

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

2
3 JONATHAN QUISANO,

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.

No. 66816

E-File

Electronically Filed
Feb 17 2015 09:18 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8
9 **FAST TRACK STATEMENT**

10 1. **Name of party:** Jonathan Quisano.

11 2. **Name of attorney submitting this fast track statement:**

12 NORMAN J. REED, #3795
13 Clark County Public Defender's Office
14 309 S. Third St., Ste. 226
15 Las Vegas, Nevada 89155
16 (702) 455-4685

17 3. **Appellate counsel if different from trial counsel:** Same.

18 4. **Judicial district, county, and district court docket number of**
19 **lower court proceedings:** Eighth Judicial District, County of Clark, District
20 Court Case No. C294266.

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22 5. **Name of judge issuing order appealed from:** Valorie Adair.

23 6. **Length of trial.** N/A.

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25 7. **Conviction(s) appealed from:** Ct. 1 – Voluntary Manslaughter,
26 Ct. 2 – Child Abuse, Neglect or Endangerment with Substantial Bodily Harm.

1 8. **Sentence for each count:** \$25 Admin. fee; \$150 DNA analysis
2 fee; genetic testing; Ct 1 – 48-120 months in prison; Ct. 2 – 72-230 months in
3 prison consecutive to Ct. 1; 488 days CTS.
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5 9. **Date district court announced decision:** 10/07/14.
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7 10. **Date of entry of written judgment:** 10/08/14.
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9 11. **Habeas corpus:** N/A.
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11 12. **Post-judgment motion:** N/A.
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13 13. **Notice of appeal filed:** 10/30/14.
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15 14. **Rule governing the time limit for filing the notice of appeal:**
16 NRAP4(b).
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18 15. **Statute which grants jurisdiction to review the judgment:**
19 NRS 177.015.
20

21 16. **Disposition below:** Judgment upon entry of plea of guilt.
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23 17. **Pending and prior proceedings in this court:** N/A.
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25 18. **Pending and prior proceedings in other courts:** N/A.
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27 19. **Proceedings raising same issues.** Appellate counsel is unaware
28 of any pending proceedings before this Court which raise the same issues as
the instant appeal.

 20. **Pursuant to NRAP 17, is this matter presumptively assigned
to the Court of Appeals? Identify issues or circumstances that override**

1 any presumptive assignment to the Court of Appeals or require retention
2 by the Supreme Court. Issues should be identified and explained with
3 specific reference to arguments in the Fast Track Statement. Appellant
4 does not oppose assignment to the Court of Appeals.
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7 21. **Procedural history.** Appellant JONATHAN QUISANO was
8 originally charged and plead not guilty in a two-count Information charging
9 child abuse murder and an alternative count of child abuse, neglect or
10 endangerment. (ROA 462-64) [Amended due to typographical error the next
11 day.](ROA 465-67) On June 9, 2014, and evidentiary hearing started which
12 was to proceed the jury trial. (ROA 1278-1513) Before the hearing was
13 completed and before the jury selection process started, the case negotiated.
14 On June 10, Quisano plead no contest to a Second Amended Information
15 charging Voluntary Manslaughter, and Child Abuse, Neglect or
16 Endangerment with Substantial Bodily Harm. (ROA 998-99). After a pre-
17 sentence report was completed, the sentencing ultimately occurred on October
18 7, 2014. (ROA 1514-42) The lower court sentencing Quisano to the maximum
19 it was allowed to under the recommendation of the State prosecutor. (ROA
20 1166-7)
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26 22. **Statement of facts.** On June 6, 2013, Quisano's wife called 9-
27 1-1 and reported that her infant son had been injured at the residence while
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1 with Quisano, the child's Father. (ROA 1022-39). When emergency
2 personnel arrived, Quisano told them his son had fallen off of a chair and hit
3 his head on the tile floor. (ROA 1022-39). The child was transported to the
4 hospital where he ultimately died. (ROA 1022-39).
5

