum*  
CLERK COURT

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **vs.**

13 **BRIAN K. O'KEEFE,**

14 **Defendant**

CASE NO. C250630  
DEPT. NO. XVII

**ORDER GRANTING  
EX PARTE MOTION  
FOR DEFENSE COSTS**

15  
16 **# 1447732**

17  
18 This matter having come at the ex parte request of counsel for the Defendant,  
19 Patricia Palm, Esq., of Palm Law Firm, Ltd., the matter having been fully reviewed, and  
20 good cause appearing therefor, Brian K. O'Keefe is determined to be indigent, and

21 **IT IS HEREBY ORDERED** that the State of Nevada, County of Clark, provide  
22 funding for the investigation and defense of this case, including investigative, expert  
23 witness, and other incidental costs, subject to the approval of the Office of Appointed  
24 Counsel of such costs as reasonable and necessary to the effective defense of

25 ...  
26 ...  
27 ...  
28 ...  
004728

1 of Defendant in this matter.

2 DATED this 30 day of June, 2010.

C250630  
St v O'Keefe

MICHAEL P. VILLANI

5 SUBMITTED BY:

DISTRICT COURT JUDGE

6   
7  
8 PATRICIA PALM, ESQ.  
9 PALM LAW FIRM, LTD.  
10 1212 Casino Center Blvd.  
11 Las Vegas, NV 89104  
12 Attorney for Defendant  
13  
14  
15  
16  
17  
18  
19  
20  
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# EXHIBIT B

STATE MINUTES  
Sept. 14, 2010

# EXHIBIT B

08C250630

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 14, 2010**

08C250630

The State of Nevada vs Brian K O'Keefe

September 14, 2010 8:15 AM

Status Check

New Trial Date

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

**JOURNAL ENTRIES**

- Christopher Lalli, Chf Dep DA, present on behalf of the State and Patricia Palm, Esq., present on behalf of Deft. O'Keefe, who is not present.

\* Motion to Withdraw FILED IN OPEN COURT. Conference at the Bench. Court directed the Court Clerk to contact Drew Christensen for appointment of counsel. Ms. Palm advised she has already been in contact with him; colloquy. COURT ORDERED, Motion to Withdraw GRANTED; Patricia Palm is APPOINTED as counsel of record on this case. COURT FURTHER ORDERED, matter set for status check. Court noted Ms. Palm has requested the trial transcripts.

CUSTODY

CONTINUED TO: 09/16/10 8:15 AM

PRINT DATE: 12/05/2013

Page 1 of 6

Minutes Date:

September 14, 2010

004731

# EXHIBIT C

STATE MINUTES

December 16, 2011

COURT DIRECTED PETITIONER  
TO FILE APPROPRIATE MOTION

# EXHIBIT C

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****December 16, 2011**

08C250630

The State of Nevada vs Brian K O'Keefe

**December 16, 2011 8:45 AM****All Pending Motions****HEARD BY:** Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- DEFT.'S MOTION TO WITHDRAW COUNSEL AND FARETTA CANVASS... FARETTA CANVASS

Christopher Lalli, Chf Dep DA, and Liz Mercer, Dep DA, present on behalf of the State; Lance Maningo, Esq., present on behalf of Deft. O'Keefe, who is also present.

Upon Court's inquiry, Deft. stated that he still wants to represent himself in this matter. Court conducted a Faretta Canvass and FINDS, Deft. competent to WAIVE his constitutional right to be represented by counsel. COURT FURTHER FINDS, that Deft. is WAIVING such right, freely, knowingly, and voluntarily. Colloquy regarding stand-by counsel and an investigator. COURT ORDERED, Deft.'s pro se Motion to Withdraw Counsel is GRANTED. Mr. Maningo shall be APPOINTED as STAND-BY COUNSEL; he advised Investigator, Craig Retke, has already been appointed and approved in this matter. Deft. indicated that he would like to keep Retke as his investigator.

\* Deft. requested the Court sign an Order for copies from inmate's account, which was presented to the Court for consideration; colloquy. Court directed Deft. to file the appropriate motion. Mr. Lalli



# EXHIBIT D

CLARK COUNTY DETENTION CENTER

LEGAL COPIES	\$ 40.20
LEGAL POSTAGE	\$ 16.32
	<hr/>
	\$ 56.32

# EXHIBIT D

004734

INMATE  
ACCOUNTS

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
INMATE REQUEST/GRIEVANCE

03-09-12 09:44 DSD BUSINESS OFC

Name (last)	(first)	(middle initial)	Floor	Date
O'Keefe	Brian	K	5	MARCH 8 2012
Housing Unit				Bed
A				29
ID Number				Prop Number
1447732				KELC30

☒ REQUEST ☐ GRIEVANCE

(All grievances must be submitted within 72 hours of incident.)

Handwritten Request

A. NEED INMATE REQUEST PRINTOUT FOR 90 DAYS  
JUNE 10, 2011 TO MARCH 9, 2012  
[HISKEY]

Sincerely, [Signature]

Inmate's Signature: [Signature] Date: 3-8-12 Staff Person Receiving: [Signature] Date/Time: 3/8/12

Issue has been resolved as follows: Attached

14510

MAR 09 2012

Signature of employee who resolved the Request/Grievance Problem Date/Time

ORIGINAL—INMATE FILE

YELLOW—RETURNED TO INMATE WITH RESPONSE

PINK—INMATE KEEPS

03/09/2012 11:25

K14510L

## DEPARTMENT OF CORRECTIONS

CLARK COUNTY DETENTION CENTER

## TRUST ACCOUNT STATEMENT

Page 1 Of 6

OTRTASTA

6.04.4.0.1.0

DOC: 0001447732 Name: OKEEFE, BRIAN KERRY

DOB: 03/14/1963

LOCATION: LVMPD-NT-5A-29-S

ACCOUNT BALANCES Total: 80.36 CURRENT: 80.36 HOLD: 0.00

06/10/2010 03/09/2012

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE	0.00	80.36

## DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
LCOPO	LEGAL COPIES	06082004	0.00	40.20 X	0.00
LEG	INDIGENT LEGAL ITEMS	06082004	0.00	11.40	0.00
WEL	WELFARE ITEMS	11062002	0.00	26.29	0.00
LPOSO	LEGAL POSTAGE OBLIGATION	06172004	0.00	16.32 Y	0.00

## TRANSACTION DESCRIPTIONS --

## SPENDABLE SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
06/10/2010	AD	Cash on Arrival	0.00	0.00
06/15/2010	WEL	Welfare Obligation	1.36	1.36
06/15/2010	CRS	CRS SAL ORD #1577708STR1	( 1.36)	0.00
06/15/2010	LEG	ACCOUNTING LEGAL OBLIGATION	2.20	2.20
06/15/2010	ALS	ALS SAL ORD #1578494AO	( 2.20)	0.00
06/16/2010	EFT	Electronic Funds Transfer/169921	50.00	50.00
06/16/2010	DED	Deduction-LEG-06082004 D D	( 2.20)	47.80
06/16/2010	DEO	Deduction-WEL-11062002 D D	( 1.36)	46.44
06/17/2010	CRS	CRS SAL ORD #1579517STR1	( 24.85)	21.59
06/18/2010	ALS	ALS SAL ORD #1580131AO	( 0.50)	21.09
06/22/2010	CRS	CRS SAL ORD #1581227STR1	( 12.45)	8.64
06/24/2010	CRS	CRS SAL ORD #1583132STR1	( 8.10)	0.54
06/29/2010	CRS	CRS SAL ORD #1584753STR1	( 0.50)	0.04
07/06/2010	WEL	Welfare Obligation	1.32	1.36
07/06/2010	CRS	CRS SAL ORD #1587331STR1	( 1.36)	0.00
07/07/2010	EFT	Electronic Funds Transfer/165613	50.00	50.00
07/07/2010	DED	Deduction-WEL-11062002 D D	( 1.32)	48.68
07/08/2010	CRS	CRS SAL ORD #1589688STR1	( 21.94)	26.74
07/13/2010	CRS	CRS SAL ORD #1591344STR1	( 5.85)	20.89
07/15/2010	CRS	CRS SAL ORD #1593268STR1	( 20.85)	0.04
07/27/2010	WEL	Welfare Obligation	1.32	1.36
07/27/2010	CRS	CRS SAL ORD #1598260STR1	( 1.36)	0.00
08/03/2010	WEL	Welfare Obligation	1.36	1.36
08/03/2010	CRS	CRS SAL ORD #1601870STR1	( 1.36)	0.00
08/05/2010	EFT	Electronic Funds Transfer/207424	20.00	20.00
08/05/2010	DED	Deduction-WEL-11062002 D D	( 2.68)	17.32
08/10/2010	CRS	CRS SAL ORD #1605126STR1	( 12.00)	5.32
08/12/2010	CRS	CRS SAL ORD #1607129STR1	( 5.00)	0.32
08/17/2010	MRCK	Mail Room Receipt/Check/16075902128	300.00	300.32
08/19/2010	CRS	CRS SAL ORD #1610490STR1	( 37.69)	262.63
08/20/2010	EFT	Electronic Funds Transfer/219305	50.00	312.63
08/24/2010	CRS	CRS SAL ORD #1612126STR1	( 14.05)	298.58

004736

# EXHIBIT E

## NEVADA DEPT. OF CORRECTIONS

8 MONTHLY STATEMENTS	<u>MONTH</u>	<u>COPIES</u>	<u>POSTAGE</u>
	1.) Feb. 2013	\$ 2.70	—
	2.) APRIL 2013	.60¢	.46¢
	3.) MAY 2013	\$10.60	\$ 5.42
	4.) JUNE 2013	\$ 4.60	—
	5.) JULY 2013	\$14.20	\$ 7.10
	6.) AUGUST 2013	\$54.10	\$ 21.52
	7.) SEPT 2013	\$174.70	\$ 23.36
	8.) Oct. 2013	\$23.70	\$ 3.10

# EXHIBIT E

\$ 185.20

\$ 60.96

Nevada Corrections Grand TOTAL

\$ 246.16

004737

INMATE ACCOUNT STATEMENT  
2/01/2013 - 2/28/2013

MSP-High Desert State Prison Unit-Wing: 3-C Cell-6ed, 35-3

TRAN DATE	DESCRIPTION	REFERENCE	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
TRUST FUND 90244 OVERPR. BRIAN K									
2/01/2013	SP INMATE STORE PURCHASE	000748115			10000122993		6209	4.18	118.04
2/05/2013	SP INMATE STORE PURCHASE	000748117			10000122993		6209	48.94	109.86
2/11/2013	SP INMATE STORE PURCHASE	000748109			10000122993		6209	8.13	48.90
2/15/2013	LC LEGAL COPIES	1968615	2/13/2013		10000122997		3763	20	60.71
2/19/2013	SP INMATE STORE PURCHASE	000748118			10000122994		6209	21.65	60.51
2/22/2013	LC LEGAL COPY	1911305	2/20/2013		10000122997		3763	3.50	34.95
2/26/2013	SP INMATE STORE PURCHASE	000748107			10000122994		6209	3.80	34.45
2/28/2013									30.65
SECOND TRUST FUND 90244 OVERPR. BRIAN K									
TRAN DATE	DESCRIPTION	REFERENCE	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
2/28/2013									.00
DEPARTMENT CHARGES FUND 90244 OVERPR. BRIAN K									
TRAN DATE	DESCRIPTION	REFERENCE	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
2/28/2013									.00
SAVINGS FUND 90244 OVERPR. BRIAN K									
TRAN DATE	DESCRIPTION	REFERENCE	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
2/28/2013									58.00

004738



INMATE ACCOUNT STATEMENT  
5/01/2013 - 5/31/2013

HOSP-High Desert State Prison 90244 OFFSPR. BRIAN X Unit-Vlog, J-C Cell Bud: 35-B

TRUST FUND	Trans Date	Descr	90244 OFFSPR. BRIAN X	Comment	Reference	SV Date	Cash No	Doc No	Pay	Offset	Trans Amt	Balance
5/01/2013				Opening Balance								157.42
5/06/2013	SP	INMATE STORE PURCHASE		Store Sale - 050771408	050771408			10000136049		8209	26.20	95.42
5/14/2013	SP	INMATE STORE PURCHASE		Store Sale - 050771305	050771305			10000136049		8209	9.09	82.33
5/25/2013	LC	LEGAL COPY		LEGAL COPIES	1971040	5/09/2013		10000136044		3763	30.00	52.03
5/13/2013	LC	LEGAL COPY		LEGAL COPIES	1971040	5/09/2013		10000136044		3763	8.60	73.43
5/16/2013	LP	LEGAL POSTAGE		LEGAL POSTAGE	1971463	5/08/2013		10000136044		3763	6.94	68.47
5/21/2013	BP	INMATE STORE PURCHASE		Store Sale - 0507715420	0507715420			10000136090		6209	4.21	64.26
5/21/2013	LC	LEGAL COPY		LEGAL COPIES	1971432	5/22/2013		10000136044		3763	8.40	43.46
5/29/2013	SV	INMATE STORE PURCHASE		Store Sale - 050777009	050777009			10000136090		8209	8.43	58.45
5/30/2013	LC	LEGAL COPY		LEGAL COPIES	1971494	5/29/2013		10000136044		3763	4.00	54.45
5/30/2013	LP	LEGAL POSTAGE		LEGAL POSTAGE	1971499	5/29/2013		10000136044		3763	4.80	51.99
5/30/2013	LC	LEGAL COPY		LEGAL COPIES	1971463	5/28/2013		10000136044		3763	50.00	51.49
5/31/2013				Closing Balance								51.49
SECOND TRUST FUND	Trans Date	Descr	90244 OFFSPR. BRIAN X	Comment	Reference	SV Date	Cash No	Doc No	Pay	Offset	Trans Amt	Balance
5/31/2013				Closing Balance								.00
DEPARTMENT CHARGES FUND	Trans Date	Descr	90244 OFFSPR. BRIAN X	Comment	Reference	SV Date	Cash No	Doc No	Pay	Offset	Trans Amt	Balance
5/31/2013				Closing Balance								.00
SAVINGS FUND	Trans Date	Descr	90244 OFFSPR. BRIAN X	Comment	Reference	SV Date	Cash No	Doc No	Pay	Offset	Trans Amt	Balance
5/31/2013				Closing Balance								25.50

004740



NEVADA DEPARTMENT OF CORRECTIONS  
Nevada Inmate Bank System

IMMATE ACCOUNT STATEMENT  
6/01/2011 6:30/2011

100 P. High Desert State Prison	50344	CHERRY, RUTHAN K	Unit-wing.	3-C	Cell used	35-B
---------------------------------	-------	------------------	------------	-----	-----------	------

[illegible]

8059-High Desert State Prison 90244 ONEEPE, BRIAN E Unit-Wing: J-C Cell: 8041 15-A

Trans Date	Description	90244 ONEEPE, BRIAN E	Comment	Reference	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
7/01/2013			Opening Balance								264.50
7/09/2013	SP INMATE STORE PURCHASE		Store Sale	000786135			10000128415		4209	111.48	150.82
7/15/2013	SP INMATE STORE PURCHASE		Store Sale	000786135			10000128415		4209	14.66	136.16
7/17/2013	LC LEGAL COPY		LEGAL COPIES	000786135	7/01/2013		10000128408		3763	13.50	122.66
7/17/2013	LC LEGAL COPY		LEGAL COPIES	1569130	7/01/2013		10000128408		3763	20	102.66
7/17/2013	LC LEGAL COPY		LEGAL COPIES	1569130	7/01/2013		10000128408		3763	70	102.76
7/17/2013	LC LEGAL COPY		LEGAL COPIES	1569130	7/01/2013		10000128408		3763	5.72	97.04
7/22/2013	SP INMATE STORE PURCHASE		Store Sale	000786135			10000128416		4209	50.93	46.11
7/25/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/11/2013		10000128408		3763	20	26.11
7/25/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/17/2013		10000128408		3763	92	45.91
7/25/2013	SP INMATE STORE PURCHASE		Store Sale	000786135			10000128416		4209	12.73	33.18
7/25/2013	LC LEGAL COPY		LEGAL COPIES	1569130	7/18/2013		10000128408		3763	10	23.18
7/26/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/17/2013		10000128408		3763	20	3.18
7/30/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/17/2013		10000128408		3763	10	13.18
7/30/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/17/2013		10000128408		3763	10	3.18
7/30/2013	LC LEGAL COPY		LEGAL COPIES	1570640	7/17/2013		10000128408		3763	10	13.18
7/31/2013			Closing Balance								13.18
SECOND TRUST FUND 90244 ONEEPE, BRIAN E											
Trans Date	Description	90244 ONEEPE, BRIAN E	Comment	Reference	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
7/25/2013			Closing Balance								.00
DEPARTMENT CHARGES FUND 90244 ONEEPE, BRIAN E											
Trans Date	Description	90244 ONEEPE, BRIAN E	Comment	Reference	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
7/25/2013			Closing Balance								.00
SAVINGS FUND 90244 ONEEPE, BRIAN E											
Trans Date	Description	90244 ONEEPE, BRIAN E	Comment	Reference	Srv Date	Case No	Doc No	Pay	Offset	Trans Amt	Balance
7/31/2013			Closing Balance								335.50

004742







Mr. Brown Kelly O'Hara

[Box # 90244]

HIGH DESERT STATE PRISON

P.O. BOX 630

LENNING SPRINGS, NV. 89070-0630

CONFIDENTIAL

Steven Erickson, DEPT OF THE COURT

200 LEWIS AVENUE, 3<sup>RD</sup> FLOOR

Las Vegas, Nevada 89155-1160

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MC  
PP  
DA

Case No. 08-CZ50630

Dept. No. XVII

*John L. Johnson*  
CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

Brian Kelly O'Keefe  
petitioner  
vs. OFFICE OF APPOINTED COUNSEL  
State of Nevada, et al.  
respondent

Case No. 08-CZ50630

Dept No. XVII

Docket \_\_\_\_\_

**NOTICE OF MOTION**

YOU WILL PLEASE TAKE NOTICE, that the EX-PARTE MOTION FOR  
REIMBURSEMENT OF INCIDENTAL COSTS . . . INDIGENT  
will come on for hearing before the above-entitled Court on the 11 day of Feb., 2014.  
at the hour of 8:15 o'clock A. M. In Department 17, of said Court.

