

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Tracie K. Lindeman
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STATE OF NEVADA
Plaintiff,
vs.

Sup. Ct. Case No. 69049
Case No. CR94-0345
Dept. 8

CHARLES JOSEPH MAKI,
Defendant.
_____ /

RECORD ON APPEAL

VOLUME 6 OF 9

DOCUMENTS

APPELLANT

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RESPONDENT

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
DEFENDANT

CASE NO. CR94-0395

v.

DEPT. No. 8

STEVEN KOSACK, Hon. Judge, Etc.
2ND JUDICIAL COURT DEPT. 8.IN AND FOR THE COUNTY OF WASHOE.
RESPONDENTBY
JACQUELINE BRYANT
CLERK OF THE COURT

2015 FEB 17 AM 9:01

FILED

WRIT OF PROHIBITION / WRIT OF MANDAMUS

COMES NOW, CHARLES MAKI DEFENDANT IN FORMA PAUPERIS,
WITH THE ASSISTANCE OF AN INMATE WITH LEGAL KNOWLEDGE IN
WRITING AND PREPARING THIS CAUSE OF ACTION COMPLAINS OF
RESPONDENT SUPRA, OF CONTINUING IRREPARABLY INJURED BY THE
CONDUCT OF THE RESPONDENT SUPRA. THE PERSON SEEKING THE WRIT
IS ENTITLED TO THE REMEDY BY CLEAR AND UNDISPUTABLE, UNEQUIVOCAL
OR ABUNDANTLY CLEAR EVIDENCE. SEE KNOWLES V. SCOFIELD, SUPRA AT
860, AND THE CASES THEREIN CITED.

JURISDICTION.

THIS WRIT OF PROHIBITION / WRIT OF MANDAMUS ALLEGED
DEFENDANTS DUE PROCESS AND EQUAL PROTECTION OF THE LAW,
OF HIS RIGHTS, UNDER NEVADA LAW AND THE UNITED STATES
CONSTITUTION OF THE (FIRST), (FOURTH), (FIFTH), (SIXTH), (EIGHTH),
(NINTH) AND (FOURTEENTH) AMENDMENT, WERE VIOLATED BY THE

V6. 940

ACTIONS OF HERIN - ABOVE NAMED RESPONDENT SUPRA, "BY NOT"
 ALLOWING DEFENDENT WITH EFFECTIVE COUNSEL OVER THE PAST
 21 YRS. TO PROVE HIS FACTUAL-INNOCENCE OF THE CRIME OF
 SEXUAL ASSAULT/LEWDNESS, THAT HE NEVER COMMITTED..

JURISDICTION IN THIS WRIT OF PROHIBITION/WRIT OF MANDAMUS
 IS HERE BY ENVOKE PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; NRS. 34.170;
 NRS. 34.570; NEVADA RULES OF CIVIL PROCEDURE; NEVADA CONST-
 ITUTION, ARTICLE NO. 6, SUB. SECTION (6), ALSO BARNES V. EIGHTH JUDICIAL
 DISTRICT COURT FOR THE STATE OF NEV. IN AND FOR CLARK COUNTY, 103 NV.
 679, 748 P2d. 483 (1987); MONTGOMERY V. PINCHAK, 294 F3d 492, AT
 499 (3RD CIR. 2002); FARMER V. HAAS, 990 F2d 319, AT 322 (7TH CIR. 1993);
 PARHAN V. JOHNSON, 126 3d 454, AT 461 (3RD CIR. 1997); HAINES V. KERNER,
 404 U.S. 519, AT 520-21, 92 S. CT. 594 (1972)..

LEGAL AUTHORITY IN SUPPORT OF THIS PROCEEDING..

PLEADING FOR WRIT OF PROHIBITION/WRIT OF MANDAMUS IS
 THE RIGHT PROCEEDING TO BRING INTO THIS HONORABLE COURT FOR FURTHER
 BRIEFING, SHOWCASE HEARING WITH THE APPOINTMENT OF LEGAL
 COUNSEL, PURSUANT TO NRS. 34.750 AND HAS NO PLAN, ADEQUATE OR
 COMPLETE REMEDY'S AT LAW TO RE-ADDRESS THE GRAVE FUNDAMENTAL
 MISARRANGE OF JUSTICE PURSUANT TO STATE V. MITCHELL, 122 NV
 1269, 149 P3d 33 (2006)..

DEFENDENT REALLEGES AND INCORPORATES BY REFERENCE DEFENDENT'S
 MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT TO SUPPORT OF
 THIS MOTION FOR APPOINTMENT OF COUNSEL SHOWING SUFFICIENT ENOUGH
 FACTUAL-EVIDENCE TO OVER COME ANY PROCEEDURAL BARR TO ANY
 UN-TIMELY OR SUCCESSIVE PETITION BY DEFENDENT, SHOWING HIS "FACTUAL-

1 INNOCECE" OF THE CRIME OF SEXUAL ASSAULT/ LEWDNESS AND HIS
 2 ILLEGAL CONVICTION OF OVER 21 YRS AGO MUST BE REVERSED AND/OR
 3 A NEW TRIAL [WITH THE ASSISTANCE OF EFFECTIVE COUNSEL] TO
 4 PROVE HIS FACTUAL-INNOCECE OF THE CRIME SEXUAL ASSAULT/
 5 LEWDNESS FOR WHICH HE WAS ARRESTED AND CONVICED OF OVER 21 YRS
 6 AGO.

8 MATTERS- OUTSIDE THE RECORD.

(1) 10 ON JAN. 19-1994 2 DETECTIVES CAME TO MY PLACE WHILE MYSELF AND A COUPLE
 11 FRIENDS OF MINE WERE DRINKING AND WORKING ON MY TRUCK SINCE EARLY
 12 MORNING. DETECTIVES TOLD ME I HAD TO GO TO POLICE STATION WITH EM
 13 TO ANSWER QUESTIONS, [I FELT I HAD NO CHOICE!]

(2) 14 ON JAN 24. 1994. I FINALLY GO TO MY ARRANGMENT WHERE I FINALLY MET
 15 MY (P.D.) MS. JANET COBB SMITH, LIKE 15 MINUTES BEFORE COURT.
 16 THE FIRST THING SHE TELLS ME IS THAT THINGS ARE DONE HER WAY ONLY
 17 AND I HAVE NO SAY IN THE MATTER. I ALREADY FEEL UNCOMFORTABLE WITH
 18 HER.

(3) 19 DURING OUR 10 MINUTES OR SO OF GETTING TO KNOW EACH OTHER (I)
 20 TRIED TO EXPLAIN TO HER WHAT I THOUGHT WAS THE REASON I WAS
 21 BROUGHT IN, ACCUSED OF AND ARRESTED FOR. [SHE DIDN'T SEEM TO INTERESTED]
 22 BUT I TOLD HER WHAT I COULD ANYWAY.

(4) 23 IT STARTED, WITH MR GARY MENESS MY NEIGHBOR NEXT DOOR.
 24 THE ALLEGED VICTIMIS (STEP-FATHER) IT STARTED ROUGHLY (3-4)
 25 MONTHS PRIOR TO MY ARREST, MR MENESS WAS A DRINKING INDIVIDUAL
 26 WHO WORKED AT BOOM TOWN CASINO, A 21 DEALER. AT FIRST I THOUGHT
 27 HE WORKED LONG HOURS, BECAUSE HIS 2- GIRLS WOULD COME HOME FROM
 28 SCHOOL AND BE BY THEMSELVES ALOT- OR GO TO THE COLLEGE BARS ACROSS

1 ACROSS THE ALLEYWAY, WERE THEY WOULD GO OUT BACK IN THE
2 FENCED (WOODEN) YARD, TILL EITHER THERE DAD CAME HOME OR
3 I'M GUESSING, TILL THE MANAGER TOLD E'M THEY HAD TO LEAVE..

(5) 4 MR. GARY MANESS AND MYSELF WERE NOT REALLY FRIENDS - JUST BASICALLY
5 NEIGHBORS. (I) ACTUALLY CALLED THE WELFARE DEPT. ON HIM (UN-IDENTIFIED)
6 TO REPORT HIS NEGLECT [AS I HAVE KIDS OF MY OWN]. THEY DID COME OUT
7 TO SEE HIM. FROM WHAT HE SAID TO ME (AFTER) WAS THEY JUST THOUGHT HIS
8 APT. WAS TOO DIRTY, [WHICH IS VERY TRUE], (I) HAD HELPED HIM LOAD 10-12
9 LARGE GARBAGE BAGS OF TRASH FROM HIS APT. INTO MY TRUCK, TO THE DUMP!

(6) 10 A DAY OR SO LATER WE SAT ON THE PORCH DRINKING A COUPLE OF BEERS,, -
11 THIS IS WHEN HE TOLD ME, HE HAD A RUN-IN WITH WELFARE DEPT BACK IN
12 1992. THAT APPARENTLY THE PEOPLE WHO LIVED IN THE SAME APT. I DID ABOUT
13 "(2) YEARS PRIOR," CALLED THE WELFARE DEPT. ON HIM FOR "RUNNING
14 AROUND IN FRONT OF HIS (TWO) GIRLS WITHOUT CLOTHES ON", WITH HIS
15 APT. DOOR OPEN.. AND THEN BRAGED HOW HE BEAT THE SYSTEM TWICE NOW...

(7) 16 HE DID ASK ME TO LOOK AFTER HIS (2) GIRLS ON OCCASION. [AS I WAS WAITING
17 FOR A VERY LARGE LIFE CHANGING SETTLEMENT] FROM A LAWSUITE, AND SITS
18 BOTH. AFTER I SPENT 3 MONTHS IN HOSPITAL - 8 MONTHS BODY CAST, SO I
19 WAS AT HOME ALOT OF TIMES BETWEEN PHYSICAL THERAPY.

(8) 20 I EVENTUALLY FOUND OUT THAT GARY MENESS WOULD GO TO THE GOLD DUST
21 WEST CASINO AFTER WORK, DRINKING AND PLAYING SLOTS. WHICH EXPLAINED
22 WHY HE CAME HOME SO LATE, SO MANY TIMES [I'M TALKING 9-10 PM] AS THE GIRLS
23 USUALLY GOT HOME 330-4PM..

(9) 24 ONE DAY MR. MENESS TOLD ME HE HAD A LADY FRIEND OF HIS IN WASHINGTON
25 STATE, (WHO WAS ALSO A 21 DEALER) WAS GOING TO COME DOWN TO LIVE WITH
26 HIM. HE LEFT, AND I BELIEVE TO THE (2) GIRLS TO THEIR MOMS IN
27 CALIFORNIA SOMEPLACE. ABOUT 3 DAYS LATER HE WAS BACK WITH THE
28 GIRLS AND HIS LADY FRIEND (GAL), DO NOT KNOW HER LAST NAME. 943 CARE.

HE DID SEEM A LITTLE OVER PROTECTIVE OF HER AT TIMES, THOUGH.
 I REALLY DIDN'T CARE, AS I WAS DATE(ING) A FEW WOMEN AT THE TIME.
 (10) MR. MENESS, WOULD GO TO WORK AND HIS LADY FRIED (GALE) WOULD STAY
 AT HOME ALOT, THE FIRST WEEK OR TWO. SHE HAD NO CAR OR JOB AS YET.
 SO WE STARTED TO TALK AND GET TO KNOW EACH OTHER, AS FRIENDS! ABOUT
 THE 2ND/3RD WEEK SHE FINALLY GOT A JOB AT SIERRA SIDS CASINO, AS A
 21 DEALER, AND SOON AFTER GOT A CAR..
 (11) ONE DAY (GALE) CAME OVER AFTER THE GIRLS WENT TO SCHOOL AND GARY HAD
 GONE TO WORK, SHE ASKED ME OUT TO BRUNCH, I ACCEPTED.. LATER ON
 THAT NIGHT I OVER HEARD THEM ARGUING ABOUT SOMETHING, SO I TOOK MY
 SHEPHERD OUT FOR A WALK, [AS I DID NIGHTLY.] AND LOTS DURING THE DAY.
 (12) THE NEXT DAY AFTER I GOT HOME, EVERYONE WAS GONE BUT HER, SHE TOLD
 ME SHE COULDN'T LIVE WITH GARY ANY MORE, THAT THE PLACE WAS A DUMP
 AND IT SMELLED BAD, AND ASKED IF SHE COULD STAY WITH ME TILL SHE FOUND
 A PLACE TO LIVE. (I) TOLD HER OK! I KNOW HOW BAD GARY MENESS'S APT
 WAS, AS I'VE BEEN IN IT A FEW TIMES MYSELF, [IN THE GIRLS ROOM THE
 CEILING HAD A LEAK THAT RAN DOWN THE WALL,] AS I WAS A JOURNEYMAN
 ROOFER I SPOKE TO THE LANDLORD ON HIS BEHALF, ABOUT IT.
 (13) GALE MOVED IN - SHE DIDN'T HAVE ALOT.. ONCE GARY GOT HOME, HE OBVIOUSLY
 SEEN HER AT MY APT. BUT DID NOT SAY ANYTHING FOR A COUPLE DAYS, TO
 ME AT LEAST. [HE FINALLY DID COME OVER DRUNK] OR HAD BEEN DRINKING
 AND ASKED WHY SHE WAS AT MY PLACE? THEN NOTICED SHE ALSO BOUGHT
 ME SOME ITEMS FOR THE APT. ALONG WITH SOME PERSONAL ITEMS FOR ME.
 "HE THREW A FIT". I KICKED HIM OUT OF MY APT. THIS WAS IN NOV. 1973.
 SHE LEFT A COUPLE WEEKS LATER!
 (14) MY SISTER JACKIE/ESTHER WOULD COME OVER A COUPLE DAYS/NIGHTS A
 WEEK, SOMETIMES HER AND HER TWO GIRLS WOULD SPEND THE NIGHT, SHE HAD
 ALSO MET (GARY - MR. MENESS) A COUPLE OF TIMES.

1 ON NEW YEARS EVE, 1993-94 my SISTER CAME OVER TO my APT. SHE
2 AND HER Boy FRIEND HAD APPARENTLY BROKE UP, FOR WHAT EVER REASON.
3 SO WE HAD A FEW DRINKS, AT THE APT. (SHE LOOKED BEAUTIFUL) SHE HAD HER
4 HAIR DONE AND A NEW DRESS FOR NEW YRS. AND TO GO OUT WITH HER Boy FRIEND.

(15) 5 GARY, CAME OVER AND SEEN my SISTER, AT FIRST HE WAS KOOL - NICE,
6 THEY MADE SMALL TALK, (HE) LEFT. AFTER AWHILE HE CAME BACK OVER
7 "BUT INTOXICATED", AND STARTED TALKING RUDELY TO my SISTER, BUT SHE
8 HANDLED IT HERSELF.. (AGAIN HE LEFT). JUST BEFORE NEW YRS (12pm)
9 AS my SISTER WAS SLEEPING ON my COUCH, GARY MEANLESS SHOWED UP
10 AGAIN DRUNK, DEMANDING TO HAVE SEX WITH my LITTLE SISTER, BECAUSE
11 HIS X- GIRL FRIEND LEFT HIM AND MOVED IN WITH ~~him~~ ME, "SO, I PUNCHED HIM
12 SQUARE IN HIS FACE" HARD!, AND WOULD DO IT AGAIN TOO.. TOLD HIM HE WILL
13 NOT DISRESPECT my LITTLE SISTER LIKE THAT PERIOD!! (SHE WAS OVER 21)..

(16) 14 "HE YELLED AT ME", THAT FIRST IT WAS HIS GIRL FRIEND, NOW HE'S BLAMING
15 ME CAUSE HE COULDN'T HAVE SEX WITH my SISTER. "AND TELL'S ME THAT
16 PAY BACK IS A BITCH". A COUPLE OF WEEKS LATER 2 DETECTIVES CAME
17 TO my APT. AND TAKE ME AWAY AS I WAS DRINKING AND WORKING ON my TRUCK
18 WITH A COUPLE OF FRIENDS..

(17) 19 AS TO ANY THING PERTAINING TO THE CRIMINAL ASPECT (I REFER TO my AFFIDAVIT).

20

(18) 21 I DID TELL my P.D. MS. SMUCK TO CALL SOME PEOPLE OR TO GO SEE E'M.

22 I'VE KNOWN EACH A LONG TIME OR HAVE DATED E'M FOR MONTHS.

23 THE FOLLOWING PARAGRAPHS [ARE CONVERSATIONS I HAD WITH EACH WHILE
24 IN JAIL] TRYING TO GET E'M TO COME TESTIFY IN my BEHALF. ALL IS TAKEN FROM
25 NOTES I MADE OF EACH CONVERSATION..

(A) 26 MS. CARLA SCARPA I'VE KNOWN SINCE 1980 OR SO. KNEW HER X-HUSBAND AND SON.

27 * CARLA, I SPOKE TO HER ON THE PHONE, SHE TOLD ME THAT MS. SMUCK AND

28 AND HER INVESTIGATOR DID GO TO HER HOUSE, AT LEAST SHE ASKED ME IF I WAS

1 THEM, AS THEY JUST SAT ACROSS THE STREET IN A MUSTANG CAR,
 2 FOR ABOUT 20 MINUTES OR SO, THEN JUST DROVE AWAY.
 3 (NOW) I ASKED MS. SMUCK ABOUT THIS! SHE TOLD ME THAT SHE WENT
 4 TO SEE CARLA AND THAT CARLA WAS DRUNK WHEN SHE OPENED THE DOOR.
 5 (I) TOLD MS. SMUCK SHE IS A LIAR. I'VE NEVER SEEN CARLA EVEN HAVE A
 6 DRINK, NOR DID SHE SMOKE! IN ALL THE YEARS I'VE KNOWN HER...

(B) 7 MS. GALE THOMAS. I KNEW GALE THROUGH MY SISTER, WE DATED FOR ABOUT 1 YR.
 8 SHE WAS A KENO RUNNER AT KARL'S SILVER CLUB IN SPARKS NV. (NOW)
 9 MS. SMUCK TOLD ME SHE DID NOT HAVE TIME TO GO SEE HER AT HER JOB,
 10 IN THE DAY TIME, THAT IF GAIL WANTED TO TALK TO HER - TO CALL HER
 11 OFFICE.. [GAIL TOLD ME SHE TRIED CALLING NUMEROUS TIMES] AND
 12 FINALLY SAID THE HEL WITH IT..

(C) 13 LINDA STALING. I MET LINDA AT WASHOE MEDICAL CENTER, SHE WAS ONE
 14 OF MY NURSES WHILE I WAS HOSPITALIZED FOR 3 MONTHS. WE DATED ABOUT
 15 6-7 MONTHS TILL JUST A FEW DAYS TILL I WAS ARRESTED MATTER FACT.
 16 SHE AND HER 2 BOYS WERE GOING BACK TO CALIFORNIA. [I SPOKE TO LINDA ON
 17 THE PHONE]. SHE SAID THAT SMUCK DID COME TO SEE HER, BUT, ACCORDING TO
 18 LINDA, SMUCK MAINLY JUST TALKED ABOUT HER JOB AS A P.O. AND VERY LITTLE
 19 ABOUT THE DEFENDENT, (LINDA) SAID THAT SHE WOULD COME TO COURT IN
 20 DEFENDENT'S BEHALF, BUT SMUCK TOLD HER THAT IT REALLY WASN'T
 21 NECESSARY AND LEFT. LINDA SAID SHE WAS UPSET AT HER..

(D) 22 MR. KEN DANFELS. I KNEW KEN SINCE ABOUT 1981 WE USED TO WORK FOR LUCKY
 23 CONCRETE CO. TOGETHER, FOR 17-18 MONTHS THEN HE GOT MARRIED WITH KIDS.
 24 FOR 2 YRS TILL I WAS ARRESTED WE SEEN EACH OTHER 2-3 TIMES A WEEK,
 25 WENT ON A COUPLE OUTINGS TOGETHER. [I SPOKE TO KEN ON PHONE] HE SAID
 26 THAT SMUCK'S INVESTIGATOR ACTUALLY LEFT HIS CARD ON HIS DOOR. KEN SAID
 27 HE TRIED TO CALL 4-5 TIMES. FINALLY HE WENT DOWN TO SEE SMUCK AT HER
 28 OFFICE, [KEN SAID, SMUCK TOLD HIM, HIS TESTIMONY WAS NOT V6. 946]

1 KEN TOLD ME HE WAS GOING TO SHOW UP ANY WAY. AND HE DID!

** (E) 2 PAUL GRUBB^S HE WAS MY DOWN STAIRS NEIGHBOR, [HIS SON WAS JOHN].

3 HE WAS WORKING ON MY TRUCK WITH ME ON THE DAY OF MY ARREST.

4 REFER TO SWORN AFFIDAVIT OF PAUL GRUBB^S EXHIBIT NO. 3.

* (F) 5 NOW EVERYONE I'VE MENTIONED SO FAR, WAS IN THE HALLWAY OUTSIDE

6 THE COURT ROOM ON THE DAY OF MY TRIAL. (I) TOLD MS. SMUCK, IN A COCKY

7 SORT OF WAY, SEE I TOLD YOU THEY WOULD COME! [SMUCK THEN TELLS ME

8 THE D.A. WILL NOT LET E'M IN TO TESTIFY FOR ME.] [THAT SHE WOULD NOT

9 BRING E'M IN PERIOD.] BUT, SHE DID LET DANIEL JOHNSON TESTIFY, I HAD

10 NOT SEEN HER IN ABOUT 5-6 YEARS, BUT SHE CAME 400⁺ MILES TO HELP ME

11 IF AT ALL POSSIBLE...

→ (G) 12 MY SISTER ESTHER / AKA JACKIE SHE SPOKE TO MS. SMUCK A COUPLE OF

13 TIMES. ONCE IN PERSON TO GIVE HER MY HEARING AIDS. SHE WAS THE ONE

14 WHO TOLD ME THAT [MS. COOMBS] WAS COMING TO LIE AT MY SENTENCING.

15 SHE ALSO TOLD MS. SMUCK, AFTER I SPOKE TO MS. SMUCK IN REGARDS TO

16 MS. COOMBS COMING, AND HOW I WANTED TO SUPPENA MR. MIKE FRIED / AKA

17 COLONEL TO TESTIFY IN REGARDS TO MS. COOMBS, (I) WROTE A LETTER 2^{1/2} WEEKS

18 PRIOR TO SENTENCING TO MS. COOMBS! [MY SISTER DID NOT LIKE MS. SMUCK AT ALL!]

(G1) 19 RIGHT BEFORE TRIAL (DAY BEFORE) MY SISTER HAD BROUGHT ME SOME NICE

20 CLOTHES FOR COURT, MS. SMUCK REFUSED TO ALLOW ME TO HAVE THEM!

21 INSTEAD GOT SOMETHING FROM (?). I INDID UP WITH A PAIR OF BROWN

22 CORDOBY PAWIS 2-3 INCHES TO SHORT, NO-BELT, A PAIR OF UGLY TENNIS SHOES

23 TO BIG FOR ME, AND A BRIGHT PURPLE RAYON BALLON PUFF SLEEVES...

24 I LOOKED LIKE A RETARDED CLOWN FROM THE 70^S. SMUCK PURPOSELY MADE

25 ME LOOK LIKE THAT!!

(H) * 26 I WOULD ASK THE COURT TO PLEASE LOOK AT MY SWORN AFFIDAVIT.

27 AS IT BASICALLY STATES THE SAME THING FROM HERE, AND I DON'T WISH

28 TO OVER DO MY STATEMENT OF FACTS IN DOUBLE.

1 CONCLUSION

2
3 THEREFORE DEFENDENT RESPECTFULLY SUBMITS
4 THIS ENTIRE WRIT OF PROHIBITION/ WRIT OF HABEAS CORPUS, MOTION FOR APPOINTMENT
5 OF COUNSEL, SWORN AFFIDAVIT TO SUPPORT WRIT OF PROHIBITION/ WRIT OF HABEAS CORPUS,
6 APPOINTMENT OF COUNSEL, AND ALL ATTACHED EXHIBITS (1 THRU 4) AND EXHIBITS
7 (A-B-C-D). WITH THE ASSISTANCE OF AN INMATE OF LEGAL KNOWLEDGE,
8 IN HELPING PREPARE (ING) THIS ENTIRE PLEADING TO BE REVIEWED BY THE
9 SECOND JUDICIAL DISTRICT COURT, CASE NO. CR94-0345, TO APPOINT LEGAL
10 COUNSEL PURSUANT TO NRS 39.750 AND TO CORRECT THE GRAVE FUNDAMENTAL
11 MISCARriage OF JUSTICE DONE TO THE DEFENDENT IN CASE NO. CR94-0345.
12
13
14

15 DATED THIS DAY 12 OF FEB 2015
16
17

18 RESPECTFULLY SUBMITTED,

19 SIGN. CHARLES MAKI

20 Charles Maki
21
22
23
24
25
26
27
28

EXIBIT'S

1 THRU 4

CHARLES MAKI-42820

WRIT OF PROHIBITION / WRIT OF
MANDAMUS

2-12-2015

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 1

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 30904

Consolidated with:

Counsel

Karla K. Butko, Verdi, NV, as counsel for Appellant

Attorney General Frankie Sue Del Papa/Carson City, Carson City, NV, as counsel for Respondent

Washoe County District Attorney Richard A. Gammick, Reno, NV \ Gary H. Hatlestad, Deputy District Attorney,
Terrence P. McCarthy, Deputy District Attorney, as counsel for Respondent

Case Information

Panel: NNP00A

Panel Members: Shearing/Agost/Leavitt

Disqualifications:

Case Status: Closed

Category: Criminal Appeal

Type: Post-Conviction

Submitted: On Briefs

Date Submitted: 05/28/98

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Supreme Court Cases:

District Court Case Information

Case Number: CR940345

Case Title: STATE VS. MAKI

Judicial District: Second

Division:

County: Washoe Co.

Sitting Judge: Steven R. Kosach

Replaced By:

Notice of Appeal Filed: 08/18/97

Appeal

Judgment Appealed From Filed: 07/24/97

Docket Entries

Date	Docket Entries
08/20/97	Filing Fee waived: Criminal.
08/20/97	Filed Certified Copy of Notice of Appeal. Appeal docketed in the Supreme Court this day.
08/25/97	Received document from district court clerk. Copy of the district court order filed January 29, 1997. Mr. Hardy's motion to withdraw as counsel for petitioner is granted. Petitioner's motion for new counsel is also granted. Mr. Joseph Plater, Esq., is appointed to represent petitioner.
08/28/97	Filed Certified Copy of Notice of Appeal (Second notice filed by proper person appellant from same judgment.)
08/29/97	Filed Certified Copy of Notice of Appeal. Filed on August 26, 1997 by attorney Joseph Plater.
10/03/97	Receipted for 8/28/97 entry and mailed docketing statement to counsel for appellant.

Thursday, October 22, 2000 12:07 PM

②

EXHIBIT-1-

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 2

- | | |
|------------|--|
| * 10/08/97 | Filed Order. Appellant shall within 10 days of the date of this order file and serve a docketing statement and a transcript request form or certificate of no transcript request, or show cause why sanctions should not be imposed upon counsel. Appellant shall have 100 days from the date of this order to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31 (a)(1). We caution attorney Plater that failure to comply with this order in a timely manner may result in the imposition of sanctions against counsel. |
| 10/21/97 | Filed Docketing Statement. |
| * 10/27/97 | Filed Request for Transcripts of Proceedings. Court reporter: Isolde Zihn. * |
| 01/22/98 | Filed Motion and Order. That appellant shall have to and including February 17, 1998, to file the opening brief. |
| 02/19/98 | Filed Motion to Extend Time. To file opening brief. |
| 02/25/98 | Filed Clerk's Order. Granting the motion filed February 19, 1998. The opening brief shall be served and filed on or before March 3, 1998. |
| 03/05/98 | Filed Motion to Extend Time. To file opening brief. |
| 03/09/98 | Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief shall be served and filed on or before March 12, 1998. |
| 03/16/98 | Received Brief. Appellant's opening brief. (Mailed on: 3/12/98.) |
| 03/16/98 | Received Appendix. Appellant's appendix I and II. (Mailed on: 3/12/98.) |
| 03/25/98 | Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief and appendix provisionally submitted on March 16, 1998, shall be filed, forthwith. |
| 03/25/98 | Filed Brief. Appellant's opening brief |
| 03/25/98 | Filed Appendix. Appellant's appendix, Volume I and II. |
| * 03/27/98 | Filed Order. Court reporter Zihn shall have 20 days from the date of this order to <u>complete the requested transcript and to provide the clerk of this court with a certificate acknowledging delivery of the completed transcript and a certified copy of the transcript</u> , or show cause why sanctions should not be imposed in accordance with NRAP 13(b). |
| * 04/09/98 | Received Letter. From court reporter Isolde Zihn. She was not the reporter in this matter. |
| 04/23/98 | Filed Brief Respondent's answering brief. (Mailed on: 4/22/98.) |
| * 05/05/98 | Filed Order. <u>Court reporter Zihn has responded to our March 27, 1998, order by way of letter. It appears that the transcript requested by appellant was completed on February 10, 1998, by court reporter Stephanie Koetting; however, a copy of the transcript was not filed in this court. Furthermore, it appears that appellant has improperly included the transcript in appellant's appendix. We decline to strike appellant's nonconforming appendix at this time, as it does not appear that appellant's error will hinder this court's review of this matter. We admonish appellant's counsel to be more mindful in the future to the procedures for prosecuting appeals as contained in the Nevada Rules of Appellate Procedure</u> |
| 05/28/98 | Filed Brief. Appellant's reply brief. (Mailed on: 5/27/98.) |
| 05/28/98 | Case submitted on briefs this day. |
| 02/02/00 | Filed Motion. To be relieved as counsel of record. |

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

Page 3

03/07/00	Filed Order. Of remand for designation of counsel. Appellant's counsel of record Joseph R. Plater has filed a motion to be relieved as counsel of record in this appeal. We grant the motion. We remand this matter to the district court for the limited purpose of securing new appellant counsel. If indigent, the district court shall have 30 days to appoint counsel for appellant. Otherwise, the district court shall order that, within 30 days appellant must retain counsel and counsel must enter an appearance in the district court. Within 5 days from the appointment or appearance of counsel, the district court clerk shall: (1) transmit to this court a copy of the district court's written or minute order; and (2) serve a copy of this order of remand on appellant's counsel. Thereafter, counsel shall have 10 days to enter an appearance with the clerk of this court. Within 15 days from the date on which counsel is required to enter an appearance in this court, counsel shall file a motion requesting permission to file a supplemental brief, if counsel deems supplemental briefing necessary.	
04/13/00	Filed Notice. Of appearance of counsel. Karla K. Butko appointed as counsel for appellant.	
04/17/00	Filed Notice. Amended notice of appearance of counsel. Karla K. Butko appointed as counsel for appellant. (Copy of order appointing counsel filed in district court on 3/20/00 attached.)	
06/14/00	Filed Motion to Extend Time. to File Appellant's Supplemental Opening Brief.	00-10134
06/14/00	Received Supplemental Brief.	00-10135
07/07/00	Filed Order Granting Motion We grant appellant's June 14, 2000, motion. The clerk of this court shall file the supplemental brief provisionally submitted with the motion on June 14, 2000. The State shall have 30 days from the date of this order within which to file a supplemental answering brief.	00-11584
07/07/00	Filed Supplemental Brief. Appellant's Supplemental Opening Brief.	00-10135
07/27/00	Filed Supplemental Brief. Respondent's Supplemental Answering Brief.	00-13069
10/10/00	Filed Order of Affirmance. Having concluded that Maki has not demonstrated error, ... we affirm the judgment of the district court." NNP00A-MS/DA/ML	00-17847
11/07/00	Issued Remittitur.	00-17948
11/07/00	Processing status update: Remittitur Issued/Case Closed.	
11/29/00	Filed Remittitur. Received by County Clerk on November 9, 2000.	00-17948

NOV -9 A9:29

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,

No. 30904

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 10 2000

J. Richards

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On May 17, 1994, appellant Charles Joseph Maki was convicted, pursuant to a jury verdict, of three counts of sexual assault of a child under age fourteen and five counts of lewdness with a child under age fourteen. Maki was sentenced to serve consecutive terms of life imprisonment with the possibility of parole, along with lesser terms of imprisonment. This court dismissed Maki's direct appeal. [See Maki v. State, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995).]

On May 9, 1996, Maki filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel filed supplemental points and authorities in support of the petition. After holding an evidentiary hearing, the district court denied Maki's petition. This appeal followed.

Maki claims that he demonstrated that he received ineffective assistance of counsel and that the district court erred in denying him relief. To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense. See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102

EXHIBIT 2-2

NOTE:
FINAL PAGE
OF ORDER

(1996). We conclude that Maki has not shown that the district court erred in denying him relief on his claims. We will address each claim in turn.

Maki first argues that his trial counsel was ineffective for failing to request independent physical and psychological/psychiatric examinations of the two victims. However, the evidence adduced at the post-conviction hearing demonstrates that counsel acted reasonably in deciding not to request independent examinations.¹ Trial counsel testified that she did not request independent physical examinations of the victims, in part because she was satisfied with the examinations that had been performed and reported to the defense. Trial counsel cited several reasons why she did not request independent psychological or psychiatric examinations. Having reviewed the documents before this court, we conclude that the reasons cited by counsel are legitimate.

