Snyder v. Nolan, 380 F.3d 279, 288-89 (7th cir. 2004) (Court Clerk NOT absolutely immune for refusing to file pleadings.)

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SUPREME COURT FOR THE STATE OF NEVADA

JUSTIN ODELL LANGFORD©,
APPELLANT,
-VS-
STATE OF NEVADA,
RESPONDENT.

Case No: 75825; 76075

AFFIDAVIT OF APPELLANTS INFORMAL BRIEF *AMENDED*

COMES NOW, JUSTIN ODELL LANGFORD, APPELLANT, through Justin-Odell: Langford Authorized Representative, Attorney-In-Fact and Secured Party Creditor, and moves this Honorable Court to enter an ORDER GRANTING this Appeal of Denial of a Petition For Writ of Habeas.

DATED: this ____ day of _____, 2018.

By:

Without Prejudice / All Rights Reserved

/s/ _____

Justin-Odell: Langford© secured Party Creditor, Authorized Representative, Attorney-In-Fact on behalf of DEBTOR JUSTIN ODELL LANGFORD©, Ens legis

Power of Attorney Limited #: P.O.A. #081418-3/POA/JOL Exhibit 12
Common Law Copyright Notice #: C.L.C. #081418-1/clc/JOL Exhibit 13
Hold Harmless and Indemnity Agreement #: 081418-1/HHA/JOL Exhibit 14

18-905408

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SILENCE IS ACQUIESCENCE

As the supreme court puts it: Indeed, as mr. Justice Brandeis declared, speaking for a unanimous court in the Tod case, Supra., which involved a deportation: "Silence is often evidence of the most persuasive character." 263 U.S. at 263 U.S. 153-154. And in Hale, Supra., the court recognized that: "Failure to contest an assertion... is considered evidence of acquiescence ... if it would have been natural under the circumstances to object to the assertion in question." 422 U.S. at 422 U.S. 176. [Footnote 3]. Baxter v. Palmigiano, 425 U.S. 308.318(1976)... The PARADIEM-SHATTERING ADMISSION bu the panel of the circuit court Came in yet another ruling as: Parker v. Comm'r, 724 F.2d 469.

Appellant is likely to be the only individual, now or in the future, who is willing and able to place a sworn affidavit affirming the herein disclosed facts under penalties of perjury, into the record of this case and as such. in absence of sworn counter-affidavit signed under the penalties of perjury regarding the same facts, laws, caselaws and evidence, Appellant should be the only prevailing party. Morris v. National Cash Register, 44 S.W. 2d 433. clearly states at Point #4 that

"uncontested allegations in affidavit must be accepted as true."

Another words put your inept arguments in an affidavit format and sign it under penalty of perjury pursuant to 28 U.S.C.§1764 & 18 U.S.C.§1621. if you can't do that, it just show your arguments are inept and as the appellant has known a big lie so the appellant ask respectfully of you to stand aside and let justice win.

Pro se pleadings must be construed liberally. Roy v. Lampert, 465 F.3d 964 (9th cir. 2006)

PROCEDURAL HISTORY

On January 21, 2014 the alleged victim, H.H. disclosed that she had been sexually abused by her stepfather, this appellant. During a forensic interview with CPS specialist Tiffany Keithe and Chelsea Schuster, H.H. (dob 6/22/2001) disclosed that the abuse began when she was six, seven or eight years old, while at her stepfathers residence in Searchlight Nevada. The Appellant allegedly made H.H. lay on the bed and the Appellant allegedly rubbed baby oil on H.H.'s legs, then placed his private parts in between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that the Appellant placed a white towel on the bed. Appellant allegedly touching H.H.'s genital area with his hand, penis, and mouth, and the appellant allegedly fondling H.H.'s buttocks and/or anal area with his penis.

On January 21, 2014 the Las Vegas Metropolitan Police Department served

a search warrant on the Appellants residence in Searchlight. Officer's recovered a white hand towel that did not match the description given by H.H.. The police also recovered baby oil and bedding, these items were tested for DNA. A stain on the towel came back consistent with a mixture of two individuals. The partial major DNA profile contributor was consistent with the Appellant, the partial minor DNA profile was consistent with the alleged victim H.H..

On January 22, 2014 the District Attorneys Office filed a criminal complaint in the Justice Court for the township of Searchlight Nevada, the criminal complaint had 9 category A felonies, 5 counts of Lewdness with a child under the age of 14, 4 counts of Sexual Assault with a minor under the age of 14, Justice Court case number 14FS0001X. On March 14, 2014 the state filed an Information Charging the Appellant with Sexual Assault with a child under 14 years of Age (3 counts), Lewdness with a child under 14 year of Age (8 counts) and Child Abuse, Neglect or endaggerment (1 COUNT). On June 4, 2015 the court granted the Appellants Motion to Dismiss Counsel Kevin

Speed. On June 11, 2015 the Court appointed Monique McNeill to represent the Appellant, during that same hearing the court addressed the Appellant's Pro Per Motion for Discovery and granted that motion as to Brady and Giglio material only.

On March 7, 2016 Jury selection began for the Appellants' trial, by the end of day 2 the Jury was chosen. First day of testimony was on March 9, 2016 and the case was given to the Jury on Monday March 14, 2016 and took them three(3) days to come to a decision that's after being hung on three (3) of the charges on day two(2) of deliberations. They came to a full decision after being read the Allen Charge. On March 17, 2016 the Jury came back with a verdict of NOT GUILTY on 11 counts and GUILTY on 1 count.

Alleged molestation incidents that H.H. testified to at the pre-lim. hearing held on March 11, 2014 of several instances of alleged sexual abuse committed by the Appellant, H.H. described instances including the Appellant sucking on her breast, the the Appellant putting his penis in her anus, putting his penis into her mouth more than once, Appellant touching her genital area with his hands and penis, and fondling her

buttocks and/or anal area with his penis.

On June 1,2016 the Appellant filed his Notice of Appeal,then counsel filed her Notice of Appeal on June 10,2016. Then on July 28,2017 The Nevada Supreme Court filed it's confirmation of conviction. On July 19, 2017 The Appellantfiled Motion for transcripts at States Expense which was denied,Motion For Production of Documents which was granted along with Motion to withdraw counsel.

On Dec. 29,2017 the Appellant filed Petition for Writ of Habeas Corpus, Memorandum in support of..., Affidavit in Support of Memorandum..., and Motion for Appointment of Counsel;Request for Evidentiary Hearing. On Jan. 5,2018 the court issued an Order for Petition for Writ of Habeas Corpus, thus giving the Respondent 45 days to respond. Then on Feb. 6, 2018 Appellant filed for a continuance on hearing for Petition for Writ of Habeas Corpus which was granted moving the hearing to April 24,2018. The state filed its' response to everything on Feb. 20,2018 subsequently the Appellant filed his Traverse and Motion to Strike States Response on March 15,2018. On the 27& 28 of Feb. the Appellant filed

Application to proceed In Forma Pauperis with financial certificate and Ex Parte Application for Ancillary services. The Informa Pauperis was granted but the Appellant never got an answer to his Ex Parte Application. Subsequently on April 24 everything filed was denied and on April 26 the court clerk mailed the April 24 hearing which the Appellant recieved recieved on May 1, 2018 and on May 2nd the appellant mailed Notice of Appeal & Case appeal statement.

OPENING STATEMENT

The Appellant plans for his brief is to layout plain and clear why everyone before this appeal has violated state law and federal caselaw in their decision to deny the Appellant relief, also why their logic was flawed as it regards evidence in and ground the case. The Appellant also will be attaching documents that support his claims before this brief and in his brief that have not been in his possession prior to this. The Appellant file a multi-count petition with numerous facts that when proven true would entitle him to relief but the Appellant was not afforded that chance at an evidentiary hearing and with the help of the resources asked for.

DENIAL OF DISCOVERY IN VIOLATION OF U.S. CONST. AMEND. V, VI, VIII, XIV

United States v. Ballard, 885 F.3d 500(7th cir. 2018)(According to the court, a statement is material if "there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." The court found that had the jury found Grant not credibe, "it is not a far stretch to see the verdict could have been different."

In observing state statutes: they are a "Contract" that must be observed. See Flay v. Yonkers S&L, 307 Fed. Supp. 2d 565. 583(2nd cir. 2004); Aclu et.al. v. Masto et. al. 670 F.3d 1046, 1065(9th cir. 2012); Halloway v. Barret. 87 NV. 385. 392. 487 P.2d 501(1971); Fed Const. Art 1, §10, Nev. Const. Art. 1. §9.

