

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 85782

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Elizabeth A. Brown
Clerk of Supreme Court

JUSTIN D. PORTER

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Jacqueline Bluth, District Court Judge
District Court Case No. 01C174954

**APPELLANT'S REPLY APPENDIX
VOLUME I**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that the Appellant's Appendix to the Reply Brief, Volumes I-III, were filed electronically with the Nevada Supreme Court on February 2, 2024. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Nevada Attorney General

STEVEN B. WOLFSON
Clark County District Attorney

By: /s/ Mariela Ramirez
An Employee of Oronoz & Ericsson, LLC

State of Nevada v. Justin D. Porter
September 19, 2007

C174954
S.C. 54866

DISTRICT COURT

CLARK COUNTY, NEVADA

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CLERK OF THE COURT

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Ann L. Blum
CLERK OF COURT

THE STATE OF NEVADA,)
)
 PLAINTIFF,)
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 VS.)
)
 JUSTIN D. PORTER)
 aka JUDG CAPRI PORTER,)
)
 DEFENDANT.)
)

CASE NO: C174954

REPORTER'S TRANSCRIPT

OF

STATUS CHECK: NEGOTIATIONS

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED WEDNESDAY, SEPTEMBER 19, 2007

FOR THE PLAINTIFF: ELISSA LUZAICH, ESQ.

FOR THE DEFENDANT: JOSEPH K. ABOOD, ESQ.
CURTIS S. BROWN, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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16 DEFENDANT PRESENT

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1 LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 19, 2007

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

3 * * * * *

4 **THE COURT:** What are we doing on Justin
5 Porter?

6 **MS. LUZAICH:** Good morning, Judge.

7 **MR. BROWN:** Good morning, Judge. Curtis
8 Brown and Joe Abood on Mr. Porter. This was a
9 continued status check for the resetting of the
10 trial date. We're asking for -- actually, if we
11 could have maybe two weeks or slightly over two
12 weeks to finish our discussions about the
13 negotiations, we can set a trial.

14 **THE COURT:** Mr. Brown, I get the feeling
15 you're always jerking me around.

16 **MR. BROWN:** No; I'm requesting, your
17 Honor. This is a complicated negotiation,
18 obviously, and Mr. Porter's reluctance -- we've had
19 many discussions with him.

20 **THE COURT:** I can't keep discussing this
21 all along --

22 **MR. BROWN:** The discussions really are
23 pretty new. For as old as this case is, we've
24 actually been discussing these negotiations for
25 about a month.

1 **THE COURT:** It's easier for me to try the
2 darn thing and be done with it.

3 **MR. BROWN:** Frankly, it's probably easier
4 for everybody to try it, except the consequences are
5 so significant to Mr. Porter, and we talked a lot
6 about that.

7 **THE COURT:** You guys are going to have
8 to -- what is it?

9 **MS. LUZAICH:** Part of the problem is mine,
10 I have to admit. All these years I have never made
11 an offer; it has always been trial only.

12 **THE COURT:** It's always your problem every
13 time you're involved in a case, I can tell you that.

14 **MS. LUZAICH:** Thank you, Judge, but I did,
15 for the first time, make an offer last month, so
16 they never had the opportunity to talk to him about
17 it.

18 **THE COURT:** Two weeks.

19 **MR. BROWN:** Thank you, Judge.

20 **MR. ABOOD:** Whoa, whoa, whoa, your Honor.

21 **THE DEFENDANT:** I don't want the deal.
22 You can keep the deal. Excuse me, your Honor. I'm
23 ready to proceed with this.

24 **THE COURT:** The man wants a trial.

25 **MR. BROWN:** Set a trial, Judge.

1 **THE DEFENDANT:** Excuse me, your Honor. I
2 want these cases severed, if I can, through my
3 attorneys, to file motions, whatever they got to do.
4 That's all I'm asking.

5 **THE COURT:** What do you mean "severed"?

6 **THE DEFENDANT:** I got --

7 **MS. LUZAICH:** He murdered one person; he
8 raped seven.

9 **THE DEFENDANT:** Okay. Well, you're just
10 saying --

11 **THE COURT:** Wait a minute. Wait. You're
12 in court.