CC:FILE

DATED this 15th day of January, 2014.

ORDER ATTACHED

BY: B. K. O'Keefe  
Brian E. O'Keefe # 90244  
/In Propria Personam

RECEIVED  
JAN 17 2014

CLERK OF THE COURTS

RECEIVED  
JAN 21 2014  
CLERK OF THE COURT

MC  
PP  
DA

3AC # 90244

Brian Kelly O'Keefe  
Defendant, In Propria Person  
Post Office Box 650  
Indian Springs, Nevada 89018

Adam B. Johnson  
CLERK OF THE COURT

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE  
OF NEVADA IN AND FOR THE COUNTY OF CLARK

The State of Nevada  
Plaintiff,

vs

Brian Kelly O'Keefe  
Defendant.

AS  
INDEPENDENT ACTION <sup>3</sup>  
Case No. C250630

Dept NO. XVII / 17

• SEE EXHIBIT "A" attached

MOTION TO MODIFY AND/OR CORRECT  
ILLEGAL SENTENCE

Date of hearing : 02/27/214

Time of hearing : 8:15AM

COMES NOW, DEFENDENT, Brian Kelly O'Keefe, proceeding  
in proper person, hereby motion this Honorable Court  
pursuant to N.R.S 176.555 and Edwards v. state.

This motion is made in based upon all papers and pleadings  
on file, the points and authorities and exhibits attached  
here to.

Dated; this 16<sup>th</sup> day of January, 2014.

RECEIVED

JAN 27 2014

CLERK OF THE COURT

Brian K. O'Keefe  
Brian K. O'Keefe # 90244  
DEFENDENT/

RECEIVED

JAN 24 2014

CLERK OF THE COURT

1 THE COURT: Thirteen --

2 MR. LALLI: Thirteen ninety-four.

3 THE COURT: -- ninety-four credit for time served.

4 Mr. Maningo, do you wish to accept the appointment on  
5 this case?

6 MR. MANINGO: Yes, sir.

7 THE COURT: All right. I'll go ahead and appoint you as  
8 appellate counsel.

9 MR. MANINGO: Actually, you know what, Your Honor? I think I  
10 need to meet with Mr. O'Keefe one more time before I do that just  
11 'cause I don't know all the basis for his potential appeal. I  
12 think I might need to clear that up before I can actually accept  
13 the appointment.

14 THE COURT: All right. We'll pass this one week. Is that  
15 enough time?

16 MR. MANINGO: That'll be fine, Your Honor.

17 THE COURT: Okay.

18 THE DEFENDANT: Will I be brought it for that, Your Honor,  
19 with all due respect?

20 THE COURT: I think you'll -- may still be here. It's up to  
21 the prison system. It's strictly to appoint counsel, sir. We're  
22 not having any --

23 THE DEFENDANT: Okay. So --

24 THE COURT: -- evidentiary hearings or anything.

25 THE DEFENDANT: Yes, sir, Your Honor.

1 MR. LALLI: When the judgment of conviction is filed and I  
2 think the practice is to file it in -- within 48 hours. So he will  
3 forthwith be taken out of the jail and brought up to the prison.  
4 Thank you, Your Honor.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: Was the \$25 administrative assessment fee paid?  
7 Do you know, Mr. Maningo?

8 THE DEFENDANT: Yes, it was, Your Honor.

9 MR. MANINGO: I don't recall.

10 THE DEFENDANT: I got it right here.

11 MR. MANINGO: I just know it was a total of \$175.

12 THE COURT: If it has been paid, it's waived.

13 MR. MANINGO: Thank you, sir.

14 MR. LALLI: Thank you.

15 THE CLERK: September 6<sup>th</sup>, 8:15.

16 MR. MANINGO: Thank you.

17 [Matter recalled at 10:21 a.m.]

18 THE COURT: Mr. O'Keefe.

19 THE DEFENDANT: Yes, Your Honor, with all due respect. I just  
20 want to make it quite clear that the photos that Mr. Lalli  
21 submitted to you was not from this instant case.

22 THE COURT: I understood that.

23 THE DEFENDANT: I just want to make it for the record because  
24 you did not hear the third trial and you know, Your Honor, I'm just  
25 making sure.

1 THE COURT: Okay.

2 THE DEFENDANT: Thank you, Your Honor. Thank you, Marshal.

3 [Proceeding concluded at 10:21 a.m.]  
4  
5  
6  
7  
8  
9

10 \* \* \* \* \*

11  
12  
13  
14  
15  
16 ATTEST: I hereby certify that I have truly and correctly  
17 transcribed the audio/video proceedings in the above-entitled case  
18 to the best of my ability.

19 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate  
20 Procedure, I acknowledge that this is a rough draft transcript,  
21 expeditiously prepared, not proofread, corrected or certified to be  
22 an accurate transcript.  
23  
24  
25

*Michelle Ramsey*  
Michelle Ramsey  
Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 61631  
District Court Case No. C250630

FILED

JUL 26 2013

*Tracie Lindeman*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 10th day of April, 2013.

D6C250630  
CCJA  
NV Supreme Court Clerk Carollene/Judge  
2757303



JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER denying rehearing"

Judgment, as quoted above, entered this 13th day of June, 2013.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
July 23, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch  
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61631

**FILED**

APR 10 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, appellant Brian O'Keefe argues that his conviction violates double jeopardy because this court reversed his prior conviction for the same offense after concluding that insufficient evidence was presented at trial. O'Keefe is mistaken. This court reversed his prior conviction because the jury was erroneously instructed regarding a theory that the killing occurred during the commission of an unlawful act, which was not alleged in the charging document and was not supported by the evidence. O'Keefe v. State, Docket No. 53859 (Order of Reversal and Remand, April 7, 2010). Double jeopardy does not preclude O'Keefe's instant conviction under an alternate theory of second-degree murder which was presented at his first trial and alleged in the charging document. See Parker v. Norris, 64 F.3d 1178, 1180-82 (8th Cir. 1995) (finding no double jeopardy violation where defendant's conviction for felony murder was reversed due to error and defendant was convicted at a second trial under an alternative theory of murder); see also Stephans v.



State, 127 Nev. \_\_\_, \_\_\_, 262 P.3d 727, 734 (2011) (the remedy for errors unrelated to sufficiency of the evidence is reversal and remand for a new trial, not an acquittal).

Second, O'Keefe argues that the district court abused its discretion by allowing him to represent himself at trial because his decision to do so was not knowing, voluntary, and intelligent. Before granting O'Keefe's request, the district court conducted an appropriate canvass pursuant to Faretta v. California, 422 U.S. 806 (1975), during which O'Keefe stated that he spent several years studying the law and understood the nature of the charges against him, the potential penalties he faced, and the dangers of self-representation. Although O'Keefe asserts that his poor performance at trial demonstrates his decision was unknowing, "a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation," Vanisi v. State, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001) (quoting Godinez v. Moran, 509 U.S. 389, 400 (1993)), and the record reflects that O'Keefe voluntarily chose to represent himself despite full knowledge of the risks. We conclude that the district court did not abuse its discretion by granting O'Keefe's request for self-representation. See Hooks v. State, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008) (reviewing the record as a whole and giving deference to a district court's decision to allow a defendant to waive his right to counsel).

Third, O'Keefe argues that the district court abused its discretion by denying his request to stay or continue trial for approximately nine months because he had pending proceedings in federal court and was unprepared for trial. The district court rejected O'Keefe's assertion that his federal proceedings in any way limited his ability to

prepare for trial and noted that O'Keefe asked to represent himself and was given ample time to do so effectively. We conclude that the district court did not abuse its discretion by denying O'Keefe's request for an extended continuance where the delay was his fault. See Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007).

Fourth, O'Keefe argues that the district court erred by allowing a substitute judge to preside over his trial because the original judge was more familiar with the case and its complex procedural posture. O'Keefe does not demonstrate how he was prejudiced by the substitution of a different judge. See generally United States v. Lane, 708 F.2d 1394, 1398 (9th Cir. 1983) (error involving substitution of judges is harmless if the defendant has not been prejudiced). We conclude that O'Keefe fails to demonstrate that the district court erred.

Fifth, O'Keefe argues that the district court abused its discretion by rejecting his proposed instructions and by giving instructions over his objection. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Because O'Keefe has not provided this court with the instructions given at trial, he fails to demonstrate that the district court abused its discretion by rejecting his proposed instruction. See generally Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 77 (2002) (noting that a district court does not err by refusing an accurate instruction related to the defendant's theory of the case if it is substantially covered by other instructions); see also Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). O'Keefe also does not identify which

instructions he contends were erroneously given. We conclude that he fails to demonstrate that the district court abused its discretion.

Having considered O'Keefe's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Cherry, J.  
Cherry

cc: Hon. Michael Villani, District Judge  
Bellon & Maningo, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>O'Keefe's fast track statement does not comply with NRAP 3C(h)(1) and 32(a)(4) because it does not have 1-inch margins on all four sides. We caution counsel that future failure to comply with formatting requirements when filing briefs with this court may result in the imposition of sanctions. NRAP 3C(n).

We deny O'Keefe's request for full briefing because it does not comply with NRAP 3C(k)(2), as it was not filed separate from the fast track statement. Further, although O'Keefe explains that full briefing is requested so that each issue may be adequately set forth and appropriate legal authority cited, we note that he did not file a motion for excess pages. See NRAP 3C(k)(2)(C).



CERTIFIED COPY.  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: July 22, 2013  
Supreme Court Clerk, State of Nevada  
By [Signature] Deputy

004658

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61631

**FILED**

JUN 13 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.<sup>1</sup>

*[Signature]*, J.  
Hardesty

*[Signature]*, J.  
Parraguirre

*[Signature]*, J.  
Cherry

cc: Hon. Michael Villani, District Judge  
Bellon & Maningo, Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>1</sup>Although we deny rehearing, we wish to acknowledge that we received and reviewed appellant's reply and appendix before affirming his judgment of conviction.



13-17458

A circular seal of the Supreme Court of the State of Nevada is partially visible in the background. It features the words "SUPREME COURT" and "STATE OF NEVADA" around a central emblem.  
**CERTIFIED COPY**  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: JULY 22 2013  
Supreme Court Clerk, State of Nevada  
By [Signature] Deputy

04660

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BRIAN KERRY O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 61631**  
District Court Case No. C250630

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: July 23, 2013

Tracie Lindeman, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

cc (without enclosures):

Hon. Michael Villani, District Judge  
Clark County District Attorney  
Attorney General/Carson City  
Bellon & Maningo, Ltd.

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JUL 26 2013

HEATHER UNGERMANN

Deputy District Court Clerk

**RECEIVED**

**JUL 25 2013**

CLERK OF THE COURT



COSCC

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

THE STATE OF NEVADA VS BRIAN  
K O'KEEFE

CASE NO.: 08C250630  
DEPARTMENT 17

**CRIMINAL ORDER TO STATISTICALLY CLOSE CASE**

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
  - ☐ Dismissed (during trial)
  - ☐ Acquittal
  - ☐ Guilty Plea with Sentence (during trial)
  - ☐ Conviction
- ☐ Jury Trial
  - ☐ Dismissed (during trial)
  - ☐ Acquittal
  - ☐ Guilty Plea with Sentence (during trial)
  - ☒ Conviction
- ☐ Other Manner of Disposition

DATED this 29th day of July, 2013.

  
MICHAEL VILLANI  
DISTRICT COURT JUDGE

004662

48

MC  
DA  
PP

BRIAN KERRY O'KEEFE - PRO SE *Ann L. Johnson*  
[#90244]  
CLERK OF THE COURT

HIGH DESERT STATE PRISON

P.O. BOX 650

INDIAN SPRINGS, NV. 89070-0650

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

~~BRIAN KERRY O'KEEFE,~~  
petitioner;

(v.)

E.S.D.C.; D.W. NEVEN;  
STATE OF NEVADA, et al.

Respondent as Real  
Party in Interest

(see #6 - C250630)

- PETITION FOR A  
WRIT OF MANDAMUS OR,  
IN THE ALTERNATIVE,  
WRIT OF CORAM NOBIS  
SEE (3) EXHIBITS ATTACHED  
(INDEPENDENT ACTION)

04-C202793

Date: 1-7-14 Time: 8:15am

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26 DEC 06 2013

CLERK OF THE COURT

RECEIVED

47 DEC 04 2013

CLERK OF THE COURT

Petitioner Brian Kerry O'Keefe, PRO SE, hereby  
moves this HONORABLE COURT for a WRIT OF  
MANDAMUS, or in the alternative, a WRIT OF  
CORAM NOBIS pursuant to NRAP 21, Article  
6 § 4 of the Nevada Constitution, Chapter 34  
of the Nevada Revised Statutes, future referencing  
of 28 U.S.C. § 1651(2), enforceable among the  
State(s) by due process of the 14<sup>th</sup> AMENDMENT  
of the U.S. Constitution and ARTICLE 1, SECTION 9,  
CLAUSE 2 of aforementioned constitution.

32  
004663 (3)

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## I. PARTIES and PROCEDURAL HISTORY

1. High Desert State Prison (Clark County), currently.
2. EIGHTH JUDICIAL DISTRICT COURT - Las Vegas, Nevada.
3. January 2005 (Sentencing held 12/27/2004)
4. 2004 - C202793; Police Event - 040529-2232  
(MAY 29, 2004 incident date)
5. 24-120 MONTHS SUSPENDED - COUNT (6) BURGLARY (Felony)
6. YES, SECOND-DEGREE MALICE IMPULSED MURDER W.D.W.  
CASE 08-C250630, N.R.S. 200.030, N.R.S. 193.165  
10-25 years, consecutive 8-20 years for enhancement.
7. Lack of Felonious intent supporting the Burglary charge  
per N.R.S. 205.060, COUNT (6). see EXHIBIT 3 attached.
8. NOT GUILTY plea by petitioner.
9. All (6) counts in INFORMATION WENT TO A JURY TRIAL.
10. Found guilty by a "JURY" of the lesser included  
simple battery (M) to Count 1. Acquitted by Jury  
of all Felony Charges Counts 1, 2, 3, 4, 5. However,  
Found guilty somehow wrongfully of Count 6, Burglary (2)



11. Yes, petitioner did testify at this trial, # C202773.

12. Yes, appeal made

13. (a) Supreme Court of Nevada

(b) 44644

(c) Affirmed

(d) 2005

14. N/A

15. No other petitions filed in any court pertaining to this judgment.

16. N/A

17. N/A

18. The ground and basis of this entire petition is solely based on lack of felonious intent by the State having predicated their intent on the prior (5) counts of Felonious Sexual Assault. See Exhibit 3. The "Court" and "Officers of the Court" failed SUA SPORTE to strike the returned verdict, guilty, on count (6) of the information by the jury. Judge Lechner then sent this case to Judge Stewart L. Bell for sentencing. [continued]

18. [continued] Judge Bell had just been elected and takes the bench. He was actually the District Attorney while my case was pending. When the Jury returned the verdict, this was on October 28, 2004.