For example, one reason counsel cited was that she was informed that the State would not call an expert witness in psychiatry or psychology. Counsel also explained that she had not received any information that the victims had received counseling or been seen by a psychiatrist. These facts are relevant both to the reasonableness of counsel's decision and to the question of whether Maki would have been entitled to an examination upon request. See *Keeney v. State*, 109 Nev. 220, 224-26, 850 P.2d 311, 314-15 (1993). Maki has not shown that the State employed an expert witness in psychology or

¹We note that the district court found trial counsel's testimony at the evidentiary hearing to be "more credible" than Maki's testimony, which the court characterized as "in large part incredible and unworthy of belief." We defer to these factual findings. See *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (indicating that a district court's factual findings regarding claims of ineffective assistance of counsel are generally entitled to deference).

psychiatry.²

In ruling that counsel acted reasonably, we are cognizant of Maki's claims that the victims expressed uncertainty and made inconsistent statements about the relevant events prior to trial. However, we emphasize that the victims' allegations were at least partially corroborated by Maki's own incriminating admissions that he had engaged in sexual misconduct with the victims. An important factor in determining the need for independent psychological or psychiatric examinations is whether there is "little or no" corroborative evidence. See Keeney, 109 Nev. at 226, 850 P.2d at 315.

Accordingly, we conclude that Maki failed to overcome the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." See Strickland, 466 U.S. at 689. Maki has not demonstrated that counsel acted unreasonably, let alone that he would have been entitled to independent examinations of the victims had counsel requested such examinations. See Keeney, 109 Nev. at 224, 850 P.2d at 314 ("Generally, a psychological examination of a sexual assault victim should be permitted if the defendant has presented a compelling reason therefor.").

Additionally, Maki has another hurdle to overcome. To properly demonstrate prejudice he must show a reasonable probability that counsel's deficient performance affected the outcome of the proceedings. Maki argues, without citation to supporting authority, that prejudice should be presumed, given the amount of time that has passed and the difficulty of showing what independent examinations would have yielded. We reject

²Maki notes that a nurse testified about behavioral problems that one of the victims was experiencing and the possible source of those problems. It also appears that the nurse concluded that this victim was sexually abused, although that finding appears to be primarily based on the physical examination. Maki has not shown that the nurse was qualified as an expert in psychology or psychiatry; nor could her testimony be reasonably viewed in this light.

this argument. Maki was required to show that such evaluations had a reasonable probability of affecting the outcome of the proceedings. He failed to do so.

Maki next claims that his counsel was ineffective, at trial, for failing to more effectively cross-examine the victims to reveal allegedly inconsistent and exculpatory prior statements. We question whether this issue was properly presented in the district court.³ In post-conviction cases, this court will generally decline to review issues not properly raised in the district court. See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995); Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Further, Maki has not included a complete copy of the trial transcript in the documents submitted to this court, or even the full portion of the transcript detailing the trial testimony of the victims. Accordingly, it is impossible to properly evaluate Maki's claim. Under these circumstances, the deficiency should be resolved against Maki. It is his responsibility to provide the materials necessary for appellate review. See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

Maki also argues that his counsel was ineffective for failing to properly cross-examine the victims on tattoos in Maki's genital area, which apparently extended downward from Maki's lower abdomen. It is similarly impossible to properly evaluate this claim because of Maki's failure to include all relevant portions of the trial transcript. We further note that the documents before this court, particularly the post-conviction evidentiary hearing transcript, reflect that trial

³The issue of the victims' prior statements was discussed, and testimony adduced on this point, at the post-conviction evidentiary hearing. However, the discussion and testimony appear to have been related to Maki's claim that counsel should have requested independent examinations of the victims. At one point the State asked to "exclude everything [regarding the victims' inconsistencies] that was raised at trial, because by that point it was far too late to seek examination." Post-conviction counsel responded, "That's fine."

counsel did present pictures to the jury showing Maki's tattoos and that counsel argued this issue to the jury. Counsel indicated that an important point of the defense was that the victims would have mentioned the tattoos, on their own, had they observed Maki's genital area.

Maki also claims that his prior counsel was ineffective for failing to more effectively argue that certain statements made by Maki to police were erroneously admitted pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Because the *Miranda* issue was fully litigated in the district court and on direct appeal, Maki's claim is barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975). Although Maki attempts to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered issues pursuant to *Miranda*, and this court reviewed the complete transcript of the police interview in resolving these issues.⁴ Maki may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *See Hall*, 91 Nev. at 316, 535 P.2d at 799.

Maki next claims that trial and appellate counsel were ineffective for failing to raise issues of duplicative and redundant charges and sufficiency of the evidence. Maki specifically notes that at the preliminary hearing one of the victims testified that an incident involving digital penetration occurred at the same time as one of the incidents in which Maki placed his penis in her vagina. He contends that this constituted only one sexual assault and therefore counsel should have sought dismissal of the digital penetration charge.

⁴This court held that Maki "was not 'in custody' before he was read his *Miranda* warnings" and that, after Maki was read the warnings and invoked his rights, police failed to scrupulously honor Maki's invocation of his right to remain silent. This court noted, however, that only one incriminating statement made after Maki invoked his rights was admitted at trial, and concluded that admission of this statement was harmless error.

[The trial transcript and analysis of all the evidence in relation to all the charges are necessary to properly resolve this and Maki's even less specific contentions of insufficient evidence and other duplicative charges.⁵] Again, it was Maki's responsibility to provide the materials necessary for our review as well as relevant authority and cogent argument.⁶ See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *Jacobs*, 91 Nev. at 158, 532 P.2d at 1036.

Maki next claims that appellate counsel was ineffective for failing to argue that the district court erred in failing to sanction the State or grant Maki a continuance, after the State disclosed evidence, shortly before trial, concerning physical examinations of the victims. Again, Maki has failed to include pertinent documents in the appendix on appeal. Maki has not included transcripts of the proceedings concerning the State's disclosure of the report and Maki's motion for the continuance. Thus, it is impossible to determine whether the district court acted improperly.

For the reasons cited above, and after further review

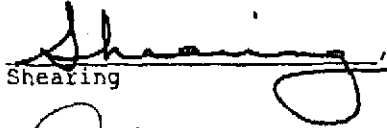

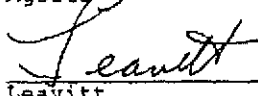
⁵We are not persuaded by Maki's specific contention that counsel was ineffective for failing to challenge the charge of digital penetration prior to trial. A victim did testify that the incident of digital penetration occurred "[w]hen he was doing the same thing in our room," meaning "[w]hen he was putting his penis inside" of her. However, a reasonable reading of this victim's testimony does not necessarily suggest that the digital penetration occurred simultaneously with the other charged offense, but simply that the two incidents were part of the same molestation episode. We emphasize that the trial transcript could clarify the relationship between the act of digital penetration and the other offenses. We also note that the jury did not return guilty verdicts on each of the charges of sexual assault, and thus the question of prejudice is also speculative.

⁶We also note that Maki has failed to include specific citation to the appendix indicating how these claims were raised in the district court in the post-conviction proceedings. Indeed, Maki's argument on these claims in the supplemental opening brief is quite general and arguably insufficient to even state a valid claim.

of the briefs and appendix, we conclude that Maki has not shown that he is entitled to relief. In closing, however, we admonish Maki's former appellate counsel, Joseph R. Plater, and his current counsel, Karla K. Butko. On several occasions, counsel failed to cite to relevant portions of the appendix and discuss how issues were raised in the district court, discussed at the post-conviction evidentiary hearing (if applicable), and resolved by the district court. The critical issue to be resolved in a post-conviction appeal is whether the district court erred in denying the post-conviction petition. Counsel should not relegate to this court the task of parsing the record to resolve appellate claims. See NRAP 28.

Having concluded that Maki has not demonstrated error, we affirm the judgment of the district court.

It is so ORDERED.

	J.
Shearing	
	J.
Agosti	
	J.
Leavitt	

cc: Hon. Steven R. Kosach, District Judge
 Attorney General
 Washoe County District Attorney
 Joseph R. Plater
 Karla K. Butko
 Washoe County Clerk

PAUL GRUBBS
AFFIDAVIT

PAGE #1

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully competent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricature and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phomr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Bul Grubbs
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth

NOTARY PUBLIC



JOHN HUTH

NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPT EXP. Dec. 3, 1995

STAMP

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

12 CHARLES J. MAKI,

13 *Petitioner,*

14 vs.

15 GEORGE GRIGAS, *et al.*

16 *Respondents.*

2:01-cv-0268-RLH-PAL

ORDER

18 This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents'
19 motion (#72) to dismiss on the basis of lack of complete exhaustion as to all claims.

20 ***Background***

21 Petitioner Charles Maki seeks to set aside his 1994 conviction, following a jury verdict,
22 for three counts of sexual assault on a child under the age of fourteen years and five counts
23 of lewdness with a child under the age of fourteen years. He was sentenced to three life
24 sentences with the possibility of parole and five ten year terms, with all such sentences and
25 terms to run consecutively. #25, Ex. 1.

26 ***Governing Law***

27 Under 28 U.S.C. § 2254(b)(1)(A), a habeas petitioner first must exhaust his state court
28 remedies on a claim before presenting that claim to the federal courts. To satisfy this

12

EXHIBIT 4-15

EXHIBIT B

V6.963

1 exhaustion requirement, the claim must have been fairly presented to the state courts
2 completely through to the highest court available, in this case the Supreme Court of Nevada.
3 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329
4 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
5 federal constitutional guarantee and must also state the facts that entitle the petitioner to relief
6 on the federal constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir.
7 2000). That is, fair presentation requires that the petitioner present the state courts with both
8 the operative facts and the federal legal theory upon which his claim is based. *E.g., Kelly v.*
9 *Small*, 315 F.3d 1063, 1066 (9th Cir. 2003). The exhaustion requirement accordingly insures
10 that the state courts, as a matter of federal-state comity, will have the first opportunity to pass
11 upon and correct alleged violations of federal constitutional guarantees. See, e.g., *Coleman*
12 *v. Thompson*, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55, 115 L.Ed.2d 640 (1991).

13 **Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g)**

14 Respondents contend that a number of ineffective assistance claims were not
15 exhausted because petitioner failed to present the claims to the Supreme Court of Nevada
16 on a counseled appeal from the denial of state post-conviction relief. Respondents contend
17 that, *inter alia*, the following claims were not exhausted:

18 1. That he was denied effective assistance of counsel because:

19

20 b.) His trial counsel failed to allow him to testify;

21 c.) His trial counsel had a conflict of interest because she had a prior
22 experience with sexual assault, with counsel telling him that she
23 therefore did not want to represent him but would "go through the
24 motions;"

25

26 e.) At sentencing, his counsel failed to discredit the testimony of a
27 State witness and failed to present effective mitigating evidence;

28 ////

1 f.) His appellate counsel failed to raise specified errors on direct
2 appeal, including:

3 (1) a claim of error based on the trial court's decision
4 denying his request for a new attorney, based on
5 an alleged conflict of interest destroying their ability
6 to communicate;

7

8 (3) a claimed violation of N.R.S. 171.178.

9 g.) He was not arraigned within 72 hours of his arrest.

10 Petitioner responds that "there were many habeas corpus briefs filed by different
11 attorneys in Maki's behalf along with his own habeas corpus" and "[t]he present grounds have
12 all been before the Nevada Supreme Court and were taken from the briefs them selves [sic]."
13 #74, at 2. However, petitioner does not provide any specific record citations showing that any
14 of these claims were presented to the Supreme Court of Nevada in the briefs filed on appeal
15 from the denial of post-conviction relief. The Court has independently reviewed the appellate
16 briefs, and they do not contain any of the foregoing claims. See #54, Exhs. 57, 59 & 63.
17 Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g) therefore are not exhausted.

18 **Ground 1(d)**

19 In Ground 1(d), petitioner alleges that his trial counsel failed to exploit, during direct
20 examination, the victims' alleged ignorance of a large multi-colored tattoo in Maki's pubic
21 area. Argument regarding this allegation was set forth within another claim in petitioner's
22 supplemental opening brief on appeal from the denial of post-conviction relief. See #53, Ex.
23 63, at 3. The Supreme Court of Nevada further treated the claim as one included within the
24 claims on appeal. See #53, Ex. 65, at 4. However, significantly, the state high court held on
25 the counseled appeal that "[i]t is . . . impossible to properly evaluate this claim because of
26 Maki's failure to include all relevant portions of the trial transcript." *Id.* Ground 1(d) therefore
27 was not fairly presented to the Supreme Court of Nevada on appeal from the denial of post-
28 conviction relief and the claim thus is not exhausted.

1 **Grounds 2(a) and 2(b)**

2 In its prior order (#71), the Court *sua sponte* questioned whether Grounds 2(a) and 2(b)
3 were completely exhausted. In these claims, petitioner alleges:

4

5 2. That he was denied effective assistance of appellate counsel because
6 his appellate counsel failed to raise on direct appeal:

7 a.) A claim of error based upon the state trial court's failure to
8 sanction the State or grant a continuance to allow the defense to
9 obtain expert psychological and psychiatric evidence to rebut late-
10 breaking physical examination evidence by the State;

11 b.) Substantially the same claim of error based on the trial court's
12 failure to sanction the State or grant a continuance to allow the
13 defense to have an expert review evidence revealed shortly
14 before trial that one of the victims had been subjected to more
15 physical abuse than she had reported against petitioner.

16 Respondents do not include Grounds 2(a) and 2(b) in the present motion to dismiss.
17 However, similar to its holding on Ground 1(d), the Supreme Court of Nevada held as follows
18 as to Grounds 2(a) and 2(b) on the counseled post-conviction appeal:

19 Again, Maki has failed to include pertinent documents in
20 the appendix on appeal. Maki has not included transcripts of the
21 proceedings concerning the State's disclosure of the report and
22 Maki's motion for the continuance. Thus, it is impossible to
23 determine whether the district court acted improperly.

24 #53, Ex. 65, at 6. It would appear to this Court that if claims were presented to the state high
25 court in such a defective manner that it was impossible for that court to review the claims, the
26 claims were not fairly presented. Petitioner therefore will be required to show cause why
27 Grounds 2(a) and 2(b) should not be found to be unexhausted.

28 **Ground 3**

 Respondents include Ground 3 in the present motion to dismiss, but the Court
dismissed this claim in its prior order as noncognizable in federal habeas. #71, at 12 & 13.

1 IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED
2 such that the Court finds that Grounds 1(b), 1(c), 1(d), 1(e), 1(f)(1), 1(f)(3) & 1(g) are not
3 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and
4 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire
5 petition, or seek other appropriate relief.

6 IT FURTHER IS ORDERED that, within twenty (20) days of entry of this order,
7 petitioner shall SHOW CAUSE in writing why Grounds 2(a) and 2(b) should not be found to
8 be unexhausted.

9 DATED this 12th day of June, 2006.

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ROGER L. HUNT
United States District Judge

VERIFICATION/AFFIRMATION PURSUANT TO NRS. 239.D.030

DEFENDENT HAS READ COMPLETELY ALL THE FOREGOING,

(1) REQUEST FOR SUBMISSION, (2) MOTION FOR APPOINTMENT OF COUNSEL,

(3) AFFIDAVIT IN SUPPORT OF APPOINTMENT OF COUNSEL (4) AFFIDAVIT (SWORN)

AFFIDAVIT OF CHARLES MAKI #42820 IN FULL SUPPORT OF HIS WRIT OF

PROHIBITION/WRIT OF MANDAMUS AND APPOINTMENT OF COUNSEL AS ONE.

(PAGES)

(5) (INDEX) COVERING SHEETS 1 THRU 3. (6) COVER SHEET OF SWORN

AFFIDAVIT OF CHARLES MAKI - 42820 IN FULL SUPPORT OF HIS WRIT OF

PROHIBITION/WRIT OF MANDAMUS (7) WRIT OF PROHIBITION/WRIT OF MANDAMUS

(8) EXHIBITS 1 THRU 4 AND EXHIBITS A-B-C-D. (HERE BY) VERIFY THAT THE

MATTER AND ALLEGATIONS OF ALLEGED HERIN BY PETITIONER/DEFENDENT

WITH THE HELP/ASSISTANCE OF AN INMATE WHO HAS LEGAL KNOWLEDGE, ARE

TRUE AND CORRECT EXCEPT TO THOSE MATTERS AND ALLEGATIONS ON INFORMATION

AND BELIEF, DEFENDENT BELIEVES THOSE MATTERS AND ALLEGATIONS THAT ARE

OUTSIDE OF THE OFFICIAL COURT RECORD CASE NO. CR94-0345 TO BE TRUE

AND CORRECT. DEFENDENT FURTHER, CERTIFY'S UNDER THE PENALTY OF

PERJURY, PURSUANT TO NRS. 208.165 THAT ALL THE FOREGOING ABOVE HERIN

MENTIONED TO THE BEST OF THE DEFENDENTS MEMORY AFTER 21 YEARS IS

TRUE AND CORRECT.

EXECUTED IN CARSON CITY, NEVADA

ON THIS DAY 12 OF FEB 2015

RESPECTFULLY SUBMITTED,

Signed, CHARLES MAKI

charl mak

CERTIFICATE OF SERVICE, BY INSTITUTIONAL MAIL..

PURSUANT TO N.R.C.P. RULE 5(B), PETITIONER HEREBY CERTIFYS
THAT HE IS THE ABOVE NAMED DEFENDENT THAT HEREIN AND THAT ON
THIS DAY 12 OF FEB 2015, DEFENDENT DEPOSITED INTO THE INSTITUTIONAL
U.S. MAIL BOX AT WARM SPRINGS CORR. CENTER, CARSON CITY NV. 89701
A TRUE AND CORRECT COPY OF THE VERIFICATION/AFFIRMATION. AND
ALL THE FOREGOING IN CASE NO. CR 99-0348, ADDRESSED TO THE FOLLOWING:

TO: CLERK OF COURT

2ND JUDICIAL DIST. COURT / WASHOE COUNTY,

RENO, NV. 89501 (75 COURT ST.)

TO: DICK GAMMICK DIST. ATTORNEY

2ND JUDICIAL DIST. COURT

75 COURT ST. RENO, NV. 89501

SIGN: CHARLES MAKI

charl mak

INDEX COVERING, SHEETS. 1 THRU 3.

DATE -2015

OF SWORN AFFIDAVIT OF C. MAKI-42820.

IN FULL SUPPORT OF HIS WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS.

AND APPOINTMENT OF COUNSEL.

1 COVER SHEET. 3 PAGES. AFFIDAVIT.

2 PAGE ONE. STARTS HERE. JAN 18-19-1994. INTERROGATION FROM #1 THRU 1-C. (1-C IS MIRANDA VIOLATION). (SEE X)

3 PAGE (2). MIRANDA VIOLATION CONT. 1-D AND 1-E. 1-F ARRESTED.

4 PAGE (2). #2: JAN 20 1994. PROBABLE CAUSE AFFIDAVIT.

5 #3: JAN. 21 1994. COMPLAINT AND DECLARATION,

6 #4. JAN. 24 1994. DEFENDENT FINALLY GOES TO HIS ARRANGEMENT.

7 #4A-4B.

8 PAGE (3) #4-C. #5. JAN. 24 1994. DEFENDENT FINALLY GETS TO FILL OUT A NOTIFICATION FORM FOR AN ATTORNEY.

10 #6. FEB. 03 1994. DEFENDENT'S PRELIM. HEARING. AND #6-A. #7.

11 PAGE (4) #8-8A, 9, A, A1, A2. [NOTE OF PERSONAL FACT] LINES 23-28,

13 PAGE (5) LINES 1-2] #10 [IN REGARDS TO TATTOOS ON THE DEFEND. BODY.] (SEE X)

13 #10A-10-B-10-C.

14 PAGE (6) #11. FEB. 16. 1994. SECOND ARRANGEMENT - PLED NOT GUILTY.

15 (SEE: X) #12. MARCH 03. 1994. MOTIONS HEARING - WROTE JUDGE TO FIRE P.D.

16 COUNSEL SMUCK IS MAKING A MOTION TO COMPEL DISCOVERY, TO STATE.

17 #13.13A [STATE HAS AN EXPERT] MARCH 11 1994. EVID. HEARING.

18 JAVET C. SMUCK FOR DEFENSE, DAN GRECO FOR THE STATE.

19 SEE: LINE 9 THRU 16.

20 (SEE: X) #14-14A - [CONFLICT WITH DEFENDENT'S COUNSEL, P.D. SMUCK]. CONT. TO

21 PAGE (7) #14-B, 14-C, 15 CONTINUED, (SEE LINE 20-21) *

22 PAGE (8) #15A. [LINE 9. APRIL 1ST 1994] SUPPRESSION HEARING. #16-16B.

23 PAGE (9) CONTINUED FROM PAGE (8) - #17, 18, 19.

24 #20 [DAY OF DEFENDENT'S TRIAL].

INDEX, CONT.

- 1 PAGE # (10.) BEFORE THE DEFENDENTS TRIAL STARTS.
- 2 [DEFENSE COUNSEL ASKING FOR ALL DISCOVERY.]
- 3 # 21 THRU 26. (SEE 22-23-24) *
- 4 PAGE (11) # 27, 27A, 28-28A 29-29A, 30 (SEE 28, LINE 14) 28A, 29, 29A) *
- 5 PAGE (12) CONT. 30A, 31, 32-32A, 33-33A. (SEE 33 LINE 21) *
- 6 PAGE (13) # 34-34A. [THE DEFENDENT COULD NOT RECEIVE A FAIR TRIAL] # 35.
- 7 PAGE (14) # 36, 37-37A, 38-38A (SEE # 37) *
- 8 PAGE (15) 39. CLEAR ERROR... (LINGG. EVIDENCE - MATERIAL TO GUILT)
- 9 # 40-40A-40B, 41 (SEE 40A-B-40) *
- 10 PAGE (16) # 41A, 42, 43, 44, 45, 46, CONT. TO p. 17 LINE 1-2.
- 11 PAGE (17) [PROSECUTIONAL - MISCONDUCT]. # 47-47A-47B.
- 12 PAGE (18) # 47-C, 48, 49, 50. (SEE 49-50) *. CONT. TO PAGE 19 LINES 1-8.
- 13 PAGE (19) # 51-51A-51B-51C. CONTINUED TO PAGE 20 LINES 1-7.
- 14 PAGE (20) # 52-53-53A.
- 15 PAGE (21) [DEFENDENTS LARGE TATTOO THAT THE (STATE) WITNESS'S DID NOT KNOW -
- 16 ABOUT AT ALL] # 54-54A, 55-55A.
- 17 PAGE (22) # 56, 57, 58, 59. (SEE 57) *
- 18 PAGE (23) [DEFENDENT - DID WISH TO TESTIFY AT HIS TRIAL] # 60, 61, 62, 63-63A.
- 19 (SEE # 61) *
- 20 PAGE (24) CONTINUED FROM PAGE 23. # 63-B, 64, 64A, [CONT. TO PAGE 25] # 65-65A
- 21 PAGE (25) # 66 [THE RECORD IS VOID OF ANY CALUMNIES]. # 66-A
- 22 PAGE (26) # 67, 68, 69, 70, 70-A, 71 (SEE 68) * CONTINUES TO PAGE 27 LINES 1-10.
- 23 PAGE (27) [SENTENCING PHASE] # 73, 74-74A
- 24 PAGE (28) # 75, 76, 77-A-B-C. [HISTORY OF DEFENDENTS (SIBLINGS)].
- 25 PAGE (29) # 77-D-E. [HISTORY OF THE DEFENDENT] # 78-A-B-C-D-E. (PAGE 30 F. LINE 1-5)
- 26 PAGE (30) # 79, 80. [QUESTIONS AND ANSWERS IN REGARDS TO COMBS].
- 27 PAGE (31) CONTINUED FROM PAGE 30 - LINES 1-5 ON PAGE 31.
- 28 # 80-82 [LETTER WRITTEN TO THE COURT IN REFERENCE TO PAGE 31]

INDEX, cont.

PAGE # 32 CONCLUSION OF SWORN AFFIDAVIT.

83, 84, 85, 86, 87, 88, SEE 83 *

PAGE # 33 # 89-A-B-90.

EXHIBITS TO BE INCLUDED. EXHIBIT A p. 5 (LINE 22 THRU 24)

EXHIBIT A p. 6 LINES 1 THRU 24

EXHIBIT A p. 7 LINES 1 THRU 24

EXHIBIT A p. 8 LINES 1 THRU 24

EXHIBIT A p. 9 (LINES 1 THRU 21)

EXHIBIT B. p. 144

EXHIBIT C. p. 150 (RE-CROSS-EXAMINATION.)

EXHIBIT D p. 109 (CLOSING ARGUMENTS p.c.t.)

SIGN CHARLES MALE 42420

Charles Male

PO BOX 7007 - WSCC

CARSON CITY, NV. 89701

DATE 12 / FEB 2015

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copy

A-SWORN AFFIDAVIT OF CHARLES MAKI, NDOC. #42820

IN FULL SUPPORT OF HIS

WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS / AND APPOINTMENT OF COUNSEL.

I, CHARLES MAKI #42820, DECLARE UNDER PENALTY OF PERJURY,
 UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT
 THE FOREGOING IS TRUE AND CORRECT, SEE 28 U.S.C. § 1746 AND
 18 U.S.C. § 1621, BASED UPON DEFENDENT'S PERSONAL KNOWLEDGE AND
 BELIEF TO BE TRUE.

CASE NO: CR94-0345

BY: CHARLES MAKI 42820

DATE: 2-12-2015 / CHARLES MAKI 42820

THAT, ALL STATED HEREIN WILL BE TAKE "DIRECTLY" FROM / THRU ALL
 OF THE DEFENDENTS, RECORDS, TRANSCRIPTS ECT.
 TO SHOW MANY VIOLATIONS OF THE DEFENDENTS CONSTITUTIONAL RIGHTS,
 INCLUDING HIS 1ST, 4TH, 5TH, 6TH, 8TH, AND 14TH U.S.C.A. RIGHTS, INCLUDING,
 A BRADY VIOLATION AND STRUCTURAL ERROR BY THE HONORABLE JUDGE,
 STEVEN KOSACK I ECT, AL.

THAT AFTER 20 plus yrs. OF INCARCERATION IN N.D.O.C., [I] CHARLES
 MAKI 42820, STILL MAINTAIN MY [FACTUAL-INNOCENCE] OF
 SAID CRIME OF MY CONVICTION, CASE CR94-0345. TO PROVE MY
 FACTUAL INNOCENCE OF SEXUAL ASSAULT AND LEWDNESS.
 SITING: STATE V. MITCHELL (2006).

THAT I'M CURRENTLY AT WARM SPRINGS CORRECTIONAL CENTER
 IN CARSON CITY, NEVADA, AS OF JAN 2015.

THAT I'M HAVING ANOTHER INMATE, HELP ME TO DO THE WHOLE

WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS, AS I DO NOT KNOW THE

1 AND THAT I HAVE A LOW GRADE / LIMITED EDUCATION..
 2 THE FOLLOWING PAGES, WILL SHOW - A MIRANDA VIOLATION, A 48 HRS,
 3 VIOLATION SET BY THE U.S. S.C.T.; THAT THERE WAS NO EVIDENCE, NO D.N.A. TEST,
 4 NO MEDICAL EVID., NO RAPE KIT, (DONE), NO WITNESSES.
 5 "WILL SHOW," PROSECUTORIAL MISCONDUCT, INCLUDING BUT LIMITED TO, (NOT)
 6 PERJURY - COACHING ALLEGED VICTIMS, (I-A-C), BRADY VIOLATION IN REGARDS
 7 TO OBTAINING DISCOVERY EVID. FROM STATE, PER N.R.S. 174.235 (1), NRS 174.285.
 8 (CONFLICT OF INTEREST, BETWEEN P.D. JAMES C. SMUCK AND DEFENDENT).

9
 10 THAT NOBODY, ^(IN) DEFENDENT'S PRELIM. HEARING, VIDEO TAPES OF ALLEGED VICTIMS, ECT.
 11 INCLUDING DET. STEINMEIER, KNEW THAT DEFENDENT HAD / HAS "A VERY LARGE"
 12 COLOR FULL TATTOO IN HIS PELLIC AREA, EVEN THOUGH ALLEGED VICTIMS STATED
 13 THAT THEY SEEN DEFENDENT NUDE! THAT AT DEFENDENT'S REQUEST, PHOTOS
 14 WERE TAKEN OF DEFENDENT BODY TO SHOW HE IN FACT HAS A LARGE TATTOO
 15 TO PROVE HIS FACTUAL INNOCENCE..

16
 17 THAT THE COURT DENIED THE DEFENDENT HIS RIGHT TO AN EXPERT
 18 WITNESS, TO REFUTE THE STATE'S EXPERT WITNESS, IN REGARDS TO
 19 PHYSICAL EVIDENCE THE STATE PRESENTED TO THE JURY IN DEFENDENT'S TRIAL.

20
 21 THAT THE COURT DENIED THE DEFENDENT HIS FUNDAMENTAL RIGHT TO
 22 TESTIFY IN HIS OWN BEHALF (AS RECORD WILL SHOW) DEFENDENT WAS
 23 NEVER CONVICTED, THOUGH HE WANTED TO TESTIFY, (IN VIOLATION OF 6TH) IAC,
 24 (AND HIS 5TH) (DUE PROCESS,) (DUE PROCESS / EQUAL PROTECTION 14TH)

25
 26 THERE'S AN UN-FAIR TRIAL OF 3 1/2 HOURS TOTAL TIME, INCLUDING BUT
 27 NOT LIMITED TO, JURISDICTIONAL ERRORS, VIOLATIONS OF DUE-PROCESS, WITH,
 28 DUE PROCESS / EQUAL PROTECTION UNDER THE LAW (AS ANY AND ALL SHOULD HAVE)

1 THAT IT ALL BREAKS DOWN TO AN OATH AGAINST AN OATH, SHE SAID/
 2 HE SAID. THAT THE DEFENDENT WAS NOT ACCUSED BY THE ALLEGED
 3 VICTIMS (DESIREE OR SUMMER MENESS) (BY THEIR ALLEGED DAD
 4 MR. GARY MENESS) HIMSELF. WHO IN FACT, WAS INVESTIGATED IN
 5 1992, FOR ALLEGED LEWENESS WITH BOTH (DESIREE) - (SUMMER)
 6 AS WILL BE SHOWN FURTHER IN RECORD. [ALONG WITH ANOTHER AFFIDAVIT,
 7 FROM MR. PAUL GRUBBS.]
 8 THAT GARY MENESS WAS MAD IN DEC 1993 BECAUSE HIS EX-GIRL
 9 FRIEND MOVED OUT OF HIS APT. AND IN WITH THE DEFENDENT FOR
 10 PERSONAL REASONS.
 11 ALSO THE FACT, THAT ON JAN 1ST 1994, DEFENDENT SMACKED MR.
 12 MENESS FOR GETTING DRUNK ON NEW YRS EVE, AND DISRESPECTING
 13 THE DEFENDENT'S SISTER, TRY TO HAVE SEX WITH HER. ALSO DEFENDENT
 14 CALLED THE WELFARE DEPT. ON MR. MENESS.
 15 THAT GARY MENESS TOLD DEFENDENT PAY BACK IS A BITCH, AND
 16 DEFENDENT WILL PAY FOR IT.
 17 ON JAN 19 - 1994 DEFENDENT WAS ARRESTED.
 18 MS. JOCELYN COOMBS IS A NONE VICTIM TESTIFYING AT DEFENDENT'S
 19 SENTENCING PHASE. PER NRS 176.015 (3) NRS 213.005

DATE 2/12/2015

SIGN. CHARLES MALI

Charles Mali

ALL FACTS HERIN ARE FROM RECORDS - TRANSCRIPTS.

CONTINUE ON PAGE ONE, OF SECOND 1/2 OF THIS AFFIDAVIT.

IT WILL STATE [START HERE.]

V6 976

COPY

...STARTS - HERE...

(1) 1 THAT ON JAN. 18-19 1974, WHILE I WAS DRINKING AND WORKING
2 ON MY TRUCK [ALL MORNING LONG, PLUS] WITH A COUPLE OF MY FRIENDS,
3 WHO ALSO LIVED IN THE SAME APT. BLDG. AS I DID, A COUPLE OF DETECTIVES
4 CAME UP TO ME, ASKED WHO I WAS, THEN TOLD ME I HAD TO GO TO THE
5 POLICE STATION WITH THEM TO ANSWER SOME QUESTIONS. CASE # 16248-74.
6 DURING INTERROGATION, I WAS BEING VIDEO TAPED, AGAINST MY WILL, AND
7 WITHOUT MY KNOWLEDGE OR PERMISSION, [THIS IS ILLEGAL ACCORDING

(1)A 8 TO THE 9TH CIR. COURT]. IT BECAME A CUSTODIAL INTERROGATION, ONCE DET.
9 STEIGHMIER TOLD ME (I)D COMMITTED A CRIME. AND NOW HE WAS TRYING
10 TO TAKE ADVANTAGE OF ME BEING BOTH NERVOUS AND INTOXICATED.

