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IN PROPER PERSON

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEP 21 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

Michael T. Botelho
REAL PARTY IN INTEREST

JUSTICE COURT CASE NO. RCR03-011479

DISTRICT COURT CASE NO. CR03-2156

VS.

SECOND JUD. DIST. COURT
STATE OF NEVADA, ET-AL
DEFENDANTS

APPLICATION FOR EXTRAORDINARY WRIT OF MANDAMUS TO
COMPEL THE SECOND JUDICIAL DISTRICT COURT TO COMPLY WITH
NEVADA LAW THE U.S. AND NEVADA CONSTITUTION(S) AND ORDER
BOTELHO'S IMMEDIATE RELEASE ON DOUBLE JEOPARDY GROUNDS
NRS 34.160-.170 (ALL INCLUSIVE)

COMES NOW, MICHAEL T. BOTELHO, [BOTELHO] REAL PARTY IN INTEREST, [NOT AN ALIAS CORPORATION],
IN PROPER PERSON AND IN FORMA PAUPERIS, BRINGING FORTH NECESSARY APPLICATION FOR EXTRAORDINARY
WRIT OF MANDAMUS. NRS 34.160-.170 (ALL INCLUSIVE) TO COMPEL THE SECOND JUDICIAL DISTRICT COURT
TO ORDER BOTELHO'S NECESSARY IMMEDIATE RELEASE FOR THE COURTS [DELIBERATE] DISREGARD OF
NRS 178.562(1) AND NRS 174.085(3), AND THE STATES FAILURE IN 2003, TO MOVE THE DISTRICT COURT TO
PROCEED ON ONE OF TWO PENDING PROCEEDINGS AND DISMISS THE PROCEEDING UNDER WHICH IT HAD
ELECTED [NOT] TO PROSECUTE WITHOUT RUNNING AFOUL OF NRS 178.562(1) IN 2003, AND THE
RESULTING FUNDAMENTAL MISCARRIAGE OF JUSTICE THEREIN. BOTELHO'S INITIAL PROSECUTION BY
FELONY CRIMINAL COMPLAINT WITH IDENTICAL CHARGES AGAINST SAME NAMED REAL PARTY IN INTEREST
WAS [NEVER] DISMISSED AND YET, HE STILL REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY HELD
HOSTAGE AGAINST HIS WILL, IN AN UNLAWFUL AND UNCONSTITUTIONAL PROSECUTION BY A
JURISDICTIONALLY DEFECTIVE INDICTMENT WITH IDENTICAL CHARGES AGAINST SAME NAMED REAL
PARTY IN INTEREST. BOTELHO STILL REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY INCARCERATED
AS A KNOWN VICTIM OF DOUBLE JEOPARDY, NOW FOR 15 YEARS, WITHOUT CORRECTION AND NECESSARY
RELIEF, INSPITE OF DOUBLE JEOPARDY, PREJUDICE IN [BOTH] CASE[S] AND THE KNOWN VIOLATIONS OF
BOTELHO'S "ASSERTED" INALIENABLE COMMON LAW RIGHTS UNDER THE U.S. AND NEV. CONSTITUTION(S) AND
LAWS THEREIN, AND HIS INALIENABLE, FUNDAMENTAL RIGHTS AND PROTECTIONS GUARANTEED BY THE
AND 11TH AMENDMENTS, SECURED BY OUR [STILL VALID] U.S. CONSTITUTION, AND ART. I, SECTIONS I, AND

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18-37039

1 8, THEREIN. THE STATUTORY AND CONSTITUTIONAL QUESTIONS OF LAW HAVE LONG BEEN DECIDED AND
2 MUST BE APPLIED IN THESE FATAALLY DEFECTIVE CASE [S] WITH IDENTICAL CHARGES C.] THE DISTRICT
3 ATTORNEY AND NEV. COURTS HAVE ALSO FAILED TO APPLY THE EXPRESS COMMANDS OF NRS 169.035,
4 "THIS TITLE IS INTENDED TO PROVIDE FOR THE JUST DETERMINATION OF [E]VERY CRIMINAL PROCEEDING,
5 ITS PROVISIONS [S]HALL BE CONSTRUED TO SECURE SIMPLICITY IN PROCEDURE, AND FAIRNESS IN
6 ADMINISTRATION, AND SEE NRS 1.036, THEREIN.

7 THE ABOVE CAPTIONED, NECESSARY WRIT OF MANDAMUS IS BASED UPON ALL PAPERS, PLEADINGS AND
8 RECORDS ON FILE, AS WELL AS, EXHIBITS AND AFFIDAVIT PRESENTED HEREIN. SEE ERICKSON V. PARDUS
9 551 US 89, 94, 127 SCT 2197 (2007) (PRO SE PLEADINGS [ARE TO BE] LIBERALLY CONSTRUED AND "HOWEVER"
10 INARTFULLY PLEADED "MUST" BE HELD TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS
11 DRAFTED BY LAWYERS); SEE HAINES V. KERNER 404 US 519, 520-21, 92 SCT. 594 (1972); BALESTRERI V.
12 PACIFICA POLICE DEPT. 901 F2d 696, 699 (9TH 1990); F.R. CIV. P. 8(a)(2), 8(f) ("ALL PLEADINGS SHALL BE SO
13 CONSTRUED AS TO DO SUBSTANTIAL JUSTICE"); AND JCRRT 6(c) ("THESE RULES SHALL BE LIBERALLY
14 CONSTRUED TO SECURE THE PROPER AND EFFICIENT ADMINISTRATION OF THE BUSINESS AND AFFAIRS
15 OF THE COURT AND TO PROMOTE AND FACILITATE THE ADMINISTRATION OF JUSTICE BY THE COURT").

16 THERE IS CLEAR LEGAL BASIS IN LAW AND FACT NECESSITATING THIS NECESSARY WRIT AS
17 EVIDENCED BY COLORABLE CLAIMS AND UNDISPUTED LEGAL PRIMA FACIE SHOWING, HEREIN. OR,
18 IN THE ALTERNATIVE, SUA SPONTE GRANT NECESSARY RELIEF, ITSELF C.] THE [IN]DISPUTED LEGAL
19 FACT AMPLIFIES THE FACT THAT BOTELHO REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY
20 HELD HOSTAGE AGAINST HIS WILL NOW 15 YEARS, AS AN UNLAWFUL AND UNCONSTITUTIONAL VICTIM
21 OF DOUBLE JEOPARDY, AND FURTHER, DUE TO DISTRICT JUDGE POLAHA'S REPUGNANT, BAD FAITH,
22 SUBVERSIVE ORDER OF LEGAL FICTION FILED ON JUNE 27, 2017, ALLOWING BOTELHO TO STILL
23 REMAIN UNLAWFULLY HELD HOSTAGE AGAINST HIS WILL AND FURTHER ALLOWING HIS CRIMINAL
24 COMPLAINT WITH IDENTICAL CHARGES IN SAME NAMED REAL PARTY IN INTEREST TO ALSO STILL
25 REMAIN PENDING IN 2017. JUDGE POLAHA WILLFULLY FAILED TO GRANT BOTELHO'S MOTION GRANTING
26 MOTION TO DISMISS ALL CHARGES WITH PREJUDICE IN [BOTH CASES] [RCRD3-011479 AND
27 CRD3-2156], AND FURTHER ORDER BOTELHO'S NECESSARY, IMMEDIATE RELEASE ON DOUBLE
28 JEOPARDY GROUNDS AND IS NOTHING SHORT OF "JUDICIAL TYRRANY" AND VIOLATIVE OF ART. 15,

SECTION 2, OF NEV. CONSTITUTION (OATH OF OFFICE) [.]

BOTELHO RESPECTFULLY INFORMS THIS COURT THAT HE IS ONLY BRINGING FORTH NECESSARY LEGAL FACTS IN EVIDENCE AS THEY "DIRECTLY RELATE TO DOUBLE JEOPARDY, PREJUDICE IN [BOTH] CASES AND THE JURISDICTIONAL DEFECT CAUSED THEREIN, THUS, MAKING THIS WRIT OF MANDAMUS NECESSARY [.] SEE GIDEON V. WAINWRIGHT, 372 US 335, 346, 9 LEd2d 79, 83 Sct. 792, 798, IT MUST BE EMPHASIZED THAT THE 5TH AMENDMENT IS "INTENDED MAINLY FOR THE SECURITY OF PERSONAL RIGHTS." SEE U.S. V. LAFLEUR, 971 F2d 200 (9TH 1991) "THE 5TH AMENDMENT INCLUDES EQUAL PROTECTION COMPONENT, WHICH REQUIRES THAT THE FEDERAL GOVERNMENT ACCORD EVERY PERSON WITHIN ITS JURISDICTION EQUAL PROTECTION OF THE LAW(S), EQUAL PROTECTION CLAIMS UNDER THE 5TH AMENDMENT ARE TREATED THE SAME AS THOSE UNDER THE 14TH AMENDMENT, MURRAY V. CARRIER, 106 Sct 2678 (1986), AND SEE NGUYEN V. STATE, 116 NV. 1171, 14 P3d 515 (2000) ("A DENIAL OF EQUAL PROTECTION MAY OCCUR WHEN A FACIALLY VALID STATUTE IS APPLIED IN AN ARBITRARY OR DISCRIMINATORY MANNER. SUCH DENIAL VIOLATES THE 14TH AMENDMENT OF THE FEDERAL CONSTITUTION.").

STATEMENT OF FACTS

THE WASHOE CO. DISTRICT ATTORNEY (D.A.) (WHO HAD NO "LAWFUL" BOND) FILED PROSECUTION BY FELONY COMPLAINT ON SEPT. 12, 2003, IN RENO JUSTICE COURT, CASE NO. RCRO3-D11479, WHEREIN JEOPARDY ATTACHED. SEE EXHIBIT 1, HEREIN, WHERE BOTELHO WAS ALSO COVERTLY PROSECUTED AS A CORPORATION. THE URSURPATION OF BOTELHO'S GOD GIVEN NAME WITHOUT HIS CONSENT IS FRAUDULENT CONCEALMENT. THE HIDING OR SUPPRESSION OF A MATERIAL FACT OR CIRCUMSTANCE WHICH THE STATE IS LEGALLY AND MORALLY BOUND TO DISCLOSE. SEE FUNDERBURKE V. MICHIGAN MUTL CO., 63 MICH. APP. 405, 234 N.W.2d. 545, 547. BOTELHO WAS THEN ARRESTED "WITHOUT AN ARREST WARRANT AND UNLAWFULLY KIDNAPPED ACROSS STATE LINES. HE WAS BOOKED INTO WASHOE CO. JAIL ON SEPT. 24, 2003, AND "ALLEGEDLY" ARRAIGNED ON SEPT. 25, 2003. ON OCT. 2, 2003, BOTELHO RECEIVED NOTICE OF APPOINTMENT OF COUNSEL AND OF SCHEDULED JUSTICE COURT PRELIMINARY EXAMINATION SET FOR OCT. 9, 2003. ON OCT. 3, 2003, BOTELHO MET HIS PUBLIC DEFENDER AND HE GAVE BOTELHO NOTICE THAT HE WAS THE TARGET OF THE WASHOE CO. GRAND JURY SET FOR OCT. 8, 2003. BOTELHO WAS INDICTED ON OCT. 8, 2003, UPON [IDENTICAL]

CHARGES, AS IN CRIMINAL COMPLAINT UNDER SAME NAMED REAL PARTY IN INTEREST, BY PROSECUTION AND JUDGE SHOPPING UNDER THE ARTIFICIAL GUISE OF [DUAL PROSECUTIONS]. THE PRELIMINARY EXAMINATION SCHEDULED FOR OCT. 9, 2003, WAS "STAYED" BY DISTRICT JUDGE ADAMS ON OCT. 8, 2003. SEE EXHIBIT 2, HEREIN (STAY ORDER). THE INDICTMENT WITH IDENTICAL CHARGES WAS FILED IN DISTRICT COURT ON OCT. 8 ⁽¹⁾ 2003. THEN, IN VIOLATION OF NV. DIST. CT. RULE 18, SEE STATE V. BABYAN, 787 P.2d 805 (1990) THE DISTRICT COURT [CHANGED] JUDGES (JUDGE SHOPPING) AND THEREIN TRANSFERRED INDICTMENT PROSECUTION WITH "IDENTICAL CHARGES," WHEREIN JEOPARDY ATTACHED UPON FILING, TO DISTRICT JUDGE POLAHA.

THE JUSTICE COURT DID [NOT] STAY, NOR SUSPEND PRELIMINARY EXAMINATION, NOR WAS BOTELHO BOUND OVER TO DISTRICT COURT. THE CRIMINAL COMPLAINT WITH "IDENTICAL CHARGES" AGAINST THE SAME NAMED REAL PARTY IN INTEREST WAS [NEVER] DISMISSED, AS THE STATE FAILED TO CARRY ITS BURDEN IN 2003 C.] THE STATE THEN FAILED TO COMPLY WITH THE MANDATORY, EXPRESS COMMANDS OF NRS 178.562 (1) AND NRS 174.085 (3), WHEN DUAL PROSECUTION(S) ARE INITIATED. THE DISTRICT ATTORNEY WAS SPECIFICALLY REQUIRED TO PROCEED ON ONE OF TWO PENDING PROSECUTION(S) AND MOVE THE DISTRICT COURT TO [DISMISS] THE PROSECUTION UNDER WHICH IT HAS ELECTED [NOT] TO PROSECUTE WITHOUT RUNNING AFOUL OF NRS 178.562 (1) C.] THEREFORE, THE DISTRICT COURT WAS PRECLUDED FROM ISSUING ANY SUCH ORDER "DISMISSING" BOTELHO'S FELONY COMPLAINT WITH "IDENTICAL CHARGES" AGAINST SAME NAMED REAL PARTY IN INTEREST.

ON OCT. 23, 2003, BOTELHO WAS UNLAWFULLY ARRAIGNED IN DISTRICT COURT, AS THE STATE HAD THEN MOVED FORWARD WITH INDICTMENT PROSECUTION WITH "IDENTICAL CHARGES" AT THAT POINT, AS CRIMINAL COMPLAINT STILL REMAINED PENDING BEFORE THE COURT WITH "IDENTICAL CHARGES." PREJUDICE ATTACHED IN BOTH PROSECUTION[S] AT THAT POINT. BOTELHO HAS CONSEQUENTLY SUFFERED 15 YEARS OF UNLAWFUL AND UNCONSTITUTIONAL INCARCERATION BEING HELD HOSTAGE AGAINST HIS WILL AND [STILL] PROSECUTION BY COMPLAINT WITH "IDENTICAL CHARGES" STILL REMAINS PENDING WITH OBVIOUS PREJUDICE IN [BOTH] PROSECUTION(S) WITH "IDENTICAL CHARGES" AND "DOUBLE JEOPARDY" PERMANENTLY ATTACHED, REGARDLESS OF HOW, OR WHY DOUBLE JEOPARDY WAS TRIGGERED. (EMPHASIS ASSERTED)

FOOTNOTE

(1) EXHIBIT #5
INDICTMENT

ON OCT. 12, 2016, BOTELHO FILED MOTION TO DISMISS ALL CHARGES WITH PREJUDICE IN "BOTH" VEHICLES OF PROSECUTION AND ORDER HIS IMMEDIATE UNCONDITIONAL RELEASE, IN JUSTICE COURT, AND THE STATE FAILED TO RESPOND AND CARRY ITS BURDEN, VIOLATING NRCP RULES (7)(8) AND (12), ALL INCLUSIVE, AND ADMITTED DEFECT AND CONFESSION OF ERROR. SEE 28 USC 2248. BOTELHO WAITED 4 MONTHS FOR THE COURT TO DO ITS DUTY, BEFORE HE FILED MOTION GRANTING MOTION TO DISMISS ALL CHARGES (JUDGMENT ON PLEADINGS) ON FEB. 13, 2017. THE CLERK ONLY STAMPED MOTION "RECEIVED," NOT FILED, OR DOCKETED, AS REQUIRED BY OATH, COURT RULES OF PROCEDURE AND NEVADA STATUTES. THIS WAS DONE AS COMMON PRACTICE BECAUSE BOTELHO IS NOT A COURT OFFICER AND IS TREATED DIFFERENTLY IN VIOLATION OF THE 1ST, 5TH-14TH AMENDMENTS OF OUR U.S. CONSTITUTION, AND ART I, SECTION(S) 1 AND 8, OF OUR NEV. CONSTITUTION. THE CLERK DOES NOT EVEN HAVE A LAWFULLY SUFFICIENT BOND, EITHER. THE STATE THEN "CHOSE TO RESPOND," TAKING YET ANOTHER BITE OF THE APPLE, AS IT DID WHEN IT WENT PROSECUTION AND JUDGE SHOPPING BY DUAL PROSECUTION(S) IN 2003 [.] THE STATE RESPONDED TO MOTION GRANTING MOTION TO DISMISS ON MARCH 16 2017. BUT WOULD "NOT" RESPOND TO MOTION TO DISMISS. THE CLERK SHOWED BIAS AND PARTIALITY WHEN SHE "FILED" THE STATES RESPONSE AS OPPOSED TO ONLY STAMPING BOTELHOS MOTION "RECEIVED." BOTELHO FILED MOTION TO STRIKE (MAILBOX RULE) STATES RESPONSE ON MARCH 29, 2017, AND "AGAIN" HIS MOTION WAS ONLY STAMPED "RECEIVED" [.]