- (See EXHIBIT 1) Judge S. Bell was elected on November 2, 2004. He then sentenced me on December 27, 2004. My attorney retained was forced to file a direct appeal for me. O'Keefe had to file his own notice of Appeal. Also, Mr. Buchanan then filed a letter with the Nevada Supreme Court telling an "untruth" that Mr. O'Keefe no longer wished to appeal his returned wrongful Court (6) Felony Burglary conviction. O'Keefe complained and the S.C.N. notified Mr. Buchanan to file a Fast Track

STATEMENT WITHIN SO MANY DAYS. THIS NOTICE IS ON THE Nevada Supreme Court Docket sheet 44644. Mr. O'Keefe had INEFFECTIVE COUNSEL DURING TRIAL and on DIRECT APPEAL.

OF course, this issue was not raised by Attorney.

FURTHERMORE, any reasonable person would have a "lack of foreseeability" in any future alleged crime.

This wrongful BURGLARY conviction was considered in the SECOND-DEGREE MURDER case at all stages and addressed in all MOTIONS in case C250630; particularly both STATE'S PETRACELLI HEARINGS. (P.S.I., Video Prints, etc.).

19. Yes, this extraordinary petition is filed past the 1 year decision on direct appeal.

20. No other petition is filed in any court as to the judgment under attack (0202793)

21. JAMES L. BUCHANAN II (BUCKY), retained.

22. No "other" future sentences to serve.

23. INSTRUCTIONAL ERROR to the Jury. This is the most important stage of the criminal case. Jury instructions which relieve the State of proving every element of a charged offense beyond a reasonable doubt violate Federal due process. See: Sandstrom v. Montana, 442 U.S. 510 (1979); Polk v. Sanders, 503 F.2d 903, 909-11 (9th Cir. 2007); Neder v. United States 527 U.S. 1, 9 (1999).

Counsel was ineffective under the Sixth and Fourteenth Amendments for failing to insure that the jury was properly instructed to how the verdict of guilty could be reached on Count (6) after being acquitted of Felony Counts 1-5.

IN ADDITION, NOT ONLY the Judge in "ELA SPINTE", BUT ALL OFFICERS OF THE COURT COMMITTED MISCONDUCT, BY FAILING TO STRIKE. (5)

004671

## II. STATEMENT OF CASE

On May 29, 2004 Mr. O'Heute was arrested by police on serious multiple charges. This now being a simple legal or question of LAW, makes this petition less burdensome on the Court's overcrowded docket.

After the arrest, police event number 040529-2232, Mr O'Heute ended up having a criminal jury trial, case number C202793, on (6) COUNTS, FELONIES.

Mr O'Heute entered a NOT GUILTY plea to all (6) COUNTS. After being bound over to District Court, did then Mr. O'Heute's family retain Mr. BUCHANAN for his defense.

Trial Commenced, lasting only (4) days. October 25-28, 2004. The TRIAL CONSISTED OF (6) COUNTS as listed.

COUNT 1 - BATTERY WITH INTENT TO COMMIT Sexual Assault. (F)

COUNT 2 - SEXUAL ASSAULT (F)

COUNT 3 - SEXUAL ASSAULT (F)

COUNT 4 - SEXUAL ASSAULT (F)

COUNT 5 - ATTEMPT SEXUAL ASSAULT (F)

COUNT 6 - BURGLARY (FELONY)

\*: Noting Count one was and had the lesser included offense of simple misdemeanor battery, it acquitted only of the FELONY BATTERY WITH INTENT TO COMMIT CRIME.



The jury on October 22, 2004, at the hour of 11:36 AM.  
(Thursday), returned with a verdict as follows:

CT 1 - GUILTY OF BATTERY (Misdemeanor), acquitted felony  
CT 2-5 NOT GUILTY of all S.A.'s (Felonies)  
CT 6 - GUILTY OF BURGLARY (F) See EXHIBIT (1)

Now, O'Keefe questioned all about the instructions  
and how could one be convicted of felony burglary  
on his inhabited apartment especially when being  
acquitted of all felonious intent.

Basically, MR.  
O'Keefe was simply, "USED" to or, for  
the court's purpose, told an "UNTRUTH"  
FOR SURELY you all are "OFFICERS OF THE COURT".

What's a further violation of the CANONS and  
commentaries is the combined efforts of all to  
misdirect this extreme miscarriage of justice.

Now, this wrongful BURGLARY conviction, MR.  
O'Keefe was acquitted of, has been used  
against him in his instant case i.e., his P.S.I.  
and by the prison in determining yard points/classification.  
Therefore, MR. O'KEEFE files this petition,  
in PRAYER OF AN IMMEDIATE VACATUR of said conviction.  
GODSPEED!!! a righteous, prompt resolution.

III.

## SYNOPSIS OF LEGAL ARGUMENT

(Chapter  
No. 34)

### A.] MANDAMUS - [B.] CORAM NOBIS

A.] Several factors are weighed for issuance of Mandamus:

- "to compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously" -

Nurnery v. E.J.D.C., 124 Nev. 477, 478, 186 P.3d 884, 887 (2008)

(Quoting Bedecker v. Dist. Ct., 122 Nev. 164, 167, 127 P.3d 525, 522 (2006))

See Williams v. Dist. Ct., 262 P.3d 360, 364 (2011);

- No plain, speedy, and adequate remedy in the ordinary course of law. See Williams, *ibid.* (quoting Mineral City v. State, Dep't of Conserv., 117 Nev. 235, 238, 207 P.3d 805 (2001)); see also N.R.S. 34.170, 34.330;

- "judicial economy and sound judicial administration militate for or against issuing the writ" - Nurnery, *ibid.* (quoting Bedecker, *ibid.*); and

- "important issue of law requires clarification" - Nurnery, *ibid.* (quoting Bedecker, *ibid.*); see Stephens Media v. Dist. Ct., 125 Nev. 849, 857, 221 P.3d 1240, 1246 (2009) (Public Policy)

Although the latter-most criterion applies solely to

the province of the S.C.N., the Judge of the District Court, who's elected and sworn to uphold the law and constitution of the State of Nevada, must exercise discretion to prevent a fundamental miscarriage of justice even if defense counsel fails to object and spawns manifest injustice.

Extraordinary relief extends to those who are in position to frustrate implementation of court order as proper administration of justice, and envelopes even those who have not taken any affirmative action to hinder justice. U.S. v. N.Y. Tel. Co., 434 U.S. 159 (1977).

The law of Nevada is clear: the offense of burglary is only complete when a house is entered with specific intent to commit larceny or any felony therein. See Sheriff - Clark County v. Stephens, 97 Nev. 316, 630 P.2d 256 (1981); Point v. State, 102 Nev. 143, 717 P.2d 38 (1986); Stowe v. State, 109 Nev. 743, 857 P.2d 15 (1993).

The specific intent is that which is designated in the statute of burglary. See State v. Simpson, 32 Nev. 138, 104 P. 244 (1909). N.R.S. 205.060(1) delineates intent, "to commit", inter alia, "assault or battery on any person or any felony." The doctrine of noscitur a sociis provides that a word is known by the company it keeps and gathers meaning from the words around it. SEE A.G.O. No. 2002-15 (March 21, 2002) (quoting - Babbitt v. Sweet Home Chapters of Communities for a Great Oregon, 515 U.S. 687, 702 (1995)) (citing Orr Ditch Co. v. Dist. Ct., 44 Nev. 138, 146 (1947)).

(9)

004675



Clearly, the "battery" written by the Legislature in N.R.S. - 205.060(1) refers to a FELONY BATTERY.

So, ultimately, when a jury returns a verdict of not guilty to all felony counts that are the undercarriage of Felonious burglary howbeit finding Mr. O'Keefe guilty of said burglary, it is a Judge's ethical, solemn duty to set aside or strike a conviction that is repugnant to Nevada laws EX SPONTE being that the Judge is the captain of the courtroom. As such, this Court must compel the prior aforementioned conviction to be vacated in its entirety.

## B • CORAM NOBIS

- A WRIT of CORAM NOBIS will lie if (4) prongs are shown:
  - (1) INNATE is no longer in custody and not eligible for habeas relief;
  - (2) INNATE provided reasonable explanation for not challenging his conviction earlier, namely Ineffective Counsel for the defense;
  - (3) Adverse consequence of inmate's conviction; and
  - (4) Fundamental Error.

See USA v. Kuan, 407 F.3d 1005 (9<sup>th</sup> Cir 2005);

See also Cisse v. U.S., 330 F.3d 336 (S.D.N.Y. 2004) (Petitioner must demonstrate (1) There are circumstances compelling such action to achieve justice, (2) sound reasons exist for failure to seek appropriate earlier relief, and (3) petitioner continues to suffer legal consequences from his conviction that may be remedied by granting of writ.); U.S. v. Durrani, 115 Fed App'x 500 (2<sup>nd</sup> Cir, Conn, 2004) (similar). (10)

104676

Writs of Error (Coram nobis) at common law were available to bring before the court that pronounced judgment errors in matters of facts which had not been put in issue or passed upon, and were material to validity and regularity of legal proceeding itself. U.S. v. Mayer, 235 U.S. 55 (1914), superseded by statute.

Here in the instant case, C202793, the jury returned a not guilty verdicts on Felonious counts 1-5, that necessarily predicated the burglary charge being count 6.

Burglary is defined as the common-law offense of breaking and entering another's dwelling at night with the intent to commit a Felony. Now the modern statutory offense is breaking and entering any building — not just a dwelling, and not only at night — but still with the intent to commit a Felony. BLACK'S LAW DICTIONARY, 91 Bryan A. Garner (4<sup>th</sup> Ed. Pocket Edition 2011).

IN Nevada, once the predicate Felony is rescinded, the principle offense must also fall. see Sheriff, Clark County v. Hicks 89 Nev 78 (1973) (when the attempted murder charge, supporting the burglary charge, was struck, the burglary charge was fatally defective as drafted and should also have been struck.) This is a reversible structural error.

While the Nev. R. Civ. P., 60(b), disallows extraordinary common law writs with the exception of "independent action", Burrell v. Lawrence 202 P.3d 716-17 (2002)

(quoting U.S. v. Bagley, 524 U.S. 38-45 (1998)), this court must note that this only applies to civil procedure. See U.S. v. Morgan, 346 U.S. 506 (1954). Nevertheless, N.R.S. 34.36, et seq., Nev. Constitution, Article 6 § 4, ("... all writs necessary or proper to the complete exercise of its appellate jurisdiction.") N.R.A.P. and "Relief accorded by exercise of the inherent Power of the district court," State v. E.J.D.C., 677 P.2d 1044, 1057 n-11 (1984) (Stetten, J., dissent) (citing State ex rel. Osborn v. Fogliani, 82 Nev. 300, 417 P.2d 148 (1966)), are "not so limited and may be pursued at any time ...". Ibid.

Judge Stetten went on further to say that this also applies to Constitutional error, id at 1057; Likewise, this too applies to Coram nobis. See, e.g., Byrnes v. U.S., 408 F.2d 599 (9th Cir. 1969) (Constitutional controversy involving collateral legal disadvantages which survive satisfaction of sentence); U.S. v. Taylor, 698 F.2d 565 (9th Cir. 1981) (to correct errors of fact of such fundamental character as render proceeding itself irregular and invalid.) U.S. v. Wickham, 474 F.Supp. 113 (C.D. Cal. 1979) (broad enough to encompass not only errors of fact that affect validity or regularity of legal proceedings, but in addition, legal errors of constitutional or fundamental proportions.)

Mr O'Keefe has amply shown that his burglary charge, Count 6, without a felony underpinning is a violation of Constitutional dimension and satisfies the fourth prong listed in Kwan, supra.



As to the 1<sup>st</sup> Kwan, prong thereof, Mr. O'Keefe is no longer convicted of the burglary charge but, if Coram Nobis is adjudicated in his favor, he would remain in custody on his present charge and, thus, he is not eligible for habeas relief. See Woychowsky v. U.S., 309 F.2d 381 (9<sup>th</sup> Cir. Nov. 1962) (validity of sentence where, if adjudged in his favor, he would still be confined under another existing sentence, motion would be cognizable as proceeding in nature of Writ of Coram Nobis).

Per Kwan, Mr. O'Keefe was plagued with I.A.C. who attempted to abandon Mr. O'Keefe's Direct Appeal and abdicated his role as advocate. This demonstrates the 2<sup>nd</sup> "cause" prong. Accord Detrich v. Ryan No. 08-99001 (9<sup>th</sup> Cir. Sept. 30<sup>th</sup> 2013) (citing Trevino v. Thaler, 185 L.Ed. 2d 1044 (2013) (quoting Martinez v. Ryan 132 S.Ct. 1309 (2012))); cf. U.S. v. Rife, 514 F. Supp. 368 (S.D. Ohio 1981) (Deprivation of Sixth Amendment right to counsel and of due process justify issuance of writ of error to remedy such defect); Tocci v. U.S., 178 F. Supp. 2d 176 (N.D. N.Y. 2001) (absence of counsel and of any advice to petitioner of his right to appeal); Tillman v. U.S., 32 M.J. 962 (N.M.R. 1991) (appellate counsel's failure to raise issue before court on direct appeal called into question effectiveness of original appellate defense counsel and validity of courts earlier proceedings).

The adverse consequences are much greater than the typical "loss of employment" opportunities usually complained of. First, there are many

ramifications of a criminal conviction, only part of which is the actual sentence in prison. Mr. O'Keefe will someday be eligible for parole. The number of convictions will count against him in the matrix utilized by parole and probation.

Second, the number of convictions could and will be used against him in future sentence enhancements, such as the charge for which he is presently incarcerated on. Indeed, the State did bring up such prior bad acts at the multiple wrongful petrocelli hearings.

Lastly, this may count as strikes for the habitual statute.

The Supreme Court of Nevada ("S.C.N.") has also recognized that adverse collateral consequences result from any criminal conviction. See Knight v. State, 116 Nev. 140, 143-44, 992 P.2d 67, 70 (2000). To deny that reality is to deny justice.

If a short, writ of Coramobis is appropriate to correct fundamental errors and to prevent injustice where habeas corpus remedy is inadequate such as in cases where petitioner's sentence has been served.

See Koramatov v. U.S., 584 F. Supp. 1406 (N.D. Cal. 1984)

Mr. O'Keefe had no realistic expectation to proximately foretell that his burglary charge would be used against him at a later date. As well, the nexus behind this constitutional error not being challenged earlier is Mr. O'Keefe's prior counsel Mr. Buchanan and his hitherto manifested error. Even if "good cause" is not shown, non-review would result in a gross miscarriage of justice.

- Murray v. Carrier, 477 U.S. 478, 488 (1986); Wainwright v. Sykes, 433 U.S. 72 (1977); Mazzari v. Warden 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

#### IV • PRAYER & RELIEF REQUESTED

- a.) GRANT MOTION TO PROCEED IN FORMA PAUPERIS;
- b.) GRANT EX PARTE MOTION TO APPOINT COUNSEL IF MORE BRIEFING IS REQUIRED;
- c.) GRANT WRIT OF HABEAS CORPUS, post hoc;
- d.) APPOINT COUNSEL in substitution of Mr. O'Keefe; and
- e.) BE A "JURIST OF REASON" and RECOGNIZE this is a SIMPLE QUESTION OF LAW that truly requires no EVIDENTIARY HEARING to prove the Fact(s) that now are a matter of the official court record. This, BES IPSA LOQUITUR.

#### V. CONCLUSION

This judgment and conviction should be vacated and stricken from the record as a "guilty verdict". Mr. O'Keefe was rightfully acquitted but by violations of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments, this earned

"NOT GUILTY" Verdict, by a true legal default when acquitted of all preceding felony counts 1 thru 5, - (Again see EXHIBIT 1!) was never received or argued for by petitioner's attorney. More sadly, is all the officers of the court knew this was improper and unjust but all remained silent. Judge Sally Leehner did not have the heart to sentence me so she herself was out that day and my case was sent to Judge Stewart Bell for sentencing. Here, he himself, the Courts and Commentaries were again clearly violated.

Mr. O'Keefe only wishes to have this conviction RIGHTFULLY stricken and to reflect as a true, LEGALLY, not guilty Verdict.

### VERIFICATION

Mr. O'Keefe, being duly sworn, deposes and says:

- 1.) This petition was constructed in PRO SE
- 2.) PRO SE Petitioner has read the foregoing petition and the matters are true and correct.
- 3.) Mr. O'Keefe has no other remedy at law available to him and that the only means is to address this ERROR OF LAW through the instant WRIT. FURTHER, your Affiant says

naught. Nov. 24, 2013

(16)

Ben K. O'Keefe

004682



## VI. CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Petition, 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 Petition complies with all applicable Nevada Rules of Appellate Procedure, NRAP 28(c), which requires every assertion in the brief regarding matters in the record, to be supported by references to the record on appeal.