11 SEE: TT. PAGE 175 LINES 5 THRU 7, D.A. GRECO, ASKING DET. STEIGHMIER
12 Q). AT ANY TIME THAT DAY DID HE (THE DEFENDENT) TELL YOU HE HAD BEEN
13 DRINKING THAT DAY? (A). YES.

14 NOTE: THERE WERE LOTS OF EMPTY AND FULL BEER CANS SITTING IN PLAIN
15 SITE, AT THE PLACE WE WERE WORKING ON MY TRUCK. SEE: MR. PAUL GRUBBS,
16 SWORN AFFIDAVIT. (EXHIBIT)³ DATED SEPT. 29. 1995.

(1)B 17 THAT DET. WAS NOW TRYING TO USE MY INTOXICATION AGAINST ME AND
18 TRYING TO [TRICK/COERSE] ME INTO MAKING SOME KIND OF A FALSE CONFESSION,
19 TO HIM. SEE: INTERROGATION TRANS. PAGE 7 LINE 28, DEFENDENT, (A). OK, SO NOW
20 YOUR SAYING, IF I TELL YOU MY SUPPOSED SIDE OF THE SIDE STORY. LINE 32. (A).
21 OK, IF I TELL THE TRUTH TO YOU AS YOU WANT TO HEAR IT, AND IT COMES OUT
22 LIKE OH, LIKE SOME KIND OF CONFESSION OR SOMETHING, IS THAT WHAT YOU WANT
23 TO HEAR? [DET. CONT. TO COERSE ME INTO MAKING STATEMENTS OF SOMETHING]

(1)C. * 24 I DIDNT DO¹. DURING INTERROGATION, [I WAS NOT GIVEN MY FULL
25 RENDITION OF MY MIRANDA RIGHTS.] SEE APP 312. I) WAS NEVER ADVISED
26 THAT ANY STATEMENT, I) MADE COULD BE USED AGAINST ME IN A COURT OF
27 LAW. [NOR DID I EVER SIGN A MIRANDIZED CARD], TO SHOW HOW
28 I WAS PROPERLY MIRANDIZED.

V6 976

AFFIDAVIT, CONT.

1 (D) 1 I ENVOCKED MY RIGHT TO AN ATTORNEY, AND YET WAS STILL BEING
2 QUESTION'D BY DET. STEIGHMIER, (COUNSEL WAS DENIED).....

1 (E) 3 THIS IS A CLEAR VIOLATION OF MIRANDA RIGHTS, SET BY THE UNITED
4 STATES SUPREME COURT, SEE: POWELL V. STATE (1992), COOPER V.
5 DUPNIK, 963 F.2d. 1220, STATE V. MITCHELL, 122 N.H. 1269, 149 P.3d. 33 (2006),
6 AND CARTER V. STATE, 299 P.3d. 367 (2013).

1 (F) 7 AT 1345 P.M. I WAS ARRESTED BY DETECTIVE JAMES STEIGHMIER.....

(2) 9 JAN. 20TH 1994 PROBABLE CAUSE AFFIDAVIT REVIEWED BY MAGISTRATE.

(3) 10 JAN. 21ST 1994 COMPLAINT AND DECLARATION OF PROBABLE CAUSE ARREST
11 AND DETENTION FILED, WITH THE DEFENDENT IN CUSTODY.

(4) 13 JAN. 24 1994 THE DEFENDENT FINALLY GOES TO HIS ARRAINGMENT,
14 JUST DOWN THE HALLWAY IN THE SAME BLDG. AS THE JAIL, ITS BEEN
15 SIX (6) DAYS NOW SINCE BEING ARRESTED. THIS IS A CLEAR FOURTH
16 (4TH) AMEND. VIOLATION. A VIOLATION OF THE 48 HR LAW SET BY THE U.S.
17 SUPREME COURT, POWELL V. STATE (1992). CONSTITUTIONAL LAW SET BY U.S.S.CT.

(A) 18 BASED ON McLAUGHLIN, THE U.S.S.CT. STATES QUOTE: WE HOLD THAT
19 A SUSPECT MUST COME BEFORE A MAGISTRATE WITHIN - 48 HOURS,
20 INCLUDING NON-JUDICIAL HOLIDAYS, FOR A PROBABLE CAUSE DETERMINATION,
21 CITING, NRS. 171.178, 171.178(3), 171.186. SEE: POWELL V. NEVADA 114 S.CT (1994).

22 [THIS CLEARLY MEANS THAT THE DEFENDENT WAS SUPPOSED TO STAND
23 IN FRONT OF A MAGISTRATE, WITHIN 48 HOURS OF HIS ARREST.] NOT
24 FIVE (5) OR SIX (6) DAYS LATER.

(B) 26 THE UNITED STATES SUPREME COURT STATED, QUOTE;
27 WHATEVER, PROCEDURE A STATE MAY ADOPT FOR MAKING A PRETRIAL
28 DETERMINATION OF THE PROBABLE CAUSE FOR DETAINING AN ARRESTED

AFFIDAVIT, CONT.

1 PERSON PENDING FURTHER PROCEEDINGS; [JUSTICE O'CONNER] [1991]
 2 HELD THAT A DEFENDENT MUST BE IN FRONT OF A MAGISTRATE
 3 NO-LATER THAN 48 HOURS AFTER BEING ARRESTED, COUNTY OF
 4 RIVERSIDE V. MCLAUGHLIN, 111 S.C.T. 1661 (1991).
 5 THAT A DELAY EXCEEDING THE 48 HRS. PRESUMPTIVELY VIOLATES
 6 THE FOURTH (4TH) AMENDMENT OF THE U.S. CONSTITUTION.

(C) 7 DEFENDENT WAS NOT AFFORDED LEGAL COUNSEL AT ANY TIME, AS THE
 8 LAW REQUIRES, EVEN THOUGH DEFENDENT REQUESTED COUNSEL DURING
 9 HIS CUSTODIAL INTERROGATION.

(5) 11 JAN. 24TH 1994 DEFENDENT, FINALLY GOT TO FILL OUT A NOTIFICATION FORM,
 12 FOR A (P.D.) - PUBLIC DEFENDER, EVEN THOUGH ~~THE~~ HE HAD REQUESTED
 13 LEGAL COUNSEL DURING HIS CUSTODIAL INTERROGATION ON JAN. 19, 1994.
 14 SEE: APP 312; (SEE: CARTER V. STATE (2013).)

(6) 16 ON FEB. 03 1994. THE DEFENDENT IS NOW GOING TO HIS PRELIM. HEARING.
 17 APPROX. 15 MINUTES BEFORE GOING INTO COURT, THE DEFENDENT FINALLY
 18 MEETS HIS (P.D.) PUBLIC DEFENDER, [MS. JANET COBB SMUCK]
 19 FOR THE FIRST TIME.

(A) 20 THE FIRST THING SHE SAYS TO DEFENDENT IS [QUOTE: THINGS WILL
 21 BE DONE HER WAY ONLY, PERIOD] [DEFENDENT WILL HAVE NO SAY
 22 IN THE MATTER]. A CONFLICT OF INTEREST HAS NOW STARTED BETWEEN
 23 THE DEFENDENT AND HIS PUBLIC DEFENDER JANET C. SMUCK!

(7) 25 DURING THE PRELIM. HEARING, THERE WAS NO MEDICAL EVIDENCE,
 26 NO D.N.A TESTING, NO RAPE KITS DONE, NOTHING PRESENTED AT ALL.
 27 "IN FACT," THE STATE DIDN'T EVEN HAVE A PROPER TIME LINE WHEN
 28 THE (S.A.'S) ALLEGEDLY OCCURRED, OR TOOK PLACE, THEY MADE V6 978

AFFIDAVIT, CONT.

"
1 THE FOLLOWING FACTS ARE TAKEN DIRECTLY, [FROM PRELIM. TRANSCRIPTS.]

(8) 2 ON P.L.T. PAGE 42 LINES 12 THRU 17, ALLEGED VICTIM, SUMMER MENESS,
3 IS TELLING [D.A. DAN GRECO] THAT THE DEFENDENT NEVER SEXUALLY
4 ASSAULTED HER. ON LINE 15, IT SAYS QUOTE: (Q.) SUMMER DID HIS
5 PRIVATE EVER GO INSIDE YOUR PRIVATE? (A.) NO!

(A) 6 ON P.L.T. PAGE 46, LINES 1 THRU 6, SUMMER GOES ON TO SAY THAT THE
7 DEFENDENT NEVER COMMITTED A LEWD ACT WITH HER EITHER. PAGE 46,
8 LINE 4, DISTRICT ATTORNEY DAN GRECO, ASKS SUMMER, (Q.) DID HE
9 (DEFENDENT) EVER TOUCH HIS PRIVATE TO THE OUTSIDE OF YOUR PRIVATE (A.) NO!

10 -- PROVING THE DEFENDENTS FACTUAL INNOCENCE --

(9) 11 ON P.L.T. PAGE 30 LINES 14 - 15 DEFENDENTS COUNSEL, ASKED [DESIREE -
12 MENESS] (Q.) DID CHUCK (DEFENDENT) EVER MAKE YOU TOUCH HIS
13 PENIS? (A.) NO! "YET" IN TRIAL WHEN D.A. GRECO ASKED HER THAT
14 SAME QUESTION, SHE SAID YES! (Why?) SHE WAS COACHED BY STATE!

(A) 15 ON P.L.T. PAGE 33, LINES 22 THRU 24, [DESIREE MENESS] WAS ASKED, HAVE
16 YOU EVER SEEN A MAN WITHOUT HIS CLOTHES ON? (A.) YES! MY DAD!!
17 SHE GOES ON ABOUT HOW SHE ALSO TOOK SHOWERS WITH HER DAD PRIOR..

(A) 18 * INTERESTING ENOUGH SHE DID NOT SAY THE DEFENDENT! *

(A) 19 LOOK AT [TRIAL TRANSCRIPTS ON PAGE 71 LINES 9 THRU 15] DESIREE WAS
20 ASKED (Q.) DESIREE, HAVE YOU EVER SEEN A MAN'S PENIS BEFORE?
21 (A.) YES!, MY DADS! JUST HER DADS!!

22

23

-- NOTE OF PERSONAL FACT. --

24 MR. GARY MENESS, WAS INVESTIGATED BACK IN 1992 FOR LEWD ACTS WITH
25 BOTH SUMMER/DESIREE. A LOT OF PEOPLE NEW IT. SEE! MR. PAUL GRUBB
26 SWORN AFFIDAVIT. [MR. MENESS EVEN STATES IT IN TRIAL]. HE WOULD
27 GET DRUNK A LOT, AND BRAGG HOW HE HAD BEAT THE SYSTEM. THE DEFENDENTS
28 COUNSEL, ALSO KNEW ABOUT THIS, BUT TOLD DEFENDENT THAT IT ~~WAS~~ 8/6-8/79

AFFIDAVIT, CONT.

1 MATTER AS IT DID NOT PERTAIN TO DEFENDENT'S CASE. MORE CONFLICT
2 OF INTEREST WITH P.D. SMUCK! [SHE REFUSED TO INVESTIGATE ANYTHING!]

3
(10) 4 IN REGARDS, TO TATTOOS ON THE DEFENDENT'S BODY...

5 DURING THE DEFENDENT'S PRELIM. HEARING, IT WAS ASKED IF THE
6 DEFENDENT (MR. MAKI) HAD ANY SCARS, MOLES OR TATTOOS IN HIS
7 PENIS AREA? AS, THIS QUESTION WAS ASKED BY VIDEO TAPES INTERVIEWS
8 AND QUESTIONS PUT TO THE ALLEGED VICTIMS [DESIREE/SUMMER MENESS],
9 BOTH, BY LEAD DETECTIVE JAMES STEIGHMIER. THESE QUESTIONS
10 WERE ALL SO PUT TO DET. STEIGHMIER ON THE WITNESS STAND...
11 SEE p.l.t. PAGE 73 LINES 23 THRU 25. (A), I DID ASK THE GIRLS DURING MY
12 INTERVIEW WITH THEM.

(10A) 13 Q. P.L.T. PAGE 74 (Q) DETECTIVE YOU ASKED A QUESTION ABOUT TATTOOS?

14 (A) WHEN [I ASKED SUMMER], ON THE TAPE ABOUT TATTOOS I ASKED
15 THAT QUESTION BECAUSE, ONE OF THE MOST DISTINGUISHING THINGS A
16 GIRL WOULD REMEMBER WAS SOMETHING THAT WAS VERY UNUSUAL IN
17 IN THE PENIS AREA, AND SOMETIMES ITS A TATTOO IN HIS PELVIC AREA...

(10B) 18 AFTER IT WAS ESTABLISHED, BY THE STATE, THAT THE DEFEND-
19 ENT DID NOT HAVE ANY TATTOOS IN HIS PELVIC AREA,
20 THE HEARING WAS OVER, SO IMMEDIATELY BEFORE EVERYONE LEFT THE
21 COURT ROOM, THE DEFENDENT TOLD HIS PUBLIC DEFENDER TO GET A CAMERA
22 A-S-A-P. TO PHOTOGRAPH HIS BODY! [TO PROVE HIS FACTUAL INNOCENCE...]

(10C) 23 THE DEFENDENT'S P.D. ASKED WHY THE CAMERA? DEFENDENT TOLD P.D.

24 SMUCK, THAT IN FACT HE HAD A [VERY LARGE - VERY COLOR FULL] TATTOO
25 IN HIS PELVIC AREA AND WANTED IT PHOTOGRAPHED TO HELP HIS CASE.

26 P.D. SMUCK SAID SHE WOULD GET THE CAMERA [BUT THAT DEFENDENT
27 MUST'VE GOTTEN THE TATTOO IN JAIL WHILE BEING LOCKED UP, BECAUSE

28 (NO BODY COULD I-D) IT. [MORE CONFLICT OF INTEREST V6+980.]

AFFIDAVIT, CONT.

(11) 1 FEB. 16 1994 I WENT TO MY SECOND ARRAINGMENT AND PLED NOT-GUILTY!

(12)* 2 MARCH 03 1994. MOTION'S- HEARING.. WROTE JUDGE A LETTER TO FIRE P.D.
3 DEFENSE COUNSEL, JANET C. SMUCK, IS ASKING THE COURT THRU ORAL MOTIONS,
4 FOR ALL DISCOVERY EVID. ENCLUDING A MOTION TO COMPEL DISCOVERY TO
5 THE STATE..

(13) 6 THE STATE HAS AN EXPERT

7 MARCH 11 1994. EVIDENTIARY HEARING.. JANET C. SMUCK FOR DEFENSE.

8 DAN GRECO FOR THE STATE.

9 ON PAGE 25 LINES 16 THRU 21, MR. GRECO ADDRESSES THE COURT, QUOTE: YES,

10 YOU HONOR (I) HAVE AN ANSWER FOR YOU, SHE DID SEE A SAINT'S EXAMINER

11 WHICH IS THE NURSE PRACTITIONER THAT EXAMINES CHILD SEXUAL ASSAULT

12 VICTIMS AND THEY ARE EXPERT'S! THE STATE CLEARLY ADMITS ON

13 RECORD THAT THE ALLEGED VICTIMS DID SEE AN EXPERT, EMPLOYED BY THE STATE..

(13A) 14 AND IF THE CASE GOES TO TRIAL, THE STATE WILL HAVE ITS EXPERT FOR THE

15 STATE TESTIFY [EXPERT WITNESS FOR THE STATE IS MS. KATHY M. PEELE,]

16 DIRECTOR OF THE SAINT'S PROGRAM.. AN EXPERT IN PHYSICAL EVIDENCE..

17

(14)* 18 (DEFENDENTS) "CONFLICT'S WITH DEFENSE COUNSEL, P.D. SMUCK.."

19 SINCE THE FIRST TIME (I) MET MS. SMUCK 15 MINUTES BEFORE MY

20 PRELIM. HEARING, WE BUMPED HEADS. ALMOST EVERY TIME SHE CAME TO

21 SEE ME IN TRAIL, [SHE ALWAYS SAID I HAD TO BE GUILTY.] I ASKED HER TO TALK TO

22 PEOPLE, ALOT OF TIMES SHE TOLD ME SHE WAS TOO BUSY, BUT SHE'D LEAVE HER

23 CARD SO SOMEONE COULD CALL HER! BUT, [SHE DID GO AND SIT DOWN WITH

24 BOTH OF THE GIRLS!] I STILL DON'T UNDERSTAND THAT. [SHE SEEMED TO BE MORE

25 INTERESTED IN HELPING THE STATES CASE, THAN HELPING ME..]

(14A) 26 I CALLED A COUPLE OF THE PEOPLE I WANTED TO TESTIFY IN MY BEHALF TO

27 SEE IF MS. SMUCK HAD IN FACT SEEN EM, THOSE I SPOKE TO SAID THAT

28 SHE DID LEAVE A CARD, THEY DID SPEAK TO HER VERY BRIEFLY. 6 981

AFFIDAVIT CONT.

1 AND EACH ONE STATED THE SAME THING TO ME, THAT DEFENDENTS (P.D.)
 2 MRS. JANET C. SMUCK TOLD THEM (1) THE STATE DID-NOT HAVE A GOOD
 3 CASE AND (2) THAT (I) DID-NOT NEED THEM TO COME TO MY TRIAL.
 4 I TOLD E'M ALL IT WASN'T TRUE AT ALL, I DID WANT THEM, AND DON'T LISTEN
 5 TO HER AT ALL. (I) SEEN MY P.D. IN JAIL AGAIN, I GOT SO MAD AT HER,
 6 I WAS TOLD TO CALM DOWN [BY THE JAIL-STAFF] P.C.T. PAGE 15 LINES 1 THRU 7.
 7 [I TOLD MS. SMUCK] I WAS GOING TO GET HER FIRED AND THAT I DID-NOT
 8 WANT HER AS MY LAWYER ANYMORE, AS ALL SHE DOES IS LIE TO ME,
 9 SHE WON'T DO AS I ASK, WON'T INVESTIGATE ANYTHING I TELL HER; "BUT
 10 SHE'LL GO TALK TO THE STATES WITNESSES" [ALLEGED-VICTIMS] AND SAY THAT
 11 THEY HAVE TO BE TELLING THE TRUTH, THAT I HAVE TO BE GUILTY. [P.C.T. PAGE 15
 12 LINES 5 THRU 7, AND 24, PAGE 16 LINES 1 THRU 5.]

(14) B 13 I TOLD HER ALL WILL COME OUT IN MY TRIAL [AND THAT I WILL WANT TO
 14 TESTIFY] IN MY OWN BEHALF. ALL SHE EVER TOLD ME WAS, QUOTE:
 15 THE JURY WOULD NOT BELIEVE ME AT ALL! P.C.T. PAGE 95 LINES 23-24..

(14) C 16 I TOLD HER ABOUT MR. GARY MENESE, (HOW IN 1992) HE WAS INVESTIGATED
 17 FOR LEWD ACTS WITH BOTH GIRLS (BY WELFARE DEPT.) SUMMER, DESIREE.
 18 AS HIS THEN (NEIGHBOR) CALLED THE WELFARE DEPT. ON HIM FOR SHOWERING
 19 WITH BOTH GIRLS AND RUNNING AROUND IN HIS HOUSE NAKED! P.D. SMUCK,
 20 REFUSED, TO INVESTIGATE HIM, TELLING DEFENDENT THAT IT HAD NOTHING TO
 21 DO WITH HIS CASE. [DEFENDENT TOTALLY DISAGREED], AND STILL DOES...

(15) 22 IT GOT SO BAD, BETWEEN DEFENDENT AND HIS PUBLIC DEFENDER,
 23 THE DEFENDENT DIDN'T KNOW WHAT TO DO, NEVER BEING IN A SITUATION AS THIS
 24 BEFORE, SO, THE DEFENDENT FINALLY WROTE A LETTER TO HER BOSS MR. MIKE
 25 SPECIO, "EVEN SPOKE TO HIM ON THE PHONE. HE REFUSED TO REMOVE HER.
 26 (2) DEFENDENT WROTE TO, WASHOE LEGAL SERVICES, FOR HELP, THEY SAID
 27 THERE WAS NOTHING THEY COULD DO. (3) DEFENDENT WROTE TO NEU. BARR.
 28 THEY SAID ALL THEY COULD DO IS REGISTER A COMPLAINT ABOUT HER. 6-982

AFFIDAVIT, CONT.

1 COULD NOT GET HER REMOVED FROM MY CASE. SEE P.C.T. PAGE 16 LINES
2 6 THRU 14. FINALLY [AN INMATE IN JAIL] TOLD ME TO WRITE A
* 3 LETTER TO THE COURT, ASKING TO HAVE MY P.D. REMOVED AND REPLACED
4 WITH A NEW COUNSEL [WHICH IS MY LEGAL RIGHT]. (APRIL 03-1994)

(15) A. 5 SO THAT'S WHAT THE DEFENDENT DID. [I WROTE A LETTER TO THE COURT].
6 TO HONORABLE STEVEN KOSACH, TELLING HIM I DID NOT WANT TO HAVE P.D.
7 JANE C. SMUCK AS MY COUNSEL, THAT I'D LIKE A NEW ONE. P.C.T. PAGE 16 LINES 10-11.

8

9 APRIL 1ST 1994. SUPPRESSION- HEARING.

10

(16) 11 THE DAY BEFORE THE SUPPRESSION HEARING, P.D. SMUCK CAME TO THE JAIL,
12 AND TOLD THE DEFENDENT IT WAS NOT NECESSARY FOR HIM TO GO TO THIS HEARING,
13 [WITHOUT EXPLAINING ANYTHING] SHE SAID SHE WOULD TAKE CARE OF EVERYTHING.

(16A) 14 FOR DAYS ON END, DEFENDENTS P.D. IS CONSTANTLY DRILLING INTO DEFENDENTS
15 HEAD THAT [QUOTE] NO-ONE WILL BELIEVE YOU, YOU'RE GUILTY, NO-ONE IS
16 GOING TO HELP YOU. [THE JURY WON'T BELIEVE YOU IF YOU GO TO TRIAL].

(16B) 17 PAGE 3 LINES 1 THRU 4. P.D. SMUCK, CONT, AND THAT IS THAT MR. MAKI WILL BE
18 PLEADING GUILTY TO (2) COUNTS OF SEXUAL ASSAULT ON A CHILD BELOW THE AGE
19 OF (14) AND (2) COUNTS OF LEWDNESS YOUR HONOR.

* 20 PAGE 16 LINES 21-22 THE COURT: DO YOU WANT TO CHANGE YOUR PLEA TODAY?
21 DEFENDENT, NO, YOUR HONOR!

22 PAGE 17 LINES 12-13. THE COURT: DO YOU FEEL YOU'VE HAD ENOUGH TIME TO
23 DISCUSS THIS WHOLE THING WITH YOUR ATTORNEY? LINES 14 THRU 17, DEFENDENT,
24 SHE DISCUSSED IT WITH ME YESTERDAY AND SHE DISCUSSED IT WITH ME
25 LAST NIGHT ON THE PHONE [AND AGAIN RIGHT BEFORE COURT] STARTED AND TOLD
26 ME I HAVE NO WAY TO DEFEND MYSELF.

27 PAGE 17 LINE 20. DEFENDENT: [AND LIKE SHE SAYS, HEY NO-ONE IS
28 GOING TO BELIEVE ME!]

V6. 983

AFFIDAVIT CONT.

- (17) 1 ONCE IT'S BEEN ESTABLISHED DEFENDENT IS GOING TO TRIAL, [EVEN THOUGH THE
2 COURT TRIED TO CONVINCE DEFENDENT OTHERWISE] AND SHOWING CLEAR BIAS
3 TOWARDS DEFENDENT STATING ON PAGE 15 LINES 17-18 QUOTE: "IF YOU THINK
4 YOUR NOT GUILTY, YOUR IN NEVER-NEVER LAND". THE COURT IS/WAS ALSO
5 TRYING TO MANIPULATE DEFENDENT THRU HIS IGNORANCE INTO A PLEA HE DID
6 NOT WANT. FROM DAY ONE ALL DEFENDENT IS BEING TOLD IS [HE HAS TO BE GUILTY,
7 [NO-ONE IS GOING TO HELP HIM] BY P.D. SMUCK, SEE PAGE 9 LINES 20-23.
8 INCLUDING HOW THE JURY WOULD NOT BELIEVE DEFENDENT. SEE: P.C.T. PAGE 95
9 LINES 23-24 D.A. MCCARTHY, ASKING P.D. SMUCK, (Q). DID YOU TELL HIM (DEFENDENT)
10 THAT HE WOULD BE FOUND GUILTY? (A). YES! [DEFENDENT STILL WANTS A TRIAL!]
- (18) 11 AFTER THE HEARING: P.D. SMUCK IS YELLING AT DEFENDENT STATING, "I GOT
12 YOU THE BEST DEAL I COULD, NOW I HAVE TO GO TO A TRIAL I DONT
13 WANT". ON PAGE 25 LINES 17 THRU 19, 20, 21. DEFENDENT TO COURT, WELL
14 APPARENTLY YOUR HONOR, LIKE MY LAWYER STATED, THAT A JURY, [I'M GOING
15 TO HAVE NO CHANCE]. LINES 20-21, FOR SOMETHING THAT DIDNT EVEN HAPPEN.
- (19) 16 APRIL 03/04? 1994. ANOTHER HEARING. JUDGE DENIES LETTER DEFENDENT SENT
17 TO COURT IN REGARDS TO FIRING HIS P.D. JAMES C. SMUCK.

(20) 19 DAY OF THE DEFENDENTS TRIAL.

- 20
- 21 APRIL 11-12 1994. TOTAL TIME OF DEFENDENTS TRIAL IS 3 1/2 HOURS...
- 22 MONDAY APRIL 11, 1994 JURY SELECTION TILL LUNCH. TRIAL STARTS AT 2:20pm
23 TILL 2:45pm END FOR THE DAY.
- 24 TUESDAY APRIL 12, 1994. DEFENDENTS TRIAL RE-STARTS AT 10:AM TILL 11:30AM
25 (LUNCH TIME) TRIAL RE-STARTS AT 1:30pm TILL 2:pm [BREAK]. REASON IS THE
26 DEFENDENT WAS ARGUEING WITH HIS P.D. IN REGARDS TO BRINGING OUT THE
27 PHOTOS HE HAD TAKEN AT HIS PRELIM. HEARING, SHOWING HIS TATTOO P.D. DIDNT
28 WANT TO PRODUCE THEM AT ALL! [TRIAL IS DONE BY 4pm.] V6. 984

AFFIDAVIT, CONT.

BEFORE THE DEFENDENTS TRIAL STARTS...[DEFENSE COUNSEL ASKING FOR ALL OF DISCOVERY]

(21) REFER BACK TO, MARCH 03, 1994. MOTION'S HEARING. (SEE AFFIDAVIT PAGE 6,
 #12.) BEFORE DEFENDENTS TRIAL STARTS, P.D. SMUCK, ADDRESSES THE
 COURT IN REGARDS TO HOW THE STATE STILL HAS NOT TURNED OVER
 ALL DISCOVERY YET. REFER TO TT. PAGE 5 AND PAGE 6, SEE ON
 PAGE 5 LINE 24, ON PAGE 6 LINES 1 THRU 5.

(22)* BY THE STATES REFUSAL OR FAILING TO TURN OVER DISCOVERY EVIDENCE
 JUST (2) DAYS BEFORE DEFENDENTS TRIAL OR ON THE DAY OF DEFENDENTS
 TRIAL, IS A BRADY VIOLATION, SEE: BRADY V. MARYLAND 373, U.S. 83,
 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed. 2d 215, 218 (1963). [EVIDENCE BEING]
 PHOTOGRAPHS OF ALLEGED VICTIM'S VAGINA. TAKEN BY THE STATES,
 EXPERT'S - REFER BACK TO MARCH 11-1994, SEE AFFIDAVIT PAGE #6. (#13.)

(23)* (THE STATE HAS AN OBLIGATION) TO TURN OVER ALL DISCOVERY EVID.
 TO THE DEFENSE.

(24)* BY THE STATE, NOT TURNING OVER ALL DISCOVERY EVIDENCE TO THE
 DEFENSE, SEE: AFFIDAVIT'S PAGE 6, (#12) - MOTION'S HEARING.
 IT BECOMES A CLEAR VIOLATION OF THE DEFENDENTS RIGHT TO DISCOVERY
 AND THE RIGHT TO A FAIR TRIAL...

(25) ALSO, A VIOLATION OF THE DEFENDENTS DUE PROCESS, DUE PROCESS/
 EQUAL PROTECTION UNDER THE LAW. A VIOLATION OF THE DEFENDENTS
 FIFTH (5th), SIXTH (6th) AND FOURTEENTH (14th) CONSTITUTIONAL RIGHTS.

(26) THE DEFENDENTS (5th-6th AND 14th) CONSTITUTIONAL RIGHTS WERE VIOLATED,
 WHEN THE PROSECUTION DID NOT, ADHERE TO PROPER REQUESTS BY
 THE DEFENSE COUNSEL, (ON MARCH 03 1994) MOTION'S HEARING..
 WHEN THE DEFENSE COUNSEL MS. SMUCK, [MADE AN ORAL MOTION]
 TO COMPEL ALL DISCOVERY EVID. FROM THE STATE, V6. 985

AFFIDAVIT, CONT.

1 PER. N.R.S. 174.235(1) AND N.R.S. 174.285, DISCOVERY AND
2 TIME LIMIT ATTACHED..

(27) 3 THE CAUSE AND DELAY, OF [ALL DISCOVERY EVID.] FROM THE STATE
4 TO THE DEFENSE, HAS NOW STOPPED THE DEFENSE, FROM BEING ABLE
5 TO OBTAIN ITS LEGAL OPPORTUNITY FOR THE DEFENSE TO HAVE IT OWN
6 MEDICAL-EXPERT, TO LOOK AT THE PHYSICAL EVIDENCE THAT THE
7 STATE WAS WITH-HOLDING, PHYSICAL (PHOTOGRAPHS), SO AS TO DISPUTE
8 THE STATES MEDICAL EXPERT, [MS. KATHY M. PEELE].

(27A) 9 ON TT. PAGE 6, LINES 6 THRU 9, DEFENSE COUNSEL IS ASKING THE COURT
10 FOR A TIME CONTINUANCE, SO THAT THE DEFENSE CAN OBTAIN AN OPINION
11 FROM ITS OWN EXPERT, AND TO HAVE ITS EXPERT IN PHYSICAL EVIDENCE
12 DISPUTE THE STATES EXPERT IN DEFENDENTS TRIAL, "FROM THE NEWLY
13 OBTAINED PHYSICAL EVIDENCE, THAT THE STATE JUST HANDED OVER."

(28)* 14 ON TT. PAGE 8, LINES 18-19, [THE COURT DENIES THE DEFENSE ITS
15 EXPERT.]

(28A)* 16 BUT, [ON TT. PAGE 8 LINE 24 AND PAGE 9 LINE 1.] THE COURT "CLEARLY
17 STATES ON RECORD, THAT THE STATE CAN HAVE ITS EXPERT, TO
18 TESTIFY AT DEFENDENTS TRIAL." AGAIN: REFER BACK TO THIS AFFIDAVIT'S
19 (PAGE 6, LINE 12.), D.A. GRECO IS STATING, [THEY ARE EXPERTS...].

(29)* 20 THIS IS HIGHLY PREJUDICIAL AS TO THE DEFENDENT GETTING A
21 FAIR TRIAL..

(29A)* 22 IT'S A CLEAR VIOLATION OF THE DEFENDENTS FIFTH (5TH) CONSTITUTIONAL
23 RIGHT, TO DUE PROCESS, THE DEFENDENTS FOURTEENTH (14TH) CONSTITUTIONAL
24 RIGHT TO DUE PROCESS/EQUAL PROTECTION UNDER THE LAWS OF THE U.S.
25 AND DEFENDENTS SIXTH (6TH) AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF
26 COUNSEL (I-A-C) UNDER STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984),

(30) 27 THAT THRU ARGUEMENTS TO THE COURT AND MAKING RECORD, GIVING
28 RISE TO COURT APPOINTED COUNSEL (PUBLIC-DEFENDER) JANUARY 16, 2006;

AFFIDAVIT, CONT.

1 COUNSEL'S FAILURE TO OBTAIN ANY OR ALL DISCOVERY," INCLUDING BUT NOT
 2 LIMITED TO, ALL MEDICAL REPORTS, PHYSICAL PHOTOGRAPHS, OF THE ALLEGED
 3 VICTIMS, PHYSICAL-EXAMINATION(S) REPORTS, DNA TEST RESULTS ECT. FROM
 4 THE PROSECUTION, BE IT PHYSICAL OR DOCUMENTED EVIDENCE THATS SAID
 5 TO BE IN POSSESSION OF THE PROSECUTION AND OR STATE AND NOT DISCLOSED
 6 TO THE DEFENSE FOR DISCOVERY PURPOSES.