6 The child had a skull fracture in the back of his head consistent with a
7 fall. (ROA 1022-39). Apparently, the child had been playing with his brother
8 when he accidentally fell over the back of the couch onto the tile floor below.
9 (ROA 1022-39). The decedent's brother sustained no injuries. Information
10 was later relayed from Mrs. Quisano that she had never witnessed Mr.
11 Quisano lose his temper with their children.
12

13 Just as the matter proceeded to trial, Mr. Quisano entered into a
14 negotiation whereby he pled guilty pursuant to Alford v. North Carolina to
15 Voluntary Manslaughter and Child Abuse Resulting in Substantial Bodily
16 Harm. (ROA 1000-08). At his sentencing, local media outlets appeared to
17 record and/or report on the proceedings. (ROA 1514-42). Defense counsel
18 objected to their presence, citing the lack of proper media request(s) filed on
19 behalf of the outlets present for the sentencing proceeding. (ROA 1514-42).
20 The trial court overruled the defense objection. (ROA 1514-42). Thereafter,
21 Mrs. Quisano gave a victim impact statement. (ROA 1514-42; 1170-78)/
22 Over defense objection, the prosecutor questioned her using discovery not
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1 previously provided to the defense. Id. Also over defense objection, the
2 prosecutor elicited testimony from Mrs. Quisano that was outside the scope of
3 the statutory authority. Id. Thereafter, the trial court sentenced Mr. Quisano
4 to 48-120 months with a consecutive 72-230 months. Id.
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7 **23. Issue on appeal.**

8 I. WAS QUISANO SENTENCED UNFAIRLY AND IN VIOLATION OF
9 THE LAW WHEN THE DISTRICT COURT ALLOWED THE STATE TO
10 USE PREVIOUSLY UNDISCLOSED INFORMATION, IMPROPER
11 VICTIM-IMPACT TESTIMONY, AND CAMERAS IN THE
12 COURTROOM WITHOUT FOLLOWING THE SUPREME COURT
13 RULES?

14 **24. Legal argument, including authorities:**

15 There is no question that a criminal defendant is entitled to a fair a
16 impartial sentencing hearing. A district court's authority in sentencing is not
17 limitless. A tribunal cannot rely on highly suspect or impalpable information.
18 In the case at bar, the court allowed the State to impeach a victim witness
19 speaker with information that was never disclosed to the defense. The Court
20 also allowed the prosecutor to cross-examine the victim speaker outside the
21 scope of the statutory authority. Thirdly, the court let cameras in the
22 courtroom in violation of Supreme Court Rules. Thus, Quisano is entitled to
23 be sentenced anew.
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26 A defendant is entitled to a fair sentencing hearing. See, Randell v.
27 State, 109 Nev. 5, 846 P.2d 278(1993). Also, "this court will not disturb a
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1 sentenced that is within statutory limits unless the district court relies on
2 highly suspect or impalpable information. Silks v. State, 92 Nev. 91, 545 P.2d
3 (1976). Certainly, undisclosed evidence, exceeding the scope of examination
4 of a witness, and violating this Court's rules regarding cameras in the
5 courtroom fall within the purview of, "suspect or impalpable information." Id.

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8 *A) FAILING TO DISCLOSE INFORMATION MATERIAL TO*
9 *PUNISHMENT VIOLATES DISCOVERY LAWS AND WARRANTS*
10 *AN NEW SENTENCING HEARING*