NRS 432B.255: Admissibilty of Evidence, states in pertinent part:

> In any proceeding resulting from a report made or action taken pursuant to the provisions of NRS 432B.220, 432B.230 or 432B.340 or in any proceeding where such report or the contents thereof is sought to be introduced in evidence, such report or contents or any fact or facts related to the condition of the child who is the subject of the report shall not be excluded on the grounds that the matter would otherwise be priviledged against disclosure under chapter 49 of NRS.

NRS 0.025(1)(F) states in pertinent part:
"Shall not" imposes a prohibition against acting.

NRS 174.235(1) states in pertinent part:

> Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney <u>shall permitt the defendant to inspect and to copy or photograph any</u>:

NRS 0.025(1)(d) states in pertinent part:

"Shall" imposes a duty to act.

NRS 174.235(1)(b) states in pertinent part:

> Results or Reports of physical or mental examinations, scientific test or scientific experiments made in connection with the paticular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney: and

So as you can see not only do to what type of case the Appellant has but the fact that a mandated reporter initiated the case by calling LVMPD, so anything done cause of the report made by the mandated reporter which was the schools First Aid Safety Supervisor "Christy Thundstrom." And H.H. was put in counseling by court do to that report being made. this was done in the Appellant's family Court Case. The Family Court Case is an extension of this case, attached as Exhibit 1,

is the counselors' letter to the Court that H.H. started counseling.

The prosecutors' have wrongly applied numerous statutes out of chapter 49 of the NRS. The prosecutors' have applied and are still applying NRS's 49.209, 49.225 and 49.252. So as to the States argument that H.H. had to give permission for the appellant to obtain those records because they are "allegedly privileged" is totally wrong due to the nature of the case, this is supported by NRS's 432B.255. 174.235(1). and 174.235(1)(b). So as stated before in other documents, the prosecutor has a duty to obtain these records. "[O]he state agent is expected to know what another knows, i.e. police, prosecutor. Michigan v. Jackson, 475 U.S. 625.634. 106 S.Ct. 1404(1986).

So when the trial court granted the Appellants' Motion For Discovery with the request for H.H.'s psychological records from Mohave Mental Health and Lisa Schaffer, the state not only had a duty but an obligation under state law & Court Order to hand over Brady and Gialio discovery material. But the prosecutors in the appellants case have

Chosen to play games with the Appellants life in which they try to win by any means necessary, which is illegal but unethical on their part. "[P]rosecutor does not represent an entity whose interest including winning at all cost; prosecutors' client is society, which seeks Justice not Victory." U.S. v. Doe, 79 F.3d 1550 (11th cir. 1996); See also U.S. v. U.S. District Court for the Central District of California, 858 F.2d 534 (9th cir. 1988).

By failure to enforce states' legislative intent, the court has journeyed to a world, heavy and dark into unconstitutionality, contrary to state statute's and U.S. Supreme Court rulings that shout forth their own reality obfuscating their source. Statutes' that are plain are incontrovertible, and a inconvenience to those who seek to ignore them. This is what the states' prosecutors chose to do when they can, which is all the time due to defense attorney's not doing their job or them having cow patties for brains. Which makes it easy for prosecutors to get convictions by any means they can, as discussed supra. it is unethical and illegal to obtain a conviction by any means necessary.

The Appellant has quoted all of the

following cases:
Kyles v. Whitley, 514 U.S. 419(1995) at 437-38;
Carriger v. Stewart, 132 F.3d 463, 479-82(9th cir. 1997);
Wyman v. State, 217 P.3d 572, 583(Nov. 2009);
U.S. v. Jennings, 960 F.2d 1488, 1490(9th cir. 1992).

The United States and Nevada Constitutions require disclosure of all exculpatory evidence of which prosecutors are in actual or constructive possession prior to trial. U.S.C.A. V, VI, XIV; Nev. Const. Art. 1. §8. CONSTRUCTIVE (Barrons Law Dictionary 7th Ed. pg. 114) not actual, but accepted in law as a substitute for whatever is otherwise required. Thus anything which the law finds to exist constructively will be treated by law as though it were actually so. If an object is not in one's actual possession but one intentionally and knowingly has dominion and control over it, the law will treat it as though it were in one's actual possession by finding a "constructive possession." The same is true in many other contexts.

In the following cases the court's have said the privileged/confidential nature of the records must yield to a defendants Constitutionally secured right to confront

and cross-examine those who testify against him. especially when the records contain information bearing on witness Credibility. This includes mental Health records. Davis v. Alaska, supra, at 356; U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th cir. 1983); See also Mazzan v. Warden, 116 Nev. 48, 67 (2000); See also Williams v. Illinois, 567 U.S. 50, 132 S. Ct. 2221, 183 L. Ed. 2d 89, 2012 US LEXIS 4658 (But state evidence rules do not trump a defendants Constitutional right to confrontation. This court ensures that an out-of-court statement was introduced for a "legitimate, nonhearsay purpose before relying on the not-for-its-truth rationale to dismiss the Confrontation Clauses' application. See Tennessee v. Street, 471 U.S. 409, 417, 105 S.Ct. 2078, 85 L.Ed. 2d 425).

Now that the appellant has established the fact that H.H.'s mental/Psychological records are not confidential do to the nature of the case at hand and do to the fact that a mandated reporter initiated the case. So it is on the state to prove those records are not in favor of Appellant, do to them being the one's who benefit from the error. The divison of prosecutors who handled the Appellants case is the special Victims Unit so they are suppose to know all applicable laws pertaining to this type of case. Chapman v. California, 386 U.S. 18, 23-24, 17 L. E 2d 2 705. 85 S.Ct. 824 (1967); See also

Crespin v. State Of N.V., 117 F.3d 691 (10th cir. 1998).

Also the states prosecutors have an affirmative duty to hand over all evidence pertaining to a given witness may well be determinative of guilt or innocence, such as H.H. because she is the alleged victim in this case, Nondisclosure of evidence affecting credibility falls within [Brady]. Roberts v. State, 110 Nev. 1121; 881 P.2d 1 (1994); see also U.S. v. Dumas, 207 F.3d 11 (1st cir. 2000); Lay v. State, 116 Nev. 1185, 1190 (2000); Illinois v. Fisher, 540 U.S. 544, 547 (2004).

II) Second Peace Of Discovery Missing

The state has not only failed to turn over the psychological records of H.H., they also failed to turn over a statement made by H.H. on June 21, 2014, the Appellant only knows about this statement because the state mentions this statement in three of their oppositions to motions filed by the appellants counsel. The states oppositions are attached as Exhibits 2, 3, and 4, the state refrence this statement in their case facts section. These oppositions are

Signed under penalty of perjury, so it is a fact on file with the courts that the statement exists. But the Appellant nor trial counsel have seen this statement at any point at all. So the state has willfully with held held this statement from the appellant, this issue was challenged in Appellants Writ of Habeas Corpus and it went unchallenged by the State. Under the silence is acquiescence Doctrine. Ylst v. Nunnemaker, 501 us. 797 (1991); Eureka v. Bank, 35 Nev. 80 (1912); see also Hale, 422 u.s. at 422 U.S. 176.

The state must turn over all exculpatory and impeachment evidence to the defense prior to trial, for the prosecutors in the Appellants case to with hold evidence from the defense is to manipulate the evidence and prosecutorial misconduct. For the state to due this they violate numerous Constitutional Rights, i.e Due process, Effective Assistance of counsel, and a Fair trial. Donnelly v. DeChristoforo, 416 U.S. 637, 647, 94 S Ct 1864, 40 L Ed 2d 431 (1974); See also Milke v. Ryan, 711 F.3d 998, 2013 U.S. app. Lexis 5102 (9th cir. 2013).

So as you can see not only are both Items are exculpatory but also

Impeachment evidence and are also material to guilt or innocence also H.H.'s motive and state of mind. Then you have the fact that the state has tried every plausable thing in the book to keep at least when it comes to H.H's psychological records out of the Appellants' hands, the state has gone as far as quoteing numerous NRS's out of chapter 49 to say those records are privileged but as discussed supra. these records are not privileged per NRS's 432B.255, 432B.220, 432B.230, 432B.340. With all that going on the Appellant was prejudiced in numerous was because of these two pieces of evidence being withheld by the state, i.e. Due process, AEffective Assistance of counsel, and a Fair trial. Strickler v. Green, 257 U.S. at 281-82; Milke v. Ryan, 711 F.3d 988, 2013 U.S. App. Lexis 5102 (9th cir. 2013); see also Youngblood v. West Virginia, 547 U.S. 867, 869-70, 126 S Ct 2188, 165 L Ed 2d 269 (2006); Lunberry v. Hornbeck, 605 F.3d 754 (9th cir 2010); Crane v. Kentucky, 476 U.S. 683, 690 [106 S Ct 2142 [1984]].

