

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

Electronically Filed
Aug 31 2017 03:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

BRENDAN DUNCKLEY,

Petitioner,

vs.

THE STATE OF NEVADA,
ROBERT LEGRAND,

Respondent.

Sup. Ct. Case No. 73095

Case No. CR07-1728

Dept. 4

RECORD ON APPEAL

VOLUME 9 OF 11

POST DOCUMENTS

APPELLANT

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RESPONDENT

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BRENDAN DUNCKLEY vs STATE OF NEVADA, ROBERT LEGRAND
Date: AUGUST 31, 2017

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CR07P1728 DC-9900009798-038
POST: BRENDAN DUNKLEY ID 140 Pages
District Court 07/21/2009 02:23 PM
Washoe County 4105
DOC

FBI OFFICE

FILED

2009 JUL 21 PM 2:23

HOWARD W. CONYERS

BY

DEPUTY

CASE No: CR07-1728

DEPT. No: 4

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

BRENDAN DUNKLEY,

PETITIONER

V.

JACK PALMER,

RESPONDANT

CASE No: CR07-1728

SUPPORTING DOCUMENTATION FOR PETITIONERS

POST-CONVICTION WRIT OF HABEAS CORPUS PETITION

PART NO: V

Brendan Dunkley

BRENDAN DUNKLEY #1023236

L.C.C.

1200 Prison Road

Lowell, Nevada 89419

Attorney in Pro Se.

FILED

2008 SEP -8 PM 2:38

HOWARD W. CONYERS

BY  DEPUTY

1 O'MARA LAW FIRM, P.C.
 2 WILLIAM M. O'MARA
 3 NEVADA BAR NO. 00837
 4 BRIAN O. O'MARA
 5 NEVADA BAR 08214
 6 DAVID C. O'MARA
 7 NEVADA BAR NO. 08599
 8 311 East Liberty St.
 9 Reno, Nevada 89501
 10 775-323-1321
 11 775-323-4082 (fax)

12 Attorneys for Defendant

13
 14 IN THE SECOND JUDICIAL DISTRICT COURT
 15 FOR THE COUNTY OF WASHOE, STATE OF NEVADA
 16

17 THE STATE OF NEVADA

18 Plaintiff,

Case No. CR07-1728

19 vs.

Dept No. 4

20 BRENDAN DUNCKLEY

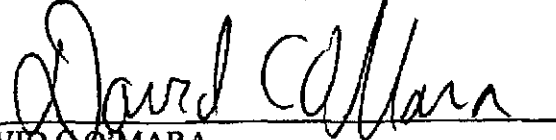
21 Defendants.

NOTICE OF APPEAL

22 Notice is hereby given that Defendant Brendan Dunckley ("Dunckley") in the above
 23 named action, hereby appeals to the Supreme Court of Nevada from the Order filed on August
 24 11, 2008.

25 DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.

26 
 27 DAVID C. O'MARA
 28

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CR07-
1096.

X Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS
125B.055)

DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.

David C. Mara
DAVID C. O'MARA

1 THE O'MARA LAW FIRM, P.C.
 2 WILLIAM M. O'MARA (Nevada Bar No. 00837)
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 311 East Liberty Street
 Reno, NV 89501
 4 Telephone: 775/323-1321
 Facsimile: 775/323-4082

FILED

2008 OCT 13 AM 11:06

DROP BOX
HOWARD W. CONYERSBY _____
DEPUTY

Attorneys for Petitioner

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

9 STATE OF NEVADA)

10 Plaintiff,)

Case No. CR07-1728

11 vs.)

12 BRENDAN DUCKLEY,)

13 Defendant.)

16 **REQUEST FOR ROUGH DRAFT TRANSCRIPT**

17 TO: Captions Unlimited,
 18 Court Reporter, Department 3.

19 Defendant, Mr. Brendan Dunckley, ("Defendant" or "Mr. Duckley"), named above, requests
 20 preparation of a rough draft transcript of the entire proceedings before the District Court on March 6,
 21 2008, and August 5, 2008, regarding the above named Defendant.

22 This notice request a transcript of only those portions of the district court proceedings which
 23 counsel reasonably and in good faith believes are necessary to determine whether appellate issues
 24 are present. Only the hearings, as they relate to Mr. Dunckley on March 6, 2008 and August 5,
 25 2008, shall be transcribed.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case

No. CR03-P0380

X Document does not contain the social security number of any person

-OR-

 Document contains the social security number of a person as required by:

 A specific state or federal law, to wit:

-or-

 For the administration of a public program

-or-

 For an application for a federal or state grant

-or-

 Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: October 13, 2008

THE O'MARA LAW FIRM, P.C.


DAVID C. O'MARA, ESQ.

1 THE O'MARA LAW FIRM, P.C.
2 WILLIAM M. O'MARA (Nevada Bar No. 00837)
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4 Telephone: 775/323-1321
5 Facsimile: 775/323-4082

Attorneys for Appellant

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

7
8 BRENDAN DUNCKLEY,

Appellant,

No. 52383

10 vs.

11 THE STATE OF NEVADA,


Respondent.

13
14 **NOTICE OF FILING ROUGH DRAFT TRANSCRIPT REQUEST**

15 PLEASE TAKE NOTICE that Appellant, BRENDAN DUNCKLEY, has filed
16 with the Second Judicial District Court of the State of Nevada, in and for the County of Washoe,
17 his Request for Rough Draft Transcript, a copy of which is attached hereto.
18

19 DATED: October 14, 2008

THE O'MARA LAW FIRM, P.C.

20
21 
22 DAVID C. O'MARA
23 Nevada Bar No. 8599
24 The O'Mara Law Firm, PC
25 311 E. Liberty Street
26 Reno, Nevada 89501
27 775.323.1321
28

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case

No. 52330

X

Document does not contain the social security number of any person

-OR-

—

Document contains the social security number of a person as required by:

— A specific state or federal law, to wit:

-or-

— For the administration of a public program

-or-

— For an application for a federal or state grant

-or-

— Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: October 14, 2008

THE O'MARA LAW FIRM, P.C.


DAVID C. O'MARA, ESQ.

DAVID,

I AM sending you this letter to inform you that Numerous times I have tried to get in touch with you at your office. Each time I call it is answered and then silence and finally I am disconnected each time. Now also with regards to the letter you sent me on Oct. 21, 2008 AND NOW it is one month later I still have not received the Appeal Statement Also I am still waiting to receive copies of the rough draft transcripts that were requested October 13, 2008. On page (2) it states "the above named court reporter shall have ten (10) days from the receipt of this notice to prepare and submit to the district court the rough draft transcripts requested herein" THE Transcripts for both March 6, 2008 & August 5, 2008 for the hearings that pertain to my case.

As of today I still have NOT received ANY of the documents that should have been sent to me previously.

I would also like you to send me copies of the transcript from the Reno Police department having to pertain to the Interrogation with Detective Tom Broome. You mention that you have provided me with copies of the discovery that was provided to you from the District Attorney. THE only papers I received from you was the transcripts of the Preliminary Hearing and Nothing else.

Again I wish you to provide me with a copy of the entire case file, All information, documents, Pleadings, papers and copies of all tangible Personal Property that is in your possession. I would also request you inform me immediately if you were ever provided w/ the tapes both audio and video of the interrogation on March 20, 2007 or on a date there about. THE one that resulted in the Primary Arrest.

In addition to those files and papers I also would like you to send me a copy of the Guilty Plea Memorandum.

Thank you for sending me ALL the information I have requested. I know you will be doing it immediately. I can not express the importance of your handling this matter.

Thank you.



Brendan Duncley

SENT 11/24/08
V9. 451 7
w/ BMS# 1425125

SA 59
STATE OF NEVADA
DEPARTMENT OF CORRECTIONS
INMATE ACCOUNT TRANSACTION
REQUEST

Date 11/24/08

NI 1425125

To: Inmate Services

I hereby authorize my account to be charged in the amount

of \$ 424 as gross 42/100 Dollars).Please pay to NDOCSignature B. D. D.Print name BRENDAN DUNKLEYID No. 1023236 Institution LCC

Approved by _____

Transfer	Purchase Order	Postage <u>leg. nt</u> <u>Patrice</u>	Other
----------	----------------	---------------------------------------------	-------

White
Canary
PinkInmate Services
Institution Copy
Inmate Copy

DOC 509 (Rev. 2/06)

Letter to D. O. Marks 11/24/08

Feb. 5, 2008

David,

I just recieved your letter and also copies of your appeal, as well as the respondents response. As I mentioned in the previous letter it was only your appeal that I was lacking, but I appreciate your initiative to send the response as well.

With regards to the contents of the appeal, I have one rather pertinent question. You had told me prior to the preliminary hearing that there was a statute of limitation that was up to the twenty-first birthday of ashley. That to my knowledge is dictated in (NRS. 171.095). One of the main foundations for that statute is that the crime be done in a secretive manner. Ergo by means of threats from the perpetrator or people acting on his behalf, towards the alleged victim.

The state originally charged me with coercion the main foundation to the secretive manner. But as you may recall the State acting on their own in fact requested the courts to dismiss and drop the coercion charge due to there being no evidence or testimony to support it.

By my understanding once the state withdrew the charge of coercion the statute of limitations set forth in NRS. 171.095 no longer held president

and subsequently, the statute of NRS 171.085 would now come in to hand. Therefore the statute of limitations the state had was three years to bring the charges forward, from the time of commission of the crime/charge. (Branner v. State 714 P.2d 175, 102 NEV. 7. (1986))

That being the case would it not be a case to claim that the State and subsequently, the courts indeed lacked Subject Matter jurisdiction.

Once the State dropped the coercion charge on their own merit not by means of the magistrate NRS 171.085 took precedent. Namely NRS 171.085(2) placing the actual statute of limitations to three (3) years. Meaning between 2001-2003 not 2007.

I appreciate your handling this matter in a timely manner.

Sincerely,



Brendan Dunckley

C.E. Morgan Dunckley

April, 6, 2009.

Dear David;

First I would like to be able to ask you to write me and inform me of where the appeal is at. By that I do not mean its literal location, but rather at what stage it is in. Has it been finally accepted as valid by the Supreme Court? Will this be counted against the current time bar I have to file the correct appeal required in the case? The reason I ask you about the "correct" appeal is because about four or five letters previously you informed me that the courts rejected your first appeal saying "the court returned your Fast Track Appeal and required me to file a full blown Appeal brief which I did" preceded by "Because your sentence was for a lifetime sentence..." (letter dated Jan 23, 2009). I do have a rather innocent question, please do not take offense to this, but how did you not know that because my sentence carried a life it would require a "full blown Appeal", and not simply a Fast Track Appeal?

Now I am sure by now you have already filed the correct appeal needed, but I have a few questions. I distinctly remember seeing two different therapists for the required psycho sexual evaluation to determine if I "do not represent a high risk to reoffend sexually based on current standards of assessment" (NRS. 176.139). Why was it your decision to only use the States evaluation at the sentencing and not introduce the second one?

I don't recall you and I discussing that specific defense V9.455

A few other items are still bothering me. I would appreciate it if you would oblige me a few minutes to express these concerns I have. Your response to these would be appreciated.

First, when we first met at the preliminary hearing I provided you with certain documents that could and should have (and still do) been considered material exculpatory evidence to prove actual innocence. Those documents as you may remember were transcripts from my college stating that I had been attending the Culinary Institute of America from 11/98 until 3/99. The school is located in Hyde Park, New York. Another document I presented to you was a copy of my vehicle registration for the alleged vehicle used in part of the original complaint (Canto I, II, III) showing that the vehicle was not registered in Nevada (where it was purchased) until 6/3/00. The other documents I presented to you was a journal written by my wife Morgan showing the exact dates that we met the "victims" in the original complaint. That information was confirmed by Michelle's testimony at the Preliminary Hearing. You see here is my problem prior to meeting you outside the courtroom on the day of the preliminary hearing I spoke to an accountant who is another attorney and showed him both the complaint as well as the documents I presented to you moments later. He said that this evidence would be strong enough to prove that the allegations of a criminal act being committed between August 19, 1998 and August 13, 2000 could not have happened as claimed. He said that any competent attorney

would have no trouble getting these charges dismissed. I know that you and I had only just met, only minutes before the hearing, but why when Ashley stated on the stand that she was absolutely positive the incident occurred when she was 12 years old did you not even slightly attempt to challenge her credibility, or use the straight forward evidence I gave you to impeach her testimony? That seriously concerns me. Every time we met either at court or the two brief times we met at court you told me to ready my family and myself for prison time. Why did you continually advise me of this, did you have the defense tactic to wait for a plea bargain?

Topic

~~Structure of the trial 1607 Sentencing Structure (Public We)~~
I recall at your office you even mentioned the best we could do is hope the State came with a deal. I hate to say so but I feel that all you did was constantly request that I present letters of character and simply waited for a deal to come forward from the State and did nothing more than request a plea agreement and facilitate the conviction of your client (me) without a trial.

I don't mean to harp on this but again I would hope that you would appreciate my concerns. You as my attorney had and still have a duty to act as an advocate for me. Except I feel that instead of doing your duty to meet, test and refute the States case you however failed to listen to me when I told you I did not do the crimes I was accused of. All the while all you did was accept as true all of the statements of law enforcement, and the allegations of the alleged victims.

③

I noticed while reading the First Trach Appeal you had originally submitted to the courts and something struck me as interesting to say the least. I noticed that you had underlined spots that you felt were relevant to your tactics, especially in the report from Doctor Stuyvesant. On page 083 of the Appendix or on page 8 of the original report you underlined information as well as page 087/12. Why did you not feel it important to also see on page 078/03 where it states:

"Mr Dinchley completed high school in New York and attended the Culinary Institute of America to become a chef. He graduated the program in 1999 in Hyde Park New York. Mr. Dinchley married his first wife Jenny in 1997. They both were twenty years old... They met while attending the culinary institute, and moved to Fresno, California area for employment after they completed their training. They divorced in 2000.... Post divorce, he developed a relationship with a neighbors sister, Morgan. They moved to Reno for employment in January 2000. He has lived in Reno ever since."

This report was dated June 4, 2008 an entire two months prior to the sentencing hearing. Why did you not proceed with my request to withdraw the plea. Except your response was we can't it would only upset the D.A. yet all the evidence (and look thereof on the States part) showed it was impossible to have committed the crime in question.

Again on July 17, 2008 the "P.S.I." report from Mr. Roundtree of the Nevada Department of Parole and Probation stated similar information; page 066 (again in Fast Track Appeal Appendix) under education: "defendant graduated from the Culinary Institute of America in Hyde Park, New York in 1999. How come you did absolutely nothing with regards to this information. The State over and over again stated I was not even in the state in 1998-1999 when the alleged incident occurred. I say those dates because as A.D.A. Vileria stated over and over again the transcripts at sentencing states: "But he calls Ashley 14 years old at the time when we all know he was 12" (pg 045/13:19-21) again on (pg 048/16;17,)(049/17;17)(044/12;1). Therefore that shows that the alleged crime had to be committed between August 14, 1998 and August 13, 1999.

Yet the State knew perfectly well I was no where around. Ashley and the state claim that I lived in Reno (resided because they allegedly stayed the night at my home) and was with Morgan. But all their reports contradicted that very substantially relevant fact. I was not in Reno from 1998-1999. I in fact lived in Reno after I separated from Jerry on July 17, 1999 where I was served with divorce papers filed on August 16, 1999 in Madam California.

The state knew that because around three weeks prior to the preliminary hearing Detective Tom Broome released the criminal complaints to Jerry's attorney in California. I told you about that and you said he did nothing wrong. At what

point were you going to start to act as an advocate for me. The very fact that he released the complaints in the least violated my right to a fair and just trial. Not to mention the right to be considered innocent until proven guilty. There was no reason what so ever for him to have done that except out of sheer malice. Yet you sat by and let him. Part of me honestly feels you did a better job prosecuting me than the State did. All along I was waiting and waiting for you to do something with all the information I gave you.

Out of all of these things, and there is quite a few more areas, all you could come up with for an appeal was "does not allow for probation." What about the numerous comments inappropriately interjected by the State during sentencing, for example:

"Whats happened over the years, judge, every time he has raped somebody, or inappropriately touched someone and gotten away with it, he has gone up to the next level."

Yet absolutely no objection to that comment for example. Yet you objected to the insinuation that Ashley is in prison because of me, Jessicas account of the night is opposed to the DA's comment And Susan's mental state. On that why did you not bring up that the State claimed they could not bring a case in that matter due to serious inconsistencies of her statements. (pg 081/06). Also why did you just stand there when numerous times the State claimed the community would be at risk if I were given Probation. If that

were the case, how come I had been out on bail to freely be at liberty for over eighteen months. I looked back if I were such a danger to society, they had seven chances to lock me up. yet repeatedly I left out the front door.

From the first line of the deputy district attorney comments "you need to realize here who your sentencing today" "Hopefully today will be the end of Brandon Dunchley and what we have to deal with him" "This has been ten years of inappropriate conduct, ten years of sexual attacks mostly on young women who were 12 years old."

What exactly were you waiting for there - She had absolutely no problem interrupting you by saying "Objection". The judicial system in itself is defined as adversarial in nature. Your job was to OBJECT not sit by and do nothing. The ABA and numerous courts have upheld the following: "Counsel has an obligation and duty to object to comments or actions by opposing counsel whenever their effect may be considered prejudicial or otherwise deserving of an objection or perhaps a request for an admonition by the judge."

As my counsel I feel you were remiss in failing to object or to raise on appeal the prosecutors misconduct and unsupported allegations as well as a serious misrepresentation of the facts.

⑦ I need to digress and return to a previous area of concern. That of Detective Tom Browne's release of the criminal complaints that you said was absolutely harmless. V9.461 17

I am sure as a "competent" attorney you are familiar with the American Bar Association Code of Standards. The section I am specifically referring to is Standard 8-1.1(b)(6) Entitled "Release of information deeming prejudice in criminal proceedings" - "The identity, expected testimony, criminal record, or credibility of prospective witnesses. In General nature of the charges against the accused, Provided there is included a statement that charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty (ABA Standard 8-1.1(c)(1)).

No such statement was ever sent to the attorney in California.

As you can see from this letter I have quite a few serious concerns with regards to both the case as well as how you have handled it. My personal opinion is that your errors and omissions of both the failure to object to all the areas of probable prosecutorial misconduct and the failure to introduce any of the exculpatory evidence to prove actual innocence. Your failure to skill, judgment or diligence that any reasonably competent defense attorney would have shown. The lack of any defense strategy whatsoever plus the previously mentioned areas where a competent attorney acting as a diligent conscientious advocate would not have made.

⑤ You are still my attorney and as such I am again requesting that your office forward to me a copy of the entire file you have in your possession. The entire file.

Please remember to include as you so eloquently stated the "full blown Appeal" in addition to the States final response.

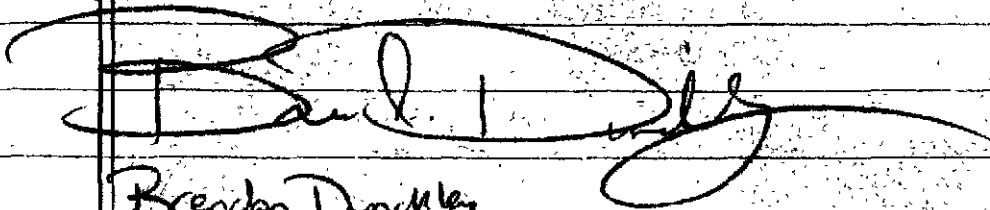
I found out some amazing information while studying the law for 12-14 hours a day for the last nine months. Researching over 3000-5,000 cases, reading 20 entire volumes of Pacific digest, Supreme Court ruling Books cover to cover. Great cases like Strickland v. Washington, Brady v. Washington, People v. Robles, Giles v. State, Effinger v. Effinger, Carion v. Cole, and Schlep v. Delt just to name a few. One of the really interesting fact I learned among many was this: "If sufficient exculpatory is brought forward that should have been introduced by defense counsel, and was not done so due to both lack of introduction of the evidence and also due to lack of any investigation of the alleged crimes charged. Would warrant a full dismissal of charges and vacating of sentence if evidence provided, proves that the main base of the States charges/case lacked any substantial evidence and new evidence shows that the allegation could not have happened. Giles rules of evidence would be an adequate base for full vacating of sentence and the reversal of the conviction. Provided that said evidence is relevant to the direct subject matter of the charges involved, and can be deemed as noteworthy, credible."

Also "If counsel had investigated the availability of mitigating evidence, he might have decided to present such evidence at the hearing. Failure to investigate warrant a violation of the Sixth Amendment."

You see both sides of the aisle in my opinion have allowed a serious miscarriage of justice to occur. So please send me the requested paperwork in a timely manner.

Thank you for indulging me to get those concerns off my chest. I look forward to your response.

Sincerely,


Brendan Duncley

cc: Copy Personal

Copy: Post-Conviction Writ of Habeas Corpus

Morgan Duncley

Brendan Duncley (1023236)
C.C.
200 Prison Road
Nevada, NV, 89419

DAVID O'MARA
311 E. Liberty Street
P.O. Box 2270
Reno, NV 89505

David;

I wish to start this letter by telling you, that in proceeding forward with my Post-Conviction Writ of Habeas Corpus. Your Assistance as my ATTORNEY will no longer be required. So with that being said I need to officially request that you be withdrawn as counsel of record. And thus Pursuant to NRS 7.005 as well as NSCR 46 & 166 I MAKE THE FOLLOWING REQUEST: THAT You immediately deliver to me all papers, documents, pleadings, and items of tangible personal property which belong to or were prepared for me your client. These items need to be turned over to me by mail to the address of record with your office at your expense.

Failure to surrender papers and property which I am entitled to will constitute a violation of the letter and spirit of SCR 166(4). I will be awaiting the production of all papers and documents including the E-mail correspondence you made reference to in your Appellate's Fast Track Appeal between yourself and ADA Vitoria on pg 53:3-7, as well as all information concerning the evidence you discovered while conducting your pretrial investigation. As the American Bar Association STANDARDS (4.41) STATES: "Effective investigation by the lawyer has an important bearing on competent representation at trial, for without adequate investigation the lawyer is not in a position to make best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial"

I would also look forward to receiving the records of your interviews with the state's witnesses. I would think you would have no trouble retrieving those records because "Ordinarily a competent attorney will conduct an in-depth investigation of the case, which includes an independent interviewing of key witnesses." (McGee v. Swenson 498 F.2d 465) 21

So again I look forward to receiving All the documentation your office has including all verifications of the pre-trial or in my case pre-deal consultation sessions that we have had. Because I am sure you are aware "Adequate Consultation between Attorney and client is an essential part of a competent representation of a criminal defendant. Consultations should be sufficient to determine All legally relevant information known to the defendant. Pre-trial investigation of all the independent examination of the factual circumstances, pleadings involved and all laws pertaining to case, IE STATUTE OF LIMITATIONS (NRS 171.085(2)) and supporting cases ie: Brannen v. State 714 P.2d 175, 102 NEV7. AS WELL AS (NRS 171.095) I'm sure you can produce all said and applicable information requested.

I would hate to feel that you knowingly violated my Sixth Amendment right guaranteed me to "Right to reasonably competent counsel correlative duty on defense counsel to undertake reasonable steps to investigate ALL AVENUES OF DEFENSE;" Failure to do a pretrial investigation may in itself amount to ineffective assistance of counsel.

I also have no doubt that in the process of your pre-trial investigation you found that I was in fact in New York State in 1998 and NOT AS ALLEGED IN COUNT 1. AS THE STANDARDS SET FORTH IN Giles v State (70 OUL. Cr 72, 104 P.2d 975) "the evidence is such to show that at the very time of the commission of the crime charged the accused was at ANOTHER PLACE (NY) SO FAR AWAY OR UNDER SUCH CIRCUMSTANCES that he could not, with normal exertion, have reached the place where the crime was committed so AS TO HAVE PARTICIPATED IN THE COMMISSION thereof" (Emphasis added)

Subsequently I eagerly await the discovery you received from the state, in such large preponderance of evidence enough to move V9.466 22

recommended that I still plead guilty to Count 1, Even though I Am sure your investigation discovered that in 1998 I WAS in fact MARRIED to my first wife JENNY ANN CARROLL - DUNCLEY, NOT MORGAN AS MENTIONED AND TESTIFIED to on the stand. You also would have seen by means of public record I was served divorce papers in August 1999 in Fresno, California. Also AS A MATTER of record is the fact that I did NOT own a vehicle in NEVADA until 6/5/00 which is A far cry from it being in 1998. AS testified by the "victim".

I believe that had you not found out this relevant evidence the state would surely have had it. As per Brady v. Washington (83 Sct. 1194, 373) it would be considered "evidence favorable to the accused which I Am sure was turned over to you in discovery" I would hate the state knowingly withheld such evidence. Constituting a serious due process violation in the least and a charge of blatant disregard for constitutional right to a fair trial, as well as malicious prosecution. The DA I am sure would remember their "duty is never to merely convict, but to see that justice is done by seeking truth of the matter and to ensure that the jury tries case solely on basis of actual facts presented them" (People v Martin 686, P.2d 1351) and in regards to the prosecutorial investigation team including the Police (Det. T. Brune) they knew they were "expected to be diligent and leave no stone unturned," (STATE v Estes 725, P.2d, 128, 11 Idaho 423)

But alas I digress, I don't wish to bore you any further. I expect that the request will be fulfilled in the next five (5) to ten (10) days. If not received by then I will be filing a Notice of Motion and Motion for withdrawal of Attorney of Record and Transfer of Records with the courts.

See also (Strickland v. Washington - 104 S. Ct. 2052, 466 U.S. 688 (1984))

Please forward to:

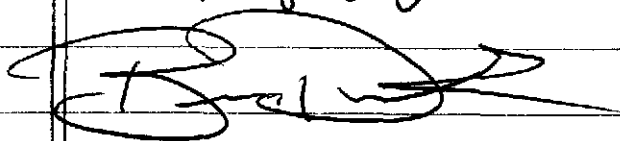
Brendan Duncley (1023236)

L.C.C.

1200 Prison Road

Lovelock, NV, 89419

Respectfully Yams.



Brendan Duncley

cc: Morgan Duncley

O' M A R A
LAW FIRM, PC

August 6, 2008

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082VIA U.S. MAILMr. Brendan Dunckley
Inmate No. 0816454
911 E. Parr Blvd.
Reno, Nevada 89512Re: **Steve v. Dunckley, CR07-1728**

Dear Brendan,

Please be advised that if you choose to appeal your case, you must do so within thirty (30) days from the date you were sentenced. The Judgment of Conviction was filed on August 7, 2008. As we discussed after your sentencing, I do not believe that you have any appealable issues in this case. However, I encourage you to seek a second opinion regarding your appealable rights.

Additionally, as we discussed prior to you signing the Guilty Plea Memorandum, you understood that you have the right to appeal from adverse rulings on pretrial motions only if the State and the Court consent to your right to appeal. In the absence of such an agreement, I understand that any substantive or procedural pretrial issue or issues which could have been raised at trial are waived by your plea.

Therefore, if you wish to file an appeal, please let me know as soon as possible. Additionally, if you are able to retain different counsel to file an appeal, please have your new counsel contact me to let me know.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


David C. O'Mara

:do

O'MARA
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

October 21, 2008

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: **State of Nevada v. Brendan Dunckley, Case No. CR07-1728**

Dear Mr. Dunckley,

I was disconnected from our last telephone conversation. If you still need to speak with me, please contact my office.

I recently received a copy of the transcript for your change of plea hearing and should receive the transcript for your sentencing by the end of the week. Once I receive the transcripts I will prepare your fast track appeal statement. I should have that completed by November 1, 2008. If you have not received the appeal statement by November 4, 2008, please contact me immediately.

I discussed your case with a public defender who handles appeals such as yours. He has advised me that your only issue on appeal is that the Court abused its discretion in the actual sentencing. I will file such an appeal.

Finally, I am unable to send you copies of the materials you requested as they are too expensive to generate. However, if you would like to get a copy of them, please send me One Hundred Dollars (\$100.00) to get started. Because of the cost of printing statutes, I would recommend you utilize the prison library to obtain the statutes.

Additionally, I have already provided you with copies of the discovery provided by the District Attorney in regards to your interviews with police detectives.

Finally, I am a little confused by your statements regarding these interviews. Indeed, you had the opportunity to


O' M A R A
LAW FIRM, PC

Mr. Brendan Dunckley
October 21, 2008
Page 2

put this evidence in front of a jury but you chose to take the plea deal because you were sure you would get probation. In fact, you claimed Judge Adams would even write you a letter of recommendation. If you have information that would tend to show an injustice by the State, you should have provided it to me prior to you accepting the plea deal, and certainly before the sentencing hearing. The only way new evidence would be allowed to be presented to the court is if you filed a Writ and is not applicable to this appeal.

In the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,



David C. O'Mara

:do

1 THE O'MARA LAW FIRM, P.C.
 2 WILLIAM M. O'MARA (Nevada Bar No. 00837)
 3 DAVID C. O'MARA (Nevada Bar No.8599)
 4 311 East Liberty Street
 5 Reno, NV 89501
 6 Telephone: 775/323-1321
 7 Facsimile: 775/323-4082

8 Attorneys for Appellant

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

10 BRENDAN DUNCKLEY,)
 11)
 12 Appellant,) No. 52383
 13 vs.)
 14 THE STATE OF NEVADA,)
 15 Respondent.)

16 **APPELLANT'S FAST TRACK APPEAL APPENDIX**

17 THE O'MARA LAW FIRM, P.C.
 18 WILLIAM M. O'MARA
 19 Nevada Bar No. 00837
 20 DAVID C. O'MARA
 21 Nevada Bar No. 8599
 22 311 E. Liberty Street
 23 Reno, Nevada 89501
 24 Telephone: 775/323-1321
 25 Facsimile: 775/323/4082

26 Attorneys for Appellant

O' M A R A
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

November 19, 2008

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: **State of Nevada v. Brendan Dunckley, Case No. CR07-
1728**

Dear Mr. Dunckley,

Enclosed is a copy of the Fast Track Statement and the Appendix, which was sent to the Supreme Court today, Wednesday, November 19, 2008. I anticipate that the Court will deny your appeal without a hearing

Additionally, as I have previously told you, I provided you with copies of your entire file as I received the documents from the State. I can not take on the additional cost to copy these documents again. Thus, if you wish to receive another copy of your file, please forward me a money order in the amount of One Hundred Dollars (\$100.00) and I will have the file copied for you again.

In the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,


David C. O'Mara

:do

O' M A R A
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

December 1, 2008

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: **State of Nevada v. Brendan Dunckley, Case No. CR07-1728**

Dear Mr. Dunckley,

I have received your letter dated November 21, 2008.

First, in regards to your claims that you have attempted to contact me, my office will not accept collect calls, nor does my office accept telephone calls when I am not in the office. If you wish to contact me, please do so via U.S. Mail or a non-collect telephone call.

Second, in regards to your request for a copy of the Transcript, I mailed you a copy of the Fast Track Statement and the Appendix on November 19, 2008. The transcripts are included within these documents.

Third, in regards to the transcripts from the City of Reno Police Department, the interviews were given to me in audio and video form. As you may recall, you and I sat in my conference room, prior to accepting the plea agreement, and watched every tape that was provided. You were provided ever single piece of discovery I received, including but not limited to, transcript of the preliminary hearing, police reports, photographs of the area where that assault occurred and well as the photo line-up and the transcript of the initial interview by Reno Police the night of the incident. Thus, should you request another copy, please provide my office with a money order, in the amount of One Hundred Dollars (\$100.00) to cover the costs of copies and postage.

Finally, I have spoken to the warden's office regarding whether you are able to receive video and audio tapes to view.