11 The prosecutor exercised his right to cross-examine the victim speaker.
12 As part of the examination, he made reference to an affidavit signed by the
13 victim speaker to show an apparent contradiction between the affidavit
14 submitted in a family court proceeding and the victim impact statement. The
15 document was never previously produced to the defense. In fact, the defense
16 has never received a copy of the affidavit. The Court made the affidavit part
17 of the court proceeding but allowed the prosecutor to use the document
18 against the victim speaker. This is a willful discovery violation requiring
19 reversal.
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23 "[T]he suppression by the prosecution of evidence favorable to an
24 accuse upon request violates due process where the evidence is material either
25 to guilt or to punishment, irrespective of the good faith or bad faith of the
26 prosecution." Brady v. Maryland, 373 U.S. 83, 87(1963); see also, Mazzan v.
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1 Warden, 116 Nev. 48, 66, 993 P.2d 25(2000)("Brady and its progeny require a
2 prosecutor to disclose evidence favorable to the defense when that evidence is
3 material either to guilt or to punishment."). There is a three-prong test to
4 determine whether a Brady violation has occurred: "[1] (t)he evidence at issue
5 must be favorable to the accused, either because it is exculpatory, or because
6 it is impeaching; [2] that evidence must have been suppressed by the State,
7 either willfully or inadvertently; and [3] prejudice must have ensued."
8 Strickler v. Greene, 527 U.S. 263, 281-82(1999).
9

10
11 In this case, the evidence was impeaching. The prosecutor elicited
12 testimony that the victim speaker was asking the court for probation for her
13 husband. In the undisclosed affidavit she allegedly said that he should go to
14 prison for his actions. (ROA 1174-75).
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17 The evidence was suppressed by the State. Defense counsel represented
18 that she had not seen the document previously. (ROA 1176, lines 6-11) Not
19 that it matters whether it was willful or inadvertent, but the State claimed,
20 "It's not part of discovery. This is a victim-impact statement." (ROA 1176,
21 lines 16-17)
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23
24 Prejudice ensued. The witness denied making the statements. There
25 were prejudicial as impeaching the witness and making her opinion as to
26 whether her husband would get probation or prison unbelievable, (ROA 1174-
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1 75). Thus, evidence at issue was impeaching, the affidavit was suppressed by
2 the State, and prejudice ensued." Strickler, supra. Thus, Quisano is entitled to
3 a new penalty hearing for violation of discovery rules.
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5 *B) THE COURT RECEIVED SUSPECT OR IMPALPABLE*
6 *INFORMATION WHEN IT ALLOWED THE STATE TO CROSS-*
7 *EXAMINE THE VICTIM SPEAKER BEYOND THAT ALLOWED*
8 *BY STATUTE AND CASE LAW*

9 The court allowed the victim speaker to make a sworn statement as
10 required by law. The law allows a victim to reasonably express any views
11 concerning the crime, the person responsible, the impact of the crime on the
12 victim and the need for restitution. When the sentencing court allowed the
13 State to examine the witness about family court proceedings, it went outside
14 the scope of its statutory authority and requires a remand for a new sentencing
15 hearing.
16

17 The prosecutor began to cross-examine the witness over family court
18 proceedings, as well as allegations of prior abuse. (ROA 1173-75). All of this
19 was done despite defense counsel's repeated objections. This line of
20 questioning far exceeds the scope of the victim impact statement and affected
21 Quisano's right to a fair sentencing hearing.
22

23 Failing to swear a victim impact speaker is clear error. Buschauer v.
24 State, 106 Nev. 890, 893, 804 P.2d 1046(1990). When properly preserved for
25 appellate review, this Court analyzes erroneous admission of victim impact
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1 statements for harmless error. Sherman v. State, 114 Nev. 998, 1014, 965
2 P.2d 903(1998). NRS 176.015(3) grants certain victims of crime an
3 opportunity to, “[r]easonably express any views concerning the crime, the
4 person responsible, the impact of the crime on the victim and the need for
5 restitution.” Despite this, the extent of questioning of a victim speaker is not
6 limitless. Randell, supra. Thus, the lower court erred by allowing questioning
7 of a victim speaker beyond that allowed by law, i.e., prior allegations of abuse
8 and family court proceedings.
9

12 *C) THE COURT VIOLATED THIS COURT'S RULES BY ALLOWING*
13 *CAMERAS IN THE COURTROOM AND NOT MAKING*
14 *SUFFICIENT FINDING TO ALLOW THE MEDIA COVERAGE*