Appellant avers, that the court is acting as a type of social reconstructionist, and that is aware

that there are situations, where dicisions made have no support in Local law, but there exists U.S. Supreme Court rulings as Precedent, that it does not want to follow. Rulings have been Polar opposite of statutes. Appellant exercises the right to rely on printed statute, Law, rather than a misaligned ~~interpreta~~interpretation. Henry v. Ryan, 720 F.3d 1080 (9th Cir. 2013) (~~because~~ Brady material must be admissible or "capable of ~~begin~~being used to impeach a government witness"). H.H. is a government witness but she is the appellants accusser and any thing she says in relation to the appellants case is determinive of guilt or innocence and has to turned over. Now that under Nevada Law H.H.'s psychological records are not privileged and that federal caselaw says the confidential nature of the records must yield to Appellants Constitutional Right to confront witnesses and accusser, and that the prosecution has willfully suppressed these pieces of evidence it is on the state to prove these records are not in the appellants favor. Chapman, supra. Nevada rules of Judicial Conduct: Rule 1-1.1. Must obey all laws

Law of the case can not be applied on this issue due to counsels incompetence, and it would be a miscarrigae of justice. Because all rulings to this point are contrary to Federal caselaw and State law and none of which were presented to this court with all the relevant facts and evidence. See Tien Fu HSU v. County of Clark, 123 Nev. 625.

INSUFFICIENT EVIDENCE/ACTUAL INNOCENCE IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

"The ultimate measure of a man, is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." Martin Luther King Jr.

The states prosecutors have been so adamant that H.H. has maintained that it all started after she moved in with the appellant and her mother in 2009, which would have made H.H. 8 years old. If this were true the date range would not have been June 22, 2007 to January 21, 2014 which is the 6½ year time frame the state keeps saying this all happened during. But it didn't start until after she moved in which was halloween 2009, the date range should have been October 31, 2009 to. January 21, 2014. Now go back to preliminary hearing on March 11, 2014 where H.H. said the alleged shower incident happened at age 8, as discussed supra. H.H.'s dob is June 22, 2001 which makes age 8 June 22, 2009 to June 22, 2010.

But the state says that the testimony at preliminary does not matter and goes on to quote Lisle v. State, but that case does not apply to the appellants case. The case the state quotes talks about grand Jury testimony not prelim testimony, the state added and dropped charges based on that testimony. The state also modified the date range on some charges based upon that testimony, but most counts were left to match the age she said in the original statement which was age 6." ..., prosecutors should be as specific as possible in delineating the dates and times of abuse offenses but we must acknowledge the reality of situtions where young child victims are involved." Valentine v. Konteh, 395 F.3d at 632.

If the stated cared about Justice and not just obtainging a conviction by any means necessary, the state would have made the date range to match what age H.H. said it was. Which was age 8 and that would make the date range of June 22, 2009 to June 22, 2010. But instead the state left the six and a half year time frame where it's impossible to cover that whole time

frame.

When a defendant challenges sufficientcy of evidence, the evidence is considered in the light most favorable to the prosecution. Origel-Candid v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). But there is only two(2) pages of trial testimony that pertain to the charge the appellant was convicted of. The charge the appellant was convicted of was supposedly ejaculating on H.H.'s face, which does not include the DNA evidence. The DNA evidence only pertained too the 11 counts that the appellant was found not guilty of. A jury speaks through its verdict, and when the jury found the appellant not guilty on those 11 counts they said it don't prove anything the state was saying about the DNA evidence. Gonzales v. The Eighth Judicial District Court of the State of Nevada, 298 P.3d 448; 2013 Nev. Lexis 21; 129 Nev. Adv. Rep. 22. "To decipher what a jury has necessarily decided, we held that courts should "examine the record of a prior proceeding taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded

its Verdict upon the issue other than that which the defendant seeks to foreclose from consideration." Id. at 444, 90 S Ct 1189, 25 L.Ed 469.

The prosecutors like to point fingers at the DNA evidence and say's it proves everything claimed by H.H., but its a lie and attempt to distract the court from challenge at hand. For the states prosecutors to keep saying this is to disrespect the Jurys' Verdict in regards to the counts that pertain to that DNA evidence. The only thing evidence or testimony is on pages 57 & 58 of trial testimony for Day 3 of trial and prelim testimony that was given pertaining to count 2 of information, as discussed supra. that count was for the appellant allegedly ejaculating on H.H.'s face in the shower. When come to H.H and when she moved in with the appellant and her mom Shayleen Coon, you should look at everyones statements and testimony of everyone at trial to what they say about when H.H. moved in. The only two that have the same time is the appellant and H.H.'s mom in which they say shes lived with them for 4½ year and moved in Halloween 2010 and they are consistent and if you look at the

Affidavit of evidence in support of Memo. you will find an affidavit from Roger Langford in which he even says H.H. moved in Halloween, 2010. So when you look at all testimony made involved in the case, along with evidence submitted by the defendant/Appellant that counsel left out of trial and direct appeal you'll see why counsel was ineffective at trial and appeal. In appellants Affidavit of evidence in support of Memo., Look at evidence for count 3 plus evidence attached as Exhibit 5.

When a defendant pleads not Guilty they place every element of the charge at jepardy, Intent is an element of the charge, Findley v. State, 1966, 370 p 2d 677, 78 Nev. 198; see also Sonner v. State, 1996, 930 P 2d 707, 112 Nev. 1328; and NRS 48.045. Lewdness (Barron's Law Dictionary 7th Ed pg. 319) criminal act of sexual indecency committed in public. Exposure of intimate parts for the purpose of arousing or gratifying the sexual desire of the actor (or any person) when such exposure is likely to be observed by nonconsenting persons who would be affonted. see also Person (Barron's Law Dictionary 7th Ed. pg. 403). "in law, an individual or incorporated group having certain legal rights and responsibilities."

121 N.E. 2d 39, 41. This has been held to include foreign and domestic corporations. See 134 U.S. 594. Precise definition and delineation of the term has been necessary for purposes of ascertaining those to whom the Fourteenth Admendment to the U.S. Constitution affords its protection, since that Amendment expressly applies to "persons." Compare natural person. Under 1 U.S.C. § para. 1, the word 'person' is described as a corporation, fiction, artificial entity or government office. "[T]he word 'person' in legal terminology is perceived as a general word which normally includes in its scope a variety of entities other than human beings., see e.g. 1 u.s.c. § para. 1." Church of Scientology v. U.S. Department of Justice, 612 F.2d 417 at 425 (1979); see also Galvan v. Federal Prison Indus., (1999 App DC), 399 us App DC 248, 199 F.3d 461 (since in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarly to exclude it). See 4 Wheat 402. Nothing in regards to elements of the crime charged was proven in regard to it happening or when it happened, the only thing established at trial was that H.H. was 12 years old when she made the report.

but never established when this alleged incident happened at all as discussed supra. the state picked the dates of June 22,2007 to January 21,2014 not H.H., H.H. said at prelim this happened at age 8 which means the date range should have been June 22,2009 to June 22,2010. Even with that the state never proved that it happened between either set of dates, theyre is enough testimony and evidence presented at trial and in the petition to show it didn't happen anytime during the age H.H. said it allegedly happen but not the 6½ years the state picked. The date range is an element of the crime charge, it was never established at trial that it did happened between those dates. Also under silence is acquiescence Doctrine the state has agreed to most of these issues when responding to the petition. As to date there has been no proof beyond reasonable doubt that the charge convicted of was [redacted] committed by the appellant. The state charged "JUSTIN LANGFORD", that is the Strawman not the natural person "Justin Odell Landford" see Exhibit 6 Artical on Strawman.

