

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 23 2022 05:09 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 VOL II

TONY L. ABBATANGELO, ESQ.
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ALISHA BURNS

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Attorneys for Appellee
State of Nevada

1 11. EXHIBITS FOR MOTION FOR LIMITED DISCOVERY.....198-293

2 12. REPLY IN SUPPORT OF PETITION294-302

3

4 13. EXHIBITS TO REPLY IN SUPPORT.....303-323

5 14. STATE RESPONSE TO MTN FOR LIMITED DISCOVERY.... 324-330

6 15. REPLY IN SUPPORT OF MTN FOR LIMITED DISCOVERY..695-701

7 16. MINUTE ORDER DENYING LIMITED DISCOVERY..... 702

8 17. NOE ORDER DENYING PWHC..... 703-710

9 18. NOTICE OF APPEAL..... 711-720

10

11 TRANSCRIPT KACZMAREK JURY TRIAL 331—694.OMITTED

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Steven D. Grierson
CLERK OF THE COURT

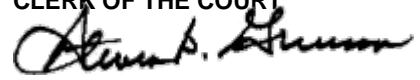


EXHIBIT A

BURNS R 0198

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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.
Attorney at Law

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Fax: (702) 366-1940

Email: tony@tonyabbatangelo.com

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

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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*
DEEDGORS 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*
DEEDGORS 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

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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: [REDACTED]

HOME PHONE: [REDACTED]

LAS VEGAS, NV 89101

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 0218

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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 0219

4

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 0220

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 0221

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 0222

7

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 0223

8

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 0224

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 0225

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

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 | | | 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 0226
SIGNATURE OF PERSON GIVING STATEMENT

EXHIBIT E

● ORIGINAL ●

14

1 **INFO**

2 STEWART L. BELL
3 Clark County District Attorney
4 Nevada Bar #000477
5 GARY L. GUYMON
6 Chief Deputy District Attorney
7 Nevada Bar #003726
8 200 South Third Street
9 Las Vegas, Nevada 89155-2211
10 (702) 455-4711
11 Attorney for Plaintiff

FILED

DEC 23 5 19 PM '02

Shirley B. Hargrave
CLERK

12 I.A. 1/6/03
13 9:00 A.M.
14 G. DENUÉ/P.
15 WOMMER

DISTRICT COURT
CLARK COUNTY, NEVADA

16 THE STATE OF NEVADA,

17 Plaintiff,

18 -vs-

19 STEVEN KACZMAREK,
20 #1752368

21 Defendant.

Case No: C188781
Dept No: XVI

INFORMATION

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

24 STEWART L. BELL, 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 STEVEN KACZMAREK, the Defendant(s) above named, having committed the
27 crimes of BURGLARY, SECOND OFFENSE, WITH THE ASSISTANCE OF A CHILD
28 (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> |
|-------------------------|------------------------------|
| 18 ALBY, R. | LVMPD #1810 |
| 19 CABRALES, A. | LVMPD #2045 |
| 20 CRUZ, ABE | GOLD AND SILVER PAWN |
| 21 CUSTODIAN OF RECORDS | GOLD AND SILVER PAWN |
| 22 CUSTODIAN OF RECORDS | LVMPD - DISPATCH |
| 23 DAHN, R. | LVMPD #5947 |
| 24 EMT PAQUET | AMR |
| 25 FERRANTI, C. | LVMPD #0016 |
| 26 GIPSON, SHERRY | 149 PERRY LN, MANCHESTER, TN |
| 27 KRAMER, DELORIS | UPTOWN MOTEL |
| 28 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 |
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| 14 | | |
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| 25 | | |
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| 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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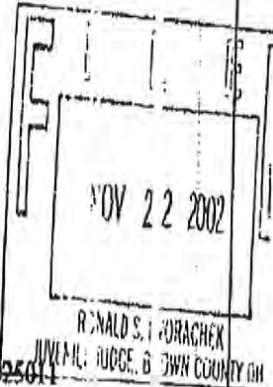
DATED this _____ day of November, 2002, in the City of Las Vegas, County of
Clark, State of Nevada.

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.
Gronman

PROSECUTING
ATTORNEY

Brown County
200 E. Cherry St.
Cincinnati, Ohio 45214
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

BURNS R 0239

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.

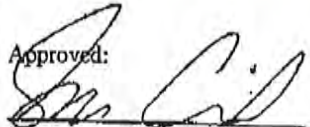

RONALD S. DVORACHEK, JUDGE


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 0240

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

BURNS R 0242

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.

3
4 - o0o-

5
6 ATTEST: FULL, TRUE AND ACCURATE
7 TRANSCRIPT OF PROCEEDINGS

8
9 

10 _____
11 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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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

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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.

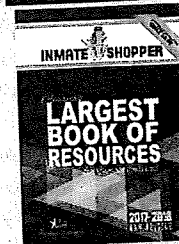
Senate Bill 395 is codified as Section 625.6 of the California Welfare and Institutions Code. ■

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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Sex: F

Police Policy Has Been Job After

EXHIBIT J

ORIGINAL

FILED

JUL 21 12 25 PM '03

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 0263

COUNTY CLERK

JUL 21 2003

RECEIVED

1 LAS VEGAS, NEVADA, APRIL 1, 2003

2 * * * * *

3

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

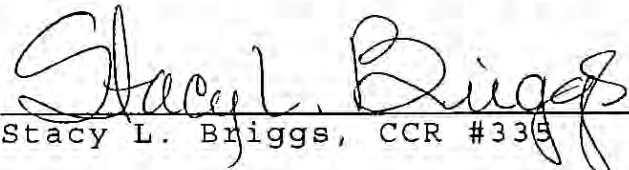
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15

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

18

19


Stacy L. Briggs, CCR #335

20

21

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25

EXHIBIT K

● ORIGINAL

● FILED

11

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

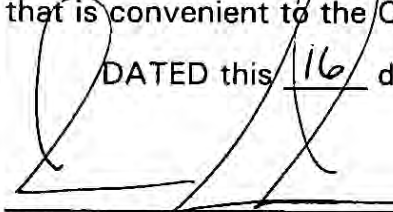
DATE OF HEARING:
TIME OF HEARING:


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

RECEIVED

APR 16 2003

COUNTY CLERK

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

BURNS R 0269

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*

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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BURNS R 0272

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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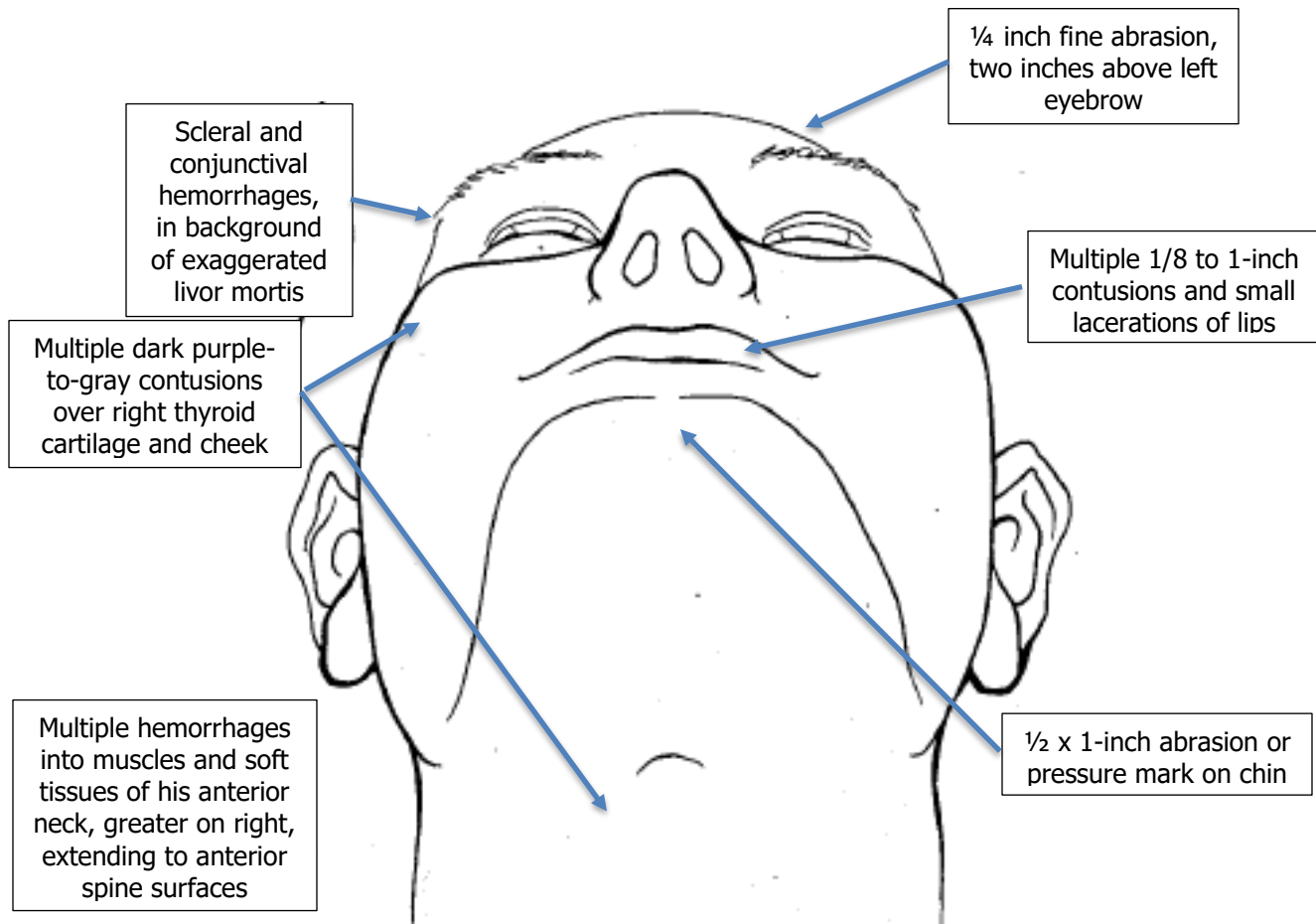
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numerous acne scars and pits. The nose and facial bones are intact by palpation. There is blood/purge fluid emanating from the nostrils. The decedent wears a black-graying mustache. The teeth are natural with some implants and extensive dental work 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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BURNS R 0274