(30A) 7 THAT THE BURDEN(S) OF SHOWING OR NOT SHOWING SUCH MATERIALITY
 8 AND/OR EXCULPATORY NATURE OF ANY EVIDENCE IN WHICH IS NOT PROPERLY
 9 (I-D.) OR PRESENTED BY THE STATE OR PROSECUTION [RESTS ON THE DEFENSE],
 10 AS STATED IN STATE V. HAUS, SUPRA 601 P2d 1197 (1979) AND IN SPARKS V.
 11 STATE, 757, P2d 180 (NU. 1988). (I-R-C.) STRICKLAND V. WASHINGTON 466 U.S.
 12 668 (1984)...

(31) 13 BY THE GOVERNMENTS (FAILURE) TO ASSIST THE DEFENSE "AND NOT DISCLOSE" ANY
 14 AND ALL INFORMATION PERTAINING TO THE [DEFENDENT'S CASE] AMOUNTS TO A
 15 CONSTITUTIONAL VIOLATION. IF IT DEPRIVES THE DEFENDENT OF A FAIR TRIAL!

(32) 16 IT WAS CLEAR CASE OF ABUSE OF DISCRETION, AND CLEAR ERROR ON THE
 17 COURTS PART TO EVEN ALLOW IT.

(32A) 18 IT WAS A CLEAR CASE OF INEFFECTIVE ASSISTANCE OF COUNSEL (I-A-C),
 19 UNDER STRICKLAND V. WASHINGTON, ALSO A VIOLATION OF THE DEFENDENTS
 20 (5TH)-(6TH) AND (14TH) CONSTITUTIONAL RIGHTS.

(33) 21 IT WAS [ABUSE OF DISCRETION AND CLEAR ERROR BY THE COURT], GIVEN THE
 22 FACT, THAT THE COURT DENIED, THE DEFENSE ITS EXPERT, TO TESTIFY IN
 23 COURT AGAINST THE STATES EXPERT, MS. KATHY M. PEELE. IN REGARDS TO
 24 ANY AND ALL [PHYSICAL EVIO., PHOTOGRAPHS, PHYSICAL REPORTS ECT.]
 25 PRESENTED BY THE STATE. THAT BY DOING SO IT WAS/ BECAME A ONE SIDED
 26 DECISION FOR THE JURY...

(33A) 27 SEE T.T. PAGE 8 LINES 18-19; (ON T.T. PAGE 8 LINE 24) AND (PAGE 9 LINE 1) THE COURT
 28 CLEARLY STATES ON RECORD, THAT THE STATE HAS ITS EXH. 987

AFFIDAVIT, CONT.

1 (AND WILL USE IT AT THE DEFENDENT'S TRIAL!)...

(34) 2 BY THE COURTS DENIAL TO THE DEFENSE, OF THE SAME EXCESS

3 AND PRIVILEGE OF AN EXPERT TO TESTIFY, IN REGARDS TO ANY

4 AND/OR ALL PHYSICAL EXAMINATIONS, PHYSICAL PHOTOGRAPHS OR ANY

5 OTHER PHYSICAL EVIDENCE OF THE ALLEGED VICTIMS, THAT THE STATE

6 REFUSED TO TURN OVER TO THE DEFENSE UNTIL (2) DAYS BEFORE

7 TRIAL AND ON THE DAY OF DEFENDENT'S TRIAL, IS CLEARLY - PREJUDICIAL

8 AGAINST THE DEFENDENT, [BY WITHHOLDING EXCULPATORY EVIDENCE],

9 "EVIDENCE, FAVORABLE TO THE DEFENDENT," IN VIOLATION OF BRADY V.

10 MARYLAND, 373 U.S. 83, 87, 83 S.Ct. 1194, 196-97 10 LEd 2d 215, 218 (1963).

(34A) 11 THE GOVERNMENT, HAS AN OBLIGATION TO TURN OVER (ALL) EVIDENCE

12 IN ITS POSSESSION, THAT IS BOTH FAVORABLE TO THE ACCUSED AND

13 MATERIAL TO GUILT AND PUNISHMENT, AND THAT THERE WAS A "REASONABLE

14 PROBABILITY" THAT HAD THAT EVIDENCE BEEN DISCLOSED, "THE RESULTS OF

15 THE PROCEEDINGS" WOULD BE DIFFERENT. CITING: UNITED -

16 STATES V. BALLEW, 473 U.S. 667, 678, 105 S.Ct. (1985).

17

18 THE DEFENDENT COULD NOT RECEIVE A FAIR TRIAL...

(35) 17

20 EVEN THOUGH THE DEFENSE'S EXPERT OF PHYSICAL EVIDENCE WAS LOCATED

21 IN CALIFORNIA, STILL BY THE COURTS REFUSAL OF ALLOWING THE DEFENSE,

22 TO HAVE THE SAME OPPORTUNITY (AS THE STATE DID), TO HAVE ITS EXPERT

23 TO OBTAIN AND RE-VIEW THE PHOTOGRAPHS OF THE ALLEGED VICTIMS,

24 (VAGINA), AND TO PROVIDE ITS OWN OPINION FOR THE JURY, AND TO

25 DISPUTE ANY PHYSICAL EVIDENCE THAT IS IN THE STATE'S POSSESSION,

26 THAT THE DEFENDENT'S TRIAL WOULD BE DIFFERENT, IN THE

27 OUTCOME HAD THE DEFENSE/DEFENDENT BEEN ALLOWED ITS EXPERT

28 IN THE FIELD OF [CHILD DEVELOPMENT], WHERE AS THE DEFENSE'S

AFFIDAVIT, CONT.

1 EXPERT, WOULD'VE TESTIFIED THAT THE FINDINGS OF THE STATES EXPERT,
2 THE SAINTS DIRECTOR, KATHY ~~MA~~ PEELE, WERE COMPLETELY BIASED.

(36) 3 AN EXPERT, FOR THE DEFENSE WOULD'VE EXAMINED THE - UNDISCLOSED
4 DISCOVERY, THE PHOTOGRAPHS OF THE (HYMEN'S) AND GIVEN THE JURY A
5 BROAD RANGE OF REASONS WHY THE [SAINTS DIRECTOR] WAS MISLEADING
6 THE JURY WITH UN-SUBSTANTIATED OPINIONS, AND WOULD'VE GIVEN AN
7 ALTERNATIVE REASONING AND LITATURE TO SHOW HOW THE SAINTS DIR.'S
8 FINDINGS WERE "NOT ONLY INACCURATE", BUT MISLEADING AND COULD BE
9 EXPLAINED BY MORE CONVENTIONAL THINKING BACKED BY HONEST RESEARCH
10 AND UNDERSTANDING.

(37)* 11 [NOW THE STATE WILL TRY AND SAY IT DID NOT HAVE AN EXPERT
12 TO TESTIFY IN DEFENDENTS TRIAL, (AS D.A. MCCARTHY STATED ON
13 RECORD IN DEFENDENTS POST-CONVICTION HEARING) IN REGARDS TO
14 PHYSICAL EVIDENCE.] REFER BACK TO MARCH 11-1994: DEFENDENTS EVID-
15 ENTUARY HEARING, JANET SMUCK DEFENSE COUNSEL, DAN GRECO DIST.
16 ATTORNEY FOR STATE OF NEV./ SEE: PAGE 25 LINES 16 THRU 21, IN SHORT
17 MR. GRECO IS CLEARLY STATING TO THE COURT, THAT THE SAINTS NURSE
18 PRACTITIONERS [THEY ARE EXPERTS]!

(37A) 19 MS. KATHY ~~MA~~ PEELE, TELLS THE JURY IN DEFENDENTS TRIAL, SHE IS HEAD DIR.
20 OF SAINTS PROGRAM AND AN ADVOCATE FOR THE STATE OF NEVADA, RENO'S
21 DISTRICT ATTORNEYS OFFICE, (TO IMPRESS THE JURY) MS. PEELE GOES ON TO TELL
22 HER QUALIFICATIONS TO THE JURY FOR (3) PAGES [STARTING ON TIT. PAGE 108 LINE 15
23 THRU PAGE ¹¹³ ~~112~~ LINE 24].

(38) 24 STATES EXPERT, (WITNESS) IN DEFENDENTS TRIAL, MS KATHY C. PEELE, DIRECTOR
25 OF THE SAINTS PROGRAM, WORKING WITH THE RENO DISTRICT ATTORNEYS OFFICE.

(38A) 26 THE EXPERT (WITNESS) FOR THE DEFENSE, TO DISPUTE THE STATES EXPERT,
27 NONE! AS THE COURT DENIED THE DEFENSE EQUAL GROUND DURING DEFENDENTS
28 TRIAL.

AFFIDAVIT, CONT.

(39) 1 "CLEAR ERROR," WAS COMMITTED BY THE COURT, BY NOT, ALLOWING
 2 THE DEFENSE/ DEFENDENT ITS OWN EXPERT TO DISPUTE THE STATES
 3 EXPERT, DURING THE DEFENDENTS TRIAL. VIOLATING THE DEFENDENTS
 4 5, 6, 14th U.S.C.A. INCLUDING (T.A.C.)...

6 ...EVIDENCE-MATERIAL-TO-GUILT...

(40) 8 THE STATE PRESENTED ITS EXPERT AT DEFENDENTS TRIAL. THE
 9 SEXUAL-ASSAULT-INVESTIGATIVE-NURSE[ing] TEAM, (SAINT'S) NURSE,
 10 KATHY C. PEELE, DIRECTOR, WHO TESTIFIED ON [T.I. PAGES 144 LINES 9
 11 THRU 12] AND ON [T.I. PAGE 145 LINES 7 THRU 13 AND 14 THRU 23]. THE FOLLOWING
 12 TESTIMONY READS, IN RESPONSE TO DEFENSE COUNSEL'S QUESTIONS,
 13 (A.) WELL YOU HAVE TO REMEMBER THAT A (HYMENAL) TISSUE IS VERY
 14 MUCH LIKE A RUBBER BAND. LIKE THE INSIDE OF YOUR MOUTH. IT CAN
 15 BE TRAMATIZED AND REPAIR ITSELF BACK, TO NORMAL.

(40A) * 16 (Q.) BY COUNSEL SMUCK, (QUESTION). MS. PEELE, DOES THE HYMEN HEAL UP?
 17 IS THAT WHAT YOU'RE TALKING ABOUT? I'M TRY TO FOLLOW YOUR ANSWERS TO
 18 MR. GRECO IN TERMS OF, IF THERE WAS SOME KIND OF BREAKAGE THERE
 19 [DOES IT HEAL UP]? ANSWER: YES, CORRECT...

(40B) * 20 (Q.) BY COUNSEL SMUCK, (QUESTION), WELL THEN AS FAR AS DESIREE IS
 21 CONCERNED, ARE YOU SAYING YOU THINK HER HYMEN IS ~~HEALED~~ HEAL'D?
 22 (A.) I DIDN'T SEE ANY EVIDENCE THAT THERE HAD BEEN ANY HEALING
 23 GOING ON, IT WAS NORMAL! I DIDN'T SEE ANY EVIDENCE AT THE TIME
 24 (I) EXAMINED HER...

(41) ** 25 DISTRICT ATTORNEY DAN GRECO, IS TELLING THE JURY IN HIS OPENING STATEMENT
 26 TO THE JURY, IN REGARDS TO DESIREE, ON T.I. PAGE 21 LINES 14 THRU 16. QUOTE:
 27 SHE'LL TELL YOU THAT HE THEN [INSERTED HIS PENIS] A, SMALL-- SHORT DISTANCE--
 28 SHE'LL SAY ABOUT AN INCH OR SO [INTO HER VAGINA].

AFFIDAVIT, CONT.

- (41A) 1 ON TT. PAGE 50 LINES 21-24, (Q3). BY D.A. GRECO TO DESIREE, (DID HE PUT HIS
2 PENIS INSIDE YOU? (A). YES. (Q). COULD YOU FEEL IT INSIDE YOUR VAGINA? A. YES.
3 GOTO P.C.T. PAGE 111 LINES 19-24. WHERE DEFENSE COUNSEL PLATTER IN CLOSING
4 ARGUMENTS STATE: DESIREE SAID SHE WAS ONLY TOUCHED (3) TIMES IN VERY 1ST
WITH DET. BELLER 5 INTERVIEW YET IN TRIAL TO D.A. GRECO (7) TIMES! NOW GOTO TT. PAGE 143 LINE 16-19,
6 STATEMENT BY MS. PEELE TO COUNSEL SMUCK, QUOTE: DESIREE'S TESTIMONY IS CONTRI-
7 DICTORY TO WHAT SHE IS CLAIMING OF WHAT THE DEFENDENT DID TO HER! DESIREE
8 MENESE SHOWED NO SEXUAL ABUSE SIGNS AT ALL!
- (42) 9 IN SUMMERS CASE MS. PEELE STATES: SUMMER'S PHYSICAL EVIDENCE IS
10 IN-CONSISTANT WITH HER ORAL TESTIMONY SHE GAVE. [NOW GOTO P.C.T. PAGE 110
11 LINE 1-24] COUNSEL PLATTER IN CLOSING ARGUMENTS: [SUMMER HAD MAJOR INCONSIST-
12 ANCES IN HER TESTIMONIES] EXPLAINING WHY BOTH GIRLS SHOULD BE SEEN, AND
13 A PSYCHOLOGICAL EXAM SHOULD BE ORDERED THRU COUNSEL SMUCK! BUT WHAT!
- (43) 14 MISS PEELE THE STATE'S DIR. DID PRESENT OPINION, STATEMENTS AND MISLEADING
15 STATEMENTS TO THE JURY, [THAT A ~~MALE~~ FEMALE HYMAN WILL GROW BACK].
- (44) 16 MS PEELE, DID PRESENT OPINION TESTIMONY FOR THE STATE'S BEHALF, WITH
17 HER ONLY INTENTION OF HELPING TO SECURE A SOLID CONVICTION FOR THE STATE'S
18 PROSECUTOR D.A. GRECO!
- (45) 19 IT WAS ALSO CUMULATIVE AND PREJUDICIAL TO THE DEFENDENT TO SHOW THE
20 VIDEO TAPES OF THE GIRLS (DESIREE/SUMMER MENESE)'S INTERVIEW'S WITH DET.
21 STEIGHMIER, ALONG WITH THEIR IN PERSON TESTIMONY TO THE JURY (BACK TO BACK)
22 DURING THE DEFENDENT'S TRIAL, THRU STATE AND COURT.
- (46) 23 MS KATHY PEELE, EXPERT FOR THE STATE, DID NOT GIVE ALTERNATE SCENARIOS
24 ONES WHICH MAY HAVE EXPLAINED WAYS AND EXAMPLES OF WHY THE
25 COMPLAINING WITNESSES DESIREE/SUMMER MENESE WERE NOT TELLING
26 THE TRUTH OR OPINIONS AND/OR EXAMPLES AS TO WHY A YOUNG GIRLS -

AFFIDAVIT, CONT.

1 GIRL(S) [MAY NOT HAVE A HYMEN], AND WHY THIS IS NOT ALWAYS
2 CONSIDERED SEXUAL ABUSE...

4 ...PROSECUTIONAL-MISCONDUCT...

(47) 6 THERE IS SUBSTANTIAL (COACHING OF ALLEGED VICTIMS) WITH PROSECUTIONAL
7 MISCONDUCT. NOT ONLY DURING DEFENDENT'S TRIAL, BUT IN HIS PRELIM.
8 HEARING AND DURING CLOSING ARGUMENTS.

(47A) 9 AS STATED PREVIOUSLY IN THIS AFFIDAVIT, DURING THE DEFENDENT'S
10 PRELIM. HEARING SUMMER WAS TELLING D.A. GRECO UNDER HIS
11 OWN QUESTIONING HOW THE DEFENDENT DID NOT COMMIT ANY
12 SEXUAL ACTS/ OR LEWDNESS WITH HER. SEE PLT. PAGE 43 LINE 12 THRU 17,
13 PLT. PAGE 46 LINES 1 THRU 6, (ON PAGE 46 LINE 4), AFTER SUMMER STATED
14 THE TRUTH WITH NO HESITATION AT ALL, D.A. GRECO GOT FRUSTRATED
15 AND MANIPULATED SUMMER INTO CHANGING HER STORY...

(47B) 16 DURING DEFENDENT'S PRELIM. HEARING, IT WAS "CLEARLY-ESTABLISHED"
17 THAT NOBODY KNEW THAT THE DEFENDENT HAD A LARGE TATTOO IN HIS
18 PELVIC AREA MAINLY-SUMMER MENESS. SEE: PLT. PAGE 73 LINES 23
19 THRU 25. DET. STEIGHMIER TALKING, (A). I DID ASK THE GIRLS DURING
20 MY INTERVIEW WITH THEM. PLT. PAGE 74 (Q.) DETECTIVE YOU ASKED
21 A QUESTION ABOUT TATTOOS? (A.) WHEN I ASKED (SUMMER) ON THE
22 VIDEO TAPE ABOUT TATTOOS, (I) ASKED THAT QUESTION, BECAUSE ONE OF
23 THE MOST DISTINGUISHING THINGS A GIRL, WOULD REMEMBER WAS
24 SOMETHING THAT WAS VERY UN-USUAL IN THE PENIS-AREA, AND
25 SOMETIMES IT A TATTOO IN HIS PELVIC AREA. [IT WAS "CLEARLY
26 ESTABLISHED" THAT SUMMER MENESS DID NOT KNOW ABOUT DEFENDENT'S
27 TATTOO IN HIS PELVIC AREA]...

AFFIDAVIT, CONT.

(47.C) 1 DURING THE DEFENDENTS TRIAL, (COUNSEL SMUCK) ASKED DET. STEIGHMIER,
 2 ON TT. PAGE 172 LINES 17 THRU 24 (Q.) WITH RESPECT TO YOUR INTERVIEW
 3 WITH SUMMER, YOU ASKED HER A QUESTION ABOUT TATTOOS WHY?
 4 ON LINES 20 THRU 24, DET. STEIGHMIER EXPLAINS HIS REASONS, [BASICALLY]
 5 HE'S STATING THE SAME REASONS AS HE DID IN DEFENDENTS PRELIM.
 6 HEARING [PLT. PAGE 74 LINES 1 THRU 10] SPEAKING OF THE INTERVIEW
 7 WITH SUMMER. ON TT. PAGE 173 LINES 7 THRU 14, COUNSEL SMUCK, ASKS
 8 DET. STEIGHMIER (Q). I BELIEVE YOU PARTICULARLY ASKED SUMMER IF MR.
 9 MAKI HAD ANY TATTOOS AROUND HIS PRIVATE AREA? (A). YES, MA'AM.
 10 (Q). AND SHE INDICATED HE DID NOT? (A). WELL I BELIEVE THAT SHE
 11 INDICATED HE HAD MANY TATTOOS FRONT/BACK, AND I SAID ANYTHING
 12 IN THAT PARTICULAR AREA? SHE SAID NO!

(48) 13 RE-DIRECT EXAMINATION (OF DET. STEIGHMIER) BY D.A. GRECO..
 14 PAGE 174 INT. TT. LINES 11 THRU 22 (Q). WHEN YOU ASKED SUMMER ABOUT
 15 HIS TATTOOS, SHE RESPONDED HE HAD MANY ON HIS FRONT/BACK CORRECT?
 16 (A). CORRECT! (Q). YOU HAD BEEN TALKING ABOUT HIS GENITALS AND PENIS
 17 AREA? (A). CORRECT! (Q). YOU SAID, "DID YOU NOTICE ANYTHING DOWN IN
 18 THAT AREA," CORRECT? (A). CORRECT! (Q). SHE SAID NO? (A). EXACTLY!!
 19 I WAS SPECIFICALLY REFERING TO THE PENIS AND PUBLIC AREA. / END OF QUESTIONS...

* *
 (49) 20 NOW THE DEFENDENT, HAS HIS COUNSEL BRING OUT THE PHOTOGRAPHS HE
 21 HAD TAKEN OF HIS-SELF AFTER HIS PRELIM. HEARING. [GO BACK TO AFFIDAVIT'S
 22 PAGE 5, PARAGRAPH'S 10 THRU 10-C].. ONCE THE PHOTOGRAPHS ARE OUT AND THERE
 23 BROUGHT TO COURTS ATTENTION, D.A. GRECO, COMES OVER TO DEFENDENTS TABLE,
 24 PICKS THE ONE PHOTOGRAPH OUT OF PILE, [OF DEFENDENTS TATTOO IN PELVIC
 25 AREA], THEN MR. GRECO GOES OVER AND GIVES THE PHOTOGRAPH TO DET STEIGHMIER,
 26 WHO INTERN GOES OUT IN THE HALLWAY TO SHOW SUMMER."

(50) * 27 NOW ON REBUTAL. (BY D.A. GRECO.) SUMMER MENESS NOW REMEMBERS
 28 "THE UN-KNOWN TATTOO IN DEFENDENTS PELVIC/PENIS AREA." V6 993

AFFIDAVIT, CONT.

1 GO TO T.T. PAGE 213 LINES 12-13. IN CLOSING ARGUMENTS TO THE JURY

2 D.A. GRECO STATES QUOTE: THE ONLY PHOTO THEY SAW WAS THE

3 ONE (IT) SHOWED THEM, TODAY! BACK TO T.T. PAGE 188 LINES 7 THRU 11

4 (D.A. GRECO) "ASKING SUMMER, (Q). CAN YOU REMEMBER WHAT ANY OF

5 THE TATTOOS LOOKED LIKE? (SUMMER ANSWERS) HALF A NAKED LADY.

6 "SUMMER WAS CLEARLY COACHED, BY THE STATE." (ALSO SEE:) T.T. PAGE

7 214 LINES 10 THRU 24. WHERE D.A. GRECO LIES TO THE JURY, IN HIS CLOSING

8 ARGUMENTS IN REGARDS TO THE DEFENDENTS TATTOOS.

9
(51) 10 IN REGARDS TO: DESIREE MENESE.. [IN DEFENDENTS TRIAL AND HIS PRELIM.]

11 IN DEFENDENTS TRIAL) ON T.T. PAGE 46 LINES 20 THRU 22. D.A. GRECO IS ASKING

12 DESIREE (Q). HOW LONG DID HE HAVE HIS PENIS INSIDE YOU THE 1ST TIME?

13 (A). 10 MINUTES. ON T.T. PAGE 48 LINES 5 THRU 8 MR. GRECO ASKS DESIREE,

14 (Q). DID HE PUT HIS PENIS INSIDE YOUR VAGINA? (A.) YES. (Q). DID HE

15 MOVE IT IN AND OUT? (A.) YES.

(51A) 16 REFER BACK TO AFFIDAVIT PAGE 15, 40B, LINES 20 THRU 24. (SEE IN

17 PARTICULAR LINE 23) WHERE MRS. KATHY M. PEELE IS TELLING COUNSEL

18 SMUCK FOR THE DEFENSE THAT [DESIREE'S VAGINA IS NORMAL!]

(51B) 19 IN PRELIM. HEARING TRANSCRIPTS) PAGE 30 LINES 14-15. DEFENSE COUNSEL

20 (SMUCK) ASKED DESIREE (Q). DID CHUCK "EVER" MAKE YOU "TOUCH HIS PENIS?"

21 (A.) NO! BUT, IN DEFENDENTS TRIAL, WHEN D.A. GRECO ASKS DESIREE

22 THE SAME THING, SHE SAYS YES, T.T. PAGE 48 LINE 23-24 (Q). WHAT DID

23 HE MAKE YOU TOUCH? (A.) HIS PENIS.

(51C) * 24 ON T.T. PAGE 53 LINES 10 THRU 14 D.A. GRECO ASKING DESIREE (Q). DID THE

25 DEFENDENT EVER ASK YOU TO PUT HIS PENIS IN YOUR MOUTH? (A.) YES.

26 (Q) DID YOU DO THAT? (A.) NO.

27 NOW THIS QUESTION IS [HIGHLY - PREJUDICIAL] TO THE DEFENDENT AND

28 MEANT TO DO NOTHING MORE THAN TO INFLAME THE JURY AGAINST THE DEFENDENT,

AFFIDAVIT, CONT.

1 [BECAUSE] IF YOU LOOK AT THE INTERROGATION - TRANS. ON PAGE 14 LINES
 2 31 THRU 33, YOU'LL SEE DET. STEIGLMIER, ASKING THE DEFENDENT THE FOLLOWING
 3 IN REGARDS TO DESIREE (Q). DID YOU PUT YOUR PENIS IN HER MOUTH (A). NO!
 4 ON PAGE 15 LINE 11, DET. STATES: (I BELIEVE YOU.) I KNOW WHAT HAPPEN'D
 5 AND THAT'S NOT ONE OF THEM. [THE DET.'S OWN STATEMENT CLEARS THE
 6 DEFENDENT OF THIS ACCUSATION BY THE STATE]. [ALSO THIS STATEMENT/
 7 ACCUSATION WAS NEVER ADDRESS AT ANY TIME ON RECORD TILL TRIAL.]

(52) 8 DURING THE DEFENDENTS TRIAL, THERE WERE MANY-INCONSISTANCIES,
 9 IN BOTH DESIREE/SUMMER'S TESTIMONIES, FROM THEIR INTERVIEW
 10 TAPES WITH DET. STEIGLMIER, DEFENDENTS PRELIM. HEARING THRU TRIAL.
 11 BUT D.A. GRECO HAS PUT BOTH DESIREE/SUMMER IN AWKWARD LIES/PERJURY,
 12 TO GAIN FAVOR WITH THE JURY [THE STATE COACHED THEIR TESTIMONIES]
 13 SO AS TO GET A CONVICTION! * [AND COUNSEL SMUCK DID BASICALLY NOTHING.] (AL).

14

(53) 15 DISCOVERY ISSUE'S - BRADY VIOLATION.
 16 THE STATE REFUSED TO TURN OVER ALL "EXCULPATORY" EVIDENCE TO THE
 17 DEFENSE, TILL (2) DAYS BEFORE DEFENDENTS TRIAL AND THE REST ON THE
 18 DAY OF DEFENDENTS TRIAL. REFER TO, AFFIDAVIT'S PAGE 10, PARAGRAPH 21
 19 THRU 26, PAGE 11, LINES 1 THRU 8, IN VIOLATION OF NRS 174.235(1) AND N.R.S.
 20 174.28 DISCOVERY AND TIME LIMIT ATTACHED. PAGE 11, #27 LINES 3 THRU 8,
 21 #27(A) LINES 9 THRU 13 AND PAGE 12 #31.

(53A) 22 "THE GOVERNMENT," HAS AN OBLIGATION TO TURN OVER (ALL) EVIDENCE IN ITS
 23 POSSESSION, THAT IS BOTH FAVORABLE TO THE ACCUSED AND MATERIAL TO GUILT
 24 AND PUNISHMENT, AND THAT THERE WAS A "REASONABLE-PROBABILITY" THAT
 25 HAD THAT EVIDENCE BEEN DISCLOSED, THE RESULT OF THE PROCEEDINGS
 26 WOULD BE DIFFERENT. CITING: BRADY V. MARYLAND, 373 U.S. 83,
 27 87, 83 S.Ct. 1194, 196-97, 10 L.Ed.2d 215, 218 (1963) ALSO UNITED STATES V.
 28 BAGLEY, 473 U.S. 667, 678, 105 S.Ct. (1985).

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AFFIDAVIT, CONT.

DEFENDENTS LARGE TATTOO THAT THE (STATE) WITNESS'S, DID NOT
KNOW - ABOUT AT ALL..

(54) COUNSEL OF RECORD, PUBLIC-DEFENDER, MS. JANET COBB SMUCK, FOR
THE DEFENDENT [CHARLES MAKI] STATED: MR. MAKI TOLD ME ABOUT
THE TATTOO'S ESPECIALLY THE TATTOO AROUND HIS PELVIC AREA.
P.C.T. PAGE 94 LINES 1-2. MR. MICHAEL W. O'BRIAN, INVESTIGATOR FOR
THE PUBLIC-DEFENDERS OFFICE, TOOK PHOTOGRAPHS OF THE DEFENDENTS
BODY IN WASHOE COUNTY JAIL ON FEB. 07 1994, OF ALL DEFENDENTS TATTOO'S.
[THE DEFENDENT HIMSELF REQUESTED THIS, AND HAD THE PHOTOS TAKEN
DIRECTLY AFTER OR A-S-A-P. AFTER HIS PRELIM. HEARING...

(54A) THE FOLLOWING IS VERY IMPORTANT:
BECAUSE BOTH OF THE ALLEGED VICTIMS "ESPECIALLY-SUMMER"
FAILED TO MENTION ANYTHING AT ALL ABOUT ANY TATTOO IN THE DEFENDENTS
PENIS/PELVIC AREA!

(55) NOW DET. STEIGHMIER STATED IN DEFENDENTS PRELIM. HEARING ON THE STAND
QUOTE: (I) DID ASK THE GIRLS DURING MY INTERVIEW WITH E'M (AND SUMMER)
SAID 'MR. MAKI' HAD NO TATTOO'S IN HIS PELVIC AREA! SEE PRELIM. HEARING
TRANS. PAGE 73 LINES 23 THRU 25 AND PAGE 74 LINES 1 THRU 10. (Q), DETECTIVE
YOU ASKED A QUESTION ABOUT TATTOO'S? (A), WHEN I ASKED [SUMMER ON THE
TAPE ABOUT TATTOO'S] I ASKED THAT QUESTION BECAUSE WHERE ONE OF THE
MOST DISTINGUISHING THINGS THAT A GIRL, COULD REMEMBER WAS SOMETHING
THAT WAS VERY UN-USUAL IN THE PENIS AREA AND ITS SOMETIMES A TATTOO
IN THE PELVIC AREA.

(55A) IN DEFENDENTS TRIAL, ON T.T. PAGE 173 LINES 1 THRU 14 [SEE 7-THRU 14], COUNSEL
SMUCK ASKS DET. STEIGHMIER. (Q). I BELIEVE YOU PARTICULARLY [ASKED SUMMER]
IF MR. MAKI HAD ANY TATTOO'S AROUND HIS PRIVATE AREA? (A). YES, MA'AM.
(Q). AND SHE INDICATED HE DID-NOT? (A). ACTUALLY SHE SAID HE HAD

AFFIDAVIT, CONT.

1 ALOT FRONT/BACK, THEN I SAID, ANYTHING IN THAT PARTICULAR AREA,
2 SHE SAID, NO! REFER BACK TO AFFIDAVIT PAGES 18-19, 47(C) - 50...

(56) 3 AFTER IT WAS PROVEN IN DEFENDENTS PRELIM. HEARING THAT NO-ONE
4 INCLUDING THE STATE, KNEW ABOUT DEFENDENTS TATTOO IN HIS PELVIC
5 AREA, AND DEFENDENT'S (P.D.) HAD PHOTOS TAKEN OF THE DEFENDENT AT
6 HIS REQUEST. THE DEFENDENTS (PUBLIC-DEFENDER) SHOULD'VE KNOWN
7 IT WOULD'VE HELPED TO PROVE THE DEFENDENTS FACTUAL INNOCENCE,
8 IN HIS TRIAL. YET ALL THE DEFENDENTS COUNSEL DID WAS REST. SEE T.T.
9 PAGE 192 LINES 4 THRU 10, (BY DOING SO) JUST HELP'D PUT THE NAILS IN DEFENDENTS
10 NOW COFFIN, [WITH A COACHED AND PERJURED TESTIMONIE BY SUMMER
11 WITNESS, ABOUT DEFENDENTS TATTOO. TL PAGE 190 LINES 3 THRU 6]..

(57)* 12 THE DEFENDENTS [TRIAL COUNSEL] [FAILED OR REFUSED] TO EXPLOIT THE
13 GIRL'S TRUE IGNORANCE [MAINLY SUMMER] ABOUT THE TATTOO IN DEFENDENTS
14 PELVIC AREA DURING HIS TRIAL, ESPECIALLY AFTER D.A. GRECO'S REBUTAL
15 Q.F. SUMMER, -

(58) 16 HAD COUNSEL FOR THE DEFENDENT ARGUED AT ALL OF THE TRUE IGNORANCE
17 OF SUMMER'S LACK OF KNOWLEDGE ABOUT THE DEFENDENTS TATTOO
18 INSTEAD OF JUST RESTING, THE JURY VERDICT WOULD'VE BEEN DIFFERENT.
19 THE DEFENDENTS TRIAL WAS COMPLETELY UNFAIR/UNLAWFUL IN THAT
20 THE DEFENDENT WAS NOT PROPERLY REPRESENTED BY COMPETENT
21 COUNSEL (I-A-C). [SEE p.c.t. PAGE 29 LINES 6 THRU 16], [P.C.T. PAGE 30 LINES 7 THRU 16].

(59) 22 DESIREE HAS CLAIMED MANY TIMES SHE SEEN THE DEFENDENT WITHOUT HIS
23 CLOTHES ON [YET ALWAYS FAILS] TO MENTION THE DEFENDENT TATTOO IN HIS
24 PELVIC/PENIS AREA! DESIREE NEVER SEEN THE DEFENDENT NAKED AS SHE
25 CLAIMS OR SHE WOULD'VE SEEN THE DEFENDENTS LARGE TATTOO!