JUSTICE COURT HAD NO JURISDICTION IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV, NEVADA CONSTITUTION AMENDMENT VI

The Justice courts that handled the appellants case had no Jurisdiction to handle the case at all. The Justice courts only have Jurisdiction to handle misdemeanors and gross misdemeanors pursuant to Nev. Const. Amend. 6, §6, Nev. Const. Amend. 6, §8 and NRS 3.190. All other cases District Court maintains original Jurisdiction, the appellants case is a felony case in which District court maintains Original Jurisdiction of not the Justice Courts. ORIGINAL JURISDICTION (Barron's Law Dictionary 7th Ed. Pg 387) authority to consider and decide cases in the first instance as distinguished from appellate Jurisdiction, which is the authority to review a decision or Judgement of an inferior tribunal and to affirm, reverse, or modify the decision. 513 P. 2d 960, 964. See Battiato v. Sheriff, 95 Nev. 361; 594 P. 2d 1152 (1979 Nev.); See also State v Kopp, 118 Nev. 199. 43 P 3d 340 (2002).

"The law requires proof of Jurisdiction to appear on the record of the administrative agency and all administrative proceeding." Hagans V. Lavine. 415 U.S. 533; See also Joyce v U.S., 474 F. 2d 215; Lantana v. Hopper, 102 F 2d 188; Chicago V. New York. 37 F. Supp 150. "Where there is no Jurisdiction, there can be no discretion, for

discretion is incident to Jurisdiction. Piper v. Pearson. 2 Gray 120; see also Bradley v. Fisher, 13 wall 335, 20 L. Ed. 646 (1872); USCC v. Airm, Inc., 487 U.S. 72 (1988).

But that is not what happened in the appellants case. The Justice Court in Searchlight Nevada exercised Jurisdiction in the appellants case, not only did the Justice Court exercise Jurisdiction where it had none, but exercised it in a case where the Judicial Officers were in conflict of interest but are biased in handling the appellants case. The Judge that handled the appellants case has ties to the appellants alleged victims family, first the Grandma was the courtclerk in that court and at one time use to work for the Judge in his personal business and H.H.'s Mom use to work in his personal business. Judge Stan Colton should've sent this case right out of his court to another court but he only did that after he denied the appellants O.R. request and set the bail at $1 Million. When Judge Colton sent the appellants case out of his court he sent it to Boulder City, Nevada instead of District Court where the case should have been in the first Place. So not only did both Justice Courts exercise Jurisdiction where they had none but they violated there Oath to uphold the Nev. Const. and laws, then they violated Rule 1-1.1 of Nev. Rules of Judicial Conduct - Must obey all laws. Where one court acts without Jurisdiction it deprives the next court of Jurisdiction pertaining to any thing done in that court, and anything done without Jurisdiction is void in effect. Justice Court had no Jurisdiction

to allow the charge the appellant was convicted of to be added which in turns deprives District Court of Jurisdiction to take the appellant to trial on the charge which renders the GUILTY verdict void.

With the Justice Court not having any Jurisdiction to handle Felony cases, means the appellant never had a fair hearing regardina bail or being release on an O.R. by an impartial Judge which also deprives the appellant of Due Process and effective assistance of counsel at trial and on direct appeal for not challenging this issue, (U.S.C.A. 5, 6, 8, 14).

FAILED TO PROSECUTE UNDER REAL PATIES IN INTEREST IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV.

The state prosecutors did not prosecute the appellants case under the real party in interest, it was prosecuted under "STATE OF NEVada" that is not the real partu in interest. The real partu in interest is H.H. but because she is non-sui Juris, the case had to be prosecuted in the name of her guardin or parent at the time and in the instant matter that would have been her mom "Shauleen Coon". This is a violation of Nev. R. Civ. Pro. Rule 17 and Fed. R. Civil. RRO. 17(A). yes this is a civil rule so see Fed. R. Civ. PRO. 2 which says there is only one tipe of case and that is civil. Eltsan v. Patel, 2007 U.S. Dist. Lexis 11036; See also Hamilton v. Matrix Logistics, Inc., 2007 US. Dist. Lexis 2638; Behar v. Underwriters at Llyods, U.S. Dist. Lexis 28691; Gracie v. Hall, 624 F 2d 150, 151 n.3 (10th cir. 1980). See Exhibit 7 article on Real Parties in interest. This may result in a Supremacy Clause violation U.S. Const. Art. 6, clause 2.

MISREPRESENT EVIDENCE IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

The states prosecutors like to say that the DNA evidence proves everything H.H says happened, but lets take a look at what the verdict is in the appellants case. The appellant was found NOT GUILTY on counts 1,3,4,5,6,7,8,9,10,11,12 which were the counts that involved the DNA Evidence. The Jury did as told in the instruction which was to use their common sense when considering the evidence and testimony presented to them. The Juru has said the DNA Evidence does not prove what your claiming. So for the state prosecutors to keep sayina it proves everything is disrespectful to the Jury's Verdict and it say's their telling the Jury you have no common sense. "Because a Jury speaks only through its verdict" Gonzalez v. The Eighth Judicial District of the State of Nevada, 298 P 3d 448; 2013 Nev. Lexis 21; 129 Nev. Adv. Rep. 22.

The state took DNA samples from only two(2) people and that was the appellant and H.H.. Here's the issues with that, first there were four people livina in the House, second all four(4) people had access to the crime scene, and third it allows the state to manipulate evidence in a trial. Lets talk about Item 1 on DNA report, which

is attached as Exhibit 8, Item 1 is the alleged towel used. As statedin other paperwork filed by the appellant this is not the exact towel H.H. described in her statements, the towel H.H. had described was 6inchs bu 12inchs and the towel collected was triple in size, So when uou look at item 1.1.6. which was a single strand of hair that had partialy identified the appellant and H.H., a single strand of Hair cannot identify two people not related especially after being cleaned by chemicals like miss Adams claims it was. If the State or Appellants attorney's had done their Jobs that would have Just have the appellants' daughters name only there, this is why right now it identifies two people unrelated. Because it belangs to someone related to both people.

Now look at items 1.2 & 1.3 on the DNA report. You'll see under discription that they are stains in opposite corners of each other near the tag. now ao to summary of those items you see one thing that has a mixture profile and that is EF which is short for Epithelial Franction which is a skin cell. As discuss supra. if they had every ones DNA it would only identify the appellants daughter, but that's not what it does. It has both the appellant and H.H. on it instead, this in turn has allowed the state to say it matches what H.H. says happened.

Here is the biggest nay sayer in the DNA

report and it is item 1.4. Stain near center of towel. Now look at the summary of that item and take notice that everything there identifies one person and that is the appellant, for this to be true to support H.H.'s claims her DNA would be all over the towel and in the center of the towel to support her statement. H.H say's that she layed on that towel numerous times and that the appellant wiped her with the towel when he ejaculated on her, the most recent one too allegedly happen was the Thursday before the appellants arrest. But the evidence shows shows that someone related to her touch the corners of the towel.

But now look at states Exhibit 50 attached as Exhibit 9. to get a clearer picture of the evidence discribed above. In the first Slide you can see the exact location of item numbers 1.2, 1.3 & 1.4 on the towel. Then on items 1.1.3 & 1.1.6 you can see as appellant has said numerous times those are single strands of Hair. Then on slide 5 which shows Item 1.4.-Stain near center of ~~Stain~~ towel, you'll see that the stain is in a zig-zag pattern. For H.H.'s statements to be true as to what happened, that would have to be a big puddle or circle pattern there not a lang zig-zag pattern.

Had counsel done there job in talking to forensics expert and obtaining a DNA Sample from

everyone in the house at the time of the alleged crime (i.e. Shayleen Coon, Kaylie Langford). The State was able to twist the evidence to mean what they want it to mean, instead of what it means. Had counsel had everything retested with all DNA samples of everyone in the house the DNA report would have the appellants and his daughter's name instead. But the state also knew that there was two(2) other people that had contact with the alleged crime scene (ie. the bed), the state knew that the hairs and skin cells were circumstantial evidence from the location of them. But the State chose to ignore this and not verify their facts, instead ~~to~~ chose to try obtaining a conviction by any means necessary.

By counsel and the State not doing any of the stuff discussed Supra. it is a violation of Due Process and renders counsel ineffective in assistance. The State is going to say it would not be logical for counsel to expose the appellant to other charges, but that shows the state does not read everything that's in a case file when they get it because the appellant's daughter said nothing happened to her. Also the appellants daughter has also said she has not seen or heard anything happen to H.H., thats why the state didn't have appellants daughter testify at trial. Because she contradicts every thing H.H. says and was Home 24/7 until August 2013.