November 24, 2013

Brian K. O'Hara

PRO SE BRIAN K. O'HARA (#90244)

## VII. CERTIFICATE OF MAILING

I, BRIAN KERRY O'HARA, hereby certify, pursuant to N.R.C.P. 5(b), that I am the Appellant, and that on this 24<sup>th</sup> day of November 2013, I mailed this Petition by giving it to a prison official at the H.D.S.P. law library to deposit in the U.S. MAIL, sealed in a manilla envelope, legal mail, postage fully prepaid through the use of a pass slip, and addressed as follows: CLERK OF THE COURT, 200 LEWIS AVE, 3<sup>rd</sup> FLOOR, LAS VEGAS, NEVADA, 89155-1160.

Also, participants in the case who are registered users of the Electronic Service and/or CM/ECF will be served by the clerk using that respective system.

BY: Brian K. O'Hara (Nov. 24, 2013) (17)

004683



VIII.

APPENDIX OF (3) EXHIBITS

- (4) TOTAL Pages of exhibits -

COVER PAGE

- EXHIBIT-1 STATE OF NEVADA  
DATE 10/28/04 CRIMINAL COURT MINUTES  
TRIAL JUDGE S. LOEHNER
- EXHIBIT-2 STATE OF NEVADA  
DATE 12/1/04 CRIMINAL COURT MINUTES  
SENTENCING JUDGE SEYMOUR BELL
- EXHIBIT-3 MOTION IN LIMINE  
... CASE C250630  
FILED JAN. 18, 2011 COVER PAGE 2101 page 12

EXHIBIT 1

TRIAL JUDGE: SALLY LOEHREN  
CASE C202793

STATE OF NEVADA  
CRIMINAL COURT MINUTES

PAGE 9

JURY TRIAL VERDICT BEING  
RETURNED

EXHIBIT 1

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 008

10/28/04 08:30 AM 03 TRIAL BY JURY

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Court Clerk  
Lisa Makowski, Reporter/RecorderPARTIES: STATE OF NEVADA  
008190 Miller, Ross J.  
0001 D1 O'Keefe, Brian K  
000754 Buchanan II, James L.Y  
Y  
Y  
Y

JURY PRESENT. At the hour of 11:58 A.M. the Jury returned with a VERDICT as follows; CT 1 - GUILTY of BATTERY (M), CT 2 - NOT GUILTY of Sexual Assault, CT 3 - NOT GUILTY of Sexual Assault, CT 4 - NOT GUILTY of Sexual Assault, CT 5 - NOT GUILTY of Attempt Sexual Assault, and CT 6 - GUILTY of BURGLARY (F). Upon inquiry by the Court, neither side requested the jury polled. Court thanked and excused the jury. Mr. Buchanan requested permission to argue for bail, SO ORDERED. Court stated its' concerns regarding deft and the victim getting in contact with one another. The Court will only consider releasing deft if the Court can be assured there will not be any telephone contact, letters, and no personal contact. Deft. concurred. Deft will reside with his father. COURT ORDERED, matter referred to the Division of Parole and Probation for a Pre-Sentence Investigation and Report. COURT ORDERED, O.R. RELEASE is GRANTED with a NO CONTACT ORDER WITH THE VICTIM. Court ADMONISHED Deft re no telephone calls, letters, mail, and no personal contact whatsoever. Deft. required to report to P & P the Monday following his release from custody on 11/1/04, and to bring \$25 in the correct denominations of cash next court date for payment of fees.

O.R.

12/27/04 8:30 A.M. SENTENCING

EXHIBIT 2

SENTENCING JUDGE: STEWART L. BELL

CASE C202793

STATE OF NEVADA

CRIMINAL COURT MINUTES

PAGE 10

SENTENCING

CT 1 - BATTERY (MISDEMEANOR)

CT 6 - BURGLARY (FELONY)

EXHIBIT 2

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 009

12/01/04 08:30 AM 01 STATE'S REQUEST REMAND TO CUSTODY FOR  
SENTENCING

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Court Clerk  
Lisa Makowski, Reporter/Recorder

PARTIES: STATE OF NEVADA

007480 Pate, Susan

Y

Y

0001 D1 O'Keefe, Brian K

Y

000754 Buchanan II, James L.

Y

Mr. Buchanan stated the Court granted deft an O.R. release after trial, however, he has a Ohio Child Support case that has a hold on him which is coming up in Justice Court the beginning of this month. He spoke to L.J. O'Neale, and he is putting it on calendar to extradite to Ohio, and Ohio will have to come pick him up. Deft has not been out-of-custody since the trial date. COURT ORDERED, Deft is REMANDED into custody and held WITHOUT BAIL, sentencing date STANDS.

CUSTODY (COC/OHIO)

\* 12/27/04 08:30 AM 00 SENTENCING

HEARD BY: Stewart L. Bell, Judge; Dept. 7

OFFICERS: Theresa Lee, Court Clerk  
Cheryl Gardner, Reporter/Recorder

PARTIES: STATE OF NEVADA

006024 Krisko, Susan R.

Y

Y

0001 D1 O'Keefe, Brian K

Y

000754 Buchanan II, James L.

Y

DEFT. O'KEEFE ADJUDGED GUILTY of CT 1 - BATTERY (M), and CT 6 - BURGLARY (F). Arguments by counsel. Court inquired re the victim speaker. Ms. Krisko stated she chose not to appear. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150 DNA Analysis Fee, and submit to testing to determine genetic markers; Deft. SENTENCED on CT 6 - to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of ONE-HUNDRED AND TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; placed on PROBATION for an indeterminate period not to exceed FIVE (5) YEARS, and on CT 1 - Deft SENTENCED to CREDIT TIME SERVED. CONDITIONS:

1/ No contact with the victim initiated by deft. (Mr. Buchanan argued the love/hate nature of their relationship and how the victim called deft to

EXHIBIT 3

FILED JAN. 18, 2011

MOTION IN LIMINE

... CASE C250630

Cover Page and page 12

See pg 12, LINES 9-19

ITEM 7.

EXHIBIT 3

004689

OPPS  
PALM LAW FIRM, LTD.  
PATRICIA PALM, ESQ.  
NEVADA BAR NO. 6009  
1212 CASINO CENTER BLVD.  
LAS VEGAS, NV 89104  
Phone: (702) 386-9113  
Fax: (702) 386-9114  
Email: [Patricia.palmlaw@gmail.com](mailto:Patricia.palmlaw@gmail.com)  
Attorney for Brian O'Keefe

FILED

JAN 18 1 45 PM '11

*John J. [Signature]*  
CLERK OF DISTRICT COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE NO: C250630

DEPT. NO: XVII

DATE: 1/20/11

TIME: 8:15a

**DEFENDANT O'KEEFE'S OPPOSITION TO MOTION IN LIMINE TO  
ADMIT EVIDENCE OF OTHER BAD ACTS PURSUANT TO NRS 48.045  
AND EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO 48.061**

COMES NOW the Defendant, Brian O'Keefe, by and through his attorney,  
Patricia Palm of Palm Law Firm, Ltd., and hereby opposes the State's Motion to  
Admit Evidence of Other Bad Acts, above-named, which was filed on served on  
Defendant's counsel on January 7, 2011.<sup>1</sup>

///

///

///

///

///

///

<sup>1</sup>The State's Certificate of Facsimile Service certifies that the document was served  
on January 6, 2011. That date is incorrect, as the document was actually served by  
facsimile in the late afternoon of January 7, 2011.



1        **6. Event Number 040403-1089 (April 3, 2003 incident, misd. BDV**  
2        **conviction, 2nd)**

3        The defense has been provided with only a three page incident report, which  
4        refers to voluntary statements by Lynda Eggleston and Victoria Whitmarsh, neither  
5        of which has been provided to the defense. The incident report also refers to  
6        domestic violence and connecting reports, which have not been provided. Neither  
7        have any other reports, photographs or other evidence. This offense resulted in a  
8        misdemeanor domestic battery conviction.

9        **7. Event number 040529-2232 (May 29, 2004 incident, Burglary**  
10       **conviction, acquittal on all sexual assault charges)**

11       The defense has been provided with only a three page incident report. It is  
12       obvious from this report that numerous other reports and records were created,  
13       including a statement from witness Tobias Besse, SANE reports, police reports,  
14       forensic reports, etc. The defense has never been provided with any of these  
15       additional reports or other evidence. Moreover, despite the fact that this incident  
16       resulted in a felony conviction for burglary, the jury obviously discredited  
17       Whitmarsh's testimony and the evidence as it related to the sexual assault counts,  
18       since the jury acquitted on these counts.

19  
20       **ARGUMENT**

21       **A. The State has failed to meet its discovery obligation with respect to this**  
22       **untimely noticed evidence, and should be precluded from introducing it**  
23       **now.**

24       As with the proposed expert testimony, raised by way of O'Keefe's Motion to  
25       Dismiss, O'Keefe has never before received notice of the State's intent to use the  
26       bad acts evidence in question in its case in chief beyond the felony conviction  
27       evidence which the Court has limited. O'Keefe has not received statutory or Brady  
28       discovery with respect to these incidents, although he has conducted repeat file

IX.

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Petition for a Writ of Mandamus ... Ceram Nobis  
(Title of Document)

filed in District Court Case number 0202793

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

B. L. O'K  
Signature

11-24-13  
Date

Brian O'Keefe  
Print Name

Pro Se  
Title

1110- C...  
# 90244  
HIGH DESERT STATE PRISON

P.O. BOX 650

INDIAN SPRINGS, NV. 89070-0650

3  
1110- C...  
# 90244  
HIGH DESERT STATE PRISON

LEGAL MAIL

CONFIDENTIAL

STEVEN D. GRIERSON,  
CLERK of the COURT

200 LEWIS AVE., 3rd FLOOR

LAS VEGAS, NV. 89155-1160

LEGAL MAIL

RECEIVED

NOV 24 2013

HIGHWAY PRISON  
LAW ENFORCEMENT

04604

MC  
DA  
PP

48

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BRIAN KERRY O'KEEFE

Petitioner/Plaintiff,

v

The EIGHTH Judicial District  
Court of the State Of Nevada, In and  
For the County of CLARK.

Respondent/Defendant.

Case No

C250630

Dept. No.

XVII

Docket No

INDEPENDENT  
ACTION  
Electronically Filed  
12/06/2013 12:14:47 PM

CLERK OF THE COURT

Date: 1-7-14  
Time: 8:15am

NOTICE OF MOTION

MOTION TO WAIVE FILING FEES FOR PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner/Plaintiff, BRIAN O'KEEFE, pro per,  
and respectfully moves this Honorable Court to waive the filing fees necessary to file a Petition for Writ of  
Mandamus, being filed contemporaneously herewith.

This motion is made and based pursuant to the supporting Points and Authorities attached hereto,  
N.R.S. 34.150 through N.R.S. 34.310, N.R.A.P., Rule 21(e) and Rule 24, as well as all papers,  
pleadings, and documents on file herein.

POINTS AND AUTHORITIES

I. STATEMENT OF THE FACTS

On the 16<sup>th</sup> day of DECEMBER, 2011, in the above entitled case,  
Petitioner/Plaintiff BRIAN K. O'KEEFE, was granted leave to proceed in forma pauperis in the  
District Court. See Exhibit #1, attached (Criminal Court Minutes)

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CLERK OF THE COURT

CLERK OF THE COURT

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N.R.A.P., Rule 21(c) requires that a filing fee be paid prior to this Court entertaining a Petition for Writ of Mandamus.

N.R.A.P., Rule 24, allows an indigent who has been granted leave to proceed In Forma Pauperis in the District Court to so proceed in this Court.

Petitioner would offer that due to his poverty, his circumstances remaining the same, he is unable to pay the required filing fee for the Petition for Writ of Mandamus that he is filing herewith, and requests that said filing fees be waived in the interest of justice.

Dated this 24<sup>th</sup> day of NOVEMBER, 2013

### CONCLUSION

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to waive the required filing fees.

DATED this 24<sup>th</sup> day of NOVEMBER, 2013

Respectfully submitted,

Brian L. O'Keefe  
Petitioner/Plaintiff

### CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Notice of Motion and Motion to Waive Filing Fees for Petition for Writ of Mandamus, and that on this 24<sup>th</sup> day of NOVEMBER, 2013, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

CLERK OF THE COURT  
200 LEWIS AVE. 3RD FLOOR  
LAS VEGAS NV. 89155

DATED this 24<sup>th</sup> day of NOVEMBER, 2013

Brian L. O'Keefe  
Petitioner/Plaintiff

Brian L O'Keefe  
90244

004696

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

MOTION TO WAIVE FILING FEE AND MOTION TO APPOINT COUNSEL  
(Title of Document)

filed in District Court Case No. \_\_\_\_\_

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or  
for an application for a federal or state grant.

B. K. O'Kell  
(Signature)

Nov 24, 2013  
(Date)



48

BRIN KEELY O'KEEFE  
70244 In Propria Persona  
Post Office Box 650 (HDSP)  
Indian Springs, Nevada 89018

*Allen L. Quinn*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

BRIN O'KEEFE,  
petitioner  
vs.  
State of Nevada et al.  
Respondent

(C250630)  
INDEPENDENT ACTION  
Case No. C202793  
Dept. No. XVII  
Docket \_\_\_\_\_

(EX PARTE) (EX PETITION)  
MOTION TO APPOINT COUNSEL FOR Petitioner  
DATE OF HEARING: 1-7-14 WRIT OF HABEAS CORPUS,  
TIME OF HEARING: 8:15 am IN THE ALTERNATIVE,  
WRIT OF CURAM BONA

COMES NOW the Defendant BRIN O'KEEFE INDEPENDENT ACTION  
in proper persona and moves  
this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached  
points and authorities.

Dated this 24<sup>th</sup> day of NOVEMBER, 20 13

Respectfully Submitted,  
*Br. O'Keefe*

MC  
DA  
PP

RECEIVED  
26  
DEC 06 2013  
CLERK OF THE COURT

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DEC 04 2013  
CLERK OF THE COURT

1  
2 **POINTS AND AUTHORITIES**

3 NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition;  
4 response to dismiss.

5 "If the Court is satisfied that the allegation of indigency is true and the petition is not  
6 dismissed summarily, the Court may appoint counsel to represent the petitioner."

7 NRS 171.188 Procedure for appointment of attorney for indigent defendant.

8 "Any defendant charged with a public offense who is an indigent may, be oral statement to the  
9 District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to  
10 represent him."

11 NRS 178.397 Assignment of counsel.

12 "Every defendant accused of a gross misdemeanor or felony who is financially unable  
13 to obtain counsel is entitled to have counsel assigned to represent him at every stage of the  
14 proceedings from his initial appearance before a magistrate or the court through appeal, unless he  
15 waives such appointment."

16 WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to  
17 allow him the assistance that is needed to insure that justice is served.

18  
19 Dated this 24<sup>th</sup> day of November, 20 13

20  
21 Respectfully submitted,  
22 B. Kelly  
23  
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1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
2

3       BRIAN K. O'KEEFE,  
4                                   Appellant.  
5       vs.  
6       THE STATE OF NEVADA  
                                  Respondent.