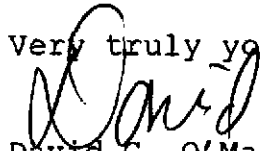
O' M A R A
LAW FIRM, PC

Mr. Brendan Dunckley
December 1, 2008
Page 2

I was instructed to send the warden a letter seeking permission to mail the tapes to you, a copy is enclosed for you review. If the request is granted you will be able to view the tapes at the law library and then the tapes will be returned to me.

In the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,



David C. O'Mara

Enclosures

:do

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Brendan Dunckley	1023236	5A-59B	12/11/08

4.) REQUEST FORM TO: (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input checked="" type="checkbox"/> OTHER	

Warden office **RECEIVED** DEC 12 2008

5.) NAME OF INDIVIDUAL TO CONTACT: Warden's office LOVELOCK

6.) REQUEST: (PRINT BELOW) I Apologize for this strange request but I need to know if your office received a letter from David O'mara Esq, on behalf of myself Brendan Dunckley (1023236) requesting permission to view taped interrogation with the Reno Police Department in Case CV07-1720.
Your response in this matter is appreciated and incredibly important in my case.

7.) INMATE SIGNATURE Brendan Dunckley DOC # 1023236
 8.) RECEIVING STAFF SIGNATURE SC/0 Kuan DATE 12/11/08

9.) RESPONSE TO INMATE

No request has been received by this office

10.) RESPONDING STAFF SIGNATURE [Signature] DATE 12/12/08

INMATE REQUEST FORM

DEC 31 2008

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Brendan Duncley	1023236	5A-59B	12/29/08

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER ☐ MEDICAL ☐ MENTAL HEALTH ☐ CANTEEN
☐ EDUCATION ☐ VISITING ☐ LAW LIBRARY ☐ DENTAL
☐ LAUNDRY ☐ PROPERTY ROOM ☒ OTHER Warden's Office for
And

5.) NAME OF INDIVIDUAL TO CONTACT: Warden Palmer or And

6.) REQUEST: (PRINT BELOW) AGAIN I Apologize for this Strange request
but I need to follow up to a recent kite I sent your office.
dated 12/11/08 needing to know as of that kite the answer was
No - So I need to see if between that time and Now, has my
attorney sent your office a letter requesting permission to view tapped
interogation with the Reno Police Department in regards case No. CV07-1728
My Attorney is David O'mara Esq.

Your attention to resolving this matter is Greatly Appreciated

7.) INMATE SIGNATURE [Signature] DOC # 1023236

8.) RECEIVING STAFF SIGNATURE [Signature] DATE 12/29/08

9.) RESPONSE TO INMATE

No we have not. AR does not
allow this either.

10.) RESPONDING STAFF SIGNATURE [Signature] DATE 12/31/08

APR 08 2009

INMATE REQUEST FORM

1) INMATE NAME	DOC #	2) HOUSING UNIT	3) DATE
BRENDAN DUNCLEY	1023236	5A-59B	4/5/09

4) REQUEST FORM TO (CHECK BOX)

<input type="checkbox"/> CASEWORKER	<input type="checkbox"/> MEDICAL	<input type="checkbox"/> MENTAL HEALTH	<input type="checkbox"/> CANTEEN
<input type="checkbox"/> EDUCATION	<input type="checkbox"/> VISITING	<input type="checkbox"/> LAW LIBRARY	<input type="checkbox"/> DENTAL
<input type="checkbox"/> LAUNDRY	<input type="checkbox"/> PROPERTY ROOM	<input checked="" type="checkbox"/> OTHER	AWO/AWP/WARDEN

5) NAME OF INDIVIDUAL TO CONTACT: AWO/AWP/WARDEN

6) REQUEST: (PRINT BELOW) I need to know if my attorney (DAVID O'MARA) has contacted your office as to whether video tapes of the police interrogation could be viewed to assist in my appeal. My attorney informed me that he intended on contacting your offices to obtain permission to view these tapes in the law library and then to return them to him. I also would like to know if any record of either a phone call or letter has ever been received by your offices from MR. DAVID O'MARA of O'MARA LAW Firm in Reno Nevada. Thank you for your help in this matter.

7) INMATE SIGNATURE Brendan Duncley DOC # 1023236

8) RECEIVING STAFF SIGNATURE [Signature] DATE 4-7-09

9) RESPONSE TO INMATE

Video tapes are not allowed from your attorney.
See AR 722, page 13 (722.09 # 9).

I have not received any letter.

10.) RESPONDING STAFF SIGNATURE [Signature] DATE 4/10/09

O' M A R A
LAW FIRM, PC

PO. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

January 23, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

**Re: Brendan Dunckley vs. The State of Nevada, Case No.
52383**

Dear Mr. Dunckley,

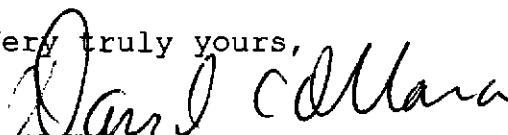
I have received your letter to the Clerk of the Court, dated January 15, 2009 regarding your request for a status report on your Fast Track Appeal.

In this regard, you should have received a copy of the Opening Statement and the State's response. Because your sentence was for a lifetime sentence, the Court returned your Fast Track Appeal and required me to file a full blown Appeal brief, which I did. If you haven't received a copy of the Opening Brief and the State's Response, please contact me immediately.

Additionally, as I have discussed with you numerous times, it will take months before the Supreme Court makes a determination on your case. You should not anticipate hearing anything from the Court for at least three (3) months.

In the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,


David C. O'Mara

DCD/aw

O' M A R A
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

March 9, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

**Re: *Brendan Dunckley vs. The State of Nevada, Case No.*
52383**

Dear Mr. Dunckley,

I have received your letters dated February 5, 2009, and February 23, 2009 in which you claim the sentence was illegal because the statute of limitations on Count I Sexual Assault on a Child, a violation of NRS 200.366, a felony; Count II Lewdness With A Child Under The Age of Fourteen Years, a violation of NRS 201.230, a felony; County III Statutory Sexual Seduction had passed after three years of the alleged incident had occurred.

First, as we discussed prior to your signing of the Guilty Plea Memorandum, you knew and understood that,

I understand that I have the right to appeal from adverse rulings on pretrial motions only if the State and the Court consent to my right to appeal. In the absence of such an agreement, I understand that any substantive or procedural pretrial issue or issues which could have been raised at trial are waived by my plea. See Guilty Plea Memorandum, 3:15-20.

Additionally, we specifically discussed the issue of whether the statute of limitations ran in this case prior to the preliminary hearing. Thus, your claim that I have misinterpreted the law in this regard is difficult for me to take. I provided you with excellent legal advice, which you chose not to take on many occasions, including your guilty plea against my advice and your failure to provide testimonials about your character from those in the community. Indeed, you even refused, against my advice to allow your wife to testify on your behalf during the sentencing phase.

O' M A R A
LAW FIRM, PC

Mr. Brendan Dunckley
March 9, 2009
Page 2

Second, your reading of NRS 171.095 is incorrect as you failed to read the entire statute. Indeed, NRS 171.095(1)(a) specifically provides that an information or complaint file, within the periods of limitation prescribed . . . **"unless a longer period is allowed by paragraph (b) or the provisions of NRS 202.885."** See NRS 171.095(1)(a). (emphasis added).

Thus, paragraph (b) of NRS 171.095 specifically provides,

Except as otherwise provided in subsection 2 and NRS 171.083 and 171.084: . . . (b) An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100, before the victim of the sexual abuse is: (1) Twenty-one years old if he discovers or reasonably should have discovered that he was a victim of the sexual abuse by the date on which he reaches that age; or (2) Twenty-Eight years old if he does not discover and reasonably should not have discovered that he was a victim of the sexual abuse by the date on which he reaches 21 years of age. See NRS 171.095(1)(b).

Third, as you know, you were charged in Count I for Assault on a Child, a violation of NRS 200.366, a felony. Under NRS 171.083,

"[i]f, at anytime during the period of limitation prescribed in NRS 171.085 and 171.095, a victim of a sexual assault or a person authorized to act on behalf of a victim of a sexual assault files with a law enforcement officer a written report concerning the sexual assault, the period of limitation prescribed in NRS 171.085 and 171.095 is removed and **there is no limitation of the time within which a prosecution for the sexual assault must be commenced.**" (emphasis added).

Thus, I can not agree with you that your sentence was a serious miscarriage of justice, that you have been seriously prejudiced, and that you are an innocent man to that was sentenced unjustly and illegally. **First**, we discussed numerous time before you signed the guilty plea memorandum what the ramifications would be if you pled guilty pursuant to the

O' M A R A
LAW FIRM, PC

Mr. Brendan Dunckley

March 9, 2009

Page 3

District Attorney's offer. **Second**, I specifically advised you not to take the deal because you would receive some type of prison sentence and that there was no possibility that you would receive probation. **Third**, you decided not to take my advice and you believed you would get probation because you claimed that hundreds of people within this community, including the Honorable Brent Adams, would rally around you and provide you with letters of recommendation and testimonials about your character. This of course did not happen, as you provided one letter from a former employee on your behalf.

Thus, I will continue to fight for your right to appeal this matter to the Supreme Court and anticipate filing your reply within the next couple of days. Quite frankly, while you were fortunate that Judge Steinheimer made the unclear statement that pleading to "something that allows for a lesser offense, but it does not allow for probation," I would not be surprised that during your new sentencing hearing, Judge Steinheimer sentences you to the same time or even more, except instead of running the two charges concurrently, the Judge runs the two charges consecutively. Should you decide to move to withdraw your plea, I would not be able to do so ethically, and you would need to find another attorney to do so.

In the meantime, if you have any questions, please do not hesitate to contact me.

Very truly yours,


David C. O'Mara

DCO/aw

O'MARA
LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

May 12, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: *Brendan Dunckley vs. The State of Nevada, Case No. 52383*

Dear Mr. Dunckley,

Enclosed for your records is a copy of the Order of Affirmance filed in the above-entitled case on May 8, 2009.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


David C. O'Mara

DCO/aw

Enclosure

O'MARA
LAW FIRM, PC

311 E. LIBERTY STREET
P.O. BOX 2270
RENO, NEVADA 89505

File

RENO NV 895
21 MAY 2009 PM 2 L



Mr. Brendan Duncckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

RECEIVED
MAY 22 2009

Lovelock Correctional Center
Mailroom

89419+8110



IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY

Appellant,

Case No. 52383

vs.

THE STATE OF NEVADA,

Respondent.

APPELLANT'S OPENING BRIEF

APPEAL FROM JUDGEMENT

FROM THE SECOND JUDICIAL DISTRICT COURT

HONORABLE CONNIE J. STEINHEIMER PRESIDING

THE O'MARA LAW FIRM, P.C.
WILLIAM O'MARA (Nv. Bar No. 00837)
DAVID C. O'MARA (Nv. Bar No. 8599)
311 East Liberty Street
Reno, NV 89501
775.323.1321

Attorneys for Appellant

RICHARD GAMMICK, ESQ.
WASHOE COUNT DISTRICT ATTORNEY
P.O. Box 30083
Reno, Nevada 89520
775.328.3220

Attorney for Respondent

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1 **A. STATEMENT OF ISSUES FOR REVIEW**

2 (a) WHETHER THE SENTENCE IMPOSED BY THE
3 DISTRICT COURT IS EXCESSIVE OR CONSTITUTES
4 AN ABUSE OF DISCRETION

5 **B. STATEMENT OF RELEVANT FACTS**

6 Mr. Dunckley was charged with (1) Sexual Assault on a Child, or in the alternative, (2)
7 Lewdness with a Child Under the Age of Fourteen Years, or in the alternative, (3) Statutory Sexual
8 Seduction, and (4) Sexual Assault, by information filed on July 12, 2008. *See Appx. 001-005.* By
9 an Amended Information filed on February 28, 2008, Mr. Dunckley was charged with one count of
10 Lewdness with a Child under the Age of Fourteen Years, a violation of NRS 201.230, and one count
11 of Attempted Sexual Assault, a violation of NRS 193.330, being an attempt to violate NRS 200.366.
12 *See Appx. 006-009.* Subsequently, on March 6, 2008, Mr. Dunckley signed a guilty plea
13 memorandum and entered a guilty plea to both counts. *See Appx. 028:13-16.*

14 The State, pursuant to negotiations, agreed not to file additional criminal charges resulting
15 from the arrest in this case, and/or would refrain from pursuing additional and/or transactionally
16 related offenses, including those counts filed and dismissed in RJC Case No. 2007-033884. *See*
17 *Appx. 013:22-25.* The State was also free to argue for an appropriate sentence. *See Appx. 013:21-*
18 22.

19 Pursuant to an agreement between counsel, sentencing was set out for approximately five (5)
20 months to allow Mr. Dunckley the opportunity to attend counseling sessions so that he would be able
21 to show he was a likely candidate for probation. *See Appx. 038.* Sentencing was set for the morning
22 of August 5, 2008. *See Appx. 33.*

23 At the sentencing hearing, Mr. Dunckley's counsel argued that probation was an appropriate
24 sentence in this case. *See Appx. 038.* At the time, the Presentence Investigative Report had
25 incorrectly advised the district court that Mr. Dunckley was not eligible for probation. *See Appx.*
26 064. Thus, prior to seeking probation, Mr. Dunckley's counsel first had to correct the Presentence
27 Investigative Report and advise the Court that Mr. Dunckley was eligible for probation because he
28 was certified as an individual that does not represent a high risk to re-offend. *See Appx. 064, see*

1 also, 036:2-14 ("I want to make the Court aware of the fact that probation in both of these charges is
2 available in this case.")

3 The Court was provided evidentiary support for sentencing Mr. Dunckley to probation
4 instead of prison time. See Appx. 037-040 and 089-090. **First**, the district court was provided with
5 information regarding Mr. Dunckley's pursuit of therapy from Eng Counseling, in which he
6 participated in group and individual sexual-offender counseling. See Appx. 037:11-15, *see also* 090.
7 **Second**, Mr. Dunckley provided the district court a letter from Leslie Deach, Food & Beverage
8 Director, Alamo Casino, in which Ms. Deach stated that she had "know [Mr. Dunckley] for over
9 eight years, and that she was "surprised to hear of the alleged allegation against [him]" as [h]e has
10 been professional and respectful in his action with [Ms. Deach] and interactions with my staff both
11 male and female." See Appx. 089. **Third**, Mr. Dunckley's mother in law, Ms. Pam McFerren
12 testified on his behalf and asked for probation "so that he can be with his family which is a very
13 important thing." See Appx. 039-040. Ms. McFerren stated that Mr. Dunckley has "helped me
14 financially as well as physically when I have needed help off and on over the years" and that "the
15 counseling that [Mr. Dunckley] is getting has been very effective." See Appx. 039. **Fourth**, Mr.
16 Dunckley further asked the Court to give him the opportunity to prove that there is good in him and
17 that he can be a productive and beneficial member of society. See Appx. 058.

18 On the other hand, the State failed to present a single witness or either of the two victims,
19 Ashley V and Jessica H. The State argued that the Court should follow the recommendation of the
20 Presentence Investigation Report as to the Lewdness¹ charge and to increase the time in prison to
21 twenty (20) years for the charge of Attempted Sexual Assault.² See Appx. 043-050. The State's
22
23

24 ¹ The Presentence Investigation Report provided that the district court could sentence Mr. Dunckly
25 on Count I "[f]or live with the possibility of parole, with eligibility of parole beginning when a
26 minimum of 10 years has been served, and may be further punished by a fine of not more than
\$10,000.00. The PSI omitted the possible penalty of probation. See Appx. 064.

27 ² The Presentence Investigation Report provided that the district court could sentence Mr. Dunckley
28 on Count II "[b]y a minimum term of 2 years and a maximum term of 20 years Nevada Department
of Correction. *Id.*

1 argument was based on self-serving statements which were not supported by documentary evidence.

2 *Id.*

3 After hearing from Mr. Dunckley and the State, the district court, the Honorable Connie
4 Steinheimer sentenced Mr. Dunckley to the following:

5 imprisonment in the Nevada Department of Prisons for the maximum term of life
6 with the minimum parole eligibility of ten (10) years for Count 1; and was sentenced
7 to imprisonment in the Nevada Department of Prisons for the maximum term of one
8 hundred twenty months with the minimum parole eligibility of twenty-four (24)
9 months for Count 2, which is to be served concurrently with the sentence imposed
10 in Count 1, with credit for four (4) days time served. Additionally, Mr. Dunckley
11 was sentenced to submit to a DNA Analysis Test for the purpose of determine
genetic markers, Twenty-Five Dollar (\$25.00) administrative assessment fee, One
Hundred Fifty Dollar (\$150.00) DNA testing fee, and a Nine Hundred Fifty Dollar
(\$950.00) Psychosexual Evaluation Fee. The Court further ordered that Appellant
serve a special sentence of lifetime supervision to commence after any term of
imprisonment or after any period of release on parole. to concurrent prison terms as
set forth above.

12 See Appx. 062-063. Mr. Dunckley now appeals his sentence.

13 **C. LEGAL ARGUMENT**

14 (a) WHETHER THE SENTENCE IMPOSED BY THE
15 DISTRICT COURT IS EXCESSIVE OR CONSTITUTES
AN ABUSE OF DISCRETION

16 This Court should review the sentence imposed in this case and remand for re-sentencing
17 with instructions to strike imposing a prison term and instead impose probation on both counts.

18 Traditionally, the Nevada Supreme Court has expressed the view that absent a district court's
19 reliance on impalpable or highly suspect evidence at sentencing it would not interfere with a district
20 court's imposition of sentence. *Silks v. State*, 92 Nev. 91, 545 P.2d 1149 (1976); *see also Arajakis v.*
21 *State*, 108 Nev. 976, 843 P.2d 800 (1992)(presumptively improper for Court to superimpose its
22 views on sentences of incarnation lawfully imposed by sentencing judges). However, there has been
23 an indication that at least some members of the Court may be interested in appellate review of
24 sentences imposed to determine if the sentence imposed is excessive or constitutes an abuse of
25 discretion given the facts of the case and the nature of the defendant. *See Tanksley v. State*, 113 Nev.
26 844, 944 P.2d 240 (1997)(Rose, J. dissenting).

27 Indeed, Chief Justice Rose "urge[d] this court. . . to reconsider its refusal to review criminal
28 sentences for excessiveness and to provide criminal defendants with the opportunity to have the most

1 important aspect of their criminal cases examined on appeal.” *See Santana v. State*, 122 Nev. 1458,
2 148 P.3d 741, 746 (2006).

3 The instance case provides such an opportunity for the Court in light of the facts underlying
4 the charges of Lewdness With a Child Under the age of Fourteen Years and Attempted Sexual
5 Assault, and the life sentence imposed against Appellant for Count One and 12-120 months for
6 Count Two. It is of course tempting to impose a life sentence and 12-120 months for the two
7 separate counts. This temptation is even more inviting in light of the current community concern
8 relating to criminal sentences related to sexual crimes, ie: the alleged Brianna Dennison abduction,
9 assault and murder, which was highly documented by the media during the period of time Mr.
10 Dunckley was being sentenced. While there is no question that given the current state of Nevada
11 law the district court certainly could legally asses the sentences it did. However, the sentences were
12 inappropriate in that the district court failed to consider Nevada Law at the time the crimes were
13 committed. Indeed, in entering her sentence against Mr. Dunckley, the district court stated that “I
14 know you pled to something that allows for a lesser offense, but it does not allow for probation.”
15 Contrary to the district court’s statement, Mr. Dunckley’s plea to a lesser offense does allow for
16 probation. *See Appx. 010-016*. Indeed this fact was omitted by the Presentence Investigative Report
17 and Mr. Dunckley’s counsel had to make the district court aware, albeit unsuccessfully, of the
18 availability of probation during the sentencing hearing. *See Appx. 064*.

19 Additionally, in the instant case, at a time where this nation now incarcerates many millions
20 of people,³ this Court must review the district court’s sentence to determine whether, given the facts,
21 a prison sentenced as opposed to a probationary term was the more appropriate sentence in this case.

22 Mr. Dunckley sought an opportunity for probation and sexual offender therapy. His counsel
23 argued that therapy was necessary and more appropriate to prison time. And, more importantly, Mr.
24 Dunckley was already successfully participating in group and individual therapy. However,
25 unpersuaded, the district court elected to follow the Division’s recommendation and incarcerate Mr.

26
27 ³ According to the United States Department of Justice, on December 31, 2007, the United States
28 incarcerated 2,294,157 individuals within federal and state prisons and local jails. *See*
<http://www.ojp.gov/bjs/prisons.htm>.

1 Dunckley in the Nevada State Prison for life for the Lewdness conviction and 12-120 months for the
2 Attempted Sexual Assault conviction.

3 Respectfully, the district court acted in hast. The district court should have placed Mr.
4 Dunckley on probation with or without very strict conditions. When Mr. Dunckley is successful in
5 completing his probation, both Mr. Dunckley and society would benefit. Indeed, Mr. Dunckley had
6 a strong motivation to succeed – his wife and his children. If he failed, prison would await him. The
7 word here is “opportunity.” This was all Mr. Dunckley and his counsel argued for.

8 Further, the district court not only rejected probation, the district court specifically stated,
9 albeit incorrectly, that Mr. Dunckley’s entry of a plea “**does not allow for probation.**” See Appx.
10 059 (emphasis added). The district court was influenced by the mendacious Presentence
11 Investigation Report which improperly omitted the fact, in the “Charge Information” that Mr.
12 Dunckley’s entry of plea specifically allows for probation. Notwithstanding Mr. Dunckley’s
13 counsel’s statements to the district court that Mr. Dunckley was eligible for probation, the district
14 court later found that Mr. Dunckley’s entry of a plea “does not allow for probation.” *Id.* The district
15 court either relied on the omitted information which was not contained in the presentence report or
16 the district court specifically ignored the fact that probation was available. In either case, the district
17 court abused its discretion in concluding that Mr. Dunckley’ entry of a plea “does not allow for
18 probation” with the result being extremely prejudicial to Mr. Dunckley. To thereafter conclude,
19 albeit improperly, that the entry of plea by Mr. Dunckley does not allow for probation is excessive
20 and an abuse of discretion.

21 Moreover, the district court was influenced in the unsubstantiated belief of the prosecutor
22 that “[w]e craft[ed] this creative plea bargain so [Mr. Dunckley] could have the right to posture
23 himself to ask the district court for sentencing.” See Appx. 044. What the Court failed to consider is
24 the other side of this equation; in that Mr. Dunckley gave up several of his constitutional rights by
25 pleading guilty. See *Correale v. United States*, 479 F.2d 944, 947 (1st Cir.1973)(noting that the
26 prompt adjudication of many criminal prosecutions “flow, however, from the defendant’s waiver of
27 almost all of the constitutional rights we deem fundamental.”). In this case, Mr. Dunckley gave up
28 several of his constitutional rights by pleading guilty to offenses that provided for probation. The

1 district court abused its discretion in finding that Mr. Dunckley's entry of plea does not allow for
2 probation, even when such a result is provided for by statute. The district court's action is excessive
3 and an abuse of discretion. The district court's decision places a defendant into an uncertain reality
4 as to whether the district court will consider the statutory provision regarding probation or just
5 unilaterally determine that a defendant's entry of plea does not allow for probation. Allow for such a
6 result would make it extremely difficult to resolve criminal matters without a trial. Mr. Dunckley
7 was entitled to have his sentence evaluated by the district court with the understanding that probation
8 was available. The district court's refusal to allow such an evaluation was excessive and an abuse of
9 discretion requiring reversal.

10 Accordingly, this Court, upon reviewing this excessive sentence, should conclude it
11 appropriate to remand this matter to the district court with instructions to re-sentence Appellant to
12 probation.

13 **D. CONCLUSION**

14 For the foregoing reasons, the sentence imposed by the District Court is excessive and
15 constitutes an abuse of discretion. Accordingly, this Court should conclude it appropriate to remand
16 this matter to the district court with instructions to re-sentence Mr. Dunckley to probation, or at the
17 very least, for a new sentencing.

18 DATED: January 7, 2009.

19 THE O'MARA LAW FIRM, P.C.
20 WILLIAM M. O'MARA
21 DAVID C. O'MARA

22 _____
23 DAVID C. O'MARA
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ATTORNEY'S CERTIFICATE

I recognize that pursuant to NRAP 28 and NRAP 28A, I hereby certify that I have read this Appellate Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose.⁴ I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page or the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: January 7, 2009.

DAVID C. O'MARA

⁴ See *Mann v. State*, 118 Nev. 351, 46 P.3d 1228 (2002)(counsel must appeal if defendant expresses dissatisfaction with the sentence.)

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

_____ Depositing for mailing, in a sealed envelope, U.S.
Postage prepaid, at Reno, Nevada

_____ Personal delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

addressed as follows:

Attorney General Catherine Cortez-Masto
100 N. Carson St.
Carson City, Nevada 89701

Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

DATED: January 7, 2009.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the
above-entitled matter

X Document does not contain the social security number of any person

-OR-

— Document contains the social security number of a person as required by:

— A specific state or federal law, to wit:

-or-

— For the administration of a public program

-or-

— For an application for a federal or state grant

-or-

— Confidential Family Court Information Sheet (NRS 125.130, NRS
125.230 and NRS 125B.055)

DATED: February 2, 2009.

THE O'MARA LAW FIRM, PC

BY: _____
DAVID C. O'MARA, ESQ.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 52383

WITHDRAWAL OF ATTORNEY

Pursuant to Supreme Court Rule 46, David C. O'Mara, Esq., of The O'Mara Law Firm, P.C., hereby withdraws as attorney for Appellant, Brendan Dunckley, in the above-entitled matter.

DATED: June 10, 2009.

THE O'MARA LAW FIRM, P.C.



DAVID C. O'MARA
311 E. Liberty Street
Reno, NV 89501
(775) 323-1321
Fax: (775) 323-4082

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

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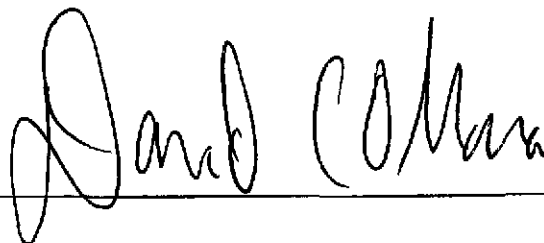
addressed as follows:

Attorney General Catherine Cortez-Masto
100 N. Carson St.
Carson City, Nevada 89701

Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

Brendan Duncley, #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419

DATED: June 11, 2009.



V9. 499
USA, FIRST-CLASS FOREVER



RENO NV 89505
11 JUN 2009 PM 3:11

Handwritten signature/initials

Brendan Duncley, #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419

Vertical handwritten text, possibly a date or reference number.

89419-4119

O'MARA
LAW FIRM, PC

311 E. LIBERTY STREET
P.O. BOX 2270
RENO, NEVADA 89505

O'MARA

LAW FIRM, PC

P.O. Box 2270
311 E. Liberty Street
Reno, Nevada 89505
(Tel) 775-323-1321
(Fax) 775-323-4082

June 10, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley
Inmate # 1023236
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419

Re: *Brendan Dunckley vs. The State of Nevada, Case No. 52383*

Dear Mr. Dunckley,

Enclosed for your records are the following:

1. The Supreme Court's Order of Affirmance.
2. My Notice of Withdrawal as your attorney.
3. Copy of the police reports, transcripts and other documents in my file, but were not included in the Supreme Court Appendix.

④ The original documents from the DMV, the Culinary Institute of America, and the Internal Revenue Service. CONFIRMING: DAVID C. O'MARA WAS IN POSSESSION OF DOCUMENTS TO PROVE ACTUAL / FACIAL INNOCENCE IN CT1.

5. I also have in my possession various audio recording, which include 911 calls, calls from the jail, your arrest and home interview, and the victim's interview. Because the prison will not allow me to mail these directly to you, please have your new attorney contact my office so I can provide him with a copy.

At this time, I will no longer be representing you, in either the Supreme Court, or the District Court. However, please be advised that should you wish to decide to file a Petition for a Writ

BUT AT NO POINT DID COUNSEL USE THESE DOCUMENTS TO EITHER MOVE FOR A DISMISSAL, IMPEACHMENT OF ASHLEY AND DETECTIVE BROOMIE, OR TO EVEN ATTEMPT TO ESTABLISH ANY SORT OF DEFENSE STRATEGY, TO BE AN ADVOCATE FOR HIS CLIENT. EXCEPT ALLOWED PETITIONER TO SIGN A DEAL HE KNEW TO BE BASED ON FALSE TESTIMONY, RAISING NO OBJECTION ON RECORD OF HIS ADVICE TO THE CONTRARY. AS ANY COMPETENT ATTORNEY WOULD HAVE DONE TO SHOW ON RECORD THAT DEFENDANT TAKES AND ENTERS INTO DEAL AGAINST LEGAL ADVICE.

O'MARA
LAW FIRM, PC

Mr. Brendan Dunckley
June 10, 2009
Page 2

of Habeas Corpus, you should obtain private counsel or file the petition yourself. In any event, you should do this immediately. I, however, can not assist you on this matter.

Very truly yours,


David C. O'Mara

DCO/aw

Enclosure

**F A C S I M I L E
TRANSMITTAL MEMORANDUM
FAX NO. (775) 325-6701
D.A. DVPT TEAM**

TO: DAVID O'MARA, ESQ.
775-323-4082

RE: DNA LAB RESULTS

FROM: Kelli Anne Vilorio
Deputy District Attorney

DATE: February 7, 2008

David-

Please see attached - as per our discussion.

Kelli Anne Vilorio

*This facsimile transmittal consists of 2 pages, including this memorandum.
Should you have any difficulties with the transmission or receipt of this/these document(s),
please call (775) 328-3288.*

Jan 28, 2008 4:55PM

me Lab

No. 9776 P. 3/2

L1806-07-1

WASHOE COUNTY SHERIFF'S OFFICE
MICHAEL HALEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512-1000
PHONE (775) 328-2800
FAX (775) 328-2831



LABORATORY NUMBER: L1806-07-1
AGENCY: RENO P.D.
AGENCY CASE #: 07-9446
SUSPECT: DUNCKLEY, BRENDAN
VICTIM: HAMBRICK, JESSICA
PERSON REQUESTING: DET BROOME
DATE OF SUBMISSION: 4/6/2007
OFFENSE: SEXUAL ASSAULT

Received from the Washoe County Sheriff's Office Evidence Section on 04/09/2007

<u>CONTROL #</u>	<u>DESCRIPTION</u>
F149340	RPD Tag 070001934, Item 1: Genitals and control swabs
F149341	RPD Tag 070002369, Item 1: Reference saliva standard from Jessica Hambrick

RESULTS OF EXAMINATION:

For additional DNA results in this case refer to Laboratory report L4130-05, which includes the analysis of the Brendan Dunckley reference standard.

No DNA foreign to the source, Brendan Dunckley, was obtained from the genitals swab. No DNA results were obtained from the control swab.

PCR quantitation was completed at the *Sp15.33* genetic locus. PCR amplification was completed at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S432, vWA, TPOX, D18S51, D5S818, and FGA. The sex determining Amelogenin locus was also examined.

The above listed evidence was returned to the Washoe County Sheriff's Office Evidence Section.

