

Ground Two: Failure to Investigate,
Violating 5th, 6th, and 14th Amendment Rights

A. Defense Then asked Ms. Hines to identify when she lied.

During interviews with Det. Tooley, Pre-HMs in court, or now, at trial? Ms. Hines was evasive, but, eventually agreed both interview, and prelm in court, under oath, were lies, while her testimony at trial was true.

When confronted with other conflicts, like her different stories of ownership; 1. "She did not know the owner" at interview, 2. "She believed the owner was Deft" at Prelim., and 3. "She knew immediately, when she saw it" at trial; she admitted she lied during the preliminary hearing, and to Det. Tooley. Tooley admitted she was never told all the stories. (VI 1292) This lie was material to the Affidavit, and Bindover. It is that interview, which was the basis for the Police and DA Affidavit for a search warrant, and it was a lie.

B. During trial, there was so much chaos over the perjury, and the motions for dismissal, and the court forbidding defense counsel from calling "Obviously, I lied.", perjury, or Tami Hines being referred to as "The Perjuror", that defense counsel was unable to explore another implication.

Bl. That implication, was that a FRANKS HEARING was called for, to challenge the search warrant. A material lie was used to support a search warrant.

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PETITION FOR Habeas Corpus

Deft: ANTHONY Castaneda Date: 12-12-2016 , Page: 3 of 4

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B1. That Implication, was that a FRANKS HEARING, WAS
called for, To challenge The search WARRANT evidence.
A MATERIAL Lie, was used to support a search WARRANT.

A simple evidentiary hearing, To review The Affidavit
presented for one of The 3 stories presented To The
Detective (TOOLEY), The preliminary hearing, OR, IN Trial,
Would be a simple, FIRST STEP.

DET. TOOLEY has already admitted IN COURT, she did NOT
KNOW all 3 STORIES TOLD BY TAMI HINES. (VI 1292)

So, The FIRST Task is JUST which story is There.

The 2nd Task, following US v. Gonzalez, INC guides
is To see whether Tooley was Reckless IN her affidavit
STATEMENT (1), and/or "Needed To find probable cause."

The Lie TOLD, OF course, is MATERIAL. It supports The
search WARRANT, and bindover To me, Deft Castaneda.
DET. TOOLEY allowed herself To be used by a LIAR, so
The COURT has The Responsibility To find if The search
WARRANT Affidavit is Wholly, OR JUST partially, Based
ON TAMI HINE's LIES.

AA 0205

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C. The Negative effect of This Failure To Investigate is rather obvious. A FRANKS Hearing can, and probably should, throw out "The Fruit of The poisoned tree". The seized computers at the heart of the case.

D. DEFT Castaneda requests the court grant This Habeas Corpus, and setup an evidentiary hearing to examine the search warrant Affidavit.

GROUND #3

5 pages

AA 0207

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PETITION FOR HABEAS CORPUS

DEFT: ANTHONY CASTANEDA DATE: 12-12-2016, PAGE: 1 of 5

GROUND #3, DUE PROCESS

VIOLATION OF 5TH, 6TH, 14TH AMENDMENT RIGHTS

- A. The Rights to a Fair Trial, Due Process, and To Present a defense, is specially sensitive to Summary. During Summary, the DA (ALEX CHEN at Trial) is under an obligation to avoid claims and conclusions, NOT supported by evidence, forensic investigation, recanted testimony, or perjured testimony.

DURING MY TRIAL, Defense was able to prove a LACK of evidence for many DA claims, prove forensic facts did NOT support D.A. claims, force forensic witnesses to admit their investigations were inadequate, and did NOT support DA. claims, and force a state witness to admit perjury at trial, and in preliminaries.

DURING SUMMARY, DA ALEX CHEN, repeatedly, referred to every claim rebutted, disproven, recanted, or based on perjury, during trial. He then made further claims, not supported at all, during trial. DURING SUMMARY, Defense can't re-argue trial court evidence, or prove the claims were unsupported, recanted, inappropriate, or based on perjury. The DA summary claims, made trial arguments, pointless, and absurd.

AA 0208

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GROUND #3, Due Process

VIOLATION OF 5th, 6th, 14th amendment Rights

- B. During Summary, The DA repeatedly, and in Powerpoint slides, referred to trial testimony by Det. Ehlers, that evidence "carved images in unallocated space" proved an interaction with, and connection to, the Deft, Castaneda, and could prove possession.
- B1. The U.S. Supreme Court Disagrees.
In UNITED STATES V. FLYER, (633 F.3d 911) The USSC found "Carved images in unallocated space are insufficient to prove possession...". The D.A. never mentions this.
- B2. During Summary, The D.A. repeatedly claims Deft Castaneda "downloaded" files, when, during trial, no web browser download records were ever found, Det. Ehlers was forced to admit none were ever found, and the initial forensic report stated "These files were locally copied from an unknown source computer."
- B3. During Summary, The DA repeatedly claims that Deft "has not proven his case", or "that he was somehow setup", or "not proven that Tami Hines would know how to". When the Defense has no obligation to prove a case, and Tami Hines testified at preliminary she had sent me ID files, had my administrator and personal account passwords, and had access to all the computers.

GROUND #3, Due Process

VIOLATION OF 5th, 6th, 14th amendment rights

B4 DURING SUMMARY, The DA claimed that state witness, Tami Hines, was "LED" to admit perjury / lying, both AT TRIAL, and DURING PRELIMINARIES, when, IN FACT, Ms. HINES VOLUNTARILY admitted "Obviously, I lied." when Defense confronted her with CONFLICTS IN her (source) PRELIM / TRIAL TESTIMONY, and a CONTRADICTION between what she told Det. Tooley at Interview "I don't know owner", and what she claimed at trial, "I knew immediately, when I saw it, it belonged to Deft Castaneda."

B5 DURING SUMMARY, The DA claimed "who knows how this happened?" when trying to explain a file written on a date, when Hines admitted admitted only she had the USB stick which starts the case. He then goes into a long series of maybe this, maybe that, during which he explains how he knows. DURING TRIAL, the DA presented NO FORENSIC TESTIMONY FOR this claim. His explanation, is IN FACT, a technical impossibility.

B6 DURING SUMMARY, The DA claimed his FORENSIC WITNESSES RAMIREZ and Ehlers proved Deft interaction with the files, when Ramirez admitted dates were UNRELIABLE, and, when Ehlers admitted the dates he proposed had access times, on multiple computers, that were IMPOSSIBLE FOR HUMANS TO PERFORM.

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Ground #3, Due Process

Violation of 5th, 6th, 14th amendment rights

- B7. DURING Summary, The DA claimed That He Knew, How Files had been Transferred between computers, When he had earlier claimed They had been downloaded. There was Never any evidence, or Testimony in Trial, To support This physical copy chain, or Transfers. (This was the actual claim of the initial forensic report at Prelim.)
- B8. DURING Summary, The DA, Repeatedly, Referred To State Witness Hines, and Landeau, and To Their Testimony That Deft "owned" The USB stick, When, IN fact, it conflicted With Hines Pre-Trial Testimony, and She admitted Lying about This attribution at Trial. Landeau, The claimed source, Never Testified at Prelims, Never claimed To be The source before Trial, and Never explained Why Hines claimed she, or her 6 year old daughter was, or How ONLY He Knew, It was Expensive.
- B9. DURING Summary, The DA. claimed That "No Virus, or Other Programs, could download These files, or could access them at will." When, IN fact, Both actions, are Normal Functions of Virus + graphics programs. DURING Trial, Both his forensic detectives admitted so. DURING Trial, automated access examples were demonstrated, FROM The DA's OWN FORENSIC REPORTS.

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Ground #3, Due Process -

VIOLATION of 5th, 6th, 14th amendment Rights

C. IN SHORT, The DA made repeated, unfounded claims, some against the direction and guidance of the US Supreme Court, some were discredited during trial, some were recanted by the state's own forensic experts, and reports, and some were from perjury during trial.

The Deft Castaneda, sincerely hopes this is not standard. The negative effect of this summary cannot be underestimated. It effectively ignored the trial itself. It steam rolled my right to a fair trial, due process, and ignored an effective defense.

The jury, already confused by a technical subject, heard a DA claim he had proved guilt, and that the Deft, had "not proved his case" None of which was true.

D. The Deft Castaneda asks the court to grant this Habeus Corpus, and correct the errors at trial. An evidentiary hearing, to substantiate this writ, is also requested.

GROUND FOUR 2 pages

AA 0213

CASE: C-11-272657-1

PETITION FOR HABEAS CORPUS

Defr: ANTHONY CASTANEDA

DATE: 12-12-2016, PAGE: 1 of 2

GROUND FOUR: Failure of Counsel To Raise

Substantive Issues on Appeal

Violating 6th and 14th Amendment Rights

- A. My Appeal Counsel, (Audrey Conway) presented my direct appeal to The full Nevada Supreme Court (en banc) on April 7, 2015. Judgement was filed 14 months later, on June 16, 2016. "Affirmed in Part, Vacated in Part, and Remanded." (64515)

This Appeal reduced my convictions from 15 to one Felony, based on a UNIT-OF-PROSECUTION ARGUMENT. (Issue #6, 64515) Since all my sentences were run concurrently, There was NO NET change in my sentence. (28 to 72 months)

- B. My Appeal Counsel failed to raise several major issues.

1. A US Supreme Court ruling (United States v. FLYER, 633 F.3d) which directly supported major issues argued on appeal.
2. Perjury admitted in-court, on the stand, was used by the DA and Police to secure the search warrant on my home.
3. Eligibility for a FRANKS Hearing to challenge the search warrant, and dismiss resulting evidence. (based on #2)
4. That trial counsel had failed to notice a retained computer expert, prior to trial, on computer crimes.

AA 0214

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PETITION FOR Habeas Corpus

Defr: Anthony Castaneda

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Ground FOUR: Failure of Counsel To Raise

Substantive Issues on Appeal.

VIOLATING 6th and 14th Amendment Rights

B. Each of These, and other issues, raise substantive issues with the presentation of my appeal. This, notably, might have prevented the Nevada Supreme Court, from making several, factual errors in explaining their final decision, which was, after all, a partial victory.

C. The negative effect of NOT raising these issues can NOT be underestimated. A Supreme Court ruling was ignored. PERTURY, self-admitted, by a state witness, on-the-stand, in court, was used to support bind over, then, a search warrant. A FRANKS hearing, might have thrown out the evidence. Lastly, trial counsel was unable to notice a computer expert for a computer crimes trial, destroying the ability to rebut outlandish DA forensic claims.

Each of these issues, warrant reversal of all counts, like in the USSC decision, and since there is now only one count, dismissal or reversal of the trial.

D. DEFT Castaneda asks the court to grant this Habeas Corpus, and correct errors at trial, and on appeal.

AA 0215

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PETITION FOR Habeas Corpus

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Ground Five: Ineffective Assistance of Counsel,

violation of 6th and 14th amendment Rights.

A. My Trial Counsel, (P. David Westbrook) Failed To challenge DA Forensic Witness Det. Ehlers Testimony, or D.A. (Alex Chen) claims during Trial and Summary, based on U.S. Supreme Court precedent, on exactly this kind of state claim, using exactly this kind of evidence. (Images in unallocated space) (United States v. FLYER, 633 F.3d 911)

B. During Trial, Det. Ehlers made a claim that "Files in unallocated space" are sufficient to prove Possession, as defined by The Law. This surprised The defense.

United States v. FLYER, disagrees:

"Files in unallocated space are insufficient for proving Possession, and without added evidence, tend to show innocent behavior."

C. This surprise claim (Ehler's) was also technically absurd, as unallocated space is exactly that, space on a hard drive never allocated to a file. Defense Counsel objected to the claim immediately, and "late noticed" a computer expert retained before the trial. The trial court turned down the request, based on late notice.

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Ground FIVE: Ineffective Assistance of Counsel,
violation of 6th and 14th amendment Rights.

- D. The Tactics chosen by defense counsel are Legitimate and viable, but, without Late Notice, UNTenable. The far simpler tactic, of simply quoting, verbatim, from U.S. v. FLYER, would have been more effective.

U.S. v. FLYER, is virtually a word-for-word rebuttal of claims by Det. Eulers, and DA Alex Chen, all by ITSELF. No computer expert needed.

- E. Unfortunately, the Late Notice was turned down, and the U.S. Supreme Court guidance on "unallocated space" data, was ignored.

- F. Lastly, there is the question of "added evidence". Once again, U.S. v. FLYER supplies guidance. "unallocated space" contained deleted data. DEFT could NOT access or view them. (download) No evidence showed defendant had emailed or printed copies of those images, or that he was aware that he could... Deleted images alone do NOT support a conviction for knowing possession of child pornography on or about a certain date."

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Ground Five: Ineffective Assistance of Counsel,
Violation of 6th and 14th amendment Rights.

- G. There was NO presentation of "added evidence", as defined by US v. FLYER during the Testimony of Det. Ehlers, during TRIAL, OR by DA Alex Chen, during TRIAL OR SUMMARY, OR ON his Powerpoint slides of the claim.
- H. There was NEVER any evidence of downloading, printing, emailing, viewing, editing, or transferring, ANY of the files at issue IN the TRIAL. NO attempts at proving purchase of the USB stick, OR of even VISITING a web site known to distribute such images, and NEVER an attempt to prove Deft was even HOME.
- I. Deft Castaneda argues there is INSUFFICIENT evidence to show I exercised "dominion OR control" over any of these files, when I was NOT even HOME to do so.
- J. Deft Castaneda Asks the COURT to grant This Habeas Corpus, and CORRECT the ERRORS at TRIAL.

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PETITION FOR Habeas Corpus

DEFT: ANTHONY Castaneda

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GROUND SIX: PROSECUTOR MISCONDUCT

VIOLATION OF 5TH, 6TH, and 14TH AMENDMENT
and THE NEVADA CONSTITUTION.

- A. AT the close of Rebuttal, Defense brought a MISTRIAL MOTION based on cumulative prosecutorial misconduct during TRIAL Rebuttal arguments, summary powerpoint presentations, The TRIAL denied The MOTION, and The MOTION TO RECONSIDER. (VIII 1593) (VIII 1595 and VIII 1656)
- B. The PROSECUTOR (ALEX CHEN) MIS-REPRESENTED HIS OWN FORENSIC TEAM, his OWN FORENSIC REPORTS FROM before and during TRIAL, shifted The BURDEN of proof to The DEFT, used claims by his WITNESSES that were admittedly perjury, vouched for ONE STATE FORENSIC expert over another, ignored The PRE-TRIAL stipulations, fabricated statements by DEFT, Disparaged Defense counsel, made statements NOT supported by evidence OR TESTIMONY at TRIAL, and LASTLY, made claims for data in "unallocated space", NOT supported by forensics, OR By The UNITED STATES Supreme COURT in U.S. V. FLYER.

NOT Bad For JUST a 6 day TRIAL.

- C. There has to be a line somewhere, That prosecutors can NOT cross, and This TRIAL crossed Them OR IT, many Times. DEFT Castaneda asks The COURT To GRANT This Habeas Corpus, and CORRECT errors at TRIAL.

AA 0219

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PETITION FOR Habeas Corpus

Defr: ANTHONY Castaneda

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Ground Seven: Evidence Tampering
Violation of 5th, 6th, and 14th Amendment Rights

A. During Preliminaries and Trial, Both the DA and Defense, Noticed odd dates on the files in question. Many of the user file-dates, pre-dated the Operating System, the file-system install-date, and even the age of the device the files were stored upon, and this is impossible.

Defr Castaneda argues these file-dates are Prima Facie indications of evidence tampering, and fabrication.

Since the right to a fair trial, due process, and defense, depend on legitimate evidence, the admission of this evidence by the trial court, violated Defr rights.

B. At Preliminaries and Trial, DA Forensic Experts (Det. Ramirez, Det. Ehlers), confronted with these odd, and contradictory file-dates, both argued the PC/OS date-system was "unreliable". Both were factually wrong.

The PC/OS date-system, and file-dates are very reliable, and file-dates are accepted as evidence for possession "on or about a certain date", by the U.S. Supreme Court. The problem is these file-dates, which are impossible by the rules of the PC/OS file date-system.

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Ground Seven: Evidence Tampering
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- C. The PC/OS File-system is created on its self-recorded FS-Install-Date. Logically, no user-file can pre-date the File-system it's in, or FS-Install-date, without "Hacking" the User-file date.
- C0. The PC/OS File-system uses 3 dates to track user-file activity, File-created-date, File-Modified-date, and File-accessed-date. All 3 are derived from current system-date-time, when that user-file activity happens.
- C1. File-Created-Date: This date is derived from system-date-time, when the user-file is created in the PC/OS File-system. Logically, it can not pre-date the FS-Install-date.
- C2. File-Modified-Date: This date is derived from system-date-time, ONLY when the user-file is modified from a previous version. Logically, if a user-file is modified on a previous (older) computer, this date CAN pre-date the File-created-date, or FS-Install-date.
- C3. File-Accessed-Date: This date is derived from system-date-time, when the user-file is "read" by the PC/OS, a user, or a program. Logically, this date will NOT pre-date either the File-created-date, or the FS-Install-date of the system it is in.

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Ground Seven: Evidence Tampering
VIOLATION OF 5TH, 6TH, and 14TH AMENDMENT RIGHTS

D. There are 3 devices in this case: an HP Laptop, a Shuttle Desktop, and an INATION USB memory stick. Two of the devices have impossible dates, and the third (H.P.), the D.A. provided no printed file information.

D1. The Shuttle Desktop. On this computer, the FS-Install-Date is December 10, 2008. The C.P. files in question, have a File-Created-Date of November 25, 2008, 15 days PRIOR. This is an impossible date. No one can create a user-file on a file-system that won't exist for another 15 days.

D2. The INATION Memory stick. On this device, the FS-Install-Date is September 10, 2009. The C.P. files in question have a file creation-date of November 25, 2008, 9 months PRIOR. This is an impossible date. No one can create a user-file on a file-system that won't exist for another 9 months.

D3. In addition, an inquiry to the INATION company, puts the manufacture date of this memory stick, to no earlier than Summer 2009. In fact, this memory stick was introduced at a Chicago Trade Show in January, 2009. November 25, 2008, on user-files stored on this stick, are a doubly impossible date. This memory stick simply did not exist in 2008.

AA 0222

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GROUND SEVEN: Evidence Tampering
VIOLATION OF 5TH, 6TH, and 14TH AMENDMENT RIGHTS

E. In addition, The INATION Memory STICK has a single File, with a File-Modified-Date, of February 7, 2010. This was The day PRIOR To when it was given To Police, when ONLY The States WITNESSES (HINES/Landean) had it, according To Their OWN, SWORN TESTIMONY.

However, There Was No FORENSIC evidence That File Was Modified ON That Memory STICK. Doing SO, Would have Left File fragments, (of The UN-modified file) on The STICK. The File Was Modified, ON 2-7-2010, ON ANOTHER computer.

F. This FORENSICALLY PROVES 2 THINGS IN THIS case.

1. Deft's computers are NOT The SOURCE computers of The C.P.

They were Modified ON ANOTHER computer, and Moved To Deft computers after 2-7-2010. (or at least the stick)

2. This USB Memory STICK user-File, STILL has a File-Created date of Nov. 25, 2008, which is impossible.

This is direct, Technical evidence, That The File-created-dates ON These Files were Technically "Hacked", or MALICIOUSLY Modified, when ONLY The State, WITNESSES, had custody of The Memory STICK.

There simply is No Other Technical explanation.

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Ground Seven: Evidence Tampering

Violation of 5th, 6th, and 14th Amendment Rights

G. At Trial, The State NEVER presented evidence that Deft's computers had ever visited KNOWN CP Websites, OR downloaded files from them. Web browser visit and download LOGS, are the STANDARD for Proving Possession in CP cases (US v. Mohrbacher), ON OR ABOUT a CERTAIN date, when the Deft was present. (US v. Romm / US v. Carrasco) They should NOT use "images in unallocated space." (US v. Flyer)

The State failed to prove Deft was present, in Las Vegas, when any file was created, OR, after, when he lived alone. The State admitted that free programs to modify user-file dates are available. No normal supporting evidence was presented, making modifications and tampering with the files in question, material to the verdict of the trial.

H. The CP user-files in question, have been tampered with. They were on other computers, were locally copied to Deft computers, NOT downloaded, and then given false creation dates, to support false charges against the Deft. Without time-machines, there is no other explanation for the evidence.

I. Deft Castaneda asks the court to grant this writ, and to convene an Evidentiary hearing to confirm the technical claims, review, and correct errors at trial.

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Ground Eight: INSUFFICIENCY of The evidence

- A. The DA failed to provide sufficient evidence for a conviction on all the elements of the crime, as defined by Nevada Law, and/or US Supreme Court Precedent.
- B. On The basic Statement of The Case, Both The State Witnesses, and The Deft, were both in The House, using The computers, both were on The internet, both had Their own computers, and used all The computers, Both had access to The "Tony" administrator account, Both had full password access to all accounts, and full administrator rights as a user. So, on The face of things, it's joint custody. Indeed, since Deft Castaneda worked in other states, The accusers had "more" custody than The Deft, specially in mere presence in Las Vegas.

IN cases where multiple people had access and control, The state must demonstrate "a sufficient connection between Deft and Contraband, to infer possession." (US v. Romm), and "on or about, a certain date."

The State, repeatedly, failed to demonstrate that I was in Nevada, Las Vegas, or at my home, when any of The files were copied to my computers. There was never any DA supplied evidence that any of The files were downloaded on any of my computers.

AA 0225

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Ground Eight: Insufficiency of The evidence

B. Download records in a web browser, are the most often presented evidence of possession, when the Def is present. (emphasis mine) (U.S. v. Mohrbacher, 182 F3d)

In this trial, both these kinds of evidence are missing. The DA presented no forensic download records. The DA presented no evidence to show I was present, in my home or Las Vegas, when any download took place.

When the DA attempted to prove I interacted with the files, the DA forensic experts conceded the dates, and times, and simultaneous access on 2 computers, could only be performed by computer programs, not humans.

C. These files were clearly, locally copied, not downloaded, from an "UNKNOWN SOURCE COMPUTER", as the original pre-trial forensic report declares. Def Castaneda agrees. The DA never identified the UNKNOWN SOURCE computer.

Yet, the DA constantly refers to downloading the files, during trial and summary, without any forensic support for it. There is no record of any of my computers, visiting such websites, downloading from any, or searching for them, using child porn terms, like "PTHC" or "Lolita".

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GROUND EIGHT: INSUFFICIENCY OF THE EVIDENCE

D. There is a reason for no such downloads on DEFT's computers. One of the running programs on my computers was a program called "SPYBOT". Spybot forbids downloads from "dangerous" websites on a list maintained by the FBI. (NCMEC, National Center for Missing and Exploited Children) NCMEC participates in the FBI list of dangerous sites.

Spybot performs this service by stuffing the web browser's built-in blacklist with thousands of websites from the FBI/NCMEC list. Any attempt to download from websites on the blacklist is blocked. It "quarantines" them.

Now, this kind of list-based security will never be foolproof, there are new rogue websites every day, but, it is tough to beat, and leaves a trail of files in "unallocated space" that are forbidden downloads, never allowed to complete.

E. All the attempts by the DA, to connect "DEFT to Contraband" failed, how about other methods supported by precedent? The DA never attempted to show I emailed, printed, posted on a chat or transferred them either.

The trial evidence simply fails to show any interaction, or awareness of these child porn files, on or about, any date at all. OR, to show I was there at all.

AA0227

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Ground Eight: INSUFFICIENCY OF THE EVIDENCE

F. The CONSTANT REFERRAL TO DOWNLOADS, WHEN NO RECORDS OF ANY EXISTED, THE CLAIMS THAT "UNALLOCATED SPACE" DATA WERE SUFFICIENT FOR POSSESSION, WHEN THE US SUPREME COURT INSISTS THEY ARE NOT; THE "ACCESS" ATTEMPTS THAT WERE AUTOMATED SCANS BY ANTI-VIRUS AND GRAPHICS PROGRAMS, THE FAILURE TO EVEN SHOW I WAS THERE, THE POWERPOINT SLIDES, THE SUMMARY CLAIMS BY THE DA IGNORING ADMISSIONS FROM HIS FORENSIC WITNESSES, AND PERJURY FROM HIS OTHER WITNESSES, SHOW A CATASTROPHIC COLLAPSE OF THE STATE'S EVIDENTIARY CASE, AND A BLUFF, FOR A SUMMARY.

G. Deft Castaneda ASKS THE COURT TO GRANT THIS Habeus Corpus, and GRANT ALSO, AN EVIDENTIARY HEARING, TO SUBSTANTIATE THESE ARGUMENTS.

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Ground Nine: The DA Relied on Perjury Testimony

- A. During Trial, state witness Tami Hines admitted Lying on the stand, during Trial, and at preliminary, which was under oath, and the basis for the search warrant.
- B. Despite declaring, "Obviously, I Lied.", when confronted with 3 stories about finding the USB stick, the Trial Court decided at a bench meeting to "Not call it Perjury", and NOT allow Defense to call Ms Hines, "a PERJURER."

Again, when confronted with 3 stories, about who might own the USB stick, at Preliminary, she admitted Lying at the Det. Tooley Interview, where she donated the evidence, and under oath during Preliminary. This was the basis for Bindover, and the search warrant.

- C. Despite all this, The DA used Tami Hines Testimony repeatedly, during Trial, and Summary, to support his case, and Testimony by her boyfriend to fix blame on Deft Castaneda, and divert attention from themselves.

Despite all this, The DA failed to investigate Tami Hines' computer, or Mr. Landeau's computer, ever, in any way. Even though they are the known source, of the USB stick.

AA 0229

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DATE: 12-12-2016, Page: 2 of 2

Ground Nine: The D.A. relied on perjured testimony

- D. Pre-Trial, or during Trial, The DA failed to investigate who purchased the USB stick, or when it was made, or anyone else who knew DEFT Castaneda, whether DEFT carried a USB stick. He simply accepted Ms Hines claims without asking why, or anything at all.
- E. In effect, The State served as an agent for Ms Hines and Mr Landeau, without question or challenge. The D.A. ignored Ms Hines eviction, and her/his motivation to do DEFT Castaneda harm. It drafted an affidavit based on that lie, and obtained a search warrant, and served it, on a house Hines/Landeau had occupied just 3 months earlier, and on a computer found inside the Hines/Landeau bedroom, and blamed DEFT Castaneda, for the evidence found on it.
- F. And They say you can't find Naivete now-a-days.
Is it any surprise, she lied under oath, and admitted it?
- G. DEFT Castaneda asks The Court to grant this Habeas Corpus, and correct errors at trial.

AA0230

Case: C-11-272657-1

PETITION FOR Habeas Corpus

Deft: ANTHONY Castaneda

Date: 12-12-2016, Page 1

Ground Ten: CUMULATIVE ERROR WARRANTS

Reversal of The conviction

A. There is NO part of This case, or This Trial, which contains NO ERROR. NOT INITIAL INTERVIEWS, NOT PRELIMINARY, NOT FORENSIC PRESENTATIONS, NOT BINDOVER, NOT SEARCH WARRANT AFFIDAVIT, NOT FOLLOWING THE U.S. SUPREME COURT ON HOW TO REGARD EVIDENCE, NOT PERTURB DURING TRIAL, NOT PROOF OF ALL THE ELEMENTS OF THE CRIME, NOT PROOF THE DEFT WAS PRESENT AT THE LOCATION OF THE CRIME, NOT AN IDENTIFIED SOURCE FOR THE EVIDENCE, NOT PROOF OF POSSESSION, NOT TRIAL SUMMARY, NOT APPEAL.

There were 3 different calls for dismissal, in a 6 day trial, an admission of perturbation on the stand, altered evidence, and disproven forensics.

That's the history, NOT my claim.

B. Deft Castaneda asks the court to GRANT This Habeas Corpus, and correct the many errors at trial.

Anthony Castaneda
1142611, Mod 100-12
HDSR, POB 650
Indian Springs, NV. 89070

Hasler
04/26/2017
FIRST-CLASS MAIL
\$03.50⁹

US POSTAGE

ZIP 89701
011D12602121



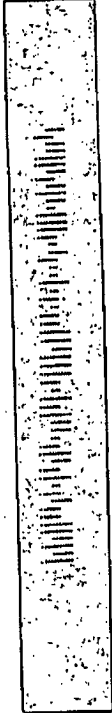
STEVEN D. GRIERSON
CLERK OF THE COURT
200 LEWIS AVE., 3RD FLOOR
Las Vegas, NV. 89155-1160

Legal-3763

CONFIDENTIAL

LEGAL MAIL

AA0232



222
STATE
NEW JERSEY DEPT. OF CORRECTIONS
WALL SPRING CORRECTIONAL CENTER

AA 0233

PPOW
PP
DA
AOR:
Terrance
Jackson
MC

Anthony Castaneda ID NO. 1142611

PUBLIC DEFENDERS OFFICE

Electronically Filed

05/10/2017 10:01:11 AM

2017 MAY 10 A 11:20

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

Adam D. Blum

CLERK OF THE COURT

MOTION TO Amend
Writ of Habeas Corpus

Anthony Castaneda
PETITIONER.

CASE NO.: C-11-272657-1

DEPT. NO.: V

DOCKET: _____

v.
Warden, HDSP
State of Nevada RESPONDENT

COMES NOW, Anthony Castaneda, herein above respectfully
moves this Honorable Court for an MOTION TO Amend a Writ of
Habeas Corpus

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

DATED: this 16th day of March, 2017

BY: Anthony Castaneda
1142611 #
Defendant/In Proper Personam

CLERK OF THE COURT

RECEIVED
MAY 10 2017

AA 0234

(15)

1 I REQUEST The CLERK of The 8TH DISTRICT COURT
2 OF Nevada To please update and Amend my WRIT
3 OF Habeus Corpus With The attached update.
4 My WRIT was electronically filed 12-20-2016.
5 (see attached first page)

6
7 SUMMARY of changes:

8
9 1. Replacement of Ground Seven, with a more
10 organized version of The same Grounds.

11
12 2. Replacement of The 5th page, To my answers to
13 question 18. (What are New grounds) This is to
14 support Ground seven, as a New issue before The
15 COURT. (1)

16
17 Please ^{see} Amended WRIT of Habeus Corpus,
18 2. Application To Proceed Informa Pauperis
19 3. Supporting Financial certificate(s)
20 4. Addendum of grounds.

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CERTIFICATE OF SERVICE BY MAILING

I, Anthony Castaneda, hereby certify, pursuant to NRCP 5(b), that on this 10th
day of March, 2017, I mailed a true and correct copy of the foregoing, "Motion
To Amend Writ of Habeas Corpus"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

STEVEN D. GRIKSON
CLERK OF THE COURT
200 LEWIS AVE, 3RD FLOOR
Las Vegas, NV
89155-1160

CC:FILE

DATED: this 10th day of March, 2017.

Anthony Castaneda
1142611 #
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AA 0237

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

MOTION To Amend Writ of Habeas Corpus
(Title of Document)

filed in District Court Case number C-11-27265Z-1

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

-OR-

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

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

(State specific law)

-or-

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

Anthony Castañeda
Signature

3-10-2017
Date

ANTHONY CASTANEDA
Print Name

PRISONER #1142611
Title

AA 0238

Steven D. Grierson

1 **SPA**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No.: 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 terry.jackson.esq@gmail.com
9 Counsel for Anthony Castaneda

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff/ Respondent,
12 v.
13 ANTHONY CASTANEDA,
14 # 1142611,
15 Defendant/ Petitioner.

Case No.: C-11-272657-1

Dept. No.: V

16 SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF
17 PETITION FOR WRIT OF HABEAS CORPUS FOR POST CONVICTION RELIEF

18 COMES NOW the Defendant/ Petitioner, ANTHONY CASTANEDA, by and through his
19 attorney, TERRENCE M. JACKSON, ESQ., and moves this honorable Court to enter an Order
20 granting his Petition and Supplemental Points and Authorities in Support of Defendant's Petition
21 for Post Conviction Relief on the grounds that trial counsel was ineffective under *Strickland v.*
22 *Washington*. This Petition is based upon all prior pleadings, all the trial transcripts and whatever
23 evidence comes before this Honorable Court on a hearing of this Petition.

24 Respectfully submitted this 25th day of July, 2017.

25 /s/ Terrence M. Jackson
26 TERRENCE M. JACKSON, ESQ.
27 Nevada Bar No.: 00854
28 Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
terry.jackson.esq@gmail.com
Counsel for Anthony Castaneda

1 Defendant/Petitioner alleges as grounds for the petition: that his conviction and imprisonment
2 is unlawful because his trial counsel was ineffective in the following respects:

- 3 1. Counsel's failure to adequately investigate and prepare pretrial by properly noticing a
4 necessary expert witness was ineffective assistance of counsel under *Strickland*;
- 5 2. The failure to file a meritorious pretrial Writ of Habeas Corpus was ineffective assistance of
6 counsel under *Strickland*;
- 7 3. Counsel's failure to file a meritorious Motion to Suppress Evidence was ineffective
8 assistance of counsel under *Strickland*;
- 9 4. Counsel's failure to prepare a necessary theory of the case jury instruction which correctly
10 instructed the jury on issues critical to the defense was ineffective assistance of counsel under
11 *Strickland*;
- 12 5. Counsel provided ineffective assistance of counsel on appeal;
- 13 6. The accumulation of errors violated Petitioner's rights under the Fourth, Fifth and Fourteenth
14 Amendments of the United States Constitution.

15
16 **POINTS AND AUTHORITIES**

17
18 I. COUNSEL'S FAILURE TO ADEQUATELY INVESTIGATE AND PREPARE
19 PRETRIAL BY NOTICING A NECESSARY COMPUTER EXPERT WAS INEFFECTIVE
20 ASSISTANCE OF COUNSEL.

21 Forensic computer expert testimony was a critical part of the prosecution's case. 'Expert'
22 testimony from the prosecution's expert witness(es) was needed by the State to establish the
23 necessary element of knowing possession of the illegal pornographic images discovered during a
24 search of the Defendant's computer.

25 Detective Ehler testified for the state to his opinion that it was 'deliberate human interaction'
26 that placed carved files in unallocated space of Defendant Castaneda's computer. (T.T. V1 1141,
27 1145, 1190) This was critical evidence to establish Defendant's guilt and Defendant could have
28 rebutted the testimony with another computer expert.

1 **A. Failure to Notice A Necessary Expert Witness on Computer Technology Was**
2 **Ineffective Assistance of Counsel Under *Strickland*.**

3 Defense counsel had actually consulted Leon Mare to testify concerning the State's computer
4 evidence. Defense counsel however did not comply with the technical requirement of notice required
5 by NRS 174.234 and this witness was barred from testifying concerning evidence that would have
6 rebutted Detective Ehler's critical testimony.

7 Even though the trial court may have been overly harsh in refusing to allow the critical
8 defense rebuttal expert to testify even though he was not noticed, that failure must be blamed on
9 defense counsel malfeasance and not just the trial court's overly harsh ruling. NRS 174.234 requires
10 notice that is timely. If counsel had acted effectively, and he was well prepared pretrial, he would
11 have filed the timely notice per statute. Counsel should have anticipated that the testimony of
12 Detective Ehler's would likely be adverse, even though all of Ehler's inculpatory testimony had not
13 been previously revealed, and even though Ehler himself did not testify directly to certain related
14 matters. (P.H.T. pp. 22 - 75) A preliminary hearing is merely a probable cause hearing. NRS
15 171.206. The State was not required to put on more than the minimum evidence necessary to
16 establish probable cause. The State did not have to prove their case beyond a reasonable doubt at the
17 preliminary hearing. *Robertson v. Sheriff*, 85 Nev. 681 (1969) The State was not even required to
18 provide a defendant full discovery prior to a preliminary hearing. *State v. Justice Court*, 112 Nev.
19 803, 919 P.2 401 (1996)

20 The trial judge rejected the Defendant's due process argument and ruled against the
21 Defendant. The Supreme Court later upheld the District Court's ruling and did not accept the
22 Defendant's due process and Sixth Amendment arguments that he should have been allowed to call
23 his expert witness at trial even though he had failed to properly provide notice. *See*, 132 Nev. Adv.
24 Op. 44, p.17. Defendant submits that the pretrial error of his counsel, which prevented him from
25 calling a necessary witness was the type of egregious ineffective assistance of counsel that mandates
26 reversal because both prongs of *Strickland* are clearly satisfied. It was certainly deficient
27 performance by counsel to not notice an absolutely essential witness. This was outside the objective
28 standards of reasonable attorney performance and the Defendant was also clearly prejudiced. It is

1 hard to imagine a stronger case for meeting both prongs of *Strickland*.

2 **B. Defendant Has Clearly Established the First Prong of *Strickland* to Show That**
3 **His Counsel was Ineffective.**

4 Under *Strickland*, the test of 'objectively reasonable counsel,' it is clear that in this case the
5 trial counsel was deficient. The defense counsel ignored the clear statutory duty to give notice to the
6 State he wished to call an expert. He could not assume the court would overlook the statute as an
7 excuse his non-compliance with a clear statutory command of notice. Counsel's arguments to
8 persuade the judge were ineffective. (A.A. 1154 - 1157)

9 Although substantial constitutional rights of the Defendant were at stake, the trial court sided
10 with the state when it refused to allow the unnoticed expert witness to testify. The trial court noted
11 that the defense had adequate time to notice an expert for rebuttal. (A.A. 1154) The court also noted
12 the state's experts were subject to vigorous cross examination. (A.A. 1423)

13 The Nevada Supreme Court even upheld this ruling on appeal stating:

14 "Castaneda asks us to excuse his tardy notice because
15 Detective's testimony that the files found in the unallocated space of
16 Castaneda's desktop and laptop had previously been deleted by a user
... caught him by surprise.

17 But Castaneda's argument misses the facts that Detective
18 Ehler's testified at the preliminary hearing and that the recovery of
19 the file remnants "means that it was viewed or was upon that
20 computer at one time and was possibly or probably deleted, or as in
this case, it was being down loaded from a website [and] did not
completely download," that it was Castaneda not the state, who
elicited the surprise testimony from Detective Ehler on cross-
examination, and that Castaneda was able to develop the points he
wanted to make on further cross-examination." (*Id.* 17)

21
22 These rulings should not have been unexpected. Defense counsel's failure to follow the
23 correct procedure led to the Defendant having an essential witness excluded. This was devastatingly
24 prejudicial. The defense was then not adequately prepared to rebut the State's computer forensic
25 evidence. Although counsel had retained a defense expert to explain or challenge this evidence
26 because counsel had failed to even properly notice this witness to testify, that witness could not
27 testify before the jury. All of counsel's arguments for admission of his expert's testimony were
28 unsuccessful.

1 The American Bar Association (ABA) Standards on the Prosecution and Defense function
2 emphasize the crucial importance of investigation by criminal defense attorneys for their clients.

3 See, ABA Standards 4.1: Duty to Investigate.

4 It is the duty of the lawyer to conduct a prompt investigation of the
5 circumstances of the case and explore all avenues leading to facts
6 relevant to guilt and degree of guilt or penalty. The investigation
7 should always include effort to secure information in the possession
8 of the prosecution and law enforcement authorities. The duty to
9 investigate exists regardless of the accused's admissions or
10 statements to the lawyer of facts constituting guilt or his stated desire
11 to plead guilty. (Emphasis added)

12 ... The importance of this ABA standard has been recognized and cited by the Nevada Supreme
13 Court for over 40 years. See, *Jackson v. Warden*, 91 Nev. 430, 537 P.2d 473 (1975). Counsel
14 however did not fulfill the elementary command to promptly investigate and develop all the relevant
15 information that would assist his client in the defense. This failure by counsel requires reversal of
16 the conviction.