ON MAY 17, 2017, RENO J.D.P. LYNCH "AGAIN" SHIRKED HER SWORN DUTIES (WITH AN INSUFFICIENT BOND, NO LESS) WHEN SHE WHOLLY DISREGARDED BOTELHOS MOTION(S) TO DISMISS AND MOTION TO STRIKE, WHEN SHE FILED ORDER FORWARDING ALL DOCUMENTS TO DISTRICT COURT WITHOUT ACKNOWLEDGING OR RULING UPON MERITS OF BOTELHOS RIGHTOUS MOTIONS AND WILLFULLY FAILED TO INCLUDE NECESSARY FACTS, FINDINGS AND CONCLUSIONS OF LAW, FOR OBVIOUS POLITICAL REASONS [.] AND, THE CLERK VIOLATED THAT ORDER BY ALTERING THE DOCKET AND NOT FORWARDING "ALL" DOCUMENTS TO DISTRICT COURT. SEE HEREIN ON PG. 6 [.] SEE EXHIBIT 3, HEREIN.

AFTER THE INCOMPLETE "CASE WAS FORWARDED TO DISTRICT COURT, THE SAME BIASED AND DISHONORABLE JUDGE FOLAH RULLED ON MOTION GRANTING MOTION TO DISMISS, WHEREIN HE AGAIN SHIRKED HIS DUTIES, ACTING IGNOBALLY, WITH MALFEASANCE, MALICE IN LAW AND PARTIALITY,

1 UNDER THE COLOR OF LAW, WHEN HE FILED HIS ODIUS, BAD FAITH ORDER OF LEGAL FICTION,
2 HAVING NO FORCE AND EFFECT OF VALID LAW, AND WITHOUT FACTS, FINDINGS AND CONCLUSIONS
3 OF LAW FOR OBVIOUS POLITICAL, MEDIA AND FINANCIAL REASONS [6] POLAHA HAS
4 REPEATEDLY ACTED AS A RUBBER STAMP, AN APOLOGIST AND AN ADVOCATE FOR THE STATE
5 SINCE 2003, TO ADVANCE THEIR POSITION. SEE INDIAN RIVER CO. SCHOOL DIST. 121 F3d 576/11TH 1992
6 POLAHA ARBITRARILY AND CAPRICIOUSLY DENIED BOTELHO'S MOTION GRANTING MOTION TO
7 DISMISS ALL CHARGES WITH PREJUDICE IN BOTH PROSECUTION[S] AND ORDER BOTELHO
8 REQUIRED IMMEDIATE & UNCONDITIONAL RELEASE, WHEN HE STATED, THE FACT THAT BOTELHO'S
9 CRIMINAL COMPLAINT STILL REMAINS PENDING WAS A "MERE PROCEDURAL GLITCH." POLAHA
10 INTENTIONALLY AND IGNOBLY VIOLATED HIS OATH OF OFFICE, JUDICIAL CANNONS, HIS CODE OF
11 CONDUCT, RULES OF PROCEDURE, THE U.S. AND NEV. CONSTITUTION(S), NEVADA STATUTES AND
12 STARE DECISIS, AND BOTELHO ASSERTED U.S. AND NEV. COMMON LAW RIGHTS, PRIVILEGES AND
13 IMMUNITIES, AND HIS 5TH AND 14TH AMENDMENT RIGHTS SECURED BY OUR "STILL VALID" U.S. CONSTITUTION
14 AND OUR NV. CONSTITUTION ART. 1, SECTION(S) 1 AND 8, AND ART. 16, SECTION 2, AND THE EVEN
15 GREATER PROTECTIONS OF OUR NV. CONSTITUTION, AS WELL AS DISREGARDING WELL DECIDED STARE DECISIS.
16 POLAHA ACTED WITH JUDICIAL TYRRANY, DISREGARDED THE LAW AND HID BEHIND IMMUNITY.
17 POLAHA'S SUBVERSIVE ORDER OF LEGAL FICTION REVEALS HIS DISDAIN, HIS DISRESPECT, AND LACK
18 OF APPRECIATION FOR THE RULE OF LAW, THE U.S. AND NEV. CONSTITUTION(S), LITIGANTS
19 CONSTITUTIONAL RIGHTS, AND LACK OF RESPECT FOR THE TRADITIONS, AND NORMS OF THE JUDICIAL
20 PROCESS, AND CLEARLY ESTABLISHED HIS BIAS AND PREJUDICE AGAINST BOTELHO. HE IS CLEARLY
21 UNFIT TO WEAR THE BLACK ROBE AS WE ARE A NATION OF LAWS [6] PROCESS WHICH IS A MERE
22 GESTURE IS NOT DUE PROCESS. "MULANE V. CENTRAL HANOVER BANK & TRUST CO. 339 US 306, 315, 94 LED
23 865, 70 SCT 652 (1950). SEE MOONEY V. HOLAHAN 294 US 103 55 SCT. 340 (1935)" DELIBERATE DECEPTION OF
24 A COURT. "AND NON-FEASANCE IS THE SUBSTANTIAL FAILURE TO PERFORM A LEGAL DUTY, 370 P2d
25 209 (1962). AS A DIRECT RESULT, BOTELHO STILL REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY
26 HELD HOSTAGE AGAINST HIS WILL, AS A VICTIM OF DOUBLE JEOPARDY, NOW 15 YEARS. SEE EXHIBIT 14,
27 (2017 ORDER) HEREIN. POLAHA HAS SYSTEMATICALLY PERSONIFIED THE EFFECTS OF STATE CREATED IMPEDIMENTS
28 OVER THE LAST 15 YEARS TO FURTHER DENY BOTELHO JUSTICE. SEE HATHAWAY V. STATE 119 NV 248, 71 P3d 503

1 (2003). SEE ALSO STAHL V. WILLIAMS, IND. APP. 367 N.E. 2d 1120-24, BY "GENERALLY IMPLYING INVOLVING
2 ACTUAL OR CONSTRUCTIVE FRAUD, AND/OR DESIGN TO [M]ISLEAD ANOTHER, OR A NEGLECT OR [R]EFUSAL
3 TO FULFILL SOME DUTY NOT PRESENTED BY AN HONEST MISTAKE, "AS TO ONE'S RIGHTS, OR DUTIES."!
4 THE ONLY CORRECTIVE REMEDY IN 2003, 2017, AND NOW IN 2018, IS A NUNC PRO TUNC ORDER
5 GRANTING DISMISSAL OF ALL CHARGES WITH PREJUDICE IN BOTH CASE(S), SPECIFICALLY, CASE NO.
6 CR03-2156 AND CASE NO. RC03-011479, AND FURTHER ORDER BOTELHO'S IMMEDIATE AND
7 UNCONDITIONAL RELEASE [.] BOTELHO IS WILLING TO SIGN A NON DISCLOSURE AGREEMENT [.]
8 BOTELHO, BEING UNTRAINED IN THE LAW, TRIED TO APPEAL THAT FRAUDULENT, BAD FAITH ORDER
9 TO THIS COURT, BUT WAS IGNORED AGAIN BY THIS COURT AS HIS ATTEMPTED APPEAL AND HIS
10 NECESSARILY FILED "JUDICIAL NOTICE" WERE ALSO IGNORED, WHEREIN THIS COURT SUMMARILY
11 DISMISSED APPEAL, ASSERTING ORDER WAS NOT FROM A JUDGMENT OR FINAL ORDER AND THUS, WAS NOT
12 APPEALABLE [.] YET THIS COURT COULD AND SHOULD STILL HAVE TAKEN CORRECTIVE ACTION
13 DUE TO THE EXTRAORDINARY CIRCUMSTANCES IN THIS MATTER, AS THIS COURT HAS DONE IN OTHER
14 CASE(S) (EMPHASIS ASSERTED).
15 THUS, BOTELHO HAS BEEN SYSTEMATICALLY AND INTENTIONALLY DEPRIVED OF, AND KNOWINGLY
16 LEFT WITHOUT A PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AND
17 STILL REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL,
18 AS A [KNOWN] VICTIM OF UNLAWFUL AND UNCONSTITUTIONAL DOUBLE JEOPARDY, BEING THE LAW OF
19 BOTH CASE(S) AND WITHOUT DISPUTE BY THE STATE, NAR JUSTICE AND NV. DISTRICT COURT, AND
20 THE DISPICABLE DISTRICT JUDGE POLANO (WHOM BOTELHO IS INITIATING A FORMAL COMPLAINT
21 WITH THE NV. JUDICIAL DISCIPLINE COMMISSION) [.] A PERVERSION OF JUSTICE HAS OCCURRED
22 [AGAIN] AND THIS NECESSARY WRIT OF MANDAMUS IS A LEGAL CONSEQUENCE OF SAID
23 PERVERTED FUNDAMENTAL MISCARRIAGE OF JUSTICE [.]

24 MANDAMUS DISCUSSION

25 THE NV. SUPREME COURT HAS DISCRETION TO ENTERTAIN A PETITION FOR EXTRAORDINARY RELIEF.
26 INT'L GAME TECH INC V. 8TH JUD. DIST. CT. 124 NV 193, 198, 179 P3d 536, 539 (2008). BUT, WE HAVE
27 CONSISTENTLY RECOGNIZED THAT WRIT RELIEF IS AVAILABLE ONLY "WHEN THERE IS NO PLAIN, SPEEDY
28 AND ADEQUATE LEGAL REMEDY." PAN V. 8TH JUD. DIST. CT. 120 NV. 222, 224, 88 P3d 840, 841 (2004);

1 COUNTY OF WASHOE V. CITY OF RENO 77 NV.152 155 360 P2d602 603(1961) SEE NRS. 34.160-.170.
2 GENERALLY THE RIGHT TO APPEAL IS AN ADEQUATE LEGAL REMEDY THAT PRECLUDES
3 CONSIDERATION OF A WRIT PETITION. PAN 120 NV, AT 224, 88 P3d, AT 840-41. DISTRICT JUDGE
4 POLAHA LEFT BOTELHO WITHOUT AN ADEQUATE LEGAL REMEDY IN THE ORDINARY COURSE
5 OF LAW WHEN HE DELIBERATELY LEFT BOTELHO UNCONSTITUTIONALLY HELD HOSTAGE AGAINST
6 HIS WILL "AGAIN" IN 2017, JUST AS HE DID IN 2003, 2004, 2007, ETC.... POLAHA "AGAIN"
7 DISREGARDED HIS SWORN TO OATH OF OFFICE IN VIOLATION OF ART. 15 SECT. 2 OF NV. CONSTITUTION.
8 WE REVIEW de novo THE DISTRICT COURTS INTERPRETATION OF CASELAW AND STATUTORY
9 LANGUAGE, LIL V. CHRISTOPHER HOMES, LLC 130 NV ___, 321 P3d 875, 877-78 (2014)
10 (REVIEWING de novo THE MEANING AND APPLICATION OF CASELAW); RENO NEWSPAPERS, INC.
11 V. HALEY 126 NV. 211 214 234 P3d 922 924 (2010) (REVIEWING de novo ISSUES OF STATUTORY
12 CONSTRUCTION). ALL STATE INSUR. CO. V. THORPE 123 NV. 565 170 P3d 489 (2007). A WRIT OF
13 MANDAMUS IS ISSUED TO COMPEL PERFORMANCE OF AN ACT WHICH THE LAW ESPECIALLY
14 ENJOINS AS A DUTY RESULTING FROM AN OFFICE TRUST OR STATION." NRS 34.160. SEE
15 T.G.T. V. DIST. CT. 124 NV 193, 197, 179 P3d 556, 558 (2008). LEWIS V. STEWART 96 NV. 846, 619 P2d 1212
16 (1980). SEE ALSO D.R. HORTON INC. V. 8TH JUD. DIST. CT. 123 NV. 468, 475, 168 P3d 731, 737 (2007).
17 A WRIT OF MANDAMUS IS APPROPRIATE WHEN AN ACTOR "REFUSES TO PERFORM A DEFINITE
18 PRESENT DUTY IMPOSED UPON HIM BY LAW." STATE EX REL CONCKLIN V. BUCKINGHAM 58 NEV
19 450, 453, 83 P2d 462, 463 (1938). "WRITS OF MANDAMUS... ARE EXTRAORDINARY REMEDIES
20 AND ARE AVAILABLE WHEN THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE
21 COURSE OF LAW. D.R. HORTON 123 NV, AT 478, 168 P3d, AT 736 (QUOTING NRS 34.170). A WRIT OF
22 MANDAMUS IS AVAILABLE "TO COMPEL THE PERFORMANCE OF AN ACT WHICH THE LAW REQUIRES
23 AS A DUTY RESULTING FROM AN OFFICE OR WHERE DISCRETION HAS BEEN MANIFESTLY ABUSED AS,
24 AND EXERCISED ARBITRARILY OR CAPRICIOUSLY." SAVAGE V. THIRD JUD. DIST. CT. 125 NV ___,
25 200 P3d 71, 81 (2009) (QUOTING REDECKER V. DIST. CT. 122 NV 164, 167, 127 P3d 520, 522 (2006)).
26 A WRIT OF MANDAMUS MAY ISSUE TO CONTROL ARBITRARY OR CAPRICIOUS EXERCISE OF
27 DISCRETION. SEPR L.V. V. 2ND JUD. DIST. CT. 123 NV 608, 610-11, 173 P3d 715, 716-17 (2007) (CITING
28 NRS 34.160); CHEUNG V. DIST. CT. 121 NV 867, 868-69, 124 P3d 550, 552 (2005); BARNES V. 8TH JUD. DIST.