JEFFREY M. ROLANDS, CRIMINALIST

5-21-7
Date

L1806-07-1

Page 1 of 1

ORIG: RPD0287 RPD7568 CJIS:QH 03/22/2007-14:10:47
RESP: CJIS (NV0004A5C256) CJIS:SQCH 03/22/2007-14:10:48

THE FOLLOWING FROM NCJIS CRIMINAL JUSTICE IS A RESULT OF YOUR SQCH INQUIRY ON:

NAM/ DUNCKLEY, BRENDAN
RAC/ W SEX/ M DOB/ 19760704
SOC/ 098605492

NCJIS BASE RECORD

BIN/ 1000562252

NAME: DUNCKLEY, BRENDN THOMAS
DOB : 07/04/1976 SOC: 098605492
RACE: WHITE SEX: M HEIGHT: 506 WEIGHT: 165
HAIR: BROWN EYES: HAZEL

ALIAS NAMES:
NONE, ADMITTED
POB: NY

SID: NV04156735 FPC:

FBI: 704876JC6
SINGLE STATE RECORD

ADDITIONAL INFORMATION:
FINGERPRINTS ARE AVAILABLE.

=====

CRIMINAL HISTORY RECORD PCN/85827205
FINGERPRINT BASED RECORD

ARREST DATE: 07/27/2005 AGENCY: RENO MUNICIPAL COURT
NAME USED: DUNCKLEY, BRENDN THOMAS

CHARGE 1: PETIT LARCENY MISDEMEANOR
RENO MUNICIPAL 8.10.040
NO DISPOSITION RECORD ON FILE

ARRESTED: RENO MUNICIPAL COURT ORI: NV016011J
LOCAL NUMBER: 050464597
BOOKED: WASHOE COUNTY SHERIFFS OFFICE ORI: NV0160000
PHOTOGRAPH AVAILABLE
RECORD CREATED: 07/28/2005 07:53:03 LAST UPDATED: 07/28/2005 12:21:23
***** END OF CRIMINAL HISTORY RECORD *****

WHEN AN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE
DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE NEVADA CRIMINAL
HISTORY RECORDS REPOSITORY.

IF FINGERPRINTS DID NOT ACCOMPANY THIS INQUIRY, THE NEVADA CRIMINAL HISTORY
RECORDS REPOSITORY IS UNABLE TO GUARANTEE THAT THIS MATERIAL CONCERNS THE
INDIVIDUAL IN WHOM YOU ARE INTERESTED.

IN REGARDS TO THE ABOVE NAMES SUBJECT, THIS DOES NOT PRECLUDE THE POSSIBLE
EXISTENCE OF ADDITIONAL MATCHED RECORDS IN LOCAL OR FBI IDENTIFICATION
DIVISION FILES WHICH ARE NOT INDEXED BY THE NEVADA STATE CRIMINAL HISTORY
RECORDS REPOSITORY. THE USE OF THIS INFORMATION IS REGULATED BY LAW. IT

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52383

FILED**MAY 08 2009**

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On August 5, 2008, the district court convicted appellant Brendan Dunckley, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years (lewdness) and of one count of attempted sexual assault. The district court sentenced him to serve a term of life in prison with a minimum parole eligibility of ten years for lewdness and to a concurrent term in prison of 120 months with a minimum parole eligibility of 24 months for attempted sexual assault.

Dunckley's sole issue on appeal is whether the district court abused its discretion when it sentenced him to prison rather than to probation, for which he was eligible. Dunckley challenges the district court's decision on two grounds. First, he contends that the district court, influenced by a "mendacious" presentence investigation (PSI) report, incorrectly stated that he was not eligible for probation. Second, he contends that the district court was improperly influenced at sentencing by the State's "unsubstantiated belief" that the plea agreement was made

to allow Dunckley to better posture himself at sentencing. We hold that the district court did not abuse its discretion.

Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). “[W]e afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (citation and internal quotation marks omitted) (internal footnote omitted). Further, we will look “to the record as a whole to determine whether the sentencing court actually exercised its discretion.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

Eligibility for probation

Dunckley contends that the district court relied on a “mendacious” PSI report to conclude that probation was not available in his case. His allegation focuses on the report’s failure to explicitly state that he was eligible for probation and the district court’s statement, “I know you pled to something that allows for a lesser offense, but it does not allow for probation.” Both arguments are without merit.

Despite the PSI report’s failure to explicitly state that Dunckley was eligible for probation, the district court was informed of his eligibility. The PSI report itself alluded to that fact in its “Conclusion,” which states that Dunckley was not viewed as “an appropriate candidate for community supervision,” thereby implying that it was an option but that the Department of Parole and Probation was not recommending it. In

addition, the district court was explicitly informed that probation was an option in the written guilty plea memorandum, during the plea hearing, and during sentencing.

Furthermore, looking at the record as a whole, the district court clearly imposed prison as a result of exercising its discretion and not because it did not believe there was another option, *i.e.*, probation. The district court did not dismiss probation outright but rather stated that Dunckley's plea for probation would have resonated more with the court had the only charge been lewdness. The court explained why it was rejecting not only Dunckley's request for probation but also the PSI report recommendation for a maximum prison term of 5 years for attempted sexual assault, again clearly exercising its discretion. The record is therefore clear that not only was the district court aware that probation was a sentencing option for Dunckley, but that it properly exercised its discretion by imposing prison terms for the offenses.

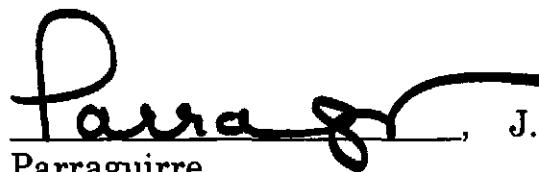
State's comments at sentencing

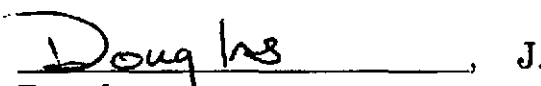
Dunckley next contends that the district court was improperly influenced by the State's "unsubstantiated belief" that the plea agreement was crafted to allow him to better posture himself at sentencing. Paragraph 7 of the guilty plea memorandum, signed by Dunckley, states in part, "I understand that I am entering my plea to [lewdness] as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault . . . and to allow me the opportunity to qualify for probation, which would otherwise be unavailable." Further, defense counsel repeated this portion of the agreement nearly verbatim in his opening remarks during Dunckley's change of plea hearing. The State's belief that the plea agreement was crafted to give Dunckley more

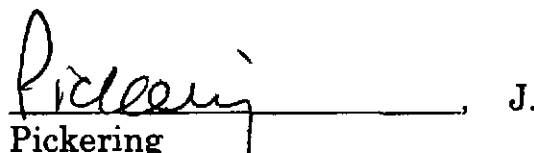
sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

The entire record before this court shows that the district court was aware of the sentencing options available for Dunckley, that it exercised its discretion in imposing terms of imprisonment, and that it was not improperly swayed by impalpable or highly suspect evidence in determining the sentence. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

Dear District Attorney Gamache,

In recent research I came across an interesting piece of information. With regards to the American Bar Association Model Rules and Standards. Namely Standard 3-2.5 entitled "Prosecutor's Handbook. Especially of interest is subsection (b) second sentence "This handbook" should be available to the public, except for subject matters declared "confidential","

You see I would be greatly interested in obtaining a copy of that handbook. If needed I will make sure it is promptly returned.

You may even be able to shed some light on the very reason that I wish to view the handbook that as subsection (a) states "The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient, and effective enforcement of the criminal law."

I find it of real importance that the ABA used the term discretion in this paragraph. Webster's dictionary defines discretion as being "Tactful, prudent." So maybe you can help me understand why it was felt to be tactful or prudent to allow release of a criminal complaint directly pertaining to a case that at the time of release had not yet been before a court, to render its decision as to guilt. There fore lending the accused the right of presumption of innocence until proven guilty.

That is a serious fundamental right anyone accused of a crime is automatically granted just for being an American citizen. Just the simple mistake of accidentally releasing such information in itself could be rendered a "harmless error" not to be considered a intentional violation of the accused Sixth Amendment right to a fair and just trial"

But unfortunately that is not the case here. The fact that a Detective working the case in which the criminal complaints were pertained to intentionally released the material to a third party attorney dealing with a Civil matter. The release of that evidence and entering it into a Civil Matter now made all the complaints that of Public Record. Being that the detective who released the confidential paperwork was a member of the Reno Police Department and the lead detective in the same referenced Criminal matter he is considered a member of the prosecutorial investigation team, and subsequently all his actions has direct bearing on your office.

I also am curious as to what would warrant a detective to intentionally violate the accused right of innocence and release the said documents to the accused ex-wife's attorney who at the time was in a nine year custody battle. That would under normal scrutiny constitute in the least malice intent on hindering the constitutional rights of the accused to a fair and just trial. Having such confidential information in the public I am sure you could agree would definitely prejudice the accused.

Also, knowing your impeccable reputation and that of your colleagues in your charge for striving to ensure that justice is done, I am sure you are familiar with the Standard set forth by the American Bar Association 4.4.1 which states "Effective investigation by the lawyer has an important bearing on competent representation at trial, for without adequate investigation the lawyer is not in a position to make the best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial." I understand the premise of this Standard is geared towards the defense counsel, but it can and also does apply to you the State.

The reason for that line of reference is to bring up the fact that the "Prosecution's duty is never to merely

convict, but to see that justice is done by seeking truth of the matter, and to ensure that jury tries cases solely on basis of actual facts presented to them." (People v. Maestra)

The fact that the opinion stated above used the words "seeking" and "actual facts" renders the fact that the prosecution investigated the charge, not simply taking the word of the complainant. That is the fact of severe relevance in the same case involving the aforementioned detective and accused. In (State v. Estes) it states "Prosecutor is expected to be diligent and leave no stone unturned, but nevertheless expected to be fair" (State v. Estes 725 P.2d, 922, 111 10AHO 423). That brings up the other reason to my letter. Which I would like to express my appreciation for your taking the time to read. But I digress.

In the referenced case that your office filed and subsequently obtained a plea deal or is referred to a Guilty Plea Memorandum. The case no. is CR07-1728. Upon review you will notice that the record has charge 1 happening in the time frame of August 14, 1998 to August 13, 2000. As you will notice from the transcripts in the Preliminary Hearing the "victim" in count 1 stated she was sure it was when she was (12) twelve years old, as affirmed by your ADA Victoria in the Sentencing transcript (Pg 13; 19-21). "But he calls Ashley 14 years old at the time. ~~for~~ when we all know she was 12." She is the representation of the state and therefore making it the states contention to her age of the attack being 12 years old. (August 14, 1998 to August 13, 1999). Again supported by record of sentencing hearing (Pg 11; 24 - Pg 12; 1, Pg 16; 17, Pg 17; 12) The reason for bringing you this letter is this: Had your office and including the police department, as well as my own attorney appointed to me by your office done even the simplest basic investigation in the allegation you would have seen that in actuality, I was not even a resident in the state of Nevada until 2000. And in 1998 at the time

the alleged incident occurred I was attending college in New York at the Culinary Institute of America in Hyde Park, NY. From 11/11/96 until 2/23/99. The information is easily verified by the college. That would have surely come up in a residential history search. Then that leaves 2/23/99 until the "victim's" thirteenth birthday 8/14/99. Well how amazed would you be to know that during that time frame I resided in Oakhurst, Ca with my former wife. And in August 1999 she filed for divorce and I was served papers in Fresno Ca. Again extremely simple information to have obtained if a due diligent investigation was in fact done. In the matter of the location of the alleged incident the said vehicle would have shown that I had not purchased and registered the said vehicle till 6/8/00. Therefore how could a crime have been committed by me in a state 3,000 miles away from my location in a vehicle I won't purchase for two years. If any evidence was deemed relevant I think this would. Not to mention "relevant in the favor of the accused" as mentioned in Brady v. Maryland. Now if you did not actually know including all members of your team including the police in the least we have a warranted example of prosecutorial misconduct. But if your office actually did know and still attempted to prosecute the case would warrant a serious case of malicious prosecution, and Brady violation, due process violation, Sixth, Fourteenth Amendment violation to say the least.

But still pursuing a conviction the ADA proceeded to bring forward a deal that to my knowledge and belief was for probation as noted in the Guilty Plea Memorandum pg. 4:25 & pg. 5:2 both sites with initials of myself, my counsel and ADA's name. But the fact that the state fought hard to obtain the max bears a problem in regards

the validity of the original plea bargain. Especially when your ADA stated in the sentencing hearing transcripts "We did craft this creative plea bargain so this defendant could have the right to posture himself to ask the Court for sentencing. That's what he required before he came to you and admitted his conduct and entered his plea of guilt." (Pg 12; 6-9 sentencing hearing transcripts)

You see the problem is that plea bargains are in fact protected under contract law. In a basic breakdown the agreement should be of benefit to both parties involved. Example; a defendant looking at the death penalty for a capital crime signs a deal and it takes the death penalty off the table. All sides benefited the State gained a conviction and saved the tax payers the expense and the accused was not to be put to death. In my case if I went to trial I would be facing 10 to life and 2 to 20 years. I got 30 to life and 2 to 10. But the state fought and argued to 2 to 20 (Pg 89 17:35-5) Therefore I gave up four protected rights 1) Remain silent 2) Bring witnesses on my own behalf. 3) Face my accusers and cross examine them 4) Right to a trial by my peers. I gave it all up and I feel that had the attorney involved on both sides of the table been even slightly competent to have exercised due diligence in pre-trial investigation and entered the relevant evidence it would have seriously changed my mind in accepting the deal and had demanded going to trial.

You I am sure would agree that once you verify the information I have given you so as to meet the Giles standards could be considered substantial evidence. Black's dictionary defines Substantial evidence as "evidence that a reasonable person could accept as adequate and sufficient to support a conclusion of defendant's guilt or innocence beyond

a reasonable doubt."

All the information I have given to you as to the Diles Standards I had handed over to my appointed attorney of record. For that and all the information in this letter along with documented evidence "e": the released police complaints with R.P.D. Detective Tom Brown signature on each in addition to the clerk stamp of Superior Court of California Madera County in reference to Dunneley v Dunneley, College transcripts, court documentation of the location of residency, divorce paperwork, Department of Motor Vehicles record of registration. Just think how I easily obtained all this information and documentation independently how much more so should all involved in this case have done so as well.

I will leave you with a final citation of due relevance to the point at hand: "Though the system of criminal justice is adversarial in nature and prosecutors have a duty and are expected to be diligent and leave no stone unturned, he is required to be fair and has a duty to avoid any misrepresentation of the facts and unnecessary inflammatory tactics." (State v. Griffiths 610 P.2d 522, 101 IDemo 163)

With my stating all that I wished, in order to help me process my next step in filing all this information by means of a Post Conviction Writ of Habeas Corpus. Which I have no reason to believe will be denied due to serious relevant evidence and dare I say, respectfully though your total lack of any physical evidence to the allegations, which I did not commit. I just wanted to allow you the opportunity to view this information which I truly believe you to feel is a gross miscarriage of justice that demands an immediate remedy of. Once again as I stated earlier I am respectfully appreciative of your taking the time to read my letter. I am a learner and I apologize if at any time I unknowingly bastardized the legal field of

references and records. Your response is greatly appreciated..

Cordially Yours.

Brendan Duncley

Brendan Duncley
INMATE # 1023236
L.C.C.
1200 Prison Road
Love Lake, Nevada. 89419

CASE Reference NO: CV07-1728
CASE Reference NO: 52383

P.S. Copies of this letter are as follows.

C.C.: Brendan Duncley
Morgan Duncley
NEVADA Supreme Court Clerk
David O'Mara Esq.
DISTRICT ATTORNEY Richard Hammick

Documents Included:

C.I.A. transcripts

DMV. Registration information

RPD reports 04-19-07, 03/10/07 AND 8/20/05 ^{evidence} stamped ^{and stamped} 5/25/07 (RPD release)

NEVADA Supreme Court minutes notes reports

Proof of Service of Summons Dated 8/16/07 At residence in Fresno, CA.



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Brendan Dunchley (1023236)

L.C.C.

1200 Prison Road

Lovelock, Nevada 89419

RECEIVED

APR 18 2000

APR 23 2000

4B
50B

Lovelock Correctional Center
Mailroom



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. Richard Gammich
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Thomas J. Frugor

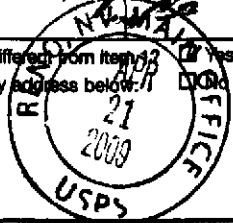
- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

[Signature]

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

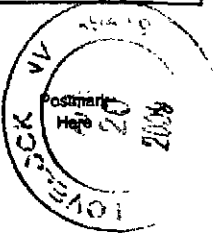
2. Article Number

(Transfer from service label)

7007 0710 0005 2300 2620

7007 0710 0005 2300 2620

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 76
Certified Fee	270
Return Receipt Fee (Endorsement Required)	220
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 566
Brendan Winkley 1023236-48-508	
Sent To: Richard Gammick W.C.D.A.	
Street, Apt. No. or PO Box No. P.O. Box 32038	
City, State, ZIP+4 RENO, NV 89520	
PS Form 3800, August 2006 See Reverse for Instructions	



June 15, 2009

Dear Mr. Hatlestad;

First of all allow me to congratulate you on your victory in having my conviction affirmed by the State Supreme Court. With that being respectfully and genuinely stated I feel that some information needs desperately to be conveyed to you.

You see on April 21, 2009 a gentleman by the name of Thomas J. Frugoli accepted a certified letter from me. With Id number (7007-0710-0005-2300-2620). For your edification I have enclosed the letter (a copy that is) also the documents that originally were enclosed with the said letter.

As you read the letter you will see that in comparison to the alleged testimony of Ashley V. at the preliminary hearing she claims that the incident in Count 1 of the order of conviction occurred when she was twelve years old. Specific window of offense would place it August 14, 1998 until her thirteenth birthday of August 14, 1999. The State argued repeatedly (SDA Victoria) that the crime occurred on a twelve year old little girl. (Sentencing Transcript pg 12/line 1; pg 13/line 19(b) to 21; pg 16/line 17; and again on pg 17/line 17). No allegation or contention was ever made by the state that any other act occurred except during her twelfth year of life.

Except there is a serious flaw and problem with that allegation, I have mentioned this to my attorney but he failed to fix it or use the evidence I presented him. Also unfortunate is the fact that the State too had in its possession evidence to show not only that the testimony of Ashley V. was perjured but that the State had evidence proving the absolute impossibility of the crime occurring.

For the record allow me to detail and break down the allegation to you. Ashley testified that after V9. 519 75

the night at my house with my girlfriend/wife Morgan (in Reno) I drove her home the following morning. While driving her home on Longly Lane (Reno) I pulled over into a parking lot and she and I had consensual sex in the back seat of my Ford Taurus, then I drove her home. The second incident occurred (by her testimony) shortly afterward at the Atlantis Hotel & Casino (Reno) in an elevator. When asked by Mr. David Clifton how old she was when these incidents occurred, she responded she was twelve years old, asked if she is certain she answered in the affirmative. Meaning with a birth date of August 14, 1986 her twelfth year would consist of August 14, 1998 until August 13, 1999. With that being said here's where the problem lies and again I told this to my attorney and recently sent the enclosed letter and documents.

First you will see a letter/transcript from the Culinary Institute of America located in Hyde Park, New York. There you will see the time I was in fact enrolled in college, dated 11/11/96 - 02/23/1999. So there is documented proof up until February 23, 1999 I was in fact in Hyde Park, New York attending college. So that would rule out 8/14/98 until 2/23/99 by the rules of Gile. (Evidence that proves I could not have committed the crime due to being in a location so far away that under normal circumstances I could not have been in the location of the crime.)

Next you will find a DMV print out dated December, 05, 2000 showing that the vehicle in the allegation my Ford Taurus was in fact not even purchased or registered until 6/5/00. So how did we have consensual sex in it in 1998-99 when I did not even own it until 2000.

Third, you will see that the State in fact knew that I was not even in the area of Reno when Ashley alleges that the incident occurred. Enclosed you will find a Reno Police Department 'draft' dated 4/19/07. Created by Detective Tom Broome of RPD Sex crimes division. Please note the second page with the conversation between Detective Tom Broome and my ex-wife Jenny Dinchley. She mentions we met in N.Y. then later moved to Madera California, our marriage broke up in July of 1999 while living in Oakhurst California. A allegation and investigation was done by Madera County Sheriff's department with me. A copy of that Detective Broome obtained. So Detective Broome knew that I was in fact residing in Madera County California in 1999 at least until July with my wife Jenny. Not as alleged residing in Washoe County, Reno with Magan. Yet the State never corrected known perjured testimony and continued to allow it to go uncorrected all the way up to sentencing, and beyond. (letter 4/21/08). As a note you will see a 'EXHIBIT D' stamp on the back of the report, that is because that was one of four criminal reports Detective Tom Broome released to my ex-wife's attorney Kenneth Ballard in Oakhurst Co. to use for an ongoing custody case. That was released 5/25/07. A full six weeks before my preliminary hearing proving the State had knowledge that I was in fact innocent of crime alleged from Ashley. But Nobody fixed it not the State nor my attorney who also had the reports released by Detective Broome. (The hearing for the exhibit was June 22, 2007, Prelim. Hearing was 7/2/07)

Finally enclosed in the original letter is a copy of a Summons of Family Law & Proof of Service for divorce dated 8/16/99. Notice I was served at my residency at 2:45pm at 255 East Neese, #257, FRESNO, CALIFORNIA. Two

after Ashley turned thirteen. Again proving beyond a reasonable doubt that I could not have committed the crime as testified by the "Victim". Since her testimony is in fact all the evidence the State has that these incidents ever occurred and I proved by documented, verifiable evidence to the contrary, the conviction can not stand. It would continue to allow a manifest injustice to go uncorrected.

As an added area of interest I did not mention in the previous letter, Ashley testified that Morgan my girlfriend/wife was pregnant as was her friend Michelle Anthony. Yet Michelle daughter Brooklyn was born September 25, 2000 and our son Jacob was born January 12, 2001. Either they both had really long pregnancies or again the allegations could not have occurred.

Please take notice that even Dr. Story's report on page 3 second paragraph shows I did not move to Reno until 2000, and in the PSI report page 3 under education I graduated H.S. in 1994 and attended the Culinary Institute of America until 1999.

I hope that you see the gross manifest injustice, prosecutorial misconduct, Brady violations, and gross bad faith negligence that has occurred here. I humbly request that the DA do their duty and set the record straight and request a reversal and vacating of Court 1 and allowing me to reverse and set aside my Guilty Plea Memorandum, and plea over to Court 2. I hope you realize I am going to include both letters in my writ of Habeas Corpus. I just felt it necessary to once again bring to the DA's attention so they can take it upon yourselves to fix and correct this problem. Sincerely the Court V9. 522

and in the interest of justice.

Besides is it not the ultimate duty of the Prosecutor to not seek a conviction by any and all means but to see that justice is done and obtained. Is it not why the Prosecutors are held to a higher standard to be diligent and leave no stone unturned. After all you the DA represent the State and all its people.

So, Mr. Hatlestad, can you in good conscience and good faith simply ignore this information as David Clifton, Kelli Anne Villoria, and Thomas S. Frugoli not to mention also Detective Tom Broome have all done on repeated and numerous occasions. I included Detective Tom Broome because as you are I'm sure aware the misconducts by an investigating law enforcement agent is indistinguishable from misconduct by prosecuting attorneys.

Please know I truly respected your brief for the Supreme Court, I know you did not know about this information, because for my attorney to have added it in appeal would have meant admitting his ineffectiveness in acting as an advocate. But it does not excuse his actions or that of Mr Clifton and especially Mrs Villoria. As you are aware being the Chief Appellate Deputy it is the duty and obligation of a prosecuting attorney to obtain Brady evidence (evidence favorable to the defendant). Even if she is not in direct possession of said evidence, she had and still has a duty to learn of any favorable evidence known to other government agents, including the Police (re Det. Broome, report 4/19/07) if those agents are involved in the investigation. Detective Broome was the lead detective.

I pray that you will do the right thing and allow an innocent man to return to his family. I again request that you vacate/dismiss and expunge Court I and allow the Guilty Plea to be reversed and ~~aff~~

me to plead anew for Count 1. You can see that had my attorney done his job and investigated the crime, interviewed Ashley or Jessica, he would see it was impossible to commit Count 1. Therefore he could not give adequate and accurate legal advice. So I plan on having the Guilty Plea reversed on that and numerous other grounds.

I just felt in the interest of justice you would do what is right and fix this SERIOUS situation. This is the second letter bringing the evidence to light I am humbly requesting you set the record straight.

I Thank you for taking the time in reading my letter, and once again congratulations on a well written and eloquent Brief. Please note after reviewing my records the letter 4/21/08 was the second a first was mailed 1/16/08 regular first class mail w/ Brass slip (Ndoc receipt) #1421887

Sincerely,



BRENDAN DUNCKLEY #1023236
L.C.C.

1200 Prison Road
Love Lock, Nevada 89419.

Case No. CRO7-1728

cc: Writ of Habeas Corpus
Personal copy.
Catherine Cortez Masto NV. ATTORGEN.

Enclosed: CIA Transcript
DMV Printout.
RPD. Draft. 4/19/07
Summons of Family Law
Proof of Service ^{8/16/00}
Letter to DA Grannick
Copy of Certif. Receipt
of Thomas J. ^{Frank} ^{sign}

Continuation:

As an additional side note to help the courts and the taxpayers further court expense and time, I would like to make a humble request and possible solution. As of June 8, 2009 I represent myself pro per. Because I know that the overwhelming evidence I am in possession of will almost certainly in the least reverse my guilty plea memorandum, But prove blatant and obvious malicious disregard for my constitutional rights on the part of ADA Victoria as well as Detective Tom Browne. There is a total of 150-160 pages of documentation proving malice, prosecutorial misconduct, ineffective assistance of counsel, police harassment, Miranda violations, inappropriately obtaining evidence, perjured testimony, Brady violations, and that's just with the few pages I have given to you in this letter. Any of which will grant reversal of the deal and prove actual innocence in regards to Count 1.

So here as the chief appellate counsel you are aware that I only need to prove it with probable preponderance, except I can prove it all beyond a reasonable doubt. Or create enough reasonable doubt to a jury. So I propose the following deal for the States consideration: Guilty Plea reversed and set aside Count 1 (NRS. 201.230) dismissed on ground of insufficient evidence and actual and factual innocence, Count 2 (NRS 193.330) be amended to Assault (due to the fact the "victim" Jessica has yet to come forward since the prelim, and her testimony is inconsistent from 3/26/07 to 7/2/07 lacking credibility), So Amend Count 2 to Assault Gross Misdemeanor or at most a 'E' felony with credit for time served. I am released and allowed to leave Nevada (Reno) forever. In exchange I do not sue federally the County or D.A.'s office for the blatant Civil rights and Constitutional violations on the part of the O.A.'s office.

If that deal is accepted as a binding agreement w/ the judges signature. I will agree to sign it. Preventing your office from being flooded with appeals that ADA Victoria and Detective Tom Browne handled. V9. 525 91

(Cont)

or in the alternative:

Reverse the Guilty plea Memorandum and dismiss count 1 on grounds of actual/factual innocence. Allowing me to plead anew for Count 2 and we proceed to trial. I would retain the right to file a lawsuit in regards to count 1's violations. Did you know my seven year old is in therapy because of the sentence I was given for a charge the state knew I could not have committed. But I digress, back to the proposed deal:

#1 - Guilty Plea Memorandum Reversed, Count 1 dismissed on grounds of insufficient evidence and Actual/factual innocence, Count 2 (NRS 193.330) Amended to Assault (GM. or 'E' Felony) with credit for time served (as of 6/15/09 \Rightarrow 419 Days = 1yr 54 Days As per AR520 stat calculation $\frac{20}{30}$). Released and record is expunged for count 1 (NRS 201.230). In exchange defendant (me) will agree to abstain from suing the State, County and DA office, for civil rights and constitutional violations. Binding Agreement WITH SENTENCE TO BE CREDIT TIME served. (No Surprises).

(Or)

#2 Guilty Plea Memorandum reversed, Count 1 (NRS 201.230) dismissed on grounds of insufficient evidence and Actual/factual innocence, Count 2 Allowed to plead anew to (NRS, 193.330) and return to a not guilty stage. Bail being allowed. And proceeding with trial -

I look forward to your response in this matter.



June 15, 2009

To whom it may concern;

I am writing your office (Nevada State Attorney General's office) with two enclosed letters. One is dated today June 15, 2009 and the other is addressed to District Attorney Richard Gammich, the second (June 15, 2009) was sent to Chief Appellate Deputy Gary Hatlestad of Washoe County District Attorney's office.

In those letters I bring to the attention evidence that was in fact in possession of the State prior to the Preliminary Hearings on July 2, 2007. Yet upon the testimony of Ashley V in case RSC Case NO. 2007-033884 for the preliminary hearings, she claimed the incident for which I am currently incarcerated under in Count 1 of the Order of Conviction filed Aug. 11, 2008 for CR07-1728, that the incident occurred when she was twelve.

Please note the enclosed letters both show along with the enclosed documents actual and factual innocence in regards to count 1. I have now brought it to the attention of the State twice. First on April 21, 2008 by the original letter to D.A. Gammich. (Signed by Thomas Frugoli) and the second to Gary Hatlestad. They have a duty to correct the errors once it comes forward to their attention. They have failed to do so.

I request your office to follow up on this matter and take the appropriate measures needed to correct this gross miscarriage of justice. V9. 527

I have, as you will note requested that the State take it upon themselves to file an immediate order to vacate count 1 in the Order of Conviction and allow reversal of the Guilty Plea Memorandum and plead anew for count 2. I am sending this letter to your office to request the same if the State (i.e. Washoe County District Attorney's office) continue to ignore and allow this blatant violation of my constitutional rights to continue uncorrected.

Please notice also that the letter refers to the record of CR07-1728 with regards to ADA Victoria making the contention over and over again that the incident in count one occurred only when Ashley V. was 12. (1998-1999) yet the state was in fact in possession of a report dated 4/19/07 a full 77 days prior to preliminary hearings, proving I was not even in Nevada during 98-99 confirmed by Det. Broomes interview with my ex-wife & obtaining a Police Report from Madera County (CA) Sheriff's department. In the least we have a case of prosecutorial negligence, misconduct, and also Brady violation, police harassment, and intentionally withholding and suppressing evidence. (casting serious doubt to the credibility of Detective Tom Broomes motives, (by his releasing documents to Kenneth Ballard ex-wife attorney) and intentionally withholding evidence. Also to speculate Jessica's account in count 2 on the night of the incident in Report 07-9446 is completely different from the 1) Arresting Charge and 2) Preliminary Statement Hearings. She only spoke to Detective Tom Broome. Now with the release of the documents to the attorney in California for

no other reason except out of intentionally malicious effort to effect dependant (me) in a child custody case showed he took personal, and intentional actions to harm me. What is to say that during the 'interview' of Jessica (which there is no record of to my knowledge) he did not 'help' her with the incident. After all adding Sexually Motivated Burglary to the original arrest booking sheet makes it an enhancement crime. All his actions are to be construed as suspect. But I will address that during Post-Conviction Writ Proceedings. I just felt it was important to once again give the State the opportunity to correct the record and vacate the count they knew prior to the Preliminary Hearings (July 22, 2001) I could not have committed, yet still filed and proceeded with charge. And then pushing a deal for a crime they knew could not have happened as stated by "Victim" which was and is the only evidence the incident occurred.

Please help me with this situation. I don't know if you're able to correct this problem but I pray you can assist me in VACATING COUNT 1 OF ORDER OF CONVICTION (8/11/08 CRO1-1728) And allow reversal of count 2 Guilty Plea to plead anew.

Sincerely,



BRENDAN DINKLEY (#1023236)

LCC.