17 In *Strickland v Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the United
18 States Supreme Court established a two pronged test for reversal based upon ineffective assistance
19 of counsel. First, the defendant must show that counsel's performance was deficient. This requires
20 a showing that counsel made errors so serious that counsel was not functioning as the
21 "counsel" guaranteed by the Sixth Amendment. Second, counsel must show that the deficient
22 performance prejudiced the defense. This requires showing that counsel errors are so serious as to
23 have deprived defendant a fair trial, a trial where the result is reliable. Unless a defendant makes both
24 showings, he is not entitled to a reversal of the conviction. (Emphasis added).

25 In *Sanborn v. State*, 107 Nev. 399, 812 P.2d 1279 (1991), the Nevada Supreme Court in
26 reversing, recognized the importance of the *Strickland* standard, stating:

27 To state a claim of ineffective assistance of counsel that is sufficient
28 to invalidate a judgment of conviction, Sanborn must demonstrate
that trial counsel's performance fell below an objective standard or
reasonableness and that counsel's deficiencies were so severe that
they rendered the jury's verdict unreliable. See *Strickland v*
Washington, 46 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984);
Warden v. Lyons, 100 Nev. 430, 683 F.2d 504 (1984) *cert. denied*,
471 U.S. 1004, 105 S.Ct. 1865, 85 L.Ed.2d 159 (1985). Focusing on
counsel's performance as a whole, and with due regard for the strong
presumption of effective assistance accorded counsel by this court

1 and *Strickland*, we hold that Sanborn's representation indeed fell
2 below an objective standard of reasonableness.

3 Trial counsel did not adequately perform pretrial investigation, failed
4 to pursue evidence supportive of a claim of self-defense, and failed
5 to explore allegations of the victim's propensity towards violence.
6 Thus, he "was not functioning as the 'counsel' guaranteed the
7 defendant by the Sixth Amendment. *Strickland*, 466 U.S. at 687, 104
8 S.Ct. at 2064. *Id.* 403, 404. (Emphasis added)

9 ...
10 In this case the defense counsel's failure to properly complete his investigation of the
11 necessary expert by filing the proper procedural notice was a grave error.

12 Consider the case of *Wiggins v. Smith*, 539 U.S. 510, 527, 123 S.Ct. 2527, 156 L.Ed.471
13 (2003): "It is evident from the PCRA record that counsel's limited investigation was not the result
14 of such reasoned judgment, but merely the consequence of lackluster performance." (Emphasis
15 added) See also, *Walker v. McQuiggans*, 656 F.3d 311 (6th Cir.2011), and the cases of *Elmore v.*
16 *Ozmint*, 661 F.3d 783 (4th Cir.2011) and *Blystone v. Horn*, 664 F.3d 397 (3rd Cir.2011). In *Elmore*
17 *v. Ozmint*, *supra*, the court noted:

18 "Because *Elmore*'s lawyer's investigation never started, there
19 could be no reasonable strategic decision to stop the investigation or
20 forego use of evidence that the investigation could have uncovered."
21 *Id.* 864 (Emphasis added)

22 ...
23 This case is hardly distinguishable from *Elmore*, even though counsel started the investigation it
24 inexcusably ended abruptly without providing the necessary assistance to the Defendant because the
25 expert witness was prevented from testifying because of lack of notice as required by statute. This
26 was error that requires reversal.

27 **C. Defense Counsel was Ineffective Pretrial Because He Did Not Contact Any of**
28 **the Employees Who Worked for Defendant's Software Security Services**
Company SpyBox. They Were Potential Exculpatory Witnesses.

29 An evidentiary hearing will establish that the Defendant had hired a commercial software
30 security service, SpyBox, to protect all his computers from being corrupted. It was ineffective
31 assistance of counsel not to call as witnesses any employees of that company, SpyBox, who could
32 have testified at trial concerning their security procedures which were being used to protect the

1 Defendant's computers. Defendant believes at an evidentiary hearing he can develop exculpatory
2 evidence from employees from SpyBox. Such witnesses can establish that Defendant had a clear
3 intent to eliminate any possibility of his computers being corrupted by illegal or malicious images
4 such as child pornography.

5 The failure to call these witnesses, which could have tended to establish the Defendant's lack
6 of intent to commit the crime of possession of illegal pornography contraband on his computer(s),
7 was ineffective assistance of counsel under *Strickland*.

8 It is respectfully submitted that the defense counsel's lack of sophistication with computer
9 security, combined with his lack of adequate pretrial investigation in cooperation with a trained
10 computer expert, led to this serious omission that was highly prejudicial to the Defendant's defense
11 case.

12 II. THE FAILURE TO FILE A MERITORIOUS PRETRIAL WRIT OF HABEAS CORPUS
13 WAS INEFFECTIVE ASSISTANCE OF COUNSEL UNDER *STRICKLAND*.

14 The Defendant was held to answer on 15 counts after a preliminary hearing on April 14,
15 2011. The Defendant was arraigned and pled not guilty on April 21, 2011. Although there were facts
16 and case law to support it, Defendant never filed a Writ of Habeas Corpus challenging any of the
17 counts pretrial of the information. NRS 171.206 requires a magistrate to hold an accused to answer
18 if there is probable cause to believe an offense has been committed and the defendant committed it.

19 Although the standard for a bindover after a preliminary hearing is just the probable cause
20 standard of NRS 171.206, legal issues, such as the double jeopardy issue raised successfully on
21 appeal, may be litigated in a pretrial Writ of Habeas Corpus.

22 A. A Pretrial Writ of Habeas Corpus Which Raised the Same Double Jeopardy
23 Issue That Was Raised on Appeal Would Have Likely Been Granted.

24 Although the standard for granting pretrial writs is very high, there was an important legal
25 issue in this case that was ripe for a legal adjudication before trial that had a high likelihood of
26 success. That issue was the double jeopardy issue of charging fifteen counts for simultaneously
27 possessing fifteen digital images. The Nevada Supreme Court decided that issue in the Defendant's
28 favor when it ruled that the State proved only one, not fifteen, violations of N.R.S. 200.730. *See*,

1 *Wilson v. State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005); *Jackson v. State*, 128 Nev. 598, 612,
2 291 P.3d 1274, 1278 (2012).

3 Defendant submits that defense counsel should have raised that double jeopardy issue or a
4 variation of that issue with a pretrial writ and that his failure to do so was ineffective assistance of
5 counsel. This failure to seek dismissal of the charge(s) before trial by Writ of Habeas Corpus was
6 extremely prejudicial to Defendant for several reasons.

7 (1) Winning the Writ of Habeas Corpus on numerous charges could possibly have led to a
8 plea bargain with much better terms. The prosecutor may have felt that even a conviction to
9 a lesser charge with a light sentence or even probation was preferable to no conviction(s) at
10 all.

11 (2) The State always has a tremendous tactical advantage when prosecuting a Defendant with
12 multiple counts. It changes the entire dynamics of the trial for the Defendant to have to
13 defend multiple counts in such a serious case as child pornography. The jury's perception
14 from the beginning of the case until the end is more heavily skewed against a defendant
15 facing many serious counts. When the jury first hears the information read and hears count
16 after count read to them, it is greatly prejudiced.

17 (3) The dynamics of how information is presented during trial, how witnesses are questioned,
18 and what motions are granted is all affected by how many counts are pending. With few
19 counts to deal with, both court and counsel handle the presentation of evidence differently.

20 (4) The Defendant's important decision of whether to testify or remain silent would likely
21 have been greatly influenced by the number of counts remaining after the granting of a writ.
22 The risks versus reward calculus that is weighed by the Defendant and counsel would have
23 been greatly changed by the fact there were less counts to consider. It is therefore respectfully
24 submitted it is more likely Defendant may have testified in his defense if he had only been
25 facing a few substantive counts instead of multiple charges.

26 (5) Finally, the granting of a pretrial writ could obviously have effected the length of any
27 sentence the Defendant received. It would also have effected the availability of bail pending
28 appeal if there was a conviction.

1 For all these reasons counsel was ineffective for not filing a potentially winning Writ of
2 Habeas Corpus pretrial.

3 III. COUNSEL'S FAILURE TO FILE A MERITORIOUS MOTION TO SUPPRESS WAS
4 INEFFECTIVE ASSISTANCE OF COUNSEL.

5 In *Kimmelman v. Morrison*, 474 U.S. 365, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986), the
6 Supreme Court found the defense counsel's failure to file a meritorious Motion to Suppress was
7 reversible error under *Strickland v. Washington*. Defendant submits counsel should have filed a
8 Motion to Suppress in this case based upon the defective search warrant. It is likely such a motion
9 would have won and the evidence would have therefore been suppressed.

10 The case of *Franks v. Delaware*, 438 U.S. 154 (1978), held that a defendant was entitled to
11 an evidentiary hearing to challenge the truthfulness of the search warrant's underlying affidavit if
12 the defendant could make a preliminary showing that the affidavit included statements knowingly
13 and intentionally falsely made or made with reckless disregard for the truth. Although this requires
14 a high standard of proof, it is respectfully submitted the defense counsel was ineffective for not
15 requesting a 'Franks' hearing in this case because there was substantial evidence the warrant was
16 defective because of many false statements made by Tami Hines to support the affidavit. See also,
17 *United States v. Kyllo*, 37 F.3d 526 (9th Cir.1994). A 'Franks' hearing could have demonstrated that
18 the government witnesses cited in the search warrant affidavit made statements that could easily have
19 been demonstrated to be untrue.

20 Even material misstatements in the affidavit that were made recklessly would have been
21 sufficient to invalidate the warrant. See, *United States v. Ippolito*, 774 F.2d 1482, 1486-87 (9th
22 Cir.1985). The remedy was for the court to suppress information seized under a warrant when an
23 affiant has either knowingly or recklessly included false information in the affidavit. *United States*
24 *v. Dozier*, 844 F.2d 701, 705 (9th Cir.1988).

25 It is respectfully submitted that there was no excuse for not filing a suppression motion in
26 this case. Case law does not even require the showing of clear proof of deliberate or reckless
27 misrepresentations at the pleading stage. *United States v. Stanert*, 762 F.2d 775, 781 (9th Cir.1985),
28 *United States v. Gonzalez, Inc.*, 412 F.3d 1102, 1111 (9th Cir.2005). Because there was significant

1 evidence of false statements in the search warrant affidavit, the court should find counsel was
2 ineffective under *Strickland*.

3
4 IV. COUNSEL WAS INEFFECTIVE BECAUSE HE FAILED TO PREPARE A NECESSARY
5 JURY INSTRUCTION BASED UPON THE CASE OF *UNITED STATES v. FLYER*.

6 A district court must correctly instruct the jury on all critical legal issues. It is respectfully
7 submitted counsel should have taken an active role in assisting the district court where there was a
8 complicated issue of law concerning possession of data in unallocated computer space such as
9 existed in this case.

10 Although a district court may have broad discretion to decide among various instructions and
11 will not be reversed absent an abuse of discretion, *Crawford v. State*, 12 Nev. 744, 121 P.3d 582
12 (2005), that discretion is not unlimited. An abuse of discretion occurs if "the district court's decision
13 is arbitrary or capricious or exceeds the bounds of reason." *Crawford, Id.* 748.

14 The Defendant was entitled to his theory of the case instructions and to fair and complete
15 instructions on the essential elements of the charges. *Williams v. State*, 99 Nev. 530, 665 P.2d 260
16 (1983); *Allen v. State*, 98 Nev. 354 (1982), *Barger v. State*, 81 Nev. 548 (1965).

17 The recent case of *United States v. Flyer*, 633 F.3d 911 (9th Cir.2011) dealt directly with the
18 important issue of the possession of images in unallocated computer space which was also the most
19 important legal issue in the Defendant's case. Based upon the decision in *United States v. Flyer*, the
20 defense counsel should have requested a similiar instruction that correctly explained the
21 government's burden of proof in all such cases. Defendant believes his counsel should have
22 proposed an instruction based upon *Flyer* which read:

23 "In order to consider the fact that pornographic images were discovered in "unallocated
24 space" on the Defendant's computer as evidence of guilt showing the Defendant's criminal
25 possession of such evidence, the government must show: (1) that the Defendant had actual
26 knowledge of the presence of the files, and (2) that the Defendant had the forensic software required
27 to access such files." See, *Flyer (Id.* 919) (Emphasis added)

28 Such an instruction adopted from language in *United States v. Flyer, supra*, or a similar such

1 instruction, was absolutely necessary as the "theory of the case" instruction which would have
2 explained the Defendant's theory that: inadvertent or innocent possession of unwanted, illegal
3 images on his computer is not a crime. The failure of counsel to request such an instruction, based
4 on the *United States v. Flyer* decision or a similar instruction, based on the facts and circumstances
5 of this case was inexcusable, ineffective assistance of counsel.

6 There is no doubt that the defendant was prejudiced because he had an inadequately
7 instructed jury. The jury needed to be instructed about inadvertent or innocent possession. Because
8 defense counsel did not effectively represent his client in preparing such necessary instructions, the
9 case must be reversed.

10
11 V. DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL ON
12 APPEAL BY NOT BEING FULLY PREPARED ON THE LAW OR THE FACTS WHEN
13 PREPARING THE DEFENDANT'S APPEAL TO THE NEVADA SUPREME COURT.

14 Although appellate counsel raised numerous issues on appeal, and appellate counsel was
15 partially successful, getting fourteen counts reversed, it is respectfully submitted he did not render
16 effective assistance of counsel in handling Defendant's appeal. Counsel failed in getting the case
17 reversed because he failed in applying all the skills needed for effective assistance of counsel on
18 appeal.

19 Effective appellate advocacy in any case requires several distinct but interrelated skills:

20 (1) Careful review and analysis of the entire record to recognize the important appellate
21 issues. This requires a basic understanding of criminal law, constitutional law and the laws of
22 evidence and trial procedures;

23 (2) Organizing the record to include all the material facts;

24 (3) Understanding and researching the law as it applies to the case; and

25 (4) Writing a persuasive appellate brief that incorporates all the material facts with the
26 relevant case law and other authorities.

27 (5) Counsel must be aware of recent changes in the law and be willing to challenge settled
28 law and precedent when necessary.

1 It is respectfully submitted counsel did not apply all of these skills effectively in preparing
2 Defendant's appeal.

3 In *Smith v. Robbins*, 528 U.S. 259, 288, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000), the Supreme
4 Court found appellate counsel was ineffective for not effectively rebutting the prosecution's theory
5 with expert testimony. It is respectfully submitted that in this case counsel was ineffective under
6 *Strickland* because there were potential winning issues regarding expert testimony not raised on
7 appeal. See, *Banks v. Reynolds*, 54 F.3d 1508 (10th Cir.1995); *Mapes v. Coyle*, 171 F.3d 408 (6th
8 Cir.1999); *Shaw v. Wilson*, 721 F.3d 908 (7th Cir.2013); *Upchurch v. Bruce*, 333 F.3d 1158 (11th
9 Cir.1997). Defendant was clearly prejudiced by his attorney's failure to raise issues that would have
10 resulted in reversing the conviction.

11 Defendant further suggests that counsel was specifically ineffective for not raising issues on
12 appeal regarding the inadequacy of the proposed jury instructions concerning criminal intent (See
13 Issue #4). Also, it is respectfully submitted that defense counsel was ineffective in raising the issue
14 of the insufficiency of evidence under the case of *Jackson v. Virginia*, 493 U.S. 307 (1979).

15 There were fundamental issues of criminal intent that were not adequately raised by appellate
16 counsel and for these reasons the post-conviction petition for habeas corpus should be granted.

17
18 VI. THE ACCUMULATION OF ERRORS IN THIS CASE VIOLATED THE APPELLANT'S
19 RIGHTS TO DUE PROCESS OF LAW UNDER THE FOURTH, FIFTH, SIXTH AND
20 FOURTEENTH AMENDMENTS AND REQUIRES REVERSAL.

21 The numerous errors and deficiencies of counsel in this case require reversal of the
22 conviction. It can be argued that even considered separately, the errors or omissions of counsel were
23 of such a magnitude that they each require reversal. But it is clear, when viewed cumulatively, the
24 case for reversal is overwhelming. *Daniel v. State*, 119 Nev. 498, see also, *Sipsas v. State*, 102 Nev.
25 at 123, 216 P.2d at 235, stating: "The accumulation of error is more serious than either isolated
26 breach, and resulted in the denial of a fair trial."

27 Prejudice may result from the cumulative impact of multiple deficiencies. *Cooper v.*
28 *Fitzharris*, 586 F.2d 1325, 1333 (9th Cir. 1978) (*En Banc*), cert. denied, 440 U.S. 970, *Harris by and*

1 through *Ramseyer v. Wood*, 61 F.3d 1432 (9th Cir. 1995). The multiple errors of counsel in this case
2 when cumulated together require reversal. A quantitative analysis makes that clear. See, Rachel A.
3 Van Cleave, When is Error Not an Error? Habeas Corpus and Cumulative Error, 46 Baylor Law
4 Review 59, 60 (1993).

5 Relevant factors to consider in evaluating a claim of cumulative error are [1] whether the
6 issue of guilt is close, [2] the quantity and character of the error, and [3] the gravity of the crime
7 charged. *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000), citing *Leonard v. State*, 114
8 Nev. 1196, 1216, 969 P.2d 288, 301 (1998). See also, *Big Pond v. State*, 101 Nev. 1, 692 P.2d 1228
9 (1985), *Daniel v. State*, 119 Nev. 498, 78 P.3d 890 (2003). See also, *Mak v. Blodgett*, 670 F.2d 614
10 (9th Cir.1991), where the Ninth Circuit stated:

11 "We do not decide whether these deficiencies alone meet the
12 prejudice standard because other significant errors occurred that,
13 considered cumulatively, compel affirmance of the district court's
14 grant of habeas corpus as to the sentence of death."

15 ...
16 The Defendant here was facing a lengthy sentence and needed effective assistance of counsel
17 at every aspect and stage of representation through the trial and pretrial. Significant errors by counsel
18 pretrial and throughout the trial led to an unfair result that violated due process.

19 VII. CONCLUSION

20 Judge David Bazelon articulated the importance of dealing rigorously and fairly with
21 ineffective assistance of counsel claims in a seminal article stating:

22 "... Defining 'effective representation' is not an easy task.
23 If the task is accomplished, appellate courts will lose a valuable
24 crutch. Every time a court finds that a substantial issue was not raised
25 below, it will be required to determine, before it can refuse to decide
26 the issue, whether trial counsel was ineffective in not raising it.
27 Furthermore, there is good reason to fear that if the Sixth Amendment
28 were given a real bite, we would have to swallow the bitter pill of
29 reversing an uncomfortably large number of convictions, and
30 releasing large numbers of defendants from their guilty pleas. And
31 even if reversals and releases would not be that prevalent, the specter
32 of a flood of frivolous ineffectiveness claims haunts every judge.
33 These concerns are surely understandable. But they cannot excuse
34 inaction.

35 If the problem is so difficult or widespread, our responsibility
36 to confront it is all the more urgent. Reversing convictions or undoing

1 guilty pleas is never very pleasant, I can tell you that. But, for every
2 conviction or plea that we reverse now, we will save ourselves the
3 need for a great many more reversals in the future. Perpetuating
4 minimal requirements for defense counsel will not prevent frivolous
5 claims from being filed. It will only preclude relief from being
6 granted in meritorious cases. Indeed, clarifying the requirements for
7 defense counsel might well reduce the number of ineffective claims
8 by informing the bar as to what is expected of them. In any event, this
9 clarification will make it easier for courts to separate frivolous from
10 non-frivolous ineffectiveness issues.

11 Now, the final reason judges have ducked ineffectiveness
12 issues, namely, their reluctance to 'soil the reputations' of counsel by
13 labeling their work ineffective, is another equally unpersuasive
14 argument as a justification for inaction. As one judge said, so vividly,
15 in a recent opinion, 'ineffectiveness of counsel in the constitutional
16 sense, is malpractice of law. It carries with it the most serious
17 professional and economic consequences for the accused counsel . .
18 . The bones of one lawyer are not for the picking by another except
19 upon the clearest and most concrete reasons.' One might ask further
20 whether this concern, even if it's valid, for reputations, justifies
21 sacrificing defendants' rights and liberties. But the far more important
22 response to this argument is that it wholly misconstrues the nature of
23 an ineffectiveness finding. Ineffectiveness is not a judgment of the
24 motives or abilities of lawyers, nor an inquiry into culpability.
25 Concern is simply whether the adversary system has functioned
26 properly. Thus, the question is not whether the defendant received the
27 assistance of effective counsel, but whether he received the effective
28 assistance of counsel. We should recognize that all lawyers will be
ineffective some of the time; the task is too difficult and the human
animal is too fallible to expect it to be otherwise."
Bazelon, "The Realities of Gideon and Argersinger," Vol. XXXIII,
N.L.A.D.A. (Emphasis added)

18 ...
19 As Judge Bazelon so eloquently stated the issue here is whether the adversary system
20 functioned properly. Defendant respectfully submits it did not in his case. Counsel for Defendant was
21 constitutionally ineffective and for that reason the Defendant's case must be reversed.

22 Respectfully submitted this 25th day of July, 2017.

23 /s/ Terrence M. Jackson
24 TERRENCE M. JACKSON, ESQ.

25 Nevada Bar No.: 00854
26 Law Office of Terrence M. Jackson
27 624 South Ninth Street
28 Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
terry.jackson.esq@gmail.com
Counsel for Anthony Castaneda

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an assistant to Terrence M. Jackson, Esq., I am a person competent
3 to serve papers and not a party to the above-entitled action and on the 25th of July, 2017, I served
4 a copy of the foregoing Defendant/Petitioner's, ANTHONY CASTANEDA'S, SUPPLEMENTAL
5 POINTS AND AUTHORITIES IN SUPPORT OF HABEAS CORPUS PETITION FOR POST
6 CONVICTION RELIEF as follows:

7
8 [X] Via Electronic Service (CM/ECF) to the Eighth Judicial District Court and by
9 United States first class mail to the Nevada Attorney General and
10 Petitioner/Appellant as follows:

11
12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Attn.: steven.wolfson@clarkcountynvda.com

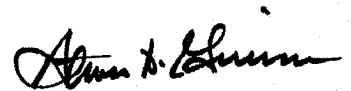
STEVEN S. OWENS
Chief Deputy D.A. - Criminal
Attn.: steve.owens@clarkcountynvda.com

15 ANTHONY CASTANEDA
16 ID# 1142611
17 Warm Springs Correction Center
18 Post Office Box 7007
19 Carson City, NV 89702

ADAM LAXALT
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

20
21
22 By: /s/ Ila C. Wills
23 Assistant to T. M. Jackson, Esq.

1 JOCP



CLERK OF THE COURT

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 *Plaintiff,*

6 -vs-

CASE NO: C-11-272657-1

7 ANTHONY CASTANEDA,
8 #2799593,

DEPT NO: V

9 *Defendant.*

10 THIRD AMENDED JUDGMENT OF CONVICTION
11 (JURY TRIAL)

12 The Defendant previously appeared before the Court with counsel and entered a plea
13 of not guilty to the crimes of: COUNTS 1, 2, 3, 4, 5, 6, 7 8, 9, 10, 11, 12, 13, 14, and 15 –
14 POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A
15 CHILD (a Category B Felony), in violation of NRS 200.700 and 200.730 and the matter
16 having been tried before a jury and the Defendant having been found guilty of said crimes;
17 thereafter, on the 30th day of October, 2013, the Defendant was present in court for
18 sentencing with his counsel, ERIKA D. BALLOU, Deputy Public Defender, and P. DAVID
19 WESTBROOK, Deputy Public Defender, and good cause appearing,

20 THE DEFENDANT was ADJUDGED guilty of said offenses and, in addition to the
21 \$25.00 administrative assessment fee, the \$760 psychosexual assessment fee, a \$150.00
22 indigent defense civil assessment, and a \$150.00 DNA analysis fee, including testing to
23 determine genetic markers,

24 //

25 //

26 //

27 //

28 //

1 The Defendant was sentenced as follows: COUNT 1 — a MAXIMUM of SEVENTY
2 TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the NDC;
3 COUNT 2 — a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of
4 TWENTY EIGHT (28) MONTHS in the NDC CONCURRENTLY TO COUNT 1; COUNT
5 3 — a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY
6 EIGHT (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 2; COUNT 4 — a
7 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
8 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 3; COUNT 5 — a
9 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
10 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 4; COUNT 6 — a
11 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
12 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 5; COUNT 7 — a
13 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
14 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 6; COUNT 8 — a
15 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
16 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 7; COUNT 9 — a
17 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
18 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 8; COUNT 10 — a
19 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
20 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 9; COUNT 11 — a
21 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
22 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 10; COUNT 12 — a
23 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
24 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 11; COUNT 13 — a
25 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
26 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 12; COUNT 14 — a
27 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
28 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 13; COUNT 15 — a

1 MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT
2 (28) MONTHS in the NDC, CONCURRENTLY TO COUNT 14.

3 The sentences of incarceration were SUSPENDED and the Defendant was placed on
4 PROBATION for a FIXED TERM of FIVE (5) YEARS, under the following SPECIAL
5 CONDITIONS:

6 1. Pursuant to NRS 176A.410, the following terms are imposed:

7 (a) Submit to a search and seizure of his person, residence or vehicle or any
8 property under his control, at any time of the day or night, without a warrant,
9 by any parole and probation officer or any peace officer, for the purpose of
10 determining whether the defendant has violated any condition of probation or
11 suspension of sentence or committed any crime;

12 (b) Reside at a location only if: (1) The residence has been approved by the
13 parole and probation officer assigned to the defendant. (2) If the residence is a
14 facility that houses more than three persons who have been released from
15 prison, the facility is a facility for transitional living for released offenders that
16 is licensed pursuant to Chapter 449 of MRS. (3) The defendant keeps the
17 parole and probation officer assigned to the defendant informed of the
18 defendant's current address.

19 (c) Accept a position of employment or a position as a volunteer only if it has
20 been approved by the parole and probation officer assigned to the defendant
21 and keep the parole and probation officer informed of the location of his
22 position of employment or position as a volunteer.

23 (d) Abide by any curfew imposed by the parole and probation officer assigned
24 to the defendant.

25 (e) Participate in and complete a program of professional counseling approved
26 by the Division of Parole and Probation.

1 (f) Submit to periodic tests, as requested by the parole and probation officer
2 assigned to the defendant, to determine whether the defendant is using a
3 controlled substance.

4 (g) Submit to periodic polygraph examinations, as requested by the parole and
5 probation officer assigned to the defendant.

6 (h) Abstain from consuming, possession or having under his control any
7 alcohol.

8 (i) Not have contact or communicate with a victim of the sexual offense or a
9 witness who testified against the defendant or solicit another person to engage
10 in such contact or communication on behalf of the defendant, unless approved
11 by the Chief Parole and Probation Officer of the Chief Parole anti Probation
12 Officer's designee and a written agreement is entered into and signed in the
13 manner set forth in MRS 176A.401(5).

14 (j) Not use aliases or fictitious names.

15 (k) Not obtain a post office box unless the defendant received permission from
16 the parole and probation officer assigned to the defendant.

17 (l) Not have contact with a person less than 18 years of age in a secluded
18 environment unless another adult who has never been convicted• of a sexual
19 offense is present and permission has been obtained from the parole and
20 probation officer assigned to the defendant in advance of each such contact.

21 (m) Comply with any protocol concerning the use of prescription medication
22 prescribed by a treating physician, including, without limitation, any protocol
23 concerning the use of psychotropic medication.

24 (n) Not possess any sexually explicit material that is deemed inappropriate by
25 the parole and probation officer assigned to the defendant.

26 (o) Not patronize a business which offers a sexually related form of
27 entertainment and which is deemed inappropriate by the parole and probation
28 officer assigned to the defendant.

1 (p) Not possess any electronic device capable of accessing the Internet and not
2 access the Internet through any such device or any other means, unless
3 possession of such a device or such access is approved by the parole and
4 probation officer assigned to the defendant.

5 (q) Inform the parole and probation officer assigned to the defendant if the
6 defendant expects to be or becomes enrolled as a student at an institution or
7 higher education or changes the date of commencement or termination of his
8 enrollment at an institution of higher education. As used in this paragraph,
9 institution or higher education has the meaning ascribed to it in NRS
10 179D.045.

11 2. Defendant is to register as a sex offender within the first 48 hours of release.

12 3. If P&P is approached that Defendant has found a job that requires Internet usage,
13 the issue must be brought back before the Court to determine the appropriate remedy.

14 4. Defendant is to abide by any curfew imposed by P&P.

15 5. Defendant is to attend counseling to address the issues related to this charge.

16 6. Defendant is to pay fees including the indigent defense fee.

17 Pursuant to statute, a special sentence of LIFETIME SUPERVISION was also
18 imposed to commence upon release from any term of probation, parole, or imprisonment and
19 register as a sex offender in accordance with NRS 179D.460 within 48 hours after
20 sentencing.

21 THEREAFTER, a parole and probation officer provided the Court with a written
22 statement setting forth that the Defendant has, in the judgment of the parole and probation
23 officer, violated the conditions of probation. On the 21st day of May, 2014, the Defendant
24 appeared in court with his counsel, P. DAVID WESTBROOK, Deputy Public Defender, and
25 pursuant to a probation violation hearing/proceeding, and good cause appearing to amend the
26 Judgment of Conviction,

1 IT WAS ORDERED that Defendant be REINSTATED to probation under the
2 original conditions, except that the previously imposed condition of LIFETIME
3 SUPERVISION was VACATED.

4 THEREAFTER, a parole and probation officer provided the Court with a written
5 statement setting forth that the Defendant has, in the judgment of the parole and probation
6 officer, violated the conditions of probation. On the 22nd day of June, 2015, the Defendant
7 appeared in court with his counsel, JEFFREY T. RUE, Deputy Public Defender, and
8 pursuant to a probation violation hearing/proceeding, and good cause appearing to amend the
9 Judgment of Conviction,

10 IT WAS ORDERED that the probation previously granted to Defendant be
11 REVOKED and that the originally imposed fees, fines, and assessments as well as the
12 original sentences be IMPOSED, with TWO HUNDRED SEVENTY THREE (273) DAYS
13 credit for time served.

14 THEREAFTER, on the 16th day of June, 2016, this matter came back before the
15 Court on remand from the Nevada Supreme Court in Defendant's direct appeal, SC Case No.
16 64515. The Supreme Court's Order entered June 16, 2016 vacated in part the Second
17 Amended Judgment of Conviction, finding that Defendant could only be properly charged
18 and convicted of ONE count of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD (a Category B Felony), for having simultaneously
20 possessed fifteen digital images of children engaged in sexual conduct, in violation of NRS
21 200.700 and 200.730. Therefore, good cause appearing to amend the Judgment of
22 Conviction,

23 IT IS HEREBY ORDERED that the Defendant is adjudged guilty of a single count of
24 Possession of Visual Presentation Depicting Sexual Conduct of a Child (a Category B
25 Felony), in violation of NRS 200.700 and NRS 200.730, for which the Defendant is
26 sentenced to a MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of
27
28

1 TWENTY EIGHT (28) MONTHS in the NDC.¹ All assessments and fees previously ordered
2 remain unchanged.

3 DATED this 18th day of July, 2016.

4
5 
6 CAROLYN ELLSWORTH
7 DISTRICT JUDGE
8
9
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28 ¹ The Court notes that because the original sentences on all counts were identical and because the Court ran those sentences concurrently, this should not change the NDC's computation of Defendant's prison time.

Ann L. Quinn
CLERK OF THE COURT

Anthony Castaneda # 1142611

/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

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

Anthony Castaneda
PETITIONER

vs.

The State of Nevada

Case No. C-11-272657-1

Dept. No. V

Docket _____

MOTION TO WITHDRAW COUNSEL

Date of Hearing: 01/04/2017

Time of Hearing: 9:00 AM

'ORAL ARGUMENT REQUESTED, Yes X No _____'

COMES NOW, Defendant, Anthony Castaneda, proceeding in proper person,
moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
of record in the proceeding action, namely,

Audrey Conway, esq David Westbrook, esq.

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

DATED: this 28 day of November, 2016.

BY: Anthony Castaneda
1142611 #
/In Propria Personam

MC
DA
PP

CLERK OF THE COURT

RECEIVED
DEC 13 2016

RECEIVED

DEC 09 2016

CLERK OF THE COURT

AA 0165 (6)

1
2
3 **POINTS AND AUTHORITIES**

4 NRS 7.055 states in pertinent part:

- 5 1. An attorney who has been discharged by his client shall upon demand and payment of the fee
6 due from the client, immediately deliver to the client all papers, documents, pleadings and items
7 of tangible personal property which belong to or were prepared for that client.
- 8 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its
9 order given under this section, the court may, after notice and fine or imprison him until the
10 contempt purged. If the court finds that the attorney has, without just cause, withheld the
11 client's papers, documents, pleadings, or other property, the attorney is liable for costs and
12 attorney's fees.

13 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant
14 does not owe counsel any fees.

15 **WHEREFORE,** Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel
16 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other
17 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper
18 assistance that is needed to insure that justice is served.

19 **DATED:** this 28 day of November, 2016.

20 Respectfully submitted,

21 **BY:** Anthony Castaneda
22 1192611 #
23 /In Propria Personam
24 Post Office Box 650 [HDSP]
25 Indian Springs, Nevada 89018
26
27
28

NAME: ANTHONY Castaneda # 1142611

HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

DATE: 28, November, 2016

TO: David Westbrook, esq.
Audrey Conway, esq
Ms. Ballou, esq

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-11-272657-1

DEPT. NO.: V

CASE NAME: STATE of Nevada v Castaneda

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

ANTHONY Castaneda

//////

//////

//////

AA 0167

CERTIFICATE OF SERVICE BY MAILING

I, _____, hereby certify, pursuant to NRCP 5(b), that on this _____ day of _____, 20____, I mailed a true and correct copy of the foregoing, “ _____”

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

CC:FILE

DATED: this _____ day of _____, 20____.

/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AA 0168

Anthony Castaneda
#1142611, MOD 10D-12
HDSP, POB 650
Indian Springs, NV. 89070

FIRST-CLASS MAIL

Hasler

12/07/2016

US POSTAGE \$000.675

ZIP 89101

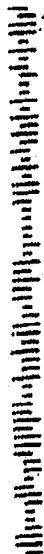
011E12650516

8th District Court
attention Clerk of The Court, Dept. V
200 Lewis Ave., 3rd Floor
Las Vegas, NV. 89155-1601

CONFIDENTIAL

LEGAL MAIL

89155531601 8000



HIGH DESERT STATE PRISON

DEC 06 2016

RECEIVED

Case: L-11-272657-1
8th District, Dept. V.
withdrawal of
attorneys

AA 0169

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

(Title of Document)

filed in District Court Case number _____

- ☐ Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-OR-

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

Signature

Date

Print Name

Title

AA 0170

1 THEREAFTER, on the 21st day of May, 2014, the Defendant was present in
2 court with his counsel, and pursuant to a violation of probation hearing and good cause
3 to amend the Judgment of Conviction;
4

5 IT WAS THEREBY ORDERED that probation was reinstated with the condition
6 that the Defendant shall find, enter and complete a new counseling program. COURT
7 FURTHER ORDERED, the condition of Life Time Supervision was REMOVED.
8

9 THEREAFTER, a parole and probation officer provided the Court with a written
10 statement setting forth that the Defendant has, in the judgment of the parole and
11 probation officer, violated the conditions of probation; and on the 22nd day of June,
12 2015, the Defendant was present in court with his counsel, JEFFREY RUE, Deputy
13 Public Defender, and good cause appearing to again amend the Judgment of
14 Conviction; now therefore,
15

16 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
17 is revoked; in addition to original fees, fines and assessments, IT IS FURTHER
18 ORDERED that the original sentence be MODIFIED and imposed as follows: as to
19 **COUNT 1** – to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
20 Eligibility of TWENTY-FOUR (24) MONTHS, as to **COUNT 2** - a MAXIMUM of
21 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
22 (24) MONTHS, Count 2 to run CONCURRENT with Count 1, as to **COUNT 3** - to a
23 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of
24 TWENTY-FOUR (24) MONTHS, Count 3 to run CONCURRENT with Count 2, as to
25 **COUNT 4** – to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
26 Eligibility of TWENTY-FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count
27
28

1 3, as to **COUNT 5** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a
2 **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 5 to run
3 **CONCURRENT** with Count 4, as to **COUNT 6** – to a **MAXIMUM** of **SEVENTY-TWO**
4 **(72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**,
5 Count 6 to run **CONCURRENT** with Count 5, as to **COUNT 7** – to a **MAXIMUM** of
6 **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR**
7 **(24) MONTHS**, Count 7 to run **CONCURRENT** with Count 6, as to **COUNT 8** - to a
8 **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of
9 **TWENTY-FOUR (24) MONTHS**, Count 8 to run **CONCURRENT** with Count 7, as to
10 **COUNT 9** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM**
11 Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 9 to run **CONCURRENT**
12 with Count 8, as to **COUNT 10** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS**
13 with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 10 to run
14 **CONCURRENT** with Count 9, as to **COUNT 11** – to a **MAXIMUM** of **SEVENTY-TWO**
15 **(72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**,
16 Count 11 to run **CONCURRENT** with Count 10, as to **COUNT 12** – to a **MAXIMUM** of
17 **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR**
18 **(24) MONTHS**, Count 12 to run **CONCURRENT** with Count 11, as to **COUNT 13** – to a
19 **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of
20 **TWENTY-FOUR (24) MONTHS**, Count 13 to run **CONCURRENT** with Count 12, as to
21 **COUNT 14** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM**
22 Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 14 to run **CONCURRENT**
23 with Count 13, and as to **COUNT 15** – to a **MAXIMUM** of **SEVENTY-TWO (72)**
24

Case No. C-11-272657-1
Dept. No. V

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

ANTHONY Castaneda
Petitioner,

CLERK OF THE COURT

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

State of Nevada
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Indian Springs, NV.
2. Name and location of court which entered the judgment of conviction under attack: 8th DISTRICT COURT, DEPT V, CLARK COUNTY, Nevada
3. Date of judgment of conviction: 12-31-2013
4. Case number: C-11-272657-1
5. (a) Length of sentence: 28 MONTHS TO 72 MONTHS

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes No ☒

If "yes," list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged:

possession of child pornography 200.730

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Plead NOT Guilty, all counts

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes No ☒

13. If you did appeal, answer the following:

(a) Name of court: Supreme Court of Nevada

(b) Case number or citation: 64515

(c) Result: Affirmed in Part, Vacate, and Remanded

(d) Date of result: 16-June-2016

(Attach copy of order or decision, if available.)

Attached

1 14. If you did not appeal, explain briefly why you did not: N/A

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4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No X

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: N/A

8 (2) Nature of proceeding:

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10 (3) Grounds raised: N/A

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13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

14 (5) Result: N/A

15 (6) Date of result:

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17
18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding:

21 (3) Grounds raised:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

23 (5) Result:

24 (6) Date of result: N/A

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26
27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach. N/A

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? *N/A*

(1) First petition, application or motion? Yes No

Citation or date of decision:

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.).....