26 REMEMBER DESIREE STATING Q.) HAVE YOU EVER SEEN A MAN WITHOUT HIS
27 CLOTHES ON (A.S. YES, MY DAD! (Q) HAVE YOU EVER SEEN A MAN'S PENIS BEFORE
28 A) YES, MY DADS! ("HER DAD - MR. GARY MENESE") (ALSO SEE ~~NO. 007~~ AFFIDAVIT)

AFFIDAVIT, CONT.

1 DEFENDENT DID WISH TO TESTIFY AT HIS TRIAL..

2 TRIAL DATE, APRIL 11-12, 1994. - 3 1/2 HOURS OF TOTAL TRIAL TIME..

3
 4 (60) THE RIGHT TO TESTIFY ON ONE'S OWN BEHALF IS OF THE BASIC
 5 CONSTITUTIONAL RIGHTS OF THE SIXTH (6) U.S.C.A. RIGHTS OF THE ACCUSED
 6 IN CRIMINAL PROSECUTIONS, THE FIFTH (5) U.S.C.A. RIGHTS OF
 7 DUE PROCESS AND THE FOURTEENTH (14) U.S.C.A. RIGHTS TO DUE PROCESS/
 8 EQUAL PROTECTION OF THE LAW.

9 (61)* THE DEFENDENT IN THIS CASE [CR94-0345] HAD DEMONSTRATED HIS
 10 TRUE DESIRE TO TESTIFY (ABOUT 1 1/2) MONTHS BEFORE HIS TRIAL, EVEN
 11 TO THE POINT OF WRITING A LETTER STATING HE WANTED TO [TO THE
 12 HONORABLE JUDGE, STEVEN-KOSACH] [T.P.P. PAGE 6 LINES 5 THRU 7], [DATE 7-18-97].

13 (62) IN - UNITED STATES V. TEAGUE, 908 F.2d 761 (1990) THE COURT HELD:
 14 WE HOLD ONLY THAT WHEN, DESPITE ANY EFFORTS BY DEFENSE COUNSEL
 15 TO CONVINCE THE DEFENDENT THAT THE BEST [REDACTED] STRATEGY IS TO REMAIN
 16 SILENT, THE DEFENDENT DOES NOT PERSONALLY WAIVE THE
 17 RIGHT TO TESTIFY, AND IF THE DEFENSE COUNSEL FAILS TO ALLOW
 18 THE DEFENDENT TO TAKE THE STAND [THE DEFENDENT'S RIGHT TO TESTIFY
 19 HAS BEEN VIOLATED].

20 (63) THE DEFENDENT'S COUNSEL NEVER ADDRESSED THE COURT, TO STATE
 21 DEFENDENT'S DESIRE TO TESTIFY, IN HIS OWN BEHALF, ALL SHE EVER TOLD
 22 THE DEFENDENT "WAS THE JURY WOULD FIND HIM GUILTY, PERIOD! P.C.T.
 23 PAGE 95 LINES 23-24 [Q. DID YOU TELL HIM HE WOULD BE FOUND GUILTY] A.) YES!
 24 THIS IS A VIOLATION OF DEFENDENT'S SIXTH (6th) U.S.C.A. RIGHTS.

25 (63A) P.C.T. PAGE 7 LINES 7 THRU 13 (Q. L?) DID SHE DISCUSS WITH YOU THE DANGERS OF
 26 TESTIFYING, IF YOU TOOK THE STAND (A.) YES. (A.) LINE 11 THRU 13) SHE TOLD ME IF
 27 I TOOK THE STAND THE JURY WOULD NOT BELIEVE ME, THEY WOULD NOT BE INTERESTED
 28 IN WHAT I HAD TO SAY, AND SHE DOESN'T WANT ME TO TESTIFY..

AFFIDAVIT, CONT.

1 P.C.T. PAGE 8 LINES 6 THRU 7, LINES 11 THRU 13, LINES 17 THRU 19 / PAGE 9 LINE 7, 15 THRU 19
 2 LINE 6. (Q) DID YOU CONTINUE TO TELL MRS. SMUCK DURING TRIAL THAT YOU
 3 WANTED TO TESTIFY? (A) I TOLD MRS. SMUCK NUMEROUS TIMES IN TRIAL
 4 THAT I WANTED TO TESTIFY, I WROTE IT ON PAPER BECAUSE THE COURT ASKED/
 5 TOLD ME TO WRITE NOTES TO HER. (LINE 11 - I WAS WRITING NOTES TO HER
 6 EXPLAINING THAT I WOULD LIKE TO GET UP THERE AND TESTIFY. ALL SHE DID IS
 7 JUST KEPT PUSHING MY NOTE PAPER AWAY FROM ME. (LINES 17 THRU 19) Q- DID YOU
 8 EVER AGREE WITH HER THAT YOU SHOULD NOT TESTIFY? (A) ABSOLUTELY NOT!

(63B) 9 PAGE 9) LINE 7. (A) I'VE NEVER BEEN TO A TRIAL.

10 LINE 15 THRU 15 (Q) HOW COME YOU DIDN'T STAND UP AND TELL THE JUDGE I WANT
 11 TO TESTIFY. (A) SHE TOLD ME I COULDN'T DO THAT. (Q) AND YOU FOLLOWED HER
 12 ADVICE? (A) THAT'S WHAT I WAS TOLD TO DO. ALSO SEE PAGE 9 LINES 20 THRU 23.

(64) 13 THE DEFENDENTS COUNSEL NEVER ADDRESS'D THE COURT, TO STATE DEFENDENTS
 14 DESIRE TO TESTIFY IN HIS OWN BEHALF. [A CRIMINAL DEFENDENT HAS THE
 15 RIGHT TO TAKE THE STAND IN HIS OWN DEFENSE.] SITE: SAYRE V. ANDERSON,
 16 238 F.3d 631 (5th CIR. 2001). P.C.T. PAGE 106 LINES 18 THRU 21 MR. PLATTER
 17 IS COUNSEL FOR DEFENDENT IN POST-CONVICTION, ASKING THE FOLLOWING OF (MRS. SMUCK).
 18 (Q) OKAY. SO YOU REMEMBER AFTER THE STATE'S CASE IN CHIEF THAT HAD
 19 YOU SAT DOWN WITH MR. MAKI AND YOU HAD A DISCUSSION? (A) NO.
 20 P.C.T. PAGE 107 LINES 2 THRU 5 (Q) SO YOU DON'T REMEMBER HIM EVER TELLING
 21 YOU: I'M NOT GOING TO TESTIFY. (A) I DON'T REMEMBER HIM SAYING SPECIFICALLY:
 22 I'M NOT GOING TO TESTIFY.

(64A) 23 THE RIGHT TO TESTIFY IS A RIGHT THAT CAN NOT BE FORFITED BY THE
 24 DEFENDENTS COUNSEL. [ALL THE DEFENDENTS COUNSEL TOLD HIM, WAS THE
 25 JURY WOULD NOT BELIEVE HIM, AND WOULD JUST FIND HIM GUILTY [P.C.T. PAGE 95
 26 LINES 23-24 PAGE 96 LINES 1 THRU 4]. [OFF RECORD] SHE ALWAYS TOLD HIM HE
 27 HAD TO BE GUILTY, AND SHE WOULD PREVENT HIM FROM TESTIFYING IN TRIAL,
 28 TO TELL HIS SIDE OF STORY. - STILL DEFENDENT ASSUMED THAT 64,999

AFFIDAVIT, CONT.

1 COUNSEL WOULD HAVE AT LEAST ADDRESSED THE COURT. . . .

(65) 2 THE DEFENDENT, DID WISH TO TESTIFY UPON HIS OWN BEHALF, AND DID
3 FULLY UNDERSTAND THE CONSEQUENCES OF THE DEFENDENT'S PRIOR NONE
4 SEXUAL CONVICTIONS [DEFENDENT HAS NEVER EVEN BEEN ACCUSED OF ANY
5 TYPE OF SEXUAL MISCONDUCT IN HIS WHOLE LIFE!], AND OTHER STATEMENTS
6 WHICH WOULD BE DISCLOSED BY THE PROSECUTION.

(65A) 7 DEFENDENT ASSERTS A JURISDICTIONAL ERROR WHEN THE COURT DENIED
8 GIVING THE DEFENDENT AN OPPORTUNITY TO TESTIFY ON HIS OWN BEHALF, AT TRIAL
9 A DEFENDENT HAS THE RIGHT TO TAKE THE STAND AND TESTIFY IN HIS OWN DEFENSE.
10 [THIS IS A CONSTITUTIONAL RIGHT]. A CRIMINAL DEFENDENT'S "WAIVER
11 OF A CONSTITUTIONAL RIGHT," MUST BE VOLUNTARY, KNOWING AND INTELLIGENT.
12 IT CAN BE CONSIDERED NONE THE LESS IMPORTANT THAN A DECISION NOT
13 TO TESTIFY ON ONE'S OWN BEHALF, MUST BE MADE KNOWING, INTELLIGENTLY,
14 AND THE WAIVER MUST BE VOLUNTARY.

(66) 15 THE RECORD, IS VOID OF ANY CANVESS. . .

16
17 THE STATE OF NEVADA, UPON THE MAKING OF A PLEA-BARGAIN, REQUIRES
18 THAT A PERSONAL CANVESS OF THE DEFENDENT, [BY THE COURT] IS
19 MANDATORILY REQUIRED ON THE RECORD, TO ENSURE THAT THE PLEA HAD
20 BEEN MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY AND THAT THE
21 DEFENDENT MUST BE SHOWN TO UNDERSTAND THE NATURE AND THE CHARGES
22 ALONG WITH THE CONSEQUENCES OF THE PLEA.

(66A) 23 JUST AS IN PLEA-BARGAINS, HOW CAN THE TRIAL COURT DEMONSTRATE THAT
24 THE DEFENDENT UNDERSTOOD THE CONSEQUENCES OF WAIVING HIS RIGHT
25 TO TESTIFY, IF [THE CANVESS OF THE DEFENDENT, IS NOT ON RECORD] OUTSIDE
26 THE PRESENCE OF THE JURY AND KNOWINGLY AND ~~AND~~ VOLUNTARILY INFORMED
27 OF HIS RIGHTS AND CONSEQUENCES.

AFFIDAVIT, CONT.

(67) 1 "THE RECORD IS VOID OF ANY CAUVAS," BY THE JUDGE TO THE DEFENDENT
 2 OUTSIDE THE PRESENCE OF THE JURY, RELATING THAT THE DEFENDENT
 3 KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WAIVED HIS FIFTH (5) - SIXTH (6)
 4 AMENDMENT CONSTITUTIONAL RIGHT.

(68)* 6 "THE STATE CAN-NOT PRODUCE A WRITTEN WAIVER EITHER..."

(69) 8 TO PROVE AND SHOW HOW NO CAUVES OF THE DEFENDENT WAS DONE BY
 9 THE HONORABLE COURT, [LOOK AT T.T.P. 192 THRU 196] FROM THE LAST WITNESS
 10 DESIREE, ROHRBACK, MENESS TO THE START OF THE JURY INSTRUCTIONS. (ALSO)
 11 SEE p.c.T PAGE 103 LINES 12 THRU 14, WHERE D.A. MCCARTHY, IS ASKING P.D.
 12 SMUCK, (Q.) DO YOU RECALL AT THE TRIAL IF THE COURT INFORMED MR. MAKI
 13 OF HIS RIGHT TO TESTIFY? (A.) I DON'T REMEMBER THAT IN TRIAL.

(70) 14 THE RIGHT TO TESTIFY IS A RIGHT THAT CAN-NOT BE FORFITED BY THE DEFENDENTS
 15 ATTORNEY OR BY THE COURT. BUT ONLY BY A KNOWINGLY, VOLUNTARY, AND
 16 INTELEGENT WAIVER BY THE DEFENDENT HIMSELF.

(70A) 17 THE RESULTS IN DEFENDENTS CASE IS DICTATED BY TEAQUE AND UNITED STATES
 18 V. SCOTT, 909 F.2d 488 (1990). THE DEFENDENTS CASE PRESENTS A MUCH CLEARER
 19 EXAMPLE OF A VIOLATION OF THE DEFENDENTS RIGHT TO TESTIFY THAT'S
 20 PRESENTED IN TEAQUE. [THE DEFENDENTS PUBLIC-DEFENDER HAD RESTED
 21 WITHOUT CALLING THE DEFENDENT OR EVEN ADDRESSING THE COURT], BY
 22 DOING SO DEFENDENT ATTORNEY "ACTIVELY AND FORCEFULLY" PREVENTED
 23 THE DEFENDENT FROM TESTIFYING, DESPITE HIS CLEARLY AND EXPRESSED
 24 DESIRE TO DO SO!

(71) 25 THE DEFENDENT HAD DEMONSTRATED HIS TRUE DESIRE TO TESTIFY ABOUT (1 1/2 -
 26 MONTHS) PRIOR TO HIS TRIAL, EVEN TO THE POINT OF WRITING TO THE COURT, (SENDING)
 27 A LETTER STATING HOW HE WANTED TO TESTIFY IN TRIAL. [TOP PAGE 6 LINES 5-7].
 28 THE DEFENDENTS RIGHT TO TESTIFY WAS VIOLATED NOT ONLY BY 1001-

AFFIDAVIT, cont.

ATTORNEY WHICH BECOMES [I.A.E.], BUT ARGUEABLY BY THE COURT
THIS VIOLATION WAS/IS NOT HARMLESS, THE LACK OF A WAIVER TO TESTIFY
VIOLATED THE DEFENDENTS U.S.C.A. RIGHTS TO DUE PROCESS/EQUAL PROTECTION
UNDER THE LAW.

(72) THE LOSS OF JURISDICTION AT THE POINT OF THE LAST WITNESS, AND NO
CANVASS OF THE DEFENDENT, OUTSIDE THE PRESENCE OF THE JURY, TO
DETERMINE THE KNOWING - INTELLIGENT - WAIVER, VOLUNTARY BEFORE
PROCEEDING [IS STRUCTURAL-ERROR], STRUCTURAL ERROR REQUIRES
"AUTOMATIC-REVERSAL", AND HARMLESS ERROR CAN-NOT BE APPLIED!
DEFENDENTS (5)(6) AND (14) CONSTITUTIONAL RIGHTS WERE VIOLATED...

SENTENCING - PHASE

(73) TUES. MAY 17-1994. STATE OF NV. V. CHARLES MAKI, CASE NO: CR94-0398.

THE COURT ERRORED BY ALLOWING A NONE-VICTIM TO TESTIFY AGAINST
THE DEFENDENT AT HIS SENTENCING, PER NRS 176.015(3), IT STATES
A VICTIM CAN TESTIFY, NOT A NONE VICTIM! NRS 213.005, DEFINES A
VICTIM AS A PERSON WHOM A CRIME HAS BEEN COMMITTED, (A PERSON)
WHO HAS BEEN INJURED OR KILLED AS A DIRECT RESULT OF THE COMMISSION
OF THE CRIME. [MS. COOMBS DOES NOT FIT INTO ANY CATEGORIES!]

(74) THE CRIMES WHICH THE DEFENDENT WAS CONVICTED OF WERE-NOT
COMMITTED AGAINST MS. COOMBS IN NV. [IN FACT DEFENDENT "NEVER-EVER"
DID ANY THING AT ALL TO MS. COOMBS IN HER LIFETIME PERIOD...]

(74A) NOW THE STATE QUOTED THE BUSCHAUER CASE WITHOUT CASE LAW. ASKING
THE COURT TO TAKE "A REALLY EXPANSIVE" VIEW OF THE CASE. IT DOESN'T CITE
ANY CASE LAW, PARTICULARLY IN NEVADA, FOR PROVIDING AN EXPANSIVE VIEW
OF BUSCHAUER. BUSCHAUER IS DIRECTLY ON POINT IN REGARD TO THIS

AFFIDAVIT, cont.

1 VICTIM IMPACT STATEMENT. IT DOES NOT ADDRESS DRIVING PEOPLE INTO
 2 COURT WHO ARE "NON-VICTIMS" AND PARTICULARLY ADDRESSING THE SUBJECT
 3 OF UN-CHARGED PRIOR MISCONDUCT.

(75) 4 BUT, AS THE COURT BEING PREVIOUSLY (BIAS) AGAINST THE DEFENDENT
 5 AS "THE RECORD CLEARLY SHOWS," GRANTED THE STATES WISH YET AGAIN,
 6 AGAINST NRS. 176.015(3), NRS. 213.005, NRS. 176.145 AND BUSCHAUER V.
 7 STATE, 1990 NEVADA SUPREME COURT.

(76) 8 ON PAGE 7. LINES 11 THRU 13, D.A. GRECO IS DRAWING HIS CONCLUSION
 9 FOR THE COURT, [WITH NO-FACTS], [NO-PRIOR HISTORY], [AND NO-PRIOR-
 10 CONVICTIONS].

11
 12 TO, HELP THE COURT-TO SAVE SOME TIME.

13
 14 THE DEFENDENT, WOULD ASK THE HONORABLE COURT TO PLEASE UNDER-
 15 STAND, [MS. COOMBS TESTIMONY IS COMPLETELY UN-TRUE] SO INSTEAD OF
 16 WRITING OUT EACH SEGMENT AS THE REST OF THIS AFFIDAVIT, DEFENDENT
 17 WILL JUST STATE THE PAGE, LINE NUMBER. THEN JUST PUT HIS ANSWER TO IT.
 18 DEFENDENT HOPES THE COURT WILL SEE IT BETTER THIS WAY...

(77) 20 FIRST OFF: HISTORY OF DEFENDENTS (SIBLINGS).

21
 22 MS. COOMBS IS THE DEFENDENTS (1/2) SISTER. DEFENDENT IS THE OLDEST,
 23 ALSO HAS SAME MOTHER/FATHER. BUT PARENTS DIVORCED WHEN DEFENDENT
 24 WAS ALMOST (2) YRS OLD.

(A) 25 NEXT IS MIKE. HIS DAD WAS IN THE U.S. AIR FORCE (MOTHER STILL SINGLE).

(B) 26 NEXT IS ESTHER/JACKIE (AKA). HER DAD WAS A POLICE OFFICER (MOTHER SINGLE).

(C) 27 NOW WHEN DEFENDENT WAS ABOUT 9 YRS OLD HIS MOTHER MET AND MARRIED

28 MR. RICHARD G. MALE, U.S. MARINE CORPS. SHORTLY AFTERWARD MS.

AFFIDAVIT, cont.

1 COOMBS WAS BORN. [SOME TIME IN JULY.] DEFENDANT IS 10 yrs / 7 mths
 2 OLDER THAN MRS. COOMBS!
 (D) 3 FINALLY THE YOUNGEST. (STEVEN), ALSO MR. MAKI'S NATURAL SON.
 (E) 4 IT BREAKS DOWN TO STEVEN AND MRS. COOMBS ARE MR. RICHARD G.
 5 MAKI'S TRUE BIOLOGICAL KIDS. THE OTHER THREE OF US ALL
 6 SHARE THE SAME MOTHER, DIFFERENT DADS. (BUT WE ALL DO HAVE THE
 7 SAME MOTHER!

(78) 8 HISTORY OF THE DEFENDANT.

(A) 10 RICHARD G. MAKI, WAS PREVIOUSLY MARRIED, DIVORCED BY SPOUSE
 11 FOR DOMESTIC/PHYSICAL ABUSE ON SPOUSE AND KIDS. HE MET DEFENDANT
 12 MOTHER AND SOON MARRIED HER WITH 3 KIDS. WHEN DEFENDANT WAS
 13 11 YRS OLD (RICHARD MAKI) ADOPTED ALL 3 KIDS, THIS INCLUDES DEFENDANT..
 (B) 14 BY THE TIME DEFENDANT WAS (12) YRS OLD (RICHARD MAKI) SENT DEFENDANT
 15 TO A BOYS RANCH IN WIMBERLY, TX., MR. WRODE WILSON WAS DIRECTOR..!!
 16 REASON: DEFENDANT REFUSED TO BE BEAT UP - AND STARTED HITTING BACK!
 (C) 17 DEFENDANT STAYED THERE, TILL HE WAS 16 YRS OLD! MAKI FAMILY BASILACLY
 18 DISOWNED THE DEFENDANT. AT AGE 16 1/2 HE LEFT THE BOYS SCHOOL IN TX.
 19 HIS MOM DID HELP DEFENDANT GET INTO JOB-CORPS IN CHEROKEE N.C.
 20 AS HE WAS NOT ALLOWED TO BE AROUND THE MAKI'S, "FOR FEAR OF PHYSICAL
 21 VIOLENCE, BETWEEN THE DEFENDANT AND THE FATHER".. DEFENDANT
 (D) 22 STAYED IN JOB-CORPS FOR APPROX 7-11 MONTHS. TOOK UP HEAVY EGPT.
 23 OPERATIONS. GRADUATED. THEN DEFENDANT DECIDED TO JOIN THE U.S.
 24 ARMY. SO HE WENT TO REALIEGH, N.C. TO SEE A ARMY RECRUTOR.
 25 AND IN A COUPLE WEEKS WAS SENT TO FORT-ORD IN CALIFORNIA.
 (E) 26 AFTER BEING HONORABLY DISCHARGED, DEFENDANT WENT TO ASHLAND WISC.
 27 AT 17 YRS OLD, GOT INTO TROUBLE, SPENT TIME IN JAIL AND ON PROBATION.
 28 MET A MS. MARJORIE SCHECK, AND HAD A SON (BRAWOY)

AFFIDAVIT CONT.

(F) 1 AFTER 2 1/2 YRS IN WISCONSIN, DEFENDENT DID GO TO PULLYUP WASHINGTON,
 2 OUTSIDE OF TACOMA. MET HIS WIFE REBECCA LUGINDILL ON THE RESER-
 3 VATION. GOT MARRIED AT 23, [HAD A DAUGHTER]. 2 YRS LATER DEFENDENT
 4 CONTACTED THE MAKI'S IN RENO NV. TO TRY TO RECONCILE DIFFERENCES
 5 AND TO INTRODUCE HIS NEW FAMILY.

(79) 6 DEFENDENTS (P.D. - COUNSEL, SMUCK) HAD ALL RECORDS TO PROVE ALL
 7 THAT HAS BEEN STATED. [BUT JUST AS IN DEFENDENTS TRIAL] REFUSED
 8 TO USE E.M. AT ALL. SHE JUST PUT E.M. IN HER BRIEF CASE, AFTER
 9 DEFENDENT GAVE E.M. TO HER PERSONALLY, AT SENTENCING.
 10

(80) 11 QUESTIONS AND ANSWERS IN REGARDS TO COOMBS.

12
 13 PAGE 10, LINES 12 THRU 15. COOMBS SAID SHE WAS (4 YRS OLD) AND I WAS IN TX.
 14 DEFEND.) THIS IS TRUE.

15 PAGE 12, LINES 6-7. COOMBS SAID SHE MOVED TO WHEATON ILL.

16 DEFEND.) I'VE NEVER BEEN/ DON'T EVEN KNOW WHERE IT'S AT! RECORDS WOULD PROVE
 17 AGAIN PROVEN THIS.

18 PAGE 18 LINE 8. (A). HE DID NOT MOVE WITH FAMILY. (DEFEND.) - TRUE. AS
 19 I WENT FROM TX. TO N.C. TO JOIN JOB CORPS. RECORDS WOULD PROVE THIS.

20 PAGE 19 LINES 10 THRU 12. COOMBS SAYS FAMILY MOVED TO MOSES LAKE WASH.
 21 AND WAS STILL BEING ASSAULTED. (DEFENDENT). UN-TRUE. WENT TO REALIGN N.C.
 22 JOINED ARMY AFTER JOB CORPS, WAS SENT TO CALIF. (FORT ORDE). RECORDS AGAIN!
 DD-214

23 PAGE 21 LINES 1 THRU 8. (A). QUANTICO VA. (Q). DID THE MOLESTATION CONTINUE,
 24 THERE? (A). I CAN'T RECALL. (DEFENDENT) IF SHE SUPPOSEDLY CAN REMEMBER
 25 BACK TO 4 YRS OLD, WHY CAN SHE RECALL AT AN OLDER AGE? (BECAUSE IT
 26 NEVER HAPPEN'D TO START WITH!)

* 27 PAGE 37 LINE 15 THRU 15. (QUESTION BY P.D. SMUCK) YOU MOVED TO N.C. (A). YES.

28 WAS MR. MAKI THERE? (NO), DO YOU KNOW WHERE HE WAS AT? (NO!).

APPENDIX, CONT.

1 NOW GO BACK TO PAGE 18 LINES 7 THRU 9. MR GRECO ASKING, (Q). DID
 2 CHUCK LIVE WITH YOU AT THAT POINT? (A) YES. [SEE P.C.T. PAGE 49
 * 3 LINES 20 THRU 24. [MR. PIATTER FOR DEFENDENT,] QUESTIONING MR. MIKE FRIED,
 * 4 AKA COLONEL.) ON PAGE 30 LINE 1 THRU 4, MRS. COOMBS STATED SHE DID NOT
 5 KNOW MR. FRIED / AKA COLONEL.

(81) 7 ON PAGE 25 LINES 11-12. LETTER WRITTEN TO THE COURT
 8 IN REFERENCE TO INEFFECTIVE COUNSEL.

10 THE COURT: I'VE GOTTEN A LETTER, WRITTEN TO ME BY MR. MIKE.
 11 I WROTE TO THE JUDGE AHEAD OF TIME, TELLING THE COURT, HOW I GAVE MY
 12 P.D. SMUCK, [ALL OF MY RECORDS PERSONALLY] SCHOOL, BOY'S RAUCH TX, JOB-
 13 CORPS, DD-214 MILITARY, SHE ALREADY HAD DEFENDENT'S F.B.I. RECORDS.
 14 AS I WAS FULLY AWARE OF MRS. COOMBS' INTENTIONS, THRU FAMILY. I ALSO TOLD
 15 MRS. SMUCK TO SUPENA (MR. MIKE FRIED / AKA COLONEL.) SHE HAD 2 WKS NOTICE!
 16 AS I WROTE A LETTER TO MRS. COOMBS.) I EXPLAINED TO THE COURT, HOW MRS. SMUCK
 17 PROBABLY WOULD REFUSE TO USE MY RECORDS OR CALL ANY WITNESS JUST LIKE IN TRNG.
 18 "BUT, I WAS PREPARED THIS TIME," [I WROTE THE COURT AHEAD OF TIME!]. TRUE
 19 TO HERSELF ALL SHE DID WAS [TAKE MY RECORDS AND PUT E'M IN HER BRIEFCASE!].
 20 AND THAT LETTER TO THE COURT, SHOULD BE PART OF DEFENDENT'S RECORD, TO
 21 PROVE WHAT THE DEFENDENT HAS BEEN SAYING SINCE DAY ONE...

(82) 22 MRS. SMUCK REFUSED TO SUPENA MR. FRIED IN SENTENCING PHASE. STATING
 23 TO DEFENDENT HE'S IN JAIL. (THE STATE WOULD, IF THEY NEEDED HIM!) BUT
 24 MR. PIATTER IN DEFENDENT'S POST-CONVICTION PAGE 49 LINES - SUPENA'D MR
 25 FRIED FROM PRISON!

AFFIDAVIT, CONT.

CONCLUSION OF SWORN AFFIDAVIT.

1
 2 83)* IN GOODSON U. STATE AT 98 NV. 493, THE NEV. S. CT. SAID, REFERRING
 3 TO ITS DECISION IN THE SILKS DECISION, THAT AN ABUSE OF DISCRETION
 4 WILL BE FOUND WHEN THE DEFENDENTS SENTENCE IS PREJUDICED,
 5 FROM CONSIDERATION OF INFORMATION OR ACCUSATIONS FOUNDED ON
 6 IMPALPABLE OR "HIGHLY SUSPECT EVIDENCE". IN RESPECT TO MS. COOMBS
 7 TESTIMONY, THERE IS NO CORROBORATION AT ALL OF HER ALLEGED CLAIMS.
 8 THERE TOTALLY UN-FOUNDED. ALSO HIGHLY PREJUDICIAL TO DEFENDENT
 9 GIVEN THE NATURE OF DEFENDENTS CASE AND RECENT TRIAL.

10 (84) DEFENDENTS) COUNSEL, KNEW (2) WEEKS OR SO AHEAD OF TIME THAT MS.
 11 COOMBS WAS COMING TO (FAISELY TESTIFY) AS NOT ONLY DID THE STATE
 12 INFORM HER, [DEFENDENT DID EVEN DEFEND THAT] AS HE WAS INFORMED
 13 BY FAMILY OF MS. COOMBS INTENTIONS. DEFENDENT TOLD COUNSEL TO
 14 SUPENA, MR. MIKE FRIED / AKA COLONEL AND OTHERS. MR. FRIED WOULD
 15 BEEN EASY AS HE WAS IN JAIL ON UN-RELATED CHARGES.

16 (85) DEFENDENT - THEN WROTE A LETTER TO MS. COOMBS (APRIL 30 1994) ALMOST
 17 3-WEEKS BEFORE HIS SENTENCING DATE. ASSUMING COUNSEL WOULD
 18 SUPENA'D MR. FRIED AS ASKED TO! SEE, PAGE 26 LINE 24 THRU 29 LINE 3.
 19 MR. FRIED WOULD TOLD ABOUT MS. COOMBS TRUE SELF. (BUT COUNSEL
 20 REFUSED, JUST LIKE IN DEFENDENTS TRIAL!!

21 (86)* IN DEFENDENTS POST-CONVICTION, COUNSEL PLATTER SUPENA'D MR. FRIED,
 22 OUT OF PRISON, TO TESTIFY FOR DEFENDENTS BEHALF.

23 (87) ON PAGE ~~26~~ ¹⁵⁻¹⁶ I WAS TELLING MY COUNSEL TO USE ALL THE RECORDS
 24 I JUST GAVE HER, TO PROVE COOMBS IS LYING. (SCHOOL, JOB-CARDS, DD-214
 25 WIMBERLY, TX). ALL SHE DID WAS PUT E'M INTO HER BRIEF CASE, JUST LIKE
 26 IN TRIAL. (ON LINES 2-3) DEFENDENT: SORRY YOUR HONOR I WAS JUST TELLING
 27 MY LAWYER SOMETHING -

28 (88) IN DEFENDENTS PCT. PAGE 49 THRU 52 MS. COOMBS DOES NO WORK CORRECTION IS..

(89) 1 MR GRECO'S UNTRUE STATEMENT TO THE COURT, STATING THAT SUMMER'S
 2 TESTIMONY WAS CORROBORATED BY THE EVIDENCE OF THE HYMENAL DAMAGE,
 3 BEING FOLDED OVER ON IT SELF AND ENLARGED. "THIS IS TOTALLY FALSE".

(A) 4 IN DEFENDENTS PRELIM. HEARING, [ON PAGE 42 LINES 12 THRU 17] SUMMER,
 5 "CLEARLY STATED TO MR GRECO, THE FOLLOWING: (Q.) DID HIS PRIVATE EVER
 6 GO INSIDE YOUR PRIVATE? (A.) NO! (2). MS. PEELE, THE STATES EXPERT
 7 STATED THAT SUMMER'S PHYSICAL EVIDENCE IS IN-CONSISTANT WITH HER
 8 TESTIMONY. (3). MS. PEELE ALSO STATED SHE COULD NOT MAKE ANY DETERMINATIONS
 9 AS TO HOW MANY TIMES SUMMER WAS ASSAULTED, OR WHEN. THE WAY THE
 10 (HYMEN) LOOKS, IT LOOKS LIKE SOMETHING THAT'S GONE ON MORE THAN ONE TIME!
 11 AS OPPOSED TO A ONE TIME INCIDENT, THAT MAY OR MAY NOT LEAVE ANYTHING
 12 AT ALL..

(B) 13 AGAIN D.A. GRECO GAVE FALSE AND MISLEADING STATEMENTS, THIS TIME TO
 14 THE COURT, NOT JUST THE JURY. [AND AGAIN DEFENDENTS COUNSEL DID NOTHING TO
 15 REFUTE/ARGUE IN DEFENDENTS BEHALF], EVEN WHEN THE JUDGE SAYS [I HOPE
 16 YOU NEVER GET OUT OF PRISON!] AT SENTENCING!

(90) 17 IN CONCLUSION: DEFENDENT BELIEVES HE WAS PREJUDICED AGAINST AND
 18 WAS SENTENCED UN-FAIRLY WITH "NO-DUE PROCESS/EQUAL PROTECTION".
 19 HIS RIGHTS WERE CLEARLY VIOLATED. THE COURT ALLOWED COMPLETELY
 20 UN-CORROBORATED TESTIMONY FROM A NON-VICTIM, WHICH AMOUNTS
 21 TO ABUSE OF DISCRETION BY THE COURT. COUNSEL SMUCK REFUSED TO
 22 CALL ANY WITNESSES, USE ANY RECORDS, OR REFUTE D.A. GRECO'S STATEMENTS.
 23 DEFENDENT 14TH AMENDMENT RIGHTS WERE VIOLATED ALSO, WITH (IAC).

24
 25 ALL OF THE ABOVE STATEMENTS OF FACTS ARE TRUE AND UN-BIAS!
 26 EVERYTHING COMES DIRECTLY FROM DEFENDENTS RECORDS, TRANSCRIPTS ETC.
 27 UNDER PENALTY OF PERJURY. 28 USC § 1746 AND 18 USC § 1621.