1200 Prison Road

Lovelock NV 89414

Letter to DA Casman
Letter to Attorney Hattestad 6/15/09

End: CIA Transcript
Dinkley Hearing
Police (GEO) report dated 4/11/07
Police report # CS-34027 (8/20/05)
Samanus Family LA- 8/16/12/95
Boat of Service 8/16/14

Original DA letter sent w/ Certified Mail

V9 529
Tracking # 7007-0710-0005-2300-262085

IMPORTANT INFORMATION

86

1. This certificate shows registered ownership. Legal ownership is shown on the certificate of title.
2. Carry this certificate, or a legible copy, in the vehicle and, upon demand, it must be displayed to a peace officer.
3. Immediately apply for a duplicate if your registration certificate or license plates/decals are lost, mutilated or illegible.
4. Notify the Registration Branch within 10 days of moving to a new address.
5. Maintain security (insurance or qualified self-insurer) for a motor vehicle for the entire time the vehicle is registered in Nevada. If you cancel your insurance you must cancel your registration by surrendering your registration certificate and license plates in order to avoid registration suspension and reinstatement fees.
6. Keep evidence of insurance in the motor vehicle and upon demand, it must be displayed to a peace officer.
7. Remove your plates if you sell this vehicle. If you do not officially transfer these plates to another vehicle owned by you, you must surrender the license plates to the DMV&PS within 60 days.

Fold Here



Plate Style: STANDARD
Issue Date: 06/05/2000

OP: 1509 Nevada Department of Motor Vehicles & Public Safety

Expires: 06/05/2001
Decal Number: M39555

MOTOR VEHICLES BRANCH

License Number	Year	Make	Type	Model Name	Cyl	MSRP	Fuel	Axle	Weight	Unladen Weight
631KWM	1993	FORD	4D	TAG	6	\$16,113.00	G	2	0	0
Vehicle Identification Number			County Based							
1FALP5244PG247860			WASHOE							

DUNCKLEY,BRENDAN T
811 PLUMAS ST
RENO NV 89509

Jim Gibbons
Governor



Ginny Lewis
Director

555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

December 05, 2008

BRENDAN DUNCKLEY
1200 PRISON RD
LOVELOCK NV 89419

This is to certify that the records have been searched for the following:

VIN: 1FALP5244PG247860
Year/Make: 1993 FORD TAURUS GL 4 DR SEDAN
Plate: 631KWM

The records of the Dept of Motor Vehicles indicate that the above referenced
Was registered in Nevada State. We show this vehicle has been register from
06-05-2000 to 06-05-2001 under the name of Brendan Dunckley.

If you have any further questions regarding this request please feel free to
contact me at the above listed phone number.

Sincerely,

A handwritten signature in black ink that reads "Pam Mendoza". The signature is fluid and cursive, with the first name "Pam" and last name "Mendoza" clearly visible.

Pam Mendoza
Record Section

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
CENTRAL SERVICES - RECORDS DIVISION
555 Wright Way
Carson City, Nevada 89711-0250
(775) 684-4590

REQUEST DATE : 12/05/2008

SUP. TRAN. ID : 45905961

BRENDAN DUNCHLEY
1200 PRISON RD
LOVELOCK NV 89419-5110

VEHICLE REGISTRATION DATA

I - VEHICLE DATA

YEAR : 1993 MAKE : FORD MODEL : TAG CYL : 06
VIN : 1FALP5244PG247860 VEHCL TYPE : VEH-SEDAN 4 DR

II - REGISTRATION INFORMATION

EXPIRATION DATE : 06/05/2001
PLATE NUMBER : 631KWM DECAL NUMBER : M39555

OWNER TYPE : REGISTERED COMBN TYPE : NONE
NAME : BRENDAN THOMAS DUNCKLEY
MAIL ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176
PHYS ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176

LAST TRANSACTION DATE: 06/06/2001

NAME/ADDRESS AT THE TIME OF REGISTRATION

NAME : BRENDAN T DUNCKLEY
MAIL ADDRESS : 811 PLUMAS ST
CITY/STATE : RENO NV 89509-1739

END DT : 06/13/2002

PAGE NO: 1** LAST PAGE **

The Culinary Institute of America

1946 Campus Dr, Hyde Park, NY 12538-1499 Phone 845.451.1267 Fax 845.905.4032 www.ciachef.edu

UNOFFICIAL

CEEB Code: 003301

DUNCKLEY, BRENDAN, T
44782 SILVER SPUR CT
AHWAHNEE, CA 93601

Student ID: 36556
Birth Date: 07/04/1976
Date Issued: Dec 8, 2006

Page 1 of 2

Major: Culinary Arts

Degree(s) Conferred:

Assoc. in Occupational Studies in Culinary Arts awarded Jan 22, 1999

Course Number	Section	Course Title	Cred Course	Cred Ernd	Grd	Rep	Abs
Semester 0 (11/11/1996 - 02/23/1999)							
A1D-2B	1A	- CULINARY MATH	1.5	1.5	C-	0	
A1K-2B	0Q	- INTRO. TO GASTRONOMY	1.5	1.5	C-	0	
B1C-2B	1B	- CUL. FRENCH	0.0	0.0	B	0	
B1E-2B	17	- FOOD PURCHASING	1.5	1.5	C-	1	
B1G-2B	0Q	- SANITATION	1.5	1.5	B-	0	
C1A-2B	1D	- MEAT FABRICATION	1.5	1.5	A-	0	
C1F-2B	0Q	- MEAT IDENTIFICATION	1.5	1.5	B-	0	
B1F-2B	0Q	- NUTRITION	1.5	1.5	B+	0	
D1A-2B	1D	- SKILL DEV. I	3.0	3.0	B	0	
E1A-2B	1F	- SKILL DEV. II	3.0	3.0	A-	0	
F2A-2B	1I	- INTRO. HOT FOODS	3.0	3.0	C+	0	
F2B-2A	0V	- SUPERVISORY DEV.	1.5	1.5	C	0	
G2B-2B	1L	- AMERICAN CUISINE	1.5	1.5	D	0	
G2A-2B	1J	- SEAFOOD COOKERY	1.5	1.5	C	0	
H2C-2B	0X	- CHARCUTERIE	1.5	1.5	D	1	
H2B-2B	0X	- ORIENTAL	1.5	1.5	B	0	
I2F-2B	0Y	- LUNCH COOKERY	1.5	1.5	D	0	
I2E-2B	0X	- BREAKFAST COOKERY	1.5	1.5	C-	0	
J2A-2B	1O	- GARDE MANGER	3.0	3.0	C	0	
J2B-2B	0X	- TERM II PRACTICAL	0.0	0.0	P	0	
00-2B	3I	- EXTERNSHIP	6.0	6.0	C	0	
L4G-A	1B	- BREAD BAKING	1.5	1.5	B	0	
L4C-A	1J	- COST CONTROL	1.5	1.5	D	1	
L4F-A	1B	- PASTRY SKILLS DEV	1.5	1.5	B+	0	
M4A-A	24	- PATISSERIE	3.0	3.0	B+	0	
N4D-A	1S	- MENUS/FAC. PLANNING	1.5	1.5	B	0	
N4E-A	1R	- MGMT. WINES&SPIRITS	3.0	3.0	D	0	
N4F-A	1J	- RESTAURANT LAW	0.0	0.0	B+	0	
P4A-A	2B	- INT'L COOKERY	1.5	1.5	B+	0	
P4D-A	1T	- ADV. CUL. PRINCIPLES	1.5	1.5	C	0	
CA5Q01-A	04	- CLAS BANQUET CUISINE	1.5	1.5	D	0	
CA5Q03-A	04	- INTRO TO CATERING	0.0	0.0	B	0	
CA5Q02-A	04	- INTRO TO TABLE SERV	1.5	1.5	A	0	
CA5R01-A	04	- A' LA CARTE SERVICE	1.5	1.5	B-	0	
CA5R02-A	04	- ST. ANDREW'S KITCHEN	1.5	1.5	C	0	
CA5S02-A	04	- 5TH SEM COSTING EXAM	0.0	0.0	P	0	
CA5S01-A	04	- DE MEDICI KITCHEN	1.5	1.5	D	0	
CA5S04-A	04	- 5TH SEM COOKING EXAM	0.0	0.0	P	0	
CA5S03-A	04	- TABLE D'HOTE SERVICE	1.5	1.5	C	0	
CA5T01-A	04	- FORMAL SERVICE	1.5	1.5	C+	1	
CA5T02-A	04	- ESCOFFIER KITCHEN	1.5	1.5	C-	1	
CA5U02-A	05	- AM BOUNTY SERVICE	1.5	1.5	C	0	
CA5U01-A	06	- AM BOUNTY KITCHEN	1.5	1.5	D	0	

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Major: Culinary Arts

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A1K-2B	0Q	- INTRO. TO GASTRONOMY	1.5	1.5	C-	0	
B1C-2B	1B	- CUL. FRENCH	0.0	0.0	B	0	
B1E-2B	17	- FOOD PURCHASING	1.5	1.5	C-	1	
B1G-2B	0Q	- SANITATION	1.5	1.5	B-	0	
C1A-2B	1D	- MEAT FABRICATION	1.5	1.5	A-	0	
C1F-2B	0Q	- MEAT IDENTIFICATION	1.5	1.5	B-	0	
B1F-2B	0Q	- NUTRITION	1.5	1.5	B+	0	
D1A-2B	1D	- SKILL DEV. I	3.0	3.0	B	0	
E1A-2B	1F	- SKILL DEV. II	3.0	3.0	A-	0	
F2A-2B	1I	- INTRO. HOT FOODS	3.0	3.0	C+	0	
F2B-2A	0V	- SUPERVISORY DEV.	1.5	1.5	C	0	
G2B-2B	1L	- AMERICAN CUISINE	1.5	1.5	D	0	
G2A-2B	1J	- SEAFOOD COOKERY	1.5	1.5	C	0	
H2C-2B	0X	- CHARCUTERIE	1.5	1.5	D	1	
H2B-2B	0X	- ORIENTAL	1.5	1.5	B	0	
I2F-2B	0Y	- LUNCH COOKERY	1.5	1.5	D	0	
I2E-2B	0X	- BREAKFAST COOKERY	1.5	1.5	C-	0	
J2A-2B	10	- GARDE MANGER	3.0	3.0	C	0	
J2B-2B	0X	- TERM II PRACTICAL	0.0	0.0	P	0	
00-2B	31	- EXTERNSHIP	6.0	6.0	C	0	
L4G-A	18	- BREAD BAKING	1.5	1.5	B	0	
L4C-A	1J	- COST CONTROL	1.5	1.5	D	1	
L4F-A	18	- PASTRY SKILLS DEV	1.5	1.5	B+	0	
M4A-A	24	- PATISSERIE	3.0	3.0	B+	0	
N4D-A	1S	- MENUS/FAC. PLANNING	1.5	1.5	B	0	
N4E-A	1R	- MGMT.WINES&SPIRITS	3.0	3.0	D	0	
N4F-A	1J	- RESTAURANT LAW	0.0	0.0	B+	0	
P4A-A	28	- INT'L COOKERY	1.5	1.5	B+	0	
P4D-A	1T	- ADV. CUL. PRINCIPLES	1.5	1.5	C	0	
CA5Q01-A	04	- CLAS BANQUET CUISINE	1.5	1.5	D	0	
CA5Q03-A	04	- INTRO TO CATERING	0.0	0.0	B	0	
CA5Q02-A	04	- INTRO TO TABLE SERV	1.5	1.5	A	0	
CA5R01-A	04	- A' LA CARTE SERVICE	1.5	1.5	B-	0	
CA5R02-A	04	- ST. ANDREW'S KITCHEN	1.5	1.5	C	0	
CA5S02-A	04	- 5TH SEM COSTING EXAM	0.0	0.0	P	0	
CA5S01-A	04	- DE MEDICI KITCHEN	1.5	1.5	D	0	
CA5S04-A	04	- 5TH SEM COOKING EXAM	0.0	0.0	P	0	
CA5S03-A	04	- TABLE D'HOTE SERVICE	1.5	1.5	C	0	
CA5T01-A	04	- FORMAL SERVICE	1.5	1.5	C+	1	
CA5T02-A	04	- ESCOFFIER KITCHEN	1.5	1.5	C-	1	
CA5U02-A	05	- AM BOUNTY SERVICE	1.5	1.5	C	1	
CA5U01-A	06	- AM BOUNTY KITCHEN	1.5	1.5	D	0	

09860549222000000000

*(TY2000)

PAGE 0005 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
800 GENTRY WAY, #10
RENO
STATE: NV ZIP: 89502-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 880402426
RENO HILTON RESORT INC
2500 E SECOND STREE
RENO NV 89595

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$6,828+
TX WITHELD.....\$816+
FICA TX WH.....\$423+
T FICA WAG.....\$6,828+
MEDCARE WH.....\$99+
MEDCARE WG.....\$6,828+

***** TAXPAYER COPY *****

09860549222000000000

*(TY2000)

PAGE 0006 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
811 PLUMAS ST.
RENO
STATE: NV ZIP: 89509-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 952858475
SUPERSTORES OF AMERICA IN
60 8996 MIRAMAR RD STE
SAN DIEGO CA 92126

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$1,634+
TX WITHELD.....\$84+
FICA TX WH.....\$101+
T FICA WAG.....\$1,634+
MEDCARE WH.....\$23+
MEDCARE WG.....\$1,634+

***** TAXPAYER COPY *****

V9. 536

09860549221999000000

*(TY1999)

PAGE 0001 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDON T DUNCKLEY
44782 SILVER SPUR CT.
AHWAHNEE
STATE: CA ZIP: 93601-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 770039563
ELDERBERRY HOUSE INC
P O BOX 2413
OAKHURST CA 93644

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$150+
FICA TX WH.....\$9+
T FICA WAG.....\$150+
MEDCARE WH.....\$2+
MEDCARE WG.....\$150+

***** TAXPAYER COPY *****

09860549221999000000

*(TY1999)

PAGE 0002 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
B DUNCKLEY

STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 770160750
CASTILLOS MEXICAN RESTAURANT

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$343+
TX WITHELD.....\$10+
FICA TX WH.....\$21+
T FICA WAG.....\$343+
MEDCARE WH.....\$4+
MEDCARE WG.....\$343+

***** TAXPAYER COPY *****

V9. 536 92

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*(TY1999)

PAGE 0005 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN DUNCKLEY
455 E NEES #112
FRESNO
STATE: CA ZIP: 93720-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 940481510
FORT WASHINGTON GOLF & COUNTRY
10272 N MILLBROOK
FRESNO CA 937203499

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$411+
FICA TX WH.....\$25+
T FICA WAG.....\$411+
MEDCARE WH.....\$5+
MEDCARE WG.....\$411+

***** TAXPAYER COPY *****

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*(TY1999)

PAGE 0006 OF 0006

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
455 E. NESS APT. 112
FRESNO,
STATE: CA ZIP: 93720-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 941272509
HARRIS FARMS INC.
ROUTE 1 BOX 400
COALINGA CA 93210

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$415+
TX WITHELD.....\$31+
FICA TX WH.....\$25+
T FICA WAG.....\$415+
MEDCARE WH.....\$6+
MEDCARE WG.....\$415+

***** TAXPAYER COPY *****

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*(TY1998)

PAGE 0001 OF 0007

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
RR4 BOX 74
RED HOOK NY
STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 060653264
THE CULINARY INSTITUTE OF AMERICA
433 ALBANY POST RD
HYDE PARK NY 12538

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$229+

***** TAXPAYER COPY *****

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*(TY1998)

PAGE 0002 OF 0007

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
RR4 BOX 73
RED HOOK
STATE: NY ZIP: 12571-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 141709328
GUIDO RESTAURANT CORP
RR 3 BOX 409M DBA MARINER S HARBOR
RED HOOK NY 12571

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$2,806+
TX WITHHELD.....\$20+
FICA TX WH.....\$173+
T FICA WAG.....\$2,806+
MEDCARE WH.....\$40+
MEDCARE WG.....\$2,806+

***** TAXPAYER COPY *****

V9. 539

09860549221998000000

*(TY1998)

PAGE 0003 OF 0007

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
44782 SILVER SPUR CT
AHWAHNEE
STATE: CA ZIP: 93601-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 770039563
ELDERBERRY HOUSE INC
P O BOX 2413
OAKHURST CA 93644

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$983+
TX WITHHELD.....\$6+
FICA TX WH.....\$60+
T FICA WAG.....\$983+
MEDCARE WH.....\$14+
MEDCARE WG.....\$983+

***** TAXPAYER COPY *****

09860549221998000000

*(TY1998)

PAGE 0004 OF 0007

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
B T DUNCKLEY

STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 770394564
YOGESHWAR INVESTMENT CORP

PENSION INDICATOR: UNCHK (UNRELIABLE)

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$1,162+
FICA TX WH.....\$72+
T FICA WAG.....\$1,162+
MEDCARE WH.....\$16+
MEDCARE WG.....\$1,162+

***** TAXPAYER COPY *****

V9. 539 95

V9. 540

96

09860549221998000000

*(TY1998)

PAGE 0005 OF 0007

DOCUMENT TYPE: W-2
 PAYEE ENTITY DATA: 098-60-5492
 BRENDAN DUNCKLEY

STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
 PAYER ENTITY DATA: 770403314
OKA JAPANESE RESTAURANT
 OAK HURST, CA.

PENSION INDICATOR: UNCHK (UNRELIABLE)

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
 WAGES.....\$768+
 TX WITHHELD.....\$41+
 FICA TX WH.....\$47+
 T FICA WAG.....\$588+
 T FICA TIP.....\$180+
 MEDCARE WH.....\$11+
 MEDCARE WG.....\$768+

TAXPAYER COPY *****

09860549221998000000

*(TY1998)

PAGE 0006 OF 0007

DOCUMENT TYPE: W-2
 PAYEE ENTITY DATA: 098-60-5492
 BRENDAN DUNCKLEY
44782 SILVER SPUR CO
AHWAHNEE
 STATE: CA ZIP: 93601-0000

ACCOUNT NUMBER: N/A
 PAYER ENTITY DATA: 770438661
 GOLD CREEK CHEVRON FOOD MART
 P O BOX 997 P O BOX 997
 COARSEGOLD CA 93614

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
 WAGES.....\$786+
 FICA TX WH.....\$48+
 T FICA WAG.....\$786+
 MEDCARE WH.....\$11+
 MEDCARE WG.....\$786+

TAXPAYER COPY *****

V9. 540 96

V9. 541

09860549221998000000

*(TY1998)

PAGE 0007 OF 0007

DOCUMENT TYPE: 1098-T
PAYEE ENTITY DATA: 098-60-5492
DUNKLEY BRENDAN T
44782 SILVER SPUR CT
AHWAHNEE
STATE: CA ZIP: 93601-0000

GRTR THAN OR EQ TO HALF TIME STUDENT
NOT A GRADUATE STUDENT

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 06-0653264
THE CULINARY INSTITUTE OF AMERICA
433 ALBANY POST RD
HYDE PARK NY12538

TAXPAYER COPY

09860549221997000000

*(TY1997)

PAGE 0001 OF 0004

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNKLEY
RR4 BOX 74
RED HOOK NY
STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 060653264
THE CULINARY INSTITUTE OF AMERICA
651 SOUTH ALBANY POST ROA
HYDE PARK NY 12538

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$585+
TX WITHELD.....\$4+

TAXPAYER COPY

V9. 541 97

V9. 542

09860549221997000000

*(TY1997)

PAGE 0002 OF 0004

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN DUNCKLEY
RR4 BOX OLD RT 199
REDHOOK
STATE: NY ZIP: 12571-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 141766034
SUMMIT INNS OPERATING CORP.
DBA BEST WESTERN INN 679 SOUTH ROAD
POUGHKEEPSIE NY 12601

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$99+
TX WITHELD.....\$7+
FICA TX WH.....\$6+
T FICA WAG.....\$99+
MEDCARE WH.....\$1+
MEDCARE WG.....\$99+

***** TAXPAYER COPY *****

09860549221997000000

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PAGE 0003 OF 0004

DOCUMENT TYPE: W-2
PAYEE ENTITY DATA: 098-60-5492
BRENDAN T DUNCKLEY
RR4 BOX 73
RED HOOK NY
STATE: ** ZIP: 00000-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 363747040
GUINNESS HLDS MNCHSTR PRPTY C&P VT
PO BOX 46
MANCHESTER VILLAG (VT) 0525

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$1,817+
TX WITHELD.....\$160+
FICA TX WH.....\$112+
T FICA WAG.....\$1,817+
MEDCARE WH.....\$26+
MEDCARE WG.....\$1,817+

***** TAXPAYER COPY *****

V9. 542 98

V9. 543

09860549221997000000

*(TY1997)

PAGE 0004 OF 0004

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BRENDAN T DUNCKLEY
44782 SILVER SPUR CT
AHWAHNEE
STATE: CA ZIP: 93601-0000

ACCOUNT NUMBER: N/A
PAYER ENTITY DATA: 770039563
ELDERBERRY HOUSE INC
P O BOX 2413
OAKHURST CA 93644

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS
WAGES.....\$3,708+
TX WITHELD.....\$48+
FICA TX WH.....\$229+
T FICA WAG.....\$3,708+
MEDCARE WH.....\$53+
MEDCARE WG.....\$3,708+

TAXPAYER COPY

Register of Civil Actions, Superior Court, Madera County

JENNY ANN DUNCKLEY

KENNETH R. BALLARD

Attorney for Petitioner/Plaintiff

Petitioner ☒ Plaintiff

AND VERSUS

BRENDAN THOMAS DUNCKLEY

Action for PETITION FOR DISSOLUTION OF MARRIAGE

Respondent ☒ Defendant

Attorney for Respondent/Defendant

PROCEEDINGS

DATE	DESCRIPTION	I/S	FEE PD
8-16-99	PETITION FOR DISSOLUTION OF MARRIAGE		
8-16-99	INCOME AND EXPENSE DECLARATION - Petitioner	I/S	185.00
8-18-99	Summons-showing service 8-16-99		
9-14-99	Response and request for dissolution of marriage		
9-14-99	Declaration under uniform child custody jurisdiction act.		
10-5-99	PROOF OF SERVICE BY MAIL, TO KENNETH R. BALLARD		
10-5-99	NOTICE OF MOTION-Child Custody, Child Support, Visitation, 10-12-99		23.00
10-12-99	MO-CONTINUED TO 11-15-99		
10-12-99	RESPONSIVE DECLARATION TO ORDER TO SHOW CAUSE OR NOTICE OF MOTION		
10-22-99	ORDER AFTER HEARING		
11-5-99	Notice of non-availability of counsel		
11-12-99	REPORT OF MEDIATOR		
11-15-99	MO-REVIEW OF MEDIATORS REPORT, MEDIATORS REPORT ADOPTED WITH MODIFICATIONS		
12-7-99	order after hearing, atty for respo signed by judge		
1-18-2000	Income and Expense Declaration (Petitioner)		
1-18-2000	Notice of Motion, Child Support, Attorney Fees and Costs 2-10-2000 at 8:30 am in Dept 5		23.00
2-10-00	MO-MOTION RE CHILD SUPPORT, ATTY FEES/COSTS; OFF CALENDAR AS REQUEST OF ATTY. BALLARD		
3-8-00	STIPULATION RE CHILD SUPPORT		
3-8-00	DISSOMASTER		
3-9-00	ORDER TO SHOW CAUSE FOR MODIFICATION, CHILD CUSTODY, VISITATION, ATTORNEY FEES AND COSTS APRIL 7, 2000 AT 8:30 A.M. DEPT. 5		\$23.00
3-9-00	ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT 4-7-00 8:30 A.M. DEPT. 5		
3-16/00	Wage and earnings assignment order, child support		
3-23/00	Responsive declaration to order to show cause or notice of motion.		23.00
3-23/00	Notice of motion attny fees and cost, re-referral to mediation, Date: 4/7/00		35.00
4-23-00	PROOF OF SERVICE FILED, PERSONAL SERVICE ON KENNETH BALLARD ON 3-17-00		38.00
4-23-00	PROOF OF SERVICE FILED, PERSONAL SERVICE ON JENNY DUNCKLEY ON 3-17-00		

↓

4-7-00

MO: CUSTODY AND VISITATION REFERRED TO MEDIATION. PARTIES ORDERED TO MAKE APPOINTMENT TODAY AND COOPERATE. SITPULATION IS RECITED INTO THE RECORD. PARTIES STATE THEIR AGREEMENT WITH THE STIPULATION AS RECIED. COURT ACCEPTS STIPULATION. ADOPTS IT AS THE ORDER OF THE COURT, ORDERS PARTIES TO COMPLY THEREWITH. MATTER IS CONTINUED TO MAY 5, 2000 AT 8 30 A.M. IN DEPT.5 FOR REVIEW OF MEDIATORS REPORT

4-10-2000
4-19-2000

STIPULATION FOR RE-REFERRAL TO MEDIATION AND ORDER THEREON
ORDER AFTER HEARING

5-2-00

REPORT OF MEDIATOR- COURT DATE MAY 4, 2000

5-5-2000

MO-REVIEW OF MEDIATOR'S REPORT continued to 6-6-2000

5-18-00

PROOF OF SERVICE- NOT FOUND OR NON SERVICE RETURN

5-30-00

PROOF OF SERVICE OF CIVIL SUBPENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING AND DECLARATION. TO DEREK WEIBEL, PERSON SERVED COLE LEE BALDRIGE BY PERSONAL DELIVERY ON 5-15-00

6-27-00

MEMORANDUM OF OPINION

7-3-00

JUDGMENT-Date marital status ends 7-3-2000

7-3-2000

NOTICE OF ENTRY OF JUDGMENT

9-29-00

LETTER FROM MR. BALLARD

9-29-00

JUDGMENT ON REMAINING ISSUES OTHER THAN STATUS

9-29-00

NOTICE OF ENTRY OF JUDGMENT ON REMAINING ISSUES

10/4/00

NOTICE OF MOTION AND MOTION TO WITHDRAW AS ATTORNEY OF RECORD. Date: 11/1/00

10/4/00

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD.

23.00

Date: 11/1/00

10/4/00

DECLARATION OF PATRICIA BONE O'NEILL IN SUPPORT OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD.

DATE: 11/1/00

10/4/00

PROOF OF SERVICE BY MAIL - DATE MAILED 10/4/00 BRENDAN DUNCCKLEY

10-12-00

Letter from attorney at law Harry Pascuzzi confirming the cancelation of the telephone conversation scheduled for 11-1-00 at 8:30 a.m. in Dept. 5

10-12-00

Notice of withdrawal of attorney of record.

10-16-00

Case management conference questionnaire

12/14/00

ORDER TO SHOW CAUSE FAMILY LAW 2/26/01

1/26/01

PROOF OF SERVICE ORDER TO SHOW CAUSE FAMILY LAW 1/23/01

2/26/01

MINUTE ORDER OSC RE MODIFICATION , cont'd 4/20/01

3/9/01

ORDER AFTER HEARING for 2/26/01

3/15/01

NOTICE OF ENTRY OF JUDGMENT AND CERTIFICATE OF SERVICE BY MAIL

4/30/2001

MINUTE ORDER-REVIEW OF CHILD SUPPORT ORDER-CHILD SUPPORT \$268; CONT TIL 10/1/2001 @ 8:30 AM IN DEPT 4

5-11-01

ORDER AFTER HEARING

6/15/2001

ABSTRACT OF SUPPORT JUDGMENT ISSUED

9/6/2001

OSC & AFFIDAVIT FOR CONTEMPT;T/A 10/22/2001 @ 8:30 AM IN DEPT 4

9/25/01

PROOF OF SERVICE ORDER TO SHOW CAUSE 9/14/01

9/1/01

MINUTE ORDER REVIEW, cont'd to 12/13/01

12/10/01

FSD OFF CAL FOR 12/13/01

12/11/01

ORDERS AFTER HEARING

SUMMONS - FAMILY LAW**CITACION JUDICIAL--DERECHO DE FAMILIA**

NOTICE TO RESPONDENT (Name): BRENDAN THOMAS
AVISO AL DEMANDADO (Nombre): DUNCKLEY

You are being sued. A usted le estan demandando.

PETITIONER'S NAME IS: JENNY ANN DUNCKLEY
EL NOMBRE DEL DEMANDANTE ES:

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

FILED
MADERA SUPERIOR COURT

AUG 18 1999

CLERK

CASE NUMBER (Numero del Caso)

CV03749

Janet M. Gallagher

DEPUTY

You have **30 CALENDAR DAYS** after this Summons and Petition are served on you to file a Response (form 1282) at the court and serve a copy on the petitioner. A letter or phone call will not protect you.

If you do not file your Response on time, the court may make orders affecting your marriage, your property, and custody of your children. You may be ordered to pay support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form.

If you want legal advice, contact a lawyer immediately.

Usted tiene **30 DIAS CALENDARIOS** despues de recibir oficialmente esta citacion judicial y peticion, para completar y presentar su formulario de Respuesta (Response form 1282) ante la corte. Una carta o una llamada telefonica no le ofrecera proteccion.

Si usted no presenta su Respuesta a tiempo, la corte puede expedir ordenes que afecten su matrimonio, su propiedad y que ordenen que usted pague mantencion, honorarios de abogado y las costas. Si no puede pagar las costas por la presentacion de la demanda, pida al actuario de la corte que le de un formulario de exoneracion de las mismas (Waiver of Court Fees and Costs).

Si desea obtener consejo legal, comuniquese de inmediato con un abogado.

NOTICE The restraining orders on the back are effective against both husband and wife until the petition is dismissed, a judgment is entered, or the court makes further orders. These orders are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them.

AVISO Las prohibiciones judiciales que aparecen al reverso de esta citacion son efectivas para ambos conyuges, tanto el esposo como la esposa, hasta que la peticion sea rechazada, se dicte una decision final o la corte expida instrucciones adicionales. Dichas prohibiciones pueden hacerse cumplir en cualquier parte de California por cualquier agente del orden publico que las haya recibido o que haya visto una copia de ellas.

- The name and address of the court is: (El nombre y direccion de la corte es)
 Superior Court of California, County of Madera
 209 West Yosemite Ave.
 Madera, CA 93637
- The name, address, and telephone number of petitioner's attorney, or petitioner without an attorney, is:
 (El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
 KENNETH R. BALLARD
 Attorney at Law
 40327 Stagecoach Road, #1
 Oakhurst, CA 96344
 559-683-2122

[SEAL]



Date (Fecha) ⁵⁰⁰⁶² **AUG 16 1999** Clerk (Actuario), by *Janet M. Gallagher*, Deputy

NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual.
- b. ☐ on behalf of respondent
 under: ☐ CCP 416.60 (minor) ☐ CCP 416.90 (individual)
 ☐ CCP 416.70 (ward or conservatee) ☐ other:
- c. ☐ by personal delivery on (date):

(Read the reverse for important information)
 (Lea el reverso para obtener informacion de importancia)

WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.

ADVERTENCIA: Para los efectos de la division de bienes al momento de una separacion legal o de la disolucion de un matrimonio, las leyes de California disponen que se presuman como bienes de la sociedad conyugal aquellos adquiridos en forma conjunta por las partes durante el matrimonio. Si cualquiera de las partes de esta accion muriese antes de que se dividan los bienes en tenencia conjunta de la sociedad conyugal, prevalecera el lenguaje relativo a la tenencia de los derechos de propiedad contenido en la escritura-- como, por ejemplo, copropiedad con derechos de sucesion (joint tenancy), tenencia en comun (tenants in common) o bienes de la sociedad conyugal (community property)-- y no la presuncion de que los bienes son de la sociedad conyugal. Usted debe consultar a su abogado o abogada si desea que la presuncion de que los bienes son de la sociedad conyugal se especifique en el titulo de propiedad inscrito.

STANDARD RESTRAINING ORDERS--FAMILY LAW

PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA

STANDARD FAMILY LAW RESTRAINING ORDERS

Starting immediately, you and your spouse are restrained from

1. removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court;
2. cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children; and
3. transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.