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: *Yes.*

(a) Which of the grounds is the same: *GROUND ONE, see addendum 17a*

(b) The proceedings in which these grounds were raised: *DIRECT Appeal, Clark Cty. Nevada Supreme Court 64515 (see attached 17B)*

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

see addendum, marked 17c

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) *See addendum, Marked Question 18*

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) NO

Decision on Direct appeal dated June 16, 2014. Rem July 28, 2016

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No X

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: David Westbrook esq., Audrey Conway esq., Ms Ballou esq.
CLARK COUNTY Public Defender

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X

If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

See Addendum, Marked Ground # (1 Through 10)
MORE THAN 4 grounds attached

1 (a) Ground ONE: 1. Ineffective Assistance of Counsel, denial
2 of my 5th, 6th, and 14th amendment Rights.
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5 Supporting FACTS (Tell your story briefly without citing cases or law.):
6 Please see attached: Marked Ground ONE
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1 (b) Ground TWO: 2. Failure To Investigate, denying My
2 5th, 6th, and 14th Amendment Rights
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5 Supporting FACTS (Tell your story briefly without citing cases or law.):
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7 Please see ATTACHED: Marked Ground TWO
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(c) Ground THREE: 3. Due Process Violations, denying my
5th, 6th, and 14th amendment rights.

Supporting FACTS (Tell your story briefly without citing cases or law.):

Please see attached: Marked Ground Three

(d) Ground FOUR: 4. Failure of Counsel To Raise Substantive
Issues on Appeal, denial of 6th and 14th amendment
Rights.

Supporting FACTS (Tell your story briefly without citing cases or law.):

Please see attached: Marked Ground Four.

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 12 day of the month of Dec., 2016.

Anthony Castaneda, 1142611

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

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

Anthony Castaneda, 1142611

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-11-272657-1 Does not contain the social security number of any person.

Anthony Castaneda, 1142611

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

Anthony Castaneda, hereby certify pursuant to N.R.C.P. 5(b), that on this 12 day of the month of December, 2016, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

Anthony Castaneda, 1142611

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

Case: C-11-272657-1

PETITION FOR Habeas Corpus

Def: Anthony Castaneda

Date: 12-12-2016, Page: 0

Addendum

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Grounds for Habeas Corpus

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Ground Five

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Ground Six

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Ground Eight

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Ground Ten

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Case: CH-272657-1

PETITION FOR Habeas Corpus

Def.: ANTHONY Castaneda

Date: 12-12-2016, Page 1 of 1

Addendum To Question 17A, 17b

17a. Has any ground being raised in this petition been previously presented in any other court...?

- Yes.

Grounds #1 was raised on direct appeal to the Nevada Supreme Court, and seen on April 7, 2015, in Clark County. Audrey Conway, esq., Clark County Public Defender Office, presented to the full court, en banc. (#64515)

An Advance Opinion (44) was filed June 16, 2016.

Remittitur by Clerk of the Court, was filed July 28, 2016.

Judgement was Affirmed in part, vacated in part, and Remanded.*

A copy of the Advance Opinion cover page, Clerk's Certificate, and Remittitur are attached. (after 17b, 17c)

17b The Judgement, reduced convictions from 15 felonies, to one, 28 month to 12 month conviction, based on a unit-of-prosecution argument. Since all 15 charges were run concurrent, no net change was performed.

* Note: Clark County P.D. failed to notice Defendant of this decision until October 17, 2016. (From June 16) to 4 months passed, affecting deadlines for this Habeas Corpus, and Federal appeal.

Case: C-11-272657-1

PETITION FOR HABEAS CORPUS

DEFT: ANTHONY CASTANEDA

DATE: 12-12-2016, Page: 1 of 4

Addendum To Question 17c

17c. Has any ground being raised been previously presented? Briefly explain why you are again raising these grounds.

A. The Trial Court excluded Late Notice For a Defense computer expert Rebuttal Witness, and admitted Testimony. (Nevada Supreme Court, #64515)

A1. The Clark County DA presented a Forensics Witness, Det. Ehlers, who presented surprise Testimony well out of Forensic Norms, specifically, about files in "Unallocated Space", and claimed they could prove Possession by the DEFT, Castaneda. (VI 1195)

This defies Computer Forensic Norms. Defense Counsel P. David Westbrook, immediately challenged this Testimony, and "late Noticed" a computer expert retained before Trial. (VI 1141) The Trial Court denied the Late Notice. (VI 1424)

ON direct appeal, The Court turned down this issue (#1), with ONLY the comment that DEFT Counsel had brought the issue up, and Det. Ehlers had testified at Preliminary, in a similar manner. (#64515, SECTION III, Page 17)

Ehlers, in fact, never testified at any Preliminary. (VI 1141) (VI 1153)

AA 0185

Case: C-11-272657-1 Petition for Habeas Corpus
Deft: ANTHONY Castaneda Date: 12-12-2016, Page: 2 of 4
Addendum To Question 17c

B. DEFT Castaneda chooses to raise this issue again, because NOT ONLY was the technical claim by the DA witness DET. Ehlers, Nonsense, BUT, it defies forensic standards, and a very specific ruling by the US Supreme Court. (UNITED STATES V. FLYER, 633 F.3.d 911-918-919)

BT. The U.S. Supreme Court, ruled in US v FLYER that:
"Carved images in unallocated space, are INSUFFICIENT FOR PROving Possession, and WITHOUT added evidence, Tend to show INNOCENT Behavior."

C. That's ALMOST a word-for-word Rebuttal, of the claims Made by DET. Ehlers at Trial, and DA claims made during TRIAL, during SUMMARY, and on PowerPoint Presentations during summary. The DA offered no "added evidence", in any presentation, or medium, or on PowerPoint slides.

D. When Trial counsel, (P. David Westbrook) sought to "Late Notice" for a Rebuttal witness, he missed US v FLYER, to add weight to his Late Notice, and present a Rebuttal expert.

By denying the Late Notice, the Trial Judge, (Carolyn Ellsworth) allowed forensic Nonsense, counter to US Supreme Court direction, to enter a Jury Trial.

Case: C-11-272657-1

PETITION FOR HABEAS CORPUS

DEFT: ANTHONY CASTANEDA Date: 12-12-2014, Page: 3 of 4

Addendum To Question 17c

- E. The Right To a Fair Trial, Due Process, and To Present a defense, hinge on the Right To Reply To The State. By denying Defense The Late Noticed Expert, and by Counsel NOT Finding US v. FLYER To Support That Notice, The Trial Court denied me The ability To Reply.
- F. The Negative effect of admitting Det. Ehler's Testimony, and NOT dismissing The Trial, ~~on Pertury~~, and NOT getting The Late Noticed expert, was Fast, and Thorough. The DA Repeated These claims, several Times in Summary, Produced a power point presentation with it, and ignored Repeated Defense objections To it.
- G. A Simple Lexis/Nexis search for "unallocated space" Produces US v. FLYER, on The first Try, and Reading The Ruling on Flyer's Count 3 is Instructive.
- D. Ehlers, "Carved Images on unallocated space are Proof That someone actively Tried To delete The Images."
US
FLYER: "Images in unallocated space are NOT cache files. Other Than Forensic software, No user can find, or, access them, or even be aware They are There... all other attributes, from dates to ownership, cannot Be recovered."

AA0187

Case: C-11-272657-1

PETITION FOR Habeas Corpus

Deft: ANTHONY Castaneda Date: 12-12-2016, Page: 4 of 4

Addendum to Question 17c

H. And, of course, The DA Never offered any proof that The unallocated space data, had ever been emailed, printed, posted, or downloaded, edited, or that any forensic software was installed. (added evidence)

In fact, that failure to interact with any of the files at issue goes across the board, none was created, downloaded, emailed, printed, posted or edited, during any time period when Deft alone, had access to it, or interacted with them. The DA, did not even attempt to trace where Deft was, when these files were written.

I. On the other hand, we do know one of the USB files, was written when only Hines and Landeau had it, by their own testimony.

J. Deft Castaneda asks the court to grant this Habeas Corpus, and correct the errors at trial.

132 Nev., Advance Opinion 44
IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CASTANEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64515

FILED

JUN 16 2016

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

Appeal from a judgment of conviction, pursuant to jury verdict, of 15 counts of possession of child pornography. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Affirmed in part, vacated in part, and remanded.

Philip J. Kohn, Public Defender, and P. David Westbrook and Audrey M. Conway, Deputy Public Defenders, Clark County,
for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Steven S. Owens, Chief Deputy District Attorney, and Alexander G. Chen, Deputy District Attorney, Clark County,
for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PICKERING, J.:

Nevada law makes it a felony to possess child pornography. The question before the court is whether appellant Anthony Castaneda committed 15 felonies or one when he simultaneously possessed 15 digital

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CASTANEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 64515
District Court Case No. C272657

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"Affirmed in part, vacated in part, and remanded."

Judgment, as quoted above, entered this 16th day of June, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 12, 2016.

Tracie Lindeman, Supreme Court Clerk

By: July Wright
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CASTANEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 64515
District Court Case No. C272657

FILED

JUL 28 2016

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

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk ✓

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

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.
original state exhibit 79

DATE: July 12, 2016

Tracie Lindeman, Clerk of Court

By: July Wright
Deputy Clerk

cc (without enclosures):

Hon. Carolyn Ellsworth, District Judge
Clark County Public Defender
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

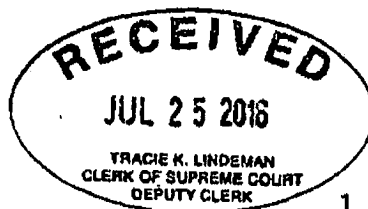
Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 21 2016

[Signature]
Deputy District Court Clerk

RECEIVED

JUL 18 2016

CLERK OF THE COURT



1

16-21716

AA 0191

CASE: C-11-272657-1

PETITION FOR HABEAS CORPUS

DEFT.: ANTHONY CASTANEDA

DATE: 12-12-2016, PAGE: 1 OF 5

ADDENDUM TO QUESTION 18

18. What New grounds are presented NOW, and why?

A. GROUND #1 - INEFFECTIVE ASSISTANCE OF COUNSEL.

My Counsel at Trial, (P. David Westbrook) Failed to Notice an Expert Rebuttal Witness, before Trial.

B. My Counsel asked for, and was granted, an Expert Witness, (Leon Mare, II 303) But, Failed to Notice that Witness.

Defense Review of Det. Ramirez (Forensics) showed NO irregular claims, OR improper procedures. The State's 2nd Forensic expert, Det. Ehlers, did make outlandish claims, did misleading definitions of standard computer terms, did make unsupported claims about anti-virus software, and propose "unallocated space" images could prove possession by DEFT Castaneda. This is counter to forensic norms, and US Supreme Court guidance, on this evidence. ("Carved images in unallocated space are insufficient for the proof of possession...") UNITED STATES V. FLYER, 633 F.3d 911, 918.

C. Det. Ehlers did NOT testify at preliminaries, But, My Attorney should have anticipated outlandish claims by The D.A., and Noticed my retained expert witness, for rebuttals, if ONLY as a precaution.

D. Why? This issue emerged at trial, and NOT on appeal.

11/20/17 AA0192

Case: C-11-272657-1

Petition For Habeas Corpus

Defr: ANTHONY Castaneda Dates: 12-12-2016, Page 2 of 5

Addendum To QUESTION 18

18. What New grounds are presented now, and why?

A. Ground #2, Failure To Investigate, (6th and 14th Amendment)
My Trial Counsel (A David Westbrook) Failed To Investigate
Pre-Trial Testimony by Tami Hines To Det. Shannon Tooley.

B. DURING TRIAL, Defense moved to dismiss trial, OR at least
The Testimony of Tami Hines, based on her admitting Perjury,
on The Stand, and during preliminaries. (V 934) (I 191)
Ms. Hines actually admitted 2 Lies.

1. That she, or her daughter, had "found" The USB drive.

2. That she "knew" The drive was Defr Castaneda's.

Both are Lies she admitted to, in court. The Last Story's

1. Actually, her boyfriend, Landeau, was The Source. (VI 1218)

2. Actually, her Testimony at Prelims was a Lie. (I 191) AND,
her Testimony To Det. Tooley had been The Lie. (I 29, p. 10)

C. This Testimony To Det. Tooley was The basis of a Search Warrant
Affidavit, which allowed Police To seize Defr's Home computers.
Det. Tooley admitted The Last Story, and Landeau involvement,
was NEVER mentioned (VI 1292). A Lie cannot be used To
support a search warrant, intentional or not.
(United States v. Fowler, 535 F3d 408)

D. Why? This issue emerged at trial, and wasn't on The appeal.

AA 0193

Case: C-11-272657-1

PETITION FOR Habeas Corpus

DEFT: ANTHONY CASTANEDA Date: 12-12-2016, Page 3 of 5

Addendum to Question 18.

18. What New grounds are presented now, and why?

- A. Ground #3, Due Process Violations during Summary. (5th, and 14th amendment violations)
- B. The Trial Court allowed the D.A. to present conclusions at Summary, NOT supported by forensic evidence, or testimony, during the Trial. The Right to a Fair Trial, and to present a defense, hinges on the Right to Reply, and challenge conclusions at Trial. During Trial Summary, Defense cannot challenge assertions and claims, never made during the Trial.
- C. The D.A. (Alex Chen) made a dozen claims in Summary, that went unsupported during Trial. These included:
 - 1. Arguments about DEFT downloading files, when BOTH PRELIM FORENSIC REPORTS, and DA FORENSIC EXPERTS testified there were no downloading records. and many other similar claims, and conclusions.
- D. Why Now? Initial similar claims on Appeal centered on PROSECUTOR MISCONDUCT, and disparaging Defense Counsel. (Appeal #64515, issue 2, 4, 5, 9)
There are many more, different, examples, that are factually wrong, or counter to US Supreme Court cases.

AA 0194

Case: C-11-272657-1

Petition For Habeas Corpus

Deft: ANTHONY Castaneda Date: 12-12-2016, page: 4 of 5

Addendum To Question 18

18 What New grounds, presented Now, and why?

A. Ground #4, Failure of Counsel To Raise substantive issues on Appeal. (6th and 14th Amendment Violations.)

B. My Appeals Counsel (Audrey Conway) presented my appeal To The Full, en banc, Nevada Supreme Court ON 4 (APRIL)-7-2015. My Judgement was Filed 14 MONTHS Later, ON JUNE 16th, 2016, as 'Affirmed in Part, Vacated in Part, and Remanded', Reducing my CONVICTIONS From 15 To 1 Felony. Since all my CONVICTIONS were RUNNING CONCURRENTLY, There was No Change in Sentence. (Nevada Supreme Court, #64515)

C. My Appeals Counsel missed several major issues, including 1. A US Supreme Court ruling (US v. Flyer), 2. That PERTURY admitted to in court, was used by the DA, and Police, To secure The Search Warrant, 3. That I was eligible for a FRANKS Hearing, Based on #2, or #4 That TRIAL Counsel had failed To Notice a retained expert on computers, PRIOR TO TRIAL.

D. Why Raise Now? Any of These, and other issues warrant Reversal of charges, and/or Dismissal at TRIAL, OR Reversal on Appeal. None were Raised.

AA 0195

Case: C-11-272657-1

PETITION FOR Habeas Corpus

Deft: ANTHONY Castaneda

Date: 3-1-2017, Page 5 of 5

Addendum to Question 18

18. What New grounds are presented Now, and Why?

A. Ground #7, Evidence Tampering. (5th, 6th, and 14th Amend.)

B. During Preliminaries and Trial, Both the D.A. and Defense, noticed odd dates on the files in question. The user-file creation-dates, pre-dated the operating system, the file system install-date, and even the age of the device. The files were stored upon, and this is impossible. (I-10)

Deft Castaneda argues These user-file creation-dates are Prima Facie indications of evidence tampering.

Since The right to a Fair Trial, Due Process, and Defense, all depend on Legitimate evidence, The admission of This evidence, by The Trial Court, Violated Deft's Rights.

C. This ground is being presented Now, because during Pre-Lim and Trial, D.A. Forensic Experts argued The PC/OS date-system was "unreliable". Both The U.S. and Nevada Supreme Courts have accepted user-file creation-dates as Reliable evidence. The problem is These creation-dates are impossible, and have been altered to support False charges against The Deft.

Case: C-11-272652-1

PETITION FOR HABEAS CORPUS

PETR: ANTHONY CASTANEDA

DATE: 12-12-2016, Page 0

Addendum of Grounds

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Ground FOUR

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Ground FIVE

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1

Ground SEVEN

~~2~~ 5

Ground EIGHT

~~4~~

Ground NINE

2

Ground TEN

1

AA 0197

Case: C-11-272657-1

PETITION FOR Habeas Corpus

DEFT: ANTHONY Castaneda

DATE: 12-12-2016 , Page: 1 of 4

Ground ONE: Ineffective Assistance of Counsel,

Violating DEFT 5th, 6th, and 14th amendment Rights

ONE: My Counsel at Trial, (P. David Westbrook) failed to Notice a computer expert, retained before Trial, prior to Trial. This violated my 5th, 6th, and 14th amendment rights, by preventing a Fair Trial, Due Process, and presentation of a defense, (rebuttal), to DA claims made during Trial.

A. My Counsel, asked for, and was granted, a computer expert, Leon Mare (11303), before Trial. He then failed to Notice him, prior to Trial. This lack of technical expertise, prevented DEFT from presenting a rebuttal to DA claims during Trial.

B. These DA claims, ran counter to forensic standards, computer operations, and US Supreme Court guidance, on how to regard such testimony, about exactly this kind of evidence (United States v. FLYER 633 F.3d 911 918) ("images in unallocated space...")

B1. My Attorney, did, in fact, detect the many forensic errors, (VI 1422) and "late noticed" my computer expert, during Trial. The Defense made a specific record of the need for a defense rebuttal expert (VI 1422) at a bench conference. The Court denied the defense motion, due to the late notice, (VI 1424)

The lack of a defense expert, allowed unbalanced, and unfair Trial testimony before the jury, and unfair evidence.

AA 0198

Case: C-11-272657-1

PETITION FOR Habeas CORPUS.

DEFT: ANTHONY Castaneda DATE: 12-12-2016 , Page: 2 of 4

Ground One: Ineffective Assistance of Counsel,

Violating DEFT 5th, 6th, and 14th Amendment Rights

B2. Second, This Trial Testimony Contradicts US Supreme Court precedent, on how to regard such evidence. (US v. Flyer) Det. Ehler's claim, "images in unallocated space..." could prove possession by the DEFT, and human interaction with them. (VI 1141) (VI 1195) is almost a word-for-word opposite to it.

The US Supreme Court ruling in United States v. Flyer reads: "Carved images in unallocated space, are INSUFFICIENT for proving possession, and, without added evidence, tend to show INNOCENT behavior." (United States v. Flyer, 633 F.3.d 911 918)

Det. Ehler's Testimony appears at Trial, and in Summary, repeatedly, in DA claims, and Powerpoint slides. It is Never supported by "added evidence", in either format. The D.A. Never mentions this decision, and the lack of a defense expert, prevented DEFT from rebutting the claim.

A simple Lexis/Nexis search for "unallocated space", finds US v. Flyer, as the "controlling case" for such evidence. My Counsel should have found this easily, but, it is Not presented at Trial, or on my appeal (#64515). This prevents, or at least undermines, Due Process Review.

AA 0199

Case: C-11-272657-1

PETITION FOR Habeas Corpus

Deft: ANTHONY CASTANEDA

DATE: 12-12-2016, Page: 3 of 4

Ground ONE: Ineffective Assistance of Counsel,
VIOLATING Deft 5th, 6th, and 14th AMENDMENT RIGHTS

B3. Third, There is No basis for The claim of HUMAN INTERACTION WITH The files, OR data, IN UNALLOCATED space, ON any disk.

Again, FROM US. V. FLYER:

"UNallocated space is space ON a hard drive THAT CONTAINS deleted data, ... THAT CANNOT BE SEEN, OR accessed by The user, WITHOUT The use of FORENSIC SOFTWARE. ...

All OTHER ATTRIBUTES - INCLUDING WHEN The file WAS created, accessed, OR deleted by The user, CANNOT be Recovered."

Technically, NO USER INFORMATION, IS preserved either. SOMETHING NOT clear FROM US. V. FLYER, but, obvious TO a COMPUTER expert such as LEON MARE.

The DA NEVER presented any evidence, The Deft ever, copied, DOWNLOADED, PRINTED, OR ALTERED, The data IN UNallocated space, OR WAS aware he could, aware of Their presence, OR THAT he INSTALLED FORENSIC SOFTWARE. (633 F3.d 919) The DA failed The "added evidence" Test.

The Lack of a defense computer-expert REBUTTAL witness, Therefor, severely affected my right TO present a defense TO CRITICAL issues at TRIAL, AND ON appeal, AND WAS NOT Presented in either forum.

AA 0200

Case: C-11-272657-1

PETITION FOR Habeas Corpus

DEFT: ANTHONY Castaneda Date: 12-12-2016, Page: 4 of 4

Ground One: Ineffective Assistance of Counsel,
violating DEFT 5th, 6th, and 14th amendment Rights

B4. DEFT Castaneda argues there was insufficient evidence to establish that I ever held dominion and control, over any of these images at any time, on any date. A computer expert, was critical to my defense, in a computer crimes trial, and counsel, failed to provide one.

C. My Counsel, (P. David Westbrook), should have anticipated the long list of unsupported claims, counter to forensic standards, computer operations, and the US Supreme Court's failure to have a technical expert available, in a trial that centered on state technical claims, constitutes ineffective assistance at trial.

Failure to find US v. FLYER, the controlling precedent, on unallocated space, constitutes ineffective assistance at trial, and on appeal. It would have also made a more effective argument, during trial, for a "late noticed" defense computer expert.

D. DEFT Castaneda asks the court to grant this writ, and correct the errors at trial.

AAO201

Ground #2 4Pages

AA0202

Case: C-11-272657-1

Petition For Habeus Corpus

Deft: ANTHONY Castaneda

Date: 12-12-2016

Pages: 1 of 4

Ground Two: Failure To Investigate,

violating 5th, 6th, and 14th Amendment Rights

Two: Counsel at Trial, (P. David Westbrook), failed to investigate state witness Tami Hines pre-trial interview with Det. Tooley. During trial, Hines admitted to perjury at this interview, which police and DA, used in a search warrant affidavit.

A. During the first day at trial, the first state witness, Tami Hines, lied on the stand, and admitted lying in court. On the stand, she admitted lying during preliminary interviews with Tooley, and, under oath, during pre-trial testimony in court. (I 29, P. 10)

Defense Counsel, asked her which, of 3 different stories of found the USB-stick was true, she found it, her 6 year old daughter found it, or her boyfriend John Landeau, found it, Hines replied, "Obviously, I lied."

Defense moved for dismissal during trial, based on perjury, on the stand, in court. (V 934) On July 12, 2013, Defense brought a motion to dismiss based on Hine's perjury. (I 191) Defense pointed out Hines directly contradicted her sworn testimony. (V 1218) The Court denied that motion. (V 1227)

Defense then asked Ms. Hines to identify when, she lied.

AA 0203

JUL 16 2013

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

PINU

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA
VS
ANTHONY CASTANEDA

CASE NO.: C-11-272657-1

DEPARTMENT 5

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 16th day of July, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By:

Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

AA 0110

INSTRUCTION NO. _____

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation; neither may a conviction be based upon mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

Offered by Defendant
and not given

Carly Elliott

AA0111

INSTRUCTION NO. _____

You are here to determine whether the State has proved the guilt of the Defendant beyond a reasonable doubt from the evidence in the case. You are not called upon to determine the guilt of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty of a crime.

*offered by Defendant
but not given*

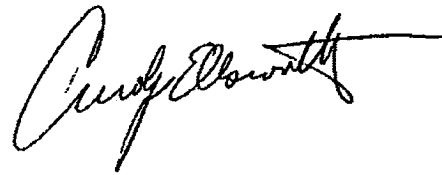
Carol Ellsworth

AA 0112

INSTRUCTION NO. _____

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proved the guilt of the Defendant beyond a reasonable doubt.

Offered by Defendant
and not given



AA0113

INSTRUCTION NO. _____

If evidence is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to his being found not guilty, it is your duty, under the law, to adopt that interpretation which will admit of the Defendant's being found not guilty, and reject that which points to his guilt. You will notice that this rule applies only when both of the two possible conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other unreasonable, it would be your duty to adhere to the reasonable deduction and reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to Defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

Offered by Defendant
but not given

Carol Ellsworth

AA 0114

If evidence is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to his being found not guilty, it is your duty, under the law, to adopt that interpretation which will admit of the Defendant's being found not guilty, and reject that which points to his guilt. You will notice that this rule applies only when both of the two possible conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other unreasonable, it would be your duty to adhere to the reasonable deduction and reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to Defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

~~If the evidence supports two reasonable interpretations,
and one . one pointing to the guilt of the defendant, and
one pointing to~~

If the evidence supports two reasonable interpretations,
~~one that supports the claim that the Defendant is guilty,~~
~~and one that supports~~
• one that points^{to} the Defendant being found guilty, and
• one that points to the defendant being found
not guilty,

It is your duty to find the defendant not guilty.

However, if one of the interpretations appears reasonable,
and the other unreasonable, you must reject the unreasonable

The crime of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD is a specific intent crime. A specific intent, as the term applies, means more than the general intent to commit the act. To establish specific intent, the State must prove beyond a reasonable doubt that the Defendant knowingly did the act which the law forbids, purposely intending to violate that law.

An act is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Specific intent is the intent to accomplish the precise act which the law prohibits.

*Offered by Defendant
but not given*

Cathy Ellsworth

INSTRUCTION NO. _____

Search warrants do not require "Proof Beyond a Reasonable Doubt." Search warrants are merely an investigative tool. All that is required to obtain a search warrant is "Probable Cause" as determined by a magistrate. "Probable Cause" can be based on slight or marginal evidence.¹ Slight or marginal evidence is not sufficient for a conviction in a criminal trial. The mere fact that a search warrant was issued in this case should in no way be considered as proof of the defendant's guilt.

Offered by Defendant
but not given.

Cathy Ellsworth

¹ Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 179 (1980)

AA0117

INSTRUCTION NO. _____

Search warrants do not require "Proof Beyond a Reasonable Doubt." Search warrants are merely an investigative tool. All that is required to obtain a search warrant is "Probable Cause" as determined by a magistrate. "Probable Cause" ^{is not the standard in} ~~can be based on slight or marginal~~ ^{this case. Probable Cause} evidence. ~~Slight or marginal evidence~~ is not sufficient for a conviction in a criminal trial. The mere fact that a search warrant was issued in this case should in no way be considered as proof of the defendant's guilt.

AA 0118

INSTRUCTION NO. _____

A valid search warrant was obtained in this case. In order for a judge to issue a valid search warrant, it must be demonstrated that the officer seeking the search warrant has probable cause to believe that evidence of a crime may be found in the place or thing to be searched. Probable cause to search is not the same as proof of guilt beyond a reasonable doubt. The mere fact that a valid search warrant was issued is insufficient, ~~by itself~~, to convict a defendant. ~~You may consider evidence, if any, found~~

AA 0119

JUL 16 2013

BY: Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA
VS
ANTHONY CASTANEDA

CASE NO.: C-11-272657-1

DEPARTMENT 5

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 16th day of July, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

AA 0120

INSTRUCTION NO. _____

A valid search warrant was obtained in this case. In order for a judge to issue a valid search warrant, it must be demonstrated that the officer seeking the search warrant has probable cause to believe that evidence of a crime may be found in the place or thing to be searched. Probable cause to search is not the same as proof of guilt beyond a reasonable doubt. The mere fact that a valid search warrant was issued is insufficient, by itself, to convict a defendant.

Offered by State &
Not Given

Cathy Ellsworth

AA 0121

1 VER

12:39 PM

2 FILED IN OPEN COURT
3 STEVEN D. GRIERSON
CLERK OF THE COURT

4 JUL 16 2013

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

BY Andrea M. Davis
ANDREA DAVIS, DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 ANTHONY CASTANEDA,

11 Defendant.

CASE NO: C-11-272657-1

DEPT NO: V

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant ANTHONY
14 CASTANEDA, as follows:

15 COUNT 1 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
16 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

17 (please check the appropriate box, select only one)

18 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD

20 ☐ Not Guilty

21
22 COUNT 2 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
23 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

24 (please check the appropriate box, select only one)

25 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
26 SEXUAL CONDUCT OF A CHILD

27 ☐ Not Guilty

28
AA 0122

1 **COUNT 3** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
2 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
5 SEXUAL CONDUCT OF A CHILD

6 ☐ Not Guilty

7
8 **COUNT 4** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
9 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

10 *(please check the appropriate box, select only one)*

11 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
12 SEXUAL CONDUCT OF A CHILD

13 ☐ Not Guilty

14
15 **COUNT 5** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
16 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
19 SEXUAL CONDUCT OF A CHILD

20 ☐ Not Guilty

21
22 **COUNT 6** - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
23 CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

24 *(please check the appropriate box, select only one)*

25 ☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
26 SEXUAL CONDUCT OF A CHILD

27 ☐ Not Guilty

28
AA 0123

**COUNT 7 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

**COUNT 8 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

**COUNT 9 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

**COUNT 10 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

AA 0124

COUNT 11 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

COUNT 12 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

COUNT 13 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

COUNT 14 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

AA 0125

**COUNT 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)**

(please check the appropriate box, select only one)

☒ Guilty of POSSESSION OF VISUAL PRESENTATION DEPICTING
SEXUAL CONDUCT OF A CHILD

☐ Not Guilty

DATED this 16 day of July, 2013


FOREPERSON

AA 0126

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 30, 2013

C-11-272657-1 State of Nevada
 vs
 Anthony Castaneda

October 30, 2013 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- STATE'S MOTION TO STRIKE OFF OF PROOF REGARDING DEFT'S MOTION TO CALL A COMPUTER EXPERT TO REBUT DETECTIVE ELHER'S SURPRISE TRIAL TESTIMONY AS DEFT'S OFFER OF PROOF IMPROPERLY SUPPLEMENTS THE RECORD

Deft. present in custody. Court noted this appears to be a counter-motion and stated it listened to JAVS and advised what happened during trial in regards to Court's decision regarding their rebuttal expert. Further, can't come in after trial and file these types of motions, they may be put in a post conviction relief petition. Arguments by counsel. Court advised these motions can be filed, but they are not part of the trial record as they were filed after verdict was reached. Further arguments by counsel. COURT ORDERED, Motion DENIED. Mr. Westbrook corrected a mistake he made for the record.

DEFT CASTANADA ADJUDGED GUILTY of CT'S 1 THROUGH 15 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (F). Statements by Deft. and counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$760 Psychosexual Assessment fee, \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to:

CT 1 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC);

CT 2 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28)

PRINT DATE: 11/14/2013

Page 1 of 4

Minutes Date:

October 30, 2013

AA 0127

MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 1;
CT 3 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 2;
CT 4 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 3;
CT 5 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 4;
CT 6 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 5;
CT 7 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 6;
CT 8 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 7;
CT 9 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 8;
CT 10 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 9;
CT 11 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 10;
CT 12 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 11;
CT 13 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 12;
CT 14 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 13;
CT 15 - a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC) CONCURRENT TO 14 with 160 DAYS credit for time served. SENTENCE SUSPENDED; placed on probation for a FIXED FIVE (5) YEARS under the following SPECIAL CONDITIONS:

1. Pursuant to NRS 176A.410, the following terms are imposed:
 - (a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any parole and probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime;
 - (b) Reside at a location only if:
 - (1) The residence has been approved by the parole and probation officer assigned to the defendant.
 - (2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is license pursuant to Chapter 449 of NRS.
 - (3) The defendant keeps the parole and probation officer assigned to the defendant informed of the defendant's current address.
 - (c) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the defendant and keep the parole and probation officer

informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the parole and probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Division of Parole and Probation.

(f) Submit to periodic tests, as requested by the parole and probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant.

(h) Abstain from consuming, possessing or having under his control any alcohol.

(i) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the Chief Parole and Probation Officer of the Chief Parole and Probation Officer's designee and a written agreement is entered into and signed in the manner set forth in NRS 176A.410(5).

(j) Not use aliases or fictitious names.

(k) Not obtain a post office box unless the defendant receives permission from the parole and probation officer assigned to the defendant.

(l) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of a sexual offense is present and permission has been obtained from the parole and probation officer assigned to the defendant in advance of each such contact.

(m) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(n) Not possess any sexually explicit material that is deemed inappropriate by the parole and probation officer assigned to the defendant.

(o) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the parole and probation officer assigned to the defendant.

(p) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the defendant.

(q) Inform the parole and probation officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, institution of higher education has the meaning ascribed to it in NRS 179D.045.

2. Register as a sex offender within the first 48 hours of leaving courthouse.

3. If P&P is approached that Deft. has found a job that requires internet usage, issue must be brought back before the Court to determine remedy.

4. Abide by any curfew imposed by P&P.

5. Attend counseling to address issues related to this charge.

6. Pay fees including the indigent defense fee.

Pursuant to statute a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation,

C-11-272657-1

- parole or imprisonment and register as a sex offender in accordance with NRS 179D.460 within 48 hours after sentencing.

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1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant


CLERK OF THE COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 THE STATE OF NEVADA,)
8 Plaintiff,) CASE NO. C-11-272657-1
9 v.) DEPT. NO. V
10 ANTHONY CASTANEDA,)
11 Defendant.)
12

13 **AMENDED JUDGMENT OF CONVICTION**

14 The Defendant previously appeared before the Court with counsel and entered a
15 plea of guilty to the crime(s) of COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 –
16 POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCTS OF A
17 CHILD (Category B Felony), in violation of NRS 200.700, 200.730; thereafter, on the 30th day of
18 October, 2013, the Defendant was present in court for sentencing with his counsel, ERIKA D.
19 BALLOU, ESQ. and P. DAVID WESTBROOK, ESQ. and good cause appearing,

20 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
21 addition to the \$25.00 Administrative Assessment Fee, \$760 Psycho-sexual Assessment fee,
22 \$150.00 to Civil Indigent Defense Fund, and a \$150.00 DNA Analysis fee including testing to
23 determine genetic markers, the Defendant is sentenced as follows: to: CT 1 – a MAXIMUM of
24 SEVENTY TWO (72) MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the
25 Nevada Department of Corrections (NDC); CT 2 – a MAXIMUM of SEVENTY TWO (72)
26 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
27 Corrections (NDC) CONCURRENT TO 1; CT 3 – a MAXIMUM of SEVENTY TWO (72)
28 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of

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1 Corrections (NDC) CONCURRENT TO 2; CT 4 - a MAXIMUM of SEVENTY TWO (72)
2 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
3 Corrections (NDC) CONCURRENT TO 3; CT 5 - a MAXIMUM of SEVENTY TWO (72)
4 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
5 Corrections (NDC) CONCURRENT TO 4; CT 6 - a MAXIMUM of SEVENTY TWO (72)
6 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
7 Corrections (NDC) CONCURRENT TO 5; CT 7 - a MAXIMUM of SEVENTY TWO (72)
8 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
9 Corrections (NDC) CONCURRENT TO 6; CT 8 - a MAXIMUM of SEVENTY TWO (72)
10 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
11 Corrections (NDC) CONCURRENT TO 7; CT 9 - a MAXIMUM of SEVENTY TWO (72)
12 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
13 Corrections (NDC) CONCURRENT TO 8; CT 10 - a MAXIMUM of SEVENTY TWO (72)
14 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
15 Corrections (NDC) CONCURRENT TO 9; CT 11 - a MAXIMUM of SEVENTY TWO (72)
16 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
17 Corrections (NDC) CONCURRENT TO 10; CT 12 - a MAXIMUM of SEVENTY TWO (72)
18 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
19 Corrections (NDC) CONCURRENT TO 11; CT 13 - a MAXIMUM of SEVENTY TWO (72)
20 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
21 Corrections (NDC) CONCURRENT TO 12; CT 14 - a MAXIMUM of SEVENTY TWO (72)
22 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
23 Corrections (NDC) CONCURRENT TO 13; CT 15 - a MAXIMUM of SEVENTY TWO (72)
24 MONTHS and MINIMUM of TWENTY EIGHT (28) MONTHS in the Nevada Department of
25 Corrections (NDC) CONCURRENT TO 14 with 160 DAYS credit for time served. SENTENCE
26 SUSPENDED; placed on probation for a FIXED FIVE (5) YEARS under the following SPECIAL
27 CONDITIONS:

28 ///

1 1. Pursuant to NRS 176A.410, the following terms are imposed:

2 (a) Submit to a search and seizure of his person, residence or vehicle or any property under
3 his control, at any time of the day or night, without a warrant, by any parole and probation officer
4 or any peace officer, for the purpose of determining whether the defendant has violated any
5 condition of probation or suspension of sentence or committed any crime;

6 (b) Reside at a location only if: (1) The residence has been approved by the parole and
7 probation officer assigned to the defendant. (2) If the residence is a facility that houses more than
8 three persons who have been released from prison, the facility is a facility for transitional living for
9 released offenders that is licensed pursuant to Chapter 449 of NRS. (3) The defendant keeps the
10 parole and probation officer assigned to the defendant informed of the defendant's current address.

11 (c) Accept a position of employment or a position as a volunteer only if it has been
12 approved by the parole and probation officer assigned to the defendant and keep the parole and
13 probation officer informed of the location of his position of employment or position as a volunteer.

14 (d) Abide by any curfew imposed by the parole and probation officer assigned to the
15 defendant.

16 (e) Participate in and complete a program of professional counseling approved by the
17 Division of Parole and Probation.

18 (f) Submit to periodic tests, as requested by the parole and probation officer assigned to
19 the defendant, to determine whether the defendant is using a controlled substance.

20 (g) Submit to periodic polygraph examinations, as requested by the parole and probation
21 officer assigned to the defendant.

22 (h) Abstain from consuming, possession or having under his control any alcohol.

23 (i) Not have contact or communicate with a victim of the sexual offense or a witness who
24 testified against the defendant or solicit another person to engage in such contact or
25 communication on behalf of the defendant, unless approved by the Chief Parole and Probation
26 Officer of the Chief Parole and Probation Officer's designee and a written agreement is entered
27 into and signed in the manner set forth in NRS 176A.401(5).

28 (j) Not use aliases or fictitious names.

1 (k) Not obtain a post office box unless the defendant received permission from the parole
2 and probation officer assigned to the defendant.

3 (l) Not have contact with a person less than 18 years of age in a secluded environment
4 unless another adult who has never been convicted of a sexual offense is present and permission
5 has been obtained from the parole and probation officer assigned to the defendant in advance of
6 each such contact.

7 (m) Comply with any protocol concerning the use of prescription medication prescribed by
8 a treating physician, including, without limitation, any protocol concerning the use of psychotropic
9 medication.

10 (n) Not possess any sexually explicit material that is deemed inappropriate by the parole
11 and probation officer assigned to the defendant.

12 (o) Not patronize a business which offers a sexually related form of entertainment and
13 which is deemed inappropriate by the parole and probation officer assigned to the defendant.

14 (p) Not possess any electronic device capable of accessing the Internet and not access the
15 Internet through any such device or any other means, unless possession of such a device or such
16 access is approved by the parole and probation officer assigned to the defendant.

17 (q) Inform the parole and probation officer assigned to the defendant if the defendant
18 expects to be or becomes enrolled as a student at an institution or higher education or changes the
19 date of commencement or termination of his enrollment at an institution of higher education. As
20 used in this paragraph, institution or higher education has the meaning ascribed to it in NRS
21 179D.045.

22 2. Register as a sex offender within the first 48 hours of leaving courthouse.

23 3. If P&P is approached that Def. has found a job that requires internet usage, issue must be
24 brought back before the Court to determine remedy.

25 4. Abide by any curfew imposed by P&P.


26 5. Attend counseling to address issues related to this charge.