28 DATED 2/12/2015 V6 1008
 [Signature]
 [Signature]

COURTS
COPY

ORIGINALS

EXHIBITS A-B-C-D 1-2

CHARLES MAKI 42820

WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS

CASE NO: CR94-0345

DATE 2 / 12 / 2015

1 videotape of his prior prison connections or prison terms
2 are now gone. So I see that term as being moot.

3 His prior convictions I have in hand. And if he
4 takes the stand, then I'm going to be introducing them. If
5 he doesn't take the stand, then I'm not. I certainly am not
6 going to mention them or show them during my case in chief.

7 THE COURT: That will be the order. Everything
8 that-- Mr. Maki, you mentioned in the tape--you might
9 remember, it was in the context you were talking to the
10 police officers, "I've done some bad things. I've been in
11 prison. I've done some assaults," or words to that effect.
12 Do you remember that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All that will be stricken from the
15 tape.

16 THE DEFENDANT: Okay.

17 THE COURT: But if you take the witness stand--and
18 you certainly can take the witness stand--if you take the
19 witness stand, then the prosecution is allowed to bring up
20 your prior record. That's basically what it amounts to.

21 Okay. Then we have something else?

22 MS. SCHMUCK: Your Honor, further, I would just
23 like to address the Court on one or two other issues.

24 One is that I was made aware on Friday morning by

1 the district attorney that he had pictures of a physical
2 examination of the two small children in this case. I have
3 seen those pictures now. I had not been aware before that
4 there were pictures that were going to be presented here at
5 the trial.

6 I am concerned, your Honor, and wish to make a
7 record that the defense has not had an opportunity to have
8 its own expert view those pictures and provide an opinion
9 for the Court. And with that in mind, I'm going to ask for
10 a continuance so that we would be able to get copies of the
11 pictures and have a defense expert take a look at the
12 pictures and be able to provide information to the Court.

13 If the Court is not inclined to grant a
14 continuance, your Honor, I'm going to ask that the district
15 attorney not be able to use the pictures in their case, and
16 just simply have Miss Peele testify with respect to her
17 report and not use the pictures at all.

18 THE COURT: Okay. Can I see the pictures, please?

19 MR. GRECO: Yes, your Honor.

20 Your Honor, I am envisioning using only the first
21 of the four pictures there that are in front of you.

22 THE COURT: All right. Go ahead.

23 MR. GRECO: Your Honor, in response to Miss
24 Schmuck's comments, Judge, I received those at a pre-trial

1 conference from Cathy Peele very late Thursday afternoon.
2 At about 4:30 she handed them to me. So the first thing in
3 the morning I called Miss Schmuck's office and let them know
4 I had the photos, and they were welcome to come take a look
5 at them anytime that day. In fact, Miss Schmuck's secretary
6 called me back and said she might avail herself of that
7 opportunity.

8 Miss Schmuck asked me about copies, Judge. And the
9 problem is, as you will see during the testimony, the way
10 those are printed out, there is a video called a coloscopy,
11 c-o-l-o-s-c-o-p-y, performed. They run the tape. She
12 freezes certain frames, then she pushes a button, and the
13 prints come out. She brought them over. I asked her to
14 make another set when she comes to the court so I can
15 provide the defense with them.

16 That first photo showing the folded-over and
17 grossly enlarged hymen on the little girl, Summer, that's
18 all mentioned in her report. That is exactly what her
19 report says. The hymen is folded over and it is on itself
20 and it is enlarged, is, I believe, what the report says. So
21 it's simply going to be showing what is in the report.

22 Judge, I didn't have them before Thursday
23 afternoon. As soon as I did, I let Miss Schmuck know.

24 Judge, I would ask that you deny the request, but

1 alternatively, if you must, I can proceed without them. I
2 can simply have her tell what she saw. I think they are
3 probative, and I think they will really assist the jury. I
4 just didn't have them any earlier.

5 THE COURT: Any response?

6 MS. SCHMUCK: My response, your Honor, is that I
7 believe we did have a hearing, an evidentiary hearing in
8 this case on March 11th, at which I made an oral motion for
9 discovery, and specifically requested any doctors' reports
10 or any reports from the SAINTS representative.

11 I did, for the Court's information, receive the
12 SAINTS exam report a little over two weeks ago. But in the
13 meantime, I had filed a motion to compel discovery,
14 indicating that I wished any results of the doctor's exam or
15 the SAINTS exam. So for the record, your Honor, we have
16 requested anything like this, and we have requested it well
17 prior to the beginning of this trial date.

18 THE COURT: Okay. The motion for continuance is
19 denied.

20 The photos we will take up at the time of the
21 report. I don't mean to say that I'm hedging on that, but
22 if it consistently flows with the testimony, the pictures
23 will be admitted. The photo will be admitted. But I am
24 going to reserve judgment based on what I hear from the

1 expert that's going to testify. And if that is the case,
2 Miss Schmuck, you certainly can--you certainly can take this
3 photo and go ahead and consult with anybody tonight,
4 tomorrow, that type of thing.

5 MS. SCHMUCK: Just for the Court's information, I
6 would like to make you aware one of problems we do have is
7 we have to send them to--I know there's several experts that
8 my office has used, and it's not possible to get it done
9 overnight. Usually it takes a couple weeks. We have to get
10 them to California. I know of one person in particular we
11 have used in northern California in the past.

12 THE COURT: Okay. Thank you for you that.

13 I have a letter from Mr. Maki dated April 3rd,
14 1994, asking that another attorney be appointed in this
15 case. We'll go ahead and note that letter.

16 Mr. Maki, do you have anything to add to this
17 letter?

18 THE DEFENDANT: No, your Honor. I think it's self-
19 explanatory. I just don't feel that Miss Schmuck is
20 representing me right at this point. We just have a lot of
21 conflict of interests.

22 THE COURT: My only comment to that, Mr. Maki, is
23 Miss Schmuck has done everything she can, in looking at it
24 objectively, the motions, that type of thing, she's done a

1 the exam could be consistent on--both exams could be
2 consistent with what they're saying.

3 Q. You could have a normal exam, and it could
4 still--you could still say it indicated sexual assault.

5 A. Yes. Sexual abuse.

6 Q. Sexual abuse. I guess I am baffled then about--

7 A. --how that could happen?

8 Q. Yes.

9 A. Well, you have to remember that the hymenal tissue
10 is very much like a rubber band. And it's very fluid
11 mucosal membrane, very much like inside your mouth. It can
12 be traumatized and be repaired back to normal.

13 And the reason I can say that is I've had kids who
14 have been severely traumatized down there, whether it's been
15 digitally or penile, we've brought them back in five or
16 eight days, and there is little to no evidence that anything
17 has even happened to them. Given the fact that the nature
18 of sexual abuse, because of things that are said to kids, or
19 for whatever reasons that children don't tell us, you're
20 more likely not to get a response or a disclosure
21 immediately, and, therefore, not have physical findings.

22 In Desiree's case, you know, I don't know
23 specifically what she said other than she was touched. Now,
24 she could have been touched on the top or the outer part.

1 other entity?

2 A. Not at all.

3 MR. GRECO: That's all I have, your Honor.

4 THE COURT: Miss Schmuck, anything? Any recross?

5 RECROSS-EXAMINATION

6 BY MS. SCHMUCK:

7 Q. Miss Peele, does the hymen heal up if it-- Is that
8 what you were talking about? I'm trying to follow your
9 answers to Mr. Greco in terms of, if there was some kind of
10 breakage there, does it heal up?

11 A. Yes. It can heal by leaving a scar. Or it can
12 heal by leaving less tissue. It can heal by leaving changes
13 in the vascular pattern.

14 Q. Okay. So was it your opinion that, for Summer
15 particularly, would you say that her hymen had healed, but
16 that there was a thickening of the edges?

17 A. Correct. Yes. Thickening and rolling.

18 Q. Well, then, as far as Desiree is concerned, are you
19 saying that you think her hymen had healed?

20 A. I didn't see any evidence that there had been any
21 healing going on, but, again, it was normal, so I didn't see
22 any evidence at the time that I examined her of any
23 healing.

24 Q. Of any healing.

1 conviction for lewdness.

2 Now, the case law in Nevada and Miss Schmuck's testimony
3 was that she doesn't -- she decided not to do one of these
4 motions to the Court, because, basically, as I understand it,
5 she thought the credibility of the children was fine and really
6 the defense was focused on Mr. Maki's tattoos had not been
7 properly identified by the children.

8 Although she conceded that the children were not correct or
9 possibly were not telling the truth that it was Mr. Maki, the
10 defense was that, well, they had been probably assaulted, but
11 they were identifying Mr. Maki and he was the wrong
12 perpetrator.

13 So she did afterwards concede the fact, well, their
14 credibility would have been an issue, because they're saying
15 when they knew better that it was Mr. Maki who had done this.
16 So that's why I think still the position about getting an
17 examination was important, because these examinations are to
18 test the credibility of the people involved. And that's what a
19 psychological or a psychological doctor or psychiatrist could
20 have done, could have examined the children or a medical doctor
21 in terms of their physical appearance.

22 Now, we didn't bring in the doctor, but I think under the
23 circumstances, if you found that one of these motions should
24 have been made, that it should be presumed prejudicial against

EXHIBIT-D #1

READ

1 Mr. Maki, because obviously at this point, a doctor can't go
2 examine them physically and psychologically. We couldn't have
3 gotten an order from the Court allowing it at this point in
4 time.

5 But the reason I think this should have been done are
6 inconsistencies that the children made and these aren't minor
7 inconsistencies. These are fairly major. The most major one
8 is that under oath at the preliminary hearing, it was Summer
9 who said, and I'll quote on page 42 of the preliminary hearing
10 transcript: Question, and then later on, did he ever put his
11 private inside your private? Answer: I'm not sure. Question:
12 Summer, did his private ever go inside your private in
13 December? Answer: No. That's pretty clear. Is that a minor
14 inconsistency regarding Count Five where Summer alleges Mr.
15 Maki sexually assaulted her with his penis? That's a glaring
16 inconsistency.

17 Now, later on, in examination, right after that, Mr. Greco
18 said: Wait a minute, Summer, didn't you tell an officer when
19 he interviewed you that Mr. Maki assaulted you? Yeah. Did you
20 tell him the truth? Yes. But the point is, whether you want
21 to believe it, your Honor, this was really good ammunition.
22 This was real good information that a defense lawyer could have
23 used to present the Court such as yourself after a preliminary
24 hearing to say: Judge, this is the basis of a motion to have

EXHIBIT D #2

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
DEFENDENT

V.

STEVEN KOSACH, Hon. Judge EcT.

2ND JUDICIAL DIST. COURT, DIST. 8.

IN AND FOR THE COUNT OF WASHOE.

CASE # CR94-0345

DEPT. 8

2015 FEB 17 AM 9:01

FILED

BY
JACQUELINE BRYANT
CLERK OF THE COURT
DEPUTY

REQUEST FOR SUBMISSION

COMES NOW DEFENDENT, CHARLES MAKI,

APPEARING IN PROPER PERSONA, AND FILES THIS REQUEST FOR

SUBMISSION, IN THE ABOVE CASE NO: CR94-0345.

THIS REQUEST IS MADE PURSUANT TO NRS. 34.160,

NRS. 34.170, NRS. 34.190, WHERE AS DEFENDENT RESPECTFULLY

REQUESTS THAT HIS MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT

IN SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL PURSUANT

TO NRS. 34.750 (A)(B)(C), BE SUBMITTED TO THE APPROPRIATE HONORABLE

JUDGE FOR REVIEW AND DECISION. SO THAT THE DEFENDENT CAN PROVE

HIS "FACTUAL INNOCENCE", PURSUANT TO STATE V. MITCHELL, 122 NV.

12.67, 149, p. 32-33 (2006), IN THIS HONORABLE COURT ON OR ABOUT

THE 12TH DAY OF APRIL 1994.

DATED THIS DAY 12 OF FEB 2015

SIGN. CHARLES MAKI

V6. 1019

CR94-0345
DC-09900063952-018
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 02/17/2015 09:01 AM
3860
Washoe County
NO. 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI, Case No. CR94-0345
Petitioner, Dept. No. 8
vs.
THE STATE OF NEVADA,
Respondent.

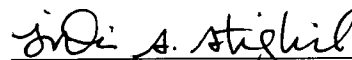
ORDER DENYING PETITION

Currently before the court is Charles Joseph Maki's *Petition for a Writ of Prohibition / Writ of Mandamus*. Maki concurrently filed a *Motion for Appointment of Counsel*. Maki's *Petition* challenges the validity of his judgment of conviction and sentence. Such a challenge must be raised in a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(b).

Accordingly, the court ORDERS Maki's *Petition* DENIED. Having considered the factors set forth in NRS 34.750, the court further ORDERS Maki's *Motion for Appointment of Counsel* DENIED.

IT IS SO ORDERED.

DATED this 8th day of March, 2015.


LIDIA S. STIGLICH
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 18th day of March, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Charles Joseph Maki
#42820
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702


CHRISTINE KUHL
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-03-18 16:11:08.446.

ROBERT STORY, ESQ. - Notification received on 2015-03-18 16:11:07.791.

ROBERT BELL, ESQ. - Notification received on 2015-03-18 16:11:07.807.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-18-2015:16:10:01

Clerk Accepted:

03-18-2015:16:10:35

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. CKuhl

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The following people were served electronically:

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ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court
Washoe County
2515
vrti note

COURT
V6.1024

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

MAR 27 2015

JACQUELINE BRYANT, CLERK

By: *[Signature]*
DEPUTY CLERK

CASE NO. CR94-0345

DEPT. 8

DATE 3/24/2015

CHARLES J. MAKI 42870
PETITIONER

v.

STEVEN KOSACH, Hon. Judge ect.
DEPT. 8- RESPONDENT

IN WASHOE COUNTY

NOTICE OF APPEAL

NOTICE TO APPEAL CASE NO. CR94-0345, ON
WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS TO THE NEVADA SUPREME
COURT; IS HEAR BY GIVEN THAT PETITIONER CHARLES J. MAKI IS APPEALING
THIS ENTIRE CASE - CR94-0345 PURSUANT TO AND BY WAY OF WRIT OF
PROHIBITION/WRIT OF HABEAS CORPUS, N.R.S. 34.160, N.R.S. 34.170, NRS. 34.190
TO THE NEVADA SUPREME COURT FOR REVIEW AND ISSUE ORDER
ALLOWING PETITIONER TO PROVE HIS "FACTUAL-INNOCENCE", PURSUANT TO
STATE V. MITCHELL, 122 NV. 1269, 149 p. 34 33 (2006), IN THIS HONORABLE
COURT ON OR ABOUT THE 12TH DAY OF APRIL 1994.

DATED THIS DAY OF 24TH OF MARCH, 2005.

Sign CHARLES J. MAKI

Charles J. Mak

V6.1024

CERTIFICATE OF SERVICE.

A TRUE AND CORRECT copy OF NOTICE OF APPEAL, CASE NO. CR 94-0345

HAS BEEN PUT IN THE N.D.O.P. UNIT MAIL BAG,

TO BE SENT TO THE FOLLOWING ADDRESSES

1) TO COURT CLERK

2ND JUDICIAL DISTRICT,

75 COURT ST.

RENO, NV. 89501

2) DISTRICT ATTORNEY OFFICE

75 COURT ST.

RENO, NV. 89501

DATED 3-24-2015

SIGN. CHARLES MAKI [#]42870

check mail

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. CR94-0345

Dept. No. 8

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Joseph Maki.
2. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles Joseph Maki #42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Terrance McCarthy, Esq., SBN: 2745
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed January 7, 2014 in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Petition filed March 18, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845 and 66144.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 2nd day of April, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

THE STATE OF NEVADA,

Dept. No. 8

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 2nd day of April, 2015, I deposited in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada, a copy of the Notice of Appeal documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701.

I further certify that the transmitted documents are true and correct copies of the original pleadings on file with the Second Judicial District Court.

Dated this 2nd day of April, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-02 09:40:38.937.

ROBERT STORY, ESQ. - Notification received on 2015-04-02 09:40:38.469.

ROBERT BELL, ESQ. - Notification received on 2015-04-02 09:40:38.687.

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PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-02-2015:09:39:28

Clerk Accepted:

04-02-2015:09:40:06

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

VE-1031
COPY

FILED

2015 APR -2 PM 1:42

JACQUELINE BRYANT
CLERK OF THE COURT

BY [Signature]
DEPUTY

1 CHARLES MAKI #42220

2 WARM SPRINGS CORR. CENTER

3 PO Box 7007, CARSON CITY, NV, 89702

4 DEFENDENT IS IN PROPER PERSON.

7 IN THE 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

8 IN AND FOR THE COUNTY OF WASHOE.

10 CHARLES MAKI
DEFENDENT

CASE NO: CR94-0395

11 V.

DEPT. NO. 8

12 STEVEN KOSACH, HONORABLE.

DATE - 3/20/2015

13 IN AND FOR WASHOE COUNTY.

16 MOTION TO THE COURT

17 A- STATE CREATED IMPEDEMENT - DENING ACCESS

18 TO THE COURT, IN VIOLATION OF THE 19TH U.S.C.A.

21 THIS MOTION IS BEING MADE SOLELY ON THE BASES OF THE LAW -

22 LIBRARY SUPERVISOR (MR. MATT TILLEY) AT WARM SPRINGS CORRECTIONAL
23 CENTER, CARSON CITY - NV, REFUSE(ING) TO GIVE OUT CASE LAW, ETC.

24 THAT IS BEING REQUESTED BY ABOVE STATED DEFENDENT, SO THAT

25 HE MAY ARGUE FACTS IN HIS CASE AT HAND; FILED IN 2ND JUDICIAL

26 DIST. COURT IN RENO NV. (FILED ON FEBRUARY 17-2015) WRIT OF PROHIBITION/

27 WRIT OF HABEAS CORPUS.

[EXHIBIT A-1034HEO]

FACTS, STATED HEREIN FOR THIS MOTION.

COMES NOW THE DEFENDANT CHARLES MAKI #42820 WHO IS BEING
DENIED HIS 1ST. 6TH. 19TH U.S.C.A. CLAUSE TO DUE PROCESS AND TO ACCESS,
TO THE COURTS BY AN EXTERNAL IMPEDIMENT BEYOND THE DEFENDENTS
CONTROL (AND) DUE TO THIS IMPEDIMENT THE DEFENDENT; (1) SHOULD
RECEIVE (COMPETENT) LEGAL REPRESENTATION APPOINTED BY THE COURTS.
(2) THE DEFENDENT SHOULD NOT BE HELD ACCOUNTABLE FOR HIS CASE,
NOT BEING PROPERLY PREPARED, OR PROPERLY ARGUED AS HE IS BEING DENIED
[ACCESS TO THE LAW-LIBRARY] ALSO [DENIED ACCESS TO FULLY RESEARCH
HIS CASE AT HAND, THAT'S FILED IN COURT ON FEB-17-2015] [DENIED ACCESS
TO FULLY RESEARCH HIS CASE IN THE LAW-LIBRARY AT ANY GIVEN TIME]
"AND NOW" [BEING DENIED ANY CASE LAW THAT DEFENDENT THINKS IS
NECESSARY FOR HIS CRIMINAL CASE AT HAND.

SITE: Bonds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).
Also Lindquist v. Idaho State Board of Corrections 776 F.2d 851, 855
(9TH CIR.) 1985.

(2) AS DEFENDENT CAN NOT GO TO THE LAW-LIBRARY PER. WARM SPRINGS,
CORR. CENTER, LAW-LIBRARY SUPERVISOR - FREE STAFF / EX 40, MR. MATT
TILLY! MR. TILLY DEEMS HIMSELF THE PERSON WHO SAYS EITHER YOU
CAN HAVE THE CASE YOU REQUESTED, OR "IF HE DECIDES THE CASE LAW
YOUR REQUESTING DON'T PERTAIN TO YOUR CASE, HE FLAT OUT REFUSES TO GIVE
IT TO YOU," ESPECIALLY OUT OF STATE JURISDICTIONAL CASES!
STATING, THE INMATE MUST USE [NEVADA CASES ONLY] FOR RESEARCH.

(3) THIS IS CLEARLY PREJUDICIAL TO THE DEFENDENT AND UN-CONSTITUTIONAL
BY DENYING THE DEFENDENT HIS CONSTITUTIONAL RIGHT TO RESEARCH ANY

1 AND ALL CASES, CASE LAW THE DEFENDENT FEELS PERTAINS TO
 2 HIS CRIMINAL CASE, INCLUDING THE JURISDICTIONAL WRITE TO FULLY
 3 EXPLORE, ANY OUT OF STATE JURISDICTIONAL CASES TO COMPARE LAW-ECT./
 4 JURISDICTIONAL ERRORS ECT., AS ALL ATTORNEYS DO, INCLUDING THE COUNTY ECT.
 5 BUT AS AN INMATE IN N.D.O.P. I'M BEING DENIED THIS CONSTITUTIONAL
 6 RIGHT!

7
 8 CONCLUSION

9
 10 DEFENDENT PRAYS THIS HONORABLE COURT SEES HOW HIS RIGHTS

11 ARE BEING VIOLATED BY N.D.O.P. / THE STATE OF NV.

12 " [FREE STAFF MR. MATT TILLY] LAW-LIBRARY SUPERVISOR"

13 AT WARM SPRINGS CORRECTIONAL CENTER, CARSON CITY, NV.

14 AND BY THIS VIOLATION OF DE PRICES APPEALS COMPELLED

15 LEGAL REPRESENTATION TO DEFENDENTS CASE.

16
 17 SWORN TO BE TRUE UNDER PENALTY OF PERJURY PER NRS. 208.165

18
 19
 20 SIGN CHARLES MALL #42820

21 SIGN CHARL MALL

22 DATE 3-20-2015

23 ADDRESS: P.O. Box 7007

24 W.S.C.C.

25 CARSON CITY NV. 89702

CR94-0345
STATE VS CHARLES JOSEPH MAKI 6 Pages
District Court 04/02/2015 01:42 PM
Washoe County 2490
MP/WHV

EXHIBIT-A.

SWORN AFFIDAVIT

DATE

3-20-2015

CASE No. CR94-0345

CHARLES MAKI 92820

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE..

CHARLES MAKI - 42820
DEFENDENT.

V.

CASE NO: CR99-0395

STEVEN KOSACH, HONORABLE,

DEPT. NO: 8

DATE 3/20/2015

SWORN- AFFIDAVIT IN SUPPORT OF MOTION.

A-STATE CREATED IMPEDEMENT, DENYING THE
DEFENDENT FULL ACCESS TO THE COURTS, IN VIOLATION
OF HIS 1ST-6TH AND 14TH CONSTITUTIONAL RIGHTS.

I, CHARLES MAKI, THE DEFENDENT IN THE ABOVE
STATED CASE, BEING DULY SWORN, DEPOSE AND SAY THAT ALL OF
THE FOLLOWING IS TRUE AND CORRECT TO MY KNOWLEDGE.
UNDER THE PENALTY OF PERJURY PER. NRS 208.165..

THIS SWORN AFFIDAVIT IS BASED SOLELY IN REGARDS TO THE FACT(S)
THAT MR. MATT TILLY, "HAS ON MORE THAN ONE OCCASSION
FLAT REFUSED" TO PRODUCE- GIVE UP- TURN OVER, CASE LAW ETC.
IN REGARDS TO THIS INMATE'S PROPER REQUEST(S).

MR. TILLY, IS AN EX- CORRECTIONAL OFFICER WHO IS STILL EMPLOYED BY
N.D.O.P. AS A LAW- LIBRARY SUPERVISOR AT WARM SPRINGS CORR.
CENTER, A- MEDIUM PRISON, IN CARSON CITY, NV.

THE DEFENDENT HAS BEEN AT WARM SPRINGS CORR CENTER SINCE
JULY OF 2013..

DENIAL OF ACCESS TO COURT

IN VIOLATION OF DEFENDENTS 1ST 6TH 14TH USEA.

(1) WARM SPRINGS CORRECTIONAL CENTER IN CARSON CITY, NV. INSTITUTED A POLICY OF "NO PHYSICAL ACCESS" AT ALL INTO THE LAW-LIBRARY. IT HAS A PAGE/RUNNER SYSTEM, WHICH REQUIRES THE INMATES TO KNOW IN ADVANCE WHAT CASE(S) HE NEEDS TO ORDER, INCLUDING THE CASE NAME AND CITE, IN ORDER TO HOPEFULLY GET A CORRECT FULL COMPUTER PRINT-OUT, OF THE SAID CASE(S). CITING: KOERSCHNER V. WARDEN, 508 F Supp 2d 849 (2007).

(2) SINCE THE RULING IN KOERSCHNER, TO THIS DATE YR. 2015, THE PRISON OFFICIALS [MR. MATT TILLY] [LAW-LIBRARY SUPERVISOR] AT W.S.CC. HAS DONE ABSOLUTLY NOTHING TO REMEDY THE ISSUE OF LACK OF ACCESS TO THE COURTS BY EITHER RE-OPENING THE LAW-LIBRARY TO PHYSICAL ACCESS OR HIRING TRAINED INMATES IN THE LAW TO ASSIST ANY AND ALL [ILLITERATE-INMATES].

(2A) AS THE U.S SUPREME COURT [MR JUSTICE MARSHAL] STATED: QUOTE, THAT ALL PRISONERS HAVE CERTAIN CONSTITUTIONAL RIGHTS WHICH CAN BE PROTECTED BY CIVIL RIGHTS ACTION(S), WOULD BE DILTED IF INMATES, OFTEN, TOTALLY OR FUNCTIONALLY ILLITERATE WERE UN-ABLE TO ARTICULATE THEIR COMPLAINTS TO THE COURTS).

(3) THE DENIAL OF LAW-LIBRARY ACCESS ALONG WITH THE COMPELLED AID IN THE, IN THE LAW FROM AN INMATE "SHOULD NOT" BE LEFT UP TO THE SOLE DISCRETION OF N.D.O.P. STAFF/PERSONAL. BY DOING SO IT IS A CLEAR VIOLATION OF THE INMATES [DUE PROCESS RIGHTS].

(3A) "ALL INMATES" HAVE THE CONSTITUTIONAL RIGHT TO COUNSEL AND FULL ACCESS TO THE COURTS, ALONG WITH FULL ACCESS TO A LEGAL LAW-LIBRARY TO DO REQUIRED RESEARCH FOR HIS CASE, ESPECIALLY IF A INMATE

1 IS PROPER PERSON. "YET-NEVADA'S PRISON SYSTEM REFUSES TO
2 RECOGNIZE AND FOLLOW THE FEDERAL LAWS AND GUIDELINES SET FORTH.
3 SEE: DAKER V. HUMPHREY, 294 GA. 504, 755 SE 2d 201 (GA. 2014)
4 (CAN NOT RECIEVE THIS CASE)....

(4) 5 IT IS COMPLETELY UN-REALISTIC TO EXPECT AN INMATE TO KNOW IN
6 ADVANCE EXACTLY WHAT LEGAL RESEARCH MATERIALS HE NEEDS
7 TO CONSULT, [YET THAT IS EXACTLY WHAT MR. TILLY EXPECTS]!
8 MR. TILLY, EXPECTS THE INMATE (my SELF) TO NO, BUT NOT LIMITED TO,
9 TOO KNOW THE FULL CASE, CASE NUMBER AND CITE ECT. "IN ORDER TO
10 POSSIBLY RECIEVE IN RETURN A COMPUTER PRINTOUT SHEET."

(5) 11 N.D.O.P. GOES THRU MATHEW/BENDER AND COMPANY INC. A
12 MEMBER OF THE LEXIS GROUP. [ANY AND ALL CASES OF LAW ECT.]
13 THAT IS ON THE COMPUTER, N.D.O.P. HAS FULL ACCESS TOO. INCLUDING
14 "OUT OF STATE JURISDICTIONAL CASES."

(5A) 15 ON 2-24-2015 DEFENDENT SENT IN A REQUEST, HE GOT FROM ANOTHER
16 INMATE TO GET A CASE IN RELATION TO HIS CONVICTION. [IT WAS FROM OUT OF
17 STATE]. MR. MATT TILLY, SUPERVISOR OF THE W.S.C.C. LAW-LIBRARY
18 "DENIED" my REQUEST, STATING, [HIS LAW-LIBRARY DON'T HAVE OUT
19 OF STATE CASE(S),- I MUST USE NEVADA STATE CASES ONLY.!!].

(5B) 20 INTERN DEFENDENT THEN FILED A FORMAL GRIEVANCE AGAINST MR.
21 TILLY FOR DENYING HIS ACCESS TO RESEARCH, AND IN TURN DENYING
22 THE DEFENDENT FULL ACCESS TO THE COURT'S.

23 SITE: Bonds V. SMITH, 430 U.S. 817, 97 SET. 1491, 52 L Ed 2d 72 (1977)
24 ALSO SEE, LINDQUIST V. IDAHO, STATE BOARD OF CORRECTIONS, 776 F.2d
25 851, 855 (9th CIR) 1985. AND DAKER V. HUMPHREY, 294 GA. 504,
26 755 SE 2d 201 [GA. 2014].

(6) 1 AS THE DEFENDENT CAN NOT GO TO THE LAW-LIBRARY [AS STATED IN
2 DEFENDENTS MOTION]; PER WARM SPRINGS CORR. CENTER, LAW-LIBRARY
3 SUPERVISOR, AN EX-CORRECTIONAL OFFICER (C/O), WHO IS NOW A FREE
4 STAFF EMPLOYEE THRU N.D.O.P. MR. MATT TILLY....

(6A) 5 MR. TILLY DEEMS HIMSELF, THE SOLE PERSON WHO SAYS EITHER YOU
6 CAN OR CAN NOT HAVE THE CASE TO RESEARCH. "NOW I.E., MR. TILLY
7 DECIDES," YOU DON'T NEED IT OR HE FEELS IN HIS EYES THAT IT DON'T
8 PERTAIN TO YOUR CASE, HE'LL FLAT REFUSE TO GET IT/ OR GIVE IT TO YOU...
9 [APPARENTLY MR. TILLY KNOWS WHAT ALL INMATES NEED] OR WANT!
10 REPEDIDLY DEFENDENT HAS ASKED FOR OUT OF STATE CASE'S TO COMPARE
11 JURISDICTIONAL ERROR, [AGAIN WAS DENIED] BY MR. TILLY, WITH HIM
12 STATING, HE DON'T HAVE OUT OF STATE CASES, THAT I MUST USE NEVADA
13 CASES ONLY, FOR ANY TYPE OF RESEARCH.

(7) 14 DEFENDENT NOT ONLY FILED ANOTHER GRIEVENCE AGAINST MR. TILLY AND
15 HIS FOUL WAYS OF NOT ALLOWING DEFENDENT TO PROPERLY PERSUE HIS
16 LEGAL RESEARCH, AS THE DEFENDENT FEELS IS CORRECT, NOT MR. TILLY,
17 (BUT) AS THE GRIEVENCE PROCESS WILL TAKE UP TO 45 DAYS OR LONGER TO
18 PROCESS, THE DEFENDENT FELT HE MUST NOTIFY THE COURTS OF THIS
19 ILLEGAL ACTION(S) THAT MR. MATT TILLY HAS BEEN GETTING AWAY WITH.

20 21 CONCLUSION OF FACTS.

22
23 THIS IS CLEARLY PREJUDICIAL TO THE DEFENDENT AND UN-CONSTITUTIONAL
24 BY DENYING THE DEFENDENT HIS CONSTITUTIONAL LEGAL RIGHT TO FULLY
25 RESEARCH ANY AND ALL CASES, CASE LAW THAT "THE DEFENDENT SOLEY
26 FEELS PERTAINS TO HIS CRIMINAL CASE," [AND NOT WHAT MR. TILLY WANTS
27 OR DON'T WANT TO GIVE OUT], INCLUDING THE LEGAL WRIGHT TO FULLY
28 EXPLORE ANY JURISDICTIONAL ERROR(S) OUT SIDE THE STATE OF NEVADA,

SO AS TO FULLY COMPARE NOTES, AND YES POSSIBLY EVEN USE, AS
 ALL LEGALLY LIC. ATTORNEYS DO - THE STATE A.G. - THE COURTS ETC..
 BUT AS AN INMATE IN N.D.O.P. (NU. DEPT. OF PRISONS) THE DEFENDENT
 IS BEING DENIED THESE CONSTITUTIONAL RIGHTS [BY MR. MATT. TILLY].

EVERYTHING SAID AND WRITTEN ON PAGES 1-5 ARE TRUE AND
 CORRECT, TO THE BEST OF DEFENDENTS KNOWLEDGE..
 UNDER THE PENALTY OF PERJURY PER NRS 208.165

SIGN CHARLES MAKI 42820

sign charl mak

DATE 3-20-2015

(CERTIFICATE OF SERVICE)

A TRUE AND CORRECT COPY OF MOTION / AFFIDAVIT, BOTH
 HAS BEEN, PUT IN THE N.D.O.P. UNIT MAIL BOX TO BE
 SENT TO THE FOLLOWING PARTY'S ADDRESSES..
 ..THRU STAMPED ENVELOPES..