You must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, nothing in the restraining orders shall preclude you from using community property to pay reasonable attorney fees in order to retain legal counsel in the action

PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA

A usted y a su conyuge se les prohíbe

1. que saquen del estado al hijo o hijos menores de las partes, si los hay, sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte; y
2. que cobren en efectivo, usen como colateral para prestamos, cancelen, transfieran, discontinuen o cambien los beneficiarios de, cualquier poliza de seguro u otras coberturas de seguro, inclusive los de vida, salud, automovil e incapacidad mantenido para el beneficio de las partes y su hijo o hijos menores; y
3. que transfieran, graven, hipotequen, escondan o de cualquier otra manera enajenen cualquier propiedad mueble o inmueble, ya sean bienes de la sociedad conyugal, quasi conyugales o bienes propios de los conyuges, sin el consentimiento por escrito de la otra parte o sin una orden de la corte, excepto en el curso normal de los negocios o para atender a las necesidades de la vida.

Ustedes deben notificarse entre si sobre cualquier gasto extraordinario propuesto, por lo menos con cinco dias de antelacion a la fecha en que se van a incurrir dichos gastos extrordinarios y responder ante la corte por todo gasto extraordinario hecho despues de que estas prohibiciones judiciales entren en vigor. Sin embargo, nada de lo contenido en las prohibiciones judiciales le impedira que use bienes de la sociedad conyugal para pagar honorarios razonables de abogados con el fin de obtener representacion legal durante el proceso.

MARRIAGE OF (last name, first name of party)
DUNCKLEY, Jenny and Brendan

Case NUMBER:

CV03749

Serve a copy of the documents on the person to be served. Complete the proof of service. Attach it to the original documents. File them with the court.

PROOF OF SERVICE OF SUMMONS (Family Law)

1. I served the Summons with Standard Restraining Orders (Family Law), **blank Response**, and Petition (Family Law) on respondent (name) **BRENDAN THOMAS DUNCKLEY**

- a. with (1) ☐ blank Confidential Counseling Statement (4) ☒ completed and blank Income and Expense Declarations
(2) ☐ Order to Show Cause and Application (5) ☐ completed and blank Property Declarations
(3) ☒ blank Responsive Declaration (6) ☐ Other (specify):

- b. ☐ By leaving copies with (name and title or relationship to person served):

- c. ☒ By delivery at ☒ home ☐ business

(1) Date of: 8/16/99

(2) Time of: 2:45 p.m.

(3) Address:

455 E. Ness, #257
Fresno, CA

(2) Place of:

- d. ☐ By mailing (1) Date of:

2. Manner of service: (Check proper box)

- a. ☒ **Personal service.** By personally delivering copies to the person served. (CCP 415.10)

- b. ☐ **Substituted service on natural person, minor, incompetent.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration stating acts relied on to establish reasonable diligence in first attempting personal service.)

- c. ☐ **Mail and acknowledge service.** By mailing (by first-class mail or airmail) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)

- d. ☐ **Certified or registered mail service.** By mailing to address outside California (by registered or certified airmail with return receipt requested) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)

- e. ☐ Other (specify code section):

☐ Additional page is attached.

3. The NOTICE TO THE PERSON SERVED on the summons was completed as follows (CCP 412.30, 415.10, and 474):

- a. ☒ as an individual

- b. ☐ on behalf of Respondent

under ☐ CCP 416.90 (Individual) ☐ CCP 416.70 (Ward or Conservatee) ☐ CCP 416.60 (Minor)

☐ Other (specify):

- c. ☒ by personal delivery on (date): 8/16/99

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$35.00

6. Person serving:

- a. ☒ Not a registered California process server.

- b. ☐ Registered California process server.

- c. ☐ Employee or independent contractor of a registered California process server.

- d. ☐ Exempt from registration under Bus. & Prof. Code section 22350(b).

- e. ☐ California sheriff, marshal, or constable.

- f. Name, address, and telephone number and, if applicable, county of registration and number:
40327 Stagecoach Road, #1
Oakhurst, CA 93644

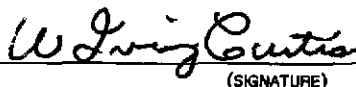
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8/16/99

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:


(SIGNATURE)


(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): 50062 KENNETH R. BALLARD Attorney at Law 40327 Stagecoach Road, #1 Oakhurst, Ca. 96344 TELEPHONE NO.: (559)683-2122 FAX NO.: (559) 658-8188 ATTORNEY FOR (Name) Jenny Ann Dunkley		FCR COURT USE ONLY FILED MADERA COUNTY COURT \$9,400.00 TO 1:48 DIANNA ORNELAS, CLERK	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Madera STREET ADDRESS: 209 West Yosemite Ave. MAILING ADDRESS: same CITY AND ZIP CODE: Madera, CA 93637 BRANCH NAME:			
MARRIAGE OF PETITIONER: JENNY ANN DUNKLEY RESPONDENT: BRENDAN THOMAS DUNKLEY			
PETITION FOR <input checked="" type="checkbox"/> Dissolution of Marriage <input type="checkbox"/> Legal Separation <input type="checkbox"/> Nullity of Marriage <input type="checkbox"/> AMENDED		CASE NUMBER: CV03749	

1. RESIDENCE (Dissolution only) ☒ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Marriage*.

2. STATISTICAL FACTS

a. Date of marriage: 5/22/97 c. Period between marriage and separation
b. Date of separation: 7/19/99 Years: 2 Months: 2

3. DECLARATION REGARDING MINOR CHILDREN (include children of this relationship born prior to or during the marriage or adopted during the marriage):

a. ☐ There are no minor children.
b. ☒ The minor children are:

Child's name	Birth date	Age	Sex
Jesse Christian	11/19/97	1 yr. 9 m	M
Madison Lynn	1/7/99	7 m	FF

☐ Continued on Attachment 3b.

c. If there are minor children of the Petitioner and Respondent, a completed *Declaration Under the Uniform Child Custody Jurisdiction Act (UCCJA)* (form MC-150) must be attached.
d. ☐ A completed voluntary declaration of paternity regarding minor children born to the Petitioner and Respondent prior to the marriage is attached.

4. ☐ Petitioner requests confirmation as separate property assets and debts the items listed
☐ in Attachment 4 ☒ below:

Item	Confirm to
Bedroom set, ruby ring and school loan	wife
Proceeds, life insurance \$1000	wife
Debt of \$700 to H. Blackburn	husband
Husband's school loan	husband

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

(Continued on reverse)

MARRIAGE OF (last name, first name of parties) DUNKLEY, Jenny and Brendan	CASE NUMBER
------------------------------------------------------------------------------	-------------

5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.
- b. ☐ All such assets and debts have been disposed of by written agreement.
- c. ☒ All such assets and debts are listed ☐ in Attachment 5c ☒ below (specify):
 Assets: 1998 Honda Civic
 Kitchen Supplies
 Debts:
 American Honda Fin.
 Medical bills: North Dutchess, Louis Gonzales, Empire Collection Agency

6. Petitioner requests

- a. ☒ Dissolution of the marriage based on
 (1) ☒ irreconcilable differences. Fam. Code, § 2310(a)
 (2) ☐ incurable insanity. Fam. Code, § 2310(b)
- b. ☐ Legal separation of the parties based on
 (1) ☐ irreconcilable differences. Fam. Code, § 2310(a)
 (2) ☐ incurable insanity. Fam. Code, § 2310(b)
- c. ☐ Nullity of void marriage based on
 (1) ☐ incestuous marriage. Fam. Code, § 2200
 (2) ☐ bigamous marriage. Fam. Code, § 2201
- d. ☐ Nullity of voidable marriage based on
 (1) ☐ petitioner's age at time of marriage. Fam. Code, § 2210(a)
 (2) ☐ prior existing marriage. Fam. Code, § 2210(b)
 (3) ☐ unsound mind. Fam. Code, § 2210(c)
 (4) ☐ fraud. Fam. Code, § 2210(d)
 (5) ☐ force. Fam. Code, § 2210(e)
 (6) ☐ physical incapacity. Fam. Code, § 2210(f)

7. Petitioner requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

- | | Petitioner | Respondent | Joint | Other |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| a. Legal custody of children to | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Physical custody of children to | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Child visitation be granted to | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (1) <input checked="" type="checkbox"/> Supervised for to be agreed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) <input type="checkbox"/> No visitation for | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) <input type="checkbox"/> Continued on Attachment 7c(3). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. <input type="checkbox"/> Determination of parentage of any children born to the Petitioner and Respondent prior to the marriage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Spousal support payable to (wage assignment will be issued) | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Attorney fees and costs payable by | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. <input checked="" type="checkbox"/> Terminate the court's jurisdiction (ability) to award spousal support to respondent. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h. <input checked="" type="checkbox"/> Property rights be determined. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i. <input type="checkbox"/> Petitioner's former name be restored (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Continued on Attachment 7j. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

8. If there are minor children born to or adopted by the Petitioner and Respondent before or during this marriage, the court will make orders for the support of the children. A wage assignment will be issued without further notice.

9. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8/16/99

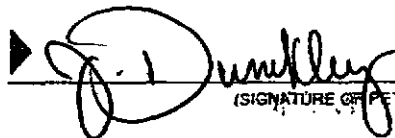
Jenny Ann Dunkley

(TYPE OR PRINT NAME)

Date: 8/16/99

Kenneth R. Ballard

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)



(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Fam. Code, §§ 231-235). Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse.

V9. 551

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Mailing Address)		TELEPHONE NO	FOR COURT USE ONLY
KENNETH R. BALLARD 62 Attorney at Law 40327 Stagecoach Road, #1 Oakhurst, Ca. 96344		(559) 683-2	107
ATTORNEY FOR (Name): Jenny Ann Dunckley			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Madera			
STREET ADDRESS 209 West Yosemite Ave.			
MAILING ADDRESS same			
CITY AND ZIP CODE: Madera, Ca. 93637			
BRANCH NAME			
CASE NAME: Jenny Ann Dunckley and Brendan Thomas Dunckley			
DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA)			CASE NUMBER

1. I am a party to this proceeding to determine custody of a child.
2. ☐ Declarant's present address is not disclosed. It is confidential under Family Code section 3409. The address of children presently residing with declarant is identified on this declaration as confidential.
3. (Number): Two (2) minor children are subject to this proceeding as follows:
(Insert the information requested below. The residence information must be given for the last FIVE years.)

a Child's name Jesse Christian Dunckley		Place of birth Clovis, CA	Date of birth 11/19/97	Sex M
Period of residence March 1999 to to present	Address 44782 Silver Spur Ct. <input type="checkbox"/> Confidential Ahwahnee, CA.	Person child lived with (name and present address) Jenny Ann Dunckley		Relationship mother
May 1998 to March 99	Red Hook, NY	Jenny Ann Dunckley and Brendan Thomas Dunckley		mother father
Nov. 97 to May 98	44782 Silver Spur Ct. Ahwahnee, CA.	Jenny Ann Dunckley and Brendan Thomas Dunckley		mother father
to				
to				
b Child's name Madison Lynn Dunckley		Place of birth Duchess County, NY	Date of birth 1/7/99	Sex F
<input checked="" type="checkbox"/> Residence information is the same as given above for child a. (If NOT the same, provide the information below)				
Period of residence to present	Address <input type="checkbox"/> Confidential	Person child lived with (name and present address)		Relationship
to				
to				
to				

- c. ☐ Additional children are listed on Attachment 3c. (Provide requested information for additional children on an attachment.)

(Continued on reverse)

V9. 551 107

SHORT TITLE: Dunckley and Dunckley	CASE NUMBER
---------------------------------------	-------------

4 Have you participated as a party or a witness or in some other capacity in another litigation or custody proceeding, in California or elsewhere, concerning custody of a child subject to this proceeding?

☒ No ☐ Yes (If yes, provide the following information.)

a. Name of each child:

b. Capacity of declarant: ☐ party ☐ witness ☐ other (specify):

c. Court (specify name, state, location):

d. Court order or judgment (date):

5. Do you have information about a custody proceeding pending in a California court or any other court concerning a child subject to this proceeding, other than that stated in item 4?

☒ No ☐ Yes (If yes, provide the following information.)

a. Name of each child:

b. Nature of proceeding: ☐ dissolution or divorce ☐ guardianship ☐ adoption ☐ other (specify):

c. Court (specify name, state, location):

d. Status of proceeding:

6. Do you know of any person who is not a party to this proceeding who has physical custody or claims to have custody of or visitation rights with any child subject to this proceeding?

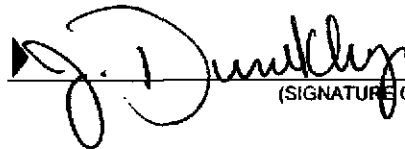
☒ No ☐ Yes (If yes, provide the following information.)

<p>a. Name and address of person</p> <p><input type="checkbox"/> Has physical custody <input type="checkbox"/> Claims custody rights <input type="checkbox"/> Claims visitation rights</p>	<p>b. Name and address of person</p> <p><input type="checkbox"/> Has physical custody <input type="checkbox"/> Claims custody rights <input type="checkbox"/> Claims visitation rights</p>	<p>c. Name and address of person</p> <p><input type="checkbox"/> Has physical custody <input type="checkbox"/> Claims custody rights <input type="checkbox"/> Claims visitation rights</p>
Name of each child	Name of each child	Name of each child

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Date: 8/16/99

... Jenny Ann Dunckley
(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

7. ☐ Number of pages attached after this page:

NOTICE TO DECLARANT: You have a continuing duty to inform this court if you obtain any information about a custody proceeding in a California court or any other court concerning a child subject to this proceeding.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): HARRY PASCUZZI, ATTY AT LAW, APC Patricia Bone O'Neill #184861 2377 W. Shaw, Suite 201 Fresno, California 93711 TELEPHONE NO.: (559) 227-1100 FAX NO.: (559) 227-1290 ATTORNEY FOR (Name): BRENDAN DUNCKLEY	FOR COURT USE ONLY FILED MADERA SUPERIOR COURT 00 JUL -3 PM 1:49 JANET H. GALLAGHER CLERK OF THE COURT DANNA C. FINELAS DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MADERA STREET ADDRESS: 209 W. Yosemite MAILING ADDRESS: CITY AND ZIP CODE: Madera, CA 93637 BRANCH NAME: CENTRAL DIVISION	
MARRIAGE OF PETITIONER: JENNY ANN DUNCKLEY RESPONDENT: BRENDAN DUNCKLEY	
JUDGMENT <input checked="" type="checkbox"/> Dissolution <input type="checkbox"/> Legal separation <input type="checkbox"/> Nullity <input checked="" type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital status <input type="checkbox"/> Judgment on reserved issues Date marital status ends: JUL 03 2000	CASE NUMBER: CV03749

1. ☐ This judgment ☐ contains personal conduct restraining orders ☐ modifies existing restraining orders.
 The restraining orders are contained on page(s) _____ of the attachment. They expire on (date): _____
2. This proceeding was heard as follows: ☐ default or uncontested ☐ by declaration under Fam. Code, § 2336 ☒ contested
- a. Date: **June 9, 2000** Dept.: **3** Rm.: _____
- b. Judicial officer (name): **John W. DeGroot** ☐ Temporary judge
- c. ☒ Petitioner present in court ☒ Attorney present in court (name): **Kenneth A. Ballard**
- d. ☒ Respondent present in court ☒ Attorney present in court (name): **Patricia B. O'Neill**
- e. ☐ Claimant present in court (name): _____ ☐ Attorney present in court (name): _____
- f. ☐ Other (specify name): _____
3. The court acquired jurisdiction of the respondent on (date): **9-14-99**
☐ Respondent was served with process ☒ Respondent appeared
4. THE COURT ORDERS, GOOD CAUSE APPEARING:
- a. ☒ Judgment of dissolution be entered. Marital status is terminated and the parties are restored to the status of unmarried persons
 (1) ☒ on the following date (specify): **JUL 03 2000**
 (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.
- b. ☐ Judgment of legal separation be entered.
- c. ☐ Judgment of nullity be entered. The parties are declared to be unmarried persons on the ground of (specify): _____
- d. ☐ This judgment shall be entered nunc pro tunc as of (date): _____
- e. ☐ Judgment on reserved issues.
- f. ☐ Wife's ☐ Husband's former name be restored (specify): _____
- g. ☒ Jurisdiction is reserved over all other issues and all present orders remain in effect except as provided below.
- h. ☐ This judgment contains provisions for child support or family support. Both parties shall complete and file with the court a *Child Support Case Registry Form* (form 1285.92) within 10 days of the date of this judgment. The parents shall notify the court of any change in the information submitted within 10 days of the change by filing an updated form. The forms *Notice of Rights and Responsibilities* (form 1285.78) and *Information Sheet on Changing a Child Support Order*

(Continued on reverse)



MARRIAGE OF (last name, first name of parties): **MARRIAGE OF
DUNCKLEY: JENNY ANN and BRENDAN**

CASE NUMBER:
CV03749

4. i. ☐ A marital settlement agreement between the parties is attached.
 j. ☐ A written stipulation for judgment between the parties is attached.
 k. ☐ Child custody and visitation is ordered as set forth in the attached ☐ Marital settlement agreement, stipulation for judgment, or other written agreement.
☐ Child Custody and Visitation Order Attachment (form 1296.31A)
☐ Other (specify):
 l. ☐ Child support is ordered as set forth in the attached ☐ Marital settlement agreement, stipulation for judgment, or other written agreement.
☐ Child Support Information and Order Attachment (form 1296.31B)
☐ Non-Guideline Child Support Findings Attachment (form 1296.31B(1))
☐ Stipulation to Establish or Modify Child Support Order (form 1285.27)
☐ Other (specify):
 m. ☐ Spousal support is ordered as set forth in the attached ☐ Marital settlement agreement, stipulation for judgment, or other written agreement.
☐ Spousal or Family Support Order Attachment (form 1296.31C)
☐ Other (specify):
☐ NOTICE: It is the goal of this state that each party shall make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating spousal support.
 n. ☐ Parentage is established for children of this relationship born prior to the marriage.
 o. ☐ Other (specify):

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions.

Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date: 7/2/2000

5. Number of pages attached: _____

☐ SIGNATURE FOLLOWS LAST ATTACHMENT


JUDGE OF THE SUPERIOR COURT

NOTICE

Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters that you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. Dissolution or annulment of your marriage may automatically change a disposition made by your will to your former spouse. A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment will automatically be issued if child support, family support, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF MADERA

Jenny Ann Dunckley vs. Brendan Thomas Dunckley

Case No: MCV03749

DATE: June 22, 2007

HEARING TYPE: Review of Reports
Hearing

Companion Case: 2557 & 2557A

☐ Interpreter

JUDGE: Honorable James E Oakley

CLERK: Filigata Samuelu

REPORTER: Sabrina Shafer

☐ New Issue Heard ☐ 1APPEARANCES: ☒ Petitioner☒ Counsel Petitioner Attorney by Kenneth Ballard☒ Respondent☐ Counsel Respondent Attorney by Pro Per

- ☒ Court calls matter on the record. Petitioner, Jenny Ann Dunckley is present with her attorney Kenneth Ballard. Respondent, Brendan Thomas Dunckley is also present representing himself.
- ☒ Court has received a memo from Family Court Services dated 6/20/07. The Court is very disappointed that a report is not ready which is a combination of the Parties not contacting Family Court Services and Family Court Services should have initiated contact with the Parties.
- ☒ Attorney Ballard states, Parties were not told to report to Family Court Services.
- ☒ Counsel states, Mr. Levine was to conduct an investigation.
- ☒ Counsel addresses the Court re: charges pending in Nevada.
- ☒ Counsel recites the Police reports and documents on the record,
 1. Reno Police Report dated 4/19/07
 2. Reno Police Report dated 3/10/07
 3. Reno Police Report dated 8/20/05
- ☒ Counsel notes, the name of the victim has been redacted.
- ☒ Mr. Dunckley agrees, that the Parties were not told at the last hearing to report to Family Court Services.
- ☒ The Parties have always reported when ordered by the Court.
- ☒ Respondent did not receive the memo from Family Court Services.
- ☒ Respondent addresses the Court re: current charges and submits a Police report stating charges are dismissed with a preliminary hearing set for 07/02/07.
- ☒ Respondent addresses the Court re: charges and visitations, he wants his children to spend time with his other children in Nevada.

COURT ORDERS:

- ☒ Court recites the memo from Family Court Services to the Parties.
- ☒ Court reviews the Police report and documents submitted by Respondent.
- ☒ Court provides copies of reports to Counsel and Mr. Dunckley.
- ☒ Court marks the documents provided as follows:
 - Exhibit #A: Motion to dismiss
 - Exhibit #B: Reno Police report dated 8/20/05
 - Exhibit #C: Reno Police report dated 3/10/07
 - Exhibit #D: Reno Police report dated 4/19/07
- ☒ Court admits all exhibits into evidence.
- ☒ Court further notes, in the past, the Court had no information.
 - For purposes of temporary orders, the Court now has information to suspend custody.
 - Court orders visitations suspended.
 - Parties are re-referred to Family Court Services for a full investigation pursuant to FC 3111.
 - Each Party to report to Family Court Services when they leave the Court today.
 - Court did not order the Parties the last time because Family Court Services requested more time.
- ☒ Mr. Dunckley addresses the court objecting to the Court's order to suspend visitations.
- ☒ Mr. Ballard to prepare order.
- ☒ Matter is to continued to: 08-24-07 at 8:30am Dept. 5 For: Review of 3111 Investigation Report

☒ Copy to: ☒ Family Court Services**CALENDARED-IC**

Minute Order – Disso & Harass

**IN THE MUNICIPAL COURT OF THE CITY OF RENO
COUNTY OF WASHOE, STATE OF NEVADA**

CITY OF RENO (Plaintiff / Demandante) vs.

Case # 16796-07

BRENDAN DUNKLEY
Name (First, Middle, Last) (Nombre Completo)
4458 HIGH PLAINS DRIVE
Address (Dirección)
RENO, NV 89523
City, State, Zip (Ciudad, Estado, Código postal)
379-7657(C)
Home Phone Number (Teléfono Casa) Work Phone Number (Teléfono Trabajo)

Dept. #1 _____
Dept. #2 _____
Dept. #3 _____
Dept. #4 X

MOTION / PETICION A LA CORTE

Comes now the undersigned affiant and moves the court to grant the following (El suscrito solicita a la corte que lo siguiente sea otorgado):

☐ Forfeit Bail (Confisque la fianza) ☐ Time to Pay Extension (Extensión para pagar) ☐ New Arraignment Date (Nueva Fecha de Lectura de Cargos)
☐ New Trial Date (Nueva Fecha de Juicio) ☐ Dismiss Warrant (Descartar orden de arresto) ☐ Change of Plea (Cambio de Declaración)
Other (Otro): DISMISS COMPLAINT W/O PREJUDICE

This relief is sought for the following reasons (Este remedio es solicitado por la siguiente razón, escriba en Español):

INSUFFICIENT EVIDENCE TO PROVE BEYOND
A REASONABLE DOUBT. DISMISSAL IS IN THE
INTEREST OF JUSTICE

AFFIRMATION / ATESTACION

I, (print name/imprima su nombre) WILLIAM L. GARNEY, COCA, hereby solemnly affirm and declare that the above statements are true to the best of my knowledge, belief, and made in good faith and not merely for delay. (Yo, por este medio solemnemente afirmo y declaro que las declaraciones anteriores son verdaderas a lo mejor de mi saber, credibilidad, y hechas de buena fe y no para retrasar mi caso.)

Will L. Garney 6-15-07
AFFIANT'S SIGNATURE (FIRMA DEL DECLARANTE)

COURT USE ONLY / NO ESCRIBA NADA ABAJOContinued From: _____ Continued To: _____ ☐ Defendant (Mail) ☐ Defendant (Hand) ☐ Defendant's Atty ☐ City Attorney

Clerk Signature: _____ Date: _____

ORDER / ORDEN

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that the motion be: ☐ Granted (Otorgada) ☐ Denied (Negada)
(Habiendo justa razón, es ordenado que la solicitud sea)

Other (Otro): _____

DATED THIS _____ day of _____, 20____.

White: Court Pink: City Attorney Canary: Defendant

Municipal Court Judge / Juez de La Corte Municipal

V9. 556

CERTIFICATE OF SERVICE

I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(ies) set forth below by:

1 Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail at Reno, Nevada, postage prepaid, following ordinary business practices.

 Personal delivery.

 Facsimile (FAX)

 Federal Express or other overnight delivery.

 Reno/Carson Messenger Service.

Addressed as follows:

**Brendan Dunkley
4458 High Plains Drive
Reno, NV 89523**

DATED this 18 day of June, 2007.

Barbara Ancina



Incident Report

RENO POLICE DEPARTMENT

05-34027

Supplement No
ORIG

Address
P.O. BOX 1900
Address
455 E 2ND ST
City State, Zip
Reno NV, 89505
Phone Number
775-334-2175
Fax Number

Reported Date
08/20/2005
Nature of Call
SEXASSLT
Author
CLARK, JERRY JR

Administrative Information

Agency RENO POLICE DEPARTMENT	OCA # 05-34027	Supplement No ORIG	Reported Date 08/20/2005	Reported Time 23:07	CAD Call No 052321447
Status REPORT TO FOLLOW	Nature of Call SEXUAL ASSAULT				
City RENO	Rep Dist J713	Area RN	Beat 44	From Date 08/20/2005	From Time 21:30
Emp # R9727/CLARK, JERRY JR			Assignment Patrol - Grave - Team 02		Author R9727
Assignment Patrol - Grave - Team 02		RMS Transfer Successful	Prop Trans Stat Successful	Approving Officer R0725	
Approval Date 08/22/2005		Approval Time 05:32:20			
# Offenses 1	Offense 200.366	Description SEXUAL ASSAULT		Complaint Type F	
Link SUS	Involvement SUS	Seq # 1	Name DUNCLEY, BRENDAN THOMAS	Race, Sex, Date of Birth	

Person Summary

Inv#	Inv# No	Type	Name	MNI	Race	Sex	Date of Birth
LEP	1	P	; CLARK, WADE - RPD				
LEP	2	P	; BELLINGER, KRISTEN - RPD				
LEP	3	P	; ALLEN, DUSTIN - RPD				
LEP	4	P	; HEGLAR, SCOTT - RPD				
LEP	5	P	; RULLA, BILL - RPD SGT				
LEP	6	P	; SALTER, ALAN - RPD DET				
LEP	7	P	; BRADSHAW, KIM - RPD DET SGT				
LEP	8	P	; ARMITAGE, BARBARA - RPD DET				
LEP	9	P	; BROOME, TOM - RPD DET				

Report Officer
R9727/CLARK, JERRY JR



Law Offices of
REL TO: Kenneth Ballard DATE: 5/25/07 BY: CK
UNLAWFUL DISSEMINATION OF THIS RESTRICTED INFORMATION IS PROHIBITED.
VIOLATION WILL SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.

per Det. Broome

**Incident Report
RENO POLICE DEPARTMENT****05-34027****LAW ENFORCEMENT PERSONNEL 1: ;CLARK,WADE - RPD**

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	1	POLICE OFFICER (RPD/UNR ONLY)
Name		
;CLARK,WADE - RPD		

LAW ENFORCEMENT PERSONNEL 2: ;BELLINGER,KRISTEN - RPD

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	2	POLICE OFFICER (RPD/UNR ONLY)
Name		
;BELLINGER,KRISTEN - RPD		

LAW ENFORCEMENT PERSONNEL 3: ;ALLEN,DUSTIN - RPD

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	3	POLICE OFFICER (RPD/UNR ONLY)
Name		
;ALLEN,DUSTIN - RPD		

LAW ENFORCEMENT PERSONNEL 4: ;HEGLAR,SCOTT - RPD

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	4	POLICE OFFICER (RPD/UNR ONLY)
Name		
;HEGLAR,SCOTT - RPD		

LAW ENFORCEMENT PERSONNEL 5: ;RULLA,BILL - RPD SGT

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	5	POLICE OFFICER (RPD/UNR ONLY)
Name		
;RULLA,BILL - RPD SGT		

LAW ENFORCEMENT PERSONNEL 6: ;SALTER,ALAN - RPD DET

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	6	POLICE OFFICER (RPD/UNR ONLY)
Name		
;SALTER,ALAN - RPD DET		

LAW ENFORCEMENT PERSONNEL 7: ;BRADSHAW,KIM - RPD DET SGT

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	7	POLICE OFFICER (RPD/UNR ONLY)
Name		
;BRADSHAW,KIM - RPD DET SGT		

LAW ENFORCEMENT PERSONNEL 8: ;ARMITAGE,BARBARA - RPD DET

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	8	POLICE OFFICER (RPD/UNR ONLY)
Name		
;ARMITAGE,BARBARA - RPD DET		

LAW ENFORCEMENT PERSONNEL 9: ;BROOME,TOM - RPD DET

Involvement	Seq #	Type
LAW ENFORCEMENT PERSONNEL	9	POLICE OFFICER (RPD/UNR ONLY)
Name		
;BROOME,TOM - RPD DET		

Report Officer	
R9727/CLARK, JERRY JR	

Incident Report

RENO POLICE DEPARTMENT

05-34027

117
Supplement No
ORIG

Property					
Item	Involvement	In Custody?	Bar Code	Item No	
1	EVIDENCE	Yes	050009152	1	
Description					
Audio tape of contact and interview/statement of suspect					
Type	Cat	Article	# Places	Box Location	
A	AUDIO TAPE	AUDIO	1	[REDACTED]	
Rev City	Rev St	Rep Dist	Year		
RENO	NEVADA	K5C4	86		
Modus Operandi					
Weapon Used		Premise Type		Victim's Race	Victim's Sex
HANDS, FISTS, FEET		CAR, TRUCK, VAN/VACANT, EMPTY LOT		WHITE	FEMALE
Victim's Action					
NOT AT HOME					
Suspect Action					
VEHICLE NEEDED/RAPE					
Crime Code(s)					
SEX CRIMES					

Narrative

On August 20, 2005, at approximately 2323 hours, Officer BELLINGER and I (CLARK) responded to Washoe Medical Center ER on report of a sexual assault that occurred between 2100-2200 hours. Upon arrival Officer BELLINGER and I contacted ER nurse HUGHES, Cyndi who said that the victim was an eighteen year old female who would be located in ER room # 28. HUGHES told us she is complaining of throat and vaginal pain. HUGHES examined the victim's throat and she reported no injuries visible. Officer BELLINGER and I then contacted victim [REDACTED] and her mother [REDACTED] ([REDACTED] initially reported the last name of [REDACTED] to officers).

Victim [REDACTED] reported the following to me at Washoe Medical Center:

At approximately 2100 hours [REDACTED] and her roommate [REDACTED], were at the Bluffs Apartment complex, [REDACTED] visit co-workers [REDACTED] and [REDACTED], who live at the above address in apartment [REDACTED] and [REDACTED] were walking through the parking lot and [REDACTED] saw an old friend only identified as Brendan. [REDACTED] used to be friends with Brendan 4 years ago and has only seen him once in the last four years. [REDACTED] saw Brendan on Friday August 19, 2005, at approximately 2100 hours at the 7-11 convenient store located on Parr Blvd. [REDACTED] spoke with Brendan and gave him her phone number. Brendan told [REDACTED] he would call her later.)

Brendan spoke with [REDACTED] in the parking lot and asked [REDACTED] to go for a drive and talk with him, as he had just gotten off of work. [REDACTED] agreed but told Brendan she could only be gone for ten minutes as she was at the Bluffs to visit friends. [REDACTED] got into Brendan's small older blue two door car and they drove through the complex. While driving Brendan asked her how she was doing, what she has been doing lately, and where she was currently working. Brendan drove the car off the pavement onto a dirt road into the hills from the Bluffs Apartment complex.