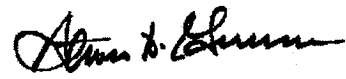
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1 6. Pay fees including the indigent defense fee.
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3 DATED this 12th day of June, 2014.
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6 _____
7 DISTRICT JUDGE
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

CASE NO. C272657-1

DEPT. NO. V

ANTHONY CASTANEDA
#2799593

Defendant.

ORDER FOR REVOCATION OF PROBATION AND
SECOND AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 - 15 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCTS OF A CHILD (Category B Felony) in violation of NRS 200.700, 200.730; and the matter having been tried before a jury and the Defendant having been found guilty of said crimes; thereafter, on the 30th day of October, 2013, the Defendant was present in court for sentencing with counsel, wherein the Court did adjudge the Defendant guilty of said crimes as set forth in the jury's verdict, suspended the execution of the sentence imposed and granted probation to the Defendant.

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1 THEREAFTER, on the 21st day of May, 2014, the Defendant was present in
2 court with his counsel, and pursuant to a violation of probation hearing and good cause
3 to amend the Judgment of Conviction;
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5 IT WAS THEREBY ORDERED that probation was reinstated with the condition
6 that the Defendant shall find, enter and complete a new counseling program. COURT
7 FURTHER ORDERED, the condition of Life Time Supervision was REMOVED.
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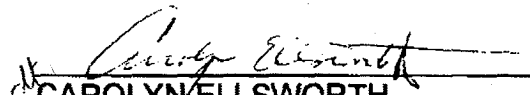
9 THEREAFTER, a parole and probation officer provided the Court with a written
10 statement setting forth that the Defendant has, in the judgment of the parole and
11 probation officer, violated the conditions of probation; and on the 22nd day of June,
12 2015, the Defendant was present in court with his counsel, JEFFREY RUE, Deputy
13 Public Defender, and good cause appearing to again amend the Judgment of
14 Conviction; now therefore,
15

16 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
17 is revoked; in addition to original fees, fines and assessments, IT IS FURTHER
18 ORDERED that the original sentence be MODIFIED and imposed as follows: as to
19 **COUNT 1** – to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
20 Eligibility of TWENTY-FOUR (24) MONTHS, as to **COUNT 2** - a MAXIMUM of
21 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
22 (24) MONTHS, Count 2 to run CONCURRENT with Count 1, as to **COUNT 3** - to a
23 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of
24 TWENTY-FOUR (24) MONTHS, Count 3 to run CONCURRENT with Count 2, as to
25 **COUNT 4** – to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
26 Eligibility of TWENTY-FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count
27
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1 3, as to **COUNT 5** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a
2 **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 5 to run
3 **CONCURRENT** with Count 4, as to **COUNT 6** – to a **MAXIMUM** of **SEVENTY-TWO**
4 **(72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**,
5 Count 6 to run **CONCURRENT** with Count 5, as to **COUNT 7** – to a **MAXIMUM** of
6 **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR**
7 **(24) MONTHS**, Count 7 to run **CONCURRENT** with Count 6, as to **COUNT 8** - to a
8 **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of
9 **TWENTY-FOUR (24) MONTHS**, Count 8 to run **CONCURRENT** with Count 7, as to
10 **COUNT 9** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM**
11 Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 9 to run **CONCURRENT**
12 with Count 8, as to **COUNT 10** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS**
13 with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 10 to run
14 **CONCURRENT** with Count 9, as to **COUNT 11** – to a **MAXIMUM** of **SEVENTY-TWO**
15 **(72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR (24) MONTHS**,
16 Count 11 to run **CONCURRENT** with Count 10, as to **COUNT 12** – to a **MAXIMUM** of
17 **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of **TWENTY-FOUR**
18 **(24) MONTHS**, Count 12 to run **CONCURRENT** with Count 11, as to **COUNT 13** – to a
19 **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM** Parole Eligibility of
20 **TWENTY-FOUR (24) MONTHS**, Count 13 to run **CONCURRENT** with Count 12, as to
21 **COUNT 14** – to a **MAXIMUM** of **SEVENTY-TWO (72) MONTHS** with a **MINIMUM**
22 Parole Eligibility of **TWENTY-FOUR (24) MONTHS**, Count 14 to run **CONCURRENT**
23 with Count 13, and as to **COUNT 15** – to a **MAXIMUM** of **SEVENTY-TWO (72)**
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1 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the
2 Nevada Department of Corrections (NDC), Count 15 to run CONCURRENT with Count
3 14, with TWO HUNDRED SEVENTY-THREE (273) DAYS credit for time served.
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6 DATED this 29th day of June, 2015.
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10 CAROLYN ELLSWORTH
11 DISTRICT COURT JUDGE
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132 Nev., Advance Opinion 44
IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CASTANEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64515

FILED

JUN 16 2016

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

Appeal from a judgment of conviction, pursuant to jury verdict, of 15 counts of possession of child pornography. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Affirmed in part, vacated in part, and remanded.

Philip J. Kohn, Public Defender, and P. David Westbrook and Audrey M. Conway, Deputy Public Defenders, Clark County, for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Steven S. Owens, Chief Deputy District Attorney, and Alexander G. Chen, Deputy District Attorney, Clark County, for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PICKERING, J.:

Nevada law makes it a felony to possess child pornography. The question before the court is whether appellant Anthony Castaneda committed 15 felonies or one when he simultaneously possessed 15 digital

images of children engaged in sexual conduct. We hold that, in the circumstances of this case, he committed a single, category B felony. Castaneda's remaining claims of error fail. We therefore affirm in part, vacate in part, and remand.

I.

The charges against Castaneda originated in a report by a former housemate of his to the Las Vegas Metropolitan Police Department (LVMPD). The former housemate reported that, after moving out of Castaneda's house, she and her boyfriend found mixed in with their belongings a USB flash drive similar to one Castaneda customarily kept on his key chain. When they opened the flash drive, they discovered that it held copies of Castaneda's driver's license, birth certificate, Social Security card and military records, as well as a file of pornographic images, some depicting children.

LVMPD obtained a search warrant to view the contents of the flash drive. On the flash drive, in addition to Castaneda's identification, detectives found a subfolder named "girl pics." This subfolder contained pornographic images, including several that an FBI database established as known images of child pornography downloadable from the World Wide Web. Based on this evidence, detectives obtained a search warrant for Castaneda's home and home computers. The home computers, a desktop and a laptop, contained each of the child pornography images found on the flash drive and several additional known images of child pornography as well, for a total of 15 separate depictions, with most being found on both the desktop and the laptop. Castaneda was interviewed by a detective while the search was underway. After the interview concluded, he came into the room where another detective had one of the illegal images open

on the computer. Reportedly, Castaneda saw what was on the screen and said, "Those are kids, I'm sorry."

The State charged Castaneda with 15 counts of knowingly and willfully possessing 15 image files depicting sexual conduct of a child in violation of NRS 200.730. Before trial, the State and Castaneda stipulated not to publish the charged images in open court but, rather, to put copies of them into evidence in a sealed envelope for the jury to examine if it so chose. They further stipulated, quoting language from NRS 200.730, that each of the 15 charged images depicted a child "under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct."

After a six-day trial, the jury convicted Castaneda on all 15 counts. The district court judge sentenced Castaneda to a minimum of 28 months and maximum of 72 months on each count, the sentences to run concurrently. The district court suspended the sentences and placed Castaneda on probation for a 5-year term. Castaneda appeals.

II.

Castaneda argues that 14 of his 15 convictions for possessing child pornography must be vacated because NRS 200.730 penalizes possession, and the State proved only "a singular act of digital possession of items seized on the day the police took the computers into police custody."¹ Castaneda casts his argument in constitutional terms, citing the protection against "multiple punishments for the same offense"

¹The State does not question that Castaneda's post-trial motion to vacate the jury's verdict as to counts 2-15 adequately preserved this issue.

afforded by the double jeopardy clauses of the United States and Nevada Constitutions. U.S. Const. amend. V; Nev. Const. art. 1, § 8. But what Castaneda's challenge asks us to do is to read NRS 200.730, the statute under which he was charged, and determine the unit of prosecution it allows in this case, specifically, whether Castaneda's simultaneous possession of 15 digital images of child pornography constitutes one crime or 15 crimes. "While often discussed along with double jeopardy," *Wilson v. State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005), "determining the appropriate unit of prosecution presents an issue of statutory interpretation and substantive law." *Jackson v. State*, 128 Nev. 598, 612, 291 P.3d 1274, 1278 (2012) (internal quotations omitted); see Akhil Reed Amar, *Double Jeopardy Law Made Simple*, 106 Yale L.J. 1807, 1817-18 (1997) (noting that "it is up to the legislature to decide whether planting and exploding a bomb should be one crime or two (because the bomb was first planted, then exploded) or fifty (because fifty people died) or 500 (because 450 more were at risk) or 1,000,500 (because the bomb also destroyed one million dollars of property and each dollar of bomb damage is defined as a separate offense"); on such questions, the double jeopardy clause is "wholly agnostic" and "imposes no limits on how the legislature may carve up conduct into discrete legal offense units"). As with other questions of statutory interpretation, our review is de novo, *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004), and begins with the statutory text, *Wilson*, 121 Nev. at 356, 114 P.3d at 293.

A.

Castaneda was charged with violating NRS 200.730, which reads in full as follows:

A person who knowingly and willfully has in his or her possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct:

1. For the first offense, *is guilty of a category B felony* and shall be punished 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.

2. For any subsequent offense, *is guilty of a category A felony* and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of life with the possibility of parole, and may be further punished by a fine of not more than \$5,000.

(Emphases added.)

To the State, NRS 200.730 is plain and unambiguous: It authorizes a separate conviction for each pornographic image possessed. Emphasizing the word "any" in the phrase "*any* film, photograph or other visual presentation," the State maintains that NRS 200.730 makes it a crime to possess even a single photograph depicting child pornography. From this it follows, the State submits, that each such photograph or image a person possesses constitutes a separate crime.

The State's explication of NRS 200.730's text is flawed. To be sure, the statute authorizes prosecution based on possession of a single image depicting child pornography. But this does not mean that each additional image possessed necessarily gives rise to a separate prosecutable offense.

A number of disparate criminal statutes use "any" as NRS 200.730 does: to catalog the objects of the prohibition the statute states. See *United States v. Kinsley*, 518 F.2d 665, 667-68 (8th Cir. 1975) (providing examples of such statutes and the cases construing them, including *Bell v. United States*, 349 U.S. 81 (1955), in which the Supreme Court famously held that the simultaneous transportation of two women across state lines constituted one, not two, violations of the Mann Act, which was ambiguous in that it made it a crime to knowingly transport "any woman or girl" across state lines for immoral purposes without defining the unit of prosecution). The word "any" has multiple, conflicting definitions, including (1) one; (2) one, some, or all regardless of quantity; (3) great, unmeasured, or unlimited in amount; (4) one or more; and (5) all." *State v. Sutherby*, 204 P.3d 916, 920 (Wash. 2009) (citing *Webster's Third New International Dictionary* 97 (1976)). For this reason, courts interpreting forms of criminal statutes similar to NRS 200.730 have rejected the proposition that the use of the word "any" to introduce a list of prohibited objects automatically authorizes a per-object unit of prosecution. In fact, contrary to the reading the State advocates in this case, "the word 'any' has 'typically been found ambiguous in connection with the allowable unit of prosecution,' for it contemplates the plural, rather than specifying the singular." *United States v. Coiro*, 922 F.2d 1008, 1014 (2d Cir. 1991) (quoting *Kinsley*, 518 F.2d at 668).

Significantly, in many of the cases in which the courts have found a *Bell*-type ambiguity [as to the proper unit of prosecution], the object of the offense has been prefaced by the word "any." Seemingly this is because "any" may be said to fully encompass (i.e., not necessarily exclude any part of) plural activity, and thus fails to

unambiguously define the unit of prosecution in singular terms.

Kinsley, 518 F.2d at 667.

B.

Since the text of NRS 200.730 does not unambiguously establish whether Castaneda was properly prosecuted on a per-image basis, we turn to other legitimate tools of statutory interpretation, including related statutes, relevant legislative history, and prior judicial interpretations of related or comparable statutes by this or other courts. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 298-99 (2012). Only then, if “a reasonable doubt persists” after “all the legitimate tools of interpretation have been applied,” do we reach the rule of lenity urged on us by Castaneda, which teaches that “[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in a defendant’s favor.” *Id.* at 299 (quotation and footnotes omitted); see *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1227 (2011).

1.

NRS 200.730 is one of a series of statutes, NRS 200.700 through NRS 200.760, codified under the heading “Pornography Involving Minors.” The lead definitional statute, NRS 200.700, defines “sexual conduct” and “sexual portrayal,” both phrases that are used in NRS 200.730, but it does not define “film, photograph or other visual presentation,” the objects whose possession NRS 200.730 prohibits. The terms “film,” “photograph,” and “other visual presentation” appear, though, in NRS 200.700(1), which defines “[p]erformance,” the use of a minor in which is made criminal by NRS 200.710 and NRS 200.720, to

mean “any play, *film, photograph*, computer-generated image, electronic representation, dance or other visual presentation.” (emphases added).²

The legislative history of NRS 200.730 sheds little light on the unit of prosecution it authorizes. Enacted in 1983, NRS 200.730's prohibition against possession of child pornography was added almost as an afterthought to A.B. 189, which proposed the statutes criminalizing the production and distribution of child pornography that became NRS 200.700 through NRS 200.760. Hearing on A.B. 189 Before the Senate Judiciary Comm., 62d Leg. (Nev., March 31, 1983). As originally adopted, NRS 200.730 made the possession of child pornography a misdemeanor. See 1983 Nev. Stat., ch. 337, § 4, at 814. The Legislature has since amended NRS 200.730 several times, but each amendment only increased the penalties for possession without providing insight into the unit of prosecution. 1985 Nev. Stat., ch. 459, § 1, at 1412-13; 1987 Nev. Stat., ch. 369, § 1, at 846; 1995 Nev. Stat., ch. 443, § 77, at 1196; 2005 Nev. Stat., ch. 507, § 29, at 2876. For the near quarter century NRS 200.730 has been on the books, its core prohibition—“possession” of “any film, photograph or other visual presentation” of a minor engaged in sex—has not changed, despite the advent of the Internet and the explosion in the market for

²As originally enacted, NRS 200.700(1) more closely tracked NRS 200.730, in that it defined “performance” as to include “any play, film, photograph, dance or other visual presentation.” See 1983 Nev. Stat., ch. 337, § 2, at 814. The 1995 Legislature amended NRS 200.700(1) to add “computer-generated image” and “electronic representation” to its definition of performance, see 1995 Nev. Stat., ch. 389, § 4, at 950, but it did not make parallel conforming amendments to NRS 200.730.

child pornography that advanced digital technology has brought.³ While digital images downloaded from the Internet no doubt qualify as a type of “film, photograph or other visual presentation,” neither the text of NRS 200.730 nor its legislative history answers the unit-of-prosecution question this case poses.

2.

In *Wilson v. State*, 121 Nev. 345, 114 P.3d 285 (2005), we considered the unit of prosecution authorized by NRS 200.710, which punishes as a category A felony the use of a minor in a “performance” involving the minor in “sexual conduct” or “sexual portrayal.” Wilson took four Polaroid photographs of a child he persuaded to undress and sexually pose for him. *Id.* at 357, 114 P.3d at 293. For this he was charged with and convicted of four counts of violating NRS 200.710, penalizing the use of a minor in a “performance.” *Id.* at 355, 114 P.3d at 292.

³Richard Wortley & Stephen Smallbone, U.S. Dep’t of Justice, *Child Pornography on the Internet* 12 (2006); see *Child Pornography*, U.S. Dep’t of Justice, <https://www.justice.gov/criminal-ceos/child-pornography> (last updated June 3, 2015) (“By the mid-1980’s, the trafficking of child pornography within the United States was almost completely eradicated through a series of successful campaigns waged by law enforcement. . . . Unfortunately, the child pornography market exploded in the advent of the Internet and advanced digital technology.”); see also *Overview and History of the Violent Crimes Against Children Program*, FBI, https://www.fbi.gov/about-us/investigate/vc_majorthefts/cac/overview-and-history (last visited June 6, 2016) (“More online incidents of these crimes are being identified for investigation than ever before. Between fiscal years 1996 and 2007, the number of cases opened throughout the FBI catapulted from 113 to 2,443.”).

On appeal, Wilson contended that NRS 200.710 outlawed the use of a child in a performance and that, because the child engaged in a single performance during which Wilson took four separate pictures, only one violation of NRS 200.710 had occurred. *Id.* at 357, 114 P.3d at 293. The State countered that, because NRS 200.700(1) defines "performance" to include "any . . . film, photograph, . . . or other visual presentation," it had proven four "performances" and, so, four violations of NRS 200.710. *Id.* We reversed three of the four counts of violating NRS 200.710 that Wilson had been convicted of. *Id.* at 358, 114 P.3d at 294. "[N]otwithstanding th[e] broad definition [of performance], it is the use of a child in a sexual performance that is prohibited under NRS 200.710, and that performance can be of any type and documented in any manner." *Id.* at 357, 114 P.3d at 294.

The purpose of Nevada's child pornography statutes is to protect children from the harms of sexual exploitation and prevent the distribution of child pornography. As such, the intent of the Legislature in passing NRS 200.700 to 200.760, inclusive, was to criminalize the use of children in the production of child pornography, not to punish a defendant for multiple counts of production dictated by the number of images taken of one child, on one day, all at the same time. *If the Legislature intended this statute to punish a party for every individual photograph produced of a sexual performance, it certainly could have effectuated that intent in the statute.* Therefore, we conclude that the facts of this case demonstrate a single violation of NRS 200.710, not multiple acts in violation of the law.

Id. at 358, 114 P.3d at 294 (footnote omitted; emphasis added); see *Casteel v. State*, 122 Nev. 356, 362, 131 P.3d 1, 5 (2006) (upholding multiple convictions of violating NRS 200.710 where the minor was photographed

in separate sexual episodes but reversing all but one of the convictions where the photographs were taken during a single episode).

The State argues that *Wilson* requires affirmance of Castaneda's per-image-based convictions. In addition to his convictions for violating NRS 200.710, Wilson was, like Castaneda, charged with and convicted of four counts of possession of child pornography under NRS 200.730 based on the four Polaroid pictures he took during the child's performance. While the State is correct that this court affirmed Wilson's convictions under NRS 200.730, Wilson did not raise a unit of prosecution challenge to his possession-of-child-pornography charges, as Castaneda does here. We decline to read into *Wilson* a holding this court was not asked to consider and did not make.

3.

While *Wilson* does not directly decide the unit of prosecution question this case presents, it does suggest the appropriate approach to take. Much as NRS 200.710 outlaws a pornographic "performance" by a child, which NRS 200.700(1) broadly defines to include "any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation," NRS 200.730 outlaws "possession" of "any film, photograph or other visual presentation" constituting child pornography. *Wilson* was concerned that counting each photograph as a separate "performance" for purposes of NRS 200.710 would lead, in the case of a moving-picture performance, to thousands of separate offenses, one per each screen comprising the film, a result the court deemed "absurd." *Wilson*, 121 Nev. at 357, 114 P.3d at 294. While NRS 200.730 presents a different question than NRS 200.710, given that it prohibits "possession" of child pornography, not "use" of a minor in a pornographic

performance, the number of electronic images downloadable in a single Internet session similarly counsels against the rudimentary, per-image unit of prosecution for which the State advocates absent clear legislative direction to that effect.

Courts elsewhere have divided on the unit of prosecution in possession-of-child-pornography cases involving statutes like NRS 200.730. Compare *People v. Hertzig*, 67 Cal. Rptr. 3d 312, 316 (Ct. App. 2007) (holding that the defendant's possession of a laptop with 30 different child pornographic videos constituted a "solitary act of possessing the proscribed property," and reversing all but one count); *Commonwealth v. Rollins*, 18 N.E.3d 670, 678 (Mass. 2014) (holding that "a defendant's possession of a single cache of one hundred offending photographs in the same place at the same time gives rise to a single unit of prosecution" for illegal possession of child pornography); *State v. Liberty*, 370 S.W.3d 537, 548, 553 (Mo. 2012) (holding child pornography possession statute was ambiguous because "the proscription . . . against possession of 'any obscene material' . . . reasonably could be interpreted to permit either a single prosecution or multiple prosecutions for a single incidence of possession of eight still photographs of child pornography," and concluding that, in light of its holding of ambiguity, "the rule of lenity *must* be applied and the statute *must* be interpreted favorably for the defendant"); *State v. Olsson*, 324 P.3d 1230, 1231, 1235, 1239 (N.M. 2014) (concluding that "the use of the word 'any' in the statute only compounds the ambiguity," and thus, "because the language is ambiguous and the history and purpose do not offer any further clarity," the rule of lenity applies, allowing only one count of possession of child pornography); *State v. Pickett*, 211 S.W.3d 696, 706 (Tenn. 2007) (holding that where the state failed to establish that the

images of illegal child pornography were downloaded from more than one website at more than one time, the evidence established only one crime), *and Sutherby*, 204 P.3d at 922 (“Given the context of the language used in the child pornography statute, and our repeated construction of ‘any’ as including ‘every’ and ‘all,’ we hold that the proper unit of prosecution under former RCW 9.68A.070 is one count per possession of child pornography, without regard to the number of images comprising such possession or the number of minors depicted in the images possessed.”), *with State v. McPherson*, 269 P.3d 1181, 1184-85 (Ariz. Ct. App. 2012) (“[U]nder our own statutes, we can only conclude the legislature intended separate punishments for separate or duplicate images of child pornography, even when those images are acquired at the same time.”); *Fink v. State*, 817 A.2d 781, 788 (Del. 2003) (holding that each individual visual depiction of child pornography possessed constituted a separate offense); *Williams v. Commonwealth*, 178 S.W.3d 491, 495 (Ky. 2005) (“The singular form of ‘photograph’ read in conjunction with the term ‘any’ clearly indicates that the Legislature intended prosecution for each differing photograph.”); *State v. Fussell*, 974 So. 2d 1223, 1235 (La. 2008) (“[W]e hold that the language of [the statute] evidences a legislative intent to allow a separate conviction on a separate count for each child, in each sexual performance in which that child is victimized, that is captured in any photographs, films, videotapes, or other visual reproductions that a defendant intentionally possesses.”); *Peterka v. State*, 864 N.W.2d 745, 750, 753-54 (N.D. 2015) (upholding conviction for 119 counts of possession of child pornography found on the defendant’s computer); *and Commonwealth v. Davidson*, 938 A.2d 198, 219 (Pa. 2007) (concluding that the word “any” followed by a list of singular objects demonstrated the

general assembly's intent to make each image of child pornography a separate crime).

We recognize the policy goals behind tying punishment to the number of child victims depicted in, and thus harmed by, the images possessed. Consistent with the rule of lenity, though, we are obligated to construe statutes that contain ambiguity in the proscribed conduct in the accused's favor. *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004) ("A court should normally presume that a legislature did not intend multiple punishments for the same offense absent a clear expression of legislative intent to the contrary. Criminal statutes must be strictly construed and resolved in favor of the defendant.") (footnote and internal quotation omitted); see *Liberty*, 370 S.W.3d at 551 ("While we agree with the State that each photograph exploits the minor and adds to the market, it is for the legislature to define what it desires to make the allowable unit of prosecution. The legislature has not made the number of children victimized the basis of separate units of prosecution in section 573.037.") (internal quotations and citations omitted).

Here, the State defends Castaneda's multiple convictions on the basis that police found 15 distinct images depicting child pornography on his home computers. When LVMPD searched Castaneda's home, they found both the laptop and the desktop, which together held all 15 charged images, some of them evident duplicates, in the same room in his home. And though the flash drive came into law enforcement's possession before the search and from a third party, the flash drive contained images that Castaneda copied from or to the laptop and desktop. The State's theory presented in closing was that Castaneda downloaded the images to the laptop, then copied those images to the flash drive and the desktop,

assertions supported by LVMPD detectives' testimony. The State prosecuted the images as a group and did not attempt to show, other than that there were 15 different images, individual distinct crimes of possession. See, e.g., *Pickett*, 211 S.W.3d at 706 (holding that evidence of possessing multiple images of child pornography on a computer constituted one crime because the "State did not otherwise attempt to distinguish the offenses by showing that the crimes were separated by time or location or by otherwise demonstrating that Pickett formed a new intent as to each image"). This case does not require us to decide whether distinct downloads at different times and in different locations would establish separate units of prosecution as some courts have held. See *State v. Roggenbuck*, 387 S.W.3d 376, 381-82 (Mo. 2012) (distinguishing *Liberty*, 370 S.W.3d at 551, on the basis that "the charges and the evidence established only that Liberty possessed multiple images of child pornography at the same time," thus constituting a single offense, and upholding multiple convictions where the acts of acquiring and possessing pornography were separated by time and place); *State v. Sutherby*, 158 P.3d 91, 94 n.4 (Wash. Ct. App. 2007) (holding that the simultaneous possession of pornographic images constituted a single offense but stressing that, "We do not address special circumstances not present here, such as possession in two distinct locations or at two distinct times."), *aff'd*, 204 P.3d 916 (Wash. 2009). As in *Liberty* and *Sutherby*, we hold only that, consistent with their reasoning and the rule of lenity long established in our law, Castaneda's simultaneous possession at one time and place of 15 images depicting child pornography constituted a single violation of NRS 200.730.

III.

Castaneda raises a number of other issues on appeal, which we conclude are either meritless or harmless and, thus, only briefly address. Chief among them is Castaneda's challenge to the sufficiency of the evidence. This challenge rests on Castaneda's charge that the State failed to prove "that it was Castaneda, and not a virus, automated program, or another individual who knowingly and willfully possessed the [pornographic] images." A criminal conviction will survive a sufficiency of the evidence challenge if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Grey v. State*, 124 Nev. 110, 121, 178 P.3d 154, 162 (2008) (quoting *Nolan v. State*, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006)). Here, although Castaneda elicited testimony that a virus *could* have accessed the files, other testimony established that the downloads were more likely the product of conscious human endeavor. Similarly, while Castaneda's housemates at one time had access to Castaneda's desktop, other evidence indicated that they did not have access to Castaneda's password-protected user account on the desktop or his laptop. The jury also was entitled to consider the fact that the same images appeared on more than one device and that, when he saw that a detective had opened one of the illegal images, Castaneda commented that "Those are kids, I'm sorry." Viewed in the light most favorable to the State, the evidence was sufficient to support the jury's conviction of Castaneda for knowingly and willfully possessing the charged images in violation of NRS 200.730.

Castaneda next challenges the district court's refusal to permit him to call a previously unnoticed expert witness, a decision we review for an abuse of discretion. *See Mitchell v. State*, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008). Castaneda asks us to excuse his tardy notice because Detective Ehlers's testimony that the files found in the unallocated space of Castaneda's desktop and laptop had previously been deleted by a user caught him by surprise. But Castaneda's argument misses the facts that Detective Ehlers testified at the preliminary hearing that the recovery of the file remnants "means that it was viewed or was upon that computer at one time and was possibly or probably deleted, or as in this case, it was being downloaded from a website [and] did not completely download," that it was Castaneda, not the State, who elicited the surprise testimony from Detective Ehlers on cross-examination, and that Castaneda was able to develop the points he wanted to make on further cross-examination. Also, Castaneda had already obtained a continuance of the trial to permit him to retain a computer expert, which he did; he simply elected not to notice that expert as a potential witness. The district court did not abuse its discretion in denying his request to call an unnoticed expert witness.

IV.

We hold that the State proved one, not 15, violations of NRS 200.730 but otherwise find no reversible error. We therefore affirm in

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CASTANEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 64515
District Court Case No. C272657

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"Affirmed in part, vacated in part, and remanded."

Judgment, as quoted above, entered this 16th day of June, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 12, 2016.

Tracie Lindeman, Supreme Court Clerk

By: July Wright
Deputy Clerk

Exhibit 2

Exhibit 2

CASE 6272657

MARKED FOR IDENTIFICATION
PROPOSED EXHIBIT

A

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 1

EVENT #: 100208-1406

SPECIFIC CRIME: POSSESSION CHILD PORNOGRAPHY

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: TAMMY HINES

DOB: 11-18-67

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS: 5576 W. ROCHELLE #10D, LV NV
89103

HOME PHONE: 702-771-9600 - Cell

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE TOOLEY, P# 6224, LVMPD ICAC Detail, on FEBRUARY 8, 2010 at 1027 hours.

Q: Operator, this is Detective Tooley, P. number 6224, conducting interview under event 100208-1406. The date is... February 8th, 2010. Time is approximately 1027 AM. Place of interview is in my vehicle outside of 620 Belrose. I'm speaking with Tammy Hines, H-I-N-E-S. Her date of birth is 11-18-67. She resides at 5576 West Rochelle Avenue, apartment number 10D, as in David, Las Vegas Nevada 89103. Her cell phone number is 771-9600. Um... Tammy, can you tell me why we're talking today?

AA 0072

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 2

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: I was (sighing)... living from November 23rd until – November 25th, 2009 until February 3rd, 2010 at 2205 Beverly Way, Las Vegas, Nevada 89104, with a gentleman named Anthony Castaneda (spelling not given). Um, I—it was only supposed to be for a few short days, but he had lost his job and was short on money and he asked if we would help him out with rent, etc, etc. Uh, couldn't wait to hurry up and find my place, which I did and I moved on February 3rd. In my move, I wound up with his flash drive in the midst of my stuff. Didn't realize it until Saturday, which would be the 6th of, uh, February 2010, and I actually figured I had it and I was gonna use it—

Q: What did this, uh, flash drive look like?

A: —it is a eight gig flash drive with red on it and silver and black, uh with a little clip piece on the end. Um...in opening the flash drive, it has all sorts of information, birth certificate, identification, all of his prominent information, even things with Houston, Texas, his military experience—

Q: What's his name again?

A: —Anthony Castaneda. Um...Also in there are a lot of files of pornography, adult pornography, pornography with animals, um, and pornography with children.

Q: When you say files were these, um, folders that had, um-were they titled something—

A: —They're folders and each of them are titled. (Mumbling) There's two of them, one's titled girls or girlie, um, I can't remember the exact way but you would know that

AA0073

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 3

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

these are not adult files on those actual files. I will tell you I did look at the files because I have four, four daughters...two, they're 18, one is 13, one is seven, and I was-I was-I needed to know if they were any of my children in any of those, which there are none.

Q: Ok.

A: However, there are small children, small children that don't even have boobs developed, or hair on their vaginas. They're standing there naked. Um, there's children with, uh, dresses on with no underwear, their skirts up. There's a-the one girl in particular I remember her face, uh, she has long blonde hair, um, very young, no boobs, no hair developed and has a penis in her face, has also one in her mouth, and I was horrified looking at these-

Q: Are these two separate images one with the penis to her face and one with the penis in her mouth? (Both talking)

A: Yeah, yeah, yeah.

Q: And she had blonde hair you said?

A: Blonde hair, long hair, very young child. I-I-have never-

Q: How old would you say-based on your-you-you said you have four daughters-how old would you say she is?

A: No more than eight.

Q: Ok.

AA0074

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 4

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: If that.

Q: Did you see her genitals?

A: Um...yes. There's pictures of her laying on the bed naked. Um, there's pictures of her um, on her knees with her butt in the air. Yes, there-it's very graphic. I'm very sick at what I saw.

Q: Ok. So, other than the, um...(mumbling) just, uh recap a little bit. You said you-there's-there's definitely-you (mumbling) two images where, um, a blonde haired girl approximately eight years old is, uh, is she standing or kneeling or laying down with the-with the penis in the picture?

A: I can-I don't really remember.

Q: Ok. But one of the pictures has a penis next to her face?

A: Yes.

Q: And the other picture its-the penis is in her mouth?

A: Yes.

Q: Can you see the adult in it?

A: No.

Q: Ok, just his penis?

A: Just his penis.

Q: Ok. And then another image you described is a girl-is it the same girl or different girl or you're not sure?

AA 0075

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 5

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: Um-

Q: The one where she's, uh, on her knees, uh, with her butt in the air?

A: A lot of-a lot of these pictures are of this one girl. There are other girls in there, but I believe the one laying on the bed is-is her as well.

Q: Ok. And when you say she's on the knees with her butt in the air, are her genitals--

A: --Yes--

Q: --Exposed?

A: Yes.

Q: So, and then another image you said-where there was a girl standing with her dress pulled up?

A: There's a girl sitting on what resembles a step with her, she's wearing I believe it's a red flowered dress with no underwear on, and its pulled up and her genitals are exposed.

Q: Ok. Are her legs spread open or just (Both talking)

A: Open, open.

Q: Ok. Um...How many images would you say there were on that-in that one-was it that folder that was titled girls, girlie or something?

A: It's the girlie or girls or something, and there are hundreds of pictures.

Q: Ok, are they all similar pictures?

A: Similar in-in-yeah, they are, they're--

AA0076

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 6

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

Q: Are most-are most-are most of the pictures of children, um, with their genitals exposed, and or engaged in sexual acts, or--

A: --Yeah, yes.

Q: Ok. Alright. And...you said also that there was also folders of adult pornography as well and bestiality?

A: Yes.

Q: Ok. Um, are there any other pictures that stood out in your mind, that you can remember?

A: No, none that I can think of. But I-I'm so sick about this, I can't even focus on anything more. I-I-I don't remember anything

Q: How do you know Anthony?

A: I met Anthony when I was with my children, um, my-at a weekly, uh, about two years ago on, uh, West Tropicana. And-And-when, um, let me see...West Tropicana located across from the Wild Wild West Hotel and Casino--

Q: Ok.

A: And, uh, I met him and all the kids became close with him, and I should have--all the red flags should have come up because everybody calls him Uncle Tony and he's always buying the kids things, always having candy. I should have put two and two together, but I...had my blinders on.

AA0077

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

Q: Ok. Um, these images that you saw, did they look, uh, dated? Like, did they--did it look like current pictures, like today? Like if you would have taken (sic) a picture of your daughter, or do they like they may be a little bit older or taken from the Internet?

A: Um...if I had to guess I would think that they were taken from the Internet, but I-I don't think that they're--it's not of anyone I know or that knows him personally. I would think it's something that he either got from somebody else or downloaded from the Internet.

Q: Ok. In any of the pictures do you notice any, um, any writing on any of the pictures like letters--

A: --No.

Q: Ok. Um--

A: There's a brick wall on--in the background on one of them. Um, nothing that I can--really stands out except that brick wall. That brick wall drives--drove me crazy, I don't know what it was.

Q: And then, back to, like, how old you think the pictures look. Um, do you think they look like they were taken in the last couple of years, they look a little bit older? Just by, like, the clothes or the coloring of the picture?

A: Um...I'm not sure.

Q: Ok. That's ok. Um...So, Anthony's house, it--it's a--it's--it's a--is it a one story or two story?

AA0078

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 8

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: Anthony's is a one story house--

Q: --How many bedrooms does it have?

A: It has three bedrooms. He has a-his main computer-he defines himself as a computer engineer, he used to work for Unisys for many years. Um, he has a desktop is his main computer, and he also has four laptops in his house.

Q: Ok. Where is the desktop located?

A: The desktop is located in his living room on the closest entrance to the kitchen, and he has two other laptops out in the living room as well. Um, one where the bar sits, one next to bar, and then he has one in the front bedroom that's the closest to the front door, and one in his bedroom.

Q: Ok. And...do you know th-do you know what kind of laptops they are, like what brands, or are they just different ones?

A: Um, different ones. But no, I don't. I don't really know.

Q: And when you were living with him which computer did he use primarily?

A: Primarily its his I-his desktop that he sits at. And he's up all hours of the night.

Q: Ok. And, uh, so it's a three bedroom house, um, does it-how many bathrooms does it have?

A: It has two.

Q: Ok. Are there any, uh, security screen doors on the front door, or?

AA0079

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

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EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: There's just a screen door on the front door and nothing, I mean it doesn't lock, doesn't, it's kinda rigid (Both talking)

Q: Ok. And, uh, any dogs or cats, or?

A: No dogs, no cats.

Q: Ok. And as far as you know, does he have any weapons?

A: No. Not to my knowledge he doesn't.

Q: Ok. Um--

A: --I know he's ex-military. Um, I don't know too much about that except that he was, like, in the medical side of that. Uh, something with helicopters and airplanes as well.

Q: Ok. And you said, um, on the thumb when you opened it up it had personal identifiers on him, such as--

A: --Such as birth certificate, driver's license, social security card. Um, it has a lot of certificates of his classes he's completed. Um, such as his, uh, uh, he was a not a-- no I don't know that it was a paramedic, he was an EMT, he had different classes in computers. It's like he has pictures of all of his certificates on there.

Q: Ok. And do you know Anthony's date of birth?

A: I know Anthony's month and...date, but I do not recall his year off the top of my head (Both talking).

Q: Ok. What's his month and date?

A: April 24th.

AA0080

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

PAGE 10

EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

Q: And about how old is he?

A: He's-he tells everyone 52, but do the math, it doesn't look right on his birth certificate. Uh, I-cause if I were to remember I would think it said the year 1952 or 54 on his birth certificate.

Q: Ok. So he's in his, probably late 50s, mid 50s?

A: Yes, he is?

Q: Ok. And what kind of car does he drive?

A: He has a red, uh, Astro van that's sitting in the driveway right now with-on axles, because he was trying to fix his breaks that he's been trying to do for two months now.

Q: Ok. And um...

A: The plates are actually Iowa plates, they're not Las Vegas plates.

Q: Does he own the residence at Beverly Way or does he-

A: -No, he rents.

Q: Ok. And does anybody else live with him?

A: Um, not anymore. But I know that people are getting ready to move in. His friend Peggy and the three girls will be moving in there with him by the end of this month.

Q: Ok. Do you know Peggy's last name?

A: Uh, I do. Jackson.

Q: Peggy Jackson?

AA0081

VOLUNTARY STATEMENT

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EVENT #: 100208-1406

STATEMENT OF: TAMMY HINES

A: Peggy Carney (spelling not given) Jackson is what she goes by.

Q: Ok. And, um, how old are her girls?

A: One is 18, her name is Mariah (spelling not given), she's pregnant and due this month in February, and the other two girls' names are Allie and Angie, and one is 14 and one is 12.

Q: Ok. And when are they supposed to move in that you know?

A: The end of this month. At the end of February.

Q: Ok. And--

A: --Peggy needs major surgery and she is unable to upkeep her place and everything with having the three girls, so Tony is gonna have her move in with him.

Q: Ok. Um, when you walk in the house which room is Tony's?

A: When you walk in the house, you're directly looking at the living room, so you would turn to the right and his bedroom is the last door on the left.

Q: Ok. Alright, I think that's all the questions I have. Um, (mumbling) the statement...

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 620 BELROSE ON THE 8TH DAY OF FEBRUARY, 2010 AT 1039 HOURS.

ST:rl

(Reviewed by Claudia Sutton, P. #7863)

AA0082

JUL 16 2013

BY Andrea M. Davis
ANDREA DAVIS, DEPUTY

1 INST

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO: C-11-272657-1

10 -vs-

DEPT NO: V

11 ANTHONY CASTANEDA,

12 Defendant.

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

AA0089

A Second Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Second Amended Information that on or between November 25, 2008 and April 7, 2010, the Defendant committed the offense of POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730).

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offense charged.

COUNT 1

did, then and there, feloniously, knowingly and willfully, have in his possession a film, photograph, or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate sexual conduct, to-wit: Image File Name: 2 girls01.jpg, described as: Image depicts two nude prepubescent female children. One child is lying on her stomach with her buttocks in the air. There is a nude adult male who is penetrating the child's genitals with his penis and his left thumb in between the child's buttocks. The other child is positioned to the left of the first child and has her left arm draped around the first child. The second child's left hand is on the first child's right buttock's cheek. The second child's head is positioned over the buttocks' of the first child. The second child has her mouth open with what appears to be ejaculate dripping out.

