

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

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Elizabeth A. Brown
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THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL TODD BOTELHO,

Defendant.

Sup. Ct. Case No. 83996

Case No. CR03-2156

Dept. 1

RECORD ON APPEAL

VOLUME 3 OF 12

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MAR 31 2004

RONALD A. LONGTIN, JR., CLERK

By: DEPUTY CLERK

4185

JOAN MARIE DOTSON

CCR #102

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 BEFORE THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,
 Plaintiff,

Case No. CR03-2156

vs.

Department No. 3

MICHAEL TODD BOTELHO,
 Defendant.

TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTION

Thursday, March 11th, 2004

8:30 A.M.

Reno, Nevada

Reported by: JOAN MARIE DOTSON
 NV, CA AND UT CERTIFIED, REGISTERED PROFESSIONAL REPORTER
 Computer-aided Transcription

CR03-2156
 STATE VS. MICHAEL TODD BOTELHO
 District Court
 Washoe County
 03/31/2004 01:54 PM
 4185

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1 THURSDAY, MARCH 11TH, 2004; RENO, NEVADA

2 --oOo--

3 THE COURT: Good morning. Be seated. This is
4 CR03-2156, State of Nevada verses Michael Todd Botelho. And
5 this is the time set for the hearing on the defendant's --
6 well, actually it's -- it's the defendant's motion that we
7 will be entertaining at this particular time.

8 Because in their opposition they made
9 requests for affirmative action by the Court. And that would
10 be the second request. Furthermore, the defendant
11 respectfully requests that this court enter an order sealing
12 all papers, pleadings, motions and transcripts pertaining to
13 this present issue.

14 And I took that also to mean this hearing.

15 MR. SULLIVAN: Correct, your Honor.

16 THE COURT: All right. So we will address that
17 portion first because, as you are aware, the press is outside
18 waiting to see what is going to happen. And, if I find in
19 your favor, then we are going to take a recess for about an
20 hour or so and they are going to gather their first amendment
21 forces and present arguments to the court too. So --

22 MR. SULLIVAN: Okay. Thank you, Judge.

23 Your Honor, it is my understanding that
24 myself and the State, Mr. Hahn, we were notified at about

1 4:45, 5:00 p.m. by your administrative assistant last night
2 of the press wanting to come this morning.

3 I just want to make a few brief points about
4 that. First and foremost, your Honor, I believe that having
5 the press here will undercut or thwart all of what I am
6 trying to do today which is, if your Honor rules in my favor,
7 recuses himself and then have this matter sealed and
8 transferred to another court. It's safe to say that other
9 sentencing judges read the paper in this community and they
10 might also be tainted by reading any accounts of this case.
11 And we would like this matter to be sealed and all the papers
12 and pleadings and certainly to exclude the press in this
13 area.

14 Secondly, I think my client has an
15 underlying due process concern that's present today. I
16 believe that the press did not comply with Supreme Court
17 rules which say they must give the Court a certain time line
18 notification when they want to appear.

19 THE COURT: Cameras.

20 MR. SULLIVAN: Cameras. Exactly. And I believe it was
21 SCR-230. I am not entirely sure.

22 Third, your Honor, the third point I am
23 trying to make ties basically in with my second point. It is
24 just basically we did not have proper notification, and thus

1 we did not have adequate time to basically prepare for this
2 type of issue to have it fully briefed.

3 THE COURT: Well, you don't have a say in that.

4 MR. SULLIVAN: Certainly.

5 THE COURT: That's strictly up to the court under our
6 Supreme Court rules.

7 MR. SULLIVAN: Certainly, your Honor, I would like to
8 have -- filed something with the court or gave some type of
9 advisory opinion as to what our position would have been. I
10 understand it is certainly up to the court. And it's
11 certainly your decision.

12 But receiving the notification on the eve of
13 the motion hearing I just don't think the press -- they must
14 follow the rules, your Honor, including whether or not they
15 did not follow the rules in this case. And I think my
16 client's rights are at stake here and I certainly -- I
17 respect the press and I understand that they have a first
18 amendment issue.

19 However, I am -- I am fighting for my client
20 to have a fair and impartial tribunal sit at his sentencing.
21 And that's certainly my overriding concern. And I would
22 certainly -- not want to jeopardize my client's rights when
23 it comes to sealing this matter and having, if the court
24 chooses, another sentencing court to sit in sentencing -- in

1 judgment of this particular individual having them reading
2 the accounts.

3 THE COURT: Let's stick with the sealing portion
4 because, if you prevail, then you will get what you want.

5 MR. SULLIVAN: Well, the -- concerning the sealing,
6 Mr. Hahn made a point in his opposition to my motion that I
7 never relied on any authority. And I don't think that's
8 true. The authority that I am relying on is actually the
9 case law that I cited and the applicable statutes for the
10 privilege itself. That's the authority I am using for
11 sealing this matter.

12 That your Honor can always recuse himself or
13 herself, if he or she believes that he or she cannot be fair
14 and impartial. That's the remedy I am seeking. So the
15 authority for my motion is the marital communication statutes
16 that I have cited and the case law. The remedy is sealing it
17 because the cat -- the proverbial cat has been let out of the
18 bag and the information was put in the State's notice of
19 intent to introduce prior bad acts.

20 The State simply could have just said in its
21 notice of intent to introduce prior bad acts, "We intend to
22 call Melissa Botelho to testify about certain statements made
23 during the course of the marriage," end of story.

24 Nevertheless, they chose to actually

1 delineate what Melissa Botelho was going to testify about.
2 And I think that basically memorializes the State's position
3 and the bell cannot be unrung at this point. So I am -- the
4 remedy is sealing, recusing and transferring to another
5 court. I don't believe -- your Honor can certainly run his
6 court as he sees fit. So the authority that I have cited, I
7 will stand behind the authority that I have already cited.

8 THE COURT: What's the authority for sealing? What's
9 the authority for sealing?

10 MR. SULLIVAN: Your Honor, it's -- analogous to us
11 sealing transcripts when we have substantial assistance
12 clients. We don't want the public or anyone else involved
13 with the case to have access to that type of information.

14 THE COURT: Why?

15 MR. SULLIVAN: Because -- it would thwart our efforts
16 today if your Honor thinks, "Yeah, Mr. Botelho, you did have
17 a statutory right to invoke the marital communication
18 privilege and I have already heard the information prior to
19 even coming to court today and entertaining this motion
20 hearing. I have already read it in the State's notice of
21 intent to introduce the evidence, so it's already in my
22 mind. So, therefore, I want to seal it because I want to
23 make sure, to ensure that no other court is going to open the
24 file and have this motion in front of them and read it and be

1 tainted as well."

2 And that's the purpose for sealing all the
3 documents concerning this issue.

4 THE COURT: I am missing something, Mr. Sullivan. I'm
5 sorry. I am trying to segregate the arguments. And you keep
6 bringing them all back. So your position is that they cannot
7 be separated. They are all -- intertwined.

8 But let me ask you directly. What authority
9 do you have to seal these criminal proceedings?

10 MR. SULLIVAN: And, like I said before, the authority I
11 would have is that your Honor has the innate or inherent
12 authority to seal any document he or she believes will --
13 should not be accessible to the public or any other persons
14 involved in these proceedings.

15 And, like I said before, your Honor will
16 routinely seal transcripts during the criminal calendar when
17 it believes that the public should not learn about a
18 substantial assistance client. So the authority I am relying
19 on is I still stand behind the statutes themselves and the
20 case law.

21 THE COURT: Isn't there a -- a practical reason for
22 that? I mean, if somebody is convicted of a -- or, yeah,
23 accused of trafficking, that has a mandatory punishment
24 requirement.

1 MR. SULLIVAN: Sure.

2 THE COURT: And the only way that they could even give
3 themselves an opportunity for probation or if they start at a
4 level three an opportunity for lesser punishment is by
5 turning in somebody else or giving information that will lead
6 to the conviction or prosecution of somebody else. So since
7 the prison system is the receptacle of all people that are
8 convicted that don't get probation, they run the risk of
9 going to the same place that they are bringing -- or sending
10 or helping to send somebody in advance of their placement
11 there.

12 So that is the reason, as I understand it,
13 why we would tend to go ahead and seal that type of
14 proceeding.

15 But that is a singular type of proceeding.

16 This is an ordinary criminal case. I don't
17 see the -- what's beneath --

18 MR. SULLIVAN: Your Honor, you would agree with me, all
19 the motions and oppositions to the motions were filed within
20 the Court Clerk's jurisdiction and they are sitting in your
21 court's file right now.

22 THE COURT: Right.

23 MR. SULLIVAN: If this matter -- if you believed, your
24 Honor, that you had learned information and you could not

1 separate yourself from that information and be fair and
2 impartial during the sentencing, then you would agree that
3 this matter could be transferred to another department with a
4 random assignment. We don't know who the other Judge would
5 be.

6 That file would then be transferred to that
7 department through the clerk's office. And the only way we
8 can ensure that these motions -- are not read by the
9 sentencing court -- because, if they are read by the next
10 sentencing court, well, then we are back to square one, are
11 we not?

12 The next sentencing court reads this notice
13 of intent and reads all the other oppositions therewith, they
14 are going to be in the exact same position that your Honor is
15 in. And I'll be arguing the exact same arguments in front of
16 that sentencing court. So for the sake of --

17 THE COURT: You are still not answering my question.

18 I think I hear what you are saying. And,
19 again, I imagine we are talking to the appellate record.

20 So let me give you my thoughts on that and
21 they can tell me if I am right or wrong in my interpretation.

22 When a court has information that it uses
23 for a sentencing and the Supreme Court overturns that
24 sentencing -- let's say -- the most common area is the breach

1 of plea negotiations, all right, and it goes up -- he gets
2 sentenced. It goes up and it comes back down. And sometimes
3 the Supreme Court says transfer to another department.
4 Sometimes they don't.

5 Okay. Sometimes the sentencing Judge takes
6 it upon themselves.

7 Now, I am of the impression that the reason
8 that is done is that they feel that because you had that
9 information, you acted on it, and then the higher court said,
10 "Hey, you shouldn't have done that. You were wrong." That,
11 if they sent it back to that Judge, he may have a personal
12 stake in it at that point and say, "Well, okay. I'll
13 disassociate myself from that knowledge and I'll give you the
14 same sentence. What do you think of that?"

15 Now, that is the only explanation I have.
16 Because legally a Judge is presumed to perform his or her
17 duties in an impartial and fair manner.

18 Because if it became apparent that they
19 cannot do that, they would be removed or there would be
20 complaints filed against them.

21 MR. SULLIVAN: Sure.

22 THE COURT: Saying, "Look, he is unfair. She is
23 unfair."

24 In fact the case law says a Judge is

1 presumed to be impartial and the party asserting the
2 challenge carries the burden of establishing sufficient
3 factual grounds warranting disqualification.

4 MR. SULLIVAN: Your Honor, I guess the point I am
5 trying to make is we never even got a chance as a defense to
6 invoke this privilege. The privilege was taken away from us
7 by the State by them filing this notice of intent, so we
8 never even had a chance to exercise our statutory right to
9 invoke this privilege because normally the State would call
10 the victim at sentencing or at trial and we would say, "Hold
11 on, your Honor. Before this victim -- excuse me, before this
12 witness testifies, we are going to invoke this privilege."

13 So we don't want anyone, the Judge, the jury
14 or anyone else to hear what's -- about to come out of this
15 witness's mouth.

16 THE COURT: Okay. So -- now I hear you say that the
17 reason you want this sealed is because it's your position
18 that the State is invoking that -- what to you is a violation
19 of the marital privilege?

20 MR. SULLIVAN: Exactly.

21 THE COURT: Okay. And you don't want those facts to
22 be broadcast.

23 MR. SULLIVAN: These facts should have never been aired
24 to begin with. Exactly. That's my position. And to short

1 stop the facts -- short stop this from going any further down
2 the line and having other judges or other court personnel
3 reading these facts, I am trying to short stop it right now
4 with my motion in today's proceedings. And I think sealing
5 it or even striking it from the record would accomplish that
6 end.

7 THE COURT: Well, that's -- presuming that you are
8 correct in the law that this is a proper subject of the
9 privilege.

10 MR. SULLIVAN: Correct. Correct.

11 THE COURT: Okay. So that's the only reason that you
12 are requesting it be sealed?

13 MR. SULLIVAN: Well, other than the -- other than the
14 fact that we are contesting the allegations themselves. We
15 don't believe them to be true. And we will -- if necessary,
16 if this either comes before your Honor or if this comes
17 before another sentencing Judge, we will certainly address
18 the merits of the allegations themselves.

19 We don't believe these allegations to be
20 true at all, the allegations that the State made concerning
21 the deviant sexual fantasies which I reference in my motion.
22 But I think that's something for whether or not -- yeah, the
23 merits of the issue. We are getting into a different area.

24 THE COURT: All right. Let me hear from the State.

1 Mr. Hahn.

2 MR. HAHN: Your Honor, our official position is that if
3 the press wishes to be here we believe they are entitled to.
4 The point that I tried to make in my opposition is that there
5 is no authority whatsoever that's offered for this. It's
6 just kind of an inherent powers kind of thing. So with
7 regard to that, Judge, I have just a couple of comments.

8 I don't see this as a constitutional
9 magnitude and I see absolutely nothing that has been offered
10 by the defendant to trump any rights or privileges that the
11 public has to this proceeding.

12 They are not articulated, nor is there any
13 bases to articulate nor is there any bases that is
14 articulated for sealing. And the Court obviously picked up
15 on that in my response.

16 Judge, I would simply offer for the Court
17 one additional reason for the analogy that the defense offers
18 about substantial assistance.

19 Well, not only is it to try and offer some
20 type of protection of the inmate when he goes down to the
21 yard, but you are also talking about protection of the
22 officers, C.N.U., when they go back out on the street or a
23 SET team or whatever in fact it may be.

24 If these people's names show up in the

1 record, someone might catch their face and now them and their
2 families are in danger. So it is a much greater issue
3 involved there. So I don't find their analogy compelling.

4 The last point, Judge, that I have is that
5 with regard to the notice, I want to encourage the defense
6 not to be too downcast that we offered formal notice, because
7 it seems like we are in a whip saw. If the State doesn't
8 offer formal notice and specify exactly what we want to offer
9 and put the Court on notice ahead of time, then we are
10 damned.

11 And, if we do offer everything that we are
12 going to do, then we are damned too because somehow that's
13 going to be prejudicial and will improperly taint every Judge
14 that sits. I just don't see that, Judge. I don't see the
15 same issues Mr. Sullivan does. Having said that, I will
16 submit it on my motion.

17 THE COURT: All right.

18 Mr. Sullivan, you get the last word.

19 MR. SULLIVAN: Thank you, Judge. Your Honor,
20 concerning Mr. Hahn's last point, damned if you do, damned if
21 you don't, if I understand his argument correctly, giving
22 notice, they could have simply just said -- we are hereby
23 giving notice that we intend to call this witness to testify
24 about everything she said, anything or everything she said

1 during her interview with the police officers.

2 I have the transcript of her interview with
3 the officers. So they don't need to actually put in there
4 the deviant sexual fantasies that we are going to be talking
5 about. They can just say, "Hey, we are referring to anything
6 in that interview transcript when the officers interviewed
7 her." That's fair game. That's what we will be talking
8 about. That would -- your Honor does not have that interview
9 transcript. And so that would at least give me enough notice
10 to cull over the interview transcript and say, "Ha, ha, here
11 we go. This is stuff where my client has a marital
12 communication privilege and I am going to object to it."

13 And the second they called her up to the
14 stand I could have objected and made my objection for the
15 record. They didn't do that. They chose to go the other
16 route. They chose to actually tell the Court what they are
17 going to be calling the witness for and putting it on the
18 record. And I think that's improper, your Honor. I think
19 that violates the statutory right. Plain and simple. And
20 I'll submit everything else upon my motions.

21 THE COURT: All right.

22 All right. In looking at the pleadings and
23 in getting a firm grasp of what it was, the position that you
24 were taking, I agree with the State that the case isn't of

1 constitutional proportions.

2 So it's denied. So with that, the press can
3 come in.

4 MR. SULLIVAN: And, your Honor, I just want to lodge my
5 objection. I am sure it's already been lodged. But for the
6 purpose of this proceeding I would lodge any objection to the
7 press coming in at today's proceedings.

8 (At this time the press entered the courtroom.)

9 THE COURT: Now, counsel, let's take up with the issue
10 of recusal.

11 There is set out in the statute procedures
12 for disqualifying a Judge.

13 And those procedures were not followed.

14 Because, had they been followed, then I
15 wouldn't be sitting here talking as I am talking now.

16 Okay. Because once the procedures are
17 followed, then I am -- restrained from participating further
18 in the case.

19 I read your motion as, "Judge, once you hear
20 all this, you will have to come to the humanitarian
21 conclusion that it is so packed with things that would
22 necessarily prejudice an individual and you, being that type
23 of individual, you are going to be prejudiced so much that
24 you couldn't fairly sit and hand down a sentence."

1 And is that what you are asking?

2 MR. SULLIVAN: I just think the nature of the
3 allegations that have been alleged by the State are so
4 damning and prejudicial certainly -- when taken in light with
5 the underlying facts of this case -- I mean, the facts speak
6 for themselves. When you couple those facts with these --
7 these allegations that the State has made in their notice of
8 intent to introduce prior bad acts at the sentencing, I think
9 then it become virtually impossible for any person to
10 disassociate those facts from the facts themselves because
11 it's so -- inflammatory.

12 And that's why we have -- that's why we
13 don't show juries certain pieces of evidence because it's so
14 inflammatory that they just basically cannot disassociate
15 themselves from such a passionate argument or passionate or
16 overwhelming piece of evidence.

17 THE COURT: But aren't judges supposed to be above
18 that? I mean, we rule on evidentiary matters everyday. We
19 exclude confessions and sit on a trial and know they already
20 confessed to their guilt.

21 By your logic or your argument, that should
22 prejudice us against the defendant. And, once we exclude, we
23 can no longer sit on those cases. And it doesn't happen that
24 way.

1 MR. SULLIVAN: Well, your Honor -- and that's a good
2 point. You make a very good point. But that's why I raise
3 in my motion NRS 49.405(1) and Hylton verses State. It seems
4 to me that the State legislature and the Nevada Supreme Court
5 did not want the State or the Judge to even comment on my
6 client invoking his marital communication privilege.

7 They don't want the State or the Judge to
8 even make reference to the fact that my client invoked his
9 marital communication privilege. And my client never even
10 got the chance to invoke the privilege. His hand was forced
11 prior to the sentencing proceedings and that's why we had to
12 bifurcate these two issues. So as far as -- as far as the
13 defense is concerned, he was robbed of his statutory right to
14 invoke the privilege.

15 THE COURT: But isn't that statute or that section of
16 the evidence code, doesn't that refer in analogy to the right
17 of the defendant to remain silent? They can't argue to a
18 jury and they can't draw an inference that there is something
19 the matter with not having taken the stand.

20 MR. SULLIVAN: Are you referencing 49.405, your Honor?

21 THE COURT: Yes.

22 MR. SULLIVAN: It says, "The claim of the privilege
23 where in the present proceeding or upon a prior occasion is
24 not a proper subject of comment by the Judge or counsel, no

1 inference may be drawn therefrom."

2 So it seems to me that they don't want
3 this -- whether it be at trial or whether it be at
4 sentencing, the courts and the legislature don't want them
5 to -- they don't want the Court or the State to basically
6 hold it against my client because he decided to invoke this
7 privilege. And that's the way I read it. And they are very
8 careful to -- including Hylton, where it says it's even
9 improper for the State to intend to call the defendant's wife
10 as a witness in violation of 49.295. And it's misconduct,
11 reversible error for the prosecutor to comment or make the
12 impermissible inference.

13 THE COURT: Right.

14 MR. SULLIVAN: They go to great lengths to guard that
15 privilege. Yet when the information concerning the privilege
16 is let out and disseminated to the court and to everyone else
17 prior to my client even getting the chance to stand up at
18 sentencing in court and say, "I am invoking my privilege. I
19 don't want her to even take that witness stand and say one
20 word," well, then nobody would have known what was to be
21 said.

22 And that's the reason why the Court, the
23 legislature have carved out -- carefully carved out these
24 exceptions and these rules. They don't want -- that being

1 the case, I don't want people to say, "I wonder what she was
2 going do say? And I wonder why that particular individual
3 had to invoke that privilege?"

4 Because now we are left with that -- that
5 hanging question mark in our mind, "What was that witness
6 going to say that was so important that he had to invoke that
7 privilege?"

8 That is why I think the case law and the
9 legislature speaks to that.

10 THE COURT: Okay. Let's stay with that thought.
11 Don't judges do that all the time? I mean, that's what we
12 do. When we rule on evidentiary matters, we don't sit and
13 wonder, "Now, if I overrule that objection or if I sustain
14 that objection, I wonder what they were going to say?"

15 I mean --

16 MR. SULLIVAN: Certainly, your Honor.

17 THE COURT: We don't do that.

18 MR. SULLIVAN: Certainly, if we were at trial right now
19 and Mr. Hahn -- I am not saying that he would -- but, if
20 Mr. Hahn asked a question of a witness that I thought was
21 improper and inflammatory, hearsay, whatever, I would
22 immediately jump out of my chair and say, "Objection, your
23 Honor. That's hearsay. The jury can't hear it. You know,
24 and your Honor can't hear it," or whatever.

1 The point is being made that we as a defense
2 need to short stop the issue before the jury or your Honor
3 hears it. How can we short stop the issue when it's already
4 been presented to the court? We can't. So that is why the
5 remedy was -- having the matter transferred.

6 THE COURT: Again, Mr. Sullivan, how can you keep the
7 Judge out of that loop? How do you do that?

8 MR. SULLIVAN: You are right.

9 THE COURT: Motions in limine, motions to bring in
10 prior acts, you all have to advise the Court that this is
11 what you want to bring in so the Judge necessarily -- because
12 of his position, has to rule on whether or not it's going to
13 be admissible. So we are involved in every evidentiary
14 proceeding in every case. How can you say, "Once you are
15 told about it, Judge, therefore you can no longer sit and
16 adjudicate?" I have a tough time with that, counsel.

17 MR. SULLIVAN: Your Honor, that's a good point. Maybe
18 my arguments are a little bit circular. But the point I am
19 going to make is this.

20 Number one, there are certain things that
21 the Judge hears that he has no choice but to hear to rule on
22 the evidence, whether it be in a drug case or whether it be
23 in a domestic battery case. He has to know something about
24 the facts that counsel are arguing about before he can make a

1 legal decision or determination and then pass down judgment
2 on it and then the counsel will act accordingly.

3 That wasn't -- that opportunity wasn't
4 presented here. The point I am trying to make is that the
5 State never even gave you a chance -- a chance to basically
6 decide whether or not you even need to hear the comments.

7 Because don't you think you could still rule
8 on whether or not Miss Melissa Botelho, the ex-wife of my
9 client, could have taken that witness stand at the sentencing
10 without even hearing the -- the deviant sexual fantasies in
11 question because you would certainly look at the statute,
12 look at the exceptions. All you need to know is that there
13 are communications made between my client and the ex-wife.

14 Do you really need to know the specifics of
15 the communications to make a ruling on that? No, you do
16 not. I would submit that you do not.

17 All you would do is apply the law as to the
18 fact pattern and say, "Well, were you married? Was the
19 couple married on or before these communications were made?
20 Do any of these exceptions apply? Were the communications
21 ever waived by presenting it to a third party or was that
22 third party present to where the communication was ever
23 waived?"

24 But do you really need to know the specifics

1 of the communication to make a legal determination as to
2 whether or not this statute applies? I submit you do not.

3 THE COURT: Well, suppose I do. How does that
4 disqualify me from making the decision?

5 MR. SULLIVAN: Well, that would be a point to where we
6 would get up to the -- we would argue on, argue on, argue up
7 to the crux and you say, "Counsel, I will have to hear what
8 the statements are before they come in." Certainly we could
9 have went one avenue or the other avenue and made more
10 arguments.

11 But simply by the fact that the State chose
12 to just interject the statements right off the bat, it leaves
13 the defense at a loss as to how to proceed. It leaves the
14 defense -- scrambling to invoke the privilege after the fact,
15 which I don't think is proper.

16 THE COURT: Well, maybe we are getting ahead of
17 ourselves. Do you agree with me or disagree with me that the
18 procedure to disqualify me from sitting on this case further
19 has not been followed?

20 MR. SULLIVAN: Well, I would have to know exactly what
21 procedure your Honor is referencing. I think that -- this is
22 unusual.

23 THE COURT: The statute, the grounds for disqualifying
24 a Judge, NRS 1.230 and 1.235, procedure for disqualifying a

1 Judge, do you have a problem with that?

2 MR. SULLIVAN: The reason why I wanted to have your
3 Honor decide the merits of the motion and bifurcate the issue
4 is for the very reason that I didn't want to be arguing this
5 in front of another Judge. I want you to make a
6 determination because you have already heard the evidence and
7 then you have yourself recused because of not being able to
8 disassociate yourself from the statement. So I guess I am
9 waffling on the issue.

10 But, no, we didn't follow the procedure.
11 But I don't think that this was the type of case that we knew
12 beforehand you were going to have to recuse yourself. It's
13 because the State made the first blow and we had to respond
14 to it. This isn't a timeliness thing.

15 THE COURT: I am not talking about the timeliness of
16 the request, okay. I will grant you that -- without finding
17 that it's final -- that you have got an argument that it is
18 timely. So I am not talking about that aspect of it.

19 MR. SULLIVAN: Okay.

20 THE COURT: I am talking about the other aspects of
21 it. What I heard you saying, counsel, is there are some
22 cases that judges just can't sit on because they are so
23 inflammatory. And I do not see this as that kind of case.
24 It's a kidnap-rape of a child. That's what it is. And I

1 don't mean to be jaded by saying that. But this is that kind
2 of a case.

3 The Montessori case, when you had
4 eighty-five alleged victims, you know, of five, six, seven
5 years old, there was a lot of passion.

6 And besides, counsel -- and again I didn't
7 want to get ahead of myself. I happened to read this --
8 before I read your motions in anticipation of the sentencing.

9 And what you are saying that they did --
10 they being the State -- he admitted in his statement. So I
11 don't understand the problem that you have here.

12 MR. SULLIVAN: I'm sorry?

13 THE COURT: Did you read his statement?

14 MR. SULLIVAN: Yes, I did. Actually I am missing a
15 page in the statement, but I have been trying to get pages.
16 But I have read the bulk of the statement, save and except
17 the pages I am missing.

18 To my knowledge, my client never admitted to
19 having deviant sexual fantasies against -- raping or
20 dismembering a fourteen-year-old child to the police or to
21 anyone else.

22 THE COURT: I don't know what you are referring to
23 when you say -- deviant sexual --

24 MR. SULLIVAN: I am saying what the State is alleging

1 in their motion.

2 THE COURT: -- sexual fantasies. But if you look at
3 his statement, line nine on page one, he talks about
4 fantasies; that he acted out a fantasy. Now --

5 MR. SULLIVAN: Your Honor, the State is saying that my
6 client expressed deviant sexual fantasies to his ex-wife
7 about raping and dismembering a girl. Unless that is in his
8 statement, I think we are talking about apples and oranges.

9 THE COURT: Dismembering is not in the statement. The
10 other thing is.

11 MR. SULLIVAN: He talked about having sex with underage
12 children? And, like I said, I have already expressed to the
13 State that I am missing pages from his statement.

14 THE COURT: "I had this stupid fantasy about being with
15 a baby-sitter and I let it get away from me and obviously did
16 what I did and will never forgive myself..."

17 MR. SULLIVAN: Wait a minute. Baby-sitter doesn't say
18 a fourteen-year-old girl or minor. The baby-sitter could be
19 eighteen years old.

20 THE COURT: Are you saying that specifically? You are
21 arguing about the specifics?

22 MR. SULLIVAN: Absolutely. It's all in the specifics.

23 THE COURT: "I had a fantasy, one of which, by the way,
24 wasn't really a serious one. Well, I got the name of the

1 baby-sitter ... I never dreamed I would actually follow
2 through," on the fantasy.

3 MR. SULLIVAN: Your Honor, baby-sitter does not say --
4 does not equate to minor child.

5 THE COURT: She was picked up for baby-sitting
6 purposes.

7 MR. SULLIVAN: The State is alleging that he had
8 deviant sexual fantasies. They allege in their motion that
9 he wanted to rape and dismember a child. Nowhere in that
10 statement does he say, "I had deviant sexual fantasies about
11 raping and dismembering a child."

12 THE COURT: Granted.

13 MR. SULLIVAN: That's all I am trying to do. I am
14 trying to basically preserve a fair and impartial sentencing
15 today for my client.

16 THE COURT: All right. But we are still at the
17 disqualification stage.

18 And the reason I am sitting on this is
19 because you did not follow the proper procedure. So then I
20 guess --

21 MR. SULLIVAN: And, your Honor, my response to that is,
22 if your Honor feels that he can be fair and impartial, then
23 that's fine with me. I respect that decision. I will
24 wholeheartedly respect that decision, if you make a ruling --

1 if you say, "Mr. Sullivan, I have read your points and I
2 considered your points. I have read the State's points. But
3 I believe I can be fair and impartial sitting in judgment of
4 this man. And I can disassociate any statements that were
5 not supposed to come in, whether it be through the ex-wife,
6 the detective or anyone else that I should not consider. I
7 will not consider those points at sentencing," then I can
8 live with that.

9 THE COURT: I do that everyday.

10 MR. SULLIVAN: I know you do, Judge. And I want to
11 bring it to your attention and make a record of all this
12 because -- as well you know, attorneys nitpick and dissect
13 every minutia of the law.

14 THE COURT: That's your function. That's your
15 function. But my function is to sit and do the best job that
16 I can with my training and my background and what I bring to
17 the table. And I have done that in every other case. And I
18 see no reason why that can't be the case in this case. If
19 you want an assurance that I believe I can do it, I know I
20 can do it.

21 MR. SULLIVAN: The other point I want to put on the
22 record is a lot of times -- maybe the Court would agree with
23 me. I don't know. A lot of times when you make those legal
24 determinations as to whether certain pieces of evidence would

1 come in, they are sanitized and they concern other types of
2 cases.

3 When you are dealing with a case such as
4 this one, everyone in this room will concede that a sexual
5 assault upon a fourteen-year-old child is a heinous act in
6 and of itself. The facts speak for themselves. It's
7 atrocious. We agree. We are not here to argue that today.

8 What we are here to argue is that when you
9 have those inflammatory facts already and then you couple
10 them with even -- what I would consider even more -- more
11 inflammatory facts that should not have been entered into the
12 equation or the mix for the judges' consideration, I think it
13 heightens the situation to a whole new level.

14 We are not talking about a drug case or even
15 an armed robbery case or something else. That's why I am
16 trying to make the argument that this is such a unique
17 situation. And I just wanted the Court to consider that
18 point.

19 THE COURT: All right. Mr. Hahn?

20 MR. HAHN: Three points. As you have indicated, we are
21 speaking specifically about recusal. The proper protocol
22 hasn't been followed. The Court has already observed that.

23 Your Honor, second, the case law is clear
24 that the defendant bears the burden of proof to demonstrate

1 that a particular court cannot be fair and impartial. And I
2 have heard absolutely nothing to articulate that you cannot
3 be fair and impartial. So they failed their burden of
4 proof.

5 Third, your Honor I will simply rely upon
6 the opposition that I have already submitted dealing with
7 refusal. Thank you.

8 THE COURT: And that part of the motion is denied.

9 Okay. That brings us to the State's motion,
10 the request to admit the testimony of the ex-wife.

11 Now, is this ex-wife the former wife or the
12 one that was -- he was married to when he was arrested.

13 MR. SULLIVAN: This is Melissa Botelho. She is the
14 ex-wife, the former wife who lives in Anchorage, Alaska.

15 THE COURT: This is the mother of the two --

16 MR. SULLIVAN: He has two children with this particular
17 person, yes.

18 THE COURT: All right.

19 MR. SULLIVAN: And, your Honor, basically you have read
20 the State's notice. You have read my opposition.

21 THE COURT: He is the movant on that.

22 MR. SULLIVAN: Okay.

23 THE COURT: Let him go first.

24 MR. HAHN: Your Honor, again I am going to primarily

1 rely upon my reply because I believe there is a statutory
2 exception for this. And having said that, I stand ready to
3 answer any questions.

4 THE COURT: All right. Well, give me the statutory
5 exceptions that you believe qualify as to --

6 MR. HAHN: There is only one. There are five possible
7 exceptions that are identified. And what I have pointed out
8 in my motion specifically --

9 THE COURT: Excuse me. Did you -- there was a case
10 that was just decided by the United States Supreme Court
11 yesterday or the day before.

12 MR. SULLIVAN: Crawford verses Illinois? I'm sorry, I
13 am thinking of something else.

14 THE COURT: It had to do with a confrontation clause.
15 They overruled Ohio v. Roberts.

16 MR. SULLIVAN: That is Crawford verses Illinois. We
17 are on the same page.

18 THE COURT: Crawford verses Illinois?

19 MR. SULLIVAN: Yes.

20 THE COURT: All right. Anyway, they sort of, as I
21 read it, narrowed the -- areas where out-of court statements
22 can come in.

23 And they didn't specifically address the
24 marital testimony or communicative privilege. But,

1 nevertheless, they are talking about hearsay statements and
2 the right to confront. And that plays into this somewhat
3 because, if you bring that in -- but again we are at the
4 sentencing stage. We are not at the guilt stage. So the
5 rules that you point out in your Points and Authorities are
6 relaxed.

7 And I will get back to you.

8 Let me hear from the opposition.

9 MR. SULLIVAN: Thank you, Judge. Judge, it is my
10 understanding that the State's sole contention is that the
11 statutory marital communication privilege set forth in NRS
12 49.295 does not apply because of 49 point -- 49.295(2)(e)(1),
13 which is the exception.