Brendan stopped the car an unknown distance from the two signs notifying vehicles that the pavement is ending. As soon as [REDACTED] told Brendan she was working at [REDACTED], Brendan grabbed her throat with his right hand (squeezed her neck) and her hair with his left hand. [REDACTED] started pushing Brendan away and slapping him on the arms and face.

Brendan then got out of the vehicle, opened the passenger side door, grabbed [REDACTED] hair on the back of her head and started to pull her out of the vehicle. [REDACTED] said she was grabbing onto the side of the car trying not to be pulled out. As Brendan pulled [REDACTED] out of the passenger side of his vehicle, she lost her balance and fell onto the ground. [REDACTED] got up on her feet and Brendan grabbed her hair again telling her to take off her pants. [REDACTED] told Brendan "no, I am not going to take off my pants." Brendan pushed her towards the hood on the front end of the vehicle, on the passenger side and unbuckled her belt, unbuttoned and unzipped her pants. [REDACTED] was slapping and pushing Brendan as he was unbuckling and unbuttoning her pants. [REDACTED] repeatedly told Brendan to stop and leave her alone. [REDACTED] said she was extremely scared and kept saying "no" and "stop". Brendan then pulled her pants and underwear to her knees. Brendan bent [REDACTED] over the front hood on the passenger side of his vehicle. Brendan then grabbed [REDACTED] by the hair on the back of the

Report Officer
R9727/CLARK, JERRY JR

**Incident Report
RENO POLICE DEPARTMENT****05-34027**Supplement No
ORIG**Narrative**

head and pushed her head on the hood of the vehicle. Brendan inserted his penis into her vagina and proceed to have intercourse from behind [REDACTED]. Brendan was not using a condom and ejaculated inside of [REDACTED] vagina. After Brendan pulled his penis out of [REDACTED], she pulled up her underwear and pants. Brendan then opened the passenger side door and told [REDACTED] to get in.

Brendan drove [REDACTED] to the area where he met her and as she was getting out of the vehicle said "I will give you a call later, whore", and drove off.

[REDACTED] then entered apartment [REDACTED] and saw [REDACTED], who asked what was wrong. [REDACTED] did not answer her and poured a shot of Vodka and ingested it. [REDACTED] then went out onto the balcony to smoke a cigarette with [REDACTED]. [REDACTED] then told [REDACTED] what had happened. [REDACTED] tried calling her parents but they did not answer the phone. [REDACTED] then tried calling her brother-in-law [REDACTED], who answered the phone. [REDACTED] took [REDACTED] and [REDACTED] to Washoe Medical Center and contacted [REDACTED] parents.

[REDACTED] stated that she does not know Brendan's last name or where he works. [REDACTED] described Brendan as a white male in his late twenties; 5' 9" or 5'10", medium build, brown hair to his ears (average man's hair cut), wearing black pants, and a white or gray short sleeve t-shirt. [REDACTED] did not observe any scars or tattoos on Brendan. [REDACTED] knew Brendan from four years ago, as an acquaintance of her former friend, [REDACTED], with whom she no longer associates.

[REDACTED] was still wearing the clothing that she had on during the assault. [REDACTED] did not shower, bathe, or clean herself. However, [REDACTED] does not recall if she went to the bathroom. [REDACTED] agreed to submit to a SART exam. Sgt. RULLA, who had responded to Washoe Medical Center and was advised of this case, made the appropriate notification. Officer BELLINGER and I transported [REDACTED] and her mother [REDACTED] to the Northern Nevada Medical Center at approximately 0033 hours.

On August 21, 2005, at approximately 0100 hours victim advocates SCHWEBER, Erin and HSU, Mindy arrived at Northern Nevada Medical Center. SCHWEBER and HSU met with me and notified me that SART nurse ENGEL, Denise would be arriving shortly for the exam. SCHWEBER and HSU contacted [REDACTED] parents and then took [REDACTED] to the SART exam room. I asked SCHWEBER to notify ENGEL that the clothes needed to be collected for evidence.

On August 21, 2005 at approximately 0114, Officer HEGLAR attempted to locate the crime scene and was unable to identify an exact location. Officer HEGLAR responded to the Bluffs Apartment complex, [REDACTED]

Report Officer

R9727/CLARK, JERRY JR

Incident Report RENO POLICE DEPARTMENT

05-34027

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ORIG

Narrative

Officer BELLINGER ran a NAMS check on DUNCKLEY, Brendan which came back with an address on [REDACTED] Reno, Nevada. The DMV check showed that DUNCKLEY was the registered owner of a four door Ford Taurus with Nevada plates of [REDACTED]. Officer BELLINGER and I drove by the above address to attempt to locate the vehicle. The above vehicle was not at the above address at that time.

At approximately 0319 hours Officer BELLINGER and I responded back to [REDACTED] Reno, Nevada, to see if the vehicle registered to DUNCKLEY had returned. Upon arrival we saw the four door light blue Ford Taurus with Nevada plates [REDACTED] parked in the parking lot. Officer ALLEN arrived at the above address to watch the vehicle as Officer BELLINGER and I drove [REDACTED] by the car to identify it as belonging to Brendan. [REDACTED] stated that is not Brendan's car.

At approximately 0417 hours Officers BELLINGER, ALLEN and I contacted DUNCKLEY at [REDACTED] Reno, Nevada. DUNCKLEY stated that he was working at the Bluffs Apartment complex putting boots on cars. DUNCKLEY said that he was at the complex at different times throughout the day and night of August 20-21, 2005 between the hours of 0800 until 0200 hours.

DUNCKLEY initially reported the following:

DUNCKLEY knows [REDACTED] and saw her that evening, but he just spoke with her. [REDACTED] got into his car to go put a boot on a car. DUNCKLEY and [REDACTED] went to another part of the apartment complex talking for

Report Officer

R9727/CLARK, JERRY JR [REDACTED]

Incident Report

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ORIG**RENO POLICE DEPARTMENT****Narrative**

approximately 15-20 minutes and he dropped her off at approximately 1900 hours. DUNCKLEY went back to the Bluffs apartment complex to remove a boot from a car approximately 0100 hours. DUNCKLEY was approached by some people and was asked what did you do to [REDACTED]. DUNCKLEY said "Who?" "Nothing," and then left the area.

DUNCKLEY asked us if we could continue the conversation somewhere else because his wife was in the apartment. We then relocated to the parking lot, behind DUNCKLEY's car.

DUNCKLEY reported the following at his car:

While in the car [REDACTED] was flirting with DUNCKLEY making sexual advances toward him. DUNCKLEY parked his vehicle on a dirt road above the Bluffs apartment complex. DUNCKLEY refused her advances at first. DUNCKLEY and [REDACTED] started kissing mouth to mouth. [REDACTED] unbuckled her belt, unbuttoned her pants, and put DUNCKLEY's hand in her underwear. [REDACTED] then began touching DUNCKLEY on his groin. For an unknown amount of time [REDACTED] and DUNCKLEY kissed and touched each other.

[REDACTED] then asked DUNCKLEY to get out of the vehicle and come with her. [REDACTED] and DUNCKLEY exited the vehicle. [REDACTED] removed her pants and underwear. DUNCKLEY and [REDACTED] then engaged into consensual sexual intercourse (penis to vagina). [REDACTED] said "she enjoyed the outdoors at night and it felt like she was being raped." When DUNCKLEY and [REDACTED] finished having sexual intercourse, she said "she felt like she was torn in half having been a year and half since the last time." [REDACTED] told DUNCKLEY "Now I can say I did it on a hill." DUNCKLEY took her back to her friend's apartment and she gave him a kiss on the cheek before exiting the vehicle.

DUNCKLEY said he received an unknown number of calls throughout the night (from [REDACTED]) from an unknown person, threatening him with physical violence and accusing him of assaulting [REDACTED].

I offered DUNCKLEY the chance to speak with a detective to tell his side of the story. DUNCKLEY was advised he was not in custody. DUNCKLEY agreed to speak with Detectives. DUNCKLEY also signed the attached permission to search waiver for his vehicle.

Sgt. RULLA was advised of the developments of the case and notified on-call sex crimes detective, SALTER. Officer BELLINGER advised Detective SALTER, Sgt. BRADSHAW, and Detective ARMITAGE of the case telephonically. At approximately 0624 hours Detective BROOME arrived at [REDACTED] Reno, Nevada, and was briefed by Officer BELLINGER. DUNCKLEY agreed to go with Detective BROOME to his office for a voluntary interview. Detective ARMITAGE attempted unsuccessfully to locate [REDACTED] for a second interview.

Officer BELLINGER and I stood by with the vehicle until FIS arrived. At approximately 0653 hours, WCSO FIS Crime lab technician SANDERS, Tracy arrived to process it and collect evidence. [REDACTED]

I booked the recorded tape of the conversation I had with DUNCKLEY in Reno Police Department evidence.-NFD-

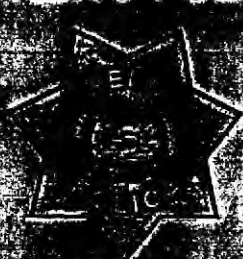
Report Officer

R9727/CLARK, JERRY JR

Incident Report RENO POLICE DEPARTMENT

07-9446

121
Supplement No
ORIG



Address
P.O. BOX 1900
Address
455 E 2ND ST
City/State/Zip
Reno NV, 89505
Phone Number
775-334-2175
Fax Number

Reported Date
03/10/2007
Nature of Call
SEXASSLT
Author
HEGLAR, SCOTT

Administrative Information

Agency RENO POLICE DEPARTMENT	OCA # 07-9446	Supplement No ORIG	Reported Date 03/10/2007	Reported Time 18:54	CAD Call No 070691209
Status REPORT TO FOLLOW	Nature of Call SEXUAL ASSAULT	Crime/Inc Loc [REDACTED]			
City RENO	Rep Dist H4F2	Area RN	Beat 38	From Date 03/10/2007	From Time 18:50
Emp # R9474/HEGLAR, SCOTT	Assignment Patrol - Swing - Team 21				
Emp #2 TRANSCRIBER, REPORTS	Assignment Administration - Academy - Days			Author R9474	
Assignment Patrol - Swing - Team 21	RMS Transfer Successful	Prop Trans Stat Successful	Approving Officer R4218		
Approval Date 03/17/2007	Approval Time 22:36:46				
Written Statement Yes					
# Offenses 1	Offense 200.366	Description SEXUAL ASSAULT	Complaint Type		

Person Summary

Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
LEP	1	P	;HEGLAR, SCOTT				
LEP	2	P	;MILLSAP, DAVID				
LEP	3	P	;LEONARD, ROLFE				
LEP	4	P	;SEVCSIK, PAUL RPD-SGT				
LEP	5	P	;BROOME, TOM RPD-SEX CRIMES DET				
SUS	1	I	DUNCKLEY, BRENDAN				
VIC	1	I	[REDACTED]				
WIT	1	I	[REDACTED]				
WIT	2	I	[REDACTED]				

Property Summary

Involvement EVD
Description ARTICLE: PHOTO/COMPUTER DISKS AUDIO CD One audio cd recording of interview.
Involvement EVD
Description ARTICLE: OTHER ITEMS / MISCELLANEOUS SWABS One swab of suspects genitals. One control swab of tap water.
Involvement PIC
Description ARTICLE: PHOTO/COMPUTER DISKS DIGITA VERIPI Digital images of suspect, victim, and scene.

Report Officer
R9474/HEGLAR, SCOTT

Law Offices of

REL TO: *Kenneth Ballard* DATE *5/25/07* BY: *CU*

UNLAWFUL DISSEMINATION OF THIS RESTRICTED INFORMATION IS PROHIBITED
VIOLATION WILL SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.

per Det Broome V9 565121

Incident Report

07-9446

RENO POLICE DEPARTMENT

LAW ENFORCEMENT PERSONNEL 1: ;HEGLAR,SCOTT

Involvement	Seq#	Type
LAW ENFORCEMENT PERSONNEL	1	POLICE OFFICER (RPD/UNR ONLY)

Name
;HEGLAR, SCOTT

LAW ENFORCEMENT PERSONNEL 2: ;MILLSAP,DAVID

Involvement	Seq#	Type
LAW ENFORCEMENT PERSONNEL	2	POLICE OFFICER (RPD/UNR ONLY)

Name
;MILLSAP, DAVID

LAW ENFORCEMENT PERSONNEL 3: ;LEONARD,ROLFE

Involvement	Seq#	Type
LAW ENFORCEMENT PERSONNEL	3	POLICE OFFICER (RPD/UNR ONLY)

Name
;LEONARD, ROLFE

LAW ENFORCEMENT PERSONNEL 4: ;SEVCSIK,PAUL RPD-SGT

Involvement	Seq#	Type
LAW ENFORCEMENT PERSONNEL	4	POLICE OFFICER (RPD/UNR ONLY)

Name
;SEVCSIK, PAUL RPD-SGT

LAW ENFORCEMENT PERSONNEL 5: ;BROOME,TOM RPD-SEX CRIMES DET

Involvement	Seq#	Type
LAW ENFORCEMENT PERSONNEL	5	POLICE OFFICER (RPD/UNR ONLY)

Name
;BROOME, TOM RPD-SEX CRIMES DET

SUSPECT 1: DUNCKLEY,BRENDAN

Report Officer

R9474/HEGLAR, SCOTT

Incident Report

07-9446

Supplement No
ORIG

RENO POLICE DEPARTMENT

Property

Item	Involvement	In Custody?	Bar Code	Item No
1	EVIDENCE	Yes	070001934	2
Description One audio cd recording of interview.				
Type	Cat	Article	Brand	# Pieces
A	PHOTO/COMPUTER DISKS	AUDIO	CD	1
Item	Involvement	In Custody?	Bar Code	Item No
2	EVIDENCE	Yes	070001934	1
Description One swab of suspects genitals. One control swab of tap water.				
Type	Cat	Article	Brand	# Pieces
A	OTHER ITEMS / MISCELLANEOUS	SWABS		2
Item	Involvement	In Custody?		
3	Veripic Pictures Only	No		
Description Digital images of suspect, victim, and scene.				
Type	Cat	Article	Brand	
A	PHOTO/COMPUTER DISKS	DIGITA	VERIPI	

Modus Operandi

Physical Evidence	Premise Type	Victim's Race	Victim's Sex	Victim's Age
PHOTOS/OTHER	APARTMENT/CONDOMINIUM/PARKING LOT	WHITE	FEMALE	ADULT
Crime Code(s)				
SEX CRIMES				

Narrative

On Saturday, March 10, 2007 at around 1900 hours, Officer Millsap and I responded to [REDACTED] regarding an unknown type of disturbance. Dispatch advised that they received multiple calls of a woman screaming and the call taker could hear an extreme disturbance in the background.

Upon arrival I was hailed by a large group standing in front of building [REDACTED]. I noticed a female sitting on the curb crying hysterically. As I approached, bystanders said the female was saying that she was sexually assaulted. One of the bystanders pointed to a white van and told me the driver was the person she was accusing of this.

I made contact with a male who identified himself as Brendan Dunckley. Brendan told me the following: He was on his way home from work when he noticed the female (later identified as [REDACTED]) stumbling in the roadway. Brendan said she appeared intoxicated and he feared for her safety because she kept stumbling into the roadway.

It should be noted that Brendan was on the phone with his wife and told her what was happening. Brendan approached [REDACTED] and asked if she was ok. [REDACTED] said she was walking home. Brendan told her he was going to follow her home to make sure she gets there without getting hurt.

As Brendan followed her she continued to stumble into the roadway. Once they got near the mail boxes at the front entrance, [REDACTED] fell into the mail boxes and onto the ground. Brendan continued to watch her as she began to walk up a flight of stairs. While on the stairs [REDACTED] fell again.

At this time Brendan parked his van in front of building [REDACTED] and got out to help [REDACTED]. Brendan helped her up the stairs and assisted her as she walked to apartment [REDACTED]. Once at the door Brendan asked if she had a key. [REDACTED] said no and fell into the door and it opened. Brendan began to walk away and [REDACTED] collapsed landing face down in a pile of cloths.

Brendan saw that she was unconscious so he gave her a sternum rub and checked her pulse. [REDACTED] came to and he began asking questions such as, her name, how much she drank, etc? [REDACTED] replied by saying, "Three

Report Officer	
R9474/HEGLAR, SCOTT	[REDACTED]

Incident Report RENO POLICE DEPARTMENT

Narrative

drinks I lost my slippers I hate my boyfriend."

again lost consciousness and Brendan again rubbed her sternum. This time when she came to she had a totally different facial expression and began screaming "Who are you?" Brendan was still talking to his wife on the phone. His wife told him to leave and he began to walk away.

As Brendan was walking away ran after him and began to hit him. stopped and began banging on a neighbors door. Brendan walked away and as he got to the parking lot again approached him and began hitting him. Brendan saw a man in the parking lot and asked for his help. A second man approached them and said he was boyfriend. Brenda was able to get away from her. He then went to his van hung up with his wife and called the RPD non-emergency number.

Brendan had at least one noticeable red mark on his neck. Brendan allowed me to check the call history on his phone. I noticed a call to around 1900 hours, then a call to 334-2677 (COPS) and then one more call to " Brendan's phone did not provide the duration of the call.

I then tried to interview and recorded it on a digital voice recorder. She was hysterically crying and in broken statements told me the following. was arguing with her boyfriend and she decided to go for a walk. As she was walking back to her apartment a male approached her in a van and tried to get her in the car. said no and walked away. While walking home the van followed her.

The next thing she remembered the same male was forcing his penis into her mouth. said she didn't know what to do so, she bit his penis. said she bit it at least four times on the shaft. I asked if she bit it hard enough that she thought it would leave a visible injury and she adamantly said yes.

While talking to I noticed a strong odor of alcohol and she appeared intoxicated. Officer Alaksa responded with a PBT.

Also on scene was boyfriend, Officer Millsap interviewed and he told Officer Millsap the following: and have been dating for 6 years. They were in an argument earlier today and left. A while later brother brought her home and said he drove her because she was too intoxicated to drive.

told that she did not want to be at the house and so she left. A few minutes after she left went to look for her. He thought she was still in the parking lot so he stayed in that area looking for her. 10 to 15 minutes later heard yelling. When he approached she was surrounded by 4 to 5 men who were trying to calm her down. told that she was raped and he stayed with her until the police arrived.

Officer Leonard also responded and began canvassing for witnesses. The only witnesses we could locate all noticed the incident as was yelling at Brendan in the parking lot.

Sergeant Sevcsik was advised of the incident and responded to our location. Sergeant Sevcsik spoke to Brendan and obtained permission to inspect his penis for any sign of injury as well as a DNA swab of his penis. Sergeant Sevcsik also contacted Brendan's wife, said she was on the phone with Brendan during this incident and was able to give details that supported this. Officer Leonard later met with

Once I was advised of this I began to approach Brendan and he said something to the effect of let's get this done. Officer Millsap and I walked with Brendan to the men's restroom in the front office. Brendan had no visible injury to penis shaft, head or base. Brendan allowed me to photograph his genital area to document this.

Brendan also voluntarily provided a DNA swab. I watched as Officer Millsap saturated the cotton swab with tap water. Officer Millsap handed the swab to Brendan. Brendan rubbed the swab on the shaft, head and base of his penis. Brendan then handed the swab to Officer Millsap. Officer Millsap then placed the swab into a cardboard container. Officer Millsap also took a second cotton swab and obtained a control sample of the tap water. Officer Millsap placed the control sample in a separate cardboard container and then labeled the two boxes.

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RENO POLICE DEPARTMENT

07-9446

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ORIG

Narrative

Officer Millsap later gave me the two boxed cotton swabs. I booked the cotton swabs, digital photographs and the audio recordings into RPD evidence per procedure.

No arrest was made and this report was submitted for further review by detectives.

No further information.

Report Officer

R9474/HEGLAR, SCOTT

V9. 5695



Incident Report

RENO POLICE DEPARTMENT



Address
[REDACTED]
Address
[REDACTED]
City State, Zip
[REDACTED]
Phone Number
[REDACTED]
Fax Number
[REDACTED]

DRAFT

Reported Date
04/19/2007
Nature of Call
SEXASSLT
Author
BROOME, TOM

Supplement No
0003

Administrative Information

Agency RENO POLICE DEPARTMENT	OCA # [REDACTED]	Supplement No 0003	Reported Date 04/19/2007	Reported Time 08:22	CAD Call No [REDACTED]
Status REPORT TO FOLLOW	Nature of Call SEXUAL ASSAULT	Crime/Inc Loc [REDACTED]			
City RENO	Rep Dist H4F2	Area RN	Beat 38	From Date 03/10/2007	From Time 18:50
Emp # R1509/BROOME, TOM	Assignment Detectives - Days - Sex Crimes/Juv				
Emp #2 TRANSCRIBER, REPORTS	Assignment Administration - Academy - Days			Author R1509	
Assignment Detectives - Days - Sex Crimes/Juv			Approving Officer		Approval Date
Approval Time					

DETECTIVE 1: ;DETECTIVE TK BROOME

Involvement DETECTIVE	Seq # 1	Type INDIVIDUAL	Name ;DETECTIVE TK BROOME
Work/School RENO POLICE SEX CRIMES UNIT		Position/Grade DETECTIVE	

SUBJECT 1: DUNCKLEY, JIM

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JIM	MNI 1244891
Relationship SON	Name DUNCKLEY, BRENDAN			

SUBJECT 1: DUNCKLEY, JENNY

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JENNY	MNI 1244903
Phone Type MESSAGE	Phone No (559) 760-5108			

SUSPECT 1: DUNCKLEY, BREN

Involvement SUSPECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, BREN	MNI 913249	Race WHITE	Sex MALE
Date of Birth 07/04/1976	Age 30	Juvenile? No	Height 5'08"	Weight 178#	Hair Color BROWN	Eye Color HAZEL

Modus Operandi

Crime Code(s)
SEX CRIMES

Narrative

On April 18, 2007 I received a call from a Jim Dunckley, who identified himself as Brendan Dunckley's father. Jim explained that he, his wife and Brendan were estranged. Jim said that he was told by his former daughter in law (Brendan's first wife), Jenny that Brendan had been arrested in Reno for sex charges. Jim said that he and his wife did some research on the Internet and saw an article in the paper confirming such. Jim asked how serious the charges were and wondered if at some point he and his wife would need to make arrangements to assist Brendan's children with he and Morgan. I explained to Jim that I could not discuss the case in detail with him. I did confirm that Brendan Dunckley had been arrested on two separate sexual assaults in Reno. Brendan's mother got on the phone at this point and explained that they feared Brendan, as he had threatened to kill her at one point during a hearing in California about custody of his two children he had with Jenny. Mrs. Dunckley said that after the hearing he walked up to her and said "your dead". Mrs. Dunckley said that Brendan felt that they should not be associated with Jenny. Mrs. Dunckley described Brendan as very manipulative and Narcissistic. Mrs. Dunckley said that Jenny recently revealed that there were some disturbing sexual issues with Brendan in

Report Officer R1509/BROOME, TOM	Printed At 04/19/2007 09:51	Page 1 of 2 V9 571
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**Incident Report
RENO POLICE DEPARTMENT****DRAFT**Supplement No
0003**Narrative**

the past. I requested that Jim and his wife contact Jenny and ask if she would talk to me. They agreed. A short time later I did receive a phone call from Jenny Dunckley.

Jenny explained that she has been divorced from Brendan for 5 or 6 years. She said that they met in New York and moved to Madera County California together after they married. She said that early in their marriage in New York Brendan had affairs with friends of her's. She said that when they moved to California, her father got Brendan a job at the Pines Resort in Bass Lake California. She said that Brendan was fired two weeks later for Sexual Harassment of another employee, she described as a younger female.

During their marriage Jenny reported that Brendan was very controlling of who she could have as a friends, where she could go and it was Brendan's way or the highway. She said that Brendan was very aggressive with her both physically and sexually. I asked if there were ever any instances that she was forced to have sex with Brendan. Jenny said that she would not say that she was forced, but he did slap her around at times and she knew better than refuse him when he demanded sex.

Jenny said that the marriage broke up in July of 1999. She said that her parents owned a Bed and Breakfast in Oakhurst California and they were receiving calls from customers complaining of charges on their credit cards. Jenny said that eventually Brendan did admit to using the customer cards to pay for Internet porn and on line sex sites. She said that before he finally admitted to what he was doing he tried to "set up" her 16 year old brother by planting floppy disks with porn on them in his room, then calling her parents and tipping them off to where they could find the porn. Jenny said that there was a police report filed and there was somewhat of an investigation by Madera County Sheriffs department. She said that Brendan was not arrested since the money was paid back by the credit card companies. She said that the Sheriff's department referred to it as a victimless crime.

I asked if there were any other sexual allegations or anything involving their children. She said that there was not. The interview ended shortly thereafter. I did obtain a copy of the police report from Madera County Sheriff's Department. No Further...





Reno Police Department

P.O. Box 1900
RENO, NV 89505
Sex Crimes/Child Abuse Unit
Phone 775-785-8605
Fax 775-785-8607



DATE: April 18, 2007
TO: Madera County Sheriff
Madera, CA
Fax: 559-875-7605
FROM: Mary Lou Mullins, Police Assistant for
Detective Tom Broome
SUBJECT: 1999-10667
Brendan Dunckley
dob 7/4/76
SS: [REDACTED]

NUMBER OF PAGES SENT (Including cover sheet):

This document contains confidential material not of a public nature and is not to be disseminated without the express permission of the office of the Chief of Police of the Reno Police Department. Any unlawful dissemination of this material could result in criminal, civil or administrative sanction.

Rita

Detective Tom Broome is investigating a sexual assault case involving Brendan Dunckley

Understand there was a Fraud case investigated by your agency. Please forward a copy of your report 1999-10667 as soon as possible.

If you have any questions, please call.

Thank you for your assistance

Mary Lou Mullins

*9 pages
total*

99010667

REPORT NUMBER

Madera County
Sheriff's Department
INCIDENT REPORT



NARRATIVE

REPORTED BY 9504

REPORT FILED by the Madera County
This copy was prepared by the Madera County
Sheriff's Office on: APR 18 2007
for the official use of: PROB. 10/10/07
DA 10/10/07
Other: 10/10/07
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***** THE FOLLOWING NARRATIVE IS CONVERTED FROM A PREVIOUS AS400 CASE *****

DESCRIPTION: ORIGINAL NARRATIVE/H.WEAVER

Reporting Officer: HARDIN O. WEAVER #9504

Date of this Report: 07-19-99

ON THE ABOVE DATE AT APPROXIMATELY 2110 HOURS I WAS DISPATCHED TO 44782 SILVER SPUR TRAIL IN AHWAHNEE IN REGARDS TO A POSSIBLE CREDIT CARD FRAUD. WHEN I ARRIVED I CONTACTED THE R/P, LYNN HAYS, WHO TOLD ME THE FOLLOWING.

SHE HAD BEEN RECEIVING PHONE CALLS FROM PEOPLE WHO HAS STAYED AT HER BED AND BREAKFAST INN, TELL HER THAT THERE WERE CHARGES ON THEIR CREDIT CARDS THAT WERE NOT THEIRS. ONE OF THE CARD HOLDERS WAS DAVE KEVANE. HIS CREDIT CARD ACCOUNT WAS TURNED OVER TO CREDIT CARD SERVICES, 1-800-542-2255, FOR INVESTIGATION. AN INVESTIGATOR THERE WAS ABLE TO LINK A TRAIL OF CREDIT CARD NUMBERS AND PHONE NUMBERS BACK TO BRENDAN DUNCKLEY. LYNN SAID WHEN SHE CONFRONTED BRENDAN, BRENDAN ADMITTED TO UTILIZING THE FORMER CUSTOMER'S CREDIT CARD ACCOUNT NUMBERS WITHOUT THEIR KNOWLEDGE. HE CHARGED TO THESE ACCOUNTS SEVERAL DIFFERENT PAID PHONE SERVICES AND PAID INTERNET SERVICE SITES. NEXT I CONTACTED BRENDAN.

AFTER READING HIM HIS MIRANDA WARNING HE ADMITTED TO ME THAT HE OBTAINED AND USED THE CREDIT CARD ACCOUNT NUMBERS OF SEVERAL ACCOUNTS WITHOUT THE KNOWLEDGE OR PERMISSION OF THE CARD HOLDER. I TRANSPORTED BRENDAN TO THE OAKHURST SUB-STATION TO BE FURTHER INTERVIEWED. HE GAVE ME HIS E-MAIL ADDRESS, b_lewis42@hotmail.com and b_lewis43@hotmail.com WITH THE PASSWORDS OF allen and culinary. I REQUESTED THAT DEPUTY ADKINS ATTEMPT TO OBTAIN ANY INFORMATION FROM THESE E-MAIL ADDRESSES HE COULD. WITH THE PERMISSION OF BRENDAN DEPUTY ADKINS PRINTED THE MAIL FROM BOTH ADDRESSES. THE PRINTOUTS WERE OF INTERNET BILLING COMPANY RECEIPTS. NEXT I RECONTACTED THE R/P.

I ASKED LYNN TO PUT TOGETHER INFORMATION OF ALL THE CREDIT CARD ACCOUNT NUMBERS THAT WERE REPORTED TO HER AS BEING UTILIZED WITHOUT THE CARD HOLDERS PERMISSION. SHE SAID TOMORROW SHE WOULD BE ABLE TO SUPPLY ME WITH THE ACCOUNT NUMBERS, CARD HOLDER'S NAMES, ADDRESSES, AND PHONE NUMBERS. IN SOME CASES EVEN THE AMOUNT THAT WAS FRAUDULENTLY CHARGED.

AT THIS TIME I HAVE NOT SPOKEN WITH A CARD HOLDER OR A CREDIT CARD COMPANY TO SEE IF THEY WANT TO PURSUE CHARGES AGAINST BRENDAN. HARD COPIES OF THE INTERNET SERVICES RECEIPTS ARE BOOKED INTO PROPERTY AS POSSIBLE EVIDENCE AND PLACED INTO THE MAILBOX.

END OF NARRATIVE.

H.WEAVER #9504

NRS 201.230 Lewdness with child under 14 years; penalties.

1. A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

2. Except as otherwise provided in subsection 3, a person who commits lewdness with a child is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

3. A person who commits lewdness with a child and who has been previously convicted of:

(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

4. For the purpose of this section, "other sexual offense against a child" has the meaning ascribed to it in subsection 5 of NRS 200.366.

[1911 C&P § 195 1/2; added 1925, 17; A 1947, 24; 1943 NCL § 10143]—(NRS A 1961, 92; 1967, 477; 1973, 96, 255, 1406; 1977, 867, 1632; 1979, 1430; 1983, 207; 1991, 1009; 1995, 1200; 1997, 1722, 2502, 3190; 1999, 470, 472; 2003, 2826; 2005, 2877)

NRS 200.364 Definitions. As used in NRS 200.364 to 200.3774, inclusive, unless the context otherwise requires:

1. "Perpetrator" means a person who commits a sexual assault.
 2. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning.
 3. "Statutory sexual seduction" means:
 - (a) Ordinary sexual intercourse, anal intercourse, cunnilingus or fellatio committed by a person 18 years of age or older with a person under the age of 16 years; or
 - (b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons.
 4. "Victim" means a person who is subjected to a sexual assault.
- (Added to NRS by 1977, 1626; A 1979, 572; 1991, 801; 1995, 700)

NRS 200.368 Statutory sexual seduction: Penalties. Except under circumstances where a greater penalty is provided in NRS 201.540, a person who commits statutory sexual seduction shall be punished:

1. If he is 21 years of age or older, for a category C felony as provided in NRS 193.130.
2. If he is under the age of 21 years, for a gross misdemeanor.