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 0275

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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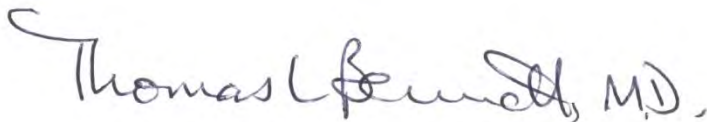
Email: doctor4n6@gmail.comWebsite: www.forensics-tlb.com**BURNS R 0276**

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 0277

EXHIBIT M

1 CASE NO. 191253

2 DEPT. NO. XVI

98
FILED ORIGINAL

Nov 21 10 18 AM '03

Shirley B. Pennington
CLERK

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4
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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,

Petitioner,

10 vs

11 JACKIE CRAWFORD, NDOC DIRECTOR,

12 Respondent.

13 BRIAN SANDOVAL, ATTORNEY GEN. /

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

Date of Hearing: _____

Time of Hearing: _____

14 PETITION

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

17 SOUTHERN NEVADA WOMEN'S CORRECTIONAL FACILITY, CLARK COUNTY

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

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

20 4. Case Number: 191253

21 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:

22 N/A

23 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
24 at this time: N/A

25 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

(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?

Citation or date of decision: N/A

Citation or date of decision: N/A

Citation or date of decision: 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:

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

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/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 AT RESIDENCE <input checked="" type="checkbox"/> | | | | | | |
| 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 | | | | | | |
| INCIDENT | LOCATION OF INCIDENT Uptown Motel AT WORK <input type="checkbox"/> | | | | | | |
| | 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 | | | | | TELEPHONE NO. (931) 728-6800 | |
| | NAME OF PERSON NOTIFI | | | | | DATE AND TIME 10/02/2002 0930 | |
| | ADDRESS (STREET, CITY, STATE, ZIP) | | | | | RELATIONSHIP | |
| | IDENTIFIED BY Rick Jones (CCCME) | | | | | TELEPHONE NO. | |
| | METHOD Fingerprints | | | | | DATE AND TIME 09/28/2002 1250 | |
| 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 | TYPE OF EXAM Autopsy | | | | | | |
| | 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 SEATBELT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | SEAT POSITION | | DECEDENT WEARING CRASH HELMET? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |

BURNS R 0286



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
BURNS R 0288
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 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.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

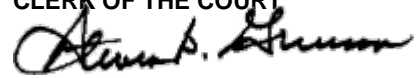
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
DISTRICT Attorney of County of Conviction

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



RIS
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. |) | |

PETITIONER'S REPLY IN SUPPORT OF HER WRIT OF HABEAS CORPUS

COMES NOW, the Petitioner, TONY L. ABBATANGELO, ESQ., attorney of record for ALISHA BURNS, and hereby submits her Reply in Support of her Petition for Habeas Corpus relief. This Reply is based on the Facts, Prior pleadings and attached exhibits, Points and Authorities, and Argument of Counsel at time of said hearing.

Dated this 6th day of January, 2020.

/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

1 **INTRODUCTION**

2 Since this Court is abundantly familiar with the facts, they need not be repeated in toto.
3 Rather, the Petitioner will respond to the Arguments made by the State. At the outset, Petitioner
4 points out that that the State has not replied to the Petitioner's Motion for Limited Discovery,
5 filed on November 12, 2019. The failure to respond must be treated as an admission that the
6 Motion is meritorious and grant the limited discovery request. ¹Further, the failure to respond
7 serves to delay this matter, in conscious indifference to the Petitioner's procedural rights.² Since
8 Petitioner stated the relevant facts and submitted exhibits in her Motion for Limited Discovery,
9 the Court no doubt is abundantly familiar with the facts.

10
11 **POINTS AND AUTHORITIES**

12 I. THERE IS PREJUDICE TO THE PETITIONER IF THIS PETITION IS NOT
13 ADDRESSED ON THE MERITS.

14 The Petitioner was finally able to get someone interested in this case, and as a result, the
15 Petitioner was able to address her innocence with the District Attorney's Conviction Integrity
16 Unit. She only recently had the funds to get the process started. Her withdrawal of the First
17 Petition was health based, and in any event, prior counsel never even visited her, never went over
18 the facts of the case with her. An innocent person is in prison while the guilty party or parties
19

20
21 ¹ Within 7 days after the service of the motion, the opposing party must serve and file written
22 opposition thereto. Failure of the opposing party to serve and file written opposition may be
23 construed as an admission that the motion is meritorious and a consent to granting of the same.
24 NV ST 8 DIST CT Rule 3.20

25 ² See. McNair v. Sheriff, Clark County, 514 P.2d 1175, 1177 (Nev. 1973), "in State v. Austin,
26 87 Nev. 81, 482 P.2d 284 (1971), we made it clear that in this context 'willful' refers not only to
27 intentional derelictions on the part of the prosecution, but 'equally to situations where there has
28 been conscious indifference to rules of procedure affecting a defendant's rights.' 87 Nev. at 83,
482 P.2d at 285; see also, Broadhead v. Sheriff, 87 Nev. 219, 484 P.2d 1092 (1971)."

1 are free. Further, due to the passage of time, Petitioner has reason to believe that re-running the
2 fingerprints may very well lead to the real murderer(s). This is why the Court should allow the
3 limited discovery request, in order that Petitioner can develop this issue, and others.

4 Counsel was ineffective for just giving up on the case, never visiting her, and advising her
5 without a diligent investigation into her innocence. During the discussions with the Conviction
6 Integrity Unit, the State had NO explanation of the door chain lock being locked, and then open,
7 and the running water on September 27, 2002, TWO FULL DAYS AFTER the items taken in the
8 robbery were pawned.

10 As to her original plea, the State ARGUES that her trial counsel CORRECTLY advised her
11 regarding her being death penalty eligible, because the Supreme Court case of Roper v.
12 Simmons, 543 U.S. 551, 125 S.Ct. 1183 (2005), had not been decided and she was therefore her
13 prior counsel correctly advised that she COULD receive the death penalty, Opp, p10 bottom-p11
14 top. This position taken by State is not true; this is and was a material misstatement of law.

15 From the federal standpoint, in Thompson v. Oklahoma, 487 U.S. 815 (1988) Defendant
16 was convicted of first-degree murder and sentenced to death, by jury verdict, in the District
17 Court of Grady County, James R. Winchester, J. Defendant appealed. The Oklahoma Court of
18 Criminal Appeals, 724 P.2d 780, Brett, J., affirmed. On writ of certiorari, the Supreme Court,
19 Justice Stevens, held that Eighth and Fourteenth Amendments prohibited execution of defendant
20 convicted of first-degree murder for offense committed when defendant was 15 years old. Since
21 the Petitioner was 15 years old at the time of the offense, she could not have received the death
22 penalty. Additionally, the statute which increased the minimum age for the death penalty
23 simply raised the age from 16 to 18; thus, in 2002, the 15 year-old Petitioner could not have
24 received the death penalty in any event. ³

27
28
³ REGULAR SESSION OF THE 73RD LEGISLATURE
Additions are indicated by **Text**; deletions by

1 In Palmer v. State, 59 P.3d 1192 (Nev. 2002) Petitioner who pleaded guilty and was
2 convicted of attempted sexual assault sought writ of habeas corpus, alleging that his guilty plea
3 was invalid. Without conducting evidentiary hearing, the Second Judicial District Court, Washoe
4 County, Brent T. Adams, J., denied petition. Petitioner appealed. The Supreme Court held that:
5

6
7 Changes in tables are made but not highlighted.

Deleted: Text

8 Ch. 33

9 A.B. No. 6

10 CRIMINAL PROCEDURE—JUDGMENT AND EXECUTION—CAPITAL PUNISHMENT
11 FOR MINORS

12 AN ACT relating to capital punishment; prohibiting the imposition of a sentence of death upon a
13 person for a crime committed while the person was under the age of 18 years; and providing
14 other matters properly relating thereto.