COUNT 2

did, then and there, feloniously, knowingly and willfully, have in his possession a film, photograph, or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate sexual conduct, to-wit: Image File Name: girlondick06.bmp, described as: Image depicts a prepubescent female child pictured from the neck up. There is an adult

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1 male's penis next to the child's mouth. There is ejaculate coming from the penis and on the
2 child's mouth, chin and cheek.

3 COUNT 3

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: girlandick08.jpg, described as:
8 Image depicts a partial view of a nude adult male and a prepubescent female child from the
9 neck up. The adult male has his left hand on his penis and has the tip of his penis inserted
10 into the child's mouth. The child has her hands on either side of the penis.

11 COUNT 4

12 did, then and there, feloniously, knowingly and willfully, have in his possession a
13 film, photograph, or other visual presentation depicting a person under the age of 16 years as
14 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
15 in or simulate sexual conduct, to-wit: Image File Name: NEW-22.JPG, described as: Image
16 depicts an adult male penetrating the vagina of a prepubescent child. The image appears to
17 be shot from a close distance and neither shows the heads nor the majority of either person's
18 torso.

19 COUNT 5

20 did, then and there, feloniously, knowingly and willfully, have in his possession a
21 film, photograph, or other visual presentation depicting a person under the age of 16 years as
22 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
23 in or simulate sexual conduct, to-wit: Image File Name: 2girls.jpg, described as: Image
24 depicts two nude prepubescent children and a nude adult male, standing, visible from the
25 lower stomach down. The children are positioned on either side of the adult male. Both
26 children are performing fellatio on the adult male.

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AA0086

1 COUNT 6

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: euro-002.jpg, described as: This
6 image has 6 images depicting a prepubescent female child with blonde hair. The first image
7 depicts the child laying on a bed with pink pants pulled down to her knees and a black dog
8 collar around her neck. The second image depicts the child nude, holding her legs open
9 exposing her genitals. The third image depicts the child on the bed leaning against a nude
10 adult male who has his arm placed around the child. The fourth image depicts an adult male
11 straddling the child with his penis next to her mouth. The fifth image depicts the child on her
12 stomach with the adult male placing his penis between the cheeks of the child's buttocks.
13 The last image depicts the adult male penetrating the child's vagina with his penis. The child
14 is positioned on her back with her hands covering her eyes.

15 COUNT 7

16 did, then and there, feloniously, knowingly and willfully, have in his possession a
17 film, photograph, or other visual presentation depicting a person under the age of 16 years as
18 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
19 in or simulate sexual conduct, to-wit: Image File Name: new-05.jpg and/or new-01.jpg,
20 described as: This image has 7 images within. The first image depicts 3 clothed prepubescent
21 female children standing with their arms around each others shoulders. Two of the images
22 show a prepubescent female child (different child in each image) performing fellatio on an
23 adult male. One image depicts a nude prepubescent female child lying on her back with her
24 legs spread open. There is a second prepubescent female child with her mouth near the first
25 child's vagina. Another image depicts a nude prepubescent female child lying face down on
26 a bed with her buttocks raised up exposing her genitals. One image depicts a female child
27 lying on the bed with what appears to be ejaculate on her face. Another image depicts an
28 adult male inserting his penis into the vagina of a prepubescent child.

AA 0087

1 COUNT 8

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: new-35.jpg, described as: This
6 image depicts a nude prepubescent female child performing fellatio on an adult male. Also,
7 the child is inserting a pink phallic shaped device into her vagina.

8 COUNT 9

9 did, then and there, feloniously, knowingly and willfully, have in his possession a
10 film, photograph, or other visual presentation depicting a person under the age of 16 years as
11 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
12 in or simulate sexual conduct, to-wit: Image File Name: GIRL69.jpg, described as: This
13 image depicts a nude adult male lying on his back with a nude prepubescent female child
14 lying, face down, on his stomach in the opposite direction. The adult has his penis inside the
15 child's mouth and is performing cunnilingus on the child.

16 COUNT 10

17 did, then and there, feloniously, knowingly and willfully, have in his possession a
18 film, photograph, or other visual presentation depicting a person under the age of 16 years as
19 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
20 in or simulate sexual conduct, to-wit: Image File Name: new-43.jpg, described as: Image
21 depicts a prepubescent female child with long blonde hair seen from the neck up. The child's
22 hands are positioned on either side of an adult's penis. The adult has his penis inserted into
23 the mouth of the child.

24 COUNT 11

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: NEW-47.jpg, described as: Image

1 depicts prepubescent female child with her hands on an adult penis and the penis is next to
2 the prepubescent female's mouth.

3 COUNT 12

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: EURO-001.jpg and/or
8 EURO013.jpg described as: This image has 5 images depicting a prepubescent female child
9 with darker blonde hair. The first image depicts the child with an adult penis in her mouth
10 and an adult hand on the penis. The second image depicts the child nude with her hands
11 around an adult penis and the child's mouth is on the penis. The third image depicts the
12 child on all fours with her buttocks facing the camera. The child is nude with her buttocks
13 and genitalia exposed. The fourth image depicts the child lying on her back with an adult
14 male straddling the child and his penis is in the child's mouth. The fifth image depicts a
15 close up of an adult penis and the penis is penetrating the anal opening of the child.

16 COUNT 13

17 did, then and there, feloniously, knowingly and willfully, have in his possession a
18 film, photograph, or other visual presentation depicting a person under the age of 16 years as
19 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
20 in or simulate sexual conduct, to-wit: Image File Name: new-33.jpg and/or
21 girlondick32.bmp described as: Image depicts 2 prepubescent children with their faces and
22 mouths near or touching an adult male penis. The image is a picture of the children from the
23 neck up.

24 COUNT 14

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: carved image unnamed file.jpg

AA0089

1 and/or new-38.jpg, described as: This image is of a prepubescent Asian female child
2 positioned in front of a Caucasian adult male with the adult male penis touching the child's
3 mouth with what appears to be ejaculate dripping from the penis. Also noted on the adult
4 male's abdominal area are the words CP REAL.

5 COUNT 15

6 did, then and there, feloniously, knowingly and willfully, have in his possession a
7 film, photograph, or other visual presentation depicting a person under the age of 16 years as
8 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
9 in or simulate sexual conduct, to-wit: Image File Name: new-44.jpg, described as: This
10 image depicts the head and face of a prepubescent female with an adult male positioned in
11 front of her and his penis is inserted into the child's mouth.

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AA0090

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a Defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent unless and until the contrary is proved. This
3 presumption places upon the State the burden of proving beyond a reasonable doubt every
4 material element of the crime charged and that the Defendant is the person who committed
5 the offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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INSTRUCTION NO. 7

You are here to determine whether or not the Defendant is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

AA 0094

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

AA0095

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

AA0097

A person who knowingly and willfully has in his possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years to the subject of a sexual portrayal, or engaging in or simulating, or assisting others to engage in or simulate sexual conduct, that person is guilty of Possession of Visual Presentation Depicting Sexual Conduct of a Child.

"Sexual conduct" includes sexual intercourse, lewd exhibition of the genitals, fellatio, masturbation, or the penetration of any part of a person's body, or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

"Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

"Prurient" means provoking lustful thoughts over and beyond those that would be characterized as normal.

Fellatio is touching, however slight, of the penis by the mouth or tongue of another person.

Digital penetration is the placing of one or more fingers of the perpetrator into the anal or vaginal opening of another person.

If you find that the Defendant did not knowingly or willfully have in his possession for any purpose a film, photograph or other visual presentation depicting a person under the age of 16 years to the subject of a sexual portrayal, or engaging in or simulating, or assisting other^s to engage in or simulate sexual conduct, you must find him not guilty.

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2 The law recognizes two kinds of possession; actual possession and constructive
3 possession. A person who knowingly has direct physical control over a thing, at a given
4 time, is then in actual custody.

5 A person who, although not in actual possession has both power and intention, at a
6 given time, to exercise dominion and control over a thing, either directly or through another
7 person or persons, is then in constructive possession of it.

8 Possession may also be exclusive or joint. Joint possession occurs when two or more
9 persons have the right or ability to maintain control or dominion over the property.

10 You may find that the element of possession as that term is used in these instructions
11 is present if you find beyond a reasonable doubt that the Defendant had actual or
12 constructive possession, either alone or jointly with another person.

An act is done knowingly if the Defendant realized what he was doing and did not act through ignorance, mistake or accident. You may consider the evidence of the Defendant's acts and words, along with all the other evidence, in deciding whether the Defendant acted knowingly.

If you find that the Defendant committed the act charged under ignorance or mistake of fact, you must find him not guilty.

INSTRUCTION NO. 14

Mere presence at the scene of the crime or knowledge that a crime is being committed is not sufficient to establish that a Defendant is guilty of an offense, unless you find beyond a reasonable doubt that the Defendant was a participant.

AA 0101

INSTRUCTION NO. 15

The parties stipulate that State's Exhibits 1 through 15 are photographs, or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct.

The parties further stipulate that the names of the files listed in Counts 1 through 15 and to the description of those files as listed in each count of the Second Amended Information.

AA 0102

INSTRUCTION NO. 16

If the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

AA 0103

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 18

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

CS

1001

AA 0105

It is a constitutional right of a Defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

AA 0107


If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 22

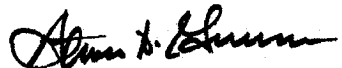
Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

AA 0109

1 **PHILIP J. KOHN, PUBLIC DEFENDER**
2 Nevada Bar #0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant



CLERK OF THE COURT

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -VS-

13 ANTHONY CASTANEDA

14 Defendant.

Case No. C-11-272657-1

Dept No. V

15 **MOTION TO DISMISS**

16 **I.**

17 **INTRODUCTION**

18 The idea that a witness would fudge, exaggerate, mischaracterize, or even downright lie
19 under oath is hardly a new concept. Nevada's perjury statute exists in order to discourage this
20 practice. At an even more basic level, having witnesses swear to tell the truth, "so help me God," is
21 an attempt by courts to invoke a higher power in keeping witnesses honest. The presumption of
22 innocence and the burden of proof form the foundation of our system of jurisprudence, the system
23 we have all sworn an oath to uphold. Lies tear away at this foundation and compromise these vital
24 principles. The lies of a government witness cannot be allowed to form the basis for a conviction.

25 The problem in most cases is this: how can we tell, with any reasonable degree of
26 confidence, whether a witness is lying? Normally, the answer is: "we can't, that's why we have
27 juries." The juries hear the evidence, the lawyers make the arguments, and hopefully, at the end of
28 the day, lies are ferreted out and justice is done. That is the reality of *most* cases. *This* case is

1 different.

2 On July 9, 2013, we saw something exceedingly rare: a witness actually admitted, in no
3 uncertain terms, to lying under oath. Several lies, in fact. This is not mere impeachment: these are
4 independently verifiable lies, followed by the witness's **actual admissions** that she lied under oath
5 about material issues in this case. We don't have to "guess" whether she has broken her oath of
6 truthfulness: we know. As a result, this case should be dismissed pursuant to the Nevada Supreme
7 Court's authority in Riley v. State, 93 Nev. 461, 567 P.2d 475 (1977) and Goldsmith v. Sheriff, 85
8 Nev. 295, 454 P.2d 86 (1969).

9 LEGAL ARGUMENT

10
11 There can be no doubt that Tami Hines committed perjury when she took the witness stand
12 and lied both at Mr. Castaneda's trial and at his preliminary hearing. Perjury occurs when a person
13 "having taken a lawful oath or made affirmation in a judicial proceeding . . . [s]wears or affirms
14 willfully and falsely in a matter material to the issue or point in question." **NRS 199.120**. At trial,
15 Ms. Hines's story about how she "discovered" a thumb drive containing child pornography that
16 allegedly belonged to Mr. Castaneda drastically changed from the story she first told detectives, and
17 the story to which she attested during Mr. Castaneda's preliminary hearing.

18 At trial, Ms. Hines offered astonishingly vivid details about how she had seen Mr. Castaneda
19 in possession of the thumb drive on numerous occasions -- that it was always in his possession, that
20 it was on his key chain, and that he was always either putting it in his pocket or taking it out of his
21 pocket. Ms. Hines testified at trial that, based on this, she "knew" the thumb drive belonged to Mr.
22 Castaneda immediately when she saw it. However, Ms. Hines' trial testimony flatly contradicted the
23 testimony she gave during the preliminary hearing when she swore, under oath, that she did **not**
24 know right away that the thumb drive belonged to Mr. Castaneda. **Exhibit 1 (Preliminary Hearing**
25 **Transcript) at 10:12-15**. When confronted with this discrepancy on cross examination at trial, Ms.
26 Hines **admitted she lied** during the preliminary hearing.

27 At trial, Ms. Hines also testified, under oath, that she told Detective Tooley the "truth" when
28 she first reported the thumb drive to police. According to Detective Tooley's report, the authenticity

1 of which was verified by Hines, Ms. Hines claimed that she found the thumb drive in a "tote" and
2 that she looked at it because she was intending to use it for her own purposes. *See Defense Exhibit*
3 A. However, at trial and preliminary hearing, Ms. Hines testified that her *boyfriend* was the one
4 who actually found the thumb drive and that he woke her up from a nap and *showed* her what was on
5 that thumb drive.¹ When cross-examined about the contradictory stories she had told, Ms. Hines
6 **admitted that her statement to Detective Tooley back in 2010 was a lie.**

7 Given the numerous discrepancies in Ms. Hines' testimony, it is not altogether clear which of
8 her statements is true and which is false. Yet, even though we cannot be sure whether Ms. Hines
9 was lying to Detective Tooley in 2010, lying at preliminary hearing, or lying to the jury now, we
10 know that **at least one** of the stories she told during trial **is false**: Either (1) she told Detective
11 Tooley the truth when she claimed she found the thumb drive herself (which would render her
12 testimony at trial/preliminary hearing that her boyfriend found the thumb drive false) or (2) she lied
13 to Detective Tooley in 2010 (which would render her sworn trial testimony that she told Detective
14 Tooley the "truth" false). Either way, there is no doubt that Ms. Hines committed perjury at trial.

15 The circumstances surrounding Ms. Hines' so-called "discovery" of the thumb drive are,
16 without a doubt, material to this case, since it was this "discovery" that led to the search warrant
17 executed by officers in this case. *See* NRS 199.120. The fact that Ms. Hines would lie about how
18 the thumb drive came into her possession completely undermines any confidence in her remaining
19 testimony about the thumb drive, particularly where *she* was the one who provided the thumb drive
20 to the police, and where the thumb drive conveniently contained all sorts of personal identifying
21 information related to Mr. Castaneda.

22 The materiality of Hines' testimony has only grown during trial, as the State has elicited
23 extensive testimony regarding the times and date stamps of the subject child pornography files. The
24 State's experts have admitted that these markers can be changed manually, which makes the veracity
25 of Hines' testimony about how she came into possession of the drive vitally important.² Hines' false
26 statement about her "discovery" of this drive led to the original search warrant. Her allegations

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28 ¹ To be more accurate, Hines first testified at preliminary hearing that she found the thumb drive, then she changed her
testimony, stating that her boyfriend found it.

² There are also numerous other reasons that I must decline to highlight at this time because they involve defense
strategy.

1 made Mr. Castenada a suspect in this case. Her story about how she discovered the drive also
2 convinced police to eliminate her and her boyfriend, Michael Landeau, as suspects. This led to the
3 destruction of evidence in the case: Neither Landau or Hines' computers were ever analyzed by
4 forensic specialist. Any evidence they may have contained has been lost forever.

5 Given the grievous nature of Ms. Hines' perjury, Mr. Castaneda's Constitutional rights to
6 due process and a fundamentally fair trial would be eviscerated if this case were not dismissed. See
7 U.S. Const. Amend. V, VI, XIV.

8
9 **1) Allowing the instant case to proceed to verdict in light of Tami Hines' false
10 testimony would violate Mr. Castaneda's constitutional rights.**

11 It is well-settled that "if the character of material evidence is false, due process inevitably is
12 denied the accused." Riley v. State, 93 Nev. 461, 462, 567 P.2d 475 (1977). In Riley, the Nevada
13 Supreme Court reversed a conviction for attempted murder following a trial that involved perjured
14 witness testimony that related to a material issue in the trial. Although there was no suggestion that
15 the prosecutor knowingly used perjured testimony in that case, the Court nevertheless found that the
16 appellant's due process right to a fair trial was violated. Id. The Court explained that even when the
17 prosecutor does not knowingly use perjured testimony, a defendant's due process rights are
18 implicated because the "truth seeking function of the trial is corrupted by such perjury whether
19 encouraged by the prosecutor or occurring without his knowledge". Id.

20 At this point, both the prosecution and the trial court can see that a witness has lied under
21 oath about material issues in this case – the discovery of the thumb drive and the reporting of that
22 thumb drive to the police. In light of the perjured testimony on this material issue, Mr. Castaneda
23 cannot now receive a fair trial and the case must be dismissed. See Riley, 93 Nev. at 462.

24
25 **2) Given Tami Hines' sworn declaration that she lied under oath at the
26 preliminary hearing, bindover was improper and this case should be
27 vacated.**

28 Tami Hines is the nexus between Mr. Castenada and the thumb drive. She claimed it was
his. Her allegations led to the initial warrant and all subsequent evidence. She has now testified

1 under oath that she lied at preliminary hearing. False testimony cannot legally form the basis for a
2 conviction. The rules concerning bindover are no different.

3 "The rules of evidence require the production of legal evidence and the exclusion of
4 whatever is not legal. The Constitutional guarantee of due process of law requires adherence to the
5 adopted and recognized rules of evidence. There cannot be one rule of evidence for the trial of cases
6 and another rule of evidence for preliminary examinations. The rule for admission or rejection of
7 evidence is the same for both proceedings." Goldsmith v. Sheriff, 85 Nev. 295, 454 P.2d 86 (1969).

8 A lie is not "legally competent evidence," and forcing Mr. Castaneda to face a jury verdict in
9 a case that is based on a lie is fundamentally unfair. See U.S. Const. Amend. V. In light of this
10 "new" evidence, we now know the bindover was improper. Mr. Castaneda cannot be forced to stand
11 trial in district court without proper preliminary due process. This case should therefore be
12 dismissed.

13
14 DATED this 10th day of July, 2013

15 **PHILIP J. KOHN, PUBLIC DEFENDER**
16 Nevada Bar #0556
17 309 South Third Street, Suite 226
18 Las Vegas, Nevada 89155

19 BY /s/David Westbrook
20 DAVID WESTBROOK
21 Deputy Public Defender, #9278
22
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28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 12th day of July, 2013 by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdancv.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office

Exhibit 1

AA 0045

1 CASE NO. C272657 1
2 DEPT. NO. 12
3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6
7 STATE OF NEVADA,
8 Plaintiff,
9 vs. Case No. 11F03995X
10 ANTHONY CASTANEDA, VOLUME I
11 Defendant.
12
13
14 REPORTER'S TRANSCRIPT
15 OF
16 PRELIMINARY HEARING
17
18 BEFORE THE HONORABLE DIANA L. SULLIVAN
19 JUSTICE OF THE PEACE
20
21 TAKEN ON MONDAY, APRIL 11, 2011
22 AT 9:30 A.M.
23
24 APPEARANCES:
25 For the State: VICKI J. MONROE
Deputy District Attorney
For the Defendant: WARREN J. GELLER
Deputy Public Defender
Reported by: Cerri De Lucca, C.C.R. #82
Official Court Reporter

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1 LAS VEGAS, NEVADA, MONDAY, APRIL 11, 2011 4
2 * * * * *
3
4 THE COURT: This is the date and time set
5 for the preliminary hearing of Anthony Castaneda,
6 11F03995. Is the State ready to proceed?
7 MS. MONROE: Yes, your Honor.
8 THE COURT: Defense ready to proceed?
9 MR. GELLER: Yes, Judge.
10 THE COURT: Mr. Geller, we have filed an
11 Amended Criminal Complaint. Do you have a copy of
12 that?
13 MR. GELLER: I do.
14 THE COURT: All right. Miss Monroe, you
15 can call your first witness.
16 MS. MONROE: Thank you, your Honor. The
17 State would call Tami Hines.
18 THE CLERK: Please have a seat.
19 Please state your first and your
20 last name and spell both for the record.
21 THE WITNESS: Tami Hines, T-a-m-i,
22 H-i-n-e-s.
23 THE COURT: Thank you.
24 You may proceed.
25

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5
1 TAMI HINES, having been first duly sworn to
2 testify to the truth, the whole truth, and nothing
3 but the truth, testified as follows:

4
5 DIRECT EXAMINATION

6 BY MS. MONROE:

7 Q: Miss Hines, do you know the defendant in
8 this case, Anthony Castaneda?

9 A: Yes, I do.

10 Q: How is it that you know Mr. Castaneda?

11 A: I met Mr. Castaneda a couple years ago
12 over at a weekly I was staying at, a Budget Suites,
13 and I lived with him for two periods in the past
14 couple years.

15 Q: And, for the record, do you see
16 Mr. Castaneda here in court?

17 A: Yes, I do.

18 Q: What I'd like you to do is describe where
19 he's located in the courtroom and an article of
20 clothing that he has on so that the Court will know
21 who it is you're referring to.

22 A: Mr. Castaneda is wearing, I guess, the
23 blue jump suit and his glasses and he's sitting next
24 to, I guess, his attorney.

25 MS. MONROE: Let the record reflect the

7
1 A: Yes, I was!

2
3 (Overlapping speakers)

4
5 THE COURT: You can't talk over each
6 other. Even though you may be anticipating the tail
7 end of her question, let her get her question out
8 before you give your answer.

9 THE WITNESS: Okay.

10 BY MS. MONROE:

11 Q: Where were you and Mr. Castaneda living
12 in '09?

13 A: He had a house on East Sahara. I forgot
14 the name of the street. It's behind PT's Pub across
15 from one of the casinos. I don't remember the name
16 of the street. I'm sorry.

17 Q: Approximately how long did you live with
18 him that first time?

19 A: The first time was probably three or four
20 months.

21 Q: Now, you said there was a second time --

22 A: Yes.

23 Q: -- that you -- let me finish.

24 There was a second time that you,
25 again, you and your daughters moved in with

6
1 identification of the defendant.

2 THE COURT: Yes.

3 BY MS. MONROE:

4 Q: You said that you had lived with him.
5 Did you have a relationship with
6 him?

7 A: No.

8 Q: When you say you lived with him for
9 approximately two times, when exactly would have been
10 the first time that you would have lived with him?

11 A: The first time was when my stepdad was
12 terminally ill. I was a single mother. My husband
13 just took off to go back east to Maryland. I was in
14 and out of the hospital all the time with my stepdad
15 and Mr. Castaneda was there.

16 My twins at the time were 17, my
17 daughter was 12, and my other one was six. So they
18 were pretty much taking care of -- my older twins
19 taking care of the younger ones while I was in and
20 out of the hospital a lot, and that was in '07.

21 Q: And then where were you living?

22 A: I'm sorry, I take that back. It was in
23 '09. My dad passed away April 23 of 2009.

24 Q: So around April of '09 you were living
25 with Mr. Castaneda?

8
1 Mr. Castaneda. About when did that happen?

2 A: The end of November 2009 until
3 February 2010.

4 Q: And where was that residence located?

5 A: The same place.

6 Q: 2205 Beverly Way in Las Vegas, Clark
7 County, Nevada?

8 A: Yes, we'am.

9 Q: So the residence that you lived in in '09
10 and then again in '010, it was the same residence?

11 A: Yes.

12 Q: Was that a house?

13 A: Yes.

14 Q: And do you remember when in November;
15 would it have been before or around the time of
16 Thanksgiving of '09 that you would have moved in
17 there?

18 A: A few days before Thanksgiving. I
19 believe it was November 23.

20 Q: And then you said you moved out in
21 February of '010. Do you remember when it was
22 exactly in February that you moved out?

23 A: I believe it was the 7th. My boyfriend
24 had also lived with us at that period of time between
25 November and February as well.

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1 Q. Now, after you left the defendant's 9
2 residence where did you, your boyfriend, and your
3 family move to?
4 A. And I don't need an address. Let
5 me rephrase that. Did your boyfriend and daughters
6 move to a different location?
7 A. Yes. We moved to a condo approximately
8 Flamingo and Lindell.
9 Q. Now, you said you had moved out on the
10 7th. Is it possible you could have moved out a
11 couple days before that?
12 A. I suppose, but I don't really think so.
13 Q. At some point did you locate an item that
14 belonged to Mr. Castaneda?
15 A. Yes.
16 Q. And what was the item that you located,
17 that you found?
18 A. A flash drive, a red flash drive.
19 Q. And where was it located when you found
20 it?
21 A. In one of my totes.
22 Q. And did you have a computer at that time?
23 A. I had a laptop, a small laptop, yes.
24 Q. And was the flash drive found in that
25 tote that contained your laptop?

1 A. No. 10
2 Q. It was found in a separate tote?
3 A. Yes.
4 Q. Do you know how that flash drive got into
5 your tote when you had left Mr. Castaneda's
6 residence?
7 A. No, but I have -- at that time my
8 daughter used to hijack Mr. Castaneda's keys, even
9 took them to school one day. She was always very
10 hands-on and into things. That's the only thing I
11 can think of how it wound up in my stuff.
12 Q. When you found the flash drive did you
13 know right away that it belonged to Mr. Castaneda?
14 A. No.
15 Q. What did you do with the flash drive when
16 you found it?
17 A. Actually, I'm not the one that found it.
18 My boyfriend found it. He had then -- I was watching
19 a movie, sitting on the sofa. I had fallen asleep
20 watching a movie. And he told me that he had found
21 this flash drive and that he picked it up and went to
22 put it in the computer, wanted to upload stuff for
23 himself. He had awakened me and was devastated by
24 what he saw and told me that I needed to come look at
25 this flash drive myself.

1 Q. Did you go look at the flash drive 11
2 yourself?
3 A. I did.
4 Q. What did you see on the flash drive?
5 A. I was -- the first couple things on the
6 flash drive was Mr. Castaneda's license, Social
7 Security card, birth record, military records, and
8 then it went into pictures of children.
9 Q. When you say pictures of children, can
10 you tell us exactly what you mean?
11 A. It's very emotional. Children that were
12 performing things on adults.
13 Q. Sexual activities?
14 A. Yes.
15 Q. Now, how many of these pictures did you
16 actually look at?
17 A. To be honest with you, I looked at
18 everything because I wanted to make sure my children
19 weren't on it.
20 Q. And did you check to see if your children
21 were on it?
22 A. Yes, I did.
23 Q. Did you find any pictures of your
24 children?
25 A. No, ma'am.

1 Q. After you -- so you had that flash drive 12
2 in your possession, at least as far as you knew, from
3 the time you had left Mr. Castaneda's residence until
4 your boyfriend found it?
5 A. Yes.
6 Q. After you had looked at the photos or the
7 pictures of the children that upset you, what did you
8 do?
9 A. I had a parole officer that I had met
10 through my sister before, and her name is Officer
11 Worthington, and I called her on her phone and I said
12 to her, I have something horrible in my possession
13 that I need to give to someone. I don't know who or
14 what or where to do this.
15 A. And she said, come meet me and I
16 will get the proper chain of command, whatever we
17 have to do, and while I was there they couldn't take
18 it from me because it had to go through a chain of
19 command.
20 Q. Let me interrupt you real quickly.
21 You said they couldn't take it
22 from you. When you called this Officer Worthington,
23 what did you do?
24 A. Went to her office off of Rancho and
25 Melrose.

1 Q. Did you show Officer Worthington what was 13
2 on the flash drive?
3 A. No. She would not look at it.
4 Q. And basically had she contacted someone
5 else who then arrived at her office?
6 A. Her supervisor contacted SVU, I believe,
7 and spoke to a Detective Tooley, and Detective Tooley
8 told them that she would be there, wait for her, and
9 I would go downstairs to meet her, they would let me
10 know when she was there.
11 Q. Did that happen?
12 A. Yes.
13 Q. And so you came into contact with
14 Detective Tooley, and what did you do when you came
15 into contact with her?
16 A. I met her at her vehicle on the curb, and
17 I handed her the flash drive. And she asked if we
18 could voice record an interview, and I said
19 absolutely, and that's where we proceeded to do.
20 Q. So you gave a statement at that time that
21 was tape recorded?
22 A. Yes.
23 Q. And then you also gave her the flash
24 drive?
25 A. Yes.

1 Q. Now, you had lived at Mr. Castaneda's 14
2 house for about three months at this time?
3 A. Yes.
4 Q. Right before the discovery of the flash
5 drive did you have access to his computers?
6 A. Yes.
7 Q. How many computers did he have in his
8 house that you had access to?
9 A. The main one that I used, there was one
10 that I would get onto. My children had access to a
11 few of the other ones.
12 Q. And was it password protected or how did
13 you get onto the one that you would usually use?
14 A. Password connected.
15 Q. And did he give you the password?
16 A. Yes.
17 Q. What was the password that he gave you?
18 A. I believe it was Girls something.
19 THE COURT: What was it?
20 THE WITNESS: Girls, G-i-r-l-s, and some
21 numbers behind it or whatever. It was a -- not a
22 laptop. It was -- it was a laptop, I'm sorry, not a
23 hard drive. His hard drive he used for his business.
24 BY MS. MONROE:
25 Q. So you would never get on his hard

1 drive -- 15
2 A. No.
3 Q. -- or the big computer?
4 A. No.
5 Q. How many big computers did he have in his
6 residence that you knew about?
7 A. I knew about the one that he had out in
8 his living room, and I knew about the one that he had
9 in his bedroom. Those were the only big ones I knew
10 about. All the others were laptops.
11 Q. And did you have access to the bigger
12 computer in his bedroom?
13 A. No.
14 Q. Did you have access to the bigger
15 computer in the living room?
16 A. Define having access.
17 Q. Were you able to use it?
18 A. No.
19 Q. Do you know if your girls were able to
20 use either of those two computers?
21 A. My girls mainly used the laptop. Had
22 they been on the hard drive before, yes, but that was
23 to help him if he was out of the house and had a
24 problem with his work and needed her to get to the
25 computer to get information from him is the only time

1 they used it. 16
2 Q. And how many laptops did he have in the
3 house that you were aware of?
4 A. One, two, three.
5 Q. And you accessed one of those laptops?
6 A. Yes.
7 Q. And did you access all three of them or
8 just one of them?
9 A. Mainly the one.
10 Q. Where was that laptop kept?
11 A. In the living room.
12 Q. And then where were the other two laptops
13 kept?
14 A. They were actually -- the living room is
15 the main place that every one was at.
16 Q. All three laptops would have been in the
17 living room?
18 A. One of the laptops was in my daughter's
19 bedroom, which was the first bedroom there was one.
20 And I have to back up for a second, I'm sorry. There
21 was a hard drive in the living room that I did use
22 all the time. It was not the laptop. They were at
23 alternate ends of the room.
24 Q. Did you ever download any child porn
25 while you were in the residence?

1 A. No. 17
 2 MS. MONROE: At this time I'll pass the
 3 witness.
 4 THE COURT: Cross-examination.
 5
 6 CROSS-EXAMINATION
 7 BY MR. GELLER:
 8 Q. Ma'am, first I'd like to clarify a little
 9 bit with respect to the computers and what room.
 10 You made reference to a computer
 11 being in Mr. Castaneda's bedroom; is that correct?
 12 A. Yes.
 13 Q. Could you please articulate what that
 14 computer looked like and where in the bedroom it was
 15 located?
 16 A. There was a little table in his bedroom
 17 that had a monitor and just a hard drive on it and a
 18 keyboard, but I had never seen Mr. Castaneda on that
 19 computer. I just know it existed.
 20 Q. And so you had an occasion to be in his
 21 bedroom before so you could observe that?
 22 A. I walked in there taking laundry and
 23 setting it on his bed. I mean nothing more than
 24 that, yes.
 25 Q. And physically what did that computer

1 Q. And did your children have occasion to 19
 2 access that computer?
 3 A. Only when Mr. Castaneda asked them to.
 4 Q. To your knowledge?
 5 A. To my knowledge.
 6 Q. So it's possible they could have accessed
 7 it without your knowledge?
 8 A. Okay.
 9 Q. Is that true?
 10 A. Sure. Anything's possible, I suppose.
 11 Q. You made a reference to another desktop
 12 computer. Could you describe where that was located?
 13 A. It was located on the opposite end of the
 14 room closest to the bar area that leads to the
 15 outside to the pool.
 16 Q. What color was that computer?
 17 A. Black.
 18 Q. Do you recall the manufacturer of that
 19 computer?
 20 A. No, I don't.
 21 Q. Have you ever had access to it?
 22 A. Yes.
 23 Q. And have you personally used the
 24 computer?
 25 A. Yes.

1 look like. Was it black, was it -- 18
 2 A. Black.
 3 Q. Do you recall the manufacturer?
 4 A. No, sir.
 5 Q. And then you made reference to there was
 6 also two also desktop computers, if I understand you
 7 correctly, in the main area?
 8 A. In the main area, yes.
 9 Q. And could you describe -- first of all,
 10 let's start with one and where it was and then we'll
 11 go on to the next one.
 12 A. Mr. Castaneda is a computer analyst, so
 13 computers is his life. On the wall closest to the
 14 kitchen he had his large desktop with his big monitor
 15 and desk.
 16 Q. Do you recall the manufacturer of that
 17 computer?
 18 A. No.
 19 Q. Could you describe its color or size or
 20 anything along those lines?
 21 A. All I remember is black. I really don't
 22 remember.
 23 Q. And is that one of the computers that you
 24 on occasion had an opportunity to access?
 25 A. No.

1 Q. Would that be the same with your children 20
 2 as well, they had access to it?
 3 A. Yes.
 4 Q. You made reference to the fact that it
 5 was password protected prior.
 6 Does Dogcat123, does that sound
 7 like the password?
 8 A. That was one of them, but there was
 9 another -- I don't know. Mr. Castaneda changed codes
 10 all the time, so sometimes he would tell the girls
 11 what it was, but there was something with a girl
 12 princess or something different. I don't remember.
 13 Q. And so we now discussed three desktop
 14 style computers. You also made reference to the
 15 existence of one or two laptops; is that correct?
 16 A. Two laptops.
 17 Q. Two laptops, okay.
 18 Would it be fair to say that the
 19 location of those laptops varied just depending on
 20 where they were set down or whether they were
 21 stationary or at a desk?
 22 A. One was on a rolling cart that mainly
 23 stayed in the living room where the futon sofa was.
 24 The other one he had moved into the bedroom where my
 25 twins were at the time and into a desk. There was a

AA0050

1 desk that sat there. He set up the monitor and I
2 mean he set up the laptop for them and the speakers
3 and stuff.

4 Q. So the one that's in your twins' room,
5 could you please describe that one to the best of
6 your ability.

7 A. It was a black laptop.

8 Q. Do you know the manufacturer?

9 A. No, I don't.

10 Q. Then with respect to the other one that
11 was in the rolling cart that you described as near
12 the futon, could you describe that one?

13 A. It's a laptop. I'm sorry, I'm not
14 computer savvy to know all the details about it.

15 Q. Would it refresh your recollection, was
16 it possibly gray, does that sound right?

17 A. In the living room, correct.

18 Q. So now I believe we've discussed three
19 desktop computers and two laptops in total.

20 Other than those were there any
21 other computers in the house that you were aware of?

22 A. Yes.

23 Q. Which computer would this be?

24 A. My boyfriend and I also had a laptop
25 there as well. Two of them ourselves. One we put in

21

1 Q. You had previously testified that you had 23
2 lived on two separate occasions with Mr. Castaneda.
3 What was the first time that you
4 moved out, roughly, when was that date?

5 A. June.

6 Q. Of which year?

7 A. 2009.

8 Q. What were the circumstances that caused
9 you to leave?

10 A. It was a financial circumstance at the
11 time.

12 Q. Was there any conflict between you or any
13 of your family and Mr. Castaneda?

14 A. No.

15 Q. Was there any conflict between you and
16 the landlord?

17 A. Tony never told the landlord that we were
18 there staying, so the landlord had a problem when he
19 came in and found out that the children and I were
20 there, but at that point in my life I was always in
21 and out.

22 I mean I just lost my stepdad, who
23 was more dad to me than my dad could have ever been.
24 It was very emotional. That period of time was kind
25 of a -- I felt safe because my children had an adult

1 the pawn shop for a period of time to get a little 22
2 bit of extra money, and the other one was a gray
3 laptop that we used on a regular basis as well.

4 Q. Of the five computers that you referenced
5 belonged to Mr. Castaneda, were they all in areas
6 that were accessible to everyone?

7 What I mean by that, not where
8 doors were locked otherwise making entry impossible.

9 A. Yes.

10 Q. So they were all in general areas; is
11 that correct?

12 A. Yes.

13 Q. And, to the best of your knowledge, the
14 passwords were the same on all computers?

15 A. No.

16 Q. So you're saying dogcat123 was the
17 password for which computers?

18 A. I really don't remember. I have to
19 really think. I'm sorry. It's been a little over a
20 year.

21 Q. Understandable.

22 A. I would think the dogcat123 was actually
23 the computer to his main computer, to his main -- but
24 it always changed, so I couldn't tell you on a
25 regular basis.

22

1 in the house at the time. They weren't by 24
2 themselves. And I did what I had to do and
3 just . . .

4 Q. I'd like to bring you forward to the
5 second time you moved out of Mr. Castaneda's house.
6 What events took place that caused
7 you to leave that second time?

8 A. When Mike and I and the girls moved in in
9 November --

10 Q. For the record, would Mike be your
11 boyfriend?

12 A. Yes, Michael Landau, I'm sorry. He was
13 my boyfriend at the time.

14 We moved into, at the end of
15 November, to Mr. Castaneda's. And we -- Mike was
16 waiting for his disability, his large back pay of
17 disability. At that time Mr. Castaneda also got laid
18 off from his job, so he was only living on what do
19 you call it?

20 Q. Unemployment?

21 A. Unemployment, yes.

22 Receiving his 400 a week. And he
23 couldn't make his bills, so we made an agreement we
24 would pay 500 a month to help him out. This was an
25 offer he had asked us about. It was kind of, you

24

AA0051

1 know, an uncomfortable scenario because I guess Mike 25
2 and Tony sometimes had some altercations.
3 Q. What was the nature of those arguments?
4 A. Probably me. I have no idea. I really
5 don't.
6 Q. Did you have a romantic relationship with
7 Mr. Castaneda?
8 A. Never.
9 Q. When you say probably you, could you
10 elaborate on that?
11 A. Tony didn't like me, but that didn't
12 matter, I mean he thought that -- I don't really know
13 how to word this. I believe in a structured
14 environment for my children. I believe if they want
15 something, they ask me for it. If they need
16 something, tell me and I'll be happy to get it for
17 them.
18 Mr. Castaneda was more like the
19 uncle that would go above and beyond, and I wouldn't
20 exactly like that because I want them to know that
21 their mom is where they turn to. They don't need to
22 turn to anyone else and ask them for something.
23 So we kind of had disagreements
24 about that often. I'm not -- Mr. Castaneda was a
25 very giving man, you know, he loves children, and --

1 A. Yes, I did. I forgot about that. 27
2 Q. What was the basis for that eviction
3 letter?
4 A. Claiming that we agreed upon a certain
5 amount of monetary money and that we weren't
6 complying with that, and he had changed the monetary
7 amount.
8 Q. So when you previously testified that he
9 had never asked you to leave, you were just mistaken;
10 is that correct?
11 A. Yes.
12 Q. And did you ever have an argument with
13 Mr. Castaneda about the disagreement with respect to
14 the rent?
15 A. Absolutely.
16 Q. How often did you all argue about that,
17 roughly?
18 A. We argued about it once. I contacted my
19 attorney and told him about this bogus eviction
20 letter based on the fact that he knew that my
21 boyfriend got his disability checks on a monthly
22 basis, but it was the third Wednesday of the month.
23 And that was a verbal agreement
24 that was made. Well, the fifth of the month I can't
25 guarantee that, you know, you're going to get your

1 but to me I wanted, I guess you could say, the 26
2 control of what my children get and what they didn't
3 get.
4 Q. And did that conflict eventually blow up
5 to the point where you decided to leave or were you
6 asked to leave?
7 A. No. No, because Mr. Castaneda knew that
8 as soon as Mike got his disability money we were
9 planning on renting a condo.
10 Q. So is that what ultimately caused you to
11 leave?
12 A. That Mike got his back disability money,
13 absolutely, yes.
14 Q. Anything else that motivated that
15 decision?
16 A. No.
17 Q. And at any point in time did he ask you
18 to leave, he being Mr. Castaneda?
19 A. Mr. Castaneda was kind of worried about
20 his landlord was down his throat again because he had
21 people living there, but what his landlord didn't
22 realize was that he wouldn't be able to afford living
23 there unless he had some help, so . . .
24 Q. At any point in time did you receive an
25 eviction letter from Mr. Castaneda?