1 CT. 103 NV. 679 748 P2d 483 (1987). THE COURT HAS ALSO HELD THAT THE ACTION BEING SOUGHT
2 TO BE COMPELLED MUST BE ONE ALREADY REQUIRED BY LAW." SEE MINERAL CO. V. STATE DEPT.
3 OF CONSERVATION AND NATURAL RESOURCES 117 NV. 235 20P3d 800 (2001). MANDAMUS IS THE
4 APPROPRIATE VEHICLE FOR CHALLENGING CONTESTED ORDERS ENTERED BY THE DISTRICT COURT.
5 SEE ANGELL V. 8TH JUD. DIST. CT. 108 NV 923 839 P2d 1329 (1992). IT HAS ALSO BEEN HELD THAT A
6 WRIT OF MANDAMUS IS PROPER WHEN THE PETITIONER RAISES URGENT AND IMPORTANT ISSUES
7 OF LAW REQUIRING CLARIFICATION BY THE SUPREME COURT. SEE FAULKE V. DOUGLAS CO. 116 NV.
8 583, 3P3d 661 (2000); SCHUSTER V. DIST. CT. 123 NV 187, 190, 160 P3d 873, 875 (2007); SONIA F. V. DIST. CT.
9 125 NV. 495, 498, 215 P3d 705, 707 (2009) (QUOTING MINERAL CO. 117 NV. AT 243 20P3d AT 805), WHEN
10 THE ISSUE IS "ONE OF FIRST IMPRESSION AND OF FUNDAMENTAL PUBLIC IMPORTANCE," COUNTY OF
11 CLARK V. UPCHURCH 114 NV 749 753 961 P2d 754 757 (1998). WE MAY ALSO CONSIDER WHETHER
12 RESOLUTION OF THE WRIT PETITION WILL MITIGATE OR RESOLVE FUTURE LITIGATION. Id.
13 (AND MUST BE DONE IN THIS INSTANCE). WE HAVE ORIGINAL JURISDICTION TO ISSUE WRITS OF
14 MANDAMUS," NV. CONST. ART. 6, SECTION 4, AND NRS 34.160 GOVERNOR V. NEV. STATE
15 LEGISLATURE 71 P3d 1269 1274 (NV. 2003). SEE BRADLEY V. ROMEO 102 NV 103, 105, 716 P2d 227,
16 22 B (1986)* THE ABILITY OF THE COURT TO CONSIDER RELEVANT ISSUES' SUA SPONTE IN ORDER
17 TO PREVENT PLAIN ERROR IS WELL ESTABLISHED..... SUCH IS THE CASE WHERE A STATUTE
18 WHICH IS CLEARLY CONTROLLING WAS [NOT] APPLIED BY THE TRIAL COURT."
19 BOTELHO RESPECTFULLY PUTS THIS COURT ON NOTICE THAT, BECAUSE OF HARDSHIP ALONE,
20 THE LEGAL JURISDICTION OF A COURT OF THE UNITED STATES MAY NOT BE ABROGATED BY THE
21 COURT ITSELF. COHENS V. VIRGINIA 6 WHEAT 264, 5 LED 257. SEE MARBURY V. MADISON
22 1 CRANCH 137, 5 US 137 (1803)* JUDGES WHO REFUSE TO HEAR WRITS OF MANDAMUS, IS A
23 CRIMINAL ACT IN ITSELF AND TREASON TO THE U.S. CONSTITUTION" [CORNERSTONE CASE];
24 SO CER V SCOTT 942 F2d 597 (9TH 1991), PRISONER WHO ALLEGES 'CAUSE OF ACTION UNDER
25 MANDAMUS ACT NEED NOT RELY UPON IMPLIED OR PRIVATE RIGHT OF ACTION UNDER ANY
26 OTHER STATUTE MARBURY, AT 163, 2 LED 69, "THE VERY ESSENCE OF CIVIL LIBERTY CERTAINLY
27 CONSISTS IN THE RIGHT OF [E]VERY INDIVIDUAL TO CLAIM THE PROTECTION OF THE LAWS, WHENEVER
28 HE RECEIVES AN INJURY." MOREOVER, "WHERE FEDERALLY PROTECTED RIGHTS HAVE BEEN INVADED,

1 IT HAS BEEN THE RULE FROM THE BEGINNING THAT COURTS WILL BE ALERT TO ADJUST
2 THEIR REMEDIES SO AS TO GRANT THE NECESSARY RELIEF. "COURTS WILL GO TO PARTICULAR
3 PAINS TO PROTECT PRO SE LITIGANTS AGAINST CONSEQUENCES OF THE ERRORS IF INJUSTICE
4 WOULD OTHERWISE RESULT. U.S. V. NICHOLS 937 F2d 1257 (7th 1991); BLACKLEDGE V. PERRY 417 US 21,
5 40 LED2d 628, 94 SCT 2098 (1974) DUE PROCESS PROTECTS CRIMINAL DEFENDANTS AGAINST
6 PROSECUTORIAL OR JUDICIAL ACTION INTENDED AS PENALTIES FOR DEFENDANTS EXERCISE
7 OF CONSTITUTIONAL RIGHTS. SEE ALSO GOMILLION V. LIGHTFOOT 364 US 339. BOTELHO CAN
8 ONLY HOPE AND PRAY THIS COURT WILL DO WHAT IT KNOWS IT MUST, REGARDLESS OF THE
9 ADVERSE CONSEQUENCE(S) TO THE STATES TWO CASES, AND SEE JONES V. THOMAS, SUPRA C. 1
10 ORIGINAL JURISDICTION IS DIRECTLY VESTED IN THE NV. CONST. ART. 6, SECTION 4. SUCH
11 JURISDICTION IS CONFERRED SO THAT COURTS OF THE HIGHEST AUTHORITY IN THE STATE
12 SHALL HAVE THE POWER TO PROTECT THE RIGHTS, INTERESTS, AND FRANCHISES OF STATE, [AND]
13 THE RIGHTS AND INTERESTS OF THE PEOPLE TO ENFORCE THE PERFORMANCE OF A HIGH OFFICIALS
14 DUTIES AFFECTING THE PUBLIC AT LARGE. (EMPHASIS IN ORIGINAL: Id. AT 57, SOUTHWEST GAS CORP.
15 V. PUBLIC SERVICE COMM. 92 NV. 48, 546 P2d 219, 225 (1976).
16 THIS COURT HAS AN ABSOLUTE DUTY, A SWORN DUTY, TO PROTECT AGAINST MISTAKEN OR ARBITRARY
17 ORDERS, ITS ADJUDICATION IS NECESSARY IN THIS INSTANCE. ITS FUNCTION AS REQUIRED IS, TO
18 BE DISPASSIONATE AND DISINTERED IN ADJUDICATION, UNMIXED WITH ANY CONCERN AS TO EITHER
19 THE SUCCESS OF EITHER PROSECUTION OR DEFENSE. NOT ONLY DID JUDGE POLAHA [AGAIN]
20 SHIRK HIS DUTIES, ACTING IGNORANTLY, WITH JUDICIAL TYRANNY, STARTING IN 2003, AND PERSONIFIED
21 IN 2017, BUT CLEARLY PROVES BEYOND ALL DOUBT THAT HE IS UNFIT TO BE A JUDGE AND THAT HE
22 OBVIOUSLY DOES [NOT] CARE, REGARDLESS. (EMPHASIS STRONGLY ASSERTED).
23 SEE ROCHIN V. CALIF. 342 US 165, 72 SCT 205 (1952) SUBSTANTIVE DUE PROCESS REFERS TO CERTAIN
24 ACTIONS THAT THE GOVERNMENT MAY [NOT] ENGAGE IN NO MATTER HOW MANY PROCEDURAL
25 SAFEGUARDS IT EMPLOYS, SEE BLAYLOCK V. SCHWINDEN 836 F2d 107 (9th 1998). A JUDGMENT
26 RENDERED IN VIOLATION OF DUE PROCESS IS VOID IN THE RENDERING STATE, "MERE PUBLIC
27 INTOLERANCE OR ANIMOSITY CANNOT CONSTITUTIONALLY JUSTIFY THE DEPRIVATION OF A PERSONS
28 PHYSICAL LIBERTY." O'CONNOR V. DONALDSON 422 US 563, 575, 95 SCT 2486 (1975).

DOUBLE JEOPARDY

DISCUSSION

"THE DOUBLE JEOPARDY CLAUSE OF THE 5TH AMENDMENT OF THE U.S. CONSTITUTION PROVIDES THAT NO PERSON SHALL BE" SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB." THIS PROTECTION APPLIES TO THE STATES THROUGH THE 14TH AMENDMENT. BENTON V. MARYLAND, 395 US 784, 794, 23 LEd 2d 707, 89 Sct. 2056 (1969), AND HAS BEEN INCORPORATED INTO THE NEW CONSTITUTION, ART. I, SECT. 8, CL(1). THE RIGHT AGAINST DOUBLE JEOPARDY IS PROTECTED UNDER THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT. POWELL V. ALABAMA, 287 US 45, 65-68, 77 LEd 158, 53 Sct 55, 84 A.L.R. 527; BROWN V. MISSISSIPPI, 297 US 278, 286, 80 LEd 682, 687, 56 Sct 461; MOONEY V. HOIDHAN, 294 US 103, 112, 79 LEd 711, 714, 55 Sct 340, 98 A.L.R. 406; SNYDER V. MASSACHUSETTS, 291 US 97, 78 LEd 674, 54 Sct 330, 90 A.L.R. 575. RIGHT AGAINST DOUBLE JEOPARDY IS PROTECTED UNDER THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE 14TH AMENDMENT. POWELL SUPRA, AT 68, 77 LEd 158, 53 Sct 55, 84 A.L.R. 527; CALGATE V. HARVEY, 296 US 404, 428, 80 LEd 299, 310, 56 Sct 252, 102 A.L.R. 54; CRANDALL V. NEVADA, 6 WALL 35, 48-49, 18 LEd 745, 748-49.

THE PROHIBITION IS NOT AGAINST TWICE BEING PUNISHED BUT AGAINST TWICE PUT IN JEOPARDY. THE TWICE PUT IN JEOPARDY LANGUAGE OF THE CONSTITUTION THUS RELATES TO A [POTENTIAL], I.E. THE RISK OF AN ACCUSED FOR A SECOND TIME WILL BE CONVICTED OF THE "SAME OFFENSE" FOR WHICH HE WAS INITIALLY TRIED FOR. PRICE V. GEORGIA, 398 US 322, 326, 26 LEd 2d 543, 91 Sct 574 (1971); GREEN V. U.S., 355 US 184, 187-88, 2 LEd 2d 199, 78 Sct 221; U.S. V. BALL, 163 US 662, 669, 41 LEd 300, 16 Sct. 1192 (1896). BECAUSE THE FOCUS ON THE "RISK" OF CONVICTION, THE GUARANTEE AGAINST DOUBLE JEOPARDY ASSURES AN INDIVIDUAL THAT AMONG OTHER THINGS, HE WILL NOT BE FORCED WITH CERTAIN EXCEPTIONS, TO ENDURE THE PERSONAL STRAIN, PUBLIC EMBARRASSMENT, AND EXPENSE OF A CRIMINAL TRIAL MORE THAN ONCE FOR THE SAME OFFENSE. AND U.S. V. DIMITZ, 426 US 600, 611, 47 LEd 2d 267, 96 Sct 1075.

THE DOUBLE JEOPARDY CLAUSE PROTECTS AGAINST 3 ABUSES: (1) A SECOND PROSECUTION FOR THE SAME OFFENSE AFTER ACQUITTAL; (2) A SECOND PROSECUTION FOR THE SAME OFFENSE AFTER CONVICTION; AND (3) MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE. N. CAROLINA V. PEARCE, 395 US 711, 717, 23 LEd 2d 656, 89 Sct. 2072 (1969), OVERRULED ON OTHER GROUNDS BY ALABAMA V. SMITH, 490 US 794, 104 LEd 2d 865, 109 Sct 2701 (1989); GARCIA V. STATE, 121 NV 327, 342, 113 P2d 836,

845 (2005). BUT SEE GRADY V. CARBIN 495 U.S. 508, 527, 109 LEd2d 548 110 Sct 2084 (1990).
J. O'CONNOR DISSENTING (IF THE DOUBLE JEOPARDY CLAUSE GUARANTEED THE RIGHT NOT TO
BE TWICE PUT IN JEOPARDY FOR THE SAME CONDUCT, IT WOULD BAR THE SECOND PROSECUTION.
BUT THAT CLAUSE GUARANTEES ONLY THE RIGHT NOT TO BE TWICE PUT IN JEOPARDY FOR THE
SAME OFFENSE, AND HAS BEEN INTERPRETED SINCE ITS INCEPTION, AS WAS ITS COMMON-LAW
ANTECEDENT TO PERMIT A PROSECUTION BASED UPON THE SAME ACT BUT FOR A [DIFFERENT]
CRIME). TO PROPERLY ANALYZE A DOUBLE JEOPARDY CLAIM, THE COURT "MUST" EXAMINE NOT
ONLY THE STATUTORY PROVISIONS AT ISSUE BUT ALSO THE SPECIFIC CHARGES BROUGHT
AGAINST THE DEFENDANT IN SIMULTANEOUS OR [DUAL] PROSECUTIONS. THE DOUBLE JEOPARDY
CLAUSE IS VIOLATED IN A "SINGLE" PROCEEDING ONLY WHERE MULTIPLE PUNISHMENTS ARE
IMPOSED FOR THE SAME CRIME, CONTRARY TO THE LEGISLATIVE INTENT. U.S. V. GAMBOA 439 F3d
796, 809 (8th 2006). THE PROHIBITIONS AGAINST MULTIPLE PUNISHMENTS PREVENTS THE
GOVERNMENT FROM "PUNISHING TWICE OR ATTEMPTING A SECOND TIME TO PUNISH CRIMINALLY
FOR THE SAME OFFENSE." WHITT V. U.S. 515 U.S. 389, 396, 132 LEd2d 351, 115 Sct. 2199 (1995) (QUOTING
HELVERING V. MITCHELL 303 U.S. 391, 399 82 LEd 917 58 Sct 630 (1938) (EMPHASIS IN WHITT)).
GARCIA V. STATE 121 NV 327, 342, 113 P3d 836, 845 (2007) (CITING N. CAROLINA V. PEARCE, 470 U.S.
SUPRA, 395 U.S. AT 717). "A CLAIM THAT A CONVICTION VIOLATES THE DOUBLE JEOPARDY CLAUSE
GENERALLY, IS SUBJECT TO DE NOVO REVIEW ON APPEAL." DAVIDSON V. STATE, 124 NV 892, 896,
192 P3d 1185, 1189 (2008).
SEE JONES V. THOMAS 491 U.S. 376, 396 105 LEd2d 322 109 Sct 2522 REH. DEN. 106 LEd2d 627 110 Sct
12 (1989) (INDISSENT) (THE DOUBLE JEOPARDY CLAUSE IS AND ALWAYS HAS BEEN, NOT A PROVISION
DESIGNED TO ASSURE REASON AND JUSTICE IN THE [P]ARTICULAR CASE, BUT THE EMBODIMENT
OF TECHNICAL PROPHYLACTIC RULES THAT REQUIRE THE GOVERNMENT TO TURN SQUARE
CORNERS. WHENEVER IT IS APPLIED TO RELEASE A CRIMINAL DESERVING OF PUNISHMENT IT
FRUSTRATES JUSTICE IN THE PARTICULAR CASE, BUT FOR THE GREATER PURPOSE OF ASSURING
REPOSE IN THE TOTALITY OF CRIMINAL PROSECUTIONS AND SENTENCES. WITH TECHNICAL RULES,
ABOVE ALL OTHERS IT IS IMPERATIVE THAT WE ADHERE STRICTLY TO WHAT WE HAVE STATED
THE RULES TO BE, A TECHNICAL RULE WITH EQUITABLE EXCEPTIONS IS NO RULE AT ALL.

THREE STRIKES IS OUT. THE STATE BROKE THE RULES HERE AND MUST ABIDE BY THE RESULT (J. SCALIA, WITH WHOM J. STEVENS JOINS, AND WITH WHOM J. BRENNAN AND J. MARSHALL JOIN, TO ALL BUT THE FOOTNOTE, DISSENTING)). THE COURT CANNOT COVER UP THE FACT THAT THE STATE BROKE THE RULES IN BOTELHO'S DUAL PROSECUTION[S] AND MUST ALSO ABIDE BY THE RESULT [.]

BOTELHO RE-ASSERTS THE RIGHTS OF THE NEV. CONST. ART. 1, SECT. 1, ART. 5, SECT. 21, AND HIS EQUAL PROTECTION RIGHTS THEREIN, AND SEE ART. 1, SECT. 8, AND WHERE THE NEVADA CONSTITUTION PROVIDES AN EVEN GREATER PROTECTION OF BOTELHO'S CONSTITUTIONAL RIGHTS. SEE WILSON V. STATE 170 P3d 975 980 (NV. 2007). SEE ALSO NRS 1.030 COMMON LAW RIGHTS.