**Supreme Court No.:**

District Court Case No. 08C750630

Electronically Filed  
Dec 01 2015 04:20 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

7                                   **APPELLANT'S APPENDIX – VOLUME XXIV – PAGES 4600-4799**  
8

9       MATTHEW D. CARLING  
10       51 East 400 North, Bldg. #1  
11       Cedar City, Utah 84720  
              (702) 419-7330 (Office)  
              Attorney for Appellant

STEVEN B. WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
Counsel for Respondent

12                                   CATHERINE CORTEZ MASTO  
13                                   Attorney General  
14                                   100 North Carson Street  
15                                   Carson City, Nevada 89701-4717  
16                                   Counsel for Respondent  
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**O'Keefe, Brian**

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"Amended" Exhibits to "Amended Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 10/03/14	5008-5036
"Evidentiary Hearing Request" (Amended Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since) filed on 10/03/14	4995-5007
"Reply" to State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Prsuant to NRS 34.360 filed on 10/27/14	5052-5061
"True Pretrial Detainee's" Reply to State's Opposition(s) Admitting the State has a Jurisdictional Defect by the Aung of a Notice of Appeal Which Diveste Jurisdiction of the Matter Appealed; i.e., O'Keefe's Pretrial Habeas Matter Appealed to the 9 <sup>th</sup> Circuit on the Subject Matter of the Amended Information Already Named a Double Jeopardy Violation filed on 10/01/14	4989-4994
Affidavit of Matthew D. Carling, Esq. filed on 06/29/15	5447-5453
Affidavit of the Honorable Michael P. Villani filed on 09/24/14	4981-4983
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1	Certificate of Service filed on 06/29/15	5454
2	Clerks Certificate Judgment Reversed and Remanded filed on 05/06/10	1023-1027
3	Criminal Bindover filed on 12/26/08	0004-0020
4	Criminal Order to Statistically Close Case filed on 07/31/13	4662
5	Defendant O'Keefe's Opposition to Motion in Limine to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence Pursuant to 48.061 filed on 01/18/11	2877-2907
6	Defendant's Brief on Admissibility of Evidence of Alleged Victim's History of Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation (With Knives and Scissors), and Erratic Behavior filed on 03/20/09	0293-0301
7	Defendant's Motion to Require Court to Advise the Prospective Jurors as to the Mandatory Sentences Required if the Defendant is Convicted of Second Degree Murder filed on 03/04/09	0196-0218
8	Defendant's Motion to Settle Record filed on 03/24/09	0317-0322
9	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
10	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
11	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
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21	Ex Parte Motion for Defense Costs filed on 06/30/10	1037-1043
22	Ex Parte Motion for Production of Documents (Specific) Papers, Pleadings and Tangible Property of Defendant filed on 01/13/14	4714-4720
23	Ex Parte Motion for Reimbursement of Legal Cost of Faretta Canvassed Defendant to Above Instant Case filed on 12/13/13	4701-4707
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21	Motion to Modify and/or Correct Illegal Sentence filed on 01/27/14	4749-4759
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12	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/02/10	1199-1210
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16	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1082-1098
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1	Statements to Police, or, Alternatively, to Preclude the State from	
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5	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
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10	Order Denying Defendant's Motion to Dismiss filed on 04/11/12	3434-3435
11	Order Denying Defendant's Motion to Seal Records and Defendant's Motion to Admit Evidence of Polygraph Examination filed on 05/24/12	3448-3449
12	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
13	Order Denying Defendant's Pro Per Motion for Judicial Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
14	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
15	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
16	Order Denying Defendant's Pro Per Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 07/15/15	5461-5463
17	Order Denying Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 11/19/15	5574-5575
18	Order Denying Motion to Disqualify filed on 10/06/14	5037-5040
19	Order filed on 01/30/09	0149
20	Order filed on 11/06/10	1462-1463
21	Order for Petition for Writ of Habeas Corpus filed on 10/15/14	5051
22	Order for Production of Inmate Brian O'Keefe filed on 05/26/10	1032-1033
23	Order for Return of Fees filed on 11/10/11	3183

1	Order for Transcripts filed on 04/30/12	3442
2	Order Granting and Denying in Part Defendant's Ex-Parte Motion for Production of Documents (Specific) Papers, Pleadings, and Tangible Property of Defendant filed on 02/28/14	4818-4820
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9	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 09/09/10	1427-1429
10	Order Granting, in Part, the State's Motion to Admit Evidence of Other Bad Acts filed on 03/13/12	3199-3200
11	Order Releasing Medical Records filed on 04/08/11	3039-3040
12	Order Requiring Material Witness to Post Bail or be Committed to Custody filed on 03/10/09	0230-0231
13	Order Shortening Time filed on 08/16/10	1283
14	Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis filed on 12/06/13	4663-4694
15	Petition for Writ of Habeas Corpus or in the Alternative Motion to Preclude Prosecution from Seeking First Degree Murder Conviction Based Upon the Failure to Collect Evidence filed on 01/26/09	0125-0133
16	Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based On Subject-Matter of Amended Information Vested in Ninth Circuit by notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since filed on 09/15/14	4940-4949
17	Petitioner's Supplement with Exhibit of Oral Argument Scheduled by the Ninth Circuit Court of Appeals for November 17, 2014, Courtroom #1 filed on 10/01/14	4984-4988
18	Pro Se "Reply to State's Opposition to Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence filed on 03/04/14	4821-4832
19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168
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1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
	Receipt of Copy filed on 05/24/10	1031
3	Receipt of Copy filed on 06/13/11	3163
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4	Receipt of Copy filed on 08/02/10	1240
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7	Receipt of Copy filed on 09/14/10	1432
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13	Request for Rough Draft Transcripts filed on 10/21/15	5549-5551
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17	Second Amended Information filed on 08/19/10	1326-1328
18	State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/07/14	4768-4791
19	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
20	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
21	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
22	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
23	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
24	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
25	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	
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1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . Rule 2.4 filed on 09/12/14	4935-4939
3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity, Absolutely filed on 09/12/14	4930-4934
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
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10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandare or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violatio with No Remand Issued Since (Post Conviction), Amended Peition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducint at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Contitutionasal Rights filed on 08/16/10	1268-1276
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
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2	File Supplemental Petition Addressing all Claims in the First Instance	
3	Required by Statute for Judicial Economy with Affidavit," "Reply to	
4	State's Response to Defendant's Pro Per Post Conviction Petition for	
5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
11	State's Response to Defendant's Reply in Support of Supplemental Post-	
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23	Habeas Corpus Matter Pursuant 28 U.S.C. § 2241 ©(3) From the Mooting	
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10	Transcript – Status Check: Availability of Dr. Benjamin for Trial filed on	
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1 THE COURT: Are you acquainted with anybody in law  
2 enforcement?

3 PROSPECTIVE JUROR NO. 040: No.

4 THE COURT: Have you ever -- you or anyone closely  
5 associated with you ever been the victim of a crime?

6 PROSPECTIVE JUROR NO. 040: No.

7 THE COURT: Arrested for a crime?

8 PROSPECTIVE JUROR NO. 040: No.

9 THE COURT: You ever served on a jury?

10 PROSPECTIVE JUROR NO. 040: Yes.

11 THE COURT: How many times, once?

12 PROSPECTIVE JUROR NO. 040: Once.

13 THE COURT: Where? Here?

14 PROSPECTIVE JUROR NO. 040: Here.

15 THE COURT: Was it a criminal matter, or a civil  
16 matter?

17 PROSPECTIVE JUROR NO. 040: Criminal.

18 THE COURT: Do you remember the charge?

19 PROSPECTIVE JUROR NO. 040: There were six felony  
20 counts of sexual assault on a minor under the age of 12, and  
21 57 counts of possession of child pornography.

22 THE COURT: Okay. And you were picked as a juror?

23 PROSPECTIVE JUROR NO. 040: Yes.

24 THE COURT: Were you picked as foreman?

25 PROSPECTIVE JUROR NO. 040: Yes.

ROUGH DRAFT TRANSCRIPT

004600

1 THE COURT: Without telling me what the verdict was,  
2 did your jury reach a verdict?

3 PROSPECTIVE JUROR NO. 040: We reached a verdict on  
4 all but two counts.

5 THE COURT: Okay. All right, all right. All right.  
6 And you pretty well remember the judge giving you instructions  
7 of law at the conclusion of the case?

8 PROSPECTIVE JUROR NO. 040: Yes.

9 THE COURT: And you could follow my instructions in  
10 this particular case?

11 PROSPECTIVE JUROR NO. 040: Yes.

12 THE COURT: Could you be a fair and impartial juror  
13 in this case?

14 PROSPECTIVE JUROR NO. 040: Yes.

15 THE COURT: Thank you. State, questions; pass for  
16 cause?

17 MS. MERCER: When was your prior service?

18 PROSPECTIVE JUROR NO. 040: It was in February of  
19 2009.

20 MS. MERCER: Okay. And do you remember who the  
21 prosecutor was, by any chance?

22 PROSPECTIVE JUROR NO. 040: The prosecutors were  
23 Vicki Monroe, and Tom -- the last name escapes me.

24 MS. MERCER: Moreo?

25 PROSPECTIVE JUROR NO. 040: Yes.

ROUGH DRAFT TRANSCRIPT

004601

1 MS. MERCER: Thank you. Have you ever had anybody  
2 close to you that was a victim of domestic violence?

3 PROSPECTIVE JUROR NO. 040: Not that I'm aware of.

4 MS. MERCER: Have you ever witnessed an incident of  
5 domestic violence?

6 PROSPECTIVE JUROR NO. 040: No.

7 MS. MERCER: Do you have any strong feelings about  
8 domestic violence that would impact your ability to be fair  
9 and impartial in this case?

10 PROSPECTIVE JUROR NO. 040: No.

11 MS. MERCER: Is there anything that we haven't asked  
12 you already that you think would affect your ability to be  
13 fair and impartial in this case?

14 PROSPECTIVE JUROR NO. 040: I don't believe so.

15 MS. MERCER: Do you believe that domestic violence  
16 is an issue that should be dealt with within the home, or are  
17 you okay with State involvement?

18 PROSPECTIVE JUROR NO. 040: I'm fine with State  
19 involvement.

20 MS. MERCER: Do you think that it's ever okay to use  
21 violence to solve a verbal dispute?

22 PROSPECTIVE JUROR NO. 040: No.

23 MS. MERCER: Pass for cause, Your Honor.

24 THE COURT: Thank you. Mr. O'Keefe, questions; pass  
25 for cause?

ROUGH DRAFT TRANSCRIPT

004602

1 MR. O'KEEFE: Pass for cause, Your Honor.

2 THE COURT: Thank you, Mr. O'Keefe. The State can  
3 exercise it's third peremptory challenge, if it sees fit.

4 MR. LALLI: Your Honor, the State would thank and  
5 excuse Juror number 35 in seat 12, Ms. Murphy.

6 THE COURT: All right. Please report back to the  
7 jury commissioner. Clerk, call another prospective juror.

8 THE CLERK: Nella Humphries.

9 THE COURT: Take that seat there, ma'am. How long  
10 you been in Las Vegas?

11 PROSPECTIVE JUROR NO. 041: 24 years.

12 THE COURT: Are you related to Marc Humphries then?

13 PROSPECTIVE JUROR NO. 041: Yes.

14 THE COURT: You are related to him. What is your  
15 relationship?

16 PROSPECTIVE JUROR NO. 041: Brother and sister.

17 THE COURT: What?

18 PROSPECTIVE JUROR NO. 041: Brother and sister.

19 THE COURT: Oh.

20 PROSPECTIVE JUROR NO. 041: How it happened, we  
21 don't know, that we both ended up --

22 THE COURT: Interesting.

23 PROSPECTIVE JUROR NO. 041: -- the second day.

24 THE COURT: I'm not sure I ever had -- in 38 years  
25 being on the bench, I'm not sure I ever had a brother and

ROUGH DRAFT TRANSCRIPT

004603

1 sister, or a mother and son.

2 PROSPECTIVE JUROR NO. 041: It's a first.

3 THE COURT: I'm not sure -- we got a problem with  
4 that? I mean, I -- you know, they're related. You don't live  
5 in the same household, do you?

6 PROSPECTIVE JUROR NO. 012: No.

7 PROSPECTIVE JUROR NO. 041: No.

8 THE COURT: You want me to keep going?

9 MR. LALLI: Can we approach?

10 THE COURT: Sure.

11 (Off-record bench conference)

12 THE COURT: It's -- you know, I don't want to tell  
13 my age. It's unfortunate. I've always picked a jury, you  
14 know, hopefully the first day, unless it's another case that  
15 took two days. And I didn't leave the bench until I picked a  
16 jury, if I was close. But I can't do that today.

17 We're close to picking a jury, but we still have  
18 more to do. So, I have to stop the court at 5:00 o'clock  
19 sharp. You know, everybody has financial problems. The  
20 county has financial -- they don't want any overtime. So --  
21 not for me, but for the staff and everything.

22 So, I'm going to have to stop at 5:00 o'clock, and  
23 then everybody come back tomorrow morning, which I'll tell you  
24 in a minute. But it's unfortunate you're going to have to  
25 come back. I mean, you guys are going to have to come back

ROUGH DRAFT TRANSCRIPT

0046^4

1 anyway, but the other prospective jurors have to come back  
2 also. I just wanted to remind you that I have to do it. So,  
3 we only have a few minutes.

4 Now, you're Nellie Humphries?

5 PROSPECTIVE JUROR NO. 041: Nella.

6 THE COURT: Nella, Nella, Neila.

7 PROSPECTIVE JUROR NO. 041: Yes.

8 THE COURT: Who's older? All right. All right.

9 PROSPECTIVE JUROR NO. 041: I beat him up.

10 THE COURT: How long you been in this area, ma'am?  
11 How long you been in Las Vegas?

12 PROSPECTIVE JUROR NO. 041: 24 years.

13 THE COURT: What do you do for a living?

14 PROSPECTIVE JUROR NO. 041: I work at Golden Gate in  
15 the cage.

16 THE COURT: I see. Are you married?

17 PROSPECTIVE JUROR NO. 041: No.

18 THE COURT: Children?

19 PROSPECTIVE JUROR NO. 041: Yes.

20 THE COURT: What do they do for a living, your  
21 children?

22 PROSPECTIVE JUROR NO. 041: You want my honest  
23 opinion? Nothing. It's my job; the mom. No, I only have one  
24 child at home still. She's 16.

25 THE COURT: She's what?

ROUGH DRAFT TRANSCRIPT

004605



1 PROSPECTIVE JUROR NO. 041: She's 16.

2 THE COURT: Oh, okay. So, you don't -- have  
3 children that don't go to work. All right.

4 PROSPECTIVE JUROR NO. 041: Yeah, they're grown.

5 THE COURT: Have you ever been in the military?

6 PROSPECTIVE JUROR NO. 041: No.

7 THE COURT: Are you acquainted with anybody -- of  
8 course, law enforcement, your brother. Anybody else?

9 PROSPECTIVE JUROR NO. 041: I have a brother in-law  
10 that's in LVPD.

11 THE COURT: Okay. All right.

12 PROSPECTIVE JUROR NO. 041: That's it.

13 THE COURT: Again, the follow up questions. You're  
14 not to give greater weight or lesser weight to a police  
15 officer's testimony simply because they're a police officer.  
16 You understand that?

17 PROSPECTIVE JUROR NO. 041: Yes.

18 THE COURT: Will you follow that?

19 PROSPECTIVE JUROR NO. 041: Yes.

20 THE COURT: Have you or anyone closely associated  
21 with you ever been a victim of a crime?

22 PROSPECTIVE JUROR NO. 041: No.

23 THE COURT: Or arrested for a crime?

24 PROSPECTIVE JUROR NO. 041: No.

25 THE COURT: Have you ever served on a jury before?

ROUGH DRAFT TRANSCRIPT

004606

1 PROSPECTIVE JUROR NO. 041: No.  
2 THE COURT: Could you be fair in this case?  
3 PROSPECTIVE JUROR NO. 041: Yes.  
4 THE COURT: All right. Now, I'm sure the district  
5 attorney, they're going to ask you about the sibling  
6 relationship. And you just answer them. But Ms. -- oh, Mr.  
7 Lalli?  
8 MR. LALLI: Yes, thank you. Ms. Humphries, you  
9 indicated that you have a friend in Metro?  
10 PROSPECTIVE JUROR NO. 041: A brother in-law.  
11 MR. LALLI: Oh, I'm sorry. Brother in-law.  
12 PROSPECTIVE JUROR NO. 041: Brother in-law. Yeah.  
13 MR. LALLI: What does he do for Metro?  
14 PROSPECTIVE JUROR NO. 041: He's a bike cop.  
15 MR. LALLI: Okay. He's in -- a motor -- motor cop?  
16 PROSPECTIVE JUROR NO. 041: Yeah.  
17 MR. LALLI: They don't like to be called bike cops.  
18 I mean, it's --  
19 PROSPECTIVE JUROR NO. 041: Sorry.  
20 MR. LALLI: Do you -- how close are you to your  
21 brother in-law?  
22 PROSPECTIVE JUROR NO. 041: Not real close. I mean,  
23 it's my sister's husband's -- brother in-law. So, but I mean,  
24 we -- when we get together --  
25 MR. LALLI: See them a few times a year?

ROUGH DRAFT TRANSCRIPT

004607

1 PROSPECTIVE JUROR NO. 041: Yeah.

2 MR. LALLI: Do you talk to him about his work?

3 PROSPECTIVE JUROR NO. 041: No.

4 THE COURT: And the rest of you, please, you're  
5 excused. Come back tomorrow. Wait outside about -- about  
6 9:30, all right? Just be outside at 9:30. Thank you very  
7 much. You're excused.