13 **THE DEFENDANT:** Sorry. I apologize, your
14 Honor. All I'm saying is I would just like the
15 cases to be severed. I'm tired. I'm ready to get
16 this over with. What's going to happen gon' happen.
17 I put my faith in the Lord, and whatever she want to
18 say, I don't care; I'm just ready to proceed. I'm
19 tired of being here.

20 **THE COURT:** Counsel, what do you want to
21 do?

22 **MR. BROWN:** Well, your Honor, we would --

23 **THE DEFENDANT:** I'm ready to proceed.

24 **MR. BROWN:** He's ready to proceed. We've
25 had discussions. This is the first time he's really

1 expressed it that severely that he's ready to go.
2 That's fine; we can set a trial date. The problem
3 we have with my calendar and Mr. Abood's calendar is
4 we're not going to be available with the Court's
5 until June. I have two death penalty cases set now.

6 **THE COURT:** I can't continue this case to
7 June.

8 **MR. BROWN:** The problem is if we set it
9 before then and the other cases continue forward,
10 we're going to be asking to continue this case.

11 **THE COURT:** How old is this case?

12 **MR. BROWN:** This is the first trial
13 setting.

14 **THE COURT:** How long has he been in jail?

15 **THE DEFENDANT:** Seven years, your Honor,
16 and some.

17 **THE COURT:** You haven't been in jail on
18 this case for seven years.

19 **MR. BROWN:** Yes, your Honor. You remember
20 this case, this was McGroarty's. We had two years'
21 worth of suppression hearings that were ruled on
22 once he became a senior judge and was retired from
23 the bench with some of the scheduling issues, but
24 ironically, this was the first trial setting that
25 was vacated last month, so you are setting the

1 second trial setting.

2 **THE COURT:** He's never been convicted of
3 this stuff?

4 **MR. BROWN:** No. He's never been
5 convicted; he hasn't had an appeal; he's never been
6 back.

7 **THE COURT:** This has been going around for
8 seven years?

9 **MR. BROWN:** Yes.

10 **THE COURT:** That's terrible. It looks
11 like, to me, you would put other stuff aside and try
12 to get this man's case tried.

13 **MR. BROWN:** That's conceivable, but as you
14 know, there's 50 different counts that are going to
15 require intensive preparation.

16 **THE COURT:** You had seven years to
17 prepare.

18 **MR. BROWN:** Your Honor, it's been working
19 towards other things during that period. For
20 instance, this was originally a death penalty case.
21 Through the process, we've had over 20 counts
22 dismissed through litigation as well as the death
23 penalty dismissed throughout the process of the
24 litigation, so we've been progressing forward with
25 tremendous benefits, but now it's time to set the

1 trial date. The first offer that was ever offered
2 that gives Mr. Porter an opportunity to save his
3 life through a negotiation, he's evaluated it. He's
4 talked about it, and he's decided he doesn't want
5 that, and he wants to go to trial, and we can do
6 that, but from this point forward to be prepared for
7 trial and to clear other schedules, June is the
8 earliest I can realistically do it. I don't think
9 Mr. Porter has a problem waiting that long as long
10 as we do the trial.

11 **THE COURT:** Is that firm date okay with
12 you?

13 **THE DEFENDANT:** You know, right now, your
14 Honor, I can't really say. I don't know right now.
15 I got a lot of things on my mind and I'm going
16 through, and I really can't say myself.

17 **THE COURT:** I'm going to give you this
18 date, but you're going to have to go to trial on
19 this. State, both of you are going to have to go to
20 trial. This is ridiculous.

21 **MR. BROWN:** Judge, if that's the way it
22 has to go, we're going to have to be ready to go to
23 trial.

24 **THE COURT:** Give them a firm date in June.
25 I don't want to hear any ifs, ands and excuses about

1 this.

2 **MS. LUZAICH:** When does your criminal
3 stack start?

4 **THE CLERK:** It starts June 30th.

5 **MS. LUZAICH:** That's correct. I have a
6 criminal trial on May 27th.

7 **THE CLERK:** Jury trial will be July 1st at
8 10:00 a.m. with a calendar call June 23rd --
9 June 30th -- I'm sorry, June 30th at 9:00 a.m. --
10 no -- it's the 23rd, thank you, your Honor.
11 June 23rd is the calendar call at 9:00 a.m. with a
12 jury trial July 1st at 10:00 a.m.

13 **THE COURT:** That's a firm date.

14 **THE DEFENDANT:** I would like to apologize
15 by hollering, your Honor.

