IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

JUSTIN ODELL LANGFORD,
Appellant(s),

vs.

RENEE BAKER, WARDEN,
Respondent(s),

Case No: A-18-784811-W

Docket No: 83032

RECORD ON APPEAL
VOLUME
1

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

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

I N D E X

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

I N D E X

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

I N D E X

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

FILED
NOV 19 2018
CLERK OF COURT

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DISTRICT COURT
CLARK COUNTY. NEVADA

A-18-784811-W

Justin Odell Langford
(Beneficiary)
Petitioner

-VS-

Warden Renee Baker
(Real Party In Interest)
Respondent

Case No.: C-14-296556-1
Dept No.: XIV XV

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

NOW COMES Justin Odell Langford©, Sui Juris, to file this Writ of Habeas Corpus. Pursuant to NRS Chap 34 et seq. based on the above statutes. And presented through the U.S. Supreme Court decision of Haines v Kerner. 404 U.S. 519. 520 (1972) (Liberally Construes).

Dated this 12th day of November, 2018.

By:

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

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OPENING STATEMENT

Pro Se post conviction relief petitioner pleadings should be liberally construed to do substantial justice. U.S. v. Garth 188 F.3d 99 (3rd cir. 1999); see also Boag v. MacDougall, 454 U.S. 364, 70 L Ed 2d 551, 102 S Ct 700 (1982). Effect of Writ of Habeas Corpus is to Vacate conviction and Release petitioner from custody. Capps v. Sullivan, 13 F.3d 350 (10th cir. 1993).

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

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

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

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

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

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

did on or between June 12, 2007 and January 21, 2014 then and there willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: HH, said child being under the age of fourteen years, by rubbing and/or placing ejaculate on the said HH's face, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said defendant, or said Child

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

The facts that need to be proven by the State are: happened between June 12, 2007 & January 21, 2014; that petitioner rubbed and/or placed ejaculate on HH's face; that petitioner had the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of him or HH.; and that it happened in public as the legal definition says. Those are the four(4) Elements the state has to prove beyond a reasonable doubt to establish guilt of the petitioner.

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

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

Page 57 Lines 7-25:

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

A: Yes.

Q: Where in the house did it happen?

A: Shower.

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

A: In the restroom.

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

A: One.

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

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

Q: Does it have a curtain on it?

A: Yes

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

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

Page 58 Lines 1-25:

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

A: Yes.

Q: What happened?
A: He would ejaculate onto my face.
Q: All right. And would the water be running, or not running?
A: Running.
Q: And when he would do that would he say anything?
A: Afterwards he would tell me to stand up and wash myself off.
Q: Okay. And did you stand up and wash yourself off?
A: Yes
Q: Did that happen one time, or more than one time?
A: More than one time.
Q: All right, Heather. I'm going to show you what's been admitted as 38, 39, and 40, okay? If you'd look at those for me, please.
Do you recognize what's in 38, 39, and 40?
A: Yes.
Q: What do you recognize that to be?
A: Bathroom
Q: Okay. So various pictures of the bathroom; is that fair?
A: Yes.

Page 59 Lines 1-20:

Q: All right. And in State's 38 what is this?
A: The Shower.
Q: Okay. And is the curtain pulled across the shower?
A: Yes
Q: So if you pull it back, then you can see the shower and get in the shower?
A: Yes.
Q: What's in here?
A: Towels and Band-Aids.
Q: Okay. Showing you State's 39, is that a picture of that cupboard open where the towels and stuff is?
A: Yes.
Q: All right. And showing you State's 40, is that also in the bathroom?
A: Yes
Q: Where in the bathroom is that?
A: The shelves above the toilet?

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

Now as you can see from all that testimony, no where in that testimony did she say when this alleged incident happened at all thus the first element is not met. The second element is not met either cause H.H. says the ejaculate got on her face after petitioner allegedly gratifyed himself which means element three was not met either because the the charge says rubbing and/or placing ejaculate on the said H.H.'s face, with the intent of arousing, appealing to, or gratify the lust, passion, or sexual desires, can't do that! And as to the forth element it being committed outside, thats not met because incedent allegedly happened in the bathroom in the petitioners home. So that didn't happen in public. If you want to go further into the definition of Lewdness it says exposure of intimate parts.... Likely to be observed by nonconsenting persons, now going by what H.H. says on all instantces she was called back to these rooms from the living room. Not once did she run out the front door of the home to a neighbors home for help, thus she was consenting to this alleged activity.

So no we go into the details given at prelim in relation to this charge. this would be page 29 Lines 1-25 and is attached as

Exhibit 4:
Page 29 Lines 3-25 of Prelim:

Q: Okay. Now Heather, did he ever have you go inside the Shower?
A: Yes.
Q: Okay. And was that in the past year or before the past year?
A: Before the past year.
Q: Was it after the first time when you were around eight years old?
A: Yes.
Q: Okay. And what--what happened with the shower?
A: He made me kneel, and he--come-on-my face.
Q: Okay. And--
MS. LOBO: I'm so sorry.
BY MR. THUNELL
Q: could you say that one more time, Heather? I'm sorry.
A: He made me kneel, and he--come on my face.
Q: Okay. And when--when you say that, what do you mean?
A: He rubbed his privates parts until sperm came out.

now that can be seen, H.H. said around age 8 that this happened. Which means the date on the charge should have been June 22, 2009 to June 22, 2010 but that's not the D.A.Q did. "..., prosecutors should be as specific as possible in delineating the dates and times of abuse offenses but we must acknowledge the reality of the situtions where young child victims are involved". Valentine v. Konteh, 395 F.3d at 632.

The Petitioner understands a little leeway in the date range so add a year to the front and back dates making it June 22, 2008 to June 22, 2011. The petitioner has demonstrated at trial with the testimony presented by H.H., H.H.'s mom ShayleenCoon, Roger Langford and the Memo. of Evidence in Support of petition that it couldn't have happen and didn't happen as the D.A.O. and H.H. keeps saying. Johnson v. State 653 N.E.2d 476.479(Ind. 1995) Corpus delecti consists of a showing of "1) the occurrence of the specific kind of injury and 2) someones criminal act as the cause of the injury.

It has been ruled not only must lack of consent be proven, but must be proven beyond a reasonable doubt even when the victim is a child and this is due to Nevada not having a set-in-stone for age of consent. Ya Thaing v. Adams, 2010 U.S. Dist. Lexis 108717. Also "consent refers to any female"; and "any female plainly includes a female child under 14" Ya Thaing v. Adams. 2010 U.S. Dist. Lexis 108717. "...the Supreme Court has stated clearly '... every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent.' Cruden v. Neale, 2 N.C. 338, 2 S.E. 70 Which was never done by petitioner. See also Dred Scott v. Sanford, 60 U.S. 393.

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See In re Winship, 397 U.S. 358, 364 (1970) holding that the government must prove "every fact necessary to constitute the crime" beyond a reasonable doubt. See also U.S. v. O'Brien, 560 U.S. 218, 224 (2010) distinguishing between "[e]lements of a crime [that] must be charged in an indictment and proved to a jury beyond a reasonable doubt" and "[S]entencing factors [that] can be proved to a Judge at sentencing by a preponderance of the evidence". The ~~Wins~~ Winship "beyond-a-reasonable doubt" standard applies in both state and federal proceedings. See Sullivan v. La., 508 U.S. 275, 278 (1993). The standard protects three intrest. First, it protects the defendant's liberty intrest. See Winship 397 U.S. at 363. Second it protects the defendant from the stigma of conviction. Id. Third, it encourages community confidence in criminal law bu giving "concrete substance" to the presomption of innocence. Id. In his concurring opinion, Justice Harlan noted that the standard is founded on "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." Id. at 372 (Harlan, J., concurring).

The burden of ~~[illegible]~~ proof consist of two parts: the burden of production and the burden of persuasion. The party bearing the burden of production must produce enough evidence to allow

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

The party bearing the burden of persuasion must convince the factfinder that a fact in issue should be decided a certain way. see Winship, 397 U.S. at 364. The Due Process Clause places on the prosecution the burden of persuasion for every element of the crime charged, and only in rare circumstances does the burden shift to the defendant. Any shifting of the burden of persuasion must withstand constitutional scruting.

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

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

not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the Jury. See State v. Purcell, 110 Nev. 1389, 887 P.2d 276, 110 Nev. Adv. Rep. 172, 1994 Nev. Lexis 169 (Nev. 1994).

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LEGAL INNOCENCE

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

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

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

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

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

AGAINST WEIGHT OF THE EVIDENCE
U.S. CONST AMEND. IV, V, VI, VIII, XIV

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

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

AGAINST THE [MANIFEST] [WEIGHT OF THE] Evidence - an evidentiary standard permitting the Trial court after verdict to order a new trial where the verdict, though based on legally sufficient evidence, appears in the view of the Trial court judge to be unsupported by the substantial credible evidence... [rest of definition omitted]. (Barrons Law Dictionary 7th ed pgs 21-22)

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

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

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

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

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

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

COERCIVE USE OF ALLEN CHARGE
U.S. CONST AMEND IV, V, VI, VIII, XIV

The Eighth and Ninth Circuits have adopted a four-part test for determing the coerciveness of an Allen charge. The court must: (1) the form of the instruction; (2) the length of deliberations following the *Allen* charge; (3) the total time of jury deliberations; and (4) indicia of pressure on the jury. See U.S. v. Thomas, 791 F.3d 939, 898 (8th cir. 2015); U.S. v. Freeman, 498 F.3d 893, 908 (9th cir. 2007).

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

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

jury your deliberations won't end until you reach a unanamous verdict on all counts, the jury went home sometime after 5pm on March 16, 2014 and came back sometime after 8am on March 17, 2016 and reached a verdict approxiatemly 1p.m. so the jury deliberated maybe another 7 hours after the *Allen* charge. This all was after the jury members said during voire dire promised nothing could make them change their minds once they made it up, so they lied because that verdict should have been the same. The jury was compeled by the court to change their minds. U.S. v. Robinson, 953 F.2d 433, 436-38 (8th cir. 1992) coercion when, in modified *Allen* charge, judge twice admonished jury ~~minorit~~ minority to yield to majority but never admonished majority to consider yielding to minority and gave impression hung jury was unpatriotic.

The Sixth Circuit has stated that a modified Allen charge must: (1) include the reminder that no juror should merely acquiesce in the majority ~~opinio~~opinion; (2) not inform jurors that they are required to agree: (3) direct both majority and minority jurors to reconsider thier positions: (4) not advise the jury that they are the only ones who can decide the case: and (5) not ask the jury to consider the external effects of thier inability to reach a verdict. See U.S. v. Brika,

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

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TRIAL COURT VIOLATED FED.R.CRIM.P. 24(B)
U.S. CONST. AMEND. IV, V, VI, VIII, XIV

FED. R. CRIM. P. 24(b) for offenses punishable by death, each side allowed 20 ~~peem~~peremptory challenges; for noncapital offenses punishable by imprisonment of more than 1 year, government allowed 6, and defendant or defendant jointly allowed 10; for offenses punishable by imprisonment of 1 year or less, each side allowed 3. The petitioners trial court violated this rule in two ways, it gave both sides 8 challenges so the first violation comes by way of giving the State two(2) more challenges than allotted by law and it's second violation is that it eroneously reduced the petitioners allotted amount by two. The petitioner never agreed for the state too get more than alotted for them. See U.S. v. Bruno, 873 F.2d 555, 560-61 (2nd Cir. 1989); See also U.S. v. Munoz, 15 F.3d 395, 398 n. 1 (5th cir. 1994). This is a violation of federal law and any state law that allows what the trial court did to petitioner is a violation of the Supremecy Clause in the 6th Amendment. Broad v. Sealaka Corp, 85 F.3d 422 (9th cir. 1996) Under Supremacy Clause, federal law premots state law either by express provision, by implication, or by conflict between federal and state law.
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USE OF HAIR DNA THAT HAS NO SCIENTIFIC VALIDATION U.S. CONST. AMEND. V, VI, VIII, XIV

The use of this evidence renders the petitioners trial "fundamentally unfair" not only because their is Scientific Validation but also due to the fact not all evidence was collected from the alleged crime scene. these both violated the petitioners due process rights. Bolin v. Baker. 2015 U.S. Dist. Lexis 18219. The petitioner has included two(2) articles: 1) Microscopic Hair compairison: 2) Trump Administration Kills Obama's Forensic Evidence Reliability Efforts, these are attached as Exhibits 6 & 7. The first article goes on to talk about how many people have been convicted due to this testing and how the NAS Report roundly critizized Hair analysis for lacking scientific validation, this article also talks about how many so far have been actually innocent ~~xxxx~~ which shows how falty this testing is. These Articles were printed in the 2018, January issue of ~~xxxxx~~ Criminal legal news.