This is a miscarriage of justice for prosecution to do this and prosecutorial misconduct. United States v. Lapage, 231 F 3d 488. (9th cir. 2000); See also Jencks v. U.S., 353 U.S. 657, 1 L Ed 2d 1103. 77 S.Ct. 1007(1957); See also Riley v. State, 93 Nev. 461; See also Cline v. Walmart Stores Inc., 144 F 3d 294(4th cir. 1998); See also Miller v. Pate, 386 U.S, 2. 17 L Ed 2d 690, 87 S.Ct.(1967). Before the state says the appellant didn't explain what way the case's cited are related to his case, the purpose of caselaw is to support what your arguing in your arguement. The state only cites a case and in rare case gives a snipet of what is said in the case cited.

The Appellant was never given an evidentry hearing or the resources requested to prove his claim once proven it would entitle the appellant to relief for prosecutorial misconduct and ineffective assistance of counsel for not doing this stuff explained Supra.. So the appellant ask this court to do a complete review of the record.

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL AND PRIOR TO TRIAL IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

The appellant in his petition for Writ of Habeas Corpus (Post Conviction) Wrote a four(4) Page list of facts to support his Ineffective Assistance of Counsel at Trial and Prior to Trial. The appellant had over 40 supportina facts as to why his counsel was ineffective. The list included facts such as: failure to consult a forensics evidence, knowledge lacking concerning matters in the case, failure to object to closing arguments bu prosecution. Fail to impeach complainina witness with prior inconsistent statements and medical evidence, just attemptina to poke holes in accusations, Failed to get DNA samples from everyone that had contact with alleged crime scene, No experts consulted in regards to forensics or medical, failed to obtain all evidence from the state such as psychological records, failed to obtain an independent psych. evaluation, Failed to call all witnesses at trial that was promised to be called, Among other issues presented to the trial court.

Now the appellant brings all those claims to this court. Had counsel contacted and Hired a forensics expert to retest all evidence collected

from the alleged crime scene once all DNA samples from everyone in the house. When counsel failed to do this stuff it left her to rely on the states witness who was to testify on this evidence. States witness was Tiffany Adams who is paid by the State, so there is no guarantee she will say the same thing the appellant as discussed supra in regards to the DNA evidence. Counsel has an affirmative duty to do every thing possible to defend their client at trial if client whish to go to trial. So for counsel not to do anything discussed supra. to Verify the results the State had produced and given to us. "[T]he failure to investigate the medical claims that formed the physical evidence for the sexual abuse charges was unreasonable and formed the basis for constitutionally deffective assistance of counsel." Miller v. Snokowski, 268 F. Supp 2d 296 (E.D.N.Y. 2003) (quoting Pavel v. Hollins, 261 F.3d 210 (2nd cir. 2001)); See also Thompson v. Calderon, 120 F 3d 1045 (9th cir. 1997); Gersten v. Senkowski, 426 F 3d 588 (2nd cir. 2005).

All appellants counsel attempted to do at trial in the complaining witness, is poking holes in it to attempt at discrediting the witness. In Fisher v. Gibson, 282 F.3d 1283 (10th cir 2002) ("Here it is evident that counsel did not have a strategy of pointing to holes in the evidence or trying to create a reasonable doubt in jurors' minds. To the contrary. it is obvious that during his direct and cross-examinations Mr. Porter had no idea he might elicit information that

could be usestul to such a strategy. furthermore, he made no attempt whatsoever to draw the jurus' attention to any gaps in the Statec evidence, and never articulated a reasonable doubt theory to the jury.[...] Where an attorney accidentally brings out testimony that is damaging because he failed to prepare. his conduct cannot be called a strategic choice: an event produced by the happenstance of counsels uninformed and reckless cross-examination cannot be called a "choice" at all. See Strickland. 466 U.S. at 691."). So as you can see pointing to Holes is not a strategy when an attorney has done no investigation to the case or the witnesses that will be called by the state. So when counsel turned up damaging statements on several instances was not planned on the several questions asked by counsel were just random questions being asked that accidently turned up damaging comments.

Appellants counsel did not attempt at anytime to impeach the complaining witness. Counsel could have tried on numerous instances tryed to impeach the complaining witness with her prior inconsistent statements and here medical evidence, but instead counsel chose to refreash the complaining witnesses memory. Tucker v. Prelesnik, 181 F 3d 747(6th cir. 1999); See also Driscoll v. Delo, 71 F 3d 701(8th cir. 1995);

Sparman v. Edwards, 26 F Supp 2d 450 (E.D.N.Y. 1997); Moffett v Kolb, 930 F 2d 1156 (7cir. 1991); U.S. Ex Rel. McCall v. O'Grady, 908 F 2d 170 (7th cir. 1990). for the appellants counsel to keep using prior inconsistent statements of the complaining witness to refreash her memory of what she said. instead of using those prior statements to impeach her. Shows the appellants counsel had a conflict of interest in the outcome of the case, by counsel continuously chosing to refreash the complaining witness shows she would rather have the State win. Fitzpatrick v. McCormick, 869 F 2d 1247 (9th cir. 1989).

Counsel showed lack of knowlege of law when it came to her motion to Compel H.H.'s psychological records and her direct appeal brief for the appellant. Had Counsel known what NRS's and caselaw to quote in her arguments for those records she would Gotten them, because she would have been able to show those records are not privileged as it is being claimed. This was all discussed supra. and in appellants Memo. in support of petition. Also appellant had filed motion for discovery with a special request for those records and that motion granted. Attached as Exhibit 10 is the motion for discovery, this also results in counsel failing

in the discovery process. Wade V. Armontrout, 790 F.2d 304 (8th cir. 1986); See also Smith v. Dretke, 417 F 3d 438 (5th cir. 2005). With the trial court denying the motion to Compel after granting motion for discovery is a denial to present a complete defense and a interference with cousels dutys. Also making a erroneous ruling going against federal caselaw and state law. Which in turn allows the state to turn over all discovery required by law to U.S. v. Stever, 603 F 3d 747 (9th cir. 2010); Stano v. Dugger, 889 F 2d 962 (11 cir. 1989).

The appellants counsel also failed to do anything to investigate the complaining witness. Counsel didn't attemot to interview the complaining witness herself or interview anyone around town regard the complaining witness. Counsel interview a couple people around town concerning the appellant. Counsel did nothing to investigate any of the witnesses that were to testify on the states behalf. U.S. v. Jasin, 215 F. Supp 2d 552 (E.D. Pa 2002); Soffar v. Dretke, 368 F 3d 441 (5th cir. 2004); Hargrave-Thomas v. Yukins, 236 F Supp 2d 750 (E.D. Mich 2002).

Counsel promised to have Craig Retke to testify on the appellants side for testimony. Craig Retke was the appellants original private investigator, as to what he was suppose

to testify to during the defenses case-in-chief the appellant does not know as his counsel never told him. Harris v. Reed, 894 F 2d 871 (7th cir. 1990); English v. Romanowski, 602 F 3d 714 (6th cir. 2010).

The appellants trial counsel sat by during the prosecutions' closing argument and did not object to there improper closing argument. The prosecution took the fact of the appellant testifying last and tried to use as a way to descredit his testimony. It's not like the appellant gets a choice to ~~testify~~ when he testify. Prosecution made the comment that the appellant waited to the very end to testify after everyone else has gotten to testify as to say that his testimony was going to change because he heard what everyone else had to say. Dubria v. Smith, 197 F.3d 390 (9th cir. 1999); see also Agard v. Portuondo, 159 F 3d 98 (2nd cir 1998) (as that was prosecutorial misconduct and ineffective assistance of counsel); See also Washington v. Hofbauer, 228 F. 3d 689 (6th cir. 2000).

Not did the appellant just raise these issues discussed supra., but he raised numerous other claims in his petition for Writ of Habeas Corpus (Post Conviction). The appellant is entitled to relief on his ineffective assisstance claim, not just on single issues

but on multiple issues with his counsel. The appellant raised his claim under Cronic and Strickland in his petition which is allowed. Fusi v. O'Brien, 621 F 3d 1(1st cir. 2010); see also Murray v. Carrier, 477 U.S. 496, 91 L Ed 2d 397, 106 S Ct 2639(1986); See also Parle v. Runnels, 505 F 3d 922(9th cir. 2007); Earls v. McCaughtry, 379 F 3d 489(7th cir. 2004); Silva v. Woodford, 279 F 3d 825(9th cir. 2002); U.S. v. Tory, 52 F 3d 207 (9th cir. 1995). "The reasonable doubt standard for a different outcome is "At least one juror would habored a reasonable doubt" Buck v. Davis, 137 S Ct 759(2017)

The appellant believes he has presented valid claims in his petition to supported his claim of ineffective assistance of counsel claim under Strickland, 466 U.S. 668 and under Cronic. 466 U.S. 648. So the appellant ask this court to ~~the~~ conduct a complete review of the record in regards to counsel. The appellant was not given an evidentry hearing in regards to this claim or any other claim that would entitle the appellant relief. Counsels' failure to investigate prosecution's forensic evidence was ineffective assistance of counsel. Elmore v. Ozmint, 661 F.3d 783 851-70(4th cir. 2011).