8 UNKNOWN MALE SPEAKER: Same courtroom?

9 THE COURT: Same -- yeah, right outside here. Just  
10 wait right outside here at 9:00 o'clock tomorrow morning?

11 UNKNOWN FEMALE SPEAKER: 9:00?

12 MR. O'KEEFE: 9:30.

13 THE COURT: Excuse me, 9:30 tomorrow morning. Go  
14 ahead. Keep your voice up, Mr. Lalli. We'll continue.

15 MR. LALLI: Okay. I'll come a little closer so you  
16 can hear me.

17 PROSPECTIVE JUROR NO. 041: Okay.

18 MR. LALLI: Let me talk about this guy over here,  
19 Mr. Humphries. The concern with people who know each other on  
20 juries is that, if you both stay on it, you won't equally  
21 deliberate with the rest of the jurors, that an alliance would  
22 be formed between you.

23 And I don't mean that in a bad way, but you may  
24 listen to your brother more than you listen to anybody else,  
25 or you may share your brother's concerns more than you share

ROUGH DRAFT TRANSCRIPT

0046^8

1 anyone else's concerns. Can you give us some sense of that  
2 dynamic?

3 PROSPECTIVE JUROR NO. 041: Yes. Growing up --

4 MR. LALLI: I know you used to beat him up.

5 PROSPECTIVE JUROR NO. 041: Yeah. That was only  
6 when he was little. I'll tell you some stories later. But we  
7 always were taught by our parents to each make our own  
8 decision about situations. Whatever his situation is, and his  
9 decision; that's his. Don't influence me, you know, and it's  
10 vice versa. And that's the way it has always been in our  
11 family.

12 MR. LALLI: Okay.

13 PROSPECTIVE JUROR NO. 041: Now, I'm the oldest in  
14 the family. If I say, you know, the sky is green, they don't  
15 follow along with what I say.

16 MR. LALLI: All right.

17 PROSPECTIVE JUROR NO. 041: That's --

18 MR. LALLI: If -- you know, there have been  
19 occasions where deliberations have become heated, and maybe  
20 there's another juror who's going to be rude to your brother,  
21 say something offensive to your brother. Are you going to  
22 internalize that, or are you going to, any more so than any  
23 other person --

24 PROSPECTIVE JUROR NO. 041: No.

25 MR. LALLI: -- have a problem with how that --

ROUGH DRAFT TRANSCRIPT

0046^9

1 PROSPECTIVE JUROR NO. 041: No.

2 MR. LALLI: -- [inaudible]?

3 PROSPECTIVE JUROR NO. 041: No. If it was -- if it  
4 was him, and somebody said something, I'd, you know, say,  
5 well, why are you saying that? No different from my brother.

6 MR. LALLI: Okay. And Your Honor, may I ask Mr.  
7 Humphries kind of the same --

8 THE COURT: Yes.

9 MR. LALLI: -- issue, just as long as we're here?

10 THE COURT: And Mr. O'Keefe can have the same  
11 privilege, of course.

12 MR. LALLI: Just on this one limited issue.

13 THE COURT: Sure, absolutely.

14 MR. LALLI: Mr. Humphries, is that the same with  
15 respect to your sister? Do you see an alliance forming, or do  
16 you still see yourselves as two, co-equal members of this  
17 jury, who would participate in deliberations? Or --

18 PROSPECTIVE JUROR NO. 012: I mean, I see us  
19 thinking independently. I don't -- I'm not really jazzed  
20 about it, to be very honest with you. So --

21 MR. LALLI: Why?

22 PROSPECTIVE JUROR NO. 012: I just -- you know, I  
23 kind of feel like, to a certain degree, it's kind of -- you  
24 know, there's a lot of things I've seen through the day, and I  
25 don't want to go into the scenario with the other gentleman

ROUGH DRAFT TRANSCRIPT

004610

1 that was in the seat over there.

2 But overall, it's just one of those things that I  
3 just kind of look at and go, it's a little bit  
4 uncharacteristic, as even Judge Bonaventure reoriented. It's  
5 the first time in 35 -- or 37 years. And so -- you know. I  
6 mean, granted, I'm going to think independently, and I'm going  
7 to do what I need to do in regards to making an objective --

8 PROSPECTIVE JUROR NO. 041: Make a decision.

9 PROSPECTIVE JUROR NO. 012: -- you know, decision,  
10 so.

11 MR. LALLI: Do you feel comfortable disagreeing with  
12 your sister?

13 PROSPECTIVE JUROR NO. 012: Most certainly. Yeah,  
14 yeah, yeah, yeah.

15 MR. LALLI: Would you -- in spite of your feeling  
16 uncomfortable about it, would you take a position against your  
17 sister?

18 PROSPECTIVE JUROR NO. 012: Most certainly.

19 MR. LALLI: Okay. So, it adds a layer of  
20 complexity.

21 PROSPECTIVE JUROR NO. 012: Yes.

22 MR. LALLI: But do you think --

23 PROSPECTIVE JUROR NO. 012: Yeah.

24 MR. LALLI: -- based upon everything you've heard,  
25 everything that you believe that's expected of you as a juror,

ROUGH DRAFT TRANSCRIPT

004611

1 is it something you can do, nonetheless?

2 PROSPECTIVE JUROR NO. 012: Yeah, yeah. Given the  
3 fact of being a professional, and I'm going to certainly, you  
4 know, go into the scenario, and look at the case, and be  
5 impartial and objective, and make a decision, so.

6 MR. LALLI: You're a member of law enforcement.

7 PROSPECTIVE JUROR NO. 012: Uh-huh.

8 MR. LALLI: And if you have this opinion, he's  
9 guilty, Brian O'Keefe is guilty as charged, and your sister  
10 says, no, he's not, he's not, are you going to stand firm on  
11 your position that he's guilty, or are you going to listen to  
12 sister?

13 PROSPECTIVE JUROR NO. 012: No, I'm going to stand  
14 firm on my decision.

15 MR. LALLI: Okay. All right. Your Honor, I don't  
16 have anymore questioning on this issue. However, I do have  
17 some other questions --

18 THE COURT: Yeah, go ahead.

19 MR. LALLI: -- for Ms. Humphries. Shall I continue?

20 THE COURT: Yeah, you may as well.

21 MR. LALLI: Okay.

22 THE COURT: Just as long as you hurry it up a  
23 little, I appreciate it.

24 MR. LALLI: All right. Do you have any feelings  
25 about -- strong feelings about domestic violence?

ROUGH DRAFT TRANSCRIPT

004612



1 PROSPECTIVE JUROR NO. 041: I think there needs to  
2 be maybe a better system set up for it, not to only help  
3 women, but to help men also; not just one-sided towards women,  
4 or one-sided towards men. I think that would help it a lot.

5 MR. LALLI: Do you think the system is one-sided?

6 PROSPECTIVE JUROR NO. 041: Not one-sided. What I'm  
7 saying is, you know, like it's -- in today's society, it's  
8 always the men that is the aggressor. But it's not always the  
9 man. It can be the woman, too. And I think a lot of people  
10 don't see that all the time.

11 MR. LALLI: Okay. So, you think that the -- that  
12 the belief of the public is that it's always the man, the  
13 aggressor; when in truth, the woman can --

14 PROSPECTIVE JUROR NO. 041: It could be the woman,  
15 too. Yes.

16 MR. LALLI: -- the woman could be the aggressor?

17 PROSPECTIVE JUROR NO. 041: Yes. Um-hum.

18 MR. LALLI: All right. Assuming the system got  
19 that part right, okay, do you see any other problems with the  
20 system in how it addresses with domestic violence?

21 PROSPECTIVE JUROR NO. 041: I think some of the  
22 sentencing for it should be a little stricter.

23 MR. LALLI: In what sense?

24 PROSPECTIVE JUROR NO. 041: You know, not let them  
25 just get off the first time with like, say anger management,

ROUGH DRAFT TRANSCRIPT

004613

1 or --

2 MR. LALLI: What do you think should happen?

3 PROSPECTIVE JUROR NO. 041: I think there should be  
4 -- I'm not --

5 MR. LALLI: Do you think people ought to do time in  
6 custody for a first time offense of domestic violence?

7 PROSPECTIVE JUROR NO. 041: I think it might --  
8 maybe it might -- well, no, not really. But there should be a  
9 -- like -- I don't know how to put it. More of an education  
10 on, why is it being done; you know, why is the domestic  
11 violence going on so much? Because that's basically all you  
12 hear anymore.

13 MR. LALLI: So, you think it goes on a lot in  
14 society, and we as a society need --

15 PROSPECTIVE JUROR NO. 041: Kind of --

16 MR. LALLI: -- to do more?

17 PROSPECTIVE JUROR NO. 041: Yes. And I think it's  
18 kind of pushed under the rug a little bit, you know.

19 MR. LALLI: Okay. So, I've asked a number of people  
20 if they think domestic violence is a private issue between a  
21 man and a woman. You would disagree with that?

22 PROSPECTIVE JUROR NO. 041: To a certain degree,  
23 yes.

24 MR. LALLI: Okay. Do you -- well, let me change  
25 gears just a little bit. Do you -- well, have you ever known

ROUGH DRAFT TRANSCRIPT

004614

1 anyone directly who has been involved in a domestic violence  
2 situation?

3 PROSPECTIVE JUROR NO. 041: Not directly. Just  
4 stuff I've heard on, you know, newspapers, TV --

5 MR. LALLI: All right.

6 PROSPECTIVE JUROR NO. 041: -- courtrooms. You  
7 know.

8 MR. LALLI: You've never seen it?

9 PROSPECTIVE JUROR NO. 041: Not really.

10 MR. LALLI: Okay.

11 PROSPECTIVE JUROR NO. 041: No. I mean, I've seen  
12 people argue and stuff like that, but nothing --

13 MR. LALLI: Physical?

14 PROSPECTIVE JUROR NO. 041: -- to the point of being  
15 physical with anybody.

16 MR. LALLI: What about individuals who suffer from  
17 mental illness? Do you have any firsthand experience dealing  
18 with that?

19 PROSPECTIVE JUROR NO. 041: Not really.

20 MR. LALLI: Know anyone with depression, or know  
21 anyone who has seen a mental health professional?

22 PROSPECTIVE JUROR NO. 041: No, not really.

23 MR. LALLI: All right.

24 PROSPECTIVE JUROR NO. 041: No. Hum-um.

25 MR. LALLI: Do you believe in holding people

ROUGH DRAFT TRANSCRIPT

004615

1 accountable for their actions?

2 PROSPECTIVE JUROR NO. 041: Yes, I do. If you are  
3 doing something wrong, you should be held accountable for it.

4 MR. LALLI: If we prove to you that Brian O'Keefe is  
5 guilty of murder of the second degree, would you convict him?

6 PROSPECTIVE JUROR NO. 041: Yes, if it's proven.

7 MR. LALLI: Thank you. Your Honor, we'll pass for  
8 cause.

9 THE COURT: All right. Mr. O'Keefe?

10 MR. O'KEEFE: Yeah, just a couple quick questions.  
11 Pass for cause, Your Honor. If I may, Your Honor -- I know  
12 this is an unusual situation. It's directed to Ms. Nella  
13 Humphries first, and then -- is it Mr. Marc --

14 PROSPECTIVE JUROR NO. 012: Sure.

15 MR. O'KEEFE: If that's okay.

16 THE COURT: Yeah.

17 MR. O'KEEFE: Okay. I just want to clarify and make  
18 sure -- to both of you. If the State doesn't prove their case  
19 without a doubt, I want to make sure I understand --

20 MR. LALLI: I'm going to object. That's an improper  
21 standard, Your Honor.

22 THE COURT: Yeah. Without a doubt is not the  
23 standard. It's the State has the burden of proving the  
24 defendant guilty beyond a reasonable doubt, all right?

25 MR. O'KEEFE: And I apologize. Thank you. I'm

ROUGH DRAFT TRANSCRIPT

004616

1 extremely tired. What I meant to say, if you determine, after  
2 hearing the case, that I'm not guilty, am I understanding that  
3 you're going to rule me opposite, just because -- or do you  
4 see what I'm trying to say? Or if you rule -- if you feel  
5 it's not guilty, are you going to go the opposite -- I just  
6 want to make clearly sure that --

7 PROSPECTIVE JUROR NO. C41: No, I make my own  
8 decision. He doesn't influence me. You know, I decide from  
9 the evidence what I am going to vote as.

10 MR. O'KEEFE: Okay. And again, also, you, without a  
11 doubt, can just individually make your own decisions? Just  
12 for the last time, I'm just making absolute sure. I think  
13 we're good. I --

14 THE COURT: Pass for cause, then?

15 MR. O'KEEFE: Pass for cause.

16 THE COURT: All right. Thank you, Mr. O'Keefe. The  
17 defense can exercise it's third peremptory challenge, if it  
18 sees fit.

19 MR. O'KEEFE: Yes, Your Honor. I'm going to thank  
20 and excuse Juror number -- is it seat -- or seat -- I can't  
21 read it. I can't -- seat 5, Linda Bellew -- Bellew.

22 THE COURT: All right. Please --

23 MR. O'KEEFE: Juror number 21.

24 THE COURT: Yeah. I don't know if the jury  
25 commissioner is open or not. But if not -- report to them.

ROUGH DRAFT TRANSCRIPT

004617

1 If not, go home. All right? Thank you very much though.  
2 PROSPECTIVE JUROR NO. 021: Do I have to come back  
3 tomorrow [inaudible]?  
4 THE COURT: No, you're done. --  
5 PROSPECTIVE JUROR NO. 021: Okay.  
6 THE COURT: You might have to fill a voucher -- I'm  
7 not sure. You know, but --  
8 PROSPECTIVE JUROR NO. 021: Yeah, I didn't get it  
9 stamped. Thank you.  
10 THE COURT: All right. So, we'll begin tomorrow,  
11 Ms. Clerk, in filling in Juror number 5, right?  
12 MR. LALLI: Yes.  
13 THE COURT: And we have --  
14 THE CLERK: It's going to be -- do you want to know  
15 the name?  
16 THE COURT: No, no.  
17 THE CLERK: Okay.  
18 THE COURT: We'll do that tomorrow.  
19 THE CLERK: Okay.  
20 THE COURT: And thank you very much, ladies and  
21 gentlemen. I know it was a long day. I usually don't give  
22 the admonition. But you're here, and probably most of you are  
23 going to stay. It depends. But I usually give the admonition  
24 after we get the entire jury.  
25 But I'm just going to say to you, please, don't

ROUGH DRAFT TRANSCRIPT

004618

1 converse among yourselves, or anyone else on any subject  
2 connected with the trial, or read, watch, or listen to any  
3 report or commentary on the trial, by any person connected  
4 with the trial, or by any medium of information, including,  
5 without limitation, newspapers, television, radio. And you  
6 are not to form or express any opinion on any subject  
7 connected with the trial until the cause is finally submitted  
8 to you.

9           So, thanks a lot. Just be out there at 9:30  
10 tomorrow. I've got a motion calendar. I might be a little  
11 late. I'm going to try to hurry it up, but it will be about  
12 that time. And just don't come in individually. Just wait  
13 outside, and the marshal will take everybody in at one time.

14           (Jury recessed at 5:11 p.m.)

15           (Pause in the proceedings)

16           (Outside the presence of the prospective jury panel)

17           THE COURT: All right. So, we'll come back -- now,  
18 it's my understanding we discussed, Mr. Lalli and Mr. O'Keefe,  
19 the number of peremptory challenges that you get here. I  
20 mean, originally, if he was charged with first degree murder,  
21 he got eight peremptory challenges; is that correct? Both of  
22 you got eight peremptory challenges?

23           MR. LALLI: Correct, Your Honor.

24           THE COURT: So, apparently, he was -- after the  
25 trial, Judge Villani sentenced Mr. O'Keefe to a maximum of 25

ROUGH DRAFT TRANSCRIPT

004619



1 years, with a minimum parole eligibility of 10; plus a  
2 consecutive of 240 months, with a minimum parole eligibility  
3 of 96 months, consecutive on the weapon. So, is it -- I mean,  
4 I know you're both going to stipulate that it's four -- is  
5 that correct? But I think it is by statute.

6 MR. O'KEEFE: Yes, Your Honor. I think you are --  
7 four, and then one --

8 THE COURT: Yeah, and one -- we'll call two -- two  
9 alternate jurors; you have one preempt.

10 MR. O'KEEFE: Each.

11 THE COURT: No, not each. Just as to both.

12 MR. O'KEEFE: Oh, okay.

13 MR. MANINGO: This way, yeah.

14 THE COURT: Yeah.

15 MR. MANINGO: The State has one, and you have one.

16 MR. LALLI: I think the Court is correct, and we  
17 would so stipulate, Your Honor.

18 THE COURT: Okay. Well, that's fine. I just wanted  
19 to clarify. Anything else to come before the Court right now?  
20 It's late, so we can't really -- we'll see everybody back at  
21 9:30 tomorrow. Hopefully I'll be ready to go, but it's a long  
22 calendar. But I'll do the best I can. Then, we'll finish  
23 picking the jury, we'll have opening statements, and whatever  
24 you want to do, Mr. Lalli.