(Added to NRS by 1977, 1627; A 1979, 1426; 1995, 1187; 2001, 703)

NRS 207.190 Coercion.

1. It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to:

(a) Use violence or inflict injury upon the other person or any of his family, or upon his property, or threaten such violence or injury;

(b) Deprive the person of any tool, implement or clothing, or hinder him in the use thereof; or

(c) Attempt to intimidate the person by threats or force.

2. A person who violates the provisions of subsection 1 shall be punished:

(a) Where physical force or the immediate threat of physical force is used, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

(b) Where no physical force or immediate threat of physical force is used, for a misdemeanor.

[1911 C&P § 475; RL § 6740; NCL § 10424]—(NRS A 1967, 522; 1979, 1455; 1995, 1239)

NRS 207.193 Coercion: Hearing to determine whether sexually motivated.

1. Except as otherwise provided in subsection 4, if a person is convicted of coercion or attempted coercion in violation of paragraph (a) of subsection 2 of NRS 207.190, the court shall, at the request of the prosecuting attorney, conduct a separate hearing to determine whether the offense was sexually motivated. A request for such a hearing may not be submitted to the court unless the prosecuting attorney, not less than 72 hours before the commencement of the trial, files and serves upon the defendant a written notice of his intention to request such a hearing.

2. A hearing requested pursuant to subsection 1 must be conducted before:

(a) The court imposes its sentence; or

(b) A separate penalty hearing is conducted.

3. At the hearing, only evidence concerning the question of whether the offense was sexually motivated may be presented. The prosecuting attorney must prove beyond a reasonable doubt that the offense was sexually motivated.

4. A person may stipulate that his offense was sexually motivated before a hearing held pursuant to subsection 1 or as part of an agreement to plead nolo contendere or guilty.

5. The court shall enter in the record:

(a) Its finding from a hearing held pursuant to subsection 1; or

(b) A stipulation made pursuant to subsection 4.

6. For the purposes of this section, an offense is "sexually motivated" if one of the purposes for which the person committed the offense was his sexual gratification.

(Added to NRS by 1997, 1681; A 1997, 2510; 2003, 1484)

NRS 200.366 Sexual assault: Definition; penalties.

1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;

(c) Sado-masochistic abuse pursuant to NRS 201.262; or

(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

(Added to NRS by 1977, 1626; A 1991, 612; 1995, 1186; 1997, 1179, 1719; 1999, 431; 2003, 2825; 2005, 2874)

AFFIRMATION

(PURSUANT TO NRS. 239B.030)

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE
 PROCEEDING, DOCUMENT FILED IN CASE NO. CR07-1728
 POST-CONVICTION WRIT OF HABEAS CORPUS PETITION.

PART NO: V

X DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY
 NUMBERS OF ANY PERSON.

-OR-

 DOCUMENT DOES CONTAIN THE SOCIAL SECURITY NUMBER
 OF A PERSON AS REQUIRED BY

 A SPECIFIC STATE OR FEDERAL LAW, TO WIT:

-OR-

 FOR THE ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

 FOR THE APPLICATION OF A FEDERAL OR STATE GRANT

-OR-

 CONFIDENTIAL FAMILY COURT INFORMATION SHEET (NRS 125.130,
 NRS 125.230, NRS 125B.055)

DATED: 7/15/09


BRENDAN DUNKLEY (#1023236)
 L.C.C.
 1200 PRISON ROAD
 LOVELOCK, NEVADA. 89419

ATTORNEY: PRO PER

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Brendan Donchley
Petitioner

Pro Se
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 15th day of July, 2009, by placing same into the hands of prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

WARDEN Palmer, LCC
1200 Prison Road
Lovelock, Nevada 89419

CATHERINE CORTEZ MASTO
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Washoe County District Attorney
% Ms. Kelle Anne Victoria
Criminal Division
P.O. Box 30083
Reno, Nevada 89520-3083

Clerk of the Courts
Second Judicial District Court
& Honorable Judge Steinheimer
P.O. Box 30083
Reno, Nevada 89520-3083

Brendan Donchley
Signature of Petitioner In Pro Se

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

10 BRENDAN DUNCKLEY,

11 Petitioner,

Case No. CR07P1728

12 vs.

Department No.: 4

13 THE STATE OF NEVADA,

14 Respondent.
15 _____/

16 **ORDER GRANTING IN FORMA PAUPERIS**

17 Having read Petitioner's Request and Affidavit in Support of Request to Proceed
18 In Forma Pauperis, the Court finds that Petitioner is currently serving a sentence in a
19 correctional institution.

20 Pursuant to Nevada Supreme Court's Order ADKT No. 411, a person will be
21 deemed 'indigent' who is unable, without substantial hardship to himself or his
22 dependents, to obtain competent qualified legal counsel on his own. Under this
23 standard, a presumption of substantial hardship attaches to those persons currently
24 serving a sentence in a correctional institution or housed in a mental health facility.

25 The Court further finds that pursuant to NRS 171.188, Petitioner has insufficient
26 assets and/or income to proceed absent a grant of *forma pauperis* status.

27 IT IS HEREBY ORDERED, pursuant to NRS 171.188, Petitioner is granted leave
28 to proceed in forma pauperis.

1 IT IS HEREBY FURTHER ORDERED that the Court allow said BRENDAN
2 DUNCKLEY to bring such action without costs and file or issue any necessary writ,
3 process, pleading or paper without charge, with the exception of jury fees.

4 IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate
5 officer within the state make personal service of any necessary writ, process, pleading
6 or paper without charge for BRENDAN DUNCKLEY.

7 IT IS HEREBY FURTHER ORDERED that the above entitled matter is referred to
8 the Department Four, the assigned Department presiding over the underlying matter, for
9 the Court's determination as to whether or not the Petitioner should be appointed
10 counsel to represent him in this matter.

11 DATED this 26 day of October, 2009.

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13 Connie I. Skidmore
14 CHIEF DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 28th day of October, 2009, I deposited in the county mailing system, a true copy of the attached document, addressed to:

Brendan Duncley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service

Connie Steinheimer
Department Four
Second Judicial District Court
Via Inter-Office Mail

I hereby certify that on the 28th day of October, 2009 I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney


Marci L. Stone

3370

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

BRENDAN DUNCKLEY,

Petitioner,

Case No. CR07P1728

vs.

Department No.: 4

THE STATE OF NEVADA,

Respondent.

ORDER

This matter coming before the Court after the Petitioner having been found indigent, and the Court having reviewed this matter in relationship to NRS 34.750, finds, that the current Petition for Writ of Habeas Corpus filed is the first Petition filed in this case, in addition due to the severity of the sentence, with good cause appearing and in the interest of justice, there is a basis for the appointment of counsel

Therefore, IT IS HEREBY ORDERED that the above entitled matter is referred to Robert Bell, Esq., Administrator of the Court Appointed Counsel, for the selection of counsel for Petitioner concerning the Petition for Habeas Corpus (Post Conviction).

DATED this 27 day of October, 2009.

Connie J. Steinheimer
DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 28th day of October, 2009, I deposited in the county mailing system, a true copy of the attached document, addressed to:

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service

Robert Bell, Esq.
Administrator
20 Winter Street
Reno, Nevada 89503
Via Inter-Office Mail

I hereby certify that on the 28th day of October, 2009 I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney



Marci L. Stone

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

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 10-28-2009:10:47:02
Clerk Accepted: 10-28-2009:10:48:30
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ord Grant in Forma Pauperis
Order...
Filed By: Marci Trabert

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.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRENDAN DUNCKLEY

1 **Code: 2715**

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

8 * * *

9 BRENDAN DUNCKLEY,

10 Petitioner,

Case No.: CR07P1728

11 vs.

12 Dept. No.: 4

13 STATE OF NEVADA,

14 Respondent.

15 **RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL**

16 The Petitioner having been previously found indigent; having filed a Petition
17 For Writ of Habeas Corpus (Post Conviction), said Writ having been reviewed by the
18 Court, who has determined that counsel should be appointed and referred the
19 matter to the Administrator of Court Appointed Counsel, who finds as follows;

20 NOW THEREFORE, IT IS HEREBY RECOMMENDED that Robert Story, Esq., be
21 appointed to represent Petitioner, Brendan Dunckley. Said Counsel is to be paid
22 pursuant to NRS 7.115 through NRS 7.165 in an amount recommended by the
23 Administrator and approved by the Court;

24 IT IS HEREBY FURTHER RECOMMENDED that Petitioner's Counsel have ten (10)
25 days from the date of the Court's Order to designate what portions of the Court file
26 Counsel requests be copied by the Clerk of the Court;

27 IT IS HEREBY FURTHER RECOMMENDED that the Clerk of the Court provide
28

1 copies of all designations made by Petitioner's Counsel within five (5) days of the
2 designation;

3 IT IS HEREBY FURTHER RECOMMENDED that counsel have forty-five (45) days
4 from the date of the receipt of the copies within which to supplement the Petition
5 for Writ of Habeas Corpus or file a Notice indicating that the original Petition for Writ
6 of Habeas Corpus shall stand as filed;

7 IT IS HEREBY FURTHER RECOMMENDED that the State of Nevada be ordered
8 to respond within forty-five (45) days from the date of filing by the Petitioner of the
9 Petition To Supplement or Notice Of Nonsupplementation;

10 IT IS FURTHER RECOMMENDED that Counsel for the Petitioner and the State of
11 Nevada be ordered to appear within fifteen (15) days of the final briefing before the
12 Administrative Assistant in Department 4, of the Second Judicial District Court for the
13 purpose of setting this case for hearing.

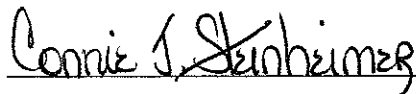
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15 DATED this 23 day of November, 2009.

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18 ROBERT C. BELL, ESQ., ADMINISTRATOR,
COURT APPOINTED COUNSEL

19 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
20 Judicial District Court's Model Plan to address ADKT 411, good cause appearing and
21 in the interest of justice,

22 IT IS HEREBY ORDERED that the recommendations of the Administrator are
23 hereby confirmed, approved and adopted.

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25 DATED this 10th day of December 2009.

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28 CHIEF DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the
14th day of December, 2009, I deposited in the county mailing system, a
true copy of the attached document, addressed to:


Robert Bell, Esq.
Administrator
20 Winter Street
Reno, Nevada 89503
Via U. S. Postal Service

Robert Story, Esq.
Attorney at Law
245 E. Liberty Street, Ste. 530
Reno, Nevada 89501
Via U.S. Postal Service

Brendan Dunckley
Inmate no. 1023236
Lovelock Correctional Centery
1200 Prison Road
Lovelock, Nevada 89419
Via U.S. Postal Service

I hereby certify that on the 14th day of December, 2009, I
electronically filed the foregoing with the Clerk of the Court by using the ECF system which
will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Deputy District Attorney


Marci L. Stone

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

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 12-14-2009:10:29:13
Clerk Accepted: 12-14-2009:10:37:54
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ord Appointing Counsel
Filed By: Marci Trabert

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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

ORIGINAL

FILED

Electronically
03-17-2010:10:05:30 AM
Howard W. Conyers
Clerk of the Court
Transaction # 1378784

Code: 4047
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
245 East Liberty Street, Suite 530
Reno, Nevada 89501
Telephone: (775) 284-5510
Facsimile: (775) 284-0800

Attorneys for Petitioner Brendan Dunckley

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

BRENDAN DUNCKLEY

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents

Case No. CR07P1728

Dept. No. 4

**STIPULATION AND ORDER FOR EXTENSION OF TIME IN WHICH TO FILE
SUPPLEMENTAL PETITION**

Petitioner, by and through his appointed counsel, and Respondents, through the Washoe County District Attorney's Office, agree and stipulate as follows:

1) Due to the length of Petitioner's original petition for habeas corpus and the myriad other documents that Petitioner has filed with the court, Petitioner's attorney requires until March 22, 2010, within which to file a Supplemental Petition for Habeas Corpus.

2) This is the first stipulation to extend the time in which to file a supplemental petition.

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

The undersigned does hereby affirm that the preceding document, Stipulation and Order, does

not contain the social security number of any person.

March 10th, 2010

Washoe County District Attorney's Office
Appellate Division

STORY LAW GROUP

By: [Signature]

By: [Signature]
ROBERT W. STORY, ESQ.

Attorneys for Defendant

Attorneys for Plaintiff

IT IS SO ORDERED.

March 16, 2010.

Connie J. Steinheimer
DISTRICT JUDGE

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

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-17-2010:10:05:30
Clerk Accepted: 03-17-2010:10:14:27
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Stip and Order
Filed By: Audrey Kay

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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

ORIGINAL

CR07P1728
 POST BRENDAN DUNCKLEY (D4 13 Pages
 District Court 03/23/2010 12:47 PM
 Washoe County
 4100
 SST:NGJF

Code: 4100
 ROBERT W. STORY, ESQ., Bar No. 6835
 STORY LAW GROUP
 245 East Liberty Street, Suite 530
 Reno, Nevada 89501
 Telephone: (775) 284-5510
 Facsimile: (775) 284-0800

FILED

2010 MAR 23 PM 12:47

ROBERT W. STORY, ESQ.

BY *[Signature]*
DEPUTY

Attorneys for Petitioner Brendan Dunckley

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY

Petitioner,

Case No. CR07P1728

vs.

Dept. No. 4

STATE OF NEVADA, et al.,

Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**(Post Conviction)**

Petitioner Brendan Dunckley, through his appointed counsel Robert W. Story, hereby files the following Supplemental Petition for Writ of Habeas Corpus (Post Conviction).

Mr. Dunckley alleges as follows, incorporating by reference his original and amended Petitions for Writ of Habeas Corpus (Post Conviction):

CURRENT CUSTODY

(1) Mr. Dunckley is currently incarcerated in the Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419 pursuant to a Judgment entered on August 11, 2008, by District Judge Connie J. Steinheimer of the Second Judicial District Court, Washoe County, Nevada.

(2) The District Court sentenced Mr. Dunckley to serve life in prison with the minimum

1 parole eligibility of ten years for Count I and a concurrent ten years with a minimum parole
2 eligibility of twenty-four months for Count II. The District Court gave Mr. Dunckley credit for four
3 days time served.

4 **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

5 **A. Justice Court**

6 (3) On April 5, 2007, the State filed a Criminal Complaint against Mr. Dunckley in Reno
7 Township Justice Court, charging him as follows: Court I Sexual Assault a violation of NRS
8 200.366 a felony.

9 (4) On April 16, 2007, the State filed an Amended Criminal Complaint against Mr.
10 Dunckley in Reno Township Justice Court, charging as follows: Count I Sexual Assault on a Child a
11 violation of NRS 200.366 a felony; Count II Lewdness with a Child Under the Age of Fourteen
12 Years a violation of NRS 201.230 a felony; Count III Statutory Sexual Seduction a violation of NRS
13 200.364 and NRS 200.368; Count IV Lewdness with a Child Under the Age of Fourteen Years a
14 violation of NRS 201.230; Count V Sexual Assault a violation of NRS 200.366; Count VI Sexual
15 Assault a violation of NRS 200.366; Count VII Sexually Motivated Coercion a violation of NRS
16 207.190 and NRS 207.193

17 (5) On April 20, 2007 Defendant appeared before Pro Tem Judge Jenny Hubach and was
18 duly arraigned, advised of rights and informed of Complaint. The Justice of the Peace set the
19 preliminary examination for May 2, 2007, and continued Mr. Dunckley's bail.

20 (6) On April 20, 2007, Mr. Dunckley requested appointment of Washoe County Public
21 Defender.

22 (7) On May 7, 2007 Conflict Attorney David O'Mara was appointed to represent Mr.
23 Dunckley.

24 (8) On July 2, 2007, Mr. Dunckley appeared together with attorney David O'Mara before
25 Justice of the Peace Harold Albright for the preliminary examination. The State was represented by
26 David Clifton. The State amended the Complaint by interlineation to conform to evidence. The
27 Justice of the Peace found probable cause to believe the offenses set forth in the Criminal Complaint
28 Counts I, II, III and VI were committed and there was probable cause that Mr. Dunckley participated

1 as the principal in such offenses. Mr. Dunckley was bound over to answer in the Second Judicial
2 District Court of the State of Nevada. The Court found insufficient probable cause to believe the
3 offenses set forth in the Criminal Complaint Counts IV, V and VII were committed and/or there was
4 insufficient probable cause that Mr. Dunckley participated as principal in such offenses. Accordingly
5 the Justice of the Peace dismissed Counts IV, V and VII.

6 **B. District Court**

7 (9) On July 12, 2007, the State filed in The Second Judicial District Court an Information
8 against Mr. Dunckley charging as follows: Count I Sexual Assault on a Child a violation of NRS
9 200.366; Count II Lewdness With a Child Under the Age of Fourteen Years a violation of NRS
10 201.230; Count III Statutory Sexual Seduction a violation of NRS 200.364 and 200.368; Count IV
11 Sexual Assault a violation of NRS 200.366

12 (10) On February 28, 2008, the State filed against Mr. Dunckley in the District Court an
13 Amended Information charging as follows: Count I Lewdness with a Child Under the Age of
14 Fourteen Years a violation of NRS 201.230; Count II Attempted Sexual Assault a violation of NRS
15 193.330 being an attempt to violate NRS 200.366 a felony.

16 (11) On March 6, 2008, Mr. Dunckley pleaded guilty to Count I Lewdness with a Child
17 Under the Age of Fourteen Years a violation of NRS 201.230; Count II Attempted Sexual Assault a
18 violation on NRS 193.330 being an attempt to violate NRS 200.366, pursuant to a Guilty Plea
19 Memorandum in the District Court. District Judge Connie J. Steinheimer accepted Mr. Dunckley's
20 guilty pleas and set sentencing for August 5, 2008, sufficient time to allow Mr. Dunckley the
21 opportunity to attend counseling sessions so that he would be able to show he was a likely candidate
22 for probation.

23 (12) On August 11, 2008, the District Judge entered Judgment against Mr. Dunckley as
24 follows: Count I, Lewdness with a Child Under the Age of Fourteen, NRS 200.230 – imprisonment
25 in the Nevada Department of Prisons for the maximum term of Life with the minimum parole
26 eligibility of 10 years; Count II, Attempted Sexual Assault, NRS 193.330 and NRS 200.366 –
27 imprisonment in the Nevada Department of Prisons for the maximum term of One Hundred Twenty
28 Months with the minimum parole eligibility of 24 months for Count II to be served concurrently

1 with sentence imposed in Count I with credit for four days time served.

2 **C. Nevada Supreme Court**

3 (13) On November 19, 2008, the Nevada Supreme Court entered an Order Conditionally
4 Imposing Sanction against Mr. O'Mara. And on November 20, 2008, the Nevada Supreme Court
5 returned as unfiled Appellant's Fast Track Appeal Statement.

6 (14) On January 8, 2009, Mr. O'Mara filed Appellant's Opening Brief filed in the Nevada
7 Supreme Court; on January 20, 2009, the State filed Respondent's Answering Brief; and on March
8 12, 2009, Mr. O'Mara filed Appellant's Reply Brief.

9 (15) On March 21, 2009, the Order Submitting for Decision Without Oral Argument was
10 filed in the Supreme Court.

11 (16) May 8, 2009, the Nevada Supreme Court entered an Order of Affirmance of the
12 Judgment.

13 **D. Petition for Writ of Habeas Corpus (Post Conviction)**

14 (17) On July 21, 2009, Mr. Dunckley filed his Petition for Writ of Habeas Corpus (Post
15 Conviction).

16 **Request For An Evidentiary Hearing**

17 Mr. Dunckley respectfully requests that this Court grant an evidentiary hearing on the
18 allegations in his Petition and Supplemental Petition in order to properly and fully develop the
19 following claims to demonstrate that Mr. Dunckley's conviction and sentence are unconstitutional.

20 **Ground One:** Petitioner Dunckley received ineffective assistance of counsel in pre-
21 trial proceedings and sentencing in violation of the Constitution and Laws of Nevada and the United
22 States Constitution. Nev. Const. Art. 1, §§ 3, 6 & 8; United States Constitution, Amendments V, VI,
23 VIII & XIV.

24 **Supporting Facts:**

25 (1) The State charged Mr. Dunckley with counts of Sexual Assault on a Child, Lewdness
26 with a Child under the Age of Fourteen Years, Statutory Sexual Seduction, and Sexual Assault.

27 (2) Mr. Dunckley provided his attorney with physical evidence, including school
28 enrollment and attendance documentation and DMV records, to corroborate his alibi that he was not

1 in the State of Nevada at the time some of the crimes were alleged to have occurred and provided his
2 attorney with alibi witnesses that could corroborate his whereabouts. Mr. Dunckley's attorney failed
3 to seek funds to conduct an investigation and failed to independently conduct such investigation
4 about the alleged underlying crimes or his alibi defense and failed to interview any witnesses in
5 support of his alibi defense.

6 (3) In addition, there was no corroborating evidence in support of the alleged crimes of
7 Sexual Assault on a Child, Lewdness with a Child under the Age of Fourteen Years, Statutory
8 Sexual Seduction, and Sexual Assault. In fact, there was a stunning lack of evidence – there was no
9 DNA; there were no bite marks; and there were no physical or psychological examinations
10 conducted of any of the victims. To make matters worse, one of the victims had a blood alcohol
11 content of 0.226 at the time of one of the alleged crimes. Finally, some of the crimes were alleged to
12 have occurred years prior to the State bringing charges against Mr. Dunckley. Accordingly, the
13 evidence in support of the alleged crimes consisted of the testimony of the alleged victims; and that
14 testimony was highly suspect, but crucial for a conviction at trial. Mr. Dunckley's attorney failed to
15 independently interview any of the victims.

16 (4) In *Warner v. State of Nevada*, 102 Nev. 635, 729 P.2^d 1359 (1986), the Nevada
17 Supreme Court held that trial counsel who failed to conduct a pretrial investigation and failed to
18 interview victims in a case involving charges of lewdness with a child under the age of fourteen
19 years and sexual assault denied his client his Sixth Amendment right to the effective assistance of
20 counsel, left his client without a defense, and was so deficient as to render the trial result unreliable.

21 (5) The Sixth Amendment to the United States Constitution guarantees to a defendant the
22 right to effective assistance of counsel in a criminal prosecution. *McMann v. Richardson*, 397 U.S.
23 759, 771 n. 14 (1970); *Strickland v. Washington*, 466 U.S. 668 (1984); *Kirksey v. State*, 112 Nev.
24 980, 923 P.2^d 1102 (1997). That right applies to both retained and appointed counsel. *Cuyler v.*
25 *Sullivan*, 446 U.S. 335 (1980). That right also applies at both the guilt and penalty phases.
26 *Strickland, supra*; *Paine v. State*, 110 Nev. 609, 877 P.2^d 1025 (1994).

27 (6) This claim is of obvious merit. Mr. Dunckley's attorney failed to conduct a pretrial
28 investigation into the alleged underlying crimes or into any potential mitigating circumstances or

1 defenses and failed to interview any of the victims whose credibility was crucial for a conviction.
2 Mr. Dunckley's attorney's performance was deficient to the point that he deprived Mr. Dunckley of
3 any defense and provided the District Court and Mr. Dunckley with a completely unreliable outcome
4 and that deficient performance prejudiced Mr. Dunckley. Competent counsel would have sought a
5 court-ordered investigator, had that investigator explore with his client the facts surrounding the
6 underlying crime and any mitigating circumstances and Mr. Dunckley's alibi defense. Competent
7 counsel would have had that investigator complete an independent investigation with an eye toward
8 defenses, and used the facts uncovered by the independent investigation in the trial and in
9 sentencing. There is no reasonable trial and/or sentencing strategy designed to effectuate Mr.
10 Dunckley's best interest that would have justified his attorney's failures in this regard. Moreover,
11 that the independent investigation would have shown Mr. Dunckley's alibi defense was true and that
12 Mr. Dunckley was innocent. The independent investigation and interview of the victims would have
13 also shown that the alleged victims lacked sufficient credibility because of alcohol impairment, age,
14 and/or the length of time between the alleged crime and the trial to support a conviction. Any
15 decision that Mr. Dunckley's attorney may have made not to conduct a pretrial investigation could
16 not have been informed and could not have constituted a reasonable professional judgment. Had Mr.
17 Dunckley's attorney conducted a pretrial investigation and interview of the victims, Mr. Dunckley
18 would not have been convicted of Lewdness with a Child under the Age of Fourteen Years and
19 Attempted Sexual Assault. Accordingly, Mr. Dunckley is entitled to relief.

20 **Ground Two:** Petitioner Dunckley was deprived of due process, equal protection, a
21 fair proceeding, and a reliable sentence in violation of the Constitution and Laws of Nevada and the
22 United States Constitution. Nev. Const. Art. 1, § 8; United States Constitution, Amendment XIV.

23 **Supporting Facts:**

24 (1) The State knowingly and intentionally offered Mr. Dunckley an illusory Guilty Plea
25 Memorandum which required Mr. Dunckley to spend months obtaining a psychosexual evaluation in
26 accordance with NRS 176.139. Indeed, during the guilty plea hearing counsel for the defense and the
27 State informed the District Court as follows:

28 **Mr. O'Mara:** Your honor, there's been negotiations with the district

1 attorney's office to see this out five to six months so that Mr. Dunckley can get sexual
 2 offender therapy during that period of time. And basically the D.A. is giving him
 3 every opportunity to try to qualify for probation and to do the things that will be
 4 beneficial for him to present to you at sentencing. So she's allowed for a five- to six-
 5 month extension so that he can get those type of therapy classes, and so we'd ask for
 6 that type of time before sentencing.

7 **Ms. Vioria:** Your Honor, my agreement is just to see if this defendant is
 8 worthy of any type of grant of probation, whether he can earn it or not. I want to see
 9 what he does between now and then.

10 So I do not object to any type of continuance that Mr. O'Mara is asking for to
 11 set out the sentencing date.

12 (Transcript of Proceedings, Motion to Confirm Trial; March 6, 2008; pages 12 and 13; attached as
 13 Exhibit 1.)

14 (2) Mr. Dunckley complied in all respects with the terms of the Guilty Plea
 15 Memorandum – Mr. Dunckley attended all required classes and appointments and obtained the
 16 appropriate psychosexual evaluation in accordance with NRS 176.139 that would have allowed him
 17 probation.

18 (3) Yet the State deprived him of the benefit of his bargain. The State vigorously,
 19 inappropriately, and in violation of the spirit of the Guilty Plea Memorandum argued for a prison
 20 sentence that exceeded even the recommendation of the Division of Parole and Probation.

21 (4) The State offered Mr. Dunckley a Guilty Plea Memorandum which allowed him an
 22 opportunity of probation, but deprived Mr. Dunckley of the benefit of probation by acting in bad
 23 faith thereby depriving Mr. Dunckley of the sole benefit to him of the Guilty Plea Memorandum.
 24 The State had no intention of allowing Mr. Dunckley probation and proved its intention to deprive
 25 Mr. Dunckley of the benefit of his bargain through its inappropriate sentencing arguments. A plea
 26 agreement includes an implied obligation of good faith and fair dealing. *U.S. v. Jones*, 58 F.3d 688
 27 (D.C. Cir. 1995); and the State breached the Guilty Plea Memorandum by acting in bad faith.

28 (5) The Due Process and Equal Protection Clauses of the Fourteenth Amendment
 mandate that a guilty plea be knowingly and intelligently entered. *Smith v. O'Grady*, 312 U.S. 329,
 334 (1941); accord, *Bryant v. Smith*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited on other
 grounds by *Smith v. State*, 110 Nev. 1009, 879 P.2d 60 (1994).

(6) This claim is of obvious merit. Mr. Dunckley was deprived of both due process and
 equal protection under the law because the State extracted an illusory Guilty Plea Memorandum

1 from him which held out the hope of probation, and then argued in bad faith against probation.
2 Accordingly, Mr. Dunckley is entitled to relief.

3 **Ground Three:** Petitioner Dunckley was deprived of due process, equal protection, a
4 fair proceeding, and a reliable sentence in violation of the Constitution and Laws of Nevada and the
5 United States Constitution. Nev. Const. Art. 1, § 8; United States Constitution, Art. 1, § 9, cl. 3, and
6 Amendment XIV.

7 **Supporting Facts:**

8 (1) During sentencing, District Court made the following statement about Mr.
9 Dunckley's request for probation as provided in his Guilty Plea Memorandum:

10 **The Court:** I know you plead to something that allows for a lesser
11 offense, *but it does not allow for probation.*

12 (Transcript of Proceedings, Sentencing; August 5, 2008; page 59; emphasis added; attached as
13 Exhibit 2.)

14 (2) The District Court deprived Mr. Dunckley of the benefit of the Guilty Plea
15 Memorandum through an *ex post facto* application of NRS 176A.110.

16 (3) According to the terms of the Amended Information, Mr. Dunckley allegedly
17 committed Count I, Lewdness with a Child under the Age of Fourteen Years, a violation of NRS
18 201.230, "on or between the 14th day of August A.D. A.D., 1998, and the 13th day of August A.D.
19 A.D., 2000, or thereabout...." (Amended Information; filed on February 28, 2008; page 1, lines 23 –
20 25; attached as Exhibit 3.)

21 (4) At the time the alleged crime occurred, NRS 176A.110(1) and (3)(j) permitted
22 probation for a person convicted of "Lewdness with a child pursuant to NRS 201.230." At the time
23 of sentencing, however, the Nevada Legislature had amended NRS 176A.110 to eliminate probation
24 for a person who had committed lewdness with a child pursuant to NRS 201.230. The District Court
25 applied the later version of NRS 176A.110 *ex post facto* to Mr. Dunckley.

26 (5) The *Ex Post Facto* Clause of the United States Constitution prohibits laws which
27 make more burdensome the punishment for a crime, after its commission. *Flemming v. Oregon*
28 *Board of Parole*, 998 F.2d 721, 723 (9th Cir.1993).

1 (6) This claim is of obvious merit. Mr. Dunckley was deprived of both due process and
2 equal protection under the law and subjected to improperly harsher sentencing because the District
3 Court applied the later version of NRS 176A.110 *ex post facto* to Mr. Dunckley. Accordingly, Mr.
4 Dunckley is entitled to relief.

5 **Ground Four:** Petitioner Dunckley received ineffective assistance of counsel in pre-
6 trial proceedings and sentencing in violation of the Constitution and Laws of Nevada and the United
7 States Constitution. Nev. Const. Art. 1, §§ 3, 6 & 8; United States Constitution, Amendments V, VI,
8 VIII & XIV.

9 **Supporting Facts:**

10 (1) The State charged Mr. Dunckley with counts of Sexual Assault on a Child, Lewdness
11 with a Child under the Age of Fourteen Years, Statutory Sexual Seduction, and Sexual Assault.

12 (2) There was no corroborating evidence in support of the alleged crimes of Sexual
13 Assault on a Child, Lewdness with a Child under the Age of Fourteen Years, Statutory Sexual
14 Seduction, and Sexual Assault. In fact, there was a stunning lack of evidence – there was no DNA;
15 there were no bite marks; and there were no physical or psychological examinations conducted of
16 any of the victims. To make matters worse, one of the victims had a blood alcohol content of 0.226
17 at the time of one of the alleged crimes. Finally, some of the crimes were alleged to have occurred
18 years prior to the State bringing charges against Mr. Dunckley. Accordingly, the evidence in support
19 of the alleged crimes consisted of the testimony of the alleged victims; and that testimony was highly
20 suspect, but crucial for a conviction at trial.