BOTELHO IS STILL UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL IN 2018, AS A KNOWN VICTIM OF DOUBLE JEOPARDY, IN SPITE OF THE STATE'S FAILURE TO COMPLY WITH THE EXPRESS COMMANDS OF NRS 178.562(1) AND NRS 174.085(3). SEE GRAFTON V. U.S. 206 U.S. 333, 350, 51 LEd 1084, 27 Sct 749. THE ALLEGED OFFENSES IN THE CRIMINAL COMPLAINT ARE [IDENTICAL] IN THE PROCEDURALLY DEFECTIVE INDICTMENT AND THE RESULTING UNLAWFUL INCARCERATION AND HOSTAGE HOLDING IN THE SAME PARTY'S NAME, IF THE TRANSACTION IS THE SAME, OR IF EACH REST UPON THE SAME FACTS BETWEEN THE SAME PARTYS, IT IS SUFFICIENT TO MAKE GOOD THE DEFENSE.

I

BOTELHO CONCEDES THAT DUAL PROSECUTIONS ARE DISCREETLY ALLOWED BY "THIS COURT" IN NEVADA, SEE NRS 173.015, WITH NO JURISDICTIONAL DEFECTS OCCURRING. BUT AS BOTELHO ASSERTS, PRIOR PROCEEDINGS BY WHICH THE PROSECUTION HAD BEEN COMMENCED WERE [DISMISSED]. THUS, THERE WERE NO JURISDICTIONAL DEFECTS IN "THOSE" CASES. SEE TELLIS V. SHERIFF 85 NV 557, 459 P2d 364 (1969); AFFIRMED IN HALL V. SHERIFF 86 NV 456, 470 P2d 422 (1970); AND REAFFIRMED IN SIMPSON V. SHERIFF 86 NV 803, 476 P2d 957 (1970). SO THERE WAS NO JURISDICTIONAL DEFECT, SO LONG AS ONE PROSECUTION OR THE OTHER, WAS DISMISSED.

BOTELHO CHARGES THAT BECAUSE THE STATE HAD NOT PROPERLY AND PROCEDURALLY BROUGHT THE [FILED] INDICTMENT PROSECUTION WITH IDENTICAL CHARGES AGAINST HIM AS MANDATED IN NRS 178.562(1) AND NRS 174.085(3), A JURISDICTIONAL DEFECT DID IN FACT OCCUR, AND DOUBLE JEOPARDY WAS TRIGGERED, THEREIN. SEE STATE V. STEVENSON 465 P2d 720 "A COURT LACKS

JURISDICTION TO ACT UPON OFFENSES WHICH ARE NOT BROUGHT BEFORE IT IN THE MANNER PROVIDED BY LAW." U.S. V. COTTON 535 US 625, 630, 122 S.Ct. 1781 (2002) "SUBJECT-MATTER-JURISDICTION BECAUSE IT INVOLVES A COURT'S POWER TO HEAR A CASE, CAN NEVER BE FORFEITED OR WAIVED." MARGOLD V. DIST. CT. 109 N.V. 804, 858 P2d 33 (1993); CITY OF KENOSHA V. BRUND 412 US 507, 93 S.Ct. 2222, 2225; AND SEE "FOR THE COURT TO ACT WHEN IT HAS [NO] JURISDICTION TO DO SO IS FOR THE COURT TO ACT "ULTRA VIRES"; U.S. STEEL CO. V. CITIZENS FOR BETTER ENVIRONMENT 523 US 83, 94, 118 S.Ct. 1003; RUHRGAS V. MARATHON OIL 526 US 574, 583 119 S.Ct. 1653. A [J]URISDICTIONAL DEFECT [MUST] BE PRESUMED WHEN THE STATE FAILED TO MOVE TO DISMISS ONE PROSECUTION, OR THE OTHER, STILL LEAVING [TWO] PROSECUTION(S) WITH IDENTICAL CHARGES, STILL IN 2018. SEE TURPIN V. SHERIFF, SUPRA, 87 N.V. 236, 238, 484 P2d 1083, 1084-85 (1971). BOTELHO [IS] UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL NOW 15 YEARS AS A [DIRECT] CONSEQUENCE [.]

THE STATE FILED INDICTMENT WITH IDENTICAL CHARGES IN DISTRICT COURT [BUT] FAILED TO CARRY ITS BURDEN AND COMPLY WITH EXPRESS COMMANDS OF NRS 178.562(1) AND NRS 174.085(3) AND MOVE THE DISTRICT COURT TO PROCEED ON [ONE] OF TWO PENDING PROCEEDINGS (PROSECUTION(S)) AND DISMISS THE PROCEEDINGS UNDER WHICH IT HAS ELECTED [NOT TO PROSECUTE] WITHOUT RUNNING AFOUL OF NRS 178.562(1) WHICH STATES:

"[E]XCEPT AS OTHERWISE PROVIDED IN NRS 174.085, AN ORDER FOR DISMISSAL OF THE ACTION AS PROVIDED IN NRS 178.554 AND NRS 178.556, IS A BAR TO ANOTHER PROSECUTION FOR THE SAME OFFENSE."

BECAUSE THE COMPLAINT WITH IDENTICAL CHARGES WAS [NEVER] DISMISSED, AND WHERE JEOPARDY ATTACHED UPON FILING, PREJUDICE WAS ALSO TRIGGERED IN [BOTH] PROSECUTION(S). WHERE THE DISTRICT ATTORNEY NEVER SOUGHT DISMISSAL OF COMPLAINT WITH IDENTICAL CHARGE(S) AND STILL PROCEEDED [FORWARD] WITH INDICTMENT PROSECUTION WITH IDENTICAL CHARGES. THE STATES FAILURE TO CARRY ITS BURDEN AS EXPRESSLY REQUIRED BY NRS 178.562(1) RESULTED IN AN ABSOLUTE BAR TO ANOTHER PROSECUTION FOR THE SAME OFFENSE, UNDER ALL CIRCUMSTANCES, WHETHER DISGUISED AS DUAL PROSECUTION(S), OR OTHERWISE, THUS, DOUBLE JEOPARDY ATTACHED AS A MATTER OF LAW, REGARDLESS, AS DID PREJUDICE.

1 SEE HEWITT V. HELMS, 459 US 469 103 SCT. 864 (1983) "DUE PROCESS PROTECTION MAY ARISE
2 FROM MANDATORY LANGUAGE IN A STATE STATUTE."

3 DISTRICT JUDGE POLAHA CONCURRED WITH BOTELHO IN THAT HIS CRIMINAL COMPLAINT
4 WITH IDENTICAL CHARGES IN SAME NAMED PARTY IN INTEREST WAS [STILL PENDING] IN HIS
5 IGNORABLE, BAD FAITH ORDER ON JUNE 27, 2017, WHEREIN HE DELIBERATELY DISREGARDED
6 THE DOUBLE JEOPARDY, PREJUDICE IN BOTH CASES, AND LACK OF DUE PROCESS AND EQUAL
7 PROTECTION AND BOTELHOS ASSERTED INALIENABLE, FUNDAMENTAL COMMON LAW, AND US AND
8 NEV. CONSTITUTIONAL RIGHTS THEREIN, WHEN POLAHA CALLED BOTELHO'S STILL PENDING
9 CRIMINAL COMPLAINT WITH IDENTICAL CHARGES A "MERE PROCEDURAL GLITCH" AND WILLFULLY
10 DENYING BOTELHOS IMMEDIATE NECESSARY RELEASE, AS A MATTER OF FACT IN LAW C.1.
11 AGAIN, SEE JONES V. THOMAS, SUPRA, HEREIN ABOVE, 491 US AT 396. SEE EXHIBIT (4) HEREIN.
12 POLAHA WILLFULLY ACTED TO DENY THE RELEASE OF BOTELHO INSPITE OF BEING, STILL
13 BEING UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL.

14 SEE TURPIN V. SHERIFF, 87 NV 236, 238, 484 P2d 1083, 1084-85 (1971) (PER CURIAM) "WE FAIL TO DISERN
15 ANY PREJUDICE TO AN ACCUSED [WHEN] ONE OF THE TWO PENDING VEHICLES FOR
16 PROSECUTION IS [DISMISSED] LEAVING HIM ACCUSED OF [ONLY ONE]. YET, BOTELHO IS "STILL" A
17 VICTIM OF TWO VEHICLES OF [PERPETUAL] PROSECUTION(S) AS ONE WAS NEVER DISMISSED,
18 SO PREJUDICE ATTACHED IN [BOTH] CASE(S). SEE ALSO NRS 174.085(3) BELOW. SUCH AN
19 ELECTION BY THE STATE IS IN NO WAY DETRIMENTAL TO THE ACCUSED [SO LONG AS THE PROHIBITION
20 OF NRS 178.562(1) AGAINST ANOTHER PROSECUTION IS NOT VIOLATED]. THE FAILURE TO DISMISS
21 ONE PROSECUTION RESULTED IN VIOLATION OF NRS 178.562(1) AMOUNTING TO ANOTHER
22 PROSECUTION AS A DIRECT CONSEQUENCE [.] TURPIN CLEARLY IMPLICATES PREJUDICE FOR
23 FAILURE TO DISMISS ONE PROSECUTION, OR THE OTHER, AND IMMEDIATELY TRIGGERED DOUBLE
24 JEOPARDY AS A LEGAL CONSEQUENCE, WHEN THE STATE FAILED TO DISMISS BOTELHOS CRIMINAL
25 COMPLAINT WITH IDENTICAL CHARGES IN 2003, **PRIOR TO** MOVING FORWARD BY ALREADY
26 FILED INDICTMENT WITH IDENTICAL CHARGES AND THE RESULTING UNLAWFUL AND UNCONSTITUTIONAL
27 INCARCERATION WHILE STILL BEING HELD HOSTAGE AGAINST HIS WILL FOR 15 YEARS AS A
28 DIRECT CONSEQUENCE OF THE MANIFEST, FUNDAMENTAL, CONSTITUTIONAL ERRORS IN 2003, AND

FURTHER, DUE TO JUDGE POLAHAS WANTON MISCONDUCT, TURPITUDE AND JUDICIAL TYRRANY IN HIS BAD FAITH ORDER IN 2017, AND THE DELIBERATELY DISREGARDED, UNLAWFUL AND UNCONSTITUTIONAL VIOLATIONS OF BOTELHO'S FUNDAMENTAL RIGHTS, THEREIN [.]

SEE THOMPSON V. STATE, 125 NV. 807, 221 P3d 708, 125 NV. ADV. REP. 59 (2009) [EN BANK], THIS COURT ANSWERED THE QUESTION PRESENTED IN TURPIN AND REAFFIRMED IN THOMPSON, WHETHER NRS 178.562(1) PRECLUDES THE STATE FROM PROSECUTING A DEFENDANT WHEN IT HAS ELECTED BETWEEN TWO PENDING FORMS OF PROSECUTION AND DISMISSED THE ONE UNDER WHICH IT HAS ELECTED [NOT] TO PROSECUTE. Id. AT 811. THE STATUTORY QUESTION OF LAW WAS ASKED AND ANSWERED [TWICE] ONCE IN TURPIN IN 1971, AND AGAIN IN THOMPSON [EN BANK] IN 2009, WHERE IT WAS REAFFIRMED. IN THOMPSON, THIS COURT REVIEWED THE LEGAL QUESTION DE NOVO. BOTELHO'S DUAL PROSECUTION(S) WITH IDENTICAL CHARGES UNDER SAME NAMED REAL PARTY IN INTEREST, TRANSPIRED IN 2003, THOMPSON IS THE CONTROLLING CASE [.] THOMPSON REAFFIRMED THE LEGISLATIVE INTENT AND EXPRESS COMMANDS OF NRS 178.562(1). NRS 178.562(1) DOES [PRECLUDE] THE STATE FROM PROSECUTING BOTELHO IN EITHER VEHICLE WHEN THE STATE "FAILED" TO ELECT BETWEEN [TWO] PENDING FORMS OF PROSECUTION AND [S]PECIFICALLY "FAILED TO DISMISS" THE ONE UNDER WHICH THE STATE HAS ELECTED [NOT TO PROSECUTE]. THE STATE'S FAILURE TO COMPLY WITH THE EXPRESS COMMANDS OF NRS 178.562(1) HAS PREJUDICED BOTELHO IN [BOTH] PROSECUTION(S) AND LEFT HIM A VICTIM OF UNLAWFUL AND UNCONSTITUTIONAL DOUBLE JEOPARDY, LACK OF DUE PROCESS AND EQUAL PROTECTION OF LAW AND BOTELHO STILL REMAINS UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL NOW 15 YEARS [.] THIS TRAVESTY HAS ALREADY CAUSED BOTELHO TO SUFFER 15 YEARS OF BEING UNLAWFULLY AND UNCONSTITUTIONALLY HELD HOSTAGE AGAINST HIS WILL WHILE HIS WIFE AND NOW TEENAGE CHILDREN SUFFER WITHOUT HIM WHILE THEY GET TO SEE JUST HOW CORRUPT AND CONSPIRATORY OUR NEVADA COURTS REALLY ARE, ESPECIALLY WHEN ONE CANNOT AFFORD A COMPETENT, HONORABLE ATTORNEY. THE STARE DECISIS DOCTRINE AND OUR [STILL VALID] U.S. AND NV. CONSTITUTION(S) MUST BE STRICTLY ADHERED TO, AS WELL AS NRS 178.562(1) AND NRS 174.085(3) AND SO MUST BOTELHO'S ASSERTED COMMON RIGHTS AND HIS INALIENABLE FUNDAMENTAL CONSTITUTIONAL RIGHTS GUARANTEED BY OUR STILL

VALID U.S. AND NEV. CONSTITUTION(S). THE STATE FAILED TO CARRY ITS BURDEN 15 YEARS AGO AND LOST ALL STANDING THEREIN. BOTELHO MUST BE ORDERED UNCONDITIONALLY RELEASED IMMEDIATELY AS THE ONLY CORRECTIVE REMEDY, AS A MATTER OF LAW [.]

THE SOLE REASON [THIS] COURT ALLOWS "DUAL" PROSECUTION(S) WITH IDENTICAL CHARGES IS TO ENABLE THE STATE TO PROSECUTION AND JUDGE SHOP FOR THE SOLE PURPOSE OF ENSURING THE STATE THE ABILITY TO SIDE-STEP AND AVERT DOUBLE JEOPARDY CONCERNS BY ALLOWING THE STATE "A SECOND BITE OF THE APPLE, IN THE FIRST INSTANCE." THE STATE STILL GETS TO MOVE FORWARD WITH [ANY] PROSECUTION WITH "IDENTICAL CHARGES" WITHOUT SECOND OR SUBSEQUENT PROSECUTION DOUBLE JEOPARDY IMPLICATIONS BY DESIGN [.]

THE STATE STILL GETS TO TEST THE STRENGTH OF THEIR CASE [S] IN PRELIMINARY EXAMINATIONS AND/OR, GRAND JURY PROCEEDINGS, WITHOUT RUNNING AFOUL OF CONSTITUTIONAL DOUBLE JEOPARDY. THE STATE GETS TO VOLUNTARILY DISMISS ONE PROSECUTION, OR THE OTHER, [OR] ONE GETS INVOLUNTARILY DISMISSED, AND UNDER THE ARTIFICIAL GUISE OF [DUAL] PROSECUTION(S) THE STATE STILL GETS TO PROCEED WITH PROSECUTION WITH IDENTICAL CHARGES. THOSE PROSECUTION(S) IN MOST CASES WOULD OTHERWISE HAVE BEEN [BARRED] IF THIS COURT HAD NOT APPROVED OF DUAL PROSECUTIONS IN TURPIN AND THOMPSON SUPRA, AS ARTIFICALLY PORTRAYED THEREIN. AND, SHERIFF V. DHADDA, 115 NV 175, 184, 980 P2d 1062, 1067 (1999) WHERE THIS COURT STATED "MAINTAINING DUAL PROSECUTIONS AGAINST AN ACCUSED [COULD BE AN ABUSE OF THE STATES POWER]".

THUS, IT WAS [NOT] CONSIDERED TO BE ANOTHER PROSECUTION BY THIS COURT BECAUSE ONE WAS STILL DISMISSED, YET TECHNICALLY, IT IS [.] BOTELHOS COMPLAINT WAS NOT DISMISSED AND A JURISDICTIONAL DEFECT OCCURRED. THIS COURT ALLOWS NEVADA TO SIDE-STEP DOUBLE JEOPARDY BY ALLOWING DUAL PROSECUTION(S), WHEREIN THEY ARE STILL "SEPERATE AND DISTINCT VEHICLES OF PROSECUTION AND ARE STILL [TWO] PROSECUTIONS, WHICH PUT BOTELHO IN JEOPARDY IN EACH PROSECUTION, REGARDLESS. SIMPLY PUT, DUAL MEANS CONCURRENT, OR AT THE SAME TIME, NOT ONE [AFTER] THE OTHER. AND THIS COURT "KNOWS" THAT ANY PROSECUTION WITH IDENTICAL CHARGES FILED 29 DAYS [AFTER] FILING OF FIRST PROSECUTION WITH IDENTICAL CHARGES IS [NOT] DUAL IN ANY DICTIONARY. ITS JUST PORTRAYED AS SUCH FOR [NON-BARRMENT] PURPOSES. THIS GIFT KEEPS ON GIVING, AS THE STATE STILL

GETS A FREE "SECOND BITE OF THE APPLE." THIS SHADY PRACTICE, IF NOT ALLOWED BY THIS COURT, WOULD IN MOST INSTANCES BAR A SECOND PROSECUTION ON DOUBLE JEOPARDY GROUNDS IN ALMOST [E]VERY CRIMINAL PROSECUTION OTHERWISE! UNDER THIS KNOWN ARTIFICIAL GUISE OF DUAL PROSECUTIONS, ANY DEFECTIVE OR WEAK PROSECUTION MAY BE DISMISSED FOR ANY REASON AND THE STATE STILL GETS TO MOVE FORWARD AGAINST ANY ACCUSED, ON THE OTHER TECHNICALLY SECOND PROSECUTION, UNDER THE DUAL PROSECUTION SAFETY NET. THIS ALLOWS A "KNOWN" CHILLING OF DOUBLE JEOPARDY! NOT ONLY IS IT FOUL, BUT THIS COURT ACTS AS NEVADA'S SAFETY NET BY STILL ALLOWING A DELIBERATE SIDE-STEPPING OF CONSTITUTIONAL DOUBLE JEOPARDY THAT LACKS THE REQUIRED "JUDICIAL INTEGRITY IN UPHOLDING THE COURTS SWORN OATH TO 'UPHOLD AND DEFEND' OUR [STILL] VALID U.S. AND NV. CONSTITUTION(S) AND BOTELHO'S COMMON LAW RIGHTS AND HIS INALIENABLE, FUNDAMENTAL CONSTITUTIONAL RIGHTS UNDER BOTH CONSTITUTION(S), AND SEE NV. CONST. ART. 15, SECT. 2 (OATH OF OFFICE). BY ALLOWING DUAL PROSECUTIONS TO CIRCUMVENT OUR CONSTITUTIONAL GUARANTEES AGAINST [T] DOUBLE JEOPARDY, IT ALSO CAUSES OUR NV. COURTS TO GET FURTHER BACK-LOGGED WITH ADDITIONAL UNNECESSARY COURT EXPENSES IN A KNOWN DISREGARD OF JUDICIAL ECONOMY IN THE ORDERLY AND FINANCIALLY RESPONSIBLE ADMINISTRATION OF COURT BUSINESS AND JUSTICE, AS EVIDENCED BY THE MULTITUDE OF NV. STATUTES, RULES OF PROCEDURE OF COURTS, CIVIL AND APPELLATE PROCEDURES, IT FURTHER CAUSES ATTORNEYS TO HAVE TO FIGHT TWO PROSECUTIONS AT THE SAME TIME, MAKING IT EASIER FOR INEFFECTIVENESS OF ASSISTANCE OF COUNSEL TO OCCUR, CAUSING MORE COURT BACK LOG WITH APPEALS AND POST CONVICTION REMEDIES, AS A RESULT.

THE INDISPUTED LEGAL FACT REMAINS, NEVADA CRIMINAL STATUTES AND STARE DECISIS CLEARLY DICTATES THAT WHEN THE STATE FAILED TO MOVE THE COURT TO DISMISS ONE PROSECUTION WITH IDENTICAL CHARGES, OR THE OTHER, THE FAILURE TRIGGERED DOUBLE JEOPARDY AS A LEGAL CONSEQUENCE AND PREJUDICE ATTACHED TO "BOTH" PROSECUTIONS. THE STATE FAILED TO CARRY ITS BURDEN 15 YEARS AGO, AND LOST ALL STANDING 15 YEARS AGO, DUE TO ITS FAILURE 15 YEARS [AGO] [I.] BOTELHO NEED NOT SHOW CAUSE AND PREJUDICE AS PREJUDICE IS PRESUMED, NORTHERN ILL. CORP. V. MILLER, 78 NV-213, 370 P2d 955

BOTELHO MUST BE RELEASED IMMEDIATELY, REGARDLESS. AGAIN, SEE JONES V. THOMAS, SUPRA. BOTELHO DECLARES THE STATES DUAL PROSECUTION(S) OF BOTELHO, WITH IDENTICAL CHARGES WAS CONTRARY TO THOMPSON WHEREIN THE STATE FAILED TO COMPLY WITH THE EXPRESS COMMANDS OF NRS 178.562(1) AND DISMISS ONE PROSECUTION, OR THE OTHER, AND NRS 174.085(3) WAS ALSO TRIGGERED. SEE NRS 174.085, WHICH STATES IN PERTINENT PART:

NRS 174.085

(3) WHEN A DEFENDANT IS CONVICTED OR ACQUITTED [OR] HAS BEEN PUT ONCE IN JEOPARDY UPON INDICTMENT INFORMATION OR COMPLAINT, EXCEPT AS PROVIDED IN SUBSECTION (5), THE CONVICTION OR ACQUITTAL, [OR] JEOPARDY IS A BAR TO ANOTHER INDICTMENT, INFORMATION OR COMPLAINT FOR THE OFFENSE CHARGED THE FORMER [OR] FOR AN ATTEMPT TO COMMIT THE SAME OF WHICH THE DEFENDANT MIGHT HAVE BEEN CONVICTED UNDER THE INDICTMENT, INFORMATION OR COMPLAINT.

(5) THE PROSECUTING ATTORNEY IN A CASE THAT THE PROSECUTING ATTORNEY HAS INITIATED MAY VOLUNTARILY DISMISS A COMPLAINT.

(a) BEFORE A PRELIMINARY EXAMINATION IF THE CHARGE IS A FELONY OR GROSS MISDEMEANOR.

NRS 174.085(3) WAS TRIGGERED IN BOTELHO'S DUAL PROSECUTION[S] WITH IDENTICAL CHARGES REGARDLESS [.] THE LEGISLATIVE INTENT AND EXPRESS PROVISIONS OF NRS 174.085(3) ARE CLEAR AND UNAMBIGUOUS. SEE THOMPSON V. STATE. BOTELHO WAS PUT IN JEOPARDY UPON FILING OF CRIMINAL COMPLAINT AND PUT IN JEOPARDY [AGAIN] UPON FILING OF SECOND PROSECUTION BY INDICTMENT WITH IDENTICAL CHARGES 29 DAYS LATER, EVEN UNDER DUAL PROSECUTION(S). AND, NO CONVICTION OR ACQUITTAL IS NECESSARY, REGARDLESS. THE JEOPARDY IS A BAR TO ANOTHER CRIMINAL INDICTMENT FOR THE OFFENSE, OR FOR AN ATTEMPT TO COMMIT THE SAME OF WHICH THE DEFENDANT [MIGHT] HAVE BEEN CONVICTED UNDER INDICTMENT, DOUBLE JEOPARDY WAS, AND IS A NECESSARY CONSEQUENCE, AS EITHER WAY, UNDER ANY AND ALL CIRCUMSTANCES, IN THESE DUAL PROSECUTIONS WITH IDENTICAL CHARGES, STILL TRIGGERED PREJUDICE IN BOTH PROSECUTIONS AND DOUBLE JEOPARDY, REGARDLESS, AND CREATED A JURISDICTIONAL DEFECT WHEREIN THE COMPLAINT WITH IDENTICAL CHARGES WAS NOT DISMISSED, REGARDLESS.

THE STATE IS SOLELY RESPONSIBLE FOR THESE [INESCAPABLE] CONSEQUENCES AND MUST NOT BE HEARD TO WHINE AND COMPLAIN OF ITS NECESSARY CONSEQUENCES THEREIN [.]

IN TELLIS, SIMPSON, TURPIN, NOR THOMPSON, DID THIS COURT ADDRESS, NOR GIVE DISCUSSION AS TO THE CONSEQUENCES OF THE FAILURE TO ADHERE TO EXPRESS COMMANDS OF NRS 178.562(1) AND NRS 174.085(3), AND DISMISS THE STILL PENDING PROSECUTION WITH IDENTICAL CHARGES. THIS COURT DID NOT WANT TO EXPOSE THE TRUE CONSEQUENCES OF THE FAILURE TO COMPLY WITH NRS 178.562(1) AND NRS 174.085(3) AS THEY ARE CLEARLY VIOLATIVE OF THE LEGISLATIVE INTENT AND EXPRESS COMMANDS THEREIN, AND WHOLLY VIOLATIVE OF THE NV. & U.S. CONSTITUTION(S) AND BOTELHO'S ASSERTED COMMON LAW RIGHTS AND HIS INALIENABLE, FUNDAMENTAL U.S. AND NEVADA CONSTITUTIONAL RIGHTS, THEREIN. YET, THE CONSEQUENCES SPEAK FOR THEMSELVES.

THE LEGISLATIVE INTENT WAS DISTINCTLY SET FORTH IN ORDINARY AND CONCISE LANGUAGE IN SUCH A MANNER AS TO ENABLE A PERSON OF COMMON UNDERSTANDING TO KNOW WHAT WAS INTENDED. WHERE THE DOUBLE JEOPARDY CLAUSE IS APPLICABLE, ITS SWEEP IS ABSOLUTE. THERE ARE NO "EQUITIES" TO BE BALANCED, FOR THE CLAUSE HAS DECLARED A CONSTITUTIONAL POLICY, BASED ON THE GROUNDS WHICH ARE NOT "OPEN TO JUDICIAL EXAMINATION." BURKS V. U.S. 437 U.S. 1, 11, 57 LEd2d 1, 98 Sct. 2141 (1978).

"A STATE COURT DECISION IS CONTRARY TO CLEARLY ESTABLISHED PRECEDENT IF THE STATE COURT APPLIES ITS OWN AGENDA THAT CONTRADICTS THE GOVERNING LAW SET FORTH IN OUR CASES, OR WHEN THE STATE COURTS CONFRONT A SET OF FACTS THAT ARE MATERIALLY INDISTINGUISHABLE FROM A DECISION OF THE SUPREME COURT, YET, NEVERTHELESS IGNORED, OR DISREGARDED THE PRECEDENT. (EMPHASIS ASSERTED). THOSE OFFENSIVE STATE ACTIONS WERE, AND STILL ARE, REPUGNANT TO THE 5TH AMENDMENT OF THE U.S. CONSTITUTION AND NV. CONST. ART. 6, SECT 4. EACH COMMANDS THAT [NO PERSON] SHALL BE DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW, FURTHER, THE NV. CONST. ART. 1, SECT. 2, CLEARLY STATES "THE COURTS ARE SUBSERVIENT TO THE U.S. SUPREME COURT RULING(S), EVEN IN CONSTITUTIONAL CASES, STARE DECISIS CARRIES SUCH PERSUASIVE FORCE THAT THE COURT HAS ALWAYS REQUIRED A DEPARTURE FROM PRECEDENT TO BE SUPPORTED BY SOME SPECIAL JUSTIFICATION, E.G. U.S. V. INT'L BUSINESS MACHINES CORP. 517 U.S. 843, 856, 135 LEd2d 124, 116 Sct 1793. SEE STOCKS V. STOCKS 64 NV. 431, 438, 183 P2d 617, 620, (1947) (NOTING THAT DOCTRINE OF STARE DECISIS IS "INDISPENSABLE TO THE DUE ADMINISTRATION OF JUSTICE") GROTT'S V. ZAHNER 115 NV 339, 342, 989 P2d 415, 417 (1999) (ROSE J. DISSENTING) (NOTING

28 THAT THE DOCTRINE OF STARE DECISIS SERVES "SOCIAL INTERESTS IN..... CONSISTANT AND

PREDICTABLE APPLICATION OF LEGAL RULES" (QUOTING THOMAS V. WASHINGTON GAS LIGHT CO. 448 US 261, 272, 100 S.Ct. 2647 (1980)). STARE DECISIS IS "OF FUNDAMENTAL IMPORTANCE TO THE RULE OF LAW." WELCH V. TEXAS DEPT. OF HIGHWAYS²; PUBLIC TRANSPORTATION 483 US 468, 494, 97 LEd2d 389, 107 S.Ct. 2941 (1987). SEE ARIZONA V. RUMSEY 467 US 203, 212, 81 LEd2d 164, 104 S.Ct. 2305 (1984) ALTHOUGH AND HEREIN TO, IS NOT RIGIDLY REQUIRED IN CONSTITUTIONAL CASES, ANY DEPARTURE FROM THE DOCTRINE OF STARE DECISIS DEMANDS SPECIAL JUSTIFICATION. SEE E.G. SWIFT CO. V. WICKHAM 382 US 111, 116, 15 LEd2d 194, 86 S.Ct. 258 (1965); SMITH V. ALWRIGHT 321 US 469, 65 S.Ct. 88, 15 LEd2d 987, 64 S.Ct. 757, 151 ALR 1110 (1944).

SEE HARLOW V. FITZGERALD 457 US 800, 818, 102 S.Ct. 2727, 2738 (1982) OFFICIAL MUST SHOW HIS ACTION DID NOT VIOLATE CLEARLY ESTABLISHED STATUTORY OR CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN. SEE WARDEN, MSP V. PETERS 83 NV. 298, 429 P2d 549 (1967), (1) THE FACT REMAINS THAT COURTS WHICH MAKE A MISTAKE IN RENDERING A JUDGMENT WHICH WORKS TO THE EXTREME DETRIMENT OF THE DEFENDANT WILL NOT ALLOW IT TO STAND UNCORRECTED. STRICKLAND V. WAYMIRE, 126 NV. — — 235 P3d 605 613 (2010) "THE CONSTITUTION MAY NOT BE CONSTRUED ACCORDING TO A STATUTE ENACTED PURSUANT THERETO, RATHER STATUTES MUST BE CONSTRUED CONSISTANT WITH THE CONSTITUTION" (QUOTING FOLEY V. KENNEDY 110 NV. 1295, 1300, 885 P2d 583, 586 (1984). SEE STATE V. HILL 848 P2d 1375, 1381-83 (1993) FURTHER, THE COURTS MUST AVOID ANY APPEARANCE OF PARTIALITY, NOT MERELY TO SECURE THE CONFIDENCE OF LITIGANTS IN A CASE, BUT TO ASSURE THE PUBLIC THAT FAIR RESULTS MERITING RESPECT FOLLOWS EVERY JUDICIAL DETERMINATION. SEE NCTC, CANNON 2, PEOPLE V. HRAPSKI 718 P2d 1050, 1054 (COLO. 1986). U.S. V. U.S. DIST. CT. FOR THE CENTRAL DIST. OF CALIF. 859 F2d 534 (9th 1998) "IF THE GOVERNMENT, POLICE AND PROSECUTORS COULD ALWAYS BE TRUSTED TO DO THE RIGHT THING, THERE WOULD HAVE NEVER BEEN A NEED FOR THE BILL OF RIGHTS." NOBODY TRUSTS THE STATE OF NEVADA, OR ITS COURTS, FOR JUST THAT VERY REASON [.]

FOLE HAS IGNOBLE, BAD FAITH ORDER RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS. A STATE COURT DECISION IS CONTRARY TO CLEARLY ESTABLISHED

28 PRECEDENT IF THE STATE COURT APPLIES ITS OWN AGENDA OR THAT CONTRADICTS THE GOVERNING

LAW SET FORTH IN OUR CASES OR WHEN THE STATE COURTS CONFRONT A SET OF FACTS THAT ARE MATERIALLY INDISTINGUISHABLE FROM A DECISION OF THE SUPREME COURT, YET NEVERTHELESS IGNORES OR DISREGARDS THE PRECEDENT. THE "REQUIRED RESULT" DICTATED BY THE DUE PROCESS CLAUSE IN THIS [DUAL PROSECUTIONS] CASE IS THAT NEVADA SIMPLY COULD NOT EVEN HALE BOTELHO INTO DISTRICT COURT TO ANSWER TO IDENTICAL CHARGES BROUGHT UNDER [PREVIOUSLY] FILED INDICTMENT WHILE STILL MAINTAINING FELONY COMPLAINT WITH IDENTICAL CHARGES, WITHOUT FIRST DISMISSING ONE PROSECUTION, OR THE OTHER, [THEN] MOVING FORWARD WITH REMAINING PROSECUTION. THE UNLAWFUL AND UNCONSTITUTIONAL DOUBLE JEOPARDY IN THESE CASE [S] IS CONTRARY TO LAW AND JURISPRUDENCE, AND THE SIGNIFICANCE OF THE FAILURE TO DISMISS ONE PROSECUTION WHILE STILL MOVING FORWARD AND PROSECUTING BOTELHO IN THE INDICTMENT PROSECUTION WITH IDENTICAL CHARGES IS NOT ONLY CAPABLE OF OCCURRING AGAIN, AND AGAIN, ESCAPING REVIEW, BUT HAS OCCURRED TO OTHER UNSUSPECTING NV. AND U.S. CITIZENS, AND THIS CONTROVERCY IS CAPABLE OF REPITION, YET EVADING REVIEW.

THE COMMON LAW OF ENGLAND, SO FAR AS IT IS NOT REPUGNANT TO "OR" IN CONFLICT WITH THE CONSTITUTION AND THE LAWS OF THE U.S., OR THE CONSTITUTION AND LAWS OF NEVADA, DEL WEBB COMMUNITIES, INC V. PARTINGTON 652 F3d 1145 (NV. 2011). SEE ALSO NRS 1.030 (APPLICATION OF COMMON LAW IN COURTS) - SHALL BE THE RULE OF DECISIONS IN ALL COURTS OF THIS STATE. AND, THE FUNDAMENTAL NATURE OF THE GUARANTEE AGAINST DOUBLE JEOPARDY IS WELL ESTABLISHED IN COMMON LAW. SEE BARTKUS V. ILLINOIS 359 US 121, 151-155, 3 LEd2d 684, 705-707, 79 SCT. 679 (1959). SEE ROBINSON V. NEIL 409 US 505, 93 SCT 876 IN EXPLAINING WHY THE DOUBLE JEOPARDY CLAUSE IS DISTINCTIVE, THE COURT NOTED THAT "ITS PRACTICAL RESULT IS TO PREVENT A TRIAL FROM TAKING PLACE AT ALL, RATHER THAN TO PRESCRIBE THE PROCEDURAL RULES THAT GOVERN THE CONDUCT OF A TRIAL." Id. AT 509, 35 LEd2d 29.

ANY JUDICIAL ACT IN EXCESS OF THE COURTS JURISDICTION, RESULTING IN THE DEPRIVATION OF LIBERTY, IS A VIOLATION OF THE REQUIREMENT IN THE 14TH AMENDMENT THAT THERE MUST BE DUE-PROCESS OF LAW AS A PREREQUISITE TO LAWFUL IMPRISONMENT."

2 WILLDOUGHBY, CON ST. P. 858; MCGEEHEE, D-P OF LAW, 158, SCOTT V. McNEAL 154 US 34, 46,
14 SCT 1108; SEE ALSO LANDRETH V. MAULK 257 P3d 163. EXTRAORDINARY RELIEF WAS WARRANTED
IN A MATTER WHERE THERE WAS A "GROSS MISCARRIAGE OF JUSTICE." STATE V. BABAYAN 106 NV
155, 176, 787 P2d 805, 819 (1990). AN UNCONSTITUTIONAL CHILL WILL ONLY EXIST IF THE GOVERNMENT
ACTION HAS INJURED THE INDIVIDUAL OR PLACES THE INDIVIDUAL IN IMMEDIATE DANGER OF
SUSTAINING A DIRECT INJURY, 92 SCT, AT 2325-26, AS HAS HAPPENED TO BOTELHO [.] NO
JUDGE WELCOMES, OR CAN IGNORE BEING TOLD THAT HE COMMITTED A CONSTITUTIONAL VIOLATION
DELAWARE V. VAN ARSDALL 475 US 673, 106 SCT. 1431 (1986). THE COURT HAS NO AUTHORITY TO
PICK AND CHOOSE WHICH LAW OR CONSTITUTIONAL AMENDMENT IT WILL OR WILL NOT FOLLOW,
DEPENDING ON WHICH WAY THE BACKROOM EX PARTE DISCUSSIONS WITH JUDGES, DICTATE.
(EMPHASIS STRONGLY ASSERTED) PROCEDURES IN CRIMINAL CASES ARE TO BE FOLLOWED [WITHOUT]
EXCEPTION BY [EVERY] DISTRICT ATTORNEY AND [EVERY] COURT IN THE STATE OF NEVADA
SINCE 2003. SEE NRS. WE ARE A NATION OF LAWS AND THEY ARE TO BE FOLLOWED
THERE CAN BE NO PROTECTIONS OF THE 14TH AMENDMENT, OF DUE PROCESS AND EQUAL
PROTECTION IF A DISTRICT ATTORNEY, OR A COURT, ARE ALLOWED TO INSTITUTE THEIR OWN
PROCEDURES! SEE U.S. V. BROADWELL 959 F2d 242 (9TH 1992) (CITING AS 9TH CIRCUIT RULE 36-3,
(UNPUBLISHED)) "ONCE JURISDICTION HAS BEEN PROPERLY CHALLENGED, JURISDICTION CANNOT BE
WAIVED, CONFERRED, OR ASSUMED, [M]UST BE PROVEN STATUTORILY" AND FURTHER "BECAUSE
THE ERROR IS JURISDICTIONAL, THE DEFENDANT (BOTELHO) NEED NOT "SHOW CAUSE AND PREJUDICE
SEE U.S. V. GRIFFIN 303 US 226-229, 58 SCT 601 (1938), AND KELLY V. U.S. 29 F3d 1107 (7TH 1994)
KELLY EXPOUNDS ON BROADWELL.
THE NV. LEGISLATIVE INTENT WAS TO ALLOW DUAL PROSECUTIONS, AS LONG AS NRS 178.562(1)
WAS COMPLIED WITH. IT WAS NOT DESIGNED TO ALLOW TWO PROSECUTION(S) TO CONTINUE AND
TRIGGER DOUBLE JEOPARDY. THE NV. S. CT. NEVER ADDRESSED THE EFFECT OF THE STATES FAILURE
TO COMPLY WITH NRS 178.562(1) IN THOMPSON AND TURNER, AND THE DOUBLE JEOPARDY
CONSEQUENCES THEREIN, BUT THE IMPLICATION IS OBVIOUS, AND [M]UST BE PRESUMED [.]
THE FACT REMAINS, DOUBLE JEOPARDY AND PREJUDICE IS A NECESSARY CONSEQUENCE OF THE
STATES FAILURE, REGARDLESS [.]

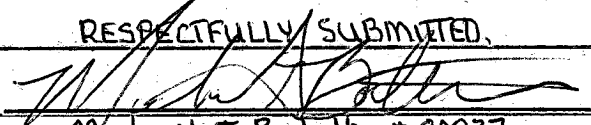
BOTELHO RESPECTFULLY PUTS THIS COURT ON NOTICE THAT THERE CAN ONLY BE [ONE] LAWFUL OUTCOME IN THIS LONG AND WELL DECIDED QUESTION OF LAW. SEE TURPIN V. SHERIFF, (PER CURIAM) IN 1971, AS PRECEDENT, AND REAFFIRMED 37 YEARS LATER, IN 2009, IN THOMPSON V. STATE [EN BANC]. NRS 178.562(1) APPLIES TO BOTELHO'S 2003 DUAL PROSECUTION(S) WITH IDENTICAL CHARGES AGAINST SAME NAMED REAL PARTY IN INTEREST, AND THE FAILURE TO DISMISS ONE PROSECUTION, OR THE OTHER, WITH IDENTICAL CHARGES, HAS RESULTED IN DOUBLE JEOPARDY AND PREJUDICE IN [BOTH] PROSECUTION(S). THE CONSEQUENCE OF DOUBLE JEOPARDY IS [INESCAPABLE]. BOTELHO ASSERTS "TRUTH IS AN ABSOLUTE DEFENSE," GARRISON V. LOUISIANA 379 US 64, 74, 85 S.Ct. 209 (1964); STANDING COMMITTEE V. YAGMAN 55 F.3d 1430 (1995). BOTELHO HAS BEEN KNOWINGLY EXPOSED TO 15 YEARS OF UNLAWFUL AND UNCONSTITUTIONAL INCARCERATION AGAINST HIS WILL AND IS STILL HELD HOSTAGE IN 2018, ^{IN SPITE} OF THE GROSS AND FUNDAMENTAL MISCARRIAGE OF JUSTICE HAS OCCURRED [.] BOTELHO ADDITIONALLY ASSERTS THAT THE 2017 DISTRICT COURT ORDER AMOUNTED TO FRAUD AND OBSTRUCTION OF JUSTICE. SEE U.S. V. FLOWERS 764 F.2d 759 (11th Cir. 1985) LIKE FACTS COMMAND LIKE RESULTS.

REQUIRED RELIEF

BOTELHO RESPECTFULLY REQUESTS THAT THIS NEV. SUPREME COURT SUA SPONTE GRANT BOTELHO'S NECESSARY RELIEF AS A MATTER OF JUDICIAL ECONOMY OR, IN THE ALTERNATIVE, COMPEL THE SECOND JUDICIAL DISTRICT COURT TO ORDER BOTH OF BOTELHO'S CRIMINAL CASE(S) STARTING WITH INDICTMENT CASE NO. CR03-2156 [AND] CRIMINAL COMPLAINT CASE NO. RCR03-011479, WITH IDENTICAL CHARGES, DISMISSED ON GROUNDS OF DOUBLE JEOPARDY AND PREJUDICE IN [BOTH] CASES. BOTELHO DECLARES THAT HE IS FURTHER WILLING TO SIGN A FULL NON-DISCLOSURE AGREEMENT, AND BE UNCONDITIONALLY RELEASED IMMEDIATELY. (EMPHASIS STRONGLY ASSERTED)

DATED SEPT. 11, 2018

RESPECTFULLY SUBMITTED,

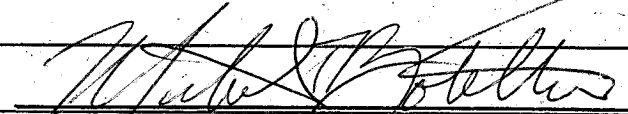

Michael T. Botelho # 80837
NMCC P.O. Box 7000
CARSON CITY, NV. 89702
IN PROPER PERSON

AFFIRMATION AND CERTIFICATE OF SERVICE

I, Michael T. Botelho, REAL PARTY IN INTEREST, AND IN PROPER PERSON, SWEAR UNDER THE PENALTY OF PERJURY, THAT ALL STATEMENTS ARE TRUE AND CORRECT, PURSUANT TO 28 USC 1746 AND 18 USC 1621. THIS DOCUMENT DOES NOT CONTAIN THE S.S.N. OF ANY PERSON.

I FURTHER CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF EXTRAORDINARY WRIT OF MANDAMUS TO THIS COURT AND AS ADDRESSED BELOW BY PLACING SAID EXTRAORDINARY WRIT OF MANDAMUS IN THE U.S. MAIL, VIA PRISON MAIL BOX RULE (HOUSTON V. LACKS), AND FRCP 5 (b). SENT PRE PAID FIRST CLASS MAIL (BRASS SLIP NO. 2243219 TO THE INSUFFICIENTLY BONDED WASHOE CO. DISTRICT ATTORNEY), AND NV. A.G. # 2200739

DATED SEPT. 11, 2018



Michael T. Botelho #00837
NINCE P.O. BOX 7000
CARSON CITY, NEV. 89702
IN PROPER PERSON.

COPY TO:

WASHOE CO. DISTRICT ATTORNEY
ATTN: CHRIS HICKS (NOT LAWFULLY THE D.A.)
P.O. BOX 11130
RENO NEVADA 89520-0027

NV. ATTORNEY GENERAL
100 N. CARSON ST.
CARSON CITY NV. 89701-4717

INCLUDED ARE:

WRIT OF MANDAMUS	PAGES
AFFIDAVIT	
EXHIBIT(S)	

54 PAGES IN TOTAL

AFFIDAVIT

STATE OF NEVADA }

CARSON COUNTY }

SS. AFFIDAVIT OF: MICHAEL T. BOTELHO REAL PARTY IN INTEREST,
IN SUPPORT OF EXTRAORDINARY WRIT OF MANDAMUS.

I, MICHAEL T. BOTELHO, THE UNDERSIGNED, DO HEREBY SWEAR UNDER THE PENALTY OF PERJURY, THAT THE ASSERTION(S) OF THIS AFFIDAVIT IN SUPPORT OF WRIT OF MANDAMUS TO COMPEL 2ND JUD. DIST. CT. TO DISMISS ALL CHARGES WITH PREJUDICE, ARE TRUE AND CORRECT PURSUANT TO 18 USC 1621 AND 28 USC 1746.

I WAS ARRESTED IN CALIF. WITHOUT AN ARREST WARRANT AND UNLAWFULLY AND UNCONSTITUTIONALLY KIDNAPPED ACROSS STATE LINES AND BOOKED INTO WASHOE CO. JAIL ON SEPT. 24, 2003, PURSUANT TO FELONY COMPLAINT FILED ON SEPT. 12, 2003, IN RENO JUSTICE COURT. I WAS "ALLEGEDLY" ARRAIGNED IN JUSTICE COURT ON SEPT. 25, 2003. I WAS GIVEN NOTICE OF APPT. OF COUNSEL AND OF PRELIM. EXAM. SCHEDULED FOR OCT. 9, 2003, ON OCT. 2, 2003. I MET COUNSEL ON OCT. 3, 2003, AND GAVE ME NOTICE OF BEING A TARGET OF WASHOE CO. GRAND JURY ON OCT. 8, 2003. I WAS INDICTED ON OCT. 8, 2003, AND WAS [PREVENTED] FROM ATTENDING IN SPITE OF BEING GIVEN INVITATION TO ATTEND AND SIGNING A PAPER SAYING I WAS GOING, BUT COUNSEL SAID NOTHING ABOUT BEING ALLOWED TO ATTEND ^{NOT} GRAND JURY PROCEEDINGS. ON OCT. 8, 2003, INDICTMENT WITH IDENTICAL CHARGES WAS FILED IN DISTRICT COURT WHEREIN DISTRICT JUDGE BRENT ADAMS STAYED JUSTICE COURT COMPLAINT PROCEEDINGS. THE DISTRICT ATTORNEY FAILED TO COMPLY WITH NRS 178.562(1), NOR NRS 174.085(3) AND DISMISS ONE PROSECUTION, OR THE OTHER, BEFORE MOVING FORWARD WITH CHOSEN MEANS OF PROSECUTION. THE PROSECUTION BY INDICTMENT WITH IDENTICAL CHARGES WAS PROCEEDED UPON, AND MY COMPETENCY WAS QUESTIONED, BUT NOTHING WAS DONE UNTIL 2 1/2 YEARS LATER. BOTELHO, I WAS UNKNOWINGLY COERCED INTO UNLAWFUL AND UNCONSTITUTIONAL INCARCERATION AND HELD HOSTAGE AGAINST MY WILL, NOW FOR 15 YEARS, WHEN FAILURE TO DISMISS ONE PROSECUTION, OR THE OTHER, OCCURRED IN 2003, NOT ONLY DID DOUBLE JEOPARDY OCCUR, BUT PREJUDICE ATTACHED IN [BOTH CASES]. FURTHERMORE, WHEN ONE CASE OR THE OTHER, WAS NOT DISMISSED PRIOR TO MOVING FORWARD IN 2003, A JURISDICTIONAL DEFECT DID OCCUR, AS CONCURRENT JURISDICTION WOULD NOT NORMALLY EXIST UPON DISMISSING, DISMISSING ONE PROSECUTION, OR THE

OTHER, BUT WHEN ONE, OR THE OTHER PROSECUTION WITH IDENTICAL CHARGES WAS NOT DISMISSED, THE JURISDICTIONAL DEFECT OCCURRED, REGARDLESS, AS DID DOUBLE JEOPARDY. I FILED MOTION TO DISMISS ALL CHARGES WITH PREJUDICE IN JUSTICE COURT ON OCT. 12, 2016. WHEN THE STATE FAILED TO RESPOND I FILED MULTIPLE REQUESTS FOR SUBMISSION. THE COURT FAILED TO ACT SO ALMOST 4 MONTHS LATER I FILED MOTION GRANTING MOTION TO DISMISS ALL CHARGES WITH PREJUDICE (MOTION FOR JUDGMENT ON PLEADINGS) AND THE STATE THEN CHOSE TO RESPOND. I FILED MOTION TO STRIKE. WITHOUT RULING UPON MY MOTION TO DISMISS, REQUESTS FOR SUBMISSION, MOTION GRANTING MOTION TO DISMISS, AND MOTION TO TRANSPORT, THE RENO J.D.P. SUMMARILY ORDERED CASE TO DISTRICT COURT WITHOUT FACTS, FINDINGS AND CONCLUSIONS OF LAW. ON JUNE 27, 2017, JUDGE POLAHA DENIED MY FORWARDED MOTION GRANTING MOTION TO DISMISS ALL CHARGES WITH PREJUDICE. POLAHA CALLED THE FACT THAT MY CRIMINAL COMPLAINT WITH IDENTICAL CHARGES WAS STILL PENDING IN 2017, WAS A "MERE PROCEDURAL GLITCH," AND FAILED TO GIVE FACTS, FINDINGS AND CONCLUSION(S) OF LAW. POLAHA KNEW HE VIOLATED HIS OATH OF OFFICE, JUDICIAL CANNON(S), NRS 178.562(1) AND NRS 174.085(3) (THEIR REQUIREMENTS THEREIN) COURT RULES OF PROCEDURE, NV. RULES OF CIVIL AND APPELLATE PROCEDURE NV. & U.S. CONSTITUTION(S) AND MY ASSERTED COMMON LAW, NEV. AND U.S. CONSTITUTIONAL RIGHTS THEREIN. POLAHA ALSO DISREGARDED THE CREATED CONCURRENT JURISDICTIONAL DEFECT(S), THE ATTACHED PREJUDICE IN BOTH PROSECUTION(S) WITH IDENTICAL CHARGES AND THE AUTOMATIC DOUBLE JEOPARDY. POLAHA WAS A CHANGED TO JUDGE IN 2003, IN VIOLATION OF NV. DIST. CT. RULE 18, AS A RESULT OF JUDGE SHOPPING IN MY OPINION. POLAHA KNEW IN 2003, THAT BOTH [DUAL] PROSECUTION(S) WITH IDENTICAL CHARGES WERE STILL PENDING WHEN HE UNLAWFULLY AND UNCONSTITUTIONALLY INCARCERATED ME IN 2003. POLAHA HAS BEEN REPEATEDLY BEEN ASKED TO RECUSE HIMSELF (6) TIMES, TWICE BY COUNSEL AND 3 TIMES BY ME FOR BIAS & PREJUDICE WITH ONE EXCUSE AFTER ANOTHER TO DENY THEM OR IGNORE THEM ALTOGETHER AND NEVER DID HE GIVE AN AFFIDAVIT. THEN IN 2017, IN HIS BAD FAITH ORDER STILL LEFT MY CRIMINAL COMPLAINT WITH IDENTICAL CHARGES IN LIMBO AND INTENTIONALLY LEFT BOTELHO INCARCERATED AGAINST HIS WILL IN VIOLATION OF NRS 178.562(1) AND NRS 174.085(3) AS A VICTIM OF CONTINUING DOUBLE JEOPARDY IN VIOLATION OF U.S. AND NEVADA CONSTITUTION(S) AND MY CONSTITUTIONAL RIGHTS THEREIN. POLAHA HAS WILLFULLY AND KNOWINGLY

HELD ME HOSTAGE AGAINST MY WILL, REGARDLESS. I ASSERT THAT DISTRICT JUDGE POLAKA IS NOT FIT TO BE A JUDGE ANY LONGER; THAT HE MUST BE INVESTIGATED BY THE NEVADA JUDICIAL DISCIPLINE COMMISSION, BE INVOLUNTARILY RETIRED AND PROSECUTED FOR COLLUSION IN CONCERT WITH THE STATE TO PERPETRATE THIS FRAUD. HE NEEDS TO BE PROSECUTED FOR FRAUD 18 USC 9; OFFERING FALSE EVIDENCE (FRAUDULENT COMPETENCY EVAL) NRS 199.210; OBSTRUCTION OF JUSTICE 18 USC 1501, 1503; IMPARTING OR CONVEYING FALSE INFORMATION (AS DONE IN BAD FAITH ORDER) 18 USC 35; CONSPIRACY IN COLLUSION WITH STATE NRS 199.480; NRS 199.490 (COVERT ACT NOT NECESSARY); OPPRESSION UNDER COLOR OF OFFICE NRS 197.200; CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS 42 USC 1985-1986; DEPRIVATION OF RIGHTS UNDER COLOR OF LAW 18 USC 242; CONSPIRACY AGAINST RIGHTS TO INJURE, OPPRESS, THREATEN OR INTIMIDATE 18 USC 241; SEDITIONARY CONSPIRACY (TO HINDER OR DELAY THE EXECUTION OF ANY LAW) 18 USC 2384; AS WELL AS TAMPERING WITH COURT RECORD - OR ASKING CLERK TO DO IT IN 2006-7, 2012-2013, 2017-2018. I HAVE NO PROBLEM HAVING MY FAMILY DO A DOCUMENT DUMP WITH SELECTED MEDIA & SOCIAL MEDIA OUTLETS TO EXPOSE WHAT HAS BEEN DONE TO ME. SADLY THESE ARE [NOT] BARE & NAKED ALLEGATIONS BUT LEGAL FACTS IN THE COURTS [ENTIRE] RECORD SINCE 2003.

ALL I SEEK IS DISMISSAL OF ALL CHARGES WITH PREJUDICE IN BOTH CASE NO. CR03-2156 [INDICTMENT PROSECUTION] AND CASE NO. RC03-011479 [COMPLAINT PROSECUTION], IMMEDIATE UNCONDITIONAL RELEASE ON GROUNDS OF DOUBLE JEOPARDY, PREJUDICE IN BOTH CASE(S) AND I WILL SIGN A NON-DISCLOSURE AGREEMENT AND GO BE WITH MY WIFE AND TEENAGE KIDS [.]

DATED SEPT. 11, 2018

RESPECTFULLY SUBMITTED,
Michael T. Polak # 80837

INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages 4

Exhibit Description 2003 FELONY CRIMINAL COMPLAINT

Exhibit Number 2 Number of Pages 2

Exhibit Description 2003 DISTRICT COURT STAY ORDER

Exhibit Number 3 Number of Pages 2

Exhibit Description 2017 JUSTICE COURT ORDER FORWARDING DOCUMENTS TO DISTRICT COURT

Exhibit Number 4 Number of Pages 7

Exhibit Description 2017 BAD FAITH DISTRICT COURT ORDER

Exhibit Number 5 Number of Pages 5

Exhibit Description 2003 INDICTMENT

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

EXHIBIT 1

CRIMINAL COMPLAINT (4 PGS)

EXHIBIT 1

DA # 318167

WCSO WC03-008924

PH 10-9 @ 1:30

FILED

IN THE JUSTICE COURT OF RENO TOWNSHIP '03 SEP 12 A10:35

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

BY: S. Sacasas
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

RCR 2003- 011479

v.

DEPT: FS-1

MICHAEL TODD BOTELHO,

RECEIVED SEP 30 2003

Defendant.

CRIMINAL COMPLAINT

KELLI ANNE VILORIA of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that MICHAEL TODD BOTELHO, the defendant above-named, has committed the crimes of:

COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and NRS 200.320, a felony, (F610) in the manner following, to wit:

That the said defendant on or about the 7th day of August, 2003, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully seize and/or confine and/or entice and/or kidnap and/or carry away the person of JANE DOE, a child of the age of fourteen years having a date of birth of November 8, 1988, with the intent to hold and detain and did hold and detain such person for the purpose of committing sexual assault upon her, and/or with the intent to hold said minor to unlawful service or to perpetrate upon the person of the minor any unlawful act.

///

EXHIBIT 1 (4 PAGES)

1 COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT, a
2 violation of NRS 200.400, a felony, (F110) in the manner following,
3 to wit:

4 That the said defendant on or about the 7th day of August,
5 2003, at Reno Township, within the County of Washoe, State of Nevada,
6 did willfully and unlawfully use force and violence upon the person
7 of JANE DOE at the hills of Washoe Valley, Washoe County, Nevada,
8 with the intent then and there to commit sexual assault upon and/or
9 against JANE DOE, to wit: by applying duct tape over the victim's
10 eyes and/or over the victim's mouth and/or over the victim's hands
11 and/or by punching said victim in the stomach area and/or by pushing
12 said victim down and sitting on her shoulders.

13 COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS
14 200.366, a felony, (F1000) in the manner following, to wit:

15 That the said defendant on or about the 7th of August,
16 2003, at Reno Township, within the County of Washoe, State of Nevada,
17 did willfully and unlawfully subject JANE DOE, a female child under
18 the age of sixteen years, having a date of birth of November 8, 1988,
19 to sexual penetration, against the victim's will or under conditions
20 in which the defendant knew or should have known that the victim was
21 mentally or physically incapable of resisting or understanding the
22 nature of the defendant's conduct, to wit, said defendant forced the
23 victim to perform fellatio upon him, in the hills of Washoe Valley,
24 Washoe County, Nevada.

25 COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS
26 200.366, a felony, (F1000) in the manner following, to wit:

1 That the said defendant on or about the 7th of August,
2 2003, at Reno Township, within the County of Washoe, State of Nevada,
3 did willfully and unlawfully subject JANE DOE, a female child under
4 the age of sixteen years, having a date of birth of November 8, 1988,
5 to sexual penetration, against the victim's will or under conditions
6 in which the defendant knew or should have known that the victim was
7 mentally or physically incapable of resisting or understanding the
8 nature of the defendant's conduct, to wit, said defendant subjected
9 said child to cunnilingus, in the hills of Washoe Valley, Washoe
10 County, Nevada.

11 COUNT V. SEXUAL ASSAULT ON A CHILD, a violation of NRS
12 200.366, a felony, (F1000) in the manner following, to wit:

13 That the said defendant on or about the 7th of August,
14 2003, at Reno Township, within the County of Washoe, State of Nevada,
15 did willfully and unlawfully subject JANE DOE, a female child under
16 the age of sixteen years, having a date of birth of November 8, 1988,
17 to sexual penetration, against the victim's will or under conditions
18 in which the defendant knew or should have known that the victim was
19 mentally or physically incapable of resisting or understanding the
20 nature of the defendant's conduct, to wit, said defendant subjected

21 ///

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1 said child to vaginal intercourse with his penis, in the hills of
2 Washoe Valley, Washoe County, Nevada.

3
4 DATED this 12th day of September, 2003

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6 Reeliana Viora

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24 Custody:
25 Bailed:
26 Warrant: X

09091924

District Court Dept: 3
District Attorney: VILORIA
Defense Attorney:
Bail 75,000 cash only
Restitution:

EXHIBIT 2

2003 DISTRICT COURT STAY ORDER (2 PGS)

EXHIBIT 2

FILED
10-8-03
RONALD A. LONGIN, JR., CLERK
S. Stagnaro
By _____ Deputy Clerk

CODE 3370
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

MICHAEL TODD BOTELHO,
also known as
"KEVIN",

Defendant.

Case No. **CR03 2156**

Dept. No. 3

ORDER STAYING PROCEEDINGS

An INDICTMENT having been found by the Grand Jury of Washoe County, Nevada, on the 8th of October, 2003, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, charging MICHAEL TODD BOTELHO, also known as "KEVIN", with the crimes of COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of NRS 200.310-1 and NRS 200.320, a felony; COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.400, a felony; COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony; COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony; and COUNT V. SEXUAL ASSAULT ON A CHILD, a

EXHIBIT 2 (2 PAGES)

1 violation of NRS 200.366, a felony, and it further appearing to the
2 satisfaction of the Court that further proceedings in the Justice
3 Court of Reno Township in connection with a Criminal Complaint
4 charging the said defendant with said offenses is not necessary,

5 IT IS HEREBY ORDERED that all further proceedings on the
6 Criminal Complaint heretofore issued against the said defendant in
7 the Justice Court of Reno Township be, and the same is hereby stayed
8 pending final determination of the aforementioned Indictment and
9 proceedings had thereupon.

10 DONE IN OPEN COURT this 8th day of October, 2003.

11
12 Brent Adams

13 _____
14 DISTRICT JUDGE
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EXHIBIT 3

2017 JUSTICE COURT ORDER FORWARDING DOCUMENTS TO DISTRICT COURT
(2 PGS)

EXHIBIT 3

FILED

FILED

2017 MAY 16 AM 11:05

17 MAY 11 PM 5:24

JACQUELINE BRYANT
CLERK OF THE COURT

DEXTER THOMAS
RENO JUSTICE COURT

DEPUTY CLERK ASSIGNED TO INMATE CORRESPONDENCE
BY
DEPUTY

DEPUTY

IN THE JUSTICE COURT OF RENO TOWNSHIP
COUNTY OF WASHOE, STATE OF NEVADA

MICHAEL T. BOTELHO,

Case No. RCR 2003-011479

Plaintiff,

Dept. No. 1

CRD3-2156

D3

ORDER FORWARDING
DOCUMENTS TO
DISTRICT COURT

vs.

RENO JUSTICE COURT,

Defendant.

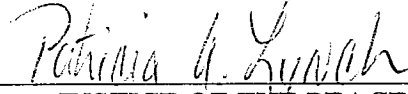
MICHAEL T. BOTELHO ("BOTELHO") was convicted of a number of serious felonies in the Second Judicial District Court and is currently serving time in prison. While the charges were originally in Justice Court, a superseding Indictment was filed, and all proceedings in Justice Court were stayed by the District Court on October 8, 2003. BOTELHO sent previous correspondence to this court, which was properly forwarded to the District Court as the Justice Court has no jurisdiction and is under the stay issued by the District Court.

BOTELHO's latest correspondence, received by this court on November 2, 2016, was inadvertently sent to the District Attorney's Office for a response. The court, more appropriately, should have forwarded BOTELHO's correspondence directly to the District Court. Additionally, there is no such case as "MICHEL T. BOTELHO V. RENO JUSTICE COURT."

THEREFORE, any and all documents and motions filed by BOTELHO from November

1 2, 2016, in Reno Justice Court are to be forwarded to District Court as the Justice Court has no
2 jurisdiction in this case.

3 DATED this 10th day of May 2017

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5 

6 JUSTICE OF THE PEACE
7 DEPARTMENT NO. 1
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EXHIBIT 4

2017 BAD FAITH DISTRICT COURT ORDER
(7 PGS)

EXHIBIT 4

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

MICHAEL TODD BOTELHO,

Petitioner,

vs.

JAMES BENEDETTI, STATE OF
NEVADA, et. al,

Respondents.

Case No. CR03-2156

Dept. No. 3

ORDER

Currently before the Court is Michael T. Botelho's ("Petitioner") *Motion Granting Motion to Dismiss All Charges With Prejudice For The Lack of Subject Matter Jurisdiction of District Court* ("the Motion") filed February 13, 2017. The State filed a *Response to "Motion Granting Motion to Dismiss All Charges..."* ("Response") on March 16, 2017. The Petitioner submitted the matter for consideration on May 22, 2017.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

This case was first brought before the Reno Justice Court, Case No. RCR2003-011479, Department 1 by criminal complaint on September 12, 2003. On October 8, 2003 the Petitioner was indicted by a grand jury on one count of kidnapping in the first degree, one count of battery with intent to commit sexual assault on a child, and three counts of sexual assault on a child. The same

1 day, this Court issued an *Order Staying Proceedings*, ordering all further proceedings on the
2 Criminal Complaint issued against the Petitioner in the Reno Justice Court be stayed pending final
3 determination of the Indictment.

4 Pursuant to a guilty plea, Judgment was entered against Petitioner on April 7, 2004 on one
5 ~~_____~~
6
7 prison term of life with the possibility of parole for kidnapping and prison terms of life with the
8 possibility of parole for each county of sexual assault. The terms for two counts of sexual assault
9 were imposed to run concurrently to one another and consecutively to the term for kidnapping. The
10 term for the remaining count of sexual assault was imposed to run consecutively to the two
11 concurrent terms for sexual assault.

12
13 The Motion currently pending before this Court was filed February 13, 2017 in the Reno
14 Justice Court, Case No. RCR2003-011479, Department 1. The State filed the Response thereto on
15 March 16, 2017. On May 16, 2017, Justice Patricia Lynch issued an *Order Forwarding Documents*
16 *to District Court* ("Justice Court Order"). The Justice Court Order indicates that while charges in
17 this case were originally filed in Justice Court, a superseding indictment was filed and all
18 proceedings in Justice Court were stayed by the District Court on October 8, 2003 and there is no
19 such case titled "Michael T. Bothelo v. Reno Justice Court." Therefore, the Justice Court ordered all
20 documents and motions filed by the Petitioner from November 2, 2016 in Reno Justice Court
21 forwarded to the District Court, as the Justice Court had no jurisdiction to hear the case.
22

23
24 Petitioner filed a request for submission of the Motion in Justice Court on May 16, 2017. On
25 May 22, 2017, Petitioner filed a document titled *Judicial Notice* and thereafter filed the *Second*
26 *Request for Submission*.¹ On June 2, 2017, Petitioner filed the *Reply and Objection to Order*
27

28 ¹ Petitioner states he was "forced" to file a second request for submission to this Court, however, this Court had no
knowledge of Petitioner's filings, including the first request for submission, as they were filed in Justice Court.

1 Forwarding Documents to District Court ("Reply"). This Court now takes the matter for
2 consideration.

3 ANALYSIS

4 The title of the motion before the Court is "Motion Granting Motion to Dismiss All Charges
5 With Prejudice." While confusing and nonspecific, this Court must consider the Motion by
6 examining the substance of the pleading, not just the title. *See Nev. Power Co. v. Eighth Judicial*
7 *Dist. Court*, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004) (stating that when considering a claim,
8 this court "must look at the substance of the claim[], not just the label[] used in the ... complaint").
9

10 Upon further review of the Motion, it appears Petitioner argues that the Reno Justice Court
11 still maintains jurisdiction over his case, even after the superseding Indictment and Stay of the
12 Justice Court proceedings. He claims "that jurisdiction over the subject-matter and the parties [still
13 remains] 'not' adjudicated in this justice court since 2003, and again in 2017." [Mot. 2:10-11]. On
14 October 12, 2016, Petitioner states he filed a *Motion to Dismiss* in Justice Court.² [Mot. 4:27].
15 Thereafter, the Justice Court had a mandatory obligation to make an immediate determination of
16 jurisdiction. [Mot. 3:11-12]. However, there was no response from the State, no hearing, and no
17 ruling from the Justice Court. [Mot. 3:13-14]. Petitioner requests this Court to "make this [nunc pro
18 tunc] order granting Botelhos (sic) required relief, as a void judgment, and/or, dismiss all charges
19 with prejudice, and all additional relief sought in this and my previous motion...." [Aff. 3:28, 4:1-
20 2].
21
22

23 In the Response, the State contends the Motion makes little sense and there is currently no
24 case pending in the Reno Justice Court. [Resp. 1:17-20]. Further, Petitioner asserts he previously
25 moved to dismiss his criminal charges, however the State contends that assertion is false. [Resp.
26
27

28 ² Petitioner asserts he filed a *Motion to Dismiss*, including an affidavit, on October 12, 2016. However, neither this Court nor the Reno Justice Court is in receipt of such documents.

1 1:21-23]. The State is unaware of any proceedings involving the Petitioner and the Reno Justice
2 Court currently pending. [Resp. 2:1-2]. To the extent Petitioner requests this Court to vacate the
3 convictions entered by the Second Judicial District Court, Petitioner's request should be denied.
4 [Resp. 2:3-5]. The State further argues that to the extent Petitioner is arguing there is some legal
5 significance to the prior complaint filed in the Reno Justice Court, he is incorrect, as there was a
6 superseding indictment. [Resp. 2:5-8].

8 In the Reply, Petitioner argues that pursuant to NRS 172.175(1)(a), this Court does not have
9 jurisdiction over the subject matter of the case because his case was first filed by way of criminal
10 complaint in the Reno Justice Court. [Reply 3:4-7]. He further states that the superseding indictment
11 and Stay of Justice Court proceedings have no legal consequence. [Reply 3:7-10]. He never waived
12 his right to a preliminary hearing and his case was not transferred to the District Court by the Justice
13 of the Peace.³ [Reply 3:11-15]. Petitioner essentially argues that jurisdiction over his case remains
14 in Justice Court, as this District Court was not properly conferred jurisdiction over the matter.
15 [Reply 10:24-28].

18 "[J]ustice courts are courts of limited jurisdiction and have only the authority granted by
19 statute." *State of Nevada v. Justice Court*, 112 Nev. 803, 805, 919 P.2d 401, 402 (1996) (citing
20 *Parsons v. District Court*, 110 Nev. 1239, 1243, 885 P.2d 1316, 1319 (1994)). NRS 4.370(3) states
21 that "[j]ustices courts have jurisdiction of all misdemeanors and no other criminal offenses except
22 as otherwise provided by specific statute." Justice [REDACTED] courts also have jurisdiction to
23 conduct preliminary examinations in felony complaints. NRS 171.196.

25
26 ³ In Nevada, felonies may be prosecuted by either indictment or information. Nev. Const. art. 1, § 8; NRS 173.015; NRS
27 252.110; NRS 453.200; *See also Cairns v. Sheriff, Clark Cty.*, 89 Nev. 113, 116, 508 P.2d 1015, 1017 (1973). Here, the
28 prosecution made the tactical decision to prosecute the Petitioner by way of indictment, which is permitted under
Nevada law. Therefore, Petitioner's argument that he failed to get a preliminary examination is meritless and
unavailing.

1 As indicated above, the State initially proceeded against the Petitioner by means of a
2 criminal complaint filed in justice court. However, the state presented the case to a grand jury and
3 obtained an indictment. When the district court accepted the indictment, it stayed any further
4 proceedings on the criminal complaint pending final determination of the indictment. It is
5 established Nevada law that a grand jury can return an indictment even though a criminal complaint
6 had been filed previously. *Hall v. Sheriff, Washoe Cty.*, 86 Nev. 456, 458, 470 P.2d 422, 423
7 (1970). Further, “[w]hile ordinarily the state dismisses a criminal complaint when an indictment is
8 returned, such a dismissal is not automatic upon return of an indictment. There is no authority for
9 the proposition that an indictment obtained while a criminal complaint is pending automatically
10 replaces the complaint.” *Sheriff, Washoe Cty. v. Dhadda*, 115 Nev. 175, 183, 980 P.2d 1062, 1067
11 (1999) (holding that neither a return of an indictment nor the granting of a writ of habeas corpus
12 automatically extinguish a pending criminal complaint). Thus, the Indictment in this case did not
13 automatically dismiss the criminal complaint filed in the Reno Justice Court, and it appears no
14 dismissal of the criminal complaint was sought by the prosecutor in this case. As indicated by the
15 Reno Justice Court Order transferring all documents to this Court, the Stay imposed by this Court is
16 still in effect. However, this is merely a procedural glitch and has no impact whatsoever on the
17 Petitioner’s Judgment of Conviction.
18

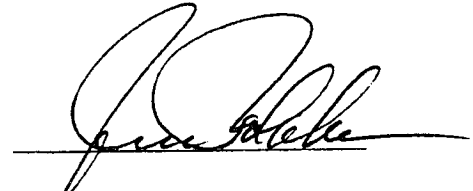
19
20
21 The Nevada Supreme Court has held that provisions under the Nevada Constitution disfavor
22 concurrent jurisdiction between the district and justice courts. *State v. Kopp*, 118 Nev. 199, 203, 43
23 P.3d 340, 342–43 (2002). Once a district court properly obtains original jurisdiction over a
24 defendant by virtue of a felony or gross misdemeanor charge, its jurisdiction is maintained to
25 convict and sentence. *Kimball v. State*, 100 Nev. 190, 191, 678 P.2d 675, 676 (1984). Thus, once
26 this Court accepted jurisdiction over the case by way of indictment and a judgment of conviction
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28

1 was entered, the case was fully adjudicated on the facts. Therefore, the justice court proceedings
2 have been adjudicated and must be dismissed.

3 Accordingly, and good cause appearing,

4 IT IS HEREBY ORDERED that Petitioner's Motion is DENIED it in its entirety.

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6 Dated this 27th day of June, 2017.

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9 JEROME POLAHA
10 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 27 day of June, 2017 I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

TERRENCE P. MCCARTHY, ESQ

☒ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

MICHAEL TODD BOTELHO #80837
NNCC
P O BOX 7000
CARSON CITY, NV 89702

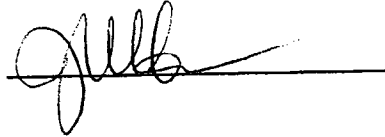


EXHIBIT 5

2003 GRAND JURY INDICTMENT
(5 PGS)

EXHIBIT 5

DA # 318167

WCSO WC03-008924

ORIGINAL

FILED

10-8-03
RONALD A. LONGTIN, JR., Clerk

By S. Stagnaro Deputy Clerk

1 CODE 1795
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR03 2156

Dept. No. 3

16 MICHAEL TODD BOTELHO,
17 also known as @154004
18 "KEVIN",

19 Defendant.

20 INDICTMENT

21 The defendant, MICHAEL TODD BOTELHO, also known as "KEVIN",
22 is accused by the Grand Jury of Washoe County, State of Nevada, of
23 the following:

24 ^{F610} COUNT I. KIDNAPPING IN THE FIRST DEGREE, a violation of
25 NRS 200.310-1 and NRS 200.320, a felony, (F610) committed as follows:

26 That the said defendant on the 7th day of August, 2003, or
thereabout, within the County of Washoe, State of Nevada, did
willfully and unlawfully seize and/or confine and/or entice and/or
kidnap and/or carry away the person of JANE DOE, a minor child of the
age of fourteen years having a date of birth of November 8, 1988,

1 with the intent to hold and detain and did hold and detain such
2 person for the purpose of committing sexual assault upon her, and/or
3 with the intent to hold said minor to unlawful service or to
4 perpetrate upon the person of the minor any unlawful act.

5 ~~F110~~ COUNT II. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT ON
6 A CHILD, a violation of NRS 200.400, a felony, (F110) committed as
7 follows:

8 That the said defendant on the 7th day of August, 2003, or
9 thereabout, within the County of Washoe, State of Nevada, did
10 willfully and unlawfully use force and violence upon the person of
11 JANE DOE, a minor child of the age of sixteen years having a date of
12 birth of November 8, 1988, at the hills of Washoe Valley, Washoe
13 County, Nevada, with the intent then and there to commit sexual
14 assault upon and/or against JANE DOE, to wit: by applying duct tape
15 over the victim's eyes and/or over the victim's mouth and/or over the
16 victim's hands and/or by punching said victim in the stomach area
17 and/or by pushing said victim down and sitting on her shoulders.

18 ~~F1000~~ COUNT III. SEXUAL ASSAULT ON A CHILD, a violation of NRS
19 200.366, a felony, (F1000) committed as follows:

20 That the said defendant on the 7th of August, 2003, or
21 thereabout, within the County of Washoe, State of Nevada, did
22 willfully and unlawfully subject JANE DOE, a female child under the
23 age of sixteen years, having a date of birth of November 8, 1988, to
24 sexual penetration, against the victim's will or under conditions in
25 which the defendant knew or should have known that the victim was
26 mentally or physically incapable of resisting or understanding the

1 nature of the defendant's conduct, to wit, said defendant forced the
2 victim to perform fellatio upon him, in the hills of Washoe Valley,
3 Washoe County, Nevada.

4 ^{F1000} COUNT IV. SEXUAL ASSAULT ON A CHILD, a violation of NRS
5 200.366, a felony, (F1000) committed as follows:

6 That the said defendant on the 7th of August, 2003, or
7 thereabout, within the County of Washoe, State of Nevada, did
8 willfully and unlawfully subject JANE DOE, a female child under the
9 age of sixteen years, having a date of birth of November 8, 1988, to
10 sexual penetration, against the victim's will or under conditions in
11 which the defendant knew or should have known that the victim was
12 mentally or physically incapable of resisting or understanding the
13 nature of the defendant's conduct, to wit, said defendant subjected
14 said child to cunnilingus, in the hills of Washoe Valley, Washoe
15 County, Nevada.

16 ^{F1000} COUNT V. SEXUAL ASSAULT ON A CHILD, a violation of NRS
17 200.366, a felony, (F1000) committed as follows:

18 That the said defendant on the 7th of August, 2003, or
19 thereabout, within the County of Washoe, State of Nevada, did
20 willfully and unlawfully subject JANE DOE, a female child under the
21 age of sixteen years, having a date of birth of November 8, 1988, to
22 sexual penetration, against the victim's will or under conditions in
23 which the defendant knew or should have known that the victim was
24 mentally or physically incapable of resisting or understanding the
25 nature of the defendant's conduct, to wit, said defendant subjected
26

1 said child to vaginal intercourse with his penis, in the hills of
2 Washoe Valley, Washoe County, Nevada.

3
4 Dated this 8th day of October, 2003.

5
6 RICHARD A. GAMMICK
7 District Attorney

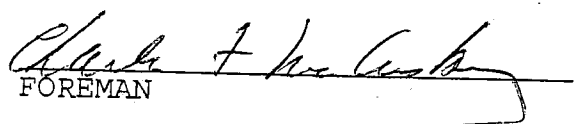
8
9 By Kelli Anne Viloria
10 KELLI ANNE VILORIA
11 5872
12 Deputy District Attorney
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1 The following are the names of witnesses examined before
2 the Grand Jury:

3 JANE DOE
4 GREG HERRERA
5 ANNIE KNAPIC
6 MARIE NORBERG
7 RENEE ROMERO
8 CUSTODIAN OF RECORDS, VERIZON WIRELESS CFMc
9 JERRY PATTISON
10 CUSTODIAN OF RECORDS, CARSON-TAHOE HOSPITAL CFMc

11 "A TRUE BILL"

12 
13 FOREMAN

14 "NO TRUE BILL"

15
16
17
18 FOREMAN
19
20
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