1 money the third week of the month. This was the 28
2 whole problem was he needed it by the first and we
3 only had it the third week of the month.
4 Q. So by the time you finally left
5 Mr. Castaneda's house would it be fair to say you
6 were no longer on good terms?
7 A. I never spoke to him after that. Just
8 had no interest to. We weren't on bad terms.
9 MR. GELLER: Court's indulgence.
10 BY MR. GELLER:
11 Q. Did you ever observe Mr. Castaneda on the
12 laptop that was located near the futon?
13 A. Yes.
14 Q. Did you observe him on that laptop on a
15 regular basis?
16 A. He was always updating files, updating
17 maintenance things, you know, just regular updates.
18 I never really noticed all the time, but . . .
19 Q. Did Mr. Castaneda inform you that he
20 didn't really want you to stay there anymore, but he
21 was doing you a favor given your circumstances?
22 A. No.
23 MR. GELLER: That's all I have.
24 THE COURT: I have a question before
25 redirect.

EXAMINATION

29

BY THE COURT:

Q. How long a time passed between the time you and your boyfriend and your kids moved out to the time that the flash drive was found in your tote?

A. Roughly, a couple weeks. I don't believe it was any more than that. We didn't unpack everything when we first moved, so . . .

Q. That was going to be my next question.

Was this tote something that you used on a regular basis or was it something that still had some items packed in there from when you moved out of his house; what was the circumstances about around the tote?

A. Still had some items like some clothes in it that we didn't use on a regular basis. It wasn't something that we were in all the time.

Q. So what was the circumstances surrounding your boyfriend finding the flash drive?

A. I guess he was --

Q. I don't want you to guess.

A. I don't know.

Q. All you know is that he found the Flash drive in the tote?

A. Yes, correct.

of November until sometime in January and then he said, oh, by the way, you should have been paying me this?

A. Yes.

Q. But you had paid him \$500 for at least one month?

A. Yes.

Q. Now, you said that he was -- that Mr. Castaneda was always on his computers updating files?

A. Mm-hmm.

Q. Is that a yes?

A. Yes, ma'am.

Q. And would these have been all of these various computers that were throughout the house?

A. Yes.

Q. Now, were you working at that time?

A. No.

Q. So were you always in the house or would you leave the house?

A. I would leave the house. I mean Mike and I would take the kids and go places and do things, so I wasn't always in the house.

Q. So you didn't -- there may have been times when Mr. Castaneda may have had access to his

THE COURT: All right. Redirect.

30

MS. MONROE: Thank you.

REDIRECT EXAMINATION

BY MS. MONROE:

Q. When was this eviction letter that you received from the defendant that you were asked about on cross-examination?

A. I believe it was in January.

Q. And when did the disagreement about the amount of money you were to pay monthly, when did that happen?

A. At the same time, after he proceeded to hand me that letter.

Q. And what was the difference?

You said you agreed to pay 500 a month. What was the difference; what was the amount?

A. He wanted 600 a month. The 500 a month was supposed to include our utilities too, okay. That was an agreement that was originally made with Mike, Tony, and myself. Unfortunately, we were stupid. We didn't get anything in writing. Mr. Castaneda said that the agreement was 600 a month plus half of each of the utilities.

Q. So you had lived there from about the end

computers that you weren't present or you wouldn't have known about?

A. Yes.

Q. And then you had your own room in the house, your own bedroom?

A. Yes.

Q. And did your children, they had their own bedroom?

A. Yes.

Q. And Mr. Castaneda had his own bedroom?

A. Yes.

Q. And when you went to sleep you don't know if Mr. Castaneda was accessing his computers at that time; would that be fair to say?

A. Mr. Castaneda did a lot of his work on the East Coast, so he was always up weird hours. He could be on the computer in the middle of the night sometimes and then early morning probably down for a little bit until he got his business calls or whatever, but the late night was a very common thing for him to be on the computers.

Q. Let me ask you this. You said you had access to the big computer in the living room. That was the only one you used, correct?

A. The one that is closest to the bar, yes.

AA0053

1 Q. And how many times do you think you 33
2 accessed that computer from the time you moved in in
3 November until you left in February?
4 A. Very little. The main thing I did on the
5 computer was play the game Zooma.
6 MS. MONROE: That's all I have, your
7 Honor.
8 THE COURT: Do you have any questions
9 based upon my questions?
10 MR. GELLER: No, Judge.
11 THE COURT: Thank you very much,
12 Miss Hines.
13
14 (Witness excused)
15
16 Call your next witness.
17 MS. MONROE: Detective Ramirez.
18 THE CLERK: Please have a seat.
19 Please state your first and your
20 last name and spell both for the record.
21 THE WITNESS: First name is Vicente,
22 V-i-c-e-n-t-e. Last name is Ramirez, R-a-m-i-r-e-z.
23 THE COURT: Thank you. You can proceed.
24 MS. MONROE: Thank you, your Honor.
25

1 V I C E N T E R A M I R E Z, having been first duly 34
2 sworn to testify to the truth, the whole truth, and
3 nothing but the truth, testified as follows:
4
5 DIRECT EXAMINATION
6 BY MS. MONROE:
7 Q. Detective Ramirez, where are you
8 presently employed?
9 A. Las Vegas Metropolitan Police Department.
10 Q. And how long have you been with LVMPD?
11 A. 16 years.
12 Q. What unit are you presently assigned to?
13 A. The computer forensic lab.
14 Q. And how long have you been with the
15 computer forensic lab?
16 A. Well, we just started. It's part of the
17 Internet crimes, so that's been since '98, but we
18 just formed the lab itself last year.
19 Q. You've been with Internet crimes since
20 1998?
21 A. Sexual assault '98 and Internet crimes
22 '99.
23 Q. Can you tell the Court what Internet
24 crimes consists of; what is your job with Internet
25 crimes?

1 A. Basically, just doing the investigations 35
2 on sexually exploited children.
3 Q. When you talk about computer analysis,
4 you just formed that unit, what do you do as a
5 computer analyst?
6 A. We conduct forensic examinations of
7 computers. We've done that since '99, but they just
8 consolidated everybody together.
9 Q. What kind of training did you have to get
10 to the point where you could start doing forensic
11 analysis of computers?
12 A. We've had training everywhere from what's
13 called EnCase training. That's the forensic software
14 tool that we use. Just A Plus Training, Network Plus
15 Training, NCSC training, Microsoft training, training
16 at the Community College for those, and FBI training
17 through the National Center For Missing And Exploited
18 Children, Cyber Training.
19 So it's a continuous amount of
20 training to keep up with all the updates of all the
21 software and everything else.
22 Q. Now, how many computers do you think that
23 you have actually done a forensic analysis on since
24 you've been assigned to that unit?
25 A. Well over a thousand.

1 Q. Now, does that also include analysis of 36
2 flash drives --
3 A. Yes.
4 Q. -- or thumb drives?
5 A. Any digital device.
6 Q. And can you just basically walk me
7 through how you would do an analysis on a computer or
8 a thumb drive if you received it and were asked to do
9 an analysis of it?
10 A. Once I get my device, I prepare my
11 forensic machine, which I have to wipe my hard drive
12 first to make sure there's no remnants of any other
13 case that I worked on.
14 Once I do that then I basically
15 get the device and I use my write blocker, on this
16 one it's a Tableau write blocker, and I connect my
17 write blocker to the device, to my machine, and that
18 ensures that there's absolutely no tampering of the
19 evidence.
20 It says in the same state. I'm
21 able to read it, and I'm able to do what's called an
22 acquisition using EnCase. And, for the record,
23 En Case is spelled capital E, lower N capital
24 C-a-s-e.
25 Q. Let me just interrupt you real quickly.

AA0054

1 You said that you have the write 37
2 blocker, and that's so that you can ensure there's no
3 tampering, that you aren't tampering with any of the
4 computers or any of the objects that you're
5 examining; is that correct?

6 A. Yes. Whatever device I'm examining, that
7 stays in the original state it's in. Nothing touches
8 or changes anything on that device.

9 Q. And then do you download that information
10 onto your computer?

11 A. Yes. I basically acquire that digital
12 device and put it on my computer and that provides me
13 a platform to conduct my analysis on that.

14 Q. And then you described Encase. Can you
15 tell me what Encase is?

16 A. Encase is just one of the leading
17 softwares that allows me to conduct searches and look
18 for deleted, just pretty much anything I need on that
19 computer, but it allows you to go further than the
20 general user that you can just get online and look at
21 their computer stuff.

22 It allows me to examine all the
23 files that are in the computer history and everything
24 else, whether it's in the allocated space or
25 unallocated space where the general user just can't

1 correct. That's when I actually conducted the exam 39
2 and started the acquisition and it would be --

3 Q. Would your report tell you when Detective
4 Tooley had contacted you to look at it or would that
5 be the same date that you actually did your
6 examination?

7 A. My report would pretty much be when I
8 actually did the acquisition.

9 Q. What was it that Detective Tooley gave
10 you to do a forensic analysis on?

11 A. She gave me a digital thumb drive.

12 Q. And what information did you have
13 regarding that digital thumb drive at the time that
14 you were given --

15 A. She just basically said that she received
16 a thumb drive from a roommate of the person that she
17 was investigating and that thumb drive was turned
18 over to her and she was looking to corroborate what
19 that person had done, instructed what was possibly on
20 that drive.

21 Q. So you believe that your analysis of that
22 thumb drive would have been on February 18 of 2010?

23 A. Yes.

24 Q. And that would have been thumb drive that
25 you had received from Detective Tooley?

1 get to. 38

2 Q. When you're doing a computer -- forensic
3 computer analysis as it pertains to your position at
4 Metro, what are you looking for when you're using
5 Encase; what are you looking to find on the computer
6 or the other items?

7 A. Well, every case is different, but like,
8 for example, on this case I'm looking to corroborate
9 what the detective has asked me to look for. And in
10 this case it was child pornography images. I'm
11 looking for any evidence that pertains to child
12 pornography.

13 Q. Let's go to this particular case. You
14 said that the detective contacted you. And who would
15 that detective have been?

16 A. Detective Shannon Tooley.

17 Q. Do you know what date it was that
18 Detective Tooley would have contacted you?

19 A. I'd have to look at my report.

20 Q. Do you have a copy of your report with
21 you?

22 A. Not that one.

23 Q. Not this one? This one? You need this
24 one?

25 A. I think it was February 18, if I'm

1 A. Yes. 40

2 Q. If you can walk through us, if you can,
3 how you, once you got that thumb drive, kind of walk
4 through the steps that you took and then what you
5 identified on that particular thumb drive.

6 A. Okay. Once the thumb drive is acquired,
7 after that the computer basically, the software
8 basically does a verification to make sure that
9 everything that was taken from that drive was copied
10 bit by bit. So it's like a digital fingerprint. So
11 that way it's an exact copy of that drive.

12 So once I start working on that I
13 do what's called a signature analysis and that makes
14 sure that it identifies the extensions and that
15 everything that is possibly an image or a different
16 type of file is put in that category.

17 Once it's verified and I verify
18 that I have a clean acquisition, there's no errors
19 and copied it bit by bit, then I start to do my
20 analysis. And on this one since it was a thumb drive
21 there was not -- it's just -- it's not a lot of
22 stuff.

23 So I'm mainly looking for images
24 first. So Encase, the way it does, it puts all my
25 images, what it believe the images, into a gallery.

AA0055

1 And immediately once it's acquired and everything I 41
 2 start looking at the gallery and start looking for
 3 images of what I believe to be child pornography.
 4 Q. So this EnCase shows you all these
 5 different images, like thumbnails of different
 6 images?
 7 A. It will show me -- it puts them in just a
 8 gallery view of just like collages of pictures of
 9 what is on that computer.
 10 Q. And that's what happened when you looked
 11 at the thumb drive, you got these images or this
 12 gallery --
 13 A. Yes.
 14 Q. -- of images on it?
 15 You said that you were looking for
 16 child porn, that that was the information you had
 17 had. Can you tell me some of things that you found
 18 on that thumb drive when those images came up?
 19 A. I found images of what I believed to be
 20 child porn. I found images of regular pornography
 21 and some images of bestiality and some images of
 22 identification cards; Nevada driver's license, a
 23 bachelor certificate of accomplishment, and just some
 24 other basic IDs, Social Security card.
 25 Q. So on this thumb drive you found

1 identifiers, I guess you could say, of a certain 42
 2 individual, things that would have belonged to an
 3 individual like driver's license, Social Security
 4 number, and certificates?
 5 A. Yes.
 6 Q. What was the name on these various items
 7 of identification, that's what I'm calling them, that
 8 you found when you looked at that thumb drive?
 9 A. Anthony Castaneda.
 10 Q. You said that you also had seen adult
 11 porn?
 12 A. Yes.
 13 Q. And then you saw some bestiality?
 14 A. Yes.
 15 Q. And you also found images of child porn
 16 or what in your opinion was child porn?
 17 A. Yes.
 18 Q. When you were looking to make the
 19 determination that you're looking at child porn, what
 20 are you looking for?
 21 A. I am looking for anybody, any victim or
 22 child that's under the age of 16 that's exposing
 23 genitalia.
 24 Q. And you said you found images of child
 25 porn. How many images of child porn did you find?

1 A. If I recall, 56. 43
 2 Q. So out of this image gallery, 56 images
 3 were of child porn?
 4 A. Yes.
 5
 6 (State's Proposed Exhibit 1 through 15
 7 marked for identification.)
 8
 9 MS. MONROE: If I could, I'm showing
 10 Mr. Geller State's Proposed Exhibits 1 through 15.
 11 If I might approach the witness,
 12 your Honor.
 13 THE COURT: Okay.
 14 BY MS. MONROE:
 15 Q. I'm showing you what's been marked for
 16 identification as State's Proposed Exhibits 1 through
 17 15.
 18 Can you look through those,
 19 Detective Ramirez, and tell me if these -- any of
 20 these images were on the thumb drive that you saw
 21 when you were doing your forensic analysis of the
 22 thumb drive.
 23 You can look at them to yourself,
 24 and then just the ones that you recognize, put them
 25 over in a pile so that we'll know which are the ones

1 you found on the thumb drive. 44
 2 So, for the record, at this
 3 moment, and, counsel, he has his report here. I
 4 don't know if you want to come up and see this as we
 5 go through these.
 6 State's Proposed Exhibits 1, 2, 3,
 7 4, 5, 8, 9, 10, 11, 13, and 14, you said that you
 8 recognized as having come from the thumb drive,
 9 correct?
 10 A. Yes.
 11 Q. Now you're also looking to see if on the
 12 thumb drive you saw State's Proposed Exhibits 6, 7,
 13 12, and 15?
 14 A. I don't see those right offhand. I have
 15 seen those. There's a lot of known images, but I
 16 don't see those that I bookmarked.
 17 Q. So these four you do not think --
 18 A. For sure.
 19 MR. GELLER: For the record, you said
 20 this one for sure?
 21 MS. MONROE: State's Proposed Exhibit 15.
 22 THE COURT: What about 15?
 23 MS. MONROE: He does not recognize that
 24 as being on the thumb drive.
 25 I'm going to bring this over here

1 so we won't ask him to testify from that.

45

2 (Discussion off the record.)

3
4
5 BY MS. MONROE:

6 Q. So you've identified 15, State's Proposed
7 Exhibit 15, and State's Proposed Exhibit 6, and
8 State's Proposed Exhibit 7.

9 These were not images that you
10 recovered off of the thumb drive?

11 A. Correct.

12 Q. He did identify 12.

13 Now, you have your report in front
14 of you. Do those also have the image file name on
15 them?

16 A. Yes, they do.

17 Q. Let's start in the order that I have them
18 in.

19 MS. MONROE: And, your Honor, I think at
20 this time I would move to admit State's Proposed
21 Exhibits 1 -- they're out of order now.

22 THE COURT: I have 1 through 14,
23 excluding 6 and 7.

24 MS. MONROE: Then those would be the ones
25 that I -- and 15.

1 adult\girlpics\twogirls.jpg. The end extension
2 twogirls.jpg, that's what that is named in the
3 computer, whoever created that.

47

4 So the other part like

5 adult\girlpics, that one is -- the user created that
6 folder.

7 Q. So the twogirls.jpg, I don't understand,
8 does the computer name that?

9 A. Yeah. Whatever they were put on that
10 website for, that's the name that was given to this
11 image.

12 Q. So it's already named even when the --

13 A. At the very end of the name. So if you
14 copied an image and you named it say donna.jpg, it
15 would be .jpg. You don't put the .jpg after the
16 identifier number, but you might put donna. So when
17 this image was downloaded, it was downloaded, the
18 name of it was twogirls, and the .jpg, that's just
19 the extension that the computer responds to it to say
20 this is a picture.

21 Q. So did the original downloader call it
22 twogirls or was that what it was named on the
23 originating source?

24 A. The originating source was twogirls.

25 THE COURT: All right. I understand.

1 THE COURT: I said 1 through 14.

46

2 MS. MONROE: Those would be the ones that
3 I would move to admit at this time.

4 THE COURT: She's moving to admit
5 Exhibits 1 through 14, excluding 6 and 7.

6 Any objection?

7 MR. GELLER: No objection.

8 THE COURT: Exhibits 1 through 14,
9 excluding 6 and 7, whatever those are, so 12 exhibits
10 total will be admitted.

11 (State's Exhibits 1 through 5,
12 8 through 14 admitted into evidence.)

13
14 EXAMINATION

15 BY THE COURT:

16 Q. I have a question for the witness, and I
17 hate to interrupt, but she was about to ask you,
18 she's going to refer to them by name.

19 When you guys refer to these
20 images by name or code or whatever, how does that get
21 on there? Who names it? Does the computer name it,
22 does the original -- I don't understand that.

23 A. For example, like the very first one I
24 have is just listed under
25

1 Thank you.

48

2 Go ahead.

3
4 DIRECT EXAMINATION
5 (Continued)

6 BY MS. MONROE:

7 Q. I'm going to show you what's now marked
8 as State's Exhibit No. 1.

9 And, first of all, can you tell me
10 what the image file name is on this case?

11 A. The image file is
12 adult\girlpics\twogirls01.jpg.

13 Q. And that is described -- what is shown in
14 that particular photograph?

15 A. That shows two minors involved in sexual
16 activity. One minor is on her stomach while being
17 penetrated by the male penis with the other minor
18 holding that girl's buttocks and what appears to be
19 semen coming out of her mouth.

20 MR. GELLER: Just for the record, I would
21 object. I ask the witness not to speculate to any
22 particular ages or anything like that. Obviously, he
23 can describe what he sees in the picture, but as to
24 whether or not someone's reached the age of majority
25 or not, that's something that's speculation.

AA0057

1 THE COURT: Well, he testified what 49
2 appears to be two minors, so I think in his mind two
3 minors would be under the age 16.
4 THE WITNESS: Under the age 16.
5 THE COURT: Based upon your parameters?
6 THE WITNESS: Based upon my experience of
7 child pornography.
8 THE COURT: When you determine child
9 porn, your parameters are under the age of 16 and
10 exposing genitalia?
11 THE WITNESS: Lewd exposing of genitalia
12 and involving sexual activity.
13 THE COURT: So when you just testified
14 they appeared to be two minors, does that mean under
15 the age of 16?
16 THE WITNESS: Yes.
17 THE COURT: So is your objection to that?
18 MR. GELLER: Yes, Judge. If the witness
19 is testifying that he knows the age is under 16, I
20 think the proper way to produce the evidence would be
21 to say you observed pubic hair, things like that.
22 MS. MONROE: I show the Court State's
23 Exhibit No. 1, and the Court can see if it has any
24 questions that those two girls are under the age of
25 16.

1 THE COURT: So the objection's noted for 50
2 the record. I suppose in his training and experience
3 he can testify what he believes appears to be under
4 the age of 16. Any final decision that needs to be
5 made for the purposes of preliminary hearing will be
6 made by the Court.
7 MS. MONROE: Sounds like probably a good
8 suggestion.
9 BY MS. MONROE:
10 Q. And the Court asked some questions when
11 you're looking for what you consider to be
12 prepubescent. What are you looking for or what are
13 you looking to note that is not present in the
14 pictures when you're looking to see if they're, in
15 your opinion, if they're prepubescent?
16 A. We just pretty much look at the size of
17 the child, and if we can pretty much tell if it's a
18 child under the age of 16 or not.
19 My own personal rules, I always
20 try to go under 12, and because teenagers, you can't
21 really specifically say if they have pubic hair, if
22 they don't have pubic hair. Some people shave the
23 pubic area. So I pretty much try to -- if I look at
24 that picture and that appears to be a child under 12
25 to me, then to me that's a child.

1 Q. And, now, so -- and the Court kind of 51
2 asked you this, but the name of the twogirls01.jpg, I
3 believe your testimony was that's the name on the
4 image, so whoever actually circulated that image into
5 the Internet for people to download, that would have
6 been the name it was under?
7 A. Correct.
8 Q. Now, can you tell from your analysis of
9 the thumb drive where this particular picture was
10 found on that thumb drive?
11 A. Yes.
12 Q. Where was that?
13 A. That was found in the folder
14 adult\girlpics.
15 Q. And so there was a folder with that name,
16 that's where that particular photo came out of?
17 A. Correct.
18 Q. Now, showing you State's No. 2.
19 You said you found this photograph
20 on the thumb drive?
21 A. Correct.
22 Q. What was the file name that State's
23 Exhibit No. 2 was listed under?
24 A. The file name is adult\girlpics\, I'll
25 spell it, g-i-r-l-o-n-d-i-c-k 0C.bmp.

1 Q. Is it 0C or 06? 52
2 A. I'm sorry, 06.
3 Q. Can you describe for us what State's
4 Exhibit No. 2 shows.
5 A. That appears to be an image of a person I
6 believe is under the age of 16. There's a male penis
7 in front of her mouth and what I believe to be semen
8 from that male penis all over her mouth.
9 Q. And when you say -- you said a child.
10 Can you tell if the child is a
11 female or male?
12 A. Female.
13 Q. Now let's go to State's Exhibit No. 3.
14 Can you tell me -- that was one of
15 the ones you said you located on the thumb drive?
16 A. Correct.
17 Q. And can you tell me what the file name on
18 State's Exhibit No. 3 is?
19 A. That is adult\girlpics\, I'll spell it
20 again, g-i-r-l-o-n-d-i-c-k 0B.jpg.
21 Q. Jp or bmp?
22 A. This is jpg.
23 MS. MONROE: Then, your Honor, I'll be
24 moving to amend that, because we have bmp.
25

1 BY MS. MONROE: 53
2 Q. What does State's Exhibit No. 3 show?
3 A. That shows what appears to be a female
4 under the age of 16 years of age. She has a -- both
5 hands on a male penis and the male penis is in her
6 mouth.
7 Q. Was this also in that folder girlpics, as
8 we discussed?
9 A. Yes.
10 Q. In fact, did all of these pictures come
11 out of a folder on that thumb drive entitled
12 girlpics?
13 A. Yes.
14 Q. Showing you State's Exhibit No. 4.
15 You said that came from the thumb
16 drive?
17 A. Correct.
18 Q. And what was the file name on that
19 photograph?
20 A. Adult\girlpics\ capital letters NEW,
21 N-B-W, dash 22.jpg.
22 Q. And what did that image show?
23 A. That appears to be a female under the age
24 of 16, and there's a male penis penetrating her
25 vagina.

1 THE COURT: We're going to Exhibit 8? 55
2 MS. MONROE: Exhibit 8, which will now be
3 Count 8.
4 BY MS. MONROE:
5 Q. So showing you what's been marked as
6 State's Exhibit No. 8.
7 Can you tell me what that file
8 name is?
9 That one you did not have, I'm
10 sorry.
11 I think No. 8 was one he did not
12 have. I'll use another witness for those.
13 Let's go to State's Exhibit No. 9.
14 That image is under adult\girlpics\ capital letters
15 GIRL69.jpg. Can you describe this image?
16 A. That is an image of what appears to be a
17 female under the age of 16 laying on top of that
18 adult male with penis in her mouth while the adult
19 male appears to be performing cunnilingus on her.
20 Q. State's Exhibit No. 10.
21 MS. MONROE: I need to withdraw the
22 admission of 10 and 11 because it looks like he's not
23 finding those as well.
24 THE COURT: 10 and 11.
25 MS. MONROE: I'll withdraw for purposes

1 Q. Now, does this show any heads or any 54
2 features at all?
3 A. No.
4 Q. It's a close up, correct?
5 A. Correct.
6 Q. What was it about this picture that led
7 you to believe that this was a prepubescent child?
8 A. Through my experience in Internet crimes
9 against children I've seen this image on numerous
10 cases.
11 Q. Let's go to State's Exhibit No. 5.
12 What was the file image name of
13 State's Exhibit No. 5?
14 A. Adult\girlpics\twogirls.jpg.
15 Q. And what did that image show?
16 A. That image shows what appears to be two
17 females under the age of 16 both performing oral sex
18 on an adult male.
19 Q. Now, this picture's kind of cloudy. Does
20 it show up better when you were looking at it on the
21 image that you saw on the thumb drive?
22 A. Yes.
23 Q. State's Exhibit -- I'll be going to Count
24 8 for purposes of the Criminal Complaint, and the
25 first ones, I was going through orders.

1 of this witness now State's Exhibits 10, 11, and 9 as 56
2 well.
3 THE COURT: Wait, hold on.
4 MS. MONROE: I'll withdraw at this point
5 because this is not the witness that can identify
6 them.
7 THE COURT: 8 he didn't have on the thumb
8 drive, but 9 he did.
9 MS. MONROE: So it would be 8, 10, and
10 11, I believe that I will withdraw. Well, 10 and 11
11 I'm going to withdraw at this time through this
12 witness.
13 THE COURT: Correct. 8 we still have
14 kind of admitted, but no foundation or anything laid
15 through him, so I think it's in limbo.
16 MS. MONROE: The ones that are in limbo
17 I'll have the other witnesses when we continue will
18 be testifying as to those.
19 BY MS. MONROE:
20 Q. So State's Exhibit No. 12.
21 A. I have it under adult\girlpics capital
22 NEW dash 47.jpg.
23 Q. This is 12. Okay.
24 So describe for me -- give me
25 again what you have it listed as.

1 A. Adult\girlpics\ capital NEW, N-E-W, dash 57
2 47.jpg.
3 MS. MONROE: So I'll have to amend that
4 count as well.
5 THE COURT: That's as to Count 11.
6 MS. MONROE: Correct.
7 No, I'm sorry, we're on Count 12
8 right now.
9 THE COURT: But that picture that you
10 just -- oh, no, that's little.
11 47, but with small caps is what's
12 alleged in your Count 11.
13 MS. MONROE: You're right, it is.
14 THE COURT: He just referenced it's all
15 caps NEW, but 47. So I don't know how you want to --
16 I'm just saying, it might be as to Count 11.
17 MS. MONROE: It's marked as State's
18 Exhibit 12, but it would go to Count 11. We'll just
19 do that.
20 BY MS. MONROE:
21 Q. Can you describe for me then State's
22 Exhibit No. 12 under NEW-47.jpg?
23 A. That's an image of what appears to be a
24 female under the age of 16. She has a male penis in
25 her hand touching the base of her mouth.

1 Q. And does she have both hands -- can you 58
2 tell if she has both hands --
3 A. Yes, both hands.
4 Q. State's Exhibit No. 13, Count 12 of the
5 Amended Criminal Complaint.
6 So showing you State's Exhibit
7 No. 13. What is the file name on that one, the image
8 file name?
9 A. File name is adult\girlpics\ capital
10 letters EURO dash 001.jpg.
11 Q. And can you describe for the record what
12 State's Exhibit No. 13 reflects?
13 A. It reflects six separate images of --
14 sorry, five separate images of what appears to be a
15 female under the age of 16. One image she's
16 performing oral sex on a male penis. Second image
17 she's performing oral sex while holding the penis.
18 Third image she's on all fours, naked, exposing her
19 genitalia and anus. Next pic she's laying on her
20 back with a male penis in her mouth. And the last
21 pic she's being penetrated anally from a male penis.
22 Q. You want to go ahead and see if you can
23 find State's Exhibit 14 for me?
24 A. That I do not have.
25 MS. MONROE: I will withdraw Exhibit 14

1 to be identified by another witness. 59
2 BY MS. MONROE:
3 Q. Now, these particular -- you just have
4 your -- so these were the images that you located
5 from the thumb drive, correct?
6 A. Correct.
7 Q. Now, after you had identified those
8 exhibits that we've admitted as child porn, what was
9 the next thing that you did?
10 A. I bookmarked those images and then just
11 did a basic report and turned all the information
12 over to Detective Tooley.
13 Q. When you say bookmarked, I'm not quite
14 sure what that is. What do you mean when you
15 bookmark the images?
16 A. Bookmarking is where I select an image, I
17 put a checkmark on it, and it puts that image with
18 all the information over into a report.
19 Q. Now, are you able to determine from the
20 thumb drive when those different things, items, the
21 personal information, and those pictures that we've
22 seen that have been admitted, when those would have
23 been put on the thumb drive?
24 A. It will give me dates and times of file
25 created and last accessed, but that just tells me

1 when it was put on that computer or on that thumb 60
2 drive.
3 Q. Let's go with the personal information
4 that you said that belonged to Anthony Castaneda.
5 When were those items put on that
6 thumb drive?
7 A. My report shows a file created date of
8 December 1 of '08.
9 Q. And when you say a file created date, I'm
10 sorry, not being computer literate I'm not real sure
11 what that means. What does that mean?
12 A. That just means that that's when that
13 was -- that image was put on that thumb drive.
14 Q. And those were those various items, the
15 Social Security card, the driver's license, the
16 certificates, were those all put on the same date or
17 were they put on at different dates?
18 A. Same date.
19 Q. I'm sorry, what was that date?
20 A. December 1 of 2008.
21 Q. Now, what about the girlpics, the
22 different exhibits that you have shown us and that
23 we've admitted that you recovered on the thumb drive;
24 do you have when those would have been put onto that
25 thumb drive?

1 A. Yes. And I have November 25 of '08. 61
 2 Q. November 25 of '08. That would have been
 3 before all of Mr. Castaneda's personal information
 4 was put onto the thumb drive, correct?
 5 A. Correct.
 6 Q. And all of those pics, all of those
 7 girlpics that we've looked at today in court, they
 8 were all put there on -- in November of '08?
 9 A. Yes.
 10 Q. And you said you found 56 images. We
 11 only really looked at probably about 10 that you were
 12 able to identify, and we didn't put them all in.
 13 Were you able to tell if all of
 14 those 56 images would have been entered at the same
 15 time?
 16 A. It appears that all these were on
 17 November 25 of '08.
 18 Q. Did you find any other files on the thumb
 19 drive or with that software that you were using or
 20 were you just pulling up images on that thumb drive?
 21 A. I was pretty much just looking for
 22 images, but I also looked into what's called the
 23 unallocated area where it won't have file names or
 24 extensions, but it will show what images were on that
 25 thumb drive and then were deleted.

1 Q. What did you find when you looked at 62
 2 that?
 3 A. I pretty much found some pornography,
 4 bestiality, and some of these images of child
 5 pornography.
 6 Q. Does that mean some of the child
 7 pornography had been put on the thumb drive, but then
 8 deleted at some point?
 9 A. Yes.
 10 Q. Does it say when they -- were you able to
 11 determine when they would have been deleted?
 12 A. No. Once it goes into unallocated,
 13 that's just an open area that doesn't get any
 14 identifiers.
 15 Q. Now, were you present when a search
 16 warrant was served at Mr. Castaneda's residence?
 17 A. Yes.
 18 Q. Do you remember what day it was that that
 19 search warrant was served?
 20 A. I'd have to look at the report.
 21 Q. Your report?
 22 A. No, for the search warrant it would be
 23 Detective Tooley.
 24 Q. I'm going to show you Detective Tooley's
 25 Declaration of Warrant Summons.

1 Could you review that and see if 63
 2 that refreshes your recollection as to what date the
 3 search warrant was served.
 4 A. That would be on April 7 of 2010.
 5 Q. And the address was 2205 Beverly Way in
 6 Las Vegas, Clark County, Nevada?
 7 A. Correct.
 8 Q. Now, you weren't responsible for
 9 obtaining the search warrant in any way; is that
 10 correct?
 11 A. Correct.
 12 Q. That would have been Detective Tooley?
 13 A. Yes.
 14 Q. So what was your role in going to that
 15 location when she had the -- when she actually had
 16 obtained a search warrant for that residence?
 17 A. Once the residence is secured and safe,
 18 then we enter, and my role would have been just to do
 19 a computer forensics preview of any of the digital
 20 media that we find there.
 21 Q. So when you went into the residence did
 22 you find any digital media that you were going to
 23 conduct a preview on?
 24 A. Yes, I did, a, what I believe was a
 25 shuttle. It's just called a shuttle. It was a mini

1 computer. 64
 2 Q. A shuttle?
 3 A. It's just a name.
 4 THE COURT: It was a shuttle means a
 5 what?
 6 THE WITNESS: It's just a name for a
 7 computer. It's just a computer. It's just the box
 8 that it's in. We call it a shuttle.
 9 BY MS. MONROE:
 10 Q. Was that the only computer that you
 11 actually looked at or previewed when you went to that
 12 location?
 13 A. Yes.
 14 Q. And when you preview it, what exactly do
 15 you do?
 16 A. Basically, I take my laptop and I attach
 17 it with my write blocker to the hard drive that's in
 18 that computer. So, basically, I pull the case cover
 19 off of that computer and then I attach my write
 20 blockers to that computer so, again, not to tamper
 21 with any of the evidence and no writing to that
 22 evidence. And then I just do a basic acquisition of
 23 the computer which just shows me generally what's on
 24 there at the time.
 25 Q. Now, when you did your preview of the

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1 shuttle or the little computer, did you find 65
2 anything, any child porn?
3 A. Yes, I did.
4 Q. Once you found the child porn, what was
5 your role; what did you do then?
6 A. As soon as I locate anything that is of
7 evidentiary value, I go ahead and contact the
8 detective and tell them, look, this is containing
9 contraband, what you were looking for.
10 Q. And when you say you contacted the
11 detective, who would that have been?
12 A. Detective Tooley.
13 Q. And why would Detective Tooley be the one
14 that you contact?
15 A. She's the assigned investigator for that
16 case.
17 Q. So when you found child porn on this
18 shuttle, I'll call it a shuttle, you then just
19 basically let the detective, Detective Tooley know,
20 and you shut it all down, and was that computer taken
21 into evidence?
22 A. I let the detective know, and I left it
23 up for -- because she was doing an interview. So
24 when she came back in the residence is when I
25 informed her that there was child pornography on that

1 A. I'm not sure if it was previewed, but I 67
2 know it was left there, so to me that would tell me
3 most likely yes.
4 Q. And then you said there were two other
5 computers that were looked at. Where were those
6 computers located?
7 A. Another computer was in the living room,
8 and then there was an additional room that was in the
9 back of the house. It was kind of like an addition
10 area. They were all pretty much in the general area
11 of the living room.
12 Q. And you didn't preview those other two?
13 A. No.
14 Q. Do you know who previewed those other
15 two?
16 A. That would have been Detective Ehlers and
17 I want to say Detective Tafoya (phonetic).
18 Q. And so once they're previewed, then a
19 determination, if there's child porn found, the
20 determination is made to let the lead detective know
21 and that person will be responsible for impounding
22 those computers?
23 A. Yes.
24 Q. Do you know how many computers were taken
25 out of the residence to be examined later?

1 computer. 66
2 Q. Where was the computer that you looked at
3 located in the residence?
4 A. When you walk into the house it was on
5 the -- to my left of the residence, which was by the
6 kitchen area. So that would have been the
7 northwestern area of the house.
8 Q. But by the kitchen area?
9 A. Yes.
10 Q. And then did you see other computers in
11 the residence, even though you may not have previewed
12 them, did you locate other computers in the
13 residence?
14 A. Yes.
15 Q. Now, how many other computers were
16 previewed, if you know?
17 A. I think there was a computer that was
18 actually left there that was looked at that was a
19 college student's. And then there was two other
20 computers that were actually looked at.
21 Q. The computer that you thought was the
22 college student's, where was that located?
23 A. That was located in the first bedroom
24 that you enter on the right.
25 Q. Was that previewed?

1 A. I believe two were taken to be examined. 68
2 It could have been three. I'm not a hundred percent
3 sure.
4 Q. You know that the one that you previewed
5 would have been taken?
6 A. Yes.
7 Q. And there may have been another one or
8 two others that may have been taken?
9 A. Yes.
10 Q. To your knowledge was child porn found on
11 any other computers other than the one that you
12 previewed?
13 A. Yes.
14 Q. After you preview it and find it, what is
15 your role after it's turned over to the lead
16 detective?
17 A. After that it's turned over to the lead
18 detective, who's responsible for the chain of custody
19 impounding the computers, and after that they just go
20 through it and it gets submitted to our sergeant for
21 analysis.
22 Q. Now, did you play any role in the
23 analysis of the two, possibly three computers that
24 would have been taken from the Beverly residence?
25 A. No.