DENIAL OF TRIAL TRANSCRIPTS IN VIOLATION OF UNITED STATES CONSTITUTION ADMENDMENTS V, VI, VIII, XIV

The appellant requested copies of trial transcripts on three occassions from the trial court. On all three occassions the motion for transcripts and other documents were denied by the trial court. The appellant needs the transcripts of all the proceedinas he asked for to be able to raise every viable claim for relief that the appellant may be entitled to. The appellant has requested the transcripts to days 1, 2, and 8 of trial and transcripts to arraignment in the Searchlight Justice Court on January 28, 2014 and Court Exhibits from trial but cannot seem to get these records. Appellant needs Court Exhibit 19 in particular. An Indigent petitioner and is entitled to a copy at states expense and not to provided them a copy is a violation of Due Process. Greene v. Brigano, 123 F 3d 917 (6th cir. 1997)

VIOLATION OF SPEEDY TRIAL ACT 18 U.S.C. §3161 IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

ON March 14.2014 the appellant had his district court arraignment. During that arraignment the appellants original trial counsel told the appellant to waive his his speedy trial. So when the court asked whether the appellant wanted to envoke his Speedy trial right, the appellant said no he did not want to. But in Zedner it states in pertinent part:

> [T]he Speedy Trial Act comprehensively regulates the time within which a trial must begin. Section 3161(h) Specifies in detail numerous categories of delay that are not counted in applying the Act's deadlines. Conspicuously, §3161(H) has no provision excluding periods of delay which a defendant waives the application of the Act, and it is apparent from the terms of the Act that this omission was a considered one. Instead of simply allowing defendants to opt out of the Act, the Act demands that defense continuances request fit within one of the specific exclusions set out in subsection (H). p1987. (For the reasons presented). we reject the District Court's reliance on §3162(a)(2) and Conclude a defendant may not prospectively waive the application of the act. It follows petitioner's waiver "for All time" was ineffective. p1990. The sanction for a violation of the Act is dismissal, but we leave it to the District Court to determine... whether dismissal should be with or without prejudice.

Zedner v. U.S., 547 U.S. 489, 164 L Ed 2d 749, 126 S Ct 1976 (2006); See also U.S. v. Mala, 7 F 3d 1058 (1st cir. 1993); Nelson v. Hargett, 989 F.2d 847 (5th cir. 1993), this is a long standing ruling in the circuits.

as you can see its a violation of due process, but shows that counsel's knowledge of the law was lacking and for new counsel to allow this violation to go on was also ineffective assistance of counsel. Also for the district court to even ask this is a showing of bias and a violation of Nevada Judicial Rules Of Conduct Rule 1-1.1 must obey all laws. By the courts not enforcing this violates due process and the Supremacy Clause in the 6th Admendment of the United States Constitution. State Court is bounded to enforce Federal Law. Scarpa v. Dubois, 38 F 3d 1 (1st cir. 1994).

COURT CLERK REFUSES TO FILE PRO SE DIRECT APPEAL BRIEF IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

The Nevada Supreme Court Clerk refused to file this petitioners pro se informal appellate brief in the appellants direct appeal, which is a violation of this appellants constitutional rights. In Myers the courts stated in pertinent part:

> P252. The Eighth Circuit, ... has noted a distinction between the right to present oral arguments and the right to present a brief to an appellate court. ~~Chamberlain v~~ Chamberlain v. Ericksen, 744 F.2d 628, 630 (8th cir. 1984), [omitted] (1985). As to Presenting oral arguments, the Chamberlain Court found that the above-quoted language from Price [v. Johnston. 334 U.S. 266. 68 S.Ct 1049. 92 L.Ed. 1356 (1948). foreclose any right of a defendant to ~~present~~ act pro se [to present oral arguments]. But, this did not foreclose a right of a defendant to present a pro se brief. In light of this, the court argued that, whether at trial or on appeal, a defendant should not be required to have counsel forced upon him or her. Id. This. the Chamberlain Court found that a criminal defendant does have a right under the Constitution to present pro se briefs or motions on appeal. Id.

Myers v. Collins, 8 F.3d 249 (5th cir. 1993); See also Myers v. Johnson, 76 F.3d 1330 (5th cir. 1996). Vega v. Johnson, 149 F.3d 354 (5th cir. 1998). Attached as Exhibit 11 is appellants direct appeal pro se Brief. The Nevada Supreme Court Clerk can be held liable for refusing to file papers. See ~~Kaufman~~ Snyder v Nolan. 380 F.3d 279. 288-89 (7th cir. 2004)

PROSECUTORIAL MISCONDUCT IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

The appellant has discussed numerous instances where the prosecutions conduct was improper. The prosecutions conduct in the instances that have been discussed supra. I.E. withholding evidence, and Improper closing arguements, Misrepresenting evidence. All these issues violate the appellants right to Due process and a fair and impartial trial.

The state has tried in every concievable way possible to keep pieces of discovery out of the appellants hands, they have gone as far as quoting that the records are priveleged and quoting statutes out of chapter 49 of the NRS. The records are not priveleged as discussed Supra. in the section titled "DENIAL OF DISCOVERY" and that is due to the nature of the case and how it originated. With the prosecution willfully withholding the psychology records and H.H.'s statement made on June 21, 2014 they interfered with the appellants' counsels dutys' and rendered counsel ineffective, and with the prosecution willfully and intentionally withholding this evidence it is on them to prove they're not in the appellants favor. Chapman v. California, 386 U.S. 18, 23-24, 17 L. Ed. 2d 2 705,

1 87 Sct. 824(1967).

2 The prosecution also failed to
3 prosecute the case under the real party in
4 intrest. In the appellants case the 'STATE OF
5 NEVADA' is not the real party in interest. In
6 the appellants case it would be H.H. but
7 because she is non-sui Juris it needsto be
8 prosecuted in the name of a parent or a
9 Guardian and that would have been Shayleen
10 Coon H.H.'s mother. This whole issue was
11 discussed supra..

12 Then you have the issue of prosecution
13 misrepresenting evidence to the court and to
14 the jury. The state kept saying that the towel
15 found was the exact one H.H. described, even
16 after they saw how big it was in court. But they
17 already knew it wasn't, because the had
18 numerous photos of it at the alleged crime
19 Scene. You can tell the towel is not 6in. x 12in. as
20 H.H described in her statement and at trial, just
21 From the pictures of it pulled apart in the
22 dresser drawer. With being able to tell how big
23 the towel was and seeing it didn't match what
24 was described by H.H., would have told any
25 competent human being that the DNA reports
26 were inaccurate and they need to get DNA
27 samples from everyone else in the house. But
28 that is not what happened, the prosecution
29 chose try to obtain a conviction with false

evidence/ammo is a violation of due process and with counsel for appellant not doing anything to Verify the States results or get DNA samples from the others in the house to get accurate results, renders counsel ineffective.

Then you have the States use of perjured testimony, the State allowed H.H. on the stand to say things happened to her even when they had medical evidence that said other wise and they had DNA reports that don't line up with what H.H. describes, discussed supra.. The State has also allowed H.H. to continue to say that it started at age 6 and that it started after she moved in with her mom and the appellant, when she was clearly adamant in her voluntary Statement on January 21, 2014 that it started at age 6. H.H. only changed the age it started at preliminary, also with the State not putting H.H.'s sister Kaylie Langford on the stand at trial shows' the State knew H.H. was lying. Kaylie was in the house 24/7 up till the begging of the 2013-14 school year. Kaylie contradicts everything H.H. say's in her statements so why would the state put Kaylie on the stand to testify. Napue v. People of the State of Ill., 360 U.S. 264, 79 S Ct 1173, 3 L Ed 2d 1217 (1969).