16 **THE COURT:** That's fine. No problem.

17 **THE DEFENDANT:** I was a little upset.

18 (WHEREUPON, THE PROCEEDINGS WERE
19 CONCLUDED.)

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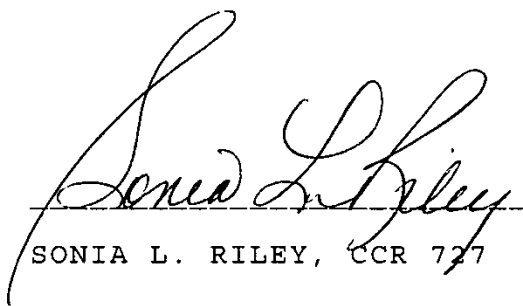
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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

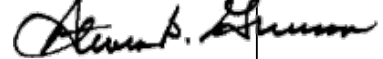
IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


SONIA L. RILEY, CCR 727

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

CASE#: 01C174954

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Plaintiff,

DEPT. VI

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vs.

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JUSTIN D. PORTER, aka JUG
CAPRI PORTER,

11

Defendant.

12

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

13

MONDAY, NOVEMBER 22, 2010

14

**RECORDER'S TRANSCRIPT OF HEARING: STATUS CHECK:
TRIAL SETTING ACHNOWLEGMENT**

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APPEARANCES:

18

For the State:

LISA LUZAICH, ESQ.

19

Chief Deputy District Attorney

20

21

For the Defendant:

JOSEPH K. ABOOD

22

Public Defender's Office

23

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RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 Las Vegas, Nevada, Monday, November 22, 2010

2 [Hearing began at 9:51 a.m.]

3 MR. ABOOD: Good morning, Judge --

4 THE COURT: Good morning.

5 MR. ABOOD: -- he's present, in custody.

6 THE COURT: All right. So at the last hearing we worked on a

7 -- trial date -- a continued trial date and came up with April 18th trial date

8 with calendar call on April 11th. Unfortunately we didn't have Mr. Porter

9 present at that time.

10 Mr. Porter, are you aware that the trials been continued to that

11 particular date?

12 THE DEFENDANT: Yes, ma'am, I'm informed.

13 THE COURT: Pardon me?

14 THE DEFENDANT: Yes, ma'am, I was informed.

15 THE COURT: Okay. All right. And, I have to say, I no longer

16 remember what the reasons were, but I believe -- counsel had conflict

17 with other trial scheduling.

18 MR. ABOOD: Had a death penalty case scheduled at exactly

19 the same time.

20 THE COURT: Right, right. Okay. All right. So, Mr. Porter,

21 we needed to have you acknowledge the new sentencing -- the new trial

22 date, I apologize. The new trial date that was necessitated by these

23 conflicts with another death penalty case. You're aware of all that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you've discussed with counsel the new

1 trial date?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. And you're not objecting to it?

4 THE DEFENDANT: I am -- objecting to it.

5 THE COURT: Okay. Go ahead.

6 THE DEFENDANT: I would like a [indiscernible] --

7 THE RECORDER: Sir could you -- can I have a microphone
8 closer? Thank you.

9 THE DEFENDANT: -- right now, I'm currently in High Desert.
10 And this back and forth thing ain't for me. And I'm just trying to get this
11 all out the way now.

12 THE COURT: Right.

13 THE DEFENDANT: It suppose been up on the 8th, but they
14 didn't bring me here.

15 THE COURT: Right.

16 THE DEFENDANT: And I'm not trying to push it off no farther
17 then what -- it -- was suppose to be. I'm ready to go. I'm not wasting
18 time.

19 THE COURT: No, I understand. And the continuance, as I
20 mentioned, was a result of some conflicts that, I think, that your
21 attorneys had with a death penalty case --

22 THE DEFENDANT: Yes.

23 THE COURT: -- that was going to go --

24 THE DEFENDANT: That has nothing to do with me.

25 THE COURT: I understand that.

1 THE DEFENDANT: That's somebody else totally different.

2 THE COURT: I understand that. All right. I certainly
3 understand that you want to get this done and over with. Believe me, I
4 appreciate that. And I'm sure that your counsel are well aware of that as
5 well, and certainly want to get this resolved just as soon as they can for
6 you, but certainly they can't be in two different places at once. And
7 certainly would not be appropriate to have different counsel come in and
8 try to get up to speed and represent you --