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1 Q. Did you ever come into contact with a
2 person identified as Anthony Castaneda?
3 A. Yes, I did.
4 Q. When was that?
5 A. That was actually at the house at the
6 search warrant, day of the search warrant.
7 Q. And you said that -- I believe you said
8 that Tooley was out doing an interview?
9 A. Yes.
10 Q. And who was the person that she was
11 interviewing?
12 A. Mr. Castaneda.
13 Q. And then at some point Mr. Castaneda was
14 brought back into the house?
15 A. Yes.
16 Q. And that was when you saw him or at least
17 to identify him?
18 A. Yes.
19 Q. Do you see Mr. Castaneda, the person that
20 was brought into the residence when you conducted --
21 after you conducted your search warrant, do you see
22 that person here in court today?
23 A. Yes, I do.
24 Q. What I need you to do is describe an
25 article of clothing that person has on and where that

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1 person is located here in the courtroom.
2 A. Mr. Castaneda is sitting on the bench
3 right there, and he's wearing a blue snook top with
4 glasses, a little facial hair, and baldheaded and some
5 grayish hair on his head.
6 MS. MONROE: May the record reflect the
7 identification of the defendant?
8 THE COURT: Yes.
9 BY MS. MONROE:
10 Q. Did you ever have or show Mr. Castaneda
11 anything that you had recovered or located in the
12 residence on the computers?
13 A. Yes, I did.
14 Q. And how did that come up?
15 A. Detective Tooley entered the residence,
16 and I told her that I had found some images of what I
17 believed to be child pornography. She informed
18 Mr. Castaneda, and I can't remember exactly what he
19 said, but then -- so I said, well, I'm looking at
20 your computer through mine.
21 So I turned my laptop, and I said,
22 this is what's on your computer, and it was some of
23 the images, and he says, oh, yeah, those are kids.
24 And then he just said I'm sorry and that was all.
25 Q. Was that the extent of your involvement

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1 in this particular case, Detective Ramirez?
2 A. Yes.
3 MS. MONROE: I'll pass the witness, your
4 Honor.
5 THE COURT: Cross-examination.
6 MR. GELLER: Thank you, Judge.
7
8 CROSS-EXAMINATION
9 BY MR. GELLER:
10 Q. And, just to clarify, from his statement
11 he acknowledged that those were children, but did not
12 say that he was responsible for putting those picture
13 on?
14 A. No, he did not.
15 Q. You testified during direct examination
16 about the file creation dates. I'd like to make a
17 distinction. If I have a digital camera, let's say,
18 for example, I were to take a picture of, say, the
19 stapler that's on the desk here, would that digital
20 camera essentially put that information as to when
21 the picture was taken and embed that into the file?
22 A. No.
23 Q. So there would be no creation date
24 associated with when a picture was actually taken by
25 a digital camera?

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1 A. No.
2 Q. So the creation dates that you testified
3 to, I believe you said were November of 2008; is that
4 correct?
5 A. Yes.
6 Q. And were those creation dates, did they
7 come down to the hour, minute, and second?
8 A. Yes.
9 Q. Are they all identical?
10 A. To the minutes, yes; seconds, no.
11 Q. And I'm going to have to ask you just for
12 in the interest of speed, we'll go through this
13 Count 1 through 15, if you could just give me that
14 information starting with Count 1 as to the --
15 THE COURT: You mean the exhibit?
16 MR. GELLER: I can give you a copy of the
17 Complaint.
18 THE WITNESS: I'd have to see the actual
19 image, because mine are numbered different than
20 yours.
21 BY MR. GELLER:
22 Q. Would it be possible if I give you the
23 file name, can you do it that way?
24 A. Yes.
25 MS. MONROE: Remember, he didn't have all

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1 of them. 73
2 MR. GELLER: Right, but my understanding
3 is that he subsequently looked into the creation
4 dates.
5 THE WITNESS: On the ones that I said
6 that I identified as the ones that I saw.
7 BY MR. GELLER:
8 Q. Okay. So if you could start with the
9 first one you have and state the file name for the
10 record and give me the creation date.
11 A. The first file name that I have is
12 adult\girlpics\twogirls.jpg.
13 Q. What would --
14 THE COURT: Hold on. Without an 01, just
15 twogirls, right?
16 THE WITNESS: Yeah.
17 THE COURT: So that's Exhibit 5.
18 MS. MONROE: I don't think so. There are
19 more images on this than were admitted.
20 THE COURT: On what?
21 MS. MONROE: On his report. He's looking
22 at numerous images, and not all of them --
23 THE COURT: Here's the exhibits. They're
24 labeled on the back. So why don't we just start, for
25 sake of Exhibit 1, and you can skip, since they all

1 came from the file adult\girlpics\ and just give us 74
2 file name, the tail end.
3 MR. GELLER: I didn't want to mess up.
4 Just read the file name; is that how we want to do
5 it?
6 THE COURT: I have as Exhibit 1 file name
7 twogirls01.jpg. What's the file creation date?
8 THE WITNESS: File creation date is
9 11-25-08, time is 04:01:28 a.m., 28 seconds.
10 BY MR. GELLER:
11 Q. All right. If you can move on to the
12 next one you were responsible for recovering.
13 MS. MONROE: Why don't you give him the
14 name on it.
15 MR. GELLER: Certainly.
16 Girlondick06.bmp.
17 THE COURT: That's Exhibit 2.
18 MR. GELLER: Yes. Girlondick06.bmp.
19 THE WITNESS: File created 11-25-08, time
20 04:01:42 a.m.
21 BY MR. GELLER:
22 Q. And you testified about girlondick08.jpg.
23 A. File created date 11-25-08, time
24 04:01:42 a.m.
25 Q. Do you have the file creation date for

1 NEW-22.jpg? 75
2 A. File created 11-25-08, time 04:02:07 a.m.
3 Q. File creation for twogirls.jpg?
4 A. File created date 11-25-08, time
5 04:01:28 a.m.
6 Q. Do you have file the creation dated for
7 EURO-002.jpg?
8 THE COURT: Wait, hold on. I don't think
9 that's one we admitted.
10 MS. MONROE: It wasn't.
11 BY MR. GELLER:
12 Q. Okay. Do you have the file creation
13 dated for NEW-05?
14 MS. MONROE: That's Count 7, and I think
15 we withdrew 07.
16 THE WITNESS: I'm at No. 9.
17 THE COURT: Exhibit 9?
18 THE WITNESS: Yes.
19 BY MR. GELLER:
20 Q. Do you have a file creation for girl69?
21 A. Yes.
22 Q. What is that?
23 A. That is 11-25-08, time 04:01:38 a.m.
24 Q. Do you have a file creation date for
25 NEW-43?

1 THE COURT: Hold on. I think that was 76
2 withdrawn.
3 MR. GELLER: It may have been. Actually,
4 I did write down 10 and 11 withdrawn. It was a
5 little confusing for me.
6 MS. MONROE: It was confusing for me.
7 MR. GELLER: I'll move on to the one
8 featured in Count 12, which would be EURO-001.jpg.
9 MS. MONROE: I think that's Exhibit 13.
10 I think we got a little confused on this.
11 THE WITNESS: No. 12 I have --
12 THE COURT: It would be admitted 13.
13 EURO-001.jpg, Exhibit 13.
14 MS. MONROE: The five images.
15 THE WITNESS: You said EURO-001, correct?
16 THE COURT: Yes.
17 THE WITNESS: That is file created date
18 11-25-08, time 04:01:36 a.m.
19 BY MR. GELLER:
20 Q. Do you have the file creation date
21 NEW-33.jpg?
22 THE COURT: I think that was withdrawn.
23 THE WITNESS: No, my next one is 47,
24 NEW-47.
25 BY MR. GELLER:

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1 Q. That's the next one you have? 77
2 A. The next one.
3 THE COURT: Exhibit 12 on the back?
4 THE WITNESS: Yes.
5 MS. MONROE: That's the one I'll have to
6 amend. 47?
7 THE WITNESS: Correct.
8 THE COURT: Go ahead.
9 THE WITNESS: File created date is
10 11-25-08, time is 4:02:11 a.m.
11 BY MR. GELLER:
12 Q. Did you have occasion to examine the file
13 creation dates with respect to child pornography
14 located on other computers in the residence?
15 A. No.
16 Q. Presumably, that information does exist?
17 A. Yes.
18 Q. Would it be physically possible if the
19 flash drives that were seized were actually
20 manufactured in '09, would it be possible to have
21 images with this creation date of 2008?
22 A. Yes.
23 Q. How is that possible?
24 A. The last written date could be earlier or
25 later. What happens is when that file is copied

1 over, that's when that date could be from the 78
2 original one. So that's why you could show, say, an
3 '06 created date or written date when it was -- when
4 the created date is, say, even before that.
5 Q. Let's go back to my stapler analogy, if
6 we can. If I were to take a digital photograph of
7 this stapler, let's say in the year 2006, and I put
8 it onto -- on January 1, 2006, I transfer that image
9 to a computer.
10 A. Correct.
11 Q. So January 1, 2006, that would be the
12 creation date associated with the picture of that
13 stapler?
14 A. Correct.
15 Q. And if I subsequently transferred that
16 image to multiple devices on another computer, a
17 thumb drive, so on and so forth, the original date
18 that the file was transferred to the computer would
19 be maintained as the creation date; is that right?
20 A. The creation date will be maintained.
21 The last written date will be the one that changed
22 because that's when you're copying it over.
23 Q. So there's something called a creation
24 date and there's something called a written date?
25 A. Correct.

1 Q. Did you acquire writing dates or written 79
2 dates?
3 A. All those dates are last written. The
4 ones -- the dates that I have are file created date,
5 last access date, and last written date. Those are
6 the three main dates that I bookmark and copy.
7 Q. So the dates that we just went over,
8 correct me if I'm wrong, those were the creation
9 dates?
10 A. Correct.
11 Q. So that would have been the date that the
12 photos were originally taken from a digital camera
13 and put onto somebody's computer?
14 A. Correct.
15 Q. Not necessarily Mr. Castaneda's?
16 A. Correct. Any device. We're not sure
17 what device at that point. As far as my examination,
18 all I have is the thumb drive.
19 Q. And then there's the written date?
20 A. Correct.
21 Q. And that would be the date that the files
22 were transported from another source, such as the
23 Internet, to Mr. Castaneda's thumb drive or computer?
24 A. That would be the date that was actually
25 written originally, and that's why if you copy it

1 over, it will keep that written date, but it can, 80
2 like you said, if it was an '06 and now it's '07, and
3 that thumb drive is bought in '07, but yet it shows
4 an '06 date, that's why, because that date is from
5 the original computer. So those last written dates
6 will be on the -- or should be on whatever computer
7 that it came from.
8 Q. So the concept between a creation date
9 and a written date is backwards?
10 A. Yeah.
11 Q. So the date that you just gave me would
12 be considered the written dates?
13 A. The dates I gave you, the 11-25-08?
14 Q. Yes.
15 A. That is the file created date. That's
16 when that file was created on that thumb drive.
17 Q. On the thumb drive.
18 And then you have something that's
19 called an access log that you can view associated
20 with these?
21 A. Last access.
22 Q. You say last access. Does the access log
23 or the last access log only allow you to determine
24 the most recent time that an image was viewed or does
25 it allow you to see each and every time an image was

1 viewed? 81

2 A. All that shows you is the last time that

3 thumb drive was accessed, that thumb drive was

4 plugged in somewhere.

5 Q. Just the thumb drive as a whole?

6 A. Correct.

7 Q. So, if I understand correctly, we're

8 going back to the analogy of the picture of the

9 stapler. If I had a picture of a stapler on my

10 computer and opened it up say on the 1st of the

11 month, 15th of the month, and the 30th of the month,

12 you would never be able to tell that?

13 A. No, you could do further analysis, but

14 from what the computer just generally gives you, it

15 will give you these three dates.

16 Q. You mentioned that that can be determined

17 from further analysis. Is that something that Metro

18 does?

19 A. Yes.

20 Q. Was that done in this case to your

21 knowledge that?

22 A. It would be whoever did the actual

23 examination on the computer, and I'm not -- depending

24 on what type of file it is, he might just be able to

25 tell how many times that was opened and not exactly

1 the exact dates that that file was opened. 82

2 Q. Is it standard procedure within Metro to

3 perform that analysis to determine when pictures --

4 A. We pretty much just see if that file was

5 just accessed and get the basic last written,

6 created, and access dates.

7 Q. But it sounds like from your testimony

8 Metro has the capability to determine each and every

9 time it was opened?

10 A. Capability, whether you can get it or

11 not, it depends on the software.

12 Q. In this case the operating system was

13 Windows NT; is that right?

14 A. I'm not sure what operating system he had

15 on those machines because I didn't do the actual

16 computers.

17 Q. With respect to the last access log, were

18 all the dates the same with respect to all of these

19 images?

20 A. Yes.

21 Q. What was the date of the last access?

22 A. The last access, that's the last time the

23 thumb drive was accessed, that was 02-07-2010.

24 Q. If I understand you correctly, and I

25 apologize if I keep repeating myself here, you're not

1 aware of what instances these pictures may have been 83

2 viewed prior?

3 A. No.

4 Q. During your analysis of the computers,

5 did you determine if there were any files that were

6 encrypted on the computer -- on the flash drive

7 rather?

8 A. No.

9 Q. Is that something that typically you will

10 look for, encrypted information?

11 A. I'd be able to see it right away. In

12 this case I didn't see anything that was encrypted.

13 Q. What is it that you can see on the

14 computer that indicated to you that there's encrypted

15 information?

16 A. If I have a zip drive and I try to open

17 the zip drive, it will prompt me for a password.

18 Q. You mentioned that there was also a file

19 path. I believe it was adult\girls, something to

20 that effect?

21 A. Yes.

22 Q. Is your analysis able to determine when

23 that file path was created?

24 A. Not on the thumb drive.

25 Q. Not on the thumb drive?

1 A. No. 84

2 Q. Can it be done with respect to the

3 laptops or desktop computer; for instance, the

4 shuttle?

5 A. That would be hard to say when the actual

6 folder was actually created. You know, you couldn't

7 really pinpoint when that photo was created exactly

8 at this time, so -- and it depends on if that folder

9 was created and moved to other places or -- it would

10 be hard to determine that, when the actual folder

11 was created.

12 Q. When you get this information with

13 respect to a picture, are you simply right clicking

14 on it and hitting properties and reading what else is

15 displayed in properties or is the analysis more in

16 depth than that?

17 A. No, the actual program we use does --

18 that actually pulls up all the dates and times of

19 that picture and it puts them in what's called a

20 gallery so we can view them in their natural state.

21 So we can export the picture, copy

22 out the picture, and then look at it from -- with a

23 different viewer, but technically we pretty much just

24 look at it the way the computer shows it to us and

25 it's supposed to be the way it's seen on his.

1 Q. Now, did you have any information with 85
2 respect to your analysis of the shuttle that that
3 computer had ever been reformatted?
4 A. No.
5 Q. Is that something that Metro can
6 determine?
7 A. We can tell what programs have been on
8 there. Typically, that detective would have looked
9 at the registry files.
10 Q. During the search phase of the
11 investigation, did one of the computers to your
12 knowledge not have a power supply associated with it?
13 A. I'm not sure.
14 Q. If you know, were the images that were on
15 the thumb drive in the exact same file path located
16 on the other computer, the shuttle?
17 A. I believe they were, but, like I said,
18 I'd have to look at the report and verify that.
19 Q. Is that information you have there?
20 A. No. That would be Detective Ehlers.
21 Q. During the course of your investigation,
22 did you come across any information that would
23 suggest Mr. Castaneda was a member of a child
24 pornography website that distributes this type of
25 information?

1 A. No. 86
2 Q. Is that something that Metro investigates
3 on these types of cases?
4 A. On the main computers we would look at
5 all his cookies and all the websites that he did go
6 to. And we do look for just general, we do what's
7 called an Internet history search and see what he's
8 actually gone to, what search terms he's put in for,
9 what he's actually looking for, yes.
10 Q. You're not personally aware of any
11 evidence --
12 A. I didn't conduct that part of the
13 investigation.
14 MR. GELLER: Court's indulgence for just
15 a moment.
16 BY MR. GELLER:
17 Q. Are you aware of what year the shuttle PC
18 was manufactured?
19 A. No.
20 Q. Were you aware of what year the Dell was
21 manufactured?
22 MS. MONROE: Your Honor, I'm going to
23 object. There was no testimony that a Dell computer
24 was found, so --
25 THE COURT: Sustained.

1 THE WITNESS: Like I said -- 87
2 THE COURT: There's no question pending.
3 MR. GELLER: I apologize.
4 BY MR. GELLER:
5 Q. What I meant to ask you was are you aware
6 of when the operating system was installed on the
7 shuttle?
8 A. I didn't do the shuttle, and since I did
9 just basic preview, that would be more into my full
10 analysis, then I would do a Windows initialization
11 and see when the operating system was actually
12 installed and the dates and times of that, and that's
13 through the Windows registry also.
14 Q. Is that something that would be normally
15 done by Metro?
16 A. We do that, but not for preview.
17 Q. Were you able to determine during your
18 analysis whether or not the entire folder and file
19 path was copied in one transfer as opposed to the
20 file being placed one by one into that particular
21 folder?
22 A. I would have to be the one that did the
23 actual computer, so . . .
24 MR. GELLER: I apologize, Judge.
25 THE COURT: I think what he testified to

1 is he only forensically analyzed his drive and only 88
2 previewed one or two computers in the home.
3 THE WITNESS: I previewed one.
4 THE COURT: One.
5 So he didn't forensically analyze
6 any of the stand-alones or any of the laptops. I
7 think your questions are more directed at the
8 forensic analysis of those computers, not previews.
9 MR. GELLER: I think you're right. We'll
10 pass the witness.
11 THE COURT: I have one question.
12
13 EXAMINATION
14 BY THE COURT:
15 Q. On the flash drive that you forensically
16 analyzed, you said you found identifier images and
17 then you found these other pornography, child
18 pornography and bestiality images, I think you said.
19 Did you find any other types of
20 images, generic images, vacation images, family
21 images, anything?
22 A. There's pretty much I'd have to look at
23 the whole drive again or the thumb drive again.
24 Typically, you'll have Windows based images.
25 Q. Right, those sample things?

1 A. Yeah. 89
 2 Q. Any other more personalized images that
 3 could be attributed to an owner?
 4 A. Just the images of the ID cards that I
 5 found, driver's license.
 6 Q. Other than those?
 7 A. No, I don't think I found any documents.
 8 Typically, I would look for
 9 documents, personal resumes and things like that, and
 10 the only thing I found was the certificates for his
 11 degree.
 12 Q. So other than the, what we're calling the
 13 identifier images, other than the pornographic images
 14 and the sample images that the computer puts on there
 15 or whatever, there was no other images that you can
 16 remember in that gallery?
 17 A. Not just the general stuff. I'd have to
 18 go back and actually look at it and see.
 19 Q. But you don't remember anything?
 20 A. No.
 21 THE COURT: All right. Redirect.
 22
 23
 24
 25 REDIRECT EXAMINATION

1 the true date that that file was actually put on that 91
 2 computer.
 3 Q. And do you have the written dates?
 4 A. Yes.
 5 Q. And I don't think -- we didn't go through
 6 those, did we?
 7 A. No.
 8 Q. Those are different from the created
 9 dates?
 10 A. Yes.
 11 Q. Let's go through the written dates then.
 12 A. The first one I have is Exhibit No. 1,
 13 and it's twogirls01.jpg, and the last written date is
 14 08-09-07 with a time of 7:29:14 a.m.
 15 Exhibit No. 2 I have it as
 16 girlondick06.bmp. That is last written 08-13-07,
 17 time 10:07:54 p.m.
 18 Exhibit No. 3 I have as
 19 girlondick08.jpg, last written 08-13-07, time
 20 10:09:00 p.m.
 21 Exhibit No. 4 I have as capital
 22 NEW-22.jpg, last written 08-11-07, time 01:03:18 a.m.
 23 Exhibit No. 5 I have as
 24 twogirls.jpg. Last written date is 08-09-07, time
 25 7:30:54 a.m.

1 BY MS. MONROE: 90
 2 Q. Just a couple, because I got a little
 3 confused on the creation date and the written date.
 4 What is the creation date? Not
 5 this specific. What is it in general; what's the
 6 creation date?
 7 A. It's just basically when that file was
 8 created.
 9 Q. When you say when that file was created,
 10 that would have been the person who was actually
 11 photographing the child in person and then putting
 12 that picture out there; is that what you mean by the
 13 creation date?
 14 A. No, on his machine.
 15 Q. On his machine. So when -- if that's
 16 Mr. Castaneda's thumb drive with his identifiers on
 17 it, the creation date is the date that he would have
 18 downloaded those images onto that thumb drive?
 19 A. They were put on that machine or that
 20 thumb drive, yes.
 21 Q. And then there was a written date, and
 22 what was that?
 23 A. A written date is -- it's kind of
 24 strange. People get confused with the file created
 25 date and the last written date. The written date is

1 Exhibit No. 9 I have as capital 92
 2 GIRL69.jpg. Last written time is 08-09-07, time is
 3 6:29:02 a.m.
 4 Exhibit No. 13 I have as
 5 EURO-001.jpg. Last written is 02-07-10, time
 6 10:03:54 p.m.
 7 In Exhibit No. 12 I have as
 8 capital NEW-47.jpg. Last written is 08-11-07, time
 9 is 01:15:20 a.m.
 10 Q. So when you say the written dates on the
 11 computer, that's the time that they would have
 12 actually been downloaded onto a computer, not on this
 13 flash drive?
 14 A. Correct.
 15 Q. And then the created dates are the dates
 16 that these photographs would have been downloaded
 17 onto the thumb drive or flash drive?
 18 A. Correct.
 19 Q. And I think that is all that I had for
 20 you.
 21 Let me ask you this. You said
 22 that you were familiar with some of these images.
 23 Why is that?
 24 A. Just through the training and through the
 25 amount of cases that we've gone through and what we

1 do is we send all the images we find on the computer 93
2 that we believe are of child pornography and we send
3 them to the National Center For Missing And Exploited
4 Children. They have a database there and they also
5 physically look at the images and they identify which
6 of those images are known images, which images are
7 series, and which are of minor children.
8 Q. So some of these images you've actually
9 seen in other investigations?
10 A. Correct.
11 Q. So how would somebody go about getting
12 these images to download onto their computers, series
13 of these images that you've seen on more than one
14 occasion?
15 A. Most popular right now is through Line
16 Wire, but there are other -- you can go to Russian
17 sites that are not under our control in the States.
18 So you can go to UK sites, .RU, .UK sites and
19 download some of these images.
20 Q. Now, I know you did not do the forensic
21 analysis of the actual computers, but the person, if
22 you were the one doing it, would you have been able
23 to tell how these sites would have been downloaded on
24 the computer? Does the computer store that
25 information?

1 A. I would have just been able to tell what 94
2 sites he actually went to.
3 Q. You can tell that on the computer?
4 A. If I'm searching for -- if that's in my
5 search warrant of what I need to look for, then yes,
6 I would look for that. If that's what I'm asked to
7 look for.
8 Q. Now, the identifiers that we talked
9 about, identifiers that you said also contained
10 Mr. Castaneda's information, what exactly, what
11 identifiers did you actually find?
12 Look at your images and go through
13 exactly what images you found.
14 A. I found one image that contained three
15 identification cards. One was his Nevada
16 identification card. The other was a Rebel card. A
17 University of Nevada Las Vegas card. And his faculty
18 staff ID card. And another one was the Social
19 Security card with the name Anthony Castaneda.
20 Q. Now, on those three can you tell what the
21 creation date is on those?
22 A. The file created date on those was 12-01
23 of '08.
24 Q. What about the written date?
25 A. Last written date was 4-25 of '06, time

1 11:38:01. 95
2 THE COURT: What was the written date?
3 THE WITNESS: 4-25 of '06.
4 And I bookmarked two other
5 documents. One was a California State, Fresno,
6 Degree of Bachelor of Science to Mr. Anthony
7 Castaneda. And that last written date was also
8 4-25-06 with a time of 11:2 -- I'm sorry,
9 11:02:34 a.m.
10 BY MS. MONROE:
11 Q. What was the creation date?
12 A. 4-25 of '06.
13 Q. So that document went on that thumb drive
14 on the 4-28-06?
15 A. 4-25 of '06, but it actually went on --
16 the file created date on that was 12-01-08.
17 Q. I thought that was the creation date?
18 A. I'm sorry, the creation date is 12-01-08,
19 and the last written was 4-25 of '06.
20 Q. Then what was the other identifier?
21 A. The last identifier was an Army diploma.
22 Q. Is that also in the defendant's name?
23 A. Yes.
24 Q. What is the creation date on that?
25 A. The creation date, file created date was

1 12-01-08, time 03:57:27 a.m. The last written date 96
2 was 4-25-06, time 11:03:36 a.m.
3 Q. When you say the last written date, I
4 thought that was just one date. What do you mean the
5 last written date?
6 A. The last written date is basically when
7 it was put on the actual computer.
8 Q. So it's kind of the written date, it's
9 not the last written date?
10 A. They just list it as the last written
11 date.
12 MS. MONROE: All right. That's all I
13 have. I'll pass the witness.
14 THE COURT: Any other questions?
15
16 RE-CROSS-EXAMINATION
17 BY MR. GELLER:
18 Q. I just wanted you to reconcile, maybe the
19 created date are misnomers because the dates that you
20 just gave me or you gave us, it sounds to me like the
21 created date is more recent in time than the written
22 date?
23 A. Correct.
24 Q. So would you say those are just misnomers
25 because that's kind of confusing?

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1 A. The last written date, if it's different 97
2 than the file created date, means that that file was
3 copied or moved. So in this case I'm investigating a
4 thumb drive. So when I see that date, that's exactly
5 what it tells me. If I see a date that's way before
6 the created date, that just tells me, okay, that file
7 was definitely moved from another computer to this.
8 Q. So when I see the word created, I could
9 probably input copied or moved to ease my
10 understanding?
11 A. Written would be copied and moved.
12 Created would be that's when that was created on that
13 thumb drive, on that device, whatever the device is.
14 MR. GELLER: Thank you. No further
15 questions.
16 MS. MONROE: Nothing.
17 THE COURT: Thank you very much.
18
19 (Witness excused)
20
21 Did you talk to your witnesses
22 about when you want to resume on Thursday?
23 MS. MONROE: Let me talk to them real
24 quick.
25

1 (Discussion off the record.) 98
2
3 THE COURT: These are the more
4 significant witnesses. I thought he was supposed to
5 be the easy one.
6 MS. MONROE: He was.
7 THE COURT: I suggest we start at 1.
8 Okay, thank you.
9 MS. MONROE: Thank you, your Honor.
10
11 (Preliminary hearing continued to
12 Thursday, April 14, 2011 at 1:00 p.m.)
13
14 ---000---
15 ATTEST: Full, true and accurate transcript of
16 proceedings. *Gerri De Luca*
17 *Gerri De Luca*
18 GERRI DE LUCCA, C.C.R. NO. 82
19
20
21
22
23
24
25

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP 99
2 COUNTY OF CLARK, STATE OF NEVADA
3
4 STATE OF NEVADA,
5 Plaintiff,
6 vs. Case No. 11F03995X
7 ANTHONY CASTANEDA, ATTEST RE: NRS 239B.030
8 Defendant.
9
10
11 STATE OF NEVADA }
12 COUNTY OF CLARK } SS
13
14 I, Gerri De Luca, a Certified Shorthand
15 Reporter within and for the County of Clark and the
16 State of Nevada, do hereby certify:
17 That REPORTER'S TRANSCRIPT OF PROCEEDINGS
18 was reported in open court pursuant to NRS 3.360
19 regarding the above proceedings in Las Vegas Justice
20 Court, 200 Lewis Avenue, Las Vegas, Nevada.
21 That said TRANSCRIPT:
22 X Does not contain the Social Security
23 number of any person.
24 _____ Contains the Social Security number
25 of a person.

1 ---000--- 100
2 ATTEST: I further certify that I am not interested
3 in the events of this action. *Gerri De Luca*
4 *Gerri De Luca*
5 GERRI DE LUCCA, C.C.R. NO. 82
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AA0070

ANTHONY CASTANEDA,
#2799593,
Appellant,

v.

STATE OF NEVADA,

Respondent.

Electronically Filed
May 29 2018 10:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
D.C. Case: C-11-272657-1
Dept.: V

Eighth Judicial District Court, Clark County

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MASTER INDEX

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CERTIFICATE OF SERVICE

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action, and that on the 28th day of May, 2018, I served a copy of the foregoing: Appellant's Appendix and Index, Volumes 1 and 2, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by United States first-class mail to the Nevada Attorney General and the Petitioner/Appellant as follows:

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at home address

By: /s/ Ila C. Wills
Assistant to T. M. Jackson, Esquire

APPLICATION AND AFFIDAVIT
for
SEARCH WARRANTSTATE OF NEVADA)
)
COUNTY OF CLARK)FILED
FEB 24 1 10 PM '10
CLERK *[Signature]*
COURT

I, Detective Shannon Tooley P# 6224, being first sworn deposes and states that she is the Affiant herein and is a Police Detective with the Las Vegas Metropolitan Police Department (LVMPD). Affiant is currently assigned to the Detective Bureau, Crimes Against Youth and Family Bureau, Internet Crimes Against Children Task Force (ICACTF) and has been employed with the Las Vegas Metropolitan Department as a Police Officer since June of 1999. There is probable cause to believe that certain property hereinafter described will be found on the following item of digital evidence, currently in the possession of the LVMPD:

1. Imation Flash Drive 8GB

The digital data referred to and sought to be analyzed / seized from the digital storage device consists of the following:

1. Any data evidence of visual depictions/representations (images and videos) that depict minors (real or animated) in an erotic, sensual or sexual manner. This would include depictions of children engaged in any form of sexual activity or simulated sexual activity, children displaying their genitals in a lewd and lascivious manner, children displayed in any manner of undress (partial or complete), and children who are clothed, but displayed in a sexually suggestive, erotic, or sensual manner.
2. Any data evidence of Internet activity associated with web sites visited relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest, and file sharing etc.
3. Any data evidence of digital communications (such as e-mail, instant messaging / chatting, file sharing) relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
4. Any data evidence relating to file sharing applications and processes.
5. Any text based data / files relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
6. Any text based data / files relating to Internet search terms, email addresses, screen

names, web site addresses, children's names and passwords.

7. Any data / files which would tend to establish the identity of persons in control of said data, which items of property would consist in part of and include, but not be limited to personal pictures, documents, education/work certificates, e-mail correspondence, bills, receipts, bank account information, software registration information, computer account information, file date access information, web site account information, Internet activity information which tend to show possession, dominion and control over said device(s) / data of investigative interest.
8. Together with the aforementioned to be seized, is other indicia evidence of storage device (flash drive) usage, ownership, possession, or control of said evidence / data.

Digital Evidence Forensics Component:

Because of the nature of this investigation, as outlined below in the probable cause of this affidavit, your affiant is requesting authorization to remove any items of digital related evidence to a location suitable for the analysis of this evidence with the LVMPD.

Authorization is requested to conduct a digital forensic analysis, using industry standard accepted methods, of any items of digital evidence recovered pursuant to this search warrant.

Such examination will be conducted by an individual trained in the analysis of digital evidence according to accepted industry standard methodologies in a proper lab environment at the Las Vegas Metropolitan Police Department.

Also, this analysis may include the search of password protected and/or encrypted files.

It should be noted that digital evidence analysis is a highly technical process requiring trained professionals using appropriate equipment, software and techniques to complete an analysis. This digital evidence analysis can be a lengthy process. In fact, it is not unusual for the analysis of a single hard drive to take up to two or more weeks to complete the analysis and reporting process on after initially assigned for an investigator to start.

Affiant Background Information:

Your Affiant is a Police Detective with the Las Vegas Metropolitan Police Department who is cross-deputized as a Special Deputy United States Marshal with the Federal Bureau of Investigation, assigned to the Internet Crimes Against Children Task Force. As a result of her assignment, she investigates matters relating to child exploitation and the use of high technology and the Internet. This typically involves cases related to child luring and child pornography.

Affiant is currently in her eleventh (11th) year as a law enforcement officer with the LVMPD, five (5) years of which she has been conducting felony sex crimes investigations (sexual assault, child sexual abuse, child pornography and child luring etc.). She has been working with the Las Vegas Internet Crimes Against Children Task Force, where she has been currently assigned for the past 2 years.

Affiant has conducted, participated in, and/or consulted in over 800 sexual related crimes, including investigations of individuals and locations suspected of the sexual exploitation of children and has participated in the execution of numerous search warrants which have resulted in the seizure of multiple items of child pornography and various items of evidence consisting of child sexual exploitation and abuse.

Affiant has received specialized training in the realm of sex crimes and sexually motivated crimes from the LVMPD, FBI, Search Group, Public Agency Training Council, United States Department of Justice Office of Juvenile Justice, Internet Crimes Against Children Program, and Project Safe Childhood. Affiant continues to stay abreast of investigative subject matters related to sexually motivated crimes by participating in and reading professional papers and articles written on related subject matters by industry professionals.

As it relates to computers and digital forensic analysis, affiant has received training through Guidance Software Corporation, National White Collar Crime Center, Search Group and Paraben Corporation. Also, your affiant is certified in handheld (cellular phones/PDA's) data recovery.

Affiant has over 500 hours of training, course work and study in child sexual abuse, child exploitation and computer investigations / forensics.

Probable Cause Offering:

This affidavit is made in support of an application for warrant to search for and seize instrumentalities, fruits, and evidence of violations of Nevada Revised Statutes- Possession of Child Pornography, NRS 200.730

The statements contained in this affidavit are based in part on information gathered through an investigation conducted by your affiant and on her investigation, training, experience and background as a police detective with the Las Vegas Metropolitan Police Department. Since this affidavit is being submitted for the limited purpose of securing a search warrant, affiant has not included each and every fact known to me concerning this investigation. Affiant has set forth only the facts that she believes are necessary to establish probable cause to believe that evidence of violations of NRS 200.730 is located on the aforementioned item.

On February 8, 2010, Tammy Hines, DOB 11-18-67, reported seeing child pornographic images on an Imation flash drive that she had in her possession. Hines further reported

the thumb drive belonged to previous housemate, Anthony Castaneda. This report was documented by your affiant under LVMPD event 100208-1406.

That same day, your affiant conducted a recorded interview with Hines. Hines described she and her family lived at Castaneda's residence, located at 2205 Beverly Way, Las Vegas, Nevada 89104 from November 25, 2009 thru February 3, 2010.

Hines described on February 6, 2010, while unpacking, she found the aforementioned described flash drive. Hines described she recognized the drive as being Castaneda's, but decided to use it for herself.

On February 7, 2010, Hines inserted the flash drive into a computer and observed the following files on the flash drive: Castaneda's birth certificate, social security card, military experience, class certificates, images of adult pornography, bestiality and child pornography.

Hines described the child pornography was located in folders entitled something like "girls" or "girly". Hines described she opened these folders because she was concerned there may be images of her children contained within (note: Hines did not locate any images of her children). Hines described she observed hundreds of images where prepubescent children were displayed with their genitals exposed and/or engaged in sexual acts. Hines provided the following descriptions of just a few of those images:

Image 1: depicts a prepubescent female child with long blonde hair and a penis next to the child's face.

Image 2: depicts the same prepubescent child, but with a penis inserted into the child's mouth.

Image 3: depicts a prepubescent female child lying naked on a bed.

Image 4: depicts a prepubescent female child on her knees with her buttocks in the air exposing her genitals.

Image 5: depicts a prepubescent female child seated on what appears to be a step. The child is wearing a red flower dress with no underwear. The child's dress is pulled up exposing her genitals.

Hines further described Castaneda is computer knowledgeable and has several computers at his residence.

Child Pornography, Collecting and Suspects Information:

Your Affiant knows, through training and experience, as well as the training and experience of other Detectives, that child pornography is not readily available in retail establishments in the United States because it is illegal. Accordingly, individuals who wish to obtain child pornography do so by ordering it from abroad, subscribing to Web sites and groups or by discreet contact with other individuals who share their interests and have it available. The use of electronic/digital storage devices to traffic in, trade or collect child pornography has become one of the preferred methods of obtaining this material. An individual familiar with an electronic/digital storage devices will use it in some private location to interact with another individual or a business offering such materials. The use of an electronic/digital storage device offers individuals interested in obtaining child pornography a sense of anonymity, privacy and secrecy not available elsewhere, as well as the added benefit of speedy transmissions and communications.

Affiant also knows through training and experience, that the most effective way to expand a collection of child pornography is to offer another collector, via a trade over the Internet, images that the trading partner does not already possess. Accordingly, it is necessary to keep a great number of images in storage so as to have adequate material to allow participation in this informal barter system and thus collectors of child pornography tend to retain it for long periods of time. This tendency is enhanced by the increased sense of security that a computer or other digital storage device provides. In addition to the emotional value the images have to the collector, the images of child pornography are intrinsically valuable for trading and/or selling and therefore are rarely destroyed or deleted by a collector. In addition, persons who procure child pornography and who have a proclivity for sexual activity involving children, obtain and retain magazines, films, videos, pictures and other items of child pornography, as well as correspondence, advertising, bills and notes relating to sexual activity involving children for long periods of time and do not dispose of or destroy such materials except to trade with others in exchange for similar items. Individuals who procure child pornography normally and generally keep such material in their residence or other secure location to ensure convenient and ready access as well as to ensure the degree of privacy necessary to enjoy the collection.

Collectors of child pornography who use personal computers in their homes tend to retain their personal files and data for extended periods of time, even if a person has replaced, traded in or "upgraded" to a new personal computer. Your Affiant knows personal computer and/or electronic/digital storage device users to routinely transfer most of their data onto their new computers and/or electronic/digital storage devices when making an upgrade. This data transfer is often done by saving files from the old computer or digital storage devices to media sources, such as a thumb drive, then opening them onto the new computer or digital storage device and saving them to the new hard drive and/or other electronic/digital storage device. Visual data such as child pornography is as likely, if not more so, to be transferred to a person's new or upgraded computer system and/or

electronic/digital storage devices.

Persons involved in the viewing, sending or receiving of child pornography tend to retain it for extended periods of time, even spanning many years. Those interested in child pornography prize the visual images they have obtained, traded and/or sold. It is also understood that no matter how much child pornography a collector has, he never has enough and rarely throws anything away. Another typical feature of a child pornography collection is its constancy. Even if evidence of the existence of a child pornography collection is several years old, chances are he still has the collection now --only it is larger.

Affiant knows that these types of individuals, involved in child pornography, also collect and maintain collateral materials, such as erotica and educational material. Erotica is anything that serves or fuels a sexual purpose for a given individual. Some of the more common types of erotica for these individuals interested in child sexual exploitation / child pornography are collections of images of children in different settings to include, those in different stages of undress, those wearing bathing suits, those at play, those wearing tight clothes or those who are even dressed but are portrayed in a promiscuous, sensual or erotic manner. Additionally, this erotica can include drawings of children and child pornography, cartoons of children and child pornography, diaries relating to children or the offenders interest in children, letters, writings or stories about children and child sexual exploitation etc. Educational material is anything that enhances an individual's ability to commit a sexual related crime, circumvent or thwart law enforcement, and/or manipulate a child, parent or guardian. These typically include books, writings, or articles on these listed subject matters.

Computers, Technology and Digital Forensics:

Computer related, digital evidence can be located throughout a hard drive or other digital media such as, flash drives, by employing a number of forensically sound, industry standard techniques.

In addition to items that a user creates and intentionally saves or downloads from a device or the internet and intentionally saves, a computer forensic analyst can also recover and document items that have been deleted by a user. Computer files and evidentiary remnants of files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the internet. It should be noted, that items deleted from a computer hard drive or other digital media by a user, are not actually erased / eradicated from it. Deleted items are only removed from the user's active view and the space on the hard drive / media that contained the items are marked as available for use. As such, those items / data still remain, intact, on the hard drive until overwritten by other random computer usage. These deleted items can then be recovered using computer forensic practices. Because of this, deleted data can often remain on a hard drive for years before being overwritten and irretrievable.

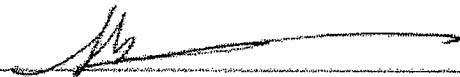
Additionally, there are many other valuable artifacts and system files that can and do exist on computer hard drives and other digital media, that a computer user is completely unaware of, that tracks their activities and computer usage, which can be recovered, interpreted and documented during analysis.

Affiant knows that computer / digital data can be stored on a variety of systems to include, USB flash drives.

Affiant knows that searching a digital storage device is a highly technical process which requires specific expertise, specialized equipment and applications, a significant amount of time and a proper environment suitable for a forensic analysis. It is therefore necessary to perform this search in a controlled laboratory type environment, not out in the field.