INEFFECTIVE ASSISTANCE OF APPEAL COUNSEL IN VIOLATION OF UNITED STATES CONSTITUTION ADMENDMENTS V, VI, VIII, XIV

The appellants counsel on Direct Appeal Showed her lack of Knowledge Federal caselaw and Nevada Statutes. The Appellant in his memo. and Traverse quoted all the Federal caselaw that there is no such thing as privelege in a criminal case but no relevant Nevada Statutes. The Appellant found all the relevant Nevada Revised Statutes which show that the psychological records of H.H. are not priveleged as claimed. If counsel had known all the relevant Federal caselaw and NRS's the outcome would have been different from what it was. With counsel not having the adequate knowledge of law it allowed the state to quote Statutes that are not even relevant to the issue and don't apply. Appellant quotes all the relevant NRS's supra. in the section titled "DENIAL OF DISCOVERY". Between Appeal Brief and appellants Memo. and Traverse, show the knowledge and argument that should have been presented by counsel originally on direct appeal.

The Appellants Direct Appeal Counsel failed to raise all the grounds possible that do have merit. Instead counsel chose to raise a ground where knowledge was lacking and a ground that had no merit. Better known as a 'Dead Bang winner'. see Page v. United States, 884 F 2d 300, 302 (7th cir. 1989)([a]n appellate advocate may deliver deficient performance and prejudice a defendant by omitting a "DEAD-BANG winner," even though counsel may have presented a strong but unsuccessful claims on appeal.); see also U.S. v. Cook, 45 F. 3d 388 (10th cir. 1995).*

The appellant has presented numerous issues in his petition for Writ of Habeas Corpus and within this brief, the appellant has taken several of his supporting facts for his main claims and broke them down in their own section in this brief. The main claims are Denial of Discovery, Prosecutorial Misconduct, Insufficient Evidence/Actual Innocents, cummulative errors of Due Process, Ineffective assistance of counsel, Unconstitutional laws, and ineffective assistance of appeal counsel. Each of the other claims argued in this appeal were argued under the main claims in the petition as supporting facts. Mason v. Hanks, 97 F.3d 887 (7th cir. 1996). "The weeding out of weak claims to be raised on appeal 'is the Hallmark of effective

advocacy. [omitted]. because every weak issue in an appellate brief or argument detracts from the attention a judge[P395] can devote to the stronger issues, and reduces the appellates counsel's credibility before the court." Miller, 882 F 2d at 1434. Counsel chose to filed two(2) claims, one was on denial of H.H.'s Psychological records and the other was a challenge on the pictures admitted in to evidence. Had counsel done her duty and researched that subject counsel would have known it was pointless to challenge the Pictures on appeal.

The appellant raised many claims that counsel could've and should've argued on an direct appeal, and the state argued that those grounds are waived because they were not raised on direct appeal. But for the court not to decide the issues on there merits would be a miscarriage of justice especially when the appellant is raising ineffective assistance of appeal counsel and ineffective assistance of counsel. Also the appellant tryed to file a Pro Se Appeal Brief on direct appeal that brought most of these issues to the courts attention, that he has raised on his petition and through his appeal brief. When the court reviews the entire record on the issues raised you'll see why counsel was ineffective all around.

There is no logical reasoning as to why counsel would not argue these major issues on appeal unless she was biased or had a conflict of interest with the appellant. [...] When appellate counsel omitts (without leaitimate strategic purpose) "a significant and obvious issue." we will deem his performance deficient. (Gray, 800 F.2d at 646) [omitted]. Mason v. Hanks. 97 F.3d 887 (7th cir. 1996). To allow counsel to do anything they want in regards to what should be done in a clients case is a total disregard to the Rules of professional conduct. If client say's to raise these issues for the following reasons the counsel should be doing it unless it is unethical or illegal. Jones v. Barnes. 463 U.S. 745. 751 (1983). See also 45 Geo. L.J. ANN. Rev. Crim. Proc. 598 (2016) (Footnote 1632). also refer to Traverse page 15, also a miscarriage of justice. Counsel can not waive anything on the appellants/defendants behalf.

VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV

The appellant raised cumulative error of due process in his Petition for Writ of Habeas Corpus. There were so many violations of Due Process in the appellants case. When considered in single form some of them might not be enough but when you take in the cumulative effect of everything that violated the appellants right to due process. The challenge has never been cumulative error of counsel. When the state argued against this count, they argued it as cumulative error of Strickland. This count was argued in Mema at 122-135 and Mema at 5-94. The State failed to argue aaainst facts 5-Z in petition For Writ of Habeas Corpus. Under the silence is acquiescence doctrine. Eureka v. Bank, 35 Nev. 80(1912); see also Hale, 422 U.S. at 422 U.S. 176; Ylst v. Nunnemaker, 501 U.S. 797(1991). Thus admitting to those issues and waiving any future right to argue against those issues. The cumulative error doctrine recoanizes that the cumulative effect of several errors mau prejudice a defendant to the extent that his conviction must be overturned. See United States v Frederick. 78 F.3d 1370. 1381(9th cir. 1996)

UNITED STATES CONSTITUTION
AMENDMENTS V VI VIII XIV

When the trial court denied this count in the appellants' petition for Writ of Habeas Corpus, the Judge broke her Oath. The Judges take an Oath to support the States' Constitution, federal law and the U.S. Constitution. The NRS's cann't over rule what the Nevada Constitution says', Any NRS that says' anything Contrary to the Nevada Constitution is unconstitutional and has no force and Effect. Another wards it is Null and Void.

The state quotes NRS261A.160 which defines a public officer.

NRS 261A.160

1. Public Officer means a person who is:
   (a) Elected or Appointed to a position which:
      (1) Is established by the Constitution of the State of Nevada, a statute of this state or a charter or ordinance of any county, City or other political Subdivision; and
      (2) Involves the exercise of a public power, trust or duty; or
   (b) Designated as a public officer for the purposes of this Chapter pursuant to NRS281A.182.
2. As used in this section, 'the exercise of a public power, trust or duty' means
   (A) Actions taken in a official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
   (b) The expenditure of public money; and
   (c) The administration of laws and rules of the State or anu county, City or other political subdivison.
3. Public officer does not include:
   (A) Any Justice, judge or other officer of the court system;
   (B) Any member of a board, commission or other body whose function is advisory;
4. 'Public office does not include an office held by:
   (A) Any justice, judge or other officer of the court system;
   (b) Any member of a board, Commission or other body whose function is advisory;
...

6, §11 says. Nev. Const. Art. 6, §11 says a judge, justice or other officers of the court system are public officers. and a public office ~~is~~ does include one held by a judge, justice or officers of the court sustem. another wards in sections 3 and 4 of the NRS are contradictary to the Nev. Const.. which means it is an unconstitutional statute.

A statute cannot amend the Nev. Const., the Constitution lays out the ways and the requirements to amend the Nev. Const. conspicously missing is amendment by statute. This is all layed out in Nev. Const. Art. 16, §§1 & 2.

Nevada Constitution Article 4, Section 23 reads as follows:

> The enacting clause of every law shall be as follows: "The people of the State of Nevada represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

NRS 0.025(1)(d) states in pertinent part:

> "Shall" imposes a duty to act.

So going by Nev. Const. Art. 4. §23 "the enacting clause of every law shall be as follows" show the statutes ~~mus~~ mandatorly have the enacting clause right along with the bill. So NRS 220.110 is also contradictary to the

Null and Void.

The Nevada Revised Statutes ARE not Prima facie evidence of the law. Senate Bill 2. Section 1 reads as follows:

> Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute law set forth after Section 9 of this act, are hereby adopted and enacted as law of ~~this~~ the State of Nevada

Section 3 of Senate Bill 2 reads as follows:

> Repeal of Prior Laws. Except as provided in section 5 of this act unless exoressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

So as uou can see right out of the Senate Bill that created the NRS say's they are the law. the previous laws of Nevada were repealed as of January 21, 1957. There is no provision in the Senate Bill that say's they are to be quoted as Prima facie evidence of the law, it explicitly sau's they are the law. "While it is well-established that the laws of Nevada must include an enacting clause," State's Response at 33 Line 15. Also for NRS 220.170 to say the NRS's are prima facie evidence of the law is totally wrong when Senate Bill 2 say's they are the law.

IN VIOLATION OF NRS 175.111 AND UNITED STATES CONSTITUTION AMENDMENTS V, VI, VIII, XIV,

This issue was not raised in petition for Writ of Habeas Corpus, because the appellant is still learning the law and just discovered the issue at hand. Not only is it a structral error but it's also a jurisdictional defect. As a straight forward issue the court had no jurisdiction. from the trial court to this court to affirm the Judgement. District Court Susan H. Johnson had no Jurisdiction to issue any Judgement, as there was done May 10, 2016, In the Eighth Judicial District Court.