15 Legislative Counsel's Digest:

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

22 This bill increases the threshold age for imposing a death sentence to 18 years so that a person
23 may not be sentenced to death for a crime that was committed when the person 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.

24 This bill applies retroactively to any person who is in prison under a sentence of death on the
25 effective date of the bill for a crime that the person committed when he was under the age of 18
26 years. The death sentence of a person to whom this bill applies retroactively is commuted to a
sentence of life without the possibility of parole.

27 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
28 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 176.025 is hereby amended to read as follows:

<< NV ST 176.025 >>

24 A sentence of death, must not be imposed or inflicted upon any person convicted of a crime
25 now punishable by death who at the time of the commission of the crime was under the age
26 of 18 years. As to such person, the maximum punishment that may be imposed is life
imprisonment.

Deleted: sentence shall

Deleted: such

Deleted: 16

Deleted: shall be

<< Note: NV ST 176.025 >>

27 CRIMINAL PROCEDURE—JUDGMENT AND EXECUTION—CAPITAL PUNISHMENT
28 FOR MINORS, 2005 Nevada Laws Ch. 33 (A.B. 6)

1 (1) lifetime supervision is direct consequence of guilty plea to sexual offense of which defendant
2 must be aware, and (2) remand to district court was warranted for purpose of determining
3 whether defendant knew that he would be subject to lifetime supervision.

4 Similarly, in this case, the Petitioner thought she could receive the death penalty, a
5 powerful tool for extracting a plea. The agents of the State may not produce a plea by actual or
6 threatened physical harm or by mental coercion overbearing the will of the defendant. Brady v.
7 U.S., 397 U.S. 742, 750 (1970). Filing a notice of Reservation to Seek the Death Penalty,
8 WHEN IT IS NOT AVAILABLE, clearly constitutes such coercion

9
10 Even absent a showing of good cause, this court will consider a claim if the petitioner can
11 demonstrate that applying the procedural bars would result in a fundamental miscarriage of
12 justice Bejarano v. State, 146 P.3d 265, 270 (Nev. 2006). Further, if a petitioner who seeks to
13 excuse a procedural default based on ineffective assistance of counsel makes the showing of
14 prejudice required by Strickland, he also has met the actual prejudice showing required to excuse
15 the procedural default Rippo v. State, 423 P.3d 1084, 1099 (Nev. 2018), amended on denial of
16 reh'g, 432 P.3d 167 (Nev. 2018).

17
18 In the federal context the Supreme Court has “recognized, however, that a prisoner “otherwise
19 subject to defenses of abusive or successive use of the writ [of habeas corpus] may have his
20 federal constitutional claim considered on the merits if he makes a proper showing
21 of actual innocence.” Id., at 404, 113 S.Ct. 853 (citing Sawyer v. Whitley, 505 U.S. 333, 112
22 S.Ct. 2514, 120 L.Ed.2d 269 (1992)). See also Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct.
23 2639, 91 L.Ed.2d 397 (1986) (“[W]e think that in an extraordinary case, where a constitutional
24 violation has probably resulted in the conviction of one who is actually innocent, a federal
25 habeas court may grant the writ even in the absence of a showing of cause for
26 the procedural default.”). In other words, a credible showing of actual innocence may allow a
27 prisoner to pursue his constitutional claims (here, ineffective assistance of counsel) on the merits
28

1 notwithstanding the existence of a procedural bar to relief. “This rule, or fundamental
2 miscarriage of justice exception, is grounded in the ‘equitable discretion’ of habeas courts to see
3 that federal constitutional errors do not result in the incarceration of innocent persons.”

4 *Herrera*, 506 U.S., at 404, 113 S.Ct. 853.” *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013)

5 **PETITIONER HAS OVERCOME THE STATE’S DEFENSE ON LACHES**

6
7 The codefendant had a trial. His testimony is preserved. The State has not maintained that
8 witnesses are no longer unavailable to the extent that it is unduly prejudiced. This being a
9 capital case, the state’s file should be available, as well as all the reports. In *Copeland v. Ryan*,
10 852 F.3d 900, 903 (9th Cir. 2017), Eleven years later, in November 2013, Copeland filed in
11 federal court a pro se petition for habeas corpus under 28 U.S.C. § 2254 challenging his state
12 convictions. To overcome § 2254’s one-year statute of limitations, Copeland alleged “actual
13 innocence” on several counts of the underlying indictment.⁴The district court held that Copeland
14 had failed to establish actual innocence on all but two of the counts of the indictment, and
15 ordered an evidentiary hearing on the remaining two counts. In *Copeland*, there was an eleven-
16 year delay. The delay in this case is longer, however, although AEDPA seeks to eliminate delays
17 in the federal habeas review process. See *Day*, 547 U.S., at 205–206, 126 S.Ct. 1675; *Miller–El*
18 *v. Cockrell*, 537 U.S. 322, 337, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). But AEDPA seeks to
19 do so without undermining basic habeas corpus principles and while seeking to harmonize the
20 new statute with prior law, under which a petition’s timeliness was always determined under
21 equitable principles. See *Slack v. McDaniel*, 529 U.S. 473, 483, 120 S.Ct. 1595, 146 L.Ed.2d

22
23
24
25
26
27 ⁴ The Antiterrorism and Effective Death Penalty Act of 1996 imposes a one-year statute of
28 limitations on § 2254 habeas petitions. 28 U.S.C. § 2244(d). As an exception to this general rule,
courts can consider untimely federal habeas petitions if the petitioner shows “actual innocence”
on the challenged convictions. *Schlup v. Delo*, 513 U.S. 298, 318–23, 115 S.Ct. 851, 130
L.Ed.2d 808 (1995). *Copeland v. Ryan*, 852 F.3d 900, 903 (9th Cir. 2017).

542 (2000) (“AEDPA’s present provisions ... incorporate earlier habeas corpus principles”); see also Day, 547 U.S., at 202, n. 1, 126 S.Ct. 1675; id., at 214, 126 S.Ct. 1675 (Scalia, J., dissenting); 2 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure § 24.2, pp. 1123–1136 (5th ed.2005). Holland v. Fla., 560 U.S. 631, 648 (2010), In Holland, supra, the Supreme Court allowed equitable tolling in an otherwise untimely Writ, stating, at 649-50:

We have said that courts of equity “must be governed by rules and precedents no less than the courts of law.” Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) (internal quotation marks omitted). But we have also made clear that often the “exercise of a court’s equity powers ... must be *650 made on a case-by-case basis.” Baggett v. Bullitt, 377 U.S. 360, 375, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964). In emphasizing the need for “flexibility,” for avoiding “mechanical rules,” Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 90 L.Ed. 743 (1946), we have followed a tradition in which courts of equity have sought to “relieve hardships which, from time to time, arise from a hard and fast adherence” to more absolute legal rules, which, if strictly applied, threaten the “evils of archaic rigidity,” Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 248, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). The “flexibility” inherent in “equitable procedure” enables courts “to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices.” *Ibid.* (permitting postdeadline filing of bill of review). Taken together, these cases recognize that courts of equity can and do draw upon decisions made in other similar cases for guidance. Such courts exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.”

The facts of this case support permitting this Petition to proceed. When Dr. Bennett reviewed the State’s evidence, he was more convinced that Ms. Burns is an actually innocent person. His findings are well supported. See Dr. Bennet report, previously submitted, **Exh A**.

Habeas corpus provides a remedy for jurisdictional and constitutional errors at trial without limit of time. U.S. v. Smith, 331 U.S. 469 (1947). This Petition is brought on Federal and State grounds.

DISCOVERY AND AN EVIDENTIARY HEARING IS REQUIRED

1 The Petitioner has previously requested limited discovery. It may very well be that the person
2 or persons whose prints were found are now in the system. The State should not be permitted to
3 take the position that there is no new evidence, when it refuses to rerun the prints. By analogy,
4 one party to a contract who prevents another party from performing his promise cannot recover
5 for the nonperformance of that promise. Hydraulic Supply Mfg. Co. v. Mardesich, 57 Wash.2d
6 104, 352 P.2d 1023, 1024 (1960) (vessel left harbor before refrigerator plant had been
7 reassembled, thereby preventing company from completing testing of its work; shipowners could
8 not recover from company for damages allegedly resulting from improper repair). The purpose
9 of this rule is to prevent a party from benefiting by its wrongful acts. Wolk v. Bonthius, 13
10 Wash.2d 217, 124 P.2d 553, 554 (1942). Seattle Totems Hockey Club, Inc. v. Natl. Hockey
11 League, 783 F.2d 1347, 1352–53 (9th Cir. 1986). The State is in possession of the evidence, it
12 cannot take withhold running of the prints and simultaneously claim that there is no new
13 evidence. In any event, Dr. Bennett’s findings demonstrate that the homicide could not have
14 been committed by the Petitioner; she has made more than a credible claim of innocence.

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18 The State submits that since Dr. Bennett stated that there was nothing new, Reply, P 11, that
19 the Petition must summarily be rejected. There is no case authority to support this “nothing new”
20 position. Dr. Bennett merely did what a competent medical expert should have done in the first
21 place. The information to which she plead (to avoid the nonexistent death penalty) even lists the
22 date of the robbery on September 27, 2002, Exh B, two days AFTER the items were pawned.
23 Exh C. In essence, to prove their case, the State has to rewrite history and fix a robbery two days
24 after it occurred. In light of the evidence as a whole ... no reasonable factfinder would have
25 found [him] guilty of the underlying offense[s].”⁵

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

1 **CONCLUSION**

2
3 WHEREFORE, the Petitioner, ALISHA BURNS, prays as follows:

- 4 1. That this Court permit discovery,
5
6 2. That this Court order a hearing in this case,
7
8 3. That after hearing, that this Court grant the Petition and discharge her from this case, and
9
10 4. For any further and final relief to which she may show herself to be entitled.

11 Dated this 7th day of January, 2020

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 **CERTIFICATE OF SERVICE**

21 A copy of this Reply was electronically served on all parties of record this 7th day of
22 January, 2020.

23 /s/Tony L. Abbatangelo, Esq
24 Tony L. Abbatangelo, Esq.
25
26
27
28

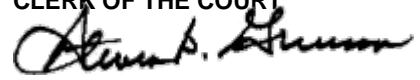


EXHIBIT A

BURNS R 0303

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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BURNS R 0304

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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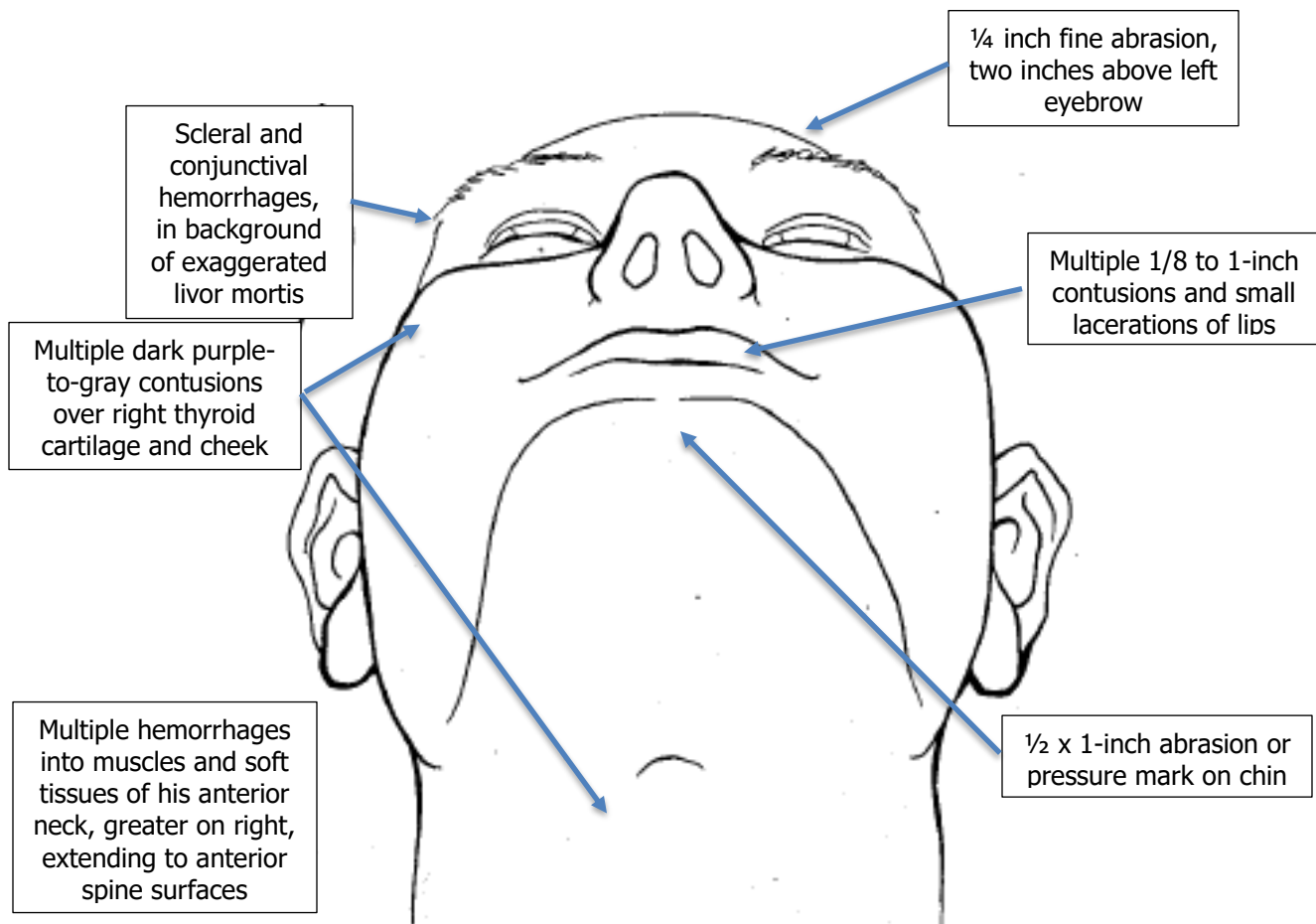
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numerous acne scars and pits. The nose and facial bones are intact by palpation. There is blood/purge fluid emanating from the nostrils. The decedent wears a black-graying mustache. The teeth are natural with some implants and extensive dental work 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 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 0307

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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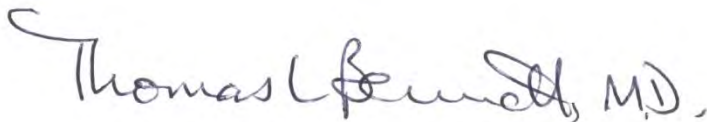
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forcefully across the front of the neck and adjacent tissues. The petechiae of the eyes, as described, are non-specific, caused by increased blood pressure in the head and neck rupturing the smallest veins and vessels that leave the pinhead-sized bruises, 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 0309

EXHIBIT B

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

FILED

APR 3 11 20 AM '03

Shirley B. Burge
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)

EXHIBIT C

DOES AUTO TITLE LOANS

BORROW MONEY AGAINST YOUR
AUTO, TRUCK OR MOTOR CYCLE 415268

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 415269

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

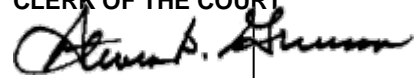
KEEP
YOUR
CASH!

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.



EXH
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. |) | DATE OF HEARING JANUARY 13, 2020 |
| |) | |
| ALISHA BURNS, |) | |
| Defendant. |) | |

SUPPLEMENTAL EXHBIT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

COMES NOW, the Petitioner, ALISHA BURNS, by and through her attorney of record,
TONY L. ABBATANGELO, ESQ., and hereby submits her Supplemental Exhibit in Support of
her Petition for Habeas Corpus, specifically, the State's request for Attendance and Order
Authorizing her Transport.

Dated this 9th day of January, 2020

/s/ Tony L. Abbatangelo, Esq.
TONY L. ABBATANGELO, ESQ.
Nevada Bar No. 003897
4560 S. Decatur, Ste 300
Las Vegas, Nevada 89102
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tony@paulpaddalaw.com
Attorney for Defendant/Petitioner

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EXHIBIT A

2-2-18

Robert,

Here are the documents you requested. I will call you next week.
You may text or call 214-214-7604 if you have anything you need
to call on. Thank you for all your hard work!

Nicholas Burns

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

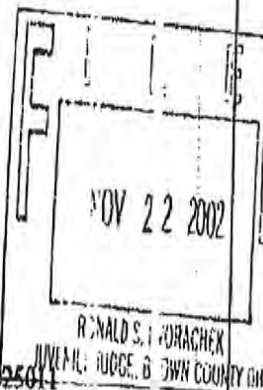
BY Craig Hendricks
CRAIG HENDRICKS
Deputy District Attorney
Nevada Bar #004630

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.
Gronman

PROSECUTING
ATTORNEY

Brown County
200 E. Cherry St.
Cincinnati, Ohio 45214
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

BURNS R 0322

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.

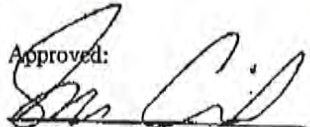

RONALD S. DVORACHEK, JUDGE


Thomas F.
Grennan

PROSECUTING
ATTORNEY

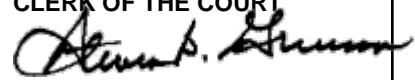
Brown County
900 E. Cherry St.
Georgetown, Ohio 43021
937/376-4151

Approved:


SCOTT T. GUSWEILER
Guardian Ad Litem for Alisha Burns


ERIN G. ROSEN
Assistant Prosecuting Attorney

BURNS R 0323



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar # 10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

ALISHA BURNS, aka,
Alisha Nicole Burns, #1753792

Petitioner,

-VS-

THE STATE OF NEVADA

Respondent.