9 THE DEFENDANT: Right.

10 THE COURT: -- at this time. So as a result of those
11 unavoidable conflict issues, and -- the trial was continued to April 18th. I
12 appreciate the concerns you've raised, but frankly it's unavoidable --

13 THE DEFENDANT: See you already had your mind set
14 whatcha you was gonna to do, basically.

15 THE COURT: Well --

16 THE DEFENDANT: Could've left me where I was.

17 THE COURT: I suppose we could have. But there is no
18 choice in the circumstance. And so given that it had to be continued we
19 put it on in April, which was the soonest we could get everybody
20 necessary to be here on the calendar at that time. So it's not -- it's not
21 that I don't hear your concerns, and understand them, I think everybody
22 involved wanted to get the trial done, but --

23 THE DEFENDANT: What was done is going to be done. So I
24 can just sit down --

25 THE COURT: All right, thank you, sir, --

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THE DEFENDANT: -- take it with stride.

THE COURT: -- I do appreciate your concerns, and they are
noted for the record. And it certainly will be the courts intention to
complete the trial in April as scheduled.

THE DEFENDANT: All right.

THE COURT: Thank you very much.

MS. LUZAICH: Thank you, Judge.

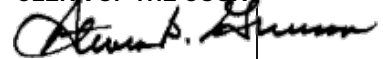
MR. ABOOD: Thank you, Your Honor.

[Hearing concluded at 9:55 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my
ability.


De'Awna Takas
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,) CASE NO. 01C174954
9 Plaintiff,)
10 vs.) DEPT. NO. VI
11 JUSTIN D. PORTER,)
12 Defendant.)

13
14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

15 MONDAY, APRIL 23, 2012

16 **RECORDER'S TRANSCRIPT OF PROCEEDING:**

17 **ALL PENDING MOTIONS**
18

19 APPEARANCES:

20 For the State: ELISSA LUZAICH, ESQ.
21 Chief Deputy District Attorney

22 For the Defendant: CURTIS BROWN, ESQ.
23 Deputy Public Defender
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25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

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Las Vegas, Nevada; Monday, April 23, 2012

[Proceeding commenced at 9:37 a.m.]

THE MARSHAL: Page 2, State of Nevada v. Porter, Justin.

MR. BROWN: Good morning, Your Honor. Curtis Brown on behalf of Mr. Porter.

MS. LUZIACH: Ms. Luziach for the State.

THE COURT: Okay. So we've got both Mr. Porter's habeas petition regarding the charges in which he was previously convicted in this department as well as the continuance of the trial setting issue and issues raised about counsel.

[Colloquy between the Court and Counsel]

Anyway, so where are we then with respect to setting the trial down on the remaining counts?

MR. BROWN: Your Honor, we can certainly set a trial date. I know that Mr. Porter has some issues he wants to raise with the Court --

THE COURT: Right.

MR. BROWN: -- concerning further representation of Mr. Abood and myself as his counsel.

THE COURT: Right.

MR. BROWN: He has strong objections to that relationship. He declined to take the opportunity to talk with me about it this morning. I think he would like to reserve and speak with the Court. I had addressed a letter to him last week explaining the options to him currently, which were that we could try and work this out. We could stay

1 his attorneys as we had through his capital murder trial, as we have for
2 the last 10 years on these charges. He could take the opportunity to
3 represent himself following a *Faretta* canvass which I strongly advised
4 against.

5 THE COURT: Yes.

6 MR. BROWN: And the third option I proposed to him was that
7 based on the remaining charges, they seem to fit -- hold on a second --
8 they seem to fit within the sexual assault unit in our office wheelhouse
9 as it were. Mr. Maningo, the team chief of that unit, has agreed to meet
10 with Mr. Porter and see what their relationship might be like. He hasn't
11 had an opportunity to do that, of course, with the two weeks, that takes
12 longer than that to get an appointment out at the prison. And he's still
13 willing to do that. Mr. Porter had indicated to me that he wasn't
14 completely interested in that option, but I don't think he's really explored
15 it. I think at a minimum he should probably meet with Mr. Maningo and
16 talk about it.