This is a Jurisdictional issue. that needs to be remanded to the District Court for an evidentiary hearing and/or other relief this Court deems proper. with the Attached Evidence/Exhibits Attached hereto under FRE201 NRS 47 et seq.

Because the state Deputy DA Michelle Jobe and the appellants counsel Moniaue A. McNeill. had a duty to bring mootness to the court's attention. There was an obvious conspiracy between the court officers. Brd of license Comm'r v. Pastore, 469 U.S. 238,

520 U.S. 43, 68(N23)(1997).

Further, Here there is an obvious structral error that should have been raised on direct appeal.

This structral error comports with Barral v. State, 353 P 3d 1197, 1200(2015)(if not directly than it's a species of common oriain)"Barral" relied on NRS 16.030(5) and NRS 175.021 as a "Voir dire" issue where the jury was required to recieve from the Judge or Court Clerk. "Shall" administer an oath or affirmation to the juror's substantially in the following form:

> Do you and each of you solemnly swear or affirm under pains and penalties of perjury that you will well and truely answer all questions put to you touching upon your qualifications to serve as Jurors in the case now pending before this court so help you God?"Next"

NRS 16.070(1) reads as follows:

> As soon as the jury is completed, the Judge or the Judges Clerk shall administer an Oath or affirmation, to the Jurors in substantially the following form:
> .....
> Do you and each of you solemnly swear that you will well and truely try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God.

NRS 175.111. Oath of Jurors. reads as follows:

> When the jury has been imponeled the court shall administer the following Oath:
>
> Do you and each of you solemnly swear that you will well and truely try this case, now pending before this court, and a true verdict render according to the evidence given. So help you God.

"Shall" imposes a duty to act.

NRS 16.070(1) allows for the oath to be administered by the judges clerk or the judge, but when you look at NRS175.111 which is the Oath of the jurors it ~~s~~ says the court shall administer the oath. NRS 175.111 is the controlling statute when it comes to the jurus oath. "Express-mention of one thing is an exclusion of another. Leake v. Blasdell, 6 Nev. 40(1870); Galloway v. Trusdell, 83 Nv 13.26.422 P 2d 13.26(1967). In this matter, with "Shall" being mandatory. "The Court" shall administer the oath. NRS 0.025(1)(d). So as you can see in the statute for the juror's oath there is no provision for the court clerk to administer the oath.

"The Court" is interpreted as the judge. (see Generally NRS 174.035. only the Court can accept a plea of guilty). If the court "Never" / administered the Oath. The court minutes for March 7.2016 and March 8.2016 only says the "prospective panel sworn" and "Twelve Jurors and two Alternates selected and sworn", what the minutes don't show is who administered the oath and what oath was administered. Also there are no Transcripts on file for these two(2) days or for March 16,2016. "[C]ourt reporters are required to record proceedings verbatim, 28 U.S.C. §753(b) but the failure to do so does

United States v. Doyle. 786 F 2d 1440. 1447 (9th cir.). Was there ever a constituted Jury? (and) did the prosecutor deputy, and the Defense attorney Monique A. McNeill esq. Violate the rules of candor in Nevada. RPC 1.4, RPC 8.4(a)(c)(d) by arguing a moot case? In other words, if the jury trier of fact didn't lawfully exist, they could not have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S Ct 2781(1979). "emphasis in original". McNair v. State, 108 Nev. 53, 56, 825 P 2d 571, 573(1992).

This would also bar the next step under NRS 175.141 because the jury. may not have been given the Oath properly under statute. This now becomes a Jurisdictional issue, and fraud upon this court NRCIVP 60(b) FRCIVP 60(b)(3-6). As states in Martinez v. Illinois, "Jeopardy doesn't attach until Jury is sworn." 134 S Ct 2070(2014).

This court, cannot challenge the transcripts, as it's deemed correct. See Braunstein v. State, 40 P.3d 413(2002) and 178 P.3d ___ 28 U.S.C. §753(B); U.S. v. Anzalone, 886 F.2d 229, 232(1989); U.S. v. Marshall, 488 F 2d 1169, 1196(9th cir. 1983); Abatino v. USA, 750 F 2d 1442, 1445(9th cir. 1985); USA v. Hoffman, 607 F 2d 280, 286(9th cir. 1979); U.S. v. Zammiella, 432 F.2d

P.2d 12, 7 Nev. Cir. 170. In other words it's the law of the case. See Ashe v. Swensen, 397 U.S. 436, 443, 444 (1970) with approval Yeager v. US, 557 U.S. 110, 129 S.Ct. 2360 (2009).

Plus the State never filed any "bill of exceptions" against the transcripts. Thiess v. Rapport, 59 NV 180, 185, 89 P.2d 5 (1939), in the past appeal and Writ of Habeas Corpus (Post conviction). Attached as Exhibit 11 is court minutes from March 17. 2016 and page 10811 of the transcripts from that day.

APPEAL STATEMENT FOR SUPP. No. 76075

The below arguement is what was presented in Petitioners Writ of Habeas Corpus which was which was not argued against by the state. So the petitioner filed motion to Correct Illegal Setence, once filed the state still failed to address the issue. Under silence is acauiescence doctrine. the state has admitted the arguement is true and correct. See Ylst v. Nunnemaker. 501 U.S. 797(1991).

The Justice courts had no Jurisdiction to handle this petitioners felony case, and Justice Court Judge Stan Colton had conflict of intrest in handling this petitioners case, the grandmother of this petitioners accuser worked as a court clerk in his court room and she used to work in his personal business, also Justice Court Judge Stan Colton knew he had conflict of intrest and he showed he knew by sending my case to Boulder City Justice Court But only after he set my bail extremely high and denied an O.R. release. And niether Justice Court showed they had Jurisdiction on the record and failed to challenge Jurisdiction upon its own motion. "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v. Lavine, 415 U.S. 533. "There is no discretion to ianore lack

of jurisdiction." Joyce v. U.S., 474 F 2d 215. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantana v. Hopper, 102 F.2d 188; Chicago v. New York, 37 F. Supp 150. Under Nevada Constitution Article 6, sec. 6 and Article 6, sec. 8, Nev. Rev. Stat. 3.190(1)(9). Battiato v. Sheriff, 95 Nev. 361; 594 p. 2d 1152 (1979 Nev.); State v. Kopp. 118 Nev. 199. 43 P.3d 340 (2002 Nev.). Jurisdiction Note: It is a fact of law that the person asserting jurisdiction must, when challenged, prove that jurisdiction exists; mere good faith assertions of power and authority (Jurisdiction) have been abolished. "A departure by a court from those recognized and established requirements of law however close apparent. adherence to mere form in methods of procedore which has the effect of depriving one of a Constitutional right, is an excess of Jurisdiction." Wuest v. Wuest, 127 p 2d 934. 937. "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Piper v Pearson, 2 Grag 120; See also Bradley v. Fisher, 13 wall. 335 20 L Ed 646 (1872). The challenge in this case goes to subject-matter jurisdiction of the court and hence its power to issue the order. The distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rest instead on the central principle of a free society that

courts have finite bounds of authority, some constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of Judicial power." USCC v Arm. Inc., 487 U.S. 72 (1998). This challenge is asserted for both Justice Courts and District Court.

Justice Court is provided Jurisdiction for misdemeanors and gross misdemeanors per Nev. Rev. Stat. and the Nev. Const. they were never given authority for anything else, thus the Justice Courts acted without Authority which deprives District Court of Authority. See Barral v. State, 353 P.3d 1197, 1200 (2015). See Actual Motion with 8th Judicial District Court, As everything is Supported by U.S. Const. Amed. II, Rule 7(a) of the Federal Rules of Pr Criminal Procedure. See Bain, 121 U.S. 1, 12-13 (1887); Makin v. U.S., 117 U.S. 348, 354 (1886); Wilson, 114 U.S. 417, 429 (1885); U.S. v. Moreland, 258 U.S. 433, 441 (1922); U.S. v. Coachman, 752 F.2d 685, 689 n.4 (D.C. Cir. 1985).

CLOSING ARGUMENT

The appellant has presentedall his arguments to this court and to the trial court. The trial Court has refused to follow the federal case law presented to it. which shows the appellant that the trial court just don't care about justice or following their Oath's to Stand on the bench as a judge. So the Appellant ask this court does the blooper real continue to to be produce at the expence of the Appellant's Constitutional Rights.

So the appellant ask for the following as Relief;

1) Evidentiary hearing
2) Counsel appointed for Hearing
3) Funds for Ancillary Services Needed.
4) Full Reversal For a New Trial
5) Any and all Relief Court may deem appropriate