CASE NO: 03C191253

DEPT NO: X

STATE'S RESPONSE TO PETITIONERS'S MOTION FOR DISCOVERY

DATE OF HEARING: February 24, 2020
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and moves this Honorable Court for an order denying Petitioner's Motion for Limited Discovery

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

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BURNS R 0324

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 5, 2010, Defendant Alisha Burns was charged by way of Criminal
4 Complaint with Burglary (Felony – NRS 205.060), Robbery (Felony – NRS 200.380), First
5 Degree Kidnapping (Felony – NRS 200.310, 200.320), and Murder (Felony – NRS 200.010,
6 200.030). On April 3, 2013, after unconditional waiver of preliminary hearing, Defendant was
7 charged by way of Information with Second Degree Murder (Felony – NRS 200.010,
8 200.030). The co-offender, Steven Kaczmarek, was charged in a separate case. On April 22,
9 2003, Defendant was arraigned and pled guilty to Second Degree Murder. The Guilty Plea
10 Agreement reflected the parties' stipulation to a sentence of life with the possibility of parole
11 after ten (10) years.

12 On June 3, 2003, Defendant was sentenced to life in the Nevada Department of
13 Corrections with the possibility of parole after one hundred twenty (120) months, or ten (10)
14 years, with one hundred thirty-one (131) days credit for time served. The Judgment of
15 Conviction was filed June 10, 2003. Defendant did not file a direct appeal.

16 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) on November
17 21, 2003 ("First Petition"). Defendant withdrew that First Petition in open court on March 8,
18 2004. For over fifteen years, nothing was filed in this case except the Withdrawal of Attorney
19 filed in 2005.

20 Defendant filed an Application for Appointment for Post-Conviction Relief
21 ("Application") on March 29, 2019. The State filed its Opposition on April 9, 2019. The
22 district court took the Application off calendar on April 10, 2019, as there was "no petition
23 pending for which the Court can appoint counsel," and the Court would not rule on the motion
24 unless counsel decided to proceed.

25 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) ("Second
26 Petition") on May 14, 2019. The State filed its Response on July 1, 2019. On January 7, 2020,
27 Petitioner filed her Reply in Support of her Writ of Habeas Corpus. This Petition is still
28 pending before the Court.

1 On November 12, 2019, Petitioner filed a Motion for Limited Discovery. The State's
2 Response follows.

3 **ARGUMENT**

4 **I. THIS MOTION IS PREMATURE**

5 Petitioner is essentially requesting discovery to find the “new evidence” that could lead
6 to an actual innocence claim sufficient to overcome the procedural bars to the instant Petition.
7 The question therefore becomes whether such a request is proper before the Court has ruled
8 on whether the Petition is procedurally barred or good cause exists for overcoming any
9 procedural bars.

10 Procedural bars may be applied before determining the need for discovery or an
11 evidentiary hearing on the underlying claims of a petition. See State v. Eighth Judicial Dist.
12 Court ex rel. Cty. of Clark, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005); see also Sherman
13 v. State, 126 Nev. 755, 367 P.3d 819 (2010)(finding that it was not error to deny a petition as
14 procedurally barred without first permitting discovery or conducting an evidentiary hearing).
15 However, an evidentiary hearing may likewise be held to determine the extent to which good
16 cause exists to overcome procedural bars. See Hathaway v. State, 119 Nev. 248, 255, 71 P.3d
17 503, 508 (2003). Likewise, an evidentiary hearing may be held to determine the extent to
18 which “new evidence” constitutes an actual innocence claim sufficient to overcome procedural
19 bars.

20 NRS 34.780 establishes the rule for discovery in post-conviction cases. NRS 34.780(2)
21 reads:

22 After the writ has been granted and a date set for the hearing, a party
23 may invoke any method of discovery available under the Nevada
24 Rules of Civil Procedure if, and to the extent that, the judge or justice
for good cause shown grants leave to do so.

25 (emphasis added). Post-conviction discovery is not available until Petitioner demonstrates she
26 is entitled to an evidentiary hearing. McCaskill v. Nevada, No. 69051, 2016 WL 7188710, at
27 *2 (Nev. App. Nov. 18, 2016) (stating: “As McCaskill was not entitled to an evidentiary
28

1 hearing, the district court properly concluded he was not entitled to postconviction
2 discovery...”).¹

3 Pursuant to NRS 34.780(2), Petitioner is not entitled to discovery regarding the
4 fingerprints at this time. Discovery would only be proper *after* the district court issued a ruling
5 that Petitioner was entitled to an evidentiary hearing. Presumably this would be equally true
6 regardless of whether the district court ordered an evidentiary hearing on either the merits of
7 the claims or on whether Petitioner’s alleged “new evidence” established either good cause or
8 “manifest injustice.” However, the Court has not yet ordered an evidentiary hearing in any
9 capacity. Petitioner’s Petition and Request for an Evidentiary Hearing is still pending before
10 this court. As such, this Motion for Discovery is premature.

11 II. PETITIONER HAS NOT SHOWN GOOD CAUSE FOR THE EVIDENCE

12 Further, even if this Court were to grant Petitioner an evidentiary hearing, Petitioner
13 would still need to assert good cause for requesting the discovery in question. NRS 34.780(2).
14 Petitioner has not met this burden. Petitioner is requesting that the State run the fingerprints
15 found at the scene of the murder. Petitioner seems to allege that if those fingerprints came back
16 positive for an individual who was not Petitioner, it would constitute new evidence sufficient
17 to prove her actual innocence. However, evidence exists that Petitioner wiped down the scene
18 to remove her fingerprints after the murder. Exhibit 2: Jury Trial Transcript: March 14, 2003,
19 at 138-140, filed March 18, 2003.² Therefore, the fact that the fingerprints did not belong to
20 Petitioner would not be surprising, nor determinative of whether Petitioner assisted in
21 committing the murder. In fact, as far as the State can ascertain, neither fingerprint evidence
22 nor DNA evidence has ever been relied on as a basis for Petitioner’s involvement in the crime.
23 See Bindover, at 15-20 (detailing the facts which led to Petitioner’s arrest); Exhibit 1: Jury

24
25
26 ¹ This is an unpublished Order from the Nevada Court of Appeals. As such, it is included only as persuasive
authority in the instant case.

27 ² Petitioner’s judgment of conviction came from a guilty plea agreement. Therefore, she did not receive a trial.
28 Further, she waived her right to a preliminary hearing. The trial transcript cited here is from the trial of her
boyfriend who she committed the crime with, Steven Kaczmarek (DC case No: 02C188781). These transcripts
are attached as Exhibits 1-3.

1 Trial Transcript: March 13, 2003, at 102, filed March 14, 2003 (stating that no DNA matching
2 Petitioner was discovered at the crime scene).

3 Further, such an identification would do nothing to change the fact that there is
4 substantial evidence of Petitioner's guilt such that no reasonable jury would fail to find beyond
5 a reasonable doubt that she was guilty. See Calderon v. Thompson, 523 U.S. 538, 560, 118 S.
6 Ct. 1489, 1503 (1998) (claiming that the standard that must be met for a successful actual
7 innocence claim is whether "it is more likely than not that no reasonable juror would have
8 convicted him in light of the new evidence presented..."). Petitioner confessed her
9 involvement in the murder on three (3) separate occasions. The first was to Theresa Daka on
10 November 24, 2002. Bindover, at 18. The second was in a letter written to detectives. Exhibit
11 1: Jury Trial Transcript: March 13, 2003 at 16, filed March, 14, 2003. The third was when she
12 signed her guilty plea agreement and admitted her guilt during a canvass with the Court. Co-
13 defendant Steven Kaczmarek further testified during his own trial that Petitioner took part in
14 the murder. Bindover, at 16, 17; Exhibit 2: Jury Trial Transcript: March 14, 2003, at 94-95,
15 filed March 18, 2003. Given this evidence, along with the fact that Petitioner actively took
16 measures to ensure her fingerprints were not left at the scene, the identification of another
17 individual's fingerprints at the scene does not show that Petitioner is actually innocent of the
18 crime she confessed to.

19 Given that this Motion is premature, and even if tested, the result of the fingerprint
20 analysis would not lead a reasonable jury to believe Petitioner was innocent, this Motion
21 should be denied.

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1 **CONCLUSION**

2 For the reasons set forth above, the court should deny Petitioner's Motion for Limited
3 Discovery.

4
5 DATED this 3rd day of February, 2020.

6 Respectfully submitted,

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

10 BY /s/ Alexander Chen
11 ALEXANDER CHEN
12 Chief Deputy District Attorney
13 Nevada Bar #10539
14

15 **CERTIFICATE OF ELECTRONIC SERVICE**

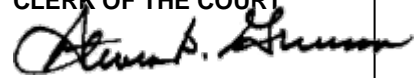
16 I hereby certify that service of the above and foregoing, was made this 3rd day of
17 February 2020, by email to:

18 Anthony Abbatangelo, esq.
19 tony@paulpaddalaw.com

20
21 BY: /s/ Stephanie Johnson
22 Employee of the District Attorney's Office
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RIS
TONY L. ABBATANGLO, ESQ.
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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. |) | |

REPLY IN SUPPORT MOTION FOR LIMITED DISCOVERY

COMES NOW, ALISHA BURNS, by and through her attorney, TONY L.
ABBATANGELO, ESQ., and hereby submits her Reply in Support to her Motion for Limited
Discovery.

Dated this 7th day of February 2020

/s/ Tony L. Abbatangelo, Esq.
TONY L. ABBATANGELO, ESQ.
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Tel: (702) 707-7000; Fax: (702) 366-1940
tony@paulpaddalaw.com
Attorney for Defendant/Petitioner

THE VEGAS LAWYERS
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 707-7000 • Fax (702) 366-1940

The limited discovery which Petitioner seeks is very reasonable and not oppressive in the least. Running the prints found at the scene is such a de minimus task that the State should want to have these prints now run. There is every reason to believe that the real murderer is on the loose, while Petitioner, FIFTEEN YEARS OLD AT THE TIME, is forever tied to lifetime parole. She deserves a life.

The State's position is that it did not need the prints, the State does not deny it ran prints, however. Running prints is basic investigation. If prints were run then, why not run them now? Forensic medicine and research have evolved to such a state of evolution that the Federal Court recognize a presumption of undue influence:

“Moreover, the application note for § 2G1.3 provides for a rebuttable presumption of undue influence “[i]n a case in which a participant is at least 10 years older than the minor.” The district court stated at sentencing that Anderson was 29 years old. His victims were minors, at least under 18, though evidence at trial suggested they were considerably younger. Thus, undue influence was both presumed and supported by evidence.”

Such undue influence occurred here. The undue influence manifested itself when the Petitioner plead to a robbery/murder, where the robbery occurred two days after the actual robbery. The State contorted/fast forwarded the date of the robbery to September 27, 2002, in order to fit the inescapable conclusion that 1),the victim was alive on September 25, 2002, and 2), the murder occurred two days after the robbery. This reality is evidenced by the ME report, and corroborated by Dr. Bennett, which fix date of the murder on September 27,2002. This is unequivocally corroborated by the fact that there was activity in the residence on September 27,

2002, not the least of which is a chain lock being locked, and then unlocked from the inside on that day. Someone had to be alive in the residence on this date for the chain lock to move from locked to unlocked.

Further, it must be noted that the Petitioner had to be emancipated just to live, because she could not receive lifesaving medical treatment unless she emancipated herself.

Finally, the State does not deny that she was incorrectly advised that she could receive the death penalty during the negotiation process.

ARGUMENT

THIS REQUEST FOR FINGERPRINTS COULD NOT BE MORE TIMELY, AND THERE IS GOOD CAUSE TO ALLOW THIS PETITION TO PROCEED

The *Sherman* case cited by the State deals with alleged Brady violations.¹ In this case, the Petitioner is factually innocent, and the advice to plead to avoid a possible death penalty is a recipe for an innocent person to plead, especially a fifteen year old girl already under the extreme undue influence of Kaczmarek. The ineffective assistance of counsel, counsels who did not know that a fifteen-year-old was never eligible for the death penalty must be deemed to have played a substantial role. See *Mazzan v. Whitley*, 921 P.2d 920, 922 (Nev. 1996) “Judicial review of Mazzan's claims for relief would nevertheless be required if Mazzan demonstrated that failure to consider them would result in a fundamental miscarriage of justice.” This court should exercise discretion and allow the prints to be run. Ms. Burns has presented more than a colorable claim of innocence. See *Pellegrini, v. State*, 117 Nev.860, 887, 34 P.3d 519, 537

¹ Respecting *Sherman's* first good-cause argument, he contends that the district court erred by denying his claims of ineffective assistance of post-conviction counsel because the State's withholding of evidence in violation of Brady prevented him from discovering post-conviction counsel's ineffectiveness until shortly before he filed the instant petition. *Sherman v. State*, 367 P.3d 819 (Nev. 2010)

1 (2001). A fundamental miscarriage of justice requires “a colorable showing” that the petitioner
2 “is actually innocent of the crime or is ineligible for the death penalty.”

3 As stated in earlier pleadings, “This generally requires the petitioner to present new evidence
4 of his innocence, House v. Bell, 547 U.S. 518, 536–37, 126 S.Ct. 2064, 165 L.Ed.2d 1
5 (2006); Schlup v. Delo, 513 U.S. 298, 316, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). Alisha has
6 certainly presented new evidence of her innocence, and the State cannot in good conscience
7 make a relevance objection to re-running of the prints, which now may contain a match.

8 It is more likely than not that no reasonable juror would have convicted (Petitioner) in the
9 light of the new evidence.” *Schlup*, 513 U.S. at 327, 115 S.Ct. 851. “[A] petition supported by a
10 convincing *Schlup* gateway showing ‘raises[s] sufficient doubt about [the petitioner’s] guilt to
11 undermine confidence in the result of the trial without the assurance that that was untainted by
12 constitutional error’; hence, ‘a review of the merits of the constitutional claims’ is
13 justified.” House v. Bell, 547 U.S. 518, 537, 126 S.Ct. 2064, 165 L.Ed.2d 1 (2006)
14 (quoting *Schlup*, 513 U.S. at 317, 115 S.Ct. 851).² *Berry v. State*, 363 P.3d 1148, 1154 (Nev.
15 2015). No reasonable jury would ever convict her. Her alleged confession is irreparably tainted,
16 the State alleges a robbery date in which the bounty was pawned two days prior, and there is
17 substantial activity occurring inside the premises on the date of the murder on September 27,
18 2002, such date established by both the ME and by Dr. Bennett.

19 **THE PETITIONER SHOULD BE PERMITTED TO APPEAR AND ASSIST WITH**
20 **THIS CRITICAL HEARING DATE**

21
22 Petitioner has been a real asset in helping put this Petition together. She has a right to be
23 present at this hearing. At the least hearing date, this Court stated that if she proceeded pro se
24 that the Court could simply rule without her being present. Counsel asks this court to reassess
25 this position. A criminal defendant has a fundamental right to be present at all critical stages of
26 a trial. Rushen v. Spain, 464 U.S. 114, 117, 104 S.Ct. 453, 78 L.Ed.2d 267 (1983). Although the
27 right to be present is rooted to a large extent in the confrontation clause of the Sixth
28

1 Amendment to the United States Constitution, the United States Supreme Court has recognized
2 that this right is also “protected by the Due Process Clause in some situations where the
3 defendant is not actually confronting witnesses or evidence against him.” United States v.
4 Gagnon, 470 U.S. 522, 526, 105 S.Ct. 1482, 84 L.Ed.2d 486 (1985). In that vein, the Court has
5 said that a defendant has a right to be present at a proceeding “whenever his presence has a
6 relation, reasonably substantial, to the fulness of his opportunity to defend against the
7 charge.” Snyder v. Massachusetts, 291 U.S. 97, 105-06, (1934) *overruled in part on other*
8 *grounds sub nom. Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). The
9 Court went on to indicate, however, that because the relationship between the defendant's
10 presence and his “opportunity to defend” must be “reasonably substantial,” a defendant does not
11 have a right to be present when his or her “presence would be useless, or the benefit but a
12 shadow.” Id. at 106–07, 54 S.Ct. 330. Thus, it is fair to say that the due process right to be
13 present is not absolute; rather “the presence of a defendant is a condition of due process to the
14 extent that a fair and just hearing would be thwarted by his absence.” Id. at 107-108, 54 S. Ct.
15 330. State v. Irby, 246 P.3d 796, 799–800 (Wash. 2011).

16 In Gomez v. United States, 490 U.S. 858, 873, 109 S.Ct. 2237, 104 L.Ed.2d 923 (1989), the
17 United States Supreme Court affirmed that jury selection is “a critical stage of the criminal
18 proceeding, during which the defendant has a constitutional right to be present. In the instant
19 case, Alisha knows every page, every letter, every punctuation mark in her case. This hearing
20 date is cannot be deemed insubstantial. She is not simply a spectator in this Petition. Denying
21 her the right to appear and assist in this hearing would constitute a federal and state due process
22 violation. She should be present, she has a right to be present, and the Petitioner so moves the
23 Court.

24
25 WHEREFORE, Petitioner prays as follows:

- 26 1. That this matter be set down for hearing,
27 2. That Petitioner be allowed to be present,
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3. That this Court permit limited discovery as requested, and,
4. For any further relief that is fair and just.

Dated this 7th day of February, 2020

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

CERTIFICATE OF SERVICE

A copy of this REPLY IN SUPPORT OF MOTION FOR LIMITED DISCOVERY was electronically served on all parties of record this 7th day of February, 2020.

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

03C191253

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 29, 2020

03C191253 The State of Nevada vs Alisha Burns

June 29, 2020 08:30 AM Motion for Discovery & Reset Evidentiary Hearing

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 14B

COURT CLERK: Berkshire, Teri

RECORDER: Boyd, Victoria

REPORTER:

PARTIES PRESENT:

Anthony L Abbatangelo Attorney for Defendant

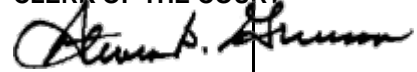
JOURNAL ENTRIES

APPEARANCES CONTINUED: Mr. Ron Evans, deputized law clerk, present on behalf of the State.

Deft. not present and in the Nevada Department of Corrections. Following arguments by counsel, COURT ORDERED, Motion for Discovery & Reset Evidentiary Hearing, DENIED WITHOUT PREJUDICE. FURTHER COURT ORDERED, Matter Set for Evidentiary Hearing on the date given. Court noted this will be a limited issue on the timeliness of the petition, and if the Court finds that there is no good cause for the untimeliness of the petition, the Court is not going to get to the ineffective assistance of counsel.

NDC

08/07/20 9:00 A.M. EVIDENTIARY HEARING - LIMITED ISSUE - TIMELINESS.OF THE PETITION



NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ALISHA BURNS,

Petitioner,

Case No: 03C191253

Dept. No: X

vs.

THE STATE OF NEVADA,

Respondent,

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on March 10, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 19, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 19 day of March 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Alisha Burns # 77669
4370 Smiley Rd.
Las Vegas, NV 89115
Last Known Address

Tony Abbatangelo, Esq.
4560 S. Decatur Ste 300
Las Vegas, NV 89103

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ALISHA BURNS #1753792,

Defendant.

Case No.: 03C191253

Department: X

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER having come on for hearing on the 18th day of September, 2020; continuing on the 22nd day of January, 2021; and the 28th day of January 2021, the Defendant being present, represented by ANTHONY ABBATANGELO, Esq., the State of Nevada being represented by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER, Esq., Chief Deputy District Attorney and RONALD EVANS, Esq., Deputy District Attorney, and the Court having considered the information and arguments contained in the pleadings, arguments of counsel, and good cause appearing therefore, DENIES the writ.

PROCEDURAL HISTORY

On December 5, 2002, Defendant Alisha Burns (hereinafter "Petitioner") was charged by way of Criminal Complaint with Burglary, Robbery, First Degree Kidnapping, and Murder. On April 1, 2003, after unconditional waiver of preliminary hearing, Petitioner was charged by way of Information with Second Degree Murder. On April 22, 2003, Petitioner was arraigned and pled

1 guilty to Second Degree Murder. Per the guilty plea agreement, the State and the Petitioner
2 stipulated to a life sentence with the possibility of parole after ten (10) years. On June 3, 2003,
3 Petitioner was sentenced to life in the Nevada Department of Corrections with the possibility of
4 parole after one hundred twenty (120) months has been served, with one hundred thirty-one (131)
5 days credit for time served. The Judgment of Conviction was filed June 10, 2003. Petitioner did not
6 file a direct appeal.

7 Petitioner filed a Post-Conviction Petition for Writ of Habeas Corpus on November 21, 2003.
8 Petitioner withdrew the petition in open court on March 8, 2004. Petitioner filed an Application for
9 Appointment for Post-Conviction Relief on March 29, 2019. The State filed its Opposition on April
10 9, 2019. The Court took the application off calendar on April 10, 2019, as there was “no petition
11 pending for which the Court can appoint counsel,” and the Court would not rule on the motion
12 unless counsel decided to proceed.

13 Petitioner filed the instant Petition for Writ of Habeas Corpus on May 14, 2019.

14 15 **CONCLUSIONS OF LAW**

16 **A. The Petition is Untimely**

17 NRS 34.726(1) states:

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

- 22 (a) That the delay is not the fault of the petitioner; and
- 23 (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

24 Petitioner has failed to meet this burden.

25 Here, the Petitioner’s Judgment of Conviction was filed June 10, 2003. She did not file a
26 direct appeal. As such, June 10, 2004 was the deadline for Petitioner to file a timely petition.
27 Petitioner did not file the instant petition until May 14, 2019, which is almost fifteen (15) years past
28

1 the statutory deadlines. Petitioner has not provided a sufficient basis for the Court to determine that
2 the delay was not the fault of the Petitioner. Petitioner filed a Habeas Petition on December 8, 2003
3 and withdrew that Petition on March 8, 2004. There was nothing else filed in the case until March
4 29, 2019 when the Petitioner filed an Application for Appointment for Post-Conviction Relief.
5 Since Petitioner had previously filed a Petition, Defendant was aware of the Petition for Writ of
6 Habeas Corpus remedy and still did not file a subsequent petition for almost fifteen (15) years.
7 Petitioner argues that she withdrew the original writ petition because her counsel, at the time, told
8 her she needed to withdraw the petition to proceed with her emancipation claims. There has been no
9 evidence presented, establishing that a post-conviction writ of habeas corpus and an emancipation
10 case cannot proceed at the exact same time. There has been insufficient evidence presented to
11 overcome the procedural time bar of the filing of the instant petition. As such, the instant Petition is
12 untimely. Since, the Court has determined that the Petition is untimely; there is no need for the
13 Court to reach the issue of Ineffective Assistance of Counsel.

14
15 **B. Actual Innocence Claim**

16 Petitioner makes a claim of actual innocence in the Post – Conviction Petition for Writ of
17 Habeas Corpus that was filed on May 14, 2019. “A habeas petitioner may overcome procedural bars
18 and secure review of the merits of defaulted claims by showing that the failure to consider the
19 petition on its merits would amount to a fundamental miscarriage of justice.” *Berry v. State*, 131
20 Nev. 957 (2015). “This standard is met when the Petitioner makes a colorable showing he is
21 actually innocent of the crime.” *Pelligrini v. State*, 117 Nev. 860 (2001). “This means that “the
22 petitioner must show that it is more likely than not that no reasonable juror would have convicted
23 him in the light of the new evidence.” *Berry* at 966, *quoting Schlup v. Delo*, 513 U.S. 298 (1995).
24 In support of this claim, Petitioner testified and called Dr. Thomas Bennett to testify.

25 *1. Petitioner’s Testimony*

26 In regards to Petitioner’s testimony, the Court finds it insufficient to establish a colorable
27 showing that she is actually innocent of the crime as required by *Pelligrini*. Petitioner argued that
28

1 co-defendant Steven Kaczmarek told her to save them both and that she wasn't going to get much
2 time. This claim is belied by the record. The record consists of letters from Steven Kaczmarek
3 (hereinafter "Kaczmarek") to Petitioner. The letter does not indicate any request, by Kaczmarek for
4 her to confess to anything or to save them both. The letters actually indicate that Kaczmarek was
5 suggesting the opposite, as he specifically told her not to sign anything until they had a chance to
6 meet. According to Petitioner's own testimony, Kaczmarek only told her to take the deal after he
7 was convicted at trial. On March 17, 2003, Kaczmarek was convicted of the murder of Pedro
8 Villarreal, among other charges. On April 16, 2003, the judge signed a Stipulation and Order
9 authorizing a contact visit between Petitioner and Kaczmarek. The visit occurred shortly after the
10 order was signed. On April 22, 2003, Petitioner entered her plea of guilty to Second Degree
11 Murder. This was more than a month after Kaczmarek had been convicted at trial. As such,
12 Petitioner taking a deal couldn't have saved Kaczmarek as he was already convicted at trial.

13 Petitioner also argues that the statements from Corrections Officer Theresa Daka are false,
14 however there was no evidence presented to explain how the corrections officer would have
15 obtained specific factual information regarding the case, from any other source. As such, that claim
16 is also belied by the record.

17 Also, Petitioner admits to choking the victim and assisting with restraining the victim. The
18 Coroner's Report indicates that victim's cause of death was due to asphyxia and Dr. Bennett agrees
19 with the victim's cause of death. Asphyxia is defined by the Merriam-Webster dictionary as "a lack
20 of oxygen or excess of carbon dioxide in the body that results in unconsciousness and often death
21 and is usually caused by interruption of breathing or inadequate oxygen supply." This is specifically
22 what was described by Petitioner as her own actions which caused the injuries to the victim. As
23 such, it is not more likely than not that a reasonable juror would have convicted her in light of the
24 evidence presented.

25 *2. Dr. Thomas Bennett's testimony*

26 Petitioner called Dr. Thomas Bennett as a witness in her case-in-chief. Dr. Bennett testified
27 regarding his opinions as follows: (1) It was unlikely that the victim died on September 25th and
28

1 more likely that he died on September 27th; (2) the underlying cause of death is asphyxia and/or
2 suffocation or strangulation; (3) the victim was intoxicated, with a blood alcohol content (BAC) of
3 .13; and (4) victim was not in the tub under water for 2 days. On cross examination, he testified that
4 he did not review any of the crime scene photographs, the statement of Officer Theresa Daka, the
5 letter written by Petitioner to the Detective, or any CSA reports in preparation of his report. On re-
6 direct examination, he testified that a review of this additional information would not have changed
7 his opinion in his report. Dr. Bennett's testimony is inconsistent with the physical evidence
8 presented. The evidence presented does not support his opinion regarding the time of death, making
9 it possible that a reasonable juror would have convicted Petitioner based on the evidence presented,
10 regarding the time of death. Further, the Petitioner's own testimony establishes that she participated
11 in the asphyxia and/or suffocation or strangulation that Dr. Bennett determined to be the cause of
12 death of the victim. The victim's intoxication level does not prove that Petitioner is actually
13 innocent. Lastly, Dr. Bennett's opinion that the victim was not in the tub under water for two days is
14 not supported by the evidence presented. As such, Dr. Bennett's testimony fails to establish that a
15 reasonable jury would not have found the Petitioner guilty based upon the evidence presented.

16 *3. Fingerprints*

17 Petitioner argues that there were fingerprints found at the scene of the crime that do not
18 match herself or Kaczmarek. However, through Petitioner's own testimony she wiped down the
19 crime scene. This would explain why her own or Kaczmarek's fingerprints would not be at the
20 scene. As such, this evidence does not prove that she was not present, or that someone else
21 committed the murder, failing to establish that a reasonable jury would not have found the Petitioner
22 guilty based upon the evidence presented.

23 *4. Sex Trafficking*

24 Petitioner argues that she was a victim of sex trafficking and that is why she pleaded guilty to the
25 instant crime, per Kaczmarek's request. This claim is belied by the record. To support this
26 assertion, Petitioner testified and called Brironni Alex from the Cupcake Girls Board. However,
27 Petitioner and Ms. Alex's testimony fails to establish that the Petitioner was actually a victim of sex
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1 trafficking. Further, as the Court has already found, the evidence presented does not suggest that
2 Petitioner's guilty plea was coerced by Kaczmarek. As such, this claim fails.

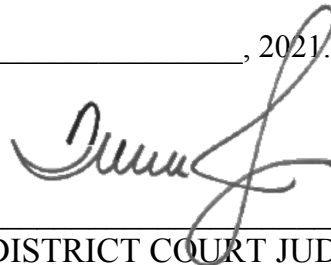
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4 **CONCLUSION**

5 The Court FINDS that the petition is untimely and good cause has not been shown for the
6 delay. The Court FURTHER FINDS that insufficient evidence has been presented to show that it is
7 more likely than not that no reasonable juror would have convicted Petitioner in light of the new
8 evidence, as required to make a colorable showing that she is actually innocent of the crime.

9 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus shall
10 be, and it is, hereby DENIED.

11 Dated this 10th day of March, 2021

12 IT IS SO ORDERED this _____ day of _____, 2021.

13
14 
15 _____

DISTRICT COURT JUDGE

16
17 358 081 D32F 29CD
18 Tierra Jones
19 District Court Judge
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 The State of Nevada vs Alisha
Burns

CASE NO: 03C191253

7 DEPT. NO. Department 10

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 3/10/2021

14 Stephen Wolfson

Motions@clarkcountynvda.com

15 Tony Abbatangelo

Tony@TheVegasLawyers.com

16 Arelice Parra

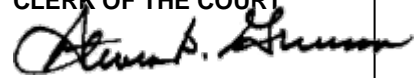
Arelice@TheVegasLawyers.com

17 Robert Rose

robert.roseinvegas@gmail.com

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BURNS R 0710



NOA
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@thevegaslawyers.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. |) | |

NOTICE OF APPEAL

ALISHA BURNS, by and through her attorney, TONY L. ABBATANGELO, ESQ.,
hereby appeals to the Supreme Court of Nevada from the Order Denying her Petition for
Habeas Corpus entered on March 10, 2021, a copy of which is attached.

Dated this 22d day of March, 2021

/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

CERTIFICATE OF SERVICE

A copy of this Notice of Appeal was electronically served on all parties of record this 22 day of March, 2021.

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

ORDER DENYING PETITION

1 **ORDR**

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

6
7 THE STATE OF NEVADA,

8 Plaintiff,

9
10 v.

11 ALISHA BURNS #1753792,

12 Defendant.
13
14

Case No.: 03C191253

Department: X

15 **ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

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17 on the 22nd day of January, 2021; and the 28th day of January 2021, the Defendant being present,
18 represented by ANTHONY ABBATANGELO, Esq., the State of Nevada being represented by
19 STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER,
20 Esq., Chief Deputy District Attorney and RONALD EVANS, Esq., Deputy District Attorney, and
21 the Court having considered the information and arguments contained in the pleadings, arguments of
22 counsel, and good cause appearing therefore, DENIES the writ.
23

24 **PROCEDURAL HISTORY**

25 On December 5, 2002, Defendant Alisha Burns (hereinafter "Petitioner") was charged by
26 way of Criminal Complaint with Burglary, Robbery, First Degree Kidnapping, and Murder. On
27 April 1, 2003, after unconditional waiver of preliminary hearing, Petitioner was charged by way of
28 Information with Second Degree Murder. On April 22, 2003, Petitioner was arraigned and pled

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2 stipulated to a life sentence with the possibility of parole after ten (10) years. On June 3, 2003,
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8 Petitioner withdrew the petition in open court on March 8, 2004. Petitioner filed an Application for
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11 pending for which the Court can appoint counsel,” and the Court would not rule on the motion
12 unless counsel decided to proceed.

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14 15 **CONCLUSIONS OF LAW**

16 **A. The Petition is Untimely**

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of this subsection, good cause for delay exists if the petitioner demonstrates to
the satisfaction of the court:

- 22 (a) That the delay is not the fault of the petitioner; and
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24 Petitioner has failed to meet this burden.

25 Here, the Petitioner’s Judgment of Conviction was filed June 10, 2003. She did not file a
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27 Petitioner did not file the instant petition until May 14, 2019, which is almost fifteen (15) years past
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14
15 **B. Actual Innocence Claim**

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18 Coroner's Report indicates that victim's cause of death was due to asphyxia and Dr. Bennett agrees
19 with the victim's cause of death. Asphyxia is defined by the Merriam-Webster dictionary as "a lack
20 of oxygen or excess of carbon dioxide in the body that results in unconsciousness and often death
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22 what was described by Petitioner as her own actions which caused the injuries to the victim. As
23 such, it is not more likely than not that a reasonable juror would have convicted her in light of the
24 evidence presented.

25 *2. Dr. Thomas Bennett's testimony*

26 Petitioner called Dr. Thomas Bennett as a witness in her case-in-chief. Dr. Bennett testified
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28

1 more likely that he died on September 27th; (2) the underlying cause of death is asphyxia and/or
2 suffocation or strangulation; (3) the victim was intoxicated, with a blood alcohol content (BAC) of
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6 direct examination, he testified that a review of this additional information would not have changed
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8 presented. The evidence presented does not support his opinion regarding the time of death, making
9 it possible that a reasonable juror would have convicted Petitioner based on the evidence presented,
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11 in the asphyxia and/or suffocation or strangulation that Dr. Bennett determined to be the cause of
12 death of the victim. The victim's intoxication level does not prove that Petitioner is actually
13 innocent. Lastly, Dr. Bennett's opinion that the victim was not in the tub under water for two days is
14 not supported by the evidence presented. As such, Dr. Bennett's testimony fails to establish that a
15 reasonable jury would not have found the Petitioner guilty based upon the evidence presented.

16 *3. Fingerprints*

17 Petitioner argues that there were fingerprints found at the scene of the crime that do not
18 match herself or Kaczmarek. However, through Petitioner's own testimony she wiped down the
19 crime scene. This would explain why her own or Kaczmarek's fingerprints would not be at the
20 scene. As such, this evidence does not prove that she was not present, or that someone else
21 committed the murder, failing to establish that a reasonable jury would not have found the Petitioner
22 guilty based upon the evidence presented.

23 *4. Sex Trafficking*

24 Petitioner argues that she was a victim of sex trafficking and that is why she pleaded guilty to the
25 instant crime, per Kaczmarek's request. This claim is belied by the record. To support this
26 assertion, Petitioner testified and called Brironni Alex from the Cupcake Girls Board. However,
27 Petitioner and Ms. Alex's testimony fails to establish that the Petitioner was actually a victim of sex
28

1 trafficking. Further, as the Court has already found, the evidence presented does not suggest that
2 Petitioner's guilty plea was coerced by Kaczmarek. As such, this claim fails.

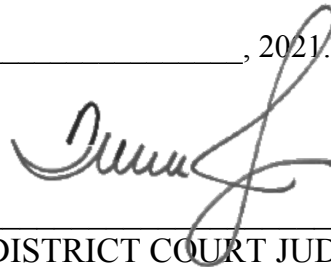
3
4 **CONCLUSION**

5 The Court FINDS that the petition is untimely and good cause has not been shown for the
6 delay. The Court FURTHER FINDS that insufficient evidence has been presented to show that it is
7 more likely than not that no reasonable juror would have convicted Petitioner in light of the new
8 evidence, as required to make a colorable showing that she is actually innocent of the crime.

9 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of Habeas Corpus shall
10 be, and it is, hereby DENIED.

11 Dated this 10th day of March, 2021

12 IT IS SO ORDERED this _____ day of _____, 2021.

13
14 
15 _____

DISTRICT COURT JUDGE

16
17 358 081 D32F 29CD
18 Tierra Jones
19 District Court Judge
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 The State of Nevada vs Alisha
Burns

CASE NO: 03C191253

7 DEPT. NO. Department 10

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 3/10/2021

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