17 I know that the Court is not in the position of just giving new
18 counsel any time somebody wants it. It would be at great expense to
19 the community and to the county. And I think that this option of Mr.
20 Maningo from the unit would be a very reasonable one for Mr. Porter to
21 talk to. He has no affiliation with Mr. Abood or myself. He's the team
22 chief of a completely separate unit in the Public Defender's office. He's
23 not even in our building. So we don't have a whole lot of crossover
24 relationships as far as clients or anything with that respect.

25 And so, we've kind of here today to reset the trial date but I

1 know that these other issues are pending in Mr. Porter's mind and we
2 probably ought to address those first.

3 THE COURT: Okay. So we'll need to do that outside others'
4 presence.

5 MR. BROWN: You know that -- probably. I don't know what
6 he's going to say because he won't -- he won't relate that to me.

7 THE COURT: All right. So let's try to ask limited questions,
8 then.

9 So, Mr. Porter, your counsel is suggesting that perhaps you
10 meet with a different attorney within the Public Defender's office who's
11 actually in the sexual assault unit which makes some sense given the
12 charges that you're facing for the upcoming trial.

13 THE DEFENDANT: Right. Well, when they refer people, see,
14 based on our history together --

15 THE COURT: Mm-hmm.

16 THE DEFENDANT: -- with dealing with the -- my conviction of
17 what I just got convicted of, I know that they tend to manipulate and
18 [indiscernible] with the things that they do. Dealing with Abood himself
19 personally lied to me numerous times and --

20 THE COURT: All right.

21 THE DEFENDANT: -- I don't know if this is a twist to send
22 somebody in that's not going to do the proper job that I need done
23 because they haven't did anything that I needed them to do. Basically,
24 they're relying on everything that the State is using. They haven't did no
25 investigation they self, the things that I asked to be investigated. They

1 never investigated. I asked my family to do certain things to get certain
2 things done. And prior to -- this has been -- this case has been going
3 since 2000.

4 THE COURT: Yes. I'm aware of that.

5 THE DEFENDANT: And they still haven't did any of the stuff
6 that I wanted done.

7 THE COURT: Okay. All right.

8 THE DEFENDANT: So being that that's the manner, I don't
9 want to really deal with them. Already went to trial with them on the
10 second degree the one I got found guilty of.

11 THE COURT: Mm-hmm.

12 THE DEFENDANT: Now --

13 THE COURT: Well, you went to trial on an open murder
14 charge and were found guilty of second degree.

15 THE DEFENDANT: Yeah. Found guilty of second degree.

16 THE COURT: Okay.

17 THE DEFENDANT: And me knowing that -- how that the
18 outcome of that turned out after I sat down and I went over a lot of things
19 myself, I feel they could've did a lot better.

20 THE COURT: Okay. So --

21 MS. LUZAICH: You know, that in it of itself demonstrates that
22 he's just trying to manipulate the system and it should end here. And his
23 representation should remain where it is.

24 THE DEFENDANT: No. You know, this is -- no disrespect to
25 you, Lisa, but --

1 THE COURT: Okay. You approach -- you address me.

2 THE DEFENDANT: Oh. Okay. No disrespect to anybody,
3 but when you -- when I'm talking about my attorney, she don't know
4 what's going on with what we have between ourselves.

5 THE COURT: That's correct. Right.

6 THE DEFENDANT: She only know what she wants to know.

7 THE COURT: Right.

8 THE DEFENDANT: Allowed to know between what they have
9 to share with each other.

10 THE COURT: All right. Why don't you meet with Mr. Maningo
11 so that you can talk with him. He can talk with you about how he would
12 look at approaching this case --

13 THE DEFENDANT: Okay.

14 THE COURT: -- and these charges.

15 THE DEFENDANT: And I understand that but then
16 representing that but you also got to remember I have -- he can't do my
17 whole entire case because I got robberies intertwined to this too that
18 doesn't have nothing to do with it.