14 And it reads as follows: "Neither a husband
15 nor a wife can be examined during the marriage or afterwards
16 without the consent of the other as to any communication made
17 by one to the other during the marriage. The provisions of
18 subsection one do not apply to -- and here is the exception
19 that the State is hanging their hat on -- criminal
20 proceedings in which one spouse is charged with -- a crime
21 against the person or the property of the other spouse or of
22 a child of either or of a child in the custody or control of
23 either, whether the crime was committed before or during the
24 marriage."

1 And I don't think that this statute -- this
2 exception to this statute applies at all. And I have three
3 main points for that. The State goes to great lengths to
4 talk to your Honor in its motion about strict interpretation
5 of the statute.

6 Well, your Honor, as you can see, this
7 clearly is talking about a family or domestic type
8 situation. Just a plain reading of the statute. It's
9 talking about whether or not one spouse or the other spouse
10 had custody or control or it was a child of them. It's
11 talking about the domestic type relationships because it
12 could have been a stepfather. It could have been a
13 stepmother. It could have been -- there are all sorts of
14 family and domestic relationships.

15 So the legislature clearly is talking about
16 a family or domestic type relationship when they made this
17 exception.

18 Furthermore, if the State relies on strict
19 interpretation of the statute -- however, yet in its footnote
20 it says, "Well, your Honor, disregard the last part of the
21 sentence, whether the crime was committed before or during
22 the marriage. The crime was committed after the marriage."

23 But they don't want you to consider that,
24 Judge. So if they are relying solely on a strict

1 interpretation of the statute, they have to concede a plain
2 reading of it. In a strict interpretation of the statute, it
3 does not apply because it's talking about a family
4 relationship. And the crime was committed after the
5 marriage.

6 My second point, your Honor, is I don't know
7 if your Honor is familiar with Peck verses State. It's 116
8 Nevada 840, decided August 24, 2000.

9 I didn't have a chance to basically reply to
10 the State's reply, so I figured I could bring it up in
11 today's proceedings.

12 But what's interesting about Peck verses
13 State, the defendant in that case accosted a young female
14 victim at a UNR football game. The young lady was urinating
15 behind some bushes out there at Mackay Stadium. And the
16 defendant comes up behind her, grabs her around the throat,
17 tells her he has a knife and drags her away and then sexually
18 assaults her behind these bushes.

19 Clearly in that case the State must concede
20 that the defendant had custody and control over the victim as
21 the State is alleging in their motion today.

22 However, the Supreme Court decided that the
23 reason why the marital communication privilege did not apply
24 was not because the defendant had custody and control over

1 the young female victim and that the exception basically
2 swallowed up the entire statutory privilege of marital
3 communication. They didn't make that determination.

4 What they hung their hat on was Peck's wife
5 failed to -- she waived her privilege when she testified in
6 the case. She never invoked it. And likewise Peck himself,
7 the defendant, waived his privilege to prevent his wife from
8 testifying by not specifically stating his objection prior to
9 her testimony.

10 They never went into this analysis --

11 THE COURT: What did she testify about?

12 MR. SULLIVAN: She testified -- basically Peck was
13 found in the bathroom when the cops came to their residence
14 and she made some statements about his whereabouts. It
15 really doesn't get into more than that.

16 But she made some incriminating statements
17 against him and where he was hiding. And she lied initially
18 to the officers. And then she told a different story and
19 they called her to testify.

20 But the Supreme Court said, "You waived the
21 privilege because you both -- you both never invoked it. You
22 both had a privilege and you never invoked it."

23 They didn't get into this whole analysis,
24 "Wait a minute. There is an exception. And because the

1 defendant had custody and control over the victim, therefore,
2 the privilege has been waived." They never even talked about
3 that because it simply does not present itself. It's not --
4 it's not an argument that has merit.

5 Finally, Judge, the last point I will make,
6 let's assume we follow the State's argument to its logical
7 conclusion. Let's assume that we are standing here before
8 you today and there is twelve people from this community
9 deciding my client's fate.

10 He already entered a plea of guilty to these
11 counts that carry life sentences. But let's just assume, we
12 go back in time and we go to trial and we are at trial and
13 it's me and Mr. Hahn and we are duking it out. We are
14 fighting the good fight.

15 And Mr. Hahn decides to call Melissa
16 Botelho, my client's ex-wife, in his case in chief -- or at
17 any time during the proceedings. Rebuttal witness,
18 whatever. It doesn't matter.

19 So, if you take the State's argument to its
20 logical conclusion and the State stands up and says, "Well,
21 your Honor, Mr. Botelho had custody and control of the victim
22 in this case and therefore he can't exercise his statutory
23 marital communication privilege because of the facts of this
24 case," do you see the faulty logic in that argument?

1 Whether somebody has custody and control,
2 whether the defendant has custody and control during a trial
3 proceeding is not a fact for your Honor to determine.

4 That is a question of fact for the jury.

5 So your Honor would therefore be thrust into
6 a dichotomy. How can I decide whether or not this is -- this
7 exception applies because I cannot make the determination as
8 to whether or not he had custody and control of this victim,
9 because that is one of the elements of the offense that he is
10 charged with and that is something for the jury to do, not
11 myself?

12 So, therefore, the State by their argument,
13 the exception is swallowing up the entire privilege. It
14 falls upon its own weight and it can't happen, Judge. And
15 I'll submit it.

16 THE COURT: All right. Mr. Hahn, let's get your
17 response to that.

18 Your interpretation of a criminal proceeding
19 in which one spouse is charged with a crime of a child -- or
20 against a child in the custody or control of either. You are
21 saying, because he was a kidnapper, therefore, he was in
22 control of a child because of her age; therefore, that's the
23 exception?

24 MR. HAHN: That's true.

1 THE COURT: I have to agree with Mr. Sullivan on
2 that. I don't think that is the -- the intent of that
3 statute. I think it has to be in a -- familial type of
4 setting.

5 But how about the Franco case? Now, we are
6 talking about -- evidently she spoke with the police officer,
7 right?

8 MR. SULLIVAN: Correct, your Honor. Detective Carry
9 and Detective Herrera.

10 THE COURT: All right. And she told them about these
11 fantasies. Is that accurate or no?

12 MR. SULLIVAN: That is accurate, Judge. Well, yes. I
13 have the transcript and she -- that's how the officers knew
14 where to even begin with these -- alleged deviant sexual
15 fantasies.

16 THE COURT: How come they can't come in that way,
17 through the officer's testimony at a sentencing hearing?

18 MR. SULLIVAN: That's a very good question, your
19 Honor. And I have combed all the transcripts from Melissa
20 Botelho and from the officers and have read the officers'
21 reports.

22 And unless the State has some piece of
23 information that I am not privy to, I don't see anywhere in
24 there where my client tells the officers that he ever had

1 these deviant sexual fantasies.

2 THE COURT: I am talking about the wife.

3 MR. SULLIVAN: They certainly cannot circumvent the
4 privilege by saying, "We talked to the wife and the wife said
5 this," because that would certainly violate his confrontation
6 rights. We have a right to basically confront. It's
7 hearsay.

8 THE COURT: At the guilt phase, I agree with you. But
9 we are now at the sentencing phase. The rules are relaxed.

10 MR. SULLIVAN: Absolutely, they are relaxed. But I
11 don't think they are disbanded all together. I don't think
12 the legislature would allow for a scenario where you can
13 circumvent the marital privilege by saying, "Well, we will
14 just call another witness, i.e., the officer who spoke to the
15 wife in question, the ex-wife in question, to get out this
16 testimony." This privilege is all encompassing. You
17 cannot --

18 THE COURT: Didn't they use that in the Franco case?
19 I mean, she talked to the police officer and he testified to
20 what she said.

21 MR. SULLIVAN: Which page are you referencing, your
22 Honor?

23 THE COURT: I didn't bring the book.

24 MR. SULLIVAN: Can I have the Court's indulgence?

1 THE COURT: Sure.

2 MR. SULLIVAN: Well, if I read the case correctly,
3 Judge -- I'm citing Franco verses State, which is 109 Nevada
4 1229 -- the Court decided that the wife could testify and
5 they hung their hat on other reasons. They talked about
6 hearsay exceptions and things of that nature. But I don't
7 ever remember them making a holding that, if there is a
8 marital communication privilege about certain material that
9 another witness --

10 THE COURT: The wife is testifying against her husband
11 in a criminal case. That's what we are talking about. That
12 was at the guilt -- that was at the guilt phase. Okay. So
13 we are taking about the same thing. There is a wife talking
14 to the police officer and he comes in and says what she said
15 to him.

16 MR. SULLIVAN: I don't think that the State could be
17 allowed to circumvent the rule. Then that's what everyone
18 would do. Well, we'll go get a Detective to talk to the
19 exspouse. And then, if the exspouse talks to the Detective,
20 then we can throw the Detective up to the stand and that's
21 how we get around the rule.

22 And I don't think that's appropriate. I
23 think that circumvents it. And the legislature made this
24 privilege for a reason.

1 THE COURT: There is case law that says they can't do
2 that.

3 MR. SULLIVAN: I disagree with the court's
4 interpretation in Franco, respectfully, your Honor.

5 THE COURT: Sure. I understand that. But read the
6 facts. That's --

7 MR. SULLIVAN: I have read the case and I have it here
8 today and I don't think that's what they are saying.

9 THE COURT: She testified against her husband and the
10 co-defendant.

11 MR. SULLIVAN: Whether or not she properly invoked the
12 privilege or whether or not he properly invoked the privilege
13 because there are two privileges.

14 THE COURT: Right. One is testimonial and that lies
15 with the witness.

16 MR. SULLIVAN: Exactly.

17 THE COURT: And then the other communicative. And
18 that goes with the person at the trial.

19 MR. SULLIVAN: And I don't think -- we are talking
20 about the first privilege, not the second privilege in
21 Franco. And I could be mistaken. I would have to give it a
22 thorough reading. But I think we are talking apples and
23 oranges. The first privilege is she wants to waive the
24 privilege. That's fine. She has a right to waive that

1 privilege. If my client invokes that privilege --

2 THE COURT: Didn't she testify in Franco that her
3 husband said, "I think I killed a guy"?

4 MR. SULLIVAN: Yeah. That was -- but whether or not --
5 we are talking about the first privilege or the second
6 privilege.

7 THE COURT: That's hearsay? The exception is against
8 penal interest of the declarant. And it's the spouse of the
9 declarant.

10 MR. SULLIVAN: But she -- she is -- she heard that
11 information firsthand. I am talking about Franco -- the
12 woman in Franco incurred that information firsthand from the
13 declarant.

14 In this fact scenario we have hearsay upon
15 hearsay, do we not? Because we have -- yeah. Exactly. We
16 have hearsay upon hearsay. We have my client allegedly
17 making statements to Melissa Botelho, who makes statements to
18 Detective Herrera and Detective Carry.

19 THE COURT: As far as NRS 49.295, I think your
20 interpretation is accurate. All right. That exception does
21 not apply in a kidnap case. Okay.

22 I agree with you.

23 What we are talking about here is the
24 argument advanced by the State that, because it's a

1 sentencing proceeding, there is an exception to the hearsay
2 rule and it comes in that way.

3 MR. SULLIVAN: Well, then I guess -- if your Honor
4 believes that Detective Herrera and Detective Carry can
5 testify at sentencing, certainly I can't -- can't make -- or
6 ask you to exclude them from testifying.

7 But, once they take that witness stand and
8 start testifying about other admissions my client may have
9 made or other facts about the case, certainly, yeah, that's
10 fine.

11 But once they start going down -- if I see
12 them start going down the path of, "Did you talk to Melissa
13 Botelho? What did she tell you about the client," I am going
14 to stand up and make that objection. I guess we will come to
15 that bridge when we come to it.

16 THE COURT: So let me see if I got this straight
17 again.

18 If a husband and wife have conversations --

19 MR. SULLIVAN: -- during the course of a marriage.

20 THE COURT: -- during the course of a marriage.

21 And then the wife or the husband, either
22 one, tells a party outside the marriage of the contents of
23 that communication, are you saying that that third party is
24 barred from ever testifying about what that spouse said?

1 MR. SULLIVAN: I think so, yes. I think --

2 THE COURT: So the privilege goes to a third party.

3 You can never waive or breach by your conduct?

4 MR. SULLIVAN: Well, all I can tell you is that I am
5 asking you for you to exclude any testimony from Melissa
6 Botelho based upon the marital communication privilege.

7 And as far as the other witnesses in this
8 case that want to testify at sentencing, they have a right to
9 testify. It's whether or not the State can show that this
10 testimony comes in, then they will -- they will have to show
11 as to why it's relevant, if they have a hearsay exception or
12 a -- two hearsay exceptions for the double hearsay.

13 And I would certainly still make the
14 argument that it circumvents the marital privilege, because,
15 as your Honor -- as I pointed out, you know, if the State
16 gets into that murky water, that area, what are they doing?

17 They are now commenting on the fact -- or
18 they are coming dangerously close to the fact that my client
19 invoked the privilege to begin with. And, as we know from
20 the statute and the case law that I have cited, you can't do
21 that. It's impermissible. It's improper. And that is
22 Hylton verses State, your Honor. 49.405 is what I am
23 referencing.

24 THE COURT: All right. Mr. Hahn?

1 MR. HAHN: Briefly, your Honor. The statute and the
2 concern that Mr. Sullivan has about -- about the trial Judge
3 or the lawyers commenting about -- commenting about the
4 marital privilege, this is the same chicken and the egg
5 argument we have been arguing about circularly. The Judge is
6 above that.

7 And the Judge can make the call. And so we
8 are not talking about whether or not it comes in front of a
9 jury. The issue is can you, if perhaps you believe it would
10 be inappropriate, put it aside?

11 The legal standard is -- for purposes of
12 sentencing is any information that is highly improbable or
13 specious should not be in front of you. That's the legal
14 standard.

15 There is no issue of a confrontation
16 clause. I agree wholeheartedly with the court because that
17 is not an issue. Hearsay routinely comes in. The issue is,
18 according to the standard, is there something about this
19 evidence that no way, no way can I consider this because this
20 is just too far removed?

21 We are not anywhere close to that because,
22 not only do we have the statements that have been represented
23 by Miss Botelho, but we also have some of those same
24 statements echoed by the defendant himself. So we don't even

1 come close to that standard. So I don't see the problem,
2 Judge.

3 THE COURT: Well, then let me ask you, how do you
4 intend to present it? You are not going to call her, are
5 you?

6 MR. HAHN: If the court finds that she should not be
7 called, I am not even going to go there, Judge.

8 THE COURT: I agree with counsel. She should not be
9 called. If you have another way of putting it on, that's a
10 different --

11 MR. HAHN: I was simply going to offer that so they had
12 the opportunity to confront her, if they want to exercise
13 that. I was going to afford them that privilege.

14 If the court would prefer that I don't, I
15 won't. I will simply put on the officers.

16 THE COURT: All right.

17 MR. SULLIVAN: And, your Honor, I would just -- I know
18 I am beating a dead horse. I apologize. I would simply
19 reference Hylton, which says it's improper for them to make
20 any impermissible inference that my client invoked the
21 spousal privilege. I don't know how the State is going to
22 get around -- they can put on the officer to reference other
23 things. But, once they start going down that path, "What did
24 you talk about with Melissa Botelho," that is an

1 impermissible inference about my client being made at
2 sentencing about the fact that he invoked his privilege. And
3 I think it's improper and I would ask this court to exclude
4 his statement.

5 THE COURT: Wait a minute. I am the one that's
6 deciding the motion. I am the one that's impacted by those
7 facts. How can you say that, because I am doing that --
8 because that's part of my job. Therefore -- I am -- I can't
9 even set that out.

10 MR. SULLIVAN: I understand, your Honor. What I am
11 trying to do is I am trying to caution the State -- and maybe
12 I am not doing a good job at it. I am trying to caution the
13 State and let them know, if they start going down this road,
14 I would consider it an impermissible inference on the fact --
15 and I would make that objection at the appropriate time.

16 THE COURT: So you are not objecting to the fact that
17 they are going to testify and say what they are going to
18 say?

19 MR. SULLIVAN: The detectives?

20 THE COURT: You are saying that because of my ruling
21 that they can't call the wife now because they are calling
22 the police officer to offer those facts, that is an obvious
23 reflection by inference on the fact that he invoked his
24 privilege and that flies in the face of the statute that says

1 the Judge can't comment on it?

2 MR. SULLIVAN: And the case law that says the State as
3 well as the Judge can't comment on it. And so the State is
4 not supposed to comment on it from the witness's -- I can't
5 prevent them from calling Detective Herrera.

6 THE COURT: What do you mean they comment on it?

7 MR. SULLIVAN: It makes the impermissible inference
8 that he invoked the privilege. And I think them asking
9 questions about what she told them, that is an inference.
10 And, you know, we will have to make that determination once
11 we get to it. Because they might not even go there, Judge.
12 They might not even go down that road. I don't know what
13 they are going to ask the Detective. They might ask other
14 things related to the transcript.

15 THE COURT: I suggest you talk with her and find out
16 what they are talking about with her so that you know what
17 they are talking about.

18 MR. SULLIVAN: You are talking about Melissa Botelho?
19 I know what she told the police.

20 THE COURT: Well, then there you go.

21 MR. SULLIVAN: Okay.

22 THE COURT: All right. That will be the order, if we
23 are all clear on it.

24 All right. And of course, counsel, you are

1 free to object like you would in a trial as we go along. But
2 on the issues that were raised here --

3 MR. SULLIVAN: Okay. Just so I am clear, your Honor.
4 The State is precluded from calling Melissa Botelho at
5 sentencing?

6 THE COURT: Yes.

7 MR. SULLIVAN: Okay.

8 Thank you, your Honor.

9 THE COURT: Anything else?

10 MR. SULLIVAN: Nothing, Judge. I think that's --

11 THE COURT: When is this sentencing?

12 MR. SULLIVAN: April sometime, your Honor.

13 THE COURT: April 7th. All right. See you then.

14 MR. SULLIVAN: Thank you, Judge.

15
16 (At this time the foregoing proceedings were concluded.)
17
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1 STATE OF NEVADA)
2) ss.

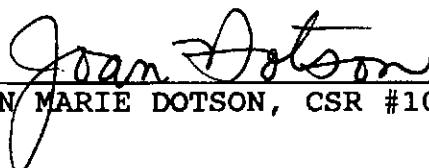
3 COUNTY OF WASHOE)

4 I, JOAN MARIE DOTSON, a Certified Shorthand
5 Reporter for the Second Judicial District Court of the State
6 of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

7 That I was present in Department No. 3 of
8 the above-entitled court on Thursday, March 11th, 2004 and
9 took verbatim stenotype notes of the proceedings and
10 thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript is a full,
13 true and correct transcription of my said stenotype notes and
14 is a full, true and correct record of the proceedings had and
15 the testimony given in the above-entitled action to the best
16 of my knowledge, skill and ability.

17
18
19 DATED: This 12th day of March, 2004.

20
21 
22 JOAN MARIE DOTSON, CSR #102
23
24

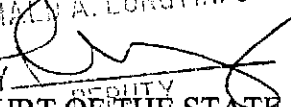
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2004 APR -6 PM 3:56.

RONALD A. LONGTON, JR.

BY  DEPUTY

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

STATE OF NEVADA

Plaintiffs,

CASE NO: CR03-2156

VS.

DEPT. NO.: 3

MICHAEL TODD BOTELHO,
Defendants

RECEIPT OF GRAND JURY TRANSCRIPT

TRANSCRIPT OF GRAND JURY PROCEEDINGS RECEIVED FROM RONALD A.
LONGTON, JR., CLERK OF THE COURT.

Dated this 6th day of APRIL, 2004.

Signature of Receiving Party
RONALD A. LONGTON, JR.

Clerk of the Court

By 

Deputy Clerk

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
1775

CASE NO. CR03-2156

STATE OF NEVADA VS. MICHAEL TODD BOTELHO

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

04/07/04

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

Deputy District Attorney Bruce Hahn represented the State.

JEROME M.

Defendant was present and represented by counsel, Deputy Public

POLAHA

Defender Sean Sullivan. Probation Officer Joan Weald was also

DEPT. NO. 3

present.

C. Patterson

Defense counsel addressed the Court moved that the

(Clerk)

Defendant's handwritten statement not be attached to the copy of the

PSI sent to the prison. **GRANTED.** Counsel further objected the

State's notice to present prior bad acts and presented a letter filed

under seal. Defense called Marylou

Coelho, Defendant's Mother and Defendant's sister who made

statements behalf of the Defendant. Counsel for the State

addressed the Court called officer Greg Herrera who was sworn and

examined. No cross examination conducted; witness excused. The

State argued in support of the PSI. Victim Jane Doe was called and

sworn and read a statement into the record. No cross examination;

witness excused. The State called the mother of Jane Doe who read

a statement into the record; questioned by the Defense and excused.

Defendant addressed the Court on his own behalf.

COURT ORDERED: Defendant adjudged guilty and sentenced to

imprisonment in the Nevada Department of Corrections for a term of

Life with the possibility of parole after a minimum of five (5) years as

been served, with credit for one hundred ninety-seven (197) days

time served. It is further ordered that Michael Todd Botelho is guilty

of the crime of Sexual Assault on a Child, a violation of NRS

200.366, a felony, as charged in Count III of the Indictment, and that

he be punished by imprisonment in the Nevada Department of

Corrections for a term of Life with the possibility of parole after a

minimum of twenty (20) years as been served, to be served

consecutively to the sentence imposed in Count I. It is further

ordered that Michael Todd Botelho is guilty of the crime of Sexual

Assault on a Child, a violation of NRS 200.366, a felony, as charged

in Count IV of the Indictment, and that he be punished by

imprisonment in the Nevada Department of Corrections for a term of

Life with the possibility of parole after a minimum of twenty (20) years

has been served, to be served concurrently to the sentences

imposed in Count III. It is further ordered that Michael Todd Botelho

is guilty of the crime of Sexual Assault on a Child, a violation of NRS

200.366, a felony, as charged in Count V of the Indictment, and that

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-020
2 Pages
04/07/2004 09:07 AM
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CASE NO. CR03-2156
DATE, JUDGE
OFFICERS OF
COURT PRESENT

STATE OF NEVADA VS. MICHAEL TODD BOTELHO
PAGE 2

APPEARANCES-HEARING

CONTINUED TO

04/07/04
HONORABLE
JEROME M.
POLAHA
DEPT. NO. 3
C. Patterson
(Clerk)
J. Dotson
(Reporter)

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

he be punished by imprisonment in the Nevada Department of Corrections for a term of Life with the possibility of parole after a minimum of twenty (20) years as been served, to be served consecutively to the sentences imposed in Counts I and IV. It is further ordered that a special sentence of Lifetime supervision commence after any period of probation, or any term of imprisonment or after any period of release on parole. It is further ordered that the Defendant pay the statutory Twenty-five Dollar (\$25.00) administrative assessment, submit to a DNA analysis test for the purpose of determining genetic markers and pay a testing fee of One Hundred Fifty Dollars (\$150.00), reimburse the Washoe County Public Defender's Office in the amount of Five Hundred Dollars (\$500.00) for legal services rendered and pay restitution in the amount of Six Hundred Thirty-two Dollars (\$632.00). Defendant remanded to the custody of the Sheriff

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APR - 7 2004

RONALD A. LONGSTIN, JR., CLERK
By *C. Patterson*
DEPUTY

1 CODE 1850

CR03-2156 DC-09900071844-032
STATE VS. MICHAEL TODD BOTELHO 2 Pages
District Court 04/07/2004 11:21 AM
Washoe County 1850

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

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR03-2156

12 MICHAEL TODD BOTELHO,

Dept. No. 3

13 Defendant.
14

15 JUDGMENT

16 The Defendant, having entered a plea of Guilty, and no sufficient cause being
17 shown by Defendant as to why judgment should not be pronounced against him, the Court
18 rendered judgment as follows:

19 That Michael Todd Botelho is guilty of the crime of Kidnapping in the First Degree, a
20 violation of NRS 200.310-1 and NRS 200.320, a felony, as charged in Count I of the
21 Indictment, and that he be punished by imprisonment in the Nevada Department of
22 Corrections for a term of Life with the possibility of parole after a minimum of five (5) years
23 as been served, with credit for one hundred ninety-seven (197) days time served.

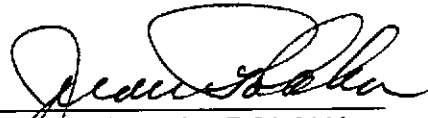
24 It is further ordered that Michael Todd Botelho is guilty of the crime of Sexual
25 Assault on a Child, a violation of NRS 200.366, a felony, as charged in Count III of the
26 Indictment, and that he be punished by imprisonment in the Nevada Department of
27 Corrections for a term of Life with the possibility of parole after a minimum of twenty (20)
28 years as been served, to be served consecutively to the sentence imposed in Count I.

1 It is further ordered that Michael Todd Botelho is guilty of the crime of Sexual
2 Assault on a Child, a violation of NRS 200.366, a felony, as charged in Count IV of the
3 Indictment, and that he be punished by imprisonment in the Nevada Department of
4 Corrections for a term of Life with the possibility of parole after a minimum of twenty (20)
5 years has been served, to be served concurrently to the sentences imposed in Count III.

6 It is further ordered that Michael Todd Botelho is guilty of the crime of Sexual
7 Assault on a Child, a violation of NRS 200.366, a felony, as charged in Count V of the
8 Indictment, and that he be punished by imprisonment in the Nevada Department of
9 Corrections for a term of Life with the possibility of parole after a minimum of twenty (20)
10 years as been served, to be served consecutively to the sentences imposed in Counts I
11 and IV.

12 It is further ordered that a special sentence of Lifetime supervision commence after
13 any period of probation, or any term of imprisonment or after any period of release on
14 parole. It is further ordered that the Defendant pay the statutory Twenty-five Dollar
15 (\$25.00) administrative assessment, submit to a DNA analysis test for the purpose of
16 determining genetic markers and pay a testing fee of One Hundred Fifty Dollars (\$150.00),
17 reimburse the Washoe County Public Defender's Office in the amount of Five Hundred
18 Dollars (\$500.00) for legal services rendered and pay restitution in the amount of Six
19 Hundred Thirty-two Dollars (\$632.00).

20 Dated this 7th day of April, 2004.

21
22
23 
24 JEROME M. POLAHA
25 DISTRICT JUDGE
26
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28

CR03-2156
 STATE VS. MICHAEL TODD BOTE 86 Pages
 District Court 04/19/2004 02:40 PM
 Washoe County
 4185

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RONALD A. LONGTIN, JR., CLERK

By: DEPUTY CLERK

4185

JOAN MARIE DOTSON

CCR #102

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,
 Plaintiff,

Case No. CR03-2156

vs.

Department No. 3

MICHAEL TODD BOTELHO,
 Defendant.

TRANSCRIPT OF PROCEEDINGS

SENTENCING

Wednesday, April 7th, 2004

8:30 A.M.

Reno, Nevada

Reported by: JOAN MARIE DOTSON
 NV, CA AND UT CERTIFIED, REGISTERED PROFESSIONAL REPORTER
 Computer-aided Transcription

A P P E A R A N C E S

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY
BY: BRUCE HAHN
Deputy District Attorney
P.O. Box 11130
Reno, Nevada 89520

For the Defendant: OFFICE OF THE PUBLIC DEFENDER
BY: SEAN SULLIVAN
Deputy Public Defender
P.O. Box 11130
Reno, Nevada 89520

THE NEVADA DEPARTMENT
OF PAROLE AND PROBATION: JO EWALD

1 WEDNESDAY, APRIL 7TH, 2004; RENO, NEVADA

2 --o0o--

3 THE COURT: Good morning. Be seated please. This is
4 CR03-2156, State of Nevada verses Michael Todd Botelho. And
5 this is the time set for the entry of judgment and the
6 imposition of sentence in this matter.

7 Mr. Sullivan, have you received the
8 presentence report?

9 MR. SULLIVAN: Your Honor, I have received a
10 presentence report. And, your Honor, I apologize. My client
11 did not make it on the first transport this morning. He made
12 it on the second transport, so he just arrived. He just sat
13 down before your Honor hit the bench.

14 And, your Honor, for the Court's knowledge,
15 there was some confusion as to the pages in the defendant's
16 attached written statement. Myself, including the Division,
17 were missing four pages from the statement.

18 Apparently on the original my client wrote
19 on the back pages and those copies were not provided to the
20 Division or myself. We just received them this morning.
21 Mr. Hahn was kind enough to allow me to look at his copy.
22 And I would ask this court for just a ten-minute recess so I
23 can review the extra pages with my client.

24 THE COURT: All right.

1 MR. SULLIVAN: Thank you, Judge.

2 (At this time a brief
3 recess was taken.)
4

5 THE COURT: Be seated please.

6 We are back on the record. And,
7 Mr. Sullivan, I have the presentence report. I have a
8 psychological and substance abuse eval.

9 And I was provided a victim impact
10 statement.

11 MR. SULLIVAN: Yes, your Honor. I have filed all those
12 documents under seal with the court. And I have provided
13 this morning Mr. Hahn a copy of the letters that were filed
14 under seal on behalf of my client.

15 THE COURT: I don't have those.

16 MR. SULLIVAN: You do not have the letters?

17 THE COURT: No.

18 I'm sorry. Yes, I do. All right. They
19 were filed under seal too.

20 MR. SULLIVAN: Yes.

21 THE COURT: Okay. Yes.

22 MR. SULLIVAN: If it pleases the Court, your Honor, we
23 are in receipt of the presentence report dated January 13th,
24 2004.

1 We have no factual corrections or additions
2 to make at this time. Judge, the only thing I would add for
3 the record concerning the P.S.I. is if you would not attach
4 my client's rather lengthy statement to the P.S.I. at the
5 conclusion of these proceedings. I do not want this
6 statement following him down to the prison.

7 Your Honor, also another housekeeping matter
8 that I have, my client would like to lodge another objection
9 on the record concerning the State's notice of intent to
10 introduce prior -- or other bad act evidence at sentencing
11 filed on February 3rd, 2004.

12 And my client would ask this court to not
13 consider any of the information alleged by the State per NRS
14 49.305 and NRS 49.405 and the applicable case law set forth
15 in the defendant's opposition to State's motion filed on
16 February 13th, 2004.

17 THE COURT: All right.

18 MR. SULLIVAN: Thank you, Judge. Judge, my client --

19 THE COURT: Mr. Sullivan, in looking at the file, I
20 was correct in my first statement concerning the family
21 letters. Yeah. They are not there. I have a cover sheet
22 saying letters from the family. But there are not letters
23 behind it.

24 MR. SULLIVAN: Can I approach, your Honor?

1 THE COURT: Sure. All right.

2 MR. SULLIVAN: Thank you, Judge.

3 Judge, actually we do have one factual
4 correction to make to the P.S.I.

5 My client would like to note the Social
6 Security number on the first page, third line down, there are
7 two Social Security numbers. The first one is his true and
8 correct social security number. And it says also used is a
9 different number which is only one number off from his true
10 and correct number.

11 My client has indicated he has never used
12 the second number and he believes it just to be a
13 typographical error and he would like the Court to note that.

14 Your Honor, we are set for sentencing today
15 for Michael Todd Botelho. My client is a forty-two year old
16 male born in Honoka, Hawaii. He has three younger sisters
17 and one younger brother.

18 Your Honor, he was -- for all intents and
19 purposes he was raised in a loving and caring environment.
20 Neither of his parents drank or abused drugs.

21 The only criticism he would have to say
22 about his upbringing is that sometimes his father could be
23 hypercritical.

24 My client himself, your Honor, has never

1 abused alcohol or drugs. He was never physically or sexually
2 abused. He first consumed alcohol at the age of seventeen
3 like a lot of -- unfortunately like a lot of seventeen year
4 old teenagers.

5 But he would only consume a few beers a
6 month, approximately six beers per month. And he tried
7 cannabis at least on one occasion. So, for all intents and
8 purposes, your Honor, we don't believe my client has any
9 substance abuse or alcohol problems to speak of.

10 He did graduate from high school with a
11 degree, your Honor. And he also went on to perform one year
12 of college in 1980.

13 His main trade or profession is in the
14 construction field, and that's where he has worked ever
15 since. He has had a number of construction jobs and he does
16 quite well. He has a very strong worth ethic, your Honor.
17 My client prides himself on never missing a day of work, up
18 until the instant offense.

19 He told me that he -- even if he was, you
20 know, very gravely ill, he would still go in to work. In
21 speaking of illnesses, your Honor, he does have a number of
22 medical complications to speak of.

23 He suffers from chronic leucopenia. In
24 addition, he also suffers from a form of Hodgkin's lymphoma.

1 Right now he has a very low white blood cell count. He has
2 swollen lymph node glands, muscle aches and joints. And he
3 is deaf in his left ear.

4 In addition, your Honor, my client did serve
5 a stint in the military. He was in the Marines. And he was
6 given an honorable discharge in light of his medical
7 conditions.

8 Your Honor, my client, as you can see from
9 Doctor Davis's report, which was filed under seal on January
10 26th, 2004, has no real mental health issues to speak of. He
11 has never sought any mental health treatment in the past.
12 Doctor Davis diagnosed my client with adjustment disorder,
13 with a depressed mood brought about by his legal issues.

14 Basically my client is certainly depressed
15 and concerned over his current situation. However, he is not
16 on any medication today. And he is not seeking any mental
17 health treatment at this time.

18 Your Honor, my client has been married in
19 the past: Three times to three different women. The first
20 time he was married was in 1981. This ended in 1985. There
21 were no kids as a result of this marriage.

22 The second time my client was married, your
23 Honor, was in 1990. This marriage ended in 1994 and there
24 were two kids from this marriage, ages ten and twelve.

1 And they live with my client's ex-wife up in
2 Anchorage, Alaska. My client's third wife, who is present
3 here today, he married her in 1997; and he is still married
4 to her today. And they have two kids together: Two sons
5 ages two and four. And my client's current wife is here to
6 speak on my client's behalf at the conclusion of my
7 arguments.