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

Or Labs controlled by police departments. It just shows states prosecutor does not care either. It was also stated in Bolin v. Baker, 2015 U.S. Dist. Lexis 19218 (Dkt. no. 161-2 at 18-21. Dkt. no. 168-1 at 25-28) "They also noted that hair analysis is highly subjective and very limited in terms of being able to identify the source of a given hair or the race of the hair's donor"

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

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FALSE USE OF PRELIMINARY HEARTING
U.S. CONST. AMEND. V, VI, VIII, XIV

The term "preliminary hearing" in this context refers the proceeding formally called a "preliminary examination," described in Rule 5.1(a) of the Federal Rules of Criminal Procedure. Fed.R.Crim.P. 5(a)(1). See also Fed.R.Crim.P. 5 Advisory Committee's Note(1972)Fed.R.Crim.P. have seperate provisions for initial appearance and preliminary hearing; although both may occur in same proceeding, this rarely happens because it deprives counsel of opportunity to prepare for preliminary hearing.

Fed.R.Crim.P. 5.1(e); see also 18 U.S.C. §3060(a). At the preliminary hearing, the court determines whether probale cause exists at the time of the hearing rather than at the time of arrest. This means that is not the time to add or modify charges if and when it needed to be done should be done in district court. Preliminary hearing is to see if there is probable cause to continue with the case as charged, it not it should not be motified so it can be bound over. Iverson v. N.D., 480 F.2d 414.420(8th cir. 1973). What should have been done is in the petitioners case is that the case be dismissed and refiled under the proper charging. To bind a case over after modifying them shows there was not enough evidence for the charges as was.

OATH OF JURORS NOT DONE PROPERLY
U.S. CONST. AMEND. V, VI, VIII, XIV

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

Because the state Deputy DA Michelle Jobe and petitioners counsel Manique A. McNeill had a duty to bring mootness to the courts attention. There was an obvious conspiracy between the courts officers. Bd of license Comm'r v. Pastore, 469 U.S. 238, 240 (1985); Arizonans For Official English v. Arizona, 510 U.S. 43, 68 (N23)(1997).

Further, here there is an obvious error that should have been raised on direct appeal. This structral error comports with Barral v. State, 355 P.3d 1197, 1200 (2015) (if not directly than it's a spiecies of common origin) "Barral" relied on NRS 16.030(5) and NRS 175.021 as a "Voir a dire" issue where the jury was required to recieve from the Judge or Court Clerk. "Shall" administer an oath or affirmation to the jurors substantially in the following form:

> Do you and each of you solemnly swear or affirm under pains and penalties of perjury that you will well and truely answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this court so help you God? "Next"

NRS 16.070(1) reads as follows:

> As soon as the jury is completed the Judge or the Judges clerk shall administer an oath or affirmation, to the Jurors in substantially the following form:
> .....
> Do you and each of you solemnly swear that you will well and truely try this case, now pending before this court, and a true verdict render according to the evidence given, so help you god.

NRS 175.111 Oath of Jurors, reads as follows:

> When the Jury has been impaneled the court shall administer the following Oath:
> .....
> Do you and each of you solemnly swear that you will well and truely try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God.

NRS 0.025(1)(d) reads as follows:

> "Shall" imposes a duty to act.

NRS 16.070(1) allows for the oath to be administered by the Judges clerk or the Judge, but when you look at NRS 175.111 which is the Oath of the Jurors it says the court SHALL administer the Oath. NRS 175.111 is the controlling statute when it comes to the Jurors Oath. "Express mention of one is an exclusion of another." Leake v. Blasdell, 6 Nev. 40 (1870); Galloway v. Trosdell, 83 NW 13, 26, 422 P.2d 13, 26 (1967). In this matter, with "Shall" being mandatory. "The Court" shall administer the oath, NRS 0.025(1)(d). So as you can see in the statute for the Juror's Oath there is no ~~there is~~ provision for the court clerk to administer the Oath.

"The Court" is interpreted as the Judge. (See Generally NRS 174.035, only the court can accept a plea of guilty). If the court "Never" administered the Oath. The court minutes for March 7, 2016 and March 8, 2016 only say the "prospective panel sworn", what the minutes

don't show is who administered the oath and what oath was administered. Also there is no Transcripts on file for these two(2) days or for March 16, 2016. "[c]ourt reporters are required to record proceedings verbatim, 28 U.S.C. §753(b) but the failure to do so does not require a per se rule of reversal. United States v. Doyle, 786 F.2d 1440, 1447 (9th cir.). Was there ever a constituted Jury? (and) did the prosecutor deputy, and the Defense attorney Monique A. McNeill esq, violate the rules of candor in Nevada. RPC 1.1. RPC 8.4(a)(c)(d) by arguing a moot case? In other words, if the jury trier of fact didn't lawfully exist. then could not have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781 (1979). "emphasis in original". McNair v. State, 109 Nev. 53, 56, 825 P.2d 571, 573 (1992).

This would also bar the next step under NRS 175.141 because the Jury may not have been given the Oath properly under statute. This now become a Jurisdictional issue and fraud upon the court NRCIVP 60(b) FRCIVP 60(b)(3-6) As states in Martinez v. Illinois. "Jeopardy doesn't attach until Jury is sworn." 134 S Ct 2070 (2014).

The court cannot challenge the transcripts, as it's deemed correct. See Braunstein v. State, 40 P.3d 413 (2002) and 178 P.3d ___; 28 U.S.C. §753(b); U.S. v. Anzalone, 886 F.2d 229, 232 (1989); Abatino v. USA, 750 F.2d 1442, 1445 (9th cir. 1985); USA v. Hoffman, 607 F.2d 290, 296 (9th cir. 1979); U.S. v. Zammiello, 432 F.2d 72, 74 (9th cir. 1970). In other words it's the law of the case. See Ashe v. Swenson, 397 U.S. 436, 443, 449 (1970) with approval Yeager v. US, 557 U.S. 110, 129 S.Ct. 2360 (2009).

Plus the State never filed any "Bill of Exceptions" aaginst the transcripts. Thiess v. Rapport, 59 NV 180, 185, 89 P.2d 5 (1939), in the past appeal and Writ of Habeas Copus (Post conviction). Attached as Exhibit ___ is court Minutes from March 17, 2016 and page 10 & 11 of the transcripts from that day as Exhibits 8 & 9, 10. When you look at the two they do not match each other, one or the other is a false document on file with the court. If the trial transcripts are false it means petitioners direct appeal was base off of false documents.

LACK OF JURISDICTION AND SUBJECT MATTER JURISDICTION
U.S. CONST. AMEND. I, V, VI, VIII, XIV

A.) History of Jurisdictional Challenge

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

A judgement is void if the court rendering judgement lacked jurisdiction. U.S. v. Boch Oldsmobile, Inc., 909 F2d 657, 661 (1st Cir. 1990), and a void judgement is one where the court did not have jurisdiction over subject matter or did not have jurisdiction over the parties. Rook v. Rook, 223 Va. 92, 95, 353 SE 2d 756, 758 (1987).

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

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

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

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

[redacted]

B.) THE PARTIES

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

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

C.) Arguments

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

The Nevada Constitution History and Background

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

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

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

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

The Vote

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

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

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

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

It is feasible, under those circumstances, that only ten(10) percent of the Nevada population voted upon the Constitutions ratification. Of that small minority, nearly half could have voted against ratification. So in the final analysis, it is very well may have been that roughly five(5) percent of the Nevada population, composed exclusively of white males, voted to ratify the Nevada Constitution and impose a government of their choosing upon other white males who voted against ratification; upon white males who did not meet voting criteria; upon women excluded from voting; upon Blacks excluded from voting; upon Native Americans excluded from voting; and upon persons under the age of consent who were excluded from voting.

Illegitimacy of the Vote

A small, small percentage of the Nevada population

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

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

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

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

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

Nevada Constitution Void as Contract

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

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

future strangers upon a majority of future Strangers-forever.

Since the illegitimate and undemocratic ratification of the Nevada Constitution in 1864, that generation of ~~same~~ who gave their consent to be ruled has died. Their contractual agreement to accept the terms of the Nevada Constitution and the rule of the incorporated government created by it also died with them. The incorporation of the State of Nevada has never been renewed. In subsequent generations since 1864, no Nevadian has given legal consent to be governed by such a corporation nor has anyone accepted the terms nor signed the contract that the Nevada Constitution represents. There is no basis for assuming the consent of the people, in their current composition, and in ~~particular~~ particular, the petitioner, to be ruled.

Addressing Arguments of Implied Consent

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

Paying Taxes

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

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

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

Voting

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

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

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

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

A rape victim who chooses for the rape to occur quickly and as physically-painless as possible--as opposed to slow and tortous-cannot be said to have "implied consent" to be raped. A robbery victim who opts to cooperate with a robber to lessen the chances of bloodshed cannot be said to have "implied consent" to be robbed. In the same way, Nevadians who vote in order to influence the conditions of their involuntary subjection cannot be said to have given implied consent to the governments illegitimate rule over them; they are simply attempting to make involuntary slavery to which they have been subjected a little less painful.

Entering Territorial Boundaries of Nevada

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

In the logic of this arguement, the State of Nevada long established it's authority. Anyone thus proceeding into the territorial boundaries claimed by the state of Nevada, reasonably informed of the State of Nevada's claims to

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

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

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

Petitioner contends this is the case.

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

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

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

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

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

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

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

Thus, with the Nevada Constitution Void, the State of Nevada was legally nonexistent. Even accepting the ratification of the Nevada Constitution and its binding character upon those who ratified it. the contract died along with the generation who voluntarily accepted its terms, thus making the State of Nevada, aaain, nonexistent.

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

<u>Party Jurisdiction: Justin Langford Defendant/ Petitioner in this Case</u>

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

Langford never voluntarily paid taxes. He may

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

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

Subject Matter Jurisdiction

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

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

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

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

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

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

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

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

B.) Counsel Allows Judge to Use Coercive Allen Charge.

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

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

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

The petitioner fails to notify the trial court that it is violating Fed.R.Crim.P. 24(B), by not only giving the state more premeptory challenges allowed. But also by giving defense less than what their suppose to have, this renders counsel ineffective in numerous ways. First, it shows counsel is not familiar with the law; Second, counsel was force to be selective about how to apply challenges; Third it allowed the state to be more picky or less contentous about their choices. U.S. v. Chronic, 466 U.S. 648, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984); See also Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

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

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

E) Counsel did not Challenge the Hair DNA

Had the petitioners counsel done any kind of Research in regards to the validity of Hair DNA, she would've found more articles as to how irrevelant it is. Counsel would have been able get that evidence suppressed, couse as dissecussed Supra there is no scientific validity to Hair DNA. When something such as Hair DNA has no Scientific validity it cann't be allowed to be used to obtain a conviction, especially when the evidence is in accurate do to the fact not all evidence was collected from the alleged crime scene.

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

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

CUMMULATIVE ERROR OF STRICKLAND
U.S. CONST. AMEND. V, VI, VIII, XIV

A.) Counsel Must Know Sentencing Laws!

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

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comprises two correlative rights: the right to reasonably competent counsel and the right to counsel's undivided loyalty. Mannhalt. 847 F.2d at 579.

Criminal Law 346.4-Ineffective-Counsel, counsel can deprive a defendant of the right to effective assistance of counsel simply by failing to render adequate legal assistance. Hays v. Farwell, 482 F. Supp. 2d 1180(2007). See also Iowa v Tovar. 541 U.S. 77, 80-81, 124 S. Ct. 1379. 158 L. Ed. 2d 209(2004). The United States Supreme Court in Strickland, "expressly declined to consider sentencing, which... may require a different approach to the definition of constitutionally effective assistance." Cooper-Smith v. Palmateer, 546 U.S. 944, 126 S. Ct. 492, 163 L. Ed. 2d 336(2005)(quoting Strickland, 466 U.S. at 696, 104 S. Ct. 2052). "The court has held, however, that any amount of actual jail time has Sixth Admendment significance implicating the right to the effective assistance of counsel." Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530(1930); Grammas v. United States, 531 U.S. 198, 203. "Finally we note that at appellant's sentencing, trial counsel failed to present any evidence or witnesses on his behalf in support of a more lenient sentence." Warner v. State. 102 Nev. 635(1987); See also Hays, 482 F. Supp. 2d. 1180(2007). Counsel did not have adequate knowlege of the law when she showed up to sentencing. which led to counsel standing there and agreeing with prosecution as to sentence being mandatory. This raises several issues which follow:

(1) Counsel caused a conflict of interest

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

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

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

hand over these records even though it was ordered. Glasser v. United States, 315 U.S. 60 (1942). The petitioners counsel filed motions to compel H.H.'s psychological records and to get an independent psychological evaluation of H.H. But failed to put up an adequate argument to the court, also failed to point out to the court that they were already granted in a proper motion for discovery. Counsel quit arguing when the prosecuting attorney said they're priviledged, when in fact states argument is contrary to law. The state likes to quote numerous statutes out of chapter 49 of the NRS, which goes against NRS 432B.255 and 174.235(1). Both of those NRS's nullify the use of chapter 49 and support NRS 174.235(1)(b). So not only was counsel ineffective for not knowing these laws, but was inhibitted by the state lies and reckless disregard for the law. Stano v. Dugger, 889 F.2d 962 (11th cir. 1989) D967. "In the present case, the circumstances surrounding Mr. Pearl's representation of Stano - the state's failure to release discovery materials - prevented [him] from assisting the accused during a critical stage of the proceeding." See Cronic, 466 U.S. at 659 n.25. Under those circumstances..." although counsel [was] available to assist the accused... the likelihood that any lawyer, even a fully competent one [as Mr. Pearl was here], could provide effective assistance [was] so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of trial." Id. at 659-60. 104 S.Ct. at 2047.