15 Normally, news reporters desiring permission to provide electronic
16 coverage must make the request in advance. The judge may waive the timely
17 written request requirement. A written order granting or denying said request
18 must be made part of this record. But, the attorneys involved are to be
19 notified and the Court must make a record allowing the proceedings to be
20 recorded. None of this was ever done in the instant case, thus making the
21 sentencing unfair. A new sentencing hearing should be granted.
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24 SCR 230 requires that, “1. News reporters desiring permission to
25 provide electronic coverage of a proceeding in the courtroom shall file a
26 written request with the judge at least 24 hours before the proceeding
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1 commences, however, the judge may grant such a request on shorter notice or
2 waive the requirement for a written request. The attorneys of record shall be
3 notified...The written order of the judge granting or denying access by a news
4 reporter to a proceeding shall be made a part of the record of the
5 proceedings.” The second portion of the rule sets forth “particularized” five-
6 part finding that the judge shall make on the record when determining whether
7 electronic coverage will be allowed at a proceeding, in whole or in part. None
8 of this was done in the case at bar.

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12 The Rule is silent regarding a remedy for a violation. There are not
13 published cases addressing this issue. However, this Honorable Court should
14 consider this rule violation in terms of the overall fairness of the sentence.
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16 Silks, surpa.

17 Sentencing counsel preserved this issue by oral motion. (ROA 1515).
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19 No prior approval had been obtained by the Review Journal (which was the
20 news agency seeking coverage). The court ruled that since other media
21 requests from different agencies had been done in the past, and that was good
22 enough. Furthermore, the court said, “if you had some kind of actual
23 prejudice, I would certainly grant your request to exclude the RJ (Review
24 Journal), but I don’t really see a reason to do that. So they’re allowed to stay.”
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26 (ROA 1518-1519) Ironically, the court’s limited findings do not even begin to
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1 address factors "a" through "f" of SCR 230(2). Thus, the court wrongfully
2 allowed cameras in the courtroom.
3

4 CONCLUSION

5 Based on the foregoing, Quisano was sentenced unfairly and in
6 violation of Nevada law when the district court allowed the State to use
7 previously undisclosed information to impeach a victim impact speaker,
8 improperly allowed the victim speaker to be examined concerning other
9 allegations of abuse and family court proceedings, and allowed cameras in the
10 courtroom in violation of Supreme Court Rules. These violations compel this
11 Court to disturb this sentence that is within statutory limits because the district
12 court relies on highly suspect or impalpable information.
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16 25. Preservation of issues:

17 A) Objections by defense counsel. (ROA 1176-78)
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19 B) Repeated objections by defense counsel. (ROA 1173-75)

20 C) Sentencing counsel preserved this issue by oral motion. (ROA 1515)
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1 26. **Issues of first impression or of public interest:** Issue C is an
2 issue of first impression as there is no published case addressing SCR 230. It
3
4 is also of public interest as the sentencing judge addressed public access to
5 courtrooms through the media.
6

7 Respectfully submitted,

8 PHILIP J. KOHN
9 CLARK COUNTY PUBLIC DEFENDER

10 By /s/ Norman J. Reed

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VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This fast track statement has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this fast track statement complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is either:

[XX] Proportionately spaced, has a typeface of 14 points or more, and does not exceed 16 pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

DATED this 13th day of February, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Norman. J. Reed
NORMAN J. REED, #3795
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2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that this document was filed electronically with
5 the Nevada Supreme Court on the 13th day of February, 2015. Electronic
6 Service of the foregoing document shall be made in accordance with the
7 Master Service List as follows:

8 CATHERINE CORTEZ MASTO NORMAN J. REED
9 STEVEN S. OWENS NANCY L. LEMCKE
 HOWARD S. BROOKS

10
11 I further certify that I served a copy of this document by mailing
12 a true and correct copy thereof, postage pre-paid, addressed to:

13 JONATHAN QUISANO
14 NDOC No. 1128389
15 c/o High Desert State Prison
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 Indian Springs, NV 89018

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19
20 BY /s/ Carrie M. Connolly
21 Employee, Clark County Public
22 Defender's Office
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