8 In addition, my client also has his
9 sister -- one of his sisters and his mother to speak on his
10 behalf at the conclusion.

11 Your Honor, as you can see from my client's
12 presentence investigation report dated January 13, 2004, my
13 client's criminal history is not extensive.

14 He was convicted of a white color crime back
15 in 1993. This was the insurance fraud.

16 And he was given three years probation on
17 this crime and he received an honorable discharge from
18 probation in 1996.

19 My client feels it's very important to let
20 the Court know that he pled to this and he owned up to this
21 crime, but he didn't feel he was guilty of the crime at the
22 time.

23 He got involved with his ex-wife in
24 something and he believes it was more to save the family

1 relationship. And that's why he basically entered into
2 negotiations.

3 But he is in no way, shape or form today
4 trying to place blame on anyone else. He would just like the
5 Court to know the facts and circumstances surrounding his
6 single felony conviction for insurance fraud.

7 He does have a conviction, your Honor, in
8 1999 for a misdemeanor domestic battery.

9 And my client was actually the one that
10 alerted probation and parole to this.

11 He received three weekends in jail, a fine
12 and community service which he completed.

13 As you can see, he has no other
14 convictions. According to my client, he also alerted the
15 Division of an arrest for trespassing back in 1981; but there
16 was no disposition.

17 Your Honor, I believe that my client -- and
18 I would submit to you in argument that my client has been
19 very forthcoming about the instant offense.

20 And to reference or support that argument, I
21 would reference his attached -- his letter that was
22 originally attached to the presentence investigation report.

23 I don't think everyday your Honor receives a
24 sixteen page letter from the defendants in court which

1 basically outline in great detail the acts that my client
2 committed and what he was thinking while he committed them
3 and why he committed them.

4 I think he struggles throughout the sixteen
5 pages to articulate or give this court a good reason for why
6 he committed this horrible act. And I think, if you read
7 this, upon a plain reading of the letter, he comes to the
8 conclusion that there was no good reason.

9 There is -- there is never a good
10 explanation for committing the crime that he did.

11 But he does struggle with it. He does admit
12 to the crime in great detail. He spells it out step by step
13 what he did.

14 And he realizes what he did was wrong. It
15 was horrible. And he is begging for forgiveness from your
16 Honor, the State and, more importantly, from the victim and
17 her family.

18 Your Honor, my client would like to impress
19 upon the Court today that it was his intention from day one
20 when he was apprehended by the police to never exercise his
21 constitutional right to go to trial. And that was the first
22 thing out of his mouth when I met with him up at the jail.

23 On my initial appearance on behalf of the
24 client he told me that he did not want to -- put this young

1 lady through any more trauma or the horrors of a trial of
2 coming in and recounting the horrible acts which she had
3 suffered.

4 He realized he did have the constitutional
5 right to do so in front of twelve members. But he chose not
6 to do so because he had said, "Mr. Sullivan, I have already
7 done enough damage to that poor little girl."

8 Your Honor, my client would also like you to
9 know that despite evidence to the contrary -- and I am
10 anticipating the State's argument -- he did want to turn
11 himself in for the crime during the investigation.

12 You can see the trip, this voyage that he
13 took with his wife where he went to Winnemucca and then he
14 went to the jail to show his wife where he was going to be
15 staying for a long time once he was apprehended and then up
16 through Susanville where he was finally apprehended by the
17 California police.

18 He did want to turn himself in. But what he
19 was trying to do was basically talk out his options. He had
20 talked to a few attorneys and this is referenced in the
21 P.S.I. attachment. And he had talked to some friends and he
22 had, more importantly, talked to his family members as to how
23 he should handle the situation.

24 But my client has indicated to me from day

1 one when he was apprehended he wanted to turn himself in.
2 There is mention by the State how he tried to color his hair
3 or do things to change his appearance.

4 And my client basically says that, you know,
5 he is going gray and it was just -- something he wanted to do
6 to basically wash the gray out of his hair.

7 But he did want to turn himself in. He just
8 was scared, and he didn't know how to do it. And my client
9 will tell you that, if he was going to run, he would have
10 been on the other side of the country or Hawaii, his place of
11 birth. He wouldn't have been in Susanville, which is
12 approximately sixty miles away, hanging out there.

13 He wants you to know that -- he wants the
14 Court to know that initially he did not talk to the police
15 about the events that had transpired on the offense date
16 because he -- basically his mind blocked them out.

17 He committed this horrible act and he
18 couldn't remember in great detail. His mind -- this is what
19 he is telling me, your Honor. His mind wouldn't let him
20 remember what happened.

21 And I think it's akin to like post traumatic
22 stress disorder or something like that. But, your Honor, he
23 does actually admit in great detail to your Honor and to the
24 State and to the Division and everyone else in his written

1 statement in great detail as to what he did to commit this
2 crime and I think that's important.

3 It just took some time for him to come to
4 terms with what he did.

5 And he -- as I have counseled him over the
6 numerous months in this case, things would come to him and he
7 would give me more and more information as to what happened.

8 And he knew what he did from day one was
9 wrong. He did a very bad thing. That's what he kept telling
10 me: "Mr. Sullivan, I did a very bad thing. And, when I
11 remember facts, I will let you know. But right now my mind,
12 I am drawing a blank."

13 And I am glad in the end he ultimately
14 accepted responsibility and he will accept his fate today.

15 Your Honor, another thing my client would
16 like to impress upon the Court along the same things of
17 accepting responsibility and doing the right thing and
18 ultimately coming clean, so to speak, is that -- he did let
19 this young lady go, which is the most important thing. He
20 let her go. He dropped her off. And he subjected her to no
21 further horrors.

22 And, as we turn on the t.v., you know,
23 nightly, all of us in this room can agree that we are
24 fortunate to have her here today because a lot of these cases

1 don't end up that way.

2 He did let her go.

3 And he wants to come in and tell the Court
4 he is accepting responsibility for his actions.

5 Your Honor, another point that my client
6 would like to impress upon the Court is that the sexual
7 assault, the numerous counts of sexual assault arose out of
8 the same transaction and occurrence, meaning it happened
9 within a matter of minutes. He didn't -- kidnap this young
10 lady and sexually assault her over a period of days or weeks
11 or months. It happened within -- on the same date within a
12 matter of minutes.

13 Albeit, he feels horrible it happened at
14 all; but he would like the Court to know that it was a
15 continuous act and it was over within a matter of minutes.

16 And my client believes in light of this and
17 in light of the fact that he did not commit separate acts
18 that lasted hours or days or months and in light of the fact
19 that he ultimately did the right thing and released this
20 young lady after he committed these atrocities and in light
21 of all the other arguments I have made this morning, my
22 client would like to argue against the recommendation which
23 has been proffered by the Division.

24 And what my client feels is fair, your

1 Honor, and what I would submit to you in argument what I
2 believe is fair is to impose a sentence -- a life sentence
3 for my client on one of the sexual assault counts with the
4 eligibility -- minimum eligibility after he has served twenty
5 years and to run the remaining counts concurrent with that
6 count. And, your Honor, at this time, as I have mentioned
7 earlier in my arguments, I have three family members that
8 would like to speak on my client's behalf, if it would please
9 the Court.

10 THE COURT: All right.

11 State your name for the record.

12 DEFENDANT'S WIFE: Mary Lou Botelho.

13 MR. SULLIVAN: And what would you like to tell the
14 Court today on behalf of Mr. Michael Botelho?

15 THE COURT: Did you want her sworn?

16 DEFENDANT'S WIFE: Excuse me?

17 MR. SULLIVAN: He is talking to the prosecutor.

18 MR. HAHN: No. Your Honor, I'll waive it. That's the
19 short answer.

20 THE COURT: All right.

21 DEFENDANT'S WIFE: I have -- if you don't mind, I would
22 like to read my statement.

23 THE COURT: Sure. No problem. Just so long as you
24 speak up so that -- we can hear.

1 DEFENDANT'S WIFE: My husband had committed the crime
2 and he is sorry. We have been married for seven years and I
3 stand by him. Like any other husband and wife, we have our
4 ups and downs. He is a good husband, a good father, a very
5 hard worker and provider.

6 He has never been involved in a serious
7 offense before. And I would like to ask your good court,
8 your Honor, to please be lenient with him. Please give him a
9 chance to be a part of our sons' life as they grow up.

10 We have a three year old and an eight month
11 old baby boy just starting to enjoy and understand what it's
12 like to have a daddy around. They need their father to guide
13 them as they grow up and face life. Because of what
14 happened, I am losing everything we have, everything we
15 worked hard for the future of the children. And I would like
16 to request your good Lord, your Honor, to please consider my
17 innocent children in making your decision. Please don't
18 let -- please don't let them lose their dad too. Here is a
19 man who humbly admits his mistakes. He is facing the
20 consequences of his actions. Every fiber of his being says,
21 "I am sorry," and he is asking forgiveness, not only to the
22 State but to the family.

23 Please give us a chance to be a family once
24 again. Like normal families we have our hopes. We have our

1 dreams to become better members of this society. And,
2 lastly, thank you for giving me the opportunity to speak
3 before you and hear my voice. Thank you so much, your
4 Honor. And may the wisdom and the knowledge of God be with
5 you always. Thank you.

6 THE DEFENDANT: Thank you, honey.

7 MR. SULLIVAN: Your Honor, this is my client's mother.
8 She would like to speak on behalf of my client. It is my
9 understanding the State will waive her statement being sworn
10 in today.

11 THE COURT: Right.

12 MR. SULLIVAN: Please state your name for the record
13 and spell your last name.

14 THE MOTHER: I am Jackie Botelho, B-O-T-E-L-H-O. I am
15 the mother of the defendant.

16 And, your Honor, I have also written because
17 I didn't know how I was going to be able to present it. I
18 didn't trust myself.

19 My son Michael and I have shared many
20 experiences through the years. We have strived for
21 successes, laughed over silly things, cried and regained hope
22 and determination through severe illnesses, fought blinding
23 snow storms trying to get home over the mountain on glass
24 smooth tires.

1 We have had running dialogs on the best way
2 to approach and solve problems, from school work to
3 misunderstandings, to building a house. All the years
4 Michael has been a protector or a support for the underdog
5 and unpopular people who have touched his life and was very
6 comfortable doing so.

7 There was sibling rivalry because all of our
8 five children were competitive spirits in school and sports.
9 But, if anyone from outside tried to create a problem,
10 Michael, as well as the others, stood up for their own.

11 Michael is a person. He is my son. Michael
12 worked with his dad through most of his school years. It
13 wasn't always easy because a lot of play time was missed.
14 But sports and other school activities kept him busy.
15 Michael also had a paper route for several years. And people
16 could rely on him thoroughly. He will help anyone who truly
17 needs help. And there have been times when he has given his
18 last food and/or his last money because someone else needed
19 it more.

20 All through high school Michael never caused
21 us grief with alcohol, drugs or smoking. If he told us he
22 would be some where at a certain time, he was there.

23 He drove a semitruck for us for several
24 years. He was one of the best drivers we had. Customers

1 were very pleased.

2 Michael was in love with his first wife.
3 She did not share that love unfortunately. She was very
4 pregnant with someone else's child when they were married.

5 And she called that to his specific
6 attention at a later date. When the child was born, he did
7 not question that the son was not his. He loved him and
8 played with him. When his second son was born he was ever so
9 happy. And to this day I have never seen a division of love
10 between the two boys. It's been absolutely thorough.

11 He loved and does love those two boys
12 immensely. Unfortunately, their marriage did not last.

13 She had found her real father toward the end
14 of their marriage and made a determination between her family
15 and her new father who had left her when she was a baby.

16 And when she left she was also pregnant with
17 someone else's child. So -- things weren't going well
18 there.

19 Michael met his present wife while visiting
20 his grandmother in Hawaii. They wrote for a couple of
21 years. Then he went to the Philippines to marry her. He was
22 so happy. He loved her so much and still does.

23 They have two boys ages eighteen months and
24 three years. He dearly loves them. He is so very good with

1 little children.

2 Michael had just finished building his own
3 house for his family. Somehow something just went terribly
4 wrong, something I cannot determine, understand. I just
5 don't know. I wish all of us knew.

6 I am asking you to please have compassion
7 and mercy on Michael. I know that the young lady and her
8 family are suffering tremendously. We all do. Nobody goes
9 unscathed.

10 We ask that you please let him have a chance
11 with his children. He knows he has a legal debt to pay.
12 Emotionally he has paid and will all his life.

13 I am asking you to please consider parole
14 after a reasonable amount of years so he can be with his
15 family because they need him and love him. Thank you very
16 much.

17 THE DEFENDANT: Thank you, mom.

18 MR. SULLIVAN: Your Honor, this is the defense's final
19 witness.

20 THE SISTER: Barbara Vasquez. I am Mike's sister,
21 V-A-S-Q-E-Z.

22 MR. SULLIVAN: What would you like to tell the Judge?

23 THE SISTER: I am here kind of winging it. I of course
24 have grown up with Mike. He has been my older brother. And

1 I guess I am -- probably the only person on earth who knows
2 him inside and out in every direction possible.

3 I have been a witness to, helped with and
4 been a part of just about every aspect of his life up until
5 this of course.

6 I myself have six children ranging in age
7 from one year to twenty-one.

8 And my children are my life. And I can't
9 imagine, if anything ever happened to any of them, especially
10 something as heinous as this.

11 But I will tell you that my brother is --
12 one of the hardest working and most loving people on this
13 earth.

14 But he doesn't always do things right. He
15 tries hard and something just happens. Wires get crossed or
16 something. And he never knows why. And he doesn't know how
17 to fix them. I know that he is greatly sorry for this. And
18 it's almost impossible to put down on paper what happened,
19 especially when you don't really know why yourself.

20 Regardless of how people feel during their
21 life, whatever outside influences do to affect them and how
22 they act and react and the decisions that they make, nobody
23 is perfect. And he has made mistakes.

24 In this case -- he -- he had just gotten

1 his -- his ultimate goal. He had his family. He had his
2 babies. And he had just finished his house. His life was --
3 great. There is absolutely no excuse and no explanation for
4 why this happened.

5 But it did.

6 And -- all I can say about that is he is not
7 a bad guy. He is not a danger to society. He is more of a
8 danger to himself. And I -- I beg the Court to consider the
9 fact that he isn't a bad person and that he does have some
10 redeeming qualities. And he has a family that loves him and
11 some babies that need him.

12 And he did a horrible thing and he dearly
13 serves to be punished. All I ask is that you consider
14 something fair and reasonable in light of the horribleness
15 that does happen in this world. This is a horrible crime.
16 But he needs to be -- he needs to be punished justly and
17 fairly and in accordance with what he did do. Thank you.

18 THE COURT: Thank you.

19 THE DEFENDANT: Thank you, Barbara.

20 MR. SULLIVAN: Thank you, Judge. We have no further
21 evidence or witnesses to present.

22 THE COURT: All right. The law affords your client an
23 opportunity to address the Court. You may do that at this
24 time.

1 THE DEFENDANT: Your Honor, first off I would like to
2 apologize to the victim and her family. I have no excuse for
3 what I did. I'm sorry that I hurt her and her family. I
4 have hurt a whole lot of people by what I have done, myself
5 included. I ruined a lot of lives and I have had a lot of
6 time to think about it already and it makes me -- it makes me
7 sick to my stomach.

8 I can never take back what I have done. And
9 I am going to have to live with it for the rest of my life.
10 But all I can do is ask for the victim and her parents and
11 her extended family's sympathy -- excuse me, forgiveness as
12 my -- I ask my family to forgive me. And I have to forgive
13 myself.

14 I realize I have done something wrong. And
15 I had to plead guilty to this. I didn't want to put anyone
16 through any more than what's already taken place. I have to
17 be able to live with myself too.

18 And I never expected to get out of jail on
19 probation. I never expected to stay in jail for five to ten
20 years. I knew I was going to be in jail for a while. I
21 accept that. I know I deserve that. But all I ask is that
22 you give me an opportunity to be -- with my family one of
23 these days so that I can be there when they are older. And
24 please forgive me for I am sorry from the bottom of my heart

1 for -- to everybody that I have hurt, for all the trouble
2 that I have caused. And I am sorry.

3 THE COURT: All right. Thank you.

4 THE DEFENDANT: Thank you.

5 THE COURT: Mr. Hahn.

6 MR. HAHN: Your Honor, the way I would like to proceed
7 this morning is I have one witness who will be presenting
8 some evidence. And I will present an argument to the court.
9 And lastly, as the Court has recognized under statute, the
10 victim and the victim's mother would like to present a
11 statement.

12 THE COURT: All right.

13 MR. HAHN: The State would call Greg Herrera.

14 -oOo-

15 GREG HERRERA

16 produced as a witness on behalf of
17 the State, being first duly sworn,
18 was examined and testified as follows:

19
20 DIRECT EXAMINATION

21 BY MR. HAHN:

22 Q Sir, could you tell us your name and spell
23 your last name please?

24 A Greg Herrera, H-E-R-R-E-R-A.

1 Q How are you employed, sir?

2 A I am a detective with the Washoe County
3 sheriff office.

4 Q For how many years have you been a sworn
5 peace officer?

6 A Approximately ten years.

7 Q You know why you are here; is that true?

8 A Yes, I do.

9 Q Detective Herrera, I would like to take you
10 to on or about August 7, 2003 in connection with an
11 investigation with the suspect that was ultimately identified
12 as Michael Botelho. You are familiar with that; is that
13 true?

14 A Yes, sir, I am.

15 Q With regard to specifically the victim who
16 was presented to you, I would like to first address several
17 issues involving her.

18 Was she known in this matter to have some
19 physical injuries?

20 A Yes, sir, she was.

21 Q Could you recount those injuries for the
22 Court please?

23 A Yes, sir. The victim had a few injuries.
24 She was -- she complained of soreness in her shoulders, her

1 back, her stomach where she stated she had been punched. She
2 was also sore from where she was duct taped around her eyes
3 and wrists. And subsequently an examination for the sexual
4 assault was conducted and there were also some injuries in
5 her vaginal area as well.

6 Q Could you briefly summarize for our record
7 today what those injuries were to not only to the vaginal
8 vault but the vestibule as well?

9 A Those injuries included abrasions on the
10 fourchette. There was bleeding. There was blood found in
11 the vaginal vault. There were lacerations and bruising
12 located inside the vaginal vault as well.

13 Q With regard to ultimately attempting to
14 identify a suspect in this case, how was the suspect
15 identified?

16 A The victim's mother was able to capture a
17 cell phone number off their caller I.D.

18 Utilizing that number, we were able to track
19 down a name and with that we were -- able to track down --
20 eventually track down the suspect.

21 Q Now, had you not had -- had not the victim's
22 mother had a caller I.D., would that have made detection
23 substantially more difficult?

24 A Absolutely.

1 Q Now, with regard to the phone number that it
2 came back to, did it come back to his phone number?

3 A No, sir, it did not.

4 Q Whose number was it?

5 A It came back to the defendant's wife, Mary
6 Lou Botelho.

7 Q Now, with regard to the apprehension of the
8 suspect, where was he apprehended?

9 A He was apprehended in Susanville,
10 California.

11 Q And how was it that he was even located
12 there?

13 A By chance we got a call from a secret
14 witness tip. We had placed the defendant's identification
15 and picture over local news media. A citizen, an alert
16 citizen, in Susanville saw the news cast and saw
17 Mr. Botelho's vehicle. And then Mr. Botelho had a local tail
18 in the Susanville area.

19 Q Now just to clear up, when you say
20 Mr. Botelho's vehicle, was this the same vehicle that was
21 used in the abduction of the victim?

22 A Yes, it was.

23 Q Now, whose vehicle -- who typically drove
24 that vehicle?

1 A Mr. Botelho's wife, Mary Lou Botelho.

2 Q Was that a vehicle that he would commonly
3 have driven?

4 A Almost never, according to him.

5 Q Now, with regard to the apprehension of the
6 suspect who was at this point in time identified as
7 Mr. Botelho, did you as an investigator observe any strange
8 behavior that would suggest that he was attempting to avoid
9 detection?

10 A Yes, Mr. Botelho had noticeably changed his
11 appearance as well as he had avoided us for several weeks
12 after learning that he was under investigation.

13 Q Now, how did he try to change his
14 appearance? Specifically what was it, detective?

15 A He had bleached his hair. His hair was
16 noticeably longer. He normally keeps his hair short, as it
17 is today. His hair was longer. It was bleached. And he had
18 an a full beard at the time he was arrested.

19 Q Had he ever -- when -- did you confront him
20 with this concern that you had?

21 A Yes, sir, I did.

22 Q What was his representation to you at this
23 time as to why his appearance may have been changed?

24 A He stated the fact that his appearance

1 changed was merely coincidental and he had been planning to
2 do it anyway. It was something that he had always been
3 wanting to do because of the graying in his hair.

4 Q Now, with regard to -- you are familiar with
5 the term FIS?

6 A Yes.

7 Q What does that refer to?

8 A That's our forensic unit, Washoe County
9 crime lab.

10 Q Again when Mr. Botelho was apprehended did
11 FIS process Mr. Botelho's wife's vehicle?

12 A Yes, sir, they did.

13 Q And was that the vehicle that was used in
14 the abduction of the victim?

15 A Yes, sir, it was.

16 Q What unusual fact did they discover about
17 the vehicle?

18 A They stated the vehicle had obviously been
19 cleaned up. Specifically in the back seat of the vehicle,
20 they noticed that it had been vacuumed and wiped down.

21 Q Now, you heard Mrs. Botelho testify in this
22 matter, correct?

23 A Yes, sir.

24 Q Did you have conversations with her in

1 connection with your investigation?

2 A Several.

3 Q Was she truthful in her representations?

4 A No, sir, she was not.

5 MR. SULLIVAN: Your Honor, I am going to actually
6 object. I am not sure which Mrs. Botelho he is talking
7 about.

8 MR. HAHN: I'm sorry. The wife.

9 THE COURT: The present wife?

10 MR. HAHN: The present wife of Mr. Botelho.

11 THE WITNESS: Mary Lou.

12 BY MR. HAHN:

13 Q Yes, sir. Was she truthful in her
14 representations to you?

15 A No, sir, she was not.

16 Q What misstatements did she make to you in
17 connection with your investigation?

18 A She told me that she -- several times that
19 she had not been in any contact with her husband whatsoever.
20 And later we found out that that was not accurate.

21 Q In fact he was actually with her at the time
22 he was apprehended, true?

23 A That's correct.

24 Q Along with her children?

1 A Yes, sir.

2 Q When you interviewed Mr. Botelho, did he
3 make some representations to you that concerned you, that
4 this incident that happened here involving the victim, this
5 was not -- a one-time thing; that there had been some type of
6 brewing fixation?

7 A I had asked him if he had had fantasies and
8 he admitted that he had fantasies but couldn't recall what
9 they were about, those fantasies.

10 Q So he simply didn't articulate them to you
11 in any specific detail?

12 A No, he did not.

13 Q And generally, what was the nature of these
14 fantasies that he had represented to you?

15 A He stated that he had fantasies about being
16 with somebody other than his wife.

17 Q Okay. Now when you say being with, what was
18 the context?

19 A Having sex.

20 Q Okay. Now, ultimately did you follow up
21 later on those representations that he made to you and
22 receive some information concerning those fantasies from
23 another source?

24 A Yes, sir, I did.

1 MR. SULLIVAN: Objection. Your Honor. I think the
2 State is actually -- the next question out of the State's
3 mouth is going to be, "Who did you follow up with -- whom did
4 you follow up with?" And I believe it's going to reference
5 my client's ex-wife Mrs. Melissa Botelho. And I would make
6 my objection noted on the record.

7 THE COURT: All right. And this is the subject -- or
8 this was the subject of the hearing prior to the sentencing
9 and I made my ruling so we'll proceed.

10 BY MR. HAHN:

11 Q What representations -- first of all, who
12 was this individual?

13 A Melissa Botelho.

14 Q And who did she represent herself to be in
15 relationship to the defendant Michael Botelho?

16 A Michael Botelho's ex-wife.

17 Q And would this be his first wife or his
18 second wife, if you recall?

19 A I don't recall that specifically. I just
20 remember she was a previous wife and she stated that they
21 were married in the early '90s.

22 Q What representations, if any, did she make
23 concerning his statements or representations to you that this
24 had been something brewing, that there was a fixation

1 involved?

2 A She had contacted me by phone when she
3 learned of the investigation and stated that she was not
4 surprised that this had happened at all.

5 MR. SULLIVAN: Your Honor, I object. Again, I
6 apologize. I make the same objection. I reference Crawford
7 verses Washington, which I don't have the Supreme Court cite;
8 but I have 200 Westlaw 401, 330 301 decided March 8, 2004.

9 Your Honor, the Court specifically held
10 out-of-court statements by a witness that are testimonial in
11 nature and included police interviews are barred under the
12 confrontation clause unless a witness is unavailable and the
13 defendant had prior opportunity to cross examine this witness
14 regardless of whether the statements are deemed reliable by
15 the Court.

16 Second, your Honor, the Court held
17 admissions of the defendant's wife concerning out-of-court
18 statements to police officers regarding the facts of the
19 incident violated the confrontation laws. And I am sure your
20 Honor is familiar with this case. The facts of the case in
21 Crawford is that the defendant was charged with an assault
22 and attempted murder. The defendant claims self-defense at
23 trial. The defendant's wife did not testify due to a
24 Washington marital privilege statute which bars one spouse

1 from testifying without the other spouse's consent.

2 THE COURT: That's what you raised --

3 MR. SULLIVAN: Exactly, your Honor, similar to what I
4 raised in the motion hearing.

5 THE COURT: And that was granted.

6 MR. SULLIVAN: Exactly. And I think the State is
7 trying to circumvent Crawford and also circumvent the marital
8 communication statute which has been codified by the NRS by
9 getting into what Melissa Botelho, my client's ex-wife, said
10 to this detective.

11 THE COURT: Well, wasn't Crawford a situation where
12 they were in the guilt phase? And the confrontation clause
13 became paramount because of that? Whereas here the argument
14 was we are not in the guilt phase. We are in the sentencing
15 phase. And the Court is allowed to have different sources of
16 information.

17 MR. SULLIVAN: I don't think --

18 THE COURT: You had knowledge of it. You had the
19 opportunity to -- confront it, to refute it, if you can.

20 MR. SULLIVAN: If I understand --

21 THE COURT: There is a different standard, and
22 Crawford did not address the sentencing aspect of the case.

23 MR. SULLIVAN: That's correct, your Honor. Crawford
24 did not carve out an exception for the guilt phase or the

1 sentencing phase. But I would submit to the court the
2 argument that Crawford doesn't apply right now. Crawford
3 never said that it doesn't apply to the sentencing phase. It
4 just never delineated that fact.

5 Your Honor is correct and I would argue that
6 under Nevada law and US Supreme Court law, which I have
7 cited, that it does apply at these proceedings because
8 basically it puts my client in a difficult position, as the
9 Court noted in Crawford in the footnote -- footnote one, I
10 believe.

11 It puts him in the difficult Hobkins choice
12 decision by forcing him to choose between the marital
13 privilege or confronting his ex-wife at sentencing and having
14 a chance to cross examine her.

15 He can't do that now, so that is what is
16 being thrust upon my client. It is either he invoke the
17 privilege, which is what he decided to do through the motion
18 hearings that we had, or we have Melissa Botelho come and
19 take the stand and we get a chance to cross examine her.

20 And I don't think the Court would voice that
21 upon my client at this time. So I would just lay my
22 objection for the record to any testimony concerning Melissa
23 Botelho through this witness.

24 THE COURT: All right.

1 You may continue.

2 MR. HAHN: Your Honor, briefly, before I continue,
3 before the Court makes a ruling from the bench, I am
4 disappointed. Mr. Sullivan is a fine lawyer and he has made
5 a very adequate record on this issue already.

6 This Crawford verses Washington, now this is
7 being dumped on me to deal with in a manner that I am not
8 prepared to. So procedurally, your Honor, it has never been
9 raised. On the merits, Judge, I offered to bring her. I
10 offered to the court and to the defense to have their
11 opportunity --

12 THE COURT: I am not concerned about that, Mr. Hahn.
13 I believe in the argument -- I came across Crawford before we
14 had the argument. I think I mentioned it in the transcript.

15 MR. SULLIVAN: You did, Judge.

16 THE COURT: So I was aware of it and it was just a
17 fresh case two days prior or something like that. It was
18 just decided in March.

19 MR. SULLIVAN: It was March 8th, your Honor.

20 THE COURT: Okay.

21 MR. HAHN: Very well, your Honor.

22 THE COURT: So --

23 MR. HAHN: I have nothing.

24 THE COURT: I made my ruling. Continue.

1 BY MR. HAHN:

2 Q Detective Herrera, with regard to her
3 representations concerning this fixation, what specifically
4 did she relate to you?

5 A She stated that Michael Botelho had been
6 having these -- had been having fantasies ever since they
7 were married, during the early '90s.

8 Q And specifically what -- in as best detail
9 as you can recall, what did she represent these fantasies
10 were composed of?

11 A She talked about fantasies -- his fantasies
12 of kidnapping a young girl and having sex with the young
13 girl, including disfigurement, torture and to hold the young
14 girl for -- anything he wanted to do.

15 Q Now, these representations that she made to
16 you, were they -- was this in a phone conversation? Was it
17 documented? How did you preserve -- in other words, I want
18 to know how sharp your memory is about this.

19 A She originally contacted me. But later on I
20 believe it was -- early January, I believe, I had a taped
21 interview with her over the phone with her consent.

22 Q And had that tape been in fact transcribed,
23 that conversation?

24 A Yes, it did.

1 Q And you reviewed that prior to coming and
2 testifying today?

3 A Yes, I did.

4 Q Judge, I have no other questions of the
5 witness. I would invite Mr. Sullivan to inquire.

6
7 * CROSS EXAMINATION *

8 BY MR. SULLIVAN:

9 Q Detective, concerning -- I just have a few
10 questions.

11 Concerning the injuries that you have
12 already discussed pursuant to Mr. Hahn's questioning, were
13 you present when the victim in this case was examined by the
14 SART team or by medical professionals?

15 A No, sir, I was not.

16 Q So you have no first-hand knowledge of the
17 injuries in question, correct?

18 A Correct.

19 Q You only saw them from documents and
20 photographs; is that accurate?

21 A And speaking with the persons who performed
22 the examination.

23 Q So secondhand knowledge basically is what
24 you have?

1 A Yes.

2 Q Okay. Now, concerning the fact that my
3 client was apprehended in Susanville, California, you and
4 Detective Carry were actually present when my client was
5 apprehended in California, correct?

6 A No, sir. That's not correct.

7 Q You were there, correct?

8 A When he was apprehended, no, sir.

9 Q Who exactly was there when he was
10 apprehended?

11 A It was a police officer from the Susanville
12 Police Department.

13 Q When did you finally come into contact with
14 my client?

15 A Detective Carry and I, I believe, came into
16 contact with him approximately a couple hours after he was
17 apprehended.

18 Q Okay. A couple hours after he was
19 apprehended?

20 A Yes, sir.

21 Q Where?

22 A At the Lassen County detention facility.

23 Q In California?

24 A Yes, sir.

1 Q Okay. And, to your knowledge, you spoke to
2 the officers that actually apprehended my client, correct?

3 A Yes, sir.

4 Q And you have reviewed those reports in
5 making your investigation in this case?

6 A Yes, sir.

7 Q Okay. And, to your knowledge, my client was
8 completely cooperative when he was apprehended by the
9 California authorities, correct?

10 A They stated he was cooperative.

11 Q He never put up a fight?

12 A No, sir.

13 Q He never tried to run?

14 A No, sir.

15 Q He never pulled a weapon?

16 A No, sir, he did not.

17 Q He went along willingly with the
18 authorities?

19 A Yes, sir.

20 Q As a matter of fact, he put his hands in the
21 air, dropped his bag and said, "I am ready to go." Isn't that
22 accurate?

23 A I don't recall that part, sir.

24 Q Okay. And when did you actually first speak

1 with my client, about how long after he was apprehended?

2 A I believe it was approximately a couple
3 hours after he was apprehended. It was driving time from
4 Reno to the detention facility there in Susanville.

5 Q Were you with Detective Carry at this time?

6 A Yes, sir, I was.

7 Q Was there any other detectives with you at
8 this time?

9 A No, there was not.

10 Q Were you guys in a marked patrol car or an
11 undercover car?

12 A We were in my unmarked detective vehicle.

13 Q Okay. And was my client handcuffed and
14 sitting in the back seat?

15 A No, sir. He was already -- he had already
16 been booked in the Lassen County detention facility.

17 Q So he was -- seated in civilian clothes in
18 the back seat of the car, no handcuffs?

19 A He was inside the jail.

20 Q I apologize. You didn't transport him back?

21 A No, sir, I did not.

22 Q Who did transport him back?

23 A I believe the Susanville Police Department
24 did.

1 Q Okay. When you spoke with my client in
2 California, did you first read him his Miranda rights?

3 A Yes, sir, I did.

4 Q And he chose to waive his rights and speak
5 with you?

6 A That's correct.

7 Q And it's true that he was having trouble
8 remembering the facts of this case initially, correct?

9 A According to him, yes.

10 Q And he was trying to remember things, but he
11 was just having a hard time. Isn't that accurate?

12 A According to him, that's correct.

13 Q But -- you have been a detective for quite a
14 long time; isn't that true?

15 A For five years, yes.

16 Q And you are familiar -- I mean, I am sure
17 you have interviewed a lot of suspects concerning a lot of
18 heinous crimes?

19 A Yes, sir.

20 Q It's true that my client wasn't playing
21 games with you, correct, giving you -- knowingly giving you
22 false and misleading information?

23 A I wouldn't say that's correct. I believe
24 that he was -- choosing not to remember. That was my belief.

1 Q Okay. But he wasn't saying his wife's car
2 was purple rather than it being red or he wasn't giving you a
3 different make of the vehicle and trying to actively mislead
4 you in the investigation?