25 MR. LALLI: Very good, Your Honor. We haven't had

ROUGH DRAFT TRANSCRIPT

004620

1 the chance to look at the evidence. I presume it's all -- I  
2 don't know if it's been remarked yet, or not. I'm not sure  
3 where we are with that. But we'll be using evidence when we  
4 call the first witness --

5 THE CLERK: I was going to --

6 MR. LALLI: -- tomorrow.

7 THE CLERK: -- remark it -- what do you want the  
8 ones from the --

9 MR. LALLI: Hearing?

10 THE CLERK: -- the hearing? Do you want those just  
11 marked at the end? Because you wanted all the same numbers.

12 MR. LALLI: We will -- so that you don't have to  
13 mark it unnecessarily, we will select --

14 THE CLERK: Okay.

15 MR. LALLI: -- which exhibits from that we'll use.

16 THE CLERK: Okay.

17 MR. LALLI: There will be just a portion of that  
18 used; not all of it.

19 THE CLERK: Okay. That's why I didn't mark, because  
20 I was -- I wasn't sure.

21 THE COURT: All right. See you tomorrow. Thank  
22 you.

23 MR. LALLI: Thank you, Your Honor.

24 MR. MANINGO: Thank you, sir.

25 (Proceeding concluded at 5:06 p.m., until Tuesday,  
26 June 12, 2012, at 9:52 a.m.)

ROUGH DRAFT TRANSCRIPT

004621

ACKNOWLEDGMENT

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

Verbatim Digital Reporting, LLC  
Englewood, CO 80110  
303-798-0890

*Julie Lord*

JULIE LORD, TRANSCRIBER

*8/24/12*

DATE

ROUGH DRAFT TRANSCRIPT

004622



CLERK OF THE COURT

1 JOC

2  
3  
4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 BRIAN KERRY O'KEEFE  
11 #1447732

12 Defendant.  
13

CASE NO. C250630

DEPT. NO. XVII

14 JUDGMENT OF CONVICTION  
15 (JURY TRIAL)  
16

17 The Defendant previously entered a plea of not guilty to the crime of MURDER  
18 OF THE SECOND DEGREE WITH USE OF A DEADLY WEAPON (Category A  
19 Felony), in violation of NRS 200.010, 200.030, 193.165; and the matter having been  
20 tried before a jury and the Defendant having been found guilty of the crime of MURDER  
21 OF THE SECOND DEGREE WITH USE OF A DEADLY WEAPON (Category A  
22 Felony), in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 28<sup>th</sup> day of  
23 August, 2012, the Defendant was present in court for sentencing pro se representing  
24 himself with stand-by counsel, LANCE MANINGO, ESQ. also present, and good cause  
25 appearing,  
26

27 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in  
28 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee to be

004623

1 waived if previously paid, and \$150.00 DNA Analysis Fee including testing to determine  
2 genetic markers to be waived if previously paid, the Defendant is SENTENCED to the  
3 Nevada Department of Corrections (NDC) as follows: TO A MAXIMUM of THREE  
4 HUNDRED (300) MONTHS with a MINIMUM Parole Eligibility of ONE HUNDRED  
5 TWENTY (120) MONTHS plus a CONSECUTIVE term of TWENTY (20) YEARS  
6 MAXIMUM and EIGHT (8) YEARS MINIMUM for Use of a Deadly Weapon; with ONE  
7 THOUSAND THREE HUNDRED NINETY-FOUR (1,394) DAYS Credit for Time Served.  
8  
9

10  
11 DATED this 30 day of August, 2012

12  
13   
14 MICHAEL VILLANI  
15 DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FILED

SEP 24 10 58 AM '12

*Lance A. Maningo*  
CLERK OF THE COURT

BELLON & MANINGO, LTD.  
LANCE A. MANINGO, ESQ.  
Nevada Bar No.: 006405  
732 S. Sixth Street, Suite 102  
Las Vegas, Nevada 89101  
Telephone: (702) 452-6299  
Facsimile: (702) 452-6298  
Email: lam@bellonandmaningo.com  
Attorney for Defendant  
BRIAN O'KEEFE

000250630  
ASTA  
Case Appeal Statement  
1046670



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BRIAN O'KEEFE, )  
 )  
Defendant. )

Case No.: C250630  
Dept. No.: XVII

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Brian O'Keefe.
2. Identify the judge issuing the decision, judgment, or order appealed from: Judge Michael Villani.
3. Identify each appellant and the name and address of counsel for each appellant:  
  
Appellant: Brian O'Keefe  
Counsel: Lance A. Maningo, Esq.  
732 S. Sixth Street, Suite 102  
Las Vegas, NV 89101

///  
///  
///

BELLON & MANINGO, LTD.  
732 SOUTH SIXTH STREET, SUITE 102  
LAS VEGAS, NEVADA 89101  
702-452-6299 • 702-452-6298 FAX

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SEP 24 2012  
CLERK OF THE COURT

- 1 4. Identify each respondent and name and address of appellate counsel:

2 Respondent: Clark County District Attorney  
3 Counsel: Steven B. Wolfson  
4 200 Lewis Ave.  
5 Las Vegas, NV 89101

- 6 5. Indicate whether any attorney identified above in response to question 3 or 4 is  
7 not licensed to practice law in Nevada, and, if so, whether the district court granted that  
8 attorney permission to appear under SCR 42: No.

- 9 6. Indicate whether appellant was represented by appointed or retained counsel in  
10 the district court: Appellant was represented by appointed counsel in the district court;  
11 however, appellant represented himself during his trial with standby counsel to assist him.

- 12 7. Indicate whether appellant is represented by appointed or retained counsel on  
13 appeal: Appellant is represented by appointed counsel on appeal.

- 14 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and  
15 the date of entry of the district court order granting such leave: No.

- 16 9. Indicate the date the proceedings commenced in the district court: Information  
17 was filed December 19, 2008.

- 18 10. Provide a brief description of the nature of the action and result in district court,  
19 including the type of judgment or order being appealed and the relief granted by the district  
20 court: Appellant entered a plea of not guilty to the crime of murder of the second degree with  
21 use of a deadly weapon (Category A Felony). Defendant was found guilty after a jury trial.  
22 Appellant is appealing the judgment of conviction which sentenced him to a maximum of three  
23 hundred months (300) with a minimum parole eligibility of one hundred twenty (120) months,  
24  
25  
26  
27  
28



1 plus a consecutive term of twenty (20) years maximum and eight (8) years minimum for Use of  
2 a Deadly Weapon entered on August 30, 2012 (filed September 5, 2012).

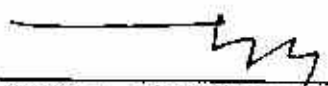
3  
4 11. Indicate whether the case has previously been the subject of an appeal to or  
5 original writ proceeding in the Supreme Court, and, if so, the caption and Supreme Court  
6 docket number of the prior proceeding: This case has been the subject of an appeal in the  
7 Supreme Court. On March 20, 2009, after appellant's first jury trial, he was found guilty of  
8 Second Degree Murder with Use of a Deadly Weapon. He appealed the conviction to the  
9 Nevada Supreme Court, and the conviction was reversed and remanded. The appeal caption  
10 was Brian Kerry O'Keefe vs. The State of Nevada, docket number 53859.

11  
12 12. Indicate whether this appeal involves child custody or visitation: No.

13 13. If this is a civil case, indicate whether this appeal involves the possibility of  
14 settlement: N/A.

15 DATED this 21<sup>st</sup> day of September, 2012.

16  
17 BELLON & MANINGO, LTD.

18  
19   
20 LANCE A. MANINGO, ESQ.  
21 Nevada Bar No. 006405  
22 732 S. Sixth Street, Suite 102  
23 Las Vegas, Nevada 89101  
24 Attorney for Defendant  
25 BRIAN O'KEEFE  
26  
27  
28

BELLON & MANINGO, LTD.  
732 SOUTH SIXTH STREET, SUITE 102  
LAS VEGAS, NEVADA 89101  
702-462-6299 • 702-452-6296 FAX

RECEIPT OF COPY

RECEIPT OF COPY of Defendant BRIAN O'KEEFE'S CASE APPEAL STATEMENT  
is hereby acknowledged this 21 day of September, 2012.

  
CLARK COUNTY DISTRICT ATTORNEY

  
CLERK OF THE COURT

BELLON & MANINGO, LTD.  
LANCE A. MANINGO, ESQ.  
Nevada Bar No.: 006405  
732 S. Sixth Street, Suite 102  
Las Vegas, Nevada 89101  
Telephone: (702) 452-6299  
Facsimile: (702) 452-6298  
Email: lam@bellonandmaningo.com  
Standby Counsel for Defendant  
BRIAN O'KEEFE

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs,

BRIAN O'KEEFE,

Defendant.

Case No.: C250630

Dept. No.: XVII

**REQUEST FOR ROUGH DRAFT TRANSCRIPTS**

TO: COURT RECORDER - MICHELLE RAMSEY

BRIAN O'KEEFE, DEFENDANT named above, by and through his stand by counsel of record, LANCE A. MANINGO, ESQ., of BELLON AND MANINGO, LTD., requests preparation of a mini rough draft transcript of certain portions of the proceedings before the district court, as follows:

Dates of proceedings: 08/16/12  
08/28/12

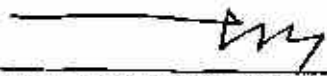
Portions of Transcript Requested: Sentencing hearings.

1 This notice requests a transcript of only those portions of the district court proceedings  
2 which counsel reasonably and in good faith believes are necessary to determine whether  
3 appellate issues are present. Voir dire examination of jurors, opening statements and the  
4 reading of jury instructions shall not be transcribed unless specifically requested above.  
5

6 I recognize that I must personally serve a copy of this form on the above named court  
7 reporter and opposing counsel, and that the above named court reporter shall have ten (10) days  
8 from the receipt of this notice to prepare and submit to the district court the rough draft  
9 transcript requested herein.  
10

11 DATED this 15<sup>th</sup> day of November, 2012.  
12

13 BELLON & MANINGO, LTD.  
14

15   
16 LANCE A. MANINGO, ESQ.  
17 Nevada Bar No. 006405  
18 732 S. Sixth Street, Suite 102  
19 Las Vegas, Nevada 89101  
20 Standby Counsel for Defendant  
21 BRIAN O'KEEFE  
22  
23  
24  
25  
26  
27  
28

BELLON & MANINGO, LTD.

732 South Sixth Street, Suite 102

Las Vegas, Nevada 89101

702-452-6298 • 702-452-6298 FAX

RECEIPT OF COPY

RECEIPT of the above named Defendant's REQUEST FOR ROUGH DRAFT  
TRANSCRIPTS is hereby acknowledged this 16<sup>th</sup> day of November, 2012.

  
\_\_\_\_\_  
MICHELLE RAMSEY

RECEIPT OF COPY

RECEIPT of the above named Defendant's REQUEST FOR ROUGH DRAFT  
TRANSCRIPTS is hereby acknowledged this 16 day of November, 2012.

  
\_\_\_\_\_  
CLARK COUNTY DISTRICT ATTORNEY



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRIAN KERRY O'KEEFE,

Defendant.

CASE NO. 08C250630

DEPT. XVII

BEFORE THE HONORABLE MICHAEL F. VILLANI, DISTRICT COURT JUDGE

THURSDAY, AUGUST 16, 2012

**RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:**

**SENTENCING**

**APPEARANCES:**

For the State:

CHRISTOPHER LALLI, ESQ.,  
Chief District Attorney

For the Defendant:

LANCE A. MANINGO, ESQ.,  
(Stand-by counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, AUGUST 16, 2012

2 [Proceeding commenced at 8:18 a.m.]

3  
4 THE COURT: Brian O'Keefe. Mr. O'Keefe is present. Mr.  
5 Maningo is here. Mr. Lalli is here. Time set for sentencing. Mr.  
6 O'Keefe, is there any reason we can't go forward today?

7 THE DEFENDANT: Yes, Your Honor. First of all, I'm glad to  
8 see you back. You know, I got to clear the air about this. You  
9 know, I know you had to go on vacation. I was really upset with  
10 it, but you know you had that right. So I just want to clear the  
11 air with that.

12 Your Honor, also yes I would like to ask if we could put  
13 this off for a week or two. I just got a copy of my PSI, Your  
14 Honor. And I haven't had a chance to look at it. I spoke with Mr.  
15 Maningo. He said he can see me next Tuesday. There's a couple of  
16 issues I wanted to talk to him about, but I understand it's at your  
17 discretion, Your Honor. You asked if we could wait. I'm asking  
18 for like a week or two.

19 THE COURT: I just want to make sure that you've had an  
20 opportunity to review it and you're ready to make any arguments.

21 THE DEFENDANT: I have not reviewed it, Your Honor. I just  
22 got it 30 seconds ago. If we could get a two-week status check.

23 THE COURT: Well, let's go with Tuesday. There's no reason to  
24 bump it -- it won't take you two weeks to read it.

25 THE DEFENDANT: Mr. Maningo said he can't come see me until



1 Tuesday because he has to go to Arizona, Your Honor.

2 MR. MANINGO: I won't be able to see Mr. O'Keefe until  
3 Tuesday, Your Honor.

4 THE COURT: Would next Thursday, Your Honor?

5 MR. LALLI: I'm not opposed to moving it, Your Honor. I'm in  
6 a trial and Thursday will be another trial date. Perhaps if we  
7 could just move it to the week after next.

8 THE COURT: All right, that's fine. Carol.

9 THE CLERK: August 30<sup>th</sup>.

10 THE DEFENDANT: Thank you, Your Honor.

11 THE CLERK: Is that okay?

12 MR. LALLI: Is that a Thursday?

13 THE CLERK: Thursday.

14 MR. LALLI: Okay.

15 THE CLERK: Is that okay?

16 MR. LALLI: Well, I may not be here on that day.

17 THE CLERK: Do you want to do Tuesday then --

18 MR. LALLI: Tuesday --

19 THE CLERK: -- the 28<sup>th</sup>?

20 MR. LALLI: -- is that okay?

21 THE CLERK: Yeah. The 28<sup>th</sup>.

22 MR. LALLI: Thank you.

23 THE DEFENDANT: August the 28<sup>th</sup>?

24 THE COURT: 28<sup>th</sup>.

25 THE DEFENDANT: Tuesday. Okay.

1 THE COURT: All right.

2 MR. LALLI: Thank you, Your Honor.


3 MR. MANINGO: Thank you, Your Honor.

4 [Proceeding concluded at 8:20 a.m.]

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16 ATTEST: I hereby certify that I have truly and correctly  
17 transcribed the audio/video proceedings in the above-entitled case  
to the best of my ability.

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

21  
22   
23 Michelle Ramsay  
24 Court Recorder/Transcriber  
25

  
CLERK OF THE COURT

1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE,

12 Defendant.  
13

)  
)  
) CASE NO. 08C250630  
)  
)  
)

) DEPT. XVII  
)  
)  
)  
)  
)

14 BEFORE THE HONORABLE MICHAEL F. VILLANI, DISTRICT COURT JUDGE

15 TUESDAY, AUGUST 28, 2012

16 RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING RE:

17 SENTENCING  
18

19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,  
Chief District Attorney

22 For the Defendant:

23 LANCE A. MANINGO, ESQ.,  
(Stand-by counsel)  
24

25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, AUGUST 28, 2012

2 [Proceeding commenced at 8:44 a.m.]

3  
4 THE COURT: Mr. O'Keefe is present in custody. Time set for  
5 sentencing. The jury returned a verdict on June 15, 2012 to the  
6 charge of murder to the second degree with use of a deadly weapon.  
7 Defendant's hereby adjudged guilty of the offense. Argument by the  
8 State?

9 MR. LALLI: Well, Your Honor, I provided these to Mr. O'Keefe.  
10 He'd seen these. What I would like to do is -- can I approach the  
11 Court?

12 THE COURT: Yes.

13 MR. LALLI: I ask that these be admitted as a Court exhibit.  
14 That's Victoria Whitmarsh as the Court knows. That is the person  
15 that Brian O'Keefe murdered. And that is the person that he had  
16 abused literally for years.