Your affiant requests authorization to conduct a complete and thorough computer forensic analysis of the Imation Flash Drive 8GB, (already in the possession of the LVMPD) searching for the previously listed items of evidence located in the form of data within.

Wherefore, Affiant requests that a Search Warrant issue directing a search for and seizure of the aforementioned items at the location set forth.

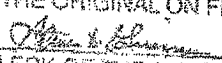

 Detective S. Tooley P# 6224, AFFIANT
 Las Vegas Metropolitan Police Department

Subscribed and sworn to before me this 18th day of February, 2010


 JUDGE

Approved by Deputy DA M. Holthus

CERTIFIED COPY
 DOCUMENT ATTACHED IS A
 TRUE AND CORRECT COPY
 OF THE ORIGINAL ON FILE


 CLERK OF THE COURT

FEB 24 2010

AA 0007

SEARCH WARRANT

STATE OF NEVADA)
)
 COUNTY OF CLARK)

FILED
 FEB 24 1 17 PM '10

The State of Nevada, to any Peace Officer in the County of Clark, proof by Affidavit having been made before me by Detective Shannon Tooley, P# 6224, LVMPD, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause that certain property, namely:

1. Any data evidence of visual depictions/representations (images and videos) that depict minors (real or animated) in an erotic, sensual or sexual manner. This would include depictions of children engaged in any form of sexual activity or simulated sexual activity, children displaying their genitals in a lewd and lascivious manner, children displayed in any manner of undress (partial or complete), and children who are clothed, but displayed in a sexually suggestive, erotic, or sensual manner.
2. Any data evidence of Internet activity associated with web sites visited relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest, and file sharing etc.
3. Any data evidence of digital communications (such as e-mail, instant messaging / chatting, file sharing) relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
4. Any data evidence relating to file sharing applications and processes.
5. Any text based data / files relating to the subject matters involved in this investigation, including but not limited to children, child sexual exploitation, child pornography, incest and file sharing etc.
6. Any text based data / files relating to Internet search terms, email addresses, screen names, web site addresses, children's names and passwords.
7. Any data / files which would tend to establish the identity of persons in control of said data, which items of property would consist in part of and include, but not be limited to personal pictures, documents, education/work certificates, e-mail correspondence, bills, receipts, bank account information, software registration information, computer account information, file date access information, web site account information, Internet activity information which tend to show possession, dominion and control over said device(s) / data of investigative interest.
8. Together with the aforementioned to be seized, is other indicia evidence of

10-215

storage device (thumb drive) usage, ownership, possession, or control of said evidence / data.

Is presently located at/on:

1. Imation Flash Drive 8GB

As I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said property, serving this warrant between 7 a.m. and 7 p.m., and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within 10 days.

Dated this 18th day of February, 2010

JUDGE

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

FEB 7 2010

AA0009

100208-1406

FILED

Page

of

1

RETURN

FEB 24

1 17 PM '10

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

INMATION FLASH DRIVE

COURT

was executed on

02/18/2010

(month, day, year)

A copy of this inventory was left with

case file (100208-1406)

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

flash drive to be imaged (copied)

This inventory was made by:

S-Toolley 6224

L. Rowe 3727

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

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OF THE ORIGINAL ON FILE

CLERK OF THE COURT

FEB 24 2010

AA 0010

APPLICATION AND AFFIDAVIT
for
SEARCH WARRANT

STATE OF NEVADA) premise known as
) 2205 Beverly Way
COUNTY OF CLARK) Las Vegas, Nevada 89104

100-443887-100

Aug 16 2 37 PM '10

CLERK OF THE COURT

1. Detective Shannon Tooley P# 6224, being first sworn deposes and states that she is the Affiant herein and is a Police Detective with the Las Vegas Metropolitan Police Department (LVMPD). Affiant is currently assigned to the Detective Bureau, Crimes Against Youth and Family Bureau, Internet Crimes Against Children Task Force (ICACTF) and has been employed with the Las Vegas Metropolitan Department as a Police Officer since June of 1999.

There is probable cause to believe that certain property hereinafter described will be found at the following described premise:

Premise to be Searched:

2205 Beverly Way, Las Vegas, Nevada 89104. Further described as a single family residence with white brick exterior and blue trim. The residence is located on the east side of Beverly Way and the front door, which has a screen door that opens left to right, faces west. The numbers "2205" are black in color and are affixed to a white placard directly above the mailbox on the north side of the front door. The residence has a circular driveway with a carport affixed to the front center of the residence. The front yard has a short white fence that borders the yard.

Any other storage sheds, storage lockers, out buildings, persons and/or vehicles found on the property (curtilage) or associated with the property described above.

This search shall include, but not limit itself to, any and all closed or locked containers found about the premises and/or surrounding areas associated with the above location.

The digital data referred to and sought to be analyzed / seized from the digital storage device consists of the following:

1. Electronic / Digital Data Storage Devices.
These are described as any and all computer / digital related equipment, including any electronic devices, which are capable of collecting, analyzing, creating, displaying, converting, storing, concealing, or transmitting digital, electronic, magnetic, optical, or similar computer impulses or data.

AA 0011

These items include, but are not limited to the following: computers, hard drives, thumb drives, flash drives, memory cards, memory sticks, camera memory cards / sticks, MP3 players, iPods, Digital video player/recording devices, computer discs (floppy diskettes, CDs, DVDs, Zip disks, Jazz Disks etc).

2. Any physical keys, encryption devices, encryption keys, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices and/or data.
3. Cellular Telephones including any inserted data storage cards, power cords and/or charging materials.
4. Personal Data Assistants including any inserted data storage cards, power cords and/or charging materials.
5. Video Recorders including any inserted data storage cards, power cords and/or charging materials.
6. Visual depictions which could or do depict any minors engaged in any form of sexual activity or who are the subject of a sexual portrayal. These items would include the following: video tape cassettes, photographs, negatives, any film, and/or printed out materials.
7. Any items of collateral material dealing with children, child development, child psychology, sex with children and/or crimes with children including, but not limited to: Erotic or sexual in nature writings, drawings, diaries, souvenirs, sexual aids, letters and books.
8. Any writings, letters, notes, or text detailing computer search terms, web site addresses, screen names, email addresses and/or passwords.
9. Items of personal property which would tend to establish the identity of persons in control of said premises, which items of property would consist in part of and include, but not be limited to personal pictures, documents, mail correspondence, bills, receipts, bank account information, vehicle registration information and/or effects which tend to show possession, dominion and control over said premises.

Digital Evidence Forensics Component:

Because of the nature of this investigation, as outlined below in the probable cause of this affidavit, your affiant is requesting authorization to remove any items of digital related evidence to a location suitable for the analysis of this evidence with the LVMPD.

Authorization is requested to conduct a digital forensic analysis, using industry standard accepted methods, of any items of digital evidence recovered pursuant to this search

warrant.

Such examination will be conducted by an individual trained in the analysis of digital evidence according to accepted industry standard methodologies in a proper lab environment at the Las Vegas Metropolitan Police Department.

Also, this analysis may include the search of password protected and/or encrypted files.

It should be noted that digital evidence analysis is a highly technical process requiring trained professionals using appropriate equipment, software and techniques to complete an analysis. This digital evidence analysis can be a lengthy process. In fact, it is not unusual for the analysis of a single hard drive to take up to two or more weeks to complete the analysis and reporting process on after initially assigned for an investigator to start.

Affiant Background Information:

Your Affiant is a Police Detective with the Las Vegas Metropolitan Police Department who is cross-deputized as a Special Deputy United States Marshal with the Federal Bureau of Investigation, assigned to the Internet Crimes Against Children Task Force. As a result of her assignment, she investigates matters relating to child exploitation and the use of high technology and the Internet. This typically involves cases related to child luring and child pornography.

Affiant is currently in her eleventh (11th) year as a law enforcement officer with the LVMPD, five (5) years of which she has been conducting felony sex crimes investigations (sexual assault, child sexual abuse, child pornography and child luring etc.). She has been working with the Las Vegas Internet Crimes Against Children Task Force, where she has been currently assigned for the past 2 ½ years.

Affiant has conducted, participated in, and/or consulted in over 800 sexual related crimes, including investigations of individuals and locations suspected of the sexual exploitation of children and has participated in the execution of numerous search warrants which have resulted in the seizure of multiple items of child pornography and various items of evidence consisting of child sexual exploitation and abuse.

Affiant has received specialized training in the realm of sex crimes and sexually motivated crimes from the LVMPD, FBI, Search Group, Public Agency Training Council, United States Department of Justice Office of Juvenile Justice, Internet Crimes Against Children Program, and Project Safe Childhood. Affiant continues to stay abreast of investigative subject matters related to sexually motivated crimes by participating in and reading professional papers and articles written on related subject matters by industry professionals.

As it relates to computers and digital forensic analysis, affiant has received training

through Guidance Software Corporation, National White Collar Crime Center, Search Group and Paraben Corporation. Also, your affiant is certified in handheld (cellular phones/PDA's) data recovery.

Affiant has over 500 hours of training, course work and study in child sexual abuse, child exploitation and computer investigations / forensics.

Synopsis

On February 8, 2010, your affiant received a report that a citizen had discovered child pornography on a flash drive that belonged to housemate, Anthony Castaneda, with whom she recently lived with. On February 18, 2010, your affiant obtained a search warrant, signed by the Honorable Judge David Barker, to search the thumb drive for evidence of child pornography and ownership. Detective Vicente Ramirez conducted a forensic analysis of the flash drive and discovered evidence of child pornography and ownership.

Probable Cause Offering

This affidavit is made in support of an application for warrant to search for and seize instrumentalities, fruits, and evidence of violations of Nevada Revised Statutes- Possession of Child Pornography, NRS 200.730

The statements contained in this affidavit are based in part on information gathered through an investigation conducted by your affiant and on her investigation, training, experience and background as a police detective with the Las Vegas Metropolitan Police Department. Since this affidavit is being submitted for the limited purpose of securing a search warrant, affiant has not included each and every fact known to me concerning this investigation. Affiant has set forth only the facts that she believes are necessary to establish probable cause to believe that evidence of violations of NRS 200.730 is located on the aforementioned item.

On February 8, 2010, Tammy Hines, DOB 11-18-67, reported seeing child pornographic images on an Imation flash drive that she had in her possession. Hines further reported the thumb drive belonged to previous housemate, Anthony Castaneda. This report was documented by your affiant under LVMPD event 100208-1406.

That same day, your affiant conducted a recorded interview with Hines. Hines described she and her family lived at Castaneda's residence, located at 2205 Beverly Way, Las Vegas, Nevada 89104 from November 25, 2009 thru February 3, 2010.

Hines described on February 6, 2010, while unpacking, she found the aforementioned described flash drive. Hines described she recognized the drive as being Castaneda's, but decided to use it for herself.

On February 7, 2010, Hines inserted the flash drive into a computer and observed the following files on the flash drive: Castaneda's birth certificate, social security card, military experience, class certificates, images of adult pornography, bestiality and child

pornography.

Hines described the child pornography was located in folders entitled something like "girls" or "girly". Hines described she opened these folders because she was concerned there may be images of her children contained within (note: Hines did not locate any images of her children). Hines described she observed hundreds of images where prepubescent children were displayed with their genitals exposed and/or engaged in sexual acts. Hines provided the following descriptions of just a few of those images:

Image 1: depicts a prepubescent female child with long blonde hair and a penis next to the child's face.

Image 2: depicts the same prepubescent child, but with a penis inserted into the child's mouth.

Image 3: depicts a prepubescent female child lying naked on a bed.

Image 4: depicts a prepubescent female child on her knees with her buttocks in the air exposing her genitals.

Image 5: depicts a prepubescent female child seated on what appears to be a step. The child is wearing a red flower dress with no underwear. The child's dress is pulled up exposing her genitals.

Hines further described Castaneda is computer knowledgeable and has several computers at his residence.

On February 18, 2010, your affiant obtained a search warrant, signed by the Honorable Judge David Barker, to search the flash drive for evidence of child sexual exploitation and ownership.

Detective Vicente Ramirez, P# 4664 conducted a forensic analysis on the Imation flash drive and located child sexual exploitation. Detective Ramirez bookmarked 56 images of child sexual exploitation. A majority of these images depicted prepubescent female children engaged in oral sex with adult males. The following are descriptions of just some of those images:

File Name: "2 girls01.jpg" depicts two nude prepubescent female children. One child is lying on her stomach with her buttocks in the air. There is a nude adult male who is penetrating the child's genitals with his penis and has his left thumb in between the child's buttocks. The other child is positioned to the left of the first child and has her left arm draped around the first child. The second child's left hand is on the first child's right buttock's cheek. The second child's head is positioned over the buttocks' of the first child. The second child has her mouth open with what appears to be ejaculate dripping out.

File Name: "girlondick06.bmp" depicts a prepubescent female child pictured from the neck up. There is an adult male's penis next to the child's mouth. There is ejaculate coming from the penis and on the child's mouth, chin and cheek.

File Name: "girlondick08.bmp" depicts a partial view of a nude adult male and a prepubescent female child from the neck up. The adult male has his left hand on his penis and has the tip of his penis inserted into the child's mouth. The child has her hands on either side of the penis.

File Name: "NEW-22.JPG" depicts an adult male penetrating the vagina of a prepubescent child. The image appears to be shot from a close distance and neither shows the heads nor the majority of either person's torso.

Also, Detective Ramirez located, in a folder entitled "2006-04 (Apr) educational History and Identification", digital copies of the following:

- several educational and military certificates bearing the name Anthony Castaneda, to include a California State University certificate
- Nevada Identification Card bearing the name Anthony Castaneda, DOB 04-24-56 (note: spelling on Nevada ID card and RebelCard is Casteneda, not Castaneda)
- RebelCard - University of Nevada, Las Vegas Faculty/Staff card bearing the name Anthony Castaneda and his picture
- Social Security card number 566-21-4423, Anthony Castaneda
- Birth Certificate in the name of Anthony Castaneda, DOB 04-24-56

On March 30, 2010, an administrative subpoena was served upon NV Energy for subscriber records for the address of 2205 Beverly Way, Las Vegas, Nevada 89104. Per NV Energy, Anthony Castaneda, social security number, 566-21-4423, employer: University of Nevada is the account holder.

Your affiant conducted a drive by verification of the residence and observed a red Ford Aerostar van bearing Iowa plate 724SSC in the driveway of the residence. Per DMV, the vehicle is registered to Anthony Castaneda, DOB 4-24-56, 5500 Dyer Avenue #310, Marion, Iowa.

Your affiant knows through training and experience that a flash drive requires a connection to a computer device in order to view and/or transfer files. That a flash drive is commonly used to store, transfer and/or backup computer files. Flash drives are a means to get files to and from multiple computers.

Due to the fact Hines stated that the aforementioned flash drive was initially in Castaneda's residence, that she observed child sexual exploitation images on said flash drive as well as certificates and identification cards bearing Castaneda's name, the fact she described Castaneda has several computers at his Beverly Way address; the fact a forensic analysis revealed that said flash drive did indeed have child sexual exploitation images and Anthony Castaneda's educational and identification files on it; Affiant deems

it is reasonable to believe a search of the residence and electronic/digital data storage devices located therein, would reveal evidence of child sexual exploitation.

Child Pornography, Collecting and Suspects Information:

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Additionally, there are many other valuable artifacts and system files that can and do exist on computer hard drives and other digital media, that a computer user is completely unaware of, that tracks their activities and computer usage, which can be recovered, interpreted and documented during analysis.

Specifically regarding on-line communication mediums like Email and Instant Messaging "chat" clients, records of communications can be intentionally saved by a user, saved by the client program itself, archived, and/or later deleted, or cached to the Windows pagefile.sys a.k.a. "swap file" which is a form of virtual memory used by Windows that writes data in memory to the hard drive to assist it in memory usage, which can be recovered during analysis. As a result, even communications between two individuals in the on-line, internet realm, often exists even though the user never intended it to. As previously stated, this evidence can exist for very long periods of time.

Affiant knows that computer / digital data can be stored on a variety of systems and storage devices including, but not limited to hard drives, floppy diskettes, computer discs (CD/DVDs), Jazz disks, Zip disks, memory chips, memory cards, and flash/thumb drives etc.

Affiant knows that searching a digital storage device is a highly technical process which requires specific expertise, specialized equipment and applications, a significant amount of time and a proper environment suitable for a forensic analysis. It is therefore necessary to perform this search in a controlled laboratory type environment, not out in the field.

Affiant knows that searching items of digital evidence can be a lengthy and arduous process that takes a significant amount of time to complete, which is exacerbated by the large volumes of data that is capable of being stored in a digital medium. In addition to that, current case loads and differing case assignment priorities are likely to cause some searches to be halted while other cases of higher priorities are re-assigned for priority analysis. As a result, it is not unusual for some forensic analysis searches to take several months before they are completed from beginning to end.

Your affiant therefore requests authorization to conduct a complete and thorough computer forensic analysis of the aforementioned items of digital evidence, searching for the previously listed items of evidence located in the form of data within.


Sealing Information:

Affiant believes based on prior experience that additional investigations could be jeopardized and evidence destroyed if investigative techniques and details are released concerning this investigation. Based on Affiant's training and experience concerning subjects involved in the trading of child pornography, it is known that information is commonly traded within the "community", such as investigative techniques and operations.

Affiant also knows based on experience that computer forensic examinations often reveal additional unidentified suspect information such as email accounts and online storage servers, and in many cases, additional computers which have yet to be identified and may contain additional evidence of criminal acts committed by the subject(s) of this investigation or new information revealing additional suspects not yet identified.

That this affidavit does not contain each and every fact known to your affiant related to this investigation but rather includes that information related to the probable cause pertaining to the search of the location referred to above.

Wherefore, Affiant requests that a Search Warrant issue directing a search for and seizure of the aforementioned items at the location set forth.



Detective S. Tooley P# 6224, AFFIANT
Las Vegas Metropolitan Police Department

Subscribed and sworn to before me this 5th day of April, 2010



JUDGE

Approved by Deputy DA Jessica Walsh

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE



CLERK OF THE COURT
APR 16 2010

SEARCH WARRANT

STATE OF NEVADA) premise known as
) 2205 Beverly Way
COUNTY OF CLARK) Las Vegas, Nevada 89104

FILED
APR 16 2 37 PM '10
John L. Quinn
CLERK OF THE COURT

The State of Nevada, to any Peace Officer in the County of Clark, proof by Affidavit having been made before me by Detective Shannon Tooley, P# 6224, LVMPD, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause that certain property, namely:

1. Electronic / Digital Data Storage Devices.
These are described as any and all computer / digital related equipment, including any electronic devices, which are capable of collecting, analyzing, creating, displaying, converting, storing, concealing, or transmitting digital, electronic, magnetic, optical, or similar computer impulses or data.

These items include, but are not limited to the following: computers, hard drives, thumb drives, flash drives, memory cards, memory sticks, camera memory cards / sticks, MP3 players, iPods, Digital video player/recording devices, computer discs (floppy diskettes, CDs, DVDs, Zip disks, Jazz Disks etc).
2. Any physical keys, encryption devices, encryption keys, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices and/or data.
3. Cellular Telephones including any inserted data storage cards, power cords and/or charging materials.
4. Personal Data Assistants including any inserted data storage cards, power cords and/or charging materials.
5. Video Recorders including any inserted data storage cards, power cords and/or charging materials.
6. Visual depictions which could or do depict any minors engaged in any form of sexual activity or who are the subject of a sexual portrayal. These items would include the following: video tape cassettes, photographs, negatives, any film, and/or printed out materials.
7. Any items of collateral material dealing with children, child development, child psychology, sex with children and/or crimes with children including, but not limited to: Erotic or sexual in nature writings, drawings, diaries, souvenirs, sexual aids, letters and books.

AA0021

8. Any writings, letters, notes, or text detailing computer search terms, web site addresses, screen names, email addresses and/or passwords.
9. Items of personal property which would tend to establish the identity of persons in control of said premises, which items of property would consist in part of and include, but not be limited to personal pictures, documents, mail correspondence, bills, receipts, bank account information, vehicle registration information and/or effects which tend to show possession, dominion and control over said premises.

Is presently located at:

2205 Beverly Way, Las Vegas, Nevada 89104. Further described as a single family residence with white brick exterior and blue trim. The residence is located on the east side of Beverly Way and the front door, which has a screen door that opens left to right, faces west. The numbers "2205" are black in color and are affixed to a white placard directly above the mailbox on the north side of the front door. The residence has a circular driveway with a carport affixed to the front center of the residence. The front yard has a short white fence that borders the yard.

Any other storage sheds, storage lockers, out buildings, persons and/or vehicles found on the property (curtilage) or associated with the property described above.

This search shall include, but not limit itself to, any and all closed or locked containers found about the premises and/or surrounding areas associated with the above location.

As I am satisfied that there is probable cause to believe that said property is located as set forth above and that based upon the affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said property, serving this warrant between 7 a.m. and 7 p.m., and if the property is there to seize it, prepare a written inventory of the property seized, and make a return for me within 10 days.

Dated this 5th day of April, 2010

JUDGE

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Alvin L. Johnson
CLERK OF THE COURT

APR 16 2010

AA 0022

IN RE: Search Warrant for)
)
)
 premise known as)
 2205 Beverly Way)
 Las Vegas, Nevada 89104)

ORDER SEALING
 AFFIDAVIT

FILED
 2 37 PM '10
Sharon L. Schuman
 CLERK OF THE COURT

Upon the ex parte application of Detective Shannon Tooley a commissioned officer with the Las Vegas Metropolitan Police Department and Affiant, to seal the affidavit in support of the attached search warrant, and for good cause appearing therefore,

IT IS HEREBY ORDERED that the affidavit in support of the attached search warrant be ordered sealed pending further order of this Court except that copies may be provided to the office of the Clark County District Attorney and the District Attorney may provide copies to a Defendant in a criminal proceeding as part of the criminal discovery process, and

IT IS FURTHER ORDERED a copy of this order sealing the affidavit be left at the premises along with the search warrant in lieu of the affidavit in support of the warrant

Dated this 5th day of April, 2010

JUDGE

AFFIANT

CERTIFIED COPY
 DOCUMENT ATTACHED IS A
 TRUE AND CORRECT COPY
 OF THE ORIGINAL ON FILE

Sharon L. Schuman
 CLERK OF THE COURT
 APR 16 2010

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
OFFICER'S REPORT

EVENT #: 100208-1406

Search Warrant

SUBJECT

DIVISION REPORTING: ISD

DIVISION OF OCCURRENCE: ISD

DATE AND TIME
OCCURRED: 04-07-10 / 0900

LOCATION OF
OCCURRENCE: 2205 Beverly Way, Las Vegas, Nevada
89104

Suspect:

Anthony Castaneda
DOB 04-24-56
WMA 5'11", 240lbs. bald/bro
2205 Beverly Way, Las Vegas, Nevada 89104
702-203-3785

Craig Castaneda
DOB
WFA 5'10", 240lbs. bro/red &bro
2205 Beverly Way, Las Vegas, Nevada 89104

Officers:

Shannon Tooley	PN 6224
Jon Carpenter	PN 5003
Vicente Ramirez	PN 4916
Lora Cody	PN 7294
Paul Ehlers	PN 4215
Steven Tafoya	PN 4435
Larry Smith	PN 3571
Alex Bustillos	FBI
Andrew Gruninger	FBI
Lisa Rowe (IS)	PN 3727
Sgt. Troy Barrett	PN 4972
John Brandon	PN 9631
Gideon Soloman	PN 8458
Shawna Partridge	FBI (photos)

Property Impounded:

pkg. 1, item 1: Shuttle mini desktop computer S/N K4800000R0827F00471
pkg. 2, item 2: HP Pavilion DV1000 laptop computer with power cord S/N
CNF625145Y
pkg. 2, item 3: Dell PP05L laptop with power cord M/N 9B1ZF41
pkg. 3, item 4: Fujitsu hard drive S/N 04560429

Date and Time of Report: 02-04-10 / 0931

Officer: S. Tooley P#: 6224

Approved: _____

Officer: _____ P#: _____

SIGNATURE: _____

AA 0024

CONTINUATION REPORT

ID/Event Number: 100208-1406

Page 2 of 3

pkg. 4, item 5: Hitachi hard drive S/N ZNR4286H
pkg. 4, item 6: Verizon pocket pc cellular phone with battery S/N
HT632E604748
pkg. 4, item 7: two Imation DVDs
pkg. 4, item 8: four DVDs
pkg. 4, item 9: eleven CDs
pkg. 5, item 10: two Kodak 35mm film rolls
pkg. 6, item 11: Cox Communications statement bearing Castaneda's name
and address

Synopsis

Officers served a search warrant reference Child Sexual Exploitation at 2205 Beverly Way, LV, NV 89104. Computers and digital related media were seized from the residence.

Entry

On April 7, 2010, at approximately 0900 hours, LVMPD detectives from ICAC, Sexual Assault Juvenile, Computer Forensic Lab and FBI, under the direction of Sgt. T. Barrett, having in possession a search warrant with the affiant being Shannon Tooley and signed by Judge David Barker on April 2, 2010, for the property located at 2205 Beverly Way, Las Vegas, Nevada 89104, executed said warrant at said location. Officers were attired in plain clothes with clear law enforcement identifiers. Uniformed patrol officers were utilized for the perimeter and security. Detectives knocked and announced and made contact with occupants, Anthony and Craig Castaneda. Both exited the residence without incident.. Detectives then cleared the residence without incident.

Custody / Interview Phase:

I advised Anthony Castaneda that we had a search warrant for the premises for computers and electronic digital storage devices. I provided Anthony with a copy of the search warrant and sealing order.

I conducted a recorded interview with Anthony Castaneda in my unmarked police vehicle that was parked on the street in front of the residence. I advised Anthony that he was not under arrest, did not have to answer any questions and was free to leave at any time. Also, I read Anthony his Miranda rights from an LVMPD Miranda card. Anthony advised that he has lived in the house for the past year and that his son, Craig just moved in three weeks ago.

Anthony initially denied downloading and/or possessing child pornography. Anthony later described that he has downloaded pictures of girls that looked young, but he believed to be of age. Anthony denied any inappropriate touching with children.

Anthony described he has scanned and stored personal documents such as, driver license, social security card and certificates on a flash drive

When I believed the interview to be over I turned off the recorder. A few minutes later, while reiterating what Anthony and I discussed, I said something to the effect of, Anthony, you said you have never downloaded and/or visited a child pornography site and Anthony replied, I never said I didn't download from a child porn site (not verbatim).

Later, Det. Ramirez showed some of the child pornography files he located on a computer in the living room belonging to Anthony. Anthony made the comment, "yeah, that's a kid" and a moment later stated, "I'm sorry."

Search Phase:

Item 1 located by v4916r on desk in room c (living room), north wall. Item 2 located by i7294c in room H (first southwest bedroom to the right of front entry) on computer desk in the northwest corner of room. Item 3 located by i7294c on computer desk located in the northwest corner of room F (sunroom near back door). Item 4 located by

AA0025

RETURN

(Must be made within 10 days of issuance of Warrant)

Page FIVE of 1

APR 1000208-1406

2 37 PM '10

John L. Lehman
CLERK OF THE COURT

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

2205 BEVERLY WAY, LAS VEGAS, NV 89104

was executed on APRIL 7, 2010
(month, day, year)

A copy of this inventory was left with ANTHONY CASTANEDA

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

CUX COMMUNICATIONS BILL IN THE NAME OF ANTHONY CASTANEDA
1 ROLL KODAK MAX 400, 24 EXPOSURE UNDEVELOPED FILM
1 ROLL KODAK ADVANTIX 200, 15 EXPOSURE UNDEVELOPED FILM
VERIZON POCKET PC SERIAL # HT632E604748
HITACHI DESKSTAR 80GB HARD DRIVE SERIAL # ZNR4286H
FUJITSU ^{L.R.} ~~HB~~ HARD DRIVE SERIAL # 04560429
MULTIPLE CDS AND DVDS
SHUTTLE MINI DESKTOP COMPUTER S/N K4800000R0827F00471
HP PAVILION DV1000 LAPTOP SERIAL # CNF62514SY WITH POWER CORD
DELL LATITUDE D600 LAPTOP SERVICE TAG 9B12F41 WITH POWER CORD

This inventory was made by: L. ROWE P#3727

S. Taylor Gandy

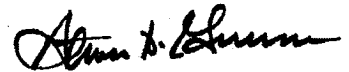
(at least two officers including affiant if present. If person from whom property is taken is present include that person)

CERTIFIED COPY

DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

John L. Lehman
CLERK OF THE COURT
APR 17 2010

AA0026



CLERK OF THE COURT

INFO

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
VICKI J. MONROE
Chief Deputy District Attorney
Nevada Bar #003776
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 04/21/2011

9:00 A.M.

PUBLIC DEFENDER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTHONY CASTANEDA,
#2799593

Defendant.

Case No: **C272657-1**
Dept No: **I**

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That ANTHONY CASTANEDA, the Defendant above named, having committed the crime of **POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730)** in the manner following, to-wit: That the said Defendant, on or between November 25, 2008 and April 7, 2010, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

//

//

AA 0027

1 COUNT 1

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: 2 girls01.jpg, described as: Image
6 depicts two nude prepubescent female children. One child is lying on her stomach with her
7 buttocks in the air. There is a nude adult male who is penetrating the child's genitals with his
8 penis and his left thumb in between the child's buttocks. The other child is positioned to the
9 left of the first child and has her left arm draped around the first child. The second child's left
10 hand is on the first child's right buttock's cheek. The second child's head is positioned over
11 the buttocks' of the first child. The second child has her mouth open with what appears to be
12 ejaculate dripping out.

13 COUNT 2

14 did, then and there, feloniously, knowingly and willfully, have in his possession a
15 film, photograph, or other visual presentation depicting a person under the age of 16 years as
16 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
17 in or simulate sexual conduct, to-wit: Image File Name: girlondick06.bmp, described as:
18 Image depicts a prepubescent female child pictured from the neck up. There is an adult
19 male's penis next to the child's mouth. There is ejaculate coming from the penis and on the
20 child's mouth, chin and cheek.

21 COUNT 3

22 did, then and there, feloniously, knowingly and willfully, have in his possession a
23 film, photograph, or other visual presentation depicting a person under the age of 16 years as
24 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
25 in or simulate sexual conduct, to-wit: Image File Name: girlondick08.jpg, described as:
26 Image depicts a partial view of a nude adult male and a prepubescent female child from the
27 neck up. The adult male has his left hand on his penis and has the tip of his penis inserted
28 into the child's mouth. The child has her hands on either side of the penis.

1 COUNT 4

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: NEW-22.JPG, described as: Image
6 depicts an adult male penetrating the vagina of a prepubescent child. The image appears to
7 be shot from a close distance and neither shows the heads nor the majority of either person's
8 torso.

9 COUNT 5

10 did, then and there, feloniously, knowingly and willfully, have in his possession a
11 film, photograph, or other visual presentation depicting a person under the age of 16 years as
12 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
13 in or simulate sexual conduct, to-wit: Image File Name: 2girls.jpg, described as: Image
14 depicts two nude prepubescent children and a nude adult male, standing, visible from the
15 lower stomach down. The children are positioned on either side of the adult male. Both
16 children are performing fellatio on the adult male.

17 COUNT 6

18 did, then and there, feloniously, knowingly and willfully, have in his possession a
19 film, photograph, or other visual presentation depicting a person under the age of 16 years as
20 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
21 in or simulate sexual conduct, to-wit: Image File Name: euro-002.jpg, described as: This
22 image has 6 images depicting a prepubescent female child with blonde hair. The first image
23 depicts the child laying on a bed with pink pants pulled down to her knees and a black dog
24 collar around her neck. The second image depicts the child nude, holding her legs open
25 exposing her genitals. The third image depicts the child on the bed leaning against a nude
26 adult male who has his arm placed around the child. The fourth image depicts an adult male
27 straddling the child with his penis next to her mouth. The fifth image depicts the child on her
28 stomach with the adult male placing his penis between the cheeks of the child's buttocks.

1 The last image depicts the adult male penetrating the child's vagina with his penis. The child
2 is positioned on her back with her hands covering her eyes.

3 COUNT 7

4 did, then and there, feloniously, knowingly and willfully, have in his possession a
5 film, photograph, or other visual presentation depicting a person under the age of 16 years as
6 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
7 in or simulate sexual conduct, to-wit: Image File Name: new-05.jpg, described as: This
8 image has 7 images within. The first image depicts 3 clothed prepubescent female children
9 standing with their arms around each others shoulders. Two of the images show a
10 prepubescent female child (different child in each image) performing fellatio on an adult
11 male. One image depicts a nude prepubescent female child lying on her back with her legs
12 spread open. There is a second prepubescent female child with her mouth near the first
13 child's vagina. Another image depicts a nude prepubescent female child lying face down on
14 a bed with her buttocks raised up exposing her genitals. One image depicts a female child
15 lying on the bed with what appears to be ejaculate on her face. Another image depicts an
16 adult male inserting his penis into the vagina of a prepubescent child.

17 COUNT 8

18 did, then and there, feloniously, knowingly and willfully, have in his possession a
19 film, photograph, or other visual presentation depicting a person under the age of 16 years as
20 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
21 in or simulate sexual conduct, to-wit: Image File Name: new-35.jpg, described as: This
22 image depicts a nude prepubescent female child performing fellatio on an adult male. Also,
23 the child is inserting a pink phallic shaped device into her vagina.

24 COUNT 9

25 did, then and there, feloniously, knowingly and willfully, have in his possession a
26 film, photograph, or other visual presentation depicting a person under the age of 16 years as
27 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
28 in or simulate sexual conduct, to-wit: Image File Name: GIRL69.jpg, described as: This

1 image depicts a nude adult male lying on his back with a nude prepubescent female child
2 lying, face down, on his stomach in the opposite direction. The adult has his penis inside the
3 child's mouth and is performing cunnilingus on the child.

4 COUNT 10

5 did, then and there, feloniously, knowingly and willfully, have in his possession a
6 film, photograph, or other visual presentation depicting a person under the age of 16 years as
7 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
8 in or simulate sexual conduct, to-wit: Image File Name: new-43.jpg, described as: Image
9 depicts a prepubescent female child with long blonde hair seen from the neck up. The child's
10 hands are positioned on either side of an adult's penis. The adult has his penis inserted into
11 the mouth of the child.

12 COUNT 11

13 did, then and there, feloniously, knowingly and willfully, have in his possession a
14 film, photograph, or other visual presentation depicting a person under the age of 16 years as
15 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
16 in or simulate sexual conduct, to-wit: Image File Name: NEW-47.jpg, described as: Image
17 depicts prepubescent female child with her hands on an adult penis and the penis is next to
18 the prepubescent female's mouth.

19 COUNT 12

20 did, then and there, feloniously, knowingly and willfully, have in his possession a
21 film, photograph, or other visual presentation depicting a person under the age of 16 years as
22 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
23 in or simulate sexual conduct, to-wit: Image File Name: EURO-001.jpg described as: This
24 image has 5 images depicting a prepubescent female child with darker blonde hair. The first
25 image depicts the child with an adult penis in her mouth and an adult hand on the penis. The
26 second image depicts the child nude with her hands around an adult penis and the child's
27 mouth is on the penis. The third image depicts the child on all fours with her buttocks facing
28 the camera. The child is nude with her buttocks and genitalia exposed. The fourth image

1 depicts the child lying on her back with an adult male straddling the child and his penis is in
2 the child's mouth. The fifth image depicts a close up of an adult penis and the penis is
3 penetrating the anal opening of the child.

4 COUNT 13

5 did, then and there, feloniously, knowingly and willfully, have in his possession a
6 film, photograph, or other visual presentation depicting a person under the age of 16 years as
7 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
8 in or simulate sexual conduct, to-wit: Image File Name: new.jpg described as: Image
9 depicts 2 prepubescent children with their faces and mouths near or touching an adult male
10 penis. The image is a picture of the children from the neck up.

11 COUNT 14

12 did, then and there, feloniously, knowingly and willfully, have in his possession a
13 film, photograph, or other visual presentation depicting a person under the age of 16 years as
14 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
15 in or simulate sexual conduct, to-wit: Image File Name: carved image unnamed file.jpg,
16 described as: This image is of a prepubescent Asian female child positioned in front of a
17 Caucasian adult male with the adult male penis touching the child's mouth with what
18 appears to be ejaculate dripping from the penis. Also noted on the adult male's abdominal
19 area are the words CP REAL.

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1 COUNT 15

2 did, then and there, feloniously, knowingly and willfully, have in his possession a
3 film, photograph, or other visual presentation depicting a person under the age of 16 years as
4 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
5 in or simulate sexual conduct, to-wit: Image File Name: new-44.jpg, described as: This
6 image depicts the head and face of a prepubescent female with an adult male positioned in
7 front of her and his penis is inserted into the child's mouth.

8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10
11 BY /s/ VICKI J. MONROE
12 VICKI J. MONROE
13 Chief Deputy District Attorney
14 Nevada Bar #003776
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1 Names of witnesses known to the District Attorney's Office at the time of filing this
2 Information are as follows:

3 BERRETT; LVMPD#04972

4 BRANDON; LVMPD#09631

5 BRISTETLOS, ALEX; FBI

6 CARPENTER; LVMPD#05003

7 CODY; LVMPD#07294

8 EHLERS; LVMPD#04215

9 HINES, TAMI; 5795 W. FLAMINGO RD. #167, LVN 89103

10 PORTRIDGE, SHAWNA; FBI

11 RAMIREZ; LVMPD#04916

12 ROWE; LVMPD#03727

13 SHUMATE; LVMPD#08980

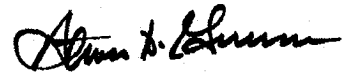
14 SMITH; LVMPD#03571

15 SOLOMON; LVMPD#08458

16 TAFOYA; LVMPD#04435

17 TOOLEY; LVMPD#06224

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27 DA#11F03995X/hjc/SVU
28 LVMPD EV#1002081406
(TK12)



CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

ANTHONY CASTANEDA,

Defendant.

CASE NO. C-11-272657-1

DEPT. NO. V

DATE: February 5, 2013

TIME: 9:00 a.m.

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, ANTHONY CASTANEDA, intends to call the following witness in his case in chief:

- | | | |
|------------------|-------------------|--|
| 1. Doug Dahmen | Investigator | c/o Office of the Clark County Public Defender |
| 2. Mariah Carney | 25 Gold Bar Court | Las Vegas, NV |

DATED this 28th day of January, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

/s/ Erika D. Ballou

By:

ERIKA D. BALLOU, #8365
Deputy Public Defender

AA 0035

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234 was made via e-filing to PDMotions@ccdancv.com and via facsimile to the Clark County District Attorney's Office (455-6980) on this 28th day of February, 2013.

/s/ Jane Palmer

By

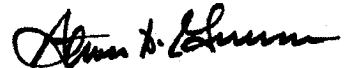
Employee of the Clark County Public Defender's
Office

Case Name: Anthony Castaneda

Case No.: C272657X

Dept. No.: V

AA 0036



CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ANTHONY CASTANEDA,

Defendant.

CASE NO. C-11-272657-1

DEPT. NO. V

DATE: April 29, 2013

TIME: 1:30 p.m.

**DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES, PURSUANT TO NRS
174.234**

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, ANTHONY
CASTANEDA, intends to call the following witness in his case in chief:

1. Craig Castaneda 786 Basswood Ave.# A Imperial Beach, CA 91932

DATED this 18th day of April, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

/s/ Erika D. Ballou

By:

ERIKA D. BALLOU, #8365
Deputy Public Defender

AA 0037

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/s/ Jane Palmer

By: _____
Employee of the Clark County Public Defender's
Office

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