21 (3) Mr. Dunckley's attorney failed to inform Mr. Dunckley of the elements of the crimes
22 involved and further failed to inform Mr. Dunckley that the State could not prove its case. Instead,
23 Mr. Dunckley's attorney became caught up in the media frenzy surrounding the Brianna Dennison
24 investigation, misinformed Mr. Dunckley that no jury would believe him, and convinced Mr.
25 Dunckley to plead guilty to crimes the State could not prove.

26 (4) The Sixth Amendment to the United States Constitution guarantees to a defendant the
27 right to effective assistance of counsel in a criminal prosecution. *McMann v. Richardson, supra*;
28 *Strickland v. Washington, supra*; *Kirksey v. State, supra*. That right applies to both retained and

1 appointed counsel. *Cuyler v. Sullivan, supra*. That right also applies at both the guilt and penalty
 2 phases. *Strickland v. Washington, supra; Paine v. State, supra*.

3 (5) This claim is of obvious merit. Mr. Dunckley's attorney failed to properly inform his
 4 client of the elements of the crimes involved so that Mr. Dunckley could make an informed decision
 5 about whether or not to plead guilty. There is no reasonable trial strategy designed to effectuate Mr.
 6 Dunckley's best interest that would have justified his counsel's failure in this regard. Mr. Dunckley's
 7 attorney's performance was deficient to the point that he deprived Mr. Dunckley of any defense and
 8 provided the District Court and Mr. Dunckley with a completely unreliable outcome and that
 9 deficient performance prejudiced Mr. Dunckley. Mr. Dunckley would not have been convicted of
 10 Lewdness with a Child under the Age of Fourteen Years and Attempted Sexual Assault.
 11 Accordingly, Mr. Dunckley is entitled to relief.

12 PRAYER FOR RELIEF

13 Mr. Dunckley has demonstrated that he is entitled to relief. For the reasons stated above, Mr.
 14 Dunckley prays this Court:

- 15 (1) Issue a Writ of Habeas Corpus;
- 16 (2) Grant an evidentiary hearing;
- 17 (3) Vacate Mr. Dunckley's conviction and sentence;
- 18 (4) Enter an order granting Mr. Dunckley a trial on all issues and new sentencing, should
- 19 Mr. Dunckley be convicted through the new trial; and
- 20 (5) Grant any other relief as this Court may deem necessary in the interest of justice.

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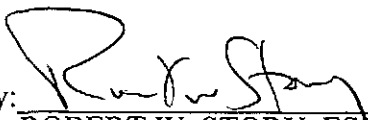
28 ////

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted on March 23, 2010.

STORY LAW GROUP

By: 
ROBERT W. STORY, ESQ.

Attorneys for Petitioner Brendan Dunckley

CERTIFICATE OF SERVICE

I, Robert W. Story, hereby declare and state as follows:

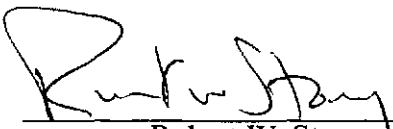
I am over the age of eighteen years, a member of Story Law Group in the City of Reno, County of Washoe, State of Nevada, and I am not a party to this action. My business address is 245 East Liberty Street, Suite 530, Reno, Nevada 89501.

On March 23, 2010, I served the **Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)** by placing a true and correct copy for delivery in the United States mail, postage prepaid, to the following address:

Terrence McCarthy
Deputy District Attorney
1 S. Sierra Street
Reno, Nevada 89501

I declare under penalty of perjury that the foregoing is true and correct.

Dated on March 23, 2010, at Reno, Nevada


Robert W. Story

INDEX OF EXHIBITS

1			
2	Exhibit 1	Transcript of Proceedings, March 6, 2008	4 Pages
3	Exhibit 2	Transcript of Proceedings, August 5, 2008	3 Pages
4	Exhibit 3	Amended Information filed February 28, 2008	4 Pages
5			
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CR07P1728 DC-9900015770-052
POST BRENDAN DUNKLEY (D4) 5 Pages
District Court 03/23/2010 12:47 PM
Washoe County 4100
TX1 SATTINCHE

EXHIBIT 1

EXHIBIT 1

Code No. 4185

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, CHIEF DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN DUNCKLEY,

Defendant.

Case No. CR07-1728

Dept. No. 4

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

THURSDAY, MARCH 6, 2008

RENO, NEVADA

Reported By: BECKY VAN AUKEN, CCR No. 418

APPEARANCES:

For the Plaintiff:

KELLI A. VILORIA
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

O'MARA LAW FIRM
BY: DAVID C. O'MARA, ESQ.
311 E. Liberty Street
Reno, Nevada 89501

Parole and Probation:

LAURA PAPPAS

1 that you didn't understand what was happening. You have
2 to tell me that now.

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: And you won't be able to change your
5 mind with regard to these pleas of guilt.

6 THE DEFENDANT: I do.

7 THE COURT: With everything I've asked and you
8 your answers, do you still wish to go forward?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you doing so of your own free
11 will?

12 THE DEFENDANT: Yes.

13 THE COURT: How do you plead to Count I?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you plead to Count II?

16 THE DEFENDANT: Guilty.

17 THE COURT: The Court finds that your pleas are
18 voluntary, that you fully understand the nature of the
19 offenses charged and the consequences of your pleas.
20 Therefore, I will accept your pleas of guilt and we'll set
21 a date for sentencing.

22 MR. O'MARA: Your Honor, there's been
23 negotiations with the district attorney's office to set
24 this out five to six months so that Mr. Dunckley can get

1 sexual offender therapy during that period of time. And
2 basically the D.A. is giving him every opportunity to try
3 to qualify for probation and to do the things that will be
4 beneficial for him to present to you at sentencing. So
5 she's allowed for a five- to six-month extension so that
6 he can get those type of therapy classes, and so we'd ask
7 for that type of time before sentencing.

8 MS. VILORIA: Your Honor, my agreement is just to
9 see if this defendant is worthy of any type of grant of
10 probation, whether he can earn it or not. I want to see
11 what he does between now and then.

12 So I do not object to any type of continuance
13 that Mr. O'Mara is asking for to set out the sentencing
14 date.

15 THE COURT: Counsel approach.

16 (A sidebar was held off the record.)

17 THE COURT: Okay. What are the conditions of
18 Mr. Dunckley's release? Is he out on bail?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And what's your bail set at?

21 THE DEFENDANT: I don't remember. It's been a
22 year, Your Honor. I don't remember off the top of my
23 head.

24 THE COURT: We have two bails posted. One may be

CR07P1728 DC-9900015770-053
POST: BRENDAN DUNKLEY (D4) 4 Pages
District Court 03/23/2010 12:47 PM
Washoe County 4100
TX SSTNCHF

EXHIBIT 2

EXHIBIT 2

1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

6 -oOo-

7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 BRENDAN DUNCKLEY,)

11 Defendant.)

Case No. CR07-1728

Dept. No. 4

COPY

12
13 TRANSCRIPT OF PROCEEDINGS

14 SENTENCING

15 August 5, 2008

16 RENO, NEVADA

17
18
19
20
21
22
23 Reported By:

LISA A. YOUNG, CCR No. 353

APPEARANCES:

For the Plaintiff:

KELLI ANNE VILORIA
Deputy District Attorney
Reno, Nevada

For the Defendant:

DAVID C. O'MARA
Attorney at Law
Reno, Nevada

Parole and Probation:

LUPE GARRISON

EXHIBITS

MARKED

ADMITTED

A - Report from Eng Counselling

5

5

B - Letter from Alamo Casino

5

5

1 me that opportunity, Your Honor, to prove that I can do this and
2 not just the five months that I proved I can stay out of trouble
3 and make my appointments and meetings and go above and beyond
4 but continued to be allowed to do that, Your Honor.

5 THE COURT: Mr. Dunckley, perhaps your plea would have
6 more resonance with me with regard to the issue that you had
7 with the friend of the family, even though it was a very young
8 girl, and even though you argue you thought she was 17, I have
9 heard that many times. That argument for treatment if it was an
10 isolated incident may well resonate with me.

11 However, the latest victim. I'm not talking about the
12 victim in between you are not charged with. I'm very concerned
13 with your latest victim. I agree with Mrs. Vilorio. I don't
14 think that the sentence is recommended even by the Division is
15 appropriate given your behavior.

16 You picked someone you didn't know, and you committed
17 a sexual assault on her.

18 I know you pled to something that allows for a lesser
19 offense, but it does not allow for probation.

20 It is the order of this court you pay \$25
21 administrative assessment fee, \$150 in DNA testing fees. I
22 think you have already submitted to a DNA analysis test. So you
23 won't have to submit again, but you also will have to pay the
24 \$950 in psycho-sexual fees.

CR07P1728
POST: BRENDAN DUNKLEY (DA) 5 Pages
District Court 03/23/2010 12 47 PM 4100
Washoe County
ESTINCH
-14

EXHIBIT 3

EXHIBIT 3

ORIGINAL

DA # 373085

RPD RP07-009446, RPD RP05-034027

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

FILED

2008 FEB 28 PM 3:13

HOWARD H. CONYERS

BY

DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

v.

Dept. No. - 4

BRENDAN DUNCKLEY,

Defendant.

AMENDED INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that BRENDAN
DUNCKLEY, the defendant above named, has committed the crimes of:

COUNT I. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
following:

That the said defendant on or between the 14th day of
August A.D. A.D., 1998, and the 13th day of August A.D. A.D., 2000,
or thereabout, and before the filing of this Information, at and
within the County of Washoe, State of Nevada, did willfully,

1 unlawfully, and lewdly commit a lewd or lascivious act upon or with
2 the body of ASHLEY V., having a date of birth of August 14, 1986, a
3 female child under the age of fourteen years at the time that the
4 said act was committed, in that the said defendant engaged the victim
5 in sexual intercourse at or near Longley Lane, Reno, Washoe County,
6 Nevada, and/or put his hand down her pants to fondle her genital area
7 in an elevator at the Atlantis Hotel and Casino, 3800 South Virginia
8 Street, Reno, Washoe County, Nevada, with the intent of arousing,
9 appealing to, or gratifying the lust, passions, or sexual desires of
10 himself or the child.

11 COUNT II. ATTEMPTED SEXUAL ASSAULT, a violation of NRS
12 193.330, being an attempt to violate NRS 200.366, a felony, (F1000) in
13 the manner following:

14 That the said defendant on the 10th day of March A.D.,
15 2008, or thereabout, and before the filing of this Information, at
16 and within the County of Washoe, State of Nevada, did willfully, and
17 unlawfully attempt to subject JESSICA H. to sexual penetration
18 against the victim's and/or under conditions in which the defendant
19 knew or should have known that the victim was mentally or physically
20 incapable of resisting or understanding the nature of the defendant's
21 conduct, to wit, fellatio at 1675 Sky Mountain Drive, #827, Reno,
22 Washoe County, Nevada.

23 ///


24 ///

25 ///

26 ///

1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.
4

5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

8 By 
9 KELLI ANNE VILORIA
10 5872
11 Deputy District Attorney
12
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4
5 RENO POLICE DEPARTMENT


6 DETECTIVE T.K. BROOME
7 OFFICER SCOTT HEGLAR

8 ASHLEY V., Silver Springs Conservation Camp

9 JESSICA RAE H.

10
11
12
13
14 The party executing this document hereby affirms that this
15 document submitted for recording does not contain the social security
16 number of any person or persons pursuant to NRS 239B.230.

17
18 RICHARD A. GAMMICK
19 District Attorney
20 Washoe County, Nevada

21
22 By 
23 KELLI ANNE VILORIA
24 5872
25 Deputy District Attorney

26 PCN RPD0726517C
PCN RPD0726524C

07068446

1 CODE No. 1130
2 RICHARD A. GAMMICK
3 #001510
4 P. O. Box 30083
5 Reno, Nevada 89520-3083
6 (775) 328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 BRENDAN DUNCKLEY,

14 Petitioner,

15 v.

Case No. CR07P1728

16 JACK PALMER,

Dept. No. 4

17 Respondent.
18 _____/

19 ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
20 (POST-CONVICTION)

21 COMES NOW, Respondent, by and through counsel, to answer the petition and
22 supplemental petition as follows:

23 1. That Respondent denies each and every allegation contained in the petition and
24 supplemental petition.

25 2. That Respondent is informed and does believe that all relevant pleadings and
26 transcripts necessary to resolve the petition are currently available.

3. That Respondent is informed and does believe that aside from an unsuccessful appeal
from his judgment of conviction, an unsuccessful motion for modification of sentence, a
pending appeal from the denial of his motion for modification of sentence, and a pending
motion for withdrawal of guilty plea, Petitioner has not applied for any other relief from this

conviction.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: May 5, 2010.

RICHARD A. GAMMICK
District Attorney

By /s/ GARY H. HATLESTAD
GARY H. HATLESTAD
Chief Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on May 5, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert Story, Esq.
for Petitioner Brendan Dunckley

/s/ SHELLY MUCKEL
SHELLY MUCKEL

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 05-05-2010:11:00:49
Clerk Accepted: 05-05-2010:11:35:55
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Answer
Filed By: GARY HATLESTAD, ESQ.

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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 **CODE 3347**
2
3
4
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRENDAN DUNCKLEY,**

10 **Petitioner,**

Case No. CR07P1728

11 **vs.**

Dept. No. 4

12 **THE STATE OF NEVADA,**

13 **Respondent.**
14 _____/

15 **ORDER TO SET**

16 On July 21, 2009, the Petitioner filed a Petition for Writ of Habeas Corpus
17 (Post Conviction). On December 14, 2009, counsel Robert Story, Esq., was appointed to
18 represent the Petitioner. On March 23, 2010, counsel for the Petitioner filed a
19 Supplemental Petition for Writ of Habeas Corpus (Post Conviction). On May 5, 2010, the
20 State filed an Answer to Petition and Supplemental Petition for Writ of Habeas Corpus
21 (Post Conviction).

22 The matter not having been formally submitted for decision nor set for an
23 evidentiary hearing, good cause appearing and in the interest of justice,
24

25 ///

26 ///

27 ///

28 ///

1 IT IS HEREBY ORDERED that petitioner's counsel shall notice opposing
2 counsel and appear within fifteen (15) days from the date of this Order, before the
3 Administrative Assistant in Department IV, of the Second Judicial District Court for the
4 purpose of setting an evidentiary hearing on the Petition and Supplemental Petition for Writ
5 of Habeas Corpus (Post Conviction).

6 Dated this 14 day of June, 2010.


7
8 Connie I. Steinheimer
9 DISTRICT JUDGE
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CERTIFICATE OF ELECTRONIC SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT,
in the STATE OF NEVADA, COUNTY OF WASHOE; that on the 17th day of
June, 2010, I electronically filed the Order with the Clerk of the Court
by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney

Robert Story, Esq.
Attorney at Law



Marci L. Stone

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 06-17-2010:14:56:22
Clerk Accepted: 06-17-2010:14:58:22
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Order to Set
Filed By: Marci Trabert

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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE: 1250
2
3
4
5
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9

10 BRENDAN DUNCKLEY

11 Petitioner,

Case No. CR07P1728

12 vs.

Dept. No. 4

13 STATE OF NEVADA, et al.,

14 Respondents.

15 APPLICATION FOR SETTING

16 TYPE OF ACTION: CRIMINAL APPEAL

17 MATTER TO BE HEARD: EVIDENTIARY HEARING

18 DATE OF APPLICATION: July 1, 2010

19 COUNSEL FOR RESPONDENTS: GARY H. HATLESTAD, ESQ., D.D.A.

20 COUNSEL FOR PETITIONER: ROBERT W. STORY, ESQ.

21 Evidentiary Hearing set for Tuesday, Nov. 9, 2010 at 10:00 a.m./p.m.
(All Day)
22
23
24
25
26
27
28

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 07-01-2010:16:26:28
Clerk Accepted: 07-01-2010:16:27:33
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Application for Setting - eFile
Filed By: Audrey Kay

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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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CODE #1260
 RICHARD A. GAMMICK
 #001510
 P. O. Box 30083
 Reno, Nevada 89520-3083
 (775)328-3200
 Attorney for Respondent

FILED

2010 OCT 27 PM 3:58

HOWARD W. CONYERS

BY

DEPUTY

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

* * *

BRENDAN DUNCKLEY,

Petitioner,

v.

Case No. CR07P1728

JACK PALMER

Dept. No. 4

Respondent.

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, Respondent herein, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, by GARY H. HATLESTAD, Chief Appellate Deputy, and alleges as follows:

1. That the above Petitioner, BRENDAN DUNCKLEY, is presently incarcerated at the Nevada State Prison, Carson City, Nevada.

2. That the above BRENDAN DUNCKLEY is scheduled for a post-conviction hearing before the Second Judicial District Court on November 9, 2010 at 10:00 a.m..

WHEREFORE, Applicant prays that an Order be made ordering the appearance of the said BRENDAN DUNCKLEY before the Second Judicial District Court, and from time to time thereafter at such times and places as may be ordered and directed by the Court for such proceedings as

thereafter may be necessary and proper in the premises, and directing the execution of said Order by the Sheriff of Washoe County, Nevada.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: October 4, 2010.

RICHARD A. GAMMICK
DISTRICT ATTORNEY

By



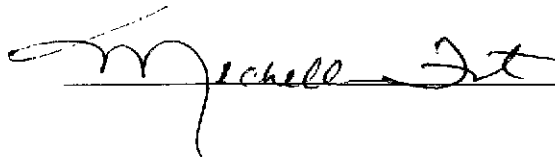
GARY H. HATLESTAD
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Robert Story, Esq.
245 E. Liberty Street, Ste. 530
Reno, NV 89501

DATED: Oct 7, 2010.

A handwritten signature in cursive script, appearing to read "Mitchell St.", is written over a horizontal line.

FILED

2010 OCT 11 PM 4:51

CASE NO.: CROTP1728

DEPT. NO.: 4

HOWARD W. CONYERS

BY: 

DEPUTY

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

BRENDAN DUNKLEY,

PETITIONER,

MOTION FOR ORDER TO

VS.,

PRODUCE THE PRISONER

JACK PALMER, WARDEN,

RESPONDENT.

THE APPLICATION OF BRENDAN DUNKLEY, PETITIONER IN ABOVE
REFERENCED CASE, RESPECTFULLY SHOWS AS FOLLOWS:

(1) THAT HE IS THE PETITIONER IN THE FOREGOING ACTION, AND IS
PRESENTLY INCARCERATED IN THE NEVADA DEPARTMENT OF CORRECTIONS, AT THE
LOVELOCK CORRECTIONAL CENTER, IN PERSHING COUNTY.

(2) THAT HE CURRENTLY HAS A HEARING SCHEDULED IN THE ABOVE-
ENTITLED COURT ON THE 9TH DAY OF NOVEMBER, 2010 AT THE HOUR OF 10 AM.

WHEREFORE, APPLICANT PRAYS THAT AN ORDER BE ISSUED, ORDERING THE
APPEARANCE OF SAID PETITIONER BEFORE THE ABOVE-NAMED COURT, AND
DIRECTING THE EXECUTION OF SAID ORDER BY THE NEVADA DEPARTMENT OF
CORRECTIONS.

DATED THIS 27TH DAY OF September, 2010

Brendan Dunkley #1023236

L.C.C.

1200 PRISON ROAD
LOVELOCK, NEVADA 89419

1 CODE #3340
2 RICHARD A. GAMMICK
3 #001510
4 P. O. Box 30083
5 Reno, Nevada 89520-3083
6 (775)328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE.

11 * * *

12 BRENDAN DUNCKLEY,

13 Petitioner,

14 v.

Case No. CR07P1728

15 JACK PALMER,

Dept. No. 4

16 Respondent.

17
18 ORDER TO PRODUCE PRISONER

19 IT APPEARING to the satisfaction of the above-entitled Court that it is necessary that the
20 Petitioner above named, BRENDAN DUNCKLEY #1023236, presently incarcerated in the Nevada State
21 Prison, Carson City, Nevada, be brought before the Second Judicial District Court for a post-conviction
22 hearing in the above-entitled action,

23 NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the Nevada State
24 Prison, Carson City, Nevada, bring the said BRENDAN DUNCKLEY before the Second Judicial
25 District Court on November 9, 2010, at 10:00 a.m. for a post-conviction hearing in the above-entitled
26 action, and from time to time thereafter at such times and places as may be ordered and directed by the

///

///

///

1 Court for such proceedings as thereafter may be necessary and proper in the premises.

2 DATED: October 12, 2010.

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4 Connie J. Steinheimer
5 DISTRICT JUDGE
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 10-12-2010:16:57:11
Clerk Accepted: 10-12-2010:16:58:49
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ord to Produce Prisoner
Filed By: Audrey Kay

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:

ROBERT STORY, ESQ. for BRENDAN
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

ORIGINAL**FILED**

2018 OCT 25 PM 4:41

HOWARD W. CONYERS

BY APD
DEPUTY

Code: 1230
 ROBERT W. STORY, Bar No. 1268
 STORY LAW GROUP
 245 East Liberty Street, Suite 530
 Reno, Nevada 89501
 Telephone: (775) 284-5510
 Facsimile: (775) 284-0800
 Email: rstory@storylaw.net

Attorneys for Petitioner Brendan Dunckley

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

BRENDAN DUNCKLEY

Petitioner,

Case No. CR07P1728

vs.

Dept. No. 4

STATE OF NEVADA, et al.,

Respondents.

MOTION FOR FEES FOR COPY COSTS

Petitioner hereby moves the Court for \$223.22 for copy costs for photocopying Mr. David O'Mara's file regarding Petitioner. Mr. O'Mara represented Petitioner in the State's criminal prosecution from Justice Court through the Nevada Supreme Court. The invoice for the requested transcript is attached as Exhibit 1. Accordingly, Petitioner requests that this Court authorize the payment of \$223.22 for the services of Sierra Legal Duplicating, Inc. for the copy costs of Mr. O'Mara's file.

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

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

October 22, 2010.

STORY LAW GROUP

By: 
ROBERT W. STORY, ESQ.

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Emily A. Ladouceur, hereby declare and state as follows:

I am over the age of eighteen years, a member of Story Law Group in the City of Reno, County of Washoe, State of Nevada, and I am not a party to this action. My business address is 245 East Liberty Street, Suite 530, Reno, Nevada 89501.

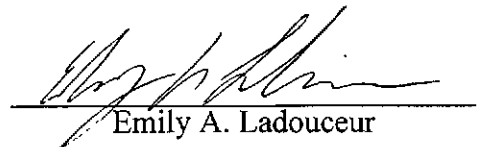
On October 25, 2010, I served the **Motion for Fees for Copy Costs** by placing a true and correct copy for delivery in the United States mail, postage prepaid, to the following address:

Terrence McCarthy
Deputy District Attorney
1 S. Sierra Street
Reno, Nevada 89501

Sierra Legal Duplicating, Inc.
P.O. Box 2452
Reno, NV 89505

I declare under penalty of perjury that the foregoing is true and correct.

Dated on October 25, 2010, at Reno, Nevada



Emily A. Ladouceur

INDEX OF EXHIBITS

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Exhibit 1 Invoice

1 Page

CR07P1728 DC-9900021032-019
POST: BRENDAN DUNKLEY (D4) 2 Pages
District Court 10/25/2010 04:41 PM
Washoe County 1230
FY1 I MATHEIS

EXHIBIT 1

EXHIBIT 1

V9. 646

Sierra Legal Duplicating, Inc.

P.O. Box 2452

Reno, NV 89505

775-786-8224 or 888-753-5345

EIN 88-0369419

Invoice

DATE	INVOICE #
10/14/2010	OCT 10 065

BILL TO
Story Law Group Robert W. Story, Esq. 245 E. Liberty Street Suite 530 Reno, NV 89501

SHIP TO
Story Law Group Robert W. Story, Esq. 245 E. Liberty Street Suite 530 Reno, NV 89501

TERMS	REP	SHIP	VIA	CLIENT/MATTER
Net 30	EF	10/14/2010	Hand Deliver	DUNCKLEY/Emily

QUANTITY	ITEM CODE	DESCRIPTION	PRICE EACH	AMOUNT
1,105	0005	Heavy Grade Copywork	0.185	204.43T
3	0013	Rebind	1.00	3.00
1	Fuel	Fuel Surcharge	0.00	0.00T
		Sales Tax	7.725%	15.79
			Total	\$223.22

Please pay by this invoice. No monthly statement will be sent. Terms: Net 30 days, interest rate of 1.5% (18.0% per annum) will be added after 30 days. Now for your convenience, we accept Visa, Master Card, Discover and American Express.



1 **CODE: 1250**
2
3
4
56 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
89 **BRENDAN DUNCKLEY,****Case Nos. CR07P1728**10 **Petitioner,****Dept. No. 4**11 **v.**12 **STATE OF NEVADA, et al.,**13 **Respondents.**
14 _____/15 **APPLICATION FOR SETTING**16 **TYPE OF ACTION:****CRIMINAL APPEAL**17 **MATTER TO BE HEARD:****EVIDENTIARY HEARING**18 **DATE OF APPLICATION:****November 2, 2010**19 **COUNSEL FOR PETITIONER:****ROBERT W. STORY, ESQ.**20 **COUNSEL FOR RESPONDENT:****GARY H. HATLESTAD, ESQ.**
21
22
23
24
2526 **Setting at 9:00 a.m. on the 1st day of April, 2011.**
27
28**** Vacates Evidentiary Hearing set for November 9, 2010 @ 10:00 a.m.****

CERTIFICATE OF SERVICE

CASE NO. CR07P1728

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 3 day of November, 2010, I electronically filed the **APPLICATION FOR SETTING** with the Clerk of the Court by using the ECF system.

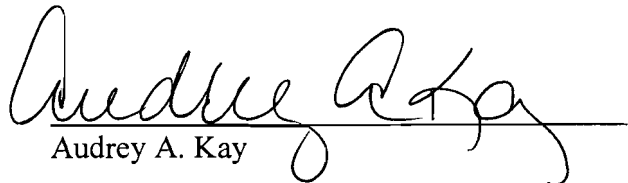
I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

GARY HATLESTAD, ESQ. for STATE OF NEVADA
ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]


Audrey A. Kay

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 11-03-2010:10:29:10
Clerk Accepted: 11-03-2010:10:29:32
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Application for Setting - eFile
Filed By: Audrey Kay

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

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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:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

Code: 4047
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
245 East Liberty Street, Suite 530
Reno, Nevada 89501
Telephone: (775) 284-5510
Facsimile: (775) 284-0800

Attorneys for Petitioner Brendan Dunckley

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

BRENDAN DUNCKLEY

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents

Case No. CR07P1728

Dept. No. 4

STIPULATION [REDACTED] FOR CONTINUANCE OF HEARING DATE

Petitioner, by and through his appointed counsel, and Respondents, through the Washoe County District Attorney's Office, agree and stipulate as follows:

The Evidentiary Hearing previously set for April 1, 2011 at 9:00 am has been moved to April 22, 2011 at 9:00 am. This continuance is due to a calendar conflict of one of the witnesses.

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

The undersigned does hereby affirm that the preceding document, Stipulation and Order, does

//

//

not contain the social security number of any person.

February 11, 2011

Washoe County District Attorney's Office
Appellate Division

STORY LAW GROUP

By: [Signature]

By: [Signature]
ROBERT W. STORY, ESQ.

Attorneys for Defendant

Attorneys for Plaintiff

IT IS SO ORDERED.

February 11, 2011.

DISTRICT JUDGE

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 02-14-2011:10:13:24
Clerk Accepted: 02-14-2011:10:18:26
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Stipulation to Continuance
Filed By: Audrey Kay

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The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1250

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

STATE OF NEVADA,

Plaintiff,

CASE NO.: CR07-1728

vs.

DEPT. NO.: 4

BRENDAN DUNKLEY,

Defendant.

BRENDAN DUNKLEY,

CASE NO.: CR07P1728

Petitioner,

DEPT. NO.: 4

vs.

STATE OF NEVADA, et al.,

Respondents.

APPLICATION FOR SETTING

TYPE OF ACTION:
MATTER TO BE HEARD:

CRIMINAL
MOTION FOR WITHDRAWAL OF GUILTY
PLEA – ORAL ARGUMENTS
and
EVIDENTIARY HEARING ON PETITION FOR
WRIT OF HABEAS CORPUS
(POST-CONVICTION)

DATE OF APPLICATION:
COUNSEL FOR PLAINTIFF:
COUNSEL FOR DEFENDANT:
PRO PER DEFENDANT:

March 11, 2011
GARY HATLESTAD, ESQ.
ROBERT STORY, ESQ.
BRENDAN DUNKLEY

Setting at **9:00 p.m.** on the **3rd** day of June, 2011
*****VACATES APRIL 22, 2011 HEARING*****

CERTIFICATE OF SERVICE

CASE NO. CR07-01728 & CR07P1728

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 11th day of March, 2011, I electronically filed the **APPLICATION FOR SETTING** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

KELLI VILORIA, ESQ. for STATE OF NEVADA

ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

Brendan Dunkley, #1023236
NNCC
P.O. Box 7000
Carson City, NV 89702


Audrey A. Kay

1 CODE 3020
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 BRENDAN DUNCKLEY,

9 Petitioner,

10 vs.

Case No. CR07P1728

11 STATE OF NEVADA, et al.,

Dept. No. 4

12 Respondent.
13 _____ /

14 **ORDER GRANTING STIPULATION**
15 **FOR CONTINUANCE OF HEARING DATE**

16 Brendan Dunckley, Petitioner, by and through his counsel, Robert W. Story, Esq. and
17 the State of Nevada, by and through Richard A. Gammick, Washoe County District Attorney
18 and Gary Hatlestad, Esq., filed a Stipulation for Continuance of Hearing Date on February 14,
19 2011 to continue the Evidentiary Hearing on the Writ of Habeas Corpus (Post-Conviction) in
20 the above-entitled matter from April 1, 2011 to April 22, 2011 at 9:00 a.m.

21 The Court having reviewed that request finds good cause and in the interest of justice,

22 IT IS HEREBY ORDERED that the Evidentiary Hearing is continued from April 1,
23 2011 to April 22, 2011 at 9:00 a.m.

24 DATED this 26 day of February, 2011.

25
26 
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CR07P1728

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 11 day of ~~February~~ ^{March}, 2011, I electronically filed the **ORDER GRANTING STIPULATION FOR CONTINUANCE OF HEARING DATE** with the Clerk of the Court by using the ECF system.

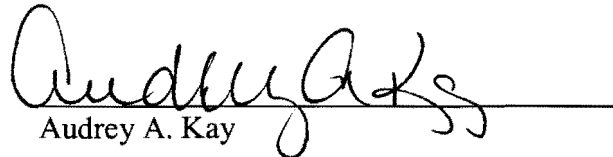
I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

GARY HATLESTAD, ESQ. for STATE OF NEVADA
ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]


Audrey A. Kay

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

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A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-11-2011:13:14:05
Clerk Accepted: 03-11-2011:13:15:36
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Application for Setting - eFile
Filed By: Audrey Kay

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GARY HATLESTAD, ESQ. for STATE OF NEVADA

ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

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

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A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 03-11-2011:13:16:38
Clerk Accepted: 03-11-2011:13:19:25
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ord Granting
Filed By: Audrey Kay

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The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA

ROBERT STORY, ESQ. for BRENDAN DUNCKLEY

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

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

-

A filing has been submitted to the court RE: CR07P1728
Judge: CONNIE STEINHEIMER
Official File Stamp: 06-21-2011:14:20:09
Clerk Accepted: 06-21-2011:14:38:42
Court: Second Judicial District Court - State of Nevada
Case Title: POST: BRENDAN DUNCKLEY (D4)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
Filed By: ROBERT STORY, ESQ.

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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