TO COURT CLERK 2nd JUDICIAL DIST. COURT

75 COURT ST.

RENO, NV. 89501

TO DISTRICT ATTORNEY'S OFFICE:

75 COURT ST.

RENO, NV. 89501

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

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67717
District Court Case No. CR940345

08

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/03/2015 Appeal Filing Fee waived. Criminal.

04/03/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: April 03, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-09 09:06:19.937.

ROBERT STORY, ESQ. - Notification received on 2015-04-09 09:06:19.859.

ROBERT BELL, ESQ. - Notification received on 2015-04-09 09:06:19.89.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-09-2015:09:05:11

Clerk Accepted:

04-09-2015:09:05:50

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

FILED

2015 APR 17 PM 4:18

JACQUELINE BRYANT
CLERK OF THE COURTBY [Signature]
DEPUTY
SUPREME COURT NO. 67717

DIST. CT. CASE NO. CR94-0345

DEPT. 8

DATE 4/8/2015

NOTICE OF APPEAL

NOTICE TO APPEAL CASE NO. CR 94-0345 ON PETITIONERS

WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS TO THE N.J. SUPREME COURT;
 IS HEARD BY GIVEN THAT PETITIONER CHARLES J. MAKI IS APPEALING
 THIS ENTIRE CASE CR 94-0345 PURSUANT TO AND BY WAY OF WRIT OF
 PROHIBITION/WRIT OF HABEAS CORPUS, N.J.S. 39:16a, N.J.S. 39:17c, N.J.S. 39:19a
 TO THE N.J. SUPREME COURT FOR REVIEW AND ISSUE ORDER ALLOWING
 PETITIONER TO PROVE "HIS FACTUAL INNOCENCE", PURSUANT TO STATE V.
 MITCHELL, 122 N.J. 1267, 197 p.3d 33 (2006), IN THIS HONORABLE
 COURT ON OR ABOUT THE 11-12TH DAY OF APRIL 1974.

DATED THIS DAY OF 8 April 2015

Sign. C. MAKI

Charles J. Maki

RECEIVED

APR 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK



CR94-0345 DC-09900065700-034
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 04/17/2015 04:18 PM
Washoe County 1600
VITI DET

V6. 1044

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

FILED

2015 APR 17 PM 4:18

JACQUELINE BRYANT
CLERK OF DISTRICT COURT

By [Signature] Court No. 67717
DEPUTY

CHARLES J. MAKI
PETITIONER

v.

CASE NO: CR94-0345

STEVEN KOSAK, Hon. Judge Ect.
RESPONDENT

DEPT. 8

DIST. 8. WASHOE COUNTY.

DATE 4/8/2015

DESIGNATION OF RECORD ON

APPEAL

COMES NOW, CHARLES J. MAKI, PETITIONER IN
PROPER PERSONA, AND HERIN DESIGNATES THE FOLLOWING, "COMPLETE"
CASE FILE FROM CASE NO. CR94-0345, 1994 TO AND INCLUDING THE
PRESENT DATE, FOR RECORD ON APPEAL TO BE CERTIFIED BY THE CLERK
OF THIS COURT AND TRANSCRIBED ALL COURT PROCEEDING(S) IN CASE
NO: CR94-0345 TO THE CLERK OF THE COURT FOR NEVADA SUPREME
COURT, WRIT OF PROHIBITION/WRIT OF MANDAMUS WITH ATTACHED
EXHIBITS, MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT TO
SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL TO REPRESENT
PETITIONER ON APPEAL TO THE NEVADA SUPREME COURT PURSUANT TO NRS. 34.160,
NRS 34.170, NRS. 34.190, NRS 34.750, NEV. RULES OF CIVIL PROCEDURE.

NEXT PAGE.

V6. 1044

PETITIONER RESPECTFULLY SUBMITS PURSUANT TO THE
ABOVE NAME LEGAL AUTHORITY SUPRA. TO HAVE THIS HONORABLE
COURT APPOINT LEGAL COUNSEL TO REPRESENT PETITIONER ON HIS
WRIT OF PROHIBITION / WRIT OF HABEAS CORPUS THAT IS BEING
FORWARDED AS PART OF THE DESIGNATION RECORD ON APPEAL
CASE NO. CR94-0345 BY THE CLERK OF THE COURT FOR THE 2ND
JUDICIAL DISTRICT COURT OF NEVADA IN AND FOR THE COUNTY OF
WASHOE; TO THE CLERK OF COURT OF THE NEVADA SUPREME COURT.

DATED THIS 8th DAY OF ^{APRIL} ~~MARCH~~ 2005.

SIGN CHARLES J. MATE

SIGN CHARLES J. MATE

CR94-0345
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 04/17/2015 04:19 PM
Washoe County
NAC

V6. 1046
C9708

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

2015-APR-17 PM 4:19

JACQUELYNNE DRYANT No. 67712
CLERK OF THE COURT
BY CASE NO: CR94-0345
DEPUTY
DEPT. 8

CHARLES J. MAKI
PETITIONER

STEVEN KUSACH Hon. Judge ECL.
DIST. 8 RESPONDENT

For the County of Washoe

DATE 4/8/2015

REQUEST FOR SUBMISSION

COMES NOW PETITIONER, CHARLES J. MAKI,
APPEALING IN PROPER PERSONA, AND FILES THIS REQUEST FOR SUBMISSION,
IN THE ABOVE CASE NO: CR94-0345.
THIS REQUEST IS MADE PURSUANT TO N.R.S. 34.160, N.R.S. 34.170,
N.R.S. 34.190 WHERE AS PETITIONER RESPECTFULLY REQUEST THAT HIS
MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT OF THE
MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO N.R.S. 34.750(A)(B)(C),
BE SUBMITTED TO THE APPROPRIATE HONORABLE JUDGE FOR REVIEW AND
DECISION; ALSO PETITIONER'S WRIT OF PROHIBITION/WRIT OF MANDAMUS
WITH ATTACHED EXHIBITS, NOTICE OF APPEAL, DESIGNATION OF RECORDS ON
APPEAL ALSO PURSUANT TO N.R.S. 34.160, NRS 34.170, N.R.S. 34.190, FOR
REVIEW AND DECISION AND TO BE FORWARDED TO THE NEVADA SUPREME COURT.

DATED THIS 8 DAY OF APRIL 2015

Sign CHARLES J. MAKI

V6. 1046

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to N.R.A.C.P. 3(f).

1. Appellant is Charles Joseph Maki
2. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:
Charles Joseph Maki #42820
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702
4. Respondent is the State of Nevada. Respondent is represented by: the Washoe County District Attorney's Office
Terrance McCarthy, Esq., SBN 2745
P.O. Box 30083
Reno, NV 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant was represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant filed a motion to proceed in forma pauperis in the District Court filed on May 9, 1996.
9. Proceeding commenced by an Information filed on February 10, 1994.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Order Denying Petition filed March 18, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court. Supreme Court No. 63845, 66144 and 67717.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 20th day of April, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 20th day of April, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 20th day of April, 2015

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-20 09:15:08.703.

ROBERT STORY, ESQ. - Notification received on 2015-04-20 09:15:08.609.

ROBERT BELL, ESQ. - Notification received on 2015-04-20 09:15:08.64.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-20-2015:09:14:05

Clerk Accepted:

04-20-2015:09:14:39

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

CR94-0345
STATE VS. CHARLES JOSEPH MAKI 1 Page
District Court 04/21/2015 03:42 PM
Washoe County
2516
VUTU ABTC

FILED

APR 21 2015

JACQUELINE BRYANT, CLERK

By: *[Signature]*
DEPUTY CLERK

SUPREME COURT No. 67717

DIST. CT. CASE No. CR94-0345

DEPT. 8

DATE 4/18/2015

NOTICE OF APPEAL

NOTICE TO APPEAL CASE No. CR 94-0345 ON PETITIONERS

WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS TO THE NV. SUPREME COURT;
IS HEAR BE GIVEN THAT PETITIONER CHARLES J. MAKI IS APPEALING
THIS ENTIRE CASE CR94-0345 PURSUANT TO AND BY WAY OF WRIT OF
PROHIBITION/WRIT OF HABEAS CORPUS, NRS 39.160, NRS 39.170, NRS 39.190
TO THE NEW SUPREME COURT FOR REVIEW AND ISSUE ORDER ALLOWING
PETITIONER TO PROVE "HIS FACTUAL INNOCENCE", PURSUANT TO STATE V.
MITCHELL, 122 NV. 1269, 199 p.3d 33 (2006), IN THIS HONORABLE
COURT ON OR ABOUT THE 11-12TH DAY OF APRIL 1994.

DATED this DAY OF 18 April 2015

Sign CHARLES J. MAKI

[Signature]

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE.

APR 21 2015
JACQUELINE BRYANT, CLERK
By: [Signature]
DEPUTY CLERK

SUPREME COURT NO. 67717

CASE NO: CR94-0345

DEPT. 8

DATE 4/18 / 2015

CHARLES J. MAKI
PETITIONER

v.

STEVEN KOSKAL, Hon. Judge Ect.
RESPONDENT

DIST. 8. WASHOE COUNTY.

DESIGNATION OF RECORD ON
APPEAL

COMES NOW, CHARLES J. MAKI, PETITIONER IN
PROPER PERSONA, AND HERIN DESIGNATES THE FOLLOWING, "COMPLETE
CASE FILE FROM CASE NO. CR94-0345, 1994 TO AND INCLUDING THE
PRESENT DATE, FOR RECORD ON APPEAL TO BE CERTIFIED BY THE CLERK
OF THIS COURT AND TRANSCRIBED ALL COURT PROCEEDING(S) IN CASE
NO: CR94-0345 TO THE CLERK OF THE COURT FOR NEVADA SUPREME
COURT, WRIT OF PROHIBITION/WRIT OF MANDAMUS WITH ATTACHED
EXHIBITS, MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT TO
SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL TO REPRESENT
PETITIONER ON APPEAL TO THE NEVADA SUPREME COURT PURSUANT TO NRS. 34.160.
NRS 34.170, NRS. 34.190, NRS 34.750, NEV. RULES OF CIVIL PROCEDURE.

NEXT PAGE.

PETITIONER RESPECTFULLY SUBMITS PURSUANT TO THE
ABOVE NAME LEGAL AUTHORITY SUPRA. TO HAVE THIS HONORABLE
COURT APPOINT LEGAL COUNSEL TO REPRESENT PETITIONER ON HIS
WRIT OF PROHIBITION/WRIT OF MANDAMUS THAT IS BEING
FORWARDED AS PART OF THE DESIGNATION RECORD ON APPEAL
CASE NO. CR94-0345 BY THE CLERK OF THE COURT FOR THE 2ND
JUDICIAL DISTRICT COURT OF NEVADA IN AND FOR THE COUNTY OF
WASHOE; TO THE CLERK OF COURT OF THE NEVADA SUPREME COURT.

DATED THIS 18th DAY OF ^{APRIL} ~~MARCH~~ 2005.

SIGN CHARLES J. MARI

SIGN Charles J. Mari

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to N.R.A.C.P. 3(f).

1. Appellant is Charles Joseph Maki
2. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:
Charles Joseph Maki #42820
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702
4. Respondent is the State of Nevada. Respondent is represented by: the Washoe County District Attorney's Office
Terrance McCarthy, Esq., SBN 2745
P.O. Box 30083
Reno, NV 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant was represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant filed a motion to proceed in forma pauperis in the District Court filed on December 30, 2013.
9. Proceeding commenced by an Information filed on February 10, 1994.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Order Denying Petition filed March 18, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court.
Supreme Court No. 63845, 66144, 67717 and 67800.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 23rd day of April, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 23rd day of April, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 23rd day of April, 2015

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-23 12:24:00.589.

ROBERT STORY, ESQ. - Notification received on 2015-04-23 12:24:00.495.

ROBERT BELL, ESQ. - Notification received on 2015-04-23 12:24:00.542.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-23-2015:12:22:49

Clerk Accepted:

04-23-2015:12:23:28

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

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

CHARLES JOSEPH MAKI,
Petitioner,
vs.

Supreme Court No. 67800
District Court Case No. CR940345

DS

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE STEVEN R. KOSACH,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓
Hon. Steven R. Kosach, Senior Judge

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/14/2015	Petition Filing Fee Waived. Criminal.
04/14/2015	Filed Proper Person Petition for Writ of Prohibition/Writ of Mandamus.
04/14/2015	Received Proper Person Motion for Appointment of Counsel.
04/14/2015	Received Proper Person Motion to the Court.
04/14/2015	Received Proper Person Document. Affidavit in Support of Motion for Appointment of Counsel, Writ of Prohibition/Writ of Mandamus.

DATE: April 14, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-24 08:32:27.474.

ROBERT STORY, ESQ. - Notification received on 2015-04-24 08:32:27.365.

ROBERT BELL, ESQ. - Notification received on 2015-04-24 08:32:27.412.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-24-2015:08:31:19

Clerk Accepted:

04-24-2015:08:31:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

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

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67717
District Court Case No. CR940345

D8

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed
the following:

04/22/2015 Filed Notice of Appeal/Proper Person. (Second NOA).

DATE: April 22, 2015

Tracie Lindeman, Clerk of Court
lh

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

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67717
District Court Case No. CR940345

38

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk, ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed
the following:

04/24/2015 Filed Notice of Appeal/Proper Person. (Third NOA).

DATE: April 24, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-04-30 16:17:07.455.

ROBERT STORY, ESQ. - Notification received on 2015-04-30 16:17:07.345.

ROBERT BELL, ESQ. - Notification received on 2015-04-30 16:17:07.377.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-30-2015:16:16:04

Clerk Accepted:

04-30-2015:16:16:36

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc
Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67717

FILED

MAY 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

1. J. J. J., C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-05 14:11:47.827.

ROBERT STORY, ESQ. - Notification received on 2015-05-05 14:11:47.718.

ROBERT BELL, ESQ. - Notification received on 2015-05-05 14:11:47.765.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

05-05-2015:14:10:34

Clerk Accepted:

05-05-2015:14:11:14

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI ,

Petitioner,

vs.

Case No. CR94-0345

THE STATE OF NEVADA ,

Dept. No. 8

Respondent.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 8th day of May, 2015, I electronically filed Volumes 1 through 6 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 7 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

Dated this 8th day of May, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/Annie Smith
Annie Smith
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-08 10:44:18.593.

ROBERT STORY, ESQ. - Notification received on 2015-05-08 10:44:18.515.

ROBERT BELL, ESQ. - Notification received on 2015-05-08 10:44:18.547.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

05-08-2015:10:43:04

Clerk Accepted:

05-08-2015:10:43:45

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI ,

Petitioner,

vs.

Case No. CR94-0345

THE STATE OF NEVADA ,

Dept. No. 8

Respondent.

_____ /

AMENDED

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 8th day of May, 2015, I electronically filed Volumes 1 through 7 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 8 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

Dated this 8th day of May, 2015.

JACQUELINE BRYANT
CLERK OF THE COURT

By /s/Annie Smith
Annie Smith
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-08 14:30:26.014.

ROBERT STORY, ESQ. - Notification received on 2015-05-08 14:30:25.92.

ROBERT BELL, ESQ. - Notification received on 2015-05-08 14:30:25.952.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

05-08-2015:14:29:18

Clerk Accepted:

05-08-2015:14:29:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-05-28 10:53:09.0.

ROBERT STORY, ESQ. - Notification received on 2015-05-28 10:53:08.704.

ROBERT BELL, ESQ. - Notification received on 2015-05-28 10:53:08.938.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

05-28-2015:10:43:48

Clerk Accepted:

05-28-2015:10:52:31

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Application for Fees

- **Continuation

- **Continuation

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-06-19 15:04:51.208.

ROBERT STORY, ESQ. - Notification received on 2015-06-19 15:04:51.114.

ROBERT BELL, ESQ. - Notification received on 2015-06-19 15:04:51.146.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

06-19-2015:15:02:35

Clerk Accepted:

06-19-2015:15:04:19

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Approving

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67717

CR94-0345
Jg
FILED

JUL 21 2015

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

ORDER OF AFFIRMANCE


This is a pro se appeal from an order of the district court denying appellant Charles Joseph Maki's petition for a writ of mandamus or prohibition.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

In his petition, Maki challenged his judgment of conviction. We have reviewed the documents on file with this court and conclude that the district court did not abuse its discretion by denying Maki's request for intervention by way of extraordinary writ because a challenge to the validity of the judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus. See NRS 34.160; NRS 34.320; NRS 34.724(2)(b); *Reno Newspapers, Inc. v. Haley*, 126 Nev., Adv. Op. 23, 234

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

P.3d 922, 924 (2010) (providing that this court reviews the district court's denial of a writ petition for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
STEVEN R. KOSACH,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 67800

FILED

JUL 21 2015

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

ORDER DENYING PETITION

This is an original, pro se petition for a writ of mandamus or prohibition, asking this court to order the district court to prepare certified copies of petitioner Charles Joseph Maki's criminal case in its entirety for this court's review. Without deciding upon the merits of any claims raised in the documents submitted in this matter, we decline to exercise our original jurisdiction. See NRS 34.160; NRS 34.170; NRS 34.320; NRS 34.330. Accordingly, we

ORDER the petition DENIED.¹

[Signature]

Saitta

[Signature]

Gibbons

[Signature]

Pickering

¹We have received Maki's motion for appointment of counsel, affidavit in support of the motion for appointment of counsel, and motion to the court. We conclude no relief is warranted.

cc: Chief Judge, The Second Judicial District Court
Hon. Steven R. Kosach, Senior Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-07-24 08:53:41.859.

ROBERT STORY, ESQ. - Notification received on 2015-07-24 08:53:41.766.

ROBERT BELL, ESQ. - Notification received on 2015-07-24 08:53:41.797.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-24-2015:08:52:38

Clerk Accepted:

07-24-2015:08:53:10

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Order Affirming
Supreme Court Order Denying

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

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ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE STEVEN R. KOSACH,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 67800
District Court Case No. CR940345

DS

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on July 21st, 2015, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: August 17, 2015

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc: Hon. Steven R. Kosach, Senior Judge
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City
Jacqueline Bryant, Washoe District Court Clerk ✓

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67717
District Court Case No. CR940345

D8

REMITTITUR

TO: Jacqueline Bryant, Washoe 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: August 17, 2015

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):
Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City

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 August 19, 2015


District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67717
District Court Case No. CR940345

D8

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:

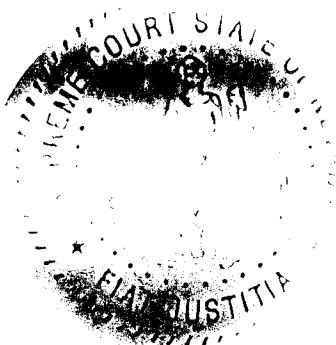
"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 21st day of July, 2015.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
August 17, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR94-6345
No. 67717 DS

FILED

JUL 21 2015

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

ORDER OF AFFIRMANCE


This is a pro se appeal from an order of the district court denying appellant Charles Joseph Maki's petition for a writ of mandamus or prohibition.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

In his petition, Maki challenged his judgment of conviction. We have reviewed the documents on file with this court and conclude that the district court did not abuse its discretion by denying Maki's request for intervention by way of extraordinary writ because a challenge to the validity of the judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus. See NRS 34.160; NRS 34.320; NRS 34.724(2)(b); *Reno Newspapers, Inc. v. Haley*, 126 Nev., Adv. Op. 23, 234

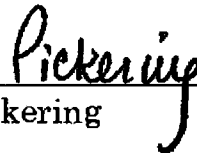
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

P.3d 922, 924 (2010) (providing that this court reviews the district court's denial of a writ petition for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CLERK OF THE SUPREME COURT
STATE OF NEVADA
CERTIFIED COPY
This document is a true and correct copy of
the original on file and on record in my office.
DATE: August 17, 2015
Supreme Court Clerk, State of Nevada
By Dallie Williams Deputy

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-08-19 15:12:35.368.

ROBERT STORY, ESQ. - Notification received on 2015-08-19 15:12:35.275.

ROBERT BELL, ESQ. - Notification received on 2015-08-19 15:12:35.321.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

08-19-2015:15:11:26

Clerk Accepted:

08-19-2015:15:12:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Not/Lieu/Remittitur
Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

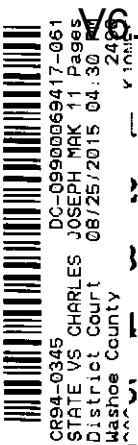
TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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CHARLES MAKI



CR94-0345
STATE VS CHARLES JOSEPH MAKI 11 Pages
District Court 08/25/2015 04:30 PM
Washoe County

V6 1094

CHARLES JOSEPH MAKI
NDOC # 42820 - 4881A
WARM SPRINGS CORRECTIONAL CENTER
3301 EAST FIFTH STREET / POB 7007
CARSON CITY, NEVADA 89702-7007

DEFENDANT, IN PROPER PERSON

FILED

2015 AUG 25 PM 4:30

JACQUELINE E. WATKINS
CLERK OF THE COURT

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
PLAINTIFF,
VS.
CHARLES JOSEPH MAKI,
DEFENDANT.

CASE No. CR94-0345
DEPT No. VIII

DEFENDANT'S MOTION TO
AMEND JUDGMENT OF 5/17/1994
TO COMPORT WITH NRS 176.105

COMES NOW, DEFENDANT, CHARLES JOSEPH MAKI (HEREINAFTER
"MAKI"), APPEARING IN PROPER PERSON, AND FILES THIS MOTION TO
AMEND JUDGMENT OF 5/17/1994 TO COMPORT WITH NRS 176.105, IN
THE ABOVE-ENTITLED ACTION.

THIS MOTION IS FILED PURSUANT TO NRS 176.105 (STATUTORY
PROVISIONS EFFECTIVE 1994), AND THE FILE GOING LEGAL MEMORAN-
DUMS OF SUPPORTING POINTS AND AUTHORITIES, AS WELL AS ANY
FURTHER ARGUMENTS AND/OR EVIDENCE TO BE ADDUCED AT TIME
OF HEARING IN THE PREMISE, IF NECESSARY.

...

V6. 1094

I. MOTION PRACTICE, NRS 178.582, CRIMINAL.

NRS 178.582 CORRELATES THE FORM OF CRIMINAL MOTION PRACTICE BY WRITING, UNLESS ORALLY MADE UPON COURT APPROVAL. THE MOTION SHALL STATE WITH PARTICULARITY THE GROUNDS THEREFOR, AND SHALL SET FORTH THE RELIEF OR ORDER SOUGHT. WDCR 12(1)(2)(4)(5) PROVIDES THAT:

§1... ALL MOTIONS SHALL BE ACCOMPANIED BY POINTS AND AUTHORITIES AND ANY AFFIDAVITS RELIED UPON;

§2. THE RESPONDING PARTY SHALL FILE AND SERVE UPON ALL PARTIES WITHIN 10 DAYS AFTER SERVICE OF A MOTION, ANSWERING POINTS AND AUTHORITIES AND COUNTER AFFIDAVITS;

§4. THE MOVING PARTY MAY FILE AND SERVE REPLY POINTS AND AUTHORITIES WITHIN 5 DAYS AFTER SERVICE OF THE ANSWERING POINTS AND AUTHORITIES. UPON THE EXPIRATION OF THE 5 DAY PERIOD, EITHER PARTY MAY NOTIFY THE FILING OFFICE TO SUBMIT THE MATTER FOR DECISION BY FILING AND SERVING ALL PARTIES WITH A WRITTEN REQUEST FOR SUBMISSION OF MOTION;

§5. DECISION SHALL BE RENDERED WITHOUT ORAL ARGUMENT UNLESS ORAL ARGUMENT IS ORDERED BY THE COURT...

II. APPLICABLE STANDARDS, NRS 176.105, JUDGMENTS IN CRIMINAL ACTIONS (LEGAL ANALYSIS).

1. IF A DEFENDANT IS FOUND GUILTY AND IS SENTENCED AS PROVIDED BY LAW, THE "JUDGMENT OF CONVICTION" MUST SET FORTH:

(a) THE PLEA;

(b) THE VERDICT OR FINDINGS;

(c) THE ADJUDICATION AND SENTENCE, INCLUDING THE DATE OF THE SENTENCE, ANY TERM OF IMPRISONMENT, THE AMOUNT AND TERMS OF ANY SUCH FINES, RESTITUTION OR ADMINISTRATIVE ASSESSMENT, A REFERENCE TO THE STATUTE UNDER WHICH THE DEFENDANT IS SENTENCED AND, IF NECESSARY, TO DETERMINE ELIGIBILITY FOR PAROLE, THE APPLICABLE PROVISION OF THE STATUTE; AND THE,

(d) EXACT AMOUNT OF CREDIT GRANTED FOR TIME SPENT IN CONFINEMENT BEFORE CONVICTION, IF ANY

NRS 176.105; EX PARTE LEIA, 25 NEV. 346, 60 P. 217 (NEV. 1900). SEE ALSO, WOOSTER V. O'DONNELL, 91 NEV. 756, 524 P.2D 1376 (1975) ("THE WORD 'SHALL' IS OPERATIVE AND MAKES THE STATUTE'S [MUST] USE MANDATORY LANGUAGE").

III. LEGAL MEMORANDUM & POINTS AND AUTHORITIES.

ADOPTING THE PRECEDING PARAGRAPHS I AND II HEREIN. MAKE

1 SEEKS AN ORDER TO AMEND THE "JUDGMENT" [OF CONVICTION]
 2 FILED MAY 17, 1994, SETTING FORTH BEHIND THE PARTICULARITIES, LEGAL
 3 ANALYSIS, AND THE APPLICABLE RELIEF SOUGHT. IN CITING LELA ABOVE,
 4 THERE ARE TWO ESSENTIALS TO A VALID JUDGMENT OF CONVICTION.
 5 SEE NRS 176.105, EXHIBIT "02," COMPARATIVE TO MAKI'S JUDGMENT,
 6 EXHIBIT "01." THE JUDGMENT, RESPECTFULLY, AND IN ITSELF, FAILS TO
 7 ADHERE TO THE STATUTORY PROVISIONS OF NRS 176.105, I.E. §§(A)
 8 THROUGH (C), WHICH MAKI WILL ADDRESS IN TURN. WOODFETER, SUPRA.

9 10 A. THE PLEA.

11 BASED UPON THE ALLEGATIONS CHARGED IN THE INFORMATION,
 12 SEXUAL ASSAULT OF A CHILD UNDER THE AGE OF 14, A FELONY, IN VIOLA-
 13 TION OF NRS 200.366, COUNTS I, II, III, IV, AND V. MAKI ENTERED A
 14 PLEA OF "NOT GUILTY." AS TO THE ALLEGATIONS CHARGED IN THE INFOR-
 15 MATION, LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN (14), A
 16 FELONY, IN VIOLATION OF NRS 200.230, COUNTS VI, VII, VIII, IX, AND X.
 17 LIKEWISE, MAKI ENTERED A PLEA OF NOT GUILTY. NOT REFLECTED.

18 B. THE VERDICT OR FINDINGS.

19 MAKI PROCEEDED TO A "JURY TRIAL" ON ALL COUNTS LISTED
 20 ABOVE. THIS CASE WAS NOT A GUILTY PLEA MEMORANDUM. THE JURY
 21 RETURNED A VERDICT OF: COUNT I, NOT GUILTY; COUNT II, HUNG
 22 JURY; AND COUNTS III TO X A FINDING OF GUILTY ON THE VERDICTS.
 23 NOT REFLECTED.

24 C. ADJUDICATION, SENTENCE, RESTITUTION.

25 HEREIN, §(C) OF NRS 176.105, THE JUDGMENT IS VOID ON
 26 MAKI'S ADJUDICATION AND SENTENCE, AND THE FORMULATION AS TO
 27 THE RESTITUTION AMOUNT OF \$526.00. SEE EXHIBIT "03," NRS
 28

176.033(1)(b), SENTENCE OF IMPRISONMENT REQUIRED BY THE
STATUTE, AS TO MINIMUM AND MAXIMUM TERMS FOR FELONY(IES).

"IF SENTENCING A PERSON WHO HAS BEEN FOUND
GUILTY OF A FELONY, SENTENCE THE PERSON TO A
MINIMUM TERM AND A MAXIMUM TERM OF IMPRISON-
MENT..."

THE WRITTEN JUDGMENT, EXHIBIT 01, ONLY IDENTIFIES THAT
MAKI; ABSENT THE APPROPRIATE REQUIRED STATUTES:

... AND THAT HE BE PUNISHED BY IMPRISONMENT IN
THE NEVADA STATE PRISON FOR THE TERM OF LIFE WITH THE
POSSIBILITY OF PAROLE ON COUNT III; THAT HE BE PUNISHED
BY IMPRISONMENT IN THE NEVADA STATE PRISON FOR THE
TERM OF LIFE WITH THE POSSIBILITY OF PAROLE ON COUNT IV
TO RUN CONSECUTIVE TO COUNT III; THAT HE PUNISHED BY
IMPRISONMENT IN THE NEVADA STATE PRISON FOR THE
TERM OF LIFE WITH THE POSSIBILITY OF PAROLE ON COUNT V
TO RUN CONSECUTIVE TO COUNT III..."

THE COURT'S ORAL PLENOLUCEMENT, AND JUDGMENT, IS SILENT
AS TO A "CONCURRENT/CONSECUTIVE" TERM BEING APPLIED TO COUNT
IV. THE JUDGMENT ONLY PROVIDES THAT COUNT V IS CONSECUTIVE
TO COUNT III. THEREBY, MAKING COUNTS IV AND V CONCURRENT
TO COUNT III. JUDGMENT, p2, 1-4.

THE CONCURRENT SENTENCE IS EFFECTIVE, AND SHOULD BE
SPECIFIED AS TO THE JUDGE'S FAILURE TO SPECIFY EARLIER WHETHER
SENTENCE [COUNT IV; V] WAS TO BE SERVED CONCURRENT OR
CONSECUTIVE. AMBIGUITIES, AS THE CASE HEREIN, MUST BE
RESOLVED IN THE FAVOR OF THE DEFENDANT IN CRIMINAL CASES.
SEE: WARD V. STATE, 73 NEV. 501, 569 P.2d 379 (1977); DEMBS-
THENES V. WILLIAMS, 77 NEV. 611, 614, 637 P.2d 1203 (1981) (BASIC
FAIRNESS REQUIRES THAT DEFENDANT BE GIVEN FAVORABLE
CONSTRUCTION).

THE JUDGMENT, LIKEWISE, FAILS TO INCLUDE A MINIMUM TERM
ON THE REMAINING MULTIPLE TEN (10) YEAR SENTENCES, MAKING

1 "NO" REFERENCES AS ANY TERMS BEING APPLIED CONCURRENT OR
 2 CONSECUTIVE TO COUNT IV, APPEARING THAT COUNTS VI THROUGH
 3 X ARE INDEED CONCURRENT WITH COUNT IV, WHILE RUNNING
 4 CONSECUTIVE TO COUNT III. Id.

5 "... THAT HE BE PUNISHED BY IMPRISONMENT IN THE
 6 NEVADA STATE PRISON FOR THE TERM OF 10 YEARS ON COUNT
 7 VI TO RUN CONSECUTIVE TO COUNT III; THAT HE BE PUNISHED
 8 IN THE NEVADA STATE PRISON FOR THE TERM OF 10 YEARS ON
 9 COUNT VII TO RUN CONSECUTIVE TO COUNT III; THAT HE BE
 10 PUNISHED BY IMPRISONMENT IN THE NEVADA STATE PRISON
 11 FOR THE TERM OF 10 YEARS ON COUNT VIII TO RUN CONSECUTIVE
 12 TO COUNT III; THAT HE BE PUNISHED IN THE NEVADA STATE
 13 PRISON BY IMPRISONMENT FOR THE TERM OF 10 YEARS TO
 14 RUN CONSECUTIVE TO COUNT III; THAT HE BE PUNISHED
 15 BY IMPRISONMENT IN THE NEVADA STATE PRISON FOR THE
 16 TERM OF 10 YEARS ON COUNT IX TO RUN CONSECUTIVE TO
 17 COUNT III..."

18 JUDGMENT, p 2, 4-13.

19 REFERENCED STATUTES OF SENTENCES NOT
 20 REFLECTED TO DETERMINE PAROLE ELIGIBILITY.

21 THE APPLICABLE PROVISIONS OF THE STATUTES, AS TO WHICH
 22 MAKI IS SENTENCED UNDER ARE NECESSARY TO DETERMINE
 23 PAROLE ELIGIBILITY, I.E., WHEN THE JUDGMENT REFLECTS A "POSSIBILITY
 24 OF PAROLE ELIGIBILITY." NRS 176.105(c); SEE ALSO, NAC 213.512;
 25 NRS 213.1085, 213.110; 213.140. A PRESUMPTION OF ARI PAROLE
 26 ELIGIBILITY ON THE SENTENCED COUNTS CANNOT BE GLEANED OR
 27 DETERMINED ON A SILENT JUDGMENT. NEITHER THE NEVADA DEPART-
 28 MENT OF CORRECTIONS ("NDOC"); NOR THE NEVADA STATE BOARD OF
 PAROLE COMMISSIONERS ("NSBPC") ARE ABLE TO DETERMINE MAKI'S
 PAROLE ELIGIBILITY ON ANY OF THE SENTENCED COUNTS. NDOC FKA
 ("NSP").