19 THE COURT: Okay. I'm sure he's capable of working on it.

20 MR. BROWN: He is, Your Honor. And with all candor to the
21 Court, Mr. Maningo is not entirely excited about this situation either.
22 You know, no attorney wants to pick up a case that's 10 years old and
23 has already had 10 years of litigation. He has to get up to speed. Any
24 meeting he's going to have --

25 THE COURT: Oh. Of course.

1 MR. BROWN: -- with Mr. Porter is going to be quite frankly
2 with -- pretty open because he's not going to be fully informed on
3 everything that's going on. So Mr. Porter has a clean palette to discuss
4 his case with him. You know, and he is fully aware, Mr. Maningo, that
5 this case went from a capital death penalty trial to where he was
6 convicted of a second degree murder. So he's familiar with those
7 aspects of it. And he'll be familiar with it. Mr. Porter's not satisfied with
8 that. So he knows where we're going but I haven't talked to him about
9 the details of the case at all. I merely asked our --

10 THE DEFENDANT: [indiscernible - away from mic]

11 THE COURT: Please don't interrupt.

12 MR. BROWN: -- I asked our administration, my bosses, to
13 ask him if he could take this case because we had to go through the
14 chain of command. And that's what they've done and he's agreed to do
15 it. And, you know, after they meet if Mr. Porter's not satisfied, he can
16 certainly express that to the Court and you can do whatever you want to
17 do. Mr. Abood and I are more than willing to stay on this case. More
18 than willing. In fact, I think we should. But understanding our
19 relationship with Mr. Porter and some of the things that he's represented
20 and indicated to me, I think this avenue of investigation is probably a
21 worthy one.

22 THE DEFENDANT: I don't mind meeting with him.

23 THE COURT: Okay.

24 THE DEFENDANT: But at the same time if I had to be -- if my
25 family was rich and I was rich maybe I could have a better outcome with

1 the system. We know 9 times out of 10 y'all give us the people that y'all
2 want us to have.

3 THE COURT: All right.

4 THE DEFENDANT: So we got to accept that. And then the
5 attorneys that y'all do give us, the public defenders --

6 THE COURT: Yes.

7 THE DEFENDANT: -- who don't have the funds to search out
8 and seek out the things that we need handled for us in these positions
9 that we're in.

10 THE COURT: Okay.

11 THE DEFENDANT: And I understand that and I realize that
12 and that's the only thing I'm trying to get done is what's best in my
13 interest. Because I know that being a Judge and y'all try to take the best
14 way. I'm not saying that you are. But I have -- I have seen actual facts
15 that states where a Judge said himself 9 times out of 10 the Judge take
16 the easy route out. And I don't want them to take the easy route out on
17 my life.

18 THE COURT: Okay. Well, I don't know what you think the
19 easy route is but.

20 THE DEFENDANT: Well, what I'm saying is I'm saying --
21 basically it was more added onto that but, you know, I know that if you
22 could get around something that's dealing with the situation right now
23 with if I had a choice to pick between different lawyers and I had the
24 option where it was my money I could pick who I want. But being that
25 it's not my money you give me who you want me to have. And if it's

1 cheaper for the system to have it done and this guy he's not no good.
2 As long as he do half his job, he ain't gotta do a good job, he can does
3 half of it.

4 THE COURT: Okay.

5 THE DEFENDANT: And I know some Judges are just content
6 with that.

7 THE COURT: Well, my experience, frankly, with the Public
8 Defender's office is that they do a excellent job on behalf of their clients.
9 And the folks who work on these type of cases are experienced trial
10 lawyers who certainly know their way around the courthouse and know
11 how to try a case. So if you are assuming that because they're not --
12 you're not paying them out of your pocket that they must not be as good
13 as others, that would be a mistake --

14 THE DEFENDANT: Well, I --

15 THE COURT: -- and assumption.

16 THE DEFENDANT: -- that would probably be a mistake to
17 say, but from the things that I have seen that it's always, you know,
18 dealing with the person that you probably rid of me, you know, dealing
19 with the person that they give you may be, you know, a slight difference
20 there.

21 THE COURT: Okay. So I -- in case it needs to be said for the
22 record, I think your counsel did an excellent job at the trial you had and
23 getting the result you got. But having said that, I suppose with respect
24 to the trial setting, we're still sort of in the same place we were which is I
25 would like to have Mr. Maningo try to meet with Mr. Porter so that -- to

1 see how that's going to go and we can look at resetting the trial as a
2 result.

3 MR. BROWN: Yeah. We're just facing a slight logistics
4 problem, Your Honor, because I know Mr. Porter doesn't want to stay
5 here. Is that correct?