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

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

Counsel also failed to use any expert witnesses for the petitioners trial to counter act the States' witnesses. Counsel also failed to retrieve the phusical evidence from LVMPD and collect the DNA samples from all people in the home to compare to the physical evidence collected from the petitioners home to rebut what the State was saying about the physical evidence. Lindstadt v. Keane, 239 F.3d 191(2nd cir. 2001) p202. "In sum defense counsel's failure to consult an expert, failure to conduct any relevant research, and failure even to request copies of the underlying studies relied on by Dr. Gordon contributed significantly to his ineffectiveness." See also ~~Sims~~ Sims v. Livesay, 970 F.2d 1575(6th cir. 1992). If the petitioners counsel had actually got anything examined Seperately with all DNA samples of people living in the petitioners home, it would have shown that the state was majorly misconstrueing the facts and misrepresenting evidence. It also would have created major doubts as to everything H.H. was saying. Because her sisters DNA sample would have matched all the items matching H.H. and petitioner thus H.H. name would have never been on the reports, it would

have her sister K.L.'s name instead. This also would not have ~~[illegible]~~ implemented petitioner in another crime due to the fact K.L. has already said nothing has happened to her. Richter v. Hickman, 578 F.3d 944 (4th cir 2009) p946. Reinhardt, Circuit Judge: To not prepare is the greatest ~~crime~~ of crimes; to be prepared beforehand for any contingency is the greatest of virtues. - Sun Tzu, The Art of War 83 (Samuel B. Griffth trans. Oxford Universitu Press 1963) At the heart of an effective defense is an adequate investigation. Without sufficient investigation, a defense attorney, no matter how intelligent or persuasive in court, renders deficient performance and jeopardizes his client's defense. [...] Although it was apparent that an issue critical to the out-come could be best resolved through the presentation of forensic evidence, counsel failed at each stage of the case to consult with a forensic expert of any type and thus failed to conduct the rudimentry investigation necessary in order to (1) decide upon the nature of the defense to be presented, (2) determine before trial what evidence he should offer, (3) prepare in advance how to counter damaging expert testimony that might be introduced by the prosecution, and (4) effectively cross-examine and rebut the prosecution's expert witnesses once they did testify during the course of the trial. There was in fact no strategic reason for counsel's failure to do so. As it turned out, these repeated fail-[p947]ures to investigate were prejudicial: available forensic testimony would have contradicted the prosecution's explanation of the events that transpired

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

D.)

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

The petitioners counsel failed to attempt to impeach the complaining witness with her multiple statements that were all different in numerous way's. Counsel ~~also~~ also didn't attempt to impeach the inconsistent statements of the complaining witness, or attempt to impeach the complaining witness with medical evidence. U.S. Ex. Rel. McCall v. O'Grady, 908 F.2d 170 (7th cir. 1990) p173. "[Defendant] McCall's second challenge to his trial counsel's performance found success in the District Court. In considering this challenge; the court first rejected the notion, relied upon by the Illinois appellate court, that the failure to impeach a state's witness cannot support an [IAC] claim. The court stated that, to the contrary several decisions of this court establish that defense counsel has not represented the defendant to the

satisfaction of the Sixth Amendment when counsel fails to pursue an impeaching cross-examination or present additional evidence that would in all reasonable probability cast a reasonable doubt on the testimony of the government's main identification witness." McCall, 714 F. Supp. at 379. See also Driscoll v. Delo, 71 F. 3d 701 (8th cir. 1995).

E.) Counsel Failed to Object to Prosecutors Improper Closing Comment

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

defendant's credibility is less than that of prosecution witnesses solely because he attended the entire trial while they were present only during their own testimony. The prosecutor's argument was not based on the fit between the testimony of the defendant and other witnesses. Rather, it was an outright bolstering of the prosecution witnesses' credibility vis-a-vis... based solely on the defendant's constitutional right to be present during the trial. State v. Cassidy, 236 Conn. 112, 672 A. 2d 899, 904 & n.17; See also Agard v. Portuondo, 159 F.3d 98 (2nd Cir 1998).

Yes this is an obvious fact, that the petitioner testifyed last. But for the state to make this argument is to say the petitioner had a choice as to when he testified in the trial, when they know for a fact the petitioner only got to after they present their case. For the state to make this argument, it is an attempt to save them selves from a complete loss. Especially when they saw the phsyical evidence come out in front of the jury and it was 3 times bigger than what the alleged victim was claiming, along with the slides from crime lab tech showing the location of the evidence collected off an item shown to jury not match the discription given. With pictures shown to the jury of the location of all the semen stains and location of the Hair on this towel, the state knew at that point the alleged victim had lied completely lied to police and on the stand.

F.) Poking Holes is not a defense Strategy

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

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

Strickland, 466 U.S. 691

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

G. Counsel allows Trial Judge to Coerce Jury!

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

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

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

H.) Counsel Fails to Call Promised Witness during Opening Statement and Request Missing Witness Instruction

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

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However, when the defense actually presented its case, defense counsel did not call Ceruti as a witness. Instead, English's attorney opted to call Bill English himself. p724, The District Court... noted that if [attorney] Escobedo had fully investigated the case beforehand, he would have been able to properly evaluate Ceruti as a witness before promising her testimony to the jury." See also Harris v. Reed, 894 F.2d 871 (7th cir. 1990); U.S. v. Ex Rel. Hampton v. Leibach. 347 F.3d 219 (7th cir. 2003).

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

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

The petitioners' counsel failed to Investigate and Interview the most important person in the petitioners case, which is the complaining witness. Soffar v. Dretke, 368 F.3d 441 (5th cir. 2004) p471. "Soffar contends that his defense counsel were ineffective for failing to conduct an adequate pretrial investigation for two reasons, first, Soffar argues that his defense counsel were ineffective in not attempting to contact Grey Garner or to interview the police officers who took Garner's statements, which would have enabled Soffar's Counsel to

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

Had counsel bothered to do this, she would have gotten another version of events happening. Counsel should have at the minimum been trying to find out what she could about H.H. from her friends around town or at school to find out what type of child she is dealing with. Instead petitioner counsel chose to do niether Investigate the complaining witness or Interview her.

J. Counsel failed to Fully Inform Client!

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

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

Had counsel been able to do any of the above, she might have been able to tell the petitioner what was needed for a conviction on each count. Such as what the full meaning of intent is and what was needed to prove intent. Findley v. State, 1966, 370 p.2d 677, 74 Nev. 198; see also Sonner v. State, 1996, 930 p.2d 707, 112 Nev. 1328; and NRS 48.045. With counsel not knowing this, there is now way she could explain how the state can prove it or how the defense can disprove it i.e. mental condition such as bi-polar disorder.

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

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

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

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

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

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

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

L.) Counsel failed to go to the Alleged Crime Scene!

Petitioners' counsel failed to visit the alleged crime scene, instead of visiting it counsel chose to use what pictures she got from the state. Counsel would have been better prepared for cross-examination of the complaining witnesses, if counsel had been out to look at the alleged crime scene. Also had counsel seen the alleged crime scene with the rest of the house she would have been able to discredit alot more of the complaining witness testimony instead of the state doing counsels' job for her. Williams v. Washington, 59 F.3d 673 (7th cir. 1995); See also Wade v. Armontrout, 798 F.2d 304 (8th cir. 1986).

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

As discussed supra. there was no grand jury indictment as required by the Fifth Amendment, as the petitioners alleged crime is an infamous crime as described by the U.S. Supreme Court in Mackin, 117 U.S. 348. 364(1886). This is further explained in U.S. v. Moreland, 258 U.S. 433, 441(1992) Because persons convicted of offenses punishable by imprisonment for more than one year may be confined in a penitentary, 18 U.S.C. §4083, any crime punishable in this manner is infamous. Rule 7(a) of the Federal Rules of Criminal Procedure codifies the Supreme Court's interpretation of the Constitutional requirement of an indictment for infamous crimes: "An offense(other than criminal contempt) must be prosecuted by an indictment if it is punishable: (A) by death: or (B) by imprisonment for more than 1 year." Coachman, 752 F.2d 685. 689 n.24(D.C. cir. 1985). This does apply to the States through Clause 2 of the 6th Amendment of the United States Constitution which applies to the States through the 14th Amendment of the United States Constitution. Clause 2 of the 6th Amendment is the Supremacy Clause. City of Auburn v. Quest Corp., 260 F.3d 1160(9th cir. 2001). See also Broad, 85 F.3d 422(9th cir. 1996)

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N.) Counsel Does not Enforce Speedy Trial Act!

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

O.) Counsel Did not Ensure Jury Was Properly Sworn!

Counsel failed to ensure all three of the jurors Oaths were properly administer. When held to be true this is a jurisdictional issue which means petitioners trial was moot. With the State Deputy DA Michelle Jobe and the ~~[illegible]~~ petitioners counsel Monique A. McNeill, had a duty to bring mootness to the courts attention. This error falls under ~~[illegible]~~ Barral v. State. 353 P.3d 1197. 1200 th (2015). This whole issue was discussed supra..

FALSE PROSECUTION OF SOMEONE MENTALLY DISABLED

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

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

Exhibit 1

Page 57 of day 3 trial
Heather's Testimony

Q All right. And in State's 38 what is this?
A The shower.
Q Okay. And is the curtain pulled across the shower?
A Yes.
Q So if you pull it back, then you can see the shower and get in the shower?
A Yes.
Q What's in here?
A Towels and Band-Aids.
Q Okay. Showing you State's 39, is that a picture of that cupboard open where the towels and stuff is?
A Yes.
Q All right. And showing you State's 40, is that also in the bathroom?
A Yes.
Q Where in the bathroom is that?
A The shelves above the toilet.
Q Okay. And is that just some of the stuff that was kept on the shelves above the toilet?
A Yes.
Q Did you -- or did Justin ever have you touch any part of him?
A Yes.
Q What part?
A His penis.

Exhibit 2

Page 58 of Day 3 trial
Heather's Testimony

MS. JOBE: Court's indulgence.

(Pause in the proceedings)

BY MS. JOBE:

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

A Okay.

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

A Yes.

Q Where in the house did it happen?

A Shower.

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

A In the restroom.

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

A One.

Q How -- what does the shower look like?

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

Q Does it have a curtain on it?

A Yes.

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

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

Exhibit 3

Page 59 of Day 3 Trial
Heather's Testimony

Q Okay. And when you would kneel in the shower and he'd pleasure himself did anything happen?
A Yes.
Q What happened?
A He would ejaculate onto my face.
Q All right. And would the water be running, or not running?
A Running.
Q And when he would do that would he say anything?
A Afterwards he would tell me to stand up and wash myself off.
Q Okay. And did you stand up and wash yourself off?
A Yes.
Q Did that happen one time, or more than one time?
A More than one time.
Q All right, Heather. I'm going to show you what's been admitted as 38, 39, and 40, okay? If you'd look at those for me, please.
Do you recognize what's in 38, 39, and 40?
A Yes.
Q What do you recognize that to be?
A Bathroom.
Q Okay. So various pictures of the bathroom; is that fair?
A Yes.

Exhibit 4

Page 29 of Prelim.

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THE WITNESS: Five or six.
BY MR. THUNELL:
Q. Okay. Now, Heather, did he ever have you go inside the shower? Pg 16 Ln 7-8 Original Statement.
A. **Yes.**
Q. Okay. And was that in the past year or before the past year?
A. **Before the past year.**
Q. Was it after the first time when you were around eight years old?
A. **Yes.**
Q. Okay. And what -- what happened with the shower?
A. **He made me kneel, and he -- come on my face.**
Q. Okay. And --
MS. LOBO: I'm so sorry.
BY MR. THUNELL:
Q. Could you say that one more time, Heather? I'm sorry.
A. **He made me kneel, and he would come on my face.**
Q. Okay. And when -- when you say that, what do you mean?
A. **He rubbed his private parts until sperm came out.**

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Q. Okay. Now, Heather, did that -- did that happen just once, or did that happen more than once?
A. **More than once.**
Q. Okay. About how many times did that happen?
A. **About three.**
Q. Was there anywhere else, besides the shower?
A. **No.**
Q. Is that the shower -- was that shower at the Hill -- Hill Street house or at any other house?
A. **It was at the Hill Street house.**
Q. Okay. Now, Heather, did he ever -- did he ever touch your privates -- your front private area? Did he ever touch that area with anything?
A. **Yes.**
Q. And what -- what did he do?
A. **He touched it.**
Q. And with what did he touch it?
A. **His hands.**
Q. With his hands? Did he ever -- would he touch on the outside or the inside?
A. **The outside.**
MS. LOBO: I'm sorry, Judge. I'm just going to object as to foundation and vague. I don't know. If we're talking about front, is it chest or vagina? I didn't --

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MR. THUNELL: I could be more specific.
THE COURT: Please. Please.
BY MR. THUNELL:
Q. And, Heather, when I'm talking about front private, I'm talking -- I think you called it the vaginal area before.
A. **Yes.**
Q. And that's what I was asking about. Did -- is that the area you were talking about, or were you talking about your chest?
A. **The vaginal area.**
Q. Okay. And, Heather, was that touch on the outside or the inside of the area?
A. **The outside.**
Q. Okay. And did he ever put any other part of his body on -- on that area?
A. **No, not that I remember.**
Q. Okay.
MR. THUNELL: Court's indulgence.
BY MR. THUNELL:
Q. Heather, let me ask you a question. During the last few years that this was going on did you ever tell anybody about it up until recently?
A. **No.**
Q. Heather, why didn't you tell anybody about

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what was going on?
A. **Because I was scared that he might hurt me or my family.**
Q. Now, recently did you -- did you tell somebody about what was going on?
A. **Yes.**
Q. Who did you talk to?
A. **I talked to my friend, Ziley (phonetic).**
Q. Okay. Now, what made you finally tell Ziley about what was going on?
A. **I didn't want it to happen again, and I knew I could trust Ziley.**
Q. And after you talked to Ziley what -- what did you do after that?
A. **I talked to the school nurse, because the counselor wasn't working.**
Q. Okay. And after that did you talk to some other people?
A. **Yes.**
Q. Okay. Heather, just one second if that's all right. Heather, now, you talked to -- you talked to some other people.
Do you remember talking to a specialist by the name of Tiffany?
A. **Yes.**

Exhibit 5

Court Exhibit 23

Jury message

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

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

~~Acc~~ How do we proceed?

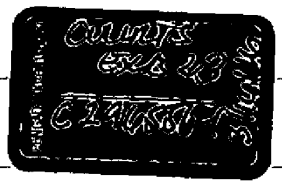

Exhibit 6

Microscopic Hair Comparison
Article. Is underlined

Criminal Legal News
a publication of the Human Rights Defense Center
www.humanrightsdefensecenter.org

EDITOR
Paul Wright
MANAGING EDITOR
Richard Resch, JD
EDITORIAL ASSISTANT
Suzanne Bring
COLUMNISTS
Kent Russell, Tara Hoveland, Brandon Sample, Michael Avery
CONTRIBUTING WRITERS
Dale Chappell, Matthew Clarke, Derek Gilna, David Reutter, Joe Watson, Mark Wilson, Christopher Zoukis
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Sabarish Neelakanta – *General Counsel*
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Faulty Forensics (cont.)

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

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

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

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

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

In response to that baffling decision, the California legislature passed the "Bill Richards Bill," which is often referred to as the "junk science" statute. The bill amended the penal code by making recantation of an expert or changes invalidating the science underlying the original testimony a statutory basis for reversing a criminal conviction. Because of the new statute, Richards was able to appeal his case once again, and this time, the California Supreme Court unanimously agreed that "it is reasonably probable that the false evidence presented by Dr. Sperber at petitioner's 1997 jury trial affected the outcome of that proceeding." Accordingly, it overturned his murder conviction.

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

Microscopic Hair Comparison

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

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

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

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

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

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

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

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

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

Bullet and Shell Casing Tool Mark Comparisons

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

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

Other Forensic Questions

Bite mark and hair analysis are the low hanging fruit of questionable forensics. Yet many of the methods believed to be on more sound scientific footing also suffer from lack of validation and other issues.

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

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

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

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

Likewise, the recognized gold standard in forensics—DNA testing—loses a little of its luster when the subjective human element is introduced as part of the examination process. This is especially true when there is very little DNA available and/or the available DNA sample contains DNA from two or more donors.

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

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

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

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

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

Exhibit 7

TRUMP Administration Kills Obama's Forensics Evidence Reliability Efforts

by. Mark Wilson

First Six(6) Paragraphs Pertain to Petitioner

Trump Administration Kills Obama's Forensic Evidence Reliability Reform Efforts

by Mark Wilson

Less than three months into the Trump Administration, the President's assault on science, truth, and all things Obama reached the criminal justice system. Under Trump's watch, a commission working to improve the reliability of forensic evidence has been abolished.

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

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

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

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

The President's Council of Advisors on Science report found that review of common forensic methods including hair, bite-mark, and shoe-print analysis "have revealed a dismaying frequency of instances of use of forensic evidence that do not pass an objective test of scientific validity." With respect to bite-mark analysis, the report found that "available scientific evidence strongly suggests that examiners not only cannot identify the source of bite mark with reasonable accuracy, they cannot even consistently agree on whether an injury is a human bite mark." Nevertheless, no court in the United States has barred bite-mark evidence, despite 21 known wrongful convictions.

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

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

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

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

Nothing could have been further from the truth. Throughout the Obama presidency, the commission prompted several important reforms. For example, Attorney General Loretta Lynch accepted commission recommendations for the adoption of new accreditation and ethical standards for forensic labs and practitioners. She did, however, reject an important recommendation that would have required expert witnesses to disclose error rates in their testimony and refrain from using methods that have not been scientifically verified.

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

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

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

Exhibit 8

Court Minutes From

March 17, 2016

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 17, 2016

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

March 17, 2016 **8:30 AM** **Jury Trial**

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15D

COURT CLERK: Melissa Murphy

RECORDER: Norma Ramirez

REPORTER:

PARTIES PRESENT:

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

JOURNAL ENTRIES

- Deliberations continued.

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

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

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

CUSTODY

05/10/16 8:30 AM SENTENCING

Exhibit 9

Page 10 Of Trial
TRANSCRIPT From
March 17, 2016

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

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

THE COURT: Okay.

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

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

(The jury is excused and exits the courtroom)

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

THE CLERK: May 10th, 8:30.

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

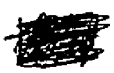

Exhibit 16

Page 11 Of Trial Transcripts from March 17, 2016

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

THE COURT: It will remain.

THE CLERK: Okay.

THE COURT: Okay, we're done.

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

* * * * *

Exhibit 11

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

Electronically Filed
09/21/2015 03:52:37 PM

CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD,
#2748452

Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

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

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

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

This Opposition 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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Suppressed Statement

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

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

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

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

ARGUMENT

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

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

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

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

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

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

///

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

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

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

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

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

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

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

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

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

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

Under NRS 49.209:

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

Under NRS 49.225 provides as follows:

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

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

Under NRS 49.252:

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

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

CONCLUSION

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

DATED this 21st day of September, 2015.

Respectfully submitted,

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

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

CERTIFICATE OF FACSIMILE TRANSMISSION

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

MONIQUE MCNEILL, ESQ.
FAX #369-1290

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

Exhibit 12

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

Electronically Filed
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CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD,
#2748452

Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE USE OF THE PREJUDICAL TERM "VICTIM" AT TRIAL

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

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

This Opposition 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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Suppressed missing statement →

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

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

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

ARGUMENT

I. Use of the Term Victim

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

> "Victim" means:
>
> 1. A person who is physically injured or killed as the direct result of a criminal act;
> 2. A minor who was involved in the production of pornography in violation of NRS 200.710, 200.720, 200.725 or 200.730;
> 3. A minor who was sexually abused, as "sexual abuse" is defined in NRS 432B.100;
> 4. A person who is physically injured or killed as the direct result of a violation of NRS 484.379 or any act or neglect of duty punishable pursuant to NRS 484.3795;
> 5. A pedestrian who is physically injured or killed as the direct result of a driver of a motor vehicle who failed to stop at the scene of an accident involving the driver and the pedestrian in violation of NRS 484.219; or
> 6. A resident who is physically injured or killed as the direct result of an act of international terrorism as defined in 18 U.S.C. § 2331(1).
>
> The term includes a person who was harmed by any of these acts whether the act was committed by an adult or a minor.

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

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

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

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

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

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

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

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

CONCLUSION

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

DATED this 22nd day of September, 2015.

Respectfully submitted,

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

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

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CERTIFICATE OF FACSIMILE TRANSMISSION

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

MONIQUE MCNEILL, ESQ.
FAX #369-1290

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

Exhibit 13

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

111

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JENNIFER CLEMONS
Chief Deputy District Attorney
Nevada Bar #10081
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD,
#2748452

Defendant.

CASE NO: C-14-296556-1

DEPT NO: XXII

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

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

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

This Opposition 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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

Suppressed Statement →

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

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

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

ARGUMENT

In Abbott v. State, 138 P.3d 462 (2006), the Nevada Supreme Court departed from a two year old precedent by overruling State v. District Court (Romano), 120 Nev. 613, 97 P.3d 594 (2004). In doing so, the Court returned to the requirements it previously set forth in Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000), reasserting that a trial judge should order an independent psychological or psychiatric examination of a child victim in a sexual assault case **only if the defendant presents a compelling reason for such an examination**. The defendant has made no such showing.

In Koerschner the Court stated;

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

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

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

Id. at 1116 – 1117, 13 P.3d at 455.

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

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

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

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

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

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

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

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

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

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

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

In 2005 the Nevada Supreme Court in Gaxiola v. State, 121 Nev. 638, 119 P.3d 1225 (2005), reiterated its long standing opinion concerning the uncorroborated testimony of a sexual assault victim by stating: "This court has repeatedly stated that the uncorroborated testimony of a victim, without more is sufficient to uphold a rape conviction.[4] Id. at 1232. Before the jury is given a case for deliberation they will be instructed by the Court: "There is no requirement that the testimony of a victim of sexual offenses be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty." This instruction, or one similar to it, which correctly states Nevada Law pursuant to Gaxiola will be given to the jury.

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

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

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

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

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

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

II.

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

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

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

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

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

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

III.

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

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

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

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

IV.

ORDERING A PSYCHOLOGICAL EVALUATION RE-VICTIMIZES A SEXUAL ASSAULT VICTIM

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

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

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

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

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> The legislature finds and declares that:
> 1. This state has a compelling interest in assuring that the victim of a sexual assault:
> (a) Reports the assault to the appropriate authorities;
>
> (b) Cooperates in the investigation and prosecution of the assault; and
> (c) Testifies at the criminal trial of the person charged with committing the assault.
> 2. The fear of public identification and invasion of privacy are fundamental concerns for the victims of sexual assault. If these concerns are not addressed and the victims are left unprotected, the victims may refrain from reporting and prosecuting sexual assaults.
> 3. A victim of a sexual assault may be harassed, intimidated and psychologically harmed by a public report that identifies the victim. A sexual assault is, in many ways, a unique, distinctive and intrusive personal trauma. The consequences of identification are often additional psychological trauma and the public disclosure of private personal experiences.
> 4. Recent public criminal trials have focused attention on these issues and have dramatized the need for basic protections for the victims of sexual assault.
> 5. The public has no overriding need to know the individual identity of the victim of a sexual assault.
> 6. The purpose of NRS 200.3771 to 200.3774, inclusive, is to protect the victims of sexual assault from harassment, intimidation, psychological trauma and the unwarranted invasion of their privacy by prohibiting the disclosure of their identities to the public.

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

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

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

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

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

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

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Ex Post Facto Violation

V.

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

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

> 1. In any criminal or juvenile delinquency action relating to the commission of a sexual offense, a court ***may not*** order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.
> 2. The court may exclude the testimony of a licensed psychologist, psychiatrist or clinical worker who performed a psychological or psychiatric examination on the victim or witness if:
> (a) There is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness by a licensed psychologist, psychiatrist or clinical worker; and
> (b) The victim or witness refuses to submit to an additional psychological or psychiatric examination by a licensed psychologist, psychiatrist or clinical worker.
> 3. In determining whether there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness pursuant to subsection 2, the court must consider whether:
> (a) There is a reasonable basis for believing that the mental or emotional state of the victim or witness may have affected his or her ability to perceive and relate events relevant to the criminal prosecution; and
> (b) Any corroboration of the offense exists beyond the testimony of the victim or witness.
> 4. If the court determines there is a prima facie showing of a compelling need for an additional psychological or psychiatric examination of the victim or witness, the court shall issue a factual finding that details with particularity the reasons why an additional psychological or psychiatric examination of the victim or witness is warranted.
> 5. If the court issues a factual finding pursuant to subsection 4 and the victim or witness consents to an additional psychological or psychiatric examination, the court shall set the parameters for the examination consistent with the purpose of determining the ability of the victim or witness to perceive and relate events relevant to the criminal prosecution.

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

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

Exhibit 14

Social Security Administration

Disabilitu Decision

SOCIAL SECURITY ADMINISTRATION

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

Date: January 22, 2018

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

Notice of Decision – Fully Favorable

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

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

If You Disagree With My Decision

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

How To File An Appeal

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

Please send your request to:

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

Form HA-L76 (03-2010)

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

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Time Limit To File An Appeal

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

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

What Else You May Send Us

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

How An Appeal Works

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

The Appeals Council may:

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

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

The Appeals Council May Review My Decision On Its Own

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

When There Is No Appeals Council Review

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

Your Right To Representation In An Appeal

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

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

If You Have Any Questions

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

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

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

Donald R. Colpitts
Administrative Law Judge

Enclosures:
Decision Rationale

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	CLAIM FOR
Justin O. Langford (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	554-73-2615 (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

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

The claimant is alleging disability since August 5, 2008.

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

ISSUES

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

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

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

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

APPLICABLE LAW

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

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The claimant's date last insured is June 30, 2010.

2. The claimant has not engaged in substantial gainful activity since August 5, 2008, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DECISION

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

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

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

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

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

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

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/s/ Donald R. Colpitts
Donald R. Colpitts
Administrative Law Judge

January 22, 2018
Date

Certificate Of Service

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

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

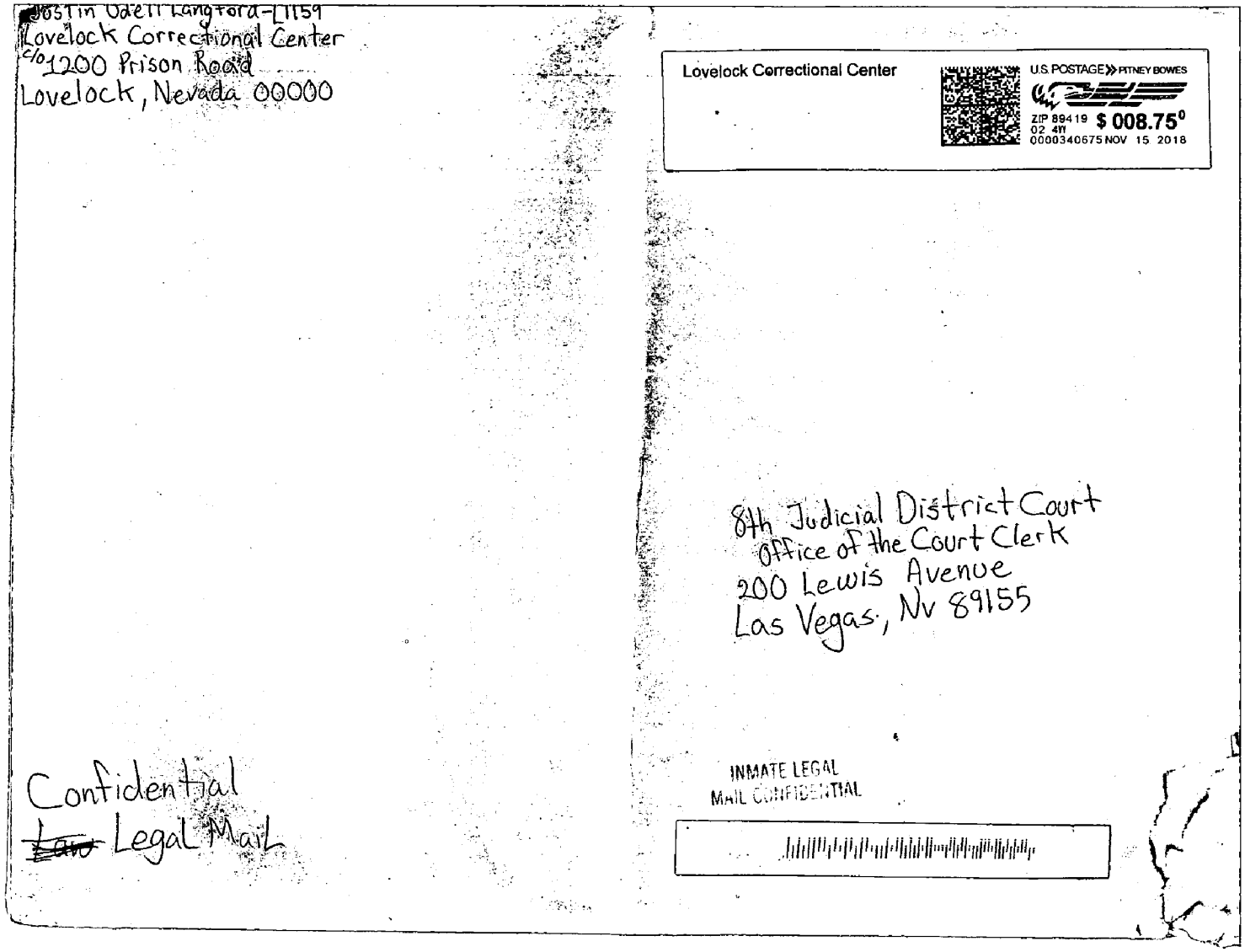
District Attorneys Office
200 Lewis. Ave.
Las Vegas, Nv 89155

Verification

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

Without Prejudice /All Rights Reserved

/s/ Justin Odell Langford
Petitioner, Sui juris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CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Justin Langford,

Petitioner,

vs.

Warden Renee Baker,

Respondent,

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

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

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

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

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 28th day of January, 2019, at the hour of 9 o'clock for further proceedings.

CLERK OF THE COURT
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Joe Hardy BM
District Court Judge
November 28, 2018

A-18-784811-W
OPWH
Order for Petition for Writ of Habeas Corpu
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MTN
Justin Odell Langford©-[1159546]
LCC
c/o 1200 Prison Road
Lovelock, Nv 00000

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FILED
DEC 10 2018
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY. NEVADA

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

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

Motion For Continuance

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

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

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A-18-784811-W
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Justin Odell Langford 1161546
LCC
P.O. 1200 Prison Road
Lovelock, Nv 00000

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c/o 1200 Prison Road
Lovelock, Nv 00000

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DISTRICT COURT
CLARK COUNTY. NEVADA

JUSTIN ODELL LANGFORD©,
~~Plaintiff~~ Petitioner,
-Vs-
Warden Renee Baker,
Respondent.

Case No. A-18-784811-W;
C-14-296556-1
Dept No. XV
Judicial Notice

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

Dated this 4th day of December, 2018.

/s/ Justin Odell Langford

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DEC 10 2018
CLERK OF THE COURT

A-18-784811-W
NOTC
Notice
4902709

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD, #2748452

Defendant.

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

DEPT NO: **XV**

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

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

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

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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARGUMENT

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

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

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

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

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

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

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

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

> Unless there is good cause shown for delay, *a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction* or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Good Cause

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

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

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

B. Actual Innocence

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

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

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

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

CONCLUSION

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

DATED this 17th day of January, 2019.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

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

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

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

hjc/SVU

FILED
JAN 22 2019
CLERK OF COURT

Justin Odell Langford© [1159546]
LCC
c/o 1200 Prison Rd
Lovelock, Nv 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD©,	Case No.- A-18-784811-W
Petitioner,	Dept No. XV
-vs-	Date: Jan. 28, 2018
Warden Renee Baker,	Time: 9 o'clock A.M.
Respondent	

Motion To Strike States Response (Telephonic Hearing)

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

This motion is made and based upon all papers, files, papers, pleadings and other documents on file with the Court. Along with the attached Points and Authorities with any oral arguments which may be adduced at the time of hearing.

Dated this 1 th day of January 2019

RECEIVED
JAN 22 2019
CLERK OF THE COURT
BY:

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

Justin Odell Langford©
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Justin Odell Langford

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NOTICE OF MOTION

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

Dated this 1 th day of January, 2019.

By:

Justin Odell Langford ©

NDOC #[1159546]

Points And Authorities

Argument

The Petitioner filed "Affidavit of Writ of Habeas Corpus" on Nov. 19 2018, which has gone unchallenged by the respondent in this case. Thus there being NO 'counter affidavit' on file regarding this issue, Petitioners Habeas must be accepted as true. See Morris v. National Cash Register, 44 S.W. 2d 433.; Group v. Finletter, 108 F. Supp. 327. Failure to contest an assertion is considered silence of acquiescence, an affidavit is an assertion of the facts, See Western Air Lines, Inc. v. Flight engineers International Association, AFL-CIO, ETC. Et. al.; 194 F. Supp. 408; 1961 U.S. Dist. LEXIS 3881; 48 L.R.R.M. 2492; 43 Lab Cas (ccm); See also Ylst v. Nunnemaker, 501 U.S. 797 (1991); Eureka v. Bank, 35 Nev. 80 (1912); Hixon v. Pixley, 15 Nev. 475 (1880).

Conclusion

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

VERIFICATION

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

Dated this 1 th day of January, 2019.

By:

Justin Odell Langford©

NDOC #[1159546]

Without Prejudice/ All Rights Reserved @ UCC 1-308 & 1-207

Justin Odell Langford

Certificate Of Service.

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

Warden Renee Baker
LCC
% 1200 Prison Rd.
Lovelock, Nv 000

Steven B. Wolfson, D.A.
% 200 Lewis Ave.
Las Vegas, Nv 00000

Justin Udell Langford
NDOC #1159546
LCC
%1200 Prison Rd
Lovelock, Nv 00000

Lovelock Correctional Center

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LCC
c/o 1200 Prison Road
Lovelock, Nevada 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL ~~[illegible]~~ LANGFORD©
Petitioner

-VS-

Renee Baker. Warden
Respondent

Case No.: A-18-784811-W
Dept No.: XV

Notice OF Appeal

COMES NOW Justin Odell Langford©, Petitioner to file Notice of Appeal to an adverse decision on Writ of Habeas Corpous that was entered in open court on Jan. 28, 2019 without petitioners presences

Dated this 5th day of Febuary 2019
Respectfully Submitted
Justin Odell Langford©
LCC
1200 Prison Road
Lovelock, NV 00000

Justin Odell Langford [1159546]
LCC
% 1200 Prison Rd
Lovelock, Nv 00000

Lovelock Correctional Center

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Court Clerk
200 Lewis Ave
Las Vegas, Nv 89101

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Brass slip
No. 2288577

ASTA

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

JUSTIN ODELL LANGFORD,

Petitioner(s),

vs.

WARDEN RENEE BAKER,

Respondent(s),

Case No: A-18-784811-W

Dept No: XV

CASE APPEAL STATEMENT

1. Appellant(s): Justin Ordell Langford

2. Judge: Joe Hardy

3. Appellant(s): Justin Ordell Langford

Counsel:

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

4. Respondent (s): Warden Renee Baker

Counsel:

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

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
**Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: November 19, 2018

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 13 day of February 2019.

Steven D. Grierson, Clerk of the Court

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

cc: Justin Ordell Langford

ORIGINAL

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD, #2748452

Defendant.

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

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

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

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☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

W:\2014\2014F\S00\01\14FS0001-FFCO-(LANGFORD_JUSTIN_01_28_2019)-001.DOCX

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

> Unless there is good cause shown for delay, *a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction* or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Good Cause

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

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

B. Actual Innocence

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

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

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

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

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

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ORDER

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

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

Joe Hardy
DISTRICT JUDGE BM

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

BY _____
JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD, #2748452

Defendant.

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

DEPT NO: **XV**

STATE'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE STATE'S RESPONSE

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

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

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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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The State responds to Defendant's Motion to Strike State's Response [to Defendant's Petition] herein.

ARGUMENT

DEFENDANT'S MOTION IS MOOT

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

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

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

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

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CONCLUSION

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

DATED this 13th day of March, 2019.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

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

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

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

hjc/SVU

27

FILED
MAR 14 2019
CLERK OF COURT

Justin Odell Langford©[1159546]
LCC
%1200 Prison Rd
Lovelock, Nv 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD©
Pititioner
-vs-
Warden Renee Baker
Respondent

Case No.: A-18-784811-W
Dept No.: XV

Judicial Notice

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

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

Dated this day of March 2019

RECEIVED
MAR 14 2019
CLERK OF THE COURT

A-18-784811-W
NOTC
Notice
4822699

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

B

Justin Odell Langford © [1159546]
LCC
% 1200 Prison Rd
Lovelock, Nv 00000

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN ODELL LANGFORD ©
Pititioner
-vs-
Warden Renee Baker
Respondent

Case No.: A-18-784811-W
Dept. No.: XV

Certificate Of Service

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

James R. Sweetin, DDA
james.sweetin@clarkcountyda.com

Jacob Villani, DDA
jacob.villani@clarkcountyda.com

Judge Joe Hardy

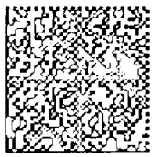
Nevada Attorney General

Nevada Supreme Court.

RECEIVED
MAR 14 2019
CLERK OF THE COURT

Justin Langford #1159546
LCC
P/O 1200 Prison Rd
Lovelock, Nv 00000

Lovelock Correctional Center



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Las Vegas, Nv 89101

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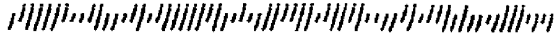

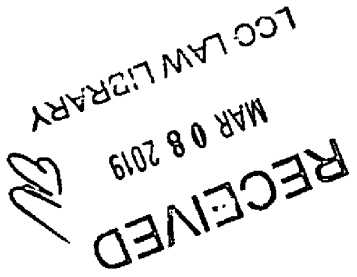

Electronically Filed
3/14/2019 2:11 PM
Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN LANGFORD,

Petitioner,

vs.

WARDEN RENEE BAKER; ET AL,

Respondent,

Case No: A-18-784811-W

Dept No: XV

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

PLEASE TAKE NOTICE that on March 11, 2019, 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 14, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson
Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 14 day of March 2019, 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:
Justin Langford # 1159546
1200 Prison Rd.
Lovelock, NV 89419

/s/ Debra Donaldson
Debra Donaldson, Deputy Clerk

ORIGINAL

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN ODELL LANGFORD, #2748452

Defendant.

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

DEPT NO: **XV**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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

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

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☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

> Unless there is good cause shown for delay, *a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction* or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
>
> (a) That the delay is not the fault of the petitioner; and
>
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Good Cause

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

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

B. Actual Innocence

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

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this Court finds good cause, ...

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

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

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

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

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ORDER

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

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

Joel Hardy
DISTRICT JUDGE

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

BY
JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN LANGFORD,

Plaintiff(s),

vs.

WARDEN RENEE BAKER; ET AL.,

Defendant(s).

Case No: A-18-784811-W

Dept No: XV

CERTIFICATE OF RE-SERVICE

I HEREBY CONFIRM that the Notice of Entry of Findings of Fact Conclusions of Law and Order originally filed on March 14, 2019 has been served on the Office of the Clark County District Attorney and the Office of the Attorney General via electronic service.

All other respective party(ies) and their counsel(s), if any, have already received copies via U.S. Mail when initially filed.

Steven D. Grierson, Clerk of the Court

s/Debra Donaldson
Debra Donaldson, Deputy Clerk

Ungermann, Heather

From: Donaldson, Debra
Sent: Wednesday, July 24, 2019 9:57 AM
To: 'motions@clarkcountyda.com'; 'wiznetfilings@ag.nv.gov'; Ungermann, Heather
Subject: FW: Filing Accepted for Case: A-18-784811-W; Justin Langford, Plaintiff(s)vs.Warden Renee Baker, Defendant(s); Envelope Number: 3989974

From: efilingmail@tylerhost.net [mailto:efilingmail@tylerhost.net]
Sent: Thursday, March 14, 2019 2:13 PM
To: Donaldson, Debra
Subject: Filing Accepted for Case: A-18-784811-W; Justin Langford, Plaintiff(s)vs.Warden Renee Baker, Defendant(s); Envelope Number: 3989974

Filing Accepted

Envelope Number: 3989974
Case Number: A-18-784811-W
Case Style: Justin Langford, Plaintiff(s)vs.Warden Renee Baker, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
Court	Clark District Criminal/Civil
Case Number	A-18-784811-W
Case Style	Justin Langford, Plaintiff(s)vs.Warden Renee Baker, Defendant(s)
Date/Time Submitted	3/14/2019 2:11 PM PST
Date/Time Accepted	3/14/2019 2:13 PM PST
Accepted Comments	Auto Review Accepted
Filing Type	Notice of Entry - NEO (CIV)
Filing Description	Notice of Entry of Findings of Fact, Conclusions of Law and Order
Activity Requested	EFile
Filed By	Debra Donaldson
Filing Attorney	

Document Details	
Lead Document	A784811.031419_neo_dd.pdf
Lead Document Page	12

Count	
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(800) 297-5377

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IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

Supreme Court No. 78144
District Court Case No. A784811

FILED
OCT 18 2019
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 13th day of August, 2019.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 18th day of September, 2019.

A-18-784811-W
CCJA
NV Supreme Court Clerks Certificate/Judgn
4870632

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this October 14, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 78144-COA

ORDER OF AFFIRMANCE

Justin Odell Langford appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Langford filed his petition on November 19, 2019, more than two years after issuance of the remittitur on direct appeal on July 24, 2017. *Langford v. State*, Docket No. 70536 (Order of Affirmance, June 27, 2017). Thus, Langford's petition was untimely filed. *See* NRS 34.726(1). Moreover, Langford's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.[2] *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Langford's

[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

[2]*Langford v. State*, Docket Nos. 75825 and 76075 (Order of Affirmance, March 29, 2019).

petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In his petition, Langford did not attempt to demonstrate good cause to overcome the procedural bars, but rather asserted the procedural bars should not apply because he was actually innocent.[3] Langford based his actual-innocence claim upon an assertion that the victim's trial testimony did not conform to the allegations contained in the State's information.

A petitioner may overcome the procedural bars and "secure review of the merits of defaulted claims by showing that the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice." *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence–factual innocence, not legal innocence. *Calderon v. Thompson*, 523 U.S. 538, 559 (1998); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A petitioner can demonstrate actual innocence by demonstrating "it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence." *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quotation marks omitted). Langford's claim was based upon evidence produced at trial and, therefore, his claim failed because it was not based upon new evidence. Accordingly, the district court did not err by denying Langford's petition as procedurally barred.

---

[3]On appeal, Langford argues that the procedural bars should have been tolled during the proceedings for his prior appeals. However, Langford did not raise this good-cause claim before the district court and we decline to consider it in the first instance on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Next, Langford argues the State filed an untimely response to his petition and therefore admitted all of the allegations contained within the petition were true. However, "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and Langford had the burden of pleading and proving facts to overcome the procedural bars, *cf. State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). Because Langford failed to meet his burden to overcome the procedural bars, the district court properly denied the petition as procedurally barred even though the State filed an untimely response to Langford's petition.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

_____, C.J.
Gibbons

_____, J.
Tao

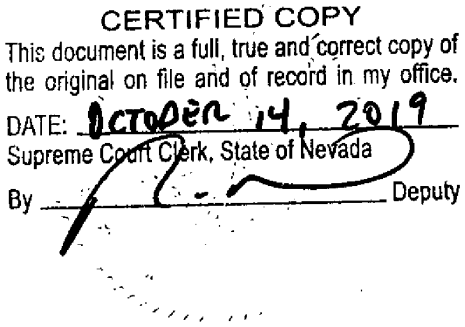
_____, J.
Bulla

---

[4]The district court denied the petition without prejudice. However, NRS chapter 34 does not allow for a district court to dispose of a postconviction petition for a writ of habeas corpus by denying it without prejudice. *See* NRS 34.830(2). As discussed previously, the district court properly denied relief due to application of the procedural bars, but should not have done so without prejudice. Because the district court properly denied relief, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

[5]We have reviewed Langford's February 28, 2019, and June 3, 2019, documents entitled "Judicial Notice," and we conclude no relief based upon those documents is warranted.

cc: Hon. Joseph Hardy, Jr., District Judge
Justin Odell Langford
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk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By _____ Deputy

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 78144-COA

FILED

SEP 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Justin Odell Langford
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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By _____ Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

Supreme Court No. 78144
District Court Case No. A784811

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 14, 2019

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Hon. Joseph Hardy, Jr., District Judge
Justin Odell Langford
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on OCT 18 2019.

HEATHER UNGERMANN
Deputy District Court Clerk

FILED
FEB - 9 2021
CLERK OF COURT

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

Justin Odell Langford ©
Petitioner,
-vs-
Warden Tim Garrett
Respondent

Case No. A-18-784811-W
Dept. No. Dept. 23

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO THE ALL WRITS ACT

COMES Now Petitioner, Justin Odell Langford, to file his Petition for Writ of Habeas Corpus Pursuant To The All Writs Act, In Which the Petitioner is challenging his Conviction for Lewdness with a minor under Fourteen years of age wherein Petitioner was sentenced in the Eighth Judicial District Court by Judge Susan H. Johnson to 10 to Life.

DATED: 1/5/21

Respectfully Submitted
/s/ Justin Odell Langford
Justin Odell Langford, #1159546
LCC, 2200 Prison Rd.
Lovelock, Nev. 89419

* Document Prepared By: Christopher Wilcox #1232445 *

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CAVEAT

I regard it as just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Nevada and uphold its oath and duty in this matter, being that it can result in this court committing acts of treason, usurpation, and tyranny. Such trespasses would be clearly evident to the public, especially in light of the clear and unambiguous provisions of the Constitution that are involved here which leave no room for construction, and in light of the numerous adjudications upon them as herein stated. The possible breaches of law that may result by denying this Petition are enumerated as follows:

1.) The failure to uphold these clear and plain provisions of our Constitution cannot be regarded as mere error in judgement, but deliberate USURPATION. "Usurpation is defined as unauthorized arbitrary assumption and exercise of power." State ex rel. Danielson v. Village of Mound, 234 Minn. 531, 543, 48 N.W.2nd 855, 863 (1951). [redacted] while error is only voidable, such usurpation is void.

> The boundary between and error in judgement and the usurpation of judicial power is this: The former is reversible by an appellate court and is, therefore, only voidable, which the latter is a nullity. State v. Mandehr, 209 N.W. 750, 752 (Minn. 1926).

To take jurisdiction where it clearly does not exist is

usurpation, and no one is bound to follow acts of usurpation, and in fact it is a duty of citizens to disregard and disobey them since they are void and unenforceable.

[N]o authority need be cited for the proposition that, when a court lacks jurisdiction, any judgement rendered by it is void and unenforceable. Hooker v. Boles, 346 Fed. 2nd 285, 286 (1965).

The fact that the "Nevada Revised Statutes" has been in use for over sixty three (63) years cannot be held as a justification to continue to usurp power and set aside the Constitutional provisions which are contrary to such usurpation, as Judge Cooley stated:

Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the Constitution. Cooley, Constitutional Limitations. pg. 71.

2.) To assume jurisdiction was valid in this case would result in TREASON. Chief Justice John Marshall once stated:

We [Judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821).

The judge of this court took an oath to uphold and support the Constitution, it will be regarded as a blatant act of TYRANNY. Any exercise of power which is done without the support of law or beyond what the law allows is tyranny.

It has been said, w/ much truth, "Where the law ends, tyranny begins." Meeks v. Welsh, 104 U.S. 694, 702 (1881).

The law, the Constitution, does not allow laws to exist without titles or enacting clauses. To go beyond that and allow the "Nevada Revised Statutes" to exist as "law" is nothing but tyranny. Tyranny and despotism exist where the will and pleasure of those in government is followed rather than established law. It has been repeatedly said and affirmed as a most basic principle of our government that, "this is a government of laws and not of men, and that there is no arbitrary power located in any individual or body of individuals." Cotting v. ~~Kansa~~ Kansas City Stock Yards Co., 183 U.S. 79, 84 (1901). The Constitution requires that all laws have enacting clauses and titles. If these clear and unambiguous provisions of the State Constitution can be disregarded, then we no longer have a Constitution in this State, and we no longer live under a government of laws but a government of men, i.e., a system that is governed by the arbitrary will of those in office. The creation of the "Nevada Revised Statutes" is a typical example of the arbitrary acts of government which have become all too prevalent in this century. Its use as law is a nullity under our Constitution.

THE NATURE OF SUBJECT MATTER JURISDICTION

The jurisdiction of a court over the subject matter has been said to be essential necessary, indispensable and elementary prerequisite to the exercise of judicial power. 21 C.J.S., "Courts," §18, p. 25. A court cannot proceed with a trial or make a judgement without such jurisdiction existing.

> It is elementary that the jurisdiction of the court over the subject matter of the action in the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at anytime. Matter of Green, 313 S.E.2d 193 (N.C. App. 1984).

Subject matter jurisdiction cannot be conferred by waiver or consent, and may be raised at any time. Rodrigues v. State, 441 So.2d 1128 (Fla. App. 1983). The subject matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action.

> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute. Stillwell v. Markham, 10 P.2d 15, 16, 135 Kan. 206 (1932).

An indictment or complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands

trial." State v. Chatman, 671 P2d 531, 535 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus if these charging instruments are invalid, there is a lack of subject matter jurisdiction.

Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. Hanamichi v. State, 333 N.W.2d 797, 798 (S.D. 1983).

A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the indictment or information is invalid the court is without jurisdiction. Ex parte Carlson 186 N.W. 722, 725, 176 Wis. 538 (1922).

Without a valid complaint any judgement or sentence rendered is "Void ab initio" Ralph v. Police Court of El Cerrito, 190 P.2d 632, 634, 84 Cal. App. 2d 257 (1948). Jurisdiction to try and punish for a crime cannot be acquired by the mere assertion of it, or invoked otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a nullity. 22 C.J.S., "Criminal Law," §167, p. 202.

The charging instrument must not only be in the particular mode or form prescribed by the constitution and statute to be valid, but it also must contain reference to valid laws. Without a valid law, the

charging instrument is insufficient and no subject matter jurisdiction exists for the matter to be tried.

Where an information charges no crime, the court lacks jurisdiction to try the accused. People v. Hardiman, 347 N.W.2d 460, 462, 132 Mich. App. 382 (1984).

Whether or not the complaint charges an offense is a jurisdictional matter. Ex parte Carlson, 186 N.W. 722, 725, 176 Wis. 538 (1922).

An invalid law charged against one in a criminal matter also negates subject matter jurisdiction by the sheer fact that it fails to create a cause of action. "Subject matter is the thing in controversy." Holmes v. Masco, 115 N.W. 770, 80 Neb. 454, citing Black's Law Dictionary. Without a valid law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try the one for an offense alleged under such a law.

If a criminal statute is unconstitutional, and the court lacks subject-matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law," §157, p. 189, citing People v. Katrinak, 185 Cal. Rptr. 869, 136 Cal. App. 3d 145 (1982).

Where the offense charged does not exist, the trial court lacks jurisdiction. State v. Christensen, 329 N.W. 2d 382, 383, 110 Wis. 2d 538 (1983).

Without a valid law there can be no crime charged under that law, and where there is no crime or offense there is no controversy or cause & action, and without a cause of action there can be no subject ~~matter~~ jurisdiction to try a person accused of violating said law. The court then has no power or right to hear and decide a particular case involving such invalid or nonexistent laws.

These authorities and others make it clear that if there are no valid laws charged against a person, there is nothing that can be deemed a crime, and without a crime there is no subject matter jurisdiction to try a person accused of violating said law. The court then has no power or right to hear and decide a particular case involving such invalid ~~laws~~ or nonexistent laws. Further invalid or unlawful laws make the complaint fatally defective and insufficient, and ~~void~~ without a valid complaint there is a lack of subject matter jurisdiction.

The Petitioner asserts that the laws he was charged / convicted under are not valid, or do not constitutionally exist as they do not conform to certain constitutional prerequisites, and thus are no laws at all, which prevents subject matter jurisdiction to the above-named court.

THE COURT HAD NO SUBJECT-MATTER JURISDICTION IN VIOLATION OF U.S. CONST. AMEND.'S V; VI; VIII; XIV; I; U.S. CONST. ART.'S 1,36,cl.2; 1,39,cl.3; 6,§§2&3; NEV. CONST. ART.'S 1,§8,cl.5; 3,§1; 4,§17; 5,§20; 6,§11; 15,§2; 16,§§1 and/or 2; 6,§6

(COUNT 1)

A) STATUTE REVISION COMMISION ILLEGALLY WROTE THE NEVADA [redacted] REVISED STATUTES

We are not bound to the legislature by its terms, but by our own terms, as Justice Wilson of the U.S. Supreme Court Said:

> The only reason, I believe, why a freeman is bound by human laws, is that he binds himself.[1]

Thus the legislative bodies are given certain powers to enact certain laws within the confines of certain limitations which the people have agreed to be bound by. The fact remains that this is the way things are. The State Legislature or Congress can make laws that we the people are subject to, as there is a legal relationship between them.

Many debates have also existed regarding the legality of such codes. An Alabama court stated that the criminal code enacted in its state was "not within the letter or spirit of the mandate of the Constitution,*** nor can it be supposed that it was within the contemplation of the framers of the constitution."[2] The Court also said that the code was

1) Chisholm v. Georgia, 2 Dallas (2 U.S.) 419, 456 (1793)

2) Ex parte Thomas, 21 So. 369, 370 (Ala. 1897)

done for the sake of "Convenience." These works are a revision of all the statutes of the State, and thus embrace every subject in a multi-volume publication.

To understand the nature and validity of today's modern codes and revisions, we need to understand the established or constitutional method of enacting and publishing laws. When laws are passed by both houses of a legislative body, the bill is sent to the governor to sign. If it is signed the enacted bill goes to the Office of the Secretary of State, who is the keeper of all official government documents and records. see Nev. Const. Art. 5, §20. The Secretary of State is the official who possesses the State seal, and affixes that seal to the true and valid documents and records that comes to its office.

Most State Constitutions prescribe these facts. Thus the laws passed by the legislature which are generally recognized as such are those that are issued or published by the Secretary of State:

> We consider that the secretary of state has an indisputable legal duty to publish validly enacted laws; a duty imposed upon him Article IV, section 4(b) of the Florida Constitution, requiring him to "keep the records of the official acts of the legislative and executive departments."[3]

As to whether a bill has become a law or not, the fact that the publication was verified by the Secretary of State is proof that it has

> The publication of an act in the volume of session laws of the year in which it purports to have been approved and verified by the Secretary of State, creates a presumption that it became a law pursuant to the requirement of the

3) Florida Optometric Ass'n v. Firestone, 465 So.2nd 1319, 1321 (1985).

constitution.[4]

As more laws became enacted, the usual or traditional mode of recording and publishing them gradually underwent a change:

> The acts passed by each legislative session of Congress or of a state legislature are compiled at the end of the session in what is known as the "Statutes at Large" in the national government, or as "Session Laws" in the states. After a few years it becomes very difficult for judges, Attorneys and the general public to know what the law is. Amendments have been made, many sections have been repealed, and even the legislators are often at a loss. At such time a compilation may be made. This is simply a gathering together, usually into a single volume, of all the laws in effect in a given jurisdiction. Changes in punctuation and spelling may be made, and repealed and unconstitutional laws eliminated, but little more. If a more constructive result is desired, a revision or codification may be ordered.[5]

Which is what was done in 1951 by Senate bill No. 182. Senate bill No. 182 created a 'permanent' "Commission" for the revision, and compilation of the laws in the State of Nevada. That was later amended by Senate Bill No. 188 (1953) which changed the title to "An act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada...". The Statutes at Large and Session laws are themselves a compilation of laws. But a "revision" or "codification" is very different from a mere compilation. They are different because they are written or drafted by a commission or committee or some non-legislative source. Further, the laws are not just compiled together, they are altered and modified along

4) Bound v. The Wisconsin Cent. Ry. Co., 45 Wis. 543 (1878)

5) Harvey Walker, Law Making in the United States, N.Y., 1934, p. 268.

with additions or deletions made to the contents. Which is what Senate Bill No. 2 (1952) was "An Act to revise the laws and statutes of the State of Nevada...". They then are passed off as the laws of the Legislature.

Within Senate Bill No's 182, 188, 2 the Legislature called for ~~revision~~ a "definite plan for revision and publication of the statutes."

> Thus, the Legislature was getting away from the idea of a mere compilation. It empowered the Committee to prepare and submit a complete revision, broader in its scope and more comprehensive in its purpose.[6]

The Legislature was giving more power and authority to this committee it had commissioned to "revise" the laws of the state. This change was noted by state Supreme Court:

> The Kentucky Revised Statutes were, therefore, enacted as the law of the Commonwealth and not adopted as a compilation. This distinction is important. A compilation is merely an arrangement and classification of the legislation of a state in the exact form in which it was enacted, with no change in language. It is merely a bringing together in a convenient form of the various acts of legislation enacted over a period of time. It does not purport to restate the law or to be a substitute for prior laws. It does not require any legislative action in order to have the effect it is intended to have. *** A revision, on the other hand, contemplates a redrafting and simplification of the entire body of statute law. *** A revision is a complete restatement of the law. It requires enactment by the legislature in order to be effective and upon enactment it becomes the law itself, replacing all former statutes.[7]

And in Nevada we had a commission/committee of Judges recreating the laws of the State. Such commissons/committees have become the new source of law in the nation. While the legislature will "enact the revision into law," this is no different than

6) Fidelity & Columbia Trust Co. v. Meek, 171 S.W.2nd 41, 43, 44 (1943).

7) Ibid., p. 44.

when the legislature approves the by-laws of a corporation, The laws of the corporation do not become laws of the legislature because of this. Rather, they are laws of the artificial legal entity (or corporation) which the legislature created, just as the "Nevada Revised Statutes" are laws of the artificial legal entity or commission that the legislature created.

This process is also no different than when the Legislature authorizes the laws of a city, or approves a city charter. The laws and charters are not regarded as those of the Legislature, or as laws of the state. While the laws which the "Commission" drafts are based upon original statutes of the Legislature, they are a complete restatement of them. New material is added, items are removed, provisions are modified. The results are, in legal parlance, laws that are of this legal entity known as "Statute Revision Commission". This legal entity is no different than a corporation or any other legal entity which the Legislature created or commissioned.

The laws which this entity writes cannot be deemed the lawful statutes of the State. This is especially so since the various Constitutions of the land specify how each law is to come into being. It was never the intent that such a comprehensive mass of legislation containing every law of the State, and passed in one act, would be the mode for making laws. There are inherent problems associated with this method, as explained by one legal writer.

The usual practice is to introduce the revision [of statutes] as a single bill, sending it through the same

Process as any other bill. Obviously, however, the members of the legislature cannot give such a comprehensive measure adequate consideration. It is almost as difficult for a committee to do so.[8]

When the mass of laws from the committee is complete, the legislature is to approve it as a single statute, but because it is so massive not one(1) single legislator will read the new body of law. There are no discussions in the legislature on any of the hundreds of new or revised laws of the committee. Further, it is required by fundamental law and constitutional mandates that a bill be read on three seperate days in the legislature. See Exhibit 1 (Log from the Senate for Senate Bill No. 2 (1957)), you'll see it was read on day one "Jan. 22nd, 1957" on day one it was "declared an emergency measure under the Constitution, and placed on third reading and final passage". What you'll also see is that it was read a third time on the same day, but you'll notice the section labled "Passed" and "Title approved" are not filled out. Also in Exhibit 1 you'll notice that the spot labeled "Enrolled and delivered to Secretary of State" is not stamped with a date, meaning it was never done. The same goes for the sections labled "Passed" and "Title approved". The three day requirement is impossible with the comprehensive codes that have been adopted in modern times. There thus is no real

According to the Constitution, enacting and changing laws for a state falls upon the legislative branch of government, and that branch cannot delegate the power to any other. The "Statute Revision Commisson" may be composed

8) Walker, Law Making in the United States, p. 272

of some members of the Legislature, but it is also composed of lawyers, Judges and private persons. It thus has been noted that "revisers have no legislative authority, and are therefore powerless to lessen or expand the letter or meaning of the law."[9]

Therefore the work of these committees cannot be regarded as law pursuant to the Constitution. The law they produce is another manner of law coming from a source other than the Constitutionally authorized source. These comprehensive revisions or codifications are like a private law approved by the legislature.

In Nevada a "statute revision commission" was created in 1951 By Senate Bill No. 182, this "commission" consisted of three Nevada Supreme Court Justices. This "Commission" became increasing involved in bill drafting as an adjunct to its statute revision work. The Commission was unlawful for several reasons, the most obvious being its very operation by the "Justices" who served on it did so in violation of the Nevada Constition. see Nev. Const. Art.'s VI, §1 & III, §1.

The Seperation of Powers Doctrine was violated as three (3) Justices were involved in the drafting of legislation and the passage of Bills in the Legislature, a "purely Legislative function," the "Statute Revision Commission" was completely responsible for the generation of the "Nevada Revised Statutes". The generation of the Nevada Revised Statutes specifically state that there were actual changes in the statement of law as they were compiled into the Nevada Revised Statutes, changes were made to existing statutes, entire

words were deleted as being redundant, grammer was changed, sentence structures were altered, as discussed supra this can only be done by the legislature, meaning a duly appointed/elected person elected to the assembly or senate. So this issue of the "Statute Revision Commission" revising all the statutes and drafting the Senate Bill to ~~a~~ pass them into law was completely Unconstitutional in of itself. Which makes Senate Bill No. 2 182(1951) and Senate Bill No. 188(1953) Unconstitutional in of themselves as it was the legislature delegating Legislative authority away to others, in which can't be done, making everything the "Statute Revision Commission / Legislative Counsel Bureau" did VOID as they were the product of Unconstitutional Acts. This also Renders Senate Bill No. 2(1957), Exhibit 12, VOID as part of the Unconstitutional Acts of the "Statute Revision Commission".

The Respondents are going to argue NRS 281A.160 which defines a public officer, the problem is its missing the constitutionally mandated Enactment Clause. Which is discussed Infra.

All written constitutions prescribe the mode and process of making laws. This includes the reading of the bill on three different days in each house, that if passed it is to be signed by the speaker of the house and by the president of the senate, the recording of the votes upon the journal, being signed by the governor, and other such procedures.

But the constitutions also regulate the form and style in which laws are to be enacted to make them laws of the State. The form and style are regarded as essential parts of the law and thus must be included at all times with the law to make it a valid law.

Laws or statutes traditionally have three main parts:

The three essential parts of every bill or law are: (1) the title, (2) the enacting clause, and (3) the Body

we will first examine the enacting clause as this is the main item that directly relates to authority of law. An enacting clause, sometimes called an enacting style or enacting authority, is that part of a law which usually comes after the title and before the body of the law. The following shows the manner in which this provision is prescribed in Nev. Const. Art. 4, §23:

The enacting clause of every law shall be as follows: "The people of the State of Nevada represented in Senate and Assembly, do enact as follows", and no law shall be enacted except by bill

For the full argument on the enactment clause as it pertains to NRS 261A.160, see Count 3 pg# 43 Line 11 to pg 55 Line 1. So this Court will see from that argument, that NRS 261A.160 is not a valid statute rendering it VOID and of no defense. This Whole Count Shows a ongoing violation of the Seperation Of Powers Violating All of Petitioners Constitutional Rights.

RELIEF FOR THIS COUNT

VACATE The Petitioners Conviction and Dismiss his case As this State has Obviously known of this issue for over

30 years as all the NRS's that the State argue, i.e. 220.110, 220.120, 220.170, 281A.160 all attempt to circumvent the Bill that create them and the Nev. and U.S. Const. So it is also a perpetual fraud upon the court by the Legislature, All of the Petitioners Claims are supported By the attached Exhibits.

THE COURT HAD NO SUBJECT-MATTER JURISDICTION IN VIOLATION OF UNITED STATES CONSTITUTION AMENDMENTS I ; V ; VI ; VIII ; XIV , UNITED STATES CONSTITUTION ARTICLES 1, §6, cl. 2 ; 1, §9, cl. 3 ; 6, §§2 & 3 , NEVADA CONSTITUTION ARTICLES 1, §8, cl. 5 ; 3, §1 ; 4, §17 ; 5, §20 ; 6, §11 ; 6, §6 ; 15, §2 ; 16, §§1 and/or 2 ; 4, §23

(COUNT 2)

A) SENATE CONCURRENT RESOLUTION No. 1 (1957) HAS NO ENACTING CLAUSE AND VIOLATES JOINT RULES OF THE NEVADA SENATE AND ASSEMBLY

All written constitutions prescribe the mode and process of making laws. This includes the reading of the bill on three different days in each house, that if passed it is to be signed by the speaker of the house and by the president of the senate, the recording of the votes upon the journal, being signed by the governor, and other such procedures.

But the constitutions also regulate the form and style in which laws are to be enacted to make them laws of the State. The form and style are gregarded as essential parts of the law and thus must be included at all times with the law to make it a valid law. Laws or statutes traditionally have three main parts ;

The three essential parts of every bill or law

are: (1) the title, (2) the enacting clause, and (3) the body.[9]

We will first examine the enacting clause as this is the main item that directly relates to authority of law. An enacting clause, sometimes called an enacting style or enacting authority, is that part of a law which usually comes after the title and before the body of the law. The following shows the manner in which this provision is prescribed in Nev. Const. Art. 4, §23:

> The enacting clause of every law shall be as follows:
> "The people of the State of Nevada represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

The Supreme Court of Georgia in 1967, said that "the constitutions of 46 states specify the form of the enacting clause. Only the constitutions of Delaware, Georgia, Pennsylvania and Virginia, as well as the Constitution of the United States, are silent on the point." The Court also stated the function and purpose of such a provisions:

> The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity.*** The purpose of an enacting clause is to establish the act; to give it permanence, uniformity and certainty; to afford evidence of its legislative, statutory nature, and thus prevent inadvertance, possible mistake, and fraud.[10]

The enacting clause gives a statute its "constitutional authenticity,"

9) H. Walker, Law Making in the United States, p. 316. Some laws also have an optional "preamble".

10) Joiner v. State, 155 S.E. 2nd 8, 10, 223 Ga. 367 (1967)

which makes its use essential since the constitution is the source of the legislature's authority for enacting laws. A law cannot be regarded as coming from a constitutionally authorized source if it does not have an enacting clause. The enacting clause provides evidence that the law which follows is of the proper legislative source or jurisdiction. This function and purpose of such a constitutional provision has often been expressly stated:

> What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation."

> The enacting clause is a short formal statement, appearing after the title, indicating that all which follows is to become law, and giving the authority by which the law is made. There is no excuse for not using it.[12]

> The enacting clause is the section of a bill or statute which establishes the whole document as a law.[13]

> The enacting part of a statute is that which declares its enactment and identifies it as an act of legislation.[14]

Since the legislature, and not any other body or agency, is given certain law making authority, an enacting clause is necessary to show that the law in question comes from that duly assembled Legislature. If any law is to have authority behind it, it must have an enacting clause preceding it, as is required by the constitution and fundamental law.

The question has often been raised as to whether constitutional provisions that call for a particular form and style of laws, or procedure

11) Ferrill v. Keel, 151 S.W. 269, 272, 105 Ark. 380 (1912)

12) Harvey Walker, The Legislative Process, N.Y., Ronald Press Co. (1948), p. 346.

13) Pearce v. Vittum, 61 N.E. 1116, 1117, 193 Ill. 192 (1901)

14) State v. Reilly, 95 Atl 1005, 1006, 88 N.J. Law 104 (1915)

for their enactment, are to be regarded as directory or mandatory. The question is critical since its use will have an effect on the validity of a statute or law. If such provisions are directory, then they are treated as legal advice which those in government can decide whether or not to follow. But if mandatory such provisions must be strictly followed or else the resulting act or law is unconstitutional and invalid.

While a few courts at an early period held that such provisions were merely directory, the great weight of authority has deemed them to be mandatory. In speaking on the mandatory character of enacting clause provisions, one legal textbook states:

> "[T]he view that this provision is merely directory seems to conflict with the fundamental principle of constitutional construction that whatever is prohibited by the constitution, if in fact done, is ineffectual. And the vast preponderance of authority holds such provisions to be mandatory and that a failure to comply with them renders a statute void."[15]

When something is "directory" its usage is only an advisable guide, and can be ignored. But the requirement of an enacting clause is based upon its ancient usage in legislative acts.

> A declaration of the enacting authority in laws is a usage and custom of great antiquity, * * * and a compulsory observance of it is founded in sound reason."[16]

The Supreme Court of Illinois had under consideration an ordinance with no enacting clause. The Court expounded upon why the lack of the clause invalidated the law:

15) Ruling Case Law, vol. 25, "Statutes," § 84, p. 836.

16) Caine v. Robbins, 131 P.2d 516, 518, 61 Nev. 416 (1942).

Upon looking into the constitution, it will be observed that "The style of the laws of this State shall be: 'Be it enacted by the People of the State of Illinois, represented in the General Assembly.'" (Art. 4 §11). *** The foregoing sections of articles 3, 4, and 5, of the Constitution, are the only ones in that instrument proscribing the mode in which the will of the people, acting through the legislative and executive departments of the government, can become law. *** That these provisions, giving the form and mode by which, *** valid and binding laws are enacted, are, in the highest sense mandatory, cannot be doubted. *** Then it follows that this resolution cannot be held to be a law. It is not the will of the people, constitutionally expressed, in the only mode and manner by which that will can acquire the force and validity, under the constitution, of law, for this legislative act is without a title, has no enacting clause, *** and is sufficient to deprive this expression of the legislative will of the force and effect of law; and the same did not become, therefore, and is not, legally binding and obligatory upon the respondents.[17]

The court concluded that the constitutional provisions regulating the form and mode of laws, such as the enacting clause and title, are "essential and indespensable parts" of the process of making laws.

In a case in Nevada a law passed the legislature without a proper enacting clause, raising the question of whether the constitutional enacting clause was a requisite to a valid law. The Court said it was because the provision was mandatory.

> [T]he said section of the Constitution is imperative and mandatory, and a law contravening its provisions is null and void. If one or more of the positive provisions of the Constitution may be disregarded as being directory, why not all? And if all, it certainly requires no argument to show what the result would be. The Constitution, which is the paramount law, would soon be looked upon and treated by the legislature as devoid of all moral obligations, without any binding force and effect; a mere "rope of sand," to be held together or pulled to pieces at its will and pleasure. We think the provisions under consideration must be treated as mandatory.

[17] City of Carlyle v. Nicolay, 165 N.E. 211, 215, 216 (Ill.); affirmed, Liberty Nat. Bank of Chicago v. Metrick, 103 N.E.2nd 308, 310, 410 Ill. 429 (1951).

Every person at all familiar with practice of legislative bodies is aware that one of the most common methods adopted to kill a bill and prevent its becoming a law, is for a member to move to strike out the enacting clause. If such a motion is carried, the bill is lost. Can it be seriously contended that such a bill, with its head cut off, could thereafter by any legislative action become a law? Certainly not.[18]

This case was cited and approved by the Supreme Court of Michigan, which also stated:

> It will be an unfortunate day for constitutional rights when courts begin the insidious process of undermining constitutions by holding unambiguous provisions and limitations to be director merely, to be disregarded at pleasure.[19]

In Montana a case arose that involved a statute with a "defective enacting clause." The Supreme Court of Montana, after quoting the constitutional section relating to the enacting clause, held that:

> These provisions are to be construed as mandatory and prohibitory, because there is no exception to their requirements expressed anywhere in the Constitution. * * * We think the provisions of the Constitution are so plainly and clearly expressed and are so entirely free from ambiguity that there can be no substantial ground for any other conclusion than that Chapter 199 was not enacted in accordance with the mandatory provisions of that instrument, and that the Act must be declared invalid.[20]

18) Nevada v. Rogers, 10 Nev. 250, 255, 256 (1875); approved in Caine v. Rabbins, 131 P2nd 516, 518, 61 Nev. 416 (1942).

19) People v. Dettenthaler, 77 N.W. 450, 453, 118 Mich. 595 (1898).

20) Vaughn & Ragsdale Co. v. State Bd. of Equalization, 96 P2nd 420, 423, 424, 109 Mont. 52 (1939).

These provisions relating to the mode of enacting laws "have been repeatedly held to be mandatory, and that any legislation in disregard thereof is unconstitutional and void."[21]

While it has been well decided that the passage of a bill in the legislature without an enacting on the bill renders it void as a law, we need to consider the result of not using an enacting clause after it leaves the legislature. This is the important question today in light of the fact that the state "Codes" and "Revised Statutes" and the "U.S. Code" are publications which purport to be law, but which use no enacting clauses. Is a publication of a law without an enacting clause a valid and lawful law?

If laws are only required to have an enacting clause while in the legislative system, only to be thereafter removed, then what is their value and purpose to the public? If they are to serve as evidence of law's legislative nature, and as identification of its source and authority as a law, what good does that ~~found~~ function do only for the legislators? The vast majority of the public never sees the bill under consideration until it passes and is printed in public records or statute books. They generally only see the finished "law."

When we read the provisions which require an enacting clause, they say that "all laws shall...", or "the laws of this State shall..." They do not say "all bills shall..." The terms "bill" and "law" are clearly distinguished from one another in

21) State v. Burlington & M. R.R. Co., 84 N.W. 254, 255, 60 Neb. 741 (1900)

most constitutions in prescribing the procedure of the legislative process, such as:

"No law shall be passed except by bill"

"No bill shall become a law except by a vote of a majority."

"Every bill which shall pass both houses shall be presented to the governor of the State; and every bill he approves shall become a law."

A bill is a form or draft of a law presented to a legislature. "A bill does not become a law until the constitutional prerequisites have been met."[22] Thus a bill is something that becomes a law. Laws do not exist in the legislature, rather only bills do. Laws exist only when the legislative process is followed and completed as prescribed in the constitution.

Clearly, the legislature cannot enact a law. It merely has the power to pass bills which may become laws when signed by the presiding officer of each house and are approved and signed by the Governor.[23]

Since all constitutional provisions place the requirement of an enacting clause on "laws" it includes the statutes as it exists outside the legislative process, that is, as it is

22) State v. Naftalin, 74 N.W. 2nd 249, 261, 246 Minn. 181 (1956)

23) Vaughn & Ragsdale Co. v. State Bd. of Eq., 96 P2nd 420, 423 (1939)

published in statute books. We have to also regard the fundamental maxim which states: "A law is not obligatory unless it be promulgated."[24] An act is not even regarded as a law, or enforceable as a law, unless it be made publicly known. This is usually done through a publication by the proper public authority such as the Secretary of State. But a law is not properly or lawfully promulgated without an enacting clause or title published with the law.

Since the constitution requires "all laws" to have an enacting clause, it makes it a requirement on published laws as well as on bills in the legislature. If the constitution said "all bills" shall have an enacting clause, then their use in publications would not be required.

That published laws are to have an enacting clause is made clear by the statement commonly used by legal authorities that an enacting clause of a law is to be "on its face." To be on its face means to be in the same plain of view.

> face has been defined as the surface of anything; especially the front, upper, or outer part or surface; that which particularly offers itself to the view of a spectator.[25]
>
> The face of an instrument is that which is shown by the language employed without any explanation, modification or addition from extrinsic facts or evidence[26]

For the enacting clause to be of any use it must appear with a

24) Black's Law Dictionary, 2d edition, p. 826

25) Cunningham v. Great Southern Life Ins. Co., 66 S.W. 2nd 765, 773 (Tex. Civ. App.)

26) In re Stoneman, 146 N.Y.S. 172, 174.

PLEADING CONTINUES IN NEXT VOLUME