17 And the Court heard some about that in the Petrocelli  
18 Hearing that we presented. On January 7<sup>th</sup> he began to slap Victoria  
19 in the face repeatedly causing her nose to bleed. There was an  
20 incident on August 4<sup>th</sup> where the Defendant dropped her off on her  
21 back, poured water all over her certainly to humiliate her.

22 On November 14, 2004 in a separate event, grabbed  
23 Victoria by the arm, pushed her down in the kitchen area, struck  
24 her on the head with his fist and then choked her with one hand  
25 while smothering her with the pillow.

1           The event that occurred on November 26, 2003 I can tell  
2 you I had those photos in my office one day and they were sitting  
3 on my desk and another Deputy, another member of my team, so  
4 somebody who handles homicide cases, walked into my office and said  
5 why are those autopsy photos sitting on your desk up like that.  
6 And I had to explain to that attorney those aren't autopsy photos;  
7 that woman survived that beating.

8           He had her so trained and so conditioned. When she was  
9 in that shape, multiple colors of blue looking literally like she  
10 was dead and the police showed up she told them nothing happened;  
11 everything's okay. And it wasn't until they continued to talk to  
12 her that she began to cry and eventually told the police what had  
13 happened. How he grabbed her by the hair and repeatedly bashed her  
14 head into a cabinet door. He choked her. He screamed at her, I'll  
15 kill you if I find out you're cheating at me. At that point, the  
16 Defendant began punching her over and over and over again, started  
17 to kick her in the ribs and back and the abuse just continued. It  
18 continues event after event after event.

19           This case was really the culmination of years of conduct  
20 by the Defendant and ultimately killing her. I can tell the Court  
21 in -- in the retrial of this matter the Court was not here, but it  
22 was tried by the Senior Judge and the jury had absolutely no  
23 question, no question whatsoever about the Defendant's guilty and  
24 very quickly repudiated any of his absurd defenses or absurd  
25 theories as to what happened. They saw this case for what it

1 really was.

2           So, with respect to what's available. The Court cannot  
3 sentence the Defendant to any more time than he had previously  
4 received. And for the murder that would have been a 25 year  
5 sentence; that is a 25 year sentence with minimum parole  
6 eligibility after 10 years. And for the weapon enhancement, it's  
7 20 years with a minimum parole eligibility after 8 years. And that  
8 is the only sentence that is appropriate.

9           He has done nothing since then. This Defendant has done  
10 nothing since he was sentenced and he committed this murder that  
11 would somehow suggest that a lighter sentence is appropriate. He  
12 has done nothing. And, in fact, we know more about him. You know  
13 more about him than you did when you sentenced him before. And  
14 certainly what you know, those pictures of what he has done to this  
15 woman, this little petite frail woman, cry out for the harshest  
16 sentence you can impose him and that is our request. We'll submit  
17 it.

18       THE COURT: All right. Thank you. Mr. O'Keefe, do you have  
19 anything to say before I impose your sentence?

20       THE DEFENDANT: Yes, I do, Your Honor. Good morning by the  
21 way, Your Honor.

22       THE COURT: Good morning, sir.

23       THE DEFENDANT: Wow, this is very hard, Your Honor. You know,  
24 there is a lot of remorse I have. A tragedy has happened, but  
25 repeatedly again you just heard the State tell one side of a story

1 that it was exactly that; one side. Always their side.

2 Okay. For the record first of all, Your Honor, I must  
3 state since I am in pro se at my choice that I do believe that this  
4 proceeding is in violation of the laws and treaties of the United  
5 States Constitution 5<sup>th</sup> Amendment double jeopardy, collateral  
6 estoppel especially and my due process absolutely is being  
7 violated.

8 You know that I filed in the Federal Court. It was  
9 denied without prejudice. I appealed to the 9<sup>th</sup> Circuit. The 9<sup>th</sup>  
10 Circuit has ordered full briefing. So it is where it is.

11 I allowed the third trial happen because I put all my  
12 eggs in a basket and I believe what I believe. It's a violation.

13 I must say for the record since this is my chance; this  
14 is my life, Your Honor. My first trial is such a violation, Your  
15 Honor. There was so many Court rulings. No offense --

16 THE COURT: Okay, sir. Let me stop you right there. You're  
17 talking about appeal issues. This is a time for sentencing, okay.  
18 And if you want this conviction appealed, then -- then the  
19 appropriate action will be taken.

20 At this point what issues do you want me to consider as -  
21 -

22 THE DEFENDANT: Okay, Your Honor.

23 THE COURT: -- far as mitigate --

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: -- mitigation --



1 THE DEFENDANT: Okay.

2 THE COURT: -- of this crime. We're not going to hash out  
3 your appeal.

4 THE DEFENDANT: Well, part of the third trial, Your Honor,  
5 when you were on vacation by Judge Bonaventure first of all he  
6 ordered another PSI, why? We already had a PSI on this case. I've  
7 been incarcerated for years. I've never been out. And the PSI was  
8 ordered on April 29, 2009, you know. I don't even know why he --  
9 Judge Bonaventure with all due respect and he's a great Judge, but  
10 he was lost in all the pre-trial rulings and everything. He had no  
11 idea what was going on. He had no idea that the misdemeanor had  
12 acts that Mr. Lalli had his second chair file on January 6, 2011  
13 was the same evidence that was litigated in the first trial. You  
14 violated, you rape collateral estoppel. The law of the case, the  
15 Supreme Court Rule 123, Your Honor.

16 They had no new evidence. It was the same standard of  
17 proof. It was the same offense that you charged me and you took me  
18 to trial when Mr. Lalli did. You had the writ that was filed  
19 trying to object that by my prior counsel. She didn't really stand  
20 up for me. She was not totally effective. She litigated in that  
21 writ which will be brought out that the State presented any new  
22 evidence, there was no new evidence. Every piece of evidence they  
23 had they had to muster up the first trial and they did. You  
24 litigated it, Your Honor. You ruled that the felony battery  
25 domestic violence would be allowed. Only that. Wrongfully against

1 NRS 48.061. You used the battery domestic violence. You based the  
2 battery domestic violence and there was no battery domestic  
3 violence in progress.

4 The 9-1-1 call which Mr. Lalli refused and would not  
5 allowed to be played; they said the manager that nobody was  
6 fighting. There was no domestic going on. There was no direct  
7 evidence. There was no direct witnesses. There was nobody heard  
8 anything. They admitted that. It was on the 9-1-1.

9 What nobody knew before that Ms. Whitmarsh was very ill,  
10 Your Honor. She had so many mental hosts, bipolar 1, 2,  
11 schizophrenia, borderline personality traits, agoraphobic, major  
12 manic depressant. She had Hepatitis C. She had cirrhosis of the  
13 liver.

14 Now these photos that he's trying to bring in that case  
15 was never litigated in the Court of law. It was dismissed. It was  
16 a misdemeanor. There was somebody involved that night and he knows  
17 it. The case was dismissed and thrown out. There's no plea  
18 agreement. Show it. Ms. Whitmarsh --

19 THE COURT: Address --

20 THE DEFENDANT: -- made statements --

21 THE COURT: -- address your comments --

22 THE DEFENDANT: -- about the case --

23 THE COURT: -- sir, listen. Address your comments to me, not  
24 to the attorneys.

25 THE DEFENDANT: Ms. Whitmarsh made so many different

1 statements to police nobody knew that she was ill; that she was  
2 being crazy. It didn't mean that she was a bad person. I loved  
3 her the way she was. I've accepted it.

4 Now the neighbors downstairs said they heard all kinds of  
5 doors and slamming and all this. I can't dispute it because I was  
6 drunk in the car. I hate myself for getting drunk. I don't know  
7 what she was doing, but she was up to no good. And she attacked me  
8 and I get charged with murder. Yet, I took a polygraph and I  
9 didn't fail it.

10 I begged the cops to come in and help me. I didn't  
11 leave. They taze me. I tried to stop the bleeding. I was in  
12 shock. I was so drunk. You guys violated me every which way.  
13 They destroy evidence. They never had any quantitative proof of my  
14 actual stating. Yet she was three times the legal limit  
15 intoxicated ethanol at the time of the autopsy. She was over the  
16 level on prescription meds. She even self admitted statements that  
17 when she didn't get her way, she was pissed as hell because I made  
18 her drive home because she wanted to leave. Then she didn't have  
19 dinner.

20 And [indecipherable] you know what -- and yet they had no  
21 case in the Supreme Court and Nevada said what did you do, they  
22 flagged you for abusive discretion because the evidence didn't  
23 support murder. Maybe involuntarily manslaughter at most, but you  
24 guys tried to imply malice murder with no direct evidence. I never  
25 made any statements of collateral intent. I right off the bat in a

1 drunken state honest I said she tried to stab me. The truth. I'm  
2 the only one who had the physical wounds of assault  
3 [indecipherable]. And you don't think I live every night I hated  
4 because I was -- she was in between me and the doorway and I just  
5 wanted to get out of the room and I pushed her back on the bed and  
6 the knife went in her side. It was a partial puncture. She's  
7 right handed. It was on this side.

8 If I stabbed her, it would have been on the other side,  
9 but the police made up all these stories that my hands got cut  
10 because it slipped off the knife. There was no blood. How could  
11 it slip off when there's one wound? And the evidence supports that  
12 and you know that.

13 At most they had an involuntary manslaughter case, but  
14 because of all those pictures and prior cases, I was automatically  
15 guilty when the police rolled. They've seen the prior  
16 [indecipherable] case to this, bring it out that I was acquitted  
17 of. They found somebody else's DNA in her, but yet she didn't mess  
18 around that night and I claimed she -- I was jealous and the  
19 Detective asked her in that case who were you messing around and  
20 she said absolutely not. He said hey don't get mad at me, but  
21 since you claimed he raped you we got to do a swab on you. And  
22 when they swabbed her, they found someone else's DNA. And the  
23 State lost that case. You think they're not prejudiced against me?

24 Every time the police came, they didn't know she was  
25 mentally ill and she was drunk every time. And now he wants to

1 bring photos from nine years ago. He got a conviction out of me.  
2 He should of.

3 THE COURT: Sir --

4 THE DEFENDANT: He's a top prosecutor.

5 THE COURT: -- address your comments to me and this is your  
6 time to establish mitigation so -- that I will -- that you want me  
7 to --

8 THE DEFENDANT: Your Honor --

9 THE COURT: -- take into consideration so I lessen the  
10 potential sentence for you.

11 THE DEFENDANT: -- I feel absolutely terrible for getting  
12 drunk that night. I told you on May 9<sup>th</sup> of 2009 at the first  
13 sentencing on this same case, again I felt totally responsible  
14 'cause I got drunk. No, I didn't mean responsible 'cause I did it.  
15 The experts in the second trial destroyed Mr. Lalli. They  
16 absolutely said there's no way that that could be proven or it was  
17 more consistent with accidental.

18 The coroner herself, Dr. Benjamin, even changed her  
19 testimony. Now she went from homicide to possible accidental that  
20 couldn't be ruled out. Possible undetermined. This is their  
21 coroner. Wait a minute. Which is it? I mean, come on. They all  
22 said if it was an intentional stabbing it would have gone all the  
23 way in, but it only went in partial. And it was on the wrong side  
24 of the body and the angle was bad. They don't want to admit that  
25 she was pushed back and it went in her side and I didn't even know

1 the dark room.

2 Three trials on the same case, the same [indecipherable],  
3 the same evidence wrongfully used the same charge. First jeopardy  
4 ended, Your Honor.

5 THE COURT: Okay, sir, listen to me again. This is the time  
6 for sentencing. The time for appeal is down the road, okay. And  
7 you can talk to Mr. Maningo. It sounds like you're dissatisfied  
8 with the result. Mr. Maningo, if you want to be appointed for  
9 appellate counsel I can go ahead and do that after the JOC has been  
10 filed.

11 MR. MANINGO: Thank you, sir.

12 THE COURT: You can do that. You're arguing appeal issues.  
13 Today's the time for sentencing.

14 THE DEFENDANT: Okay, Your Honor. So --

15 THE COURT: Sir, this will be the last time I advise you of  
16 that. You're representing yourself and I told you under the same  
17 rules as an attorney. An attorney at sentencing is going to argue  
18 mitigation issues. I understand you disagree with the jury's  
19 verdict. They have spoken. The Supreme Court will resolve the  
20 issues you are bringing up now.

21 What do you want me to take into consideration in  
22 mitigation? And I understand you dispute or you disagree with the  
23 jury verdict.

24 THE DEFENDANT: Your Honor, you're telling me you want me to  
25 hold and conduct myself as an attorney. What about the actions of

1 the prosecutor of the State?

2 THE COURT: Sir, we're not going there. What do you want me  
3 to consider for your sentencing so I -- I'm assuming you want to  
4 the bare minimum sentence here. Give me reasons to sentence you to  
5 -- to at least amount of years in prison.

6 MR. LALLI: Your Honor, the record should reflect that the  
7 Defendant shook his head no.

8 THE COURT: That is accurate. Anything else to say, sir?

9 THE DEFENDANT: I want you to consider at least, Your Honor,  
10 that my DNA fee has been repeatedly taken out and the assessment  
11 fee has already been paid. I'm under the prior -- and this is from  
12 2008, no other fees are applied.

13 Ask -- I'm going to ask you, Your Honor, since I'm in pro  
14 se still and this will be the last time probably, that you make  
15 sure that it's not put in the JOC. Have Carol, Ms. Donahoo, take  
16 it out. Last time she put it in even though you said not to. So  
17 it doesn't get it -- again, I'm going to ask you to ask Mr. Maningo  
18 to assist me in getting those fees returned. Mr. Lalli did agree  
19 and submitted an order. And I'll say this now because you're going  
20 to sentence me and you're going to add it in the end and that's why  
21 it's important. To assist in getting that DNA fee back please,  
22 Your Honor.

23 Also, while I have the chance 'cause this is the last  
24 time, can you tell me the status of my transcripts after you get  
25 done sentencing me or now, Your Honor.



1 THE COURT: I have no idea, sir.

2 THE DEFENDANT: Okay.

3 THE COURT: Your appellate counsel will check into that.

4 THE DEFENDANT: And for the record again, are you stating to  
5 me that you have already appointed Mr. Maningo?

6 THE COURT: No. I haven't said that. I'm going to inquire  
7 after I sentence him if he wants to take the appointment. We'll  
8 wait for the judgment of conviction to be filed. I can appoint him  
9 now and he knows the rules as far as filing your appeal. Anything  
10 else, sir, you want me to take into consideration for your  
11 sentence?

12 THE DEFENDANT: Your Honor, I just -- again, you know, you're  
13 a pretty fair Judge and I know it's been hard on you. I know it's  
14 been hard on everybody. It's been hard on her family. It's been  
15 hard on my family. And I can't change what happened that night. I  
16 walked in and it happened and it happened so quick. And I didn't  
17 leave her side and I wouldn't leave her.

18 There's never ever been a weapon involved. I'm against  
19 weapons. I don't allow them. Of course, the police never found  
20 nothing in my place. It was clean. It was immaculate.

21 It's not where you live. I was always taught it was how  
22 you live. I can only say I didn't do this and I'll fight to the  
23 end, Your Honor.

24 THE COURT: All right. Thank you, sir. Mr. Maningo, do you  
25 have anything to say as stand-by counsel at this point?

1 MR. MANINGO: Only with respect to Mr. O'Keefe's last request  
2 with respect to the DNA fees. You did previously sign an order  
3 relative to that for the hundred seventy-five dollar return.

4 THE COURT: Okay. All right.

5 In the accordance of the laws of the State of Nevada,  
6 this Court on the -- the Court sentences you as follows, sir, on  
7 the murder of the second degree, the Court sentences you to a  
8 maximum term of 300 months, minimum term of 120 months. For the  
9 weapon enhancement, Court sentences you to a maximum term of 20  
10 years, minimum term of 8 years. Per statute, the weapon  
11 enhancements to run consecutive to the underlying sentence.

12 If the administrative assessment fee has been paid, that  
13 is waived. The DNA fee is waived as apparently it has been paid.  
14 And Defendant is entitled to 1,380 days credit for time served.

15 THE DEFENDANT: Your Honor --

16 THE COURT: Well, actually it should be more.

17 THE DEFENDANT: -- one thousand --

18 MR. LALLI: Yeah, it's --

19 THE DEFENDANT: -- three hundred ninety-three, Your Honor,  
20 with all due respect.

21 THE COURT: That was on as of August 16<sup>th</sup>.

22 MR. LALLI: I had it 1394.

23 THE DEFENDANT: I'll take that extra day if the State doesn't  
24 mine, Your Honor.

25 MR. LALLI: No. We'll give Mr. O'Keefe an extra day.