THE PENALTIES FOR ALLEGED SEXUAL ALLEGATIONS INVOLVING
 MINOR VICTIMS HAVE BEEN AMENDED MULTIPLE TIMES BY THE
 LEGISLATURE SINCE 1989 (OVER 25 YEARS). MAKI WAS SENTENCED
 IN 1994 WHEN THE TERMS WERE A MINIMUM OF FIVE YEARS, IN

WHICH THE COURT "MUST" HAVE DETERMINED UNDER THE APPROPRIATE STATUTE CHARGED, E.G., NRS 200.364; 200.366, IF THERE EXISTED ANY SUBSTANTIAL HARM. THE SENTENCES WERE BASED IN 1994 ON TWO FACTORS; AND "SHALL" STATE WHETHER:

1. IF SUBSTANTIAL BODILY HARM TO THE VICTIM RESULTED FROM THE ACTIONS OF THE DEFENDANT COMMITTING THE CRIME; OR

2. IF NO SUBSTANTIAL BODILY HARM TO THE VICTIM WAS DETERMINED BY THE TRIAL RECORD.

OBVIOUSLY, THESE FACTORS PLAY A CRITICAL ROLE UNDER THE STATUTE TO WHICH A DEFENDANT'S MINIMUM TERM IS ASSIGNED. IN MAKI'S CASE, THE SECOND PRONG, AS TO "NO SUBSTANTIAL HARM RESULTING" IS SUPPORTED BY THE RECORD (MAKI MAINTAINING HIS NOT GUILTY PLEAS). AGAIN, REFERENCE IS GIVEN TO THE ABSENCE OF DETERMINATION IN THE JUDGMENT. WARD, DEMOSTHENESES, SUPRA; WOODFIER'S (SUPRA) (MANDATORY LANGUAGE).

ABSENT ARGUENDO, MAKI'S EARNED CREDITS CANNOT BE APPLIED TO HIS SENTENCES FOR PURPOSES OF THE NDC'S AND NSBA'S PAROLE ELIGIBILITY DETERMINATIONS. DEMOSTHENESES; HUNT V. WARDEN, NSP, 111 NEV. 1284, 703 P.2D 826 (1995) (CREDIT ELIGIBILITY OF ALL INMATES WITH LIFE-PAROLE SENTENCES, ARE PLAUSIBLE TO EVENTUAL RELEASE).

LIFE-TIME SUPERVISION, JUDGMENT.

MAKI'S 1994 JUDGMENT/CONVICTION, PURSUANT TO NRS 213.1214, ET SEQ, IS NOT A MATTER TO BE DETERMINED BY THE COURT IN AMENDING THE MAY 17, 1994 JUDGMENT OF CONVICTION. LIFE-TIME SUPERVISION, AS TO THE ALLEGED SEXUAL OFFENSES WAS NOT APPLICABLE BY STATUTE AT TIME OF MAKI'S CONVICTIONS.

RESTITUTION NOT DEFINED.

PURSUANT TO NRS 176.105(C), THE JUDGMENT DOES NOT

1 SET FORTH THE "TERMS OF THE RESTITUTION." THE JUDGMENT
2 ONLY REFLECTS:

3 "... AND THAT HE EFFECT RESTITUTION IN THE AMOUNT
4 OF FIVE HUNDRED TWENTY-SIX DOLLARS (\$526.00)."

5 JUDGMENT, p2, 14-16.

6 THE TRIAL COURT'S JUDGMENT ORDERING RESTITUTION, FAILED
7 TO SET FORTH THE TERMS OF THE RESTITUTION, RATHER THAN RELYING
8 ON THE DISCRETION OF PROBATION TO JUST SET AN AMOUNT.
9 LEE V. STATE, 112 NEV. 773, 917 P.2D 959 (1996).

10 TURNING TO NRS 176.033 (C) PROVIDES BY STATUTE THAT:

11 "IF RESTITUTION IS APPROPRIATE, SET AN AMOUNT
12 OF RESTITUTION FOR EACH VICTIM OF THE OFFENSE AND FOR
13 EXPENSES RELATED..."

14 THE PROPER SUBJECT OF THE RESTITUTION EXPENSES FOR "WHOM,"
15 AND TO "WHOM" SAID EXPENSES ARE TO BE PAID. ERICKSEN V. STATE,
16 107 NEV. 864, 821 P.2D 1042 (1991) (RESTITUTION ON FINDING GUILT BY
17 JURY); GREENWOOD V. STATE, 112 NEV. 57, 915 P.2D 252 (1996) (JURY
18 ACQUITTAL ON COUNT I; HUNG JURY ON COUNT II, BUT RESTITUTION
19 STILL APPLIED); NORWOOD V. STATE, 112 NEV. 61, 915 P.2D 277 (1996)
20 (MEDICAL EXPENSES, DIVISION, AGENCY, VICTIM, STATED RESTITUTION TO
21 WHOM); BOTTS V. STATE, 107 NEV. 567, 854 P.2D 856 (1993) (RESTITUTION
22 FOR COUNSELLING AND/OR PROFESSIONAL SERVICES RENDERED TO VICTIM
23 OF DEFENDANT).

24 D. JUDGMENT OF CONVICTION, ERRORS IN 25 MAKI'S 1994 JUDGMENT - CUMULATIVE.

26 IN ADDITION TO THE SUPPORTING LEGAL ANALYSIS
27 PRESENTED ABOVE, PARAGRAPHS "A" THROUGH "C," AND THE
28 STATUTORY PROVISIONS OF NRS 176.105. THE OPINIONS OF THE
NEVADA STATE SUPREME COURT, IN LEDBETTER V. STATE,

122 Nev. 252, 129 P.3d 671 (2006), See Exhibit 04, are directly on point as to Maki's arguments herein, i.e. "Errors in the Written Judgment," Lexis excerpt, # 43093, and appended references footnotes therein.

"Our review of the record reveals several errors in the written judgment of conviction. We take this opportunity to express our concerns respecting to the increased number of errors appearing in the written judgments of convictions in the District Courts."

The Court in Ledbetter went on to opine the vital information, and the necessity of attentive drafting, that is critical to the written judgment of conviction.

"The written judgment of conviction is an essential document in a criminal proceeding because it memorializes a defendant's conviction, his crime, and the terms of his sentence. Its required contents are set forth by statute, and are relied upon by other courts [agencies NDC, NDBA] long after the proceedings in the district court have passed. It is therefore critical that the written judgment contain accurate information. The judge's signature on the document is required to be ensure that it does."

IV. CONCLUSION.

Based upon the foregoing legal memorandum, Maki has made a prima facie showing, with particularities, for the relief sought upon an order to amend the judgment to conform with NRS 176.105 (statutory provision).

Wherefore, Maki prays that this Honorable Court grant the relief requested herein. Thank you.

DATED THIS 24TH DAY OF AUGUST, 2015.

Respectfully Submitted,

Charles J. Maki

CHARLES JOSEPH MAKI, #42820
DEFENDANT, IN PROPER PERSON

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding DEFENDANT'S
MOTION TO AMEND JUDGMENT OF 5/17/1994 TO COMPLY
WITH NRS 176.105
(Title of Document)

filed in District Court Case number CR 94-0345

☒ 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: N/A

(State specific law)

-OR-

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

Charles F. Maki
Signature

AUGUST 24, 2015
Date

CHARLES JOSEPH MAKI
Print Name

DEFENDANT, IN PROPER PERSON
Title

CERTIFICATE OF SERVICE BY MAIL

I, CHARLES J. MAKI, hereby certify, pursuant to NRS 178.584(2)³,
 that on this 24TH day of AUGUST, 20 15, I mailed a
 true and correct copy of the foregoing "DEFENDANT'S MOTION TO AMEND
JUDGMENT OF 5/17/1974, TO COMPLY WITH NRS 176.105"
 by placing it in the hands of the warm springs correctional center law library
 supervisor, First-class Postage, fully paid, and addressed as follows;

MR. CHRISTOPHER J. HICKS, ESQ.
WASING COUNTY DISTRICT ATTORNEY
CRIMINAL DIVISION
1 SOUTH SIERRA STREET, 3RD FLOOR
RENO, NEVADA 89502

DATED THIS 24TH DAY OF AUGUST, 20 15.

Charles J. Maki
CHARLES J. MAKI, #42820
 Warm Springs Correctional Center
 P.O. Box 7007-3301 E. 5TH STREET
 Carson City, NV 89702

3. CRIMINAL MOTION, SERVICE OF PLEADINGS.

THE INDEX TO DEFENDANT'S EXHIBITS

JUDGMENT, STATE V. MAKI, CR94-0345, MAY 17, 1994,
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01

NRS 176.105, REQUIREMENTS OF JUDGMENT IN A
CRIMINAL ACTION,
2pp.

02

NRS 176.033, SENTENCE OF IMPRISONMENT...
MINIMUM AND MAXIMUM TERMS FOR FELONY(IES)...
1pp.

03

LEDBETTER V. STATE, 122 Nev. 252, 129 P.3d 671,
MARCH 16, 2006 (EXCERPT LEXIS 43073, pp 1 AND 9, WITH
REFERENCED FOOTNOTES APPENDED, 24-28 @ p 12),
3pp.

04

AUTHORIZATION FOR LEGAL ASSISTANCE BY AN INMATE,
LCC LL FORM 34.007,¹ PURSUANT TO AR 722.0458² "INMATE
ACCESS TO JUDICIAL PROCESS," LETTER OF CLARK G. LESLIE,
ESQ., 9/20/2012,
2pp.

05

1.
LCC LL FORM 34.007 - AUTHORIZATION, NOT PERMITTED FOR REPRODUCTION AT THIS
INSTITUTION'S LAW LIBRARY, WSC. WILL BE PERMITTED UPON COURT ORDER BY FILING ASSISTING PARTY.

2.
PURSUANT TO NRS 52.05B, NDC'S ADMINISTRATIVE REGULATIONS (ARs) ARE SELF-
AUTHENTICATED RECORDS BY A PUBLIC AGENCY, AVAILABLE ON THE INTERNET.

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V. THICC

EXHIBIT

01

EXHIBIT

01

No. CR94-0345

Dept. No. 8

FILED

5/17/94
JUD. BAILEY, ClerkBy L. K. KENNEDY
Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

Reporter: I. Zihn

J U D G M E N T

No sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court renders judgment as follows:

That Charles Joseph Maki is guilty of the crimes of Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Counts III, IV & V of the Information and Lewdness With A Child Under The Age Of Fourteen Years as charged in Count VI, VII, VIII, IX & X of the Information and that he be punished by imprisonment in the Nevada State Prison for the term of Life with the possibility of parole on Count III; that he be punished by imprisonment in the Nevada State Prison for the term of Life with the possibility of parole on Count IV to run consecutive to Count III; that he be punished by imprisonment in the Nevada

State Prison for the term of Life with the possibility of parole on Count V to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VI to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VII to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count VIII to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count IX to run consecutive to Count III; that he be punished by imprisonment in the Nevada State Prison for the term of ten (10) years on Count X to run consecutive to Count III; and that he effect restitution in the amount of Five Hundred Twenty-Six Dollars (\$526.00). It is further ordered that the Defendant pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee. Defendant is given credit for one hundred eighteen (118) days time served.

Dated this 17th day of May, 1994.


DISTRICT JUDGE

CR94-0345 DC-09900069417-063
STATE VS CHARLES JOSEPH MAKI 3 Pages
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Washoe County 2490
KIMLE

EXHIBIT

02

EXHIBIT

02

176.105. Judgment in criminal action generally.

1. If a defendant is found guilty and is sentenced as provided by law, the judgment of conviction must set forth:

- (a) The plea;
- (b) The verdict or finding;
- (c) The adjudication and sentence, including the date of the sentence, any term of imprisonment, the amount and terms of any fine, restitution or administrative assessment, a reference to the statute under which the defendant is sentenced and, if necessary to determine eligibility for parole, the applicable provision of the statute; and
- (d) The exact amount of credit granted for time spent in confinement before conviction, if any.

2. If the defendant is found not guilty, or for any other reason is entitled to be discharged, judgment must be entered accordingly.

3. The judgment must be signed by the judge and entered by the clerk.

1967, p. 1433; 1973, p. 161; 1979, p. 1124; 1989, ch. 438, § 1, p. 938; 1993, ch. 46, § 1, p. 78; 1997, ch. 257, § 1, p. 905.

NOTES TO DECISIONS

Finality of judgment and granting of probation. Only after a judgment of conviction is signed by the judge and entered by the clerk, as provided by this section, does it become final and does the defendant begin to serve a sentence of imprisonment; otherwise, a district judge could never suspend an announced sentence and grant probation under NRS 176.185(1) (now NRS 176A.100), since the defendant, immediately after pronouncement of sentence, would have commenced serving his or her sentence. *Miller v. Hayes*, 95 Nev. 927, 604 P.2d 117, 1979 Nev. LEXIS 699 (1979).

No impeachment by a felony until it is final. Where the state sought to impeach the defendant's testimony by showing that he was an ex-felon, the trial court did not abuse its discretion in refusing to allow the state to use a preferred judgment of conviction where the judgment of conviction in the prior case was incomplete in that it did not contain a penal sentence. *Revuelta v. State*, 86 Nev. 224, 467 P.2d 105, 1970 Nev. LEXIS 492 (1970).

An oral pronouncement remains modifiable by the imposing judge until such time as it is signed and entered by the clerk, therefore, where district judge modified oral sentence by the signed and entered written judgment of conviction, the district judge's subsequent modification of the sentence was effective such that the judge's failure to specify at earlier hearing whether sentencing was to be consecutive or

nvcode

concurrent was modifiable. *Bradley v. State*, 109 Nev. 1090, 864 P.2d 1272, 1993 Nev. LEXIS 170 (1993).

There are two essentials to a valid judgment of conviction, and a process of commitment issued thereon, namely, the statement defining the punishment, and the statement of the offense for which the punishment is inflicted. *Ex parte Dela*, 25 Nev. 346, 60 P. 217, 1900 Nev. LEXIS 4 (1900) (decision under former similar statute).

Various California court records of each prior DUI conviction were legally sufficient to establish that California judgments of conviction were entered against appellant. *Jones v. State*, 105 Nev. 124, 771 P.2d 154, 1989 Nev. LEXIS 28 (1989).

Claim for credit for presentence incarceration is a challenge to the validity of the judgment of conviction and sentence, which may be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus complying with the statutory procedures governing petitions that challenge the validity of the judgment of conviction and sentence. *Griffin v. State*, 137 P.3d 1165, 2006 Nev. LEXIS 70 (2006).

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EXHIBIT

03

EXHIBIT

03

176.033. Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence.

1. If a sentence of imprisonment is required or permitted by statute, the court shall:

(a) If sentencing a person who has been found guilty of a misdemeanor or a gross misdemeanor, sentence the person to imprisonment for a definite period of time within the maximum limit or the minimum and maximum limits prescribed by the applicable statute, taking due account of the gravity of the particular offense and of the character of the individual defendant.

(b) If sentencing a person who has been found guilty of a felony, sentence the person to a minimum term and a maximum term of imprisonment, unless a definite term of imprisonment is required by statute.

(c) If restitution is appropriate, set an amount of restitution for each victim of the offense and for expenses related to extradition in accordance with NRS 179.225.

2. At any time after a prisoner has been released on parole and has served one-half of the period of parole, or 10 consecutive years on parole in the case of a prisoner sentenced to life imprisonment, the State Board of Parole Commissioners, upon the recommendation of the Division, may petition the court of original jurisdiction requesting a modification of sentence. The Board shall give notice of the petition and hearing thereon to the Attorney General or district attorney who had jurisdiction in the original proceedings. Upon hearing the recommendation of the State Board of Parole Commissioners and good cause appearing, the court may modify the original sentence by reducing the maximum term of imprisonment but shall not make the term less than the minimum term prescribed by the applicable penal statute.

HISTORY:

1967, p. 527; 1973, p. 844; 1975, p. 652; 1977, p. 414; 1987, ch. 174, § 1, p. 395; 1989, ch. 322, § 1, p. 678; 1993, ch. 331, § 1, p. 934; 1993, ch. 466, § 112, p. 1512; 1995, ch. 293, § 30(1), p. 551; 1995, ch. 443, § 205, p. 1248.

Editor's note.

Acts 1995, ch. 443, § 393, provides: "The amendatory provisions of sections 1 to 230, inclusive, and 232 to 374, inclusive, of this act do not apply to offenses which are committed before July 1, 1995."

NOTES TO DECISIONS

Jurisdiction.

District court had jurisdiction to award restitution to the State for cost of care for the victim of defendant's crime to the extent that the district court's order did not overlap existing support obligation

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District Court 08/25/2015 04:30 PM
Washoe County 2490
v. TIME

EXHIBIT

04

EXHIBIT

04

**JOHN ALLEN LEDBETTER, Appellant, vs. THE STATE OF NEVADA, Respondent.
SUPREME COURT OF NEVADA**

122 Nev. 252; 129 P.3d 671; 2006 Nev. LEXIS 26; 122 Nev. Adv. Rep. 22

No. 43093

March 16, 2006, Decided

Editorial Information: Prior History

Appeal from a judgment of conviction, pursuant to a jury verdict, of 14 counts of sexual assault on a minor under 14 years old and 12 counts of sexual assault on a minor under 16 years old. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

Disposition:

Affirmed and remanded for the limited purpose of correcting errors in the written judgment of conviction.

Counsel

Christopher R. Oram, Las Vegas, for Appellant.

George Chanos, Attorney General, Carson City; David J. Roger, District Attorney, and James Tufteland, Chief Deputy District Attorney, Clark County, for Respondent.

Judges: ROSE, C.J., with whom BECKER, J., agreed, dissented. GIBBONS, DOUGLAS, HARDESTY and PARRAGUIRRE, JJ., concur. ROSE, C.J., with whom BECKER, J., agrees, dissenting.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant was convicted in the Eighth Judicial District Court, Clark County (Nevada) of multiple counts of sexual assault on a minor. Defendant appealed. Probative value of explaining to the jury what motivated defendant to repeatedly sexually abuse his stepdaughter over many years was high; therefore, evidence of defendant's prior acts of sexual abuse, Nev. Rev. Stat. § 48.045, was properly admitted to show defendant's sexual attraction to and obsession with the young female members of his family.

OVERVIEW: Defendant argued, inter alia, that the trial court erred by admitting evidence of uncharged prior acts of sexual abuse committed by him upon two other victims. The supreme court disagreed. What motivated defendant to sexually abuse the victim was relevant to the State's prosecution, and the evidence of his prior acts of abuse of other young female family members established that motive. Even excluding the uncharged prior act evidence of defendant's sexual abuse of the others, the remaining direct and circumstantial evidence admitted against him overwhelmingly supported his conviction for sexually assaulting the victim. Particularly, the evidence included the following: the testimony of the victim, the testimony of a nurse who examined the victim and found evidence of sexual abuse, the testimony of the victim's step-aunt and mother, who once observed defendant abusing the victim in her bedroom, and the letter written by defendant to the victim's mother that contained emphatic apologies for his behavior and implied admissions of guilt. Therefore, the trial court did not err by admitting the prior acts evidence.

OUTCOME: The judgment was affirmed and the case was remanded for the limited purpose of correcting

The decision to deny a motion for a mistrial rests within the district court's discretion and will not be reversed on appeal "absent a clear showing of abuse." 22 Moreover, "[a] witness's spontaneous or inadvertent references to inadmissible material, not solicited by {122 Nev. 265} the prosecution, can be cured by an immediate admonishment directing the jury to disregard the statement." 23

Here, assuming that L.R.'s remark was inadmissible, the district court found that it was not solicited by the prosecutor and promptly admonished the jury to disregard it. The remark was isolated, and we conclude that any prejudice flowing from it was adequately cured by the district court.

Ledbetter has therefore failed to clearly demonstrate that the district court abused its discretion by denying his mistrial motion. He is not entitled to relief on this basis.

Errors in the written judgment

Our review of the record reveals several errors in the written judgment of conviction. We take this opportunity to express our concern respecting the increasing number of clerical errors appearing in written judgments of conviction filed in the district courts.

The written judgment of conviction is an essential document in a criminal proceeding because it memorializes a defendant's conviction, his crime, and the terms of his sentence. 24 Its required contents are set forth by statute 25 and are relied upon by other courts long after the proceedings before the district court have passed. It is therefore critical that the written judgment contain accurate information. The district judge's signature on the document is required to ensure that it does so. 26

Yet written judgments containing errors are being presented to this court with increasing frequency. These clerical errors often concern basic, but vital, information, such as whether a defendant was convicted pursuant to a jury verdict or a guilty plea. And they appear to be the result of nothing more than inattentive drafting that could be easily avoided by a more careful review of the {129 P.3d 681} document below. Such errors needlessly inject uncertainty into criminal proceedings and their correction constitutes a waste of judicial resources. The written judgment in this case illustrates but one example of our concern and contains three errors that we must address.

First, the written judgment states that Ledbetter's conviction was the result of a guilty plea. This is incorrect. Ledbetter was convicted pursuant to a jury verdict.

{122 Nev. 266} Second, the written judgment states that Ledbetter was sentenced to life in prison with the possibility of parole in five years for each of the 26 sexual assault counts. Yet the official transcript of Ledbetter's March 16, 2004, sentencing hearing reveals that the district court orally pronounced a sentence of 26 terms of life in prison with the possibility of parole in 20 years for each of the counts. The sentence within the written judgment not only differs substantially from the oral pronouncement of Ledbetter's sentence, but it is incorrect as a matter of law. NRS 200.366 sets forth the possible penalties for the crime of sexual assault on a minor and has been amended several times since 1989, 27 which is the year Ledbetter's abuse of L.R. first began. Depending upon the dates of the offenses, the resulting bodily harm, and the age of the victim, that statute has provided for various terms of imprisonment. None of these terms, however, allowed for a sentence of life in prison with the possibility of parole after five years under the facts of this case.

Finally, the written judgment states that the prison terms for all 26 counts were imposed to run concurrently to one another. Yet the official transcript of Ledbetter's sentencing hearing reveals that the district court orally announced that count two would run consecutively to count one. Although a district court may modify an oral pronouncement of a defendant's sentence in a subsequent written judgment, 28 there is no indication in the record before us that the district court intended to do so in this case. Thus, we are uncertain whether the discrepancy between the oral pronouncement of

See *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) ("The testimony of a sexual assault victim alone is sufficient to uphold a conviction."); *McNair v. State*, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992) ("Circumstantial evidence alone may sustain a conviction.").

19

See *Richmond*, 118 Nev. at 934, 59 P.3d at 1255-56.

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Because we conclude that the prior act evidence was admissible to show Ledbetter's motive, we will not address intent.

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Our review of the record reveals that the district court failed to orally give instructions to the jury limiting the use of the prior act evidence before the testimony of each witness. Although Ledbetter does not raise this issue, the district court's failure was error, *Tavares v. State*, 117 Nev. 725, 731-33, 30 P.3d 1128, 1131-33 (2001), and we reaffirm our holding that when a district court admits prior act evidence, a limiting instruction should be given to the jury both at the time of admission and again when the case is submitted to the jury for deliberations. *Rhymes*, 121 Nev. at , 107 P.3d 1281-82.

Here, the State did discuss the limited use of the prior act evidence during its opening and closing arguments to the jury, and as previously discussed, the district court gave the jury a limiting instruction prior to deliberations. Deficient limiting instructions are a factor this court has considered when analyzing the admissibility of prior act evidence. See *Rosky*, 121 Nev. at , 111 P.3d at 697-99. Given the overwhelming evidence of Ledbetter's guilt as discussed above, we conclude that this error did not have a "substantial and injurious effect or influence in determining the jury's verdict" and was harmless. See *Tavares*, 117 Nev. at 732, 30 P.3d at 1132 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946)).

22

Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001).

23

Carter v. State, 121 Nev. , , 121 Nev. 759, 121 P.3d 592, 599 (2005).

(24)

See generally *Ex parte Dela*, 25 Nev. 346, 350-51, 60 P. 217, 219 (1900).

(25)

See NRS 176.105(1).

(26)

See NRS 176.105(3).

(27)

See 1997 Nev. Stat., ch. 314, § 3, at 1179-80; *id.* ch. 455, § 1, at 1719-20; 1995 Nev. Stat., ch. 443, § 58, at 1186-87; 1991 Nev. Stat., ch. 250, § 1, at 612-13.

(28)

See *Bradley v. State*, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1274-75 (1993); *Miller v. Hayes*, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).

29

See *McCall v. State*, 97 Nev. 514, 517, 634 P.2d 1210, 1212 (1981).

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CR94-0345
STATE VS CHARLES JOSEPH MAKI 3 Pages
District Court 08/25/2015 04:30 PM
Washoe County
2490
KIMES

EXHIBIT

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EXHIBIT

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ASSISTED DOCUMENT DISCLOSURE

UPON THE REQUEST OF THE INITIATING PARTY, THIS DOCUMENT IS ASSISTED BY MICHAEL ANGELO DEARKE, NDC #61122 (AN INMATE), AS AUTHORIZED BY THE NEVADA DEPARTMENT OF CORRECTIONS' (NDC) ADMINISTRATIVE REGULATION (AR) 722.045 B "INMATE ACCESS TO THE JUDICIAL PROCESS." SEE ATTACHED "AUTHORIZATION FOR LEGAL ASSISTANCE BY INMATES," LOVELOCK CORRECTIONAL CENTER (LCC) LAW LIBRARY (LL) LCC LL FORM NO. 34.007. SEE ALSO ATTACHED CORRESPONDENCE OF THE NEVADA ATTORNEY GENERAL'S OFFICE, FROM CLARK G. LESLIE, ESQ. (DEPUTY ATTORNEY GENERAL) DATED 9/20/2012. REFERENCE: JOHNSON V. ARIZONA, 393 U.S. 401, 89 S. CT. 747 (1969).

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SUBMITTED DOCUMENT: "DEFENDANT'S MOTION TO AMEND JUDGMENT OF 5/17/1994 TO COMPLY WITH NRS 176.105," STATE OF NEVADA V. MAKI, CASE NO. CR 94-0345, SECOND JUDICIAL DISTRICT COURT, WASHOE COUNTY, NEVADA.

Charles J. Maki

AUGUST 24, 2015

CHARLES JOSEPH MAKI, # 42820

DEFENDANT, IN PROPER PERSON



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

September 20, 2012

Delivered via U.S. mail

Michael Angelo Drake #61122
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Re: Assisting other inmates with legal work

Mr. Drake:


In reviewing several appeal filings I note that you have been writing briefs for other inmates. Under appropriate circumstances this may be allowable but the Administrative Regulations *expressly* require an assisting inmate to identify himself in the brief or other paper filed with the Court. You have not been doing so.

PLEASE BE ADVISED that if you draft or write any other briefs or matters filed with the court and you fail to identify yourself in the document I will report your violation to the Warden for disciplinary action. I'm giving you this one warning; no further considerations will be forthcoming.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


CLARK G. LESLIE
Sr. Deputy Attorney General

CGL:vjb

CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 09/11/2015 03:52 PM
Washoe County
3860
V JALICE

Charles J. MAKI # 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702

DEFENDANT, In Propria Persona

FILED

2015 SEP 11 PM 3:52

JACQUELINE EVANS
CLERK DISTRICT COURT

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Vs.

Charles J. MAKI,

Defendant,

CASE No. CR94-0345

DEPT. No. VIII

REQUEST FOR SUBMISSION OF MOTION

COMES NOW, Charles J. MAKI, Defendant, in propria persona, and files this request for submission of motion for: DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION,

In the above titled action, which was submitted/filed on or about the 25th day of AUGUST, 20 15

Defendant respectfully request that this matter be submitted to the appropriate Honorable Court for review/decision. Thank You.

DATED this 9th day of SEPTEMBER, 20 15.

RESPECTFULLY SUBMITTED,

Charles J. MAKI
DEFENDANT, In Propria Persona
Charles J. MAKI, #42820

CERTIFICATE OF SERVICE BY MAIL

I, CHARLES J. MAKI, hereby certify, pursuant to NRCP 5(b), that on this 9TH day of SEPTEMBER, 20 15, I mailed a true and correct copy of the foregoing "REQUEST FOR SUBMISSION OF MOTION," by placing it in the hands of the warm springs correctional center law library supervisor, First-class Postage, fully paid, and addressed as follows:

CHRISTOPHER J. HICKS, ESQ.
WASHINGTON COUNTY DISTRICT ATTORNEY
CRIMINAL DIVISION
1 SOUTH SIERRA STREET, 7TH FLOOR
RENO, NEVADA 89502

DATED THIS 9TH DAY OF SEPTEMBER, 20 15.

Charles J. Maki
CHARLES J. MAKI, #42820
 Warm Springs Correctional Center
 P.O. Box 7007
 Carson City, NV 89702

DEFENDANT, IN PROPER PERSON

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Case No. CR94-0345

Plaintiff,

Dept. No. 8

vs.

CHARLES JOSEPH MAKI,

Defendant.

ORDER DENYING MOTION

Currently before the court is Defendant Charles Joseph Maki's *Motion to Amend Judgment of May 17, 1994 to Comport With NRS 176.105*. To the extent that Maki challenges the validity of the judgment of conviction and sentence, such claims must be raised in a post-conviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(b). To the extent that Maki seeks to modify or correct his sentence, he has failed to demonstrate that his sentence was facially illegal, or that the sentence was based on mistaken assumptions about his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 707-708, 918 P.2d 321, 324 (1996).

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Accordingly, the court ORDERS Maki's *Motion to Amend* DENIED.

IT IS SO ORDERED.

DATED this 7th day of October, 2015.

Lidia S. Stiglich
LIDIA S. STIGLICH
District Judge

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 7th day of October, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Charles Joseph Maki
#42820
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702

3

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-07 15:51:24.642.

ROBERT STORY, ESQ. - Notification received on 2015-10-07 15:51:24.595.

ROBERT BELL, ESQ. - Notification received on 2015-10-07 15:51:24.689.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-07-2015:15:50:18

Clerk Accepted:

10-07-2015:15:50:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

FILED

OCT 19 2015
JACQUELINE BRYANT, CLERK
By [Signature]
DEPUTY CLERK

CHARLES J. MAKI, # 42820

Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada, 89702

~~DEFENDANT~~
PLAINTIFF, In Propria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Vs.

CHARLES J. MAKI,

Defendant.

CASE No. CR54-0345

DEPT. No. 8

Dkt. No.

NOTICE OF APPEAL

Please take notice that CHARLES J. MAKI, ^{DEFENDANT} ~~Plaintiff~~, and in his proper person, hereby appeals to the Nevada Court of Appeals, the judgment(s) in the above-entitled action(s) entered in this Honorable Court on or about the 2TH day of OCTOBER, 2015. This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this 16TH day of OCTOBER, 20 15.

RESPECTFULLY SUBMITTED,

Charles J. Maki
~~PLAINTIFF~~, In Propria Persona
~~DEFENDANT,~~

1. ORDER DENYING DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION.

CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court
10/19/2015 02:37 PM
Washoe County
2515

CERTIFICATE OF MAILING

I, CHARLES MAKI, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

CHRISTOPHER J. HICKS, ESQ.
District Attorney
WASHINGTON COUNTY DISTRICT ATTORNEY
1 SOUTH SIERRA STREET, 7TH FLOOR
RENO, NEVADA 89502
(Copy to)

DATED this 16th day of OCTOBER, 20 15

BY: Charles Maki

Appellant, In Proper Person

DEFENDANT,

Code 1310

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

Case No. CR94-0345

Dept. No. 8

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Joseph Maki.
2. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles J. Maki #42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Terrance McCarthy, Esq., SBN: 2745
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed on January 7, 2014 in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion filed on October 7, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845, 66144, 67717 and 67800.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 22nd day of October, 2015.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

STATE OF NEVADA,

Case No. CR94-0345

Dept. No. 8

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 22nd day of October, 2015, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 22nd day of October, 2015

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-22 09:41:55.762.

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ROBERT BELL, ESQ. - Notification received on 2015-10-22 09:41:55.824.

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-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-22-2015:09:40:43

Clerk Accepted:

10-22-2015:09:41:20

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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-

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The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

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

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69049
District Court Case No. CR940345

JB

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

10/26/2015 Appeal Filing Fee waived. Criminal.

10/26/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: October 26, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-28 14:26:03.651.

ROBERT STORY, ESQ. - Notification received on 2015-10-28 14:26:03.62.

ROBERT BELL, ESQ. - Notification received on 2015-10-28 14:26:04.712.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-28-2015:14:25:01

Clerk Accepted:

10-28-2015:14:25:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

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The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69049

FILED

DEC 01 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28 (a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

[Signature], C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk /

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-12-10 15:09:38.681.

ROBERT STORY, ESQ. - Notification received on 2015-12-10 15:09:38.65.

ROBERT BELL, ESQ. - Notification received on 2015-12-10 15:09:38.743.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

12-10-2015:15:08:32

Clerk Accepted:

12-10-2015:15:09:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

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The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI