

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CRAIG MORTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Docket No. 23-0022 12:48 p.m.
Elizabeth A. Brown
D. Ct. Clerk of Supreme Court

APPEAL FROM JUDGMENT OF
THE HONORABLE RICHARD WAGNER

SIXTH JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 5

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1 remorse at sentencing for the sentence he ultimately received, whereas here the district court
2 looked at the overwhelming evidence against the Petitioner for his imposed sentence in this case,
3 which was found by a jury of his peers. *See Brake v. State*, 113 Nev. 579, 939 P.2d 1029, 1033
4 (1997); and *Brown v. State*, 113 Nev. 275, 934 P.2d 235 (1997). As a result, Petitioner's fourth
5 allegation of ineffective assistance of counsel lacks legal merit.
6

7 ***E: Ineffective Assistance of Counsel Allegations – Opening the Door on Cross-Examination-***
8 ***Ground 5:***

9 The Petitioner next alleges that his trial counsel inadvertently opened the door to alleged
10 "bad act" and hearsay evidence of a domestic battery, that he was trying to keep closed by his
11 cross-examination of Robert Morton, and that the jury was not advised to disregard these
12 statements. However, adverse that these statements supposedly were, trials are not scripted
13 events and errors such as these sometimes happen, and Petitioner simply has not shown that the
14 failure to not ask for a jury instruction from the Court to disregard these statements, does not fall
15 into strategic decisions that made by trial counsel that are assumed to be intentional and are
16 "virtually unchallengeable." *See Doleman*, 112 Nev. at 848, 921 P.2d at 280. To try to suggest
17 and shift blame for any error in this regard, onto the Court itself, the State, or even to the
18 victim in this case who was murdered by the Petitioner, Cynthia Morton, as Petitioner does
19 here in completely disingenuous. (*See Supplemental Petition for Writ of Habeas Corpus (Post*
20 *Conviction) filed on September 10, 2019, pages 18-19*). As a result, Petitioner has failed meet
21 either of his burdens under the two prong *Strickland standard*, *supra*, and Petitioner's fifth
22 allegation in ineffective assistance of counsel must fail as well.
23
24

25 ***F: Ineffective Assistance of Counsel Allegations – Failure to Select Issues on Appeal-Ground 6:***

26 In the instant case, Petitioner throws out a hodgepodge of six or more issues that it had
27 wished that its then trial counsel should have appealed. However, as noted above, in *Morales v.*
28 *State* (Nev., 2018), the Court held that to prove ineffective assistance of appellate counsel a

petitioner "must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal," citing *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996), *Morales, supra* at page 8. The *Morales* court further noted that "Appellate counsel is not required to raise every non-frivolous issue on appeal," citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983), and that "[r]ather, appellate counsel will be most effective when every conceivable issue is not raised on appeal," citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), *Morales, supra* at page 8. Thirdly, the *Morales* court also noted that "[b]oth components of the inquiry must be shown," citing *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and that they will "give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo," citing *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), *Morales, supra* at page 9.

In the present case, it is believed that the testimony at the evidentiary hearing will show that the Petitioner was fully advised of his right to appeal after his conviction, and at the same time, there is simply no evidence that any of the issues cited by Petitioner as possible appellate issues, would have any reasonable probability of success on appeal. See *Morales v. State, supra*; *Lara v. State, supra* and *Kirksey v. State, supra*. Moreover, there is simply no evidence that the words or actions of Judge Wagner in this case against one of the Petitioner's trial attorneys had any adverse effects on the jury in this case under *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 470 P.2d 135 (1970), nor has Petitioner shown that that admissibility of the gruesome photographs of the victim was an abuse of discretion under *Flores v. State*, 121 Nev. 706, 722, 120 P.3d 1170, 1180 (2005).

Additionally, as to the hearsay statements of the victim in this case, Petitioner has not

1 shown that the District Court abused its discretion in its admission of any of evidence in this
2 case, and even if it could be argued as such, any such error would have been harmless due to the
3 cumulative effect of the other incriminating evidence in this case. In Nevada, under *Baltazar-*
4 *Monterrosa v. State*, 122 Nev. 606, 137 P.3d 1137, (2006) the Nevada Supreme Court held
5 that the district court's decision "to admit or exclude evidence is given great deference and
6 will not be reversed absent manifest error" citing *Baltazar-Monterrosa v. State*, 122 Nev.
7 606, 137 P.3d 1137, (2006). Moreover, the Nevada Supreme Court has stated in *Vallery v.*
8 *State*, 118 Nev. 357, 46 P.3d 66 (2002) that a district court's improper exclusion of evidence
9 is reviewed for harmless error, and in *McKellan v. State*, 124 Nev. 263, 182 P.3d 106
10 (2008), the Court noted that an error is harmless unless there was a substantial and injurious
11 effect or influence in determining the juries.

12
13
14 Finally, as to any of the jury instructions in this case, namely dealing with the
15 definition of homicide, or giving any limited instructions as to hearsay evidence or evidence
16 that came in through cross-examination, these issues fall within the discretion of the trial
17 court and there is no evidence that the trial court abused its discretion in this regard. Under
18 *Higgs v. State*, 222 P.3d 649, (2008) the Nevada Supreme Court noted that district courts have
19 "broad discretion to settle jury instructions" citing *Cortinas v. State*, 124 Nev., 195 P.3d 315,
20 319 (2008), and that the Court is limited to inquiring whether there was an abuse of discretion or
21 judicial error. *Higgs v. State*, *supra* at 661. In the present case, the Petitioner has not shown to the
22 Court here the exact instructional wording he asserts for ground 6 in his Petition for Writ of
23 Habeas Corpus (Post Conviction), or why it was an abuse of discretion for the District Court to
24 not give it, and therefore this specific allegation must fail under *Higgs v. State*, *supra*.

25
26 In summary, as a result of the above, Petitioner has failed meet either of his burdens
27 under the two prong *Strickland standard*, *supra*, and Petitioner's sixth allegation is ineffective.
28

1 assistance of counsel must fail as well.

2 ***G: Ineffective Assistance of Counsel Allegations – Failure to file a Motion to Suppress***
3 ***Petitioner's statements at the Humboldt County (NV) Detention Center -Ground 7:***

4 In the present case, Petitioner alleges that his trial counsel was ineffective when he failed to
5 file a motion to suppress his statements made at the Humboldt County (NV) Detention Center, as
6 he was too intoxicated to voluntarily waive his Miranda Rights under *Miranda v. Arizona*, 384 U.S.
7 436, (1966). (See *Supplemental Petition for Writ of Habeas Corpus (Post Conviction)* filed on
8 *September 10, 2019, page 25*). The Nevada Supreme Court in *Kirksey v. State*, 112 Nev. 980, 923
9 P.2d 1102, (1996) is illustrative in this regard, where the Court stated:

11 “When an ineffective assistance claim is based upon counsel's failure to
12 file a motion to suppress evidence allegedly obtained in violation of the Fourth
13 Amendment, the prejudice prong must be established by a showing that the claim
14 was meritorious and that there was a reasonable likelihood that the exclusion of
15 the evidence would have changed the result of a trial. *Kimmelman v.*
16 *Morrison*, 477 U.S. 365, 375, 106 S.Ct. 2574, 2582-83, 91 L.Ed.2d 305 (1986).
17 (Citations here omitted from original). We conclude that the same analysis applies
18 when the ineffective assistance claim is based upon counsel's failure to file a
19 motion to suppress a confession.

20 To be admissible, a confession must be made freely and voluntarily,
21 without compulsion or inducement. *Passama v. State*, 103 Nev. 212, 213, 735
22 P.2d 321, 322 (1987). A confession must be the product of a free will and rational
23 intellect. *Id.* at 213-14, 735 P.2d at 322. Physical intimidation or psychological
24 pressure constitute coercion, making a confession involuntary. *Id.* at 214, 735
25 P.2d at 322-23. The voluntariness of a confession must be determined from the
26 effect of the totality of the circumstances on the defendant's will. *Id.*, 735 P.2d at
27 323. This court has listed the following factors to be considered:

28 the youth of the accused; his lack of education or his low
intelligence; the lack of any advice of constitutional rights; the
length of detention; the repeated and prolonged nature of
questioning; and the use of physical punishment such as the
deprivation of food or sleep.

See *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102, 1109 (1996).

Moreover, to determine the voluntariness of a confession, the Court must consider the
effect of the totality of the circumstances on the will of the defendant. See *Schneckloth v.*

1 *Bustamonte*, 412 U.S. 218, 226-227 (1973)(The question in each case is whether the defendant's
2 will was overborne when he confessed). *See Schneckloth v. Bustamonte*, 412 U.S. at 225-
3 226. Furthermore, consent is an exception to the Fourth Amendment of the U.S. Constitution's
4 search requirement, *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973). Consent must be
5 voluntary, meaning that citizens must give consent in the absence of explicit or implied coercion. *See*
6 *also Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). When determining whether consent is
7 given voluntarily, a court must consider all circumstances within the case, and the State must prove that
8 the defendant gave consent freely and voluntarily. *See Schneckloth, supra* 412 U.S. at 233; *Bumper,*
9 *supra* 391 U.S. at 548. Finally, the State must prove by clear and convincing evidence that the
10 defendant consented freely and voluntarily. *McKforran v. State*, 118 Nev. 379, 383, 46 P.3d 81, 85
11 (2002); *see also Howe v. State*, 112 Nev. 458, 464, 916 P.2d 153, 158 (1996)(requiring clear and
12 persuasive evidence).

13
14
15 In the present case, despite speculating otherwise that his free will was overborne in this
16 case by his intoxicated state, Petitioner has not shown that the failure of his trial counsel to file a
17 motion to suppress his statements at the Humboldt County Detention Center was even close to
18 meritorious, or that there was a reasonable likelihood that the exclusion of his confession would
19 have changed the result of his trial in this case. *See Kimmelman v. Morrison, supra*. Additionally,
20 Petitioner has not shown that his confession was not voluntary under the totality of the
21 circumstances in the present case under *Passama v. State, supra*, or that his waiver of his rights
22 under *Miranda v. Arizona, supra* were not freely or voluntarily given. *See Miranda v. Arizona,*
23 *supra* 384 U.S. at 479. *See also Echavarria v. State*, 108 Nev. 734, 742, 839 P.2d 589, 595 (1992).
24 Moreover, any decision of his trial counsel to actually file a motion to suppress his confession in
25 this case would be fall again into strategic decisions that are made by trial counsel and that are
26 assumed to be intentional and are "virtually unchallengeable." *See Doleman*, 112 Nev. at 848,
27
28

1 921 P.2d at 280 (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

2 Furthermore, there is no indication in this case that the trial court abused its discretion
3 as to any jury instruction here, where the exact instructional wording was not delineated for
4 ground 7 in his *Supplemental Petition for Writ of Habeas Corpus (Post Conviction)* filed on
5 *September 10, 2019*, or even why it was an abuse of discretion for the District Court to not give it
6 under *Higgs v. State, supra*. As noted above, under *Higgs v. State, supra* the Nevada Supreme
7 Court noted that district courts have "broad discretion to settle jury instructions" citing *Cortinas*
8 *v. State*, 124 Nev. ___, 195 P.3d 315, 319 (2008), and that the Court is limited to inquiring whether
9 there was an abuse of discretion or judicial error. See *Higgs v. State, supra* at 661. See also
10 *Crawford v. State* 121 Nev. 744, 748, 121 P.3d 582, 585 (2005)(A district court's denial of
11 proposed jury instructions may constitute an abuse of discretion or judicial error). There is
12 simply no evidence presented by Petitioner as to why the District Court abused its discretion
13 here, and it is mere speculation that the alleged omitting of any jury instruction in this case, as to
14 any pertinent elements of any crime here, relieved the State of its burden of proof in this case
15 under *Francis v. Franklin*, 471 U.S. 307, 316 (1985). As a result, Petitioner again has failed
16 meet either of his burdens under the two prong *Strickland standard, supra*, and Petitioner's
17 seventh allegation in ineffective assistance of counsel must fail as well.

18 ***H: Ineffective Assistance of Counsel Allegations – Failure to use a Risk Assessment at***
19 ***Sentencing-Ground 8:***

20 Petitioner next alleges that his trial counsel was ineffective at the sentencing when he failed
21 to present expert witness testimony by arranging for a risk assessment by a psychological expert.

22 (See *Supplemental Petition for Writ of Habeas Corpus (Post Conviction)* filed on September 10,

23 2019, page 28). As noted above, the Nevada Supreme Court has previously ruled that the

24 sentencing judge has wide discretion in imposing a sentence, and that this determination will not

25 be overruled absent a showing of abuse of discretion, *Norwood v. State*, 112 Nev. 438, 915 P.2d

1 177 (1996), citing *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Moreover, as
2 with the above ineffective assistance of counsel allegations concerning trial counsel's failure to
3 highlight part of the Petitioner's Presentence Report in this case as alleged in ground 3 above,
4 any failure to arrange for a risk assessment of the Petitioner would fall into strategic decisions
5 that made by trial counsel and are assumed to be intentional and are "virtually
6 unchallengeable." See *Doleman*, 112 Nev. at 848, 921 P.2d at 280 (quoting *Howard v. State*,
7 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), strategic decisions based on an incomplete
8 investigation are reasonable "precisely to the extent that reasonable professional judgments
9 support the limitations on investigation." *Strickland*, supra 466 U.S. at 690-91). As Petitioner
10 himself essentially noted, at the time of the trial, his family was upset and that the family
11 dynamics were hard to define by his children, and most likely by Petitioner as well. (See
12 *Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed on September 10, 2019*,
13 *page 9*).

14
15
16 Moreover, any such risk assessment of the Petitioner would have been provided to the
17 Respondent and it could have very well highlighted areas that would prove very damaging to
18 Petitioner's best interests at sentencing, and it is mere speculation now by the Petitioner's proposed
19 use of an "after the fact" psychological expert evaluation, to suggest that if one was indeed
20 obtained by Petitioner's trial counsel at the time of his original sentencing, it would have not have
21 led the sentencing court to impose the maximum possible weapon enhancement sentence on
22 Petitioner, no matter where the bullet casings fell in this case at the crime scene, where incidentally
23 he does not now deny coming from the weapon he discharged at the time of the crime. (See
24 *Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed on September 10, 2019*,
25 *page 29*). As a result, Petitioner has failed again to meet either of his burdens under the two
26
27
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1 prong *Strickland standard, supra*, and Petitioner's eighth allegation in ineffective assistance of
2 counsel must fail as well.

3 ***I: Ineffective Assistance of Counsel Allegations – Cumulative Errors-Ground 9:***

4
5 Lastly, in the present case, Petitioner alleges that the cumulative errors of his trial counsel
6 deprived him of his Constitutional Rights to Due Process, the Effective Assistance of Counsel, and
7 the Right to a Fair Trial in violation of his 5th, 6th and & 14th Amendments to the United States
8 Constitution, (*See Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed on*
9 *September 10, 2019, page 30*). Petitioner's final allegation lacks legal merit.

10 In *Hernandez v. State*, 118 Nev. 513, 50 P.3d 1100 (2002), which was also a murder case,
11 the defendant there had alleged that his conviction and sentence should be reversed due to
12 cumulative error. *See Hernandez v. State*, 50 P.3d *supra* at 1100. In *Hernandez v. State, supra*,
13 the Nevada Supreme Court noted that while the cumulative effect of errors may violate a
14 defendant's Constitutional Right to a Fair Trial even though errors are harmless individually, in
15 the case before them they ruled that any errors which occurred were minor and, even considered
16 together, did not warrant reversal. *See Hernandez v. State*, 50 P.3d *supra* at 1100. In *Mulder v.*
17 *State*, 116 Nev. 1, 992 P.2d 845 (2000), the Nevada Supreme Court noted that it will consider, as
18 to evaluating a claim cumulative error, the three relevant factors of; (1) whether the issue of guilt
19 is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged,
20 citing *Leonard v. State*, 114 Nev. 1196, 1216, 969 P.2d 288, 301 (1998). *See Mulder v. State,*
21 *supra*, 992 P.2d 854-855.

22 A similar legal situation exists in this case, as in *Hernandez v. State supra*, as the evidence
23 in this case of Petitioner's guilt was not even close; any errors by his trial counsel, the trial and
24 sentencing court; and the Respondent were minor or non-existent, and the Petitioner here was
25 charged with two very serious charges at trial, namely one count of Open Murder in the Second
26
27
28

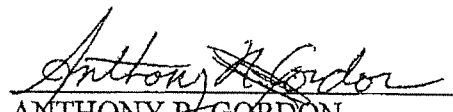
1 Degree with the Use of a Deadly Weapon, a Category A Felony in violation of *NRS 200.010*,
2 *NRS 200.020*, *NRS 200.030*, *NRS 200.033* and *NRS 193.165*, and one count of Discharging a
3 Firearm from Within or From a Structure, a Category B Felony, in violation of *NRS 202.287(b)*.⁶
4 As a result, reversal of his conviction, a resentencing, or any type of legal or equitable relief is
5 not warranted in this case, especially since Petitioner has failed again to meet either of his
6 burdens under the two prong *Strickland standard*, *supra*, and Petitioner's ninth and allegation in
7 ineffective assistance of counsel must fail finally as well.

8 CONCLUSION

9
10 Based on the above legal arguments and all facts and pleadings herein, the Petitioner has
11 failed on all of his allegations of Nevada Statutory, U.S. Constitutional and Nevada
12 Constitutional error alleged in his initial pro-per *Petition for Motion to Modify and/or Correct an*
13 *Illegal Sentence* filed on December 29, 2011; his pro-per *Writ of Habeas Corpus (Post-*
14 *Conviction)*, filed on December 29, 2011; and his *Supplemental Petition for Writ of Habeas*
15 *Corpus (Post Conviction)* filed on September 10, 2019. Accordingly, it is respectfully requested
16 that this Court deny Petitioner's *Petition for Motion to Modify and/or Correct an Illegal Sentence*
17 *filed on December 29, 2011*; his *Writ of Habeas Corpus (Post-Conviction)*, filed on December
18 29, 2011; and his *Supplemental Petition for Writ of Habeas Corpus (Post Conviction)* filed on
19 September 10, 2019 in their entirety.

20
21
22 Furthermore, pursuant to NRS 239B.030., the undersigned hereby affirms this document
23 does not contain the social security number of any person.

24 DATED this 1st day of October, 2021.

25
26 
27 ANTHONY R. GORDON
28 Deputy District Attorney

⁶ See Information filed in this matter on October 22, 2009.

HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89446

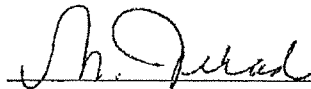
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 1 day of October, 2021, I delivered a copy of the **RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR MOTION TO MODIFY AND/OR CORRECT AN ILLEGAL SENTENCE; PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to:

KARLA K. BUTKO, ESQ
PO. Box 1249
Verdi, Nevada, 89439

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

- ☒ (X) U.S. Mail
- ☐ () Certified Mail
- ☐ () Hand-delivered
- ☐ () Placed in DCT Box
- ☐ () Via Facsimile



Certificate of
Miranda Warning and Waiver

I hereby declare: That I am an officer of the WINNEMUCCA POLICE
DEPT and that on 08-06-15-2009 at 11:16 a.m. / p.m.
I interviewed DAVID MORTON
at HCLC

and that prior to that interview, and before any questioning, I advised the person named
above the following:

- DL "1. You have the right to remain silent.
- DL 2. Anything you say can and will be used against you in a court of law.
- DL 3. You have the right to talk to a lawyer and have him present with you while
you are being questioned.
- DL 4. If you cannot afford to hire a lawyer, one will be appointed to represent you,
before any questioning, if you wish one.
- DL 5. You can decide at any time to exercise these rights and not answer any
questions or make any statements."

That after informing the person named above of the foregoing, I asked him if he
understood the rights that I had stated, to which he replied: "YES I DO"

That I then asked him if, having in mind and understanding his rights, he was
willing to talk to me, to which he replied: "YA, I'LL TALK TO YOU"

That the above answers were given freely and voluntarily, without the making
of any threats or promises, and not under duress, pressure or coercion of any kind.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at 01:17 AM on 08-06-15-2009

[Signature]
Signature of Officer

STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY
INTOXILYZER 5000EN CHECKLIST

INSTRUMENT SERIAL # 68-013409

AGENCY: WINNEMUKA POLICE DEPT

CASE #: 09-0778

SUBJECT: MARTON, DAVID CRAIG

DATE: 08-06-09

OPERATOR: Hinton, Mitchell

CERTIFICATION #: N01917

If the instrument is in STANDBY (red power light is on, display is blank), press the green START TEST button.

1. If subject has removable dental work, (dentures, partial), have subject remove dental work, rinse mouth with water.
2. Check subject's mouth for foreign objects (i.e., chewing tobacco, breath mints, candy, gum, coins). If any are found, have subject remove object and rinse mouth with water.
3. TIME OBSERVATION PERIOD STARTED: 01:40 HOURS Observe subject minimum 15 minutes with close visual contact. If the subject eats; drinks; smokes; burps; regurgitates; vomits; or puts any foreign object in his/her mouth, you must wait an additional 15 minutes.
4. Observation period was completed satisfactorily. Comments:
5. Ensure that the simulator solution is 34 +/- 0.5 degrees centigrade. TRANSFER INFORMATION FROM LABEL ATTACHED TO SIMULATOR TO THE BLANKS BELOW:

CERTIFIED VALUE OF SIMULATOR SOLUTION 0.103

LOT NUMBER OF SIMULATOR SOLUTION N-0609
6. In display window, observe READY TO START message scrolling across screen. To start the test, push the GREEN START TEST button at any time.
7. When requested, insert an evidence card into the card slot located on the front of the instrument. Make sure to insert the card face up with the sealed edge in first.

Display will request, "ENTER START OF OBSERVATION TIME - OBSR. START=". Enter the time that observation began followed by ENTER.
9. The instrument will automatically run an air blank and a simulator test. A test cannot be administered if the simulator solution tests out of range. If this occurs, determine reason why or replace simulator solution.
10. When prompt displays "PLEASE BLOW / R INTO MOUTHPIECE UNTIL TONE STOPS" attach a clean mouthpiece and request subject blow with a long, continuous breath into the breath tube until the tone stops. If subject is not willing to provide a sample, press "R" key followed by ENTER. The instrument will not accept this command until after the beep is heard and "PLEASE BLOW / R" is flashing on the display.
11. When prompt again displays "PLEASE BLOW / R INTO MOUTHPIECE UNTIL TONE STOPS" attach a clean mouthpiece and request subject blow into the mouthpiece until the tone stops. If subject is not willing to provide a sample, press "R" key followed by ENTER. The instrument will not accept this command until after the beep is heard and "PLEASE BLOW / R" is flashing on the display.
12. If the two samples do not agree within 0.020, the instrument will automatically request another sample be given. When requested, have subject deliver a third sample.
13. Display will request "SUB LAST NAME". Enter subject's last name followed by ENTER. Answer subsequent test data entry questions.
14. Instrument will automatically print out the test results. REMOVE TEST PRINTOUT and SIGN. CORRECT THE TIME / DATE ON EVIDENCE CARD IF NECESSARY. INITIAL THE CHANGES. Record necessary information below and in the D.U.I. LOGBOOK

RESULTS:

REF. STD. (SIMULATOR TEST) 0.107

TEST #1 0.276 TEST #2 0.266 TEST #3 0.11

ATTACH TEST RECORD

I HAVE FOLLOWED THE PROCEDURES OUTLINED ABOVE.

OPERATOR'S SIGNATURE

CHX 2
1012 10

CURRICULUM VITA

NAME: Sheri J. Hixon-Brenenstall, Ph.D., M.A.
Nevada Licensed Psychologist, # PY0668

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Carson City, NV. 89706

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Carson City, NV. 89702

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EMPLOYMENT

State of Nevada, Licensed Psychologist, # PY0668, 2012 to Present

Private Practice, Including:

Clinical Psychological Counseling and Consultation, Juveniles and Adults

Adult and Juvenile Psychological and Forensic Evaluations

Nevada Bureau of Disability, Adult and Juvenile Disability Consultative
Evaluations

Nevada Department of Public Safety Division of Parole and Probation,
Psycho-Sexual and Forensic Evaluations

Nevada Department of Vocational Training and Rehabilitation,
Vocational Evaluations

Nevada Division of Child and Family Services, Psychological and
Forensic Risk Evaluations

State of Nevada, Registered Psychological Assistant, 2010-2012

Truckee Meadows Community College, Department of Psychology, Professor of
Psychology and Sociology, 2007-2013.

Hosseini Moftakhar, Ed.D., Research Scientist, 2006-2010.

Hosseini Moftakhar, Ed.D., Research Associate, 2000-2006.

North Davis Elementary School, Special Education Instructional
Assistant, 2005-2006.

Public Health Institute, Research Interviewer, 2001-2004.

Sheri's Family Daycare, Small Business Owner, 1996-2003

North American Research, Research Associate, 1988-1996.

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EDUCATION

Ph.D., Saybrook University, 2010, Psychology with Clinical Emphasis,
Dissertation: "Archetypal Perspectives on Nordic and Germanic Initiation
Symbols, Mythology, and Rites of Passage in a European American Self
Referenced White Supremacist Gang".

Dissertation Chair: Alan G. Vaughan, Ph.D., J.D.

Certified Jungian Analyst, San Francisco Jung Institute

M.A., Saybrook University, 2006, Psychology with Clinical Emphasis,
Thesis: "Cultural and Psychosocial Dynamics of a White Supremacist
Youth Gang".

Thesis Chair: Alan G. Vaughan, Ph.D., J.D.

Certified Jungian Analyst, San Francisco Jung Institute

PROFESSIONAL CERTIFICATIONS AND RECORD CLEARANCES

Alliance of Therapy Dogs, Certified Therapy Dog Handler, No. 60208,
Owner and Handler of Certified Therapy Dog Doc Harley of the
Valley "Harley", August 2019

American Kennel Club (AKC), Canine Good Citizen Certification,
August 2019, Certification for Doc Harley of the Valley "Harley"

International Association of Trauma Professionals (IATP), Certified Clinical
Trauma Professional

National Association of Forensic Counselors (NAFC), Clinically Certified
Forensic Counselor, No. 27928

National Association of Forensic Counselors (NAFC), Clinically Certified Sex
Offender Specialist, No. 27928

National Association of Forensic Counselors (NAFC), Clinically Certified
Juvenile Treatment Specialist, No. 27928

National Association of Forensic Counselors (NAFC), Clinically Certified
Juvenile Sex Offender Treatment Specialist, No. 27928

State of Nevada Lakes Crossing, Competency Training, Dated July 2019 to
Current

PESI, Personality Disorders, Assessment, and Treatment Certification, Dated
December 2019

Disaster Mental Health Training and Certification

Aviation Disaster Mental Health Response Training and Certification

Nevada State Department of Justice (DOJ), 2010, 2012

California State Department of Justice (DOJ), 1996, 2000

Federal Bureau of Investigations, 1996, 2000, 2010, 2012

MEMBERSHIPS IN PROFESSIONAL ORGANIZATIONS AND SOCIETIES

Nevada Psychological Association (Member)

National Association of Forensic Counselors (Member)

American Psychological Association (Member)

American Psychological Association, Psychology Teachers in Community Colleges (Member)

Association for Psychological Science (Member)

Division of the Society for General Psychology (APA Div. 1, Member)

Division of the Society of Clinical Psychology (APA Div. 12, Member)

Division of Psychoanalysis (APA Div. 39, Member)

Division of Qualitative, Evaluation, Measurement, and Statistics (APA Div. 5 Member)

Paws for Love, Member, Approval Includes "Harley", August 2019

COMMUNITY INVOLVEMENT

Benefactor of the "Harley-Boobala Kids First Fund", Fund Managed by the the Ron Wood Family Resource Center, Carson City, NV., Fund Established August 2019

Registered Volunteer with the State of Nevada Battle Born Medical Corps, Registered Since April 2020

Ron Wood Family Resource Center, Board Member, Carson City, NV., July 2021 to Present

Ron Wood Family Resource Center, Children's Mental Health Clinic Advisory Committee Member, Carson City, NV., July 2021 to Present

HONORS AND AWARDS

Scholarly Awards and Recognitions:

Saybrook University-Dissertation with Distinction Award Nominee, 2010

Truckee Meadows Community College, Department of Psychology, Excellence in Teaching Award, 2010

Truckee Meadows Community College, Phi Theta Kappa Teacher of the Year Nominee, 2010

The Society for Applied Sociology-Best Undergraduate Student Research Paper Award Recipient, 2002

The National Deans List Award Recipient, 2001, 2002, 2003

National College Board Talent Roster Award Recipient, 2000, 2001, 2002

Scholarships and Grants:

Saybrook University Dissertation Research Grant, 2009, 2010
Saybrook University Professional Development Grant, 2006
USA Funds Scholarship, 2005, 2006, 2007, 2008, 2009
Chela Scholarship, 2005
Phyllis J. Smith Memorial Scholarship, 2001

Academic Honors:

Doctor of Philosophy, *Magna Cum Laude*, with distinction in Clinical Psychology
Master of Arts, *Magna Cum Laude*, with distinction in Psychology
Bachelor of Arts, *Summa Cum Laude*, highest honors with distinction in Psychology

INTERNSHIPS

Carson City, Juvenile Detention and Probation Department, Supervising Psychologist Jack Araza, Ph.D., Clinical Registered Psychological Assistant, 2012
Private Practice, Adult and Juvenile Evaluation and Treatment, Supervising Psychologist Jack Araza, Ph.D., Clinical Registered Psychological Assistant, 2010-2012
Ron Wood Center, Supervising Psychologist Jack Araza, Ph.D., Clinical Registered Psychological Assistant, 2012
Rite of Passage, Juvenile Rehabilitation Facility, Supervising Psychologist Jack Araza, Ph.D., Clinical Registered Psychological Assistant, 2010-2012
Washoe County Juvenile Probation Department, Supervising Psychologist Jack Araza, Ph.D., Clinical Registered Psychological Assistant, 2010-2012

EDITORIAL RESPONSIBILITIES

McGraw Hill Higher Education Publishing, Academic Advisory Board Member, 2009
McGraw Hill Higher Education Publishing, Proposal/Prospectus Reviewer, 2008

ASSESSMENT AND EVALUATION SCALE DEVELOPMENT

Hixon, S.J. (2010). *Gang affiliation risk assessment scale*. Carson City, NV: Author.
Hixon, S.J. (2010). *A professional guideline and rubric for the evaluation of clinical psychology evaluation reports within the juvenile justice system*. Carson City, NV: Author.
Hixon, S.J. (2011). *Progress and functionality behavioral evaluation checklist for adolescents: Brief screening version*. Carson City, NV: Author.
Hixon, S.J. (2011). *Progress and functionality behavioral evaluation checklist for adolescents: Full version*. Carson City, NV: Author.

- Araza, J., & Hixon-Brenenstall, S.J. (2014). *Vocational rehabilitation checklist-20 (VOC-CHECK: 20)*. Carson City, NV: Authors.
- Araza, J., & Hixon-Brenenstall, S.J. (2015). *Functionality assessment of strengths and barriers-Adult*. Carson City, NV: Authors.
- Araza, J., & Hixon-Brenenstall, S.J. (2015). *Juvenile intake assessment of strengths and challenges-Females*. Carson City, NV: Authors.

PUBLICATIONS

- Moftakhar, H., & Hixon, S.J. (2003). *Violence, discrimination, and perceptions among African Americans, Whites, and Hispanic Americans*. Sacramento, CA: California State University Sacramento, Cross-Cultural Center.
- Hixon, S.J. (2006). *Cultural and psychosocial dynamics of a White supremacist youth gang* (Masters Thesis). Masters Theses International, (UMI No. 1437857).
- Moftakhar, H., & Hixon, S.J. (2007). *Ten steps to research design* (3rd ed.). Sacramento, CA: Authors.
- Moftakhar, H., & Hixon, S.J. (2008). *Ten steps to research design* (4th ed.). Sacramento, CA: Authors.
- Moftakhar, H., & Hixon, S.J. (2009). *Ten steps to research design: An introduction to primary components* (5th ed.). Sacramento, CA: Authors.
- Hixon, S.J. (2009). Psychosocial processes associated with bullying and victimization. *The Humanistic Psychologist*, 37(3), 257-270.
- Hixon, S.J. (2010). *Archetypal perspectives on Nordic and Germanic initiation symbols, mythology, and rites of passage in a European American self referenced White supremacist gang* (Doctoral Dissertation). Dissertation Abstract International (DAI), UMI 3418929.
- Moftakhar, H., & Hixon, S.J. (2010). *Ten steps to research design: An introduction to primary components* (6th ed.). Sacramento, CA: Authors.
- Hixon, S.J., & Moftakhar, H. (Fall, 2010). Millennials in the classroom: Student centered recommendations for teaching and working with the millennial generation. *The Psychology Teacher Network: American Psychological Association Education Directorate*, 20(3), 8-11.

PROFESSIONAL CONFERENCE/CONVENTION PRESENTATIONS

- Moftakhar, H., & Hixon, S.J. (2002, August). *Violence, discrimination, and perceptions of African Americans, Whites, and Hispanic Americans*. Paper presented at the meeting of the Annual Family Strengths Family Centered Services 9th Annual Conference, Sacramento, CA.
- Hixon, S.J. (2002, September). *Qualitative inquiry into parents' perceptions of adequacy of daycare services*. Paper presented at the meeting of the Society for Applied Sociology Annual Conference, Sacramento, CA.
- Moftakhar, H., & Hixon, S.J. (2003, August). *Workshop Seminar: Associative group analysis (AGA) qualitative research method*. Workshop seminar session presented at the Sacramento City College, Los Rios Community College District, Staff Development and Training Program.

- Moftakhar, H., & Hixon, S.J. (2003, September). *Perceptions of self and others among African Americans, Whites, and Hispanic Americans*. Paper presented at the annual meeting of The American Sociological Association, Sacramento, CA.
- Moftakhar, H., McHargue, T., & Hixon, S.J. (2004, October). *Perceptions of barriers among students with learning disabilities*. Paper presented at the annual meeting of The California Association for Postsecondary Education and Disability (CAPED) Conference, Monterey, CA.
- Hixon, S.J. (2006, June). *White supremacist youth gangs: Socio-cultural factors and implications*. Poster session presented at the bi-annual Saybrook University Residential Conference, San Francisco, CA.
- Hixon, S.J. (2006, October). *Cultural dynamics associated with parolee youths*. Paper presented at the annual meeting of the California Association for Postsecondary Education and Disability (CAPED) Conference, Lake Tahoe, CA.
- Hixon, S.J. (2007, August). *Cultural and psychosocial dynamics of a white supremacist youth gang*. Poster session presented at the annual meeting of the American Psychological Association (APA) Convention, San Francisco, CA.
- Hixon, S.J., & Moftakhar, H. (2008, July). *Comparative cultural study of Iranian and American cultures*. Paper presented at the Mehr Association of the Iranian Community quarterly meeting, Sacramento, CA.
- Moftakhar, H., & Hixon, S.J. (2008, August). *Workshop: AGA – A unique qualitative research methodology*. Workshop session presented at the annual meeting of the American Psychological Association (APA) Convention, Boston, MA.
- Moftakhar, H., & Hixon, S.J. (2009, January). *Workshop: Iranian and American Cultural Frames of Reference*. Workshop session presented at the Faculty Association of California Community Colleges Education Institute (FACCC) Diversity Conference, Sacramento, CA.
- Moftakhar, H., & Hixon, S.J. (2009, August). *Workshop: Sharing results and research methodology of our diversity studies*. Workshop session presented at the annual meeting of the American Psychological Association (APA) Convention, Toronto, Canada.
- Hixon, S.J. (2010, June). *Archetypal perspectives on Nordic and Germanic initiation symbols, mythology, and rites of passage in a European American self referenced White supremacist gang*. Lecture session presented at the bi-annual Saybrook University Residential Conference, San Francisco, CA.
- Hixon, S.J. (2010, June). *Archetypal perspectives on Nordic and Germanic initiation Symbols, mythology, and rites of passage in a European American self referenced White supremacist gang*. Poster session presented at the bi-annual Saybrook University Residential Conference, San Francisco, CA.
- Moftakhar, H., Agha Mohammadi, A., Khazari, M., & Hixon, S.J. (2010, August). *Symposium: We speak in different cultures: Iranian and American bridges to understanding and peace*. Symposium session presented at the annual meeting of the American Psychological Association (APA) Convention, San Diego, CA.
- Moftakhar, H., Agha Mohammadi, A., Khazari, M., & Hixon, S.J. (2010, August). *Symposium: Persian philosophy influences in the behavioral sciences: A historic exploration*. Symposium session presented at the annual meeting of the American Psychological Association (APA) Convention, San Diego, CA.

Araza, J. & Hixon-Brenenstall, S.J. (2014). *Predicting Vocational Development: The Vocational Checklist: 20*. Lecture and workshop session presented at the annual in-service training of the State of Nevada Department of Employment, Training, and Rehabilitation, Reno, NV.

Sheri J. Hixon-Brenenstall, Ph.D.
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P.O. Box 3016
Carson City, Nevada 89702

Name: David Morton
DOB: October 12, 1959
Age: 61
Case #: CV 18,803
Attorney: Karla Butko, Esq.
Date of Report: September 12, 2021
Date of Hearing: October, 2021
Psychologist: Sheri J. Hixon-Brenenstall, Ph.D.

REASON FOR REFERRAL

David Morton was referred for a general psychological evaluation by his attorney Karla Butko, Esq. This evaluation provides a general overview of psychological factors, and recommendations are provided as this was requested. To make the results more relevant, Mr. Morton's psychological features are considered in terms of his behaviors that led to gaining the attention of authorities and the charge that he was found guilty of.

INFORMED CONSENT

David Morton was informed of the purpose for this evaluation and limits of confidentiality in these types of evaluations. David Morton was a willing participant, and communicated an understanding of these conditions and agreed to proceed with the interview and evaluation prior to beginning the evaluation.

CIRCUMSTANCES REQUIRING THIS EVALUATION

According to the enclosed Judgment of Conviction Dated January 20, 2011, Mr. Morton was found guilty at trial of the following:

- 1) Open Murder, with the Use of a Deadly Weapon, a Category A Felony, in Violation of NRS 200.010, NRS 200.020, NRS 200.033, and NRS 193.165
- 2) Discharging a Firearm From Within or From a Structure, a Category B Felony, in Violation of NRS 202.287(b)

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The enclosed records documented that the Court approved this psychological evaluation in support of Mr. Morton's "Petition for Writ of Habeas Corpus (Post-Conviction)".

Mr. Morton was questioned about the circumstances that led to requiring this evaluation, and he was cooperative during the evaluation.

Relationship to the Victim and Background Information

The records document that the crime occurred on August 5, 2009, and the victim was Mr. Morton's wife.

Mr. Morton was questioned about the incident, Mr. Morton reported that he and his wife had a history of marital problems, and shortly before the incident Mr. Morton paid for his wife to travel to Utah with the intention that she locate employment and move to Utah, and Mr. Morton obtained divorce papers. The victim returned home to Winnemucca about five days later, and the victim reportedly was unsuccessful establishing employment in Utah. After returning home she rejected the divorce papers and indicated that she would not move from the residence. On the day of the incident, Mr. Morton described that both he and the victim had consumed alcohol, and argued. He recalled that he consumed a large quantity of alcohol prior to the incident which is consistent with the records that document alcohol test results that support a high concentration of alcohol. At some point, Mr. Morton picked up a gun and planned to commit suicide. When he confronted his wife while holding the firearm, he unintentionally shot her. Mr. Morton reported that he was intoxicated at the time of the incident. Mr. Morton recalled that law enforcement arrived and he was arrested. His wife was taken to the hospital and she died about one month later. He has remained incarcerated since August 2009 when he was arrested. He denied any disciplinary problems during his time incarcerated in the Humboldt County Jail, and while incarcerated at Four different Nevada State Prisons.

When discussing the crime, Mr. Morton expressed regret, remorse, and was tearful. He indicated that he did not intend to harm the victim, and he regrets what happened. He described that he wanted a divorce, but he did not want to hurt her rather he wanted the victim to move to Utah and cooperate with the divorce. He was apologetic for the harm that his behavior caused the victim's family, and his own family including the children that he and his wife shared.

Mr. Morton's recollections were consistent with the enclosed records.

The records documented that when Mr. Morton was arrested in August 2009, law enforcement completed an intoxilyzer test for alcohol and results supported alcohol levels between .276 and .266.

PROCEDURES AND INFORMATION SOURCES

David Morton completed a comprehensive 2 Hour 30 Minute clinical interview on September 5, 2021, along with the following measures:

- 1) Minnesota Multiphasic Personality Inventory-3 (MMPI-3), on September 5, 2021
- 2) Structured Inventory of Malingered Symptomatology (SIMS), on September 5, 2021

Collateral information was reviewed for this evaluation and included:

- 1) Humboldt County Judicial Court, Transcript of David Morton Testimony, No Date
- 2) Letter Regarding David Morton, by Lynn Kieser, No Date
- 3) File Notes From Defense Attorney and Notes From File Review of State's Case File, Total of 33 Pages, No Dates
- 4) Humboldt County Judicial Court, Petition for Writ of Habeas Corpus (Post Conviction), by David Morton, Dated December 29, 2011
- 5) Humboldt County Judicial Court, Judgment of Conviction, Dated January 20, 2011
- 6) Humboldt County Sheriff's Office, Statement Regarding David Morton, by Deputy Dave Milton, Dated December 8, 2010
- 7) Nevada Division of Parole and Probation, Presentence Investigation Report, by DPS Specialist Debbie Okuma, Dated December 1, 2010
- 8) Letter Regarding David Morton, by Shirley Upshaw, Dated November 30, 2010
- 9) Letter Regarding David Morton, by John Regan and Dawn Blasengame, Dated November 2, 2010
- 10) Letter Regarding David Morton, by Mike Wolicki, Dated October 24, 2010
- 11) Letter Regarding David Morton, by Jean McCoy, Dated October 20, 2010
- 12) Letter Regarding David Morton, by Terry Miller, Dated October 15, 2010
- 13) Washoe County Sheriff's Office, Forensic Report, by Criminalist Kerri Heward, Dated June 18, 2010
- 14) Humboldt County Judicial Court, Information, by District Attorney Russell Smith, Dated October 22, 2009
- 15) Washoe County Medical Examiner's Office, Autopsy Report, by Medical Examiner's Ellen Clark, M.D., and Piotr Kubiczek, M.D., Dated October 22, 2009
- 16) Winnemucca Police Department, Supplement Narrative Report, by Detective David Garrison, Dated October 21, 2009
- 17) Winnemucca Police Department, Statement, by Jessica Morton, Dated October 21, 2009
- 18) Winnemucca Police Department, Follow Up Report, by Detective David Garrison, Dated October 13, 2009
- 19) Winnemucca Police Department, Follow Up Report, by Detective David Garrison, Dated September 24, 2009
- 20) Washoe County Medical Examiner's Office, Case Information Report, by Allison Plaz, R.N., Dated September 5, 2009
- 21) Humboldt County Sheriff's Office, Booking Report, Dated August 6, 2009
- 22) State of Nevada Department of Public Safety, Intoxilyzer 5000EN Checklist Form, by Officer Mitchell Hinton, Dated August 6, 2009
- 23) Winnemucca Police Department, Case Narrative Regarding Intoxilyzer Alcohol Test, by Officer Mitchell Hinton, Dated August 6, 2009
- 24) Winnemucca Police Department, Follow Up Report, Unknown Author, Dated August 5, 2009
- 25) Humboldt County Sheriff's Office, Incident Report, by Deputy Matt Haylett, Dated August 5, 2009
- 26) Winnemucca Police Department, Supplemental Report, by Officer Cassinelli, Dated June 5, 2009 [Incorrect Date]

- 27) Winnemucca Police Department, Incident and Supplemental Narrative Report, by Detective David Garrison, Dated August 5, 2009
- 28) Winnemucca Police Department, Supplemental Narrative Summary Report, by Detective David Garrison, Dated August 5, 2009 through August 12, 2009
- 29) Humboldt County Sheriff's Office, Incident Report, Dated March 22, 2009
- 30) Humboldt County Justice Court, Judgment of Conviction and Order of the Court, Dated January 8, 2008
- 31) Humboldt County Justice Court, Charge Record for David Morton, Dated November 19, 2007
- 32) Humboldt County Sheriff's Office, Narrative Report, Dated October 21, 2007
- 33) Humboldt County Sheriff's Office, Incident Report, Dated October 21, 2007
- 34) Unified Police Department Greater Salt Lake, General Occurrence Hardcopy Report, by Officer Bryan Marshall, Dated August 29, 2004
- 35) Unified Police Department Greater Salt Lake, General Occurrence Hardcopy Report, by Officer John Shire, Dated September 16, 2002

BEHAVIORAL OBSERVATIONS AND MENTAL STATUS

Mr. Morton a 61 year old, 6'2" tall, 195 pound male presented for the evaluation while incarcerated at the Warm Springs Correction Center in Carson City, Nevada. Mr. Morton was cooperative with detention staff.

There were no observed problems with his posture or gait. No involuntary movements or atypical psychomotor activity were observed. No pain postures or behaviors were observed. He was satisfactorily groomed in detention clothing. His emotional expression and affect were sad, tearful, worried, depressed, and the emotional expressiveness increased when discussing the incident; Mr. Morton was given two breaks during the evaluation so he could calm himself. He exhibited good eye contact. His interpersonal social skills were good, and he was cooperative. His speech was clear, with no observed problems regarding rate, rhythm, or tone. His responses to interview questions and thought processing were linear, goal directed, and relevant. He tracked the conversation and attended to interview questions. He exhibited no problems understanding interview questions or exam items. His satisfactory expressive and receptive language skills supported satisfactory intellectual functioning.

When discussing the reported incident, Mr. Morton acknowledged responsibility for his inappropriate behavior, and he regrets harming the victim and her death from the injuries, and regrets the harm to the victim's family, and his own family including the two children that he and the victim shared. His remorsefulness appeared genuine, and he did not blame others for his behavior. His presentation supported that he recognizes the seriousness of his current situation, and he took this evaluation seriously.

Mr. Morton did not appear to approach the evaluation with an agenda, and did not attempt to gain this examiner's sympathy. He acknowledged responsibility for his behaviors, he feels ashamed of himself, was apologetic, and recognizes that his behaviors were wrong. He is not angry anyone associated with the case. Mr. Morton appeared to answer questions to the best of his ability, and all indications were that he was a credible historian which is supported by the

MMPI-3 results that indicated a valid profile, and the SIMS results that did not support malingering or indication of feigned symptoms.

The scope of information was sufficient for this examiner to form opinions and make recommendations.

BACKGROUND INFORMATION

Legal History

Mr. Morton reported the following legal history:

- 1) DUI in 1985
- 2) DUI in 1988
- 3) August 2004, while living in Utah law enforcement was called but Mr. Morton was not arrested. Mr. Morton was unaware that there was an outstanding warrant associated with this incident, and he reported that he appeared for the warrant and that the charge was not pursued.
- 4) October 2007, while living in Winnemucca Nevada with the victim, he was charged with and pled guilty to a misdemeanor domestic violence charge.

Mr. Morton reported that he has no other adult criminal record history, and no juvenile delinquency history. When discussing the October 2007 incident, Mr. Morton recalled that he and his wife (the victim) were intoxicated at the time of the incident. He recalled that they argued, and described that the argument escalated to mutual hitting and pushing. Mr. Morton left the residence and when he returned home about two hours later, he was arrested. He pled guilty and completed the Court requirements which included community service and domestic violence counseling. He was not sentenced to a probation term for that offense.

He has been incarcerated since he was arrested in 2009. During his time incarcerated in the Humboldt County Jail and in four different Nevada State Prisons, he reported no disciplinary problems with detention staff.

During his time in detention, Mr. Morton reported that he participated in Alcoholics Anonymous meetings while housed in the Lovelock prison and he found that program helpful. He also feels that his participation in that program contributed to an increase of self-control which has helped him decline offers to participate in gambling activities during his time incarcerated. He completed the "Commitment to Change", and "Victim Impact" certificate programs. He applied for other certificate programs, but the requests were denied which he believes is in part due to the fact that he is not yet eligible for parole since some of the programs are often offered to detainees who are parole eligible. Mr. Morton had a job in the laundry at the Lovelock prison for 8 years, which he enjoyed.

Mr. Morton reported that there is not a job program at the Warm Springs facility, so he is unable to pursue a job at this time. Mr. Morton described that other Department of Corrections programs for example the service dog program and certificate classes are suspended because of the COVID 19 health crisis, but he plans to pursue those opportunities once the programs are again available.

The enclosed Presentence Investigation Report documented the following history:

- 1) February 1986, Salt Lake City Utah, reportedly was convicted of Misdemeanor DUI
- 2) July 1989, Tooele Utah, reported convicted of Misdemeanor DUI
- 3) September 2002, Salt Lake City Utah, law enforcement contacted about possible domestic violence incident and upon officer's arrival the victim denied assault or injury so no action taken by law enforcement.
- 4) August 2004, Salt Lake City Utah, records indicate that a warrant was issued and that the case was pending.
- 5) July 2005, Taylorsville Utah, active warrant due to possible charges involving driving without insurance, open container/drinking in vehicle, no valid drivers license, domestic violence warrant, and additional warrants for "escape". The records indicate that a telephonic arraignment was scheduled while Mr. Morton was in custody at the Humboldt County Jail, however the results of the Court case were not documented.
- 6) October 2007, Winnemucca Nevada, convicted of Misdemeanor domestic battery 1st offense, no probation required.
- 7) August 2009, the current incident charges.

Family and Relationship History

Mr. Morton was born in Portola, California and was raised by both parents. He is one of four siblings. He is the father of two children, his one child is 34 years old, and his second child is deceased.

At the time of the incident, Mr. Morton lived in Winnemucca, Nevada with his wife and one child. They moved from Utah to Winnemucca Nevada, and had been in Winnemucca for three years prior to the incident.

He was married one time, and his wife is the victim. He met his wife in high school, and they married in 1977.

When discussing his relationship with his wife, he described that they had many good years together, but after their children were born, his wife started consuming methamphetamine, heroin, and other substances including alcohol. Mr. Morton often travelled because of employment obligations, and he recalled that while away for work that his wife was reported to the Division of Child and Family Services (DCFS) multiple times because of her illegal drug use. He recalled one incident where he was contacted by DCFS because his wife had left the children with a babysitter, and the babysitter found heroin and methamphetamine in the house so the babysitter contacted DCFS. He reported that he paid for substance abuse treatment programs for his wife, but she did not respond to the treatment attempts. He described that as time went on that he wanted a divorce because he could no longer manage the problems with his wife. Despite providing his wife with financial assistance so she could relocate, his wife did not relocate and reportedly refused to sign the divorce papers.

Mr. Morton reported that he had no other long term intimate relationships.

Mr. Morton described his relationships with his mother, father, stepfather, brothers, and son as good, and he speaks with them multiple times week. Mr. Morton views them as good sources of social support.

Physical and Sexual Abuse History

Mr. Morton reportedly has some physical abuse history that involved his father, and being bullied in school. He did not present with a history of sexual abuse.

Education History

Mr. Morton graduated high school in 1977. He did not participate in special education programs and denied any problems with learning. He described a stable attendance history, and that his grades were good and he achieved honor roll status. He denied any disciplinary problems in school for example no history of suspensions or detentions.

Employment History

Mr. Morton reported that he was employed with a Railroad Company for 25 years but lost the job because of a positive cannabis test. After leaving the railroad job, he worked for a mining company for 2 years, and chose to leave the underground mining job to work with his stepfather.

At the time of the incident, he was working with his stepfather remodeling homes and had been doing this work for about one year when he was arrested.

Future Plans

If at some point Mr. Morton is granted parole, he wants to return home to Winnemucca, Nevada to be near his parents and help care for them. He wants to spend time with his three grandchildren and his son. He would file for retirement benefits from the Railroad job and believes he would have enough money from the retirement to support himself. He understands that if granted parole that he would have Court and Parole obligations, and he recognizes the importance of fulfilling those obligations. He is agreeable to pursue counseling to assist with his transition back into the community if he is granted parole, and wants to continue the Alcoholics Anonymous meetings as this program has been helpful for him while in detention.

Substance Use History

Mr. Morton revealed the following substance use history:

- 1) Alcohol, at the time of the incident he was drinking a "12 pack of beer or more" daily, and he usually had his first beer by 12:00 p.m. or shortly after finishing work. He described a pattern of alcohol use increase as he aged during middle adulthood.
- 2) Cannabis, discontinued in 2002 after he lost the Railroad Company job.
- 3) Experimented with methamphetamine but denied any regular use.

After he lost the Railroad Company job, Mr. Morton completed a substance abuse treatment program in Salt Lake City, Utah in 2002. He completed the 28 day inpatient portion of the program, and then completed 6 months of outpatient treatment.

Mr. Morton described that after completing the 2002 treatment program that he was sober for a period of time, but gradually returned to drinking alcohol.

Medical History

Mr. Morton reported that he has neuroma in both feet, and is otherwise physically healthy.

Mental Health History

Mr. Morton reported that he has no history of psychiatric treatment for any mood or other psychiatric condition.

During his time in detention, he had appointments with a counselor for a few months because he had problems coping with the death of his child. He was prescribed Prozac which was discontinued a few months later. He denied any other counseling or psychiatric treatment during his time in detention.

When discussing his mood, he described that he often feels sad, depressed, and down. He knows he can request counseling while in detention, but feels he is coping with the depression OK at this time. He described that having frequent phone calls with his family members is helpful for his mood, and he enjoys the contact with them. His sleeping is fair.

He reported that he experienced suicidal thoughts one time, he acted on those thoughts, and this episode occurred on the day of the incident that led to the death of his wife. During this evaluation, Mr. Morton denied and did not appear to manifest problems with suicidal or homicidal ideations, or self-harm behavior.

Medication

Mr. Morton is currently prescribed indomethacin and acetaminophen for the food condition.

CLINICAL INTERVIEW

Mr. Morton was sufficiently oriented to person, place, time, and purpose. He denied and did not appear to manifest problems with suicidal or homicidal ideations, or self-harm behavior. His emotional expression and affect were sad, tearful, worried, depressed, and the emotional expressiveness increased when discussing the incident; Mr. Morton was given two breaks during the evaluation so he could calm himself. There were no observed problems with reality testing. His interpersonal social skills were good, and he presented with stable personality characteristics. His clinical presentation supported symptoms consistent with a history of alcohol and cannabis abuse currently in remission, and depression symptoms. His presentation supported good capacity for insight, and he reportedly has benefited from participation in the Alcoholics Anonymous program to manage the alcohol abuse.

PSYCHOLOGICAL TEST RESULTS AND INTERPRETATION

Structured Inventory of Malingered Symptomatology (SIMS)

The structured Inventory of Malingered Symptomatology (SIMS) is a 75 item, multi-axial, self-administered screening measure used for the detection of malingering across a variety of clinical and forensic settings. The SIMS was developed and intended for use with adults ages 18 years

and older and has been validated with clinical forensic samples, psychiatric samples, and non-clinical samples. The SIMS is appropriate for the screening of malingered psychiatric and cognitive complaints in a wide range of contexts for example forensic, neuropsychological, and medicolegal evaluations and a wide variety of settings for example inpatient, outpatient, and correctional. The SIMS is written at a 5th grade reading level.

SIMS Results:

Sub-Scale	Scale Raw Score	Clinical Cutoff Score	Descriptive
Neurologic Impairment (NI)	2	>2	Not Elevated
Affective Disorders (AF)	4	>5	Not Elevated
Psychosis (P)	1	>1	Not Elevated
Low Intelligence (LI)	0	>2	Not Elevated
Amnesic Disorders (AM)	0	>2	Not Elevated
Total Score	7	>14	Not Elevated

Mr. Morton's SIMS Total score of 7 was not significantly elevated, suggesting that his endorsement of psychiatric and cognitive symptoms is consistent with symptoms described by individuals who have a genuine disorder. Given the lack of other data that suggests the presentation of feigned symptoms, no further evaluation of malingering appears to be warranted at this time. The SIMS results are consistent with the MMPI-3 validity scale results that indicated a valid profile.

Minnesota Multiphasic Personality Inventory-3 (MMPI-3)

The Minnesota Multiphasic Personality Inventory-3 (MMPI-3) is a self-report inventory used in the assessment of clinically relevant variables to inform an individual's psychological functioning including clinical and personality characteristics. The inventory is used with adults aged 18 and older. The MMPI-3 is comprised of 52 scales including the Validity Scales. The 10 Validity Scales assess three types of threats to the interpretability of a protocol. The 42 Substantive Scales assess the individual's clinical and personality characteristics. Elevated scores on the Substantive Scales are intended to apply to T-scores of 65 or higher.

The Profile Scale Results are Listed Below:

Validity Scales:

	T-Score
CRIN (Combined Response Inconsistency/Random and Fixed Response):	63
VRIN (Variable Response Inconsistency/Random Response):	60
TRIN (True Response Inconsistency/Fixed Responding):	60
F (Infrequent Responses in General Population):	53
Fp (Infrequent Psychopathology Responses in Psychiatric Populations):	41
Fs (Infrequent Somatic Responses in Medical Patient Populations):	53
FBS (Symptom Validity Scale/Noncredible Somatic/Cognitive Complaints):	51
RBS (Response Bias Scale/Exaggerated Memory Complaints):	35
L (Uncommon Virtues/Rarely Claimed Moral Attributes or Activities):	44
K (Adjustment Validity/Claims of Uncommonly High Level of Psych. Adjust.):	59

Higher-Order (H-O) Scales:

	T-Score
EID (Emotional/Internalizing Dysfunction Pxs with Mood and Affect):	54
THD (Thought Dysfunction/Pxs with Disordered Thinking):	37
BXD (Behavioral/Externalizing Dysfunction/Under Controlled Behavior):	70

Restructured Clinical (RC) Scales:

	T-Score
RCd (Demoralization/General Unhappiness and Dissatisfaction):	56
RC1 (Somatic Complaints/Physical Health Complaints):	57
RC2 (Low Positive Emotions/Lack of Positive Emotions):	51
RC4 (Antisocial Behavior/Rule Breaking Irresponsible Behavior):	62
RC6 (Ideas of Persecution/Self Referential Beliefs That Others are a Threat):	40
RC7 (Dysfunctional Negative Emotions/Maladaptive Anxiety Anger Irritable):	44
RC8 (Aberrant Experiences/Unusual Perceptions or Thoughts):	44
RC9 (Hypomanic Activation (Overactivation Aggression Impulsive Grandios):	54

Specific Problems (SP) Scales:

Somatic Cognitive Scales:

	T-Score
MLS (Malaise/Overall Sense of Poor Health):	52
NUC (Neurological Complaints/Dizziness Weakness Paralysis etc.):	60
EAT (Eating Concerns/Problematic Eating Behaviors):	44
COG (Cognitive Complaints/Memory Pxs Attention Concentration Pxs):	38

Internalizing Scales:

	T-Score
SUI (Suicidal/Death Ideation):	58
HLP (Helplessness/Hopelessness):	40
SFD (Self-Doubt/Lacks Self-Confidence Feelings of Uselessness):	65
NFC (Inefficacy/Belief That One is Indecisive Inefficacious):	48
STR (Stress):	45
WRY (Worry):	49
CMP (Compulsivity/Engaging in Compulsive Behaviors):	42
ARX (Anxiety Related Experiences/Panic Dread Catastrophizing):	56
ANP (Anger Proneness/Easily Angered Impatient):	44
BRF (Behavior Restricting Fears/Fears Inhibit Normal Behavior):	43

Externalizing Scales:

	T-Score
FML (Family Problems):	36
JCP (Juvenile Conduct Problems):	52
SUB (Substance Abuse/Current and Past Misuse):	74
IMP (Impulsivity/Poor Impulse Control):	66
ACT (Activation/Heightened Excitation and Energy Level):	46
AGG (Aggression/Physically Aggressive Violent Behavior):	49
CYN (Cynicism/Beliefs That Others are Bad Untrusting):	43

Interpersonal Scales:	T-Score
SFI (Self-Importance/Beliefs of Having Special Talents Abilities):	43
DOM (Dominance/Domineering Behavior in Relationships):	40
DSF (Disaffiliativeness/Dislike People and Being Around People):	48
SAV (Social Avoidance/Not Enjoying and Avoiding Social Events):	37
SHY (Shyness/Uncomfortable Anxious Around Others):	55

Personality Psychopathology Five (PSY-5) Scales:

	T-Score
AGGR (Aggressiveness/Instrumental Goal Directed Aggression):	37
PSYC (Psychoticism/Disconnection From Reality):	38
DISC (Disconstraint/Under Controlled Behavior):	70
NEGE (Negative Emotionality Neuroticism/Anxiety Insecurity Worry Fear):	50
INTR (Introversion Low Positive Emotionality/Social Disengage Anhedonia):	40

Mr. Morton's MMPI-3 validity scale results support that the protocol is valid. There were no problems with un-scorable items. Mr. Morton responded to the items relevantly on the basis of their content, and there are no indications of over-reporting or under-reporting with all T-Scores on the validity scales <70. The resulting valid MMPI-3 protocol is likely to provide an accurate portrayal of Mr. Morton's psychological functioning. These results are consistent with the SIMS results that support no indication of malingering or feigned symptoms.

Mr. Morton's profile is consistent with individuals who present with a history of alcohol and other substance abuse and related irresponsible, impulsive, and self-defeating behavior. The results indicate that Mr. Morton tends to have a fairly strong inner critic and that he is prone to experiencing periods of self-doubt, and feelings of inadequacy, inferiority, and lack of self-confidence. For Mr. Morton, when confronted by adversity, personal inadequacies, or negative appraisals from others, he can become vulnerable to behaving in self-defeating ways for example substance use relapse and vulnerable to poor decision making given his problems with self-efficacy, self-confidence, and self-doubt. The results indicated stable personality trait characteristics, and did not indicate an antisocial orientation. The results did not support problems with reality testing or other serious psychopathology. The results indicate that Mr. Morton has the capacity to be receptive to authority and to learn from his mistakes, which are factors in terms of his suitability for treatment and interventions.

Diagnostically, Mr. Morton's profile along with his reported history and clinical presentation indicate problems with depression and low feelings of self-worth and self-esteem, and is consistent with a history of alcohol and substance abuse with related impulsivity and externalizing behaviors.

SUMMARY AND CONCLUSIONS

David Morton was referred for a general psychological evaluation by his attorney Karla Butko, Esq. This evaluation provides a general overview of psychological factors, and recommendations are provided as this was requested. To make the results more relevant, Mr. Morton's psychological features are considered in terms of his behaviors that led to gaining the attention of authorities and the charge that he was found guilty of.

The evidence indicates that serious alcohol abuse was a key contributing factor associated with the behaviors that gained the attention of law enforcement. Mr. Morton's presentation and the available evidence indicate that Mr. Morton's poor behaviors were primarily driven by alcohol abuse, addiction, acute intoxication, and related poor decision making and poor judgment. Alcohol and other substances are associated with impaired decision making, judgment, and contribute to disinhibition and impulsivity. Given Mr. Morton's lengthy period of incarceration, diagnostically the alcohol abuse is in remission under controlled conditions, but if he is granted parole in the future it would be important for Mr. Morton to pursue counseling to help him maintain sobriety given his history that support he had problems achieving and maintaining sobriety independently.

By history, Mr. Morton presented with a pattern of responsible and productive behavior, which is evidenced by his history of stable employment, and financially supporting his family. Additionally, Mr. Morton presented with a pattern of substance abuse with accompanying disinhibition, impulsivity, and externalizing behavior, which is evidenced by his reported history where he lost a job because of cannabis use, and his reported criminal history including two DUI's, and that he reportedly was intoxicated at the time of the reported domestic violence and the current 2009 incidents. For Mr. Morton, his presentation supports that the substance abuse has been a significant barrier for him, and has been a significant contributing factor associated with his reported inappropriate behaviors and his reported criminal record history.

Clinically, Mr. Morton presents with symptoms consistent with depression likely within the moderate range. Mr. Morton feels he is managing the emotional symptoms satisfactorily, and reported that he does not want to pursue therapy at this time. However, his presentation supports that he would likely benefit from psychotherapy treatment for the observed depression symptoms. While medication treatment for the mood problems is not necessarily indicated at this time, if he pursues therapy for the depression his treating therapist would be able to inform possible medication treatment needs. Mr. Morton's presentation along with the MMPI-3 results indicate stable personality characteristics, and he did not present with an antisocial orientation. Mr. Morton presented with satisfactory capacity for insight and empathy, the ability to learn from his mistakes, and he acknowledged responsibility for his behavior. When confronted by adversity, setbacks, personal inadequacies, or negative appraisals from others, he becomes vulnerable to behaving in self-defeating ways for instance substance use as a means to cope and avoid the emotional discomfort. Mr. Morton's presentation supported capacity for resiliency and the capacity to be receptive to and influenced by authority, which is evidenced by his participation in self-improvement certificate classes offered by the Department of Corrections, pursuing a job offered through the Department of Corrections, and that he reportedly has no record of disciplinary problems during his time in detention.

Finally, while it is this examiner's understanding that Mr. Morton is not currently a candidate for parole, at the same time given the reason for referral and that recommendations were requested, the following opinions and Recommendations provided below are offered for consideration. Alcohol abuse and depression are treatable conditions, and while the alcohol abuse is in remission at the same time it would be important for Mr. Morton that he pursue counseling to help him maintain sobriety if he is granted parole at some point. While Mr. Morton indicated that at the present time he does not want to pursue psychotherapy for the depression and related self-esteem and self-doubt issues, it is this examiner's opinion that he would likely benefit from psychotherapy treatment and Mr. Morton was encouraged to consider pursuing treatment while in detention. Mr. Morton appears to recognize the importance of maintaining sobriety, his future plans and goals are realistic, and he reportedly has access to positive social support including multiple family members. Mr. Morton's presentation indicates that he has the capacity, awareness, and judgment to manage his behavior, and to manage the terms of parole and Court obligations if parole is granted in the future. Mr. Morton has the capacity to benefit from the Recommendations provided below.

DIAGNOSTIC IMPRESSIONS

The following DSM-5 diagnostic impressions are based upon the information available at the time of this evaluation.

Defer to Medical

311 Unspecified Depressive Disorder, Symptoms Possibly Due to Persistent Depressive Disorder, Mild to Moderate Intensity Range
305.00 Alcohol Use Disorder, In Sustained Remission, Under Controlled Conditions
V62.5 Incarceration

RECOMMENDATIONS


Based on the information available at the time of this evaluation, the following recommendations are offered:

- 1) While Mr. Morton indicated that he does not want to pursue psychotherapy treatment at this time, Mr. Morton's presentation supports that he would likely benefit from therapy treatment for the depression and related self-doubt and self-esteem issues. If Mr. Morton pursues therapy, his treating therapist would be able to inform other treatment needs based on Mr. Morton's progress for example possible referral for medication assessment. If he pursues therapy treatment, Mr. Morton's treating source should be able to inform his progress within 3 to 4 months.
- 2) If Mr. Morton is granted parole in the future, it is recommended that he pursue counseling to help him maintain sobriety given his history of having problems achieving and maintaining sobriety independently.
- 3) Because Mr. Morton reported that participation in the Alcoholics Anonymous program was beneficial for him, recommend that Mr. Morton continue participation in that program once the Nevada Department of Corrections can resume that program given the COVID 19 health crisis. If he is granted parole in the future, recommend Mr. Morton continue to participate in the Alcoholics Anonymous program in the community.

- 4) Recommend Mr. Morton pursue psychoeducational certificate classes and programs such as the Non-Violent Communication, Conflict Resolution, and Re-Entry to Society certificate programs once those opportunities are again available through the Department of Corrections.
- 5) Mr. Morton would likely benefit from support and participation in a re-entry program that are often available for individuals released from prison to help with the individual's transition back into the community. If granted parole in the future, it is recommended that he participate in a re-entry program.

Thank you for this referral.

Respectfully Submitted,


Sheri J. Hixon-Brenenstall, Ph.D.
Nevada Licensed Psychologist

Disclaimer Statement/Cautionary Statement:

The reader should understand that this report is based upon all the information available to the writer at the time of this evaluation/assessment. Other information that may be pertinent but is presently unavailable or information that may be received after this report is completed, is of course not included. Any such other information that may be supplied to the reader may alter the findings or recommendations in the current report.

It is unethical to give the subject access to this evaluation without consulting a mental health professional who knows the subject's psychological capacity to manage and handle such information. The reader should understand that this report/dictation was created in part by using voice recognition software. The author has made a reasonable attempt to correct obvious errors, but it is possible that there are errors of grammar or possibly content that was not discovered prior to finalizing the report.

INVOICE

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Date: September 12, 2021

Karla Butko, Esq.
P.O. Box 1249
Verdi, Nevada 89439

Description			Total
	Psychological Evaluation – David Morton		\$2,000.00
	Case #CV 18,803		
	Date of Evaluation Appointment: September 5, 2021		
Subtotal			\$2,000.00
Total			\$2,000.00

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Winnemucca Police Department
Criminal Investigations Division

entrails and the interior of her abdomen were spilling forth from the wound. I was also informed that the bullet had exited her body from the area of her left buttock.

Once I had spoken with Cynthia I spoke with the on-duty physician, Dr. David Crutchfield. Dr. Crutchfield informed me that Cynthia had suffered a gunshot wound to her upper left abdomen. Dr. Crutchfield also told me that Cynthia had an entrance wound in aforementioned location and an exit wound in her left buttock area.

On 08-06-2009 at approximately 01:10 hrs I responded to the Humboldt County Jail reference a report that David Craig Morton (Hereafter referred to as Morton) was attempting to cause himself physical injury. When I arrived I found Morton in a small room in the booking area of the Humboldt County Jail. Morton had several minor lacerations to his neck that were apparently self-inflicted. Without any prompting from myself, Morton stated, "I can't believe I shot her. I am going to prison for a long time. I wish I had done it right the first time". Once Morton made this statement I informed him that if he wanted to speak with me, I would have to read him his Miranda rights. Morton agreed and I subsequently read him his Miranda rights. Morton subsequently waived his Miranda rights and agreed to speak with me.

Miranda given → Once Morton had initialed the Miranda form I asked him what had happened this evening. Initially Morton stated that Cynthia attacked him while he was sleeping in bed. Morton stated that Cynthia came home after being out at an unknown location and struck him several times while he was lying in bed. Morton stated that after he got out of bed they argued in the living room area of the residence. Morton said that during this argument Cynthia again struck him several times but stopped her attack to go to the bathroom. Thinking that this was odd, I confirmed this statement with Morton by stating, "She stopped hitting you to go to the bathroom?" Morton then stated that he was unsure exactly what happened he (Morton) stated, "I lost it and got the gun". Morton then said, "I can't believe I shot her". When I asked Morton where Cynthia was when she was shot, Morton said that she was seated on the toilet. When I asked him what his intention was when he not only pointed the gun towards Cynthia but discharged it as well, Morton said that he was just trying to scare her. I questioned Morton at length about his intentions when he discharged the firearm at Cynthia. Morton repeatedly stated that he was just trying to scare Cynthia and was not trying to kill her. Morton stated that he was going to scare her and then kill himself with the gun. After speaking with Morton about his intentions in regards to Cynthia, I asked him where the gun had been stored. Morton stated that the gun had been in the living room behind the front door. Morton said that he retrieved the gun from its stored position and then went to the bathroom where Cynthia was.

Winnemucca Police Department
Criminal Investigations Division

Once Morton made these admissions I asked him again how the fight had started. Morton again said that Cynthia had attacked him. Morton said that this was a commonality lately in which she would get intoxicated and they would argue. Morton said that he would only try to fend off her blows, but would not strike Cynthia.

While I was speaking with Morton I observed several old injuries to his person. Morton had multiple scabbed over abrasions on his hands and arms. When I asked him where he had been struck this evening by Cynthia, Morton initially stated, "It doesn't matter". I then told him that I needed to confirm his statement that Cynthia had attack him. I then questioned him further as to where she had struck him. Morton then pointed to his face and the top portion of his head. I did not observe any marks, redness or any other indicators that would indicate new physical injuries to these areas. I then asked Morton if I could photograph his injuries. Morton refused to give me permission to photograph his injuries. Once Morton had finished relaying his verbal statement I asked him how much alcohol he had consumed this evening. Morton stated, "About three or four beers". While we had been speaking I had smelled a moderate odor common to that of an intoxicating beverage coming from his person. Although Morton had this odor emanating from his person he appeared to me to be very cognizant of what was happening. His speech was not slurred and even though his movements were minimal he did not appear to stagger or walk as if he was intoxicated. However due to the fact that he did have this odor I asked Morton if he would consent to a legal breath analysis for blood alcohol content. Morton stated he would. Due to the fact that I did not have my Intoxilyzer 5000 Certification Card on my person I asked Officer M. Hinton to conduct the test for me. At approximately 01:59 hrs Officer Hinton administered the test. The results were: 0.276, and 0.266 b.a.c.

Once the test was completed Morton asked what the status of his wife was. I informed him that she was still alive, but was in critical condition. Morton then said that he didn't want to talk about the incident anymore at this time. Because of this I terminated the contact with Morton.

On 08-06-2009 at approximately 04:05 hrs I obtained a search warrant to search the residence located at 1565 Harmony Rd for evidence pertaining to the shooting. The search warrant also authorized me to search the person of David Craig Morton and photograph his body for any signs of injury. At approximately 04:35 hrs I executed the search warrant at 1565 Harmony Rd. with the assistance of Officers Cassinelli and Haylett.

I started the search warrant by photographing the exterior of the residence. Due to the fact that it was starting to rain, I located and photographed the firearm in the backyard of 1561 Harmony Rd. The weapon was lying in the grass apparently where it had been dropped by Robert Morton. The weapon was a British .303 rifle. It was lying on its right side with the bolt action facing towards



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1/10/08

Drugs Belonging to Cynthia					
TYPE	DATE	#	DOCTOR	LOCATION	
Hydrocodone/APAP TAB 7.5-750	1/15/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CARISOPRODOL TAB 350 MG	2/13/2009	60	HARRISON	WAL*MART 3010 POTATO ROAD WINNEMUCCA	
AVINZA 30mg	2/13/2009	???	HUNTER	???	
CARISOPRODOL TAB 350 MG	3/11/2009	60	HARRISON	WAL*MART 3010 POTATO ROAD WINNEMUCCA	
HYDROCO/APAP TAB 5-500MG	3/30/2009	20	GRANT	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP TAB 7.5-750	4/1/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
TORSEMIDE 10 MG TAB	4/2/2009	30	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CARVEDILOL TAB 35MG	4/2/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LISINAPRIL TAB 20MG	4/2/2009	30	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
TRAMADOL HCL 50MG	4/15/2009	60	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP TAB 7.5-750	4/27/2009	60	HARRISON	WAL*MART 3010 POTATO ROAD WINNEMUCCA	
CARISOPRODOL TAB 350 MG	4/27/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA CAP 100MG	4/27/2009	90	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CLONIDINE HCL 0.1MG	5/13/2009	60	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP TAB 7.5-750	5/27/2009	60	HARRISON	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
HYDROCO/APAP 7.5-750	5/27/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CARVEDILOL TAB 25MG	6/11/2008	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CLONIDINE HCL TAB 0.2MG	6/18/2009	30	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA CAP 100MG	6/17/2009	60	CHARLES STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA 100MG	6/17/2009	60	CHARLES STRINGHAM	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
CARISOPRODOL TAB 350 MG	6/30/2009	60	HARRISON	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
LYRICA CAP 100MG	7/9/2009	60	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LISINAPRIL TAB 20MG	7/20/2009	30	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA CAP 100MG	7/27/2009	90	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA 100MG	7/27/2009	52	STRINGHAM	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
CARISOPRODOL TAB 350 MG	7/28/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP TAB 7.5-750	7/28/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
AVINZA 30 MG	1/18/2008	30	HUNTER	KHOURYS PHARMACY 1041 GRASS VALLEY ROAD WINNEMUCCA	
METHADONE HCL 5MG TAB	1/22/2008	90	RICHARD HARRIS	LONGS DRUGS 2878 VISTA BOULEVARD SPARKS, NEVADA	
OXYCODONE HCL 20 MG ER TAB	1/22/2008	90	HARRIS	LONGS DRUGS 2878 VISTA BOULEVARD SPARKS, NEVADA	
OXYCOD/APAP 5-500MG	2/28/2005	30	WILLIAMS (PA)	7081 S. REDWOOD ROAD WEST JORDAN, UT	
METHADONE HCL 5MG TAB	3/13/2008	90	RICHARD HARRIS	LONGS DRUGS 2878 VISTA BOULEVARD SPARKS, NEVADA	
OXYCONTIN CR TAB	3/14/2008	90	HARRIS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CLONIDINE HCL TAB 0.3MG	5/12/2008	60	ANDREWS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCODONE/APAP 10/500	5/2/2008	30	MARY JEAN WALKER	SAVON DRUGS 3555 WEST 3500 SOUTH WEST VALLEY CITY UT	
CYCLOBENZAPRINE 10MG	5/9/2002	90	RADA	HARMONS APOTHECARY 5454 S. REDWOOD ROAD TAYLORSVILLE, UT	
BUTAL/APAP/CAF 50/325/40	5/23/2008	90	ANDREWS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
SEROQUEL 25MG	6/2/2008	30	MARY WALKER UT	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
CLONIDINE HCL TAB 0.3MG	6/5/2008	60	ANDREWS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
AVINZA 30MG	6/6/2008	30	MARY WALKER	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
METHADONE HCL 5MG TAB	6/13/2008	90	ANDREWS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
OXYCONTIN CR TAB 20MG	6/13/2008	90	HARRIS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
BUTAL/APAP/CAF 50/325/40	7/1/2008	90	ANDREWS	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
CARVEDILOL TAB 25MG	7/2/2009	60	HARRISON	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
TRAMADOL HCL 50MG	7/9/2009	60	STRINGHAM	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
HYZAAR 100-25 TABS	7/15/2008	30	MARK ANDREWS	OLSENS CORNER 147 S. BRIDGE STREET WINNEMUCCA	
INDOMETHACIN 50MG CAPS	9/10/2008	60	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP 5-500MG	10/1/2008	20	BABU	WAL*MART 3010 POTATO ROAD WINNEMUCCA	
LYRICA CAP 50MG	10/23/2008	18	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
LYRICA CAP 50MG	10/25/2008	12	STRINGHAM	RALEYS 1125 W. WINNEMUCCA BOULEVARD	
HYDROCO/APAP 5-500MG	10/23/2007	12	BABU	KHOURYS PHARMACY 1041 GRASS VALLEY ROAD WINNEMUCCA	
CARISOPRODOL TAB 350 MG	11/20/2000	30	HUSSELL	RIVERTON DRUG 1751 W. 12800 SOUTH RIVERTON, UT	
CARVEDILOL 25MG 93FILLS	11/26/2008	60	CHARLES STRINGHAM	WAL*MART 3010 POTATO ROAD WINNEMUCCA	
BUTAL/APAP/CAF 50/325/40	12/7/2007	90	ANDREWS	KHOURYS PHARMACY 1041 GRASS VALLEY ROAD WINNEMUCCA	
LEXAPRO 10MG	N/A	7	SAMPLE	SAMPLE	
BENICAR 40MG	N/A	7	SAMPLE	UNK	
BENICAR 40MG	N/A	7	SAMPLE	UNK	
ALBUTEROL USP INHAALATION	N/A	N/A	N/A	N/A	
LYRICA 50MG	N/A	21	SAMPLE	SAMPLE	

ASHLEY ODORIZZI

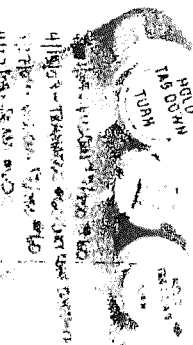
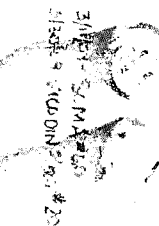
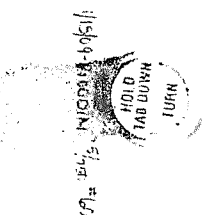
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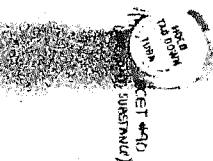
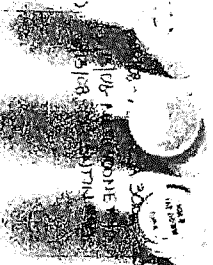
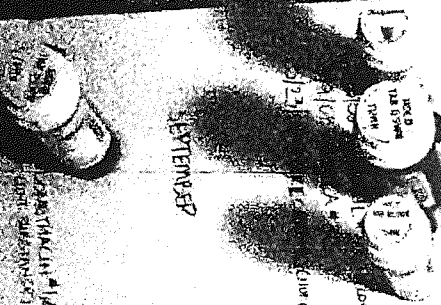
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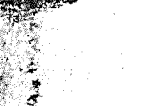
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7

Case No. CV0018803

Dept. No. 2

FILED

2021 NOV 30 PM 4:54

TAMARA SPRO
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF
STATE OF NEVADA IN AND FOR THE COUNTY OF HUMBOLDT

David Morton,

Petitioner,

vs.

State of Nevada,

Respondent.

**NOTICE OF ENTRY OF
DECISION OR ORDER**

PLEASE TAKE NOTICE that on November 30, 2021, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this notice is mailed to you. This notice was mailed on December 1, 2021.

DATED November 30, 2021



TAMI RAE SPERO, CLERK OF THE COURT

(SEAL)

1 Case No. CV 18,803

2 Dept. No. 2

FILED

2021 NOV 30 PM 4:08

MM
TAMARAE SPENCER
DIST. COURT CLERK

3
4 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF HUMBOLDT**
6

7 DAVID MORTON,

8 Petitioner,

9 vs.

10 STATE OF NEVADA,
11 Et al,

12 Respondent.
13 _____/.

ORDER PARTIALLY GRANTING
PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS &
STAYING DECISION PENDING
BELATED APPEAL

14 This matter came before the Court on October 6 & 7, 2021, on Petitioner's Writ of
15 Habeas Corpus (postconviction) and the Supplemental Petition for Writ of Habeas Corpus
16 (postconviction). The Petition appeared with retained counsel, Karla K. Butko, Esq. and
17 Anthony Gordon, Deputy District Attorney for Humboldt County appeared representing the
18 interest of Respondent and the State of Nevada. This Court has reviewed the pleading on file,
19 considered the evidence and arguments of the Parties presented at the evidentiary hearing and
20 incorporates the entirety of the record in Case Number CR09-5709. The Court issues its findings
21 and Order.

22 **CASE HISTORY.**

23 This case proceeded to jury trial with the Honorable Judge Richard Wagner presiding
24 over the trial. David Morton, petitioner herein, was represented by appointed counsel, Richard
25 Molezzo. During the trial, Mr. Molezzo was assisted by pro bono counsel, Del Hardy. The State
26 was represented by Russell Smith, then District Attorney of Humboldt County and Brian
27 Williams, then Chief Deputy District Attorney of Humboldt County. The jury convicted Mr.
28

1 Morton of second degree murder with the use of a deadly weapon. Judge Wagner sentenced Mr.
2 Morton to a term of 25 years in prison with parole eligibility after service of ten years + a term of
3 8-20 years for the deadly weapon enhancement term. A concurrent term of 6-15 years was
4 imposed on a felony charge of discharging a firearm within a structure. The judgment of
5 conviction was entered on January 20, 2011. There was no direct appeal.

6 Mr. Morton filed a notice of appeal in Docket 60625 which was dismissed by the Nevada
7 Supreme Court on May 22, 2012, on the basis that the Court did not have jurisdiction to handle
8 the appeal as it was deemed to be a postconviction matter.

9 Mr. Morton filed an initial and timely petition for writ of habeas corpus (postconviction)
10 on December 29, 2011. Counsel Hy Forgeron was then appointed to represent Mr. Morton. No
11 action was taken by Mr. Forgeron to pursue the writ. Ultimately, Mr. Morton contacted the
12 Court by letter seeking the status of his postconviction. The court removed Mr. Forgeron as
13 counsel and appointed counsel Lockie and MacFarlan of Elko to represent Mr. Morton. No
14 action was taken by their firm to pursue the writ so Mr. Morton retained counsel Karla K. Butko
15 to represent him. Ms. Butko filed a supplemental petition for writ of habeas corpus
16 (postconviction) on Mr. Morton's behalf on September 10, 2019.

17 The parties stipulated to allow the State additional time to respond to the petition and
18 supplemental petition but the State did not file its response. Ms. Butko sought an evidentiary
19 hearing and the court granted that request. The hearing was set for October 6 & 7, 2021. On
20 October 1, 2021, the State filed its responsive pleading.

21 The case proceeded to evidentiary hearing on October 6 & 7, 2021. The Court heard
22 evidence and argument of the parties.

23 LEGAL STANDARDS.

24 A district court reviews claims of ineffective assistance of counsel under *Strickland v.*
25 *Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under *Strickland*, to prevail
26 upon a claim of ineffective assistance of trial counsel, a defendant must establish two elements:

1 (1) counsel provided deficient performance and (2) the deficient performance prejudiced the
2 defense. *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (Nev. 1996). To prove
3 deficient performance, a defendant must show counsel's performance fell below and objective
4 standard of reasonableness. To prove prejudice, a defendant must demonstrate a reasonable
5 probability that, but for counsel's errors, the result of the trial would have been different.

6 A petition must demonstrate the facts underlying a claim of ineffective assistance of
7 counsel by a preponderance of the evidence, and a district court's factual findings regarding a
8 claim of ineffective assistance of counsel are entitled to deference on appeal. *Riley v. State*, 110
9 Nev. 638, 878 P.2d 272 (1994) and *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33
10 (2004).

11 The constitutional right to effective assistance of counsel extends to a direct appeal.
12 *Burke v. State*, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance
13 of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in
14 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *Kirksey v.*
15 *State*, 112 Nev. 980, 923 P.2d 1102 (Nev. 1996).

16 Counsel must consult with the client about the procedures for and advantages and
17 disadvantages of an appeal, and counsel's failure to do so is deficient performance for purposes
18 of proving an ineffective assistance of counsel claim. U.S. Const. amend., VI; *Roe v. Flores-*
19 *Ortega*, 528 U.S. 470, 477-81; *Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999);
20 and *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999) and *Toston v. State*, 127 Nev.
21 971, 267 P.3d 795 (2011).

22 Further, the Court notes the application of NRAP 4 (c) which provides:

23 An untimely notice of appeal from a judgment of conviction and sentence may be filed
24 only under the following circumstances:

25 (A) A postconviction petition for a writ of habeas corpus has been timely and
26 properly filed in accordance with the provisions of NRS 34.720 to 34.830,
27 asserting a viable claim that the petitioner was unlawfully deprived of the right to
28 a timely direct appeal from a judgment of conviction and sentence; and

1 (B) The district court in which the petition is considered enters a written order
2 containing;

3 (i) specific findings of fact and conclusions of law finding that the petitioner has
4 established a valid appeal-deprivation claim and is entitled to a direct appeal with
5 the assistance of appointed or retained appellate counsel;

6 (ii) if the petitioner is indigent, directions for the appointment of appellate
7 counsel, other than counsel for the defense in the proceedings leading to the
8 conviction, to represent the petitioner in the direct appeal from the conviction and
9 sentence; and

10 (iii) directions to the district court clerk to prepare and file—within 5 days of the
11 entry of the district court's order—a notice of appeal from the judgment of
12 conviction and sentence on the petitioner's behalf in substantially the form
13 provided in Form 1 in the Appendix of Forms.

14 FINDINGS OF FACT

15 1. The Petitioner was convicted by jury verdict of second degree murder with the use of
16 a deadly weapon and discharging a firearm within a structure for a shooting incident which took
17 the life of his wife, Cindy Morton. The Petitioner was sentenced by Judge Richard Wagner to
18 serve 25 years in prison with parole eligibility after service of 10 years + a term of 8-20 years for
19 the deadly weapon enhancement term. A concurrent term of 6-15 years was imposed on a felony
20 charge of discharging a firearm within a structure. The judgment of conviction entered on
21 January 20, 2011. See case number CR09-5709.

22 2. The petitioner filed a first and timely Petition for Writ of Habeas Corpus
23 (postconviction). Counsel was retained and filed a Supplemental Petition for Writ of Habeas
24 Corpus (postconviction).

25 3. The State filed a Response to the Petition & Supplemental Petition for Writ of Habeas
26 Corpus (postconviction).

27 4. The Court held an evidentiary hearing on the Petition & Supplemental Petition for
28 Writ of Habeas Corpus (postconviction) on October 6 & 7, 2021.

5. Trial counsel Richard Molezzo and Del Hardy testified at the hearing. The Court also
heard testimony from Dustin Grate, defense investigator, Brian Williams, prosecutor at the trial
stage, Michael Smock, Dave Milton, Dave Garrison, Mitchell Hinton, Beverly Upshaw, Royce

1 Upshaw, and Terry Morton. Sheri Hixon-Brenenstall, Ph.D. a psychologist and defense expert
2 witness, testified concerning a psychological evaluation report that she recently prepared
3 regarding Petitioner. David Morton, Petitioner testified in support of his petition for writ of
4 habeas corpus.

5 6. The Court also considered the exhibits offered during the evidentiary hearing on this
6 matter.

7 7. The Court considered the testimony at the evidentiary hearing and makes the
8 following findings:

9 a. The Petitioner established and proved by a preponderance of the evidence a valid
10 appeal deprivation claim under NRAP 4 (c) and is entitled to representation by counsel on a
11 belated appeal.

12 b. Mr. Molezzo testified that he did speak with Mr. Morton about a direct appeal but that
13 the conversation would have only been a ten to thirty second conversation with Mr. Morton
14 directly after the conclusion of the sentencing proceeding. Mr. Molezzo did not recall a lengthy
15 discussion of any type after the date of the sentencing hearing. Mr. Molezzo testified it was his
16 practice to prepare a written letter to defendants advising them of their right to appeal but no such
17 letter was brought forth as evidence at this proceeding. There was no testimony by Mr. Molezzo
18 that he recalled having a discussion with Mr. Morton which included appellate issues or the pros
19 or cons of a direct appeal. Mr. Molezzo advised the Court that he is not an appellate attorney and
20 would not have handled the direct appeal himself but could have sought appointment of alternate
21 counsel for Mr. Morton.

22 c. During the hearing, issues that were properly the subject of direct appeal became the
23 subject of testimony, which were contested by the parties to the proceeding. Those issues were
24 as follows:

25 -- Failure to instruct the jury on the accurate definition of homicide, as agreed by the court.

26 — The improper *Kazalyn* instruction provided to the jury by the court
27
28

1 — Failure to instruct the jury that the State had to prove beyond a reasonable doubt that the
2 defendant was not adequately provoked by actions of the victim to reduce the charge to
3 manslaughter
4 — bias of the trial court against trial counsel Hardy
5 — suspect evidence and findings of the district court at the sentencing stage of the case/
6 findings of the sentencing court that were unsupported by the trial record
7 — suspect evidence and argument in the presentence report
8 — unsworn victim evidence testimony at the sentencing hearing
9 — failure of the sentencing court to allow Mr. Morton to maintain his innocence at the
10 sentencing stage of the case
11 — attempt by the court to impose an illegal sentence in excess of that available at law for the
12 deadly weapon enhancement
13 — admission of bad act evidence of prior domestic battery by the defendant but failure to
14 admit domestic battery evidence of the victim
15 — cumulative graphic photographs admitted (50+ pictures)
16 — admission of statement of defendant when it was proven he had a 0.276 blood alcohol
17 hours after the shooting and at the time of the confession/admission
18 d. Mr. Molezzo admitted that the failure to appeal was not tactical but rather an error on
19 his part. Mr. Morton testified that he spoke with Mr. Molezzo about two weeks after the
20 sentencing hearing and requested that Mr. Molezzo file a direct appeal on his behalf, but that
21 during the conversation, Mr. Molezzo advised him that he could end up worse off by appealing
22 his conviction.

23 8. Postconviction counsel Karla K. Butko indicated that she sought a remedy of a
24 belated appeal on behalf of her client, David Morton.

25 9. The Court believes that it is appropriate to stay its decision on the remaining
26 allegations of the Petition & Supplemental Petition for Writ of Habeas Corpus (postconviction)
27
28

1 pending the results of the belated appeal which is granted herein, and that the appellate courts
2 should first address petitioner's appellate as the Court would not want to address in the Writ any
3 claims that were properly raised on direct appeal. Hence, all remaining claims before the district
4 court are stayed pending appeal.

5 **ORDER**

6 The Court applies the legal standards to the facts in this case. The Court concludes that
7 Petitioner met his burden to prove beyond a preponderance of the evidence that he lost his direct
8 appellate rights due to counsel's error, and that he has met his burden under NRAP 4 (c) of
9 being deprived of his right to a timely direct appeal. As a result, this Court grants Mr. Morton a
10 belated appeal pursuant to the remedy found in NRAP 4 (c). The Court has been advised that
11 Karla K. Butko will remain as counsel of record to represent Mr. Morton on the belated appeal.

12 The district court clerk is ordered to prepare and file—within 5 days of the entry of this
13 Order—a notice of appeal from the judgment of conviction and sentence on the petitioner's
14 behalf in substantially the form provided in Form 1 in the Appendix of Forms.

15 The remaining postconviction claims raised in the Petition & Supplemental Petition for
16 Writ of Habeas Corpus (postconviction) are stayed by the Court pending the results of the belated
17 appeal which was granted herein.

18 GOOD CAUSE APPEARING, and based on the foregoing, the Petition & Supplemental
19 Petition for Writ of Habeas Corpus (postconviction) is partially granted and partially stayed,
20 pending the results of the belated appeal, which was granted herein.

21 DATED this 30th day of November, 2021.

22
23
24 

25 _____
DISTRICT JUDGE

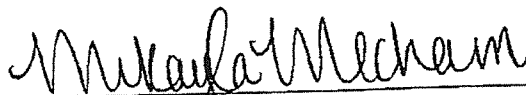
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Humboldt County Clerk's office for the Sixth Judicial District Court, and am not a party to, nor interested in, this action; and that on the 30th day of November 2021, I caused to be served a true and correct copy of the enclosed **ORDER PARTIALLY GRANTING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS & STAYING DECISION PENDING BELATED APPEAL** upon the following parties:

KARLA K. BUTKO, ESQ.
P.O. Box 1249
Verdi, Nevada 89439
Via US Mail

MICHAEL MACDONALD
HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89445
Via DCT box

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Via US Mail



MIKAYLA MECHAM
Deputy Clerk
Sixth Judicial District Court

David Morton, Petitioner, vs. State of Nevada, Respondent.
Sixth Judicial District Court of Nevada, Case No. CV0018803

DECLARATION OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am an employee of the Humboldt County Clerk's Office, and my business address is 50 W 5th Street, Winnemucca, NV 89445. On this day I caused to be served the following document(s):

NOTICE OF ENTRY OF DECISION OR ORDER

 X By placing in a sealed envelope, with postage fully prepaid, in the United States Post Office, Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in the designated area for pick up by the United States Postal Service.

David Morton #1062758
Lovelock Correctional Center
1200 Prison Road
Lovelock NV 89419

Karla K. Butko, Esq.
PO Box 1249
Verdi, Nevada 89439

Michael Macdonald
Humboldt County District Attorney
PO Box 909
Winnemucca, NV 89446

Aaron Ford
Nevada Attorney General
100 N. Carson Street
Carson City NV 89701

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on November 30, 2021 at Winnemucca, Nevada.



Humboldt County Clerk

FILED

2021 DEC -2 PM 2:28

JAMES E. SPEDD
CLERK OF DISTRICT COURT

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR0905709

DAVID CRAIG MORTON,

Dept. No. 2

Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that David Craig Morton, the Defendant above-named, hereby appeals to the Supreme Court of Nevada, from the Judgment of Conviction dated January 20, 2011. This appeal is being filed by the Clerk of the Court in compliance with the terms of the order and NRAP 4(C) because the District Court found an appeal deprivation claim valid after a timely post conviction case was heard by the Court with an Order Partially Granting Petitioner's Petition for Writ of Habeas Corpus and Staying Decision Pending Belated Appeal dated November 30, 2021 with Notice of Entry of Order dated November 30, 2021.

DATED this 2nd day of December, 2024.


Humboldt County Clerk

1049

Case No. CR09-5709

Dept. No. 1

2011 JUN 20 AM 10:57

Acad

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF HUMBOLDT.

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

JUDGMENT OF CONVICTION

DAVID CRAIG MORTON

DOB: 10/12/1959,

Defendant. /

WHEREAS, on the 2nd day of November, 2009, the Defendant entered his plea of not guilty to the charges of OPEN MURDER, WITH THE USE OF A DEADLY WEAPON, a Category A Felony, in violation of NRS 200.010, NRS 200.020, NRS 200.030, NRS 200.033 and NRS 193.165, and DISCHARGING A FIREARM FROM WITHIN OR FROM A STRUCTURE, a Category B Felony, in violation of NRS 202.287(b), and the matter having been tried before the Honorable Judge Richard A. Wagner.

At the time Defendant entered the plea of not guilty, this Court informed the Defendant of the privilege against compulsory self-incrimination, the right to a speedy trial, the right to a

1 trial by jury, the right to compulsory process to compel witnesses
2 to testify on behalf of the Defendant and the right to confront the
3 accusers. That after being so advised, the Defendant stated that
4 these rights were understood and still desired this Court to accept
5 the plea of not guilty.
6

7 The Court having accepted Defendant's plea of not guilty, set
8 the date of September 13-24, 2010, at the hour of 9:00 a.m. as the
9 date and time for jury trial. On the 22nd day of September, 2010,
10 Defendant was found guilty of Open Murder in the Second Degree With
11 the Use of a Deadly Weapon and Discharging a Firearm From Within or
12 From a Structure.
13

14 Furthermore, at the time Defendant entered the plea of not
15 guilty and at the time of sentencing, Defendant was represented by
16 attorney, RICHARD A. MOLEZZO, Esq.; also present in Court were TAMI
17 RAE SPERO, Humboldt County Court Clerk or her designated agent; ED
18 KILGORE, Sheriff of Humboldt County or his designated agent; DEBBIE
19 OKUMA, representing the Division of Parole and Probation; and BRIAN
20 WILLIAMS, Humboldt County Deputy District Attorney representing the
21 State of Nevada.
22

23
24 Defendant appeared on January 14, 2011 represented by counsel,
25 and Defendant having been given the opportunity to exercise the
26 right of allocution and having shown no legal cause why judgment
27 should not be pronounced at this time.
28

The above-entitled Court having accepted the jury's verdict of

1 guilty on September 22, 2010, of OPEN MURDER IN THE SECOND DEGREE
2 WITH THE USE OF A DEADLY WEAPON, a Category A Felony, in violation
3 of NRS 200.010, NRS 200.020, NRS 200.030, NRS 200.033, and NRS
4 193.165, and DISCHARGING A FIREARM FROM WITHIN OR FROM A STRUCTURE,
5 a Category B Felony, in violation of NRS 202.287(b), the Defendant
6 was thereby ordered by the Court to pay an administrative
7 assessment fee of \$25 to the Clerk of the above entitled Court. In
8 addition, the Defendant must, pursuant to NRS 176.0913, submit a
9 biological specimen under the direction of the Nevada Department of
10 Corrections to determine the Defendant's genetic markers. Further,
11 pursuant to NRS 716.0915, in addition to any other penalty the
12 Defendant must pay a \$150 DNA fee, payable to the Humboldt County
13 Clerk of the Court and may not be deducted from any other fines or
14 fees imposed by the Court.
15
16
17

18 After making a specific findings of fact pursuant to NRS
19 193.165, the Court sentenced the Defendant, DAVID CRAIG MORTON, as
20 follows:

21 Count I: Open Murder in the Second Degree with the Use of
22 a Deadly Weapon, a Category A Felony - imprisonment in the Nevada
23 Department of Corrections for a minimum term of one hundred twenty
24 (120) months and a maximum term of three hundred (300) months, with
25 eligibility for parole beginning when a minimum of 10 years has
26 been served, with credit for time of 526 days, in addition to time
27 served from January 14, 2011 until transfer to the Nevada
28

1 Department of Corrections;

2 Additional penalty: In addition to the foregoing term of
3 imprisonment, by imprisonment in the Nevada Department of
4 Corrections for a minimum term of ninety-six (96) months and a
5 maximum term of two hundred forty (240) months. Further, that the
6 sentence run consecutive to the sentence imposed in Count I; and
7

8 Count II: Discharging a Firearm From Within or From a
9 Structure - imprisonment in the Nevada Department of Corrections
10 for a minimum term of seventy-two (72) months and a maximum term of
11 one hundred eighty (180) months. Further, that the sentence in
12 Count II run concurrent to the sentences imposed in Count I and the
13 additional penalty.
14

15 Furthermore, bail, if any, is hereby exonerated.

16 RICHARD A. MOLEZZO, Esq., represented the Defendant
17 during all stages of the proceedings.
18

19 BRIAN WILLIAMS, Deputy District Attorney, represented the
20 State of Nevada during all stages of these proceedings.

21 DEBBIE OKUMA, represented the Division of Parole and
22 Probation during all stages of these proceedings.
23


24 Therefore, the clerk of the above-entitled Court is
25 hereby directed to enter this Judgment of Conviction as a part of
26 the record in the above-entitled matter.

27 Furthermore, pursuant to NRS 239B.030., the undersigned
28 hereby affirms this document does not contain the social security

HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89446

number of any person.

DATED this 19th day of January, 2011, in the City of
Winnemucca, County of Humboldt, State of Nevada.


DISTRICT JUDGE

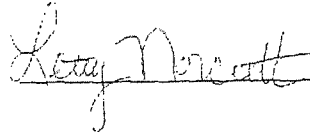
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 20th day of January, 2011, I delivered at Winnemucca, Nevada, by the following means, a copy of the JUDGMENT OF CONVICTION to:

Richard A. Molezzo, Esq.
96 & 98 Winter Street
Reno, Nevada 89503

Division of Parole and Probation
3505 Construction Way
Winnemucca, Nevada 89445

- (X) U.S. Mail
- () Certified Mail
- () Hand-delivered
- () Placed in box at DCT
- () Via Fax



HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89446

1 Case No. CV 18,803

2 Dept. No. 2

FILED

2021 NOV 30 PM 4:08

MM
JAN GARCIA
DIST COURT CLERK

3
4 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF HUMBOLDT**
6

7 DAVID MORTON,

8 Petitioner,

9 vs.

10 STATE OF NEVADA,

11 Et al,

12 Respondent.

ORDER PARTIALLY GRANTING
PETITIONER'S PETITION FOR
WRIT OF HABEAS CORPUS &
STAYING DECISION PENDING
BELATED APPEAL

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20 incorporates the entirety of the record in Case Number CR09-5709. The Court issues its findings
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24 over the trial. David Morton, petitioner herein, was represented by appointed counsel, Richard
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26 was represented by Russell Smith, then District Attorney of Humboldt County and Brian
27 Williams, then Chief Deputy District Attorney of Humboldt County. The jury convicted Mr.

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2 Morton to a term of 25 years in prison with parole eligibility after service of ten years + a term of
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12 Court by letter seeking the status of his postconviction. The court removed Mr. Forgeron as
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14 action was taken by their firm to pursue the writ so Mr. Morton retained counsel Karla K. Butko
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18 supplemental petition but the State did not file its response. Ms. Butko sought an evidentiary
19 hearing and the court granted that request. The hearing was set for October 6 & 7, 2021. On
20 October 1, 2021, the State filed its responsive pleading.

21 The case proceeded to evidentiary hearing on October 6 & 7, 2021. The Court heard
22 evidence and argument of the parties.

23 LEGAL STANDARDS.

24 A district court reviews claims of ineffective assistance of counsel under *Strickland v.*
25 *Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) . Under *Strickland*, to prevail
26 upon a claim of ineffective assistance of trial counsel, a defendant must establish two elements:

1 (1) counsel provided deficient performance and (2) the deficient performance prejudiced the
2 defense. *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (Nev. 1996). To prove
3 deficient performance, a defendant must show counsel's performance fell below an objective
4 standard of reasonableness. To prove prejudice, a defendant must demonstrate a reasonable
5 probability that, but for counsel's errors, the result of the trial would have been different.

6 A petition must demonstrate the facts underlying a claim of ineffective assistance of
7 counsel by a preponderance of the evidence, and a district court's factual findings regarding a
8 claim of ineffective assistance of counsel are entitled to deference on appeal. *Riley v. State*, 110
9 Nev. 638, 878 P.2d 272 (1994) and *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33
10 (2004).

11 The constitutional right to effective assistance of counsel extends to a direct appeal.
12 *Burke v. State*, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective assistance
13 of appellate counsel is reviewed under the "reasonably effective assistance" test set forth in
14 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *Kirksey v.*
15 *State*, 112 Nev. 980, 923 P.2d 1102 (Nev. 1996).

16 Counsel must consult with the client about the procedures for and advantages and
17 disadvantages of an appeal, and counsel's failure to do so is deficient performance for purposes
18 of proving an ineffective assistance of counsel claim. U.S. Const. amend., VI; *Roe v. Flores-*
19 *Ortega*, 528 U.S. 470, 477-81; *Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999);
20 and *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999) and *Toston v. State*, 127 Nev.
21 971, 267 P.3d 795 (2011).

22 Further, the Court notes the application of NRAP 4 (c) which provides:

23 An untimely notice of appeal from a judgment of conviction and sentence may be filed
24 only under the following circumstances:

25 (A) A postconviction petition for a writ of habeas corpus has been timely and
26 properly filed in accordance with the provisions of NRS 34.720 to 34.830,
27 asserting a viable claim that the petitioner was unlawfully deprived of the right to
28 a timely direct appeal from a judgment of conviction and sentence; and

1 (B) The district court in which the petition is considered enters a written order
2 containing:

3 (i) specific findings of fact and conclusions of law finding that the petitioner has
4 established a valid appeal-deprivation claim and is entitled to a direct appeal with
5 the assistance of appointed or retained appellate counsel;

6 (ii) if the petitioner is indigent, directions for the appointment of appellate
7 counsel, other than counsel for the defense in the proceedings leading to the
8 conviction, to represent the petitioner in the direct appeal from the conviction and
9 sentence; and

10 (iii) directions to the district court clerk to prepare and file—within 5 days of the
11 entry of the district court's order—a notice of appeal from the judgment of
12 conviction and sentence on the petitioner's behalf in substantially the form
13 provided in Form 1 in the Appendix of Forms.

14 FINDINGS OF FACT

15 1. The Petitioner was convicted by jury verdict of second degree murder with the use of
16 a deadly weapon and discharging a firearm within a structure for a shooting incident which took
17 the life of his wife, Cindy Morton. The Petitioner was sentenced by Judge Richard Wagner to
18 serve 25 years in prison with parole eligibility after service of 10 years + a term of 8-20 years for
19 the deadly weapon enhancement term. A concurrent term of 6-15 years was imposed on a felony
20 charge of discharging a firearm within a structure. The judgment of conviction entered on
21 January 20, 2011. See case number CR09-5709.

22 2. The petitioner filed a first and timely Petition for Writ of Habeas Corpus
23 (postconviction). Counsel was retained and filed a Supplemental Petition for Writ of Habeas
24 Corpus (postconviction).

25 3. The State filed a Response to the Petition & Supplemental Petition for Writ of Habeas
26 Corpus (postconviction).

27 4. The Court held an evidentiary hearing on the Petition & Supplemental Petition for
28 Writ of Habeas Corpus (postconviction) on October 6 & 7, 2021.

1 Trial counsel Richard Molezzo and Del Hardy testified at the hearing. The Court also
2 heard testimony from Dustin Grate, defense investigator, Brian Williams, prosecutor at the trial
3 stage, Michael Smock, Dave Milton, Dave Garrison, Mitchell Hinton, Beverly Upshaw, Royce

1 Upshaw, and Terry Morton. Sheri Hixon-Brenenstall, Ph.D. a psychologist and defense expert
2 witness, testified concerning a psychological evaluation report that she recently prepared
3 regarding Petitioner. David Morton, Petitioner testified in support of his petition for writ of
4 habeas corpus.

5 6. The Court also considered the exhibits offered during the evidentiary hearing on this
6 matter.

7 7. The Court considered the testimony at the evidentiary hearing and makes the
8 following findings:

9 a. The Petitioner established and proved by a preponderance of the evidence a valid
10 appeal deprivation claim under NRAP 4 (c) and is entitled to representation by counsel on a
11 belated appeal.

12 b. Mr. Molezzo testified that he did speak with Mr. Morton about a direct appeal but that
13 the conversation would have only been a ten to thirty second conversation with Mr. Morton
14 directly after the conclusion of the sentencing proceeding. Mr. Molezzo did not recall a lengthy
15 discussion of any type after the date of the sentencing hearing. Mr. Molezzo testified it was his
16 practice to prepare a written letter to defendants advising them of their right to appeal but no such
17 letter was brought forth as evidence at this proceeding. There was no testimony by Mr. Molezzo
18 that he recalled having a discussion with Mr. Morton which included appellate issues or the pros
19 or cons of a direct appeal. Mr. Molezzo advised the Court that he is not an appellate attorney and
20 would not have handled the direct appeal himself but could have sought appointment of alternate
21 counsel for Mr. Morton.

22 c. During the hearing, issues that were properly the subject of direct appeal became the
23 subject of testimony, which were contested by the parties to the proceeding. Those issues were
24 as follows:

25 -- Failure to instruct the jury on the accurate definition of homicide, as agreed by the court.

26 — The improper *Kazalyn* instruction provided to the jury by the court
27
28

Failure to instruct the jury that the State had to prove beyond a reasonable doubt that the defendant was not adequately provoked by actions of the victim to reduce the charge to manslaughter

bias of the trial court against trial counsel Hardy

suspect evidence and findings of the district court at the sentencing stage of the case/
findings of the sentencing court that were unsupported by the trial record

suspect evidence and argument in the presentence report

unsworn victim evidence testimony at the sentencing hearing

failure of the sentencing court to allow Mr. Morton to maintain his innocence at the sentencing stage of the case

attempt by the court to impose an illegal sentence in excess of that available at law for the deadly weapon enhancement

admission of bad act evidence of prior domestic battery by the defendant but failure to admit domestic battery evidence of the victim

cumulative graphic photographs admitted (50+ pictures)

admission of statement of defendant when it was proven he had a 0.276 blood alcohol hours after the shooting and at the time of the confession/admission

d. Mr. Molezzo admitted that the failure to appeal was not tactical but rather an error on his part. Mr. Morton testified that he spoke with Mr. Molezzo about two weeks after the sentencing hearing and requested that Mr. Molezzo file a direct appeal on his behalf, but that during the conversation, Mr. Molezzo advised him that he could end up worse off by appealing his conviction.

8. Postconviction counsel Karla K. Butko indicated that she sought a remedy of a belated appeal on behalf of her client, David Morton.

9. The Court believes that it is appropriate to stay its decision on the remaining allegations of the Petition & Supplemental Petition for Writ of Habeas Corpus (postconviction)

1 pending the results of the belated appeal which is granted herein, and that the appellate courts
2 should first address petitioner's appellate as the Court would not want to address in the Writ any
3 claims that were properly raised on direct appeal. Hence, all remaining claims before the district
4 court are stayed pending appeal.

5 **ORDER**


6 The Court applies the legal standards to the facts in this case. The Court concludes that
7 Petitioner met his burden to prove beyond a preponderance of the evidence that he lost his direct
8 appellate rights due to counsel's error, and that he has met his burden under NRAP 4 (c) of
9 being deprived of his right to a timely direct appeal. As a result, this Court grants Mr. Morton a
10 belated appeal pursuant to the remedy found in NRAP 4 (c). The Court has been advised that
11 Karla K. Butko will remain as counsel of record to represent Mr. Morton on the belated appeal.

12 The district court clerk is ordered to prepare and file—within 5 days of the entry of this
13 Order—a notice of appeal from the judgment of conviction and sentence on the petitioner's
14 behalf in substantially the form provided in Form 1 in the Appendix of Forms.

15 The remaining postconviction claims raised in the Petition & Supplemental Petition for
16 Writ of Habeas Corpus (postconviction) are stayed by the Court pending the results of the belated
17 appeal which was granted herein.

18 GOOD CAUSE APPEARING, and based on the foregoing, the Petition & Supplemental
19 Petition for Writ of Habeas Corpus (postconviction) is partially granted and partially stayed,
20 pending the results of the belated appeal, which was granted herein.

21 DATED this 30th day of November, 2021.

22
23
24 

25 _____
DISTRICT JUDGE

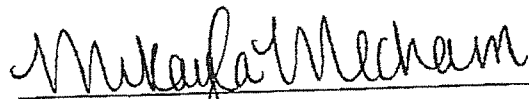
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Humboldt County Clerk's office for the Sixth Judicial District Court, and am not a party to, nor interested in, this action; and that on the 30th day of NOVEMBER 2021, I caused to be served a true and correct copy of the enclosed **ORDER PARTIALLY GRANTING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS & STAYING DECISION PENDING BELATED APPEAL** upon the following parties:

KARLA K. BUTKO, ESQ.
P.O. Box 1249
Verdi, Nevada 89439
Via US Mail

MICHAEL MACDONALD
HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89445
Via DCT box

AARON FORD
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701
Via US Mail



MIKAYLA MECHAM
Deputy Clerk
Sixth Judicial District Court

DECLARATION OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am an employee of the Humboldt County Clerk's Office, and my business address is 50 W 5th Street, Winnemucca, NV 89445. On this day I caused to be served the following document(s):

NOTICE OF APPEAL

X By placing in a sealed envelope, with postage fully prepaid, in the United States Post Office, Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in the designated area for pick up by the United States Postal Service.

X By personal delivery of a true copy to the person(s) set forth below by placement in the designated area in the Humboldt County Clerk's Office for pick up by the person(s) or representative of said person(s) set forth below.


Michael Macdonald
Humboldt County District Attorney
501 S. Bridge Street
Winnemucca NV 89445
(Personal delivery)

David Morton #1062758
Lovelock Correctional Center
1200 Prison Road
Lovelock NV 89419
(Regular mail)

Karla K. Butko, Esq.
PO Box 1249
Verdi NV 89439
(Regular mail)

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on December 2, 2021 at Winnemucca, Nevada.



HUMBOLDT COUNTY CLERK

1063A
~~1063A~~

Case No. CR 09-5709

Dept. No. I

FILED

2010 JUL -8 PM 3:32

TAMI RAE SPERO
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

State's Motion in Limine to
Admit Admissions and
Confession of Defendant and
Request for Evidentiary
Hearing

DAVID MORTON,

Defendant.

The State of Nevada, in and through Russell Smith, District Attorney for Humboldt County, and Brian Williams, Deputy District Attorney, hereby files this Motion in Limine seeking a pre-trial determination that admissions given by Defendant, David Morton, and a confession given by Defendant are admissible evidence.

Court Ruled
FACTS¹

Δ admission and confession can come in

¹ The facts are taken from Detective Garrison's report, attached as Exhibit 1, and a copy of the waiver form he had Defendant sign before interrogation, attached as Exhibit 2.

officer cannot say Δ saw stop and photograph me

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1 On August 5th, 2009, at approximately 11:50pm the
2 Winnemucca Police Department was called to the Morton home
3 located at 1565 Harmony Rd., in Winnemucca, NV. When the
4 officers arrived on scene it was revealed that Cynthia Morton,
5 Defendant's wife, had been shot in the abdomen. The prime
6 suspect was the Defendant, who had been found by the Morton's
7 son, Robert, with a gun immediately after Cynthia was shot.
8 Detective Dave Garrison responded to the residence after Cynthia
9 had been taken to the hospital and Defendant had been taken to
10 the Humboldt County Detention Center, at approximately 12:10am.
11 He was assigned to be the chief investigator on the case. After
12 securing the crime scene, he went to Humboldt General Hospital
13 at approximately 12:30am and spoke briefly with Cynthia, who
14 told Detective Garrison that the Defendant was the party who
15 shot her. It was clear from her condition that her status was
16 uncertain and she could eventually die from her injuries. He
17 next drove to the Humboldt County Detention Center, where the
18 Defendant had been placed in a holding cell.

21 Detective Garrison entered the holding cell of the
22 Defendant at approximately 1:10am, because of a report that the
23 Defendant was trying to cause himself physical injury. Detective
24 Garrison observed several minor lacerations to the Defendant's
25 neck which appeared to be self-inflicted. Before Detective
26 Garrison asked about the injuries Defendant blurted out, "I
27
28

1065

can't believe I shot her. I am going to prison for a long time.
I wish I had done it right the first time." Once Defendant had
Strike sanitize no collateral evidence implies A shot her before
made this statement, Detective Garrison informed the Defendant
he would need to waive his rights under Miranda for them to
continue speaking. Detective Garrison read the Defendant his
Video tapped why not?
rights, and the Defendant elected to waive his right to remain
silent and undergo questioning. He also signed a written form
indicating his waiver.

Once the Defendant signed the form, Detective Garrison
began questioning the Defendant. The Defendant proceeded to tell
Detective Garrison that he was lying in bed when his wife struck
him several times. He got up and began arguing with her, during
which she continued to strike him. He claimed at some point she
stopped and went to the bathroom. When this happened the
Defendant claimed "I lost it and got the gun." He went on to say
"I can't believe I shot her." When asked where the victim was
when she was shot, the Defendant stated she was on the toilet.
The Defendant claimed to Detective Garrison that he was only
trying to scare her and then kill himself with the gun. He had
retrieved the gun from the living room, behind the front door,
and then went to the bathroom where Cynthia was located. The
Defendant claimed the fight was part of a recurring pattern
after they became intoxicated, and he would try to fend off her
blows but not strike back.

1 Detective Garrison noticed several old injuries to the
2 Defendant's person and asked where the Defendant had been
3 struck. The Defendant stated that it did not matter where he
4 had been hit. Detective Garrison repeated the question and the
5 Defendant pointed to his face and top of his head. Detective
6 Garrison could not see any indications of injury in these areas.
7 The Defendant then refused to let Detective Garrison take
8 pictures of the areas he alleged were injured. Detective
9 Garrison could smell an odor of alcohol on the Defendant so he
10 asked him if he had been drinking on the evening of August 5th,
11 2009 and the Defendant indicated he had consumed 3 or 4 beers.
12 *truth serum*
13 Detective Garrison asked the Defendant to consent to a PBT test,
14 which showed a BAC of .276 and .266. After the test the
15 Defendant inquired about the status of his wife and was told she
16 was in critical condition. The Defendant then indicated he did
17 not want to talk any longer, at which point Detective Garrison
18 terminated the conversation. *how much time had lapsed b/w now
19 and first encounter w/ A?*

20 Detective Garrison later obtained a search warrant to
21 photograph the Defendant for signs of injury. While being
22 photographed the Defendant again asked Detective Garrison about
23 his wife's medical condition. Detective Garrison reminded the
24 Defendant of his rights under Miranda and asked if he could ask
25 the Defendant some more questions. He told the Defendant about
26 his wife's condition and then asked the Defendant if he knew
27
28

1 truth of the matter at trial. For that reason the State feels
2 the statements are not inadmissible on hearsay grounds.

3 II. DEFENDANT'S STATEMENTS MADE BOTH BEFORE AND AFTER MIRANDA
4 WARNINGS WERE GIVEN BY DETECTIVE GARRISON ARE ADMISSIBLE

5 The Nevada Supreme Court has held: "[p]ursuant to *Miranda*,
6 a suspect may not be subjected to an interrogation in official
7 'custody' unless that person has previously been advised of, and
8 has knowingly and intelligently waived the following: the right
9 to silence, the right to the presence of an attorney, and the
10 right to appointed counsel if that person is indigent. See
11 *Alward v. State*, 112 Nev. 141, 154 (1996); see also *Miranda v.*
12 *Arizona*, 384 U.S. 436 at 444, 16 L. Ed. 2d 694, 86 S. Ct. 1602
13 (1966). 'Custody' means a formal arrest or restraint on freedom
14 of movement of the degree associated with a formal arrest." See
15 *id.*; See also *California v. Beheler*, 463 U.S. 1121, 1125,
16 (1983); accord *Oregon v. Mathiason*, 429 U.S. 492, 495, (1977)
17 (internal quotations omitted). Interrogation means "not only
18 express questioning, but any words or actions that police should
19 know [are] reasonably likely to evoke an incriminating response
20 from a suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301
21 (1980).
22
23
24

25 In order to be voluntary, a confession must be the product
26 of a "rational intellect and a free will." *Blackburn v. Alabama*,
27 361 U.S. 199, 208 (1960). In *Passama v. State*, 103 Nev. 212,
28

1068

1 214, 735 P.2d 321, 323 (1987), the Court espoused several
2 factors which are relevant in determining whether a defendant's
3 statement given after Miranda warnings was voluntary:
4

5 the youth of the accused; his lack of education or his low
6 intelligence; the lack of any advice of constitutional
7 rights; the length of detention; the repeated and prolonged
8 nature of questioning; and the use of physical punishment
9 such as the deprivation of food or sleep.

10 Another factor to consider in addition to this is the
11 subject's prior experience with law enforcement. *Id.* Therefore
12 the analysis of whether or not an accused gave a voluntary
13 waiver is a subjective analysis "as it logically depends on the
14 accused's characteristics." *Rosky v. State*, 111 P.2d 690, 696
15 (2005). The prosecution bears the burden of proving by a
16 preponderance of the available evidence that based upon these
17 factors the statements were given voluntarily. *Id.*

18 **A. DEFENDANT WAS NOT SUBJECT OF INTERROGATION AT THE TIME OF**
19 **HIS ADMISSION SO MIRANDA WARNINGS WERE NOT NEEDED**

20 The State will concede in this case when the Defendant made
21 all of his statements he was in custody. Detective Garrison's
22 interaction with the Defendant occurred at the Humboldt County
23 Detention Center in a secured environment. The critical issue
24 then turns on whether Defendant was the subject of interrogation
25 such that Miranda warnings were required before any statements
26 were made by the Defendant. See *Floyd v. State*, 118 Nev. 156,
27 172 (2002); see also *Innis*, 446 U.S. at 308.
28

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by
Whome
Video

1 the unforeseeable results of their words or actions." See Innis,
2 446 U.S. at 301-2. Detective Garrison had merely gone to the
3 Detention Center and entered the Defendant's holding cell
4 because he was told the Defendant was attempting to harm
5 himself. While an interrogation was probably planned, the
6 Defendant spoke before such action could be taken. The State
7 will acknowledge it was later determined the Defendant was
8 intoxicated, but his statement to Detective Garrison seems to
9 indicate that the Defendant was coherent enough to comprehend
10 the gravity of his actions. *custody trigger Miranda before interrogation*
11 Kirksey v. State, 112 Nev. 980, 992
12 (1996). Since the Defendant was not interrogated by Detective
13 Garrison, the statements he made to Detective Garrison before
14 Miranda warnings were given should be admissible.

15 **B. DEFENDANT'S STATEMENTS MADE AFTER MIRANDA WARNINGS WERE**
16 **GIVEN WERE VOLUNTARY AND SHOULD BE ADMISSIBLE**

17 As previously stated, any statements given during
18 interrogation must be voluntarily given after a defendant is
19 given a proper Miranda waiver and validly waives his right
20 against self-incrimination. Floyd, 118 Nev. at 171. Several
21 factors, already listed, have been given to assist in
22 determining whether the State has produced sufficient evidence
23 that a waiver was knowingly given. See Alward, 112 Nev. 141 at
24 155.
25
26
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1070

1 Turning again to the *Floyd* case, after the Court ruled the
2 defendant's pre-Miranda admission was admissible, it considered
3 the admissibility of his post-Miranda confession given to police
4 during interrogation. *Floyd*, 118 Nev. at 172. It concluded the
5 defendant's confession was admissible because the record
6 demonstrated the State had proven the defendant knowingly waived
7 his Miranda rights. *Id.* This conclusion was supported by the
8 defendant's average intelligence, the fact that he was not
9 subject to repeated, prolonged interrogation, and he was not
10 deprived of sleep or food or subject to other physical
11 discomfort. *Id.* While the defendant was somewhat intoxicated
12 "intoxication renders a confession inadmissible only if the
13 defendant was so intoxicated that he could not understand the
14 meaning of his comments." *Id.*; see also *Kirksey*, 112 Nev. at
15 992.

18 Applying *Floyd* and the *Passama* factors to the current case,
19 Detective Garrison interviewed the Defendant less than 1 hour
20 after the crime occurred. The interview with the Defendant was
21 brief and not prolonged. The Defendant was not subjected to
22 sleep deprivation, coercive interrogations techniques, or any
23 sort of threats. While his intelligence level is unknown, he was
24 able to communicate fully and coherently with Detective
25 Garrison. His age appeared to be that of a middle-aged male
26 adult. While the Defendant did have a large amount of alcohol
27
28

1 present in his body, he appeared to fully understand the nature
2 of Detective Garrison's questioning. He also had a full
3 knowledge of the nature of the crime he was accused of and its
4 severity, even asking Detective Garrison what the medical status
5 of his wife was. His description of what occurred also matched
6 Detective Garrison's knowledge of the story he was given by the
7 victim, other officers at the crime scene, and later by the
8 Defendant's son, Robert Morton.

10 Lastly, the Defendant was given his full Miranda warnings
11 in writing by Detective Garrison before the interrogation began,
12 and he signed a valid waiver form. Detective Garrison also
13 ceased interrogating the Defendant both times he insisted he no
14 longer wished to talk, and did not attempt to press the
15 conversation any further. Detective Garrison's actions were
16 clearly the actions of a peace officer seeking to keep his
17 questioning within the requirements of the 5th Amendment. The
18 Defendant's statements given after Miranda warnings were recited
19 should be ruled admissible for use at his trial.

22 **C. THE STATE REQUESTS AN EVIDENTIARY HEARING**

23 District Court Rule 13 states that granting an evidentiary
24 hearing on a motion is within the sole discretion of the
25 District Court. NRS 47.090 requires that preliminary hearings on
26 the admissibility of confessions or admissions by an accused
27 should be held outside the presence of the jury. At the hearing
28

1072

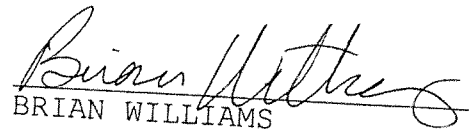
1 the burden is on the State to demonstrate the admissibility of
2 this evidence. *Id.* The accused is allowed to testify pursuant to
3 that issue and cannot have the testimony introduced at trial or
4 be subject to cross-examination of other issues. *Id.* The State
5 therefore requests an evidentiary hearing pursuant to Rule 13 of
6 the District Court Rules and NRS 47.090 to determine the
7 admissibility of the Defendant's statements.
8

9
10 CONCLUSION

11 Based upon the foregoing, the State asks the Court for a
12 pre-trial ruling admitting the Defendant's spontaneous
13 statements to Detective Garrison before Miranda warnings were
14 given. It also seeks the admission of the Defendant's statements
15 given to Detective Garrison during questioning after he freely,
16 voluntarily and intelligently waived his right not to
17 incriminate himself under the 5th Amendment.
18

19 Pursuant to NRS 239B.030., the undersigned hereby affirms
20 this document does not contain the social security number of any
21 person.
22

23 DATED this 8th day of July, 2010.
24

25 
26 BRIAN WILLIAMS
27 Chief Deputy District Attorney
28

1073

HUMBOLDT COUNTY DISTRICT ATTORNEY
P.O. Box 909
Winnemucca, Nevada 89446

AFFIDAVIT

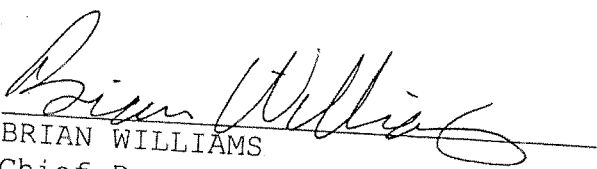
STATE OF NEVADA)
 : ss.
COUNTY OF HUMBOLDT)

BRIAN WILLIAMS, being first duly sworn, upon oath,
deposes and says:

1. That Affiant is an attorney duly licensed in the
State of Nevada and is currently the Chief Deputy District
Attorney for Humboldt County.

2. That the foregoing factual assertions are true and
correct and made under penalty of perjury.

DATED this 8th day of July, 2010.


BRIAN WILLIAMS
Chief Deputy District Attorney

SUBSCRIBED and SWORN to before me, a Notary Public, this
_____ day of July, 2010.

NOTARY PUBLIC

1074

Winnemucca Police Department
Criminal Investigations Division

Case# 09-0778
Date: 08-10-2009

On 08-05-2009 at approximately 23:50 hrs I was dispatched to 1565 Harmony Rd. reference a report of a shooting. I was informed via telephone by Humboldt County Dispatch that patrol officers had responded to the aforementioned location referencing a report of a subject that had been shot in the abdomen. I later learned that when the patrol officers responded to the location they found a white female, later identified as Cynthia Morton, lying on the floor in the upstairs hallway bathroom. Cynthia informed them that she had been shot by her husband David Craig Morton.

On 08-06-2009 at approximately 00:10 hrs I responded to 1565 Harmony Rd. to investigate the shooting and process the crime scene. Once on-scene I found that the suspect, David Craig Morton, had been taken into custody by Officer Matt Haylett and had been transported to the Humboldt County Jail for booking. I further learned that the victim, Cynthia Morton, had been transported to Humboldt General Hospital via ambulance. I was also told that the suspect and victim's son, Robert Morton was still in the residence with his invalid cousin and her friend. Sgt Morgan told me that Robert Morton was the care taker for his invalid cousin and that she and her friend were currently in the downstairs portion of the residence. Sgt Morgan further informed me that Robert had heard the shooting and had found his mother in the upstairs bathroom. Sgt Morgan said that Robert wrestled the gun away from his father (David Craig Morton) and had detained him until the arrival of Police. Sgt Morgan said that the gun was lying on the ground in the backyard of 1561 Harmony. Due to the gravity of the crime committed I ordered that the residence be vacated and secured in order to obtain a search warrant to process the scene. Once the residence was vacated Officer Cassinelli and Captain Waldie remained on scene to secure the residence.

On 08-06-2009 at approximately 00:30 hrs I went to Humboldt General Hospital and spoke with the victim, Cynthia Morton. Cynthia told me that on this night she and her husband, David Craig Morton, were involved in a verbal argument. Cynthia stated that while she was urinating in the upstairs hallway bathroom, David produced a firearm and pointed it at her. Cynthia stated, "He shot me with a shotgun". When I asked her to identify her shooter, Cynthia stated, "It was my Husband, David Morton". Due to her current medical situation Cynthia was unable to provide me with any further information. While I was speaking with her I observed what appeared to be an entrance wound in her left breast. The wound appeared to have been made by a projectile. Below the entrance wound in the area of her upper abdomen I observed a large area of trauma. The trauma had the appearance of trauma caused by the hydro-static shock of the projectile passing thru her body. What appeared to be Cynthia's

25 W. 5th St.
P.O. Box 382
Winnemucca, NV 89445

EXHIBIT 1

1075

1



Winnemucca Police Department
Criminal Investigations Division

entrails and the interior of her abdomen were spilling forth from the wound. I was also informed that the bullet had exited her body from the area of her left buttock.

Once I had spoken with Cynthia I spoke with the on-duty physician, Dr. David Crutchfield. Dr. Crutchfield informed me that Cynthia had suffered a gunshot wound to her upper left abdomen. Dr. Crutchfield also told me that Cynthia had an entrance wound in aforementioned location and an exit wound in her left buttock area.

On 08-06-2009 at approximately 01:10 hrs I responded to the Humboldt County Jail reference a report that David Craig Morton (Hereafter referred to as Morton) was attempting to cause himself physical injury. When I arrived I found Morton in a small room in the booking area of the Humboldt County Jail. Morton had several minor lacerations to his neck that were apparently self-inflicted. Without any prompting from myself, Morton stated, "I can't believe I shot her. I am going to prison for a long time. I wish I had done it right the first time". Once Morton made this statement I informed him that if he wanted to speak with me, I would have to read him his Miranda rights. Morton agreed and I subsequently read him his Miranda rights. Morton subsequently waived his Miranda rights and agreed to speak with me.

Once Morton had initialed the Miranda form I asked him what had happened this evening. Initially Morton stated that Cynthia attacked him while he was sleeping in bed. Morton stated that Cynthia came home after being out at an unknown location and struck him several times while he was lying in bed. Morton stated that after he got out of bed they argued in the living room area of the residence. Morton said that during this argument Cynthia again struck him several times but stopped her attack to go to the bathroom. Thinking that this was odd, I confirmed this statement with Morton by stating, "She stopped hitting you to go to the bathroom?" Morton then stated that he was unsure exactly what happened he (Morton) stated, "I lost it and got the gun". Morton then said, "I can't believe I shot her". When I asked Morton where Cynthia was when she was shot, Morton said that she was seated on the toilet. When I asked him what his intention was when he not only pointed the gun towards Cynthia but discharged it as well, Morton said that he was just trying to scare her. I questioned Morton at length about his intentions when he discharged the firearm at Cynthia. Morton repeatedly stated that he was just trying to scare Cynthia and was not trying to kill her. Morton stated that he was going to scare her and then kill himself with the gun. After speaking with Morton about his intentions in regards to Cynthia, I asked him where the gun had been stored. Morton stated that the gun had been in the living room behind the front door. Morton said that he retrieved the gun from its stored position and then went to the bathroom where Cynthia was.



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Once Morton made these admissions I asked him again how the fight had started. Morton again said that Cynthia had attacked him. Morton said that this was a commonality lately in which she would get intoxicated and they would argue. Morton said that he would only try to fend off her blows, but would not strike Cynthia.

While I was speaking with Morton I observed several old injuries to his person. Morton had multiple scabbed over abrasions on his hands and arms. When I asked him where he had been struck this evening by Cynthia, Morton initially stated, "It doesn't matter". I then told him that I needed to confirm his statement that Cynthia had attack him. I then questioned him further as to where she had struck him. Morton then pointed to his face and the top portion of his head. I did not observe any marks, redness or any other indicators that would indicate new physical injuries to these areas. I then asked Morton if I could photograph his injuries. Morton refused to give me permission to photograph his injuries. Once Morton had finished relaying his verbal statement I asked him how much alcohol he had consumed this evening. Morton stated, "About three or four beers". While we had been speaking I had smelled a moderate odor common to that of an intoxicating beverage coming from his person. Although Morton had this odor emanating from his person he appeared to me to be very cognizant of what was happening. His speech was not slurred and even though his movements were minimal he did not appear to stagger or walk as if he was intoxicated. However due to the fact that he did have this odor I asked Morton if he would consent to a legal breath analysis for blood alcohol content. Morton stated he would. Due to the fact that I did not have my Intoxilyzer 5000 Certification Card on my person I asked Officer M. Hinton to conduct the test for me. At approximately 01:59 hrs Officer Hinton administered the test. The results were: 0.276, and 0.266 b.a.c.

Once the test was completed Morton asked what the status of his wife was. I informed him that she was still alive, but was in critical condition. Morton then said that he didn't want to talk about the incident anymore at this time. Because of this I terminated the contact with Morton.

On 08-06-2009 at approximately 04:05 hrs I obtained a search warrant to search the residence located at 1565 Harmony Rd for evidence pertaining to the shooting. The search warrant also authorized me to search the person of David Craig Morton and photograph his body for any signs of injury. At approximately 04:35 hrs I executed the search warrant at 1565 Harmony Rd. with the assistance of Officers Cassinelli and Haylett.

I started the search warrant by photographing the exterior of the residence. Due to the fact that it was starting to rain, I located and photographed the firearm in the backyard of 1561 Harmony Rd. The weapon was lying in the grass apparently where it had been dropped by Robert Morton. The weapon was a British .303 rifle. It was lying on its right side with the bolt action facing towards

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the ground. After photographing the weapon I actuated the bolt action to clear the weapon and make it safe. I found that there was a live round chambered and another live round in the magazine. I cleared the weapon and it was subsequently recovered by Officer Cassinelli.

Once we had recovered the weapon I began to photograph the interior of the residence. Immediately upon entering the front door of the residence I observed a live round lying on the living room floor. I photographed this as well as the rest of the room. Prior to photographing the crime scene area I photographed the downstairs of the residence and the kitchen area to document the condition of the residence.

Once I had photographed the other areas of the residence I proceeded to area of the upstairs hallway bathroom. Immediately outside the bathroom I found another live .303 round. Once I had photographed the hallway including the live round I began to examine the interior of the bathroom. Inside the bathroom I found a small bath rug that was soaked in blood. I further observed that the floor in this area was covered in blood smear. Towards the back of the bathroom and approximately ten feet from the door was where the toilet was positioned. On the wall to the right of the toilet I found a small hole in the wall that was apparently made from the bullet as it exited Cynthia's left buttock. I later cut this area of drywall out and attempted to recover the projectile. The projectile had passed thru Cynthia, thru the drywall and lodged deep in a 2 X 6 that was an interior support for the staircase that was adjacent to the bathroom. It was because of this that I was unable to recover the projectile. I photographed the entire area to document where the bullet had come to rest.

After I had photographed the bathroom I began to gather swabs of the blood evidence inside the bathroom. I took a total of six swabs and one control swab. These swabs consisted of different areas of blood spatter and pieces of human tissue that was located on the wall adjacent to the toilet and the floor in front of the toilet. Once I had collected the swabs they were packaged by Officer Cassinelli and Officer Haylett.

Once we had processed the bathroom, Officer Haylett informed me that he had located several papers on the kitchen table that appeared to be divorce papers. Several of the papers were torn while others were only half completed. I photographed all of the papers and took the torn papers as evidence. Once this was finished we secured all the items we had collected as evidence, secured the residence and departed the scene.

Once I had completed the processing of the residence I went to the Humboldt County Jail where I again met with Morton. I informed him that I had a search warrant that authorized me to photograph his body. With that Deputy Close and I escorted Morton into the shower room adjacent to the booking area. Once in there I took numerous photographs of Morton's body to document his

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Criminal Investigations Division

injuries that I had noted previously. While I was doing this Morton asked me again what the condition of Cynthia was. I told him that the last I had heard was that she was in critical but stable condition and had been flown to Reno for further treatment. Morton then stated again that he couldn't believe he had shot her. With that I reminded Morton of his Miranda Rights and asked him if I could ask him a couple of more questions. Morton stated that it was ok if I asked him some more questions. With that I asked Morton what the torn divorce paperwork was all about. Morton stated that he had filled out the divorce papers several times but each time Cynthia would throw it away or destroy it in some other manner. I then asked him who had torn the papers that I had found on the table. Morton stated that Cynthia had torn the papers. Once Morton made this statement he said that he was too upset about incident to talk about it any further. With that I terminated the contact with Morton. It should be noted that because I did not have my digital recorder at the time of the two brief interviews with Morton I attempted to do the interviews in the booking area of the jail where I believed they would be recorded with both video and audio recordings being made. I was later informed by Jail Sgt David Milton that the surveillance system was not functioning and because of that my interviews were not captured by their system.

On 08-10-2009 at approximately 10:45 hrs I met with Ryan Morton at the Winnemucca Police Department. Robert said that on the night of the shooting he had been downstairs in his room. Robert said that his father (David Morton) and mother (Cynthia Morton) had been arguing for most of the day. Robert said that this was a common occurrence between the two. Robert said that most of the time he or his older brother would have to step in because, "He would usually take it too far". In saying this Robert was referring to his father. Robert said that his mother and father would drink, become intoxicated, and the arguing would escalate to becoming physical usually with his father being the predominant aggressor. Robert said that his father would usually start drinking beer at around 07:00 hrs and drink until around 01:00 hrs.

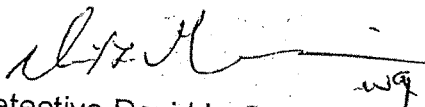
Robert said that while he was in his room he could hear his parents arguing. Although he stated that he couldn't hear what exactly was being said, Robert indicated that he could tell it was escalating. Robert said that when his mother was shot, he heard a loud, "Thud". Robert said that he believed this to be his mother falling to the floor. I asked him if this could have been the sound of the gun being fired. Robert stated that he believed it was. Robert said that after this happened he heard his mother scream, "Help me Robert! He's hurting me!" Robert said that he ran upstairs to find his father, naked, standing in the doorway of the bathroom holding the gun. Robert said that Morton was holding the gun just above waist level with both hands. Robert said that when he approached his father, he yelled at him, "Stay away from me", and started to put the gun under his chin. Robert said that he engaged his father in a physical struggle and was able to take the gun away from him.

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Criminal Investigations Division

Robert said that during this struggle he was able to observe his mother lying on the floor in what he described as the "fetal" position. Robert said that she was lying on her right side with her feet drawn up. Robert said that she was moaning in pain and that she was bleeding from her abdomen area. Robert said that after he was able to get the gun away from his father he attempted to call 911 but was unable to because of a problem with the upstairs phone. Robert said that he then went downstairs to get his cell phone to call 911. Robert said that his father followed him part way downstairs, but turned around and went to his room and put some pants on.

Robert said that after he successfully called 911 he returned upstairs to find his father fleeing out the front door. Robert said that he attempted to detain his father, but he ran to the neighbor's backyard. Robert said that he again engaged his father in a physical struggle, but prior to doing so threw the gun to the ground, caught his father, and carried him to the front of the residence. Robert said that he threw the gun to the ground and left it there, until it was later recovered by Officer Cassinelli and I. Robert said that he did not do anything to manipulate the gun other than taking it from his father. Robert said that at no time did he actuate the bolt action to chamber another round. Robert said that after escorting his father to the front of the residence, Officers from the Winnemucca Police Department arrived and the scene was subsequently secured. Once Robert had relayed his statement I thanked him for his cooperation and he departed the Police Department.

At this time (08-12-2009) this case is still pending the interview of Cynthia Morton. Since the day of the shooting Cynthia has been hospitalized at RENOWN Regional Medical Center in Reno, Nevada. Cynthia has been on a ventilator and has had several surgeries to correct her injuries. Cynthia's condition has been relayed to this investigator as "Extremely Serious, but Stable". I have made repeated checks on her condition to be told the aforementioned. Once Cynthia has regained consciousness it is my intention to obtain a formal statement from her. At this time there are no further details to list.


Detective David L. Garrison W9
Winnemucca Police Department

Certificate of
Miranda Warning and Waiver

I hereby declare: That I am an officer of the WINNEMUECCA POLICE
DEPT and that on 08-06-19-2009 at 8:16 a.m. / p.m.
I interviewed DAVID MORTON
at HCLC
and that prior to that interview, and before any questioning, I advised the person named
above the following:

- 1 "1. You have the right to remain silent.
- 2 2. Anything you say can and will be used against you in a court of law.
- 3 3. You have the right to talk to a lawyer and have him present with you while
you are being questioned.
- 4 4. If you cannot afford to hire a lawyer, one will be appointed to represent you,
before any questioning, if you wish one.
- 5 5. You can decide at any time to exercise these rights and not answer any
questions or make any statements."

That after informing the person named above of the foregoing, I asked him if he
understood the rights that I had stated, to which he replied: "YES I DO"
DOWN

That I then asked him if, having in mind and understanding his rights, he was
willing to talk to me, to which he replied: "YA, I'LL TALK TO YOU"
DOWN

That the above answers were given freely and voluntarily, without the making
of any threats or promises, and not under duress, pressure or coercion of any kind.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at 01:17 AM on 08-06-19-2009
12-12-09 1081
Signature of Officer

1 RICHARD MOLEZZO, ESQ.
2 SBN 5072
3 HARDY LAW GROUP
4 96 & 98 Winter Street
5 Reno, Nevada 89503
6 Phone: (775) 786-5800
7 Fax: (775) 322-2303
8 Attorney for Defendant

FILED
2010 AUG 27 AM 11:43
TAHI KAE SPERO
DIST. COURT CLERK

9 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF HUMBOLT

11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 DAVID C. MORTON,

15 Defendant.

Case No.: CR09-5709

Dept. No.: 2

16 MOTION IN LIMINE RE: ALLEGED OTHER BAD ACTS, NRS 48.045

17 COMES NOW, Defendant, DAVID C. MORTON, by and through his undersigned counsel,
18 RICHARD MOLEZZO, ESQ., and hereby moves this Honorable Court for an Order in Limine of the
19 following.

20 I. ARGUMENT

21 Nevada Revised Statutes, 48.045 permits the limited introduction in evidence of certain other
22 bad acts evidence. The Nevada Supreme Court has approached such evidence cautiously, finding in
23 recent opinions that the evidence **must be recent, clearly and convincingly proven, and strong**
24 **probative of a matter at issue in the trial.** Further, the proponent of such evidence bears the
25 burden of properly instructing the jury on the limited use to which they can put the evidence. Failure
26 to do so has resulted in reversal.

27 The Court's strongest statement regarding prior bad acts was announced recently. In *Rosky v.*
28 *State*, 121 Nev. 184, 111 P.3d 690 (2005), the Court stated, "[a] presumption of inadmissibility
attaches to all prior bad act evidence." *Id.* At 4. The Court went on to explain that evidence admitted

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1 under a *modus operandi* theory **must establish a criminal course of conduct so unique that it**
2 **serves to identify the perpetrator**, because no other similar criminal commits the offense in the
3 same manner. The Court also indicated that admission of prior acts evidence based upon common
4 scheme or plan requires more than proof that the two incidents have common elements. The State
5 must actually prove the existence of an overarching plan for the commission of the acts.

6 In *Tavares v. State*, 117 Nev. 725, 30 P.3d 1128 (2001), the murder conviction of Mr.
7 Tavares was reversed, and his case remanded for new trial. The case was returned on three grounds.
8 First, the prosecutor had a duty to assure the jury was properly instructed on the limited use to which
9 it could put prior acts evidence, and did not do so. Second, the defendant was prejudiced by the failure
10 to so instruct. And, finally, a flight instruction given at the State's request should not have been
11 given.

12 With respect to the prior bad acts analysis, the Court restated its position announced in *Tinch*
13 *V. State*, 113 Nev. 1170, 946 P.2d 1061 (1997), in which the Court defines the three steps the State
14 must take to present prior bad acts evidence. At a hearing outside the presence of the jury, the State
15 must 1) establish the relevance of the proffered evidence, 2) the act(s) must be proven to the Court by
16 clear and convincing evidence, and 3) the Court must conclude the probative value of the evidence is
17 not outweighed by the danger of unfair prejudice. The Court must further make specific findings of
18 fact and conclusions of law on which it bases its finding of admissibility in the cases in which the
19 evidence is admitted. *Armstrong v State*, 110 Nev. 1322, 885 P.2d 600 (1994).

20 Relevance will be evaluated at least in part with reference to the timing of the alleged prior
21 bad act, versus the time of the charged offense. In *Walker v. State*, 116 Nev. 442, 997 P.2d 803
22 (2000), the Court ruled as stale evidence regarding alleged threats by the defendant against the victim
23 that occurred six and ten years before the charged offense. The Court noted that in evaluating the
24 relevance of prior acts evidence, "we have consistently noted that events remote in time from the
25 charged incident have less relevance in proving later intent." *Id.* At 806-807.

26 In *Richmond v. State*, 118 Nev. 924, 59 P.3d 1249 (2002), the Court **deemed inadmissible**
27 **under a common plan analysis** an alleged prior act that had occurred **one month before the**
28 **charged offense.**

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1 The State bears a heavy burden in seeking introduction of prior bad acts evidence. The
2 *Travares* Court noted that use of such evidence is heavily disfavored because it can force an accused
3 to defend against vague and unsubstantiated charges, for which he or she is not on trial, and because
4 such acts are often irrelevant and prejudicial. *Tavares* at 1131.


5 In addition to the concerns addressed by the Nevada Supreme Court, a jury being permitted to
6 consider evidence other than the elements of the crime must be clearly instructed. A jury must be
7 clearly instructed that the other acts evidence, if admitted, is NOT an element of the crime, and
8 cannot be considered by them as an element of the crime. If a jury were permitted to consider other
9 acts evidence to establish an element of charged offenses, the conviction could not stand.

10 The United States Supreme Court has made clear every element of a charged offense must be
11 proven to a jury, beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, (1970). To
12 allow less would permit the State to avoid its constitutionally imposed burden of proof, and to
13 convict not based upon proof of the elements of the offense, but other acts, not charged. This would
14 clearly contravene the Defendant's rights under the Nevada and United States Constitutions to due
15 process of law, fair trial by jury, and proper notice. U.S. CONST. Amd V, VI, and XIV; Nev.
16 CONST., Art. 1, Sec. 8.

17 II. CONCLUSION

18 Mr. Morton has constitutional rights to notice of the charges against him, due process of law,
19 and fair trial by jury. As such every element of any charge brought against him should be pleaded by
20 the State, then proven to a jury beyond a reasonable doubt. No evidence of alleged prior bad acts by
21 Mr. Morton would be admissible, unless all the constitutional protections are recognized and satisfied
22 at a hearing outside the presence of the jury. Therefore, Mr. Morton requests this Court exclude
23 evidence of alleged prior bad acts.

24 DATED this 26 day of August 2010.

25 
26 RICHARD MOLEZZO, ESQ.
27 Attorney for Defendant, David C. Morton
28 1087

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) on all parties to this action by:

XX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

Personal delivery

Facsimile (FAX)

Federal Express or other overnight delivery

Messenger Service

Certified Mail with Return Receipt Requested


addressed as follows:

Humboldt County District Attorney
Attn: Russell Smith, D.D.A.
Post Office Box 909
Winnemucca, Nevada 89446

AFFIRMATION (NRS 239B.030)

The undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 26 day of August 2010.


Debra Keene

1085

CASE NO. CR 09-5709

FILED

2010 SEP 22 AM 8:32

TAMI RAE SPERO
DIST. COURT CLERK

Tami Rae Spero

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

V E R D I C T

DAVID CRAIG MORTON,

Defendant. /

We, the jury in the above-entitled action, do find the Defendant, DAVID CRAIG MORTON, **GUILTY** in Count II of DISCHARGING A FIREARM FROM WITHIN OR FROM A STRUCTURE.

Dated this 21st day of September, 2010.

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 11-30-2010

Tami Rae Spero, County Clerk and Clerk of the Sixth Judicial District Court, in and for the County of Humboldt, State of Nevada.

By Tami Rae Spero, Deputy

Per NRS 295 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.

[Signature]
FOREPERSON

1086



RICHARD A. MOLEZZO, ESQ.
Nevada Bar No.: 5072
HARDY LAW GROUP
96 & 98 Winter Street
Reno, NV 89503
Telephone: 775-786-5800
Attorney for Defendant

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

STATE OF NEVADA,

Plaintiff,

vs.

DAVID C. MORTON,

Defendant.

CASE NO.: CR09-5709

DEPT. NO.: 1

SENTENCING MEMORANDUM

Mitigation of Punishment

This sentencing memorandum was prepared by Defendant's counsel and is for the information of this Court in sentencing the Defendant upon the verdicts of guilty. Both of which are felony violations. Defendant had no previous felony convictions prior to this event.

THE CHARGES

The Defendant was charged with one count of murder in the first degree, and another count of discharging a firearm in a structure. Defendant invoked his constitutional right to trial by his peers. A jury trial was had and Defendant was found guilty of one count of second-degree murder with the use of a firearm, and one count of discharging a firearm within a structure.

DEFENDANT'S CONTENTIONS AS TO THE PRESENT CHARGES

David relates that he had known the deceased since high school, that he and the deceased fell in love and were married while in there early twenties. He says that for years in

the beginning, the marriage was a good one, one based on respect, love and mutual desires.

Both he and the deceased have two children, Chad Morton and Robert Morton.

In regards to this crime for which David has been found guilty, David relates that for the past 3 to 5 years he and the deceased have been at odds. His life and marriage began to unravel after he was fired from his train conductor job. After years of service he was let go due to a drug problem. David says that as the breadwinner his loss of employment greatly impacted his family, and instead of finding support and comfort he was shunned and ridiculed by the deceased. He admits that both he and the deceased were heavy drinkers and that the deceased, was also into the heavy use of narcotics. This conduct only escalated their marital discord. Both he and the deceased have convictions for domestic battery, with the deceased having also been convicted for doctor shopping (to obtain multiple prescription medication). This mutual bad behavior continued to escalate, so much so, that David made multiple attempts to divorce the deceased rather than continue in a spiteful marriage.

On the fateful day in question David contends that both he and the deceased were grossly intoxicated, and once again he suffered a severe tongue lashing, not to mention another physical assault from the deceased. The hatred initially spewing from the deceased, who referenced, David's desire for a divorce, his general worthlessness and his lack of employment. This ridicule lasted well into the night. The rancor between David and the deceased was all too common, as testified to by Robert Morton. As hard as he tried he could not defuse the situation, and finally David found himself in such emotional distress he decided to take his own life. David picked up a 1918, 303 Enfield rifle and began heading out the front door, yet, wanting to get the last word he foolishly reversed direction and went upstairs where the deceased was using the water closet. Why? You may ask did he do this. From the very beginning of the case, David told me it was so that he could show the deceased that by holding the rifle for the deceased to see, he was serious in the desire to take his own life. He wanted her to see it (the rifle), after which he was going to go outside and blow his brains out. But, we now know, as fate would have it, he never completed his desired task. David was holding the rifle at his side when the gun went off striking the deceased. He never

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took aim. The deceased was severely wounded lasting 30 days in the hospital before succumbing to her injuries. From that day to present David has been a shattered man. In his early 50's, coupled with a fragile continence, it is doubtful with the certainty of at least a 10-year sentence he will see the outside as a free man again.

PERSONAL BACKGROUND

David Morton is 52 years old and was born in Portola, California. He moved to Winnemucca in 1961 and lived there until 1985, leaving to find work, he moved back in 2003. The first time he met the deceased was his sophomore year in high school. He was with the deceased from that time until the tragedy. They had their first son Chad in 1985, and their second son Robert in 1988. During David's childhood his father physically abused him. He recalls that at the age of 2 his father severely beat him. He also witnessed his father's rage directed at his 3 brothers as well. "I always seemed to bring out the worst in him." Davis was a boy scout 2nd class, and attained the office of Master Councilor in the DeMolay Chapter. David always worked every summer from the age of 11. He was an honor role student and a state champion swimmer.

OVERALL IMPRESSION

David is basically a good man in a very bad situation. At first blush with the conviction of murder attached to him, one would think that he is a bad man. This could not be farther from the truth. The layperson would tag him as undesirable, but little do they know. David is a man remorseful and broken; no one who has been with him for any stretch of time, nor the guards supervising him in custody, would think that David has a malignant heart. Although, punishment will be administered against David for this tragic offense, by no means is there a feeling that he is an evil man, one who has disregard for life, and a recidivist who has no understanding of self-control. He does not demonstrate that degree of insecurity or suppressed anger, which typify the deeply troubled. There is nothing whatsoever to indicate any anti-social tendencies or behavior apart from his over consumption of alcohol. He is a man lost in his own guilt and sense of failure. But he is not a man forgotten by either this author or his family and friends. One day David will again taste freedom, and there is no

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doubt he will conduct himself as a positive member of society.

THE PRE-SENTENCE PROBATION REPORT

In addition to his other qualifications and qualities, a judge must be courageous in sentencing. It is solely his responsibility. He should not abdicate nor permit his sentencing function to be pre-empted by the direction in which the pre-sentence probation report may be slanted. Such report should be merely advisory. A courageous jurist will not automatically adopt and rely upon a pre-sentence probation report, per se. To do so would shift the function of the sentencer, from the judge to the probation worker.

Reliance upon such portion of the pre-sentence probation report that embodies unproven, unchecked, unedited and uncorroborated "raw" hearsay data furnished by the prosecutor's office is unwarranted, unjustified and an affront to our concept of fairness in justice.

Responsible defense counsel will, of course, object to and dispute that portion of the probation report which is unfair, unfounded, based upon hearsay or any other raw material or tortured conclusion or slanting, that may be contained therein.

Alas, therein lies the rub. In order for the sentencing judge to rule upon the admissibility thereof, he has to read and hear the objectionable material. Certainly such information will tend to influence his sentencing discretion to the detriment of the person standing before him.

A glittering example of judicial courage and awareness is found in the sentencing remarks of Judge Metzner, of the United States District Court of the Southern District of New York, in an income tax evasion case. The judge properly brushed aside the comments of the prosecutor and probation report that the defendant was the king of pornography with links to organized crime, and stated: "I'm dealing with this case as an income tax case" and imposed a one (1) year sentence.

Probation officers vary in quality and are subject to the same potential for bias as the judges. Worse, however, they are not open to and are shielded from the public scrutiny of the actual decision maker, as the judge is, and are protected there from by anonymity. 1090

2 A probation officer can be the most important individual in the life of a person-
3 awaiting sentence. If the probation officer is inadequate, vicious, bigoted or in the job to
4 long, the pre-sentence probation report will reflect these offensive characteristics, and as a
5 result thereof the sentencing judge will be influenced thereby towards severity.

6 The responsibility of sentencing is solely that of the judge; the function of the
7 probation office is merely advisory fact-finding as an investigatory aid to the judge, which in
8 itself is an important facet of our sentencing process. A probation officer should never act as
9 a de facto extension of the investigatory arm of the prosecutor's office, or the agency
10 involved, particularly as to unproven hearsay material. Nor should the probation officer
11 attempt to superimpose "his" sentence upon the Court, either directly or indirectly, by
12 slanting his report, subconsciously or otherwise.

13 In today's climate, the firmest pillar of good government is a courageous jurist, which
14 assures each of us to the blessings of impartial justice.

15 THE WEAPON ENHANCEMENT

16 NRS 193.165 provides this Court with parameters in which the Court must interpret
17 when sentencing David to an additional sentence in prison. This sentence must run
18 consecutive to any sentence imposed for the original conviction of Murder in the 2nd degree.
19 This sentencing range is between one year and twenty years. The max sentence under this
20 prong is eight to twenty years. However, the sentence can also be from one year to thirty
21 months, or any 40% sentencing range between one and twenty years. What makes this
22 statute unique is that it provides the sentencing court with the ability to look outside the box.
23 In fact, it gives the Court guidelines much like that of a Federal Judge, which allows the
24 Court to look at the circumstances of not only the crime itself, but also, the character of the
25 Defendant.

26 For argument purposes I will reference to NRS 193.165 sec. 1. §(a) to (e).

27 The statute tells us that in determining the length of the additional penalty the Court
28 "shall" consider the following information:

- (a) The facts and circumstances of the crime;

1091

2 *ARGUMENT.* David did not lay in wait with the intent to kill his wife. He did
3 not formulate a plane with the desire to kill his wife. As the trial has told us
4 this was an act performed while David was intoxicated and under severe
5 emotional distress. Nevertheless, it was conduct by which a rational person
6 should have known could lead to the serious injury of another. David never
7 aimed this 90-year-old rifle at his wife, yet his actions and conduct put another
8 person in peril. And his actions did result in sever injury to another, injuries
9 which later we now know contributed to the death of another.

10 (b) The criminal history of the person;

11 *ARGUMENT.* Prior to this event David had no felony convictions. In regards
12 to the documents to be provided to this Court from the Humboldt County D.A.,
13 counsel is well aware that for sentencing purposes the rules of evidence are
14 relaxed. Yet counsel is compelled at the very least, to point out the
15 constitutional infirmities of the supposed prior convictions/reports. Under
16 Nevada law, for valid prior conviction, certain conditions need to be met. (See,
17 NRS 176.105). In regards to the documents provided to counsel by the
18 prosecution, counsel does not see certification, counsel does not see judicial
19 signatures, counsel does not see a signed waiver of rights by Defendant and
20 counsel does not see signatures of defense attorneys or a waiver for self-
21 representation. However, counsel for Defendant will acknowledge a conviction
22 for a first time domestic battery misdemeanor in 2007. As to the other
23 information provided by the prosecution, counsel respectfully asks the Court
24 give the due weight afforded any document that cannot be verified or validated
25 in accordance with a criminal case.

26 (c) Impact of the crime on any victim;

27 *ARGUMENT.* David's children are victims. Although collateral in nature, they
28 are truly hurting for both the loss of there mother and in a lesser since the loss
of their father David. I have spoken to both young men; they do not forgive

1092

2 their father at this time, but still love him. Neither Chad nor Robert want to see
3 their dad die in prison, and knowing full well that he will receive at least ten
4 years of confinement, both are heartbroken. They will forever be impacted by
5 what David did. Chad, the oldest son, related to me that this marriage had been
6 toxic for quite sometime, and that both parents continuously treated each other
7 poorly i.e., the deceased was no saint and an aggressor in her own right with
8 serious abuse and anger issues. That being said we all know she did not
9 deserve to die. All who are close to this family are victims however slight;
10 because of David's actions in August 2009 the immediate family suffers greatly
11 and will for sometime. But they love David and want to see him walk the
12 streets as a free citizen again.

13 (c) Any mitigating factors presented by the person;

14 *ARGUMENT.* What needs to be said? David has no offensive criminal history,
15 and is profoundly remorseful. He maintains it was an accident. He loves his
16 family and they love him. He accepts he is going to prison. He has been a
17 model prisoner while in custody for over 400 days. By nature he is a peaceful
18 person and helpful to others. Alcohol was and is his downfall.

19 [PLEASE REVIEW ATTACHED LETTERS OF SUPPORT]

20 (d) Any other relevant information.

21 *ARGUMENT.* This case went to trial, the evidence has been submitted, and the
22 jury has spoken.

23 CONCLUSION

24 *Justice should remove the bandage from her
25 eyes long enough to distinguish between
26 the vicious and the unfortunate.*


27 ROBERT G. INGERSOLL,
28 19TH CENTURY AMERICAN LAWYER

29 May I respectfully suggest and recommend the following sentence, which I trust you
30 will find in order:

1093

1 As to Murder in the Second Degree, a sentence of 10 to 25 years. In regards to the
2 enhancement for the weapon, a sentence of 24 to 60 months consecutive to the Murder in the
3 Second Degree. In reference to the discharge of a firearm within a structure, probation and a
4 fine of \$2,000.00 dollars. In the alternative, a sentence of 24 to 60 months to run concurrent
5 to the Murder in the Second Degree.

6 DATED this 15 day of December 2010.

7
8 
9 RICHARD MOLEZZO, ESQ.
10 Attorney for David Morton
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1094

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) on all parties to this action by:

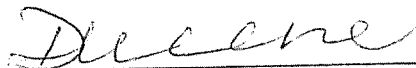
- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
☐ Personal delivery
- ☒ Facsimile (FAX)
- ☐ Federal Express or other overnight delivery
- ☐ Messenger Service
- ☐ Certified Mail with Return Receipt Requested

addressed as follows:

Humboldt County District Attorney
Attn: Russell Smith, D.D.A.
Post Office Box 909
Winnemucca, Nevada 89446

Affirmation: Undersigned hereby affirms that this document does not contain the social security numbers of any person pursuant to NRS 239B.030.

DATED this 15 day of December 2010.


Debra Keene

1095



Humboldt County Sheriff's Office

Gene A. Hill, Sheriff/Coroner
Brian Jonas, Undersheriff



12-8-2010

To: Mr. Richard A. Molezzo, Esq.
Re: David C. Morton

Dear Mr. Molezzo,
In response to your request, I am writing this letter on behalf of the Detention Staff at the Humboldt County Detention Center.
Mr. Morton, since his incarceration date of August 6th, 2009, has been cooperative, easily manageable and has no disciplinary violations whatsoever. Thank you for your request.

Sincerely,
Sgt. Dave Milton
Humboldt County Detention Center
801 E. Fairgrounds Road
Winnemucca, NV. 89445

A handwritten signature in black ink, appearing to read "D. Milton 4302".

1096



1365 Mizpah Street
Winnemucca, NV 89445
775.623.9920
Fax: 775.623.6326

DEAR HONORABLE RICHARD WARNER,

THIS LETTER IS IN REGARD TO DAVID MORTON,
I HAVE KNOWN DAVID SINCE WE MOVED HERE
SEVEN YEARS AGO. WHAT A PLEASURE TO MEET
A GENTLEMAN WITH MANNERS AND DIGNITY.

MY RESPECTS ARE WITH BOTH FAMILY'S, TO
BE HONEST, I CAN'T IMAGINE WHAT THEY
ARE GOING THROUGH!

IN OUR LINE OF WORK WE SEE MANY ^(THE SAME PEOPLE)
PEOPLE, OFTEN 3 TO 7 DAYS A WEEK. IT'S
VERY NICE TO MEET A PERSON THAT CONDUCTS
THEMSELVES RESPECTFULLY, NOT ONLY TO US,
BUT TO ALL OTHERS.

IN MY HEART, DAVID HAD NO INTENT TO HARM,
I KNOW HE WILL REGRET THIS ACCIDENT AS
LONG AS HE LIVES AND TO ME THAT'S
TIME ENOUGH.

I WISH YOU LUCK WITH YOUR DECISION AND
APPRECIATE THE TIME YOU GIVE TO LISTEN!

Sincerely, LYN KESER

1097

November 2, 2010

John Regan & Dawn Blasengame
1551 Harmony Rd
Winnemucca, NV 89445
(775) 623-6785

Dear Honorable Judge Richard Wagner

We met Dave Mortin in 2005 when he was working on the house next door to ours to prepare it for his family to move into. We were impressed with the hard work and hours he put into that project so we asked if he could advise us on some home maintenance projects we had. He not only helped us, but became a friend.

During our times together we appreciated Dave's hard work, eagerness to help, empathy and compassion. Early in our friendship, our first grandson was still born; Dave was a support to our family at that time.

Having him as a neighbor was a very positive experience. He was friendly and personable. He shared memories of how the neighborhood was when he grew up in that house. He was so kind-hearted; many times he gave half of his lunch to our well fed, but woeful-eyed Brittany Spaniel.

He was very excited about his family moving here. We did notice that after their arrival Dave seemed quieter and more stressed.

We moved to Washington State for two years about six months prior to the tragic event that has brought Dave to your courtroom. Our history with Dave leads us to believe that this event was a highly emotionally charged anomaly, and he is in no way a threat to our community.

We thank you for taking the time to read this.

Very Respectfully



John Regan
Underground Miner



Dawn Blasengame
Homemaker

1098

Judge Wagner;

11-30-10

I am David Martons aunt
by marriage. He was always
the kindest, most polite man I
have ever known. He was proud of
the fact that he and his step-dad
were completely remodeling a home
for David and his family. He worked
months tearing apart this home and
rebuilding it to a beautiful home.
He loves working with wood and
did a beautiful job.

I have known David many years
seeing him many times a year I
am asking for Linney concerning
his case.

It would be a sad thing to have
him put away for a long time.

I'm sure he didn't deliberately
shoot his wife. It was a pure
accident.

I am 80 years old and would love
to see and hold David again.

Thanks for your consideration

Shirley T. Upshaw

445 E. 1400 N

Providence, Utah

31414

801-732-6750

1099



Terry W. Miller
2080 Skyland Blvd
Winnemucca, NV
89445

October 15, 2010

Honorable Richard Wagner
Sixth Judicial Court
50 W Fifth Street
Winnemucca, Nevada

Honorable Judge Wagner,

This is written regarding the upcoming sentencing of David Morton. I have basically known David since he was a child and he worked for me in the later 1970s when I owned the Uptown Market and in fact my son was actually a ring bearer at his wedding. What David is responsible for is not excusable and a tragedy to everyone concerned but I would feel comfortable asking that David not be given the maximum sentence allowed which I understand to be 20 years but rather more towards the minimum of 10 years. I do not in any way feel David in the future will be a threat to others and ten years is a long time but might still leave him some time at a point in the future to live a life outside the prison system. Again what has happened is not excusable and David must be punished but I see no major benefit to anyone in his serving over ten years in the Nevada prison system and have no doubt his remorse is genuine but of course I understand remorse cannot bring back the life that was lost.

Thank You,

A handwritten signature in cursive script that reads "Terry Miller".

Terry Miller

1180

October 20, 2010

To the Honorable Richard Wagner:

My name is Jean McCoy, and I am writing on behalf of David Morton with respect to his upcoming sentencing hearing in December of this year. I am a lifelong resident of Humboldt County, and prior to retirement, I taught school for thirty-eight years in grades second through eighth as well as in English as a Second Language and Special Education. For all but four of these years, I worked for the Humboldt County School District at the Grammar School, Sonoma Heights Elementary, Kings River School, and French Ford Middle School. After retiring, I worked as a substitute teacher for five years, including one year as a full-time substitute at French Ford Middle School.

David Morton was my student in fourth grade at Sonoma Heights Elementary in the early 1960s. I was twenty-four years old, and David was ten. When I think back to those years, I can still see him, a quiet, sincere little boy with a beautiful smile. I cannot remember anything negative about David or his behavior.

Many years later, David came to see me at Sonoma Heights to request that I tutor his son who was experiencing difficulties with reading. I agreed to do so, and I found that David was a concerned parent, who wanted the best for his son. Despite the lapse in time, he had the same sincerity and sense of responsibility as he had in fourth grade. He would stop in from time to time to check on his son's progress, and if an issue came up that needed to be addressed, he was there to visit with me immediately.

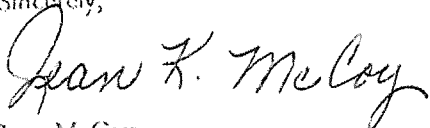
After I retired, I saw David again at Sonoma Heights with his mother, Beverly. He would come to give support to his niece during extra-curricular activities, and I was touched by his desire to give his moral support to a little girl who had just lost her father.

Since the tragic event that ended the life of David's wife, Cindy, I have kept in touch with David by writing him letters and visiting him regularly at the Detention Center.

This letter is a plea for mercy on David's behalf. I fully understand the seriousness of David's situation just as he does. The mental anguish and guilt that I see in him is fierce, and this will never abate whatever punishment the court metes out. One life is lost, and in a very real way, David's former life has been lost forever as well. I fear for David's state of mind and worry that he will never come to terms with this tragedy. David has sentenced himself, and not outside entity could be more severe and exacting than his own remorse and guilt.

David is not a danger to society, and I truly feel that a severe jail sentence will exacerbate his mental and physical condition. I humbly ask you to take these factors into consideration as you decide David's fate.

Sincerely,



Jean McCoy
5640 W. Rose Creek Rd.
Winnemucca, NV 89445
(775) 623-3784

1101

To The Honorable Richard Wagner

Your Honor,

My name is Mike Wolicki and I am an employee at the Union Pacific Railroad. I have known David Morton for the past thirty years. We worked together on the railroad for fourteen years, of which three and half years we were on the same crew.

I see the events of August 5, 2009, which led to his felony conviction to be very much out of character for David. David is a caring, dependable, fun loving individual, and a good friend.

Thank you.

Mike Wolicki

Oct 24, 2010

775-6235745

1102

HUMBOLDT CO. SO. WINNEMUCCA, NV
 INTOXILYZER - ALCOHOL ANALYZER
 NU MODEL 5000EN SN 68-913489
 08/06/2009

OBSR. START=01:40
 SUB NAME=MORTON, DAVID, CRAIG
 SUB DOB =10/12/59 SEX =MALE
 DRID LID=107222335/UT
 OFFICER=GARRISON, DAVE
 AGENCY=WMCA
 CIT=N/A
 LOC=1565 HARMONY
 OPER=HINTON, M. CERT=N01912
 SOLUTION LOT NO=H-0689

---BREATH ANALYSIS---

AIR BLANK	.000	01:58
SIN TEMP WITHIN RANGE		
REF. STD.	.107	01:58
AIR BLANK	.000	01:58
SUBJECT TEST	.276	01:59
AIR BLANK	.000	01:59
AIR BLANK	.000	02:02
SUBJECT TEST	.266	02:02
AIR BLANK	.000	02:02

ALL RESULTS IN GRAMS OF
 ALCOHOL / 210 LITERS OF BREATH

Morton, DAVID, CRAIG
 SUBJECT'S NAME

0140 hrs
 TIME FIRST OBSERVED

Humboldt Cty Det. Cntr
 INSTRUMENT LOCATION

Off. Mitchell Hinton w15
 OPERATOR

ADDITIONAL INFORMATION AND/OR REMARKS

INTOXILYZER INSTRUMENT PRINTER CARD

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CMI INC.

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 WINNEMUCCA POLICE DEPT

1103

The State of Nevada,

vs.

David Craig Morton

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 05/17/10

	1.D.	MARKED	OFFERED	ADMITTED
1 Letter from Washoe Crime Lab	1	05/17/10	05/17/10	05/17/10
2 Memorandum	2	05/17/10	05/17/10	
3				
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1109

The State of Nevada,

vs. David Craig Morton

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/09/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Miranda Warning and Waiver</u>	<u>1</u>	<u>09/09/10</u>	<u>09/09/10</u>	<u>09/09/10</u>
2 _____	_____	_____	_____	_____
3 _____	_____	_____	_____	_____
4 _____	_____	_____	_____	_____
5 _____	_____	_____	_____	_____
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8 _____	_____	_____	_____	_____
9 _____	_____	_____	_____	_____
10 _____	_____	_____	_____	_____
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26 _____	_____	_____	_____	_____

1105

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Death Certificate</u>	<u>1</u>	<u>09/14/10</u>	<u>09/14/10</u>	<u>09/14/10</u>
2 <u>Basement Diagram</u>	<u>2</u>	<u>09/14/10</u>	<u>09/14/10</u>	<u>09/14/10</u>
3 <u>Upstairs Diagram, marked by Robert Morton</u>	<u>3</u>	<u>09/14/10</u>	<u>09/14/10</u>	<u>09/14/10</u>
4 <u>CD of 911 Call</u>	<u>4</u>	<u>09/14/10</u>	<u>09/14/10</u>	<u>09/14/10</u>
5 <u>Upstairs Diagram, marked by Robert Morton</u>	<u>5</u>	<u>09/14/10</u>	<u>09/14/10</u>	<u>09/14/10</u>
6 <u>Rifle & boldt & clip</u>	<u>6</u>	<u>09/14/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Diagram of Basement</u>	<u>7</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>8-1</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>8-2</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>8-3</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>8-4</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>8-5</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>8-6</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>8-7</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>8-8</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>8-9</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>8-10</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>8-11</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>8-12</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>8-13</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>8-14</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>8-15</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>8-16</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>8-17</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>8-18</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>8-19</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	8-20	09/15/10	09/15/10	09/15/10
2 Photograph	8-21	09/15/10	09/15/10	09/15/10
3 Photograph	8-22	09/15/10	09/15/10	09/15/10
4 Photograph	8-23	09/15/10	09/15/10	09/15/10
5 Photograph	8-24	09/15/10	09/15/10	09/15/10
6 Photograph	8-25	09/15/10	09/15/10	09/15/10
7 Photograph	8-26	09/15/10	09/15/10	09/15/10
8 Photograph	8-27	09/15/10	09/15/10	09/15/10
9 Photograph	8-28	09/15/10	09/15/10	09/15/10
10 Photograph	8-29	09/15/10	09/15/10	09/15/10
11 Photograph	8-30	09/15/10	09/15/10	09/15/10
12 Photograph	8-31	09/15/10	09/15/10	09/15/10
13 Photograph	8-32	09/15/10	09/15/10	09/15/10
14 Photograph	8-33	09/15/10	09/15/10	09/15/10
15 Photograph	8-34	09/15/10	09/15/10	09/15/10
16 Photograph	8-35	09/15/10	09/15/10	09/15/10
17 Photograph	8-36	09/15/10	09/15/10	09/15/10
18 Photograph	8-37	09/15/10	09/15/10	09/15/10
19 Photograph	8-38	09/15/10	09/15/10	09/15/10
20 Photograph	8-39	09/15/10	09/15/10	09/15/10
21 Photograph	8-40	09/15/10	09/15/10	09/15/10
22 Photograph	8-41	09/15/10	09/15/10	09/15/10
23 Photograph	8-42	09/15/10	09/15/10	09/15/10
24 Photograph	8-43	09/15/10	09/15/10	09/15/10
25 Photograph	8-42	09/15/10	09/15/10	09/15/10
26 Photograph	8-43	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO. CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	8-44	09/15/10	09/15/10	09/15/10
2 Photograph	8-45	09/15/10	09/15/10	09/15/10
3 Photograph	8-46	09/15/10	09/15/10	09/15/10
4 Photograph	8-47	09/15/10	09/15/10	09/15/10
5 Photograph	8-48	09/15/10	09/15/10	09/15/10
6 Photograph	8-49	09/15/10	09/15/10	09/15/10
7 Photograph	8-50	09/15/10	09/15/10	09/15/10
8 Photograph	8-51	09/15/10	09/15/10	09/15/10
9 Photograph	8-52	09/15/10	09/15/10	09/15/10
10 Photograph	8-53	09/15/10	09/15/10	09/15/10
11 Photograph	8-54	09/15/10	09/15/10	09/15/10
12 Photograph	8-55	09/15/10	09/15/10	09/15/10
13 Photograph	8-56	09/15/10	09/15/10	09/15/10
14 Photograph	8-57	09/15/10	09/15/10	09/15/10
15 Photograph	9-1	09/15/10		
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17 Photograph	9-3	09/15/10	09/15/10	09/15/10
18 Photograph	9-4	09/15/10		
19 Photograph	9-5	09/15/10	09/15/10	09/15/10
20 Photograph	9-6	09/15/10		
21 Basement Diagram - Anastaisa Barsness	10	09/15/10	09/15/10	09/15/10
22 Photograph	11-1	09/15/10	09/15/10	09/15/10
23 Photograph	11-2	09/15/10	09/15/10	09/15/10
24 Photograph	11-3	09/15/10	09/15/10	09/15/10
25 Photograph	11-4	09/15/10	09/15/10	09/15/10
26 Photograph	11-5	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	11-6	09/15/10	09/15/10	09/15/10
2 Photograph	11-7	09/15/10	09/15/10	09/15/10
3 Photograph	11-8	09/15/10	09/15/10	09/15/10
4 Photograph	11-9	09/15/10	09/15/10	09/15/10
5 Photograph	11-10	09/15/10	09/15/10	09/15/10
6 Photograph	11-11	09/15/10	09/15/10	09/15/10
7 Photograph	11-12	09/15/10	09/15/10	09/15/10
8 Photograph	11-13	09/15/10	09/15/10	09/15/10
9 Photograph	11-14	09/15/10	09/15/10	09/15/10
10 Photograph	11-15	09/15/10	09/15/10	09/15/10
11 Photograph	11-16	09/15/10	09/15/10	09/15/10
12 Photograph	11-17	09/15/10	09/15/10	09/15/10
13 Photograph	11-18	09/15/10	09/15/10	09/15/10
14 Photograph	11-19	09/15/10	09/15/10	09/15/10
15 Photograph	11-20	09/15/10	09/15/10	09/15/10
16 Photograph	11-21	09/15/10	09/15/10	09/15/10
17 Photograph	11-22	09/15/10	09/15/10	09/15/10
18 Photograph	11-23	09/15/10	09/15/10	09/15/10
19 Photograph	11-24	09/15/10	09/15/10	09/15/10
20 Photograph	11-25	09/15/10	09/15/10	09/15/10
21 Photograph	11-26	09/15/10	09/15/10	09/15/10
22 Photograph	11-27	09/15/10	09/15/10	09/15/10
23 Photograph	11-28	09/15/10	09/15/10	09/15/10
24 Photograph	12-1	09/15/10	09/15/10	09/15/10
25 Photograph	12-2	09/15/10	09/15/10	09/15/10
26 Photograph	12-3	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	12-4	09/15/10	09/15/10	09/15/10
2 Photograph	12-5	09/15/10	09/15/10	09/15/10
3 Photograph	12-6	09/15/10	09/15/10	09/15/10
4 Photograph	12-7	09/15/10	09/15/10	09/15/10
5 Photograph	12-8	09/15/10	09/15/10	09/15/10
6 Photograph	12-9	09/15/10	09/15/10	09/15/10
7 Photograph	12-10	09/15/10	09/15/10	09/15/10
8 Photograph	12-11	09/15/10	09/15/10	09/15/10
9 Photograph	12-12	09/15/10	09/15/10	09/15/10
10 Photograph	12-13	09/15/10	09/15/10	09/15/10
11 Photograph	12-14	09/15/10	09/15/10	09/15/10
12 Photograph	12-15	09/15/10	09/15/10	09/15/10
13 Photograph	12-16	09/15/10	09/15/10	09/15/10
14 Photograph	12-17	09/15/10	09/15/10	09/15/10
15 Photograph	12-18	09/15/10	09/15/10	09/15/10
16 Photograph	12-19	09/15/10	09/15/10	09/15/10
17 Photograph	12-20	09/15/10	09/15/10	09/15/10
18 Photograph	12-21	09/15/10	09/15/10	09/15/10
19 Photograph	12-22	09/15/10	09/15/10	09/15/10
20 Photograph	12-23	09/15/10	09/15/10	09/15/10
21 Photograph	12-24	09/15/10	09/15/10	09/15/10
22 Photograph	12-25	09/15/10	09/15/10	09/15/10
23 Photograph	12-26	09/15/10	09/15/10	09/15/10
24 Photograph	12-27	09/15/10	09/15/10	09/15/10
25 Photograph	12-28	09/15/10	09/15/10	09/15/10
26 Photograph	12-29	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Photograph</u>	<u>12-30</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
2 <u>Photograph</u>	<u>12-31</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
3 <u>Photograph</u>	<u>12-32</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
4 <u>Photograph</u>	<u>12-33</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
5 <u>Photograph</u>	<u>12-34</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
6 <u>Photograph</u>	<u>12-35</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Photograph</u>	<u>12-36</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>12-37</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>12-38</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>12-39</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>12-40</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>12-41</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>12-42</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>12-43</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>12-44</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>12-45</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>12-46</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>12-47</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>12-48</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>12-49</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>12-50</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>12-51</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>12-52</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>12-53</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>12-54</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>12-55</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	12-56	09/15/10	09/15/10	09/15/10
2 Photograph	12-57	09/15/10	09/15/10	09/15/10
3 Photograph	12-58	09/15/10	09/15/10	09/15/10
4 Photograph	12-59	09/15/10	09/15/10	09/15/10
5 Photograph	12-60	09/15/10	09/15/10	09/15/10
6 Photograph	12-61	09/15/10	09/15/10	09/15/10
7 Photograph	12-62	09/15/10	09/15/10	09/15/10
8 Photograph	12-63	09/15/10	09/15/10	09/15/10
9 Photograph	12-64	09/15/10	09/15/10	09/15/10
10 Photograph	12-65	09/15/10	09/15/10	09/15/10
11 Photograph	12-66	09/15/10	09/15/10	09/15/10
12 Photograph	12-67	09/15/10	09/15/10	09/15/10
13 Photograph	12-68	09/15/10	09/15/10	09/15/10
14 Photograph	12-69	09/15/10	09/15/10	09/15/10
15 Photograph	12-70	09/15/10	09/15/10	09/15/10
16 Photograph	12-71	09/15/10	09/15/10	09/15/10
17 Photograph	12-72	09/15/10	09/15/10	09/15/10
18 Photograph	12-73	09/15/10	09/15/10	09/15/10
19 Photograph	12-74	09/15/10	09/15/10	09/15/10
20 Photograph	12-75	09/15/10	09/15/10	09/15/10
21 Photograph	12-76	09/15/10	09/15/10	09/15/10
22 Photograph	12-77	09/15/10	09/15/10	09/15/10
23 Photograph	12-78	09/15/10	09/15/10	09/15/10
24 Photograph	12-79	09/15/10	09/15/10	09/15/10
25 Photograph	12-80	09/15/10	09/15/10	09/15/10
26 Photograph	12-81	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	12-82	09/15/10	09/15/10	09/15/10
2 Photograph	12-83	09/15/10	09/15/10	09/15/10
3 Photograph	12-84	09/15/10	09/15/10	09/15/10
4 Photograph	12-85	09/15/10	09/15/10	09/15/10
5 Photograph	12-86	09/15/10	09/15/10	09/15/10
6 Photograph	12-87	09/15/10	09/15/10	09/15/10
7 Photograph	12-88	09/15/10	09/15/10	09/15/10
8 Photograph	12-89	09/15/10	09/15/10	09/15/10
9 Photograph	12-90	09/15/10	09/15/10	09/15/10
10 Photograph	12-91	09/15/10	09/15/10	09/15/10
11 Photograph	12-92	09/15/10	09/15/10	09/15/10
12 Photograph	12-93	09/15/10	09/15/10	09/15/10
13 Photograph	12-94	09/15/10	09/15/10	09/15/10
14 Photograph	12-95	09/15/10	09/15/10	09/15/10
15 Photograph	12-96	09/15/10	09/15/10	09/15/10
16 Photograph	12-97	09/15/10	09/15/10	09/15/10
17 Photograph	12-98	09/15/10	09/15/10	09/15/10
18 Photograph	12-99	09/15/10	09/15/10	09/15/10
19 Photograph	12-100	09/15/10	09/15/10	09/15/10
20 Photograph	12-101	09/15/10	09/15/10	09/15/10
21 Photograph	12-102	09/15/10	09/15/10	09/15/10
22 Photograph	12-103	09/15/10	09/15/10	09/15/10
23 Photograph	12-104	09/15/10	09/15/10	09/15/10
24 Photograph	12-105	09/15/10	09/15/10	09/15/10
25 Photograph	12-106	09/15/10	09/15/10	09/15/10
26 Photograph	12-107	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Photograph</u>	<u>12-108</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
2 <u>Photograph</u>	<u>12-109</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
3 <u>Photograph</u>	<u>12-110</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
4 <u>Photograph</u>	<u>12-111</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
5 <u>Photograph</u>	<u>12-112</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
6 <u>Photograph</u>	<u>12-113</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Photograph</u>	<u>12-114</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>12-115</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>12-116</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>12-117</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>12-118</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>12-119</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>12-120</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>12-121</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>12-122</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>12-123</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>12-124</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>12-125</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>12-126</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>12-127</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>12-128</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>12-129</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>12-130</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>12-131</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>12-132</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>12-133</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Photograph</u>	<u>12-134</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
2 <u>Photograph</u>	<u>12-135</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
3 <u>Photograph</u>	<u>12-136</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
4 <u>Photograph</u>	<u>12-137</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
5 <u>Photograph</u>	<u>12-138</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
6 <u>Photograph</u>	<u>12-139</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Photograph</u>	<u>12-140</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>12-141</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>12-142</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>12-143</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>12-144</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>12-145</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>12-146</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>12-147</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>12-148</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>12-149</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>12-150</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>12-151</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>12-152</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>12-153</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>12-154</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>12-155</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>12-156</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>12-157</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>12-158</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>12-159</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Photograph</u>	<u>12-160</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
2 <u>Photograph</u>	<u>12-161</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
3 <u>Photograph</u>	<u>12-162</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
4 <u>Photograph</u>	<u>12-163</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
5 <u>Photograph</u>	<u>12-164</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
6 <u>Photograph</u>	<u>12-165</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Photograph</u>	<u>12-166</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>12-167</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>12-168</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>12-169</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>12-170</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>12-171</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>12-172</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>12-173</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>12-174</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>12-175</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>12-176</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>12-177</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>12-178</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>12-179</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>12-180</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>12-181</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>12-182</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>12-183</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>12-184</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>12-185</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

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PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	12-186	09/15/10	09/15/10	09/15/10
2 Photograph	12-187	09/15/10	09/15/10	09/15/10
3 Photograph	12-188	09/15/10	09/15/10	09/15/10
4 Photograph	12-189	09/15/10	09/15/10	09/15/10
5 Photograph	12-190	09/15/10	09/15/10	09/15/10
6 Photograph	12-191	09/15/10	09/15/10	09/15/10
7 Photograph	12-192	09/15/10	09/15/10	09/15/10
8 Photograph	12-193	09/15/10	09/15/10	09/15/10
9 Photograph	12-194	09/15/10	09/15/10	09/15/10
10 Photograph	12-195	09/15/10	09/15/10	09/15/10
11 Photograph	12-196	09/15/10	09/15/10	09/15/10
12 Photograph	12-197	09/15/10	09/15/10	09/15/10
13 Photograph	12-198	09/15/10	09/15/10	09/15/10
14 Photograph	12-199	09/15/10	09/15/10	09/15/10
15 Photograph	12-200	09/15/10	09/15/10	09/15/10
16 Photograph	12-201	09/15/10	09/15/10	09/15/10
17 Photograph	12-202	09/15/10	09/15/10	09/15/10
18 Photograph	12-203	09/15/10	09/15/10	09/15/10
19 Photograph	12-204	09/15/10	09/15/10	09/15/10
20 Photograph	12-205	09/15/10	09/15/10	09/15/10
21 Photograph	12-206	09/15/10	09/15/10	09/15/10
22 Photograph	12-207	09/15/10	09/15/10	09/15/10
23 Photograph	12-208	09/15/10	09/15/10	09/15/10
24 Photograph	12-209	09/15/10	09/15/10	09/15/10
25 Photograph	12-210	09/15/10	09/15/10	09/15/10
26 Photograph	12-211	09/15/10	09/15/10	09/15/10

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Photograph</u>	<u>12-212</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
2 <u>Photograph</u>	<u>12-213</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
3 <u>Photograph</u>	<u>12-214</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
4 <u>Photograph</u>	<u>12-215</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
5 <u>Photograph</u>	<u>12-216</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
6 <u>Photograph</u>	<u>12-217</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
7 <u>Photograph</u>	<u>12-218</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
8 <u>Photograph</u>	<u>12-219</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
9 <u>Photograph</u>	<u>12-220</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
10 <u>Photograph</u>	<u>12-221</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
11 <u>Photograph</u>	<u>12-222</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
12 <u>Photograph</u>	<u>12-223</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
13 <u>Photograph</u>	<u>12-224</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
14 <u>Photograph</u>	<u>12-225</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
15 <u>Photograph</u>	<u>12-226</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
16 <u>Photograph</u>	<u>12-227</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
17 <u>Photograph</u>	<u>12-228</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
18 <u>Photograph</u>	<u>12-229</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
19 <u>Photograph</u>	<u>12-230</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
20 <u>Photograph</u>	<u>12-231</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
21 <u>Photograph</u>	<u>12-232</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
22 <u>Photograph</u>	<u>12-233</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
23 <u>Photograph</u>	<u>12-234</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
24 <u>Photograph</u>	<u>12-235</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
25 <u>Photograph</u>	<u>12-236</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>
26 <u>Photograph</u>	<u>12-237</u>	<u>09/15/10</u>	<u>09/15/10</u>	<u>09/15/10</u>

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PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
1 Photograph	12-238	09/15/10	09/15/10	09/15/10
2 Photograph	12-239	09/15/10	09/15/10	09/15/10
3 Photograph	12-240	09/15/10	09/15/10	09/15/10
4 Photograph	12-241	09/15/10	09/15/10	09/15/10
5 Photograph	12-242	09/15/10	09/15/10	09/15/10
6 Photograph	12-243	09/15/10	09/15/10	09/15/10
7 Photograph	12-244	09/15/10	09/15/10	09/15/10
8 Statement of Jessica Morton	13	09/15/10	09/15/10	09/15/10
9 Diagram of 1st Floor - Jeff Murdock	14	09/15/10	09/15/10	09/15/10
10 Miranda Warning and Waiver	15	09/15/10	09/15/10	09/15/10
11 Diagram of 1st Floor - David Garrison	16	09/15/10	09/15/10	09/15/10
12 Piece of Formica	17	09/15/10	09/15/10	09/15/10
13 Piece of Drywall with hole	18	09/15/10	09/15/10	09/15/10
14 Swab from David Morton	19	09/15/10	09/17/10	09/17/10
15 6 Swabs of Red Stains & 1 Control Swab	20	09/15/10	09/15/10	09/17/10
16 White & Green Flowered Underwear	21	09/15/10		
17 Shell Casing & Swab	22	09/15/10	09/15/10	09/15/10
18 Torn Divorce Papers	23	09/15/10	09/15/10	09/15/10
19 .303 Rounds (4)	24	09/15/10	09/15/10	09/15/10
20 Swab from Robert J. Morton	25	09/15/10	09/17/10	09/17/10
21 White Box with 2 bags	26	09/15/10		
22 Green Pajama Top	26-1	09/15/10	09/15/10	09/15/10
23 Report of Dr. Ellen Clark	27	09/16/10	09/16/10	09/16/10
24 Fingerprint Cards (6)	28	09/17/10	09/17/10	09/17/10
25 Report of Kevin J. Byrne	29	09/17/10	09/17/10	09/17/10
26 Report of Monica Siewertsen	30	09/17/10	09/17/10	09/17/10

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DEFENDANT'S/RESPONDENT'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
A Upstairs Diagram	A	09/14/10	09/14/10	09/14/10
B Statement of Robert Morton	B	09/14/10	09/14/10	09/14/10
C Statement of Anastasia Barsness	C	09/15/10	09/15/10	09/15/10
D Perscription Bottles mounted on a board	D	09/16/10		
E Diagram 1st Floor - David Garrison	E	09/16/10	09/16/10	09/16/10
F Letter from Kerri Heward to the District Attorney	F	09/17/10	09/17/10	09/17/10
G Photograph	G-1	09/20/10	09/20/10	09/20/10
H Photograph	G-2	09/20/10	09/20/10	09/20/10
I Photograph	G-3	09/20/10	09/20/10	09/20/10
J Photograph	G-4	09/20/10	09/20/10	09/20/10
K Photograph	G-5	09/20/10	09/20/10	09/20/10
L Photograph	G-6	09/20/10	09/20/10	09/20/10
M Photograph	G-7	09/20/10	09/20/10	09/20/10
N Photograph	G-8	09/20/10	09/20/10	09/20/10
O Photograph	G-9	09/20/10	09/20/10	09/20/10
P Photograph	G-10	09/20/10	09/20/10	09/20/10
Q Photograph	G-11	09/20/10	09/20/10	09/20/10
R Photograph	G-12	09/20/10	09/20/10	09/20/10
S Photograph	G-13	09/20/10	09/20/10	09/20/10
T Photograph	G-14	09/20/10	09/20/10	09/20/10
U Photograph	G-15	09/20/10	09/20/10	09/20/10
V Photograph	G-16	09/20/10	09/20/10	09/20/10
W Photograph	G-17	09/20/10	09/20/10	09/20/10
X Photograph	G-18	09/20/10	09/20/10	09/20/10
Y Photograph	G-19	09/20/10	09/20/10	09/20/10
Z Photograph	G-20	09/20/10	09/20/10	09/20/10

DEFENDANT'S/RESPONDENT'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/13/10

	I.D.	MARKED	OFFERED	ADMITTED
A Photograph	G-21	09/20/10	09/20/10	09/20/10
B Photograph	G-22	09/20/10	09/20/10	09/20/10
C Photograph	G-23	09/20/10	09/20/10	09/20/10
D Diagram of 1st Floor	H	09/20/10	09/20/10	
E Diagram of 1st Floor	I	09/20/10	09/20/10	09/20/10
F				
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The State of Nevada,

vs.

David Craig Morton

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 01/14/11

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>David Morton Information</u>	<u>1</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
2 <u>Utah Police Report</u>	<u>2</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
3 <u>Utah Police Report</u>	<u>3</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
4 <u>Utah Police Report</u>	<u>4</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
5 <u>Winnemucca Police Department Report</u>	<u>5</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
6 <u>Utah Conviction</u>	<u>6</u>	<u>01/14/11</u>	<u>01/14/11</u>	<u>01/14/11</u>
7 _____	_____	_____	_____	_____
8 _____	_____	_____	_____	_____
9 _____	_____	_____	_____	_____
10 _____	_____	_____	_____	_____
11 _____	_____	_____	_____	_____
12 _____	_____	_____	_____	_____
13 _____	_____	_____	_____	_____
14 _____	_____	_____	_____	_____
15 _____	_____	_____	_____	_____
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17 _____	_____	_____	_____	_____
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24 _____	_____	_____	_____	_____
25 _____	_____	_____	_____	_____
26 _____	_____	_____	_____	_____

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ORIGINAL

1 RICHARD A. MOLEZZO, ESQ.
Nevada Bar No.: 5072
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3 Reno, NV 89503
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4 Attorney for Defendant

FILED

2010 SEP 08 PM 1:23

JUDITH S. SPERO
DISTRICT CLERK

5
6 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF HUMBOLDT**
8

9 STATE OF NEVADA,

10 Plaintiff,

CASE NO.: CR09-5709

11 vs.

DEPT. NO.: 1

12 DAVID C. MORTON,

13 Defendant.
14

15 **DEFENDANT'S RESPONSE/SUPPRESSION TO THE STATE'S**
16 **MOTION TO ADMIT DEFENDANT'S STATEMENTS**

17 COMES NOW, David Morton, by and thru counsel Richard A. Molezzo and hereby
18 Responds to the States Motion to Admit Statements from Mr. Morton while in police custody, both
19 statements before Miranda was administered and after Miranda was administered.

20 **1. STATEMENT OF THE CASE**

21 DAVID MORTON is accused of Murder with a deadly weapon and discharging a firearm
22 within a dwelling, both felonies.

23 **2. STATEMENT OF FACTS**

24 Members of the Humboldt County Sherriff Department arrested DAVID MORTON on
25 August 5, 2009. He was accused of shooting Cynthia Morton, and discharging a firearm inside a
26 dwelling. At the time he was contacted officers detected an odor of alcohol about his person, he
27 was arrested on scene and was taking to Humboldt County Detention Center and given a PBT test.
28 Results showed gross intoxication of .260. He was in custody. Although, in the words of law

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1 enforcement he was the **prime suspect** and arrested, he was not given his Miranda warnings on
2 scene. (emphasis added). Moreover, prior to questioning Mr. MORTON, the police received
3 statements from Robert Morton implicating his father in the shooting and from the now deceased
4 Cynthia Morton whom also, pointed to Mr. MORTON as being the shooter. This information was
5 in the hands of Humboldt County Lead Detective Dave Garrison. Mr. MORTON was in a holding
6 cell at the Humboldt County Detention Center when Det. Garrison came into contact with him.
7 Det. Garrison enters the holding cell at around 1:10 a.m., under the subterfuge of checking on Mr.
8 MORTON due to an alleged report that Mr. MORTON was trying to harm himself.

9 3. ARGUMENT

10 A suspect in custody has a constitutional right to remain silent. United States Constitution,
11 Fifth Amendment and Fourteenth Amendment and Nevada Constitution, Article One, Section
12 Eight. This right has been memorialized in what are commonly known as the Miranda rights.
13 Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

14 In addition to the requirement that statements obtained from a suspect in custody be
15 obtained consistently with Miranda, the statements must also be voluntary. Jackson v. Denno, 378
16 U.S. 368, 84 S.Ct. 1774 12 L.Ed.2d 908 (1964); Passama v. State, 103 Nev. 212, 735 P.2d 321
17 (1987). Psychological pressures can themselves overbear a suspect's will. Proof of physical
18 brutality is not required. When a suspect's will is overborne, the Statements thus obtained are not
19 voluntary and as a result are not admissible. "A confession is involuntary whether coerced by
20 physical intimidation or psychological pressure." Townsend v. Sain, 372 U.S. 293, 307, 83 S.Ct.
21 745, 754, 9 L.Ed.2d 770 (1963).

22 The Court must consider factors particular to the Defendant, to determine if his will was
23 overborne. "[W]hen police officers turn to more subtle forms of psychological pressure, the
24 defendant's mental condition becomes a more significant factor in the voluntariness calculus." *Id.*
25 at 178-179.

26 The State bears the burden of showing by a preponderance of the evidence that the
27 Defendant knowingly and intelligently waived his Fifth Amendment rights after receiving Miranda
28 warnings. Falcon v. State, 110 Nev. 530, 534, 874 P.2d 772, 775 (1994). The validity of the waiver

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1 must be determined in each case based on the particular facts and circumstances presented
2 including the background, experience and conduct of the accused. Anderson v. State, 109 Nev.
3 1129, 1133, 865 P.2d 318, 320 (1993) (citing Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68
4 L.Ed.2d 378 (1981)). Harte v. State, 116 Nev. 1054, 1062, 13 P.3d 420, 426 (Nev.,2000).

5 The use of unconstitutionally obtained statements is prohibited for any purpose in Nevada,
6 not merely case in chief. Allan v. State, 118 Nev. 19, 38 P.3d 175 (2002), overruled in part by
7 Rosky v. State, (2005). In Allen the Court determined the Defendant's confession to be involuntary
8 under the Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 1780, 12 L.Ed.2d 908 (1964) and
9 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987) analyses, but ruled it could never-the-less be
10 used for impeachment if the Defendant elected to testify. The Nevada Supreme Court reversed that
11 ruling, holding that if the confession were involuntarily obtained, it was not admissible for
12 impeachment or for case in chief. Ruling it admissible for impeachment unfairly chilled the
13 Defendant's right to testify.

14 The Supreme Court's more recent ruling in Rosky, supra, addressed the type of analysis the
15 Court should conduct in deciding custody and voluntariness challenges, and further specified that
16 review of determinations will be *de novo*. Rosky, supra at 694.

17 The Court referred to the factors subject to consideration as the "scene and
18 action-setting circumstances." In the present case the officer knew Mr. MORTON
19 was in custody, he failed to verify if Mr. MORTON had received his Miranda
20 warnings at the scene, he was aware the Mr. MORTON was extremely intoxicated,
21 that he was possibly in shock, and that Mr. MORTON showed clear signs of remorse
22 and thus was in a vulnerable mental state.

23 There are several factors Courts have focused on in determining custody. United States v.
24 McKinney, 88 F.3d 551, 554 (8th Cir. 1996), cited in State v. Taylor, 114 Nev. 1071, 968 P.2d 315
25 (1998), listed whether the interrogation is at the police department, (yes) whether the person is told
26 he is free to leave (no), whether formally arrested (yes), whether freely able to move around during
27 questioning (no), whether the responses appear to be voluntary (no), whether the questioning is
28 police dominated (yes), whether deception is used during questioning (no), and, as noted above,
whether the suspect is arrested at the end of the interrogation (no, he was already under arrest). The
Court notes that the presence or absence of any or all seven factors is not itself determinative. In

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1 the present case, the Officers did not tell Mr. MORTON he could leave, and was not under arrest.
2 He could not move about freely during questioning. He was questioned at the jail where he was
3 under arrest for the offense. The questioning was police-dominated. Deception was apparently not
4 used.

5 The Nevada Supreme Court has recently analyzed the factors described above. In Casteel v.
6 State, 131 P.3d 1 (March 30, 2006), the court upheld a trial court finding the Defendant had not
7 been in custody. However, factually that case is distinct because many of the factors to be
8 considered were found not to apply to Mr. Casteel. He was repeatedly told he could leave. He did
9 not expect to be arrested. The questions did not suggest he would be arrested. Here the Defendant
10 was never told he could leave, was questioned at the jail and was already arrested. A finding of
11 custody should be made on the facts of this case.

12 The United States Supreme Court recently noted, "Miranda has become embedded in
13 routine police practice to the point where the warnings have become part of our national culture."
14 Dickerson v. United States, 530 U.S. 428, 120 S.Ct. 2326 (2000). In Dickerson the Court held that
15 the Miranda warnings are constitutionally required, and a law purporting to overrule them in favor
16 of merely a voluntariness analysis was itself ineffective and unconstitutional. The Court further
17 declined an invitation to overrule its own prior precedent on the issue.

18 Again we stress that the modern practice of in-custody interrogation is
19 psychologically rather than physically oriented. As we have stated before, 'Since
20 Chambers v. State of Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716, this Court
21 has recognized that coercion can be mental as well as physical, and that the blood of
22 the accused is not the only hallmark of an unconstitutional inquisition.' Blackburn v.
23 State of Alabama, 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960).
Interrogation still takes place in privacy. Privacy results in secrecy and this in turn
results in a gap in our knowledge as to what in fact goes on in the interrogation
rooms. Miranda v. Arizona, 384 U.S. 436, 448, 86 S.Ct. 1602, 1614 (U.S.Ariz.
1966).

24 The United States Supreme Court has long recognized that statements that are
25 the product of coercion are more likely to be untrustworthy than voluntary statements.
26 Spano v. New York, 360 U.S. 315, 320, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959). And
confidence in the police turns at least in part on the belief that in enforcing the law,
police will follow the law. Id. The use of coerced statements rejects both those ideas.

27 The absence of counsel itself is another factor, which bears on the determination of
28 voluntariness. But, it is important to keep in mind that the primary analysis must be the

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1 Constitutional one. The Supreme Court in Dickerson expressly disavowed any analysis that
2 focused solely on voluntariness of the statements, without attending to whether the suspect's
3 constitutional rights had been scrupulously honored.

4 Their focus in this regard, echoes the original Miranda decision:

5 A different phase of the Escobedo decision was significant in its attention to the
6 absence of counsel during the questioning. There, as in the cases today, we
7 sought a protective device to dispel the compelling atmosphere of the
8 interrogation. In Escobedo, however, the police did not relieve the defendant of
9 the anxieties which they had created in the interrogation rooms. Rather, they
10 denied his request for the assistance of counsel, 378 U.S., at 481, 488, 491, 84
11 S.Ct. at 1760, 1763, 1765. This heightened his dilemma, and made his later
12 statements the product of this compulsion. Cf. Haynes v. State of Washington,
13 373 U.S. 503, 514, 83 S.Ct. 1336, 1343 (1963).
14 Miranda v. Arizona, 384 U.S. 436, 465-466, 86 S.Ct. 1602, 1623 (U.S.Ariz. 1966).

15 The determination whether an accused is in custody during questioning also does not
16 depend on whether charges have been filed against him. In this case, they had not been.

17 It would exalt form over substance to make the right to counsel, under these
18 circumstances, depend on whether at the time of the interrogation, the authorities had
19 secured a formal indictment. Petitioner had, for all practical purposes, already been
20 charged with murder. The New York Court of Appeals, whose decisions this Court
21 cited with approval in Massiah, 377 U.S. 201, at 205, 84 S.Ct. 1199, at 1202, has
22 recently recognized that, under circumstances such as those here, no meaningful
23 distinction can be drawn between interrogation of an accused before and after formal
24 indictment. [Footnotes omitted]. Escobedo v. State of Ill. 378 U.S. 478, 486-487, 84
25 S.Ct. 1758, 1762 - 1763 (U.S.Ill. 1964).

26 That application of the law in this manner may result in fewer admissible confessions is an
27 argument that has met with disfavor:

28 It is argued that if the right to counsel is afforded prior to indictment, the
number of confessions obtained by the police will diminish significantly, because
most confessions are obtained during the period between arrest and indictment, and
'any lawyer worth his salt will tell the suspect in no uncertain terms to make no
statement to police under any circumstances.' 1764 Watts v. Indiana, 338 U.S. 49,
59, 69 S.Ct. 1347, 1357, 93 L.Ed. 1801 (Jackson, J., concurring in part and
dissenting in part). This argument, of course, cuts two ways. **The fact that many
confessions are obtained during this period points up its critical nature as a
'stage when legal aid and advice' are surely needed.** Massiah v. United States,
supra, 377 U.S. at 204, 84 S.Ct. at 1202; Hamilton v. Alabama, supra; White v.
Maryland, supra. **The right to counsel would indeed be hollow if it began at a
period when few confessions were obtained.** There is necessarily a direct
relationship between the importance of a stage to the police in their quest for a
confession and the criticalness of that stage to the accused in his need for legal
advice. Our Constitution, unlike some others, strikes the balance in favor of the right
of the accused to be advised by his lawyer of his privilege against self-incrimination.
See note, 73 Yale L.J. 1000, 1048--1051 (1964). Escobedo v. State of Ill., 378 U.S.
478, 488, 84 S.Ct. 1758, 1763 - 1764 (U.S.Ill. 1964).

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1 The Court continues:

2 We hold only that when the process shifts from investigatory to accusatory--when its
3 focus is on the accused and its purpose is to elicit a confession--our adversary system
4 begins to operate, and, under the circumstances here, the accused must be permitted
5 to consult with his lawyer. Escobedo v. State of Ill., 378 U.S. 478, 492, 84 S.Ct.
6 1758, 1766 (U.S.Ill. 1964).

7 The United States Supreme Court In June, 2004, assessed a technique used as follows: bring
8 the suspect to the station for interrogation, but not formally arrest until after obtaining incriminatory
9 statements. In Missouri v. Siebert, 542 U.S. 600, 124 S.Ct. 2601 (June 28, 2004), the Court
10 disapproved of a two-part questioning technique in which police were trained to question a suspect
11 to the point of a confession, the Mirandize, and get him or her to repeat the incriminating
12 statements. Here, there is a second set of questioning, after the arrest. However, the Court in
13 Siebert clearly concludes the first stage of the interview fails to comply with the requirements of the
14 Fifth Amendment and Miranda. The issue litigated in that case was the admissibility of the second
15 statement, which the Court also excluded. In the present case, the answers given at the jail should
16 similarly be suppressed.

17 Twenty years ago the United States Supreme Court ruled in Nix v. Williams, 467 U.S. 431,
18 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984), that an officer commenting that not finding the body of a
19 young homicide victim would deny her a decent Christian burial was a comment designed to elicit a
20 response from the suspect, even though the officer specifically told him at the time that he did not
21 expect a response. The Court admitted the evidence as independently obtained, but ruled, the
22 violation would otherwise have required suppression of the response.

23 We conclude that the *Miranda* safeguards come into play whenever a person in
24 custody is subjected to either express 301 questioning or its functional equivalent.
25 That is to say, the term "interrogation" under *Miranda* refers not only to express
26 questioning, but also to any words or actions on the part of the police (other than
27 those normally attendant to arrest and custody) that the police should know are
28 reasonably likely to elicit an incriminating response [FN5] from the suspect. [FN6]
The latter portion of this definition focuses primarily upon the perceptions of the
suspect, rather than the intent of the police. This focus reflects the fact that the
Miranda safeguards were designed to vest a suspect in custody with an added
measure of protection against coercive police practices, without regard to objective
proof of the underlying intent of the police. A practice that the police should know is
reasonably likely to evoke an incriminating response from a suspect thus amounts to
interrogation. But, since the police surely cannot be held accountable for the
unforeseeable results of their words or actions, the definition of interrogation can
extend only to words or actions on the part of police officers that they *should have*
known were reasonably likely to elicit an incriminating response. [Footnotes
omitted].

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1 Rhode Island v. Innis, 446 U.S. 291, 300-302, 100 S.Ct. 1682, 1689 - 1690 (U.S.R.I.,
2 1980).

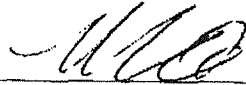
3 It should be noted that Det. Garrison had two interviews with Mr. MORTON. Both times
4 Garrison initiated the conversations and that both times while in police custody **no audio or video**
5 **recordings were made.** (emphasis added). So, how is it then that an outside agent be its defense
6 counsel or the Court could rely solely on the statements of Det. Garrison standing alone to
7 determine what really happened in the interrogation room at the Humboldt County Detention
8 Center. A determination that carries with it Mr. MORTON'S 5th Amendment Constitutional rights.

9 This is a burden that neither defense counsel nor Mr. MORTON should be held to carry.

10 **4. CONCLUSION**

11 Mr. MORTON has constitutional rights to remain silent in the face of accusations against
12 him. Statements allegedly made by him, which inculcate or incriminate are only admissible at trial
13 if constitutionally obtained. In the present case, the statements allegedly made to Detective
14 Garrison, while Mr. MORTON was in custody, yet before has Miranda admonishment and after
15 Miranda must be suppressed.

16 DATED this 18th day of September 2010.

17 
18 RICHARD A. MOLEZZO
19 Attorney for David Morton.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HARDY LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) on all parties to this action by:

XV Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
Personal delivery

XV Facsimile (FAX)

Federal Express or other overnight delivery

Messenger Service

Certified Mail with Return Receipt Requested

addressed as follows:

Humboldt County District Attorney
Attn: Russell Smith, D.D.A.
Post Office Box 909
Winnemucca, Nevada 89446

Affirmation: Undersigned hereby affirms that this document does not contain the social security numbers of any person pursuant to NRS 239B.030.

DATED this 10th day of September 2010.

Debra Keene
Debra Keene

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF HUMBOLDT.

THE STATE OF NEVADA,

NO. CR 09-5709

Plaintiff,

Thursday, September 9, 2010

vs.

1:30 a.m.

DAVID CRAIG MORTON,

Defendant.

PRESENT: Honorable Richard A. Wagner, District Judge presiding; Laura Lecumberry, Deputy Court Clerk; Zoie Williams, Court Reporter; Curtis Kull, Bailiff.

MOTIONS HEARING

Russell Smith, District Attorney and Brian Williams, Deputy District Attorney, present on behalf of the State.

Defendant (custody) present with counsel, Richard Molezzo.

The record reflected that this matter is set to begin Jury Trial on September 13, 2010 at 9:00 a.m. The Court went over the scheduling for the trial.

The record further reflected that discovery has been completed.

Williams addressed the Court.

Molezzo will not stipulate to anything at this time.

Williams addressed the Court.

Molezzo addressed the Court.

The Court will not direct the Sheriff's Deputies to dress in plain clothes.

Molezzo moved for the rule of exclusion.

The Court so ordered.

State's Motion In Limine To Admit Admissions And Confession Of Defendant And Request For Evidentiary Hearing, filed July 8, 2010.

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David Garrison, duly sworn, testified under the direct examination of Williams. State's exhibit "1", Miranda Warning and Waiver, offered and admitted. Cross examination by Molezzo.

The Court addressed counsel. Voluntary statements are not necessarily considered hearsay.

Argument by Williams.

Argument by Molezzo.

The Court ordered that the first statements out of the Defendants mouth can be used. After Miranda is given.

The Court granted the Motion In Limine and will allow the statements of the Defendant. Counsel is not to mention the statement where the Defendant refused to be photographed.

State's Motion In Limine To Admit Statements Of The Victim Made To Detective Garrison and Robert Morton, filed August 13, 2010 and State's Addition To Motion In Limine To Admit Statements Of The Victim Made To Officer Jeff Murdock, filed September 8, 2010.

The Court addressed Counsel.

Williams moved to withdraw the portion of the Motion as to the statement made to Detective Garrison.

Molezzo addressed the Court and stated that he is not objecteing to statments being brought in through Garrison.

The Court asked for an offer of proof as to statements made to Officer Murdock and Robert Morton.

Williams made an offer of proof.

Argument by Molezzo.

The Court will allow the one statement, "My husband shot me".

Williams asked about Robert.

The Court will allow Roberts testimony.

Defendant's Motion In Limine Re: Alleged Other Bad Acts, NRS 48.045, filed August 17, 2010.

Argument by Molezzo. He does not feel that this needs to be argued at this time.

The Court explained the purpose of a Petrocelli hearing.

Response by Williams.

The Court will not rule on that at this time, just cautioned counsel.

Defendant's Motion In Limine To Refer To The Defendant By His Christian Name, filed September 8, 2010.

Argument by Molezzo.

The Court will not instruct anyone to do so.

The Court directed Williams to prepare the orders from today's hearing.

The Court and counsel went over the needs of counsel for the trial.

The Court further addressed counsel as to the Jury Instructions.

PLAINTIFF'S/PETITIONER'S EXHIBITS: CASE NO.

CR 09-5709

Date: 09/09/10

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Miranda Warning and Waiver</u>	<u>1</u>	<u>09/09/10</u>	<u>09/09/10</u>	<u>09/09/10</u>
2 _____	_____	_____	_____	_____
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4 _____	_____	_____	_____	_____
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25 _____	_____	_____	_____	_____
26 _____	_____	_____	_____	_____

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X E-Flex Delivery System of the Nevada Supreme Court
_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

addressed as follows:

MICHAEL McDONALD DISTRICT ATTORNEY
ANTHONY GORDON, DEPUTY DISTRICT ATTORNEY
Humboldt County District Attorney's Office
P. O. Box 909
Winnemucca, NV 89446

DATED this 25th day of March, 2022.



KARLA K. BUTKO, ESQ.