6 THE COURT: Right.

7 THE DEFENDANT: No.

8 MR. BROWN: Okay.

9 THE COURT: Right.

10 MR. BROWN: So that means Mr. Maningo's got to make
11 arrangements to go to the prison to see him.

12 THE COURT: Right.

13 MR. BROWN: And the last few times that Mr. Abood and I
14 went to see Mr. Porter, the prison was having problems. We couldn't
15 get a face to face, it had to be through this glass, and sometimes the
16 microphone -- the phones didn't work. So it was a very difficult
17 environment for us to even have a conversation. And this predates any
18 of the problems we've had. And so that wasn't part of it.

19 THE COURT: Yes.

20 MR. BROWN: And so, I think if we -- if we pass this for four to
21 maybe five weeks that should give us -- for status check to set the trial
22 or you could set a trial date now. I know that Ms. -- but I don't know Mr.
23 Maningo's schedule.

24 THE COURT: I think it's a waste of time to set it without his
25 schedule.

1 MS. LUZAICH: I agree. But here's my problem.
2 THE COURT: Yeah.
3 MS. LUZAICH: My case today is 12 years old.
4 THE COURT: Right.
5 MS. LUZAICH: And I recognize that that benefits the
6 Defendant, you know, I'm going to lose witnesses over time and things
7 like that. But that's not fair to me.
8 THE COURT: Right.
9 MS. LUZAICH: All of these continuances have been -- most
10 of these continuances have been because the Defendant has been
11 having issues with his attorneys.
12 THE COURT: Yes.
13 MS. LUZAICH: So he's creating his own conflict and he's
14 creating problems in my case now. So I want to get this moving. I'm
15 done with him. I don't want to make any more offers. I just want to go to
16 trial.
17 THE COURT: Right.
18 THE DEFENDANT: Excuse me, I would differ to that. If you -
19 - from my recollection, it was always the --
20 THE COURT: Okay.
21 THE MARSHAL: You need to address the Court.
22 THE COURT: Over here. Over here. Thank you.
23 THE DEFENDANT: -- it was always the D.A. I'm sorry. It
24 was always the D.A. that always continued.
25 THE COURT: Okay. All right. Stop. Stop. It doesn't matter.

1 Okay. We are where we are for a lot of reasons over the last 12 years
2 that I'm not going to go into at this point. But whatever happened before
3 this is where we are now.

4 I'm going to put over the status check on trial for 30 days.
5 And I would like Mr. Maningo to have met with Mr. Porter by then. That
6 means that I would like you to take the meeting with him. You can come
7 back here at the next meeting and say whatever you have to say about
8 him, but I want you to take the meeting and at least give him a chance.

9 THE DEFENDANT: I didn't say I wasn't.

10 THE COURT: Good. I just want to be clear about that. And if
11 there's an issue on being able to meet and I don't know what may be
12 going on at the prisons. I know that Kara Krause from the attorney
13 general's office has been coming to the criminal Judges meetings and
14 seems willing to assist in facilitating meetings if that's needed.

15 MR. BROWN: That might be beneficial, Your Honor --

16 THE COURT: So --

17 MR. BROWN: -- because I think it's not just important that
18 they have an opportunity to meet, but they do need to sit in the same
19 room and have a face to face. So we might need an order to just
20 facilitate that part of it.

21 THE COURT: Yeah. If you need something --

22 MR. BROWN: Generally setting up meetings hasn't -- yeah.

23 THE COURT: I was just going to say if you need something
24 from me I'm willing to do that but I don't know exactly what's needed or
25 what the concerns are. But if she can help you, great. If you need an

1 order from me, I'm willing to --

2 MR. BROWN: Okay.

3 THE COURT: -- do that.

4 MR. BROWN: Thank you, Your Honor.

5 THE COURT: Now so what's the date in 30 days on that
6 then?

7 THE COURT CLERK: May 23rd, 8:30.

8 THE COURT: Okay. So that's on the status check for trial.
9 Let me address his pro se petition for writ of habeas corpus.

10 THE DEFENDANT: Denied.

11 THE COURT: Pardon?

12 THE DEFENDANT: I was going to say you about to deny it
13 right now, ain't you?

14 THE CORRECTIONS OFFICER: That's being rude.

15 THE DEFENDANT: I ain't trying to be rude [indiscernible] --
16 I'm not trying to be rude. Just accepting my fate.

17 THE COURT: Okay. So I have read the petition as well as
18 the State's response. And first, the petition is untimely. Good cause
19 has not been demonstrated for that untimeliness. