

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 23 2022 05:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

ALISHA BURNS

Appellant,

vs.

THE STATE OF NEVADA

Respondent

CASE NO. 82686

D.C. CASE NO: 03C191253

APPELLANT'S APPENDIX VOLUME I

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Attorney for Appellant
ALISHA BURNS

STEVEN WOLFSON, ESQ.
Chief Criminal District Attorney
Nevada Bar Number 1565
200 Lewis Avenue
Las Vegas Nevada 89101

AARON FORD, Esq.
Nevada Attorney General
Nevada Bar Number 12426
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Carson City, Nevada 89701

Attorneys for Appellee
State of Nevada

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ORIGINAL

14

1 INF

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARY BROWN
6 Deputy District Attorney
7 Nevada Bar #006947
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

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APR 3 11 20 AM '03

Shirley B. Langston
CLERK

12 I.A. 4/8/03
13 9:00 A.M.
14 P. Kohn

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16
17 Plaintiff,

18 -vs-

19 ALISHA BURNS, aka Alisha Nicole
20 Burns, #1753792
21 Defendant.

Case No:

C 191253

Dept No:

XVI

INFORMATION

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 DAVID ROGER, District Attorney within and for the County of Clark, State of
25 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

26 That ALISHA BURNS, aka Alisha Nicole Burns, the Defendant(s) above named,
27 having committed the crime of SECOND DEGREE MURDER (Felony - NRS 200.010,
28 200.030), on or about the 27th day of September, 2002, within the County of Clark, State of
Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
and against the peace and dignity of the State of Nevada, did then and there wilfully,
feloniously, without authority of law, and with malice aforethought, kill PEDRO
VILLAREAL, a human being, by asphyxiation by putting pressure on the neck of the said
PEDRO VILLAREAL with his hands and arm, by placing a sock in the mouth of the said
PEDRO VILLAREAL and by placing the said PEDRO VILLAREAL's head in such a

1 position as to be submerged in water in the following manner, to-wit: said Defendant and
2 STEVEN KACZMAREK, aka Steven D. Kaczmarek aiding or abetting each other by
3 counsel and encouragement by entering into a course of conduct whereby Defendant
4 ALISHA BURNS, aka Alisha Nicole Burns, did pose as a prostitute to lure the said PEDRO
5 VILLAREAL to his room and Defendant and STEVEN KACZMAREK, aka Steven D.
6 Kaczmarek did then overpower PEDRO VILLAREAL and did kidnap, rob and murder him.

7 DAVID ROGER
8 DISTRICT ATTORNEY
9 Nevada Bar #002781

10 BY

Mary Brown

11 MARY BROWN
12 Deputy District Attorney
13 Nevada Bar #006947
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26 DA#02F21724X/gmr
27 LVMPD EV#0209271153
28 2ND DEG MURD - F
(TK6)

● ORIGINAL

● FILED

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APR 16 3 24 PM '03

Philip J. Kohn
CLERK

1 **ORDR**
2 PHILIP J. KOHN
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0556
5 333 South Third Street, 2ND Floor
6 Las Vegas, NV 89155-2316
7 (702) 455-6265
8 Attorneys for Defendant

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 THE STATE OF NEVADA,
14
15 Plaintiff,

CASE NO. C191253

DEPT. NO. XVI

16 vs.

17 ALISHA BURNS,
18 ID No. 1753792

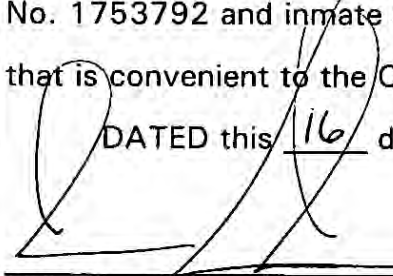
DATE OF HEARING:
TIME OF HEARING:


19 Defendant.
20

21 **STIPULATION AND ORDER**
22 **FOR A CONTACT VISIT**

23 IT IS HEREBY STIPULATED AND AGREED by and between the parties that the
24 Clark County Detention shall allow a contact visit between inmate ALICIA BURNS, I.D.
25 No. 1753792 and inmate STEVEN KACZMAREK, I.D. No. 1752368 at a date and time
26 that is convenient to the Clark County Detention Center.

27 DATED this 16 day of April, 2003.

28
29 
30 GARY L. GUYMAN
31 Deputy District Attorney
32 State Bar No. 003756
33 200 S. Third Street
34 Las Vegas, NV 89155
35 Attorney for Plaintiff

36 
37 PHILIP J. KOHN
38 Special Public Defender
39 State Bar No. 000556
40 333 South Third Street, 2nd Floor
41 Las Vegas, NV 89155
42 Attorney for Defendant, Burns

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APR 16 2003

COUNTY CLERK

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

BURNS R 0003

1
2
3
4 GREGORY L. DENUE
5 State Bar No. 5279
6 601 S. Tenth Street
7 Las Vegas, NV 89101
8 Attorney for Defendant, Kaczmarek

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ORDER

IT IS HEREBY ORDERED that the Clark County Detention shall allow a contact visit between inmate ALICIA BURNS, I.D. No. 1753792 and inmate STEVEN KACZMAREK, I.D. No. 1752368 at a date and time that is convenient to the Clark County Detention Center.

DATED this 16th day of April, 2003.


DISTRICT COURT JUDGE *re*

● ORIGINAL ●

1 GMEM

2 DAVID ROGER

3 Clark County District Attorney

4 Nevada Bar #002781

5 MARY BROWN

6 Deputy District Attorney

7 Nevada Bar #006947

8 200 South Third Street

9 Las Vegas, Nevada 89155-2211

10 (702) 455-4711

11 Attorney for Plaintiff

FILED IN OPEN COURT

APR 22 2003

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Barbara J. Karp*

BARBARA J. KARP, DEPUTY

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 ALISHA BURNS, aka Alisha Nicole)
18 Burns, #1753792)

19 Defendant.)

CASE NO:

C

19/253

DEPT NO:

XVI

20 GUILTY PLEA AGREEMENT

21 I hereby agree to plead guilty to: **SECOND DEGREE MURDER (Category A**
22 **Felony - NRS 200.010, 200.030)**, as more fully alleged in the charging document attached
23 hereto as Exhibit "1".

24 My decision to plead guilty is based upon the plea agreement in this case which is as
25 follows:

26 The State and Defendant stipulate to a life sentence with the possibility of parole after
27 ten (10) years.

28 CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of
the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to
imprisonment in the Nevada Department of Corrections for life with possibility of parole
with eligibility for parole beginning at ten (10) years; or a definite term of twenty-five (25)

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COUNTY CLERK

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1 years with eligibility for parole beginning at ten (10) years. I understand that the law requires
2 me to pay an Administrative Assessment Fee.

3 I understand that, if appropriate, I will be ordered to make restitution to the victim of
4 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
5 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
6 reimburse the State of Nevada for any expenses related to my extradition, if any.

7 I understand that I am not eligible for probation for the offense to which I am
8 pleading guilty.

9 I understand that if more than one sentence of imprisonment is imposed and I am
10 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
11 the sentences served concurrently or consecutively.

12 I also understand that information regarding charges not filed, dismissed charges, or
13 charges to be dismissed pursuant to this agreement may be considered by the judge at
14 sentencing.

15 I have not been promised or guaranteed any particular sentence by anyone. I know
16 that my sentence is to be determined by the Court within the limits prescribed by statute.

17 I understand that if my attorney or the State of Nevada or both recommend any
18 specific punishment to the Court, the Court is not obligated to accept the recommendation.

19 I understand that if the State of Nevada has agreed to recommend or stipulate a
20 particular sentence or has agreed not to present argument regarding the sentence, or agreed
21 not to oppose a particular sentence, such agreement is contingent upon my appearance in
22 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).

23 I understand that if I fail to appear for the scheduled sentencing date or I commit a
24 new criminal offense prior to sentencing the State of Nevada would regain the full right to
25 argue for any lawful sentence.

26 I understand that the Division of Parole and Probation will prepare a report for the
27 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
28 sentencing, including my criminal history. This report may contain hearsay information

1 regarding my background and criminal history. My attorney and I will each have the
2 opportunity to comment on the information contained in the report at the time of sentencing.
3 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
4 may also comment on this report.

5 WAIVER OF RIGHTS

6 By entering my plea of guilty, I understand that I am waiving and forever giving up
7 the following rights and privileges:

8 1. The constitutional privilege against self-incrimination, including the right to refuse
9 to testify at trial, in which event the prosecution would not be allowed to comment to the
10 jury about my refusal to testify.

11 2. The constitutional right to a speedy and public trial by an impartial jury, free of
12 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
13 assistance of an attorney, either appointed or retained. At trial the State would bear the
14 burden of proving beyond a reasonable doubt each element of the offense charged.

15 3. The constitutional right to confront and cross-examine any witnesses who would
16 testify against me.

17 4. The constitutional right to subpoena witnesses to testify on my behalf.

18 5. The constitutional right to testify in my own defense.

19 6. The right to appeal the conviction, with the assistance of an attorney, either
20 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional
21 or other grounds that challenge the legality of the proceedings and except as otherwise
22 provided in subsection 3 of NRS 174.035.

23 VOLUNTARINESS OF PLEA

24 I have discussed the elements of all of the original charge(s) against me with my
25 attorney and I understand the nature of the charge(s) against me.

26 I understand that the State would have to prove each element of the charge(s) against
27 me at trial.

28 I have discussed with my attorney any possible defenses, defense strategies and

1 circumstances which might be in my favor.

2 All of the foregoing elements, consequences, rights, and waiver of rights have been
3 thoroughly explained to me by my attorney.

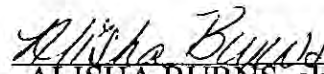
4 I believe that pleading guilty and accepting this plea bargain is in my best interest,
5 and that a trial would be contrary to my best interest.

6 I am signing this agreement voluntarily, after consultation with my attorney, and I am
7 not acting under duress or coercion or by virtue of any promises of leniency, except for those
8 set forth in this agreement.

9 I am not now under the influence of any intoxicating liquor, a controlled substance or
10 other drug which would in any manner impair my ability to comprehend or understand this
11 agreement or the proceedings surrounding my entry of this plea.

12 My attorney has answered all my questions regarding this guilty plea agreement and
13 its consequences to my satisfaction and I am satisfied with the services provided by my
14 attorney.

15 DATED this 21 day of April, 2003.

17 
18 ALISHA BURNS, aka ALISHA NICOLE
19 BURNS
20 Defendant

21 AGREED TO BY:

22 
23 MARY BROWN
24 Deputy District Attorney
25 Nevada Bar #006947
26
27
28

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 DATED this 21 day of April, 2003

19 
20 PHILIP KOHN
21 ATTORNEY FOR DEFENDANT

22
23
24
25
26
27
28 gmr

1 INF

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 MARY BROWN
6 Deputy District Attorney
7 Nevada Bar #006947
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

12 I.A. 4/8/03
13 9:00 A.M.
14 P. Kohn

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16
17 Plaintiff,

18 -vs-

19 ALISHA BURNS, aka Alisha Nicole
20 Burns, #1753792
21 Defendant.

Case No: C
Dept No: XVI

INFORMATION

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 DAVID ROGER, District Attorney within and for the County of Clark, State of
25 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

26 That ALISHA BURNS, aka Alisha Nicole Burns, the Defendant(s) above named,
27 having committed the crime of SECOND DEGREE MURDER (Felony - NRS 200.010,
28 200.030), on or about the 27th day of September, 2002, within the County of Clark, State of
Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
and against the peace and dignity of the State of Nevada, did then and there wilfully,
feloniously, without authority of law, and with malice aforethought, kill PEDRO
VILLAREAL, a human being, by asphyxiation by putting pressure on the neck of the said
PEDRO VILLAREAL with his hands and arm, by placing a sock in the mouth of the said
PEDRO VILLAREAL and by placing the said PEDRO VILLAREAL's head in such a

1 position as to be submerged in water in the following manner, to-wit: said Defendant and
2 STEVEN KACZMAREK, aka Steven D. Kaczmarek aiding or abetting each other by
3 counsel and encouragement by entering into a course of conduct whereby Defendant
4 ALISHA BURNS, aka Alisha Nicole Burns, did pose as a prostitute to lure the said PEDRO
5 VILLAREAL to his room and Defendant and STEVEN KACZMAREK, aka Steven D.
6 Kaczmarek did then overpower PEDRO VILLAREAL and did kidnap, rob and murder him.

7 DAVID ROGER
8 DISTRICT ATTORNEY
Nevada Bar #002781

9
10 BY

Mary Brown

11 MARY BROWN
12 Deputy District Attorney
13 Nevada Bar #006947
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26 DA#02F21724X/gmr
27 LVMPD EV#0209271153
28 2ND DEG MURD - F
(TK6)

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DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

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Alisha W. Burns
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALISHA BURNS,
#1753792

Defendant.

Case No: C191253

Dept No: XVI

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of SECOND DEGREE MURDR (Felony), in violation of NRS 200.010, 200.030; thereafter, on the ^{3rd}~~22nd~~ day of ^{June}~~April~~, 2003, the Defendant was present in court for sentencing with her counsel, PHILIP KOHN, Special Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee, the Defendant is sentenced as follows: Deft. SENTENCED to LIFE with the possibility of

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COUNTY CLERK

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1 PAROLE after ONE HUNDRED AND TWENTY (120) MONTHS; Submit to a blood
2 and/or saliva test to determine genetic markers; with 131 DAYS Credit Time Served.

3 DATED this 9th day of June, 2003.

4 John Ambrosio
5 DISTRICT JUDGE *re*

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1 CASE NO. 191253

2 DEPT. NO. XVI

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FILED ORIGINAL

Nov 21 10 18 AM '03

Shirley B. Pennington
CLERK

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

8
9 ALISHA BURNS,
10 Petitioner,

11 vs

12 JACKIE CRAWFORD, NDOC DIRECTOR,
13 Respondent.

14 BRIAN SANDOVAL, ATTORNEY GEN. /

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

Date of Hearing: _____
Time of Hearing: _____

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or
17 where and how you are presently restrained of your liberty:

18 SOUTHERN NEVADA WOMEN'S CORRECTIONAL FACILITY, CLARK COUNTY

19 2. Name and location of court which entered the judgement of conviction
20 under attack: EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, LAS VEGAS.

21 3. Date of judgement of conviction: 12-05-02

22 4. Case Number: 191253

23 5. (a) Length of sentence: LIFE WITH THE POSSIBILITY OF PAROLE AFTER 10 YRS.
24 (b) If sentence is death, state any date upon which execution scheduled:

25 N/A

6. Are you presently serving a sentence for a conviction under attack in
motion: Yes _____ No XX. If "yes," list crime, case no. and sentence being served
at this time: N/A

7. Nature of offense involved in conviction being challenged: SECOND DEGREE
MURDER

8. What was your plea ? (check one)

- 1 (a) Not guilty _____
2 (b) Guilty XX _____
3 (c) Nolo contendere _____

4 9. If you entered a guilty plea to one count of an indictment of
5 information, and a not guilty plea to another count of an indictment or
6 information, or if a guilty plea was negotiated, give details: N/A
7 _____
8 _____

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

- 11 (a) Jury N/A _____
12 (b) Judge without jury: N/A _____

13 11. Did you testify at the trial? Yes N/a No _____

14 12. Did you appeal from judgement of conviction: Yes _____ No XX

15 13. If you did appeal, answer the following:

- 16 (a) Name of court: N/A _____
17 (b) Case number of citation: N/a _____
18 (c) Result: N/A _____
19 (d) Date of result: N/A _____

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

21 14. If you did not appeal, explain briefly why you did not: COUNSEL TOLD
22 PETITIONER THAT SHE COULD NOT APPEAL.

23 15. Other than a direct appeal from the judgement of conviction and
24 sentence, have you previously filed any petitions, applications or motions with
25 respect to this judgement in any court, state or federal: Yes _____ No XX

26 16. If you answer to No. 15 was "yes," give the following information:
27 _____
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(a) (1) Name of court N/A

(2) Nature of proceeding: N/A

(3) Grounds raised N/A

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

(5) Results: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders
entered pursuant to each result: N/A

(b) As to any second petition, application or motion, give the
same information: (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

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

(5) Result: N/A

(6) Nature of proceeding: N/A

(7) If known, citation or any written opinion or date of orders
entered pursuant to each result: N/A

(c) As to any third or subsequent application or motions, give the
same information

1 as above, list them on a separate sheet and attach.

2 (d) Did you appeal to the highest state or federal court
3 having jurisdiction, the the result or action taken on any petition, application
4 or motion? (1) First petition, application or motion?

5 Yes N/A No

6 Citation or date of decision: N/A

7 (2) Second petition, application or motion?

8 Yes N/A No

9 Citation or date of decision: N/A

10 (3) Third or subsequent petitions, application or motion?

11 Yes N/A No

12 Citation or date of decision: N/A

13 (5) If you did not appeal from the adverse action on any petition,
14 application or motion, explain briefly why you did not. (you must relate specific
15 fact in response to this to this question. Your response may be included on
16 paper which is 8 1/2 x 11 inches attach to the petition. Your response may not
17 exceed five handwritten or typewritten pages in length). N/A
18
19

20 (17). Has any ground being raised in this petition been previously
21 presented to this or any other court by way of petition for habeas corpus, motion
22 or application or any other post-conviction proceedings? If so, identify:

23 a. Which of the grounds are the same: NONE

24 b. The proceedings in which these grounds were raised: N/A

25 c. Briefly explain why you are again raising these grounds. (You must
26 relate
27
28

specific facts in response to this question. Your response may be included on paper which is 8 1/2 X 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

N/A

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

N/A

19. Are you filing this petition more than one year following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (you must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

NO

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

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

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: PHIL KOHN

22. Do you have any future sentences to serve after you complete the sentence impose by the judgement under attack? Yes _____ No XX

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

2
3 23. State concisely every ground on which you claim that you are being held
4 unlawfully. Summarize briefly the facts supporting each ground. If necessary
5 you may attach pages stating additional grounds and facts supporting same.

6 (a) Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL

7
8 Supporting FACTS(Tell your story without citing cases or law): PETITIONER'S
9 COUNSEL DID NOT PROPERLY OR THOROUGHLY INVESTIGATE POSSIBLE DEFENSES THAT
10 SHE HAD. HE DID NOT FOLLOW UP ON THE FACT THAT THERE WAS A 3rd SUSPECT

11 (b) Ground two: GUILTY PLEA

12
13 Supporting FACTS(Tell your story briefly without citing cases or law): THE
14 PETITIONER'S RIGHT TO DUE PROCESS, EFFECTIVE ASSISTANCE OF COUNSEL, AND A
15 FAIR TRIAL WAS VIOLATED WHEN SHE PLEAD GUILTY TO SECOND DEGREE MURDER. SHE

16 (c) Ground three: STATEMENTS

17
18 Supporting FACTS(Tell your story briefly without citing cases or law): THE
19 DEFENSE COUNSEL DID NOT INQUIRE INTO THE FALSE STATEMENT THAT THE PETITIONER
20 GAVE ON BEHALF OF HER CO-DEFENDANT KACZMAREK OR WHY SHE MADE IT. COUNSEL

21 (d) Ground four: N/A

22 Supporting FACTS(Tell your story briefly without citing cases or law): N/A

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QUESTION 23(a) CONTINUED

known as "Tommy". Counsel did not try to find out who he actually was or to locate him so that what the Petitioner was saying could be verified. If counsel had done so, Tommy would have been able to verify that the Petitioner had left the victim's apartment. And that when she left the victim was still alive and Steve Kaczmarek and Tommy were left alone with the victim. When the Petitioner returned she never re-entered the residence because Kaczmarek and Tommy were standing outside the residence with a VCR and money that they had taken from the victim waiting for Kaczmarek the Petitioner to return. From there they went to the pawn shop where Kaczmarek pawned what he had taken from the victim.

Counsel also did not look into the time of death the coroner had given and the statement given by the maintenance man, Thomas Riddle, who was the one that found the victim. The date listed on the Coroner's report is 9-27-02 (see attached report) and the date on the pawn ticket is 9-25-02 (see attached ticket) which was two days before the date listed as the victim's death.

Riddle said that he had tried to get into the victim's apartment earlier in the day on 9-27-02 to check on a water leak, but the chain was on the door so it would not open all the way and he could not enter. He said he tried again a few hours later and the chain had been removed so he was able to enter at that time, which is when he found he found the victim. (See attached statement)

Counsel never tried to find out who had been in the victim's apartment after the Petitioner, Kaczmarek, and Tommy left. Nor did he try to find out who was in the apartment at the time that Riddle had first tried to enter the apartment and if they had possibly had a hand in the death of the victim.

Counsel did not bring to the Courts attention that the Petitioner's Co-defendant, Kaczmarek, was a 33 year old man that had been accused of Statutory Rape of the Petitioner who was 15 years old. Because of her dependence on him she refused to testify against him and plead the Fifth Amendment. She did this because she believed that he was the only one that loved her or even cared about her.

Counsel never took the time to explain the Guilty Plea Agreement to the Petitioner or to make sure that she understood the full effect to entering a Guilty Plea. All he told her was that she needed to take the Guilty Plea because if she didn't, the State would seek the Death Penalty and that is what she would get if she went to trial with it.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

38
m/la
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



REPORT OF INVESTIGATION
Coroner Case

CALL INFO	NAME OF DECEASED (LAST, FIRST MIDDLE) Villarreal, Pedro		AKA		CASE NUMBER 02-06370	
	INVESTIGATOR Carol Ferranti	REPORTED BY Sgt Alby	REPORTING AGENCY Las Vegas Metropolitan Police Departm		REFERENCE NUMBER 020927-1153	
	CALL DATE AND TIME 09/27/2002 1425	DISPATCH DATE AND TIME 09/27/2002 1430	ARRIVAL DATE AND TIME 09/27/2002 1459		RETURN DATE AND TIME 09/27/2002 1630	
	DATE AND TIME OF DEATH 09/27/2002 1510		DATE OF BIRTH 08/23/1944	AGE 58	GENDER Male	RACE Spanish
DECEDENT	RESIDENCE (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	TELEPHONE NO. None
	SOCIAL SECURITY NUMBER 464-86-2999	DRIVER'S LICENSE NO. AND STATE		OCCUPATION Kitchen Worker	EMPLOYER Caesars Palace	
	MARITAL STATUS Unknown	HEIGHT 67	WEIGHT 189	EYE COLOR Brown	HAIR COLOR Black	
	CLOTHING White underwear, black jean pants, brown belt, white pair of socks.			SCARS/TATTOOS/MARKS Cat tattoo on upper left arm.		
	LOCATION OF DEATH Uptown Motel					
DEATH	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	
	<input type="checkbox"/> FOUND BY <input checked="" type="checkbox"/> PRONOUNCED BY Carol Ferranti		AGENCY Clark County Coroner			
	LOCATION OF INCIDENT Uptown Motel					
INCIDENT	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	
	DATE AND TIME OF INCIDENT 09/27/2002 1213		INVESTIGATING AGENCY Las Vegas Metropolitan Police Department		OFFICERS Sgts Alby & Thompson, Detec	
	CIRCUMSTANCES OF DEATH Circ: Homicide/LVMPD. Discovered by maintance worker @ 1200 hrs with hands & feet bound with electrical cord, pillow case over head, face down in bathtub in approx. 3-5 inches of water with shower running. Maintance worker attempted entry into decedent's apartment @ approx 1000 hrs due to water back up in next door apartment tub but found					
	LEGAL NEXT OF KIN Sherry Gipson					
NOTIFICATION	ADDRESS (STREET, CITY, STATE, ZIP) 149 Perry Ln., Manchester, TN 37355				RELATIONSHIP Guardian of Minor	
	NOTIFIED BY Landlord				METHOD Telephone	
	NAME OF PERSON NOTIFI				DATE AND TIME 10/02/2002 0930	
	ADDRESS (STREET, CITY, STATE, ZIP)				RELATIONSHIP	
	IDENTIFIED BY Rick Jones (CCCME)				METHOD Fingerprints	
	DATE AND TIME 09/28/2002 1250				RELATIONSHIP	
DISP	TRANSPORTED TO MORGUE BY Nevada Funeral Services				TRANSPORTED TO MORTUARY BY Nevada funeral service	
	FUNERAL HOME				PROPERTY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
VEHICULAR	DECEDENT WAS <input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Bicyclist <input type="checkbox"/> Motorcyclist <input type="checkbox"/> Skateboard <input type="checkbox"/> Motorized Wheelchair					
	VEHICLE				LICENSE NUMBER	
	OCCURRED ON PRIVATE PROPERTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				DECEDENT WEARING CRASH HELMET? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

BURNS R 0021



LVMPD Pawn Shop Detail
Pawn Ticket - Other Property

FIREARM	CODE	LOAN	BUY
N	4		Y

G & S PAWN

Ticket #: 415269

Serial Number 101877897		Model # VC-A410U		Amount: \$ 10.00				
Name KACZMAREK, STEVEN		Date 09/25/2002	Time 9/25/00	Clerk: ABE CRUZ				
Address (Number, Street, City, State, Zip) 11444 ABERDEEN WAY, HILLSBORO OH 45133					SSN:			
Sex M	DOB 02/18/1970	Height 510	Weight 171	Eyes BLU	Hair BLK	Race O	Driv License # 36150252001	State OH

Describe Article:

Additional Identification Information:

Misc. ID Type:

Misc. ID #:

Other No:

Property Description: VHS VCR WITH REMOTE: SHARP VC-A410U SER#101877897

Property Type: STEREO/TV/MUSIC EQUIPMENT

Comments:

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

020927-1153

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>MURDER</u>	Date Occurred <u>9-27-02</u>	Time Occurred <u>1213</u>
	Sector/Beat <u>A4</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County
Location of Occurrence <u>813 Oaden Uptown Motel</u>		

Your Name (Last / First / Middle) <u>Riddle, Thomas Wesley</u>						Date of Birth <u>6/8/44</u>	Social Security # <u>547-56-8822</u>
Race <u>W</u>	Sex <u>M</u>	Height <u>6ft2</u>	Weight <u>180</u>	Hair <u>Br</u>	Eyes <u>Br</u>	Work Schdl. (Hours) <u>Disabled</u>	(Days Off) <u>Uptown Motel</u>
Residence Address: (Number & Street) <u>Same as Above</u>		Bldg./Apt. # <u>14</u>	City <u>LV</u>	State <u>NV</u>	Zip Code <u>89101</u>	Res. Phone: <u>382-5257</u>	
Bus. (Local) Address: (Number & Street)		Bldg./Apt. #	City	State	Zip Code	Occupation <u>Maint.</u>	Depart Date (if visitor)
Best place to contact you during the day				Best time to contact you during the day		Can You Identify <input type="checkbox"/> Yes the Suspect? <input type="checkbox"/> No	

DETAILS Went in to No. 25 to check on water leak
I could hear water RUNNING. Found Pete
in Tub Face down. Door and it had
chain lock on the First Tried door, Air was
running. Second time I Tried the door
the chain was not on the door and the
Air was OFF. Second time was about 2 hr.
later, called cops.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
 COMPLETED AT (LOCATION) 813 Oaden

AT THE 27 DAY OF Sept. AT 12:15 (AM / PM).

Witness/Officer:

Sgt Mike Thompson

(SIGNATURE)

Witness/Officer:

Sgt Mike Thompson P# 1588

(PRINTED)

Thomas Riddle

SIGNATURE OF PERSON GIVING STATEMENT

QUESTION 23(B) CONTINUED

did not enter her plea knowingly, intelligently, or voluntarily, she also was not competent to enter a plea of guilty. The Petitioner was coerced into pleading guilty by the State's threat to prosecute under a capital murder charge and their intent to seek the Death Penalty. See attached document.

The Petitioner's counsel also told her to take the guilty plea agreement because it was her only choice, that if she went to trial the State would seek the Death Penalty and she would be sentenced to that. The Petitioner was not aware, nor did her counsel tell her, that under NRS 176.025:

"a death sentence shall not be imposed or inflicted upon any person convicted of a crime now punishable by death who at the time of such crime was under the age of 16 years. As to such person, the maximum punishment that may be imposed shall be life imprisonment".

Counsel led the Petitioner to believe that she would get the Death Penalty as her co-defendant, Steven Kaczmarek, had. At the time of these proceedings the Petitioner was only 15 years old.

The Petitioner was not competent to make the decision to plead guilty due to her age and several psychological disorders she had been diagnosed with such as; Attachment Disorder, Borderline Personality Disorder, and Odd-Oppositional Defiance Disorder. Defense counsel did not ask for a Competency Hearing nor did he have the Petitioner evaluated by a psychologist to determine whether or not she was competent to stand trial or enter a plea of guilty. Had either of these been done the Petitioner's psychological problems and the emotional problems caused from being a ward of the State and bounced from one foster home to another would have been brought to the Courts attention, as well as her emotional dependence on co-defendant Kaczmarek. Had this been done the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

4

1 **NOTICE OF RESERVATION TO SEEK THE DEATH PENALTY**

2

3 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County

4 District Attorney, pursuant to the Order Amending Supreme Court Rule 250 filed on

5 December 30, 1998, NRS 175.552 and NRS 200.033, reserves the right to file a Notice of

6 Intent to Seek the Death Penalty.

7 DATED this 31st day of December, 2002.

8 Respectfully submitted,

9

10

11 BY



Chris J Owens
Chief Deputy

QUESTION 23(c) CONTINUED

did not bring to the Courts attention the fact of the Petitioner's emotional dependence on Kaczarek or the fact that he was 33 years old and she was only 15 years old.

Counsel did not take into consideration or bring to the Courts attention that the Petitioner had come to believe that Kaczmarek was the only one that loved or even cared about her, and that she could not survive without him. Counsel did not pursue any possible defenses that the Petitioner may have had based on her emotional dependence of the Co-defendant. Had counsel investigated any of this, he would have found that the Petitioner gave the statement that she did because Kaczmarek told her to. She lied to the Detective's telling them what Kaczmarek told her to tell them. Kaczmarek told the Petitioner to lie and tell them that she was the one that committed the crime so that he wouldn't get as much time. He told her that they would go easier on her because she was a juvenile, and she would also get less time that way, so that they would be out at about the same time and be able to be together again. Because the Petitioner believed what he was telling her she gave a false statement to the Detectives. If counsel had pursued this issue the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

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

3 EXECUTED at S.N.W.C.P. on the 12³ day of NOVEMBER,

4 2003.

5 *William Burns*
6 Signature of Petitioner
7 4370 SMILEY RD
8 Address
9 LAS VEGAS, NV 89115-1808

10 Signature of Attorney (if any)

11 Attorney for Petitioner

12 Address

13
14 VERIFICATION

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

20 *William Burns*
21 Signature of Petitioner

22 Attorney for Petitioner(if any)
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

I, Alisha Burns, hereby certify pursuant to N.R.C.P.
5(b), that on the 12 day of Nov- 13, I mailed a true
and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
addressed to:

JACKIE CRAWFORD, NDOC DIRECTOR
Respondent prison or jail official

P.O. BOX 7011
Address

CARSON CITY, NV 89702-7011

Attorney General
100 NORTH CARSON STREET
CARSON CITY, NEVADA
89701

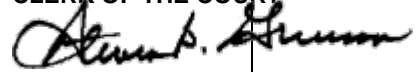
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT Attorney of County of Conviction

200 SOUTH THIRD STREET
Address

LAS VEGAS, NV 89155

EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XVI
200 SOUTH THIRD STREET
LAS VEGAS, NV 89155

Alisha Burns
Signature of Petitioner



MOT
TONY L. ABBATANGLO, ESQ.
Nevada Bar No. 003897
4560 S. Decatur Ste 300
Las Vegas, Nevada 89103
Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner
ALISHA BURNS

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO.: 03C191253
)	
Plaintiff,)	DEPT.NO.: X
)	
vs.)	
)	
ALISHA BURNS,)	
Defendant.)	

APPLICATION FOR APPOINTMENT FOR POST CONVICTION RELIEF

NOTICE OF MOTION

TO: STEVE WOLFSON, ESQ. Attorney for Plaintiff, the State of Nevada:

PLEASE TAKE NOTICE that the undersigned will bring this motion before this Honorable Court on the ___th day of April, 2019, at the hour of ___A.M., or as soon thereafter as counsel may be heard.

/s/ Tony L. Abbatangelo, Esq
TONY L. ABBATANGELO, ESQ.

COMES NOW, ALISHA BURNS, by and through her attorney, TONY L. ABBATANGELO, ESQ., and hereby submits her Application for Appointment of Counsel for Post-Conviction Relief. This motion is based on the Facts, Pleadings, Exhibits, Points and Authorities, and argument, if any, at time of said motion.

Dated this 29th day of March, 2019

/s/ Tony L. Abbatangelo, Esq.
TONY L. ABBATANGELO, ESQ.
Nevada Bar No. 003897
4560 S. Decatur, Ste 300
Las Vegas, Nevada 89102
Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

This case cries out for post-conviction relief, including newly obtained evidence, and knowing what is now known about victims of sex trafficking. The genesis of this case occurred when Mr. Burns was 15 years old. As the letter to Dan Silverstein, Esq., (head of the conviction integrity unit) states, Ms. Burns had been a runaway from 36 foster homes in Ohio and took up with a sexual predator/sex trafficker, ex-felon, Steve Kaczmarek, who was 32 years old at the time. See **Exh A**, letter to Dan Silverstein, Esq.

While in Las Vegas, Kaczmarek convinced Alisha to be involved in a robbery, for which her involvement was minimal. This robbery occurred on September 25, 2002. Items taken in the robbery were pawned. See **Exh A**, **Exh B**, timeline, **Exh C**, pawn tickets. There is evidence that the scene of the robbery was wiped clean. The relevance of this fact will be addressed later.

On September 27, 2002, the body was found. **Exh B**, timeline, **Exh D**. Mr. Riddle, maintenance man of the premises, explained when first attempted to gain access into the unit, the

1 door was chain locked from the inside, and the air conditioner was off. **Exh D**, p 4. This fact
2 reflects that people had been inside the unit subsequent to September 25, 2002, the documented
3 date of the robbery. Mr. Riddle returns a short time later; the chain lock had been removed, and
4 he was able to gain access into the unit. This is when he discovered the decent. Police were
5 called and investigated the scene. The police dusted the area and found fingerprints, none of
6 which matched Alisha's or Kaczmarek's. This corroborates and reinforces other people entered
7 the room after Alicia and Kaczmarek left.
8

9 The Clark County Medical examiner fixes the date of death to be September 27, 2002.
10 Suddenly, when Kaczmarek is charged with the murder/robbery, the date of the robbery becomes
11 September 27, 2002, two days after the items were pawned, presumably to match the ME's
12 fixing the date of death to September 27, 2002. See **Exh E**, Kaczmarek Information. This is in
13 irreconcilable contrast with the September 25, 2002, pawn ticket, **Exh C**. It is important to note
14 that Alisha was not originally charged with Murder and Robbery, only Kaczmarek, **Exh E**
15

16 The circumstances which led to Alisha's plea are highly suspect, if not actually outrageous.
17 Ms. Burns was originally brought to Nevada as a state's witness and victim. The first charges
18 against Kaczmarek were Kidnapping, Statutory Sexual Seduction, Possession of Forged
19 Instrument, and Possession of a Stolen Vehicle. Alisha was ordered to be transported to Clark
20 County from Ohio, with the assurances that she would not be prosecuted. See **Exh F**, Kaczmarek
21 Complaint, Request, and Order.
22

23 There was a hearing in Justice Court on November 26, 2002, wherein, among other topics
24 Alisha's current status as a witness was discussed. **Exh G**. For Kaczmarek, this was a death
25 penalty case, **Exh G**, p 2. Alisha was to be a witness in the kidnapping case, and would be a
26 potential witness in the murder case, **Exh G** pp 3-4. After this hearing, Kaczmarek sent a flurry
27
28

1 of letters to Alisha, asking her to submit a confession to the murder case. This would help his
2 case, and since she was a juvenile, nothing serious would happen to her. Kaczmarek promised
3 her that they would be together forever. (The location of these letters will be addressed
4 subsequently.) Kaczmarek manipulated this sex-trafficking-victim-defendant into giving a false
5 confession to the detective. She was then charged with Murder on December 5, 2002. **Exh H**,
6 docket sheet, Complaint and Reservation to Seek Death Penalty. It is important to note that
7 studies show that 42% of juvenile confessions are false. **Exh I**.

9 On April 1, 2003, Ms. Burns was wavering on whether or not to plead **Exh J**, waiver of
10 preliminary hearing. Shortly thereafter, on April 16, 2003, a rare, if not unprecedented order was
11 signed allowing a contact visit between the two co-defendants was filed. **Exh K**.

13 There is new evidence. Dr. Tom Bennett, MD, a forensic pathologist and Medical
14 Examiner, recently reviewed the discovery provided, and submits his expert opinion that the
15 murder did not happen on the true date of the robbery, September 25, 2002. **Exh L**. Dr.
16 Bennett's findings are to a reasonable degree of medical certainty.

18 Ms. Burns filed a pro se Petition for Habeas Corpus on November 21, 2003. **Exh M**. The
19 late Marvin Longabaugh, who passed away on March 4, 2017, was appointed. Alisha never met
20 Mr. Longabaugh, only an assistant/investigator working for him. Alisha gave the above
21 referenced Kaczmarek letters to this person. It is believed that Mr. Longabaugh received the
22 Kaczmarek letters references above. A review of the minutes in this case show that this Petition
23 has not been decided.

25 The instant case presents substantial Federal and State constitutional issues, including but not
26 limited to a host of ineffective assistance counsel claims. There also exists a fundamental
27 miscarriage of justice. There are also constitutional issue regarding her illegal confinement, and
28

1 whether the statement she sent to the Detective, while spending months in adult solitary
2 confinement, are the fruits of the poisonous tree.

3 It should be noted that Kaczmarek was originally sentenced to death; after an amended
4 Petition for Habeas was filed, but before it was decided, the State and Kaczmarek resolved the
5 Petition by an amended plea bargain to life without parole, thus taking off the death penalty. The
6 disposition of Kaczmarek's writ is strong circumstantial proof that there were multiple
7 constitutional violations which occurred in Alisha's case, on both a State and Federal level.
8 Undersigned is intimately familiar with the issues in this case, he has been working on this
9 matter for over a year, and has done extensive research, extensive reviews, and has personally
10 visited Alisha on multiple occasions. The scope of undersigned's representation did not include
11 judicial proceedings. Based on the fact that the Petition has not yet been decided, and based on
12 new evidence, Petitioner is entitled to appointed counsel, and requests to be appointed.

13 **ARGUMENT**

14 CONTINUITY OF COUNSEL SHOULD BE AFFORDED THE PETITIONER

15 In *People v. Gzikowski*, 32 Cal 3d 580 (1982), at 589, the court in reversing a case where the
16 defendant was deprived counsel of his choice, stated that "Reversal is automatic, however, when
17 a defendant has been deprived of his right to defend with counsel of his choice." The right of a
18 criminal defendant to counsel and to present a defense are among the most sacred and sensitive
19 of our constitutional rights. *Magee v. Superior Court* (1973) 8 Cal.3d 949, 954, 106 Cal.Rptr.
20 647, 506 P.2d 1023. "While we have recognized competing values of substantial importance to
21 trial courts, including the speedy determination of criminal charges, the state should keep to a
22 "necessary minimum its interference with the individual's desire to defend himself in whatever
23 manner he deems best, using any legitimate means within his resources"(*People v. Crovedi*
24 (1966) 65 Cal.2d 199, 208, 53 Cal.Rptr. 284, 417 P.2d 868 (hereafter *Crovedi*). A criminal
25 defendant's right to decide how to defend himself should be respected unless it will result in
26
27
28

1 “significant prejudice” to the defendant or in a “disruption of the orderly processes of justice
2 unreasonable under the circumstances of the particular case.” (*Ibid.*) In other words, we demand
3 of trial courts a “resourceful diligence directed toward the protection of [the right to counsel] to
4 the fullest extent consistent with effective judicial administration.” *Id.* at p. 209, 53 Cal.Rptr.
5 284, 417 P.2d 868. *People v. Ortiz*, 800 P.2d 547, 552 (Cal. 1990)

6 As also stated in *Crovedi*, at 206 “Further, the right to counsel of one’s choice furthers the
7 dual goals of due process: (1) ensuring the possibility that an innocent person will not be
8 punished; and (2) protecting the ideal of human individuality by affirming the state’s duty to
9 refrain from unreasonable interference with a defendant’s desire to defend himself in whatever
10 manner he deems best. *People v. Crovedi*, 65 Cal. 2d 199, (1966) at 206.

11 In *Fuller v. Warren Dieslin, Superintendent of Buena Vista Correctional Facility*, et al, 868
12 F 2d 604, (1989), The United States Court of Appeals for the Third Circuit granted a writ of
13 habeas corpus to appellee prisoner. In that case, the prisoner, who had in-state counsel, moved
14 for the admission pro hac vice of two out-of-state lawyers who were prepared to try the case.
15 Without a hearing or making particularized findings, the state trial court denied appellee’s
16 request, reasoning that local counsel was competent and that unacceptable trial delay was likely.
17 There, the out of state counsel, was ready to try the case, and the Court found that the state trial
18 court failed to make record-supported findings that balanced appellee’s right to counsel with the
19 demands of the administration of justice. Here, counsel is firmly entrenched with the facts of the
20 case, and any new appointment of counsel will only serve to delay , since new counsel will have
21 to invest substantial time getting up to speed. It is worth noting that the Public Defender is
22 conflicted, and could not be appointed.

23 Undersigned does not believe that the State would object, particularly given the cadence and
24 rapport that has evolved and emerged between counsel for the respective parties. California
25 courts have emphasized that the state should keep to a necessary minimum its interference with
26 the individual’s desire to defend himself in whatever manner he deems best, using any legitimate
27 means with his resources-and that can constitutionally be forced to yield only when it will result
28

1 in . . . a disruption of the orderly process of justice unreasonable under the circumstances of the
2 particular case. *Crovedi*, supra.

3 Denial of continuity of counsel could be construed as removal of counsel. Tennessee has
4 followed the California standards. In *State v. Huskey*, 82 S.W. 3^d 297 (2000), the trial court was
5 reversed for removing defendant's counsel because it considered counsel's approach to litigation
6 an abuse of the legal system. There is not any allegation of this type in the instant case. In
7 *Huskey*, the Court of Appeals was reluctant for any court to place limits on a attorney's ability to
8 conduct his or her case within the bounds of the obligation to represent the client zealously. In
9 *Huskey*, the trial court improperly chose the most "drastic" option available. Removal of counsel
10 should only have occurred when no other options existed. Disqualifying an attorney was the
11 most drastic option, and therefore, the trial court erred. Though the state in *Huskey* argued that
12 California had adopted a broader standard than other jurisdictions that have considered the
13 involuntary removal of counsel, the Court stated otherwise. The Court stated that "based on our
14 review of relevant cases, however, we are not convinced that this is the case. California decisions
15 continue to reflect that the trial court's discretion to remove counsel absent the consent of the
16 defendant and his counsel is "*severely limited*," and that "*courts should seek an*
17 *accommodation reasonable under the facts of the particular case.*" *People v. Lucev*, 188 Cal.
18 App. 3d 551(1986). Decisions of the California courts as well as those of other jurisdictions
19 similarly illustrate the balancing of interests that a trial court must undertake when determine
20 whether the removal of counsel is justified under the circumstances of a particular case to the end
21 that "a reasonable accommodation of seemingly conflicting values shall thereby be achieve.
22 *Crovedi*, 417 P 2d at 874."

23 Counsel is molecularly familiar with the facts and appellate issues. As held in *Huskey*, supra,
24 "*A trial court has a broad range of options available to insure that its proceedings are fair*
25 *both in appearance and in fact. Disqualifying an attorney is the most drastic. It invariably*
26 *causes delay, increases costs, and deprives parties of counsel of their choice. Court should,*
27 *therefore, disqualify counsel with considerable reluctance and only when no other practical*
28 *alternative exists.*"

1 The Court in *Huskey* also stated that in cases involving the life or liberty of citizens, this
2 discretion entrusted to the courts should be “carefully and cautiously exercised,; and where an
3 appellate court can see that the rights of a party many have been jeopardized by an improper
4 exercise of this judicial discretion, it will not hesitate to reverse for that cause.”

5 *Huskey* also explained more the wisdom of restricting a Court’s unfettered ability to remove
6 counsel by stating, “ The constitutional guarantee of the defendant’s right to counsel requires that
7 his advocate, whether retained or appointed, be free in all cases of the threat that he may be
8 summarily relieved as incompetent by the very trial judge he is duty-bound to attempt to
9 convince the rightness of his client’s cause. The recognition of such an authority would involve
10 the surrender of a substantial amount of the independence of the bar, and, in many instances
11 would deprive litigants of a fair hearing. When removal is permitted at all, it requires objective
12 evidence of counsel’s physical incapacity to continue or serious misconduct by counsel which
13 cannot be addressed through other measures.”

14 The Supreme Court of Alaska has spoken to the right to *CONTINUE* with one’s chosen
15 counsel, stating that this is “not mere constitutional formalism” *McKinnon v. State*, 526 P. 2d 18,
16 22 (1974). The Court further stated that once a defendant has counsel, the trial judge may not,
17 consistent with the Alaska and United States constitutions, rend that relationship by dismissing
18 the original attorney and then thrusting unfamiliar and unwelcome counsel upon the defendant.
19 The attorney-client relationship, once established, is inviolate, and may not be severed or
20 otherwise intruded upon. *Mckinnon*, supra, at 22, citing *Smith v. Superior Court of Los Angeles*
21 *County*, 68 Cal. 2d 547, (1968), 440 P. 2d at 75.

22 “Once counsel has been chosen, whether by the court or the accused, the accused is entitled
23 to the assistance of THAT (emphasis added) counsel at trial.” *English v. State*, 8 Md. App. 330
24 (1969).

25 Finally, dealing with the issue of a defendant’s right to continuation of counsel, the Court in
26 *Smith*, supra, 440 P 2d 65 stated, that in the face of a defendant’s attempt, not to *ESTABLISH OR*
27 *CHANGE* , but to *PRESERVE* the relationship with (her) counsel, any attempt to distinguish
28 between appointed and retained counsel was *MEANINGLESS*. Although we are dealing here

1 with retained vs. appointed counsel, the reasoning is the same. The court stated in *Smith*: “We
2 must consider whether a court-appointed counsel may be dismissed, over the defendant’s
3 objection, in circumstances in which a retained counsel could not be removed. A superficial
4 response is that the defendant does not pay his fee, and hence, has no ground to complain as long
5 as the attorney currently handling his case is competent. But the attorney-client relations ship is
6 not that elementary; it involves not just the casual assistance of a member of the bar, but an
7 intimate process of consultation and planning which culminates in a state of trust and confidence
8 between the client and his attorney. This is particularly essential, of course, when the attorney is
9 defending the client’s life or liberty. Furthermore, the relationship is independent of the source of
10 compensation, for an attorney’s responsibility is to the person he has undertaken to represent
11 rather than to the individual or agency which pays for the service. It follows that once counsel is
12 appointed to represent an indigent defendant, whether it be the public defender or a volunteer
13 private attorney, the parties enter into an attorney-client relationship which is no less inviolable
14 than if counsel had been retained. To hold otherwise would be to subject that relationship to an
15 unwarranted and invidious discrimination arising merely from the poverty of the accused.”

16 Other jurisdictions have likewise spoken to the limited power of a court to remove counsel,
17 In *Eric Omar Hercules, v. The Honorable William Harmon*, 864 S.W. 2d 752 (1993), the Court
18 of Appeals, Fourteenth District, Houston, Texas, conditionally granted relief to the Petitioner, to
19 compel the trial court to vacate its order terminating his counsel, holding that the attorney-client
20 relationship, once established, required the protection of law and the trial court should not,
21 absent a showing of actual or potential conflict, sever that relationship. The Court found the trial
22 court denied appellant’s motion to continue counsel’s appoint without a “principled reason” to
23 justify the denial. The Court in that case urged the trial court to vacate its order terminating the
24 appointment of relator’s counsel and stated that the writ would issue if the trial court failed to
25 comply.

26 Here, counsel was retained for a limited but important purpose. The same principles,
27 however should apply, the relief sought clearly weighs in Alisha’s favor, and there is no reason
28 why the undersigned should not continue as counsel, rather than be removed.

1
2 THERE ARE SUBSTANTIAL AND COMPLEX ISSUES WHICH NEED TO BE FULLY
3 AND FAIRLY ADDRESSED AND DEVELOPED, SUCH THAT THIS PETITION CANNOT
4 BE SUMMARILY DISMISSED

5 Petitioner submits that there is not a time bar in this case; since there has not been a ruling, it
6 should not be summarily denied. For the mere sake of argument, if where a petition is
7 procedurally barred and the petitioner cannot demonstrate good cause, the district court may
8 nevertheless reach the merits of any constitutional claims if the petitioner demonstrates that
9 failure to consider those constitutional claims would result in a fundamental miscarriage of
10 justice. *Pellegrini, v. State*, 117 Nev.860, 887, 34 P.3d 519, 537 (2001). A fundamental
11 miscarriage of justice requires “a colorable showing” that the petitioner “is actually innocent of
12 the crime or is ineligible for the death penalty.” *Id.* This generally requires the petitioner to
13 present new evidence of his innocence. *House v. Bell*, 547 U.S. 518, 536–37, 126 S.Ct. 2064,
14 165 L.Ed.2d 1 (2006); *Schlup v. Delo*, 513 U.S. 298, 316, 115 S.Ct. 851, 130 L.Ed.2d 808
15 (1995).
16

17
18 Again, for mere argument that there exists a procedural bar, a habeas petitioner may
19 overcome these bars and secure review of the merits of defaulted claims by showing that the
20 failure to consider the petition on its merits would amount to a fundamental miscarriage of
21 justice. *Schlup v. Delo*, 513 U.S. 298, 314–15, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995); *Mitchell*
22 *v. State*, 122 Nev. 1269, 1274, 149 P.3d 33, 36 (2006); *Pellegrini v. State*, 117 Nev. 860, 887, 34
23 P.3d 519, 537 (2001). This standard is met when the “petitioner makes a colorable showing he
24 is actually innocent of the crime.” *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. This means that
25 “the petitioner must show that it is more likely than not that no reasonable juror would have
26 convicted him in the light of the new evidence.” *Schlup*, 513 U.S. at 327, 115 S.Ct. 851. “[A]
27 petition supported by a convincing *Schlup* gateway showing ‘raises[s] sufficient doubt about [the
28

petitioner's] guilt to undermine confidence in the result of the trial without the assurance that that was untainted by constitutional error'; hence, 'a review of the merits of the constitutional claims' is justified." *House v. Bell*, 547 U.S. 518, 537, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006) (quoting *Schlup*, 513 U.S. at 317, 115 S.Ct. 851).² *Berry v. State*, 363 P.3d 1148, 1154 (Nev. 2015). It is highly unlikely that Ms. Burns, (not simply more likely than not) that no reasonable juror would have convicted her. She is entitled to new counsel, and undersigned asks that he be appointed.

DISCOVERY MUST BE CONDUCTED

Dr. Bennett's report constitutes new evidence. Additionally, after the September 25, 2002 incident, the premises were wipe clean; on September 27, 2002, the premises were disheveled, and prints, which did not match the Petitioner, were found. It is highly possible that these prints may now be able to be matched. The State may want to take Dr. Bennett's deposition. The Petitioner intends to call him at an evidentiary hearing. Other depositions need to be taken, including but not limited to prior counsel. Representatives or PMK's from the Clark County Medical Examiner's Office needs to be deposed on some level. A fingerprint expert needs to be retained. Clearly, Petitioner is entitled to appointment of counsel; she is incarcerated at the Florence McClure Women's Prison, and the issues are complex and require discovery. Pursuant to NRS 34.750, the district court may appoint counsel to aid indigent petitioners. The court may consider: the severity of the consequences, whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery, pursuant to Nev. Rev. Stat. Ann. § 34.750 (1).¹

¹ 1. A petition may allege that the petitioner is unable to pay the costs of the proceedings or to employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel to represent the petitioner. In making

1 Petitioner has the utmost respect for this Honorable Court, and believes that this Court
2 will afford her all of her statutory and constitutional rights in this case.

3 **CONCLUSION**

4
5 WHEREFORE, Petitioner prays as follows:

- 6 1. That undersigned be appointed in the case,
7 2. That discovery be commenced,
8 3. That an evidentiary hearing be conducted,
9 4. That after said hearing this Petition be in all things granted, and,
10 5. For any further relief that is fair and just in the premises.

11 Dated this 29th day of March, 2019

12 /s/ Tony L. Abbatangelo, Esq.
13 TONY L. ABBATANGELO, ESQ.
14 Nevada Bar No. 003897
15 4560 S. Decatur, Ste 300
16 Las Vegas, Nevada 89102
17 Tel: (702) 707-7000; Fax: (702) 366-1940
18 tony@paulpaddalaw.com
19 Attorney for Defendant/Petitioner
20
21
22
23
24

25
26 its determination, the court may consider, among other things, the severity of the consequences
27 facing the petitioner and whether:

- 28 (a) The issues presented are difficult;
(b) The petitioner is unable to comprehend the proceedings; or
(c) Counsel is necessary to proceed with discovery. Nev. Rev. Stat. Ann. § 34.750.

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A copy of this Application for Appointment for Post Conviction Relief was electronically served on all parties of record this 29th day of March, 2019.

/s/Tony L. Abbatangelo, Esq
Tony L. Abbatangelo, Esq.

Electronically Filed
3/29/2019 5:06 PM
Steven D. Grierson
CLERK OF THE COURT

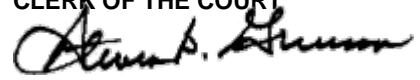
A handwritten signature in black ink, appearing to read "Steven D. Grierson", is written over the printed name and title.

EXHIBIT A

BURNS R 0042

Law Offices
Of
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October 16, 2018

SENT VIA EMAIL

Dan Silverstein, Esq.
District Attorney's Office
Conviction Integrity Unit
silverda@co.clark.nv.us

In re: Alisha Burns,
Dear Mr. Silverstein, Esq.

I am writing you this correspondence requesting your unit to review the conviction of Alisha Burns, case number, 03C191253. As you will clearly see, she is factually and actually innocent.

The case involves a murder which occurred September 27, 2002. Alisha Burns was 15 years old at the time of the event. She was a runaway involved in the foster care system in the state of Ohio. Codefendant, Steve Kaczmarek was 32 years old at the time of the offense.

Alisha and Steve were in a criminal and exploitive sexual relationship. The age difference is of significance. Alisha was a runaway from Ohio, having been placed in 36 different homes. Mr. Kaczmarek was able to kidnap her, promising this 15-year old a stable life, to which she had never experienced at the age of 15.

The physical evidence supports our position Miss Burns is not guilty of the crime to which she plead, 2nd° murder. The common fatal flaw that exists with all of the murder pleadings, is that the pleadings date the robbery on September 27, 2002 in order to fix the date of the murder on September 27, 2002. THE ROBBERY WAS ON SEPTEMBER 25, 2002, THERE WAS DOCUMENTED AND CHRONICLED ACTIVITY INSIDE THE DECEASED'S PREMISES ON THE 27TH DAY OF SEPTEMBER. 2002, AS WELL AS DOCUMENTED AND CHRONICLED EVIDENCE THAT THE ROBBERY OCCURRED ON THE 25TH DAY OF SEPTEMBER 2002. KACZMAREK'S STATEMENT, AS WELL AS THE NOTICE TO SEEK THE DEATH PENALTY STATE THAT THE ITEMS WERE PAWNED AFTER THE MURDER. THE ITEMS WERE PAWNED ON SEPTEMBER 25, 2002, HAD THE MURDER OCCURRED ON SEPTEMBER 25, 2002, THERE WOULD HAVE BEEN SUBSTANTIAL STENCH AND DECOMPOSITION. SEE REPORT OF DR. TOM BENNETT, MD, ATTACHED,

The murder was not committed by these individuals on September 25, 2002. The fact that Mr. Villarreal was alive after the robbery was never disclosed prior to any statements, and it is clear that this 15-year-old did not comprehend the discovery, assuming that it was explained to her at all.

The facts chronicled in the submitted Bate numbered exhibits were numbered by Miss Burns. The documents are selectively presented ease and efficiency. The entire file can be produced upon your request. Miss Burns has dedicatedly and consistently pursued her innocence

BURNS IS A SEX TRAFFICKING VICTIM

Miss Burns and Mr. Kaczmarek came to Las Vegas in September 2002. Originally Mr. Kaczmarek was charged with kidnapping a minor, on October 11, 2002, the minor being Ms. Burns. This is an important fact, that Miss Burns was the victim of sex trafficking. See original charges. She was transported to Nevada while in custody. See Application for Attendance of Witness. The document states Miss Burns would be given protection from prosecution in connection with any matters which arose before entrance to the State of Nevada pursuant to the subpoena, See application for attendance. This was done by the Clark County District Attorney's office in order to persuade Ohio to allow the transportation of Miss Burns to Nevada. This agreement was breached due to her being charged with Murder. In this order, the state made a promise that she would travel free from prosecution of any offenses committed prior to her coming to Las Vegas. Clearly, this promise was breached; she was "yoyoed," send back to Ohio, only to be brought back.

As a predicate to requesting that she be brought back to Las Vegas, Mr. Kaczmarek gave a recorded statement of October 11, 2002, admitting to what he did with this juvenile; at no time during this interview was he questioned about the murder case. The statement regarding the murder was given on October 29, 2012. The state was so moved by his conduct that they went to great lengths to have this 15-year old returned to Las Vegas. Note that in the murder charges, he was charged with use of a minor, Ms. Burns. See District Court Information.

CONFESSION BY BURNS

There is NO physical evidence to link her to the September 27, 2002 murder. The District Attorney may cite the reason for Miss Burns negotiations was due to her confession. Our position is this is a false confession for a number of reasons.

The statement given by Miss Burns conflicts with the physical evidence in the case. She was 15 years old at the time, and never reviewed the discovery, which plainly showed activity at the deceased's residence two days after her participation, two days after the items were pawned. . By not being informed of this critical fact, namely the substantial activity two days after the robbery which demonstrates that she was alive on September 25-26, any admission was based on the erroneous premise that the murder occurred on the day of the pawning. Unless she maintained a calendar, or had thoroughly reviewed the discovery, it is reasonable to assume that there were no intervening actions which occurred two days after the robbery. This was wrong.

You will not that a "Tommy" was present on September 25, 2002. It is a reasonable construct that he could have gone back to Mr. Villarreal's, or told people about it. Michael Henderson's statement to the police is highly suggestive of there being other persons involved in the murder of September 27, 2002.

The coroner was not informed about two incidents when it did the autopsy report; likewise, neither was Kaczmarek informed about a separate incident two days after he robbed and pawned. The date of death was September 27, 2002, per the coroner's report. Dr. Bennett agrees with this date.

Ms. Burns could not be expected to comprehend the discovery at the age of 15. Further, there was undue influence used upon Miss Burns to obtain her confession. We

have attached an article from the American Bar Association stating that 42% of all juvenile confessions between 1989 and 2012 are false. In this tragic case, Mr. Kaczmarek was writing her, telling her what to say, and promising that they would be together forever.

Miss Burns was manipulated by Mr. Kaczmarek in hopes of him receiving a lighter sentence. The stakes were high for Mr. Kaczmarek to get her to help him; the State had filed a notice to seek the death penalty, and the charges involved the use of a minor. (The issue is not whether it helped him, the issue is that he believed that it would.). Ms. Burns waived her preliminary hearing on April 2, 2003; her attorney stated in open court that Ms. Burns was wavering as to whether to plea. In order to secure her plea, Kaczmarek was allowed a contact visit, and was able to write letters to her, telling her what to say, in the hopes that he would get a lighter sentence. On April 16, 2003, an extremely rear contact visit was arranged for Ms. Burns and Mr. Kaczmarek to meet in the jail. The District Court order was signed by Ms. Burns's attorney, Phil Kohn, the prosecutor, Gary Guymon, Esq., and District Court Judge Hon. John McGroarty. During this visit, Mr. Kaczmarek closed the deal, so to speak, and she plead seven days after the Order for Contact Visit was signed.

Other factors to reflect her confession was false she had been placed in isolation due to her age and not being intermixed with the general population of adults. Miss Burns was in solitary confinement from October 2002-June, 2003. During this stretch, letters were being sent to Mr. Kaczmarek to Ms. Burns, manipulating her, telling her what to say, making promises that they would be together. Another inmate at the time, Bridget Pascua, saw these letters. Currently Miss Pascua is incarcerated at Florence McClure Correctional Facility, and is easy to contact. These letters should be in the possession of

the District Attorney's Office, they are highly relevant and material

PHYSICAL EVIDENCE

The physical evidence supports Miss Burns's innocence. According to the discovery, the only contact my client had with the deceased was on September 25, 2002. The defense will concede Miss Burns and Mr. Kaczmarek did participate in a robbery of the victim. However, they did not kill the deceased. On September 25, 2002, items taken from victim were pawned. See pawn ticket. Mr. Kaczmarek stated in his police interview the entire apartment was wiped clean and organized. See statement page 36/173. Mr. Kaczmarek acknowledges pawning the merchandise after the robbery. This fixes the interaction between Ms. Burns two days before Mr. Villarreal was asphyxiated to death. Note that the pawn tickets were for September 25, 2002. Mr. Kaczmarek states on page 35/172 of his interview he did pawn a VCR and gold chain. He also stated that the area was wiped clean, p 35/172. Fast forward to September 27, 2002, and the area is rife with evidence, notably fingerprint evidence. Latent print report, p 3-849 shows negative latent fingerprints for Alisha Burns. Lastly, note that at the beginning of Mr. Kaczmarek's statement the Detective states that they are talking about a murder that took place on the 27th day of September 2002. See Statement p 2/139.

Mr. Cruz, an employee of the pawnshop, was interviewed by the police. He admitted recognizing Mr. Kaczmarek. He denied seeing or recognizing Miss Burns. The police asked Mr. Cruz three times about Miss Burns. All three times Mr. Cruz denied seeing her with Mr. Kaczmarek, this demonstrates a rush to accuse.

The Las Vegas Metropolitan Police Department Detectives never informed Mr.

Kaczmarek there was proof the victim was alive two days later, September 27, 2002. The information states the robbery occurred September 25, 2002. The Information of Stephan Kaczmarek states September 27 2002, this date is a manipulated date in order to conveniently reconcile with the date of the murder. A forensic medical examiner, Dr. Thomas Bennett, MD, reviewed the case, and concludes that the murder could not have occurred on September 25, 2002, thus clearing Ms. Burs. I attach Dr. Thomas Bennett's report, in which he explains that there would be observable and detectable decomposition and stench had the murder occurred on September 25, 2002. Even Mr. Kaczmarek stated that there was no intent to kill Mr. Villarreal.

SCENE OF CRIME

The Defense contends that Mr. Villarreal was killed in a twenty (20) minute-two (2) hour window of time on September 27, 2002. See preliminary hearing, transcript, P 12. This is the day the body was found. This is two days after the pawning of stolen items. The Coroner states the cause of death is asphyxiation.

September 26, 2002, Mr. Riddle, a complex maintenance worker, received complaints the tenants were not able to have hot water. September 27 Mr. Riddle goes to Mr. Villarreal's room at approximately 10 AM. Mr. Riddle attempts to open the door. However he is prevented from entry due to the chain being on the door. The air conditioner is running. Approximately 20 minutes later the neighbor of Villarreal complains. This causes Mr. Riddle to return to Mr. Villarreal's room. Now the chain is not preventing entry into the

room, the air conditioner is off, and Mr. Riddle, in his own words, states “I figured he got up.” Note in the Investigative report, at p 7, that on September 27, 2002, the shower was now running, This is when Mr. Riddle finds Villarreal deceased. Mr. Riddle also knows that the deceased had “hookers coming in.” This ties in with Vicki Hayes, aka “Sadie,” a known prostitute, who frequently saw Mr. Villereal, who was 86’d from half the casinos in the downtown area.

OTHER SUSPECTS

After receiving a call from Michael Henderson on October 8, 2002, On October 10, 2002 (a day prior to Mr. Kaczmarek being arrested on the Kidnapping and related charges) detectives question Michael Henderson. He tells the police there is a woman outside a 7-Eleven, Tina Olsen a.k.a. Hobel. She is the girlfriend of Thomas Wilson. Tina tells the murder story to Michael Henderson. As stated earlier, Mr. Henderson called the police, and gave a statement. Note in Mr. Henderson’s statement that the Detective pens the murder on September 27, 2002, at p 2. Note that, per Mr. Henderson, Tina was there, and a girl named Yolanda was present, statement, p. 3. Arthur Mickey is named by the Detective, p 7. Tina was describing an ID found around 9th Street, and told Michael Henderson “they didn’t know how close they came to arresting the right people because her and... Yolanda was tied to the crime. Later in the statement Mr. Henderson relates that this person had been 86’d from half the casinos downtown for prostitution, illegal drugs, etc., at p 9,

On October 9, 2002, a day after Mr. Henderson’s call to the Detective, Tina Hobel is grilled. She is able to pass a polygraph. In Tina’s interview, she is told that she “can’t take drugs at all 24 hours before that. Statement, p 38/16.

On November 12, 2002, Vicki Hayes, a close friend of the deceased, was interviewed. She talks about a girl having a tennis bracelet of the deceased's, p 7, how Trish supposedly found the bracelet in a dumpster, p 8. and how the FBI was looking for her, p 9. Finally, with respect to Ms. Hayes, she explains to the Detective that she avoided them because she was afraid she would be arrested on an "order out of being in the downtown area," at p 10.

Mr. Wilson did not have his fingerprints in the criminal database as far as the defense is aware in 2002. The defense is requesting Mr. Wilson's fingerprints be compared to the fingerprints found at the scene of the crime. The area was wiped clean on the 25th, there are now fingerprints that can be re-run. Prints should be re-run through a National Database. This murder needs to be solved, really solved, not just on paper.

The defense request your office to obtain letters written between Miss Burns and Mr. Kaczmarek. This will show the power Mr. Kaczmarek held over her.

DAKA STATEMENT

Ms. Burns apparently spoke to Teresa Daka during her stint in solitary confinement. The documentation of this conversation is problematic. First, Ms. Burns's oral statement to Officer Daka is predicated on the assumption that nothing else occurred in Mr. Villareal's residence after September 25, 2002. As you can see, there a serious time issues with Officer Daka's recollection of the statements made by Ms. Burns to her. However, there is not real issue as to the events on September 25, 2002. One must have to question why the date of the robbery was modified to September 27, 2002, especially when combined with the many leads that exist, and still exist. Additionally and paramount, scientific forensic evidence shows that the murder could not have happened on September 25, 2002. See Dr. Bennett's report.

In Daka's recorded statement given on December 2, 2002, she states at p 9, that the incident report has more details because it was fresh on her mind. Anything she stated in her recorded interview goes beyond the four corners of her report, and constitutes unreliable embellishment. I also point out Officer Daka states to the Detective that Alisha summoned her on November 27, 2002, but her report states that she was summoned on November 25, 2002. The report date is now three days later, per the December 1, 2002, report, on November 28, 2002. Daka's mixed dates make the statement inherently unreliable, and more weight must be given to the written report, just as she told the detective.

I AM HERE AS TO REVISING The physical evidence does not support the proposition that they robbed and murdered Mr. Villarreal the same day. The physical evidence supports that he was alive on September 27, 2002 and died of asphyxiation on that date. The lack of substantial decomposition, the lack of a stench, also establishes that she did not participate in a murder. She was a victim of sex trafficking and was manipulated by Kaczmarek into pleading to a murder that she did not commit. The State moved the date of the robbery two days after it actually occurred, and this fact was not grasped by Ms. Burns, who was not present at the September 27, 2002 murder. This is a grave injustice which needs to be rectified. It is no wonder that Ms. Burns got into more trouble after she spent ten years, from 15 to 25 years of age, after she was released from prison. Freeing her constitutes a fair and happy resolution for all, one that could serve as a poster child for your conviction integrity unit. Thanking you in advance for your prompt attention, I remain

Very truly yours,

Tony L. Abbatangelo, Esq.

TONY L. ABBATANGELO, ESQ.

EXHIBIT B

Law Offices
Of
TONY L. ABBATANGELO, ESQ.
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October 16, 2018

SENT VIA EMAIL

Dan Silverstein, Esq.
District Attorney's Office
Conviction Integrity Unit
silverda@co.clark.nv.us

In re: Alisha Burns,

TIMELINE OF RELEVANT EVENTS

1. Sept. 25, 2002, Incident at Pedro Villarreal, with Alisha, items are pawned that night, See Pawn Ticket
2. Sept. 25, 2002, Kaczmarek and Alisha wipe area clean, per Kaczmarek statement of October 29, 2002.
3. Sept. 26, 2002, call to maintenance about hot water loss, See Riddle Statement of Sept. 27, 2002
4. Sept. 27, 2002, Riddle gives statement on Sept. 27, 2002
 - a. Riddle finds the chain lock on, air conditioner running
 - b. Riddle comes back, chain lock is off, air conditioning is off
 - c. Riddle gives statement and talks about several prostitutes coming over on a regular basis.
 - d. There is clearly activity in Mr. Villarreal's residence
 - e. Body is found, no stench, no decomposition, no forensic evidence to indicate that the murder occurred on September 25, 2002
5. Coroner fixes date of death as September 27, 2002, Report on October 7, 2002.
6. October 8, 2002, Detective gets call from Michael Henderson
7. October 9, 2002, extensive 37-page interrogation of Tina Hobel
 - a. Is questioned about Sadie,

- b. Was told by Tina that police were looking for Sadie, who tells Tina that "I'm gonna be a suspect," at p 25,
 - c. Discussion that a lot of prints found there, p 26,
 - d. Tina agrees to take polygraph and subsequently passes
8. October 10, 2002, Michael Henderson gives statement
 - a. Yolanda is mentioned as being present at the murder,
 - b. Told them that Tina has been 86'd from casinos, and Tina, another girl and a guy were involved, reputation for being involved in that
 - c. Told detective at p 7, that Tina told him. "they didn't know how close they'd come to arresting the right people
9. October 11, 2002, Kaczmarek arrested on kidnapping charges, etc., provides statement.
10. October 14, 2002, Kaczmarek is booked for KIDNAPPING, STATUTORY SEXUAL SEDUCTION, POSSESSION OF STOLEN VEHICLE, POSSESSION OF FORGED INSTRUMENT. No Murder charges filed as of yet. Ms. Burns is a named victim, demonstrating that she is a victim of sex trafficking.
11. October 14, 2002, Original charges filed on Kaczmarek KIDNAPPING, STATUTORY SEXUAL SEDUCTION, POSSESSION OF STOLEN VEHICLE, POSSESSION OF FORGED INSTRUMENT. No Murder charges filed as of yet.
12. October 24, 2002, Abe Cruz gives statement to Detective, who is questioning about "a murder which occurred on or about September 27, 2002." He identifies Kaczmarek. He could not identify Ms. Burns.
13. October 29, 2002, Kaczmarek is questioned about a murder that occurred on September 27, 2002, he states he pawned the items after the robbery, wiped area of prints, and did not want to kill him, thought he would come around, p 19. He tells police that Villarreal was alive when a sock was put in his mouth, p 20. Kaczmarek is never told that he was describing the events on Sept 25, NOT Sept 27, as he was led to believe that everything occurred on same day, he would have not known otherwise
14. November 21-22, 2002, Request and Order for Ms. Burns to be transferred from Ohio to Clark County to be a witness against Kaczmarek on charges unrelated to murder. This was pursuant to an agreement between Ohio and Nevada that she would be granted protection from prosecution "for any matters which arose before (her) entrance into said state pursuant to said Summons."
15. Ms. Burns brought to Las Vegas
16. November 25, 2002, Teresa Daka allegedly summoned by client, conversation with Ms. Burns reported three days later, printed on December 1, 2002, states she is not sure how he died.
17. November 26, 2002, Justice Court appearance of Kaczmarek, doesn't know if there were will ever be another defendant, Burns will be a witness in the Kidnapping and Sexual Assault charges.

18. December 3, 2002, Daka gives recorded statement, states that "the youth summoned me on November 27, 2002. Ms. Burns describes the events at the robbery, Daka admits that her original statement is more detailed. She states that she is not sure how he died. burn
19. December 5, 2002, Murder Charges filed
20. December 5, 2002, Arrest Warrant issued, Declaration states date of offense to be September 25, 2002, NOT September 27, 2002
21. December 11, 2002, Kaczmarek charged by way of Amended Criminal Complaint with Burglary Second with Assistance of a Child, Robbery with Assistance of a Child, First Degree Kidnapping with Use of a Child, Murder with Assistance of Child, the robbery charges are shifted from September 25, 2002, to September 27, 2002.
22. December 18, 2002, Ms. Burns writes her statement under the direction of Steve Kaczmarek through letters.
23. Ms. Burns returned to Ohio on December 20, 2002
24. February 7, 2003, Ms. Burns is returned.
25. February 9, 2003, client is served with death penalty notice, she is under 16 and could not receive the death penalty
26. March 3, 2003, hearing for handwriting exemplars, missing from the motion is the fact that Mr. Villareal was alive on Sept 27, 2002
27. April 1, 2003, waiver of preliminary hearing. Court is told that she is wavering on accepting the deal.
28. April 16, 2003, Stipulation for Order for Contact Visit with Kaczmarek signed by District Court John McGroarty.
29. A few days later, she meets with Kaczmarek, in a half hour conversation, he tells her to take the deal, how proud he was of her for writing the statement, that even it says 10-life, you will only do a percentage of the time, that they would be together when they both got out, that everything she was doing because they were going to be together, that he was the only person who ever loved her, only person who understood her.
30. April 22, 2003, Ms. Burns enters plea
31. June 3, 2002, Judgment of Conviction. During the time that she was in both Ohio and Las Vegas, Kaczmarek was writing her letters telling her what to say, that this would help both of them, that she would save him, that she "was the only one who had the power to save us."

EXHIBIT C

DOES AUTO TITLE LOANS

BORROW MONEY AGAINST YOUR
AUTO, TRUCK OR MOTOR CYCLE

KACZMAREK, STEVEN

090337

ORIGINAL LOAN NO.
415268

4

Buy

DATE MADE 09/25/02		TIME MADE 22:23		DATE DUE				
EMP. IN 00331	PAID BROKEN CREDITOR	EMP. OUT	EYES BLU	RACE UNW	HAIR BLK	HEIGHT 5'10"	WEIGHT 171	SEX M
GOLD & SILVER PAWN SHOP 713 Las Vegas Blvd. South Las Vegas, NV 89101 • (702) 385-7912			AMOUNT FINANCED. The amount of cash given directly to you.			\$ 30.00		
You are giving a security interest in the following personal property. Description of property.			FINANCE CHARGE. The dollar amount the credit will cost you.			\$		
-BRACELET: 14K I.D. 13.06TGW/YG BLANK			TOTAL OF PAYMENTS. Amount required to redeem pawn on Date Due.			\$		
			ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate.			%		
			PAYMENT SCHEDULE: Total of Payments is due on Date Due shown above.					
			PREPAYMENT: If you pay off early, you will not be entitled to a refund of part of the finance charge.					
			DATE PAID			AMOUNT PAID		

See your contract for any additional information concerning nonpayment and default and prepayment refunds or penalties.

By signing, I agree to all terms and conditions on the front and back and acknowledge receipt of a copy of this ticket.

X *Steven Kaczmarek*
SIGNATURE ON REDEMPTION

X *Steven Kaczmarek*
DEEDOR'S SIGNATURE

NOTICE: See Reverse Side

GOLD & SILVER PAWN SHOP DOES AUTO TITLE LOANS

BORROW MONEY AGAINST YOUR
AUTO, TRUCK OR MOTOR CYCLE

KACZMAREK, STEVEN

090337

ORIGINAL LOAN NO.
415269

4

Buy

DATE MADE 09/25/02		TIME MADE 22:25		DATE DUE				
EMP. IN 00331	PAID BROKEN CREDITOR	EMP. OUT	EYES BLU	RACE UNW	HAIR BLK	HEIGHT 5'10"	WEIGHT 171	SEX M
GOLD & SILVER PAWN SHOP 713 Las Vegas Blvd. South Las Vegas, NV 89101 • (702) 385-7912			AMOUNT FINANCED. The amount of cash given directly to you.			\$ 10.00		
You are giving a security interest in the following personal property. Description of property.			FINANCE CHARGE. The dollar amount the credit will cost you.			\$		
-VHS VCR WITH REMOTE: SHARP VC-A410U SER#101877897			TOTAL OF PAYMENTS. Amount required to redeem pawn on Date Due.			\$		
			ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate.			%		
			PAYMENT SCHEDULE: Total of Payments is due on Date Due shown above.					
			PREPAYMENT: If you pay off early, you will not be entitled to a refund of part of the finance charge.					
			DATE PAID			AMOUNT PAID		

See your contract for any additional information concerning nonpayment and default and prepayment refunds or penalties.

By signing, I agree to all terms and conditions on the front and back and acknowledge receipt of a copy of this ticket.

X *Steven Kaczmarek*
SIGNATURE ON REDEMPTION

X *Steven Kaczmarek*
DEEDOR'S SIGNATURE

NOTICE: See Reverse Side

Save 75%

on your
Payday Loan

KEEP
YOUR
CASH!

Just pay the
Finance Charge
and
Renew
your loan
for 120 days.

Save 75%

on your
Payday Loan

KEEP
YOUR
CASH!

Just pay the
Finance Charge
and
Renew
your loan
for 120 days.

EXHIBIT D

2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1

EVENT #: 020927-1153

SPECIFIC CRIME: MURDER

DATE OCCURRED: 09-27-02

TIME OCCURRED: 1213 HRS.

LOCATION OF OCCURRENCE: [REDACTED]

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: THOMAS RIDDLE

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

LAS VEGAS, NV 89101

HOME PHONE: [REDACTED]

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE J. MIKOLAINIS, P# 1511, LVMPD HOMICIDE SECTION, on 09-27-02 at 1345 hours.

Q. This is Mikolainis. I'll be taking a taped statement under Event #020927-1153.

Time now is 1345 hours. Location of interview is gonna be the Uptown Motel located at 813 Ogden Avenue, Las Vegas, Nevada 89101. Person being interviewed last name Riddle, R-I-D-D-L-E, first name Thomas. Date of birth of [REDACTED]

[REDACTED] Social [REDACTED] He resides at [REDACTED] at building on [REDACTED] and he's got a phone number or business phone of [REDACTED] Person conducting

BURNS R 0062

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 2

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

interview is Detective J. Mikolainis, Metro Homicide. Mr. Riddle, are you aware that this interview is being tape recorded?

A. Yes I am.

Q. Okay. Knowing that it's being tape recorded, ah, are you, ah, employed at the Uptown Motel?

A. Yeah, I'm the maintenance man.

Q. As a maintenance man. How long have you been doing that?

A. About 5 or 6 years. Something like that. _____ (inaudible).

Q. Okay, about 5 or 6 years. Ah, did something occur within the last day or two days over at the Uptown Motel that got your attention that something happened in the room? Was there some type of a water problem?

A. Ah, yes. We didn't have no hot water.

Q. When did that start?

A. Ah, well it started yesterday but I thought it was an existing problem with the shower curtain being left out of the tub.

Q. Okay when you say it started yesterday could you give me a rough time?

A. Well about noon, ah, Lou in, ah, [REDACTED] told me he didn't have no hot water and I went back and looked at the hot water heater and it was functioning normally, you know, and I told him somebody used all the hot water, just wait, you know, and

BURNS R 0063

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

that's all that was done about it at that time. And then this morning Lou told me again, that's Lou [REDACTED] that he didn't have hot water again. So we went back and checked the hot water heater again and went lookin' around and couldn't find nothing wrong. And, ah—

Q. It was working properly?

A. Yeah, yeah.

Q. Okay.

A. And then, ah, the old man, I don't know what his name is.

(Unknown person answers in background: Ralph Welch)

A. Ralph Welch in, ah,

(Unknown person answers in background: _____ right below)

A. No, no, no, no. The old man. The little guy.

(Unknown person answers in background: Oh, _____ or Frank Sasiela)

A. Yeah, in an, he's in

(Unknown person answers in background: [REDACTED])

A. [REDACTED] He told me that the water was _____, ah, over flowing from the tub next door. See they're back to back.

Q. Uh huh.

BURNS R 0064

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 4

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

A. And the drains get stopped up between 'em. And, ah, he got my attention so I went up there and got my wet 'n vac and started vacuuming the water up, you know. Then I went—

Q. Out of [REDACTED]

A. Yeah. I went to, and I was getting so much of it that, ah, I knew it had to be in Pete's [REDACTED] So I went, I went over there and the air conditioner was running. I knocked on the door and got no answer. I put my key in and the chain lock was on the door. I hollered at him and still got no answer so I figured well he's in the tub or something, you know. So I closed the door and went back and continued in, ah, [REDACTED] bumpin' it out. And then I put my acid in there and I made a comment to Lou of, ah, [REDACTED] that the way that acid stinks, like rotten eggs, that that would get him out of the room, you know. And it was, I don't know, probably 15, 20 minutes later, I guess, we were all standing out here talking and I noticed the air conditioner wasn't leaking over the balcony no more. So I figured he had got up.

Q. You're talking about Pete?

A. Yeah. I figured he had got up. So she says she was gonna go up there and I said well I'll go up there. And I went up and the air conditioner was off. I knocked on the door.

Q. The air conditioner was off?

BURNS R 0065

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 5

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

A. It was off, yes. And it was wet still outside but it wasn't dripping. And I knocked on the door and got no answer and I stuck my key in and there was no chain lock so I figured either he went to the store or he's left, you know. And I could hear water running, you know. So went on back and the bathroom door was open about 4 inches and I just pushed it. When I seen, I seen water and I seen him laying in the tub. So I got the hell out of there.

Q. _____(inaudible)

A. _____(inaudible)

Q. So you walked out of there and then came over here to the office?

A. Yeah, I started _____(inaudible).

Q. Okay that's, that's when you, ah, notified Delores, the manager, is that correct?

A. Yeah.

Q. Okay. Have you ever gone into Pete's apartment before?

A. Oh yeah.

Q. Okay, ah, when you went in there today does it look like, like it normally does or is there a little bit, ah, was it more disturbed than others or?

A. Ah, it's basically about the same.

Q. About the same. Okay. Okay. Do you know if, ah, Pete has any, ah, friends coming over to his apartment, ah, on a regular basis?

BURNS R 0066

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

A. Ah, he gets hookers coming in. But as far as any male friends _____ and usually he'll stand outside, greet 'em out here and bring 'em in and do their thing and they leave _____. But like I say males friends _____.

Q. Okay.

A. It's usually just one or two hookers.

Q. Does, does he have this, ah, hooker or prostitute on a weekly basis?

A. No. It's, it's—

Q. Whenever he feels like it?

A. Yes, I guess.

(Unknown person in background: It's usually the same one.)

Q. Okay. Do you know if there's any particular, ah, prostitutes that might, ah, come to this location? Have you ever seen any?

A. Ah, I've seen the same ones two or three times. _____

(inaudible)

Q. Are they white or black or?

A. Ah, they're white.

Q. They're white?

A. Yes.

BURNS R 0067

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 7

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

Q. Okay. Have you seen any here within the last couple of days?

A. No not the last couple days _____. The last couple days I been _____ laying around the house _____. I _____ out of the house about 3 times _____ in 3 days. _____ sittin' right here in the corner _____ and _____ goes by the store _____. They got a leaky faucet or something they tell me about it right there. I take care of it.

Q. Okay so what type of tenant is Pete. Is he pretty much quiet, no problems?

A. Yeah he's real quiet. He's, ah, just one of the nicest, politest guys you'd ever want to meet.

Q. Okay. And, ah, when you went back to the room the second time when the chain was off, ah, did you or anybody else in the complex see anybody leaving from the room or from the area that didn't look familiar?

A. I didn't. I don't think anybody else did.

Q. Okay.

A. I have Lou _____ (inaudible).

BURNS R 0068

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

PAGE 8

EVENT #: 020927-1153

STATEMENT OF: THOMAS RIDDLE

- Q. Well I tell you what, in case we missed somebody that we didn't talk to yet, I'm gonna leave you my business card and if somebody by just coincidence mentions that they saw someone in the complex that didn't belong here today,
- A. Oh sure.
- Q. would you please give me a call?
- A. Oh you bet.
- Q. Okay. We'll go ahead and end this interview. Time now is 1355. Same people present.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT UPTOWN MOTEL, 813 OGDEN AVE., LAS VEGAS, NV ON THE 27TH DAY OF SEPTEMBER, 2002 AT 1355 HOURS.

JM:sd
02V0592

BURNS R 0069

VOLUNTARY STATEMENT

Event # 020927-1153

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>Homicide</u>	Date Occurred <u>9-27-02</u>	Time Occurred <u>1213</u>
Location of Occurrence <u>[REDACTED]</u>	Sector/Beat <u>A4</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>Lundy Bradford Lee</u>						Date of Birth <u>[REDACTED]</u>		Social Security # <u>[REDACTED]</u>	
Race <u>white</u>	Sex <u>M</u>	Height <u>6'0</u>	Weight <u>200</u>	Hair <u>Brown</u>	Eyes <u>Blue</u>	Work Schedl. (Hours) <u>varied</u>	(Days Off) <u>varied</u>	Business / School <u>Amr - Emt</u>	
Residence Address: (Number & Street) <u>[REDACTED]</u>			Bldg./Apt. # <u>[REDACTED]</u>		City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89139</u>	Res. Phone: <u>[REDACTED]</u>	
Bus. (Local) Address: (Number & Street) <u>1200 manhattan</u>			Bldg./Apt. # <u>[REDACTED]</u>		City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89102</u>	Occupation <u>EMT</u>	
Best place to contact you during the day <u>work</u>						Best time to contact you during the day <u>[REDACTED]</u>		Can You Identify <input type="checkbox"/> Yes the Suspect? <input type="checkbox"/> No	

DETAILS Entered room with officer turned off
water. felt for pulses, did not find a pulse, fingers
were white & rigid. At all times while
in Patient/victim room we had Body Isolation & used
P.E. & Gloves.

I READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS

AT (LOCATION) 813 E. Ogden
DAY OF September AT 1235 (AM / PM), Pm.

[Signature]
(SIGNATURE)
Sgt Mike Thompson
(PRINTED) P# 1988

[Signature]
BURNS R 0070
SIGNATURE OF PERSON GIVING STATEMENT

EXHIBIT E

ORIGINAL

14

INFO

STEWART L. BELL
Clark County District Attorney
Nevada Bar #000477
GARY L. GUYMON
Chief Deputy District Attorney
Nevada Bar #003726
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

FILED

DEC 23 5 19 PM '02

Shirley B. Hargis
CLERK

I.A. 1/6/03
9:00 A.M.
G. DENUÉ/P.
WOMMER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVEN KACZMAREK,
#1752368

Defendant.

Case No: C188781
Dept No: XVI

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEWART L. BELL, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That STEVEN KACZMAREK, the Defendant(s) above named, having committed the crimes of BURGLARY, SECOND OFFENSE, WITH THE ASSISTANCE OF A CHILD (Felony - NRS 205.060, 193.162); ROBBERY, WITH THE ASSISTANCE OF A CHILD (Felony - NRS 200.380, 193.162); FIRST DEGREE KIDNAPPING WITH THE ASSISTANCE OF A CHILD (Felony - NRS 200.310, 200.320, 193.162); and MURDER WITH THE ASSISTANCE OF A CHILD (Felony - NRS 200.010, 200.030, 193.162), on or about the 27th day of September, 2002, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

RECEIVED

DEC 23 2002

COUNTY CLERK

1 COUNT 1 - BURGLARY, SECOND OFFENSE, WITH THE ASSISTANCE OF A CHILD
2 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a
3 felony, to-wit: robbery and/or murder, and/or with the intent to commit larceny, that certain
4 building occupied by PEDRO VILLAREAL, located at 813 Ogden Street, Apartment No.
5 25, Las Vegas, Clark County, Nevada, said Defendant, being over eighteen (18) years of age,
6 committing the crime with the assistance of a child, to-wit: ALISHA BURNS, who was less
7 than eighteen (18) years of age at the time of said crime, said Defendant having been
8 previously convicted of Burglary, in the Court of Common Pleas for Highland County, Ohio,
9 in Case No. 96-CR-085(A) on December 16, 1996.

10 COUNT 2 - ROBBERY WITH THE ASSISTANCE OF A CHILD

11 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
12 a leather jacket and/or a VCR and/or a gold bracelet and/or a gold ring and/or a pair of socks
13 and/or a comb and/or a cellular telephone and/or \$20.00 lawful money of the United States
14 and/or a State Quarters collection and/or a wallet including the contents, from the person of
15 PEDRO VILLAREAL, or in his presence, by means of force or violence, or fear of injury to,
16 and without the consent and against the will of the said PEDRO VILLAREAL, said
17 Defendant, being over eighteen (18) years of age, committing the crime with the assistance
18 of a child, to-wit: ALISHA BURNS, who was less than eighteen (18) years of age at the
19 time of said crime, Defendant being responsible under one of the following theories of
20 criminal responsibility: (1) by Defendant himself taking said property from PEDRO
21 VILLAREAL by force, violence, or fear; and/or (2) by Defendant aiding and abetting Alisha
22 Burns and/or an unidentified third party by counsel and encouragement throughout the
23 commission of the crime by entering into a course of conduct whereby they lured PEDRO
24 VILLAREAL into his room, where they overpowered PEDRO VILLAREAL and did rob
25 him; and/or (3) by Defendant conspiring with Alisha Burns and/or an unidentified
26 accomplice to commit the offense of robbery and/or larceny and/or kidnapping and/or
27 murder, whereby each is vicariously liable for the foreseeable acts of the other co-
28 conspirator when the acts are in furtherance of the conspiracy.

1 COUNT 3 - FIRST DEGREE KIDNAPPING WITH THE ASSISTANCE OF A CHILD

2 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
3 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away PEDRO VILLAREAL, a
4 human being, with the intent to hold or detain the said PEDRO VILLAREAL against his
5 will, and without his consent, for the purpose of committing robbery and/or murder upon the
6 said PEDRO VILLAREAL, the said PEDRO VILLAREAL suffering substantial bodily
7 harm, to-wit: death, during the act of kidnapping or subsequent detention and confinement,
8 said Defendant, being over eighteen (18) years of age, committing the crime with the
9 assistance of a child, to-wit: ALISHA BURNS, who was less than eighteen (18) years of age
10 at the time of said crime, Defendant being responsible under one of the following theories of
11 criminal responsibility: (1) by Defendant himself kidnapping said PEDRO VILLAREAL for
12 the purposes of committing robbery and/or murder; and/or (2) by Defendant aiding and
13 abetting Alisha Burns and/or an unidentified third party by counsel and encouragement
14 throughout the commission of the crime by entering into a course of conduct whereby they
15 lured PEDRO VILLAREAL into his room, where they overpowered PEDRO VILLAREAL
16 and did kidnap him for the purposes of robbery and/or murder; and/or (3) by Defendant
17 conspiring with Alisha Burns and/or an unidentified accomplice to commit the offense of
18 robbery and/or larceny and/or kidnapping and/or murder, whereby each is vicariously liable
19 for the foreseeable acts of the other co-conspirator when the acts are in furtherance of the
20 conspiracy.

21 COUNT 4 - MURDER WITH THE ASSISTANCE OF A CHILD

22 did then and there wilfully, feloniously, without authority of law, and with
23 premeditation and deliberation, and with malice aforethought, kill PEDRO VILLAREAL, a
24 human being, by asphyxiation, said Defendant, being over eighteen (18) years of age,
25 committing the crime with the assistance of a child, to-wit: ALISHA BURNS, who was less
26 than eighteen (18) years of age at the time of said crime, Defendant being responsible under
27 one of the following theories of criminal responsibility: (1) by Defendant himself murdering
28 PEDRO VILLAREAL by asphyxiation; and/or (2) by Defendant aiding and abetting Alisha

1 Burns and/or an unidentified third party by counsel and encouragement throughout the
2 commission of the crime by entering into a course of conduct whereby they lured PEDRO
3 VILLAREAL into his room, where they overpowered PEDRO VILLAREAL and murdered
4 him; and/or (3) by Defendant conspiring with Alisha Burns and/or an unidentified
5 accomplice to commit the offense of robbery and/or kidnapping and/or murder, whereby
6 each is vicariously liable for the foreseeable acts of the other co-conspirator when the acts
7 are in furtherance of the conspiracy.

8
9 STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

10
11 BY

12 GARY L. GUYMON
13 Chief Deputy District Attorney
14 Nevada Bar #003726

15 Names of witnesses known to the District Attorney's Office at the time of filing this
16 Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ALBY, R.	LVMPD #1810
CABRALES, A.	LVMPD #2045
CRUZ, ABE	GOLD AND SILVER PAWN
CUSTODIAN OF RECORDS	GOLD AND SILVER PAWN
CUSTODIAN OF RECORDS	LVMPD - DISPATCH
DAHN, R.	LVMPD #5947
EMT PAQUET	AMR
FERRANTI, C.	LVMPD #0016
GIPSON, SHERRY	149 PERRY LN, MANCHESTER, TN
KRAMER, DELORIS	UPTOWN MOTEL
LEWIS, TORRENCE	3425 SANDY LN, LVN

1	LUNDY, BRADFORD	AMR AMBULANCE
2	MIKOLAINIS, J.	LVMPD #1511
3	PRYOR, EDD	2801 IRIS COURT, HEND., NV
4	RIDDLE, THOMAS	UPTOWN MOTEL
5	ROLLOS, S.	LVMPD #6932
6	ROPER, B.	LVMPD #7539
7	RUMERY, S.	LVMPD #6734
8	TELGENHOFF, GARY	CORONER'S OFFICE
9	THOMPSON, M.	LVMPD #1988
10	VILLARREAL, AMANDA	C/O SHERRY GIPSON
11	WILSON, R.	LVMPD #3836
12		
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26		
27	DA#02F19658X/mb	
28	LVMPD EV#0209271153	
	BURG; ROBB; KIDNAP; MURDER - F	
	(TK6)	

EXHIBIT F

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

STEVEN KACZMAREK, aka
Steven D. Kaczmarek #1752368,

Defendant.

CASE NO: 02F18660X

DEPT NO: 4

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of FIRST DEGREE KIDNAPPING (Felony - NRS 200.310, 200.320); STATUTORY SEXUAL SEDUCTION (Felony - NRS 200.364, 200.368); POSSESSION OF STOLEN VEHICLE (Felony - NRS 205.273) and POSSESSION OF FORGED INSTRUMENT (Felony - NRS 205.160), in the manner following, to-wit: That the said Defendant, on or between September 2, 2002 and October 7, 2002, at and within the County of Clark, State of Nevada,

COUNT 1 - FIRST DEGREE KIDNAPPING

did on or between September 2, 2002, and October 7, 2002, wilfully, unlawfully, feloniously, and without authority of law, lead, take, entice, carry away and/or detain ALISHA BURNS, a minor child, with the intent to keep, imprison or confine the said ALISHA BURNS from her parents, guardians or other person or persons having lawful custody of said minor child, and/or with the intent to perpetrate upon the person of the said ALISHA BURNS, an unlawful act, to-wit: statutory sexual seduction.

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE

did on or about October 7, 2002, then and there wilfully, unlawfully, and feloniously sexually assault and subject ALISHA BURNS, a female child under sixteen years of age, to sexual penetration, to-wit: sexual intercourse, by the said Defendant inserting his penis into the vaginal opening of the said ALISHA BURNS, against her will, or under conditions in which Defendant knew, or should have known, that the said ALISHA BURNS was mentally

1 or physically incapable of resisting or understanding the nature of Defendant's conduct, the
2 said Defendant being approximately 32 years of age.

3 COUNT 3 - POSSESSION OF STOLEN VEHICLE

4 did on or about September 2, 2002, then and there wilfully, unlawfully, and
5 feloniously possess a stolen motor vehicle wrongfully taken from MARY JANE
6 ESPELAGE, to-wit: a 1996 Geo Prizm, bearing Ohio [REDACTED] which
7 Defendants knew, or had reason to believe, had been stolen.

8 COUNT 4 - POSSESSION OF FORGED INSTRUMENT

9 did on or about October 2, 2002, then and there wilfully, unlawfully, feloniously, and
10 falsely, with intent to defraud DENNIS L. and DONNA BUTLER, have in his possession,
11 with the intent to utter or pass as true and genuine, a certain instrument for the payment of
12 money, to-wit: a First Interstate Bank Check No. 950, issued in the sum of \$250.00, lawful
13 money of the United States, said check payable to the order of MARY JANE ESPELAGE.

14 All of which is contrary to the form, force and effect of Statutes in such cases made
15 and provided and against the peace and dignity of the State of Nevada. Said Complainant
16 makes this declaration subject to the penalty of perjury.

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10/14/02

02F18660X/rld
LVMPD EV# 0210110380
KDNP; ST SX SED; PSV;
POSS FORG INSTR - F
(TK4)

FILED
NOV 21 10 33 AM '02
BY CLERK

1 STEWART L. BELL
2 Clark County District Attorney
3 Nevada Bar #000477
4 CRAIG HENDRICKS
5 Deputy District Attorney
6 Nevada Bar #00000477
7 200 South Third Street
8 Las Vegas, Nevada 89155-2211
9 (702) 455-4711
10 Attorney for Plaintiff

11 JUSTICE COURT, LAS VEGAS TOWNSHIP
12 CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,

14 Plaintiff,

15 -vs-

16 STEVEN KACZMAREK,
17 #1752368

18 Defendant.

CASE NO: 02F18660X

DEPT NO: 4

19 REQUEST FOR ATTENDANCE OF OUT-OF-STATE
20 WITNESS ALISHA BURNS

21 TO: The Honorable Judge of the above entitled Court:

22 The undersigned, CRAIG HENDRICKS, Deputy District Attorney of the County of
23 Clark, State of Nevada, hereby reports and certifies as follows:

24 1. That there is now pending in Justice Court the above entitled criminal prosecution
25 by the State of Nevada against STEVEN KACZMAREK, Defendant, wherein said
26 Defendant stands accused and charged with having committed the following criminal
27 offenses against the laws of the State of Nevada, to wit: FIRST DEGREE KIDNAPPING
28 (Felony - NRS 200.310, 200.320), STATUTORY SEXUAL SEDUCTION (Felony - NRS
200.364, 200.368), POSSESSION OF STOLEN VEHICLE (Felony - NRS 205.273) and
POSSESSION OF FORGED INSTRUMENT (Felony - NRS 205.160), on or about October
11, 2002, at and within the County of Clark, State of Nevada, contrary to the form, force and
effect of statutes in such cases made and provided, and against the peace and dignity of the

1 State of Nevada,

2 2. That ALISHA BURNS is a necessary and material witness for the State of Nevada
3 in the prosecution and further that ALISHA BURNS' testimony at said preliminary hearing
4 will be required, commencing on November 27, 2002, at the hour of 9:00 o'clock a.m.

5 3. That ALISHA BURNS, whose address is SCIETO COUNTY JUVENILE
6 DETENTION CENTER, Georgetown, Ohio, is a necessary and material witness and a
7 principal witness for the State of Nevada in such prosecution by reason of the following:

8 ALISHA BURNS is the victim of the crimes of First Degree Kidnapping and
9 Statutory Sexual Seduction.

10 4. That the presence of the said ALISHA BURNS personally in said Justice Court for
11 the preliminary hearing of the Defendant for the purpose of giving testimony therein upon
12 the part of the State of Nevada on November 27, 2002, at the hour of 9:00 o'clock A.M. of
13 said day will be required for a period of 2 day(s).

14 5. That if the said ALISHA BURNS as such witness comes into the State of Nevada
15 in obedience to a Summons directing him to attend and to testify at said preliminary hearing,
16 the laws of the State of Nevada and of any other state through which said witness may be
17 required to pass by the ordinary course of travel to attend said preliminary hearing, give him
18 protection from arrest or the service of process, civil or criminal, in connection with matters
19 which arose before his entrance into said state pursuant to said Summons.

20 WHEREFORE, it is requested, for and on behalf of the State of Nevada, that your
21 Honor certify to the above and foregoing by the issuance of a Certificate thereto under the
22 seal of the Las Vegas Justice Court of the State of Nevada, in and for the County of Clark,
23 for the purpose of being presented to a Judge of a Court of Record in the State of
24 Georgetown, Ohio in a proceeding to compel the attendance of the said ALISHA BURNS as
25 a witness at said preliminary hearing for the time and date above set forth, and pursuant to
26 law.

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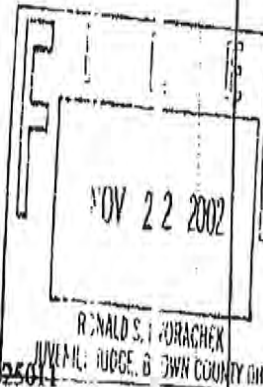
DATED this _____ day of November, 2002, in the City of Las Vegas, County of
Clark, State of Nevada.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY Craig Hendricks
CRAIG HENDRICKS
Deputy District Attorney
Nevada Bar #004630

CERTIFIED COPY
The document to which this certificate is attached
is a full, true and correct copy of the original on
file and of record in Justice Court of Las Vegas
Township, in and for the County of Clark, State
of Nevada.
By [Signature] Deputy
Date NOV 21 2002

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
BROWN COUNTY, OHIO



IN RE: REQUEST FOR
ATTENDANCE OF
MATERIAL WITNESS:
ALISHA BURNS

Case No. 20025611
Judge Dvorachek

Entry Ordering Witness to
Appear and Testify in
Out-of-State Criminal Proceeding

This matter came on upon the presentation of the Certificate of the Honorable James Bixler, Justice of the Peace for the Las Vegas Justice Court of the State of Nevada, in and for the County of Clark, State of Nevada, a Court of Record, which Certificate has been duly filed in this Court pursuant to Sections 2939.25 to .29 of the Ohio Revised Code, attesting that ALISHA BURNS, a person who is to be found in the custody of the Brown County Department of Jobs and Family Services, is a necessary and material witness in the criminal proceeding captioned: State of Nevada v. STEVEN KACZMAREK, being Case Number 02F18660X; that the attendance of such witness is required in the Las Vegas Justice Court of the State of Nevada, in and for the County of Clark, State of Nevada; that the State of Nevada and any other state through which the witness shall be required to pass by ordinary course of travel shall afford protection from arrest and service of civil and criminal process to and from the Court where such prosecution is pending; that it will not cause undue hardship to the witness, and that said witness has been served with a copy of the aforementioned Certificate.

Thomas P.
Gronau

PROSECUTING
ATTORNEY


Brown County
200 E. Cherry St.
Cincinnati, Ohio 45221
937/378-4151

IT IS THEREFORE ORDERED THAT, ALISHA BURNS, a necessary and material witness to the prosecution of the aforesaid criminal proceedings, shall appear in the Las Vegas Justice Court

of the State of Nevada, in and for the County of Clark, State of Nevada on the 27TH day of
November, 2002 at 9:00 a.m., to testify as a witness at a preliminary hearing.

IT IS FURTHER ORDERED THAT ALISHA BURNS shall be conveyed to the custody of
Geri Luna and Terry Sullivan, investigators for the Nevada District Attorney's Office, Las Vegas,
Nevada, on November 24, 2002 at 9:00 a.m. at the Brown County Sheriff's Office in Georgetown,
Ohio. ALISHA BURNS shall then be transported by Geri Luna and Terry Sullivan to the Greater
Cincinnati Airport to be transported to Las Vegas, Nevada. ALISHA BURNS shall remain in the
custody of Geri Luna and Terry Sullivan until after the preliminary hearing scheduled for November
27, 2002 has concluded. ALISHA BURNS shall then be returned to Brown County, Ohio, as soon
as the first reasonable flight arrangement can be made. ALISHA BURNS shall then be transported
to the Brown County Sheriff's Office and returned to the custody of the Brown County Department
of Jobs and Family Services.

IT IS FURTHER ORDERED THAT, due to ALISHA BURNS being a minor child, the Las
Vegas Justice Court of the State of Nevada shall appoint an attorney or guardian ad litem to act as
counsel on behalf of ALISHA BURNS while she is in the custody of Geri Luna and Terry Sullivan,
in Las Vegas, Nevada.

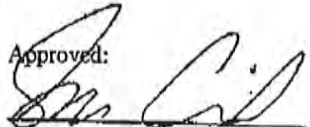

RONALD S. DVORACHEK, JUDGE


Thomas F.
Grennan

PROSECUTING
ATTORNEY

Brown County
900 E. Cherry St.
Georgetown, Ohio 43021
937/376-4151

Approved:


SCOTT T. GUSWEILER
Guardian Ad Litem for Alisha Burns


ERIN G. ROSEN
Assistant Prosecuting Attorney

BURNS R 0084

EXHIBIT G

COPY

1 TRAN

2 CASE NO.

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
4 COUNTY OF CLARK, STATE OF NEVADA

5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 STEVEN KACZMAREK,)

9 Defendant.)

CASE NO. 02F18660X

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

10

11

12 BEFORE THE HONORABLE JAMES BIXLER
13 JUSTICE OF THE PEACE

14

15 TUESDAY, NOVEMBER 26, 2002

16

8:00 A.M.

17

18

APPEARANCES:

19

For the State: GARY GUYMON, ESQ.
Deputy District Attorney

20

21 For the Defendant: JAY L. SIEGEL, ESQ.

22

23 Court Appointed Counsel
For Alicia Burns: PHILLIP J. KOHN, ESQ.
CURTIS S. BROWN, ESQ.
24 Deputy Public Defenders

25 Reported by: KENDALL D. HEATH, CCR NO. 475

1 LAS VEGAS, NEVADA, NOVEMBER 26, 2002,

2 8:00 A.M.

3 P R O C E E D I N G S

4 * * * * *

5 THE COURT: Recall State of Nevada versus
6 Steven Kaczmarek.

7 MR. GUYMON: I have a murder case in Justice
8 Court

9 THE COURT: I have Department 6's file. In
10 looking at this, is this a death penalty case?

11 MR. GUYMON: There are aggravating factors,
12 there is a possibility. That's correct.

13 THE COURT: You understand the conflict the
14 you had in that?

15 MR. GUYMON: Yes, I do understand it.

16 THE COURT: It was also suggested in the
17 process of getting counsel for the two cases that we get
18 the same counsel because of overlapping of witnesses and
19 interrelated facts. I have no idea

20 MR. GUYMON: I understand that. And my only
21 certain was this: I've presented it to counsel today
22 and there is not a second defendant in this case
23 currently. I don't know that we will ever charge a
24 second defendant. So my feelings, which are, why
25 doesn't this go to the special public defender's office

1 who we have on contract for the cases, if we don't have
2 a second defendant?

3 THE COURT: They are short somebody in their
4 office and they got a bunch coming up. So I think under
5 the circumstances, we should probably do it the right
6 way and that's not in that spot.

7 Mr. Siegel, you're death penalty qualified?

8 MR. SIEGEL: I am qualified. What I
9 indicated. If it does become a death case, if they make
10 it through the committee, I'm making sure I take another
11 attorney THE COURT: And you are entitled to have
12 co-counsel on a death penalty case.

13 THE COURT: Mr. Kaczmarek, Mr. Siegel has
14 agreed to take both matters here in Department 4 and
15 Department 6.

16 The defendant has an appearance today. Can
17 you be in Department 6 on Mr. Kaczmarek's case? Is
18 Judge Oesterle here.

19 MR. GUYMON: Yes

20 THE COURT: I'll make a note and explain the
21 situation to her.

22 MR. SIEGEL: I've got two federal matters.
23 So what I'll do is show up a little later.

24 MR. KOHN: In terms of the other potential
25 client, Alicia Burns, I ask that we be appointed to

1 represent her.

2 THE COURT: She's not a defendant yet?

3 MR. KOHN: But she will obviously need legal
4 counsel at some point.

5 MR. GUYMON: She's a witness in the
6 kidnapping case, which is in your courtroom, and would
7 be a witness in our case in the murder case,
8 potentially.

9 THE COURT: She's going to need counsel,
10 obviously. She's not only a witness but a potential
11 defendant. She'll need legal counsel appointed, unless
12 the State is willing to state right off the top that
13 they are not going to consider her a defendant.

14 MR. GUYMON: We're not in that position.
15 That's the odd thing. They'll represent the one person
16 that's not charged currently, but they can't represent
17 the defendant that is charged. I'm concerned about the
18 physical dollars that the County concerns itself with.
19 I'll tell the Court that the Court in Ohio ordered that
20 the juvenile, Alicia Burns, have counsel prior to
21 testifying in the kidnapping case, and prior to
22 testifying in the murder case, so she does need counsel
23 and it has been ordered.

24 THE COURT: Right now we have our appearance
25 date tomorrow in Department 6 and in Department 4. We

1 have a prelim set for the 27th, but you won't be ready
2 by then. We'll reset it in two weeks.

3 MR. BROWN: We have a December 6 prelim date.

4 MR. SIEGEL: Yes. December 6, I'll have to
5 reset. Can we do it the week of December 10?

6 THE COURT: How about the 12th of December?
7 And I'll ask Department 6 if -- do you want both of
8 these matters set the same day?

9 MR. GUYMON: It won't be prudent to set them
10 the same day because I think both prelims may be
11 lengthy.

12 MR. BROWN: Let's set ours for the 16th and
13 maybe she'll set hers for the 12th.

14 MR. GUYMON: That's fine.

15 MR. SIEGEL: Is there any chance, because the
16 11th is wide open. Is there any way you can do the
17 11th?

18 THE COURT: I'm trying to get a date for
19 Department 6 so Department 6 can hear their case before
20 we hear ours.

21 MR. SIEGEL: If you want to do the 10th here
22 and the 11th there.

23 THE COURT: That's two weeks away.

24 MR. GUYMON: That's fine for us.

25 THE COURT: Department 6 on the 10th and ours

1 is on the 11th.

2 MR. KOHN: I heard it's been ordered that she
3 have counsel. I ask the Court that we get appointed so
4 we know she has counsel so she's not in a position --

5 THE COURT: Why is it that you guys are
6 willing to take her appointment and not the defendant's
7 appointment?

8 MR. KOHN: Because she can't be a death case.
9 We picked up three death cases last week we had a death
10 case that we had worked out that Chris Owens --

11 THE COURT: Let me appoint somebody outside
12 the public defender's office.

13 MR. GUYMON: You just hit it. It seems odd
14 to me they won't represent a guy that's currently
15 charged but we may be --

16 THE COURT: The time involved in representing
17 a witness on the case is going to be substantially less
18 than it is going to represent the defendant charged with
19 the murder, and the problem with the office is the fact
20 that they have got so many death penalty cases coming up
21 in a short time constraint with what we're dealing with,
22 and actually it would be better taxpayer-wise to have
23 him represent the witness because there's no additional
24 outlay.

25 I can understand. I think we've thoroughly

1 analyzed it. You guys are going to be appointed to
2 represent her.

3 The trouble is we're going to have to explain
4 to her why she has counsel appointed. When she gets to
5 court, we'll have to explain to her the situation. I
6 don't think she's going to be amenable to have somebody
7 saying the Court appointed us because you're going to be
8 a potential witness and you have certain rights.

9 MR. KOHN: She needs to know all that.

10 THE COURT: The forum is to do it when she
11 comes to court, so the Court can explain it on the
12 record.

13 We'll set yours on Monday and set Judge
14 Oesterle's -- do you know where she is?

15 MR. GUYMON: She's being held in the juvenile
16 detention center.

17 THE COURT: So you have control over her?

18 MR. GUYMON: Absolutely.

19 THE COURT: We'll put it on 7:30, Monday
20 morning, and have her brought over.

21 MR. KOHN: And I'll be here. The problem is
22 we go over oftentimes to talk to people to advise them
23 of their rights, and the concern that the Court has her
24 not trusting us, but when I explain to her --

25 THE COURT: Go over to Juvenile Hall and tell

1 her you're going to be appointed Monday morning.
2 Actually, you're appointed right now. Come back Monday
3 and we'll go through all of this with her so it's on the
4 record and she understands.

5 One last thing about our schedule. Just
6 taking a look at everything, December 11th in here is
7 the sexual assault 02F18660. That's the first degree
8 kidnapping and sexual assault of a minor under 16,
9 possession of a stolen vehicle, possession of forged
10 instrument.

11 MR. SIEGEL: On the Justice Court 6, did you
12 tell me that December 16 was a an okay date for Justice
13 Court 6?

14 THE COURT: I have no idea. As soon as we're
15 done, I'm going to over and ask them, ask whoever is
16 over there.

17 MR. SIEGEL: Either the 10th or the 16th.

18 MR. GUYMON: Any date is fine for the date on
19 the murder case.

20 THE COURT: You want to do the murder case in
21 6 before this case. Those things tend to sift
22 everything downhill. I don't really care.

23 MR. SIEGEL: I'm looking at preparation time.
24 The 17th is no problem.

25 THE COURT: If the witnesses are here one

1 day, it's easier to get them to come back the next
2 morning.

3 MR. SIEGEL: My preference, if I have a
4 preference, I would say the 11th on the sex case, the
5 16th on the murder case.

6 THE COURT: You're not paying attention. I
7 want them back to back. Give me two days back to back
8 so these witnesses they come here one morning and they
9 got to come back the next morning.

10 MR. KOHN: Let's go with 10th and 11th.

11 THE CLERK: December 2, 7:30.

12 The preliminary hearing date is December 11,
13 nine o'clock.

14 THE COURT: The prelims are on 10th and 11th.

15 THE DEFENDANT: If they are going to give me
16 the death penalty --

17 THE COURT: Nobody has said that yet. They
18 haven't decided that yet. Wait and talk to your
19 attorney.

20 MR. SIEGEL: I don't have the discovery.

21 MR. GUYMON: The public defender's office has
22 the discovery on the homicide case. I've provided that
23 to Curtis Brown. Otherwise, I would burn another copy.

24 ///

25 ///

1 THE COURT: We'll get everything over to
2 Mr. Siegal.

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6 ATTEST: FULL, TRUE AND ACCURATE
7 TRANSCRIPT OF PROCEEDINGS

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12 KENDALL D. HEATH, CCR NO. 475
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EXHIBIT H

Justice Court, Las Vegas Township

STATE VS. BURNS, ALISHA aka BURNS, ALISHA NICOLE


CASE NO. 02F21724X

PAGE 2

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

DECEMBER 23, 2002 N. OESTERLE G. GUYMON, DA A. COFFEE, PD J. DALY, CR T. CORDOBA, CLK	DEFENDANT NOT PRESENT IN COURT PASSED BY COURT FOR STATE TO PREPARE ARREST WARRANT NO BAIL POSTED	12/24/02 8:00A #6 MAB
DECEMBER 24, 2002 N. OESTERLE M. BROWN, DA -----SPD S. CRAIG, CR T. CORDOBA, CLK	DEFENDANT NOT PRESENT IN COURT ARREST WARRANT ISSUED - \$00/00 PER COUNT	 JSW
FEBRUARY 12, 2003 N. OESTERLE G. GUYMON, DA A. JACKSON SPEC PD J. DALY, CR T. CORDOBA, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* PASSED BY COURT FOR SPECIAL PUBLIC DEFENDER, P. KOHN, TO BE NOTIFIED TO SET PRELIMINARY HEARING DATE /JC DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	2-13-03 7:45 #6 JC
FEBRUARY 13, 2003 N. OESTERLE G. GUYMON, DA P. KOHN, SPEC PD S. GRAHAM, CR T. CORDOBA, CLK	DEFENDANT PRESENT IN COURT IN CUSTODY PRELIMINARY HEARING DATE SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	03/07/03 9:30 #6 hlg
FEBRUARY 26, 2003	NOTICE OF MOTION AND MOTION TO COMPEL HANDWRITING EXEMPLAR	FILED TC
MARCH 3, 2003 N. OESTERLE G. GUYMON, DA P. KOHN, SPEC. PD S. BRIGGS, CR T. CORDOBA, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* MOTION FOR HANDWRITING EXEMPLAR BY DEFENDANT REQUESTED BY STATE-MOTION STAYED AT THIS TIME PRELIMINARY HEARING DATE STANDS DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	3-7-03 9:30 #6 TC

Justice Court, Las Vegas Township

STATE VS. BURNS, ALISHA AKA BURNS, ALISHA NICOLE CASE NO. 02F21724X

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

DECEMBER 5, 2002	CRIMINAL COMPLAINT FILED: COUNT 1 - BURGLARY COUNT 2 - ROBBERY COUNT 3 - FIRST DEGREE KIDNAPPING COUNT 4- MURDER	JC
DECEMBER 5, 2002 JANSEN FOR #6	DEFENDANT NOT PRESENT IN COURT ARREST WARRANT ISSUED: \$5000/50000 COUNT 1 10,000/100,000 COUNT 2 25,000/250,000 COUNT 3 NO BAIL COUNT 4	JC
DECEMBER 9, 2002	MOTION TO PLACE ON CALENDAR (AMEND CRIMINAL COMPLAINT)	12-11-02 7:45 #6
DECEMBER 9, 2002	NOTICE OF MOTION AND MOTION TO CONSOLIDATE FILED	12/11/02 8:00A #6
DECEMBER 10, 2002 A. ZIMMERMAN FOR N. OESTERLE G. GUYMON, DA P. KOHN, SPECIAL PD C. BROKA, CR J. JOLLEY, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT SPECIAL PUBLIC DEFENDER TO REPRESENT THE DEFENDANT PER PUBLIC DEFENDER - DEFENDANT IS BEING HELD ON THESE CHARGES ILLEGALLY AND DEFENDANT IS A WARD OF THE STATE OF OHIO AND WAS ONLY BROUGHT HERE TO TESTIFY ON ANOTHER PRELIMINARY HEARING	12/11/02 7:45A #6
	MOTION BY SPECIAL PUBLIC DEFENDER TO HAVE DEFENDANT RETURNED TO OHIO AND HAVE DEFENDANT EXTRADICTED PASSED BY COURT FOR STATE TO DETERMINE AS TO HOW THEY WILL PROCEED AND DECISION BY COURT DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	MAB
DECEMBER 11, 2002	ORDER TO TRANSPORT FILED	MAB
DECEMBER 11, 2002	EX-PARTE ORDER TO ALLOW THE DEFENDANT TO MAKE REASONABLE TELEPHONE CALLS FILED	MAB
DECEMBER 11, 2002 N. OESTERLE G. GUYMON, DA P. KOHNS, S.P.D. S. GRAHAM, CR T. CORDOBA, CLK	DEFENDANT PRESENT IN COURT *IN CUSTODY* MOTION TO CONSOLIDATE BY STATE - MOTION WITHDRAWN STATE WILL BE PROCEEDING AT SOME OTHER TIME IN THE FUTURE PASSED BY COURT FOR STATE TO ISSUE AN ARREST WARRANT - STATE TO PREPARE ARREST WARRANT FOR SIGNATURE BY NEXT COURT DATE DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	12/23/02 7:45A #6 2303 MAB

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 ALISHA BURNS, aka
7 Alisha Nicole Burns,

8 Defendant.

DEC 5 10 12 AM '02

BY LAS VEGAS

CASE NO: 02F21724X

DEPT NO: 6

CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of BURGLARY (Felony -
10 NRS 205.060); ROBBERY (Felony - NRS 200.380); FIRST DEGREE KIDNAPPING
11 (Felony - NRS 200.310, 200.320) and MURDER (Felony - NRS 200.010, 200.030), in the
12 manner following, to-wit: That the said Defendant, on or about the 27th day of September,
13 2002, at and within the County of Clark, State of Nevada,

14 COUNT 1 - BURGLARY

15 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a
16 felony, to-wit: robbery and/or murder, and/or with the intent to commit larceny, that certain
17 building occupied by PEDRO VILLAREAL, located at 813 Ogden Street, Apartment No.
18 25, Las Vegas, Clark County, Nevada.

19 COUNT 2 - ROBBERY

20 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
21 a leather jacket, a Sharp VCR, a gold bracelet, a gold ring, a pair of socks, a comb, a cellular
22 telephone, \$20.00 lawful money of the United States, a State Quarters collection and a wallet
23 including the contents, from the person of PEDRO VILLAREAL, or in his presence, by
24 means of force or violence, or fear of injury to, and without the consent and against the will
25 of the said PEDRO VILLAREAL, in the following manner, to-wit: said Defendant and
26 STEVEN KACZMAREK, aka Steven D. Kaczmarek aiding or abetting each other by
27 counsel and encouragement by entering into a course of conduct whereby Defendant
28 ALISHA BURNS, aka Alisha Nicole Burns, did pose as a prostitute to lure the said PEDRO

VILLAREAL to his room and Defendant and STEVEN KACZMAREK, aka Steven D. Kaczmarek did then overpower PEDRO VILLAREAL and did kidnap, rob and murder him.

COUNT 3 - FIRST DEGREE KIDNAPPING


did wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away PEDRO VILLAREAL, a human being, with the intent to hold or detain the said PEDRO VILLAREAL against his will, and without his consent, for the purpose of committing robbery and/or murder upon the said PEDRO VILLAREAL, the said PEDRO VILLAREAL suffering substantial bodily harm, to-wit: death, during the act of kidnapping or subsequent detention and confinement, in the following manner, to-wit: said Defendant and STEVEN KACZMAREK, aka Steven D. Kaczmarek aiding or abetting each other by counsel and encouragement by entering into a course of conduct whereby Defendant ALISHA BURNS, aka Alisha Nicole Burns, did pose as a prostitute to lure the said PEDRO VILLAREAL to his room and Defendant and STEVEN KACZMAREK, aka Steven D. Kaczmarek did then overpower PEDRO VILLAREAL and did kidnap, rob and murder him.

COUNT 4 - MURDER

did then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill PEDRO VILLAREAL, a human being, by asphyxiation by putting pressure on the neck of the said PEDRO VILLAREAL with his hands and arm, by placing a sock in the mouth of the said PEDRO VILLAREAL and by placing the said PEDRO VILLAREAL's head in such a position as to be submerged in water in the following manner, to-wit: said Defendant and STEVEN KACZMAREK, aka Steven D. Kaczmarek aiding or abetting each other by counsel and encouragement by entering into a course of conduct whereby Defendant ALISHA BURNS, aka Alisha Nicole Burns, did pose as a prostitute to lure the said PEDRO VILLAREAL to his room and Defendant and STEVEN KACZMAREK, aka Steven D. Kaczmarek did then overpower PEDRO VILLAREAL and did kidnap, rob and murder him.

All of which is contrary to the form, force and effect of Statutes in such cases made

1 and provided and against the peace and dignity of the State of Nevada. Said Complainant
2 makes this declaration subject to the penalty of perjury.
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6 12/5/02
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26 02F21724X/kb
27 LVMPD EV# 0209271153
28 BURG; ROB; KDNP/SBH;
MURD - F
(TK6)

1 **NOTICE OF RESERVATION TO SEEK THE DEATH PENALTY**

2

3 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County

4 District Attorney, pursuant to the Order Amending Supreme Court Rule 250 filed on

5 December 30, 1998, NRS 175.552 and NRS 200.033, reserves the right to file a Notice of

6 Intent to Seek the Death Penalty.

7 DATED this 31st day of December, 2002.

8 Respectfully submitted,

9

10

11 BY



12 Chris J Owens

13 Chief Deputy

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EXHIBIT I

door," the Court explained. "A person asked that question outside her home, in her yard, on her sidewalk, or on her front steps has the

equivalent right to walk away, enter her home, and decline the officer the right to enter." The Supreme Court reversed the appellate division

and reinstated the trial court's dismissal of the action against Detective Steet. See: *Brown v. State*, 164 A.3d 735 (N.J. 2017). ■

New California Law Safeguards Minors' Rights When in Police Custody

ON OCTOBER 11, 2017, CALIFORNIA Governor Jerry Brown signed into law much-needed protection for minors who are targeted by police for questioning. Senate Bill 395 requires that minors 15 years of age or younger consult with a lawyer in person, by telephone, or by video conference before a custodial interrogation may occur and before the waiver of any *Miranda* rights.

Previously under California law, minors of any age could waive their *Miranda* rights. In a particularly egregious case that was cited by sponsors of the new law, a 10-year-old boy was deemed to have made a voluntary, knowing, and intelligent waiver of his *Miranda* rights when asked by police whether he understood his right to remain silent by responding, "Yes, that means that I have the right to stay calm." Remarkably, an appellate court held that his statement constituted a valid waiver of his *Miranda* rights, and the California Supreme Court declined to review the lower court's troubling decision. Under the new law, that

farce would not constitute a valid waiver of a minor's *Miranda* rights.

This reform was urgently needed. As the American Academy of Child and Adolescent Psychiatry explains, children and adolescents "differ from adults in the way they behave, solve problems, and make decisions." A recent study of exonerations by researchers with The National Registry of Exonerations reveals the very real consequences of the critical differences between the thought processes of adults and children once ensnared in the criminal justice system. Of the exonerations from 1989 to 2012 that were examined, the researchers found that 13% of adults had falsely confessed, but a staggering 42% of juveniles had done so.

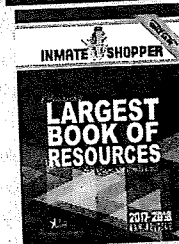
Senate Bill 395 is codified as Section 625.6 of the California Welfare and Institutions Code. ■

Sources: Senate Bill 395; Senator Ricardo Lara, Legislative Fact Sheet: *Miranda Rights for Youth*,

Senate Bill 395; Gross, Samuel R. "Exonerations in the United States, 1989-2012: Report by the National Registry of Exonerations," M. Shaffer, co-author; *The National Registry of Exonerations*, (2012)

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EXHIBIT J

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Tran
CASE NO. C191253
DEPT NO. 6

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK STATE OF NEVADA

CLERK

STATE OF NEVADA,

Plaintiff,

vs.

ALISHA BURNES,

Defendant.

Case No.
02F21724X

REPORTER'S TRANSCRIPT

OF

UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE NANCY OESTERLE
JUSTICE OF THE PEACE

Tuesday, April 1, 2003

A P P E A R A N C E S:

For the State: MARY D. BROWN, ESQ.
Deputy District Attorney

For the Defendant: PHILIP J. KOHN, ESQ.
Special Public Defender

Reported by: Stacy L. Briggs, CCR #335

Stacy L. Briggs, CCR (702) 455-5512

BURNS R 0107

COUNTY CLERK

JUL 21 2003

RECEIVED

1 LAS VEGAS, NEVADA, APRIL 1, 2003

2 * * * * *

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4

5 THE COURT: Mr. Kohn, I have Alisha
6 Burnes, 02F21724X.

7 MR. KOHN: Yes, Your Honor. Thank you,
8 Your Honor.

9 Your Honor, in this matter, we'll be
10 waiving the preliminary hearing. The District
11 Attorney has offered to allow Alisha to plead to
12 second degree murder, which would be a ten-to-life
13 sentence.

14 Alisha is seriously considering it and
15 is sort of waivering a little, but she still is
16 prepared to waive her preliminary hearing.

17 I have advised her, on more than one
18 occasion, that if you do waive your preliminary
19 hearing, you do not have a chance to come back to
20 this courtroom.

21 THE COURT: She could change her mind
22 and try to re-negotiate it or go to trial in
23 District Court.

24 MR. KOHN: Yes, Your Honor.

25 THE COURT: Ms. Brown, is that a correct

1 statement of the negotiations?

2 MS. BROWN: That's correct, Your Honor.

3 THE COURT: So, Alisha, did you talk to
4 your attorney, Mr. Kohn, about the negotiations?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand the
7 deal?

8 THE DEFENDANT: Yes.

9 THE COURT: And is that what you would
10 like to do?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that by
13 entering into these negotiations you are waiving,
14 by that I mean that you are giving up your right to
15 have a preliminary hearing in this matter, which
16 means that you are giving up your right to
17 cross-examine the witnesses that the State could
18 call against you and to challenge their evidence;
19 you are also giving up your right to subpoena
20 witnesses to testify for you, and you are giving up
21 your right to testify on your own behalf for the
22 purpose of today's preliminary hearing only?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you also understand that
25 this is an unconditional waiver, which means that

1 it's a permanent waiver of your right to have a
2 preliminary hearing in this case?

3 So if for any reason, once you get to
4 District Court, you change your mind, you decide
5 that you don't want to take the plea bargain, you
6 would then go directly to jury trial on the
7 original charges, you would not come back to
8 Justice Court and appear before me for the purpose
9 of having a preliminary hearing in this case.

10 THE DEFENDANT: Oh. Yes.

11 THE COURT: So knowing all of that, do
12 you still want to go forward at this point and
13 unconditionally waive your right to a preliminary
14 hearing?

15 THE DEFENDANT: Yes.

16 THE COURT: It appears to me, from the
17 Complaint on file herein, that crimes have been
18 committed, to wit: Count I, burglary; Count II,
19 robbery; Count III, first-degree kidnapping; Count
20 IV, murder.

21 And this defendant having
22 unconditionally waived her right to have a
23 preliminary hearing, I hereby order said defendant
24 to be held to answer to said charges in the Eighth
25 Judicial District Court, State of Nevada, in and

1 for the County of Clark.

2 Your next appearance date will be in
3 District Court.

4 THE CLERK: April 8th, 9:00 a.m.,
5 District Court 16.

6 MR. KOHN: Your Honor, I did advise your
7 clerk that I probably won't be available, so I'll
8 be moving to continue when I get there. That's
9 just so the DA knows.

10 THE COURT: Okay.

11

12

13 (Proceedings concluded.)

14

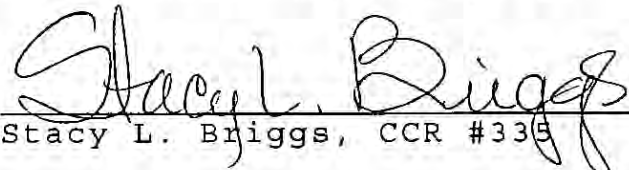
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16 Attest: Full, true, accurate transcript of
17 proceedings.

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Stacy L. Briggs, CCR #335

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EXHIBIT K

● ORIGINAL

● FILED

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APR 16 3 24 PM '03

Philip J. Kohn
CLERK

1 **ORDR**
2 PHILIP J. KOHN
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0556
5 333 South Third Street, 2ND Floor
6 Las Vegas, NV 89155-2316
7 (702) 455-6265
8 Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

12 vs.

13 ALISHA BURNS,
14 ID No. 1753792

15 Defendant.

CASE NO. C191253

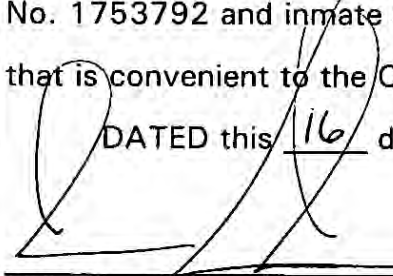
DEPT. NO. XVI


DATE OF HEARING:
TIME OF HEARING:

16 **STIPULATION AND ORDER**
17 **FOR A CONTACT VISIT**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties that the
19 Clark County Detention shall allow a contact visit between inmate ALICIA BURNS, I.D.
20 No. 1753792 and inmate STEVEN KACZMAREK, I.D. No. 1752368 at a date and time
21 that is convenient to the Clark County Detention Center.

22 DATED this 16 day of April, 2003.

23
24 
25 GARY L. GUYMAN
26 Deputy District Attorney
27 State Bar No. 003756
28 200 S. Third Street
Las Vegas, NV 89155
Attorney for Plaintiff


PHILIP J. KOHN
Special Public Defender
State Bar No. 000556
333 South Third Street, 2nd Floor
Las Vegas, NV 89155
Attorney for Defendant, Burns

RECEIVED

APR 16 2003

COUNTY CLERK

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

BURNS R 0113

1
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4 GREGORY L. DENUE
5 State Bar No. 5279
6 601 S. Tenth Street
7 Las Vegas, NV 89101
8 Attorney for Defendant, Kaczmarek

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ORDER

IT IS HEREBY ORDERED that the Clark County Detention shall allow a contact visit between inmate ALICIA BURNS, I.D. No. 1753792 and inmate STEVEN KACZMAREK, I.D. No. 1752368 at a date and time that is convenient to the Clark County Detention Center.

DATED this 16th day of April, 2003.


DISTRICT COURT JUDGE *re*

EXHIBIT L

Thomas L. Bennett, M.D.

Forensic Medicine and Pathology

October 2, 2018

Tony L. Abbatangelo, Attorney at Law
724 S. 9th Street
Las Vegas, NV 89101

RE: F18-83, State-NV v Alisha Burns

Dear Mr. Abbatangelo:

Thank you for the opportunity to work with you on the above case. You asked me to review the materials regarding this event, and to offer what information and opinions I may have from my role as a physician and forensic pathologist. I am board certified in anatomic pathology, clinical pathology and forensic pathology, and am active as a forensic consultant and forensic pathologist for Wyoming and Montana and adjacent states, working with our courts, families and Coroners in the investigation of the causes, manners and circumstances of injuries, deaths and other medical conditions. I have performed well-over 12,000 forensic autopsies in my career, the majority involving non-natural deaths. These have included investigating thousands of injuries, toxicology cases and trauma-associated deaths.

I have received the following **MATERIALS FOR REVIEW**:

1. Burns – Coroner's and related reports;
2. Kaczmarek DC - filed information;
3. Burns - statement of Kaczmarek in re murder
4. Burns - statement of Abe Cruz at pawn shop;
5. Burns and Kaczmarek notice of intent to seek the death penalty;

SUMMARY:

Pedro Villarreal (58 yo Hispanic man, 67 inches and 189 pounds) was found dead in his apartment at ~1200 on 9-27-02 by a maintenance worker who was checking on complaints the Uptown Motel room/apartment complex was without hot water. He was found in a tub of running water, he clothed in white underwear, black jean pants, brown belt and white socks, a blood-stained/blood-soaked sock in his mouth and multicolored pillow case over his head. His "hands appeared white in color and very wrinkled". The Medical Examiner was notified, and autopsy performed the next day.

CIRCUMSTANCES OF DEATH

Circ: Homicide/LVMPD. Discovered by maintenance worker @ 1200 hrs with hands & feet bound with electrical cord, pillow case over head, face down in bathtub in approx. 3-5 inches of water with shower running. Maintenance worker attempted entry into decedent's apartment @ approx 1000 hrs due to water back up in next door apartment tub but found

You indicated that you questioned whether the events could have happened on the 25th, based upon the findings at the scene and the autopsy, and requested I review materials and offer whatever opinions I could. You indicated that there were color photos available, but they had not been released to you, and are not in the materials I was able to review at the time of this report.

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Email: doctor4n6@gmail.com Website: www.forensics-tlb.com

BURNS R 0116

EXAMINATION of his BODY:**THE VICTIM**

The victim was located on his stomach in the bathtub apparently face down. The victim's head pointed south and there was a multi-colored pillowcase (ITEM 7; 6932) located over the victim's head. The right arm was slightly bent at the elbow and was pointing to the north. The lower portion of the right arm was resting on the lower portion of the victim's back with his hand palm up near his buttocks. The left arm was bent approximately 90 degrees at the elbow with the upper portion pointing to the south at the victim's side and the lower portion located across the lower back of the victim pointing to the west. The left hand was palm up and located on top of the right hand. The victim's hands appeared water pruned. The left and right arms were bound together near the wrists and around the left hand with a white extension cord (ITEM 10; 6932). His legs mirrored each other and were bent approximately 90 degrees at the knees with the upper portion pointing south with the knees located against the interior south wall of the bathtub. The upper portion of the legs were angled upwards with the left foot located against the east wall and the toes of the feet located against the south wall. The left and right legs were bound together just above the ankles with a cut white electrical cord (ITEM 11; 6932). There were two (2) "older" injuries on the victim's back. The victim was wearing a pair of black "Rustler" denim type pants with a brown belt (ITEM 6; 6932), a pair of white "Hanes" brief style underwear (ITEM 5; 6932), and a pair of white ankle length socks (ITEM 4; 6932). The clothing was wet.

From the autopsy, which was started at 0900 the day after he was found dead, Dr. Gary Telgnhoff listed the following diagnoses, and concluded that Mr. Villarreal died of "asphyxia", the manner of death "homicide".

- I. Asphyxia.
 - A. Suffocation.
 - B. Strangulation.
 - C. Drowning.
- II. Multiple blunt force trauma, body.

A white blood soaked piece of cloth (white sock) is in the oral cavity obstructing the same. The entire article is packed within the oral cavity with the tongue compressed to the bottom of the oral cavity. A white button approximately 1/4 inch is found attached to the right upper aspect of the abdomen (on the skin). There are exaggerated wrinkles in the skin of the forearms, wrists, hands and feet (washerwoman changes).

Upon removal of the previously described electric cords, deep furrows remain in the skin surrounding the wrists with prominent skin slippage in these areas and deep furrows around the lateral aspect and posterior aspect of the legs bilaterally.

The refrigerated body is cold. Rigor mortis is receded. Fixed exaggerated livor mortis is on the anterior aspect of the body, most pronounced on the anterior thighs, abdomen and chest and most particularly the neck and head. Some Tardieu spots are present on the shoulders and juncture of the chest with the neck. There is pronounced male pattern baldness. Residual black-graying scalp hair at the sides of the head and is 2-1/2 inches in maximal length. The anterior aspect of the skull is intact. The skin is edematous (slightly). The face is slightly weathered with

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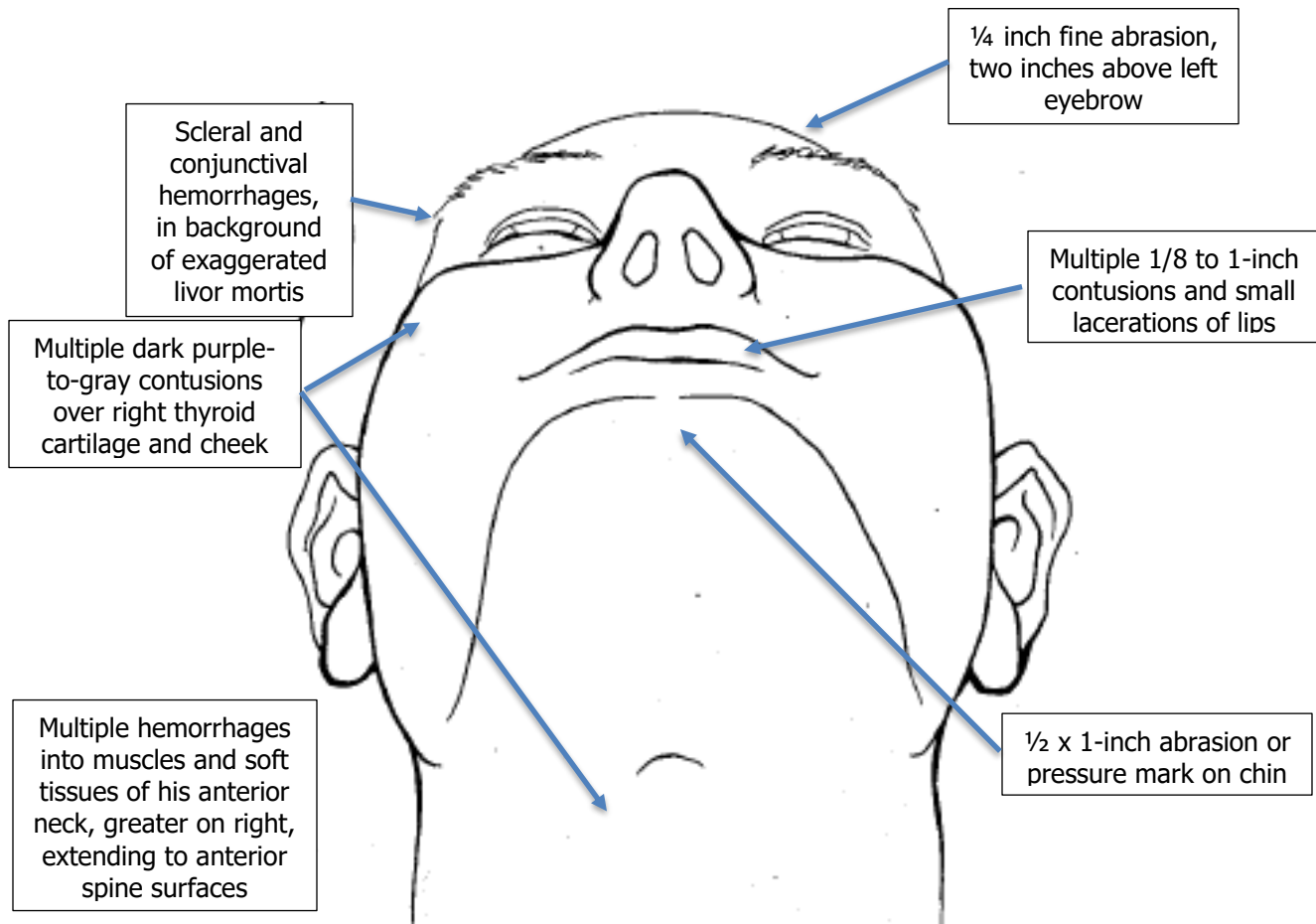
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BURNS R 0117

numerous acne scars and pits. The nose and facial bones are intact by palpation. There is blood/purge fluid emanating from the nostrils. The decedent wears a black-graying mustache. The teeth are natural with some implants and extensive dental work present that are in adequate condition. The neck has evidence of injury to be described, but is otherwise well developed and symmetrical.

Head and Neck: Numerous petechial hemorrhages are in the sclerae and conjunctivae of both eyes; however, the head is involved by exaggerated livor mortis and is dependent at the scene. This most likely represents true petechial hemorrhage, exaggerated by dependent position.



Many abrasions were described over his back and left arm, with no mention of bruising. Bruises are described over his shoulders and his medial right arm.

Internally, prominent vascular engorgement and congestion of the organs is described, the lungs weighing 1,480 grams combined. No froth is described in the airways. No microscopic studies are described/performed, and there is no mention of saving tissues for potential microscopic studies. Toxicology studies found his blood contained 0.13% ethanol, no other drugs found.

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EXAMINATION of the SCENE:

From the Medical Examiner report:

It was reported that the maintenance worker attempted to enter the motel room/apartment at approximately 1000 hours on 27 September 2002. It was reported that he attempted to open the door, which was not locked, but found the chain intact from the inside. The air-conditioner was apparently running at that time. At approximately 1200 hours, he again attempted to knock on the decedent's door. At that time, the air-conditioner was off. The door this time was locked and required a key to enter. The chain was no longer latched. The maintenance man then reportedly left the apartment and called 911.

Scene:

One bedroom, second floor efficiency apartment with a bathroom, which was occupied only by the decedent. The apartment had no sign of forced entry or drug use. The apartment was in disarray with several items that appeared to have been gone through including a large dresser with most of the drawers pulled out. One dresser drawer was broken and some items from the closet appeared to have been searched. A small fan was turned over on the floor by the front window and its electrical cord was missing. An ash tray full of used cigarette butts appeared to have been dumped on the bed and the ashtray left on the floor along with a cigarette butt. The bathroom had three towels hanging on a towel rack next to the toilet and what appeared to be a pair of tan colored, nylon pantyhose hanging on a hook, on the back of the bathroom door.

There was also a wet box on the floor next to the tub with several paper items, which appeared to be magazines. On a small shelf between the bathroom door and the tub there were two toothbrushes upside down in a coffee cup filled with what appeared to be water, a second empty coffee cup, two razors and some other toiletries. The floor in the bathroom and out into the bedroom area was very wet. The sink and side of the tub had what appeared to be shaving cream all over the surfaces. No identification or money was located in the apartment.

Multiple fingerprints were lifted from the scene, none reportedly matching Alisha Burns.

DISTRICT ATTORNEY - CHARGES: The Clark County District Attorney's Notice includes information regarding past convictions of Steven Kaczmarek in 1989-1996. The current trial regards the death of Pedro Villarreal, the State accusing Mr. Kaczmarek of the murder and the robbery, and alleging Alisha Burns was his accomplice, many sites in the charges noting she was considered a child. They further allege:

The Defendant engaged in an extended struggle with the victim and strangled the victim for a substantial period of time before the victim died. Burns jumped on Villarreal's head and/or neck in a further attempt to asphyxiate him. Villarreal had several abrasions on his back from where he struggled against Defendant and Burns. Defendant and Burns left Villarreal bound in the tub with a sock in his mouth, a pillowcase over his head and water pouring over him. At the autopsy, the coroner observed that the sock in Villarreal's mouth was soaked with blood.

Abe Cruz, who worked as a counterman at a pawn shop, was interviewed about events he could have witnessed on 9-25-02. He apparently recognized a photo of Steve Kaczmarek but was unable to recognize a photo of Alisha Burns or more info about the events.

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BURNS R 0119

STEVE KACZMAREK INTERVIEW, 10-29-02:

He indicated he and Alisha Burns had taken her mother's car and driven from Ohio to Las Vegas, ultimately selling the car, and then Alisha panhandling for money, he and "Tommy" hovering nearby. They worked Fremont Street, where she met Mr. Villarreal, who had been drinking. Mr. Villarreal bought her a drink at McDonalds, and he alleges than offered her \$200 "to go to his house". He didn't remember the day. The three went with Mr. Villarreal back to his home about 2230, where they drank a beer. They decided to rob him, Steve indicating he grabbed the decedent around his neck with his left arm, taking Mr. Villareal to the floor, where he "passed out". They found the wallet between the mattresses. Mr. Villarreal began coming around, and Tommy then choked him, as did Alisha. Steve stood on his torso and Alisha stomped and punched the back of his neck. They then tied Mr. Villarreal up with the electrical cords and placed him into the tub. Steve put the sock into the mouth and cut off his shirt. They put on gloves they found at the apartment, and he claimed they wiped the room down, he worried about prints and DNA. They then turned on the water, took some money and things and left (p. 22). They then went directly to the pawn shop and pawned the merchandise. He claimed Alisha had gotten a fake ID under the name "Mary Jane Espelage", age 18, which she used to sell the car and also to sign a check (p. 45).

OPINIONS: After review of the above, I offer the following opinions, each to a reasonable degree of medical certainty:

1. From the description of the body of Mr. Villareal at the scene and then at the autopsy on 9-28-02, it is unlikely that Mr. Villareal had been dead since the 25th.
 - a. He had "washer woman" change of the skin, which is simply a sign of immersion or water soaking, which can occur in less than an hour of exposure to water.
 - b. The temperature of the water spraying on him is not given, or how the faucets were set (such as whether the hot water spigot had been turned on in addition to the cold?), but in general, the exposure of a body to water for approximately eight hours or more will result in generalized skin slippage, with the top layers of skin slipping and sloughing away. There is a description of some slipping of the skin under the bindings, but this is a result of mechanical trauma from the bindings, consistent with the description of the localized slippage of the skin.
2. "Asphyxia" is a "mechanism of death", meaning it is a functional disturbance with insufficient oxygen supply for the body, caused by a disease or injury. A "cause of death" is a disease or injury. The pathologist lists three causes under the "asphyxia" heading – suffocation, strangulation and drowning.
 - a. In my opinion, suffocation was a major contribution to the cause of death. The sock stuffed into the mouth would occlude the mouth, and at least compromise the posterior pharynx and breathing through the nose. He had bloody purge from his nose and mouth, much of which could have washed away in the tub, but with 300 mL of brown fluid in his stomach, there is a reasonable source of the purge, which could contribute through aspiration of gastric contents.
 - b. Strangulation is also a possibility. The bruising of the neck is only evidence of manual throttling injuries, as were described, from the hand or forearm of an assailant placed

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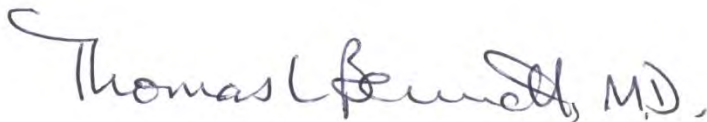
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forcefully across the front of the neck and adjacent tissues. The petechiae of the eyes, as described, are non-specific, caused by increased blood pressure in the head and neck rupturing the smallest veins and vessels that leave the pinhead-sized bruises, these bruises indeed potentially enlarging because of the pooling of blood in the lowest portions of the body following death – the dependent lividity.

3. Alcohol intoxication is a contributing factor to his death.
4. I agree with the Coroner/Medical Examiner that his death occurred on 9-27-02. Had he been dead for two days when found, and then the autopsy performed the next day, I would have expected more early changes of decomposition, such as malodor. By the time of the autopsy, the day after he was found dead, the rigor mortis was described as "receded" and the lividity fixed over the front of his body.
5. The floor was described as wet, and the air conditioner off in the apartment when his body was discovered. I did not see photos or a description of the wetness, but if the water came from the struggle to get the decedent into the tub and then clean up the area, and had been there two days, the Nevada climate is unlikely to allow persistent moisture for two days. The chain lock changes and air conditioner changes on the day he was found also clearly argue against his death being on the 25th.
6. Unidentified prints were described from the initial investigation, only sufficient to demonstrate that Alisha Burns was not identified. With the intervening 16 years, it may be of use to recheck the prints against computer records, as new additions to the data base may lead to hits.
7. In summary, it is my opinion that Mr. Villarreal's death occurred on the 27th rather than the 25th of September, just before he was found dead rather than two days prior to being found. I find nothing in the materials I have been able to review to date that disprove this opinion. It is interesting that the items were pawned on the 25th, per the interview with Abe Cruz, and in the same interview the officers state the murder occurred on the 27th.

If additional information becomes available that has a bearing on these conclusions, these conclusions will be amended or supplemented appropriately. I hope these points are of assistance. Please let me know if there is anything more I can do or need to provide.

Sincerely,



Thomas L. Bennett, M.D.
Forensic Pathologist

Forensic Medicine and Pathology, PLLC

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BURNS R 0121

EXHIBIT M

1 CASE NO. 191253

2 DEPT. NO. XVI

98
FILED ORIGINAL

Nov 21 10 18 AM '03

Shirley B. Pennington
CLERK

3
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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8
9 ALISHA BURNS,
10 Petitioner,

11 vs

12 JACKIE CRAWFORD, NDOC DIRECTOR,
13 Respondent.

14 BRIAN SANDOVAL, ATTORNEY GEN. /

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

Date of Hearing: _____
Time of Hearing: _____

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or
17 where and how you are presently restrained of your liberty:

18 SOUTHERN NEVADA WOMEN'S CORRECTIONAL FACILITY, CLARK COUNTY

19 2. Name and location of court which entered the judgement of conviction
20 under attack: EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, LAS VEGAS.

21 3. Date of judgement of conviction: 12-05-02

22 4. Case Number: 191253

23 5. (a) Length of sentence: LIFE WITH THE POSSIBILITY OF PAROLE AFTER 10 YRS.
24 (b) If sentence is death, state any date upon which execution scheduled:

25 N/A

6. Are you presently serving a sentence for a conviction under attack in
motion: Yes _____ No XX. If "yes," list crime, case no. and sentence being served
at this time: N/A

7. Nature of offense involved in conviction being challenged: SECOND DEGREE
MURDER

8. What was your plea ? (check one)

- 1 (a) Not guilty _____
2 (b) Guilty XX _____
3 (c) Nolo contendere _____

4 9. If you entered a guilty plea to one count of an indictment of
5 information, and a not guilty plea to another count of an indictment or
6 information, or if a guilty plea was negotiated, give details: N/A
7 _____
8 _____

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

- 11 (a) Jury N/A _____
12 (b) Judge without jury: N/A _____

13 11. Did you testify at the trial? Yes N/a No _____

14 12. Did you appeal from judgement of conviction: Yes _____ No XX

15 13. If you did appeal, answer the following:

- 16 (a) Name of court: N/A _____
17 (b) Case number of citation: N/a _____
18 (c) Result: N/A _____
19 (d) Date of result: N/A _____

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

21 14. If you did not appeal, explain briefly why you did not: COUNSEL TOLD
22 PETITIONER THAT SHE COULD NOT APPEAL.

23 15. Other than a direct appeal from the judgement of conviction and
24 sentence, have you previously filed any petitions, applications or motions with
25 respect to this judgement in any court, state or federal: Yes _____ No XX

26 16. If you answer to No. 15 was "yes," give the following information:
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(a) (1) Name of court N/A

(2) Nature of proceeding: N/A

(3) Grounds raised N/A

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

(5) Results: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders
entered pursuant to each result: N/A

(b) As to any second petition, application or motion, give the
same information: (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

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

(5) Result: N/A

(6) Nature of proceeding: N/A

(7) If known, citation or any written opinion or date of orders
entered pursuant to each result: N/A

(c) As to any third or subsequent application or motions, give the
same information

as above, list them on a seperate sheet and attach.

(d) Did you appeal to appeal to the highest state or federal court having jurisdiction, the the result or action taken on any petition, application or motion? (1) First petition, application or motion?

Yes N/A No

Citation or date of decision: N/A

(2) Second petition, application or motion?

Yes N/A No

Citation or date of decision: N/A

(3) Third or subsequent petitions, application or motion?

Yes N/A No

Citation or date of decision: N/A

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

(17). Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceedings? If so, identify:

a. Which of the grounds are the same: **NONE**

b. The proceedings in which these grounds were raised: N/A

c. Briefly explain why you are again raising these grounds. (You must relate

specific facts in response to this question. Your response may be included on paper which is 8 1/2 X 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

N/A

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

N/A

19. Are you filing this petition more than one year following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (you must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

NO

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

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

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: PHIL KOHN

22. Do you have any future sentences to serve after you complete the sentence impose by the judgement under attack? Yes _____ No XX

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

2
3 23. State concisely every ground on which you claim that you are being held
4 unlawfully. Summarize briefly the facts supporting each ground. If necessary
5 you may attach pages stating additional grounds and facts supporting same.

6 (a) Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL

7
8 Supporting FACTS(Tell your story without citing cases or law): PETITIONER'S
9 COUNSEL DID NOT PROPERLY OR THOROUGHLY INVESTIGATE POSSIBLE DEFENSES THAT
10 SHE HAD. HE DID NOT FOLLOW UP ON THE FACT THAT THERE WAS A 3rd SUSPECT

11 (b) Ground two: GUILTY PLEA

12
13 Supporting FACTS(Tell your story briefly without citing cases or law): THE
14 PETITIONER'S RIGHT TO DUE PROCESS, EFFECTIVE ASSISTANCE OF COUNSEL, AND A
15 FAIR TRIAL WAS VIOLATED WHEN SHE PLEAD GUILTY TO SECOND DEGREE MURDER. SHE

16 (c) Ground three: STATEMENTS

17
18 Supporting FACTS(Tell your story briefly without citing cases or law): THE
19 DEFENSE COUNSEL DID NOT INQUIRE INTO THE FALSE STATEMENT THAT THE PETITIONER
20 GAVE ON BEHALF OF HER CO-DEFENDANT KACZMAREK OR WHY SHE MADE IT. COUNSEL

21 (d) Ground four: N/A

22 Supporting FACTS(Tell your story briefly without citing cases or law): N/A

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QUESTION 23(a) CONTINUED

known as "Tommy". Counsel did not try to find out who he actually was or to locate him so that what the Petitioner was saying could be verified. If counsel had done so, Tommy would have been able to verify that the Petitioner had left the victim's apartment. And that when she left the victim was still alive and Steve Kaczmarek and Tommy were left alone with the victim. When the Petitioner returned she never re-entered the residence because Kaczmarek and Tommy were standing outside the residence with a VCR and money that they had taken from the victim waiting for Kaczmarek the Petitioner to return. From there they went to the pawn shop where Kaczmarek pawned what he had taken from the victim.

Counsel also did not look into the time of death the coroner had given and the statement given by the maintenance man, Thomas Riddle, who was the one that found the victim. The date listed on the Coroner's report is 9-27-02 (see attached report) and the date on the pawn ticket is 9-25-02 (see attached ticket) which was two days before the date listed as the victim's death.

Riddle said that he had tried to get into the victim's apartment earlier in the day on 9-27-02 to check on a water leak, but the chain was on the door so it would not open all the way and he could not enter. He said he tried again a few hours later and the chain had been removed so he was able to enter at that time, which is when he found he found the victim. (See attached statement)

Counsel never tried to find out who had been in the victim's apartment after the Petitioner, Kaczmarek, and Tommy left. Nor did he try to find out who was in the apartment at the time that Riddle had first tried to enter the apartment and if they had possibly had a hand in the death of the victim.

Counsel did not bring to the Courts attention that the Petitioner's Co-defendant, Kaczmarek, was a 33 year old man that had been accused of Statutory Rape of the Petitioner who was 15 years old. Because of her dependence on him she refused to testify against him and plead the Fifth Amendment. She did this because she believed that he was the only one that loved her or even cared about her.

Counsel never took the time to explain the Guilty Plea Agreement to the Petitioner or to make sure that she understood the full effect to entering a Guilty Plea. All he told her was that she needed to take the Guilty Plea because if she didn't, the State would seek the Death Penalty and that is what she would get if she went to trial with it.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

38
m/la
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



REPORT OF INVESTIGATION
Coroner Case

CALL INFO	NAME OF DECEASED (LAST, FIRST MIDDLE) Villarreal, Pedro		AKA		CASE NUMBER 02-06370	
	INVESTIGATOR Carol Ferranti	REPORTED BY Sgt Alby	REPORTING AGENCY Las Vegas Metropolitan Police Departm		REFERENCE NUMBER 020927-1153	
	CALL DATE AND TIME 09/27/2002 1425	DISPATCH DATE AND TIME 09/27/2002 1430	ARRIVAL DATE AND TIME 09/27/2002 1459		RETURN DATE AND TIME 09/27/2002 1630	
	DATE AND TIME OF DEATH 09/27/2002 1510		DATE OF BIRTH 08/23/1944	AGE 58	GENDER Male	RACE Spanish
DECEDENT	RESIDENCE (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	TELEPHONE NO. None
	SOCIAL SECURITY NUMBER 464-86-2999	DRIVER'S LICENSE NO. AND STATE		OCCUPATION Kitchen Worker	EMPLOYER Caesars Palace	
	MARITAL STATUS Unknown	HEIGHT 67	WEIGHT 189	EYE COLOR Brown	HAIR COLOR Black	
	CLOTHING White underwear, black jean pants, brown belt, white pair of socks.			SCARS/TATTOOS/MARKS Cat tattoo on upper left arm.		
	LOCATION OF DEATH Uptown Motel					
DEATH	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	
	<input type="checkbox"/> FOUND BY Carol Ferranti		<input checked="" type="checkbox"/> PRONOUNCED BY		AGENCY Clark County Coroner	
	LOCATION OF INCIDENT Uptown Motel					
INCIDENT	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101				COUNTY Clark County	
	DATE AND TIME OF INCIDENT 09/27/2002 1213		INVESTIGATING AGENCY Las Vegas Metropolitan Police Department		OFFICERS Sgts Alby & Thompson, Detec	
	CIRCUMSTANCES OF DEATH Circ: Homicide/LVMPD. Discovered by maintance worker @ 1200 hrs with hands & feet bound with electrical cord, pillow case over head, face down in bathtub in approx. 3-5 inches of water with shower running. Maintance worker attempted entry into decedent's apartment @ approx 1000 hrs due to water back up in next door apartment tub but found					
	LEGAL NEXT OF KIN Sherry Gipson					
NOTIFICATION	ADDRESS (STREET, CITY, STATE, ZIP) 149 Perry Ln., Manchester, TN 37355				RELATIONSHIP Guardian of Minor	
	NOTIFIED BY Landlord				METHOD Telephone	
	NAME OF PERSON NOTIFI				DATE AND TIME 10/02/2002 0930	
	ADDRESS (STREET, CITY, STATE, ZIP)				RELATIONSHIP	
	IDENTIFIED BY Rick Jones (CCCME)				METHOD Fingerprints	
	DATE AND TIME 09/28/2002 1250				TELEPHONE NO.	
DISP	TRANSPORTED TO MORGUE BY Nevada Funeral Services				TRANSPORTED TO MORTUARY BY Nevada funeral service	
	FUNERAL HOME				PROPERTY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
VEHICULAR	DECEDENT WAS <input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Bicyclist <input type="checkbox"/> Motorcyclist <input type="checkbox"/> Skateboard <input type="checkbox"/> Motorized Wheelchair					
	VEHICLE				LICENSE NUMBER	
	OCCURRED ON PRIVATE PROPERTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				DECEDENT WEARING CRASH HELMET? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

BURNS R 0130



LVMPD Pawn Shop Detail
Pawn Ticket - Other Property

FIREARM	CODE	LOAN	BUY
N	4		Y

G & S PAWN										Ticket #: 415269	
Serial Number 101877897					Model # VC-A410U					Amount: \$ 10.00	
Name KACZMAREK, STEVEN					Date 09/25/2002		Time 9/25/00		Clerk: ABE CRUZ		
Address (Number, Street, City, State, Zip) 11444 ABERDEEN WAY, HILLSBORO OH 45133										SSN:	
Sex M	DOB 02/18/1970	Height 510	Weight 171	Eyes BLU	Hair BLK	Race O			Driv License # 36150252001	State OH	
Describe Article:											
Additional Identification Information:											
Misc. ID Type:											
Misc. ID #:											
Other No:											
Property Description: VHS VCR WITH REMOTE: SHARP VC-A410U SER#101877897											
Property Type: STEREO/TV/MUSIC EQUIPMENT											
Comments:											

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

020927-1153

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime

MURDER

Date Occurred

9-27-02

Time Occurred

1213

Location of Occurrence

813 Oaden Uptown Motel

Sector/Beat

A4

☒ City☐ County

Your Name (Last / First / Middle)

Riddle, Thomas Wesley

Date of Birth

6/8/44

Social Security #

547-56-8822

Race

W

Sex

M

Height

6ft2

Weight

180

Hair

Br

Eyes

Br

Work Schdl. (Hours)

Disabled

(Days Off)

Business / School

Uptown Motel

Residence Address: (Number & Street)

Same as Above

Bldg./Apt.# City

14

LV

State Zip Code

NM 89101

Res. Phone:

Bus. Phone: 382-5257

Bus. (Local) Address: (Number & Street)

Bldg./Apt.# City

State Zip Code

Occupation

Mait.

Depart Date (if visitor)

Best place to contact you during the day

Best time to contact you during the day

Can You Identify ☐ Yes
the Suspect? ☐ No

DETAILS Went in to No. 25 to check on water leak. I could hear water running. Found Pete in Tub Face down. Door ~~and~~ had chain lock on the First Tried door, Air was running. Second time I Tried the door the chain was not on the door and the Air was OFF. Second time was about 2 hr. later, called cops.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 813 Oaden

AT THE 27 DAY OF Sept. AT 12:15 (AM / PM).

Witness/Officer:

Sgt. Mike Thompson

(SIGNATURE)

Witness/Officer:

Sgt. Mike Thompson P# 1588

(PRINTED)

Thomas Riddle

SIGNATURE OF PERSON GIVING STATEMENT

QUESTION 23(B) CONTINUED

did not enter her plea knowingly, intelligently, or voluntarily, she also was not competent to enter a plea of guilty. The Petitioner was coerced into pleading guilty by the State's threat to prosecute under a capital murder charge and their intent to seek the Death Penalty. See attached document.

The Petitioner's counsel also told her to take the guilty plea agreement because it was her only choice, that if she went to trial the State would seek the Death Penalty and she would be sentenced to that. The Petitioner was not aware, nor did her counsel tell her, that under NRS 176.025:

"a death sentence shall not be imposed or inflicted upon any person convicted of a crime now punishable by death who at the time of such crime was under the age of 16 years. As to such person, the maximum punishment that may be imposed shall be life imprisonment".

Counsel led the Petitioner to believe that she would get the Death Penalty as her co-defendant, Steven Kaczmarek, had. At the time of these proceedings the Petitioner was only 15 years old.

The Petitioner was not competent to make the decision to plead guilty due to her age and several psychological disorders she had been diagnosed with such as; Attachment Disorder, Borderline Personality Disorder, and Odd-Oppositional Defiance Disorder. Defense counsel did not ask for a Competency Hearing nor did he have the Petitioner evaluated by a psychologist to determine whether or not she was competent to stand trial or enter a plea of guilty. Had either of these been done the Petitioner's psychological problems and the emotional problems caused from being a ward of the State and bounced from one foster home to another would have been brought to the Courts attention, as well as her emotional dependence on co-defendant Kaczmarek. Had this been done the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

4

1 **NOTICE OF RESERVATION TO SEEK THE DEATH PENALTY**

2

3 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County

4 District Attorney, pursuant to the Order Amending Supreme Court Rule 250 filed on

5 December 30, 1998, NRS 175.552 and NRS 200.033, reserves the right to file a Notice of

6 Intent to Seek the Death Penalty.

7 DATED this 31st day of December, 2002.

8 Respectfully submitted,

9

10

11 BY



Chris J Owens
Chief Deputy

did not bring to the Courts attention the fact of the Petitioner's emotional dependence on Kaczarek or the fact that he was 33 years old and she was only 15 years old.

Counsel did not take into consideration or bring to the Courts attention that the Petitioner had come to believe that Kaczmarek was the only one that loved or even cared about her, and that she could not survive without him. Counsel did not pursue any possible defenses that the Petitioner may have had based on her emotional dependence of the Co-defendant. Had counsel investigated any of this, he would have found that the Petitioner gave the statement that she did because Kaczmarek told her to. She lied to the Detective's telling them what Kaczmarek told her to tell them. Kaczmarek told the Petitioner to lie and tell them that she was the one that committed the crime so that he wouldn't get as much time. He told her that they would go easier on her because she was a juvenile, and she would also get less time that way, so that they would be out at about the same time and be able to be together again. Because the Petitioner believed what he was telling her she gave a false statement to the Detectives. If counsel had pursued this issue the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

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

3 EXECUTED at S.N.W.C.P. on the 12³ day of NOVEMBER,

4 2003.

5 *William Burns*
6 Signature of Petitioner
7 4370 SMILEY RD
8 Address
9 LAS VEGAS, NV 89115-1808

10 Signature of Attorney (if any)

11 Attorney for Petitioner

12 Address

13
14 VERIFICATION

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

20 *William Burns*
21 Signature of Petitioner

22 Attorney for Petitioner(if any)
23
24
25
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27
28

CERTIFICATE OF SERVICE BY MAIL

I, Alisha Burns, hereby certify pursuant to N.R.C.P.
5(b), that on the 12 day of Nov- 13, I mailed a true
and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
addressed to:

JACKIE CRAWFORD, NDOC DIRECTOR
Respondent prison or jail official

P.O. BOX 7011
Address

CARSON CITY, NV 89702-7011

Attorney General
100 NORTH CARSON STREET
CARSON CITY, NEVADA
89701

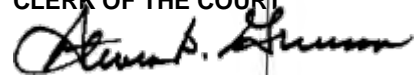
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT Attorney of County of Conviction

200 SOUTH THIRD STREET
Address

LAS VEGAS, NV 89155

EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XVI
200 SOUTH THIRD STREET
LAS VEGAS, NV 89155

Alisha Burns
Signature of Petitioner



PWHC
ALISHA BURNS
4370 SMILEY RD.
Las Vegas, NV 89115
Petitioner In Proper Person


EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO.: 03C191253
)	
Plaintiff,)	DEPT.NO.: X
)	
vs.)	
)	
ALISHA BURNS,)	
)	
Defendant.)	

PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

TO: STEVE WOLFSON, ESQ.: Elected District Attorney:

PLEASE TAKE NOTICE that the Petitioner will bring this Petition on the 14 day of
May, 2019, at the hour of ___ M. or as soon thereafter as counsel may be heard.


ALISHA BURNS

PETITION FOR A WRIT OF HABEAS CORPUS

COMES NOW, the Petitioner, ALISHA BURNS, and respectfully shows:

1. ALISHA BURNS Petitions for a Writ of Habeas Corpus, where Petitioner is restrained in the Florence McClure Women's Prison, and that the peace officer that by whom she is restrained is Dwight Neven, Warden.

//

I.

NATURE OF ILLEGAL DETENTION

The Petitioner is currently being under restraint by the Warden, where Petitioner is serving a sentence of LIFE WITH PAROLE, based on revocation of parole on a Judgment of Conviction filed March 18, 2015, **Exhibit A**. The Petitioner's conviction is unlawful for the following reasons:

- A. The Petitioner, fifteen years old at the time of the incident, received Ineffective Assistance of Counsel at the plea bargain phase, based upon her attorney's failure to conduct an adequate pretrial investigation, which prejudiced the Petitioner, in violation of Petitioner's 6th and 14th Amendment rights. An adequate investigation would have revealed that the State did not have a convictable case against Petitioner. Petitioner is actually innocent, and had her counsel conducted a constitutionally adequate pretrial investigation, she would have insisted on going to trial on a plea of not guilty.
- B. Petitioner's counsel also rendered deficient performance at the plea bargaining stage by failing to advise her that, as a fifteen year old, she was not eligible for the death penalty, and was not eligible for life without parole. Had she been advised of the true penalty range, she would have insisted on going to trial.
- C. The Petitioner received Ineffective Counsel based upon her attorney's failure to separate Petitioner from her codefendant, Steven Kaczmarek, of whom she was a victim of human trafficking. Mr. Kaczmarek was facing the death penalty, he exerted undue influence on Petitioner in order to attempt to reduce his sentence. Mr. Kaczmarek unduly influenced Petitioner into making a false confession; Petitioner's counsel further enabled Mr. Kaczmarek's undue influence by arranging for a contact visit between the two, solely for the purpose of securing Petitioner's plea. Counsel did not commit his undivided loyalty to Petitioner, her counsel functioned to Petitioner's extreme prejudice, resulting

1 in a manifest miscarriage of justice, in violation of her State and Federal Constitutional
2 rights.

3 D. There is new evidence. Dr. Thomas Bennett, MD, a forensic medical examiner
4 pathologist, has presented a report that Petitioner is actually innocent, based on the
5 review of the voluminous evidence provided by both the State and Petitioner's counsel.
6 This new evidence further underscores that a manifest miscarriage of justice has
7 occurred. Dr. Bennett's report is submitted as **Exhibit B**.

8
9 E. There are fingerprints taken from the scene of the crime which do NOT match the
10 Petitioner. On reason and belief, due to the passage of time, a re-running of the
11 fingerprints will reveal positive matches for individuals who were not in the NCIC
12 system in 2002 at the time when the prints were found and run. If the fingerprints come
13 back with a positive match, this constitutes new evidence which could not have been
14 raised in her first Petition.¹ In light of the evidence as a whole ... no reasonable factfinder
15 would have found [him] guilty of the underlying offense[s].”²

16
17 F. Petitioner reserves the right to supplement this Petition with additional grounds, pending
18 discovery.

19 Further, Petitioner's withdrawal of her previously uncounseled filed Petition is
20 invalid; Petitioner, a juvenile at the time, had a serious medical condition. Her heart stopped
21 beating; she was brought back to life in the prison system.

22
23
24 ¹ [A] numerically second petition is not properly termed 'second or successive' to the extent it
25 asserts claims whose predicates arose after the filing of the original petition.” In re Jones, 652
26 F.3d 603, 605 (6th Cir.2010). In re Wogenstahl, 902 F.3d 621, 627 (6th Cir. 2018)

27 ² 28 U.S.C. § 2244(b)(2)(B)(ii). Jones v. Ryan, 733 F.3d 825, 845 (9th Cir. 2013)

1 Although the Petitioner was certified as an adult, she could be tried for murder, but,
2 since she was a minor, could not receive adequate medical treatment unless she was
3 emancipated. Consequently, Petitioner withdrew the Petition in order to take care of her
4 emancipation issues. See **Exhibit C**, minute orders of January 27, 2004, and March 8, 2004.
5 Petitioner never met with her attorney until the day of the March 8, 2004 hearing. Petitioner's
6 attorney did not discuss the evidence with her, did not make a constitutionally adequate
7 investigation into the many factual and legal issues, which cried out for the granting of habeas
8 corpus relief. Petitioner's overriding concern at the time was just being able to receive medical
9 attention in order that she could be kept alive. Petitioner's withdrawal of the Petition was not
10 free and voluntary, the Petition should have merely been tabled while Petitioner getting her
11 health issues in order.

12 There is good cause to file this successive Petition.³ This is an extraordinary case, where a
13 constitutional violation has probably resulted in the conviction of one who is actually innocent.
14 A federal habeas court may grant the writ even in the absence of a showing of cause for the
15 procedural default.⁴ Alternatively, if there is not a final written order denying or withdrawing the
16 Petition, she prays that this Court treat this Petition as an amended Petition. No post conviction
17 claims have been heard on their merits.

18 II.

19 FACTS IN SUPPORT OF PETITION

20
21
22
23
24
25 ³ See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), holding that good cause existed for
26 excusing defendant's procedural default in presenting successive petition for postconviction
27 relief; and defendant suffered actual prejudice sufficient to excuse filing of successive petition.

28 ⁴ Schlup v. Delo, 513 U.S. 298, 321 (1995)

1 The genesis of this case occurred when Petitioner was 15 years old. Petitioner had been a
2 runaway from 36 foster homes in Ohio and took up with a sexual predator/sex trafficker, ex-
3 felon, Steve Kaczmarek, who was 32 years old at the time.
4

5 While in Las Vegas, Kaczmarek convinced Alisha to be involved in a robbery, for which
6 her involvement was minimal. This robbery occurred on September 25, 2002. Items taken in
7 the robbery were pawned. The scene of the robbery was wiped clean. The relevance of this fact
8 will be addressed later.
9

10 On September 27, 2002, the body was found. Mr. Riddle, maintenance man of the premises,
11 explained when he first attempted to gain access into the unit, the door was chain locked from
12 the inside, and the air conditioner was off.

13 Mr. Riddle returns a short time later; the chain lock had been removed, and he was able to
14 gain access into the unit. This is when he discovered the decedent. Police were called,
15 investigated the scene, dusted the area and found fingerprints, none of which matched Alisha's
16 or Kaczmarek's. This fact reflects that people had been inside the unit subsequent to September
17 25, 2002, the documented date of the robbery.
18

19 The Clark County Medical examiner fixes the date of death to be September 27, 2002.
20 Suddenly, when Kaczmarek is charged with the murder/robbery, the date of the robbery becomes
21 September 27, 2002.⁵ This is two days after the items were pawned; one can presume this is to
22 match the ME's fixing the date of death to September 27, 2002. This newest and more
23 convenient date is in irreconcilable conflict with the September 25, 2002, pawn ticket.⁶
24
25

26 ⁵ Petitioner has not attached very document referred to in this Petition. These documents will be
27 produced at any evidentiary hearings.

28 ⁶ It is important to note that Petitioner was not originally charged with Murder and Robbery, only
Kaczmarek.

1 The circumstances which led to Alisha's plea are highly suspect and outrageous. Petitioner
2 was originally brought to Nevada as a state's witness and victim. The first charges against
3 Kaczmarek were Kidnapping, Statutory Sexual Seduction, Possession of Forged Instrument, and
4 Possession of a Stolen Vehicle. To be clear, Petitioner was the victim of the Kidnapping and
5 Statutory Sexual Seduction. Petitioner was ordered to be transported to Clark County from Ohio,
6 with the assurances that she would not be prosecuted.
7

8 There was a hearing in Justice Court on November 26, 2002, wherein, among other topics
9 Petitioner's current status as a witness was discussed. For Kaczmarek, this was a death penalty
10 case, Petitioner was to be a witness in the kidnapping case, and would be a *potential* witness in
11 the murder case. Kaczmarek was present at this hearing, and right after this hearing, he
12 commenced to send a flurry of letters to Petitioner, asking her to submit a confession to the
13 murder case, that this would help *his* case, and since she was a juvenile, nothing serious would
14 happen to her. Kaczmarek promised her that they would be together forever. (The location of
15 these letters will be addressed subsequently.) Kaczmarek manipulated this sex-trafficking-
16 victim-defendant into giving a false confession to the detective. She was then charged with
17 Murder on December 5, 2002. It is important to note that studies show that 42% of juvenile
18 confessions are false, see attached article, **Exh D**.
19
20
21

22 On April 1, 2003, when Petitioner waived her preliminary hearing, the transcript of the
23 waiver demonstrates Petitioner wavering on whether or not to plead. Shortly thereafter, on
24 April 16, 2003, a rare, if not unprecedented stipulated order was signed allowing a contact visit
25 between the two co-defendants. After the meeting, this innocent 15-year-old girl pleads.
26

27 There is now new evidence. Dr. Tom Bennett, MD, a forensic pathologist and Medical
28 Examiner, recently reviewed the discovery provided, and submits his expert opinion that the

1 murder did not happen on the true date of the robbery, September 25, 2002. **Exh E.** Dr.
2 Bennett's findings are to a reasonable degree of medical certainty.

3 Petitioner filed a pro se Petition for Habeas Corpus on November 21, 2003. **Exh F.** The late
4 Marvin Longabaugh, who passed away on March 4, 2017, was appointed. Petitioner never met
5 Mr. Longabaugh and never discussed the facts of the case with her. Only an assistant/investigator
6 working for Mr. Longabaugh met with her. Petitioner gave the above referenced Kaczmarek
7 letters to this person. It is believed that Mr. Longabaugh received the Kaczmarek letters
8 references above.
9

10 The instant case presents substantial Federal and State constitutional issues, including but not
11 limited to a host of ineffective assistance counsel claims. Petitioner asks this Court to take
12 judicial notice of the facts contained in her Pro Se Petition. There also exists a fundamental
13 miscarriage of justice. There are also constitutional issues regarding her illegal confinement, and
14 whether the statement she sent to the Detective, while spending months in adult solitary
15 confinement, are the fruits of the poisonous tree.
16

17 It should be noted that Kaczmarek was originally sentenced to death; after an amended
18 Petition for Habeas was filed, but before it was decided, the State and Kaczmarek resolved the
19 Petition by an amended plea bargain to life without parole, thus taking off the death penalty. The
20 disposition of Kaczmarek's writ is strong circumstantial proof that there were multiple
21 constitutional violations which occurred in Alisha's case, on both a State and Federal level.
22
23
24

25 ARGUMENT

26 THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT 27 THE PLEA BARGAINING STAGE.

28 Where the issue is whether to advise the client to plead or not, the attorney has the duty to
advise the defendant of the available options and possible consequences, and failure to do so

1 constitutes ineffective assistance of counsel. U.S. v. Blaylock, 20 F 3rd 1458 (9th Cir. 1994),
2 citing Beckham v. Wainwright, 639 F 2d 262 (5th Cir. 1981), at 267. Further, the Nevada
3 Supreme Court in Larson v. State, 766 P 2d 261 (Nev.1988) held that the defendant has a right to
4 effective assistance of counsel at the plea bargaining stage.

5 The plea-bargaining stage is a vitally important and a critical stage at which the right to
6 effective assistance of counsel attaches. U.S. v. Caruso, 689 F 2d 435 (3rd Cir. 1982) There
7 clearly is a duty to render effective assistance of counsel at the plea bargaining stage of a
8 proceeding, which must include fully, fairly and competently advising the client of the plea offer
9 and its consequences. Petitioner was told that she would eligible for the death penalty, this was
10 simply false. Here is the current version of NRS 176.025:

11 “A sentence of death or life imprisonment without the possibility of parole must not be
12 imposed or inflicted upon any person convicted of a crime now punishable by death or
13 life imprisonment without the possibility of parole who at the time of the commission of
14 the crime was less than 18 years of age. As to such a person, the maximum punishment
15 that may be imposed is life imprisonment with the possibility of parole.”
16 Nev. Rev. Stat. Ann. § 176.025 (West).

17 A.B. 6 of the 2005 Legislation recognizes that prior to A.B. 6, the statute proscribed death, or
18 life without parole if the person was under 16:

19 Existing law prohibits the imposition of a death sentence upon a person for a crime that
20 was committed by the person when the person was under the age of 16 years. (NRS
21 176.025) However, on March 1, 2005, the United States Supreme Court held that the
22 imposition of a death sentence upon a person for crime committed by the person when he
23 was under the age of 18 years violates the Eighth and Fourteenth Amendments to the
24 U.S. Constitution. Roper v. Simmons, 543 U.S. _____ (2005) That decision renders
25 the existing law in Nevada unconstitutional.

26 This bill increases the threshold age for imposing a death sentence to 18 years so that a
27 person may not be sentenced to death for a crime that was committed when the person
28 was under the age of 18 years. Increasing the threshold to 18 years makes the law in
Nevada constitutional according to the ruling of the United States Supreme Court.
CRIMINAL PROCEDURE—JUDGMENT AND EXECUTION—CAPITAL
PUNISHMENT FOR MINORS, 2005 Nevada Laws Ch. 33 (A.B. 6)

Although a reviewing court must defer to a lawyer's strategic trial choices, those
choices must have been made after counsel has conducted “reasonable investigations or [made] a

1 reasonable decision that makes particular investigations unnecessary.” Summerlin v. Schriro,
2 427 F.3d 623, 630 (9th Cir. 2005) Effective counsel includes familiarity of counsel with the
3 case and an opportunity to investigate it if necessary in order to meaningfully advise the accused
4 of his options. Calloway v. Powell, 393 F 2d 886, 888 (5th Cir. 1970). Further, it is the attorney’s
5 job to provide the accused with an understanding of the law and the facts. .. and a lawyer who is
6 not familiar with the facts . . . relevant to his client’s case cannot meet that required minimal
7 level of assistance. Herring v. Estelle, 491 F 2d 125 (5th Cir. 1974) See Von Moltke v. Gillies,
8 332 US 708, 721. Strickland v. Washington, 466 US 668 (1984)

9 Petitioner asks the Court to take judicial notice of the facts alleged in her original petition .⁷
10 counsel did not competently investigate the circumstance of the death, failed to investigate other
11 suspects, and totally failed to comprehend the exculpatory impact of the activity in the residence
12 of the decedent days after the robbery. Hence, Dr. Bennett is able to provide the new evidence,
13 his expert report, **Exh E**.

14
15 Before pleading guilty, Petitioner should be made aware of the possible defenses. U S v.
16 Frye, 738 F 2d 196 (7th Cir. 1984). The failure to adequately investigate the weaknesses of the
17 state’s case in conjunction with Petitioner, not knowing that the Petitioner could NOT receive
18 either the death penalty or life without parole, prior to advising the defendant to plead guilty,
19 prejudiced the defendant; but for this grossly and unconstitutionally inadequate, the result would
20 have been different.

21
22 THERE ARE SUBSTANTIAL AND COMPLEX ISSUES WHICH NEED TO BE FULLY
23 AND FAIRLY ADDRESSED AND DEVELOPED, SUCH THAT THIS PETITION CANNOT
24 BE SUMMARILY DISMISSED

25
26
27 ⁷ 1. A judge or court may take judicial notice, whether requested or not.

28 2. A judge or court shall take judicial notice if requested by a party and supplied with the
necessary information. Nev. Rev. Stat. Ann. § 47.150 (West)

1 Petitioner submits that if there is not a notice of entry of order withdrawing her Original
2 Petitioner, that there is not a time bar in this case. However, if a petition is procedurally barred
3 and the petitioner cannot demonstrate good cause, the district court may nevertheless reach the
4 merits of any constitutional claims if the petitioner demonstrates that failure to consider those
5 constitutional claims would result in a fundamental miscarriage of justice. Pellegrini v. State,
6 117 Nev.860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of justice requires “a
7 colorable showing” that the petitioner “is actually innocent of the crime or is ineligible for the
8 death penalty.” *Id.* This generally requires the petitioner to present new evidence of
9 his innocence. *House v. Bell*, 547 U.S. 518, 536–37, 126 S.Ct. 2064, 165 L.Ed.2d 1
10 (2006); *Schlup v. Delo*, 513 U.S. 298, 316, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). A habeas
11 petitioner may overcome these bars and secure review of the merits of defaulted claims by
12 showing that the failure to consider the petition on its merits would amount to a fundamental
13 miscarriage of justice. *Schlup v. Delo*, 513 U.S. 298, 314–15, 115 S.Ct. 851, 130 L.Ed.2d 808
14 (1995); *Mitchell v. State*, 122 Nev. 1269, 1274, 149 P.3d 33, 36 (2006); *Pellegrini v. State*, 117
15 Nev. 860, 887, 34 P.3d 519, 537 (2001). This standard is met when the “petitioner makes a
16 colorable showing he is actually innocent of the crime.” *Pellegrini*, 117 Nev. at 887, 34 P.3d at
17 537. This means that “the petitioner must show that it is more likely than not that no reasonable
18 juror would have convicted him in the light of the new evidence.” *Schlup*, 513 U.S. at 327, 115
19 S.Ct. 851. “[A] petition supported by a convincing *Schlup* gateway showing ‘raises[s] sufficient
20 doubt about [the petitioner’s] guilt to undermine confidence in the result of the trial without the
21 assurance that that was untainted by constitutional error’; hence, ‘a review of the merits of the
22 constitutional claims’ is justified.” *House v. Bell*, 547 U.S. 518, 537, 126 S.Ct. 2064, 165 L.Ed.2d
23 1 (2006) (quoting *Schlup*, 513 U.S. at 317, 115 S.Ct. 851).² *Berry v. State*, 363 P.3d 1148, 1154

1 (Nev. 2015). It is highly unlikely that any reasonable juror would have convicted her, especially
2 with this new evidence. (“[T]he District Court must assess the probative force of the newly
3 presented evidence in connection with the evidence of guilt adduced at trial.”). Still, the “court’s
4 function is not to make an independent factual determination about what likely occurred, but
5 rather to assess the likely impact of the evidence on reasonable jurors. *House*, 547 U.S. at 538,
6 126 S.Ct. 2064. *Berry v. State*, 363 P.3d 1148, 1155–56 (Nev. 2015).

8 PETITIONER IS ENTITLED TO AN EVIDENTIARY HEARING

9
10 If a petition for post-conviction relief contains allegations of facts outside the record which,
11 if true, would entitle the petitioner to relief, an evidentiary hearing thereon is required. *Grondin*
12 *v. State*, 97 Nev. 454, 634 P.2d 456 (1981); *Doggett v. State*, 91 Nev. 768, 542 P.2d 1066 (1975).
13 *Bolden v. State*, 659 P.2d 886, 887 (Nev. 1983). Further, from a federal standpoint, a district
14 court abuses its discretion in denying a request for an evidentiary hearing if a petitioner “has
15 alleged facts that, if proven, would entitle him to habeas relief, and ... he did not receive a full
16 and fair opportunity to develop those facts. *Tilcock v. Budge*, 538 F.3d 1138, 1143 (9th Cir.
17 2008). The advice rendered by prior counsel is necessarily outside the record; the new evidence
18 is outside the record. Based on State and Federal grounds, an evidentiary hearing is mandated,

19 CONTINUITY OF COUNSEL SHOULD BE AFFORDED THE PETITIONER, AND MR.
20 ABBATANGELO HAS BEEN SUBSTANTIALLY INVOLVED IN THIS CASE
21 SUBSTANTIALLY

22 In *People v. Gzikowski*, 32 Cal 3d 580 (1982), at 589, the court in reversing a case where the
23 defendant was deprived counsel of his choice, stated that “Reversal is automatic, however, when
24 a defendant has been deprived of his right to defend with counsel of his choice.” The right of a
25 criminal defendant to counsel and to present a defense are among the most sacred and sensitive
26 of our constitutional rights. *Magee v. Superior Court* (1973) 8 Cal.3d 949, 954, 106 Cal.Rptr.
27 647, 506 P.2d 1023. “While we have recognized competing values of substantial importance to
28 trial courts, including the speedy determination of criminal charges, the state should keep to a
“necessary minimum its interference with the individual’s desire to defend himself in whatever

1 manner he deems best, using any legitimate means within his resources”(*People v. Crovedi*
2 (1966) 65 Cal.2d 199, 208, 53 Cal.Rptr. 284, 417 P.2d 868 (hereafter *Crovedi*). A criminal
3 defendant's right to decide how to defend himself should be respected unless it will result in
4 “significant prejudice” to the defendant or in a “disruption of the orderly processes of justice
5 unreasonable under the circumstances of the particular case.” (*Ibid.*) In other words, we demand
6 of trial courts a “resourceful diligence directed toward the protection of [the right to counsel] to
7 the fullest extent consistent with effective judicial administration.” *Id.* at p. 209, 53 Cal.Rptr.
8 284, 417 P.2d 868. *People v. Ortiz*, 800 P.2d 547, 552 (Cal. 1990)

9 As also stated in *Crovedi*, at 206 “Further, the right to counsel of one’s choice furthers the
10 dual goals of due process: (1) ensuring the possibility that an innocent person will not be
11 punished; and (2) protecting the ideal of human individuality by affirming the state’s duty to
12 refrain from unreasonable interference with a defendant’s desire to defend himself in whatever
13 manner he deems best. *People v. Crovedi*, 65 Cal. 2d 199, (1966) at 206.

14 In *Fuller v. Warren Dieslin, Superintendent of Buena Vista Correctional Facility*, et al, 868
15 F 2d 604, (1989), The United States Court of Appeals for the Third Circuit granted a writ of
16 habeas corpus to appellee prisoner. In that case, the prisoner, who had in-state counsel, moved
17 for the admission pro hac vice of two out-of-state lawyers who were prepared to try the case.
18 Without a hearing or making particularized findings, the state trial court denied appellee’s
19 request, reasoning that local counsel was competent and that unacceptable trial delay was likely.
20 There, the out of state counsel, was ready to try the case, and the Court found that the state trial
21 court failed to make record-supported findings that balanced appellee’s right to counsel with the
22 demands of the administration of justice. Here, Mr. Abbatangelo, Esq. is firmly entrenched with
23 the facts of the case, and any new appointment of counsel will only serve to delay , since new
24 counsel will have to invest substantial time getting up to speed. It is worth noting that the Public
25 Defender is conflicted, and could not be appointed.

26 Petitioner does not believe that the State would object, particularly given the cadence and
27 rapport that has evolved and emerged between counsel for the respective parties. California
28 courts have emphasized that the state should keep to a necessary minimum its interference with

1 the individual's desire to defend himself in whatever manner he deems best, using any legitimate
2 means with his resources-and that can constitutionally be forced to yield only when it will result
3 in . . . a disruption of the orderly process of justice unreasonable under the circumstances of the
4 particular case. *Crovedi*, supra.

5 Denial of continuity of counsel could be construed as removal of counsel. Tennessee has
6 followed the California standards. In *State v. Huskey*, 82 S.W. 3^d 297 (2000), the trial court was
7 reversed for removing defendant's counsel because it considered counsel's approach to litigation
8 an abuse of the legal system. There is not any allegation of this type in the instant case. In
9 *Huskey*, the Court of Appeals was reluctant for any court to place limits on a attorney's ability to
10 conduct his or her case within the bounds of the obligation to represent the client zealously. In
11 *Huskey*, the trial court improperly chose the most "drastic" option available. Removal of counsel
12 should only have occurred when no other options existed. Disqualifying an attorney was the
13 most drastic option, and therefore, the trial court erred. Though the state in *Huskey* argued that
14 California had adopted a broader standard than other jurisdictions that have considered the
15 involuntary removal of counsel, the Court stated otherwise. The Court stated that "based on our
16 review of relevant cases, however, we are not convinced that this is the case. California decisions
17 continue to reflect that the trial court's discretion to remove counsel absent the consent of the
18 defendant and his counsel is "severely limited," and that "courts should seek an
19 accommodation reasonable under the facts of the particular case." *People v. Lucev*, 188 Cal.
20 App. 3d 551(1986). Decisions of the California courts as well as those of other jurisdictions
21 similarly illustrate the balancing of interests that a trial court must undertake when determine
22 whether the removal of counsel is justified under the circumstances of a particular case to the end
23 that "a reasonable accommodation of seemingly conflicting values shall thereby be achieve.
24 *Crovedi*, 417 P 2d at 874."

25 Mr. Abbatangelo, Esq. is molecularly familiar with the facts and appellate issues. As held in
26 *Huskey*, supra, "A trial court has a broad range of options available to insure that its
27 proceedings are fair both in appearance and in fact. Disqualifying an attorney is the most
28 drastic. It invariably causes delay, increases costs, and deprives parties of counsel of their

1 choice. Court should, therefore, disqualify counsel with considerable reluctance and only
2 when no other practical alternative exists.”

3 The Court in *Huskey* also stated that in cases involving the life or liberty of citizens, this
4 discretion entrusted to the courts should be “carefully and cautiously exercised,; and where an
5 appellate court can see that the rights of a party may have been jeopardized by an improper
6 exercise of this judicial discretion, it will not hesitate to reverse for that cause.”

7 *Huskey* also explained more the wisdom of restricting a Court’s unfettered ability to remove
8 counsel by stating, “ The constitutional guarantee of the defendant’s right to counsel requires that
9 his advocate, whether retained or appointed, be free in all cases of the threat that he may be
10 summarily relieved as incompetent by the very trial judge he is duty-bound to attempt to
11 convince the rightness of his client’s cause. The recognition of such an authority would involve
12 the surrender of a substantial amount of the independence of the bar, and, in many instances
13 would deprive litigants of a fair hearing. When removal is permitted at all, it requires objective
14 evidence of counsel’s physical incapacity to continue or serious misconduct by counsel which
15 cannot be addressed through other measures.”

16 The Supreme Court of Alaska has spoken to the right to *CONTINUE* with one’s chosen
17 counsel, stating that this is “not mere constitutional formalism” *McKinnon v. State*, 526 P. 2d 18,
18 22 (1974). The Court further stated that once a defendant has counsel, the trial judge may not,
19 consistent with the Alaska and United States constitutions, rend that relationship by dismissing
20 the original attorney and then thrusting unfamiliar and unwelcome counsel upon the defendant.
21 The attorney-client relationship, once established, is inviolate, and may not be severed or
22 otherwise intruded upon. *McKinnon*, supra, at 22, citing *Smith v. Superior Court of Los Angeles*
23 *County*, 68 Cal. 2d 547, (1968), 440 P. 2d at 75.

24 “Once counsel has been chosen, whether by the court or the accused, the accused is entitled
25 to the assistance of THAT (emphasis added) counsel at trial.” *English v. State*, 8 Md. App. 330
26 (1969).

27 Finally, dealing with the issue of a defendant’s right to continuation of counsel, the Court in
28 *Smith*, supra, 440 P 2d 65 stated, that in the face of a defendant’s attempt, not to *ESTABLISH OR*

1 *CHANGE* , but to PRESERVE the relationship with (her) counsel, any attempt to distinguish
2 between appointed and retained counsel was *MEANINGLESS*. Although we are dealing here
3 with retained vs. appointed counsel, the reasoning is the same. The court stated in *Smith*: “We
4 must consider whether a court-appointed counsel may be dismissed, over the defendant’s
5 objection, in circumstances in which a retained counsel could not be removed. A superficial
6 response is that the defendant does not pay his fee, and hence, has no ground to complain as long
7 as the attorney currently handling his case is competent. But the attorney-client relationship is
8 not that elementary; it involves not just the casual assistance of a member of the bar, but an
9 intimate process of consultation and planning which culminates in a state of trust and confidence
10 between the client and his attorney. This is particularly essential, of course, when the attorney is
11 defending the client’s life or liberty. Furthermore, the relationship is independent of the source of
12 compensation, for an attorney’s responsibility is to the person he has undertaken to represent
13 rather than to the individual or agency which pays for the service. It follows that once counsel is
14 appointed to represent an indigent defendant, whether it be the public defender or a volunteer
15 private attorney, the parties enter into an attorney-client relationship which is no less inviolable
16 than if counsel had been retained. To hold otherwise would be to subject that relationship to an
17 unwarranted and invidious discrimination arising merely from the poverty of the accused.”

18 Other jurisdictions have likewise spoken to the limited power of a court to remove counsel,
19 In *Eric Omar Hercules, v. The Honorable William Harmon*, 864 S.W. 2d 752 (1993), the Court
20 of Appeals, Fourteenth District, Houston, Texas, conditionally granted relief to the Petitioner, to
21 compel the trial court to vacate its order terminating his counsel, holding that the attorney-client
22 relationship, once established, required the protection of law and the trial court should not,
23 absent a showing of actual or potential conflict, sever that relationship. The Court found the trial
24 court denied appellant’s motion to continue counsel’s appointment without a “principled reason” to
25 justify the denial. The Court in that case urged the trial court to vacate its order terminating the
26 appointment of relator’s counsel and stated that the writ would issue if the trial court failed to
27 comply.
28

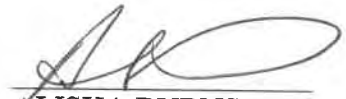
1 Mr. Abbatangelo, Esq. is intimately familiar with the issues in this case; he has been working
2 on this matter for over a year, and has done extensive research, extensive reviews, and has
3 personally visited Alisha on multiple occasions. The scope of Petitioner's representation did
4 not include judicial proceedings. Based on the facts and authorities contained in this Petition, the
5 relief sought clearly weighs in Alisha's favor, Counsel was retained for a limited but important
6 purpose. The scope of Petitioner's representation has been completed, and there is no reason why
7 the Petitioner should not continue as counsel, rather than be removed. Since counsel was retained
8 for a limited but important purpose, continuity of counsel clearly weighs in Petitioner's favor.

9 PRAYER

10 WHEREFORE, Petitioner prays as follows:

- 11 1. That Petitioner be appointed Tony L. Abbatangelo, Esq. to represent her in the case,
12 2. That discovery be commenced,
13 3. That an evidentiary hearing be conducted,
14 4. That after said hearing this Petition be in all things granted, and,
15 5. For any further relief that is fair and just in the premises.

16 Dated this 14 day of May, 2019.

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19 ALISHA BURNS
20 4370 SMILEY RD.
21 Las Vegas, NV 89115
22 Petitioner in Proper Person
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- DATED this 14 day of May, 2019.

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CERTIFICATE OF SERVICE

A copy of this Petition was electronically served on all parties of record this 24th day of May, 2019.



ALICIA BURNS

EXHIBIT A

ORIGINAL

9

JOCP

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

FILED

JUN 10 1 45 PM '03

Shirley A. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALISHA BURNS,
#1753792

Defendant.

Case No: C191253

Dept No: XVI

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of SECOND DEGREE MURDR (Felony), in violation of NRS 200.010, 200.030; thereafter, on the ^{3rd}~~22nd~~ day of ^{June}~~April~~, 2003, the Defendant was present in court for sentencing with her counsel, PHILIP KOHN, Special Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee, the Defendant is sentenced as follows: Deft. SENTENCED to LIFE with the possibility of

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RECEIVED

JUN 10 2003

CLERK

COUNTY CLERK

JUN 06 2003

RECEIVED

PAWPDOCS\JUDG\221\22172401.doc

BURNS R 0157

1 PAROLE after ONE HUNDRED AND TWENTY (120) MONTHS; Submit to a blood
2 and/or saliva test to determine genetic markers; with 131 DAYS Credit Time Served.

3 DATED this 9th day of June, 2003.

4 John Ampranty
5 DISTRICT JUDGE

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EXHIBIT B

Thomas L. Bennett, M.D.

Forensic Medicine and Pathology

October 2, 2018

Tony L. Abbatangelo, Attorney at Law
724 S. 9th Street
Las Vegas, NV 89101

RE: F18-83, State-NV v Alisha Burns

Dear Mr. Abbatangelo:

Thank you for the opportunity to work with you on the above case. You asked me to review the materials regarding this event, and to offer what information and opinions I may have from my role as a physician and forensic pathologist. I am board certified in anatomic pathology, clinical pathology and forensic pathology, and am active as a forensic consultant and forensic pathologist for Wyoming and Montana and adjacent states, working with our courts, families and Coroners in the investigation of the causes, manners and circumstances of injuries, deaths and other medical conditions. I have performed well-over 12,000 forensic autopsies in my career, the majority involving non-natural deaths. These have included investigating thousands of injuries, toxicology cases and trauma-associated deaths.

I have received the following **MATERIALS FOR REVIEW**:

1. Burns – Coroner's and related reports;
2. Kaczmarek DC - filed information;
3. Burns - statement of Kaczmarek in re murder
4. Burns - statement of Abe Cruz at pawn shop;
5. Burns and Kaczmarek notice of intent to seek the death penalty;

SUMMARY:

Pedro Villarreal (58 yo Hispanic man, 67 inches and 189 pounds) was found dead in his apartment at ~1200 on 9-27-02 by a maintenance worker who was checking on complaints the Uptown Motel room/apartment complex was without hot water. He was found in a tub of running water, he clothed in white underwear, black jean pants, brown belt and white socks, a blood-stained/blood-soaked sock in his mouth and multicolored pillow case over his head. His "hands appeared white in color and very wrinkled". The Medical Examiner was notified, and autopsy performed the next day.

CIRCUMSTANCES OF DEATH

Circ: Homicide/LVMPD. Discovered by maintance worker @ 1200 hrs with hands & feet bound with electrical cord, pillow case over head, face down in bathtub in approx. 3-5 inches of water with shower running. Maintance worker attempted entry into decedent's apartment @ approx 1000 hrs due to water back up in next door apartment tub but found

You indicated that you questioned whether the events could have happened on the 25th, based upon the findings at the scene and the autopsy, and requested I review materials and offer whatever opinions I could. You indicated that there were color photos available, but they had not been released to you, and are not in the materials I was able to review at the time of this report.

Forensic Medicine and Pathology, PLLC

6 Canyon View Drive, Sheridan, WY 82801-9008
Office and cell phone: 406-855-5447 Fax: 307-655-5986
Email: doctor4n6@gmail.com Website: www.forensics-tlb.com

BURNS R 0160

EXAMINATION of his BODY:**THE VICTIM**

The victim was located on his stomach in the bathtub apparently face down. The victim's head pointed south and there was a multi-colored pillowcase (ITEM 7; 6932) located over the victim's head. The right arm was slightly bent at the elbow and was pointing to the north. The lower portion of the right arm was resting on the lower portion of the victim's back with his hand palm up near his buttocks. The left arm was bent approximately 90 degrees at the elbow with the upper portion pointing to the south at the victim's side and the lower portion located across the lower back of the victim pointing to the west. The left hand was palm up and located on top of the right hand. The victim's hands appeared water pruned. The left and right arms were bound together near the wrists and around the left hand with a white extension cord (ITEM 10; 6932). His legs mirrored each other and were bent approximately 90 degrees at the knees with the upper portion pointing south with the knees located against the interior south wall of the bathtub. The upper portion of the legs were angled upwards with the left foot located against the east wall and the toes of the feet located against the south wall. The left and right legs were bound together just above the ankles with a cut white electrical cord (ITEM 11; 6932). There were two (2) "older" injuries on the victim's back. The victim was wearing a pair of black "Rustler" denim type pants with a brown belt (ITEM 6; 6932), a pair of white "Hanes" brief style underwear (ITEM 5; 6932), and a pair of white ankle length socks (ITEM 4; 6932). The clothing was wet.

From the autopsy, which was started at 0900 the day after he was found dead, Dr. Gary Telgnhoff listed the following diagnoses, and concluded that Mr. Villarreal died of "asphyxia", the manner of death "homicide".

- I. Asphyxia.
 - A. Suffocation.
 - B. Strangulation.
 - C. Drowning.
- II. Multiple blunt force trauma, body.

A white blood soaked piece of cloth (white sock) is in the oral cavity obstructing the same. The entire article is packed within the oral cavity with the tongue compressed to the bottom of the oral cavity. A white button approximately 1/4 inch is found attached to the right upper aspect of the abdomen (on the skin). There are exaggerated wrinkles in the skin of the forearms, wrists, hands and feet (washerwoman changes).

Upon removal of the previously described electric cords, deep furrows remain in the skin surrounding the wrists with prominent skin slippage in these areas and deep furrows around the lateral aspect and posterior aspect of the legs bilaterally.

The refrigerated body is cold. Rigor mortis is receded. Fixed exaggerated livor mortis is on the anterior aspect of the body, most pronounced on the anterior thighs, abdomen and chest and most particularly the neck and head. Some Tardieu spots are present on the shoulders and juncture of the chest with the neck. There is pronounced male pattern baldness. Residual black-graying scalp hair at the sides of the head and is 2-1/2 inches in maximal length. The anterior aspect of the skull is intact. The skin is edematous (slightly). The face is slightly weathered with

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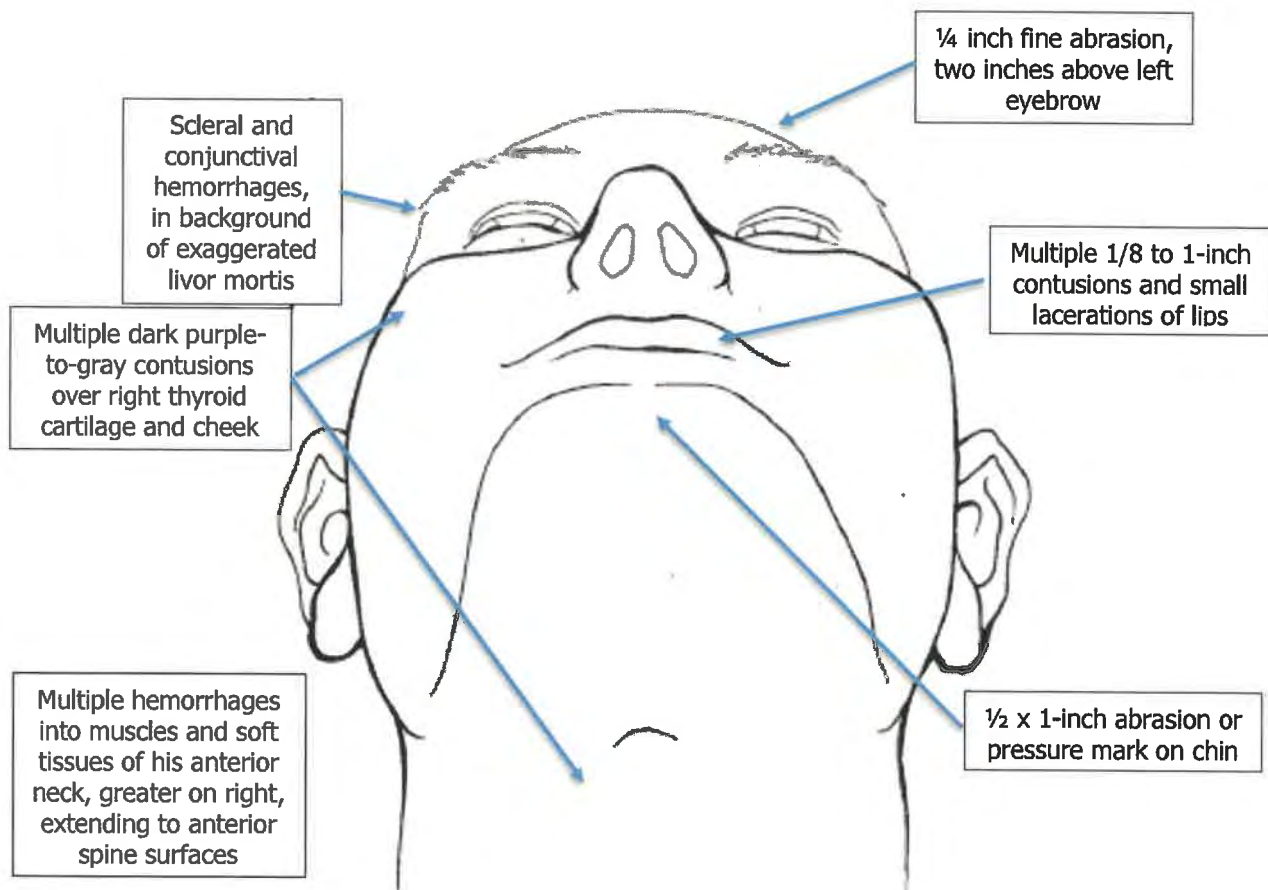
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numerous acne scars and pits. The nose and facial bones are intact by palpation. There is blood/purge fluid emanating from the nostrils. The decedent wears a black-graying mustache. The teeth are natural with some implants and extensive dental work present that are in adequate condition. The neck has evidence of injury to be described, but is otherwise well developed and symmetrical.

Head and Neck: Numerous petechial hemorrhages are in the sclerae and conjunctivae of both eyes; however, the head is involved by exaggerated livor mortis and is dependent at the scene. This most likely represents true petechial hemorrhage, exaggerated by dependent position.



Many abrasions were described over his back and left arm, with no mention of bruising. Bruises are described over his shoulders and his medial right arm.

Internally, prominent vascular engorgement and congestion of the organs is described, the lungs weighing 1,480 grams combined. No froth is described in the airways. No microscopic studies are described/performed, and there is no mention of saving tissues for potential microscopic studies. Toxicology studies found his blood contained 0.13% ethanol, no other drugs found.

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EXAMINATION of the SCENE:**From the Medical Examiner report:**

It was reported that the maintenance worker attempted to enter the motel room/apartment at approximately 1000 hours on 27 September 2002. It was reported that he attempted to open the door, which was not locked, but found the chain intact from the inside. The air-conditioner was apparently running at that time. At approximately 1200 hours, he again attempted to knock on the decedent's door. At that time, the air-conditioner was off. The door this time was locked and required a key to enter. The chain was no longer latched. The maintenance man then reportedly left the apartment and called 911.

Scene:

One bedroom, second floor efficiency apartment with a bathroom, which was occupied only by the decedent. The apartment had no sign of forced entry or drug use. The apartment was in disarray with several items that appeared to have been gone through including a large dresser with most of the drawers pulled out. One dresser drawer was broken and some items from the closet appeared to have been searched. A small fan was turned over on the floor by the front window and its electrical cord was missing. An ash tray full of used cigarette butts appeared to have been dumped on the bed and the ashtray left on the floor along with a cigarette butt. The bathroom had three towels hanging on a towel rack next to the toilet and what appeared to be a pair of tan colored, nylon pantyhose hanging on a hook, on the back of the bathroom door.

There was also a wet box on the floor next to the tub with several paper items, which appeared to be magazines. On a small shelf between the bathroom door and the tub there were two toothbrushes upside down in a coffee cup filled with what appeared to be water, a second empty coffee cup, two razors and some other toiletries. The floor in the bathroom and out into the bedroom area was very wet. The sink and side of the tub had what appeared to be shaving cream all over the surfaces. No identification or money was located in the apartment.

Multiple fingerprints were lifted from the scene, none reportedly matching Alisha Burns.

DISTRICT ATTORNEY - CHARGES: The Clark County District Attorney's Notice includes information regarding past convictions of Steven Kaczmarek in 1989-1996. The current trial regards the death of Pedro Villarreal, the State accusing Mr. Kaczmarek of the murder and the robbery, and alleging Alisha Burns was his accomplice, many sites in the charges noting she was considered a child. They further allege:

The Defendant engaged in an extended struggle with the victim and strangled the victim for a substantial period of time before the victim died. Burns jumped on Villarreal's head and/or neck in a further attempt to asphyxiate him. Villarreal had several abrasions on his back from where he struggled against Defendant and Burns. Defendant and Burns left Villarreal bound in the tub with a sock in his mouth, a pillowcase over his head and water pouring over him. At the autopsy, the coroner observed that the sock in Villarreal's mouth was soaked with blood. . .

Abe Cruz, who worked as a counterperson at a pawn shop, was interviewed about events he could have witnessed on 9-25-02. He apparently recognized a photo of Steve Kaczmarek but was unable to recognize a photo of Alisha Burns or more info about the events.

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STEVE KACZMAREK INTERVIEW, 10-29-02:

He indicated he and Alisha Burns had taken her mother's car and driven from Ohio to Las Vegas, ultimately selling the car, and then Alisha panhandling for money, he and "Tommy" hovering nearby. They worked Fremont Street, where she met Mr. Villarreal, who had been drinking. Mr. Villarreal bought her a drink at McDonalds, and he alleges than offered her \$200 "to go to his house". He didn't remember the day. The three went with Mr. Villarreal back to his home about 2230, where they drank a beer. They decided to rob him, Steve indicating he grabbed the decedent around his neck with his left arm, taking Mr. Villarreal to the floor, where he "passed out". They found the wallet between the mattresses. Mr. Villarreal began coming around, and Tommy then choked him, as did Alisha. Steve stood on his torso and Alisha stomped and punched the back of his neck. They then tied Mr. Villarreal up with the electrical cords and placed him into the tub. Steve put the sock into the mouth and cut off his shirt. They put on gloves they found at the apartment, and he claimed they wiped the room down, he worried about prints and DNA. They then turned on the water, took some money and things and left (p. 22). They then went directly to the pawn shop and pawned the merchandise. He claimed Alisha had gotten a fake ID under the name "Mary Jane Espelage", age 18, which she used to sell the car and also to sign a check (p. 45).

OPINIONS: After review of the above, I offer the following opinions, each to a reasonable degree of medical certainty:

1. From the description of the body of Mr. Villareal at the scene and then at the autopsy on 9-28-02, it is unlikely that Mr. Villareal had been dead since the 25th.
 - a. He had "washer woman" change of the skin, which is simply a sign of immersion or water soaking, which can occur in less than an hour of exposure to water.
 - b. The temperature of the water spraying on him is not given, or how the faucets were set (such as whether the hot water spigot had been turned on in addition to the cold?), but in general, the exposure of a body to water for approximately eight hours or more will result in generalized skin slippage, with the top layers of skin slipping and sloughing away. There is a description of some slipping of the skin under the bindings, but this is a result of mechanical trauma from the bindings, consistent with the description of the localized slippage of the skin.
2. "Asphyxia" is a "mechanism of death", meaning it is a functional disturbance with insufficient oxygen supply for the body, caused by a disease or injury. A "cause of death" is a disease or injury. The pathologist lists three causes under the "asphyxia" heading – suffocation, strangulation and drowning.
 - a. In my opinion, suffocation was a major contribution to the cause of death. The sock stuffed into the mouth would occlude the mouth, and at least compromise the posterior pharynx and breathing through the nose. He had bloody purge from his nose and mouth, much of which could have washed away in the tub, but with 300 mL of brown fluid in his stomach, there is a reasonable source of the purge, which could contribute through aspiration of gastric contents.
 - b. Strangulation is also a possibility. The bruising of the neck is only evidence of manual throttling injuries, as were described, from the hand or forearm of an assailant placed

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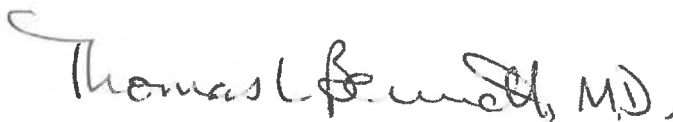
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forcefully across the front of the neck and adjacent tissues. The petechiae of the eyes, as described, are non-specific, caused by increased blood pressure in the head and neck rupturing the smallest veins and vessels that leave the pinhead-sized bruises, these bruises indeed potentially enlarging because of the pooling of blood in the lowest portions of the body following death – the dependent lividity.

3. Alcohol intoxication is a contributing factor to his death.
4. I agree with the Coroner/Medical Examiner that his death occurred on 9-27-02. Had he been dead for two days when found, and then the autopsy performed the next day, I would have expected more early changes of decomposition, such as malodor. By the time of the autopsy, the day after he was found dead, the rigor mortis was described as "receded" and the lividity fixed over the front of his body.
5. The floor was described as wet, and the air conditioner off in the apartment when his body was discovered. I did not see photos or a description of the wetness, but if the water came from the struggle to get the decedent into the tub and then clean up the area, and had been there two days, the Nevada climate is unlikely to allow persistent moisture for two days. The chain lock changes and air conditioner changes on the day he was found also clearly argue against his death being on the 25th.
6. Unidentified prints were described from the initial investigation, only sufficient to demonstrate that Alisha Burns was not identified. With the intervening 16 years, it may be of use to recheck the prints against computer records, as new additions to the data base may lead to hits.
7. In summary, it is my opinion that Mr. Villarreal's death occurred on the 27th rather than the 25th of September, just before he was found dead rather than two days prior to being found. I find nothing in the materials I have been able to review to date that disprove this opinion. It is interesting that the items were pawned on the 25th, per the interview with Abe Cruz, and in the same interview the officers state the murder occurred on the 27th.

If additional information becomes available that has a bearing on these conclusions, these conclusions will be amended or supplemented appropriately. I hope these points are of assistance. Please let me know if there is anything more I can do or need to provide.

Sincerely,



Thomas L. Bennett, M.D.
Forensic Pathologist

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EXHIBIT C

01/27/2004 **All Pending Motions (9:00 AM) ()**
ALL PENDING MOTIONS 1-27-04 Court Clerk: Annette Duncan Reporter/Recorder: Peggy Isom Heard By: SEE MINUTES

Minutes

01/27/2004 9:00 AM

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK:
SET BRIEFING SCHEDULE FOR WRIT...STATUS CHECK: TRANSCRIPTS
OF GPA Mr. Longabaugh requested a Briefing Schedule be set for the filing of a
new Petition for Writ of Habeas Corpus noting as new Counsel of Record he
would prefer to re-file the Motion on Deft's behalf. The CLERK SET the
following Briefing Schedule: Defense Petition for Writ due 2-24-04; State's
Response due 4-20-04; Defense Reply due 5-11-04; with hearing set thereafter.
Original Petition, MOOT as Mr. Longabaugh will re-file. Status Check regarding
Transcripts continued to hearing date. NDC 5-18-04 9:00 AM HEARING:
DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...STATUS CHECK:
TRANSCRIPTS OF GPA CLERK'S NOTE: A copy of this Minute Order placed
in Mr. Longabaugh's attorney folder as he is requested to set his Petition on the 5-
18-04 date/ad.

03/08/2004 **Hearing (9:00 AM) ()**
DEFT'S PTN FOR APPEARANCE/12 Court Clerk: Barbara Karp Reporter/Recorder: Peggy Isom Heard By: John McGroarty

Minutes

03/08/2004 9:00 AM

- Mr. Longabaugh requested the Deft. be emancipated and requested to be
appointed Counsel to take care of this matter. COURT ORDERED, Mr.
Longabaugh appointed counsel and directed Mr. Longabaugh to check with
Family Court regarding emancipation. Deft. withdrew her Petition for Writ of
Habeas Corpus at this time to take care of the emancipation issue first. COURT
SO ORDERED. NDC

[Parties Present](#)

EXHIBIT D

door," the Court explained. "A person asked that question outside her home, in her yard, on her sidewalk, or on her front steps has the

equivalent right to walk away, enter her home, and decline the officer the right to enter." The Supreme Court reversed the appellate division

and reinstated the trial court's dismissal of the action against Detective Steet. See: *Brown v. State*, 164 A.3d 735 (N.J. 2017).

New California Law Safeguards Minors' Rights When in Police Custody

ON OCTOBER 11, 2017, CALIFORNIA Governor Jerry Brown signed into law much-needed protection for minors who are targeted by police for questioning. Senate Bill 395 requires that minors 15 years of age or younger consult with a lawyer in person, by telephone, or by video conference before a custodial interrogation may occur and before the waiver of any *Miranda* rights.

Previously under California law, minors of any age could waive their *Miranda* rights. In a particularly egregious case that was cited by sponsors of the new law, a 10-year-old boy was deemed to have made a voluntary, knowing, and intelligent waiver of his *Miranda* rights when asked by police whether he understood his right to remain silent by responding, "Yes, that means that I have the right to stay calm." Remarkably, an appellate court held that his statement constituted a valid waiver of his *Miranda* rights, and the California Supreme Court declined to review the lower court's troubling decision. Under the new law, that

farce would not constitute a valid waiver of a minor's *Miranda* rights.

This reform was urgently needed. As the American Academy of Child and Adolescent Psychiatry explains, children and adolescents "differ from adults in the way they behave, solve problems, and make decisions." A recent study of exonerations by researchers with The National Registry of Exonerations reveals the very real consequences of the critical differences between the thought processes of adults and children once ensnared in the criminal justice system. Of the exonerations from 1989 to 2012 that were examined, the researchers found that 13% of adults had falsely confessed, but a staggering 42% of juveniles had done so.

Senate Bill 395 is codified as Section 625.6 of the California Welfare and Institutions Code.

Sources: Senate Bill 395; Senator Ricardo Lara, Legislative Fact Sheet: *Miranda Rights for Youth*.

Senate Bill 395; Gross, Samuel R. "Exonerations in the United States, 1989-2012: Report by the National Registry of Exonerations," M. Shaffer, co-author; *The National Registry of Exonerations*, (2012)

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EXHIBIT E

98

CASE NO. 191253

DEPT. NO. XVI

FILED ORIGINAL

Nov 21 10 18 AM '03

Shirley S. Rungius
CLERK

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

ALISHA BURNS

Petitioner,

vs

JACKIE CRAWFORD, NDOC DIRECTOR

Respondent.

BRIAN SANDOVAL, ATTORNEY GEN. /

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

Date of Hearing: _____

Time of Hearing: _____

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

SOUTHERN NEVADA WOMEN'S CORRECTIONAL FACILITY, CLARK COUNTY

2. Name and location of court which entered the judgement of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, LAS VEGAS.

3. Date of judgement of conviction: 12-05-02

4. Case Number: 191253

5. (a) Length of sentence: LIFE WITH THE POSSIBILITY OF PAROLE AFTER 10 YRS.

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

N/A

6. Are you presently serving a sentence for a conviction under attack in motion: Yes No XX. If "yes," list crime, case no. and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: SECOND DEGREE MURDER

8. What was your plea ? (check one)

COUNTY CLERK

NOV 19 2003

RECEIVED

- 1 (a) Not guilty _____
2 (b) Guilty XX
3 (c) Nolo contendere _____

4 9. If you entered a guilty plea to one count of an indictment of
5 information, and a not guilty plea to another count of an indictment or
6 information, or if a guilty plea was negotiated, give details: N/A
7 _____
8 _____

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

- 11 (a) Jury N/A
12 (b) Judge without jury: N/A

13 11. Did you testify at the trial? Yes N/a No _____

14 12. Did you appeal from judgement of conviction: Yes _____ No XX

15 13. If you did appeal, answer the following:

- 16 (a) Name of court: N/A
17 (b) Case number of citation: N/a
18 (c) Result: N/A
19 (d) Date of result: N/A

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

21 14. If you did not appeal, explain briefly why you did not: COUNSEL TOLD
22 PETITIONER THAT SHE COULD NOT APPEAL.

23 15. Other than a direct appeal from the judgement of conviction and
24 sentence, have you previously filed any petitions, applications or motions with
25 respect to this judgement in any court, state or federal: Yes _____ No XX

26 16. If you answer to No. 15 was "yes," give the following information:
27
28

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

2 (2) Nature of proceeding: N/A

3
4
5 (3) Grounds raised N/A

6
7
8 (4) Did you receive an evidentiary hearing on your petition,
9 application or motion? Yes N/A No

10 (5) Results: N/A

11 (6) Date of result: N/A

12 (7) If known, citations of any written opinion or date of orders
13 entered pursuant to each result: N/A

14
15 (b) As to any second petition, application or motion, give the
16 same information: (1) Name of court: N/A

17 (2) Nature of proceeding: N/A

18 (3) Grounds raised: N/A

19 (4) Did you receive an evidentiary hearing on your petition,
20 or application or motion? Yes N/A No

21 (5) Result: N/A

22 (6) Nature of proceeding: N/A

23 (7) If known, citation or any written opinion or date of orders
24 entered pursuant to each result: N/A

25
26 (c) As to any third or subsequent application or motions, give the
27 same information
28

1 as above, list them on a separate sheet and attach.

2 (d) Did you appeal to appeal to the highest state or federal court
3 having jurisdiction, the the result or action taken on any petition, application
4 or motion? (1) First petition, application or motion?

5 Yes N/A No

6 Citation or date of decision: N/A

7 (2) Second petition, application or motion?

8 Yes N/A No

9 Citation or date of decision: N/A

10 (3) Third or subsequent petitions, application or motion?

11 Yes N/A No

12 Citation or date of decision: N/A

13 (5) If you did not appeal from the adverse action on any petition,
14 application or motion, explain briefly why you did not. (you must relate specific
15 fact in response to this to this question. Your response may be included on
16 paper which is 8 1/2 x 11 inches attach to the petition. Your response may not
17 exceed five handwritten or typewritten pages in length). N/A
18
19

20 (17). Has any ground being raised in this petition been previously
21 presented to this or any other court by way of petition for habeas corpus, motion
22 or application or any other post-conviction proceedings? If so, identify:

23 a. Which of the grounds are the same: NONE

24 b. The proceedings in which these grounds were raised: N/A

25 c. Briefly explain why you are again raising these grounds. (You must
26 relate
27
28

specific facts in response to this question. Your response may be included on paper which is 8 1/2 X 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

N/A

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

N/A

19. Are you filing this petition more than one year following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (you must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

NO

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

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

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: PHIL KOHN

22. Do you have any future sentences to serve after you complete the sentence impose by the judgement under attack? Yes _____ No XX

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

2
3 23. State concisely every ground on which you claim that you are being held
4 unlawfully. Summarize briefly the facts supporting each ground. If necessary
5 you may attach pages stating additional grounds and facts supporting same.

6 (a) Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL

7
8 Supporting FACTS(Tell your story without citing cases or law): PETITIONER'S
9 COUNSEL DID NOT PROPERLY OR THOROUGHLY INVESTIGATE POSSIBLE DEFENSES THAT
10 SHE HAD. HE DID NOT FOLLOW UPON THE FACT THAT THERE WAS A 3rd SUSPECT

11 (b) Ground two: GUILTY PLEA

12
13 Supporting FACTS(Tell your story briefly without citing cases or law): THE
14 PETITIONER'S RIGHT TO DUE PROCESS, EFFECTIVE ASSISTANCE OF COUNSEL, AND A
15 FAIR TRIAL WAS VIOLATED WHEN SHE PLEAD GUILTY TO SECOND DEGREE MURDER. SHE

16 (c) Ground three: STATEMENTS

17
18 Supporting FACTS(Tell your story briefly without citing cases or law): THE
19 DEFENSE COUNSEL DID NOT INQUIRE INTO THE FALSE STATEMENT THAT THE PETITIONER
20 GAVE ON BEHALF OF HER CO-DEFENDANT KACZMAREK OR WHY SHE MADE IT. COUNSEL

21 (d) Ground four: N/A

22 Supporting FACTS(Tell your story briefly without citing cases or law): N/A

23
24
25
26

QUESTION 23(a) CONTINUED

known as "Tommy". Counsel did not try to find out who he actually was or to locate him so that what the Petitioner was saying could be verified. If counsel had done so, Tommy would have been able to verify that the Petitioner had left the victim's apartment. And that when she left the victim was still alive and Steve Kaczmarek and Tommy were left alone with the victim. When the Petitioner returned she never re-entered the residence because Kaczmarek and Tommy were standing outside the residence with a VCR and money that they had taken from the victim waiting for Kaczmarek the Petitioner to return. From there they went to the pawn shop where Kaczmarek pawned what he had taken from the victim.

Counsel also did not look into the time of death the coroner had given and the statement given by the maintenance man, Thomas Riddle, who was the one that found the victim. The date listed on the Coroner's report is 9-27-02 (see attached report) and the date on the pawn ticket is 9-25-02 (see attached ticket) which was two days before the date listed as the victim's death.

Riddle said that he had tried to get into the victim's apartment earlier in the day on 9-27-02 to check on a water leak, but the chain was on the door so it would not open all the way and he could not enter. He said he tried again a few hours later and the chain had been removed so he was able to enter at that time, which is when he found he found the victim. (See attached statement)

Counsel never tried to find out who had been in the victim's apartment after the Petitioner, Kaczmarek, and Tommy left. Nor did he try to find out who was in the apartment at the time that Riddle had first tried to enter the apartment and if they had possibly had a hand in the death of the victim.

Counsel did not bring to the Courts attention that the Petitioner's Co-defendant, Kaczmarek, was a 33 year old man that had been accused of Statutory Rape of the Petitioner who was 15 years old. Because of her dependence on him she refused to testify against him and plead the Fifth Amendment. She did this because she believed that he was the only one that loved her or even cared about her.

Counsel never took the time to explain the Guilty Plea Agreement to the Petitioner or to make sure that she understood the full effect to entering a Guilty Plea. All he told her was that she needed to take the Guilty Plea because if she didn't, the State would seek the Death Penalty and that is what she would get if she went to trial with it.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

38
m/w
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



REPORT OF INVESTIGATION
Coroner Case

CALL INFO	NAME OF DECEASED (LAST, FIRST MIDDLE) Villarreal, Pedro			AKA		CASE NUMBER 02-06370	
	INVESTIGATOR Carol Ferranti		REPORTED BY Sgt Alby		REPORTING AGENCY Las Vegas Metropolitan Police Departm		REFERENCE NUMBER 020927-1153
	CALL DATE AND TIME 09/27/2002 1425		DISPATCH DATE AND TIME 09/27/2002 1430		ARRIVAL DATE AND TIME 09/27/2002 1459		RETURN DATE AND TIME 09/27/2002 1630
	DATE AND TIME OF DEATH 09/27/2002 1510		DATE OF BIRTH 08/23/1944		AGE 58		GENDER Male
DECEDENT	RESIDENCE (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101					COUNTY Clark County	RACE Spanish
	SOCIAL SECURITY NUMBER 464-86-2999		DRIVER'S LICENSE NO. AND STATE		OCCUPATION Kitchen Worker	EMPLOYER Caesars Palace	
	MARITAL STATUS Unknown		HEIGHT 67		WEIGHT 189		EYE COLOR Brown
	HAIR COLOR Black		SCARS/TATTOOS/MARKS Cat tattoo on upper left arm.				
	CLOTHING White underwear, black jean pants, brown belt, white pair of socks.						
	LOCATION OF DEATH Uptown Motel						
DEATH	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101					COUNTY Clark County	
	<input type="checkbox"/> FOUND BY Carol Ferranti		<input checked="" type="checkbox"/> PRONOUNCED BY Clark County Coroner		AGENCY Clark County Coroner		
	LOCATION OF INCIDENT Uptown Motel						
INCIDENT	ADDRESS (STREET, CITY, STATE, ZIP) 813 East Ogden #25, Las Vegas, NV 89101					COUNTY Clark County	
	DATE AND TIME OF INCIDENT 09/27/2002 1213		INVESTIGATING AGENCY Las Vegas Metropolitan Police Department			OFFICERS Sgts Alby & Thompson, Detec	
	CIRCUMSTANCES OF DEATH Circ: Homicide/LVMPD. Discovered by maintance worker @ 1200 hrs with hands & feet bound with electrical cord, pillow case over head, face down in bathtub in approx. 3-5 inches of water with shower running. Maintance worker attempted entry into decedent's apartment @ approx 1000 hrs due to water back up in next door apartment tub but found						
	LEGAL NEXT OF KIN Sherry Gipson						
NOTIFICATION	ADDRESS (STREET, CITY, STATE, ZIP) 149 Perry Ln., Manchester, TN 37355					RELATIONSHIP Guardian of Minor	
	NOTIFIED BY Landlord					METHOD Telephone	
	NAME OF PERSON NOTIFI					DATE AND TIME 10/02/2002 0930	
	ADDRESS (STREET, CITY, STATE, ZIP)					RELATIONSHIP	
	IDENTIFIED BY Rick Jones (CCCME)					METHOD Fingerprints	
	DATE AND TIME 09/28/2002 1250					RELATIONSHIP	
DISP	TRANSPORTED TO MORGUE BY Nevada Funeral Services					TRANSPORTED TO MORTUARY BY Nevada funeral service	
	FUNERAL HOME					PROPERTY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
VEHICULAR	DECEDENT WAS <input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Bicyclist <input type="checkbox"/> Motorcyclist <input type="checkbox"/> Skateboard <input type="checkbox"/> Motorized Wheelchair						
	VEHICLE					LICENSE NUMBER	
	OCCURRED ON PRIVATE PROPERTY <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					DECEDENT WEARING CRASH HELMET? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

BURNS R 0178



LVMPD Pawn Shop Detail
Pawn Ticket - Other Property

FIREARM	CODE	LOAN	BUY
N	4		Y

G & S PAWN

Ticket #: 415269

Serial Number 101877897		Model # VC-A410U		Amount: \$ 10.00				
Name KACZMAREK, STEVEN		Date 09/25/2002	Time 9/25/00	Clerk: ABE CRUZ				
Address (Number, Street, City, State, Zip) 11444 ABERDEEN WAY, HILLSBORO OH 45133					SSN:			
Sex M	DOB 02/18/1970	Height 510	Weight 171	Eyes BLU	Hair BLK	Race O	Driv License # 36150252001	State OH

Describe Article:

Additional Identification Information:

Misc. ID Type:

Misc. ID #:

Other No:

Property Description: VHS VCR WITH REMOTE: SHARP VC-A410U SER#101877897

Property Type: STEREO/TV/MUSIC EQUIPMENT

Comments:

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

020927-1153

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime

MURDER

Date Occurred

9-27-02

Time Occurred

1213

Location of Occurrence

813 Ogden Uptown Motel

Sector/Beat

A4

☒ City

☐ County

Your Name (Last / First / Middle)

Riddle, Thomas Wesley

Date of Birth

6/8/44

Social Security #

547-56-8822

Race

W

Sex

M

Height

6ft2

Weight

180

Hair

Br

Eyes

Br

Work Schedl. (Hours)

(Days Off)

Disabled

Business / School

Uptown Motel

Residence Address: (Number & Street)

Same as Above

Bldg./Apt. # City

14 LV

State Zip Code

NV 89101

Res. Phone:

Bus. Phone: 382-5257

Bus. (Local) Address: (Number & Street)

Bldg./Apt. # City

State Zip Code

Occupation

Maint.

Depart Date (if visitor)

Best place to contact you during the day

Best time to contact you during the day

Can You Identify ☐ Yes

the Suspect? ☐ No

DETAILS

Went in to No. 25 to check on water leak
I could hear water running. Found Pete
in Tub Face down. Door ~~was~~ had
chain lock on the First Tried door, Air was
running. Second time I Tried the door
the chain was not on the door and the
Air was OFF. Second time was about 2 hr.
later, called cops.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
COMPLETED AT (LOCATION) 813 Ogden

THE 27 DAY OF Sept. AT 12 15 (AM / PM).

Witness/Officer:

Sgt Mike Thompson

Witness/Officer:

Sgt Mike Thompson P# 1588

(PRINTED)

Thomas Wesley Riddle

SIGNATURE OF PERSON GIVING STATEMENT

BURNS R 0180

QUESTION 23(B) CONTINUED

did not enter her plea knowingly, intelligently, or voluntarily, she also was not competent to enter a plea of guilty. The Petitioner was coerced into pleading guilty by the State's threat to prosecute under a capital murder charge and their intent to seek the Death Penalty. See attached document.

The Petitioner's counsel also told her to take the guilty plea agreement because it was her only choice, that if she went to trial the State would seek the Death Penalty and she would be sentenced to that. The Petitioner was not aware, nor did her counsel tell her, that under NRS 176.025:

"a death sentence shall not be imposed or inflicted upon any person convicted of a crime now punishable by death who at the time of such crime was under the age of 16 years. As to such person, the maximum punishment that may be imposed shall be life imprisonment".

Counsel led the Petitioner to believe that she would get the Death Penalty as her co-defendant, Steven Kaczmarek, had. At the time of these proceedings the Petitioner was only 15 years old.

The Petitioner was not competent to make the decision to plead guilty due to her age and several psychological disorders she had been diagnosed with such as; Attachment Disorder, Borderline Personality Disorder, and Odd-Oppositional Defiance Disorder. Defense counsel did not ask for a Competency Hearing nor did he have the Petitioner evaluated by a psychologist to determine whether or not she was competent to stand trial or enter a plea of guilty. Had either of these been done the Petitioner's psychological problems and the emotional problems caused from being a ward of the State and bounced from one foster home to another would have been brought to the Courts attention, as well as her emotional dependence on co-defendant Kaczmarek. Had this been done the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

4

1 **NOTICE OF RESERVATION TO SEEK THE DEATH PENALTY**

2

3 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County

4 District Attorney, pursuant to the Order Amending Supreme Court Rule 250 filed on

5 December 30, 1998, NRS 175.552 and NRS 200.033, reserves the right to file a Notice of

6 Intent to Seek the Death Penalty.


7 DATED this 31st day of December, 2002.

8 Respectfully submitted,

9

10

11 BY



Chris J Owens
Chief Deputy

QUESTION 23(c) CONTINUED

did not bring to the Courts attention the fact of the Petitioner's emotional dependence on Kaczmarek or the fact that he was 33 years old and she was only 15 years old.

Counsel did not take into consideration or bring to the Courts attention that the Petitioner had come to believe that Kaczmarek was the only one that loved or even cared about her, and that she could not survive without him. Counsel did not pursue any possible defenses that the Petitioner may have had based on her emotional dependence of the Co-defendant. Had counsel investigated any of this, he would have found that the Petitioner gave the statement that she did because Kaczmarek told her to. She lied to the Detective's telling them what Kaczmarek told her to tell them. Kaczmarek told the Petitioner to lie and tell them that she was the one that committed the crime so that he wouldn't get as much time. He told her that they would go easier on her because she was a juvenile, and she would also get less time that way, so that they would be out at about the same time and be able to be together again. Because the Petitioner believed what he was telling her she gave a false statement to the Detectives. If counsel had pursued this issue the outcome may have been different.

THIS IS IN DIRECT VIOLATION OF THE PETITIONER'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

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

3 EXECUTED at S.N.W.C.F. on the 12³ day of NOVEMBER,
4 2003.

5 *William Burns*
6 Signature of Petitioner
7 4370 SMILEY RD
8 Address
9 LAS VEGAS, NV 89115-1808

10 Signature of Attorney (if any)

11 Attorney for Petitioner

12 Address

13
14 VERIFICATION

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

20 *William Burns*
21 Signature of Petitioner

22
23 Attorney for Petitioner(if any)

CERTIFICATE OF SERVICE BY MAIL

I, Alison Burns, hereby certify pursuant to N.R.C.P.
5(b), that on the 12 day of Nov. 13, I mailed a true
and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS
addressed to:

JACKIE CRAWFORD, NDOC DIRECTOR
Respondent prison or jail official

P.O. BOX 7011

Address

CARSON CITY, NV 89702-7011

Attorney General
100 NORTH CARSON STREET
CARSON CITY, NEVADA
89701

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT Attorney of County of Conviction

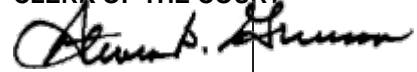
200 SOUTH THIRD STREET

Address

LAS VEGAS, NV 89155

EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XVI
200 SOUTH THIRD STREET
LAS VEGAS, NV 89155

Alison Burns
Signature of Petitioner



1 **APP**

2 TONY L. ABBATANGLO, ESQ.
3 Nevada Bar No. 003897
4 4560 S. Decatur Ste 300
5 Las Vegas, Nevada 89103
6 Tel: (702) 707-7000; Fax: (702) 366-1940
7 tony@paulpaddalaw.com
8 Attorney for Defendant/Petitioner
9 ALISHA BURNS

7 EIGHTH JUDICIAL DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,) CASE NO.: 03C191253
10)
11 Plaintiff,) DEPT.NO.: X
12)
13 vs.)
14)
15 ALISHA BURNS,)
16 Defendant.)
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RENEWED APPLICATION FOR APPOINTMENT FOR POST CONVICTION RELIEF

18 COMES NOW, ALISHA BURNS, by and through her attorney, TONY L.
19 ABBATANGELO, ESQ., and hereby submits her Renewed Application for Appointment of
20 Counsel for Post-Conviction Relief. This motion is based on the Facts, Pleadings, Exhibits,
21 Points and Authorities, and argument, if any, at time of said motion.
22

23 Dated this 6TH day of June, 2019

24 /s/ Tony L. Abbatangelo, Esq.
25 TONY L. ABBATANGELO, ESQ.
26 Nevada Bar No. 003897
27 4560 S. Decatur, Ste 300
28 Las Vegas, Nevada 89102
Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **FACTS**

5 When this Motion was originally filed, undersigned was under the impression that the
6 original proceeding was still pending. This is due to the fact that the Withdrawal was not posted
7 on Odyssey. Subsequently Petitioner filed a pro se Petition, which is set to be heard on July 15,
8 2019, at 8:30, in front of this Honorable Court. Petitioner asks this Court to take judicial notice
9 of her pro se Petition, filed on May 14, 2019, the exhibits submitted and undersigned's
10 previously filed Motion for Appointment and supporting exhibits, filed on March 29, 2019,
11 pursuant to NRS 47.150¹

12
13 **ARGUMENT**

14 Undersigned incorporates the arguments previously submitted in his March 29, 2019
15 Application. Petitioner also submits that the issues are complex, the Petitioner is indigent, and
16 that appointment of counsel is necessary to proceed with discovery, pursuant to NRS 34.750:
17

18
19 “A petition may allege that the petitioner is unable to pay the costs of the proceedings or
20 to employ counsel. If the court is satisfied that the allegation of indigency is true and the
21 petition is not dismissed summarily, the court may appoint counsel to represent the
22 petitioner. In making its determination, the court may consider, among other things, the
23 severity of the consequences facing the petitioner and whether:
24 (a) The issues presented are difficult;
25 (b) The petitioner is unable to comprehend the proceedings; or
26 (c) Counsel is necessary to proceed with discovery.
27 Nev. Rev. Stat. Ann. § 34.750 (West)

28 A proposed Order of Appointment is hereby attached.

¹ 2. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information Nev. Rev. Stat. Ann. § 47.150 (West)

1 CONCLUSION

2 WHEREFORE, Petitioner prays as follows:

- 3 1. That undersigned be appointed in the case,
4 2. That discovery be commenced,
5 3. That an evidentiary hearing be conducted,
6 4. That after said hearing this Petition be in all things granted, and,
7 5. For any further relief that is fair and just in the premises.

8 Dated this 6th day of June, 2019

9 /s/ Tony L. Abbatangelo, Esq.
10 TONY L. ABBATANGELO, ESQ.
11 Nevada Bar No. 003897
12 4560 S. Decatur, Ste 300
13 Las Vegas, Nevada 89102
14 Tel: (702) 707-7000; Fax: (702) 366-1940
15 tony@paulpaddalaw.com
16 Attorney for Defendant/Petitioner
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/s/Tony L. Abbatangelo, Esq
Tony L. Abbatangelo, Esq.

1 **ORD**

2 TONY L. ABBATANGLO, ESQ.
3 Nevada Bar No. 003897
4 4560 S. Decatur Ste 300
5 Las Vegas, Nevada 89103
6 Tel: (702) 707-7000; Fax: (702) 366-1940
7 tony@paulpaddalaw.com
8 Attorney for Defendant/Petitioner
9 ALISHA BURNS

7 EIGHTH JUDICIAL DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 ALISHA BURNS,

13 Defendant.

) CASE NO.: 03C191253

) DEPT.NO.: X

14
15
16
17 **ORDER APPOINTING COUNSEL**

18
19 The Court, having considered the pleadings on file, including the Petitioner's pro se
20 Application for Habeas Corpus Relief, Mr. Abbatangelo's Motion for Appointment of Counsel,
21 and renewed Application for Appointed of counsel finds as follows:

- 22 1. That the Petitioner is indigent,
23
24 2. That the issues involved are complex,
25
26 3. That Petitioner has asserted a claim of actual innocence, and supported the claims with
27 documents,
28 4. That it reasonably appears that discovery is needed in this case, and
5. That undersigned is exceedingly familiar with the history and facts of this case.

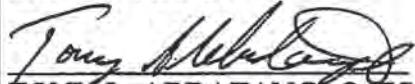
1 IT IS THEREFORE ORDERED that Mr. Tony L. Abbatangelo, Esq., is appointed,
2 effective immediately, to represent the Petitioner, Alisha Burns, formerly representing herself in
3 proper person.

4 DATED this ___th day of June, 2019

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DISTRICT COURT JUDGE

SUBMITTED BY:



TONY L. ABBATANGLO, ESQ.

Nevada Bar No. 003897

4560 S. Decatur Ste 300

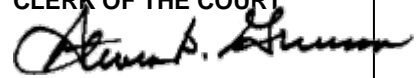
Las Vegas, Nevada 89103

Tel: (702) 707-7000; Fax: (702) 366-1940

tony@paulpaddalaw.com

Attorney for Defendant/Petitioner

ALISHA BURNS



MOT
TONY L. ABBATANGLO, ESQ.
Nevada Bar No. 003897
4560 S. Decatur Ste 300
Las Vegas, Nevada 89103
Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner
ALISHA BURNS

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO.: 03C191253
)	
Plaintiff,)	DEPT.NO.: X
)	
vs.)	HEARING REQUESTED
)	
ALISHA BURNS,)	
Defendant.)	

MOTION FOR LIMITED DISCOVERY

COMES NOW, ALISHA BURNS, by and through her attorney, TONY L. ABBATANGELO, ESQ., and hereby submits her Motion for Limited Discovery in order to fully and fairly file her Supplement to her pro se Petition for Habeas Corpus. This motion is based on the Facts, Pleadings, Exhibits, Points and Authorities, and argument, at time of hearing on said motion.

Dated this 12th day of November, 2019

/s/ Tony L. Abbatangelo, Esq.
TONY L. ABBATANGELO, ESQ.
Nevada Bar No. 003897
4560 S. Decatur, Ste 300
Las Vegas, Nevada 89102
Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

Counsel was recently appointed to represent the Petitioner, who filed a pro se Petition. This Court gave undersigned until October 14, 2019 to respond. In order to fully and fairly respond to the State' Opposition, limited discovery is appropriate. In the original investigation, there were several suspects. When the police were called, fingerprints were found, none of which matched the Petitioner. This fact should be conceded by the State. The discovery requested in this case, therefore, is that Metro re-run the prints to see if, after this passage of time, there may be a match. This request is quite analogous to asking for DNA to be retested; this is a most reasonable request.

In this case, the date of death was a moving target. The original reports showed the date of the murder on September 27, 2002, **Exh A**. This is two days AFTER September 25, 2002, the date of the pawning of the items taken in the robbery. robbery in which items were pawned, **Exh B**. The statement given by Kaczmarek indicated that after the robbery, the scene was wiped clean. **Exh C**, p 15, "real good," p 18. Note that Kaczmarek's statement indicates that "Tommy" was there, **Exh C**, p 15. It is thus possible that Tommy could have gone back to the scene two days later.

It is clear from Kaczmarek' statement that he is referring to an event which occurred two days prior to the murder, since he specifically refers to the pawning of the items immediately after the robbery **Exh C**, p 26. The items could not be pawned until after the robbery. Mr. Riddle, maintenance man of the premises, explained when first attempted to gain access into the unit, the door was chain locked from the inside, and the air conditioner was off. **Exh D**, p 4. This fact reflects that people had been inside the unit subsequent to September 25, 2002, the documented date of the robbery. Mr. Riddle returns a short time later; the chain lock had been removed, and

1 he was able to gain access into the unit. On September 27, 2002, when he Kaczmarek) discovers
2 the decent, the police were called and investigated the scene. The police dusted the area and found
3 fingerprints, none of which matched Alisha's or Kaczmarek's. This corroborates and reinforces
4 other people entered the room after Alicia and Kaczmarek left.

5 The Clark County Medical examiner fixes the date of death to be September 27, 2002.
6 Suddenly, when Kaczmarek is charged with the murder/robbery, the date of the robbery and
7 murder becomes September 25, 2002, two days after the items were pawned, presumably to
8 match the ME's fixing the date of death to September 27, 2002. See **Exh E**, Kaczmarek
9 Information. This is in irreconcilable contrast with the September 25, 2002, pawn ticket, **Exh C**.
10 It is important to note that Alisha was not originally charged with Murder and Robbery, only
11 Kaczmarek, **Exh E**.

12 When Mr. Burns was writing her statement, she had been in solitary confinement for 13
13 days prior to mailing her statement to the detective, and all she had to bide her time were the
14 letters Kaczmarek wrote her in order to manipulate her into sending this statement.¹

15 Bridget Pasqua, a fellow inmate, befriended the Petitioner, is a material fact witness in this
16 Petition She has submitted an Affidavit in Support of the Petitioner, **Exhibit F**. Her affidavit
17 provides a ring side seat to the undue influence levied on her as a result of her being allowed to
18 interact with Kaczmarek during the relevant time frame. Her affidavit
19
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26 ¹ Interestingly, after her statement was received, she was then transferred back to Ohio, and
27 with no new evidence, she is then brought back to Nevada. She was brought here in the first
28 place pursuant to an agreement between Nevada and Ohio that she would be free from
prosecution. This area needs to, and will be, addressed.

1 Dr. Thomas Bennett, MD's report must be considered new evidence. His report fixes the
2 death on September 27, 2002, two days after the Petitioner was present, **Exh G.**²

3
4 THERE ARE SUBSTANTIAL AND COMPLEX ISSUES WHICH NEED TO BE FULLY
5 AND FAIRLY ADDRESSED AND DEVELOPED, SUCH THAT THIS PETITION CANNOT
6 BE SUMMARILY DISMISSED

7 Petitioner submits that there is not a time bar in this case; since there has not been a ruling, it
8 should not be summarily denied. For the mere sake of argument, if where a petition is
9 procedurally barred and the petitioner cannot demonstrate good cause, the district court may
10 nevertheless reach the merits of any constitutional claims if the petitioner demonstrates that
11 failure to consider those constitutional claims would result in a fundamental miscarriage of
12 justice. *Pellegrini, v. State*, 117 Nev.860, 887, 34 P.3d 519, 537 (2001). A fundamental
13 miscarriage of justice requires "a colorable showing" that the petitioner "is actually innocent of
14 the crime or is ineligible for the death penalty." *Id.* This generally requires the petitioner to
15 present new evidence of his innocence. *House v. Bell*, 547 U.S. 518, 536–37, 126 S.Ct. 2064, 165
16 L.Ed.2d 1 (2006); *Schlup v. Delo*, 513 U.S. 298, 316, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995).
17

18
19 Again, for mere argument that there exists a procedural bar, a habeas petitioner may overcome
20 these bars and secure review of the merits of defaulted claims by showing that the failure to
21 consider the petition on its merits would amount to a fundamental miscarriage of
22 justice. *Schlup v. Delo*, 513 U.S. 298, 314–15, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995); *Mitchell*
23 *v. State*, 122 Nev. 1269, 1274, 149 P.3d 33, 36 (2006); *Pellegrini v. State*, 117 Nev. 860, 887, 34
24

25
26
27 ² Dr. Bennett, in addition to looking at all the evidence provided, had many conversations with
28 the Assistant District Attorney assigned to the public integrity unit. His opinion was only
strengthened.

1 P.3d 519, 537 (2001). This standard is met when the “petitioner makes a colorable showing he
2 is actually innocent of the crime.” *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. This means that
3 “the petitioner must show that it is more likely than not that no reasonable juror would have
4 convicted him in the light of the new evidence.” *Schlup*, 513 U.S. at 327, 115 S.Ct. 851. “[A]
5 petition supported by a convincing *Schlup* gateway showing ‘raises[s] sufficient doubt about [the
6 petitioner’s] guilt to undermine confidence in the result of the trial without the assurance that that
7 was untainted by constitutional error’; hence, ‘a review of the merits of the constitutional claims’
8 is justified.” *House v. Bell*, 547 U.S. 518, 537, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006)
9 (quoting *Schlup*, 513 U.S. at 317, 115 S.Ct. 851).² *Berry v. State*, 363 P.3d 1148, 1154 (Nev.
10 2015). It is highly unlikely that Ms. Burns, (not simply more likely than not) that no reasonable
11 juror would have convicted her. She is entitled to new counsel, and undersigned asks that he be
12 appointed.
13

14
15 DISCOVERY MUST BE CONDUCTED
16

17 Dr. Bennett’s report constitutes new evidence, the fingerprint evidence is new evidence, or could
18 be. Since the murder occurred two days after the robbery, and since other people were in the
19 premises after the robbery, and since both the State’s coroner and Dr. Bennett agree on this date
20 of the homicide, limited discovery in the form of running the prints is reasonable, fair, and
21 constitutes the only manner in which the Petitioner can obtain this evidence. Although this is not
22 a capital case, the holding from the Ninth Circuit of Appeals is persuasive. The Ninth Circuit, in
23 denying the State’s attempts to block discovery in a Habeas proceeding, stated as follows.
24

25
26 Second, a stay of discovery or a writ of mandamus is not the State’s only adequate
27 means of relief. For example, as discovery proceeds, the State is not foreclosed from
28 making routine challenges to specific discovery requests on the basis of privilege or

1 relevance. Third, while the State probably cannot correct on appeal any negative effects
2 it sustains as a result of compliance with the district court's discovery order, this factor
3 carries little weight compared with the needs of an incarcerated capital
4 habeas petitioner to obtain discovery in order to pursue his claims McDaniel v. U.S.
5 Dist. Ct. for the Dist. of Nevada, 127 F.3d 886, 888–89 (9th Cir. 1997)

6 The State is in exclusive possession of these prints. There is no prejudice to the State. The
7 Petitioner's prints were not present; other persons' prints are present. It is relatively simple to
8 ascertain if the prints can now match.

9 WHEREFORE, Petitioner prays as follows:

- 10 1. That this matter be set down for hearing,
11 2. That this Court permit limited discovery as requested, and,
12 3. For any further relief that is fair and just.

13 Dated this 12th day of November, 2019

14 /s/ Tony L. Abbatangelo, Esq.
15 TONY L. ABBATANGELO, ESQ.
16 Nevada Bar No. 003897
17 4560 S. Decatur, Ste 300
18 Las Vegas, Nevada 89102
19 Tel: (702) 707-7000; Fax: (702) 366-1940
20 tony@paulpaddalaw.com
21 Attorney for Defendant/Petitioner

22 CERTIFICATE OF SERVICE

23 A copy of this Motion was electronically served on all parties of record this 12th day of
24 November, 2019.

25 /s/Tony L. Abbatangelo, Esq
26 Tony L. Abbatangelo, Esq.