

1 The Nevada Supreme Court has stated: “Without such limitations on the availability of
2 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
3 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
4 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
5 The Nevada Supreme Court recognizes that “[u]nlike initial petitions which certainly require
6 a careful review of the record, successive petitions may be dismissed based solely on the face
7 of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other
8 words, if the claim or allegation was previously available with reasonable diligence, it is an
9 abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-
10 498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
11 P.3d at 1074.

12 Defendant’s first Petition was filed on December 29, 2017, and raised claims regarding
13 ineffective assistance of trial and appellate counsel, denial of discovery, prosecutorial
14 misconduct, cumulative error, and due process violations. That Petition was considered on the
15 merits by this Court, and then denied on April 24, 2018. Defendant raises the ineffective
16 assistance of trial and appellate counsel, and cumulative error claims again in the instant
17 petition. Therefore, these claims are successive. Defendant’s other claims of (1) factual and
18 legal innocence, (2) lack of grand jury indictment (3) coercive use of Allen charge, (4)
19 violation of rules of criminal procedure, (5) DNA issues, (6) false use of preliminary hearing,
20 (7) improper oath of jurors, (8) lack of jurisdiction and (9) false prosecution were available to
21 Defendant at the time he filed his first petition which was not time barred. Therefore, raising
22 these claims in a successive petition is an abuse of writ. Accordingly, this Court should deny
23 Defendant’s Petition.

24 **IV. DEFENDANT HAS NOT SHOWN GOOD CAUSE OR ACTUAL INNOCENCE**
25 **TO OVERCOME THE PROCEDURAL BARS.**

26 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

unduly prejudiced if the petition is dismissed.¹ NRS 34.726(1)(a) (emphasis added); see Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646–47, 29 P.3d 498, 523 (2001) (emphasis added).

A. Good Cause

“To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. Examples of good cause include interference by State officials and the previous unavailability of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Here, Defendant fails to address good cause to ignore his procedural defaults. Defendant has failed to show that an impediment external to the defense prevented him from raising these claims in an earlier proceeding. Indeed, the applicable law and facts were all available to him on direct appeal and he offers no excuse for his failure to raise these issues there. Accordingly, Defendant’s petition should be denied.

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¹ Since Defendant has failed to assert good cause or prejudice to overcome the procedural default, the State will only address good cause. To the extent this Court finds good cause, the State will retain the right to argue Defendant’s lack of prejudice in further proceedings.

1 **B. Actual Innocence**

2 Where a petition is procedurally barred and the petitioner cannot demonstrate good
3 cause, the district court may nevertheless reach the merits of any constitutional claims if the
4 petitioner demonstrates that failure to consider those constitutional claims would result in a
5 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing
6 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of
7 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or
8 is ineligible for the death penalty." Id. This generally requires the petitioner to present new
9 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064, 165 L. Ed.
10 2d 1 (2006); Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

11 When claiming a fundamental miscarriage based on actual innocence, the petitioner
12 "must show that it is more likely than not that no reasonable juror would have convicted him
13 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, *9-10, citing
14 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence
15 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,
16 1273-74, 149 P.3d 33, 36 (2006).

17 Defendant claims he is factually innocent because the facts presented at trial did not
18 mirror the facts as outlined in the Information. Specifically, the victim did not give an exact
19 date when the incident occurred, the victim did not testify that Defendant placed his hands on
20 her face, the incident did not occur in public, and the victim did not run away and ask for help,
21 therefore consenting. Petition at 11-19. This is not factual innocence. Defendant is not negating
22 the fact that the incident occurred, he is merely suggesting that the act did not occur as framed
23 by the State. To the extent the Defendant is alleging that the facts don't match the crime
24 charged, this is a claim of legal innocence which cannot be used to support a claim that a
25 fundamental miscarriage of justice will occur if the petition is not heard. Mitchell, 122 Nev. at
26 1273-74, 149 P.3d at 36 (2006).

27 Accordingly, Defendant cannot prove his actual innocence and this Court should deny
28 the Petition for Writ of Habeas Corpus.

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CONCLUSION

For all the foregoing, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 17th day of January, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #01565

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 17th day of JANUARY, 2019, to:

JUSTIN LANGFORD, BAC#1159546
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89149

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

FILED
JAN 22 2019
CLERK OF COURT

Justin Odell Langford[®] [1159546]

LCC

% 1200 Prison Rd

Lovelock, Nv 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD[®]

Case No. - A-18-784811-W

Petitioner,

Dept No. XV

-vs-

Date: Jan. 28, 2018

Warden Renee Baker,

Time: 9 o'clock AM.

Respondent

Motion To Strike States Response (Telephonic Hearing)

COMES NOW JUSTIN ODELL LANGFORD[®], Ens legis, Petitioner,
through Justin Odell Langford[®] Attorney-In-Fact, Authorized
Representative, moves this Honorable Court for an order
GRANTING this Motion

This motion is made and based upon all papers, files,
papers, pleadings and other documents on file with the Court.

Along with the attached Points and Authorities with any oral
arguments which may be adduced at the time of hearing,

dated this 1st day of January 2019

A-18-784811-W
MSTR
Motion to Strike
4811869



Justin Odell Langford[®]

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Justin Odell Langford

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CLERK OF THE COURT

NOTICE OF MOTION

TO: WARDEN RENEE BAKER; STATE OF NEVADA; STEVEN
B. WOLFSON, Counsel. YOU AND EACH OF YOU WILL TAKE
NOTICE that the foregoing Motion to Strike States
Response. Will be heard on January 28, 2019 @
9^{AM} o'clock in dept. XV. February 25

Dated this 1st day of January, 2019.

By:

Justin Odell Langford ©

NDOC # [1159546]

Points And Authorities

Argument

The Petitioner filed "Affidavit of Writ of Habeas
Corpus" on Nov. 19, 2018, which has gone unchallenged
by the respondent in this case. Thus there being
NO 'counter affidavit' on file regarding this issue,
Petitioners Habeas must be accepted as true. See
Morris v. National Cash Register, 44 S.W. 2d 433;
Group v. Finletter, 108 F.Supp. 327. Failure to contest
an assertion is considered silence of acquiescence,
an affidavit is an assertion of the facts, See
Western Air Lines, Inc. v. Flight engineers International
Association, AFL-CIO, ETC. Et. al., 194 F.Supp. 408; 1961 U.S.
Dist. LEXIS 3881; 48 L.R.R.M. 2492; 43 Lab. Cas.(ccm); See
also Ylst v. Nunnemaker, 501 U.S. 797(1990); Eureka v. Bank,
35 Nev. 80(1912); Hixon v. Pixley, 15 Nev. 475(1880).

Conclusion

So as you can see with the respondent or the State not filing a 'Counter affidavit' the Petitioner must win in this matter, their response Striken and Writ of Habeas Corpus GRANTED.

VERIFICATION

I, Justin Odell Langford[©], declare and verify, that the foregoing information is true and correct to the best of my knowledge and belief. Per 28 U.S.C.A. §1746 and 18 U.S.C.A. §1621.

Dated this 1st day of January, 2019.

By:

Justin Odell Langford[©]

NDOC # [1159546]

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Justin Odell Langford

Certificate Of Service.

I, Justin Odell Langford[©], certify, that I have attached the foregoing Motion to Strike States Response with special Instructions for electronic filing & Service to the Clerk of Court serve all of my opponents pursuant to N.E.F.C.R. 9, 5(K), et. seq. (A-E), Etc. to the following:

Warden Renee Baker

LCC

% 1200 Prison Rd.

Lovelock, Nv 000

Steven B. Wolfson, D.A.

% 200 Lewis Ave.

Las Vegas, Nv 00000

Justin Udeh Longford
NDOC #L11545487
LCC
% 1200 Prison Rd
Lovelock, NV 00000

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Lovelock Correctional Center



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LCC

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Love Lock, Nevada 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL ~~LANGFORD~~ LANGFORD[®]

Petitioner

- VS -

Renee Baker, Warden

Respondent

Case No: A-18-784811-W

Dept No: XV

Notice of Appeal

COMES NOW Justin Odell Langford[®], Petitioner
to File Notice of Appeal to an adverse decision
on Writ of Habeas Corpus that was entered in
open court on Jan. 28, 2019 without petitioners
presences

Dated this 5th day of February 2019

Respectfully Submitted

Justin Odell Langford[®]

LCC

1200 Prison Road
Love Lock, NV 00000

CLERK OF THE COURT

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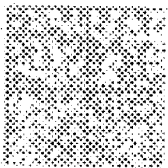
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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 JUSTIN ODELL LANGFORD,

10 Petitioner(s),

11 vs.

12 WARDEN RENEE BAKER,

13 Respondent(s),
14

Case No: A-18-784811-W

Dept No: XV

15
16 **CASE APPEAL STATEMENT**
17

18 1. Appellant(s): Justin Ordell Langford

19 2. Judge: Joe Hardy

20 3. Appellant(s): Justin Ordell Langford

21 Counsel:

22 Justin Ordell Langford #1159546
23 1200 Prison Rd.
24 Lovelock, NV 89419

25 4. Respondent (s): Warden Renee Baker

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89155

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5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A
9. Date Commenced in District Court: November 19, 2018
10. Brief Description of the Nature of the Action: Civil Writ
Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus
11. Previous Appeal: No
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A
13. Possibility of Settlement: Unknown

Dated This 13 day of February 2019.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Justin Ordell Langford

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STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JUSTIN ODELL LANGFORD,
#2748452

Defendant.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **JANUARY 28, 2019**
TIME OF HEARING: **9:00 AM**

THIS CAUSE having presented before the Honorable JOE HARDY, District Judge, on the 28th day of February, 2019; Petitioner not being present, proceeding IN PROPER PERSON; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JACOB VILLANI, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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PROCEDURAL BACKGROUND

On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Defendant") was charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B Felony - NRS 200.508(1)).

On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

On May 10, 2016, Defendant was sentenced to Life with a possibility of parole after a term of 10 years have been served in the Nevada Department of Corrections ("NDOC"). Defendant received 841 days credit for time served. The Judgment of Conviction was filed on May 17, 2016.

On June 1, 2016, Defendant filed a Notice of Appeal from his conviction. On June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July 28, 2017.

On July 19, 2017, Defendant filed a Motion to Modify And/Or Correct Sentence ("Motion to Modify"), Motion for Sentence Reduction ("Motion for Reduction"), Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, a Motion for Transcripts at the State's Expense and Memorandum of Point and Authorities in Support of Request for Transcripts at State's Expense, a Motion to Obtain a Copy of a Sealed Record, and a Motion to Withdraw Counsel. The State filed its Response to Defendant's Motion to Modify And/Or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

On August 10, 2017, the Court denied Defendant's Motion for Sentence Reduction, granted Defendant's Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, denied Defendant's Motion for Transcripts at State's Expense, granted Defendant's Motion to withdraw Counsel, granted Defendant's Motion to Obtain Copy of a Sealed Record, and denied Defendant's Motion to Modify/Correct Illegal Sentence.

1 On October 10, 2017, Defendant filed a Motion to Claim and Exercise Rights
2 Guaranteed by the Constitution for the United States of America and Require the Presiding
3 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
4 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
5 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
6 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
7 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
8 2017. On October 31, 2017, the Court denied all of Defendant's Motions, and the order was
9 filed on November 7, 2017.

10 On November 27, 2017, Defendant filed a Motion for Ancillary Services and a Motion
11 for Transcripts and Other Court Documents and State's Expense. The State filed its
12 Opposition to Defendant's Motion for Ancillary Services on December 13, 2017. The Court
13 denied Defendant's Motions on December 19, 2017, and the order was filed on December 29,
14 2017.

15 On December 29, 2017, Defendant filed a "Notice of Understanding of Intent and Claim
16 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ
17 of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
18 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
19 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
20 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

21 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Petition for
22 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
23 2018, he filed a Motion to Strike State's Response [to Defendant's Petition]. In both of those,
24 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
25 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
26 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
27 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding
28 judicial day." February 19, 2018, was a legal holiday, thus, the State properly filed its

1 Response on the next succeeding judicial day, February 20, 2018.

2 On March 15, 2018, Defendant filed a Motion for Stay of Sentence, Traverse, and
3 Motion to Strike the State's Response. The State responded on April 2, 2018. The court denied
4 Defendant's Motion on April 5, 2018.

5 On March 30, 2018, Defendant filed a Motion to Modify and/or Correct Illegal
6 Sentence and "Judicial Notice of Lack of Jurisdiction" claiming that the District Court lacked
7 subject matter jurisdiction to sentence him. The State responded on April 18, 2018.

8 On April 24, 2018, the court denied Defendant's Pro Per Petition for Writ of Habeas
9 Corpus. That same day, the court also denied Defendant's Motion to Modify and/or Correct
10 Illegal Sentence. On May 7, 2018, Defendant filed a notice of appeal.

11 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Writ of Habeas
12 Corpus (Post-Conviction). On May 1, 2018 the court issued an Order denying Defendant's
13 Motion.

14 On June 1, 2018, the court entered and order denying Defendant's Motion to Modify
15 and/or Correct Illegal Sentence and "Judicial Notice of Lack of Jurisdiction. The court also
16 entered its Findings of Fact, Conclusions of Law, and Order.

17 On July 2, 2018 this case was reassigned to Department fifteen (15). On August 28,
18 2018, Defendant filed a Motion to Recuse and Application for Bail. The State responded on
19 October 8, 2018. The court denied Defendant's Motion on October 9, 2018. Defendant filed a
20 Notice of Appeal on October 22, 2018.

21 On November 19, 2018, Defendant filed a Petition for Writ of Habeas Corpus. The
22 State responded on January 17, 2019.

23 ANALYSIS

24 **I. THIS INSTANT PETITION IS PREMATURE DUE TO THE PENDING** 25 **DIRECT APPEAL**

26 "Jurisdiction in an appeal is vested solely in the supreme court until the remittitur issues
27 to the district court." Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994)
28 (emphasis added). While an appeal is pending district courts do not have jurisdiction over the

1 case until remittitur is issued. Id. The Nevada Supreme Court has repeatedly held that the
2 timely filing of a notice of appeal ‘divests the district court of jurisdiction to act and vests
3 jurisdiction in [the appellate] court.’” Foster v. Dingwall, 126 Nev. 49, 52, 228 P.3d 453, 454-
4 55 (Nev. 2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529
5 (2006)).

6 Only a remittitur will return jurisdiction from an appellate court of competent
7 jurisdiction to the district court. See NRS 177.305 (“After the certificate of judgement has
8 been remitted, the appellate court of competent jurisdiction shall have no further jurisdiction
9 of the appeal or of the proceedings thereon, and all order which may be necessary to carry the
10 judgement into effect shall be made by the court to which the certificate is remitted.”). Until a
11 remittitur is received, a district court lacks jurisdiction over a particular case. Buffington, 110
12 Nev. at 126, 868 P.2d at 644.

13 While a perfected appeal ordinarily “divests the district court of jurisdiction to act
14 except with regard to matters collateral to or independent from the appealed order, the district
15 court nevertheless retains a limited jurisdiction to ... direct briefing on the motion, hold a
16 hearing regarding the motion, and enter an order denying the motion, but lacks jurisdiction to
17 enter an order granting such a motion. ... ” however, “the district court does have jurisdiction
18 to deny such requests.” Foster v. Dingwall, 126 Nev. 49, 52–53, 228 P.3d 453, 455–56 (2010)
19 (emphasis in original).

20 In the instant case, Defendant filed two notices of appeal on May 7, 2018, and October
21 22, 2018. These are now consolidated appeals under Nevada Supreme Court case numbers
22 75825 and 76075. Both of these appeals remain outstanding. Therefore, these appeals are
23 pending, and no remittitur has been issued. Accordingly, the instant petition is technically
24 premature but raises issues which can be entertained on the merits and denied.

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1 **II. DEFENDANT'S PETITION IS PROCEDURALLY BARRED UNDER NRS**
2 **34.726(1).**

3 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause
4 shown for delay. Pursuant to NRS 34.726(1):

5 Unless there is good cause shown for delay, *a petition that*
6 *challenges the validity of a judgment or sentence must be filed*
7 *within 1 year of the entry of the judgment of conviction* or, if an
8 appeal has been taken from the judgment, within 1 year after the
Supreme Court issues its remittitur. For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

9 (a) That the delay is not the fault of the petitioner; and

10 (b) That dismissal of the petition as untimely will unduly prejudice
11 the petitioner.

12 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be
13 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
14 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726
15 begins to run from the date the judgment of conviction is filed or a remittitur from a timely
16 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

17 The one-year time limit for preparing petitions for post-conviction relief under NRS
18 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
19 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
20 evidence presented by the defendant that he purchased postage through the prison and mailed
21 the Notice within the one-year time limit.

22 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
23 consider whether a defendant's post-conviction petition claims are procedurally barred. State
24 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
25 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
26 conviction habeas petitions is mandatory," noting:

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1 Habeas corpus petitions that are filed many years after conviction are
2 an unreasonable burden on the criminal justice system. The necessity
3 for a workable system dictates that there must exist a time when a
criminal conviction is final.

4 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district
5 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
6 Court has granted no discretion to the district courts regarding whether to apply the statutory
7 procedural bars; the rules must be applied.

8 In the instant case, Defendant's Judgement of Conviction was filed on May 17, 2016.
9 Defendant filed a direct appeal, and remittitur was issued on July 28, 2017. Thus, the one-year
10 time bar began to run from the date of remittitur. Defendant's Petition was not filed until
11 November 19, 2018. This is over 12 months after remittitur issued and in excess of the one-
12 year time frame. Absent a showing of good cause for this delay and undue prejudice, this Court
13 finds Defendant's petition must be dismissed because of its tardy filing.

14 **III. DEFENDANT'S CLAIMS ARE SUCCESSIVE AND AN ABUSE OF WRIT**

15 Defendant's claims are successive and an abuse of the writ pursuant to NRS 34.810(2)
16 which reads:

17 A second or successive petition *must* be dismissed if the judge or
18 justice determines that it fails to allege new or different grounds for
19 relief and that the prior determination was on the merits or, *if new and*
20 *different grounds are alleged, the judge or justice finds that the failure*
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

21 (Emphasis added). Second or successive petitions are petitions that either fail to allege new
22 or different grounds for relief and the grounds have already been decided on the merits or that
23 allege new or different grounds but a judge or justice finds that a defendant's failure to assert
24 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
25 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
26 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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1 The Nevada Supreme Court has stated: "Without such limitations on the availability of
2 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
3 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
4 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
5 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
6 a careful review of the record, successive petitions may be dismissed based solely on the face
7 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other
8 words, if the claim or allegation was previously available with reasonable diligence, it is an
9 abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-
10 498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
11 P.3d at 1074.

12 Defendant's first Petition was filed on December 29, 2017, and raised claims regarding
13 ineffective assistance of trial and appellate counsel, denial of discovery, prosecutorial
14 misconduct, cumulative error, and due process violations. That Petition was considered on the
15 merits by this Court, and then denied on April 24, 2018. Defendant raises the ineffective
16 assistance of trial and appellate counsel, and cumulative error claims again in the instant
17 petition. Therefore, these claims are successive. Defendant's other claims of (1) factual and
18 legal innocence, (2) lack of grand jury indictment (3) coercive use of Allen charge, (4)
19 violation of rules of criminal procedure, (5) DNA issues, (6) false use of preliminary hearing,
20 (7) improper oath of jurors, (8) lack of jurisdiction and (9) false prosecution were available to
21 Defendant at the time he filed his first petition which was not time barred. Therefore, raising
22 these claims in a successive petition is an abuse of writ. Accordingly, this Court finds
23 Defendant's Petition must be denied.

24 **IV. DEFENDANT HAS NOT SHOWN GOOD CAUSE OR ACTUAL INNOCENCE**
25 **TO OVERCOME THE PROCEDURAL BARS.**

26 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

1 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see
2 Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada
3 Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a
4 habeas petition if it presents claims that either were or could have been presented in an earlier
5 proceeding, unless the court finds both cause for failing to present the claims earlier or for
6 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
7 47, 29 P.3d 498, 523 (2001) (emphasis added).

8 **A. Good Cause**

9 “To establish good cause, appellants must show that an impediment external to the
10 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
11 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
12 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying
13 impediment might be shown where the factual or legal basis for a claim was not reasonably
14 available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court continued,
15 “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. Examples
16 of good cause include interference by State officials and the previous unavailability of a legal
17 or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly,
18 any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

19 Here, Defendant fails to address good cause to ignore his procedural defaults.
20 Defendant has failed to show that an impediment external to the defense prevented him from
21 raising these claims in an earlier proceeding. Indeed, the applicable law and facts were all
22 available to him on direct appeal and he offers no excuse for his failure to raise these issues
23 there. Accordingly, this Court finds Defendant’s petition must be denied.

24 **B. Actual Innocence**

25 Where a petition is procedurally barred and the petitioner cannot demonstrate good
26 cause, the district court may nevertheless reach the merits of any constitutional claims if the
27

1 petitioner demonstrates that failure to consider those constitutional claims would result in a
2 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing
3 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of
4 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or
5 is ineligible for the death penalty." Id. This generally requires the petitioner to present new
6 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064, 165 L. Ed.
7 2d 1 (2006); Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

8 When claiming a fundamental miscarriage based on actual innocence, the petitioner
9 "must show that it is more likely than not that no reasonable juror would have convicted him
10 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, *9-10, citing
11 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence
12 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,
13 1273-74, 149 P.3d 33, 36 (2006).

14 Defendant claims he is factually innocent because the facts presented at trial did not
15 mirror the facts as outlined in the Information. Specifically, the victim did not give an exact
16 date when the incident occurred, the victim did not testify that Defendant placed his hands on
17 her face, the incident did not occur in public, and the victim did not run away and ask for help,
18 therefore consenting. Petition at 11-19. This is not factual innocence. Defendant is not negating
19 the fact that the incident occurred, he is merely suggesting that the act did not occur as framed
20 by the State. To the extent the Defendant is alleging that the facts don't match the crime
21 charged, this is a claim of legal innocence which cannot be used to support a claim that a
22 fundamental miscarriage of justice will occur if the petition is not heard. Mitchell, 122 Nev. at
23 1273-74, 149 P.3d at 36 (2006).

24 Accordingly, Defendant cannot prove his actual innocence and this Court finds
25 Defendant's Petition for Writ of Habeas Corpus must be denied.

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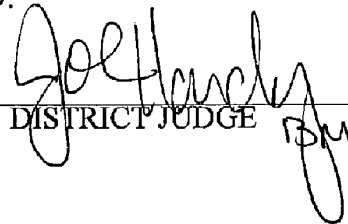
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ORDER

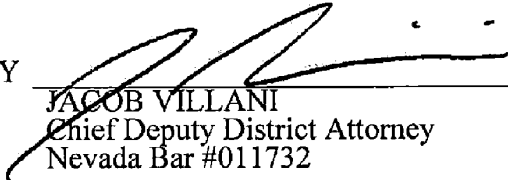
THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, DENIED *without prejudice.*

DATED this 8 day of ~~February~~ *March*, 2019.


DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY


JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 **JUSTIN ODELL LANGFORD,**
14 **#2748452**

15 Defendant.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XV**

16
17 **STATE'S RESPONSE TO DEFENDANT'S MOTION**

18 **TO STRIKE STATE'S RESPONSE**

19 DATE OF HEARING: **APRIL 3, 2019**
20 TIME OF HEARING: **9:00 AM**

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in this State's Response to Defendant's Motion to
24 Strike State's Response.

25 This Response is made and based upon all the papers and pleadings on file herein, the
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if
27 deemed necessary by this Honorable Court.

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//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter “Defendant”) was
4 charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 –
5 Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS
6 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony
7 - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category
8 B Felony - NRS 200.508(1).

9 On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the
10 jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

11 On May 10, 2016, Defendant was sentenced to Life with a possibility of parole after a
12 term of 10 years have been served in the Nevada Department of Corrections (“NDOC”).
13 Defendant received 841 days credit for time served. The Judgment of Conviction was filed
14 on May 17, 2016.

15 On June 1, 2016, Defendant filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July
17 28, 2017.

18 On July 19, 2017, Defendant filed a Motion to Modify And/Or Correct Sentence,
19 Motion for Sentence Reduction, Motion for Production of Documents, Papers, Pleadings, and
20 Tangible Property of Defendant, a Motion for Transcripts at the State’s Expense and
21 Memorandum of Point and Authorities in Support of Request for Transcripts at State’s
22 Expense, a Motion to Obtain a Copy of a Sealed Record, and a Motion to Withdraw Counsel.
23 The State filed its Response to Defendant’s Motion to Modify And/Or Correct Sentence and
24 Motion for Sentence Reduction on August 2, 2017.

25 On August 10, 2017, the Court denied Defendant’s Motion for Sentence Reduction,
26 granted Defendant’s Motion for Production of Documents, Papers, Pleadings, and Tangible
27 Property of Defendant, denied Defendant’s Motion for Transcripts at State’s Expense, granted
28 Defendant’s Motion to withdraw Counsel, granted Defendant’s Motion to Obtain Copy of a

1 Sealed Record, and denied Defendant's Motion to Modify/Correct Illegal Sentence.

2 On October 10, 2017, Defendant filed a Motion to Claim and Exercise Rights
3 Guaranteed by the Constitution for the United States of America and Require the Presiding
4 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
5 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
6 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
7 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
8 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
9 2017. On October 31, 2017, the Court denied all of Defendant's Motions, and the order was
10 filed on November 7, 2017.

11 On November 27, 2017, Defendant filed a Motion for Ancillary Services and a Motion
12 for Transcripts and Other Court Documents and State's Expense. The State filed its
13 Opposition to Defendant's Motion for Ancillary Services on December 13, 2017. The Court
14 denied Defendant's Motions on December 19, 2017, and the order was filed on December 29,
15 2017.

16 On December 29, 2017, Defendant filed a "Notice of Understanding of Intent and Claim
17 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ
18 of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

22 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Petition for
23 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
24 2018, he filed a Motion to Strike State's Response [to Defendant's Petition]. In both of those,
25 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
26 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
27 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
28 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding

1 judicial day.” February 19, 2018, was a legal holiday, thus, the State properly filed its
2 Response on the next succeeding judicial day, February 20, 2018.

3 On March 15, 2018, Defendant filed a Motion for Stay of Sentence, Traverse, and
4 Motion to Strike the State’s Response. The State responded on April 2, 2018. The court denied
5 Defendant’s Motion on April 5, 2018.

6 On March 30, 2018, Defendant filed a Motion to Modify and/or Correct Illegal
7 Sentence and “Judicial Notice of Lack of Jurisdiction” claiming that the District Court lacked
8 subject matter jurisdiction to sentence him. The State responded on April 18, 2018.

9 On April 24, 2018, the court denied Defendant’s Pro Per Petition for Writ of Habeas
10 Corpus. That same day, the court also denied Defendant’s Motion to Modify and/or Correct
11 Illegal Sentence. On May 7, 2018, Defendant filed a notice of appeal.

12 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Writ of Habeas
13 Corpus (Post-Conviction). On May 1, 2018 the court issued an Order denying Defendant’s
14 Motion.

15 On June 1, 2018, the court entered and order denying Defendant’s Motion to Modify
16 and/or Correct Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also
17 entered its Findings of Fact, Conclusions of Law, and Order.

18 On July 2, 2018 this case was reassigned to Department fifteen (15). On August 28,
19 2018, Defendant filed a Motion to Recuse and Application for Bail. The State responded on
20 October 8, 2018. The court denied Defendant’s Motion on October 9, 2018. Defendant filed a
21 Notice of Appeal on October 22, 2018.

22 On November 19, 2018, Defendant filed a Petition for Writ of Habeas Corpus (Post-
23 Conviction). The State responded on January 17, 2019. On January 22, 2019, Defendant filed
24 the instant Motion to Strike State’s Response [to Defendant’s Petition].

25 On January 28, 2019, Defendant’s Petition for Writ of Habeas Corpus was denied. On
26 February 12, 2019, Defendant appealed the denial of his Petition for Writ of Habeas Corpus.

27 The State responds to Defendant’s Motion to Strike State’s Response [to Defendant’s
28 Petition] herein.

1 **ARGUMENT**

2 **DEFENDANT’S MOTION IS MOOT**

3 The question of mootness is one of justiciability. Personhood Nevada v. Bristol, 126
4 Nev. 599, 602, 245 P.3d 572, 574 (2010). This court's duty is not to render advisory opinions
5 but, rather, to resolve actual controversies by an enforceable judgment. NCAA v. University
6 of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must be present
7 through all stages of the proceeding, See Arizonans for Official English v. Arizona, 520 U.S.
8 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997); Lewis v. Continental Bank Corp., 494 U.S.
9 472, 476–78, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990), and even though a case may present a
10 live controversy at its beginning, subsequent events may render the case moot. University Sys.
11 v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); Wedekind v. Bell,
12 26 Nev. 395, 413–15, 69 P. 612, 613–14 (1902).

13 Here, Defendant complains that the State did not respond to his November 19, 2018,
14 “Affidavit of Writ of Habeas Corpus” with a counter affidavit, and requests to strike the State’s
15 Response. Motion at 2. This argument is moot.

16 The State responded to Defendant’s writ on January 17, 2019. Subsequently, the court
17 denied Defendant’s petition on January 28, 2019 and Defendant filed a Notice of Appeal on
18 February 12, 2019. No counter affidavit was required beyond the State’s response, and the
19 court has already denied Defendant’s petition. Therefore, Defendant’s motion is moot.

20 As such, this Court should find that Defendant’s Motion is moot and deny Defendant’s
21 Motion to Strike the State’s response.

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CONCLUSION

For all the foregoing, the State respectfully requests that Defendant's Motion to Strike the State's Response be DENIED.

DATED this 13th day of March, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #01565

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 13th day of MARCH, 2019, to:

JUSTIN LANGFORD, BAC#1159546
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89149

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

27

Justin Odell Langford © [1154546]

FILED

MAR 14 2019

LCC

1200 Prison Rd

CLERK OF COURT

Lovelock, NV 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGEFORD ©

Petitioner

Case No: A-18-784811-W

-VS-

Dept No: XV

Warden Renee Baker

Respondent

Judicial Notice

To Every body attention the Motion to Strike States' Response (Telephonic Hearing) that was Heard on February 25, 2019 and continued to April 3, 2019, was suppose to be heard on the 28th of January 2019 the same day as the writ. The Petitioner Filed a motion for continuance in December, 2018 with no response from the Judge in this case.

The Motion For Continuance and Motion to Strike States' Response (Telephonic Hearing) are Moot at this point. The State should have been served by court clerk as requested, see Certificate of service on Motion to Strike... Gee another State Official that can't do their JOB. Also states Response was Filed 3 days late in contempt of Court Orders

Y'all Immunity doesn't Exist!!

Dated this day of March 2019

CLERK OF THE COURT

MAR 14 2019

RECEIVED

A-18-784811-W
NOTICE
Notice
4822599



CC: Supreme Court; James R. Sweetin; Joe Hardy; Nev. AG.

Justin Odell Langford⁹ [159546]

LCC

1200 Prison Rd

Love Lock, NV 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD⁹

Petitioner

Case No.: A-18-784811-W

-VS-

Dept. No.: XV

Warden Renee Baker

Respondent

Certificate of Service

I, Justin Odell Langford, certify, that I have attached a true and correct copy of ~~Judicial Notice~~ with special instructions for electronic filing & Service to the clerk of court, to serve all my opponents pursuant to N.E.F.C.R. 5(w), 9 et. seq. (A-E) etc. to the following:

James R. Sweetin, DDA

james.sweetin@clarkcountyyda.com

Jacob Villani, DDA

jacob.villani@clarkcountyyda.com

CLERK OF THE COURT

RECEIVED
JAN 14 2019

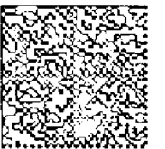
Judge Joe Hardy

Nevada Attorney General

Nevada Supreme Court

Justin Langford @ L151546
LCC
200 Prison Rd
Lovelock, NV 89600

Lovelock Correctional Center

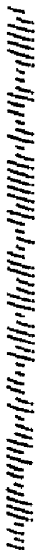


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1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 JUSTIN LANGFORD,

6 Petitioner,

Case No: A-18-784811-W

Dept No: XV

7 vs.

8 WARDEN RENEE BAKER; ET AL,

9 Respondent,

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

10
11 **PLEASE TAKE NOTICE** that on March 11, 2019, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on March 14, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 14 day of March 2019, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:
25 Justin Langford # 1159546
26 1200 Prison Rd.
Lovelock, NV 89419

27 /s/ Debra Donaldson

28 Debra Donaldson, Deputy Clerk

ORIGINAL

Electronically Filed
3/11/2019 11:20 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JUSTIN ODELL LANGFORD,
#2748452

Defendant.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: **JANUARY 28, 2019**
TIME OF HEARING: **9:00 AM**

THIS CAUSE having presented before the Honorable JOE HARDY, District Judge, on the 28th day of February, 2019; Petitioner not being present, proceeding IN PROPER PERSON; Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JACOB VILLANI, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, and documents on file herein, the Court makes the following Findings of Fact and Conclusions of Law:

//

//

//

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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PROCEDURAL BACKGROUND

On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter "Defendant") was charged by way of Information with the following: COUNTS 1, 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect, or Endangerment (Category B Felony - NRS 200.508(1)).

On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

On May 10, 2016, Defendant was sentenced to Life with a possibility of parole after a term of 10 years have been served in the Nevada Department of Corrections ("NDOC"). Defendant received 841 days credit for time served. The Judgment of Conviction was filed on May 17, 2016.

On June 1, 2016, Defendant filed a Notice of Appeal from his conviction. On June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July 28, 2017.

On July 19, 2017, Defendant filed a Motion to Modify And/Or Correct Sentence ("Motion to Modify"), Motion for Sentence Reduction ("Motion for Reduction"), Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, a Motion for Transcripts at the State's Expense and Memorandum of Point and Authorities in Support of Request for Transcripts at State's Expense, a Motion to Obtain a Copy of a Sealed Record, and a Motion to Withdraw Counsel. The State filed its Response to Defendant's Motion to Modify And/Or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

On August 10, 2017, the Court denied Defendant's Motion for Sentence Reduction, granted Defendant's Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, denied Defendant's Motion for Transcripts at State's Expense, granted Defendant's Motion to withdraw Counsel, granted Defendant's Motion to Obtain Copy of a Sealed Record, and denied Defendant's Motion to Modify/Correct Illegal Sentence.

1 On October 10, 2017, Defendant filed a Motion to Claim and Exercise Rights
2 Guaranteed by the Constitution for the United States of America and Require the Presiding
3 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
4 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
5 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
6 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
7 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
8 2017. On October 31, 2017, the Court denied all of Defendant's Motions, and the order was
9 filed on November 7, 2017.

10 On November 27, 2017, Defendant filed a Motion for Ancillary Services and a Motion
11 for Transcripts and Other Court Documents and State's Expense. The State filed its
12 Opposition to Defendant's Motion for Ancillary Services on December 13, 2017. The Court
13 denied Defendant's Motions on December 19, 2017, and the order was filed on December 29,
14 2017.

15 On December 29, 2017, Defendant filed a "Notice of Understanding of Intent and Claim
16 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ
17 of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
18 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
19 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
20 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

21 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Petition for
22 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
23 2018, he filed a Motion to Strike State's Response [to Defendant's Petition]. In both of those,
24 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
25 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
26 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
27 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding
28 judicial day." February 19, 2018, was a legal holiday, thus, the State properly filed its

1 Response on the next succeeding judicial day, February 20, 2018.

2 On March 15, 2018, Defendant filed a Motion for Stay of Sentence, Traverse, and
3 Motion to Strike the State's Response. The State responded on April 2, 2018. The court denied
4 Defendant's Motion on April 5, 2018.

5 On March 30, 2018, Defendant filed a Motion to Modify and/or Correct Illegal
6 Sentence and "Judicial Notice of Lack of Jurisdiction" claiming that the District Court lacked
7 subject matter jurisdiction to sentence him. The State responded on April 18, 2018.

8 On April 24, 2018, the court denied Defendant's Pro Per Petition for Writ of Habeas
9 Corpus. That same day, the court also denied Defendant's Motion to Modify and/or Correct
10 Illegal Sentence. On May 7, 2018, Defendant filed a notice of appeal.

11 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Writ of Habeas
12 Corpus (Post-Conviction). On May 1, 2018 the court issued an Order denying Defendant's
13 Motion.

14 On June 1, 2018, the court entered and order denying Defendant's Motion to Modify
15 and/or Correct Illegal Sentence and "Judicial Notice of Lack of Jurisdiction. The court also
16 entered its Findings of Fact, Conclusions of Law, and Order.

17 On July 2, 2018 this case was reassigned to Department fifteen (15). On August 28,
18 2018, Defendant filed a Motion to Recuse and Application for Bail. The State responded on
19 October 8, 2018. The court denied Defendant's Motion on October 9, 2018. Defendant filed a
20 Notice of Appeal on October 22, 2018.

21 On November 19, 2018, Defendant filed a Petition for Writ of Habeas Corpus. The
22 State responded on January 17, 2019.

23 ANALYSIS

24 **I. THIS INSTANT PETITION IS PREMATURE DUE TO THE PENDING** 25 **DIRECT APPEAL**

26 "Jurisdiction in an appeal is vested solely in the supreme court until the remittitur issues
27 to the district court." Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994)
28 (emphasis added). While an appeal is pending district courts do not have jurisdiction over the

1 case until remittitur is issued. Id. The Nevada Supreme Court has repeatedly held that the
2 timely filing of a notice of appeal ‘divests the district court of jurisdiction to act and vests
3 jurisdiction in [the appellate] court.’” Foster v. Dingwall, 126 Nev. 49, 52, 228 P.3d 453, 454-
4 55 (Nev. 2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529
5 (2006)).

6 Only a remittitur will return jurisdiction from an appellate court of competent
7 jurisdiction to the district court. See NRS 177.305 (“After the certificate of judgement has
8 been remitted, the appellate court of competent jurisdiction shall have no further jurisdiction
9 of the appeal or of the proceedings thereon, and all order which may be necessary to carry the
10 judgement into effect shall be made by the court to which the certificate is remitted.”). Until a
11 remittitur is received, a district court lacks jurisdiction over a particular case. Buffington, 110
12 Nev. at 126, 868 P.2d at 644.

13 While a perfected appeal ordinarily “divests the district court of jurisdiction to act
14 except with regard to matters collateral to or independent from the appealed order, the district
15 court nevertheless retains a limited jurisdiction to ... direct briefing on the motion, hold a
16 hearing regarding the motion, and enter an order denying the motion, but lacks jurisdiction to
17 enter an order granting such a motion. ... ” however, “the district court does have jurisdiction
18 to deny such requests.” Foster v. Dingwall, 126 Nev. 49, 52–53, 228 P.3d 453, 455–56 (2010)
19 (emphasis in original).

20 In the instant case, Defendant filed two notices of appeal on May 7, 2018, and October
21 22, 2018. These are now consolidated appeals under Nevada Supreme Court case numbers
22 75825 and 76075. Both of these appeals remain outstanding. Therefore, these appeals are
23 pending, and no remittitur has been issued. Accordingly, the instant petition is technically
24 premature but raises issues which can be entertained on the merits and denied.

25 //

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1 **II. DEFENDANT'S PETITION IS PROCEDURALLY BARRED UNDER NRS**
2 **34.726(1).**

3 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause
4 shown for delay. Pursuant to NRS 34.726(1):

5 Unless there is good cause shown for delay, *a petition that*
6 *challenges the validity of a judgment or sentence must be filed*
7 *within 1 year of the entry of the judgment of conviction* or, if an
8 appeal has been taken from the judgment, within 1 year after the
 Supreme Court issues its remittitur. For the purposes of this
 subsection, good cause for delay exists if the petitioner
 demonstrates to the satisfaction of the court:

9 (a) That the delay is not the fault of the petitioner; and

10 (b) That dismissal of the petition as untimely will unduly prejudice
11 the petitioner.

12 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be
13 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
14 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726
15 begins to run from the date the judgment of conviction is filed or a remittitur from a timely
16 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

17 The one-year time limit for preparing petitions for post-conviction relief under NRS
18 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
19 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
20 evidence presented by the defendant that he purchased postage through the prison and mailed
21 the Notice within the one-year time limit.

22 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
23 consider whether a defendant's post-conviction petition claims are procedurally barred. State
24 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
25 Riker Court found that "[a]pplication of the statutory procedural default rules to post-
26 conviction habeas petitions is mandatory," noting:

27 //

28 //

1 Habeas corpus petitions that are filed many years after conviction are
2 an unreasonable burden on the criminal justice system. The necessity
3 for a workable system dictates that there must exist a time when a
4 criminal conviction is final.

5 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district
6 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
7 Court has granted no discretion to the district courts regarding whether to apply the statutory
8 procedural bars; the rules must be applied.

9 In the instant case, Defendant's Judgement of Conviction was filed on May 17, 2016.
10 Defendant filed a direct appeal, and remittitur was issued on July 28, 2017. Thus, the one-year
11 time bar began to run from the date of remittitur. Defendant's Petition was not filed until
12 November 19, 2018. This is over 12 months after remittitur issued and in excess of the one-
13 year time frame. Absent a showing of good cause for this delay and undue prejudice, this Court
14 finds Defendant's petition must be dismissed because of its tardy filing.

14 **III. DEFENDANT'S CLAIMS ARE SUCCESSIVE AND AN ABUSE OF WRIT**

15 Defendant's claims are successive and an abuse of the writ pursuant to NRS 34.810(2)
16 which reads:

17 A second or successive petition *must* be dismissed if the judge or
18 justice determines that it fails to allege new or different grounds for
19 relief and that the prior determination was on the merits or, *if new and*
20 *different grounds are alleged, the judge or justice finds that the failure*
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

21 (Emphasis added). Second or successive petitions are petitions that either fail to allege new
22 or different grounds for relief and the grounds have already been decided on the merits or that
23 allege new or different grounds but a judge or justice finds that a defendant's failure to assert
24 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
25 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
26 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

27 //

28 //

1 The Nevada Supreme Court has stated: "Without such limitations on the availability of
2 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
3 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
4 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
5 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
6 a careful review of the record, successive petitions may be dismissed based solely on the face
7 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other
8 words, if the claim or allegation was previously available with reasonable diligence, it is an
9 abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-
10 498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112
11 P.3d at 1074.

12 Defendant's first Petition was filed on December 29, 2017, and raised claims regarding
13 ineffective assistance of trial and appellate counsel, denial of discovery, prosecutorial
14 misconduct, cumulative error, and due process violations. That Petition was considered on the
15 merits by this Court, and then denied on April 24, 2018. Defendant raises the ineffective
16 assistance of trial and appellate counsel, and cumulative error claims again in the instant
17 petition. Therefore, these claims are successive. Defendant's other claims of (1) factual and
18 legal innocence, (2) lack of grand jury indictment (3) coercive use of Allen charge, (4)
19 violation of rules of criminal procedure, (5) DNA issues, (6) false use of preliminary hearing,
20 (7) improper oath of jurors, (8) lack of jurisdiction and (9) false prosecution were available to
21 Defendant at the time he filed his first petition which was not time barred. Therefore, raising
22 these claims in a successive petition is an abuse of writ. Accordingly, this Court finds
23 Defendant's Petition must be denied.

24 **IV. DEFENDANT HAS NOT SHOWN GOOD CAUSE OR ACTUAL INNOCENCE**
25 **TO OVERCOME THE PROCEDURAL BARS.**

26 To avoid procedural default, under NRS 34.726, a defendant has the burden of pleading
27 and proving specific facts that demonstrate good cause for his failure to present his claim in
28 earlier proceedings or to otherwise comply with the statutory requirements, *and* that he will be

1 unduly prejudiced if the petition is dismissed. NRS 34.726(1)(a) (emphasis added); see
2 Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 715–16 (1993); Phelps v. Nevada
3 Dep’t of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988). “A court *must* dismiss a
4 habeas petition if it presents claims that either were or could have been presented in an earlier
5 proceeding, unless the court finds both cause for failing to present the claims earlier or for
6 raising them again and actual prejudice to the petitioner.” Evans v. State, 117 Nev. 609, 646-
7 47, 29 P.3d 498, 523 (2001) (emphasis added).

8 **A. Good Cause**

9 “To establish good cause, appellants must show that an impediment external to the
10 defense prevented their compliance with the applicable procedural rule.” Clem v. State, 119
11 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev.
12 248, 251, 71 P.3d 503, 506 (2003); Pellegrini, 117 Nev. at 887, 34 P.3d at 537. “A qualifying
13 impediment might be shown where the factual or legal basis for a claim was not reasonably
14 available at the time of default.” Clem, 119 Nev. at 621, 81 P.3d at 525. The Court continued,
15 “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526. Examples
16 of good cause include interference by State officials and the previous unavailability of a legal
17 or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012). Clearly,
18 any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

19 Here, Defendant fails to address good cause to ignore his procedural defaults.
20 Defendant has failed to show that an impediment external to the defense prevented him from
21 raising these claims in an earlier proceeding. Indeed, the applicable law and facts were all
22 available to him on direct appeal and he offers no excuse for his failure to raise these issues
23 there. Accordingly, this Court finds Defendant’s petition must be denied.

24 **B. Actual Innocence**

25 Where a petition is procedurally barred and the petitioner cannot demonstrate good
26 cause, the district court may nevertheless reach the merits of any constitutional claims if the
27

1 petitioner demonstrates that failure to consider those constitutional claims would result in a
2 fundamental miscarriage of justice. Lisle v. State, 351 P.3d 725, 729-730 (2015), citing
3 Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of
4 justice requires "a colorable showing" that the petitioner "is actually innocent of the crime or
5 is ineligible for the death penalty." Id. This generally requires the petitioner to present new
6 evidence of his innocence. House v. Bell, 547 U.S. 518, 536-37, 126 S. Ct. 2064, 165 L. Ed.
7 2d 1 (2006); Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

8 When claiming a fundamental miscarriage based on actual innocence, the petitioner
9 "must show that it is more likely than not that no reasonable juror would have convicted him
10 absent a constitutional violation. Crump v. State, 2016 Nev. Unpub. LEXIS 374, *9-10, citing
11 Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537 (2001). In this context, actual innocence
12 means "factual innocence, not mere legal insufficiency." Mitchell v. State, 122 Nev. 1269,
13 1273-74, 149 P.3d 33, 36 (2006).

14 Defendant claims he is factually innocent because the facts presented at trial did not
15 mirror the facts as outlined in the Information. Specifically, the victim did not give an exact
16 date when the incident occurred, the victim did not testify that Defendant placed his hands on
17 her face, the incident did not occur in public, and the victim did not run away and ask for help,
18 therefore consenting. Petition at 11-19. This is not factual innocence. Defendant is not negating
19 the fact that the incident occurred, he is merely suggesting that the act did not occur as framed
20 by the State. To the extent the Defendant is alleging that the facts don't match the crime
21 charged, this is a claim of legal innocence which cannot be used to support a claim that a
22 fundamental miscarriage of justice will occur if the petition is not heard. Mitchell, 122 Nev. at
23 1273-74, 149 P.3d at 36 (2006).

24 Accordingly, Defendant cannot prove his actual innocence and this Court finds
25 Defendant's Petition for Writ of Habeas Corpus must be denied.

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ORDER

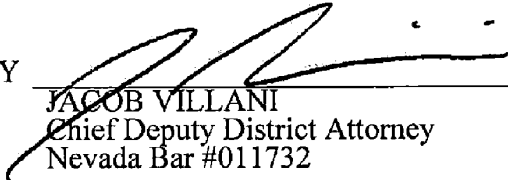
THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, DENIED *without prejudice.*

DATED this 8 day of ~~February~~ *March*, 2019.


DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY


JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

January 28, 2019

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

January 28, 2019	9:00 AM	Petition for Writ of Habeas Corpus
-------------------------	----------------	-----------------------------------------------

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan
Dara Yorke

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Villani, Jacob J. Attorney

JOURNAL ENTRIES

- Court indicated it had reviewed Plaintiff's Petition for Writ Of Habeas Corpus, as well as the State's Response. Finding that oral argument was not necessary due to its review of the pleadings, COURT ORDERED, Petition DENIED WITHOUT PREJUDICE for all of the reasons set forth in the State s response. Court indicated the State was to prepare the order, including the reasons from the response and submit it directly to the Court.

CLERK'S NOTE: A copy of this minute order was mailed to the Petitioner Justin Langford (1159546) Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89419.// 1-30-19/ dy

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 25, 2019

A-18-784811-W	Justin Langford, Plaintiff(s)
	vs.
	Warden Renee Baker, Defendant(s)

February 25, 2019 9:00 AM Motion to Strike

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court noted that it was unclear whether the District Attorneys' Office was properly served with the instant Motion, as there was no response to said Motion, and a District Attorney had not appeared in open court. COURT ORDERED the instant Motion was hereby CONTINUED, and the Court would provide electronic service of said Motion to the District Attorneys' Office. COURT FURTHER ORDERED, the Opposition to the instant Motion would be DUE BY March 18, 2019, and any Reply would be DUE BY March 25, 2019.

CONTINUED TO: 4/3/19 9:00 AM

CLERK'S NOTE: A copy of this minute order, along with a copy of the Motion to Strike State's Response (Telephonic Hearing), was e-mailed to: James R. Sweetin, DDA [james.sweetin@clarkcountyda.com] and Jacob Villani, DDA [jacob.villani@clarkcountyda.com]. A copy of this minute order was mailed to: Justin Langford #1159546 [Lovelock Correctional Center 1200 Prison Road Lovelock, NV 89149]. (KD 2/27/19)

PRINT DATE: 04/05/2019

Page 2 of 3

Minutes Date: January 28, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

April 03, 2019

A-18-784811-W Justin Langford, Plaintiff(s)
vs.
Warden Renee Baker, Defendant(s)

April 03, 2019 9:00 AM Motion to Strike

HEARD BY: Hardy, Joe

COURTROOM: RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Given the filing of the Judicial Notice, COURT ORDERED the instant Motion was hereby VACATED as MOOT.

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated March 20, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 197.

JUSTIN ODELL LANGFORD,

Plaintiff(s),

vs.

WARDEN RENEE BAKER,

Defendant(s),

Case No: A-18-784811-W

Dept. No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 5 day of April 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant(s),

vs.

RENEE BAKER, WARDEN,
Respondent(s),

Electronically Filed
Apr 05 2019 12:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-18-784811-W

Docket No: 78144

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
JUSTIN LANGFORD #1159546,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

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Justin Odell Langford-[1159546]
Lovelock Correctional Center
% 1200 Prison Road
Lovelock, Nevada 00000

FILED

NOV 19 2018

Ann L. Smith
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

A-18-784811-W

Justin Odell Langford
(Beneficiary)
Petitioner

Case No.: C-14-296556-1

Dept No. XIV

XV

-VS-

Warden Renee Baker
(Real Party In Interest)
Respondent

Affidavit of Writ of Habeas Corpus
NRS Chap. 34 et seq. FRE 201
NRS Chap 47 et seq. NRCIVP 8(A)

NOW COMES Justin Odell Langford[©], Sui Juris, to file
this Writ of Habeas Corpus. Pursuant to NRS Chap 34 et seq;
based on the above statutes. And presented through
the U.S. Supreme Court decision of Haines v Kerner, 404
U.S. 519, 526 (1972) (Liberally Construes).

Dated this 12th day of November, 2018.

By:

Without Prejudice / All Rights Reserved
Justin Odell Langford
Petitioner, Sui juris
NDOC # [1159546]

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CLERK OF THE COURT

A-18-784811-W
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Inmate Filed - Petition for Writ of Habeas
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OPENING STATEMENT

Pro Se post conviction relief petitioner pleadings should be liberally construed to do substantial justice.

U.S. v. Garth 188 F.3d 49 (3rd cir. 1999); see also

Boag v. MacDougall, 454 U.S. 364, 70 L Ed 2d 551, 102

S Ct 700 (1981). Effect of Writ of Habeas Corpus is to

Vacate conviction and Release petitioner from custody.

Capps v. Sullivan, 13 F.3d 350 (10th cir. 1993).

The petitioner filed his first Writ of Habeas Corpus on December 29, 2017 after his direct appeal was denied by the Nevada Supreme Court in July of 2017. The petitioner raised Ineffective Assistance of Trial counsel; Ineffective Assistance of Appellate Counsel; Denial of Discovery; Prosecutorial Misconduct; Cumulative Error of Due Process; Unconstitutional laws which were denied by the trial court without a slight consideration of the claims. That was denied on April 24, 2018, subsequently petitioner filed notice of appeal Approx. May 3, 2018 and his appeal brief on May 30, 2018. Then on June 3 the Trial Court filed its order denying petition.

The petitioner is only filing this second Writ of Habeas Corpus due to the fact he found these issues after the State filed its response to the original petition which meant petitioner could not file an amended petition to include what he had discovered at that point which left him to file this petition after his appeal of denial of his first petition. The petitioner is in custody due to

1 a guilty verdict at trial, the petitioner was
2 found guilty on Count 2 which was Lewdness with a
3 under the age of 14. That conviction resulted in
4 a sentence of 10 years to life in the Nevada
5 department of Corrections.

6 The petitioner is reraising two(2) grounds
7 from the Original petition and they are Ineffective
8 Assistance of trial Counsel and Ineffective Assistance
9 of Appellate Counsel. Petitioner only reraises these
10 grounds do to the other grounds being raised in
11 this Writ of Habeas Corpus. The petitioner has been
12 reading all kinds of legal papers and material
13 which lead him to discovering these legal issues.
14 That petition prays this court reads this and
15 considers it on the merits and not what the State
16 claims. If petitioner didn't have to exhaust all
17 remedies before he presents them to the federal
18 Courts the petitioner would just present them in
19 federal court. The courts have an affirmative
20 duty to up hold the Constitution of the United
21 States. The Petitioner now has newly discovered
22 evidence do to a federal Appeals ruling in his
23 Social Security Disability claim, this ruling
24 says the Petitioner is mentally Disabled and has
25 been since September 2010.

26 //

27 //

28 //

29 //

FACTUAL INNOCENCE

U.S. CONST. AMEND. IV, V, VI, VIII, XIV

Count 2-Lewdness With A Child Under The Age Of 14

did on or between June 22, 2007 and January 21, 2014
then and there willfully, lewdly, unlawfully, and
feloniously commit a lewd or lascivious act upon or with
the body, or any part or member thereof, a child, to-wit: HH,
said child being under the age of fourteen years, by
rubbing and/or placing ejaculate on the said HH's face, with
the intent of arousing, appealing to, or gratifying the lust,
passions, or sexual desires of said defendant, or said child

LEWDNESS-criminal act of sexual indecency committed in
public. Exposure of intimate parts for the purpose of arousing
or gratifying the sexual desire of the actor (or of any other
person) when such exposure is likely to be observed by
nonconsenting persons who would be affronted. See N.J.S.A.
2C:14-4. INDECENT EXPOSURE is sometimes synonymous with
lewdness but most often is considered to be nudity in public; a
lesser offense and punishable generally as a misdemeanor...
[rest of definition omitted] (Barrons Law Dictionary 7th Ed pg 319)

The facts that need to be proven by the State
are: happened between June 22, 2007 & January 21, 2014;
that petitioner rubbed and/or placed ejaculate on HH's face;
that petitioner had the intent of arousing, appealing to, or
gratifying the lust, passions or sexual desires of him or
HH; and that it happened in public as the legal
definition says. Those are the four(4) Elements the
state has to prove beyond a reasonable doubt to
establish guilt of the petitioner.

Now lets go into the trial testimony of the
alleged victim H.H. who has made Slanderous

1 Comments about the petitioner. The petitioner uses
2 the term "Alleged Victim" instead of "Victim" do to
3 the fact the term "victim" under the NRS means
4 someone who suffered do to a crime which H.H. has
5 not suffered do to a crime committed by the
6 petitioner. H.H.'s Trial testimony to follow. Pg 57,
7 58, 59 of H.H. Testimony Day 3 trial Attached as
8 Exhibits 1, 2 & 3.

9 Page 57 Lines 7-25:

10 Q: All right. so you--we talked about how--well.
11 it happened in the bedroom. Did anything happen with
12 Justin outside the bedroom or in a different
13 area of the house?

14 A: Yes.

15 Q: Where in the house did it happen?

16 A: Shower.

17 Q: Okay. And where is the shower in your house?

18 A: In the restroom.

19 Q: Is there one shower. or more than one shower?

20 A: One.

21 Q: How--what does the shower look like?

22 A: It's a stand up-- it's a bathtub with a shower
23 nozzle.

24 Q: Does it have a curtain on it?

25 A: Yes.

26 Q: All right tell me what happened in the shower.

27 A: He would make me stand over him while he
28 pleased himself or he would make me kneel
29 and he would pleasure himself.

30 Page 58 Lines 1-25:

31 Q: Okay. And when you would kneel in the shower
32 and he'd pleasure himself did anything
33 happen?

34 A: Yes.

1 Q: What happened?
2 A: He would ejaculate onto my face.
3 Q: All right. And would the water be running, or not
4 running?
5 A: Running.
6 Q: And when he would do that would he say anything?
7 A: Afterwards he would tell me to stand up and wash
8 myself off.
9 Q: Okay. And did you stand up and wash yourself off?
10 A: Yes.
11 Q: Did that happen one time, or more than one time?
12 A: More than one time.
13 Q: All right, Heather. I'm going to show you what's
14 been admitted as 38, 39, and 40, okay? If you'd
15 look at those for me, please.
16 Do you recognize what's in 38, 39, and 40?
17 A: Yes.
18 Q: What do you recognize that to be?
19 A: Bathroom.
20 Q: Okay. So various pictures of the bathroom; is
21 that fair?
22 A: Yes.
23 Page 59 Lines 1-20:
24 Q: All right. And in State's 38 what is this?
25 A: The Shower.
26 Q: Okay. And is the curtain pulled across the shower?
27 A: Yes.
28 Q: So if you pull it back, then you can see the shower
29 and get in the shower?
30 A: Yes.
31 Q: What's in here?
32 A: Towels and Band-Aids.
33 Q: Okay. Showing you State's 39, is that a picture of
34 that cupboard open where the towels and stuff is?
35 A: Yes.
36 Q: All right. And showing you State's 40, is that also
37 in the bathroom?
38 A: Yes.
39 Q: Where in the bathroom is that?
40 A: The shelves above the toilet?

1 Q: Okay. And is that just some of the stuff that was
2 kept on the shelves above the toilet?
3 A: Yes.

4 Now as you can see from all that testimony,
5 no where in that testimony did she say when
6 this alleged incident happened at all thus the
7 first element is not met. The second element is
8 not met either cause H.H. says ~~the~~ the ejaculate got
9 on her face after petitioner allegedly gratified him-
10 self which means element three was not met either
11 because the the charge says rubbing and/or
12 placing ejaculate on the said H.H.'s face, with the
13 intent of arousing, appealing to, or gratifying the lust,
14 passion, or sexual desire, can't do that! And as to
15 the fourth element it being committed outside, that's
16 not met because incident allegedly happened
17 in the bathroom in the petitioners home. So
18 that didn't happen in public. If you want to go
19 further into the definition of Lewdness it says
20 exposure of intimate parts..... Likely to be
21 observed by nonconsenting persons, now going
22 by what H.H. says on all instances she was called
23 back to these rooms from the living room. Not
24 once did she run out the front door of the
25 home to a neighbors home for help, thus she
26 was consenting to this alleged activity.

27 So now we go into the details given at
28 prelim in relation to this charge. This would
29 be page 29 lines 1-25 and is attached as

1 Exhibit 4:
2 Page 29 Lines 3-25 of Prelim.
3 Q: Okay. Now Heather, did he ever have you go inside
4 the Shower?
5 A: Yes.
6 Q: Okay. And was that in the past year or before
7 the past year?
8 A: Before the past year.
9 Q: Was it after the first time when you were
10 around eight years old?
11 A: Yes.
12 Q: Okay. And what--what happened with the
13 shower?
14 A: He made me kneel, and he--come on my face.
15 Q: Okay. And--
16 MS. LOBO: I'm so sorry.
17 BY MR. THUNELL
18 Q: could you say that one more time, Heather?
19 I'm sorry.
20 A: He made me kneel, and he--come on my face.
21 Q: Okay. And when--when you say that, what do
22 you mean?
23 A: He rubbed his private parts until sperm came
24 out.
25 now that can be seen, H.H. said around age 8
26 that this happened. Which means the date on the
27 charge should have been June 22, 2009 to
28 June 22, 2010 but that's not the D.A. did.
29 "..., prosecutors should be as specific as
possible in delineating the dates and times of
abuse offenses but we must acknowledge the
reality of the situations where young child victims
are involved". Valentine v. Kenteh, 395 F.3d at 632.

1 The Petitioner Understands a little leeway in
2 the date range so add a year to the front and
3 back dates making it June 22, 2008 to June 22,
4 ~~2011~~ 2011. The petitioner has demonstrated at
5 trial with the testimony presented by H.H., H.H.'s
6 mom Shayleen Coon, Roger Langford and the Memo.
7 of Evidence in Support of petition that it
8 couldn't have happen and didn't happen as
9 the DAO. and H.H. keeps saying. Johnson v. State
10 653 N.E.2d 474, 479 (Ind. 1995) Corpus delicti consists
11 of a showing of "1) the occurrence of the
12 specific kind of injury and 2) someones criminal
13 act as the cause of the injury.
14 It has been ruled not only must lack of
15 consent be proven, but must be proven beyond
16 a reasonable doubt even when the victim is a
17 child and this is due to Nevada not having a
18 set-in-stone for age of consent. Ya Thaing v. Adams,
19 2010 U.S. Dist. Lexis 108717. Also "consent
20 refers to any female"; and "any female plainly
21 includes a female child under 14" Ya Thaing v. Adams.
22 2010 U.S. Dist. Lexis 108717. "...the Supreme
23 Court has stated clearly: '... every man is
24 independent of all laws, except those
25 prescribed by nature. He is not bound by any
26 institutions formed by his fellowmen without
27 his consent.' Cruden v. Neale, 2 N.C. 338, 2 S.E. 70
28 Which was never done by petitioner. See also
29 Dred Scott v. Sanford, 60 U.S. 393.

1 See In re Winship, 397 U.S. 358, 364 (1970)
2 holding that the government must prove "every
3 fact necessary to constitute the crime" beyond a
4 reasonable doubt. See also U.S. v. O'Brien, 560
5 U.S. 218, 224 (2010) distinguishing between "elements
6 of a crime [that] must be charged in an
7 indictment and proved to a jury beyond a
8 reasonable doubt" and "sentencing factors [that]
9 can be proved to a Judge at sentencing by a
10 preponderance of the evidence". The ~~Winship~~ Winship
11 "beyond-a-reasonable doubt" standard applies in
12 both state and federal proceedings. See
13 Sullivan v. La., 508 U.S. 275, 278 (1993). The standard
14 protects three interests. First, it protects the
15 defendant's liberty interest. See Winship 397 U.S. at
16 363. Second it protects the defendant from the
17 stigma of conviction. *Id.* Third, it encourages
18 community confidence in criminal law by giving
19 "concrete substance" to the presumption of
20 innocence. *Id.* In his concurring opinion, Justice
21 Harlan noted that the standard is founded on
22 "a fundamental value determination of our
23 society that it is far worse to convict an innocent
24 man than to let a guilty man go free." *Id.* at 372
25 (Harlan, J., concurring).
26 The burden of ~~proof~~ proof consist of two parts:
27 the burden of production and the burden of
28 persuasion. The party bearing the burden of
29 production must produce enough evidence to allow

1 a factfinder to determine that the fact in
2 question occurred. The party who first pleads the
3 existence of a fact not yet in issue usually has
4 the burden of production, but the burden can shift
5 from one party to another. If a party fails to
6 sustain its burden of production, that party is
7 subject to an adverse ruling by the court. For
8 instance, the prosecution has the burden of
9 production on every element of the offense
10 charged. If the government fails to produce
11 sufficient evidence for any element, thereby not
12 bringing the fact into issue, the judge may direct a
13 verdict in the defendant's favor. See generally
14 LaFare Criminal Law §1.8 (5th ed. 2010); McCormick,
15 Evidence §§336-37 (6th ed. 2006).

16 The party bearing the burden of persuasion must
17 convince the factfinder that a fact in issue should
18 be decided a certain way. see Winship, 397 U.S. at 364.

19 The Due Process Clause places on the
20 prosecution the burden of persuasion for every
21 element of the crime charged, and only in rare
22 circumstances does the burden shift to the
23 defendant. Any shifting of the burden of persuasion
24 must withstand constitutional scrutiny.

25 All Information discussed Supra. pertain to
26 the next to counts after this which are Legal
27 Innocence and Against the weight of evidence.

28 ■ In contrast to conflicting evidence, insufficiency
29 ■ of the evidence occurs where the prosecution has

1 not produced a minimum threshold of evidence
2 upon which a conviction may be based, even if
3 such evidence were believed by the Jury. See
4 State v. Purcell, 110 Nev. 1389, 837 P.2d 276, 110
5 Nev. Adv. Rep. 172, 1994 Nev. Lexis 169 (Nev. 1994).
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LEGAL INNOCENCE

U.S. CONST. AMEND. IV, V, VI, VIII, XIV

Count 2-Lewdness With A Child Under The Age Of 14

did on or between June 22, 2007 and January 21, 2014 then and there wilfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body or any part or member thereof, a child, to-wit: H.H., said child being under the age of fourteen years, by rubbing and/or placing ejaculate on the said ~~HH~~ HH's face, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

LEWDNESS-criminal act of sexual indecency committed in public. Exposure of intimate parts for the purpose of arousing or gratifying the sexual desire of the actor (or of any other person) when such exposure is likely to be observed by nonconsenting persons who would be affronted. See N.J.S.A. 2C:14-4. INDECENT EXPOSURE is sometimes synonymous with lewdness but most often is considered to be nudity in public, a lesser offense and punishable generally as a misdemeanor ... [rest of definition Omitted] (Barrons Law Dictionary 7th Ed pg. 319)

This claim is also based on the same information presented supra in the Factual innocence claim, plus Exhibits 1-4 that are attached. See Exhibit 14 Social Security Disability decision saying petitioner is Mentally Disabled as of August 5, 2008 this means intent can't be proven and NRS 178.400 was violated.

1 AGAINST WEIGHT OF THE EVIDENCE

2 U.S. CONST AMEND. IV, V, VI, VIII, XIV

3
4 Count 2-Lewdness With A Child Under The Age Of 14

5 did on or between June 22, 2007 and January 21, 2014 then and
6 there wilfully, lewdly, unlawfully, and feloniously commit a
7 lewd or lascivious act upon or with the body, or any part or
8 member thereof, a child, to-wit: H.H., said child being
9 under the age of 14 years, by placing and/or placing
ejaculate on the said H.H.'s face, with the intent of
arousing, appealing to, or gratifying the lust, passions, or
sexual desires of said defendant, or said child.

10 AGAINST THE [MANIFEST] [WEIGHT OF THE] Evidence -an

11 evidentiary standard permitting the Trial court after
12 verdict to order a new trial where the verdict, though
13 based on legally sufficient evidence, appears in the view
14 of the Trial court judge to be unsupported by the
15 substantial credible evidence... [rest of definition omitted].
16 Barrons Law Dictionary 7th ed pgs 21-22)

17 LEWDNESS-criminal act of sexual indecency
18 committed in public. Exposure of intimate parts for the
19 purpose of arousing or gratifying the sexual desire of
20 the actor (or of any other person) when such
21 exposure is likely to be observed by nonconsenting
22 persons who would be affronted. See N.J.S.A. 2C:14-4.

23 INDECENT EXPOSURE is sometimes synonymous with
24 lewdness but most often is considered to be nudity in
25 public; a lesser offense and punishable generally as a
26 misdemeanor... [rest of definition omitted] (Barron's Law
27 Dictionary 7th Ed. pg 319). See information in the
28 Factual Innocence claim as this claim is base on
29 Same Argument.

NO GRAND JURY INDICTMENT
U.S. CONST. AMEND. IV. V. VI. VIII. XIV

The Fifth Amendment provides in relevant part:
"No person shall be held to answer for a capital,
or otherwise infamous crime, unless on a
presentment or indictment of a Grand Jury." U.S.
Const. Amend. V. see Ex parte Bain, 121 U.S. 1, 12-13
(1887) defendant can be tried for infamous crime
only after grand jury indictment.

The Supreme Court has defined "infamous
crimes" as those crimes "punishable by
imprisonment in the penitentiary." Mackin v. U.S.,
117 U.S. 348, 354 (1886), or by "imprisonment for a
term of years at hard labor." Ex parte Wilson, 114
U.S. 417, 429 (1885). The sentence that the law may
impose, not the sentence actually imposed,
determines whether grand jury indictment is
required. see U.S. v. Moreland, 258 U.S. 433, 441
(1922). Because persons convicted of offenses
punishable by imprisonment for more than one
year may be confined in a penitentiary,
18 U.S.C. § 4083, any crime punishable in this
manner is infamous. Rule 7(a) of the Federal
Rules of Criminal Procedure codifies the
Supreme Court's interpretation of the
Constitutional requirement of an indictment for
infamous crimes: "An offense (other than
criminal contempt) must be prosecuted by an

1 indictment if it is punishable; (A) by death; or
2 (B) by imprisonment for more than 1 year." FED. R.
3 CRIM. P. 7(a)(1); See. e.g., U.S. v. Coachman, 752 F.2d
4 685, 689 n.24 (D.C. cir. 1985). Most of petitioners
5 charges at arrest was 10 years minimum, the
6 rest were 35 to life. So petitioner now poses
7 this question to you were's the indictment? No
8 equals wrongly here in prison.

9 The state cant argue this does not apply to
10 them, when it does apply to them through clause 2
11 of the U.S. Const. Amend 6. That is the Supremacy
12 clause which is applied to the states through
13 the 14th Amend. of the U.S. Const. The Supremacy
14 states that Federal law and the U.S. Const. are
15 law of the land, that any state law in conflict
16 with them must yield. Broad v. Sealaska Corp., 85 F.3d
17 422 (9th cir. 1996).

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1 COERCIVE USE OF ALLEN CHARGE

2 U.S. CONST AMEND IV, V, VI, VIII, XIV

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4 The Eighth and Ninth Circuits have adopted a
5 four-part test for determining the coerciveness of
6 an Allen charge. The court must: (1) the form of the
7 instruction; (2) the length of deliberations
8 following the Allen charge; (3) the total time of jury
9 deliberations; and (4) indicia of pressure on the
10 jury. See U.S. v. Thomas, 791 F.3d 839, 878 (8th cir. 2015);
11 U.S. v. Freeman, 498 F.3d 893, 908 (9th cir. 2007).

12 The petitioners' jury got the case handed
13 over to them on March 14, 2016 sometime
14 after lunch approximately, which was after all
15 closing arguments. On March 16, 2016 the
16 jury sent a message saying reached an
17 agreement on 9 out of 12 and the other 3
18 counts the jury were hung on, this was
19 admitted as courts Exhibit 23 and that is
20 attached as Exhibit 5. Sometime after Noon
21 the jury got there response and that was in
22 the form of an Allen charge which was filed
23 as instruction No. 32.

24 When the jury was given the Allen charge
25 they were told they were the best people for
26 the job and told which ever you were voting,
27 if you ~~other~~ are on the side with less votes
28 you need to reconsider your vote and go
29 with the majority. This basically told the

1 jury your deliberations won't end until you reach
2 a unanimous verdict on all counts, the jury
3 went home sometime after 5pm on March 16, 2014
4 and came back sometime after 8am on March
5 17, 2016 and reached a verdict approxiately
6 1p.m. so the jury deliberated maybe another
7 7 hours after the Allen charge. This all
8 was after the jury members said during Voire
9 dire promised nothing could make them change
10 their minds once they made it up, so they
11 lied because that verdict should have been
12 the same. The jury was compeled by the
13 court to change their minds. U.S. v. Robinson,
14 953 F.2d 433, 436-38 (8th cir. 1992) coercion when, in
15 modified Allen charge, judge twice admonished jury
16 ~~minority~~ minority to yield to majority but never
17 admonished majority to consider yielding to
18 minority and gave impression hung jury was
19 unpatriotic.
20 The Sixth Circuit has stated that a modified
21 Allen charge must: (1) include the reminder that
22 no juror should merely acquiesce in the majority
23 ~~opinion~~ opinion; (2) not inform jurors that they are
24 required to agree; (3) direct both majority and
25 minority jurors to reconsider thier positions; (4)
26 not advise the jury that they are the only ones
27 who can decide the case; and (5) not ask the
28 jury to consider the external effects of thier
29 inability to reach a verdict. see U.S. v. Brika,

1 716 F.3d 514, 521-22 (6th cir. 2005). The petitioners
2 trial court violated three of the above 5 in
3 the Allen charge given to his jury, this violates
4 petitioners rights. See U.S. v. Haynes, 729 F.3d
5 178, 194 (2nd cir. 2013) coercion when judge gave
6 modified Allen charge but failed to admonish
7 jurors not to give up ~~conscis~~ conscientiously held
8 beliefs and that failure to reach a verdict was
9 permissible.

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1 TRIAL COURT VIOLATED FED. R. CRIM. P. 24(B)

2 U.S. CONST. AMEND. IV, V, VI, VIII, XIV

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4 FED. R. CRIM. P. 24(b) for offenses punishable
5 by death, each side allowed 20 ~~per~~peremptory
6 challenges; for noncapital offenses punishable by
7 imprisonment of more than 1 year, government
8 allowed 6, and defendant or defendant jointly
9 allowed 10; for offenses punishable by

10 imprisonment of 1 year or less, each side allowed

11 3. The petitioners trial court violated this

12 rule in two ways, it gave both sides 8

13 challenges so the first violation comes by

14 way of giving the State two(2) more challenges

15 than allotted by law and its' second violation

16 is that it erroneously reduced the petitioners

17 allotted amount by two. The petitioner never

18 agreed for the state too get more than allotted

19 for them. See U.S. v. Bruno, 873 F.2d 555, 560-61

20 (2nd Cir. 1989); See also U.S. v. Munoz, 15 F.3d 395, 398

21 n.1 (5th Cir. 1994). This is a violation of federal

22 law and any state law that allows what the

23 trial court did to petitioner is a violation of

24 the Supremacy Clause in the 6th Amendment.

25 Brook v. Sealaska Corp, 85 F.3d 422 (9th Cir. 1996)

26 Under Supremacy Clause, federal law preempts state law

27 either by express provision, by implication, or by conflict

28 between federal and state law.

29 "

1 USE OF HAIR DNA THAT HAS NO SCIENTIFIC
2 VALIDATION U.S. CONST. AMEND.
3 V, VI, VIII, XIV
4

5 The use of this evidence renders the petitioners
6 trial "fundamentally unfair" not only because there is
7 scientific validation but also due to the fact not all
8 evidence was collected from the alleged crime scene.
9 these both violated the petitioners due process rights.

10 Bolin v. Baker. 2015 U.S. Dist. Lexis 18219. The petitioner
11 has included two(2) articles: 1) Microscopic Hair
12 comparison: 2) Trump Administration Kills Obama's
13 Forensic Evidence Reliability Efforts, these are
14 attached as Exhibits 6 & 7. The first article goes
15 on to talk about how many people have been
16 convicted due to this testing and how the NAS Report
17 roundly criticized Hair analysis for lacking
18 scientific validation, this article also talks about how
19 many so far have been actually innocent ~~and~~ which
20 shows how faulty this testing is. These Articles
21 were printed in the 2018, January issue of ~~Prison~~
22 criminal legal news.

23
24 The second article goes on to talk about how
25 unreliable hair testing, bite-mark, and shoe-print
26 analysis and a majority do not match the objective
27 test of scientific validity. It shows those mostly
28 come out of police department controlled crime
29 labs. This shows justice is not served by crime

1 ~~or~~ Labs controlled by police departments. It just
2 shows states prosecutor does not care either.
3 It was also stated in Bolin v. Baker, 2015 U.S. Dist.
4 Lexis 14214 (Dkt. no. 161-2 at 18-21. Dkt. no. 168-1 at
5 25-28) "They also noted that hair analysis is highly
6 subjective and very limited in terms of being able to
7 identify the source of a given hair or the race of
8 the hair's donor"

9 What this also shows is an defense attorney
10 who does not get there own testing done on this
11 tupe of evidence is truely ineffective assistance of
12 counsel cause they are more than likely letting an
13 innocent man get convicted at trial, if they go to trial
14 as is what whappened in the petitioners' case. See
15 Strickland, 466 U.S. at 696, 104 S.Ct. 2052; Lindstadt v.
16 Keane, 239 F.3d 191 (2nd cir. 2001); Sims v. Livesay, 970
17 F.2d 1575 (6th cir. 1992).

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1 FALSE USE OF PRELIMINARY HEARING
2 U.S. CONST. AMEND. V, VI, VIII, XIV
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4 The term "preliminary hearing" in this
5 context refers the proceeding formally called a
6 "preliminary examination," described in Rule 5.1(c) of
7 the Federal Rules of Criminal Procedure. Fed. R. Crim. P.
8 5(a)(1). See also Fed. R. Crim. P. 5 Advisory
9 Committee's Note (1972) Fed. R. Crim. P. have separate
10 provisions for initial appearance and preliminary
11 hearing; although both may occur in same
12 proceeding, this rarely happens because it deprives
13 counsel of opportunity to prepare for preliminary
14 hearing.

15 Fed. R. Crim. P. 5.1(e); see also 18 U.S.C. § 3060(a). At
16 the preliminary hearing, the court determines
17 whether probable cause exists at the time of the
18 hearing rather than at the time of arrest. This means
19 that is not the time to add or modify charges
20 if and when it needed to be done should be done
21 in district court. Preliminary hearing is to see if
22 there is probable cause to continue with the
23 case as charged, if not it should not be modified
24 so it can be bound over. Iverson v. N.D., 480 F.2d
25 414, 420 (8th cir. 1973). What should have been done is
26 in the petitioners case is that the case be
27 dismissed and refiled under the proper charging. To
28 bind a case over after modifying them shows there
29 was not enough evidence for the charges as was.

1 OATH OF JURORS NOT DONE PROPERLY
2 U.S. CONST. AMEND. V, VI, VII, XIV
3

4 Not only is this a structural error but it's also a
5 jurisdictional defect. As a straight forward issue the court
6 had no jurisdiction from the trial court to the Nevada
7 supreme Court to affirm the Judgement District Court
8 Judge Susan H. Johnson had no Jurisdiction to issue any
9 Judgement, as there was done May 10, 2016, in the Eighth
10 Judicial District Court.

11 Because the state Deputy DA Michelle Jobe and
12 petitioners counsel Monique A. McNeill had a duty to
13 bring mootness to the court's attention. There was an
14 obvious conspiracy between the courts officers.
15 Brd of license Comm'r v. Pastore, 469 U.S. 238, 240
16 (1985); Arizonans For Official English v. Arizona, 520 U.S. 43,
17 64 (N23) (1997).

18 Further, here there is an obvious error that should
19 have been raised on direct appeal. This structural error
20 comports with Barral v. State, 353 P.3d 1197, 1200 (2015)
21 (It not directly than it's a species of common origin)
22 "Barral" relied on NRS 16.030(5) and NRS 175.021 as a
23 "Voi a dire" issue where the jury was required to recieve
24 from the Judge or Court Clerk "Shall" administer an oath or
25 affirmation to the jurors substantially in the following form:
26 Do you and each of you solemnly swear or affirm
27 under pains and penalties of perjury that you
28 will well and truly answer all questions put to
29 you touching upon your qualifications to serve as
jurors in the case now pending before this
court so help you God?" "Next"

1 NRS 16.070(1) reads as follows:
2 As soon as the jury is completed the Judge or the
3 Judges clerk shall administer an oath or affirmation,
4 to the Jurors in substantially the following form:
5
6 Do you and each of you solemnly swear that you will well
7 and truly try this case, now pending before this
8 court, and a true verdict render according to the
9 evidence given, so help you god.

10 NRS 175.111 Oath of Jurors, reads as follows:
11 When the Jury has been impaneled the court shall
12 administer the following Oath:
13
14 Do you and each of you solemnly swear that you will well and
15 truly try this case, now pending before this court, and a
16 true verdict render according to the evidence given, so
17 help you God.

18 NRS 0.025(1)(d) reads as follows:
19 "shall" imposes a duty to act.

20 NRS 16.070(1) allows for the oath to be administered by the
21 Judges clerk or the Judge, but when you look at NRS 175.111
22 which is the Oath of the Jurors it says the court SHALL
23 administer the Oath. NRS 175:111 is the controlling statute
24 when it comes to the Jurors Oath. "Express mention of one
25 is an exclusion of another." Leake v. Blasdel, 6 Nev. 40
26 (1870); Galloway v. Trusdell, 83 NW 13, 26, 422 P.2d 13, 26
27 (1967). In this matter, with "shall" being mandatory. "The
28 Court" shall administer the oath, NRS 0.025(1)(d). So as
29 you can see in the statute for the Juror's Oath there is no
~~there is~~ provision for the court clerk to administer the Oath.
30 "The Court" is interpreted as the Judge. (See
31 Generally NRS 174.035, only the court can accept a plea of
32 guilty). If the court "Never" administered the Oath. The
33 court minutes for March 7, 2016 and March 8, 2016 only
34 say the "prospective panel sworn", what the minutes

1 don't show is who administered the oath and what oath was
2 administered. Also there is no Transcripts on file for these
3 two(2) days or for March 16, 2016. "[c]ourt reporters are
4 required to record proceedings Verbatim, 28 U.S.C. §753(h)
5 but the failure to do so does not require a per se rule of
6 reversal. United States v. Doyle, 786 F.2d 1440, 1447 (9th cir.).
7 Was there ever a constituted Jury? (and) did the prosecutor
8 deputy, and the Defense attorney Monique A. McNeill esq,
9 violate the rules of candor in Nevada. RPC 14. RPC 8.4(a)(6)(d)
10 by arguing a moot case? In other words, if the jury trier
11 of fact didn't lawfully exist, then could not have found the
12 essential elements of the crime beyond a reasonable
13 doubt. Jackson v. Virginia, 443 U.S. 307, 314, 99 S.Ct. 2781(1979).
14 "emphasis in original" McNair v. State, 109 Nev. 53, 56, 825 P.2d
15 571, 573(1992).
16 This would also bar the next step under NRS 175.141
17 because the Jury may not have been given the oath
18 properly under statute. This now become a Jurisdictional
19 issue and fraud upon the court NRCIVP 60(h) FRCIVP 60(b)(3)-(6)
20 As states in Martinez v. Illinois. "Jeopardy doesn't attach
21 until Jury is sworn." 134 S Ct 2070(2014).
22 The court cannot challenge the transcripts, as it's deemed
23 correct. See Brownstein v. State, 40 P.3d 413(2002) and 178
24 P.3d ___; 28 U.S.C. §753(b); U.S. v. Anzalone, 886 F.2d 229, 232
25 (1989); Abelino v. USA, 750 F.2d 1442, 1445(9th cir. 1985); USA v
26 Hoffman, 607 F.2d 290, 296(9th cir. 1979); U.S. v. Zammiello,
27 422 F.2d 72, 74(9th cir. 1970). In other words it's the law of
28 the case. See Ashe v. Swenson, 397 U.S. 436, 443, 447(1970) with
29 approval Yeager v. US, 557 U.S. 110, 129 S.Ct. 2360(2004).

1 Plus the State never filed any "Bill of Exceptions" ~~and~~
2 against the transcripts. Thiess v. Rappert, 59 NIV 180,
3 195, 89 P.2d 5 (1939), in the past appeal and Writ of
4 Habeas Copus (Post conviction). Attached as Exhibit is
5 court Minutes from March 17, 2016 and page 10 & 11 of
6 the transcripts from that day as Exhibits 8 & 9, 10.
7 When you look at the two they do not match each
8 other, one or the other is a false document on
9 file with the court. If the trial transcripts are
10 false it means petitioners direct appeal was
11 base off of false documents.

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LACK OF JURISDICTION AND SUBJECT MATTER JURISDICTION

U.S. CONST. AMEND. I, V, VI, VIII, XIV

A.) History of Jurisdictional Challenge

By rendering a judgement, a court tacitly, if not expressly, determines its jurisdiction over both the parties and the subject matter. Stoll v. Gottlieb, 305 US 165, 171-72, 59 S Ct 143 (1938).

A judgement is void if the court rendering judgement lacked jurisdiction. U.S. v. Borch Oldsmobile, Inc., 409 F2d 657, 661 (1st Cir. 1970), and a void judgement is one where the court did not have jurisdiction over subject matter or did not have jurisdiction over the parties. Rock v. Rock, 223 Va. 92, 95, 353 SE 2d 756, 758 (1987).

A void judgement-as distinguished from an erroneous one-is, from its inception, a complete nullity and without legal effect. Lubben v. Selective Service System, 453 F2d 645, 649 (1st Cir. 1972). A void judgement is void even prior to reversal. Valley v. Northern Fire & Marine Insurance Co., 245 US 349, 41 S Ct 116 (1920). Thus, no court can confer jurisdiction where none existed and no court can make a void proceeding valid. Old Wayne Mutual Legal Association v. McDonough, 204 US 8, 17 S Ct 236 (1907).

There exists no time limit for raising a challenge on jurisdictional grounds. Judgements have been vacated thirty (30) years after being rendered. See: Crosby v. Bradstreet Co., 312 F2d 483 (2nd Cir.) cert. denied, 373 US 911,

1 83 SCt 1300, 10 Led 2d 412 (1963). A void judgement can be
2 challenged in any court. Old Wayne Mutual, Supra.,
3 emphasis added.

4 Justin Odell Langford challenges the trial court's
5 party Jurisdiction and subject matter Jurisdiction.

6

7 ~~XXXXXXXXXXXX~~

8 B.) THE PARTIES

9

10 The petitioner in this case Justin Odell Langford.
11 Langford was born August 1, 1982.

12 The Plaintiff in this case was STATE OF NEVADA.
13 STATE OF NEVADA was incorporated in 1864. The State's
14 incorporation began with a proposed draft of the
15 Nevada Constitution. It was put before the people
16 of the Nevada Territory for a ratification vote. Upon
17 a tally of the voting, the Nevada Constitution was
18 ratified and the government of the State of Nevada was
19 incorporated.

20

21 C.) Arguments

22

23 However, as the following arguments demonstrate, the
24 Nevada Constitution is void and, as a matter of law,
25 lacks all legal authority. Subsequently, the incorporation
26 of the State of Nevada, based upon a document that's void,
27 legally nonexistent as a party.

28

29

The Nevada Constitution History and Background

The Nevada Constitution was drafted by a panel of people chosen by the people of the Nevada Territory. The Nevada Constitution was then drafted at a convention that ~~was~~ went from July 4, 1864 to July 28, 1864, then put to a vote in sept. 1864 in which it was ratified. Then the president of the United State, Abraham Lincoln, on Oct. 1, 1864 brought the Territory of Nevada into the union. The drafters of the constitution could not simply impose their proposed government upon the people of Nevada without their consent, as no government formed without the will of the people is legitimate (see: Preamble to the Constitution of the United States). For this reason, as a matter of legitimacy, the Nevada Constitution had to be ratified by the people of Nevada for it to have legal standing.

In 1864, the Nevada Constitution's ratification was put a vote. The legal and contractual question posed to each voter was not whether the Constitution and government formed thereof should be imposed upon others, but whether the voter approved of such government being imposed upon himself. The voters were not asked, for instance, whether the Nevada Const. and government should be imposed upon the people of California, Arizona or Utah. The Nevada voters had no legal standing to impose a government upon the people of California, Arizona or Utah. The people of Nevada had

1 no legal standing to contractually bind the people of
2 California, Arizona or Utah to a government not of their
3 own choosing. The people of Nevada could only choose a
4 government for themselves. could only accept the terms
5 of the Nevada Constitution for themselves.

6 So properly, the question put to the voters in 1864
7 was whether they themselves consented to become
8 subjects to the incorporated government that the
9 Nevada Constitution described. The question put to
10 Voters was whether they accepted the terms of the
11 contract, for the Nevada Constitution was a contract
12 describing the rights and duties of two(2) parties - the
13 people of Nevada and its proposed government. The Voters
14 could only accept the terms of the contract for
15 themselves, not for others.

16 17 The Vote 18

19 There is no record of who voted in 1864. However,
20 women were prohibited from voting. Thus, any women living in the
21 Nevada Territory in 1864 had a government imposed upon them
22 without their consent or consultation. Blacks were not
23 permitted to vote. They too were involuntarily subjected to a
24 government not of their own choosing. The same is true of
25 Native Americans. Persons under the age of consent were
26 also excluded.

27 This left only white males over the age of consent
28 who were allowed to decide the question of the Nevada
29 Constitution's ratification. As women compose more than

1 fifty percent of any given population, males were a
2 minority. Given the low life-expectancy for people of that
3 time, persons under the age of eighteen(18) likely composed
4 a large percentage of the population and were also
5 excluded. With the voting segment further narrowed by
6 the exclusion of Native Americans and Blacks, the
7 Nevada Constitution was ratified only by a small, small
8 minority of the Nevada population.

9 Further, it is unknown how many of the small minority of
10 the population-white males-were properly informed of the
11 vote. Moreover, of those informed, it is not known how many of
12 them met the voting criteria, if any existed.

13 It is feasible, under those circumstances, that only ten(10)
14 percent of the Nevada population voted upon the
15 constitution's ratification. Of that small minority, nearly half
16 could have voted against ratification. So in the final
17 analysis, it is very well may have been that roughly five(s)
18 percent of the Nevada population, composed exclusively of
19 white males, voted to ratify the Nevada Constitution and
20 impose a government of their choosing upon other white
21 males who voted against ratification; upon white males who
22 did not meet voting criteria; upon women excluded from
23 voting; upon Blacks excluded from voting; upon Native
24 Americans excluded from voting; and upon persons under the
25 age of consent who were excluded from voting.

26 Illegitimacy of the Vote

27 A small, small percentage of the Nevada population
28
29

1 approved of a government and imposed it unwillingly upon a
2 large majority. Such a ratification is not democratic. It is not
3 valid. It does not meet the very basic international
4 standards. If Jimmy Carter had been alive, he would have
5 condemned the vote in the strongest terms.

6 As such, because the Constitution of the United States
7 specifically states that no government formed without the
8 will of the people is legitimate, the government originating
9 from the Nevada Constitution held no legitimate
10 authority.

11 But more importantly, that small minority of white males
12 in 1864 who ratified the constitution only had authority to
13 accept the terms of the contract for themselves. As the
14 Nevada Constitution sets forth contractual terms between
15 the people and the government, those ratifying such a
16 contract could only ratify it for themselves, accept the
17 terms for themselves. Just as the most basic legal
18 principles prohibit the people of Nevada from ratifying a
19 Constitution and imposing a government upon the people of
20 California, Arizona and Utah without their consent, the
21 same principles prohibit a small group of voters from
22 imposing a government upon the vast majority without their
23 consent or consultation. They held no legal authority to
24 ratify a constitution and impose a government involuntarily
25 upon others any more than they had legal authority to
26 validate a contract and make it binding upon others
27 without their consent or consultation.

28 Thus, by the most fundamental principles of contract
29 law, the Nevada Constitution, ratified under the most

1 debious of circumstances by a small elite without legal
2 authority to bind others or involuntarily impose a
3 government upon others, is legally void. And with the
4 Nevada Constitution void, the State of Nevada, as an
5 incorporated entity, is nonexistent.

6

7 Nevada Constitution Void as Contract

8

9 Petitioner Justin Langford was not alive in 1864. He
10 did not ratify the Nevada Constitution. Even assuming that a
11 select few white males in 1864 possessed the lawful
12 authority to approve a contract and impose its conditions
13 upon the vast majority of the Nevada population without
14 their consent-women, Blacks, Native Americans, young
15 people - there exists no rationale for extending and
16 that authority and permitting those select few white
17 males to impose the government of their choosing
18 involuntarily upon all future generations.

19 Those select few white males in 1864 did not have
20 legal standing to impose a future government of some
21 unknown composition upon Justin Langford, also unknown
22 and in the future. Those select few only had the legal
23 standing to contractually bind themselves to a government of
24 their choosing and incorporate it to rule themselves. In order
25 for this court to contend Justin Langford's confinement is
26 lawful, it must determine the authority of an
27 anonymous select few from 1864 to involuntarily
28 impose a government, not only upon all of their fellow
29 Nevadans of their time, but to impose a government of

1 future strangers upon a majority of future Strangers-forever.
2 Since the illegitimate and undemocratic ratification of
3 the Nevada Constitution in 1864, that generation of ~~some~~
4 who gave their consent to be ruled has died. Their
5 contractual agreement to accept the terms of the Nevada
6 Constitution and the rule of the incorporated government
7 created by it also died with them. The incorporation of the
8 State of Nevada has never been renewed. In subsequent
9 generations since 1864, no Nevadian has given legal
10 consent to be governed by such a corporation nor has
11 anyone accepted the terms nor signed the contract that
12 the Nevada Constitution represents. There is no basis for
13 assuming the consent of the people, in their current
14 composition, and in ~~particular~~ particular, the petitioner, to
15 be ruled.

17 Addressing Arguments of Implied Consent

19 There are three(3) principle arguments most commonly put
20 forward to justify the existence of the incorporated State
21 of Nevada in perpetuity--that is, that once voted into
22 existence, the State of Nevada could exist forever. All three(3)
23 arguments are based upon an assertion that the people of
24 Nevada have implicitly given their consent to be subjects
25 and that they have implicitly accepted the terms of this
26 subjection through their own actions.

28 Paying Taxes

1 It is argued that, by paying taxes, people have
2 implicitly given their consent to be ruled by the State of
3 Nevada and have accepted the terms of subjection. This
4 is not the case.

5 Taxes are not voluntary. Taxes are levied upon pay before
6 paychecks ever reach the workers. Taxes are levied upon
7 purchased goods before consumers ever take possession of
8 the goods. One is not provided the option of not paying
9 taxes.

10 This does not demonstrate the consent of the governed.
11 In fact, it represents just the opposite. The State of Nevada's
12 appropriation of taxes without consent demonstrates the
13 government's knowledge that, if taxation were left as a
14 voluntary act, the people would refuse to pay and would
15 permit the government to collapse. So in order to prevent the
16 people's voluntary rejection of government, the State of
17 Nevada exacts taxation through the same method used
18 by robbers and tyrants and school yard bullies.

19 20 Voting

21
22 It is argued that, by voting, people have implicitly given
23 their consent to be ruled by the State of Nevada and have
24 accepted the terms of this subjection. This is not the
25 case.

26 To begin, only a small percentage of the population votes.
27 If anything, the low turn-out for voting implies the
28 rejection of government by the vast majority of the population,
29 more so than the ballots of a small percentage implies the

1 the acceptance of government. However, even the act of
2 voting, for those who cast a ballot, does not imply consent to
3 be ruled by this government.

4 Voters are given options to choose under what conditions
5 the government exists. The voter is not given the option of
6 rejecting government overtly and entirely through the ballot
7 box. The government does not give such an option.

8 A rape victim who chooses for the rape to occur quickly and
9 as physically-painless as possible--as opposed to slow and
10 tortuous--cannot be said to have "implied consent" to be raped. A
11 robbery victim who opts to cooperate with a robber to lessen
12 the chances of bloodshed cannot be said to have "implied
13 consent" to be robbed. In the same way, Nevadans who
14 vote in order to influence the conditions of their
15 involuntary subjection cannot be said to have given implied
16 consent to the government's illegitimate rule over them;
17 they are simply attempting to make involuntary slavery
18 to which they have been subjected ~~too~~ a little less painful.

19 20 Entering Territorial Boundaries of Nevada

21
22 It is argued that, by entering the territorial boundaries
23 of Nevada, people have implicitly given their consent to be
24 ruled by the State of Nevada and have accepted the terms
25 of this subjection. This is not the case.

26 In ~~this~~ the logic of this argument, the State of Nevada
27 long established its authority. Anyone thus proceeding into
28 the territorial boundaries claimed by the state of Nevada,
29 reasonably informed of the State of Nevada's claims to

1 authority, is thus implicitly consenting to the government's
2 terms.

3 The State of Nevada has claimed authority and
4 jurisdiction. However, anyone can assert authority and
5 jurisdiction over an area. Any one of the millions of
6 Nevadians can proclaim themselves King or Queen of
7 Nevada. Such a claim does not make their authority
8 legitimate. Pursuant to the Constitution of the United
9 States, authority is only legitimate when it is formed
10 from the will of the governed. By this standard, anyone
11 proclaiming themselves King or Queen of Nevada would be
12 invalidated--as would be the State of Nevada and its
13 constitution, which have not been ratified by any living
14 Nevadian.

15 It is argued that the State of Nevada made its claim
16 of authority long ago. However, the passage of time
17 neither mitigates nor enhances the legitimacy of the
18 government's claim to authority. The passage of time is not
19 determinative to legitimacy. It could quite possibly mean
20 that this alleged State of Nevada has gotten away
21 with a vast bamboozlement for far too long.

22 Petitioner contends this is the case.

23 This "established territory" argument to justify the
24 State of Nevada's legitimacy is analogous to the
25 justification used by a school yard bully who divests
26 other children of their milk money. Such a bully contends
27 that the other children know he has established his "turf",
28 and they ~~know~~ are aware of the penalties for stepping foot
29 on his "turf", and therefore anyone entering consents to

1 his or her own robbery. But such an argument presupposes
2 that each victim agrees that the bully has the authority to
3 proclaim his turf in the first place.

4 In the case of the alleged State of Nevada, this is clearly
5 not the case. As already described the Constitutional basis of this
6 incorporated government is legally void. Thus, any party to
7 enter the territorial boundaries claimed by such an
8 illegitimate government cannot be presumed to accept
9 and recognize the government's prima facie claim to its
10 "turf."

11 Simply living within the territorial boundaries claimed by an
12 illegitimate power does not demonstrate a party's implied
13 consent to be ruled. Such a government rules not on the
14 basis of legitimacy and consent but upon force and power. A
15 people ruled under such a basis are not citizens, but
16 slaves.

17
18 Party Jurisdiction: The State of Nevada, Respondent /
19 Plaintiff in this Case!

20
21 The ratification of the Nevada Constitution was not valid,
22 as a small minority had no legal standing to impose a
23 constitution and government upon others without consent. As
24 a contract with delineated terms and defined rights and
25 duties for both people and the government, it could
26 only be binding upon those who ratified it. Those men
27 were anonymous, and they are now dead, Without
28 renewal, their contract died with them. No one
29 living has consented to ~~this~~ the incorporation of the

1 State of Nevada nor voluntarily submitted to the terms
2 of its contract—the Nevada Constitution. Those who
3 contend to act on behalf of the State of Nevada are
4 fraudulent inheritors of a dead corporation with no
5 legal standing.

6 Thus, with the Nevada Constitution Void, the State of
7 Nevada was legally nonexistent. Even accepting the
8 ratification of the Nevada Constitution and its binding
9 character upon those who ratified it, the contract died
10 along with the generation who voluntarily accepted its
11 terms, thus making the State of Nevada, again,
12 nonexistent.

13 As a nonexistent party, the State of Nevada had no
14 legal standing as Plaintiff. The court lacked party
15 jurisdiction over the State of Nevada, a nonexistent
16 party.

17
18 Party Jurisdiction: Justin Langford Defendant /
19 Petitioner in this Case

20
21 The actions of an anonymous select few in 1864 do
22 not impose any contractual burden upon Justin Langford.
23 Langford did not ratify the Nevada Constitution and he did
24 not sign it: he did not agree to its terms and did not
25 agree to be ruled by any incorporated entity calling
26 itself the State of Nevada. Justin Langford has
27 breached no duty owed to this alleged State of
28 Nevada..

29 Langford never voluntarily paid taxes. He may

1 have voted. While he lived within territorial
2 boundaries where the alleged State of Nevada asserted
3 authority. Justin Langford never gave consent for the
4 alleged State of Ohio to declare its authority where he
5 lived, where he himself exercised de facto authority. And
6 given Justin Langford's own declaration of his own
7 authority over his own home, it would appear that, with
8 opposing claims of authority, there exist, at most, a
9 territorial dispute between powers. Thus, Langford
10 has never provided consent or implied consent for the
11 State of Nevada to claim Justin Langford as it's
12 subject.

13 As Justin Langford was not subject to the authority
14 of the alleged State of Nevada, the government lacks
15 jurisdiction over him.

16 17 Subject Matter Jurisdiction 18

19 As the Nevada Constitution is legally void, the State
20 of Nevada is, at best, a dead corporation and a
21 legally nonexistent entity. It's laws are void. It was
22 without authority to regulate or govern the conduct
23 of Justin Langford.

24 Further, as Justin Langford was never a subject of
25 the State of Nevada, his conduct was never a matter
26 for the government's regulation, even if the government
27 lawfully existed.

28 Moreover, as Justin Langford has never agreed to abide
29 by any dictates of this alleged State of Nevada and has

1 never entered into any contract agreeing to be subject
2 to it, he breached no legal or contractual duty to the
3 alleged State. The alleged State of Nevada has no basis
4 for bringing an action against Justin Langford.

5 Therefore, on the basis of (1) the state's lack of
6 legitimate authority and legal existence, (2) Justin Langford's
7 conduct not being a matter for the government's
8 regulation, and (3) the lack of Justin Langford's legal or
9 contractual duty to the alleged State of ~~this~~ Nevada, the
10 court in this case lacked subject matter
11 jurisdiction.

12 "

13 "

14 "

15 "

16 "

17 "

18 "

19 "

20 "

21 "

22 "

23 "

24 "

25 "

26 "

27 "

28 "

29 "

1 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
2 U.S. CONST. AMEND. V, VI, VIII, XIV

3
4 A.) Counsel does not cross-examine H.H.
5 about count II.

6 Trial counsel Monique A. McNeill did not cross-
7 examine H.H. in any fashion about count II at
8 trial. the only testimony about count II at trial is
9 attached as Exhibits 1, 2 & 3. Which is pages 57,
10 58 & 59 of day 3. With counsel not doing any cross-
11 examination of H.H. in regards to count II, it leaves
12 leaves the jury to believe the petitioner is guilty
13 because there was no defense to it. Sparman v.
14 Edwards, 26 F. Supp. 2d 450 (E.D.N.Y. 1997); See also
15 Driscoll v. Delo, 71 F.3d 701 (8th cir. 1995).

16
17 B.) Counsel Allows Judge to Use Coercive
18 Allen Charge.

19
20 The petitioners counsel on March 16, 2016
21 allowed the judge to read a Allen Charge to the
22 jury. As discussed supra. this allen charge was
23 very coercive in nature, this was discussed in the
24 count labeled Coercive use of Allen Charge. For
25 counsel not to object to this was prejudicial to
26 the petitioner, because by allowing the judge to
27 do this renders the verdict unreliable. With just
28 under 24 hours passing after being a hung jury on
29 the jury foreman notifying the court both times,

1 the jury was told to continue deliberations the first
2 time. The second time they notified the court, the
3 jury said they had reached a decision on 9 out of 12
4 counts. This is when the jury was read the Allen charge
5 and it was about 1pm, which means they deliberated
6 another 4 hours before going home, then came back at 8am
7 and reached a verdict about 1:30 pm. Which means the jury
8 deliberated another 8 and a half hours before coming to
9 an agreement, but only after being told the side with the
10 less votes needs to reevaluate their vote. Counsel
11 should have moved for mistrial or objected to this.
12

13 C.) Counsel Allows Violation of Fed. R. Crim. P. 24(B)

14
15 The petitioner fails to notify the trial court
16 that it is violating Fed. R. Crim. P. 24(B), by not only
17 giving the state more preemptory challenges allowed. But
18 also by giving defense less than what their suppose
19 to have, this renders counsel ineffective in numerous
20 ways. First, it shows counsel is not familiar with the
21 law; Second, counsel was force to be selective about
22 how to apply challenges; Third it allowed the state to
23 be more picky or less contentous about their choices.

24 U.S. v. Chronic, 466 U.S. 648, 80 L.Ed. 2d 657, 104 S.Ct. 2034
25 (1984); See also Strickland v. Washington, 466 U.S. 669, 80
26 L.Ed. 2d 674, 104 S.Ct. 2052 (1984).

27 28 D.) Counsel Fails to Notify Court of Suppressed 29 Evidence By Government Agency

1 Petitioners counsel failed to notify the trial
2 court that the Las Vegas Metropolitan Police
3 Department and Child Protective Services were
4 suppressing DNA Evidence. What the petitioner means
5 by suppressing DNA Evidence is that they didn't collect
6 DNA samples from everyone within the home, this was
7 done in an attempt to keep the truth hidden. This
8 also allowed the prosecution to manipulate the
9 evidence with inaccurate DNA reports. Petitioners
10 case should not have made it to trial due to this, but
11 without counsel not doing anything about it allowed
12 prosecution to present false evidence and created
13 vindictive prosecution. U.S. v. Chronic, 466 U.S. 648, 80
14 L.Ed.2d 657, 104 S.Ct. 2039 (1984); See also Strickland v.
15 Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

16
17 E) Counsel did not Challenge the Hair DNA

18
19 Had the petitioners counsel done any kind of
20 Research in regards to the validity of Hair DNA, she would've
21 found more articles as to how irrelevant it is. Counsel
22 would have been able get that evidence suppressed, cause
23 as discussed supra there is no scientific validity to Hair
24 DNA. When something such as Hair DNA has no scientific
25 validity it can't be allowed to be used to obtain a
26 conviction, especially when the evidence is inaccurate due to
27 the fact not all evidence was collected from the alleged
28 crime scene.

29

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
U.S. CONST. AMEND. V VI VIII XIV

With counsel missing or not filing ~~the~~ the other grounds in this petition as they were discussed Supra.. Counsel not raising these grounds were prejudicial to the petitioner because at least 4 of the ground would have reversed the petitioners direct appeal. It would be a miscarriage of justice for the court not to consider all these grounds. Counsels' failure or blantant disregard not to raise them can't act as a waiver of them. Brinson v. Walker, 407 F.Supp.2d 456 (W.D.N.Y. 2006).

1 CUMULATIVE ERROR OF STRICKLAND
2 U.S. CONST. AMEND. V, VI, VII, XIV

3
4 A. Counsel Must Know Sentencing Laws!

5
6 The petitioners counsel failed at a major
7 part of her duties which are described in
8 criminal law §46.4. The petitioners counsel showed
9 him no loyalty at sentencing by agreeing with
10 the prosecution that the sentence of 10 to life
11 that the petitioner recieved at sentencing on
12 May 10, 2016 is mandatory. The petitioners counsel
13 did not even try to get him a lesser sentence.
14 Counsel didn't even try to present evidence or
15 witnesses in his favor of a reduced sentence. Had
16 counsel known all laws regarding sentencing in
17 class A felony cases, Counsel would have known that
18 NRS 193.130(2)(a) is the controlling statute in
19 sentencing for class A felony cases. It says a sentence
20 of death or imprisonment in state prison for life with
21 or without the possibility of parole may be imposed, the
22 key phrase in that is "may be imposed" which over
23 rides the mandatory term "shall" within NRS 201.230,
24 which in turn makes 10 to life a sentencing range.
25 U.S. v. Soto, 132 F.3d 561(D.C. Cir. 1997); See also
26 Wiggins v. Smith, 539 U.S. 510, 156 L.Ed. 2d. 471, 123
27 S.Ct. 2527(2003); Ford v. Heck, 655 F.3d 524(6th cir 2011).
28 Fitzpatrick v. McCormick, 869 F.2d 1247(9th cir. 1989)p1251.
29 The guarantee of effective assistance of counsel

1 comprises two correlative rights: the right to
2 reasonably competent counsel and the right to
3 counsel's undivided loyalty. Mannhalt, 847 F.2d at 579.
4 Criminal Law §46.4-Ineffective-Counsel, counsel
5 can deprive a defendant of the right to effective
6 assistance of counsel simply by failing to render
7 adequate legal assistance. Hays v. Farwell, 482 F. Supp.
8 2d 1180(2007). See also Iowa v Tovar, 541 U.S. 77, 80-81,
9 124 S. Ct. 1379, 158 L. Ed. 2d 209(2004). The United
10 States Supreme Court in Strickland, "expressly
11 declined to consider sentencing, which... may require a
12 different approach to the definition of constitutionally
13 effective assistance." Cooper-Smith v. Palmateer, 546 U.S.
14 944, 126 S. Ct. 492, 163 L. Ed. 2d 336(2005) (quoting
15 Strickland, 466 U.S. at 696, 104 S. Ct. 2052). "The court
16 has held, however, that any amount of actual jail time
17 has Sixth Amendment significance implicating the right to
18 the effective assistance of counsel." Argersinger v.
19 Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530(1930);
20 Grammas v. United States, 531 U.S. 198, 203. "Finally we
21 note that at appellant's sentencing, trial counsel failed to
22 present any evidence or witnesses on his behalf in support of
23 a more lenient sentence." Warner v. State, 102 Nev. 635(1987).
24 See also Hays, 482 F. Supp. 2d. 1180(2007). Counsel did not
25 have adequate knowledge of the law when she showed up to
26 sentencing, which led to counsel standing there and agreeing
27 with prosecution as to sentence being mandatory. This
28 raises several issues which follow:
29 (1) Counsel caused a conflict of interest

1 (2) Counsel was inadequate and basically not present
2 (3) did not advocate the petitioners cause at sentencing
3 (4) by siding with the prosecution on the sentence showed
4 the petitioner no loyalty at all
5 (5) Gave petitioners trial court false sentencing information
6 See Massey v. Prince George's County, 907 F.Supp. 138
7 (D. MD. 1995). The Supreme Court of California in
8 Smith v. Lewis, 13 Cal. 3d 349, 530 P.2d 589, 118 Cal.
9 Rptr. 621 (1975) expanded upon this obligation:
10 "An attorney... is expected... to possess knowledge of
11 those plain and elementary principles of the law
12 which are commonly known by well-informed attorneys,
13 and to discover those additional rules of law which,
14 although not commonly known, may readily be found by
15 standard research techniques." [Ibid] The other rule of
16 Professional Conduct counsel has apparently
17 misplaced is Rule 1.3 which holds that: "[a] lawyer shall
18 act with reasonable diligence and promptness in
19 representing a client." Failure to pursue applicable
20 legal authority in timely fashion may well constitute a
21 violation of this rule.

22
23 B.) Counsel's Knowledge Lacking on Discovery Laws!

24
25 The petitioner originally filed a pro per Motion
26 for Discovery before Ms. McNeill took over his case,
27 the motion had a specific request in it for H.H.'s
28 psychological records, this motion was granted via
29 BRADY and GIGLIO. But the state still refused to

1 hand over these records even though it was ordered.
2 Glasser v. United States, 315 U.S. 60 (1942). The
3 petitioners counsel filed motions to compel H.H.'s
4 psychological records and to get an independent
5 psychological evaluation of H.H.. But failed to put up
6 an adequate argument to the court, also failed to
7 point out to the court that they were already
8 granted in a proper motion for discovery. Counsel
9 quit arguing when the prosecuting attorney said they're
10 privileged, when in fact states argument is contrary
11 to law. The state likes ~~to~~ to quote numerous
12 statutes out of chapter 49 of the NRS, which goes
13 against NRS 432B.255 and 174.235(1). Both of those
14 NRS's nullify the use of chapter 49 and support NRS
15 174.235(2)(b). So not only was counsel ineffective for
16 not knowing these laws, but was inhibited by the
17 state. lies and reckless disregard for the law.
18 Stano v. Dugger, 839 F.2d 962 (11th Cir. 1989) 967. "In the
19 present case, the circumstances surrounding Mr. Pearl's
20 representation of Stano- the state's failure to release
21 discovery materials- prevented [him] from assisting the
22 accused during a critical stage of the proceeding."
23 See Cranic, 466 U.S. at 654 n.25. Under those
24 circumstances... "although counsel [was] available to
25 assist the accused... the likelihood that any lawyer, even
26 a fully competent one [as Mr. Pearl was here], could provide
27 effective assistance [was] so small that a presumption
28 of prejudice is appropriate without inquiring into the
29 actual conduct of trial." Id. at 659-60. 104 S.Ct. at 2047.

1 p969. Under Cronic, therefore, we must presume
2 that Stano was prejudiced by Mr. Pearls inability to
3 give advice and grant him relief on grounds of [INC].
4

5 C.) Counsel Failed To Consult or Obtain an
6 Forensics Expert!
7

8 Counsel also failed to use any expert witnesses
9 for the petitioners trial to counter act the States'
10 witnesses. Counsel also failed to retrieve the physical
11 evidence from LVMPD and collect the DNA samples from
12 all people in the home to compare to the physical
13 evidence collected from the petitioners home to rebut
14 what the State was saying about the physical evidence.
15 Lindstadt v. Keane, 239 F.3d 191(2nd cir. 2002) p202. "In
16 sum defense counsel's failure to consult an expert,
17 failure to conduct any relevant research, and failure
18 even to request copies of the underlying studies relied
19 on by Dr. Gordon contributed significantly to his
20 ineffectiveness." See also ~~Sims~~ Sims v. Livesay, 970
21 F.2d 1575(6th cir. 1992). If the petitioners counsel had
22 actually got anything examined Seperately with all DNA
23 samples of people living in the petitioners home, it
24 would have shown that the state was majorly misconstrueing
25 the facts and misrepresenting evidence. It also would have
26 created major doubts as to everything H.H. was saying.
27 Because her sisters DNA sample would have matched
28 all the items matching H.H. and petitioner thus H.H.
29 name would have never been on the reports, it would

1 have her sister K.L.'s name instead. This also would
2 not have ~~imade~~ implemented petitioner in another
3 crime due to the fact K.L. has already said nothing
4 has happened to her. Richter v. Hickman, 578 F.3d 944
5 (4th cir 2009) p946. Reinhardt, Circuit Judge: To not prepare
6 is the greatest ~~crime~~ of crimes; to be prepared beforehand
7 for any contingency is the greatest of virtues. -Sun Tzu, The
8 Art of War 83 (Samuel B. Griffith trans. Oxford
9 Universitu Press 1933) At the heart of an effective defense
10 is an adequate investigation. Without sufficient investigation,
11 a defense attorney, no matter how intelligent or persuasive
12 in court, renders deficient performance and jeopardizes
13 his client's defense. [...] Although it was apparent that an
14 issue critical to the out-come could be best resolved
15 through the presentation of forensic evidence, counsel
16 failed at each stage of the case to consult with a forensic
17 expert of any type and thus failed to conduct the
18 rudimentary investigation necessary in order to (1) decide
19 upon the nature of the defense to be presented, (2)
20 determine before trial what evidence he should offer, (3)
21 prepare in advance how to counter damaging expert
22 testimony that might be introduced by the prosecution, and
23 (4) effectively cross-examine and rebut the prosecution's
24 expert witnesses once they did testify during the course
25 of the trial. There was in fact no strategic reason for
26 counsel's failure to do so. As it turned out, these
27 repeated fail-[p947]ures to investigate were prejudicial:
28 available forensic testimony would have contradicted
29 the prosecution's explanation of the events that transpired

1 and would have strongly supported the defense's version.
2 See also Holsomback v. White, 133 F.3d 1382 (11th cir 1998);
3 Gersten v. Senkowski 426 F.3d 588 (2nd cir. 2005). There
4 was no penetration proven in the petitioners case but
5 because of the nature of all the different types of sexual
6 abuse, the petitioner was accused of there should have
7 been some kind of consultation with a forensics and medical
8 expert. These experts could have been called to rebut
9 anything the state could say.

10 D.)

11 Counsel Failed to Attempt to Impeach Complaining
12 Witness With Prior Inconsistent Statements or
13 Medical Evidence

14
15 The petitioners counsel failed to attempt to impeach the
16 complaining witness with her multiple statements that were
17 all different in numerous ways. Counsel ~~also~~ didn't
18 attempt to impeach the inconsistent statements of the
19 complaining witness, or attempt to impeach the
20 complaining witness with medical evidence. U.S. Ex. Rel.

21 McCall v. O'Grady, 908 F.2d 170 (7th cir 1990) p173.

22 "[Defendant] McCall's second challenge to his trial
23 counsel's performance found success in the District Court.

24 In considering this challenge, the court first rejected
25 the notion, relied upon by the Illinois appellate court,
26 that the failure to impeach a state's witness cannot
27 support an [IAC] claim. The court stated that, to the contrary
28 several decisions of this court establish that defense
29 counsel has not represented the defendant to the

1 satisfaction of the Sixth Amendment when counsel
2 fails to pursue an impeaching cross-examination or present
3 additional evidence that would in all reasonable probability
4 cast a reasonable doubt on the testimony of the
5 government's main identification witness." McColl, 714
6 F. Supp. at 379. See also Driscoll v. Delo, 71 F. 3d 701
7 (5th cir. 1995).

8

9 E.) Counsel Failed to Object to Prosecutors

10 Improper Closing Comment

11

12 On page 88 Line 24 through page 89 Line 4 of day 6
13 of trial the prosecutor Michelle Jobe makes the
14 following comment: "In 2016 what's his motive? Well, the
15 defendant is on trial for twelve counts. You heard them
16 all when the judge read the jury instructions to you. And
17 he took the stand at the end of trial after he listened
18 to all the evidence, heard all the testimony, That's
19 when the defendant decides to take the stand." This
20 is in her closing argument in an attempt to discredit
21 the petitioners testimony, "[The prosecutor in the
22 present case...argued]" that "unlike all the other
23 witnesses in this case the defendant has a benefit and the
24 benefit that he has, unlike all the other witnesses, is he
25 gets to sit here and listen to the testimony of all the
26 other witnesses before he testifies[.] That gives you
27 a big advantage doesn't it." This was not a factual
28 argument based on the defendant's testimony in this
29 particular case but a generic argument that a

1 defendant's credibility is less than that of prosecution
2 witnesses solely because he attended the entire trial
3 while they were present only during their own testimony.
4 The prosecutor's argument was not based on the fit
5 between the testimony of the defendant and other
6 witnesses. Rather, it was an outright bolstering of the
7 prosecution witnesses' credibility vis-a-vis... based
8 solely on the defendant's constitutional right to be present
9 during the trial. State v. Cassidy, 236 Conn. 112, 672 A.2d 899,
10 903 & n.17. See also Agard v. Portocarrero, 159 F.3d 98 (2d cir 1999).
11 Yes this is an obvious fact, that the petitioner
12 testified last. But for the state to make this argument
13 is to say the petitioner had a choice as to when he
14 testified in the trial, when they know for a fact the
15 petitioner only got to after they present their case. For
16 the state to make this argument, it is an attempt to
17 save them selves from a complete loss. Especially
18 when they saw the physical evidence come out in front
19 of the jury and it was 3 times bigger than what the
20 alleged victim was claiming, along with the slides from
21 crime lab tech showing the location of the evidence
22 collected off an item shown to jury not match the
23 discription given. With pictures shown to the jury of
24 the location of all the semen stains and location of
25 the Hair on this towel, the state knew at that point
26 the alleged victim had lied completely lied to
27 police and on the stand.

28
29

1 F) Poking Holes is not a defense Strategy

2

3 The petitioners' counsel did nothing but point to holes
4 in the states case through questioning there witnesses
5 and did not present anything in the way of evidence to
6 rebut or disprove the states case. Fisher v. Gibson, 282
7 F.3d 1283 (10th cir. 2002) p1296. [...] Counsel has a duty to
8 investigate all reasonable lines of defense, or make
9 reasonable determinations that such investigation is not
10 necessary. Strickland [...] a ~~defendant~~ decision not to
11 investigate cannot be deemed reasonable if it is uninformed. Id.
12 Mr. Porter's decision not to undertake substantial pretrial
13 investigation and instead to "investigate" the case during
14 the trial was not only uninformed, it was patently
15 unreasonable. [...]

16 Here it is evident that counsel did not have a
17 strategy ~~to~~ of pointing to holes in the evidence or trying
18 to create a reasonable doubt in jurors' minds. To the
19 contrary, it is obvious during his direct and cross-examination
20 Mr. Porter had no idea he might elicit information that
21 could be useful to such a strategy. Furthermore, he made
22 no attempt whatsoever to draw the jury's attention to any
23 gaps in the state's evidence, and never otherwise
24 articulated a reasonable doubt theory to the jury. [...]
25 Where an attorney accidentally brings out testimony that is
26 damaging because he failed to prepare, his conduct cannot
27 be called a strategic choice, an event produced by
28 happenstance of counsel's uninformed and reckless cross-
29 examination cannot be called a "choice" at all. see

1 Strickland, 466 U.S. 691

2 As you can see from what petitioners counsel
3 didn't do during trial and prior to trial, with counsels'
4 lack of legal knowledge pertaining to issues within
5 petitioners case. But what you can see from the
6 verdict in the petitioners case, is that the jury used
7 common sense when it came to the evidence. What
8 can see from all the pictures presented at trial is
9 that the state didn't use common sense and the fact
10 that the states prosecution keeps making the same
11 bold claims, even after the jury has said otherwise
12 with their verdict. Shows two (2) things about the
13 states prosecutors (1) they have no respect for a jury's
14 Verdict and (2) they have no respect for the people of
15 this state or the Justice System. Petitioners' counsel did
16 nothing in his case, two reasons this case went the
17 way it did (1) the jury used it's common sense, and (2) the
18 states evidence says the petitioner is innocent. What
19 didn't happen is that petitioners' counsel doing her job,
20 the State did it for her.

21
22 G.) Counsel allows Trial Judge to Coerce Jury!

23
24 As discussed Supra. in Coercive Use OF Allen
25 Charge, the jury got the case handed over to them on
26 March 14, 2016 sometime after lunch approximately. Which
27 was after all closing arguments, then on March 16, 2016
28 the jury sent a message saying they reached an agreement
29 on 9 out of 12 counts and the other 3 counts they were

1 hung on, this was admitted as courts Exhibit 23 and that is
2 attached as Exhibit 5. Sometime after Noon the jury got
3 there response and that was in the form of an Allen
4 Charge which was filed as instruction No. 32.

5 When the jury was given the Allen Charge they were
6 told they were the best people for the job and told
7 which ever way you were voting, if you are on the side
8 with less votes you need to reconsider your vote and
9 go with the majority. For counsel not to object to this
10 type of Allen charge says numerous things about the
11 petitioners counsel, first it says' counsel was not paying
12 attention to what was being said, Second that counsels
13 just wanted the trial to end, Third it shows counsel has
14 no knowledge as to how a judge can word the Allen Charge.

15
16 H. Counsel Fails to Call Promised Witness during Opening
17 Statement and Request Missing Witness Instruction
18

19 Counsel promised to have private investigator
20 Craig Retke to testify on the petitioners side, as to
21 what he was suppose to testify to during the defenses'
22 case-in-chief. The petitioner does not know as his counsel
23 never told him and rarely kept him informed. English v.
24 Romanowski, 602 F.3d 714 (6th Cir 2010) "The defense's
25 theory of the case was self-defense, and it attempted to
26 present a version of the facts consistent with that theory. In
27 his opening statement, defense counsel stated to the jury
28 that it would hear Lydia Ceruti, who would testify that
29 Higdon was attempting to hit her when English attacked him.

1 However, when the defense actually presented its case,
2 defense counsel did not call Ceruti as a witness. Instead, English's
3 attorney opted to call Bill English himself. p724, The District
4 Court... noted that if [attorney] Escobedo had fully investigated
5 the case beforehand, he would have been able to properly
6 evaluate Ceruti as a witness before promising her testimony
7 to the jury.³³ See also Harris v. Reed, 894 F.2d 871 (7th cir. 1990),
8 U.S. v. Ex Rel. Hampton v. Leibach, 547 F.3d 219 (7th cir 2008).

9 Then at some point when petitioners counsel
10 realized she was not going to call this promised
11 witness, counsel should have made sure to include
12 a missing witness jury instruction. This would
13 prevent the jury from wondering why this witness was
14 promised and why then the witness was not called as
15 promised. Henry v. Scully, 78 F.3d 51 (2nd cir. 1996).

16
17 I.) Counsel did not Investigate or Interview The
18 Alleged Victim!

19
20 The petitioners' counsel failed to Investigate
21 and Interview the most important person in the
22 petitioners case, which is the complaining witness.
23 Soffar v. Dretke, 369 F.3d 441 (5th cir. 2004) p471. "Soffar
24 contends that his defense counsel were ineffective for
25 failing to conduct an adequate pretrial investigation for
26 two reasons, first, Soffar argues that his defense counsel
27 were ineffective in not attempting to contact Greg Garner or
28 to interview the police officers who took Garner's
29 statements, which would have enabled Soffar's Counsel to

1 introduce into evidence the significant discrepancies
2 between Garners account of the crime and Soffar's
3 statements. Soffar contends that had his defense counsel
4 done so, the reliability of his confessions would have been
5 undermined. We conclude that Soffar's defense counsel
6 have offered no acceptable justification for their failure
7 to take the most elementary step of attempting to
8 interview the sin-[0474]ale known eyewitness to the
9 crime with which their client was charged."

10 Had counsel bothered to do this, she would have
11 gotten another version of events happening. Counsel
12 should have at the minimum been trying to find out what
13 she could about H.H. from her friends around town or
14 at school to find out what type of child she is dealing
15 with. Instead petitioner counsel chose to do neither
16 Investigate the complaining witness or Interview her.

18 J. Counsel failed to Fully Inform Client!

19
20 Massey v. Prince George's County, 907 F. Supp. 138
21 (D. MD. 1995) p142. "[...] Counsel appears to have forgotten
22 two of the most fundamental Rules of Professional
23 Conduct. First, Rule of Professional Conduct 1.1 provides
24 that: [a] lawyer shall provide competent representation
25 to a client. Competent representation requires the
26 legal knowledge, skill, thoroughness and preparation
27 reasonably necessary for the representation." As a basic
28 treatise has observed, "to provide competent
29 representation, a lawyer must be able to research law."

1 Jacobstein and Mersky, Fundamentals of Legal
2 Research. p.13(5th Ed.). See also Smith, 13 Cal. 3d. 349,
3 530 P.2d 589, 118 Cal. Rptr. 621(1975).

4 Had counsel been able to do any of the above, she
5 might have been able to tell the petitioner what was
6 needed for a conviction on each count. Such as what the
7 full meaning of intent is and what was needed to
8 prove intent. Findley v. State, 1966, 370 p.2d 677, 78 Nev.
9 198; see also Sonner v. State, 1996, 930 p.2d 707, 112 Nev.
10 1328; and NRS 48.045. With counsel not knowing this,
11 there is now way she could explain how the state can
12 prove it or how the defense can disprove it i.e.
13 mental condition such as bi-polar disorder.

14 Also part investigation means paying attention to
15 what is said in pleadings by the other party. If
16 counsel can't do this basic thing, what could the other
17 party put in their pleadings that counsel don't notice.
18 Such as the fact of a statement made by the
19 complaining witness, which is what the state did on
20 three occasions. The state mentions a statement
21 made by H.H. on June 21, 2014, attached as Exhibits
22 , , and . Which is just showing counsel did
23 not investigate because if she had, counsel could
24 have gone to the courts with this.

25 Also with counsel not knowing ~~the~~ how to
26 research the law concerning psychological records
27 of an alleged child victim, it allowed the state to
28 suppress even more discovery that should have
29 handed over by the state before trial. This allowed

1 the scales of justice at trial to be tipped in favor of
2 the State way more than they should have been. This
3 also allowed the state to interfere with counsels
4 ability to cross-examine the complaining witness and
5 petitioners right to confront his accuser.

6 With counsel not doing anything as discussed
7 Supra. means the petitioner could not make any well
8 informed decisions on where he stood at trial. If the
9 petitioner didn't know where he stood on his chances
10 of success at trial do to the fact counsel didn't do
11 the basic function of counsels' duties. it can't be said
12 his choice ~~was~~ of trial vs. Plea deal was remotely
13 informed. See also Smith v. United States, 348 F.3d 545 (4th, 03)

14 15 K.) Counsel Failed to Move for a Directed Verdict 16 or File Motion for New Trial!

17
18 Counsel for petitioner could have and should
19 have moved for a Directed Verdict of Not Guilty,
20 but petitioners counsel failed at this. Why counsel did
21 not do this, only counsel knows but it is highly evident
22 from the verdict that it would have been granted by
23 the trial court. Then counsel should have filed a
24 motion for new trial based on insufficient evidence to
25 support conviction, as discussed ~~supra~~ supra. the
26 testimony given at trial pertaining to count 2 is not
27 sufficient to sustain this conviction. U.S. v. Hillard, 392
28 F.3d 981 (8th cir. 2004) p. 985 "On [1/6/03], Hillard filed the
29 instant §2255 petition, arguing, inter alia, that his trial

1 attorney was ineffective for not filing a timely motion for
2 a new trial. The district ~~court~~ court found that trial
3 counsel's failure to file a timely motion for new trial on
4 behalf of Hillard, simply because he mistook the filing
5 deadline, fell below an objectively reasonable
6 standard of ~~conduct~~ professional conduct." The state
7 cannot say it would be unreasonable for counsel to do
8 that because it would expose petitioner to all 12
9 counts again, cause that would be double jeopardy
10 on the 11 counts He was found "Not Guilty" on. All
11 the new trial would be on is the count petitioner
12 was found "Guilty" on in first trial.

13
14 1. Counsel failed to go to the Alleged Crime Scene!

15
16 Petitioners' counsel failed to visit the alleged
17 crime scene, instead of visiting it counsel chose to
18 use what pictures she got from the state. Counsel
19 would have been better prepared for cross-
20 examination of the complaining witnesses, if counsel
21 had been out to look at the alleged crime scene. Also
22 had counsel seen the alleged crime scene with the
23 rest of the house she would have been able to
24 discredit a lot more of the complaining witness
25 testimony instead of the state doing counsel's job for
26 her. Williams v. Washington, 59 F.3d 673 (7th cir. 1995);
27 See also Wade v. Armont, 798 F.2d 304 (8th cir.
28 1986).

29

1 M.I. Counsel Allows Case To Proceed Without A
2 Grand Jury Indictment.

3
4 As discussed supra, there was no grand jury
5 indictment as required by the Fifth Amendment, as
6 the petitioners alleged crime is an infamous crime
7 as described by the U.S. Supreme Court in Mackin,
8 117 U.S. 348, 364 (1886). This is further explained in
9 U.S. v. Moreland, 258 U.S. 433, 441 (1992) Because persons
10 convicted of offenses punishable by imprisonment for
11 more than one year may be confined in a penitentiary,
12 18 U.S.C. § 4083, any crime punishable in this manner
13 is infamous. Rule 7(a) of the Federal Rules of
14 Criminal Procedure codifies the Supreme Court's
15 interpretation of the Constitutional requirement of an
16 indictment for infamous crimes: "An offense (other than
17 criminal contempt) must be prosecuted by an
18 indictment if it is punishable: (A) by death; or (B) by
19 imprisonment for more than 1 year." Coachman, 752 F.2d
20 685, 689 n.24 (D.C. cir. 1985). This does apply to the
21 states through Clause 2 of the 6th Amendment of
22 the United States Constitution which applies to the
23 states through the 14th Amendment of the United
24 States Constitution. Clause 2 of the 6th Amendment
25 is the Supremacy Clause. City of Auburn v. Quest Corp.,
26 260 F.3d 1160 (9th cir. 2001). See also Broad, 85 F.3d 412 (9th
27 cir. 1996)

1 N/Counsel Does not Enforce Speedy Trial Act!

2

3 As discussed in previous pleadings counsel had
4 petitioner waive his right to a speedy trial, but under
5 18 U.S.C. § 3161 which is the speedy trial act there is no
6 place in it that say a defendant can waive this right.
7 What it does give is numerous ways to toll the time or
8 extend it by way of motion for continuance. There is
9 no place within the Act that allows a defendant to
10 opt out of it, what it also says is that it is automatically
11 applied to a defendants case. U.S. v. Garcia, 660 F. Supp.
12 2d 821 (W.D. Mich. 2009), see also Zedner v. U.S., 547 U.S. 489,
13 164 L.Ed.2d 749, 126 S.Ct. 1976 (2006), Maples v. Stegall, 427
14 F.3d 1020 (6th 2005). The state has waived any right to
15 claim prejudice do to this violation as they stood by
16 and allowed this to happen for over two(2) years.

17

18 O/Counsel Did not Ensure Jury Was Properly Sworn!

19

20 Counsel failed to ensure all three of the
21 jurors oaths were properly administer. When held
22 to be true this is a jurisdictional issue which
23 means petitioners trial was moot. With the State
24 Deputy DA Michelle Jube and the ~~counselors~~
25 petitioners counsel Monique A. McNeill, had a duty
26 to bring mootness to the court's attention. This error
27 falls under Barral v. State, 353 P.3d 1197, 1100
28 (2015). This whole issue was discussed supra..

29

1 FALSE PROSECUTION OF SOMEONE MENTALLY DISABLED

2 U.S. CONST. AMEND. V, VI, VII, XIV

3
4 The Petitioner was accused of numerous crimes,
5 that were allegedly committed from June 22, 2007 to
6 January 21, 2014. Now here are the issues with this, the
7 Petitioner has been deemed Mentally Disabled since
8 August 5, 2008 all the way to current. So not only
9 can the State not prove intent on the charge, but
10 the Petitioner was tried and punished while he is
11 Mentally Disabled in violation of NRS 178.400.
12 Attached as Exhibit _____ is the appeals court
13 decision for the petitioners Social Security
14 Disability Claim. So this ruling comes off a Federal
15 ~~law~~ Court and based on Federal law. and under the
16 Supremacy Clause under the VI Amed. to the
17 U.S. Constitution Federal Law trumps State law.
18 Broad v. Sealaska Corp, 85 F.3d 422 (9th cir. 1996);
19 See also Pate v. Robinson, 383 U.S. 375, 378 (1966).

Exhibit 1

Page 57 of day 3 trial
Heather's Testimony

1 Q All right. And in State's 38 what is this?
2 A The shower.
3 Q Okay. And is the curtain pulled across the shower?
4 A Yes.
5 Q So if you pull it back, then you can see the shower
6 and get in the shower?
7 A Yes.
8 Q What's in here?
9 A Towels and Band-Aids.
10 Q Okay. Showing you State's 39, is that a picture of
11 that cupboard open where the towels and stuff is?
12 A Yes.
13 Q All right. And showing you State's 40, is that also
14 in the bathroom?
15 A Yes.
16 Q Where in the bathroom is that?
17 A The shelves above the toilet.
18 Q Okay. And is that just some of the stuff that was
19 kept on the shelves above the toilet?
20 A Yes.
21 Q Did you -- or did Justin ever have you touch any
22 part of him?
23 A Yes.
24 Q What part?
25 A His penis.

Exhibit 2

Page 58 of Day 3 trial
Heather's Testimony

1 MS. JOBE: Court's indulgence.

2 (Pause in the proceedings)

3 BY MS. JOBE:

4 Q All right, Heather. Just a couple more subjects,
5 and then we're done, okay?

6 A Okay.

7 Q All right. So you -- we talked about how -- well,
8 it happened in the bedroom. Did anything happen with Justin
9 outside the bedroom or in a different area of the house?

10 A Yes.

11 Q Where in the house did it happen?

12 A Shower.

13 Q Okay. And where is the shower in your house?

14 A In the restroom.

15 Q Is there one shower, or more than one shower?

16 A One.

17 Q How -- what does the shower look like?

18 A It's a stand up -- it's a bathtub with a shower
19 nozzle.

20 Q Does it have a curtain on it?

21 A Yes.

22 Q All right. Tell me what happened in the shower.

23 A He would make me stand over him while he pleasured
24 himself or he would make me kneel and he would pleasure
25 himself.

Exhibit 3

Page 59 of Day 3 Trial
Heather's Testimony

1 Q Okay. And when you would kneel in the shower and
2 he'd pleasure himself did anything happen?
3 A Yes.
4 Q What happened?
5 A He would ejaculate onto my face.
6 Q All right. And would the water be running, or not
7 running?
8 A Running.
9 Q And when he would do that would he say anything?
10 A Afterwards he would tell me to stand up and wash
11 myself off.
12 Q Okay. And did you stand up and wash yourself off?
13 A Yes.
14 Q Did that happen one time, or more than one time?
15 A More than one time.
16 Q All right, Heather. I'm going to show you what's
17 been admitted as 38, 39, and 40, okay? If you'd look at those
18 for me, please.
19 Do you recognize what's in 38, 39, and 40?
20 A Yes.
21 Q What do you recognize that to be?
22 A Bathroom.
23 Q Okay. So various pictures of the bathroom; is that
24 fair?
25 A Yes.

Exhibit 4

Page 29 of Prelim.

1 THE WITNESS: Five or six.
 2 BY MR. THUNELL:
 3 Q. Okay. Now, Heather, did he ever have you go
 4 inside the shower? *Pg 16 LN 7-8*
 5 A. Yes. *Original statement.*
 6 Q. Okay. And was that in the past year or before
 7 the past year?
 8 A. Before the past year.
 9 Q. Was it after the first time when you were
 10 around eight years old?
 11 A. Yes.
 12 Q. Okay. And what -- what happened with the
 13 shower?
 14 A. He made me kneel, and he -- come on my face.
 15 Q. Okay. And --
 16 MS. LOBO: I'm so sorry.
 17 BY MR. THUNELL:
 18 Q. Could you say that one more time, Heather?
 19 I'm sorry.
 20 A. He made me kneel, and he would come on my
 21 face.
 22 Q. Okay. And when -- when you say that, what do
 23 you mean?
 24 A. He rubbed his private parts until sperm came
 25 out.

1 MR. THUNELL: I could be more specific.
 2 THE COURT: Please. Please.
 3 BY MR. THUNELL:
 4 Q. And, Heather, when I'm talking about front
 5 private, I'm talking -- I think you called it the
 6 vaginal area before.
 7 A. Yes.
 8 Q. And that's what I was asking about. Did -- is
 9 that the area you were talking about, or were you
 10 talking about your chest?
 11 A. The vaginal area.
 12 Q. Okay. And, Heather, was that touch on the
 13 outside or the inside of the area?
 14 A. The outside.
 15 Q. Okay. And did he ever put any other part of
 16 his body on -- on that area?
 17 A. No, not that I remember.
 18 Q. Okay.
 19 MR. THUNELL: Court's indulgence.
 20 BY MR. THUNELL:
 21 Q. Heather, let me ask you a question. During
 22 the last few years that this was going on did you ever
 23 tell anybody about it up until recently?
 24 A. No.
 25 Q. Heather, why didn't you tell anybody about

1 Q. Okay. Now, Heather, did that -- did that
 2 happen just once, or did that happen more than once?
 3 A. More than once.
 4 Q. Okay. About how many times did that happen?
 5 A. About three.
 6 Q. Was there anywhere else, besides the shower?
 7 A. No.
 8 Q. Is that the shower -- was that shower at the
 9 Hill -- Hill Street house or at any other house?
 10 A. It was at the Hill Street house.
 11 Q. Okay. Now, Heather, did he ever -- did he
 12 ever touch your privates -- your front private area?
 13 Did he ever touch that area with anything?
 14 A. Yes.
 15 Q. And what -- what did he do?
 16 A. He touched it.
 17 Q. And with what did he touch it?
 18 A. His hands.
 19 Q. With his hands? Did he ever -- would he touch
 20 on the outside or the inside?
 21 A. The outside.
 22 MS. LOBO: I'm sorry, Judge. I'm just going
 23 to object as to foundation and vague. I don't know.
 24 If we're talking about front, is it chest or vagina?
 25 I didn't --

1 what was going on?
 2 A. Because I was scared that he might hurt me or
 3 my family.
 4 Q. Now, recently did you -- did you tell somebody
 5 about what was going on?
 6 A. Yes.
 7 Q. Who did you talk to?
 8 A. I talked to my friend, Ziley (phonetic).
 9 Q. Okay. Now, what made you finally tell Ziley
 10 about what was going on?
 11 A. I didn't want it to happen again, and I knew I
 12 could trust Ziley.
 13 Q. And after you talked to Ziley what -- what did
 14 you do after that?
 15 A. I talked to the school nurse, because the
 16 counselor wasn't working.
 17 Q. Okay. And after that did you talk to some
 18 other people?
 19 A. Yes.
 20 Q. Okay. Heather, just one second if that's all
 21 right. Heather, now, you talked to -- you talked to
 22 some other people.
 23 Do you remember talking to a specialist by the
 24 name of Tiffany?
 25 A. Yes.

Exhibit 5

Court Exhibit 23

Jury message

We have come to an agreement on
9/12 counts.

3 out of 12 are hung where jurors
do not have reasonable doubt and
others do.

~~Are~~ How do we proceed?

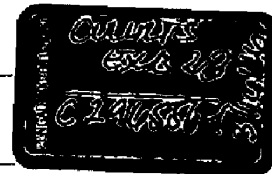


Exhibit 6

Microscopic Hair Comparison
Article. Is underlined

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Faulty Forensics (cont.)

for crimes they didn't commit. Moreover, that this technique is still used in our justice system, including current capital prosecutions, presents a public safety threat.

Harward is hardly alone in having been convicted based on bite mark comparison testimony. Eddie Lee Howard has been on Mississippi's death row for over two decades after having been convicted of the rape and murder of an 84-year-old woman. In his trial, bite marks found on the exhumed body of the victim were compared to Howard's teeth. The identification was made by Mississippi dentist Dr. Michael West, a for-hire forensic dental expert for the prosecution. His freewheeling methods put a huge black eye on bite-mark evidence, according to Dr. Richard Souvion, a Florida dental expert who helped identify serial killer Ted Bundy in 1979. Unfortunately, that identification helped ensure the popularity of the questionable forensic method among prosecutors nationwide.

In a May 26, 2016 opinion, the California Supreme Court overturned the 1997 murder conviction of Bill Richards for the murder of his wife. The Court determined that false forensic bite mark testimony influenced the outcome of the trial. During the trial, legendary forensic dentist Norman "Skip" Sperber testified that, based on his 40-plus years of forensic dentistry, only one or two or less, out of 100 people would have the same "unique feature" in their lower teeth found in a bite mark on the wife's hand and in Richards' teeth.

In 2008, Sperber recanted his testimony, saying he had cited statistics that lacked scientific support. His recantation, along with new DNA evidence that pointed to an unknown male and the testimony of a defense forensic dentist, persuaded the trial court to conclude that the evidence now pointed "unerringly" to Richards' innocence.

The state appealed that decision, and the California Supreme Court reversed it in a tortured 2012 opinion that *California Lawyer* magazine labelled the worst decision of the year. Remarkably, the Supreme Court "ruled that expert testimony was merely opinion and therefore could never be considered true or false."

In response to that baffling decision, the California legislature passed the "Bill Richards Bill," which is often referred to as the "junk science" statute. The bill amended the penal code by making recantation of an expert or

changes invalidating the science underlying the original testimony a statutory basis for reversing a criminal conviction. Because of the new statute, Richards was able to appeal his case once again, and this time, the California Supreme Court unanimously agreed that "it is reasonably probable that the false evidence presented by Dr. Sperber at petitioner's 1997 jury trial affected the outcome of that proceeding." Accordingly, it overturned his murder conviction.

California's "junk science" statute is only the second one passed in the nation; Texas was first state to do so in 2013.

Microscopic Hair Comparison

HAIR ANALYSIS IS ANOTHER FIELD OF FORENSIC science roundly criticized in the NAS report for lacking scientific validation. An ongoing review of the cases in which FBI hair analysts testified reveals that erroneous statements were made in over 90% of the cases tried before 2000. Analysts often falsely testified that a hair could be matched to a specific person. Some of the reviewed cases had already been overturned due to post-conviction DNA testing.

On February 2, 2016, a Massachusetts court vacated the conviction of George Perrot for a 1992 rape and burglary after finding the conviction was based upon an FBI expert's erroneously overstated hair analysis. The 79-page opinion marked the first time a court conducted a thorough review of the science of microscopic hair comparison. The court conducted a two-day hearing during which it heard testimony from multiple defense and prosecution experts.

The decision is vitally important because it will be followed by many other courts around the country which will have to decide how to deal with this erroneous testimony, according to Fabricant. "While we don't know how many cases may ultimately be reversed because of the use of this scientifically invalid evidence, we know from the preliminary findings of the review that FBI agents, over a period of more than two decades, erroneously testified or provided erroneous reports in more than 957 of the cases where microscopic hair analysis was used to connect a defendant to a crime."

The Innocence Project and National Association of Criminal Defense Lawyers urged the FBI to conduct the review following the DNA exonerations of Donald Gates, Santae Tribble, and Kirk Odom, who were convicted in separate cases involving testimony by FBI

Faulty Forensics (cont.)

hair analysts. Erroneous hair analysis testimony contributed to 207 of the more than 337 convictions that were later reversed based upon DNA evidence.

Tribble spent 28 years in prison and later won a \$13.2 million award against the District of Columbia. He was convicted after a FBI agent testified that the chances were "1 in 10 million" that a hair from a stocking mask came from someone else. While incarcerated, Tribble developed a heroin addiction and contracted HIV and hepatitis. He suffers from severe depression, and though only 55, he is not expected to survive beyond 2019.

Tribble was held in solitary confinement for periods of up to nine months at a time. Additionally, he was "tasered, tear-gassed, and, at one point, held in four-point restraints and strapped to a concrete bed for four to five days" during a 1999 prison transfer. D.C. Superior Court Judge John M. Mott wrote that "Mr. Tribble's ordeal did not merely deprive him of his liberty in a constitutional sense—it ruined his life, leaving him broken in body and spirit and, quite literally, dying."

DNA testing established that none of the 13 hairs found in the stocking cap that were located near the crime scene came from Tribble or any of his alleged accomplices.

Odom, 54, spent over two decades in prison for rape. A D.C. court ordered the District to pay him \$9.2 million. The District settled a lawsuit brought by Gates, 64, for \$16.65 million. He alleged that police framed him for a 1981 rape and murder.

Bullet and Shell Casing Tool Mark Comparisons

ON JANUARY 22, 2016, A D.C. COURT OF appeals ruled that claims by a forensic examiner that a bullet or shell casing can be matched to a specific weapon lacked a scientific basis and should be barred from criminal trials as misleading. A D.C. police expert had testified that three bullets came from a specific gun in the murder trial of Marlon Williams. He was convicted and appealed.

In the opinion, Associate Judge Catherine Easterly wrote that the erroneous testimony in the trial was "more than regrettable [as the government had characterized it]. It was alarming" like "the vision of a psychic" with "foundationless faith in what he believes to be true." Unfortunately, Williams lost the appeal because his trial lawyer failed

to object to the testimony.

Other Forensic Questions

BITB MARK AND HAIR ANALYSIS ARE THE low hanging fruit of questionable forensics. Yet many of the methods believed to be on more sound scientific footing also suffer from lack of validation and other issues.

Forensic analysis of lead in bullets and matching of voice prints have already been discarded as scientifically useless, but not before they were used to help secure many convictions. The pattern of burns supposedly caused by liquids has been discredited for being scientifically unsound. Such burn pattern testimony led to the 2009 execution of Todd Willingham in Texas, despite the fact that the so-called science had been disproven two years earlier.

Even fingerprint comparison, long accepted in American courts, has problems. The problems are not with the statistics that set the probability that one fingerprint is the same as a randomly chosen fingerprint. Instead, the problem lies with the subjective determination by individual analysts as to whether a suspect's fingerprint matches the unknown fingerprint with which it is being compared.

That is "where it gets a little fuzzy," according to Glenn Langenburg, a fingerprint examiner with the Minnesota Bureau of Criminal Apprehension. When fingerprint examiners look at multiple fingerprints from the same source and different sources for protracted periods, "their brains get calibrated" to some internal threshold of similarity resulting in dissimilarities being ignored and similarities emphasized, Langenburg noted. This is especially true when dealing with the partial or degraded fingerprints typically found at a crime scene. That is an extremely important point because, while it takes multiple points of similarity to consider a fingerprint a "match," it requires only one unexplained point of dissimilarity to prove they belong to different people.

The subjective nature of fingerprint analysis is demonstrated when fingerprint examiners are given blind tests. In one study of 169 examiners, there were 7.5% false negatives—errors where examiners said prints from the same person came from different people—and 0.1% false positives where examiners concluded prints from different people were from the same person.

Likewise, the recognized gold standard in forensics—DNA testing—loses a little of its luster when the subjective human element

is introduced as part of the examination process. This is especially true when there is very little DNA available and/or the available DNA sample contains DNA from two or more donors.

Shannon Morris, Melissa Lee, and Kevin Rafferty have filed a lawsuit against the New York State Police crime lab that formerly employed them. They allege that when they tried to correct errors in DNA testing at the lab, they were silenced and fired because the errors were favorable to the prosecution.

The department was implementing a computerized DNA analysis called TrueAllele that would have eliminated the errors that occur when a technician subjectively interprets a complex mixture containing DNA from more than one person recovered from a crime scene. However, the investigation into their allegations was used as an excuse to cancel implementation of TrueAllele.

Similarly, in a recently filed civil rights lawsuit, Dr. Marijana Stajic alleges she was forced out of her position as laboratory director for the New York City Medical Examiner's office after she criticized a DNA testing method known as low copy number ("LCN"). Other critics claim that the LCN method, which uses fewer strands of DNA than is recommended by the manufacturer of the testing equipment or the FBI, is unreliable. Stajic also served on the New York State Commission of Forensic Science and reportedly angered her superiors by voting with defense attorneys on the commission to require the public release of a study of the LCN method.

Greg Hampikian, a professor of biology and criminal justice at Boise State University and director of the Idaho Innocence Project, has spoken out publicly about contamination issues that plague crime scene DNA samples—especially those tested using smaller sample sizes than recommended by the FBI.

Cross contamination is what happened in the Amanda Knox case. Italian investigators found small amounts of Knox's DNA on the handle of a knife, a small amount of her roommate's DNA on the knife's blade, and a tiny sample of her boyfriend's DNA on the clasp of her roommate's bra. They used this to tie both Knox and her boyfriend to the murder of her roommate. But the bra had not been collected until 48 days after the murder. During that time, it had been moved around the residence and repositioned multiple times by investigators photographing the scene. Further, the knife had been used by Knox for cooking and was collected from a kitchen drawer.

Exhibit 7

TRUMP Administration Kills Obama's
Forensic Evidence Reliability Efforts
by Mark Wilson

First Six(b) Paragraphs Pertain to
Petitioner

Trump Administration Kills Obama's Forensic Evidence Reliability Reform Efforts

by Mark Wilson

LESS THAN THREE MONTHS INTO THE Trump Administration, the President's assault on science, truth, and all things Obama reached the criminal justice system: Under Trump's watch, a commission working to improve the reliability of forensic evidence has been abolished.

In 2013, the Obama Administration created the National Commission on Forensic Science, an independent advisory panel of approximately 30 scientists, crime lab leaders, judges, prosecutors, and criminal defense lawyers. The commission was charged with reviewing forensic science standards and making recommendations to ensure the reliability of forensic science used in criminal trials.

The commission was created in the wake of numerous scandals and reports about unreliable evidence being used to convict and even execute criminal defendants.

In 2005, for example, the FBI abandoned its 40-year practice of tracing bullets to a specific manufacturer's batch through chemical analyses, after its methods were scientifically debunked. Also in 2015, the Justice Department and FBI admitted that nearly every examiner in a hair-analysis unit gave scientifically flawed or overstated testimony in 90 percent of cases from 1980 to 2000. Those cases included 32 criminal defendants who were sentenced to death, and 14 of the condemned men were executed or died in prison.

The National Academy of Sciences ("NAS") also issued reports criticizing inadequate standards and funding for crime labs, examiners, and researchers. The NAS found that forensic examiners had falsely claimed for many years that they could match pattern evidence, like firearm and bite-mark evidence, to a source with "absolute" or "scientific" certainty. The NAS found that law enforcement control over crime labs is partly to blame for the problem.

The President's Council of Advisors on Science report found that review of common forensic methods including hair, bite-mark, and shoe-print analysis "have revealed a dismaying frequency of instances of use of forensic evidence that do not pass an objective test of scientific validity." With respect to bite-mark analysis, the report found that "available scientific evidence strongly suggests that ex-

aminers not only cannot identify the source of bite mark with reasonable accuracy, they cannot even consistently agree on whether an injury is a human bite mark." Nevertheless, no court in the United States has barred bite-mark evidence, despite 21 known wrongful convictions.

On April 6, 2017, six leading research scientists on the commission, led by Thomas Albright, an internationally recognized neuroscientist specializing in vision and the brain at the Salk Institute for Biological Studies, warned against ending its work. "For too long, decisions regarding forensic science have been made without the input of the research science community," the group wrote in a letter urging United States Attorney General Jeff Sessions to continue the commission's work for another two years.

Sessions was not moved. As the commission began its last, two-day meeting before its term ended, Sessions announced on April 10, 2017, that the Justice Department would not renew the commission when its term expired on April 23, 2017. He claimed that decisions about how to meet the needs of overburdened crime labs will be made by a yet-to-be-named senior adviser and a subcommittee of a Justice Department task force on violent crime that is part of President Trump's "law and order" efforts (which includes encouraging the revival of 1990s "tough-on-crime" strategies).

"It is unrealistic to expect that truly objective, scientifically sound standards for the use of forensic science...can be arrived at by entities centered solely within the Department of Justice," said U.S. District Judge Jed Rakoff of New York, who was the only federal judge on the commission. Other members who work within the criminal justice system agree, arguing that even well-intentioned prosecutors lack a scientist's objectivity and training and that the Justice Department's retreat into insularity creates a risk of repeating past mistakes.

Naturally, the National District Attorneys Association applauded Sessions for abolishing the commission. Disagreements among members of the commission had reduced it to "a think tank," yielding few accomplishments and wasted tax dollars, the association claimed.

Nothing could have been further from

the truth. Throughout the Obama presidency, the commission prompted several important reforms. For example, Attorney General Loretta Lynch accepted commission recommendations for the adoption of new accreditation and ethical standards for forensic labs and practitioners. She did, however, reject an important recommendation that would have required expert witnesses to disclose error rates in their testimony and refrain from using methods that have not been scientifically verified.

Another recommendation resulted in a \$20 million research project to study crime lab techniques used more than 100,000 times a year, including questions about how frequently claimed matches of pattern-based evidence such as complex DNA profile mixtures, firearms, and bite-mark tracing may be erroneous. The Trump Administration has ignored other recommendations, including a proposal for new, department-wide standards for examining and reporting forensic evidence in criminal courts across the nation.

Other reforms are likely an extension of the commission's work. In 2016, for example, FBI Director James Comey, who has since been fired by President Trump, asked state and local crime labs to review FBI hair-comparison cases. Criminal convictions in at least a dozen states are currently under review, according to the National Association of Criminal Defense Lawyers ("NACDL"). "We want to make sure there aren't other innocent people in jail based on our work," Comey wrote in a June 2016 letter. "Unfortunately, in a large number of cases, our examiners made statements that went too far in explaining the significance of a hair comparison and could have misled a jury or judge."

After the Justice Department and FBI admitted in 2015 that two dozen examiners in one of its forensic labs had given flawed testimony in hundreds of cases, the Obama Justice Department also initiated a 2016 review of expert testimony across several disciplines. The review was based on findings that for years nearly all FBI experts overstated and gave scientifically misleading testimony concerning FBI laboratory techniques related to the tracing of crime scene hairs based on microscopic examinations and of bullets based

Exhibit 8

Court Minutes From
March 17, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 17, 2016

C-14-296556-1 State of Nevada
 vs
 Justin Langford

March 17, 2016 8:30 AM Jury Trial

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15D

COURT CLERK: Melissa Murphy

RECORDER: Norma Ramirez

REPORTER:

PARTIES

PRESENT:	Burton, Chris	Attorney
	Langford, Justin Odell	Defendant
	McNeill, Monique A.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deliberations continued.

OUTSIDE THE PRESENCE OF THE JURY: Judge Gonzalez present. Court conducted a conference call with Ms. McNeill and Mr. Burton on the record regarding a Juror question received with respect to reasonable doubt, which was ADMITTED as Court's Exhibit 25. Court directed the Jury to Jury Instruction No. 6.

JURY PRESENT: At the hour of 1:05 p.m. the Jury returned with a written Verdict which was FILED IN OPEN COURT. JURY FOUND Deft GUILTY of COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14. JURY FOUND Deft NOT GUILTY of COUNTS 1, 3,4,5,6,7,8,9,10,11 and 12. Jury polled, thanked and excused.

PRINT DATE: 05/04/2018

Page 5 of 6

Minutes Date: March 15, 2016



C-14-296556-1

OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, Deft REMANDED into custody WITHOUT BAIL; BAIL REVOKED. COURT FURTHER ORDERED, matter REFERRED to the Division of Parole and Probation (P&P) and SET for SENTENCING.

CUSTODY

05/10/16 8:30 AM SENTENCING

PRINT DATE: 05/04/2018

Page 6 of 6

Minutes Date: March 15, 2016

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Exhibit 9

Page 10 Of Trial
TRANSCRIPT From
March 17, 2016

1 If -- and it's never happened in my five years, but
2 if somebody bothers you and persists in asking you, notify
3 Department 22. They'll notify me and I'll make sure it stops
4 immediately. That's not going to happen, but I just say that
5 in the over-abundance of caution. As I said, a lot of times
6 they'll want to know for a learning experience and it helps
7 the attorneys. So if you have the time -- I guess it's one
8 o'clock -- and you want to, they'll probably meet you on the
9 way out.

10 THE MARSHAL: What I'll do after I take them out
11 and Mr. Langford leaves, I'll bring them back in and give
12 them maybe ten minutes to talk to counsel.

13 THE COURT: Okay.

14 THE MARSHAL: And anybody that doesn't want to can
15 just head down to the third floor.

16 THE COURT: Absolutely. So again, I want to thank
17 you for your service and you're now excused.

18 (The jury is excused and exits the courtroom)

19 THE COURT: Okay, we're on the record outside the
20 presence. This matter is referred to the Department of Parole
21 and Probation for a Pre-Sentence Report and set over for entry
22 of judgment and imposition of sentence on --

23 THE CLERK: May 10th, 8:30.

24 THE COURT: The defendant is remanded to custody.
25 Is there --

Exhibit 16

Page 11 Of Trial
Transcripts from
March 17, 2016

1 MS. McNEILL: His bail is currently set at a million
2 dollars, Your Honor.

3 THE COURT: It will remain.

4 THE CLERK: Okay.

5 THE COURT: Okay, we're done.

6 (Proceedings concluded at 1:08 p.m.)

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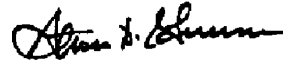
24

25



Exhibit 11

State's Opposition To
Defendant's Motion To
Compel Psychological
Records OF H.H.



CLERK OF THE COURT

1 **OPPS**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **JENNIFER CLEMONS**
6 Chief Deputy District Attorney
7 Nevada Bar #10081
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JUSTIN ODELL LANGFORD,
13 #2748452

14 Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL**
16 **PSYCHOLOGICAL RECORDS OF H.H.**

17 DATE OF HEARING: SEPTEMBER 24, 2015
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JENNIFER CLEMONS, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in State's Opposition to Defendant's
22 Motion to Compel Psychological Records of H.H.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On March 14, 2014 the State filed an Information charging Justin Langford (hereinafter
4 "Defendant") with Sexual Assault with a Minor under Fourteen Years of Age (Category A
5 Felony- NRS 200.364, 200.366), Lewdness with a Child under the Age of Fourteen (Category
6 A Felony- NRS 201.230) and Child Abuse, Neglect or Endangerment (Category B Felony-
7 NRS 200.508(1)). On June 4, 2015 the court granted the Defendant's Motion to Dismiss
8 Counsel Kevin Speed. On June 11, 2015 the court appointed Monique McNeill to represent
9 the Defendant. On June 11, 2015 the Court addressed the Defendant's Pro Per Motion for
10 Discovery and granted that motion as to Brady and Giglio material only. On September 13,
11 2015 the Defendant filed a Motion to Compel Psychological Records of H.H. The State's
12 opposition follows.

13 STATEMENT OF FACTS

Suppressed
Statement 14 → On June 21, 2014 the victim H.H. disclosed that she had been sexually abused by her
15 stepfather, Justin Langford.¹ During a forensic interview with CPS specialists Tiffany Keither
16 and Chelsea Schuster, H.H. (dob 6/22/2001) disclosed that the abuse began when she was six,
17 seven or eight years old. While at her stepfather's residence in Searchlight Nevada the
18 Defendant called H.H. into his bedroom and had H.H. take off her clothes. The Defendant
19 made H.H. and lay on the bed and the Defendant rubbed baby oil on H.H.'s legs. The
20 Defendant then placed his private parts in between her legs and rubbed himself back and forth
21 until he ejaculated. H.H. stated that the Defendant placed a white hand towel on the bed and
22 had the victim lay on the towel during the molestation incidents. The abuse continued until
23 the victim reported the abuse in January 2014. H.H. testified at the preliminary hearing held
24 on March 14, 2014 of several instances of sexual abuse committed by the Defendant. The
25 victim describes instances including the Defendant sucking on her breasts, the Defendant
26 putting his penis in her anus, the Defendant putting his penis into H.H.'s mouth more than
27

28 ¹ The Statement of Facts is a summary of the Arrest Report in this case and the victim's testimony at the preliminary hearing.

1 once, Defendant touching H.H.'s genital area with his hands and his penis, and the Defendant
2 fondling H.H.'s buttocks and/or anal area with his penis.

3 On January 21, 2014 the Las Vegas Metropolitan Police Department served a search
4 warrant on the Defendant's residence in Searchlight. Officer's recovered a white hand towel
5 that matched the description given by the victim. The police also recovered baby oil and
6 bedding. These items were tested for DNA. A stain on the white towel came back consistent
7 with a mixture of two individuals. The partial major DNA profile contributor was consistent
8 with the Defendant. The partial minor DNA profile is consistent with victim H.H.

9 ARGUMENT

10 The Defendant has filed a Motion for the psychological records of H.H. In the Motion
11 Defendant asks this Court to expand the State's Brady obligations beyond the evidence
12 required by statute and case law. The request for psychological records is overbroad and not
13 supported by Nevada statutes on discovery in criminal cases.

14 The Nevada Revised Statutes provide the discovery obligations for the State. NRS
15 174.235 outlines what discovery is to be provided by the State of Nevada. It includes:

16 1. Written or recorded statements or confessions made by the defendant or any
17 witness the State intends to call during the case in chief of the State, within the custody of the
18 State or which the State can obtain by an exercise of due diligence. (1)(a).

19 2. Results or reports of physical or mental examinations, scientific tests or
20 scientific experiments made in connection to the case, within the control of the State, or which
21 the State may learn of by an exercise of due diligence. (1)(b).

22 3. Books, papers, documents, tangible objects which the State intends to introduce
23 during its case in chief, within the possession of the State, or which the State may find by an
24 exercise of due diligence. (1)(c).

25 The statute makes clear the defense is not entitled to any internal report, document or
26 memorandum prepared by the State in connection with the investigation or prosecution of the
27 case. (2)(a). Nor is the defense entitled to any report or document that is privileged.

28 ///

1 The State recognizes and readily accepts its continuing disclosure obligation as defined
2 in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its interpretive progeny. The
3 rule in Brady requires the State to disclose to the defendant exculpatory evidence is founded
4 on the constitutional requirement of a fair trial. Brady is not a rule of discovery, however. As
5 the Supreme Court held in Weatherford v. Bursy, 429 U.S. 545, 559, 97 S.Ct. 837, 846 (1977):

6 There is no general constitutional right to discovery in a criminal
7 case, and Brady did not create one... 'the Due Process Clause has
8 little to say regarding the amount of discovery which the parties
must be afforded...' Wardius v. Oregon, 412 U.S. 470, 474 [93
S.Ct. 2208, 2212, 37 L.Ed.2d 82](1973).

9 It is the position of the Clark County District Attorney's Office to permit discovery and
10 inspection of any relevant material pursuant to the appropriate discovery statutes (NRS
11 174.235, et seq.) and any exculpatory material as defined by Brady. It should be noted that
12 under Brady, a formal request by the defense is not necessary. The case has been interpreted
13 to require prosecutors, in the absence of any specific request, to turn over all obviously
14 exculpatory material. United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976).

15 However, Brady does not require the State to conduct trial preparation and investigation
16 on behalf of the defense. The requirement is to produce exculpatory information which the
17 defense would not be able to obtain itself in an ordinary exercise of diligence. The District
18 Attorney's office will not permit discovery to be used as a vehicle wherein the State of Nevada
19 is required to investigate and prepare the defendant's case. The Defendant's request for
20 essentially anything that might become helpful to his defense is both overbroad and not
21 supported by law.

22 Giglio v. United States, 405 U.S. 150 (1972) requires that certain impeaching material
23 be disclosed as to those persons actually called as witnesses. Giglio did not create a
24 constitutional right to pretrial discovery of all potential witnesses. The right to impeach
25 witnesses is based on the Confrontation Clause of the Constitution. The United States
26 Supreme Court has held that the Confrontation Clause is not "a constitutionally compelled
27 right of pretrial discovery." United States v. Ritchie, 480 U.S. 39, 52, 107 S.Ct. 989, 999
28 (1987). Instead, the right to confrontation is a trial right, "designed to prevent improper

1 restrictions on the types of questions that defense may ask during cross-examination." Id. It
2 "does not include the power to require the pretrial disclosure of any and all information that
3 might be useful in contradicting unfavorable testimony." Id. It guarantees the opportunity for
4 effective cross-examination, "not cross-examination that is effective in whatever way, and to
5 whatever extent, the defense might wish." Id. at 53, 107 S.Ct. 999, citing Delaware v.
6 Fensterer, 474 U.S. 15, 20, 106 S.Ct. 292, 294 (1985). -

7 Based upon the foregoing, this Court is respectfully requested to continue to adhere to
8 the clear legislative scheme on criminal discovery embodied in Nevada's statutes, the
9 interpretation thereof by the Supreme Court of this State, and the opinions of the United States
10 Supreme Court in this area.

11 A. Defendant's request for H.H.'s psychological records is overbroad and not
12 supported by statute.

13 The Defendant requests the victim's mental health records from Mohave Mental Health
14 and Psychologist Lisa Schaeffer. These records are not exculpatory, nor are they within the
15 State's possession. The District Attorney's office will not permit discovery to be used as a
16 vehicle wherein the State of Nevada is required to investigate and prepare the defendant's
17 case. The Defendant's request for essentially anything that might become helpful to his
18 defense is both overbroad and not supported by law.

19 Further, the Defendant's requests for mental health records are also privileged pursuant
20 to NRS 174.235(2)(b). The following Nevada Revised Statutes state:

21 Under NRS 49.209:

22 A patient has a privilege to refuse to disclose and to prevent any
23 other person from disclosing confidential communications
24 between himself and his psychologist or any other person who is
participating in the diagnosis or treatment under the direction of
the psychologist, including a member of the patient's family.

25 Under NRS 49.225 provides as follows:

26 A patient has a privilege to refuse to disclose and to prevent any
27 other person from disclosing confidential communications among
28 himself, his doctor or persons who are participating in the

1 diagnosis or treatment under the direction of the doctor, including
2 members of the patient's family

3 Under NRS 49.252:

4 A client has a privilege to refuse to disclose, and to prevent any
5 other person from disclosing confidential communications among
6 himself, his social worker or any other person who is participating
7 in the diagnosis or treatment under the direction of the social
8 worker.

9 Therefore, Defendant is not entitled to the requested items as they are privileged and
10 confidential.

11 CONCLUSION

12 Based upon the above and foregoing Points and Authorities, Defendant's Motion
13 should be denied as the requested information is privileged, overbroad and not required by
14 statute.

15 DATED this 21st day of September, 2015.

16 Respectfully submitted,

17 STEVEN B. WOLFSON
18 Clark County District Attorney
19 Nevada Bar #001565

20 BY /s/ JENNIFER CLEMONS
21 JENNIFER CLEMONS
22 Chief Deputy District Attorney
23 Nevada Bar #10081

24 CERTIFICATE OF FACSIMILE TRANSMISSION

25 I hereby certify that service of State's Opposition to Defendant's Motion to Compel
26 Psychological Records of H.H., was made this 21st day of September, 2015, by facsimile
27 transmission to:

28 MONIQUE MCNEILL, ESQ.
FAX #369-1290

BY /s/ J. MOTL
Secretary for the District Attorney's Office

Exhibit 12

State's Opposition To Defendant's
Motion To Preclude Use Of Prejudicial
Term "Victim" At Trial


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JENNIFER CLEMONS
6 Chief Deputy District Attorney
7 Nevada Bar #10081
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JUSTIN ODELL LANGFORD,
13 #2748452

14 Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE**
16 **USE OF THE PREJUDICIAL TERM "VICTIM" AT TRIAL**

17 DATE OF HEARING: September 24, 2015
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JENNIFER CLEMONS, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in State's Opposition to Defendant's
22 Motion in Limine to Preclude Use of the Prejudicial Term "Victim" At Trial.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On March 14, 2014 the State filed an Information charging Justin Langford (hereinafter
4 "Defendant") with Sexual Assault with a Minor under Fourteen Years of Age (Category A
5 Felony- NRS 200.364, 200.366), Lewdness with a Child under the Age of Fourteen (Category
6 A Felony- NRS 201.230) and Child Abuse, Neglect or Endangerment (Category B Felony-
7 NRS 200.508(1)). On June 4, 2015 the court granted the Defendant's Motion to Dismiss
8 Counsel Kevin Speed. On June 11, 2015 the court appointed Monique McNeill to represent
9 the Defendant. On September 13, 2015 the Defendant filed a Motion in Limine to Preclude
10 use of the Prejudicial Term "Victim" at Trial. The State's opposition follows.

11 STATEMENT OF FACTS

12 → On June 21, 2014 the victim, H.H., disclosed that she had been sexually abused by her
13 stepfather, Justin Langford.¹ During a forensic interview with CPS specialists Tiffany Keither
14 and Chelsea Schuster, H.H. (dob 6/22/2001) disclosed that the abuse began when she was six,
15 seven or eight years old. While at her stepfather's residence in Searchlight Nevada the
16 Defendant called H.H. into his bedroom and had H.H. take off her clothes. The Defendant
17 made H.H. and lay on the bed and the Defendant rubbed baby oil on H.H.'s legs. The
18 Defendant then placed his private parts in between her legs and rubbed himself back and forth
19 until he ejaculated. H.H. stated that the Defendant placed a white hand towel on the bed and
20 had the victim lay on the towel during the molestation incidents. The abuse continued until
21 the victim reported the abuse in January 2014. H.H. testified at the preliminary hearing held
22 on March 14, 2014 of several instances of sexual abuse committed by the Defendant. The
23 victim describes instances including the Defendant sucking on her breasts, the Defendant
24 putting his penis in her anus, the Defendant putting his penis into H.H.'s mouth more than
25 once, Defendant touching H.H.'s genital area with his hands and his penis, and the Defendant
26 fondling H.H.'s buttocks and/or anal area with his penis.

27 ///

28 ¹ The Statement of Facts is a summary of the Arrest Report in this case and the victim's testimony at the preliminary hearing.

1 On January 21, 2014 the Las Vegas Metropolitan Police Department served a search
2 warrant on the Defendant's residence in Searchlight. Officer's recovered a white hand towel
3 that matched the description given by the victim. The police also recovered baby oil and
4 bedding. These items were tested for DNA. A stain on the white towel came back consistent
5 with a mixture of two individuals. The partial major DNA profile contributor was consistent
6 with the Defendant. The partial minor DNA profile is consistent with victim H.H.

7 ARGUMENT

8 I. Use of the Term Victim

9 The State of Nevada has made specific statutory provisions to define the term "victim."
10 NRS 217.070 defines "Victim" as follows:

11 "Victim" means:

- 12 1. A person who is physically injured or killed as the direct
13 result of a criminal act;
- 14 2. A minor who was involved in the production of
15 pornography in violation of NRS 200.710, 200.720,
16 200.725 or 200.730;
- 17 3. A minor who was sexually abused, as "sexual abuse" is
18 defined in NRS 432B.100;
- 19 4. A person who is physically injured or killed as the direct
20 result of a violation of NRS 484.379 or any act or neglect
21 of duty punishable pursuant to NRS 484.3795;
- 22 5. A pedestrian who is physically injured or killed as the direct
23 result of a driver of a motor vehicle who failed to stop at
24 the scene of an accident involving the driver and the
25 pedestrian in violation of NRS 484.219; or
- 26 6. A resident who is physically injured or killed as the direct
27 result of an act of international terrorism as defined in 18
28 U.S.C. § 2331(1).

The term includes a person who was harmed by any of
these acts whether the act was committed by an adult or a
minor.

23 The crimes that Defendant is accused of committing are listed in NRS Chapter 200,
24 Crimes against the Person, a human being; hence there must be a victim, in order to even
25 charge the crime. Following Defendant's logic that the use of the term raises an inference of
26 guilt in the jury's mind, the State could argue that by granting Defendant's motion, this Court
27 would be prejudicing the people of the State of Nevada by not allowing identification of the
28 victim as the victim, and thereby insinuating that the victim is not telling the truth. According

1 to Defendant's logic, the State and the court should be precluded from even informing the jury
2 of what Defendant is charged with as this certainly would be prejudicial to the presumption of
3 innocence.

4 Obviously, there has been no specific legislation or case law in Nevada which indicates
5 when the term "victim" is inappropriate in a courtroom, during a criminal case. Throughout
6 the years, defense attorneys have made this request with absolutely no authority or logic
7 behind it. Should the defense wish to argue that a reference to the victim does not mean
8 defendant is guilty; that is fair; however, for a Court to start limiting language and precluding
9 one word over another is a slippery slope that eventually avalanches the jury's ultimate
10 question.

11 In order to have a prosecution for sexual assault there must be a victim otherwise
12 Defendant could not be accused of the crime. The Defendant cites to three Supreme Court
13 cases from 1991, 1988 and 1985 that used the term "complaining witness" in lieu of "victim."
14 While the authors of those three opinions opted to use complaining witness there is no case
15 law suggesting the term "victim" is prejudicial. In fact numerous opinions stemming from
16 sexual assault cases have continued to use the term "victim." See, Ebeling v. State, 120 Nev.
17 401, 91 P.3d 500 (2004); 125 Nev. 265, 212 P.3d 1085 (2009); State v. Catanio, 120 Nev.
18 1030, 102 P.3d 588 (2004); Hutchins v. State, 110 Nev. 103, 867 P.2d 1136 (1994).

19 The Defendant also cites to an 1860 California case for the proposition that California
20 courts do not use the term "victim." The case the Defendant cites to, People v. Williams, 17
21 Cal. 142, 147 (1860), was a homicide case where the issue on appeal was whether the
22 Defendant was prejudiced by a jury instruction where the decedent was referred to as the
23 Defendant's victim when the defense presented was self-defense. Id. 147-148. The court
24 found in this specific case and under these specific circumstances the use of "victim" was not
25 proper. Williams is a limited and narrow exception to the standard terminology in criminal
26 cases. California courts do not have case law stating that the use of the word "victim" is
27 improper and in fact, the courts continue to use the word victim when referencing victims of
28 sexual assaults. See, People v. Vargas, 178 Cal. App. 4th 647 (Cal. App. 2d Dist. 2009);

1 People v. Mestas, 217 Cal. App. 4th 1509 (Cal. App. 3d Dist. 2013); People v. Miranda, 199
2 Cal. App. 4th 1403 (Cal. App. 2d Dist. 2011).

3 The bottom line is that the State has no intention of "overusing" the term victim. It
4 becomes an exercise in futility for the parties and this Court to spend inordinate amounts of
5 time carving out exceptions to which words can and cannot be used and which semantics are
6 prejudicial or "correct" or "incorrect." Motions and blanket rulings such as these should be
7 discouraged.

8 Defendant's motion should be denied with the understanding that any problems in
9 overuse of terminology can be addressed as the trial unfolds. Defendant should be required to
10 object contemporaneously to any one "word" that is used which may allegedly violate
11 Defendant's due process rights. Further, any jury instruction that would reference victim
12 proposed by the State would properly state the law of the State of Nevada and, if proffered by
13 the State, is appropriate.

14 **CONCLUSION**

15 Based upon the above and foregoing Points and Authorities, Defendant's Motion in
16 Limine to Preclude the State from Using the Prejudicial Term "Victim" at trial must be denied.

17 DATED this 22nd day of September, 2015.

18 Respectfully submitted,

19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

21 BY /s/ JENNIFER CLEMONS
22 JENNIFER CLEMONS
23 Chief Deputy District Attorney
Nevada Bar #10081

24 ///

25 ///

26 ///

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition to Defendant's Motion in Limine to Preclude Use of the Prejudicial Term "Victim" At Trial, was made this 22nd day of September, 2015, by facsimile transmission to:

MONIQUE MCNEILL, ESQ.
FAX #369-1290

BY /s/ J. MOTL
Secretary for the District Attorney's Office

Exhibit 13

State's Opposition To Defendant's
Motion To Compel Independent
Psychological Examination Of
Alleged Victim

1 **OPPS**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JENNIFER CLEMONS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #10081**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JUSTIN ODELL LANGFORD,
13 #2748452

14 Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL**
16 **INDEPENDENT PSYCHOLOGICAL EXAMINATION OF ALLEGED VICTIM**

17 DATE OF HEARING: SEPTEMBER 24, 2015
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JENNIFER CLEMONS, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in State's Opposition to Defendant's
22 Motion to Compel Independent Psychological Examination of Alleged Victim.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

POINTS AND AUTHORITIES**STATEMENT OF THE CASE**

On March 14, 2014 the State filed an Information charging Justin Langford (hereinafter "Defendant") with Sexual Assault with a Minor under Fourteen Years of Age (Category A Felony- NRS 200.364, 200.366), Lewdness with a Child under the Age of Fourteen (Category A Felony- NRS 201.230) and Child Abuse, Neglect or Endangerment (Category B Felony- NRS 200.508(1)). On June 4, 2015 the court granted the Defendant's Motion to Dismiss Counsel Kevin Speed. On June 11, 2015 the court appointed Monique McNeill to represent the Defendant. On September 13, 2015 the Defendant filed a Motion to Compel Independent Psychological Examination of Alleged Victim. The State's opposition follows.

STATEMENT OF FACTS

On June 21, 2014 the victim, H.H., disclosed that she had been sexually abused by her stepfather, Justin Langford.¹ During a forensic interview with CPS specialists Tiffany Keither and Chelsea Schuster, H.H. (dob 6/22/2001) disclosed that the abuse began when she was six, seven or eight years old. While at her stepfather's residence in Searchlight Nevada the Defendant called H.H. into his bedroom and had H.H. take off her clothes. The Defendant made H.H. and lay on the bed and the Defendant rubbed baby oil on H.H.'s legs. The Defendant then placed his private parts in between her legs and rubbed himself back and forth until he ejaculated. H.H. stated that the Defendant placed a white hand towel on the bed and had the victim lay on the towel during the molestation incidents. The abuse continued until the victim reported the abuse in January 2014. H.H. testified at the preliminary hearing held on March 14, 2014 of several instances of sexual abuse committed by the Defendant. The victim describes instances including the Defendant sucking on her breasts, the Defendant putting his penis in her anus, the Defendant putting his penis into H.H.'s mouth more than once, Defendant touching H.H.'s genital area with his hands and his penis, and the Defendant fondling H.H.'s buttocks and/or anal area with his penis.

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On January 21, 2014 the Las Vegas Metropolitan Police Department served a search warrant on the Defendant's residence in Searchlight. Officer's recovered a white hand towel that matched the description given by the victim. The police also recovered baby oil and bedding. These items were tested for DNA. A stain on the white towel came back consistent with a mixture of two individuals. The partial major DNA profile contributor was consistent with the Defendant. The partial minor DNA profile is consistent with victim H.H.

ARGUMENT

In Abbott v. State, 138 P.3d 462 (2006), the Nevada Supreme Court departed from a two year old precedent by overruling State v. District Court (Romano), 120 Nev. 613, 97 P.3d 594 (2004). In doing so, the Court returned to the requirements it previously set forth in Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000), reasserting that a trial judge should order an independent psychological or psychiatric examination of a child victim in a sexual assault case only if the defendant presents a compelling reason for such an examination.

The defendant has made no such showing.

In Koerschner the Court stated;

The primary source of ambiguity in our decisions in these cases centers on the second Keeney factor, i.e., whether the victim is not shown by compelling reasons to be in need of protection. See Griego, 111 Nev. at 450, 893 P.2d at 999. We now conclude that, to the extent Keeney shifted the burden in these matters from the defendant to the State, it should be overturned. In this, we return to the statement in Washington that "[t]he trial judge should order an examination if the defendant presents a compelling reason for such an examination. Washington v. State, 96 Nev. 305, 307, 608 P.2d 1101, 1102 (1980). We now also hold that whether a compelling need exists for such an intrusion is not a factor to be considered along with the other three factors. Rather, it is the overriding judicial question which must be resolved based upon the other three factors.² Thus, compelling reasons to be weighed,

² Keeney words the second factor, in terms of whether "the victim is not shown by compelling reasons to be in need of protection." Keeney v. State, 109 Nev. 220, 226, 850 P.2d 311, 315 (1993). This assumes that an examination should be ordered unless the State met a burden of proving that the victim is in need of protection. As noted, this changed the statement of the rule as articulated in Washington. We have therefore reworded this consideration so that the burden is on the defendant to prove, based upon the other three former Keeney factors, that compelling circumstances exist to justify the intrusion.

not necessarily to be given equal weight, involve whether the State actually calls or obtains some benefit from an expert in psychology or psychiatry, whether the evidence of the offense is supported by little or no corroboration beyond the testimony of the victim, and whether there is a reasonable basis for believing that the victim's mental or emotional state may have affected his or her veracity.³

Id. at 1116 – 1117, 13 P.3d at 455.

The first factor to consider in determining whether Defendant has proven that a compelling need exists to force the victim to undergo an intrusive psychological evaluation is whether the State has hired such an expert? The answer is NO. The State has not hired an expert in the field of psychology or psychiatry in this case for the purpose of examining H.H. for trial of this matter. Defendant attempts to rely upon the State's notice of Dr. Sandra Cetl as a reason to satisfy this first prong. Dr. Sandra Cetl is not an expert in psychology. She is a medical doctor who performs sexual assault exams. Therefore, her testimony and expertise is limited to her opinions and findings on the physical sexual assault exams. She is not qualified to give an opinion on the credibility of the victim, and therefore will not be testifying as an expert in that area.

The first prong of Koerschner relies on notice that an expert will testify in a certain manner. Unless and until the State notifies Defendant that an expert in psychology/psychiatry has been retained, has in fact examined the victim and will testify as to the findings of that examination; or the State notifies Defendant that another witness will give testimony of something, *other than percipient facts*, Defendant has not shown that the State has benefited from an expert and consequently cannot meet his burden for the first prong of Koerschner.

Pursuant to the second prong of Koerschner, this Court must also examine whether the Defendant has shown that evidence of the crimes has little or no corroboration beyond the testimony of the victim in this case. A psychological examination ordered because the victim's

³ Keeney does not hold that an independent examination may never be ordered unless the State calls or obtains benefit from an expert. Rather, it holds that error is committed when a defendant in a child-victim case is refused such an examination if the State has the benefit of an expert analysis and the other three factors are satisfied. There may be situations where the veracity of a child witness may be brought into question because of his or her emotional or mental state, even though the State has had no access to or benefit from an expert.

1 testimony is uncorroborated would be counterproductive. The only possible reason for an
2 evaluation of the victim to be performed for this reason would be to attack veracity, which is
3 prohibited by Nevada Law. Further, in this case H.H stated that the Defendant would place a
4 white hand towel under her when the Defendant committed the various sexual abuse crimes
5 to her. She stated that he kept this towel in his nightstand. She also stated that the Defendant
6 used baby oil on her legs when he would rub his penis on her. When police executed a search
7 warrant at the Defendant's residence they located a towel and baby oil in the exact location
8 the victim described. Further, DNA testing identified DNA from a stain on the towel
9 consistent with DNA from both the Defendant and H.H. Therefore, corroboration exists in
10 this case.

11 In Lickey v. State, 108 Nev. 91, 827 P.2d 824 (1992) the court ruled that it is error to
12 permit the State to have a psychologist testify as to the veracity of a victim. Id. at 826. The
13 Court went on to cite Townsend v. State, 103 Nev. 113, 734 P.2d 705 (1987) by recalling that
14 they unequivocally stated that it was improper for an expert to comment directly on whether
15 the victim's testimony was truthful, because that would invade the prerogative of the jury. Id.
16 at 827. If it was error in Lickey for the State to have an expert testify as to the veracity of a
17 victim, then it is certainly error for a defense expert to testify in the same manner. Hence, any
18 testimony that the expert could offer because of the lack of significant corroboration of the
19 victim's testimony would go to the veracity of the victim's testimony and would consequently
20 be inadmissible pursuant to Lickey. The expert's testimony would further avalanche the
21 purpose of the jury. Moreover, to allow the defense expert to testify in any way concerning
22 the lack of corroboration of the victim's account of the crime, would serve to confuse the
23 members of the jury.

24 In distinguishing Lickey, the Nevada Supreme Court in Cordova v. State, 116 Nev.
25 664, 6 P.3d 481 (2000) stated:

26 Cordova contends that the detective improperly testified on Cordova's veracity
27 and guilt under Nevada case law. An expert may not comment on a witness's
28 veracity or render an opinion on a defendant's guilt or innocence. See Lickey v.
State, 108 Nev. 191, 196, 827 P.2d 824, 827 (1992); Winiarz v. State, 104 Nev.
43, 50-51, 752 P.2d 761, 766 (1988). This case law is not precisely on point
here. The detective did not testify as an expert, nor did he comment on Cordova's



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1 veracity as a witness. However, the detective's opinion on the truthfulness of
2 Cordova's confession did implicate the ultimate question of guilt or innocence,
3 and we recognize the possibility that jurors "may be improperly swayed by the
4 opinion of a witness who is presented as an experienced criminal investigator."
5 Sakeagak v. State, 952 P.2d 278, 282 (Alaska Ct.App.1998).

6 Id. at 669, 6 P.3d at 485. (Emphasis added).

7 Any defense expert who is permitted to examine the victim and later testify concerning
8 the truth of her uncorroborated testimony will be presented to the jury as an expert and may
9 improperly sway the jury by virtue of their opinion. This is exactly why experts are not
10 permitted to comment on the veracity of another witness.

11 In 2005 the Nevada Supreme Court in Gaxiola v. State, 121 Nev. 638, 119 P.3d 1225
12 (2005), reiterated its long standing opinion concerning the uncorroborated testimony of a
13 sexual assault victim by stating: "This court has repeatedly stated that the uncorroborated
14 testimony of a victim, without more is sufficient to uphold a rape conviction." Id. at 1232.
15 Before the jury is given a case for deliberation they will be instructed by the Court: "There is
16 no requirement that the testimony of a victim of sexual offenses be corroborated, and her
17 testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a
18 verdict of guilty." This instruction, or one similar to it, which correctly states Nevada Law
19 pursuant to Gaxiola will be given to the jury.

20 On the one hand the jury has the ability to discern the believability of the
21 uncorroborated testimony of the victim for the purpose of determining the guilt or innocence
22 of the defendant. But on the other hand, this responsibility is removed from them and placed
23 in the hands of a defense expert when the uncorroborated testimony of the victim is a factor in
24 the analysis of whether or not to subject the victim to a harassing and intrusive examination.
25 There can be no other purpose for an expert's examination relating to the uncorroborated
26 testimony of the victim than to cast doubt on his veracity. Since the testimony of the defense
27 expert would be inadmissible as to the victim's veracity, or more specifically the truthfulness

28 ⁴ State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996); Washington v. State, 112 Nev. 1067, 1073, 922 P.2d 547, 551 (1996); Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994); Rembert v. State, 104 Nev. 680, 681, 766 P.2d 890, 891 (1988); Deeds v. State, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981); Henderson v. State, 95 Nev. 324, 326, 594 P.2d 712, 713 (1979); Bennett v. Leypoldt, 77 Nev. 429, 432, 366 P.2d 343, 345 (1961); Martinez v. State, 77 Nev. 184, 189, 360 P.2d 836, 838 (1961); State v. Diamond, 50 Nev. 433, 437, 264 P. 697, 698 (1928).

1 of her mainly uncorroborated testimony, the psychiatric examination based on the amount of
2 corroboration of her testimony becomes an exercise in futility and an unnecessary burden for
3 the victim to bear. Counsel for Defendant will have more than an ample opportunity to cast
4 doubt on the truthfulness of the victim's testimony on cross examination at trial.

5 The Defendant mentions the fact that the victim has received counseling since reporting
6 the abuse as a reason why an independent psychological exam should be conducted. This is
7 not a factor for the court to consider in making its analysis of whether a compelling reason for
8 an exam exists.⁵ The fact that a victim of sexual abuse has chosen to get counseling to address
9 the ramifications of being abused does not trigger a court to order an invasive psychological
10 exam as part of the criminal case. No statutes nor case law support this proposition.

11 Finally, this Court must consider whether the Defendant has shown that there is a
12 reasonable basis to believe that the victim's mental or emotional state may have affected her
13 veracity. In this case, Defendant has presented no evidence and has shown nothing in the
14 record to suggest that the victim was suffering from any kind of mental or emotional state that
15 would affect her ability to be truthful in this matter. The fact that the victim stated during
16 interviews that the Defendant physically abused her, physically abused her mother, and that
17 he preferred his biological daughter over H.H., does not rise to the level that proves the victim
18 was suffering from any kind of mental or emotional state that would affect her ability to be
19 truthful. Counsel for the Defendant can certainly cross exam the victim regarding these
20 statements to show bias or motive, but H.H.'s opinions, observations and personal feelings
21 regarding the dynamics of the household do not provide any evidence of mental or emotional
22 illness that would trigger a psychological exam. These factors coupled with the lack of any
23 benefit derived by the State from an expert witness requires that the instant motion be denied.

24 ///

25 ///

26 ///

27

28 ⁵ Defendant also states that the State does not intend to obtain counseling records or provide them to the defense. This
issue was fully briefed in the State's Opposition to the Defendant's request for H.H.'s psychological records so the State
will not readdress the discovery issue here.

II.
**ORDERING A VICTIM TO SUBMIT TO PSYCHOLOGICAL
TESTING FOR PURPOSE OF DETERMINING CREDIBILITY
UNDERMINES THE ROLE OF THE JURY**

The State understands the law as it currently exists as stated above. However, it is the State's position that a victim of sexual assault should never be forced to endure something as intrusive and harassing as a psychological examination unless it has a purpose other than to cast doubt on the veracity of the victim. For the most part, psychological testing of sexual assault victims is requested by the defense as a means for discovering impeachment evidence to use against the victim. This is an improper method for defense to discover impeachment evidence or to attack the credibility of the victim. It is one thing to attempt to impeach a witness's credibility by the introduction of evidence showing for instance a background of hospitalization and psychiatric care. However, it is quite another to have a witness undergo a mental examination for the direct purpose of enabling the other side to impeach his testimony. People v. Souvenir, 373 N.Y.S.2d 824, 826-27 (1975). Furthermore, where a judge orders a psychological test for a sexual assault victim and the competency of the victim is not at issue, the court is infringing on the jury's duty to assess credibility.

Pursuant to established law in Nevada, it is the jury's function, not that of the court or a psychiatrist, to assess the credibility of witnesses and the weight of the evidence. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). In refusing to allow psychological testing of sexual assault victims, the Supreme Court of North Carolina reasoned:

As we have seen, competency [of a witness] is for the judge, not the jury. Credibility, however, is of the jury -- the jury is the lie detector in the courtroom. It is now suggested that psychiatrists and psychologists have more expertise than either judges or juries, and that their opinions can be of value to both juries and judges in determining the veracity of witnesses. Perhaps. The effect of revering such testimony, however, may be two-fold: first, it may cause juries to surrender their own common sense in weighing testimony; second, it may produce a trial within a trial on what is a collateral but still important matter.

State v. Clontz, 286 S.E.2d 793, 796 (N.C. 1982), citing with approval United States v. Banard, 490 F.2d 907, 912-13 (9th Cir. 1973).

1 By allowing courts to order victims to submit to psychiatric tests for the purpose of
2 accessing credibility, the door will be opened to a battle of experts. There is no reason why
3 defendants will not request that each of the state's witnesses submit to a psychological test. In
4 this era of increasing use of experts in both civil and criminal trials, the sad truth is that an
5 "expert" can be found to testify on behalf of almost any viewpoint or position. Wisely, we
6 have historically left credibility determinations to the trier of fact. See, United States v.
7 Ramirez, 871 F.2d 582, 585 (6th Cir. 1989).

8 III.

9 JUSTICE DOES NOT REQUIRE SEXUAL ASSAULT VICTIMS 10 TO SUBMIT TO PSYCHOLOGICAL EXAMINATIONS

11 A psychological examination of a sexual abuse victim is not a constitutional guarantee.
12 United States v. Riley, 657 F.2d 1377, 1387 (8th Cir. 1981). A defendant's constitutional
13 rights to confront witnesses and to present evidence on his own behalf are clearly protected
14 without a psychological evaluation of the victim. When California enacted Penal Code 1112,
15 prohibiting courts from ordering psychological testing of sexual assault victims, California
16 courts found that the statute did not violate a defendant's rights under the Confrontation
17 Clause. People v. Fleming, 189 Cal.Rptr. 619, 621 (1983) (overruled on other grounds). A
18 Texas Court of Appeals also found that psychological tests of victims are not necessary to
19 preserve a defendant's right to confront and cross-examine the witness. State v. Lanford, 764
20 S.W.2d 593, 594 (Tex. 1989). See also, People v. Glover, 273 N.E.2d 367, 369-70 (1971)
21 (holding that defendant's due process and equal protection rights were not violated by court's
22 denial of request to have sexual abuse victim submit to psychiatric exam).

23 Defendants have a host of tools available to ensure that the witness is telling the truth,
24 which eliminate the need for a psychological evaluation of the victim. The traditional methods
25 of assessing credibility of a witness are adequate. Defendants are afforded the opportunity to
26 cross-examine the victim and to present jury instructions regarding credibility. "A
27 zealous concern for the accused is not justification for a grueling and harassing trial of the
28

1 victim as condition precedent to bring the accused to trial." State v. Looney, 240 S.E.2d. 612,
2 627 (N.C. 1978).

3 IV.

4 **ORDERING A PSYCHOLOGICAL EVALUATION RE-VICTIMIZES A SEXUAL**
5 **ASSAULT VICTIM**

6 The ability to force a victim to submit to psychological testing does not appear to be a
7 right that exists for defendants in other types of criminal cases. Thus, it appears that victims
8 of sexual assault are open to attack merely because of the nature of the offense perpetrated
9 against them. There is no more justification for court to order victim of sexual assault to submit
10 to psychiatric evaluation than there is for every other witness in every criminal case to be asked
11 to submit to an examination. See People v. Sourvenir, 373 N.Y.S.2d 824, 827 (1975). While
12 it is important to ensure that the defendant's rights to present evidence and to confront his
13 accuser are preserved, these rights must be weighed against the rights of the victim to be free
14 from humiliating and formidable psychological exams which probe for the existence of
15 information that may or may not discredit them as a witness.

16 **A. Court Ordered Psychological Evaluations Constitute an Invasion of the Victims'**
17 **Right to Privacy**

18 Even without a court ordered psychological evaluation, the road for a sexual assault
19 victim can be formidable and humiliating. Often victims must submit to an intrusive physical
20 exam, confront their attacker in court, testify regarding personal details of the sexual assault
21 in open court, and be subject to an often severe cross examination by the defense. It would be
22 insensitive to argue that the burden of submitting to a psychological evaluation would have a
23 minimal impact on the victim. U.S. v. Dildy, 39 F.R.D. 340, 343 (D.C. 1966).

24 The Nevada Legislature has recognized the hardships that victims of sexual assault
25 must endure. In NRS 200.377, the Nevada Legislature made findings regarding victims of
26 sexual assault:

27 ///

28 ///

The legislature finds and declares that:

1. This state has a compelling interest in assuring that the victim of a sexual assault:

(a) Reports the assault to the appropriate authorities;

(b) Cooperates in the investigation and prosecution of the assault; and

(c) Testifies at the criminal trial of the person charged with committing the assault.

2. The fear of public identification and invasion of privacy are fundamental concerns for the victims of sexual assault. If these concerns are not addressed and the victims are left unprotected, the victims may refrain from reporting and prosecuting sexual assaults.

3. A victim of a sexual assault may be harassed, intimidated and psychologically harmed by a public report that identifies the victim. A sexual assault is, in many ways, a unique, distinctive and intrusive personal trauma. The consequences of identification are often additional psychological trauma and the public disclosure of private personal experiences.

4. Recent public criminal trials have focused attention on these issues and have dramatized the need for basic protections for the victims of sexual assault.

5. The public has no overriding need to know the individual identity of the victim of a sexual assault.

6. The purpose of NRS 200.3771 to 200.3774, inclusive, is to protect the victims of sexual assault from harassment, intimidation, psychological trauma and the unwarranted invasion of their privacy by prohibiting the disclosure of their identities to the public.

In addition, the adoption of the rape shield law, NRS 50.090, indicates the Nevada Legislature's concern for the privacy of sexual assault victims. Among the purposes of the rape shield law is the need to protect sexual assault victims from degrading and embarrassing disclosure of details about their private life and to encourage rape victims to come forward and report crimes and testify in court. Johnson v. State, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997). Allowing trial courts to compel sexual assault victims to submit to unnecessary psychological testing contravenes the Nevada Legislature's stated intent to protect sexual abuse victims from invasion of their privacy.

Unnecessary and compelled psychological testing inhibits society's interest in prosecuting perpetrators of sexual assault by discouraging victims from coming forward to report the crimes. The fear of embarrassment and invasive psychological testing will prevent victims from reporting sexual assault to the proper authorities. The continuous accumulation of intimidating and indelicate procedural probings, tend to relegate to silence all but the most

1 hardened victims. As we induce such silence in the victim, we discourage the victim from
2 registering her complaint. United States v. Dildy, 39 F.R.D. 340, 343 (1966).

3 Discouraging the reporting of sexual abuse is not in the public interest. Further,
4 harassing victims of sexual assault by requiring them to submit to psychological examinations
5 contravenes the Nevada Legislature's interest in encouraging victims to report sexual assault
6 and testify for the prosecution.

7 In addition, where a victim's testimony is conditioned on submitting to a psychological
8 evaluation, witnesses will be even less willing to testify. Absent a statute, there is no authority
9 to enforce a court's order for psychological testing when a witness refuses to submit to the
10 order. Thus, where a victim refuses to submit to testing, a material witness is lost and the
11 State's ability to prosecute sexual assaults decreases. This could severely handicap the State's
12 prosecution of sexual assault cases. The public interest in prosecuting sexual assault cases
13 will not be served where sexual assault victim's enthusiasm to testify is chilled due to court
14 ordered psychological testing. The tremendous invasion of a sexual assault victim's privacy
15 and the danger of decreased reporting of sexual assault cases substantially outweigh any
16 benefit to a defendant of psychological testing of sexual assault victims.

17 At least for the time being in Nevada, the overriding judicial question this Court must
18 consider pursuant to Abbott and Koerschner, is whether the defendant has proved, based upon
19 the presence or absence of the aforementioned factors, that compelling circumstances exist to
20 justify an extremely harassing and intrusive examination of the victim which will undoubtedly
21 cause her to unnecessarily relive horrible experiences. In the instant case, Defendant has
22 completely failed to meet his burden and his motion should be denied.

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Ex Post Facto Violation

V.

**THE NEVADA LEGISLATURE HAS PASSED A BILL THAT WILL PRECLUDE
THE COURT FROM ORDERING A PSYCHOLOGICAL OR PSYCHIATRIC
EXAMINATION IN ANY CRIMINAL OR JUVENILE DELINQUENCY MATTER
REALTING TO THE COMMISSION OF A SEXUAL OFFENSE**

The Nevada legislature addressed this very issue in the past legislative session and passed Assembly Bill No. 49, section 24 which reads:

1. In any criminal or juvenile delinquency action relating to the commission of a sexual offense, a court *may not* order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.

2. The court may exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on the victim or witness if:

(a) There is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness by a licensed psychologist, psychiatrist or clinical worker; and

(b) The victim or witness refuses to submit to an additional psychological or psychiatric examination by a licensed psychologist, psychiatrist or clinical worker.

3. In determining whether there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness pursuant to subsection 2, the court must consider whether:

(a) There is a reasonable basis for believing that the mental or emotional state of the victim or witness may have affected his or her ability to perceive and relate events relevant to the criminal prosecution; and

(b) Any corroboration of the offense exists beyond the testimony of the victim or witness.

4. If the court determines there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness, the court shall issue a factual finding that details with particularity the reasons why an additional psychological or psychiatric examination of the victim or witness is warranted.

5. If the court issues a factual finding pursuant to subsection 4 and the victim or witness consents to an additional psychological or psychiatric examination, the court shall set the parameters for the examination consistent with the purpose of determining the ability of the victim or witness to perceive and relate events relevant to the criminal prosecution.

(emphasis added)(State's exhibit 1).

The effective date of the new law is October 1, 2015. While the District Court is currently not **prohibited** from ordering a psychological examination of the victim, this will not be the case come October 1, 2015. Assembly Bill 49 forbids the Court from ordering a psychological exam of a victim unless the State uses a psychological expert *and* there is a

Exhibit 14

Social Security Administration

Disability Decision



SOCIAL SECURITY ADMINISTRATION

Office of Disability Adjudication and Review
SSA Office Of Hearings
Suite 4452
333 Las Vegas Blvd S.
Las Vegas, NV 89101-7065

Date: January 22, 2018

Justin O. Langford
High Desert State
Prison
1159546
P.O. Box 650
Indian Springs, NV 89070

Notice of Decision – Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Form HA-L76 (03-2010)

Suspect Social Security Fraud?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

See Next Page

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

Your Right To Representation In An Appeal

If you appeal, you may choose to have an attorney or other person help you. Many representatives do not charge a fee unless you win your appeal. Groups are available to help you find a representative or, if you qualify, to give you free legal services. Your local Social Security office has a list of groups that can help you in this process.

If you get someone to help you with your appeal, you or that person must let the Appeals Council know. If you hire someone, we must approve the fee before he or she is allowed to collect it.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (866)613-9963. Its address is:

Social Security
1250 S Buffalo Dr
Suite 150
Las Vegas, NV 89117-8329

Donald R. Colpitts
Administrative Law Judge

Enclosures:
Decision Rationale

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

DECISION

IN THE CASE OF

Justin O. Langford
(Claimant)

(Wage Earner)

CLAIM FOR

Period of Disability, Disability Insurance
Benefits, and Supplemental Security Income

554-73-2615

(Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before me on remand from the Appeals Council. The claimant appeared and testified at a hearing held on May 23, 2017, in Las Vegas, NV. Alan E. Cummings, an impartial vocational expert, also appeared at the hearing. Although informed of the right to representation, the claimant chose to appear and testify without the assistance of an attorney or other representative.

The claimant is alleging disability since August 5, 2008.

The claimant submitted or informed the Administrative Law Judge about all written evidence at least five business days before the date of the claimant's scheduled hearing (20 CFR 404.935(a) and 416.1435(a)).

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through June 30, 2010. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

If the claimant is under a disability and there is medical evidence of a substance use disorder(s), there is an additional issue as to whether the substance use disorder(s) is a contributing factor material to the determination of disability under sections 223(d)(2) and 1614(a)(3)(j) of the Social Security Act. If so, the individual is not under a disability.

See Next Page

After careful review of the entire record, I find that the claimant has been disabled from August 5, 2008, through the date of this decision. I also find that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, I must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, I must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1522 and 416.922; Social Security Rulings (SSRs) 85-28 and 16-3p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, I must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, I must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, I must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

See Next Page

Next, I must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b) and 416.965). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), I must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(f), 404.1560(c), 416.912(f) and 416.960(c)).

If it is found that the claimant is disabled and there is medical evidence of a substance use disorder(s), I must determine if the substance use disorder(s) is a contributing factor material to the determination of disability. In making this determination, I must evaluate the extent to which the claimant's mental and physical limitations would remain if the claimant stopped the substance use. If the remaining limitations would not be disabling, the substance use disorder(s) is a contributing factor material to the determination of disability (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

- 1. The claimant's date last insured is June 30, 2010.**
- 2. The claimant has not engaged in substantial gainful activity since August 5, 2008, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).**

The claimant worked after the established disability onset date and has earnings of \$1,300.30 in 2009, \$234.00 in 2010 and \$7,619.02 in 2013. (Exhibit 7D). However, this work activity did not rise to the level of substantial gainful activity.

- 3. The claimant has the following severe impairment: bipolar disorder (20 CFR 404.1520(c) and 416.920(c)).**

See Next Page

The above medically determinable impairments significantly limit the ability to perform basic work activities as required by SSR 85-28.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

The claimant has the following degree of limitation in the four broad areas of mental functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: a moderate limitation in understanding, remembering, or applying information, a moderate limitation in interacting with others, a moderate limitation in concentrating, persisting, or maintaining pace, and a mild limitation in adapting or managing oneself.

5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform a full range of work at all exertional levels but with the following nonexertional limitations: the claimant is unable to sustain full-time work due to symptoms of his bipolar disorder.

In making this finding, I have considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSR 16-3p. I also considered the medical opinion(s) and prior administrative medical finding(s) in accordance with the requirements of 20 CFR 404.1520(c) and 416.920(c).

In considering the claimant's symptoms, I must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and effects of the claimant's symptoms to determine the extent to which they limit the claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, I must consider other evidence in the record to determine if the claimant's symptoms limit the ability to do work-related activities.

The claimant is a 35-year-old man with a history of bipolar disorder. Treatment notes from Southern Nevada Adult Mental Health Services ("SNAMHS") in 2012 reveal that the claimant complained of mood swings, irritability and violent outbursts. He reported a history of inpatient treatment at Rawson Neal in 2009 for mood swings and agitation. He reported none or temporary improvement in his symptoms with medications, and that the medications were

See Next Page

causing adverse side effects, such as nausea and vomiting. Treatment notes reveal that the claimant was not stable. (Exhibit 1F). Treatment notes from Dr. Ron Zedek in 2013 reveal that the claimant continued to report mood swings and irritability. (Exhibit 3F).

Little weight is given to the psychological consultative examiner and state agency psychological consultant's opinions because they are inconsistent with the record. (Exhibit 4F, 5F). Specifically, the record supports a finding of limitations greater than those found by them.

In assessing the evidence on this issue, I have not failed to consider the non-medical opinions in the record by the claimant's girlfriend, Shayleen Coon. SSR 16-3p. I find that Ms. Coon's opinion is consistent with the record. Accordingly, great weight is given to her opinion. (Exhibit 6E).

After careful consideration of the evidence, I find that the claimant's medically determinable impairment could reasonably be expected to cause the alleged symptoms. The claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are reasonably consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

Based on the claimant's work history and income records, I find that the claimant has past relevant work as a truck driver, medium, semiskilled. (Exhibits 7D, 8E, Vocational Expert Testimony). The vocational expert, in response to a question from me that accurately reflected the above residual functional capacity, compared the requirements of the past relevant work to the claimant's restrictions and found that the claimant was not capable of performing the past relevant work. After a review of the evidence and a comparison between the functioning of the claimant and the requirements of the position, I find that the claimant is unable to perform the past relevant work.

7. The claimant was a younger individual age 18-49 on the established disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

The claimant's ability to perform work at all exertional levels has been compromised by nonexertional limitations. To determine the extent to which these limitations erode the occupational base of unskilled work at all exertional levels, I asked the vocational expert whether

See Next Page

jobs exist in the national economy for an individual with the claimant's age, education, work experience, and residual functional capacity. The vocational expert testified that given all of these factors there are no jobs in the national economy that the individual could perform.

Based on the testimony of the vocational expert, I conclude that the claimant is unable to make a successful vocational adjustment to work that exists in significant numbers in the national economy. A finding of "disabled" is therefore appropriate under the framework of section 204.00 in the Medical-Vocational Guidelines.

11. The claimant has been under a disability as defined in the Social Security Act since August 5, 2008, the alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

12. The claimant's substance use disorder is not a contributing factor material to the determination of disability (20 CFR 404.1535 and 416.935).

Applying the sequential evaluation process a second time, the claimant's other impairment would not improve to the point of nondisability in the absence of the substance use disorder. The claimant reported a history of substance abuse until 2007. Treatment notes reveal that despite the claimant's abstention from illegal substance, the claimant continued to experience symptoms of bipolar disorder that causes more than a minimal effect on his ability to function. (Exhibit 1F). Accordingly, the claimant would still be disabled in the absence of the substance use disorder.

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 23, 2011, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since August 5, 2008.

Based on the application for supplemental security income protectively filed on September 23, 2011, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since August 5, 2008.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

It is recommended that a determination be made concerning the appointment of a representative payee who can manage payments in the claimant's interest.

The workers' compensation offset provisions at 20 CFR 404.408 may be applicable.

See Next Page

/s/ Donald R. Colpitts

Donald R. Colpitts
Administrative Law Judge

January 22, 2018

Date

Certificate of Service

I, Justin Odell Langford[®], certify that I've attached Affidavit of Writ of Habeas Corpus with special instructions for electronic filing/Service to the Clerk of Court to serve all of my opponents at the following:

Warden Renee Baker
LCC
1200 Prison Rd.
Lovelock, Nv 89419

District Attorneys Office
200 Lewis Ave.
Las Vegas, NV 89155

Verification

I, Justin Odell Langford[®], declare, and verify, under the Pains and Penalties of perjury that I have read the foregoing, and that it is true and correct to the best of my knowledge Pursuant to 28 U.S.C. §1764 and 18 U.S.C. §1621.

Without Prejudice / All Rights Reserved
Justin Odell Langford
Petitioner, Sui juris

Post in Outer Envelope - [1159]
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89400

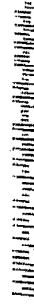
Lovelock Correctional Center



8th Judicial District Court
Office of the Court Clerk
200 Lewis Avenue
Las Vegas, NV 89155

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PPOW

FILED

NOV 29 2018

John L. Johnson
CLERK OF COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Justin Langford,

Petitioner,

vs.

Warden Renee Baker,

Respondent,

Case No: A-18-784811-W
Department 15

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on November 19, 2018. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 28th day of January, 2019, at the hour of

9 o'clock for further proceedings.

RECEIVED

Joel Hardy
District Court Judge BM
November 28, 2018

A-18-784811-W
OPWH
Order for Petition for Writ of Habeas Corpus
4799845



NOV 26 2018

CLERK OF THE COURT

NOV 29 2018

MTN
Justin Odell Langford ©-[1159546]
LCC
c/o 1200 Prison Road
Lovelock, NV 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

27
FILED
DEC 10 2018
CLERK OF COURT

JUSTIN ODELL LANGFORD, ©
Petitioner,
-VS-
Warden Renee Baker,
Respondent,

Case No: A-18-784811-W
C-14-296556-1
Dept No: XV

Motion For Continuance

COMES NOW, Justin Odell Langford, The Living Breathing Man (Natural Person) and moves this Honorable Court to grant this Motion For Continuance. What I'm asking for is a sixty (60) day continuance so I can file an opposition to the States Opposition which they will file at the last second. along with sending me a copy and me filing any other motion's that need to be heard before petition is heard and decision made on it.

Dated this 4th day of December, 2018.
All Rights Reserved / Without Prejudice

/s/ Justin Odell Langford

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DEC 10 2018
CLERK OF THE COURT

A-18-784811-W
MOT
Motion
4802707



Justin Udeil Langford 2-11-15 1546
LCC
701200 Prison Road
Lovelock, NV 00000

Lovelock Correctional Center



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89101#6300 C075



Clerk of Court
200 Lewis Ave.
Las Vegas, NV 89155

LCOLA/AVT-C07

DEC 05 2017

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NOTC
Justin Odell Langford[©] - [1159546]
LCC
% 1200 Prison Road
Lovelock, Nv 89500

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FILED
DEC 10 2018
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD[©]
Plaintiff Petitioner,
-VS-

Case No. A-18-784811-W;
C-14-296556-1

Dept No. XV

Warden Renee Baker,
Respondent.

Judicial Notice

To Judge Joe Hardy I don't know why there was a new case number assigned to the Writ of Habeas Corpus In this case, but under ~~the~~ normal procedures it is filed under the criminal case it is concerning. I ~~am~~ figure the court clerk just did what they wanted to do. if possible can you please have consolidated with the criminal case it concerns. if not can you please explain why this is being done.

Dated this 4th day of December, 2018.


All Rights Reserved/Without Prejudice

/s/ Justin Odell Langford

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DEC 10 2018
CLERK OF THE COURT

A-18-784811-W
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Notice
4902709





1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 **JUSTIN ODELL LANGFORD,**
14 **#2748452**

15 Defendant.

CASE NO: **A-18-784811-W**
C-14-296556-1

DEPT NO: **XV**

16
17 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR**
18 **WRIT OF HABEAS CORPUS (POST-CONVICTION)**

19 DATE OF HEARING: **JANUARY 28, 2019**
20 TIME OF HEARING: **9:00 AM**

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in Response to Defendant's Petition for Writ of
24 Habeas Corpus (Post-Conviction).

25 This response is made and based upon all the papers and pleadings on file herein, the
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if
27 deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 14, 2014, JUSTIN ODELL LANGFORD (hereinafter “Defendant”) was
4 charged by way of Information in Case No. C-14-296556-1 with the following: COUNTS 1,
5 2, 6, 7, 8, 10, 11, and 12 – Lewdness With A Child Under The Age Of 14 (Category A Felony
6 - NRS 201.230); COUNTS 3, 4, and 5 – Sexual Assault With A Minor Under Fourteen Years
7 Of Age (Category A Felony - NRS 200.364, 200.366); and COUNT 9 – Child Abuse, Neglect,
8 or Endangerment (Category B Felony - NRS 200.508(1)).

9 On March 7, 2016, a jury trial convened and lasted nine days. On March 17, 2016, the
10 jury returned a guilty verdict as to COUNT 2, and not guilty as to all other Counts.

11 On May 10, 2016, Defendant was sentenced to Life with a possibility of parole after a
12 term of 10 years have been served in the Nevada Department of Corrections (“NDOC”).
13 Defendant received 841 days credit for time served. The Judgment of Conviction was filed
14 on May 17, 2016.

15 On June 1, 2016, Defendant filed a Notice of Appeal from his conviction. On June 27,
16 2017, the Nevada Supreme Court affirmed the Judgment of Conviction. Remittitur issued July
17 28, 2017.

18 On July 19, 2017, Defendant filed a Motion to Modify And/Or Correct Sentence
19 (“Motion to Modify”), Motion for Sentence Reduction (“Motion for Reduction”), Motion for
20 Production of Documents, Papers, Pleadings, and Tangible Property of Defendant, a Motion
21 for Transcripts at the State’s Expense and Memorandum of Point and Authorities in Support
22 of Request for Transcripts at State’s Expense, a Motion to Obtain a Copy of a Sealed Record,
23 and a Motion to Withdraw Counsel. The State filed its Response to Defendant’s Motion to
24 Modify And/Or Correct Sentence and Motion for Sentence Reduction on August 2, 2017.

25 On August 10, 2017, the Court denied Defendant’s Motion for Sentence Reduction,
26 granted Defendant’s Motion for Production of Documents, Papers, Pleadings, and Tangible
27 Property of Defendant, denied Defendant’s Motion for Transcripts at State’s Expense, granted
28 Defendant’s Motion to withdraw Counsel, granted Defendant’s Motion to Obtain Copy of a

1 Sealed Record, and denied Defendant's Motion to Modify/Correct Illegal Sentence.

2 On October 10, 2017, Defendant filed a Motion to Claim and Exercise Rights
3 Guaranteed by the Constitution for the United States of America and Require the Presiding
4 Judge to Rule upon this Motion, and All Public Officers of this Court to Uphold Said Rights
5 and an affidavit in support of that Motion. He also filed a Motion to Reconsider Transcripts at
6 State's Expense, a Motion to Compel Court Orders, and a Motion to Reconsider Motions for
7 Correction of Illegal Sentence and Sentence Reduction. The State responded to the Motion to
8 Reconsider Motions for Correction of Illegal Sentence and Sentence Reduction on October 30,
9 2017. On October 31, 2017, the Court denied all of Defendant's Motions, and the order was
10 filed on November 7, 2017.

11 On November 27, 2017, Defendant filed a Motion for Ancillary Services and a Motion
12 for Transcripts and Other Court Documents and State's Expense. The State filed its
13 Opposition to Defendant's Motion for Ancillary Services on December 13, 2017. The Court
14 denied Defendant's Motions on December 19, 2017, and the order was filed on December 29,
15 2017.

16 On December 29, 2017, Defendant filed a "Notice of Understanding of Intent and Claim
17 of Right as well as a Notice of Denial of Consent." He additionally filed a Petition for Writ
18 of Habeas Corpus (Post-Conviction), Memorandum in Support of Petition, Motion for
19 Appointment of Counsel, and Request for Evidentiary Hearing. The State responded to
20 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Memo in Support, Motion
21 to Appoint Counsel, and Motion for Evidentiary Hearing on February 20, 2018.

22 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Petition for
23 Writ of Habeas Corpus (Post-Conviction) Due to Respondent's Silence, and on March 15,
24 2018, he filed a Motion to Strike State's Response [to Defendant's Petition]. In both of those,
25 he alleged that since the State did not respond by February 19, 2018 (45 days from the order
26 to respond), its Response should be disregarded. Pursuant to Eighth Judicial District Court
27 Rule 1.14(b), "If any day on which an act required to be done by any one of these rules falls
28 on a Saturday, Sunday or legal holiday, the act may be performed on the next succeeding

1 judicial day.” February 19, 2018, was a legal holiday, thus, the State properly filed its
2 Response on the next succeeding judicial day, February 20, 2018.

3 On March 15, 2018, Defendant filed a Motion for Stay of Sentence, Traverse, and
4 Motion to Strike the State’s Response. The State responded on April 2, 2018. The court denied
5 Defendant’s Motion on April 5, 2018.

6 On March 30, 2018, Defendant filed a Motion to Modify and/or Correct Illegal
7 Sentence and “Judicial Notice of Lack of Jurisdiction” claiming that the District Court lacked
8 subject matter jurisdiction to sentence him. The State responded on April 18, 2018.

9 On April 24, 2018, the court denied Defendant’s Pro Per Petition for Writ of Habeas
10 Corpus. That same day, the court also denied Defendant’s Motion to Modify and/or Correct
11 Illegal Sentence. On May 7, 2018, Defendant filed a notice of appeal.

12 On March 7, 2018, Defendant filed a Motion for Summary Judgment on Writ of Habeas
13 Corpus (Post-Conviction). On May 1, 2018 the court issued an Order denying Defendant’s
14 Motion.

15 On June 1, 2018, the court entered and order denying Defendant’s Motion to Modify
16 and/or Correct Illegal Sentence and “Judicial Notice of Lack of Jurisdiction. The court also
17 entered its Findings of Fact, Conclusions of Law, and Order.

18 On July 2, 2018 this case was reassigned to Department fifteen (15). On August 28,
19 2018, Defendant filed a Motion to Recuse and Application for Bail. The State responded on
20 October 8, 2018. The court denied Defendant’s Motion on October 9, 2018. Defendant filed a
21 Notice of Appeal on October 22, 2018.

22 On November 19, 2018, Defendant filed the instant Petition for Writ of Habeas Corpus.
23 The State responds herein.

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ARGUMENT

**I. THIS INSTANT PETITION IS PREMATURE DUE TO THE PENDING
DIRECT APPEAL**

“Jurisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court.” Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (emphasis added). While an appeal is pending district courts do not have jurisdiction over the case until remittitur is issued. Id. The Nevada Supreme Court has repeatedly held that the timely filing of a notice of appeal ‘divests the district court of jurisdiction to act and vests jurisdiction in [the appellate] court.’” Foster v. Dingwall, 126 Nev. 49, 52, 228 P.3d 453, 454-55 (Nev. 2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006)).

Only a remittitur will return jurisdiction from an appellate court of competent jurisdiction to the district court. See NRS 177.305 (“After the certificate of judgement has been remitted, the appellate court of competent jurisdiction shall have no further jurisdiction of the appeal or of the proceedings thereon, and all order which may be necessary to carry the judgement into effect shall be made by the court to which the certificate is remitted.”). Until a remittitur is received, a district court lacks jurisdiction over a particular case. Buffington, 110 Nev. at 126, 868 P.2d at 644.

While a perfected appeal ordinarily “divests the district court of jurisdiction to act except with regard to matters collateral to or independent from the appealed order, the district court nevertheless retains a limited jurisdiction to ... direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying the motion, but lacks jurisdiction to enter an order granting such a motion. ... ” however, “the district court does have jurisdiction to deny such requests.” Foster v. Dingwall, 126 Nev. 49, 52–53, 228 P.3d 453, 455–56 (2010) (emphasis in original).

In the instant case, Defendant filed two notices of appeal on May 7, 2018, and October 22, 2018. These are now consolidated appeals under Nevada Supreme Court case numbers 75825 and 76075. Both of these appeals remain outstanding. Therefore, these appeals are

1 pending, and no remittitur has been issued. Accordingly, the instant petition is technically
2 premature but raises issues which can be entertained on the merits and denied.

3 **II. DEFENDANT'S PETITION IS PROCEDURALLY BARRED UNDER NRS**
4 **34.726(1).**

5 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause
6 shown for delay. Pursuant to NRS 34.726(1):

7 *Unless there is good cause shown for delay, a petition that challenges*
8 *the validity of a judgment or sentence must be filed within 1 year of*
9 *the entry of the judgment of conviction or, if an appeal has been taken*
10 *from the judgment, within 1 year after the Supreme Court issues its*
11 *remittitur. For the purposes of this subsection, good cause for delay*
12 *exists if the petitioner demonstrates to the satisfaction of the court:*

13 (a) That the delay is not the fault of the petitioner; and

14 (b) That dismissal of the petition as untimely will unduly prejudice
15 the petitioner.

16 (Emphasis added). The Supreme Court of Nevada has held that NRS 34.726 should be
17 construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528
18 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726
19 begins to run from the date the judgment of conviction is filed or a remittitur from a timely
20 direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

21 The one-year time limit for preparing petitions for post-conviction relief under NRS
22 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
23 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
24 evidence presented by the defendant that he purchased postage through the prison and mailed
25 the Notice within the one-year time limit.

26 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
27 consider whether a defendant's post-conviction petition claims are procedurally barred. State
28 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
Riker Court found that "[a]pplication of the statutory procedural default rules to post-
conviction habeas petitions is mandatory," noting:

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1 Habeas corpus petitions that are filed many years after conviction are
2 an unreasonable burden on the criminal justice system. The necessity
3 for a workable system dictates that there must exist a time when a
4 criminal conviction is final.

5 Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district
6 court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme
7 Court has granted no discretion to the district courts regarding whether to apply the statutory
8 procedural bars; the rules must be applied.

9 In the instant case, Defendant's Judgement of Conviction was filed on May 17, 2016.
10 Defendant filed a direct appeal, and remittitur was issued on July 28, 2017. Thus, the one-year
11 time bar began to run from the date of remittitur. Defendant's Petition was not filed until
12 November 19, 2018. This is over 12 months after remittitur issued and in excess of the one-
13 year time frame. Absent a showing of good cause for this delay and undue prejudice,
14 Defendant's claim must be dismissed because of its tardy filing.

15 **III. DEFENDANT'S CLAIMS ARE SUCCESSIVE AND AN ABUSE OF WRIT**

16 Defendant's claims are successive and an abuse of the writ pursuant to NRS 34.810(2)
17 which reads:

18 A second or successive petition *must* be dismissed if the judge or
19 justice determines that it fails to allege new or different grounds for
20 relief and that the prior determination was on the merits or, *if new and
different grounds are alleged, the judge or justice finds that the failure
of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.*

21 (Emphasis added). Second or successive petitions are petitions that either fail to allege new
22 or different grounds for relief and the grounds have already been decided on the merits or that
23 allege new or different grounds but a judge or justice finds that a defendant's failure to assert
24 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
25 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
26 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

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