5 A That's correct.

6 Q Okay. So at least he was attempting to give
7 you some facts?

8 A Yes, sir.

9 Q To aid you in the investigation?

10 A Yes, sir.

11 Q And he in fact did give you some facts. I
12 am not saying all the facts you wanted. I am just saying
13 some facts to aid you in the investigation?

14 A Yes, sir, he did.

15 Q Thank you. Now, concerning his appearance,
16 you had never laid eyes on my client prior to the time that
17 you went and saw him in the Lassen County jail, correct?

18 A Just pictures that I have seen.

19 Q Was this a Department of Motor Vehicles
20 picture?

21 A Yes, and a previous booking photo.

22 Q Okay. And the previous booking photo and
23 the Department of Motor Vehicle photo, those two pictures
24 looked pretty different, correct?

1 A Yes. As far as his weight, yes.

2 Q His weight had fluctuated and his hair might
3 have been either shorter or longer, correct?

4 A That's correct.

5 Q And maybe a few more wrinkles around the
6 eyes where some years had passed, correct?

7 A Yes, that's correct.

8 Q And you have already testified that you
9 hadn't laid eyes on him physically prior to interviewing him
10 at the Lassen County jail?

11 A Yes, sir.

12 Q So you can't really testify as to what he
13 looked like without having known him in person prior to the
14 offense date, correct?

15 A That's correct.

16 Q And you can't really accurately testify as
17 to how his appearance had changed, correct?

18 A That's not correct. I had shown a picture
19 to his wife Mary Lou and she had stated that that's pretty
20 much how he looked. She said his hair was a little bit
21 longer.

22 Q Okay. Well, what I am asking you is that
23 you have no personal knowledge of how his appearance had
24 changed?

1 A That's correct.

2 Q You had to rely on the secondhand
3 information of other persons, correct?

4 A Yes, sir.

5 Q And by looking at photographs?

6 A Yes, sir.

7 Q Now, you testified pursuant to Mr. Hahn's
8 questioning that FIS processed my client's wife's vehicle,
9 correct?

10 A That's correct.

11 Q And pursuant to the processing, FIS informed
12 you throughout the investigation that the vehicle in question
13 had been cleaned recently. Is that an accurate statement?

14 A That was their opinion, correct.

15 Q But that is an opinion. What I am driving
16 at is you don't know when that vehicle was cleaned, do you?

17 A That's not correct. I was later informed by
18 Mr. Botelho himself that he had cleaned the vehicle.

19 Q Okay. Did he tell you when he cleaned the
20 vehicle?

21 A He stated that it was after -- either the
22 night that he was informed he was under investigation or the
23 next day. I don't recall which one specifically.

24 Q Do you recall whether or not my client said

1 it was just routine maintenance, a routine cleaning on the
2 vehicle or whether it was cleaning the vehicle to cover up a
3 crime?

4 A It was cleaning the vehicle to cover up a
5 crime.

6 Q He actually used the words, "I cleaned the
7 vehicle to cover up a crime"?

8 A He didn't state those words, but he stated
9 he realized he had done something horrible and he didn't know
10 what it was so he cleaned out his vehicle.

11 Q So concerning -- this is my last segment,
12 detective. Thank you for bearing with me today. This is my
13 last segment that I want to get into. Concerning the alleged
14 fantasies that you testified about that you heard through
15 Melissa Botelho, my client's ex-wife?

16 A Yes.

17 Q Who exactly interviewed Melissa Botelho?

18 A I did, sir.

19 Q And was Detective Carry there as well?

20 A I don't believe he was.

21 Q Was this a taped interview?

22 A Yes, sir, it was.

23 Q And I have a transcript of her original
24 interview dated January 8, 2004, stating statement given by

1 Melissa Botelho. Is that when the interview was given?

2 A Can you repeat the date?

3 Q January 8, 2004.

4 A Yes, sir.

5 Q You got the date wrong earlier?

6 A I think I said early January.

7 Q And it says statement taken by Detective
8 Greg Herrera. And it was telephonic, correct?

9 A Yes, sir, it was.

10 Q Okay. Now, in the -- you have testified
11 that -- Melissa Botelho told you my client had these alleged
12 deviant sexual fantasies where he wanted to dismember and
13 maybe dispose of a young female. Is that your testimony
14 today?

15 A I testified to dismembering.

16 Q Dismembering. What did you take that to
17 mean?

18 A Cutting off limbs or disfiguring.

19 Q Okay. Have you reviewed the transcript from
20 Melissa Botelho from your interview?

21 A Yes, sir.

22 Q Prior to today's proceedings?

23 A Yes, I did.

24 Q Does it say anywhere in that transcript what

1 you just testified to?

2 A Not in that transcript. But I believe I
3 testified there was also a previous phone call that I had
4 with Melissa Botelho when I was first notified of these
5 fantasies.

6 Q There was a previous phone call. What date
7 was that, sir?

8 A That was back in September, I believe.

9 Q Did you make -- was there a statement or
10 transcript provided to the District Attorney's Office
11 concerning this phone call?

12 A I didn't do a taped interview, sir, no.

13 Q So this is the only transcript that we are
14 working from, just so I am clear, January 8, 2004?

15 A Yes. I didn't do a formal interview at that
16 time. I just received the information and -- relayed it to
17 the District Attorney and moved on.

18 Q Let me ask you this, detective. Don't you
19 think that the earlier telephonic communication with Melissa
20 Botelho when she mentions the word dismember is important
21 enough to put down on a transcript or a taped recording?

22 A At the time, sir, I was more interested in
23 apprehending Mr. Botelho than I was sitting down and doing
24 that formal interview at that time.

1 Q But that doesn't answer my question. My
2 question is --

3 A No.

4 Q -- do you feel that that testimony or that
5 piece of information that Melissa Botelho gave you is not
6 significant -- significant enough to put down in a transcript
7 or written statement, have her provide a written statement to
8 that effect?

9 A She was in Anchorage, Alaska. I couldn't
10 have the -- I couldn't have her easily and quickly do a
11 written statement. I just did it when -- the first chance I
12 had.

13 Q Okay. But you would agree you could have
14 provided her -- mailed her a written statement to fill out
15 and then provide it back to you, correct?

16 A Yes, sir.

17 Q But you chose not to do so?

18 A Right. I didn't do so, correct.

19 Q Okay. So the only testimony transcript that
20 you have -- that we have from Melissa Botelho is on January
21 8, 2004, correct?

22 A Yes.

23 Q Wherein she says, "It was -- Michael's key
24 fantasy to kidnap a young girl, twelve, thirteen years old,

1 find someplace to keep her and basically just have his way
2 with her," correct?

3 A Correct.

4 Q And she never mentions dismember in the
5 second telephonic interview?

6 A That's correct.

7 Q When was this report that you just testified
8 about, this report that you provided to the District
9 Attorney's Office, what was the date on that report
10 concerning Melissa Botelho's first telephonic interview?
11 What was the date on that?

12 A I don't recall. I would have to see the
13 report and see the date.

14 MR. SULLIVAN: Court's indulgence, your Honor.

15 Q Detective, just so I am clear, my client
16 never admitted to you or Detective Carry during the course of
17 the investigation that he had deviant -- these alleged
18 deviant sexual fantasies, correct?

19 A Correct.

20 Q As a matter of fact, the fantasies that he
21 said he might have had were just normal -- normal type
22 fantasies of having sex with another female other than his
23 wife?

24 A We didn't -- he said he couldn't remember

1 what the fantasies actually were.

2 Q And then after he said he couldn't remember
3 any fantasies; isn't that true?

4 A I don't believe so. I think he admitted
5 that he had fantasies; but he couldn't recall the content, if
6 I remember correctly.

7 Q But didn't he say, "I don't know. I don't
8 know," when you were pressing him during the course of the
9 investigation? "I can't remember"?

10 A I believe he said, "I can't remember."

11 Q Thank you, Judge. I have nothing further.

12 THE COURT: All right.

13 MR. HAHN: I waive. Thank you.

14 THE COURT: All right. You may step down.

15 MR. HAHN: Your Honor, that's the State's evidentiary
16 presentation.

17 THE COURT: All right.

18 MR. HAHN: Your Honor, with regard to a couple of
19 comments that I want to make clear to the court that I don't
20 know are adequately addressed in the presentence
21 investigation report, I want to offer a couple of thoughts
22 concerning Mr. Botelho, a couple of thoughts concerning the
23 acts involved here and then a couple of thoughts concerning
24 the victim.

1 Your Honor, I agree with Mr. Sullivan about
2 one thing; that there were some atrocities committed. But I
3 think the Court has seen through its years of experience that
4 atrocities are committed many times on impulse or they simply
5 occur very, very quickly and they occur by people who have
6 had horrific life experiences, people who were whacked-out on
7 dope or they are intoxicated or they have been horribly
8 abused themselves or there is something which the
9 psychologists and the legal community and the forensic
10 community can say, "Okay, well, at least there is some type
11 of understanding. There is some type of explanation to this
12 behavior," so we can make a judgment as to whether or not a
13 person would ever be a risk to someone else again.

14 And what I am seeing in the defense's
15 presentation and what I have examined is is that Mr. Botelho
16 has none of those. This is a man who had a good background.

17 This is a man who was treated properly as a
18 child.

19 This is a man who has not abused drugs, who
20 has not abused alcohol. This is a man who was in the Corp
21 and should have learned something about honor and sacrifice.

22 It doesn't exist here, Judge. And that's
23 what troubles me so much as a prosecutor.

24 Because all of the common excuses that you

1 and I see every week, he doesn't have any.

2 And I believe that's what represents this
3 man to be such a significant threat.

4 What we do know is that, despite all of
5 these good things that his parents did for him, he is a
6 convicted felon before he ever hits this courtroom because of
7 false representations: The insurance fraud. We do know that
8 he has had a series of failed relationships, intimate
9 relationships.

10 Why exactly, we don't know.

11 But we do know that there is some stability
12 issues that this man has.

13 And when I hear his family and friends come
14 and present these letters and present these arguments, I
15 appreciate the pain they are going through, Judge. But this
16 isn't about them.

17 Because, frankly, they are victims too.
18 This is not a good man. This is a selfish man.

19 He is selfish to the core and he simply
20 injured other people in getting his own selfish way:

21 This man has young children and he is
22 engaging in anything remotely considerate with this type of
23 behavior.

24 He is selfish.

1 This is not a good man.

2 Love doesn't demand its own way.

3 Those are my thoughts on Mr. Botelho.

4 As to the crimes involved in this case,
5 Judge, again, I agree that an atrocity has occurred. But
6 those things sometimes happen on impulse. The amount of
7 planning that went into this troubles me.

8 This man did not use his own car. He used
9 his wife's car with the baby blinds and the dark tinted
10 windows. He brought duct tape. He cleansed the car inside
11 and out because he didn't want to get caught. He didn't even
12 use his own cell phone. He changes his appearance.

13 Judge, this is not just planning. But this
14 was an intelligent, concealed cover-up. And of course that
15 makes sense. This man has a year of college behind him. He
16 is not a dummy.

17 Those are the thoughts that I have on the
18 crime. And when -- again when I hear about he is a hard
19 worker, well, that's nice. I appreciate that. And he is
20 okay with his kids. I can appreciate that too.

21 But this is a man who slugged a girl who
22 doesn't even weigh ninety pounds soaking wet in the stomach
23 to gain her compliance. This is a man who threatened her
24 with harm if she ever told anybody.

1 And yet when I read his statements I am
2 wondering if I am looking at the right case because I am
3 hearing how, "After I get off of her I start to cry and say
4 I'm sorry, I'm sorry and she tries to calm me down and she
5 tries to tell me it's okay. And I am really scared and I am
6 so freaked out. I am very sorry and I didn't remember doing
7 anything wrong and the cops were trying to make me feel
8 guilty and I just -- I can only remember just doing a few
9 things."

10 Judge, this is a man who is minimizing.

11 He came in and he admitted responsibility,
12 and for that he should receive some credit. I am okay with
13 that. But this is a man who will not go one step further.

14 Give credit where credit is due.

15 Judge, my last group of comments is
16 concerning the victim in this case. Judge, she was fourteen
17 years old.

18 This was her first baby-sitting job.

19 Her mom and her had responded to an ad that
20 this man had placed for a baby-sitter.

21 And of course everything looked right. It
22 was a decent looking car. And, of course, there is baby
23 seats in the back. This girl did everything that she knew in
24 her fourteen years to be smart.

1 And Detective Herrera would have indicated
2 to you that when the defendant was talking to them, the one
3 thing he remembered when -- in this -- in this haze where he
4 can't remember anything in detail -- one of the things that
5 this man did remember is when he saw the young girl he saw
6 her smile. He saw her smile.

7 And the reason that that's significant,
8 Judge, is that tells you that she trusted this man.

9 Those are my comments concerning her.

10 Judge, with regard to the Division's
11 recommendations, there is some additional restitution that
12 the court needs to be familiar with. It's another two
13 hundred sixty-nine dollars to the victim. And that's been
14 documented and I'll invite the Court to inquire of the
15 Division. The fines and fees look appropriate. I agree that
16 the court should put the defendant on lifetime supervision
17 with the standard fines and fees.

18 I also agree with the Division that the life
19 terms are in fact appropriate in this case. It's the right
20 thing, Judge. And I also agree with the Division that the
21 maximum, not just the maximum terms, but the fact that the
22 sentences should in fact run consecutive is the right thing
23 to do in this case.

24 There is absolutely no explanation for this

1 man's behavior. And that's the most troubling thing that I
2 have to address to you. So having said that, Judge, I will
3 rest and invite any questions from the court. If the court
4 has none, I would like to then have the Court hear from the
5 victim and her mother in a sworn statement.

6 THE COURT: All right. Here, let me give you my
7 thoughts before we proceed any further.

8 I see the recommendation. And I can fully
9 appreciate the setting in motion the -- yes, setting into
10 motion the chain of events that caused this.

11 I guess the bottom line question that I have
12 is the recommendation is for the maximum.

13 MR. HAHN: That's correct.

14 THE COURT: The minimum is five to twenty, the maximum
15 is sixty-five to life. Okay. We are at the maximum. Now,
16 here is my concern.

17 The only saving factor that I see in this
18 case was the fact that she was returned alive. Because, as
19 you indicated, almost every case that we see it turns out
20 otherwise.

21 My concern in that regard is, if you face
22 the maximum for having done the acts and returning the victim
23 alive, what is to prevent killing the next victim because the
24 punishment is going to be the same? And that is where I am

1 stuck.

2 This is not a minimum punishment case. This
3 is a heavy punishment case. But the only concern, as I have
4 expressed is -- what stops the next person, once that is set
5 in motion and the thought occurs kill the victim, kill the
6 witnesses, because I have already crossed the line and, once
7 crossed, there is no turning back. Is that a legitimate
8 concern or -- that's the concern I have.

9 Any response?

10 MR. HAHN: Your Honor, with regard to -- -- I
11 appreciate what the court is saying. Because the Court is
12 saying theoretically, if offenders would hear about this,
13 then why not just go ahead and cut up and kill the victim
14 like they have been thinking about for years?

15 Judge, I don't know. I don't have an
16 intelligent answer in terms of presenting to the potential
17 offender community out there a mathematical formula and a
18 carrot-stick type of approach to saying, at least if you --
19 if you come forward and you turn yourself in or if you don't
20 kill the victim, you know, we want to offer you something.

21 I can't speak to that, Judge. I just --
22 it's really outside my realm. I appreciate the weight on
23 your shoulders. But what I do know about this man -- what I
24 do know is this was not an impulse act. And we are thankful

1 that she is alive.

2 THE COURT: I agree. All right.

3 Go ahead.

4 MR. HAHN: The State will ask -- will invite the Court
5 to inquire of Jane Doe, the victim.

6 -oOo-

7 JANE DOE

8 being first duly sworn,
9 was examined and testified as follows:

10
11 DIRECT EXAMINATION

12
13 MR. HAHN: May I have just a moment with her?

14 THE COURT: Sure.

15 BY MR. HAHN:

16 Q Ma'am, you were the Jane Doe that's listed
17 in the information on file; is that true?

18 A Yes.

19 Q Could you tell me how old you are?

20 A I am fifteen now.

21 Q And you know why you are here; is that true?

22 A Yes.

23 Q What grade are you in?

24 A 9th.

1 Q And is there some information that you would
2 like to relate to Judge Polaha?

3 A Yes.

4 Q Did you prepare a statement?

5 A Yeah.

6 Q Would you like to read it?

7 A Yeah.

8 Q If you would please.

9 THE COURT: If you could, could you get closer to the
10 microphone so that your voice is heard?

11 THE VICTIM: Okay. You know, my name is Jane Doe. On
12 August 7th, 2003 I thought I was going to go for a baby
13 sitting job for Kevin. That's what he said his name was.

14 Instead Mike Botelho took me up in the hills
15 and raped me. That day changed my family's life and my life
16 forever. I sat there not knowing if I was going to live or
17 die.

18 I kept telling myself over and over again,
19 "This is all a horrible dream. You will soon wake up and be
20 home again." I think that is how I got through this
21 horrifying rape. I would like to tell you what my life has
22 been like for the past eight months and how Mike Botelho's
23 crime has affected me.

24 Being raped has turned my whole world

1 upside-down in every horrible possible way. I have been
2 through four internal pelvic exams -- which is pretty unusual
3 and scary for somebody my age, who hasn't even started their
4 period yet -- thirteen separate blood tests, two x-rays and
5 two ultra sounds, which have to be repeated in a couple of
6 years because of my size.

7 We don't really know if I will ever be able
8 to have kids of my own because of the damage that has been
9 done. And I have just received the paperwork for my fourth
10 HIV test.

11 I have seven more of those to go over in the
12 next four-and-a-half years. All of those proceedings that I
13 have gone through have been painful, scary and embarrassing.

14 I have been on antidepressants and
15 medication to sleep because I have not been able to sleep.
16 And, when I do, I have really bad dreams.

17 I live my life afraid. I can't even stay
18 alone in my own house. I lock every single lock on every
19 single door and I am still scared.

20 I am afraid of men now, even ones I knew
21 before this happened. To get in a car with men, especially
22 in the back seat, it takes everything I have got. And I am
23 still scared even with my own grandpa.

24 I am always watching the road to make sure

1 we are going the way we are supposed to be going. I started
2 school two weeks after the rape. I had to get some of my
3 classes changed so that I would only have female teachers. I
4 am afraid to trust anybody. I have never in my life been so
5 scared. I am still scared. I feel like I have to watch my
6 back every second of everyday. And I hate it.

7 I hate that I have no freedom. I am afraid
8 to go anywhere alone. My brother walks me to and from my
9 friend's house and my mom drives me wherever else I go.

10 I hate this. No one should ever -- have to
11 be this afraid ever. My family and closest friends don't
12 know what to say or do. They all want to help me. They just
13 don't know how. I don't even know how. My brother goes into
14 another room and we start talking about the rape. My brother
15 feels like he let me down. He does not know what to say or
16 do. He feels helpless. My grandfather can find no words to
17 say how much this has torn him up.

18 What he says over and over is how lucky we
19 are to have me here. My mother feels she let me down because
20 she wasn't there to protect me from him. My best friend is
21 afraid to talk about it because she is afraid she might say
22 the wrong thing. She won't though.

23 I feel so much grief in this. I am so
24 embarrassed by it. And I am so afraid that he will come back

1 and do this again, maybe even worse. But, like my grandma
2 always used to say, God never gives you anything that he
3 thinks you cannot handle.

4 This has made me wonder.

5 I know I will survive this and I hope one
6 day I can help other victims. I know how terrible it can
7 be. I have lived it nonstop for the past eight months and
8 will for the rest of my life.

9 I would never wish this kind of life on
10 anybody in the whole world. I think Michael Botelho should
11 receive the maximum sentence for what he did and took from me
12 to make sure that he can never do this to any other girl
13 ever.

14 Nobody should ever have to go through the
15 pain, humiliation, the anguish, the terror that I have. I
16 didn't deserve this. No one does. I didn't ever want -- I
17 don't want to ever have to worry that there will be a day
18 that Michael Botelho will be released from prison and come
19 knocking on my door. He warned me, if I ever told anyone,
20 that he would come back and do worse. I don't want that to
21 happen. I just want to be me again.

22 Q Was that your statement?

23 A Yes.

24 Q Just a few questions. I want to follow-up,

1 if I might. Are you receiving therapy right now?

2 A Yes.

3 Q How often?

4 A Once a week.

5 Q And how long do the medical providers think
6 that you are going to be under care?

7 A I don't know.

8 Q I would invite any questions from
9 Mr. Sullivan.

10 MR. SULLIVAN: Judge. The defense has no questions for
11 this witness. Thank you.

12 THE COURT: All right. Thank you. You may step
13 down.

14 MR. HAHN: Your Honor, the next witness will be the
15 mother of Jane Doe.

16 I am sorry.

17 Would you please raise your right hand and
18 be sworn.

19 -oOo-

20 JANE DOE'S MOTHER

21 being first duly sworn,
22 was examined and testified as follows:

23
24 DIRECT EXAMINATION

1 BY MR. HAHN:

2 Q Ma'am, you are the mother of the child that
3 just spoke here in court?

4 A Yes, I am.

5 Q Did you prepare a statement that you would
6 like to offer to Judge Polaha?

7 A Yes, I did.

8 Q Please.

9 A All she wanted to do is earn a little bit of
10 money so she could help buy her school clothes and supplies
11 for her first year in high school that was starting in two
12 weeks. She didn't earn anything that day. Instead she lost
13 a part of herself that she will never be able to get back.

14 She lost that little-girl innocence that she
15 has always had, that special sparkle that was always in her
16 eyes. She lost her independence, her freedom, her ability to
17 trust and a lot of her confidence and self-esteem. And I
18 lost my little girl.

19 These past eight months have been
20 excruciating. The endless doctors appointments, blood tests,
21 x-rays, ultra sounds, therapy appointments, more blood tests
22 and on and on, all in the desperate attempt to get back at
23 least some of what this amazing young woman has lost since
24 that date.

1 I have so hated taking her to this
2 appointment and that appointment, seeing the terror in her
3 eyes, the pain and fear of more unfamiliar tests or the next
4 procedure. The agony of what this whole nightmare is doing
5 to her, pain, that for the first time, as her mommy, I can't
6 just kiss away. I'll never be able to kiss it away.

7 She is always the champ though. Through all
8 of this she has done what she's had to do, regardless, and
9 has held her head up high and endured more trauma and fear
10 than any person on the face of the earth, let alone a now
11 fifteen year old girl should ever have to.

12 My daughter is a remarkable young lady. She
13 isn't like a lot of the teenage girls that we see running
14 around the streets these days. She is a good, honest,
15 decent, honorable, responsible, loving young lady with real
16 true morals, values and beliefs.

17 In my lifetime, I have seen few people as
18 kind or loving or as generous as she. Her heart has no
19 limits.

20 She is currently on petition for the
21 International Order of Rainbow For Girls, a civic group for
22 teenage girls that is a descendent of the Masonic Lodge and
23 the Shriners.

24 She works hard in school and is a pole

1 vaulter on the school track team. She volunteers every
2 Saturday morning, a day I'd guess most teenagers sleep rather
3 late, at a local bowling alley helping and teaching young
4 children how to bowl.

5 Every Monday after school she is at her old
6 elementary school tutoring second graders in reading.

7 She used to baby-sit a lot until this animal
8 using the pretense of a baby-sitting job kidnapped her,
9 attacked her, terrorized her, hit her and then he raped her.

10 She hasn't been able to baby-sit since.

11 She is a very beautiful young lady and had
12 been doing some modeling, the results of which have always
13 been unbelievable. She is a delight to work with and her
14 beauty is refreshing.

15 She hasn't done much modeling either since
16 the attack.

17 I adore my daughter. There is no doubt in
18 the world about that. And I am so extremely blessed to have
19 such a loving and very close relationship with her.

20 The day I adopted her and her older brother
21 was when I felt my life was finally complete and they have
22 shown me each and every day how truly fortunate I am.

23 She has been in intense weekly treatment
24 with a clinical psychologist.

1 Her doctor feels it will take at least five
2 more years of therapy for her to get to a point where she can
3 comfortably live with this nightmare and proceed with a
4 relatively normal life.

5 This isn't something she will ever be able
6 to get over or forget about.

7 She will carry the horror and the terror
8 she's experienced with her for the rest of her life.

9 Her therapy has come along steadily but very
10 slowly.

11 It has been terribly hard for her
12 emotionally to even accept what happened to her. She is
13 still in a lot of denial about it.

14 They feel that, given the extreme
15 circumstances, she is only able to process a little at a time
16 or she becomes so overwhelmed that she doesn't know which way
17 to go and retreats back into denial.

18 She is having a terrible time with sleep,
19 getting to sleep or staying asleep. And when she finally can
20 rest, the nightmares come.

21 There are nights when I wake up to blood
22 curdling screams and go to her and she is soaked with sweat
23 and trembling violently.

24 It takes me hours to calm her down enough to

1 go back to sleep.

2 Other nights while she is sound asleep she
3 cries, sobs in her sleep.

4 When I wake her up from this, she just lays
5 in my arms and cries her heart out. She is still so afraid.

6 She was placed on antidepressant,
7 antianxiety medication immediately after the attack and just
8 recently was put on a prescription medication to help her
9 sleep.

10 She was hypnotized a few months ago. But
11 when it wasn't helping anymore they prescribed the pills for
12 her.

13 No fifteen year old should have to go
14 through any of this.

15 When the detectives realized that he was on
16 the run and especially since he had threatened her that if
17 she told anyone what had happened he would come back and do
18 worse, they warned me to make sure she was never out of my or
19 any other responsible and informed adult's sight literally.

20 For the next three weeks she was never
21 alone, not even for a second.

22 Even when she was at home, I found myself
23 just checking in on her to make sure she was okay.

24 Instead of enjoying the last of her summer

1 vacation like most of the other kids, she spent it alone,
2 looking over her shoulder and in constant fear.

3 When Detective Herrera called and told me he
4 was in custody, although relieved, it was impossible even
5 then to feel safe.

6 My heart still stops when she walks away
7 from me. I wonder if any of us will ever feel safe again.

8 Before this happened, she was given the
9 freedom of an average teenager. She went to movies with
10 friends or walked to the store or to nearby friends houses.

11 Now, eight months later, we still make sure
12 she is driven to wherever she needs to go.

13 She doesn't walk anywhere anymore. Anywhere
14 we go, she is always by my side.

15 Recently she has started going out a bit
16 with her friends, but I always drop them off and pick them up
17 at the door. And I am never too far away.

18 She has no freedom or the chance to just get
19 away by herself.

20 This is not a rule that I've imposed on
21 her. It's just the way it has become for all of us.

22 I'm afraid to let her out of my sight and
23 she is afraid to be out of my sight.

24 She tries to recapture her independence but

1 is so afraid and untrusting now that it's hard.

2 What had always been such a bright, bubbly,
3 happy, positive outgoing young lady has turned into a scared,
4 sad, withdrawn little girl.

5 There are times that it seems like her
6 spirit has just been drained right out of her.

7 The look of sadness and fear that is so deep
8 in her eyes is heart breaking.

9 I want to see her smile again and hear that
10 cute little laugh of hers.

11 I miss the twinkle in her eyes and the
12 bounce in her step.

13 I want my daughter back.

14 We've learned the hard way that when someone
15 is raped, especially your child, it doesn't just happen to
16 her. It happens to the whole family.

17 We hurt obviously not to the degree that
18 this has hurt my daughter so terribly but in so many other
19 ways.

20 This has even changed her friends and
21 friends of my son's as well.

22 My father is eighty-three years old and
23 underwent a triple bypass surgery three years ago.

24 He is very close to my children and the love

1 they share is immeasurable.

2 It killed me to have to tell him that his
3 girl had been raped. I was terrified that he would have
4 another heart attack or worse.

5 Thankfully, he didn't. But I am not sure if
6 I have ever seen such pain and hurt in his eyes.

7 He's been our rock through this, as daddies
8 often are. But his grief is plain to see.

9 This just broke his heart.

10 We lost my dear mother last year and for
11 once I was so glad she wasn't here to see this.

12 She was my children's biological great
13 grandmother before I adopted them. So there was a special
14 bond there.

15 My daughter spoon fed her some of her meals
16 in the days before she passed away. That was how close they
17 were.

18 I thank God she was spared the pain of this.

19 Her brother, who is eleven months older, is
20 at a terrible loss over this.

21 He feels the rage and pain that we all feel
22 along with the guilt that he wasn't able to protect his
23 little sister from something so horrible.

24 He has become withdrawn and clings to both

1 her and I more than ever.

2 He has confessed to me that he doesn't know
3 how to act with her or how to treat her.

4 They have always been very close. At times
5 it's as if he they can feel each other's pain.

6 Like now watching what she has to go through
7 is tearing him up. He can't understand how or why someone
8 could inflict such terrible pain on an innocent girl. None
9 of us can.

10 My children are my heart beat. Each of them
11 so incredible in their own special way.

12 Jane's the baby, my baby girl.

13 The one that the doctors said at three
14 pounds wouldn't even make it through her first night. But
15 she fought to survive, just as she's had to do for the past
16 eight months.

17 To have something this devastating happen to
18 your own daughter is a hurt no mother should ever have to
19 endure. It's a pain so hard and so deep that I can't begin
20 to describe the intensity.

21 My heart has crumbled.

22 Seeing her strength and her courage through
23 all of this is all that has sustained me. During the worst
24 time in her life she's been worried about me that I am all

1 right, protecting me.

2 That's what kind of a person she is.

3 That's what she is and has always been all
4 about.

5 What this animal, himself a parent, did to
6 my precious daughter is beyond comprehension.

7 I have watched what the pain and the fear
8 that he imposed on her has done and continues to do to her
9 and it is killing me. His fantasies turned our world
10 horribly, tragically upside-down.

11 I am a single mother and own and operate a
12 residential cleaning business.

13 I am my business. I am our income. I have
14 missed so much work for all of the obvious reasons since this
15 has happened that I have been lucky to pay our rent.

16 I work hard for my money and the sleepless
17 nights I spend comforting and rocking her back to sleep for
18 half of the night after a nightmare, my own endless crying,
19 tossing and turning the rest of the night from fear and
20 sadness and heart break, wondering how I'll pay the bills,
21 how I can protect my kids, how I can help my daughter try to
22 rebuild her shattered life, how can I help my son try to deal
23 with what happened to his sister, my worries for my father
24 and his health in trying to cope with this. This list is

1 endless.

2 My health has nose dived. I'm so tired and
3 rundown all the time. I catch every bug around. I have
4 developed stress related ulcers which results in more lost
5 work and more lost money. I was barely able to keep our
6 heads above water before this tragedy.

7 I am the mom. I am supposed to be the
8 strong one, but it's so terribly hard now. It's hard to be
9 strong when your greatest fear materializes and your world
10 crumbles to pieces.

11 There aren't words to describe the feelings
12 of contempt and hatred I have for this man and for what he
13 did to my daughter.

14 They are so intense and so deep.

15 I have never felt this way before. I never
16 realized I was capable of it.

17 This man took something away from my
18 daughter and our family that we can never again have. He has
19 damaged each of us in irreparable ways. His actions have
20 forever changed our lives.

21 Michael boat is not fit to be free among
22 others ever to do this again, to destroy the life and the
23 dreams of a young girl or to tear another family's life apart
24 the way he did ours.

1 I do thank God each and every day that he
2 did bring her home, broken and battered. But home to her
3 family with enough love to put her back together again.

4 We will heal in time. But we will never
5 understand his selfish and cruel acts or why he picked our
6 family.

7 Our greatest hope is that he will receive
8 the maximum sentences for each charge with no chances for
9 parole, ever and that everyday for the rest of his miserable
10 life he is reminded of all the pain he's caused and all of
11 the irreversible damage he's done. We believe he deserves at
12 least that.

13 THE COURT: All right.

14 MR. HAHN: I would invite any questions from
15 Mr. Sullivan.

16 MR. SULLIVAN: I have a few questions, Judge. Thank
17 you.

18
19 * CROSS EXAMINATION *

20 BY MR. SULLIVAN:

21 Q Mrs. Jane Doe, could you please clarify for
22 the Court and myself, I believe Mr. Hahn throughout his
23 argument articulated that my client actually placed the
24 baby-sitter ad which we know is not true. Would you tell us

1 who placed the ad?

2 A My daughter placed the ad in a local -- it's
3 called the Bug, one of the local freebie newspapers.

4 Q That's a local paper in Carson City?

5 A Out of Gardnerville, Carson Valley.

6 Q Thank you. I appreciate that. And, in
7 addition, I believe the State referenced that your daughter
8 had not babysat -- or babysat before in the past; that it was
9 her first time. But you articulated she had babysat?

10 A She babysat for probably two years, maybe
11 three years before that.

12 Q Okay. Okay. And just one last question
13 that I have. Your family or your daughter did not know my
14 client prior to the incident that we are talking about?

15 A He called a few weeks before the actual --
16 when he actually attacked her, he called to set it up. He
17 setup -- he said he was divorced and was going to have
18 visitation of his children for a month and asked if she would
19 be interested in just a -- a short term job instead of like
20 an ongoing job. And they discussed at that time -- he said
21 he would call her back when he found out when his children
22 would be visiting.

23 Q Thank you, Mrs. Doe. I have no further
24 questions.

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* REDIRECT EXAMINATION *

BY MR. HAHN:

Q When I asked about and represented the information concerning the baby-sitting job, that had been with people that she had known before?

A Yes, yes, it had been like -- real close friends or -- family members, so to speak. About, yeah, she had worked for -- she had one lady in particular she babysat for for about two years like once or twice a week and then just odds and ends people here and there. But, yeah, she would baby-sit.

Q But that was people that she knew?

A Yes.

Q This was the first time --

A Yes.

Q Nothing else. Thank you.

MR. SULLIVAN: Nothing else. Thank you.

THE COURT: Thank you.

MR. HAHN: Your Honor, I have not been alerted to anyone else who is going to provide a victim impact statement.

THE COURT: All right.

Mr. Botelho, please stand. Any just or

1 legal cause why judgment should not now be entered?

2 MR. SULLIVAN: No, your Honor.

3 THE COURT: There being none, the Court does hereby
4 adjudge Michael Todd Botelho guilty of the offense set out in
5 Count I, kidnapping in the first degree, a violation of NRS
6 200.310(1).

7 The Court finds him guilty of the charges
8 that are set out in Counts III, IV and V of that Information
9 charging sexual assault on a child, a violation of --
10 violations of NRS 200.366, all by virtue of his pleas of
11 guilty entered December the 22nd of last year.

12 The Court has read the documentation that
13 was provided. I have read the facts of the case as contained
14 in the file. And, of course, I heard the statements that
15 were made today. And I have read and considered the
16 recommendation by the Division of Parole and Probation.

17 Mr. Botelho, you had the opportunity to hear
18 the impact of the acts that you perpetrated against the young
19 girl and her family.

20 I know by reading your statement that you
21 considered not only the damage done to them but also the
22 damage that you inflicted on your own family.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In listening to your family and in looking

1 at your past record, somebody presented to me one time that
2 we are not the sum total of the worst things that we ever
3 did. And, in looking at your background and looking at what
4 your attorney presented to the court, you present an enigma
5 in as much as I can say without too much hesitation that
6 basically you are not a bad person.

7 But you did a very bad thing.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I mean, it is difficult to contemplate
10 exactly what it was that you did to this young girl in as
11 much as she was coming to you to offer her services for your
12 children.

13 And you took that offer of trust and
14 terrorized. And we say terrorized and use words like that so
15 many times today, awesome words like that, but we forget the
16 true meaning of those words.

17 You did in fact terrorize that young girl.
18 She -- as she indicated, she did not know whether that was
19 the last day of her life. All right. And I cannot imagine
20 what a -- to a fourteen year old person, either girl or boy,
21 who is looking forward the second year of their teen years,
22 looking forward to finishing high school, enjoying high
23 school, going to college and getting on with life, coming to
24 the realization that perhaps this is going to be my last day

1 on earth.

2 As I mentioned earlier, the only, the only
3 saving fact in this particular case is that you did not
4 mutilate or kill her and she was returned to her family. She
5 has to come, you know, with the help of professionals and the
6 love that her family has given her to get past this.

7 I do recognize that in your statement you
8 appreciate what you did to the extent of what you did because
9 that was an unusual statement. And you went step by step as
10 to the harm that you inflicted on her, her family and your
11 own family. Okay. Those are the positives.

12 The negatives are what you did. And society
13 has to protect its children. All right. They are our hope
14 and our future.

15 Some acts are so uncivilized that the people
16 that commit those acts forfeit their place in society.

17 I do believe that I was concerned about the
18 message that we send out. And I still am.

19 And I think that, having heard everything,
20 that's still a valid concern.

21 But I am certain that the message has to go
22 out that, if you harm a child, the punishment must be
23 severe. It must be swift. And it must be certain.

24 So, in accordance with the laws of the State

1 of Nevada, I do hereby sentence you, Michael Todd Botelho,
2 for the conviction of Count I, kidnapping, to a term of life
3 imprisonment with parole eligibility after a term of fifteen
4 years.

5 PAROLE & PROBATION: Your Honor, that was a mistake.
6 It should be five years.

7 THE COURT: Five years?

8 PAROLE & PROBATION: Yes.

9 THE COURT: Oh, you are right. Fifteen definite with
10 a five-year term. That will be life with parole eligibility
11 after five years has been served.

12 For Count III, sexual assault on a child, I
13 am sentencing you to a term of life imprisonment with a
14 parole eligibility after twenty years has been served.

15 That count and sentence will run consecutive
16 to the sentence that I meted out in Count I.

17 For Count IV I sentence you to a like term
18 of life imprisonment with a minimum parole eligibility of
19 twenty years. That count will run concurrent with the
20 second -- excuse me, with Count III.

21 And for Count V, I sentence you to a term of
22 life imprisonment with a parole eligibility after twenty
23 years. And that will run consecutive to Counts III and IV.

24 Now, what that means is you will be sent to

1 prison for the rest of your life with a minimum parole
2 eligibility of forty-five years. You will be given credit
3 for one hundred forty-one days served.

4 MR. SULLIVAN: Your Honor, I believe there is a
5 correction on the credit time served.

6 PAROLE & PROBATION: That should be one hundred
7 ninety-seven days.

8 THE COURT: 197?

9 PAROLE & PROBATION: Yes.

10 THE COURT: You will be given credit for one hundred
11 ninety-seven days. I am ordering you to effect restitution
12 in the amount of six hundred seven dollars.

13 PAROLE & PROBATION: It should be six hundred
14 thirty-two. The prosecutor misspoke the amount. The family
15 is requesting two hundred ninety-four dollars restitution.
16 So if you add the amounts together it comes out to 632.

17 THE COURT: 632?

18 PAROLE & PROBATION: Yes.

19 THE COURT: All right. I am ordering that you submit
20 to genetic marker testing. And there is a one hundred fifty
21 dollar fee for that. I am assessing a five hundred dollar
22 fee, a twenty-five dollar administrative assessment fee.

23 Finally, if, in the event that you did get
24 paroled, you will be subject pursuant to NRS 176.0931 to a

1 condition of lifetime supervision.

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3 (At this time the foregoing proceedings were concluded.)
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1 STATE OF NEVADA)

2)ss.

3 COUNTY OF WASHOE)

4 I, JOAN MARIE DOTSON, a Certified Shorthand
5 Reporter for the Second Judicial District Court of the State
6 of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

7 That I was present in Department No. 3 of
8 the court on Wednesday, April 7th, 2004 and took verbatim
9 stenotype notes of the proceedings and thereafter transcribed
10 them into typewriting as herein appears;

11 That the foregoing transcript is a full,
12 true and correct transcription of my said stenotype notes and
13 is a full, true and correct record of the proceedings had and
14 the testimony given in the above-entitled action to the best
15 of my knowledge, skill and ability.

16
17
18 DATED: This 9th day of April, 2004.

19
20 
21 _____
22 JOAN MARIE DOTSON, CSR #102
23
24

ORIGINAL

FILED

2004 APR 22 AM 8:16

RONALD L. LONGTIN, JR.

BY  DEPUTY

CODE 2295

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

v.

Dept. No. 3

MICHAEL TODD BOTELHO

also known as

'KEVIN',

Defendant.

MOTION TO DISMISS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and BRUCE C. HAHN, Deputy District Attorney, and moves the above-entitled Court to dismiss COUNT II filed against the above-named defendant on October 8, 2003, on the Indictment in case number CR03-2156.

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CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-001
TODD BOTELHO 2 Pages
04/22/2004 09:31 AM
2295

1 Said Motion for dismissal is predicated upon the
2 defendant's plea of guilty and judgment of guilty on COUNTS I, III,
3 IV and V and that said dismissal, if granted, would be in the
4 furtherance of justice.

5 Dated this 7 day of April, 2004.

6 RICHARD A. GAMMICK
7 District Attorney
8 Washoe County, Nevada

9
10 By 

11 BRUCE C. HAHN
12 5011
13 Deputy District Attorney
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ORIGINAL
FILED

2004 APR 28 PM 1:48

RONALD M. LONGTIN, JR.

BY  DEPUTY

CODE 2905
 Richard A. Gammick
 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR03-2156

v.

Dept. No. 3

MICHAEL TODD BOTELHO

also known as

'KEVIN',


Defendant.

ORDER

Based upon the Motion of the District Attorney filed
 herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that COUNT II of the Indictment in
 case number CR03-2156 filed against the above-named defendant on
 October 8, 2003, be, and the same hereby is dismissed.

DATED this 23rd day of April, 2004.


 DISTRICT JUDGE

ORIGINAL

FILED

2004 APR 30 PM 2:20

RONALD A. LONGTIN, JR.

BY  DEPUTY

1
CODE 2515
WASHOE COUNTY PUBLIC DEFENDER
JOHN REESE PETTY, State Bar No. 10
350 SOUTH CENTER STREET, SUITE 600
RENO, NEVADA 89501
(775) 337-4827
Attorney for Defendant.

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR03-2156

MICHAEL TODD BOTELHO,

Dept. No. 3

Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that MICHAEL TODD BOTELHO the
defendant above named, hereby appeals to the Supreme Court of
Nevada from the judgment entered in this action on April 7, 2004.
This is **not** a fast track appeal. NRAP 3C.

DATED this 30th day of April, 2004.

MICHAEL R. SPECCHIO
Washoe County Public
Defender

By: 

JOHN REESE PETTY
Chief Deputy

CERTIFICATE OF SERVICE

I hereby certify that on MAY 3, 2004, I served a copy of the foregoing by mailing it by first class mail with sufficient postage prepaid to the following addresses:

JANETTE M. BLOOM, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET SUITE 201
CARSON CITY, NEVADA 89701-4702

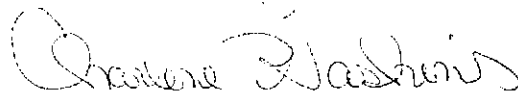
MICHAEL TODD BOTELHO #80837
NORTHERN NEVADA CORRECTIONAL CENTER
PO BOX 7000
CARSON CITY, NEVADA 89702

BRIAN SANDOVAL
ATTORNEY GENERAL STATE OF NEVADA
100 N. CARSON STREET
CARSON CITY, NEVADA 89701

And served a copy by inter-office mail to:

RICHARD GAMMICK
WASHOE COUNTY DISTRICT ATTORNEY
Attn: GARY HATLESTAD, CHIEF APPELLATE DEPUTY

DATED this 3rd day of MAY, 2004



Charlene Gaskins

ORIGINAL

FILED

2004 APR 30 PM 2:21

RONALD A. LONGTIN, JR.

BY
DEPUTY

CODE 1310
 WASHOE COUNTY PUBLIC DEFENDER
 JOHN REESE PETTY, State Bar No. 10
 350 SOUTH CENTER STREET, Suite 600
 RENO, NEVADA 89501
 (775) 337-4827
 Attorney for Defendant.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

Case No. CR03-2156

11 MICHAEL TODD BOTELHO,

Dept. No. 3

12 Defendant.

13 /
14 CASE APPEAL STATEMENT

15 1. Appellant, MICHAEL TODD BOTELHO hereby files this
 16 Case Appeal Statement;

17 2. This appeal is from a judgment of conviction
 18 entered on April 7, 2004, by the Honorable Jerome Polaha,
 19 district judge;

20 3. The parties below consisted of (a) THE STATE OF
 21 NEVADA, Plaintiff; and (b) MICHAEL TODD BOTELHO defendant;

22 4. The parties herein consist of (a) MICHAEL TODD
 23 BOTELHO Appellant; and (b) THE STATE OF NEVADA, Respondent;

24 ///

25 ///

26

CR03-2156 DC-0900071886-004
 STATE VS. MICHAEL TODD BOTELHO 4 Pages
 District Court 04/30/2004 08:29 AM
 Washoe County 1310

1 5. Counsel on appeal are:

2 MICHAEL R. SPECCHIO
3 Washoe County Public
4 Defender

 RICHARD A. GAMMICK
 Washoe County District
 Attorney

5 JOHN REESE PETTY
6 Chief Deputy

 GARY H. HATLESTAD
 Chief Deputy

7 350 South Center Street
8 Suite 600
9 Reno, Nevada 89501

 P.O. Box 30083
 Reno, Nevada 89520

10 ATTORNEYS FOR APPELLANT

 ATTORNEYS FOR RESPONDENT

11 6. Appellant, MICHAEL TODD BOTELHO was represented by
12 the Washoe County Public Defender in district court;

13 7. Appellant, MICHAEL TODD BOTELHO is represented by
14 the Washoe County Public Defender in this appeal;

15 8. Not applicable; and

16 9. By an Indictment filed in this case on October 8,
17 2003, MICHAEL TODD BOTELHO was charged with one count of
18 kidnapping in the first degree, a violation of NRS 200.310-1 and
19 NRS 200.320, a felony; one count of battery with the intent to
20 commit sexual assault on a child, a violation of NRS 200.400, a
21 felony; and three counts of sexual assault on a child, a
22 violation of NRS 200.366, a felony.

23 On December 11, 2003, MICHAEL TODD BOTELHO entered his
24 guilty pleas to the kidnapping count as well as to the three
25 counts of sexual assault on a child.

26 ////

 ////

 ////

1 On April 7, 2004, Judge Polaha sentenced MICHAEL TODD
2 BOTELHO to a term of life in the Nevada State Prison with the
3 possibility of parole after a minimum of five (5) years has been
4 served on count I (kidnapping); and to a term of life in the
5 Nevada State prison (on each of the sexual assault counts) with
6 the possibility of parole after a term of twenty (20) years has
7 been served. With the exception of one of the sexual assault
8 charges, each of the sentences imposed by Judge Polaha were
9 ordered to be served consecutively and not concurrently.

10 This is **not** a fast track appeal. See NRAP 3C.

11 DATED this 30th day of April, 2004.

12
13 MICHAEL R. SPECCHIO
14 Washoe County Public
15 Defender

16 By: _____

17 JOHN REESE PETTY
18 Chief Deputy
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on MAY 3, 2004, I served a copy of the foregoing by mailing it by first class mail with sufficient postage prepaid to the following addresses:

JANETTE M. BLOOM, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET SUITE 201
CARSON CITY, NEVADA 89701-4702

MICHAEL TODD BOTELHO #80837
NORTHERN NEVADA CORRECTIONAL CENTER
PO BOX 7000
CARSON CITY, NEVADA 89702

BRIAN SANDOVAL
ATTORNEY GENERAL STATE OF NEVADA
100 N. CARSON STREET
CARSON CITY, NEVADA 89701

And served a copy by inter-office mail to:

RICHARD GAMMICK
WASHOE COUNTY DISTRICT ATTORNEY
Attn: GARY HATLESTAD, CHIEF APPELLATE DEPUTY

DATED this 3RD day of MAY, 2004



Charlene Gaskins

ORIGINAL

FILED

CODE 1350

2004 MAY -3 AM 8:37

RONALD A. LONGTIN, JR.

BY

DEPUTY

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

MICHAEL TODD BOTELHO,

Appellant,

vs.

Case No. CR03-2156

Dept. No. 3

THE STATE OF NEVADA,

Respondent,

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the Revised Rules of Appellant Procedure Rule D(1).

Dated: MAY 3, 2004

Ronald Longtin, Jr., Court Clerk

By:

Cathy Kepler, Appeals Clerk

(775) 328-3114

ORIGINAL

FILED

2004 MAY -3 AM 8:37

RONALD A. LONGTIN, JR.

BY C. Kepler
DEPUTY

1 CODE 1365

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-006
TODD BOTELHO 1 Page
05/03/2004 08:29 AM
1365

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

10 MICHAEL TODD BOTELHO,

11 Appellant,
12 vs.

Case No. CR03-2156

Dept. No. 3

13 THE STATE OF NEVADA,
14 Respondent,
15
16
17

18 CERTIFICATE OF TRANSMITTAL

19 I hereby certify that the enclosed Notice of Appeal and other required documents
20 (certified copies), were delivered to the Second Judicial District Court mailroom
21 system for transmittal to the Nevada Supreme Court.
22

23 Dated: MAY 3, 2004

24 Ronald Longtin, Jr., Court Clerk

25 By: C. Kepler

26 Cathy Kepler, Appeals Clerk

27 (775) 328-3114
28

ORIGINAL

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
DC-09900071886-007
MICHAEL TODD BOTELHO 1 Page
05/06/2004 08:53 AM
1186

MICHAEL TODD BOTELHO,
Appellant,STATE OF NEVADA,
Respondent.

Supreme Court No. 43247

District Court Case No. CR032156

BY *R. Longtin, Jr.*
RONALD A. LONGTIN, JR.
DEPUTY

2004 MAY -6 PM 3:54

FILED

RECEIPT FOR DOCUMENTS

TO: Washoe County Public Defender and Michael R. Specchio, Public
Defender and John Reese Petty, Chief Deputy Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Ronald A. Longtin Jr., District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

05/05/04 Filing Fee Waived: Criminal.

05/05/04 Filed Certified Copy of Notice of Appeal.
Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel
for appellant.)

DATE: May 05, 2004

Janette M. Bloom, Clerk of Court

By: *[Signature]*

Deputy Clerk

ORIGINAL

FILED

2004 MAY 17 PM 2:18

RONALD L. LONGTIN, JR.
BY *[Signature]*
DEPUTY

Code 2230
 WASHOE COUNTY PUBLIC DEFENDER
 JOHN REESE PETTY, STATE BAR NO. 10
 ONE SOUTH CENTER STREET, SUITE 600
 RENO, NV 89501
 (775) 337-4827
 Attorney for the Defendant

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR03-2156

MICHAEL TODD BOTELHO,

Dept. No. 3

Defendant.

MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE
 AND SPECIFICATION OF ERROR

Defendant, MICHAEL TODD BOTELHO, by and through his counsel on appeal, moves for an Order granting Defendant a copy of the transcript of his hearing held on March 11, 2004, at County expense, for preparation of his appeal. Notice of Appeal was timely filed by the Defendant in the Second Judicial District Court of the State of Nevada.

Defendant had been represented by the Washoe County Public Defender's Office and/or conflict counsel, and the Public Defender has been appointed to handle the appeal. Defendant cannot pay for the transcript due to his alleged indigency.

////


CR03-2156
 DC-08900071886-008
 STATE VS. MICHAEL TODD BOTELHO 3 Pages
 District Court 05/17/2004 03:21 PM
 Washoe County 2230

1 Defendant requires these transcripts to explore and develop
2 the following potential issues on appeal:

3 To determine whether improper evidence was allowed to be
4 used during sentencing in this matter on April 7, 2004.

5 DATED this 14th day of May, 2004.

6
7 MICHAEL R. SPECCHIO
Washoe County Public Defender

8
9 By: 
10 JOHN REESE PETTY
Chief Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on MAY 18, 2004, I served a copy of the foregoing by mailing it by first class mail with sufficient postage prepaid to the following addresses:

JANETTE M. BLOOM, CLERK
OFFICE OF THE CLERK
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89702

J. DOTSON
C/O DEPARTMENT THREE
SECOND JUDICIAL DISTRICT COURT
75 COURT STREET
RENO, NEVADA 89501

MICHAEL TODD BOTELHO #80837
NORTHERN NEVADA CORRECTIONAL CENTER
PO BOX 7000
CARSON CITY, NEVADA 89702

And served a copy by inter-office mail to:

RICHARD GAMMICK
WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE
Attention: GARY HATLESTAD, Appellate Deputy
Via interoffice Mail

DATED this 18th day of March, 2004


Charlene Gaskins

ORIGINAL

2004 JUN -1 PM 2: 23

RONALD A. LONGTIN, JR.

BY  DEPUTY

3370

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR03-2156

MICHAEL TODD BOTELHO,

Dept. No. 3

Defendant.
_____ORDER

The Court having reviewed the Specifications of Error
filed by Defendant, and good cause appearing,

IT IS HEREBY ORDERED that the requested transcript of
defendant's hearing held on March 11, 2004, be provided to the
Defendant at County expense pursuant to NRS 3.370(4).

DATED this 18th day of May, 2004.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2004, I served a copy of the foregoing mailing it by first class mail with sufficient postage prepaid to the following addresses:

JANETTE M. BLOOM
CLERK OF THE COURT
SUPREME COURT OF NEVADA
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

MICHAEL TODD BOTELHO #80837
NORTHERN NEVADA CORRECTIONAL CENTER
PO BOX 7000
CARSON CITY, NEVADA 89702

J. DOTSON
C/I DEPARTMENT THREE
SECOND JUDICIAL DISTRICT COURT
75 COURT STREET
CARSON CITY, NEVADA 89702

RICHARD GAMMICK
Washoe County District Attorney
Attention: GARY HATLESTAD, Appellate Deputy
Via Interoffice mail

DATED this 2nd day of JUNE, 2004



Charlene Gaskins

ORIGINAL

CR03 2/56

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2005 APR -6 PM :53

RONALD A. LONGSTON, JR.

No. 43247

BY *[Signature]*
DEPUTY

FILED

APR 04 2005

ORDER OF AFFIRMANCEJANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of kidnapping and three counts of sexual assault on a child. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The district court sentenced appellant Michael Botelho to a prison term of life with the possibility of parole for kidnapping and prison terms of life with the possibility of parole for each count of sexual assault. The terms for two counts of sexual assault were imposed to run concurrently to one another and consecutively to the term for kidnapping. The term for the remaining count of sexual assault was imposed to run consecutively to the two concurrent terms for sexual assault.

Botelho cites to the dissent in Tanksley v. State¹ and asks this court to review his sentence to see if justice was done. He claims that the sexual assaults that he perpetrated on the victim were a continuous act and were completed in a matter of minutes.² He contends that the district

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

²Botelho cites Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285-86 (2004), in which we concluded that Crowley's convictions for sexual
continued on next page . . .

CR03-2156
DC-09800071886-010
STATE VS. MICHAEL TODD BOTELHO 3 Pages
District Court 04/06/2005 10:11 AM
Washoe County 4134
CENTRAL

court should have imposed concurrent sentences to reflect the uninterrupted nature of his assault. And he argues that this court should ensure that the punishment fits the crime.

We have consistently afforded the district court wide discretion in its sentencing decisions, and we have refrained from interfering with the sentence imposed when "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."³ Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁴

Botelho does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. The sentences imposed were within the parameters provided by the relevant statutes.⁵ And the sentences were not so unreasonably disproportionate to the crimes as to shock the conscience. Botelho admitted to kidnapping the 14-year-old victim and perpetrating three distinct acts of sexual assault upon her: forcing her to perform

... continued

assault and lewdness with a minor were redundant because Crowley's actions were uninterrupted: "Crowley's act of rubbing the male victim's penis on the outside of his pants was a prelude to touching the victim's penis inside his underwear and the fellatio."

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

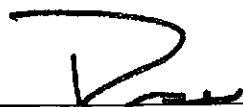
⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).


⁵See NRS 200.310(1); NRS 200.320(2)(a); NRS 200.366(3)(b)(1).

fellatio on him, subjecting her to cunnilingus, and subjecting her to vaginal intercourse. Contrary to Botelho's assertion, his sexual assaults were not one continuous act, and the district court was not required to treat them as one at sentencing.⁶ Accordingly, we conclude that the district court did not abuse its discretion when sentencing Botelho.

Having considered Botelho's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Rose

 J.
Gibbons

 J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Deeds v. State, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981) ("The great weight of authority supports the proposition that separate and distinct acts of sexual assault committed as a part of a single criminal encounter may be charged as separate counts and convictions entered thereon."); see also Peck v. State, 116 Nev. 840, 848, 7 P.3d 470, 475 (2000).

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 43247

2005 MAY -3 AM 9:46

District Court Case No. CR032156

RONALD A. LONGTIN, JR.
BY C. K. Kelle
DEPUTY

REMITTITUR

O: Ronald A. Longtin Jr., Washoe 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: April 29, 2005

Janette M. Bloom, Clerk of Court

By: J. Richards

Chief Deputy Clerk

cc: Hon. Jerome Polaha, District Judge
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe County Public Defender

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 5-5-05

Ronald A. Longtin Jr.
District Court Clerk

DSV34376

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
05/03/2005 10:00 AM
4145

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2005 MAY -3 AM 9:46

RONALD A. LONGTIN, JR.

DEPUTY

MICHAEL TODD BOTELHO,
Appellant,

Supreme Court No. 43247

vs.

THE STATE OF NEVADA,

District Court Case No. CR032156BY

Respondent.

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

Janette M. Bloom, 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 4th day of April, 2005.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 29th day of April, 2005.

Janette M. Bloom, Supreme Court Clerk

By: J. R. Rube
Chief Deputy Clerk



ORIGINAL

CR03-2156

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2005 MAY -3 AM 9:46

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43247

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

FILED

APR 04 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of kidnapping and three counts of sexual assault on a child. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The district court sentenced appellant Michael Botelho to a prison term of life with the possibility of parole for kidnapping and prison terms of life with the possibility of parole for each count of sexual assault. The terms for two counts of sexual assault were imposed to run concurrently to one another and consecutively to the term for kidnapping. The term for the remaining count of sexual assault was imposed to run consecutively to the two concurrent terms for sexual assault.

Botelho cites to the dissent in Tanksley v. State¹ and asks this court to review his sentence to see if justice was done. He claims that the sexual assaults that he perpetrated on the victim were a continuous act and were completed in a matter of minutes.² He contends that the district

¹113 Nev. 844, 850, 944 P.2d 240, 244 (1997) (Rose, J., dissenting).

²Botelho cites Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285-86 (2004), in which we concluded that Crowley's convictions for sexual
continued on next page...

CR03-2156
DC-09900071886-013
STATE VS. MICHAEL TODD BOTELHO
District Court 05/03/2005 16:01 PM
Washoe County 4134
JMTT

court should have imposed concurrent sentences to reflect the uninterrupted nature of his assault. And he argues that this court should ensure that the punishment fits the crime.

We have consistently afforded the district court wide discretion in its sentencing decisions, and we have refrained from interfering with the sentence imposed when "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."³ Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.⁴

Botelho does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. The sentences imposed were within the parameters provided by the relevant statutes.⁵ And the sentences were not so unreasonably disproportionate to the crimes as to shock the conscience. Botelho admitted to kidnapping the 14-year-old victim and perpetrating three distinct acts of sexual assault upon her: forcing her to perform

... continued

assault and lewdness with a minor were redundant because Crowley's actions were uninterrupted: "Crowley's act of rubbing the male victim's penis on the outside of his pants was a prelude to touching the victim's penis inside his underwear and the fellatio."

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).


⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).


⁵See NRS 200.310(1); NRS 200.320(2)(a); NRS 200.366(3)(b)(1).

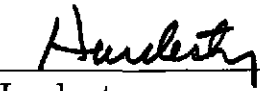
fellatio on him, subjecting her to cunnilingus, and subjecting her to vaginal intercourse. Contrary to Botelho's assertion, his sexual assaults were not one continuous act, and the district court was not required to treat them as one at sentencing.⁶ Accordingly, we conclude that the district court did not abuse its discretion when sentencing Botelho.

Having considered Botelho's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Deeds v. State, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981) ("The great weight of authority supports the proposition that separate and distinct acts of sexual assault committed as a part of a single criminal encounter may be charged as separate counts and convictions entered thereon."); see also Peck v. State, 116 Nev. 840, 848, 7 P.3d 470, 475 (2000).

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: April 29, 2005

Supreme Court Clerk, State of Nevada

By J. Richards Chief Deputy

ORIGINAL

MICHAEL T. BOTELHO # 80837

Lovelock Correctional Center

P.O. Box 359

Lovelock, Nevada 89419

Defendant in Pro Se

2005 JUL 13 AM 3:27

RONALD A. BRISTON JR.

BY *[Signature]*
DEPUTY

In the Second Judicial District Court of the State of Nevada
in and for the county of Washoe

THE STATE OF NEVADA,

Case No. CR03-2156

Plaintiff,

Dept. No. 3

-vs-

Michael T. Botelho,

Defendant.

NOTICE OF MOTION AND MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

COMES NOW Defendant, Michael T. Botelho, in pro se, and submits his Notice of Motion and Motion for Withdrawal of Attorney of Record and Transfer of Records, moving this Court to Order that John Reese Petty, counsel of record in the above-entitled action, be withdrawn as counsel of record herein, and that said counsel deliver to Defendant all Documents, Pleadings, Papers and Tangible Personal Property in counsels possession and control to Defendant, at counsel's expense, to the above address.

This motion is based upon NRS 7.055, Nevada Supreme Court Rules 46 & 166, this court's Local Rule of Practice corresponding to this Motion, as well as the attached points and authorities and affidavit supporting same.

NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
07/13/2005 11:08 AM
2260

undersigned will bring the foregoing motion on for hearing before the above-entitled Court and Department Number, on the date and time set forth on the caption above, or as soon thereafter as the matter may be heard.

Dated this ^{EIGHTH} ~~SEVENTH~~ day of JULY, 2005



Michael T. Botelho # 80837
Lovelock Correctional Center
P.O.Box 359
Lovelock, Nevada 89419

Defendant In Pro Se

POINTS AND AUTHORITIES

Although an attorney may not withdraw as counsel of record if doing so would adversely affect the client's interest, Madrid v. Gomez, 150 F.3d 1030, 1038-39 (9th Cir. 1998), the client may terminate his counsel's representation at any time, Kashefi-Zihagh v. I.N.S., 791 F.2d 708, 711 (9th Cir. 1986). See NRS 7.055.

Upon being discharged by his client,

[The] attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

NRS 7.055 (1) (emphasis added). See also Nevada Supreme Court Rule (SCR) 46 & 166; Second Judicial Court Rule 23(1); and Eighth Judicial District Court Rule 7.40(b) (2) (ii).

As the judgement of conviction has been entered in this case, with appeal, if any, having been perfected, counsel's services are no longer required in this criminal matter. Defendant has, pursuant to the mandates of NRS 7.055(3), directed counsel to forward to him all documentation generated in this action

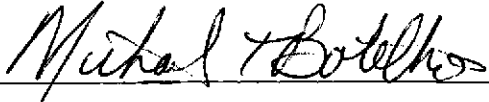
and to withdraw as counsel of record, but counsel has failed to comply. See Affidavit in support of instant motion.

Counsel's refusal to withdraw himself and forward said document to Defendant violates the letter and the spirit of SCR 166(4), which directs a discharged attorney to "protect a client's interests" by "surrendering papers and property to which the client is entitled." This rule governing attorney conduct is a basic one of which the American Bar Association has recognized by requiring of all attorneys within Canon 2 of the Code of Professional Responsibility, EC2-32, and Disciplinary Rule 2-110(A) (2). The Nevada Supreme Court has likewise adopted this rule within SCR 150. See, e.g. Jones, waldo, holbrook, etc v. Dawson, 923 P.2d 1366, 1376 (Utah 1996).

Counsel herein has no legal basis for withholding Defendants papers in this matter, as Defendant owes counsel NO fees which would permit counsel to maintain said papers under a general or retaining lien. Figliuzzi v. District Court, 111 Nev. 338, 340-341, 890 P.2d 798, 800-02 (1995).

Therefore, this Court is moved to exercise its jurisdiction in this matter and ORDER counsel to be withdrawn as counsel of record and to deliver to Defendant the entirety of documentation generated in this instant case, as Defendant has no other remedy at law to compel counsel to do so.

Dated this ^{EIGHTH} ~~Seventh~~ day of July, 2005


 Michael T. Botelho #80837
 Lovelock Correctional Center
 P.O.Box 359
 Lovelock, Nevada 89419

MICHAEL T. BOTELHO #80837
 Lovelock Correctional Center
 P.O.Box 359
 Lovelock, Nevada 89419

Defendant In Pro Se

FILED

2005 JUL 13 AM 3:27

RONALD A. LONGIN, JR.

BY *[Signature]*
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,)
 Plaintiff,)

Case No. CR03-2156

Dept.No. 3

-VS-

MICHAEL T. BOTELHO,)
 Defendant,)

AFFIDAVIT IN SUPPROT OF MOTION FOR WITHDRAWAL
 OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

STATE OF NEVADA)

SS:

COUNTY OF PERSHING)

COMES NOW, MICHAEL T. BOTELHO, who being first duly sworn
 and under the penalty of perjury, do hereby depose and state the
 following:

(1) I am the Defendant in the above-entitled action.

(2) I mailed a letter to Wasoe County Public defender
 Attorney John Reese Petty on the 12 day of April , 2005, which
 which was at least five (5) days prior to the date indicated
 below, wherein I gave notice to said counsel of his termination
 as counsel of record and instructed said counsel to so with-
 draw himself and forward to me my case files herein pursuant to
 NRS 7.055.

(3) I have received no response from said counsel, nor his

(4)

CR03-2156
 STATE VS. MICHAEL TODD BOTTEL 2 Pages
 District Court 07/13/2005 11:08 AM
 Washoe County
 1030

...Office, and to my said instruction. I am therefore submitting the instant motion in good faith, as I have no other remedy than this Court's power to enforce my statutory rights under NRS.7.055 to - cause counsel to be withdrawn and to send me my said case file.

Dated: This 8th Day Of July, 2005.

BY: Michael T Botelho
 Michael T. Botelho, #80837
 Lovelock Correctional Center
 Post Office Box-359
 Lovelock, Nevada. 89419-0359. /
 Defendant/Affiant In Pro Se:

VERIFICATION UNDER PENALTY OF PERJURY:

I do verify under the penalty of perjury that the above ... Affidavit is True and Correct and is stated to the best of my Own Personal Knowledge, and is made without benefit of a notary pursuant to NRS.208.165, as I'am incarcerated person.

BY: Michael T Botelho
 Michael T. Botelho, #80837
 Defendant, In Pro Se: /

CERTIFICATE OF SERVICE BY MAILING:

I do certify that I mailed a True and Correct copy of the - foregoing "NOTICE OF MOTION, AND MOTION FOR WITHDRAWAL OF COUNSEL OF RECORD, AND TRANSFER OF RECORD(s)" to the Address(es) below on this- 8th Day Of JULY, 2005, by placing same into the U.S. Mail, [Via]-prison law library staff, in compliance with N.R.C.P., 5(b):

Mr. Richard A. Gammick, Esq.
 Office of District Attorney
 [Washoe County]
 Post Office Box-30083
 RENO, Nevada. 89520-3083.

Mr. John Reese Petty, P.D.
 Office of Public Defender
 [Washoe County]
 350 South Center Street
 RENO, Nevada. 89501.

CC: FILE

Respectfully Submitted,
 BY: Michael T Botelho
 Michael T. Botelho, #80837
 Lovelock Correctional Center
 Post Office Box-359
 Lovelock, Nevada. 89419-0359. ///
IN FORMA PAUPERIS:

ORIGINAL

Mr. Michael T. Botelho #80837
 Affiant In Propria Personam
 Lovelock Correctional Center
 Post Office Box-359
 Lovelock, Nevada. 89419-0359.

FILED

2005 JUL 13 AM 3:27

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

DEPUTY

THE STATE OF NEVADA, et al.,

Case No. # [CR03-2156]

Plaintiff,

Dept. No. # [3]

Vs.

AFFIDAVIT OF: MICHAEL T. BOTELHO, #80837:

MICHAEL T. BOTELHO

Defendant.

STATE OF NEVADA)

) ss:

COUNTY OF PERSHING)

I, Michael T. Botelho, who is first being duly sworn, deposes and says:

1.) I'am the Defendant in the Foregoing, "Notice of Motion, and Motion for Withdrawal of Attorney of REcords, and for the TRansfer Of [All] REcords, Files, Document(s), Etc., That Was Prepared And Investigated For The Aove-Defendant.

2.) That The Defendant Knows the Contents Thereof, and Contained In This - Affidavit, To Be True and Correct Of His Own Personal Knowledge and Belief, ... EXcept of those matters that were based upon, the Information and Belief, And As To Such Matters, He Believes them to be TRUE.

3.) That Mr. Botelho, is Also REquesting from the Attorney Of REcords, The- Foregoing As Stated Below:

(a)-Stating:

The Ethical Obligation of An Attorney REquire Disclosure of Work- Product To The Client, [After] Termination of the REpresentation;

(b)-Nev. Rev. Stat. § 7.055 Provides the Petitioner with the Statutory - Right to REceive His [Complete] Trial File from the Former Counsel, INcluding [All] Work Product Contained In The File;

(c)-The Work Product Privilege Does [Not] Apply to the Former Client of An Attorney;

(d)-The Plain Language of Rule 26(b)(3) Excludes The Former Client of an Attorney;

(e)-No Work Product or Attorney Client Privilege Exist In This Case, - Because the Petitioner is the [Exclusive Holder] of those Privileges;

(I)

(f)-Petitioner Can Show Substantial [Need] for his Former Attorney's Work Product, Since this [Information] is [Crucial] to his Ability to In'-fact-Litigate the Constitutional Claim(s) in State Post-Conviction - Proceedings;

(g)-Petitioner is Independently [Entitled] to [Trial Counsel's Work - Product] Pursuant to, Nev. Rev. Stat. § 50.125;

(h)- The State Has [No] Standing to [Assert the Work Product or Attorney-Client Privileges];

Further Stated, Of The Records [Needed], See-Below:

(4):

- (A)-All police reports, including statements to police
- (B)-Complete record of Grand Jury Minutes
- (C)-Copy arraignment, change of plea hearing, etc..
- (D)-Copy of all pleadings and all hearings
- (E)-Copy of all of counsel's notes
- (F)-Copy of appellate papers
- (G)-Copy of any other work product not mentioned herein.
- (H)-Copy of hospital records and states findings
- (I)-Copy of all proceedings taking place in California

CC: FILE

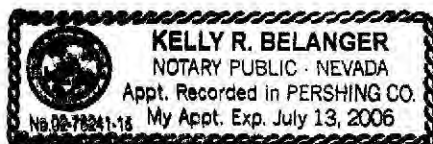
STATE of Nevada Dated: This 8th Day Of July, 2005.

County of Pershing

Sworn and Subscribed To Before Me,
This 8 Day Of July, 2005,
And Was Identified To Me By His -
Back Number, #[80837], In The County
Of Pershing:

BY: Michael T. Botelho
Michael T. Botelho, #80837*
Affiant, In Propria Personam: //

[Notary Public]



Case No. CR03-2156Dept. No. 3IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOEMICHAEL T. BOTELHO #80837PETITIONER

vs.

LENARD VARE, STATE OF NEVADA,
ETALRESPONDENTCERTIFICATE OF
INMATE'S INSTITUTIONAL ACCOUNT

I, the undersigned, hereby certify that M. Botelho, # 80837,
PETITIONER above-named, has a balance of \$ 9.38 on account to
his credit in the prisoners' personal property fund for his use at Lovelock
Correctional Center, in the County of Pershing, State of Nevada, where he is
presently confined.

I further certify that said PETITIONER owes departmental charges
in the amount of \$ 0 and that the solitary security to his credit is
a savings account established pursuant to NRS 209.247(5) with a balance of
\$ 77.56 which is inaccessible to him.

DATED THIS 29th day of June, 2005.

Radford
Accounting Technician
Inmate Services Division
Nevada Department of Corrections

Submitted by: Michael T Botelho, # 80837, on 6/22/2005

Micheal Todd Botelho, # 80837
Lovelock Correctional Center
P.O. Box 359
Lovelock, Nevada 89419

4/ 12, 200 05

Public Defender's Office
1 south Sierra
ATTN: John Reese Petty
Reno, Nevada 89501 89501

RE: STATE v. Micheal Todd Botelho Case No. CR03-2156
YOUR TERMINATION AS COUNSEL AND DELIVERY TO ME OF
ALL CASE MATERIALS PURSUANT TO NRS 7.055

Dear Counsel,

Be advised that as of this date your authority and authorization as attorney of record in the above-entitled case is terminated and all professional relationship is ended. It is noted that I owe you no fees as you were appointed to represent me due to my indigence.

Pursuant to NRS 7.055 I am demanding immediate delivery to me at the above address of ALL papers, documents, pleadings and items of tangible property which belong to me or were prepared for me in relation to the above-entitled case.

Be advised that in the event I do not receive the requested materials in a timely manner as required by the statute, i.e., five (5) days from the date above, I will file a motion with the court to obtain an order directing your compliance with the statutory requirements as requested herein.

Thank you for your attention to this matter. I await your prompt response.

Sincerely,

Michael T Botelho

cc: file

Certificate of Service

Pursuant to NRCP 5, I certify that I am an Inmate of Lovelock correctional Center Lovelock NV 89419 and that on this date I caused the foregoing document to be delivered to the Party to this action.

 X By U. S. Mail

Dated this 12th day of April, 2005

Micheal Todd Botelho



Washoe County Public Defenders Office
350 South Center St. Suite 600
Reno, NV 89501
ATTN: John Reese Petty

ORIGINAL

FILED

Michael T. Botelho, #80837
 Lovelock Correctional Center
 P.O. Box 359
 Lovelock, Nevada 89419

2005 AUG 18 PM 3: 09

RONALD A. LONGTIN, JR.

BY W. J. K.
DEPUTY

Defendant, In Proper Person

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

MICHAEL T. BOTELHO,

Defendant,

Case No. CR03-2156

V.

Dept. No. 3

THE STATE OF NEVADA,

Respondant.

REQUEST FOR SUBMISSION

Comes now, Defendant, Michael T. Botelho, in his Proper Person, and submits the instant Request for Submission in the above entitled action.

Petitioner requests that this court submit the NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS, files on July 8, 2005. Respondants have failed to plead or otherwise respond to the aforementioned pleading. Therefore, due to the fact that over thirty (30) days has expired since the filing of the motion, it is now proper for adjudication on the merits.

Dated this day, AUGUST 16, 2005.

Respectfully Submitted,

Michael T. Botelho

CR03-2156
 STATE VS. MICHAEL TODD BOTELHO
 District Court
 Washoe County
 DC-09900071886-017
 TODD BOTELHO 2 Pages
 08/18/2005 03:08 PM
 3860

CERTIFICATE OF SERVICE BY MAILING:


I do certify that I mailed a True and Correct copy of the foregoing letter to the addresses below on this 16th day of August, 2005, by placing same into the u.s. mail, [VIA]-prison law library staff, in compliance with N.R.C.P., 5 (b):

Mr. Richard Gammick, ESQ.
Office of District Attorney
Washoe County
P.O. BOX 30083
Reno, Nevada 89520

Mr. John Reese Petty
Mr. Sean Sullivan
Washoe County Public Defenders Office
350 South Center St.
P.O. BOX 30083
Reno, Nevada 89520

Dated this 16th day of August, 2005.

By: _____


Michael T. Botelho, #80837
P.O. BOX 359
Lovelock Corr. Center
Lovelock, Nevada 89419

CC:FILE

ORIGINAL FILED

Code 3060

SEP 13 2005

RONALD A. LONGSTIN JR., CLERK

BY *[Signature]*
DEPUTY

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

THE STATE OF NEVADA,
Plaintiff,

vs.

Case No. CR03-2156

Dept. No. 3

MICHAEL T. BOTELHO,
Defendant.

ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL

The Court has reviewed and considered the points and authorities in support of and in opposition to Defendant MICHAEL T. BOTELHO's Motion for Withdrawal of Attorney of Record and Transfer of Records filed on July 13, 2005 and submitted to the Court for decision on August 18, 2005. Defendant requests the withdrawal of counsel, John Reese Petty, Esq.

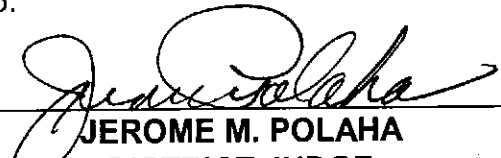
Good cause appearing, IT IS HEREBY ORDERED THAT:

- (1) Pursuant to NRS 7.055, Defendant's for Withdrawal of Attorney of Record and Transfer of Records is GRANTED; and
- (2) John Reese Petty, Esq. immediately deliver to Defendant at his Lovelock Correctional Center address, all documents, papers, pleadings, discovery and any other tangible property in the above-

CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court 09/13/2005 05:16 PM
Washoe County
3060
ACW:11

entitled case, at counsel's expense, no later than ten court calendar
days of the date of this Order.

DATED this 14th day of September, 2005.

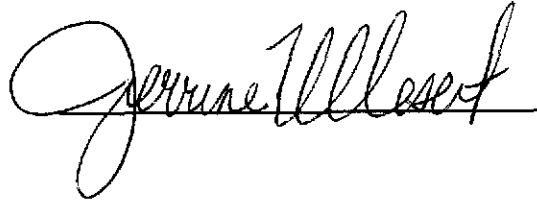

JEROME M. POLAHA
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13 day of September 2005, I deposited for mailing a copy of the foregoing to:

Michael T. Botelho
Inmate # 80837
P. O. Box 359
Lovelock, NV 89419

John Petty, Esq.
Washoe County Public Defender's Office
Via Interoffice Mail



FILED

Electronically

06-04-2012:04:34:04 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 2995756

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,
Petitioner,

vs.

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

Respondent,

and

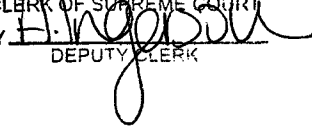
JACK PALMER, WARDEN; AND THE
STATE OF NEVADA,
Real Parties in Interest.

No. 60556

CR03-2156
3

FILED

MAY 31 2012

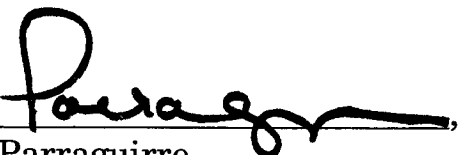
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERKORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order compelling the district court to grant post-conviction relief. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. NRS 34.160; NRS 34.170. Accordingly, we

ORDER the petition DENIED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Michael Todd Botelho
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156
Judge: JEROME POLAHA
Official File Stamp: 06-04-2012:16:34:04
Clerk Accepted: 06-04-2012:16:37:07
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. MICHAEL TODD BOTELHO (D3)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Lori Matheus

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA
JOHN PETTY, ESQ. for MICHAEL BOTELHO
DIV. OF PAROLE & PROBATION
SEAN SULLIVAN, ESQ. for MICHAEL BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

MICHAEL BOTELHO
STATE OF NEVADA

FILED

Electronically

07-31-2012:10:58:10 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3118134

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,
Petitioner,

vs.

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

Respondent,

and

JACK PALMER, WARDEN; AND THE
STATE OF NEVADA,
Real Parties in Interest.

No. 60556

CR03-2156
3**FILED**

JUL 25 2012

TRAQIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Indersul*
DEPUTY CLERKORDER DENYING REHEARINGRehearing denied.¹ NRAP 40(c).

It is so ORDERED.

Douglas, J.
Douglas*Gibbons*, J.
Gibbons*Parraguirre*, J.
Parraguirre

¹As the documents received from appellant on both June 12, 2012, and July 9, 2012, argue that this court wrongfully denied appellant's petition for extraordinary relief, we construe these documents as a petition for rehearing.

cc: Michael Todd Botelho
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156
Judge: JEROME POLAHA
Official File Stamp: 07-31-2012:10:58:10
Clerk Accepted: 07-31-2012:10:59:46
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. MICHAEL TODD BOTELHO (D3)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Annie Smith

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA
JOHN PETTY, ESQ. for MICHAEL BOTELHO
DIV. OF PAROLE & PROBATION
SEAN SULLIVAN, ESQ. for MICHAEL BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

MICHAEL BOTELHO
STATE OF NEVADA

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,

Petitioner,

vs.

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

Respondent,

and

JACK PALMER, WARDEN; AND THE STATE
OF NEVADA,

Real Parties in Interest.

Supreme Court No. 60556

District Court Case No. CR032156

3

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on July 25th, 2012, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: August 20, 2012

Tracie Lindeman, Clerk of Court

By: Lindsey Smith

Deputy Clerk

cc: Michael Todd Botelho

Attorney General/Carson City/Catherine Cortez Masto, Attorney General

Washoe County District Attorney/Terrence P. McCarthy, Deputy District Attorney

Joey Orduna Hastings, District Court Clerk ✓

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156
Judge: JEROME POLAHA
Official File Stamp: 08-22-2012:14:18:12
Clerk Accepted: 08-22-2012:14:20:36
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. MICHAEL TODD BOTELHO (D3)
Document(s) Submitted: Supreme Ct Not/Lieu/Remittitur
Filed By: Mary Fernandez

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GARY HATLESTAD, ESQ. for STATE OF NEVADA
JOHN PETTY, ESQ. for MICHAEL BOTELHO
DIV. OF PAROLE & PROBATION
SEAN SULLIVAN, ESQ. for MICHAEL BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

MICHAEL BOTELHO
STATE OF NEVADA

1 CODE #2300
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent
5

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

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 JAMES BENEDETTI,

Dept. No. 3

13 Respondent.
14 _____/

15 MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

16 COMES NOW, the State of Nevada and moves this Honorable Court to dismiss the
17 Petition for Writ of Habeas Corpus. This motion is based upon the records of this court, and of
18 the Supreme Court and the following points and authorities.

19 POINTS AND AUTHORITIES

20 This case appears to have been ignored by the petitioner. The untimely, abusive and
21 successive petition was filed on January 27, 2010, many years after the time allowed by NRS
22 34.726. Several days later, the petitioner apparently executed and mailed a motion to recuse
23 someone. That, however, was sent only to the Attorney General and the District Attorney and
24 was never filed or served on the court in chambers, as required by NRS 1.235(4).

25 This court determined that petitioner was indigent but there was no determination on
26 the request for counsel. Since then, the record goes silent.

1 NRCP 41(e) requires dismissal for want of prosecution when the plaintiff has failed to
2 bring an action to trial within five years of initiating the action. It has been over five years since
3 the petition was filed. NRS 34.780 calls for application of the Civil Rules to post-conviction
4 procedures if there is no inconsistent provision in chapter 34 of the Revised Code. There is no
5 inconsistent provision in chapter 34 and so the Civil Rules should apply and this case should be
6 subject to mandatory dismissal.

7 The court should also dismiss because the petition was untimely when it was filed and
8 the petitioner has given no cognizable excuse. Thus, dismissal is mandatory. *State v. District*
9 *Court (Riker)*, 121 Nev. 225, 112 P.3d 1070 (2005).

10 AFFIRMATION PURSUANT TO NRS 239B.030

11 The undersigned does hereby affirm that the preceding document does not contain the
12 social security number of any person.

13 DATED: July 24, 2015.

14 CHRISTOPHER J. HICKS
15 District Attorney

16 By /s/ TERRENCE P. McCARTHY
17 TERRENCE P. McCARTHY
18 Chief Appellate Deputy
19
20
21
22
23
24
25
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on July 24, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael T. Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

GARY HATLESTAD, ESQ. - Notification received on 2015-07-24 09:54:15.349.

JOHN PETTY, ESQ. - Notification received on 2015-07-24 09:54:15.676.

DIV. OF PAROLE & PROBATION - Notification received on 2015-07-24 09:54:15.645.

SEAN SULLIVAN, ESQ. - Notification received on 2015-07-24 09:54:15.38.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

07-24-2015:09:12:41

Clerk Accepted:

07-24-2015:09:53:38

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Mtn to Dismiss Pet

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

GARY HOWARD HATLESTAD, ESQ. for STATE
OF NEVADA

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

MICHAEL TODD BOTELHO
PETITIONER

CASE NO. CR03-2156 PM 4:17

VS.

DEPT. NO. 3

JACQUELINE DRYNT
CLERK OF THE COURT

JAMES BENEDETTI,

BY

DEPUTY

STATE OF NEVADA, et al
RESPONDENTS

MOTION TO STRIKE AND OPPOSITION TO RESPONDENTS

MOTION TO DISMISS PETITION FOR POST-CONVICTION

WRIT OF HABEAS CORPUS

COMES NOW, MICHAEL TODD BOTELHO (HEREIN AFTER BOTELHO)
IN PROPER PERSON AND IN FORMA PAUPERIS, RESPECTFULLY BRINGING
FORTH THIS INSTANT MOTION TO STRIKE AND OPPOSITION TO RESPONDENTS
MOTION TO DISMISS PETITION FOR POST-CONVICTION WRIT OF HABEAS
CORPUS.

THE ABOVE CAPTIONED MOTION TO STRIKE AND OPPOSITION IS
BASED UPON ALL PAPERS, PLEADINGS AND RECORDS ON FILE AS WELL
AS THE MOTION TO DISMISS FILED BY THE STATE (RESPONDENT)
FILED IN ACCORDANCE WITH BOAG V. MCDOWGAL, 454 U.S. 364,
102 S. CT 700 (1982); HAINES V. KERNER, 404 U.S. 519, 92 S. CT 594
(1972). PRO-SE LITIGANTS PLEADINGS ARE TO BE CONSTRUED LIBERALLY
AND HELD TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS
TO STATE VALID CLAIM ON WHICH LITIGANTS COULD PREVAIL, IT SHOULD
DO SO DESPITE FAILURE TO CITE PROPER LEGAL AUTHORITY, CONFUSION
OF LEGAL THEORIES, POOR SYNTAX AND SENTENCE CONSTRUCTION,
OR LITIGANTS UNFAMILIARITY WITH PLEADING REQUIREMENTS. SEE
ALSO BLACKMON V. CRAWFORD, 305 F. SUPP. 2d 117 (D Nev 2004), AND
BALESTRERI V. PACIFICA POLICE DEPT., 901 F2d 696 (9th 1990); BATEMAN V.
U.S. POSTAL SERVICE, 231 F3d 1220-24 (9th 2002).

STATEMENT OF FACTS
& POINTS AND AUTHORITIES

1 THE ^{STATE} ACTED IN BAD FAITH WITH ITS SHAM MOTION TO DISMISS
2 PETITION FOR WRIT OF HABEAS CORPUS NOW BEFORE THIS COURT.

3 THE STATE (WASHOE CO. DISTRICT ATTORNEY) HAS NO STANDING IN
4 THIS CASE. THE STATE HAD A LEGAL, MORAL, ETHICAL DUTY TO RESPOND
5 OR ANSWER IN 2010, PURSUANT TO DISTRICT COURT RULES, NEVADA
6 CIVIL RULES OF PROCEDURE (HEREIN AFTER N.R.C.P.), NEVADA LAW,
7 THEIR OATH OF OFFICE, THE NEV. CONSTITUTION, THE U.S. CONSTITUTION
8 AND PETITIONER'S INALIENABLE, 1ST, 5TH, 8TH, 9TH AND 14TH AMENDMENT
9 RIGHTS GUARANTEED BY THE UNITED STATES CONSTITUTION.

10 SEE STAHL V. WILLIAMS, IND. APP. 367 N.E. 2d 1120, IMPLYING OR
11 INVOLVING ACTUAL OR CONSTRUCTIVE FRAUD; GOMILLION V. LITE FOOT,
12 364 US 339, 81 S. CT 125 (1960); IN RE INTERMAGNETICS AMERICAN, INC.,
13 926 F2d 912, 916 (9TH 1991) "FRAUD UPON THE COURT"; AND ALEXANDER V.
14 ROBINSON, 882 F2d 421, 424 (9TH 1994).

15 BOTE LHO ALSO ASSERTS AND BELIEVES THAT THE RESPONDENT
16 (DISTRICT ATTORNEY) HAS NO STANDING AS IT HAS COME TO LIGHT THAT
17 WASHOE COUNTY DISTRICT ATTORNEY ⁽¹⁾ HAS NOT PERFECTED, NOR LEGALLY
18 OCCUPIED HIS OFFICE BY WILLFULLY VIOLATING NRS. 282.010, WHEREIN
19 CHRIS HICKS FAILED TO PROPERLY FILE A VALID BOND, THUS, VIOLATING NRS
20 282.120, WHICH REQUIRES NO LESS THAN [T]WO SURETIES UPON EACH
21 BOND; HE VIOLATED NRS 282.208 (1), (2), IN (2) FORFEITURE OF OFFICE OR
22 APPOINTMENT UPON FAILURE TO FILE NEW OR ADDITIONAL BOND; SUSPENSION
23 OF FUNCTION OF OFFICE (INCLUSIVE); AND SEE NRS 252.070 (2) DISTRICT
24 ATTORNEY RESPONSIBLE ON THEIR OFFICIAL BONDS FOR ALL OFFICIAL
25 MALEFEASANCE OR NON FEASANCE OF THE DEPUTIES BOND" (ALL INCLUSIVE);
26 ALSO NRS 282.040 "ALL OFFICIAL BONDS REQUIRED BY LAW, OF
27 OFFICER, SHALL BE (2) MADE ~~PER~~ PAYABLE TO THE STATE OF NEVADA,
28 NOT WASHOE COUNTY AS IS THIS CASE (SEE PUBLIC RECORD).

FOOTNOTE
(1) CHRIS HICKS

1 AS A RESULT, AND AS ALSO PERPETRATED BY DICK GAMMICK, PREVIOUS
 2 TO CHRIS HICKS, THE DEPUTY DISTRICT ATTORNEYS ACTIONS, PLEADINGS
 3 AND FILINGS HAVE NO FORCE AND EFFECT OF LAW. AS A RESULT, THE
 4 RESPONDENTS MOTION IS VOID. THE STATE HAS NO STANDING IN THIS CASE.

5 BOTELHO ASSERTS THAT IT IS NOW AND HAS BEEN THE STATES POSITION
 6 AND INTENT TO FURTHER IRREPARABLY INTJURE AND PREJUDICE BOTELHO
 7 AND HIS INALIENABLE CONSTITUTIONAL RIGHTS [PRIOR TO] AND "SINCE" HIS
 8 ARREST IN 2003

9 THE STATE AND THIS COURT ARE NOW ON NOTICE, "JUDICIAL NOTICE,"
 10 "THE OATH OF OFFICE AND THE COMMANDS OF BOTH NEVADA AND THE UNITED
 11 STATES CONSTITUTION(S) ARE STILL INFACIT [V] AND COMMANDS, COMMANDS,
 12 WITH FULL FORCE AND EFFECT;" NO MATTER HOW IT PAINS THE STATE OR THIS
 13 COURT!

14 IT IS BOTELHOS ASSERTION THAT THE RESPONDENT ACTED IN CONCERT/
 15 COLLUSION WITH THIS COURT AND JUDGE POLAHA TO SHELVE THIS PETITION
 16 AND (3) MOTIONS FILED IN 2010 TO, AND IN THE HOPE OF DESTROYING BOTELHO'S
 17 ABILITY TO HAVE HIS CASE ADJUDICATED WITHIN THE STATUTE OF LIMITATIONS
 18 AND NV. CIVIL RULES OF PROCEDURE.

19 BOTELHO ASSERTS AND THE OFFICIAL COURT RECORD PROVE THAT BOTELHOS
 20 WRIT OF HABEAS CORPUS, ALONG WITH MOTIONS FOR APPOINTMENT OF COUNSEL
 21 AND ALSO FOR IN FORMA PAUPERIS STATUS WERE PROPERLY FILED IN THIS
 22 COURT ON JAN. 28, 2010. THE COURT RECORD FURTHER PROVES BOTELHO
 23 FILED MOTION TO RECUSE JUDGE POLAHA, ALONG WITH AFFIDAVIT IN
 24 SUPPORT THEREOF, ON FEB. 8, 2010.

25 TO THIS DATE, BOTELHO HAS ONLY RECEIVED AN ORDER GRANTING
 26 HIS MOTION FOR IN FORMA PAUPERIS BY JUDGE POLAHA. BOTELHO HAS
 27 NOT RECEIVED ANY FILE STAMPED MOTIONS, NOR, HIS PETITION, THOUGH
 28 HE HAD WRITTEN TO THIS WASHOE COUNTY COURT CLERK ON 2-21-2012,

1 SEE EXHIBIT I, HEREIN. IN ADDITION, BOTELHO'S WIFE CONTACTED THE
2 COURT CLERK ON AT LEAST TWO(2) DIFFERENT OCCASIONS AND TOLD THAT
3 THE COURT HAS A HEAVY CASELOAD, BUT THAT THE CLERK WOULD CHECK
4 INTO THE MATTER AND GET BACK TO HER.

5 THE CLERK NEVER GOT BACK TO BOTELHO, OR HIS WIFE TO FIND OUT
6 WHAT WAS GOING ON. PETITIONER HAS TRIED AND PROVEN THAT HE MADE,
7 AND HIS WIFE, REPEATED ATTEMPTS TO ADDRESS THIS. THIS IS HOW YOU, THIS
8 COURT, TREAT POOR, PRO SE INMATES NOT EDUCATED IN THE LAW AND
9 WHOM THIS SAME COURT PREVIOUSLY APPOINTED COUNSEL DUE TO HIS
10 INABILITY TO HELP HIMSELF.

11 THE STATE HAD A DUTY, LEGAL AND ETHICAL, TO ADDRESS AND REPLY/
12 RESPOND TO BOTELHO'S PETITION AND MOTIONS FILED BEFORE THIS
13 COURT PURSUANT TO THEIR OATH OF OFFICE, THE NEVADA LAWS, NEVADA
14 RULES OF CIVIL PROCEDURE, SECOND JUDICIAL DISTRICT COURT RULES,
15 STATE DISTRICT COURT RULES, THE NEVADA AND U.S. CONSTITUTIONS, AND
16 PETITIONERS INALIENABLE GUARANTEED BY THE NEVADA AND OUR "STILL
17 VALID" UNITED STATES CONSTITUTION(S).

18 THE RESPONDENTS CHOSE TO STAND SILENT, WHEN IT HAD A DUTY
19 TO RESPOND AND ACT UPON THESE MOTIONS AND WRIT OF HABEAS CORPUS
20 BEFORE THIS COURT. THE RESPONDENT SHIRKED ITS DUTIES AND
21 WILLFULLY, ALONG WITH THIS COURT, DISREGARDED BOTELHO'S CONSTITUTIONAL
22 RIGHTS TO ADDRESS HIS GRIEVANCE; HIS DUE-PROCESS, CRUEL AND
23 UNUSUAL TREATMENT AND EQUAL PROTECTION. IN SO DOING, BOTELHO
24 HAS BEEN WILLFULLY AND SYSTEMATICALLY, IRREPARABLY AND PREJUDICALLY
25 DAMAGED BEYOND ALL STANDARDS AND ~~THE~~ IMAGINATION.

26 SEE U.S.V. NICHOLS, 937 F.2d 1257 (7th Cir. 1991) "DUE PROCESS PROTECTS
27 CRIMINAL DEFENDANTS AGAINST PROSECUTORIAL OR JUDICIAL ACTION
28 INTENDED AS PENALTY FOR DEFENDANTS EXERCISE OF CONSTITUTIONAL

RIGHTS." SEE ALSO BLAIR V. CRAWFORD, 275 F3d 1156 (9th 2002); U.S. V. DETERS, 143 F3d 577 (10th 1998); U.S. V. GOMEZ, 67 F3d 1515 (10th 1995); ROCHIN V. CALIF., 342 U.S. 165, 72 S. CT 26 (1952); AND SEE BLAYLOCK V. SCHWINDEN, 856 F2d 107 (9th 1998); ZINERMAN V. BLANCH, 444 U.S. 113, 125-128, 110 S. CT 975, 983-88 (1990).

BOTELHO HAS WAITED FOR THE COURT AND THE STATE TO DO ITS DUTY, CONSTITUTIONAL DUTY, SINCE 2010. AS STATED IN COOLIDGE V. NEW HAMPSHIRE, 403 U.S. 443, 454, 91 S. CT 2022, 2031, AS STATED BY SUPREME COURT "IT IS THE DUTY OF THE COURTS TO BE WATCHFUL FOR THE CONSTITUTIONAL RIGHTS OF THE CITIZENS, AND AGAINST ANY STEALTH ENCROUCHMENT THEREON." THE RECORD SPEAKS FOR ITSELF, THE STATE AND THIS COURT HAS DONE INEXCUSABLE, IRREPARABLE AND PREJUDICIAL DAMAGE TO BOTELHO.

THERE HAS BEEN AN UNCONSTITUTIONAL CHILL BY THE GOVERNMENT ACTION IN THIS CASE. BOTELHO HAS SUFFERED MAJOR IRREPARABLE CONSTITUTIONAL VIOLATIONS & DEPRIVATIONS UNDER COLOR OF STATE AND FEDERAL LAW AS THE OFFENSIVE STATE ACTION IS REPUGNANT TO BOTH NEV. AND U.S. CONSTITUTION(S). A JUDGMENT RENDERED WITHOUT DUE-PROCESS IS VOID.

THE GREAT WRIT IS GUARANTEED BY THE U.S. CONSTITUTION, ARTICLE I, SECTION 9, THE GREAT WRIT IS FUNDIMENTAL RIGHT TO ACCESS THE COURTS, SMITH V. BENNET, 365 U.S. 708, 81 S. CT. 895 (1961); AND SEE BOWEN V. JOHNSON, 306 U.S. 83 (1939) CONGRESS HAS DEMONSTRATED ITS SOLITUDE FOR VIGOR OF GREAT WRIT. THE COURT HAS STEADFASTLY INSISTED THAT IS NO HIGHER DUTY THAN TO MAINTAIN IT UNIMPAIRED, IN THIS REGARD, THAT THE WRIT OF HABEAS CORPUS IS THE MOST FUNDAMENTAL INSTRUMENT FOR SAFEGUARDING INDIVIDUAL FREEDOM AGAINST ARBITRARY AND LAWLESS STATE ACTION, COOPER V. TAYLOR, 70 F3d 1454 (4th 1995).

PETITIONER DEMANDS THE RIGHTS AND PROTECTIONS UNDER THE EQUAL PROTECTION AND DUE PROCESS CLAUSE(S) OF THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION; AND THE NEVADA CONSTITUTION, ARTICLE I, SECTION 8, AND WHERE THE NV. CONSTITUTION PROVIDES A GREATER PROTECTION OF BOTELHO'S U.S. CONSTITUTIONAL RIGHTS; PETITIONER DEMANDS THAT GREATER RIGHT AND PROTECTION. SEE WILSON V. STATE, 170 P3d 975, 980 (NV, 2007).

SPECIAL SOLITUDE IS REQUIRED FROM COURTS WITH RESPECT TO HABEAS CORPUS PROCEEDINGS BECAUSE THE WRIT IS INTENDED TO BE A SWIFT AND IMPERATIVE REMEDY IN ALL CASES OF ILLEGAL RESTRAINT OF CONFINEMENT, SEE YONG V. I.N.S., 203 F3d 1116 (9TH 2000). PETITION FOR HABEAS IS [NOT] MOOT IF [A]DVERSE COLLATERAL CONSEQUENCES CONTINUE TO FLOW FROM UNDERLYING CONVICTION, SEE WOOD V. HALL, 130 F3d 373 (9TH 1997).

THIS COURT IS ADVISED THAT "THE PETITION FOR WRIT OF HABEAS CORPUS CANNOT BE "SUSPENDED" (ABROGATED) UNDER ANY GUISE, EXCEPT SO STATED IN ARTICLE I, SECT. 9, CLAUSE 2, OF U.S. CONSTITUTION.

BROWN V. NATION BANK CORP., 188 F3d 579 (5TH 1999) THE GUARANTEE OF DUE PROCESS PROTECTS CITIZENS AGAINST DELIBERATE HARM FROM GOVERNMENT OFFICIALS. SEE HATHAWAY V. STATE, 119 NEV. 248, 71 P3d 503 (NV, 2003); SEE ROCHIN V. CALIF. 342 U.S. 165, 72 S. CT 76 (1952) SUBSTANTIVE DUE PROCESS TO CERTAIN ACTIONS THAT THE GOVERNMENT MAY NOT ENGAGE IN NO MATTER HOW MANY PROCEDURAL SAFEGUARDS IT EMPLOYS; BLAYLOCK V. SCHWINDEN, 856 F2d 107 (9TH 1998) EQUAL PROTECTION OF THE LAWS DOES NOT MERELY MEAN EQUAL PROTECTION OF THOSE LAWS WHICH CONCERN THE VIOLATION OF CONSTITUTIONAL RIGHTS, RATHER, IT REQUIRES EQUAL PROTECTION OF ALL THE LAWS."

CEJA V. STEWART, 97 F3d 1246 (9TH 1996) MULTIPLE ERRORS, EVEN IF HARMLESS INDIVIDUALLY, MAY ENTITLE PETITIONER TO HABEAS

1 RELIEF IF THERE ~~IS~~ CUMMULATIVE EFFECT PREJUDICED DEFENDANT.

2 THE STATE AND THIS COURT WILLFULLY AND KNOWINGLY, IRREPARABLY
3 HARMED BOTELHO'S ACCESS TO THE COURTS, SEE RAND V. ROWLAND, 154
4 F3d 952 (9TH 1998); EDWARDS V. CALIF., 314 U.S. 160, 62 S.Ct 164, CHAMBERS
5 V. FLORIDA, 309 U.S. 227, 60 S.Ct 472; AND SEE ROWELL V. ALABAMA, 287 U.S.
6 45, 53 S.Ct. 55 "EQUAL PROTECTION".

7 THE GOVERNMENT HAS A SPECIAL RESPONSIBILITY TO ENSURE THE
8 INTEGRITY OF THE CRIMINAL JUDICIAL PROCESS BY LIVING UP TO THE CODE OF
9 PROFESSIONAL ETHICS AND FAIR PLAY, U.S. V. WHITE, 222 F3d 363 (7TH 2000),
10 AND ALSO HAVE A DUTY TO ENSURE FAIRNESS OF CRIMINAL TRIALS, U.S. V.
11 WALKER, 234 F3d 780 (1ST 2000); VICK WO V. HOPKINS, 6 S.Ct 1064 AND
12 ROUSE V. BENSON, 193 F3d 936 (8TH 1999) "IMPAIRMENT, AND/OR OBSTRUCTION
13 OF THOSE WHO SEEK JUSTICE IN ANY COURT IS A CRIME AND IS PUNISHABLE
14 BY IMPRISONMENT UNDER U.S. CODE.

15 THE RESPONDENTS AND THIS COURT WERE KNOWING OF, AND WILLFULLY
16 BEING DELIBERATELY INDIFFERENT TO BOTELHO. SEE WALKER V. SHEABAN,
17 526 F3d 973, 978 (7TH 2008); GOMEZ V. RANDLE, 620 F3d 859 (7TH 2012); COTTS V.
18 OSARO, 692 F3d 564 (7TH 2012); MOONEY V. HULLIHAN, 294 U.S. 103, 55 S.Ct. 340
19 (1935) DELIBERATE DECEPTION OF A COURT; AND SEE TURNER V. STATE, 114 Nev.
20 682, 962 P2d 1223, JUDGES FAILURE TO RECUSE HIMSELF ALSO VIOLATED
21 CANON 3 (c). JUDGE POLAHA WILLFULLY AND REPEATEDLY VIOLATED HIS OATH
22 OF OFFICE PURSUANT TO ARTICLE 15, SECT. 2 OF NV. CONSTITUTION, DISTRICT
23 COURT RULES, CANONS, NEV. RULES OF CIVIL PROCEDURES, PETITIONERS
24 DUE-PROCESS AND EQUAL PROTECTION RIGHTS GUARANTEED BY NEVADA
25 AND U.S. CONSTITUTION(S).

26 A STATE PROCEDURAL RULE MUST BE REGULARLY ADHERED TO IF IT
27 IS TO BE AN ADEQUATE STATE GROUND, SUPPORTING A PROCEDURAL BAR,
28 JAMES V. KENTUCKY, 466 U.S. 341, 348-51, 104 S.Ct. 1830 (1984).

PETITIONER ASSERTS AND THIS COURTS RECORD PROVES AND IS A MATERIAL FACT THAT MULTIPLE EGREGIOUS ACTS OF PLAIN AND HARMFUL "PLAIN ERROR" HAS BEEN PERPETRATED UPON BOTEELHO BY THE STATE AND THIS COURT. SEE CHAPMAN V. CALIF., 396 U.S. 18, 22-23, 87 S. CT 824 (1967) (2) HARMFUL PLAIN ERROR DOES NOT EXIST, ALL PLAIN ERRORS ARE HARMFUL, (3) HARMLESS CONSTITUTIONAL ERROR TEST IS STRINGENTLY APPLIED, RESOLVING REASONABLE DOUBT AGAINST GOVERNMENT.

IN BOTEELHO'S PETITION FOR HABEAS CORPUS FILED ON 1-27-2010, IS (EXHIBIT I), PURSUANT TO U.S. DISTRICT COURT ORDER, WHICH CLEARLY STATES "IT IS ORDERED AND ADJUDGED THAT RESPONDENTS MOTION TO DISMISS (#20) IS GRANTED, IT IS FURTHER ORDERED THAT THIS CASE ^{IS} ~~BE~~ DISMISSED (WITHOUT PREJUDICE TO ALLOW PRISONER TO RETURN TO STATE COURT TO EXHAUST HIS CLAIMS." PETITIONER DID SO RE-PRESENT HIS ORIGINAL POST-CONVICTION HABEAS CORPUS TO THIS COURT FOR EXHAUSTION, THIS POSITION WAS FORCED UPON BOTEELHO BY THIS STATES ACTIONS, NOT BOTEELHO. PETITIONER, IN PRO-SE, AND NOT TRAINED IN THE LAW AND ALREADY PREVIOUSLY HAVING BEEN APPOINTED COUNSEL BY THIS VERY COURT, THIS VERY JUDGE, FOR GOOD CAUSE SHOWN, PROVES BOTEELHO'S NEEDING COUNSEL. AND NOW THE STATE ASSERTS, IN ESSENCE, THAT PETITIONER IS "IGNORANT," BOTEELHO HAS JUSTLY ASSUMED THAT THIS COURT WOULD ACT AS REQUIRED BY LAW AND BOTH NEV. AND U.S. CONSTITUTIONS BY HAVING COUNSEL APPOINTED, BEING GRANTED INDIGENCY STATUS AND JUDGE POLAHA RECUSED, BOTEELHO "MISTAKENLY ASSUMED" THAT THIS COURT AND THE STATE WOULD PROPERLY AND EFFECTIVELY, ^{ACT} AND IN AN ORDERLY MANNER, ADMINISTER JUSTICE AS THE LAW REQUIRES. BY INFACIT RULING ON BOTEELHOS (3) MOTIONS AND HIS PETITION AS WAS BEFORE THIS COURT, TO HAVE A HEARING AND A JUST BERT DETERMINATION MADE IN THIS CASE. IT IS A MATTER OF COURT RECORD THAT POLAHA HAS NOW (4)

1 RECUSAL MOTIONS IN THIS CASE; TWO (2) BY COUNSEL ORALLY IN COURT
2 AND TWO (2) BY BOTELHO. POLAHA ALSO CONDUCTED AN ILLEGAL EX PARTE
3 (PHONE) BAIL CONVERSATION PRIOR TO APPOINTMENT OF COUNSEL BY THE STATE,
4 WITHOUT NOTICE; POLAHA ALLOWED PERTURBED, PREJUDICIAL HEARSAY BY A
5 CROOKED COP AT SENTENCING WITHOUT PENALTY. POLAHA FURTHER HELD A
6 SHAM EVIDENTIARY HEARING AND DENIED BOTELHO ANY RESEMBLANCE OF
7 A FAIR AND JUST HEARING AND ALSO WOULD NOT ALLOW BOTELHO TO SPEAK.
8 BOTELHO'S COUNSEL TOLD POLAHA AT DISTRICT COURT ARRAIGNMENT THAT
9 HE (COUNSEL) BELIEVED BOTELHO HAD PTSD, YET NO EVALUATION WAS ORDERED
10 PRIOR TO BEING "TRICKED" INTO TAKING A PLEA BARGAIN. PETITIONER GOT
11 HIS PSI REPORT 5 MINUTES BEFORE SENTENCING, FULL OF INCORRECT
12 INFORMATION AND IN VIOLATION OF NV. LAW. POLAHA FURTHER SENTENCED
13 BOTELHO TO A 5 TO 15 ON COUNT I, THEN KNOWINGLY CHANGED THE
14 SENTENCE FOR COUNT I, TO A [6 TO LIFE]. POLAHA HAS AT EVERY
15 OPPORTUNITY, WILLFULLY VIOLATED NEVADA LAW, HIS CANNONS, HIS
16 OATH OF OFFICE, THE NV. AND U.S. CONSTITUTION(S) AND BOTELHO'S
17 INALIENABLE CONSTITUTIONAL RIGHTS GUARANTEED BY BOTH CONSTITUTIONS,
18 POLAHA HAS ACTED ARBITRARY AND CAPRICIOUSLY AGAINST BOTELHO SINCE
19 HIS GRAND JURY INDICTMENT WITH MALICE AND INTENT TO INTURE HIM.
20 THIS IS CLEARLY IN THE COURT RECORD, PETITIONERS WRIT OF HABEAS CORPUS
21 AND HIS AFFIDAVITS. THESE ARE BUT JUST A HANDFUL OF HIS EGRESSIOUS
22 ACTIONS IN THIS CASE.

23 POLAHA NOT ONLY SHOULD HAVE BEEN RECUSED, BUT SHOULD HAVE
24 BEEN REMOVED FROM THE BENCH AS A DIRECT RESULT OF THIS CASE!
25 NOW, AS HAS HAPPENED, BOTELHO'S CASE WAS INTENTIONALLY MISHANDLED
26 BY THIS COURT, JUDGE POLAHA AND THE STATE WITH THE HOPE THAT HIS
27 CASE WOULD JUST GO AWAY OR EVENTUALLY HAVE THE STATE COME
28 UP WITH A WAY TO END PETITIONERS FIGHT FOR JUSTICE, AS IS

1 BEING ATTEMPTED BY THEIR 5 YEARS LATE, MOTION TO DISMISS.
 2 "CRIME IS CONTAGIOUS IF THE STATE OR FEDERAL GOVERNMENT(S)
 3 BECOME THE LAW BREAKERS, IT BREEDS CONTEMPT FOR THE LAW." LOUIS
 4 D. BRANDEIS, IN ELKINS V. U.S., 364 U.S. 2, AT 364 U.S. AT 218, 80 S. CT
 5 AT 1444, U.S. SUPREME COURT JUSTICE (1956-1941); U.S. V. CLAYBORNE,
 6 265 F2d 784 (9th 1985) FED. DISTRICT COURT JUDGE COULD BE PROSECUTED
 7 EVEN THOUGH HE HAD NOT BEEN IMPEACHED BY CONGRESS.; N. CAROLINA
 8 V. PEARCE, 395 U.S. 711, 89 S. CT 2072 (1969) "VINDICTIVENESS ON THE
 9 PART OF THE JUDGE"; U.S. V. U.S. DIST. COURT FOR THE CENTRAL DIST. OF
 10 CALIF., 858 F2d 534 (9th 1998) "IF THE GOVERNMENT, POLICE, AND
 11 PROSECUTORS COULD ALWAYS BE TRUSTED TO DO THE RIGHT THING,
 12 THERE WOULD NEVER HAVE BEEN A NEED FOR THE BILL OF RIGHTS";
 13 NORTH V. RUSSELL, 427 U.S. 328, 96 S. CT 2769 (1976) "JUDGES IGNORANCE
 14 OF THE LAW IS NO EXCUSE"; "JUDICIAL BIAS", SEE IN RE MURCHISON,
 15 349 U.S. 133, 75 S. CT 623; TUMEX V. OHIO, 273 U.S. 510, 47 S. CT 437;
 16 HAGANS V. ANDRUS, 651 F2d 622 (9th) CERT. DEN. 454 U.S. 859, 102 S. CT 313
 17 (1991); U.S. V. BROOKS, 145 F3d 446 (1st 1998) "JUDGES MUST NOT ONLY
 18 BE SCRUPULOUSLY FAIR IN THE ADMINISTRATION OF JUSTICE, BUT
 19 ALSO MUST FOSTER AN AURA OF FAIRNESS"; U.S. V. CLASSIC,
 20 313 U.S. 299, 61 S. CT 1031 "MISUSE OF POWER POSSESSED BY VIRTUE
 21 OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONGDOER
 22 IS CLOTHED WITH THE AUTHORITY OF STATE LAW, ACTIONS TAKEN,
 23 UNDER COLOR OF STATE LAW."

24 AGAIN, THE STATE HAS NO STANDING IN THIS CASE WHEN IT
 25 CONTENDS THAT BOTELHO FAILED TO BRING THIS ACTION TO TRIAL WITHIN
 26 5 YEARS, PURSUANT TO NRCP 4(e), THE STATE WILLINGLY AND
 27 KNOWINGLY CHOSE TO NOT PROSECUTE THIS CASE HOPEING BOTELHO
 28 WOULD MAKE A MISTAKE OR JUST GIVE UP, AS BOTELHO ASSERTS!

1 THE STATE FALSELY CONTENDS THAT PETITIONER FAILED TO BRING
2 THIS ACTION TO TRIAL WITHIN 5 YEARS PURSUANT TO NRCP 41(e)

3 PETITIONER ASSERTS, AND THIS COURTS RECORD WILL INDISPUTIBLY
4 PROVE THAT PETITIONER, THOUGH IN PRO SE AND UNTRAINED IN THE LAW,
5 HAS REPEATEDLY TRIED TO GET THIS COURT TO RULE ON THIS CASE AS
6 BROUGHT BEFORE IT. THE STATE AND THIS COURT CHOSE TO IGNORE THIS
7 PETITIONER ON ITS OWN ACCORD AND THUS, ACTED IN BAD FAITH.

8 SEE EXHIBITS LISTED AS FOLLOWS:

9 EXHIBIT # 1, MOTION TO ATTACK S-M-J AND MOTION TO DISMISS, FILED
10 ON 12-20-2011 (FRONT PAGE & CERTIFICATE OF SERVICE)

11 EXHIBIT # 2, LETTER TO WASHOE CO. COURT CLERK FOR STATUS CHECK
12 OF CASE ON FEB 21, 2012 [AND] MOTION FOR DIRECTED VERDICT,
13 (MOTION FRONT PAGE & CERT. OF SERVICE (3 PGS) AND (1) PG. STATUS CHECK)

14 EXHIBIT # 3, MANDAMUS FILED IN NV. S. CT. TO COMPEL THIS COURT, FILED
15 MARCH 29, 2012, S. CT # 60556 (FRONT PAGE, CERT. OF SERVICE, 2 PGS)

16 EXHIBIT # 4, NRCP 60(b)(4) MOTION, FILED IN NV. SUPREME COURT ON
17 JULY 9, 2012 (FRONT PAGE, CERT. OF SERVICE, 2 PGS)

18 THESE FOUR (4) EXHIBITS PROVE CLEARLY THAT THIS PETITIONER
19 HAS TRIED IN INSTANCE AFTER INSTANCE TO HAVE HIS CASE, CR03-
20 2156 ADJUDICATED AS LAW AND JUSTICE REQUIRE.

21 AGAIN, THE STATE HAS NO STANDING, PERIOD, AND THIS COURT HAS
22 ONLY ONE OPTION, TO GRANT PETITIONER HIS RELIEF REQUESTED HEREIN.

23 "A PARTY IS NOT BOUND BY THE LABEL HE PUTS ON HIS PAPERS," SEE
24 N.C. DASH, INC. V. SCHWANTES, SUPRA, 125 NEV 647, 218 P3d 853 (2009),
25 (A MOTION MAY BE TREATED AS AN INDEPENDANT ACTION OR VLSA-VERS A,
26 IS APPROPRIATE")

27 PETITIONER FURTHER ASSERTS THAT HIS WIFE ALSO CONTACTED THE
28 COURT CLERK ABOUT BOTELHO'S CASE FILED ON 1-27-2010, IN 2012 AND

2014, AND WAS TOLD BY WASHOE CO. COURT CLERK THAT THE COURT CASE LOAD WAS HEAVY AND THAT BOTELHO'S PETITION WILL STILL BE HEARD IN AN ORDERLY FASHION.

THE FACT THAT THIS COURT, NOR RESPONDENTS, REPLIED, OBJECTED TO, OR DISPUTED PETITION^S AND MOTIONS IS THE INEXCUSABLE FAULT OF THE COURT CLERK, THIS COURT, JUDGE POLAKA, THE CHIEF JUDGE AND [N]OT THE PETITIONER, THE "IGNORANT", UNTRAINED IN THE LAW AND UNCOUNSELED PRO-SE, INDIGENT PETITIONER.

THE COURT RECORD IS CLEAR AND BEYOND DISPUTE, THAT THIS COURT AND THE STATE WERE IN POSSESSION OF THESE DOCUMENTS AND STILL CHOSE TO STAND SILENT, AND ARE NOW FOREVERMORE, WITHOUT STANDING TO ANSWER, EVER!

ARGUMENT(S)

BOTELHO STRONGLY ASSERTS THAT RESPONDENTS FAILURE TO OPPOSE OR DISPUTE ANY PLEADING ITSELF, AND/OR CLAIMS AMOUNTED TO "CONFESSION OF ERROR", AND [A]DMISSION THAT BOTH PETITION(S) AND ALL MOTIONS AND CLAIMS ASSERTED ARE [M]ERITORIOUS AND CONSENT TO GRANT THE SAME.

BOTELHO SUPPORTS HIS ASSERTION(S) BASED ON NRCP 7 (1)(a) THERE SHALL BE A COMPLAINT AND AN ANSWER; NRCP 7(c) DEMURRERS (ABOLISHED) (1951), NRCP 7(2) IF AFFIRMATIVE DEFENSES ARE NOT PLEADED OR TRIED BY CONSENT, THEY ARE [W]AIVED.

SEE NRCP 8(b) A PARTY [S]HALL STATE IN SHORT, PLAIN TERMS, THE PARTY'S DEFENSES TO EACH CLAIM ASSERTED AND [S]HALL ADMIT OR DENY THE AVERMENTS UPON WHICH THE ADVERSE PARTY RELIES. SEE NRCP 8(c), A PARTY [S]HALL SET FORTH AFFIRMATIVE ACCORD AND SATISFACTION, ARBITRATION, AWARD, ASSUMPTION OF RISK, CONTRIBUTORY NEGLIGENCE, DURESS, ESTOPPEL, STATUTE OF LIMITATIONS, WAIVER, AND ANY OTHER

1 FAILURE OF CONSIDERATION, FRAUD, ILLEGALITY, LACHES, RES JUDICATA,
 2 AND ANY OTHER MATTER CONSTITUTING AN AVOIDANCE OR AFFIRMATIVE
 3 DEFENSE; AND SEE NRCP 8(d) EFFECT OF [FAILURE] TO DENY AVERMENTS IN
 4 A PLEADING TO WHICH A RESPONSIVE PLEADING [IS] REQUIRED, "ARE ADMITTED,"
 5 WHEN (NOT) DENIED IN THE RESPONSIVE PLEADINGS. AVERMENTS IN A
 6 PLEADING TO WHICH NO RESPONSIVE PLEADING IS REQUIRED OR PERMITTED
 7 "SHALL" BE TAKEN AS DENIED OR AVOIDED.

8 IF AN AFFIRMATIVE DEFENSE IS NOT PLEADED, IT IS DEEMED WAIVED, AND
 9 [N]O EVIDENCE CAN BE SUBMITTED RELEVANT TO THAT ISSUE", PERCE
 10 LATHINGS CO. V. I SEC, 956 P2d 93; UNDER NRCP 8(c), IF AN AFFIRMATIVE
 11 DEFENSE IS NOT PROPERLY ASSERTED OR TRIED BY CONSENT, IT IS WAIVED.
 12 EQUITABLE ESTOPPEL IS AN AFFIRMATIVE DEFENCE AND [M]UST BE
 13 AFFIRMATIVELY PLEADED, SECOND BAPTIST CHURCH V. FIRST NAT'L
 14 BANK, 89 NEV. 217, 220, 510 P2d 630, 632 (1973); CHISHOLM V. BEDFIELD,
 15 75 NEV. 502, 508, 347 P2d 523, 526 (1959); WOODS V. STATE, 291 P3d 1284
 16 (2013) (PER CURIAM); SEE ALSO KLEIN V. HARRIS, 667 F2d 274 (2ND 1981); AND
 17 LWIN V. I.N.S., 144 F3d 505 (7TH 1998).

18 WHERE PETITIONERS ALLEGATIONS AND GROUNDS/ISSUES WERE "Not"
 19 DISPUTED AND WERE ACCEPTED AS A MATTER OF LAW AMOUNTED TO CONFESSION
 20 OF ERROR, SEE BARROWS V. HOGAN, 379 F. SUPP. 314 "28 USC 2248"
 21 6d PA 1974). SEE MELVIN V. LUKINS & SONS V. KAST, 91 NEV. 116, 532
 22 P2d 602 (1975); STATE, DMV V. STONE, 94 NEV. 775, 587 P2d 828 1325 (1979);
 23 GROGAN V. COUNTY OF ESMEERALDA, 91 NEV. 728, 541 P2d 1102, 1102 (1975);
 24 SUMMA CORP. V. BROOKS RENT-A-CAR, 95 NEV. 719, 602 P2d 192 (1979);
 25 STATE V. PRINS, 96 NEV. 565, 613 P2d 408 (1980); STATE DMV V. PALMER,
 26 96 NEV. 599, 614 P2d 5 (1980); AND POLK V. STATE, 233 P2d 357, 2010
 27 NEV. LEXIS 20, WHERE THE SUPREME COURT OF NEVADA HELD THAT AS
 28 A RESULT OF "CONFESSION OF ERROR", THE JUDGMENT OF CONVICTION IS

1 IS [V]OID, [W]ITHOUT ANY CONSIDERATION OF THE MERITS (1) WHERE
 2 PETITIONERS ALLEGATIONS WERE "NOT" DISPUTED AND WERE ACCEPTED
 3 AS A MATTER OF LAW "(28 USC 2248).

4 THE NV. SUPREME COURT CLEARLY CONVEYS IN THE ABOVE CASES
 5 (PG. 13, LINES 14-27) THAT IT WILL [N]OT COMB THE RECORD TO
 6 ACERTAIN MATTERS WHICH SHOULD HAVE BEEN SET FORTH IN RESPONDENTS
 7 BRIEF, INSTEAD, IT WILL ELECT TO TREAT RESPONDENTS FAILURE TO
 8 FILE ITS ANSWERING BRIEF AS A "CONFESSION OF ERROR", STATE V.
 9 PRINS, SUPRA; COURT TREATED THE FAILURE OF ERROR, AND REVERSED
 10 JUDGMENT [WITHOUT] CONSIDERATION OF THE MERITS OF THE APPEAL;
 11 AND STATE DM V. PALMER, SUPRA; POLK V. STATE, SUPRA.

12 THE COURT HAD A DUTY TO HEAR AND ADJUDICATE BOTELHO'S ACTION
 13 AS LAW AND JUSTICE REQUIRE, YET SHIRKED IT LEGAL OBLIGATION TO
 14 ADMINISTRATE JUST AND CAUSING GREAT PREJUDICIAL AND IRREPARABLE
 15 HARM TO BOTELHO. SEE DUGGET V. U.S., 112 S. CT. 2686, ONE YEAR NOT
 16 HEARD IS "INORDINATE DELAY"; U.S. V. MENTINC, 783 F2d 1413-1417 (9TH 1986)
 17 6 MONTHS NOT HEARD IS "INORDINATE DELAY"; HARRIS V. CHAMPION, 15 F3d
 18 1538 (10TH 1994); GIVENS V. GREEN, 12 F3d 1041 (11TH 1994); JOHNSON V. ROGERS,
 19 917 F2d 1283 (10TH 1990) A "JUDGES" DELAY OF MORE THAN 14 MONTHS IN
 20 HEARING A PRISONERS WRIT OF HABEAS CORPUS WAS IMPERMISSIBLE; AND
 21 EL COCK V. HENDERSON, 947 F2d 1004 (2ND 1991) 8 1/2 YEAR DELAY IN APPEAL
 22 FROM CONVICTION VIOLATED DUE PROCESS.

23 THE RESPONDENTS AND THIS COURT FURTHER IGNORED SECOND JUDICIAL
 24 DISTRICT COURT RULES, NEVADA DISTRICT COURT RULES, MORE NRC P
 25 RULES AND POLAHA VIOLATED HIS JUDICIAL CANNONS. SEE HERE

26 SECOND JUD. DIST. CT. RULE(S) 12, MOTIONS, POINTS, AUTHORITIES AND
 27 DECISIONS (2) RESPONDING PARTY [S] SHALL FILE AND SERVE UPON ALL PARTIES,
 28 WITHIN 10 DAYS AFTER SERVICE OF A MOTION, ANSWERING POINTS AND AUTHORITIES

1 AND COUNTER AFFIDAVITS; RULE 18, PAPERS WHICH DO NOT COMPLY WITH
 2 THE RULES - EXCEPT IN CRIMINAL CASES AND WRITS ARISING FROM
 3 CRIMINAL CASES, FILING OFFICE PERSONNEL SHALL REFUSE TO FILE ANY
 4 DOCUMENTS OR PLEADINGS WHICH IS NOT PROPERLY SIGNED BY ALL PARTIES
 5 OR WHICH DOES NOT COMPLY WITH THESE RULES, DIST. COURT RULES, OR
 6 APPLICABLE STATUTES. SEE BARNES V. 9TH JUD. DIST. CT., 103 NEV 679, 748
 7 P2d 483 (1987). ALSO 2ND JUD DIST RULE(S) 22, WRITS OF HABEAS CORPUS (1)
 8 THE HEARING [S] SHALL BE SET WITHIN 21 DAYS FROM DATE PETITION IS
 9 FILED. THIS COURT WILLFULLY DISOBEYED RULE 22, AS SUCH, THE STATE AND
 10 THIS COURT HAVE NO STANDING AND I MUST GRANT BOTELHO'S RELIEF IN ITS
 11 ENTIRETY.

12 THE STATE AND THIS COURT FURTHER VIOLATED NEVADA DISTRICT COURT
 13 RULES 13, MOTIONS, PROCEDURE FOR MAKING MOTIONS, AFFIDAVITS, RENEWAL
 14 AND REHEARING OF MOTIONS (3) WITHIN 10 DAYS AFTER SERVICE OF MOTION,
 15 THE OPPOSING PARTY SHALL SERVE AND FILE HIS WRITTEN OPPOSITION
 16 THERETO.

17 AND SEE NRCP RULE 12, DEFENSES AND OBJECTIONS ^(a) (1) A DEFENDANT
 18 (THE STATE) "SHALL" SERVE AN ANSWER WITHIN 20 DAYS AFTER BEING
 19 SERVED YET IN (a)(3) THE STATE IS ALLOWED TO RESPOND WITHIN 45 DAYS
 20 (WHERE IS THE EQUAL PROTECTION AND TREATMENT HERE? YET, THE STATE
 21 CHOSE NOT TO RESPOND TO, OR ANSWER BOTELHO'S PETITION(S) OR MOTIONS
 22 AS FILED, NOR DID THIS COURT ORDER A RESPONSE OR RULE IN BOTELHO'S
 23 REPEATED ATTEMPTS BY A PRO SE LITIGANT TO HAVE HIS CASE RESOLVED.
 24 PETITIONER FURTHER ASSERTS AND THE NV. REVISED STATUTES CONFIRM
 25 THAT THE STATE, THIS COURT AND JUDGE POLAHA WILLFULLY, REPEATEDLY
 26 VIOLATED NV. LAW, RULES, ETC.... SEE AS FOLLOWS: NRS 34.390 -
 27 JUDGE TO GRANT WRIT WITHOUT DELAY (1); NRS 34.430, RETURN AND ANSWER(1);
 28 NRS 34.440 - PERSONS SERVED MUST BRING BODY OF PERSON IN CUSTODY;

1 NRS 34.470 (PRE-2015) ANSWER TO RETURN (1) & (2); NRS 34.500-
 2 GROUND FOR DISMISSAL [DISCHARGE] IN CERTAIN CASES-(3),(4),(9);
 3 NRS 34.660, CLERK TO ISSUE WRITS, WARRENTS, PROCESSES AND
 4 SUBPOENAS; WHEN RETURNABLE; NRS 34.670, DAMAGES RECOVERABLE
 5 FOR FAILURE TO ISSUE WRIT; NRS 34.726, LIMITATIONS ON TIME TO FILE
 6 (1), (1)(a), (1)(b); NRS 34.680, DEFECT OF FORM IN WRIT IMMATERIAL;
 7 NRS 34.740, PETITION: [EXPEDITIOUS] JUDICIAL EXAMINATION (PRE 2015);
 8 NRS 34.745, JUDICIAL ORDER TO FILE ANSWER AND RETURN (1)(a)(b), (4);
 9 NRS 34.750, APPOINTMENT OF COUNSEL (1)(a)(b)(c), (4); NRS 34.760,
 10 CONTENTS OF RESPONDENTS ANSWER (1); NRS 34.770 JUDICIAL
 11 DETERMINATION OF NEED FOR EVIDENTIARY HEARING, DISMISSAL OF PETITION
 12 OR GRANTING OF WRIT (1), (2), (3); NRS 34.780, APPLICABILITY OF NRCP,
 13 (1), (2); NRS 34.800 DISMISSAL OF PETITION FOR DELAY OF FILING, (1)(a), (2);
 14 NRS 34.810, ADDITIONAL REASONS FOR DISMISSAL OF PETITION, (1)(2), (3)(a)(b),
 15 (4); NRS 34.575 APPEAL FROM ORDER OF DIST. COURT GRANTING OR DENYING
 16 WRIT (1) (PETITIONER HAS BEEN DENIED THIS OPPORTUNITY); NRS 34.830,
 17 CONTENTS AND NOTICE OF ORDER FINALLY DISPOSING OF PETITION (1)(2),
 18 AND SEE NRS 1.230, GROUNDS FOR DISQUALIFYING JUDGE (1), (2)(a), (4);
 19 NRS 1.235, PROCEDURE FOR DISQUALIFYING JUDGE (1)(a), (2)(a)(c), (4),
 20 (5)(a)(b)(i); ALSO NRS 3.026 CHIEF JUDGE, DUTIES (1)(a), (2); NRS 3.250;
 21 NRS 3.260, (1), (2),
 22 TO DEMONSTRATE PREJUDICE, THE PETITIONER MUST SHOW NOT JUST
 23 THE
 24 THAT HE CLAIMED ERRORS "CREATED A POSSIBILITY OF PREJUDICE, BUT
 25 THAT THEY WORKED TO HIS ACTUAL AND SUBSTANTIAL DISADVANTAGE,
 26 INFECTING HIS ENTIRE TRIAL WITH ERRORS OF CONSTITUTIONAL DIMENSIONS,"
 27 STATE V. DIST CT., 121 NEV 225, 112 P3d 1070 (2005), AT 121 NEV AT 232, 112
 28 P3d AT 1075 (QUOTING U.S. V. FRADY, 456 U.S 152, 170 (1982); SEE ALSO
HOGAN V. WARDEN, 109 NEV. 952, 960, 860 P2d 710, 716 (1993).

THIS COURT ACTED WITH BIAS AND PREJUDICE AGAINST A PRO-SE PERSON, AND PERPETRATED AN [E]GREGIOUS AND [C]OMplete GROSS MISCARRIAGE OF JUSTICE. SEE IN RE MARRIAGE OF HAMPSHIRE, 261 KAN 854, 862, 934 P2d 58 (1997)" A JUDGMENT IS VOID IF THE COURT ACTED IN A MANNER INCONSISTANT WITH DUE PROCESS, A VOID JUDGMENT IS A NULLITY AND MAY BE VACATED AT ANY TIME;" SEE U.S. V. BOSCH OLDSMOBILE, INC., 909 F2d 667, 661 (1ST 1990); U.S. V. BROADWELL, 959 F2d 242 (9TH 1992); AND KELLY V. U.S., 29 F3d 1107 (7TH 1994) KELLY EXPOUNDS ON BROADWELL.

SEE U.S. V. FLOWER, 764 F2d 759 (11TH 1985) "LIKE FACTS COMMAND LIKE RESULTS."

PETITIONER HAS TO THE BEST OF HIS ABILITY, WITHOUT COUNSEL, PROVED TO THIS COURT THE FACTS THAT ARE FACTUALLY INDISPUTED BY THE STATE. SEE MORLEY V. WALKER, 175 F3d 756, 759 (9TH 1999) "THE COURTS TAKE AS TRUE, ALL ALLEGATIONS OF MATERIAL FACT STATED IN COMPLAINT, THE COURT CONSTRUES IN THE LIGHT MOST FAVORABLE TO PLAINTIFF;" NOLL V. CARLSON, 809 F2d 1146 (9TH 1987); COOPER V. PATE, 398 U.S. 546, 84 Sct 1733 (1964) "COURT [M]UST ACCEPT ALLEGATIONS IN PLEADINGS AS TRUE"; ALSO STANDING COMMITTEE V. YAGMAN, 55 F3d 1430 (9TH 1995) AGAIN, SEE U.S. V. FLOWERS, SUPRA.

THE COURT HAS NO AUTHORITY TO REACH THE MERITS. IN SUCH A SITUATION, THE ACTION SHOULD BE DISMISSED FOR WANT OF JURISDICTION (BY THE STATE AND THIS COURT). SEE WILLIAMS V. STATE, 489 F.SUPP2d 1179 (NV 2007) (QUOTING MELO V. U.S., 505 F2d 1026 (1974)).

RELIEF DUE PETITIONER AS A MATTER OF LAW

BOTELHO SEEKS AND DEMANDS THAT THIS COURT, "ORDER" THE RESPONDENTS FRAUDULENT AND UNTIMELY "MOTION TO DISMISS" TO BE STRUCK DOWN AND FIND FOR BOTELHO, THAT THIS COURT, BY THIS

1 STATES ACTIONS, AND THE ACTIONS OF THIS COURT BY THE "CONFESSION OF
 2 ERROR" FURTHER ORDER BOTE LHO'S JUDGMENT OF CONVICTION, IN THIS
 3 CASE CRO3-2156 [AS NULL AND VOID], WITH PREJUDICE. AND THEREBY,
 4 BARRING FURTHER ACTION IN THIS CASE, "PERIOD". BOTE LHO FURTHER
 5 RESPECTFULLY REQUESTS AND DEMANDS THAT HE BE UNCONDITIONALLY
 6 RELEASED IMMEDIATELY.

7 AFFIRMATION & CERTIFICATE OF SERVICE

8 I, MICHAEL TODD BOTE LHO, IN PROPER PERSON, DO SWEAR UNDER PENALTY
 9 OF PERJURY, UNDER LAWS OF THE U.S.O.F.A, THAT THE FORGOING MOTION
 10 IS TRUE AND CORRECT, PURSUANT TO 18 USC 1621 AND 28 USC 1746 AND
 11 THAT THIS MOTION CONTAINS NO PERSONS SOCIAL SECURITY NUMBER

12 I, FURTHER ASSERT THAT I PLACED A TRUE, ORIGINAL, AND/OR PHOTO
 13 COPY OF PETITIONERS MOTION TO STRIKE IN FIRST CLASS PRE-PAID, U.S.P.S.
 14 MAIL SERVICES VIA PRISON MAIL BOX RULE (BRASS SLIP # 2066016)
 15 TO THIS COURT AND COURTESY COPY TO WASHOE COUNTY DISTRICT ATTORNEY,
 (BRASS # 2129750) TO DISTRICT ATTORNEY

16 DATED THIS 6TH DAY OF AUGUST, 2015

17 *Michael T. Botelho*

18 COURTESY COPY TO:

MICHAEL T. BOTE LHO # 80837

19 WASHOE CO. DISTRICT ATTORNEY

PETITIONER, IN PRO-SE

20 "CHRIS HICKS"

NNCC, P.O. BOX 7000

21 P.O. BOX 11130

CARSON CITY, NEV. 89702

22 RENO, NV. 89520-0027

23
 24 MOTION TO STRIKE (18 PGS)

25 INDEX OF EXHIBITS (1 PG)

(33⁺¹⁼³⁴ PAGES IN TOTAL)

26 AFFIDAVIT IN SUPPORT OF (1⁺²⁼² PG) = (2 PGS)

27 EXHIBITS (4) IN TOTAL (9 PGS) PLUS I = (10 PGS)

28 CASE LAW INDEX (3 PGS)

INDEX OF EXHIBITSExhibit Number 1 Number of Pages 2Exhibit Description MOTION TO ATTACK S-M-J AND MOTION TO DISMISS.Exhibit Number 2 Number of Pages 4Exhibit Description LETTER TO COURT CLERK, STATUS CHECK & MOTION FOR DIRECTED VERDICTExhibit Number 3 Number of Pages 2Exhibit Description MANDAMUS TO NEVADA SUPREME COURTExhibit Number 4 Number of Pages 2Exhibit Description 60(b)(4) MOTION TO NEVADA SUPREME COURT

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

Exhibit Number _____ Number of Pages _____

Exhibit Description _____

DC-0990069015-013
 CR03-2156 MICHAEL TODD BOTELHO 2 Pages
 STATE VS. MICHAEL TODD BOTELHO 04:17 PM
 District Court 08/11/2015 04:17 PM
 Washoe County

MICHAEL T. BOTELHO # 80837

P.O. BOX 7000

NNCC, CARSON CITY, NV. 89702

ACCUSED, IN PROPER PERSON

STATE OF NEVADA

IN THE SECOND JUDICIAL DISTRICT, WASHOE COUNTY, NEVADA.

CASE NO: CR03P-2156

MICHAEL T. BOTELHO,

DEPT. NO. 3

ACCUSED

PETITIONERS MOTION FOR WRIT OF QUO WARRANTO,

-V-

AND SUPPORTING MEMORANDUM IN SUPPORT OF

STATE OF NEVADA,

MOTION TO DISMISS FOR LACK OF SUBJECT

RESPONDENT

MATTER JURISDICTION.

COMES NOW, MICHAEL T. BOTELHO DENYING AND CHALLENGING THE JURISDICTION OF THE ABOVE NAMED COURT OVER THE (LACK OF) SUBJECT MATTER JURISDICTION IN THE ABOVE ENTITLED CASE, FOR REASONS CITED/EXPLAINED IN THE FOLLOWING POINTS, AUTHORITIES AND MEMORANDUM. IN PETITIONERS COLLATERAL ATTACK OF, ON THE LACK OF THIS HONORABLE COURTS SUBJECT MATTER JURISDICTION, FILED IN ACCORDANCE WITH; BOAG V. MACDOUGAL, 454 U.S. 364, 70 LED 2d 551, 102 S. CT 700 (1982),...

(A) SEE: JOHNSON V. MANHATTAN RY. CO. N.Y. 289 U.S. 479, 77 LED 1331, 53 S. CT 721 (1933) AS INTENDED TO PREVENT EXERCISE OF POWERS THAT ARE NOT CONFERRED BY LAW....

EXHIBIT I

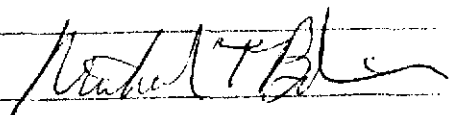
I, MICHAEL T. BOTELHO, ACCUSED, IN PROPER PERSON DO SWEAR
 UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE UNITED
 STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT,
 PER 18 USC § 1621; 28 USC § 1746...

DATED THIS 10TH DAY OF DECEMBER, 2011

THAT I PLACED A TRUE AND COMPLETE, ORIGINAL, AND/OR PHOTO-
 COPY OF POSITIONERS MEMORANDUM AND MOTION TO DISMISS
 FOR LACK OF SUBJECT MATTER JURISDICTION, IN FIRST CLASS
 PRE-PAID, U.S.P.S. MAIL SERVICES ON THIS 10TH DAY OF
 DECEMBER, 2011; ADDRESSED TO THE FOLLOWING:

1) CLERK OF THE COURT
 SECOND JUDICIAL DISTRICT COURT
 WASHOE COUNTY RENO, NV 89520-3083

2) WASHOE COUNTY DISTRICT ATTORNEY
 BOX 30083
 RENO, NV. 89520-3083


 MICHAEL T. BOTELHO
 IN PROPER PERSON
 NNCC CARSON CITY, NV.

89702

DC-0990069015-014
CR03-2156
STATE VS. MICHAEL TODD BOTELHO
District Court
Washoe County
08/11/2015 04:17 PM
2490
v mlpf
cvs

STATE OF NEVADA

SECOND JUDICIAL DISTRICT FILED

2012 MAR -6 AM 10:27

MICHAEL T. BOTELHO
ACCUSED PETITIONER

- V -

JACK PALMER, WARDEN
STATE OF NEVADA, ET-AL
RESIDENT(S)

CASE NO. CR03P2156 JOEY HASTINGS

DEPT. NO. 3

BY J. Yosi

DEPUTY

"PETITIONERS MOTION TO CORRECT
CLERKS ERROR, AND, AS A MATTER OF
LAW, ISSUE A DIRECTED VERDICT
FOR PETITIONER." (DECLATORY RELIEF)

COMES NOW, MICHAEL T. BOTELHO, PETITIONER IN PROPER PERSON,
IN ACCORDANCE WITH; BALESTORI - V- PACIFICA POLICE DEPT, 901 F.2d
696 (9th CIR 1990); AND BATEMAN - V- U.S POSTAL SERVICE, 201 F.3d
1220-1224 (9th CIR. 2000).

FACTUAL ISSUE(S)

- 1) PETITIONER, MICHAEL T. BOTELHO, FILED A PROPER-PERSON WRIT OF HABEAS CORPUS, AND QUO-WARRANTO CHALLENGE BEFORE THIS HONORABLE COURT ON DECEMBER 20, 2011.
- 2) PETITIONER ASSERTED "HOLSTEN - V- LACK(S), 487 U.S 266 (1988)," PRISONERS PRO-SE MOTION (FOR JUDGMENT N.O.V.) WAS DERMED FILED ON DATE MOTION WAS PLACED IN PRISON LEGAL MAIL BOX, AS OPPOSED TO THE DATE OF ITS RECEIPT BY COURT CLERK" (PETITIONER CERTIFICATE OF SERVICE). SEE ALSO CALDWELL - V- AMEND, 30 F.3d 1199 (9th CIR. 1994).

EXHIBIT 2

MOTION FOR RELIEF

1) THAT THIS HONORABLE COURT FIND GOOD CAUSE SHOWING (IN THAT NON-RESPONSE, NON-ANSWER, EQUAL CONSENT OF DEFECT) AND GRANT PETITIONER, MICHAEL T. BOTELHO (A) RELIEF AS REQUESTED IN HIS WRIT OF HABEAS-CORPUS/QUO-WARRANTS FILING; AND (B) STRIKE ANY AND ALL RESPONSE(S), REPLY(S), PLEADING(S) FROM RESPONDENT, RESPONDENTS COUNSEL, THIRD PARTIES, ETC., ANY KIND, TYPE, FORM, MANNER OF FUTURE OPPOSITION IN THIS MATTER AS UNTIMELY, AND/OR ESTOPPED, AND/OR BARRED BY LACHES AND/OR ESTOPPED BY LACHES, ETC., ETC., ETC.

AFFIRMATION, CERTIFICATE OF SERVICE

I, MICHAEL T. BOTELHO, SWORE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, PER 18 USC § 1621 AND 28 USC § 1746. *Michael T Botelho* FEBRUARY 21, 2012.

THAT A TRUE AND COMPLETE ORIGINAL, AND/OR COPY OF PETITIONERS MOTION WAS PLACED IN THE LEGAL MAIL AT THE PRISON'S LAW LIBRARY AND ADDRESSED TO THE FOLLOWING ON THIS 21ST DAY OF FEBRUARY, 2012.

1) CLERK OF THE COURT
SECOND JUDICIAL DISTRICT COURT, DEPT. 3
BOX 30083 25 COURT ST.
RENO, NEV. 89520-3083

2) OFFICE OF THE DISTRICT ATTORNEY
ROOM 214 BOX 30083
RENO, NV. 89520-3083

EXHIBIT 2

AFFIRMATION CERTIFICATE OF SERVICE (cont'd)

Michael T. Botelho

MICHAEL T. BOTELHO # 80937

P.O. BOX 7000

NNCC

CARSON CITY, NV. 89702

EXHIBIT 2

FEB. 21, 2012

TO WASHOE CO. COURT CLERK,

MY NAME IS MICHAEL TODD BOTE LHO, I FILED MY PETITION OF HABEAS CORPUS WITH THIS COURT, CASE NO. CRO3-2156, DEPT # 3, ON 1-27-2010, ALONG WITH MOTIONS FOR APPOINTMENT OF COUNSEL AND IN FORMA PAUPERIS.

I ALSO FILED WITH THIS COURT ON 2-8-2010, A MOTION OF RECUSAL FOR JUDGE POLAHA WITH AFFIDAVIT IN SUPPORT OF, VIA MAIL AS OF THIS DATE I HAVE NOT RECEIVED A FILED COPY OF ^{Box} Rule ANY OF THE 3 MOTIONS BUT I DID GET A COPY OF ORDER GRANTING MY MOTION FOR IN FORMA PAUPERIS STATUS, I NEVER GOT A COPY OF FILED HABEAS BUT AS MY MOTION WAS GRANTED "INDIGENCY" I KNOW YOU FILED IT.

I AM SEEKING A STATUS CHECK ON THESE MOTIONS AND WHEN MY WRIT OF HABEAS CORPUS MIGHT BE HEARD. YOUR ASSISTANCE IN THIS MATTER WILL BE GREATLY APPRECIATED.

THANK YOU.

FEBRUARY 21, 2012

Michael T. Botelho

MICHAEL T. BOTE LHO # 80837
NNCC
P.O. BOX 7000
CARSON CITY, NV. 89702

PART OF EXHIBIT # 2

C.C. FILE:

1

1 PAGE

STATE OF NEVADA
IN THE SUPREME COURT OF NEVADA **FILED**

CR03-2156 DC-0990069015-015
 STATE VS. MICHAEL TODD BOTELHO 2 Pages
 District Court 08/11/2015 04:17 PM
 Washoe County 2490
 v. JUDGE

MICHAEL TODD BOTELHO

CASE NO. CR03-2156, DEPT. NO. 3

MAR 29 2012

ACCUSED, IN PRO-SE

-V-

JACK PALMER, WARDEN

STATE OF NEVADA, et al.

RESPONDENTS

TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT

PETITIONERS MOTION FOR WRIT OF HABEAS-CORPUS,
 TO COMPEL THE SECOND (2ND) JUDICIAL
 DISTRICT COURT OF THE STATE OF NEVADA
 (WASHOE COUNTY)

COMES NOW, MICHAEL T. BOTELHO, IN PROPER PERSON, DENYING AND
 CHALLENGING THE SECOND JUDICIAL DISTRICT COURTS (NV) AUTHORITY,
 AND LACK OF SUBJECT-MATTER JURISDICTION IN THE MATTER OF; THE
 STATE OF NEVADA -V- MICHAEL TODD BOTELHO, 2ND JUDICIAL DISTRICT
 COURT, DEPT. NO. 3, CASE NO. CR03-2156, IN WHICH PETITIONER FILED
 A PROPER PERSON HABEAS-CORPUS QUO-WARRANTO CHALLENGE OF THE
 SECOND JUDICIAL DISTRICT COURTS LACK OF SUBJECT-MATTER JURISDICTION
 ON DECEMBER 20, 2011.

FILED IN ACCORDANCE WITH; BALESTERI-V-PACIFICA POLICE DEPT., 901 F2d.
 696 (9TH CIR. 1990); AND; BATEMAN-V-U.S. POSTAL SERVICE, 231 F.3d 1270-24 (9TH CIR. 2000)
 231 F.3d

FACTUAL ISSUES

- 1) PETITIONER FILED A PROPER-PERSON PETITION FOR WRIT OF HABEAS-CORPUS
 IN A QUO-WARRANTO CHALLENGE TO WASHOE COUNTY DISTRICT ATTORNEY
 TO DEFEND, AND/OR ANSWER THAT THE COLLECTIVE PUBLICATION
 KNOWN AS "THE NEVADA REVISED STATUTES" ARE, AS RECORDED,
 PUBLISHED, PRINTED, AND HELD OUT AS LAW, ARE IN FULL, PROPER
 CONSTITUTIONAL NEVADA COMPLIANCE.

RECEIVED

MAR 28 2012

TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT
 COUNTY CLERK

1.

EXHIBIT

3

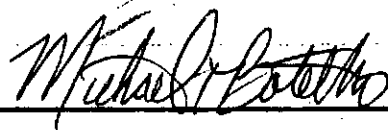
AFFIRMATION, CERTIFICATE OF SERVICE

I, MICHAEL T. BOTELHO, ACCUSED, IN PROPER PERSON, DO
SWEAR UNDER THE PENALTY OF PERJURY, UNDER THE LAWS
OF THE UNITED STATES OF AMERICA, THAT THE FOREGOING IS
TRUE AND CORRECT, PER 18 U.S.C. § 1621, 28 U.S.C. § 1746....

DATED THIS 26TH DAY OF MARCH, 2012.

THAT I PLACED A TRUE ORIGINAL, AND/OR PHOTO-COPY OF
PETITIONERS WRIT OF MANDAMUS IN FIRST CLASS PRE-PAID,
U.S.P.S. MAIL SERVICES AT THE PRISON LAW LIBRARY ON THE
26TH DAY OF MARCH, 2012; ADDRESSED AS FOLLOWS:

- 1) NEVADA SUPREME COURT
CLERK OF THE COURT
201 S. CARSON ST. SUITE 201
CARSON CITY, NV. 89701
- 2) SECOND JUDICIAL DISTRICT COURT
75 COURT ST. BOX 30083
RENO, NEV. 89520-3083
- 3) WASHOE COUNTY DISTRICT ATTORNEY
Room 214, Box 30083
RENO, NEV. 89520-3083



MICHAEL T. BOTELHO # 90837

IN PROPER PERSON

NNCC BOX 7000

CARSON CITY, NV. 89702

CR03-2156
DC-0900069015-016
STATE VS. MICHAEL TODD BOTELHO 5 Pages
District Court 08/11/2015 04:17 PM
Washoe County 2490
FV2 X 101111

IN THE SUPREME COURT OF THE STATE OF NEVADA

 PROPER PERSON
RECEIVED/ENTERED

MICHAEL TODD BOTELHO

NV. SUPREME COURT CASE NO. 60556

JUL 09 2012

PETITIONER

 TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

-V-

MOTION TO SHOW CAUSE HEARING FOR LACK

JACK PALMER, WARDEN

OF SUBJECT-MATTER JURISDICTION AND

STATE OF NEVADA, ET-AL

F.R.C.P. RULE 60(b)(4) MOTION FOR RELIEF

RESPONDENT(S)

FROM JUDGMENT OR ORDER.

COMES NOW, MICHAEL T. BOTELHO, PETITIONER IN PROPER-PERSON,
DENYING AND COLLATERALLY ATTACKING SUBJECT-MATTER JURISDICTION IN
THE MATTER OF BOTELHO -V- STATE, AND REQUESTING SHOW-CAUSE
HEARING IN THAT THIS NEVADA SUPREME COURT CERTIFY THE QUESTION,
THAT THEY HAVE SUBJECT-MATTER JURISDICTION OVER PETITIONER, SEE
MARBURY-V-MADISON, 5 U.S. 137 (U.S.D.C. COL. 1803)" JUDGES WHO REFUSE
TO HEAR WRITS OF MANDAMUS IS A CRIMINAL ACT IN ITSELF. SUBJECT-
MATTER JURISDICTION, TREASON TO CONSTITUTION." SEE ALSO UNITED
STATES-V-SIVIGLIO, 686 F.ED.2d. 832, 835 (1981)." A COURT LACKING
JURISDICTION CANNOT RENDER JUDGMENT BUT MUST DISMISS THE CAUSE
AT ANY STAGE OF THE PROCEEDING IN WHICH IT BECOMES APPARENT
THAT JURISDICTION IS LACKING."

"SHOW ME YOUR JURISDICTION"

AND, F.R.C.P. RULE 60(b)(4) MOTION FOR RELIEF FROM JUDGMENT OR ORDER.

IN ACCORDANCE WITH BOAG-V-MACDOUGAL, 454 U.S. 364, 70 L.ED. 2d,
551, 102 S. CT. 700 (1982); BALESTERI-V-PACIFICA POLICE DEPT., 901 F.2d
1190 (9th Cir. 1990); AND BATEMAN-V-U.S. POSTAL SERVICE, 231 F.3d
1111 (9th Cir. 2000).

EXHIBIT 4

V3. 432

10 0150

AFFIRMATION AND CERTIFICATE OF SERVICE

I, MICHAEL TODD BOTELHO, PETITIONER IN PROPER-PERSON DO
 SWEAR THAT THE FOREGOING IS TRUE AND CORRECT UNDER
 THE PENALTY OF PERJURY, UNDER THE LAW(S) OF THE UNITED STATES
 OF AMERICA, PER 18 U.S.C. § 1621 AND 28 U.S.C. § 1746, THAT
 THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL-SECURITY NUMBER
 OF ANY PERSON. DATED 5 JULY, 2012

THAT I PLUCED A TRUE AND COMPLETE ORIGINAL AND/OR COPY
 OF SAID "MOTION FOR SHOW-CAUSE HEARING AND F.R.C.P.
 RULE 60(b)(4) MOTION".... IN FIRST CLASS MAIL, PRE-PAID
 (BRASS SLIP # 1592312) U.S.P.S. PRISON LEGAL MAIL SERVICE,
 ADDRESSED TO THE FOLLOWING: DATED 5 JULY, 2012

1) CLERK, NEVADA SUPREME COURT
 201 S. CARSON ST., SUITE 201
 CARSON CITY, NV. 89701

Michael T. Botelho

MICHAEL T. BOTELHO # 30837

2) NEVADA ATTORNEY GENERAL
 100 N. CARSON ST.
 CARSON CITY, NEV. 89701

PETITIONER IN PROPER PERSON

N.N.C.C.

P.O. BOX 7000

CARSON CITY, NV. 89702

3) WASHOE CO. DISTRICT ATTY
 ROOM 214, Box 30033
 RENO, NV. 89520-3083

BOAG V. McDUGAL, 454 U.S. 364, 102 S. CT 700 (1982)
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 BLACKMON V. CRAWFORD, 305 F. SUPP. 2d 117 (D. NEV. 2004)
 BALESTRIERI V. PACIFICA POLICE DEPT., 901 F.2d 696 (9th 1990)
 BATEMAN V. U.S. POSTAL SERVICE 231 F.3d 1220-24 (9th 2002)
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 BLAIR V. CRAWFORD 275 F.3d 1156 (9th 2002)
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 RAND V. ROWLAND 154 F.3d 952 (9th 1998)
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 YICK WO V. HOPKINS 6 S. CT 1061
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 WALKER V. SHEABAN 526 F.3d 973 (7th 2008)
 GOMEZ V. RANDLE 680 F.3d 859 (7th 2012)
 COTTS V. OSARO 692 F.3d 564 (7th 2012)
 MOONEY V. HULLIHAN 294 U.S. 103, 55 S. CT 340 (1935)
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 U.S. V. BROADWELL 959 F.2d 242 (9th 1992)
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WILLIAMS V. STATE 489 F.Supp. 2d 1179 (NV 2007)
MELO V. U.S. 505 F2d 1026 (1974).

STATE OF NEVADA)
 COUNTY OF CARSON CITY) SS. AFFIDAVIT OF FILED MICHAEL TODD BOTELHO
 PETITIONER, IN PRO SE

CASE NO. CRO3-2015-AUG, DEPT 3: 17

TO WHOM IT MAY CONCERN:

I, MICHAEL TODD BOTELHO, THE UNDERSIGNED, DO HEREBY SWEAR UNDER THE PENALTY OF PERJURY THAT THE ASSERTIONS OF THIS AFFIDAVIT MADE IN SUPPORT OF HIS MOTION TO STRIKE ARE TRUE AND CORRECT.

BOTELHO HAS BROUGHT THIS ACTION IN GOOD FAITH, TO HAVE THIS COURT STRIKE THE STATES MOTION TO DISMISS HIS PETITION FOR WRIT OF HABEAS CORPUS.

BOTELHO ASSERTS AND PROVES THAT HE REPEATEDLY ATTEMPTED IN GOOD FAITH TO HAVE HIS CASE HEARD, ACTED UPON AND ADJUDICATED AS LAW AND JUSTICE REQUIRES. INCLUDED EXHIBITS WITH MOTION AND THIS COURTS OFFICIAL RECORD WILL CONFIRM THIS.

BOTELHO ASSERTS THAT THE STATE, WILLFULLY ACTED IN BAD FAITH, AS DID THIS COURT, JUDGE POLAHA AND THE CHIEF JUDGE TOO!, BY SYSTEMATICALLY IGNORING PETITIONERS EFFORTS TO BE HEARD IN COURT, HIS RIGHTS HAVE BEEN VIOLATED PRIOR TO AND SINCE HIS ARREST IN 2003. THE STATE HAS PERPETRATED FRAUD UPON THE COURT, THE RECORD, ACTED ARBITRARILY AND CAPRICIOUSLY IN THIS CASE BY ITS EGREGIOUS VIOLATIONS IN AND OUT OF THIS COURTS RECORD.

BOTELHO FURTHER ASSERTS AND PROVES THAT RESPONDENTS AND THIS COURT HAVE CONSPIRED TO PREVENT BOTELHO HIS DAY IN COURT BY IGNORING, DISREGARDING AND VIOLATING THEIR OATH OF OFFICE AND ITS COMMANDS; SECOND JUDICIAL DISTRICT COURT RULES; STATE DISTRICT COURT RULES; NEVADA RULES OF CIVIL PROCEDURE, NEVADA REVISED STATUTES (IF THEY ARE REALLY ANY GOOD) AND THE FACT THAT THE STATE USES THEM WHEN BENEFICIAL TO THE STATE AND BOLDLY DISREGARD THEM IF ARGUED OR ARE APPLIED BY BOTELHO (IN HIS FAVOR). JUDGE POLAHA AND ALSO THE CHIEF JUDGE OF THIS COURT HAVE WILLINGLY VIOLATED THEIR OATH OF OFFICE AND NEVADA JUDICIAL CANNONS AT WILL. BOTELHO'S INALIENABLE RIGHTS GUARANTEED BY THE NEVADA AND U.S. CONSTITUTION(S) AND GROSS VIOLATIONS OF THE NEVADA CONSTITUTION AND OF OUR GREAT AND [STILL VALID] UNITED STATES CONSTITUTION AND ITS "STILL VALID" COMMANDS, NO MATTER HOW MUCH THAT PAINS YOU.

BOTELHO STRONGLY ASSERTS THAT THE STATE, THIS COURT AND JUDGE POLAHA HAS ACTED EGREGIOUSLY AND IRREPARABLY DAMAGED AND PREJUDICED BOTELHO AND HIS DUE PROCESS OF LAW AND AS SUCH IS A CONFESSION OF ERROR. THE STATE HAS [N]O STANDING TO FILE MOTION TO DISMISS, NOR ANY STANDING LEFT IN THIS CASE TO RESPOND, PERIOD. AS A RESULT, THIS COURT MUST GRANT BOTELHOS RELIEF AS REQUESTED IN HIS MOTION TO STRIKE AND AS LAW AND JUSTICE REQUIRE, AS A MATTER OF LAW.

DATED 8-6-2015

1 of 2

Michael T. Botelho
 MICHAEL T. BOTELHO # 80837
 NNCC, PO BOX 7000
 CARSON CITY, NEV. 89403

CR03-2156
 STATE VS. MICHAEL TODD BOTELHO
 District Court
 Washoe County
 DC-09900069015-017
 TODD BOTELHO 2 Pages
 08/11/2015 04:17 PM
 1075

LASTLY, AND MOST IMPORTANTLY OF ALL, SEE EXHIBITS:

EXHIBIT # 1, MOTION TO ATTACK SUBJECT-MATTER JURISDICTION AND MOTION TO DISMISS, (INCLUDED ARE FRONT PAGE OF MOTION AND CERTIFICATE OF SERVICE, AS THE COURT ALREADY HAS THIS IN THE COURT RECORD. (2 PGS). DID NOT GET A RETURNED FILED STAMPED COPY

EXHIBIT # 2, LETTER TO COURT CLERK FOR STATUS CHECK AND MOTION FOR DIRECTED VERDICT, (FRONT AND BACK PAGE OF MOTION, AGAIN IN COURT RECORD (2 PGS) AND (1 PG) = (3 PGS) MOTION WAS RETURNED, STAMPED FILED ON MARCH 6, 2012

EXHIBIT # 3, MANDAMUS TO NEV. SUPREME COURT (FRONT AND BACK PAGE OF WRIT. (2 PGS) MOTION WAS RETURNED, STAMPED FILED MARCH 29, 2012

EXHIBIT # 4, MOTION 60(b)(4) TO NV. SUPREME COURT (FRONT AND BACK PAGE) (2 PGS) MOTION WAS RETURNED, STAMPED RECEIVED/ENTERED JULY 9, 2012

THESE EXHIBITS PROVE THAT THIS PETITIONER, IN PRO-SE, UNTRAINED IN THE LAW AND THANKS TO JUDGE POLAKA, UNCOUNSELED, TRIED TO HAVE HIS CASE, CRO3-2156, HEARD, ANSWERED AND RULED UPON AS LAW AND JUSTICE REQUIRED AS A MATTER OF LAW AND YET WAS DENIED REPEATEDLY, BOTH IN THESE 4 EXHIBITS AS ALSO IN HIS PETITION FOR HABEAS CORPUS AND THE 3 MOTIONS THE STATE SPEAKS OF IN IT FLAGRANT MOTION TO DISMISS.

AGAIN, BOTELHO ASSERTS THAT THE STATE GAVE UP ITS RIGHT TO ANSWER BY ITS REPEATED AND WILLFUL FAILURE TO DO SO AND AS SUCH IS CONFESSION OF ERROR. THE STATE CANNOT ANSWER NOW, AS IT HAS NO STANDING, NO SECOND BITE OF THE PROVERBIAL APPLE.

BOTELHO ALSO STRONGLY ASSERTS ADDITIONALLY, THAT THE STATE (THE WASHOE COUNTY DISTRICT ATTORNEY, CHRIS HICKS AND HIS DEPUTY DISTRICT ATTORNEYS HAVE NOT PERFECTED THEIR BONDS AS REQUIRED BY NEVADA LAW. IT WILL BE INTERESTING TO SEE IF THAT IS WILLFULLY IGNORED ALSO. AS SUCH, THIS JUST ADDS TO THE PLAIN, SIMPLE FACT THAT THE STATE CANNOT ANSWER, REGARDLESS AND HAS NO STANDING.

THE MOTION TO STRIKE AND RELIEF REQUEST THEREIN ARE WARRENTED AND REQUIRED AS LAW AND JUSTICE REQUIRE. PETITIONER MUST BE GRANTED A VOID JUDGMENT WITH PREJUDICE IN HIS CASE, CRO3-2156 AND THAT THE STATE BE FOREVER BARRED FROM TRYING TO RE-PRESENT AN ACTION AGAINST BOTELHO

DATED 8-6-2015

PG 2 OF 2

Michael Todd Botelho #80837
MICHAEL TODD BOTELHO
NCC, P.O. BOX 7000
CARSON CITY, NV. 89702

1 CODE #3795
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent
5

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

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 JAMES BENEDETTI and
13 THE STATE OF NEVADA,

Dept. No. 3

14 Respondent.
_____ /

15 REPLY TO OPPOSITION TO MOTION TO DISMISS, AND OPPOSITION TO MOTION TO
16 STRIKE

17 Petitioner Botelho filed a petition for writ of habeas corpus in January, 2010, and then
18 ignored it. Recently, the State moved to dismiss for lack of prosecution as allowed by the civil
19 rules. Botelho has responded and claimed that the State was required to answer and then move
20 this case along. He is incorrect. The duty to answer arises when the court orders an answer.
21 NRS 34.745. It is the duty of the plaintiff to move a case along. NRCP 41(e). The respondent,
22 the warden and the State, have no such duty.

23 As for the notion of the "standing" of the State, the court may notice that the caption of
24 the motion names the State. Furthermore, the petitioner identifies a state agent, the warden of
25 a state prison, as the respondent. NRS 34.745 also anticipates that the respondent may be
26 represented by either the Attorney General or the District Attorney. If by asserting lack of

1 “standing” Botelho actually meant something else, whatever it is it does not lead to “striking”
2 the motion to dismiss.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED: August 13, 2015.

7 CHRISTOPHER J. HICKS
8 District Attorney

9 By /s/ TERRENCE P. McCARTHY
10 TERRENCE P. McCARTHY
11 Chief Appellate Deputy
12
13
14
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16
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18
19
20
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24
25
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on August 13, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

1 CODE #3860
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520
(775)328-3200
4 Attorney for Respondent
5

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

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 JAMES BENEDETTI,

Dept. No. 3

13 Respondent.
14 _____/

15 REQUEST FOR SUBMISSION

16 It is requested that the Motion to Dismiss Petition for Writ of Habeas Corpus, filed on
17 July 24, 2015, be submitted to the Court for decision.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not contain the
20 social security number of any person.

21 DATED: August 13, 2015.

22 CHRISTOPHER J. HICKS
District Attorney

23 By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
24 Chief Appellate Deputy
25
26

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on August 13, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

1 CODE #2526
CHRISTOPHER J. HICKS
2 #7747
P. O. Box 11130
3 Reno, Nevada 89520-0027
(775) 328-3200
4 Attorney for Respondent
5

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

8 * * *

9 MICHAEL TODD BOTELHO,

10 Petitioner,

11 v.

Case No. CR03-2156

12 JAMES BENEDETTI and
13 THE STATE OF NEVADA,

Dept. No. 3

14 Respondent.
_____ /

15 NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY

16 COME NOW, Respondent, by and through Terrence P. McCarthy, Chief Appellate Deputy,
17 and hereby provides notice to the Court, all parties, and their respective counsel that Terrence P.
18 McCarthy, Chief Appellate Deputy, has replaced Gary H. Hatlestad, retired Chief Appellate Deputy,
19 as the responsible attorney for Respondent in all future matters related hereto.

20 Respondent herein requests that the Court and all parties herein update their service list
21 with Terrence P. McCarthy's name and address in order to facilitate timely service of all documents
22 in the matter.

23 / / /

24 / / /

25 / / /

26 / / /

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: August 13, 2015.

CHRISTOPHER J. HICKS
District Attorney

By /s/ TERRENCE P. McCARTHY
TERRENCE P. McCARTHY
Chief Appellate Deputy
Nevada Bar No. 2745

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on August 13, 2015, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Michael Todd Botelho #80837
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ DESTINEE ALLEN
DESTINEE ALLEN

Return Of NEF**Recipients**

GARY HATLESTAD, ESQ. - Notification received on 2015-08-13 12:20:36.576.

JOHN PETTY, ESQ. - Notification received on 2015-08-13 12:20:37.684.

DIV. OF PAROLE & PROBATION - Notification received on 2015-08-13 12:20:37.153.

SEAN SULLIVAN, ESQ. - Notification received on 2015-08-13 12:20:36.607.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

08-13-2015:10:38:44

Clerk Accepted:

08-13-2015:12:19:48

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Reply

Filed By:

Terrence McCarthy

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OF NEVADA

JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

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A filing has been submitted to the court RE: CR03-2156

Judge:

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08-13-2015:10:39:15

Clerk Accepted:

08-13-2015:12:26:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Request for Submission

Filed By:

Terrence McCarthy

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JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA

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JOHN PETTY, ESQ. - Notification received on 2015-08-13 12:40:43.2.
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SEAN SULLIVAN, ESQ. - Notification received on 2015-08-13 12:40:43.107.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR03-2156

Judge:

HONORABLE JEROME M. POLAHA

Official File Stamp:

08-13-2015:10:39:46

Clerk Accepted:

08-13-2015:12:40:12

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS. MICHAEL TODD BOTELHO (D3)

Document(s) Submitted:

Notice of Change of Attorney

Filed By:

Terrence McCarthy

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TERRENCE P. MCCARTHY, ESQ. for STATE
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JOHN REESE PETTY, ESQ. for MICHAEL TODD
BOTELHO

DIV. OF PAROLE & PROBATION

SEAN B. SULLIVAN, ESQ. for MICHAEL TODD
BOTELHO

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MICHAEL TODD BOTELHO for MICHAEL TODD
BOTELHO

STATE OF NEVADA for STATE OF NEVADA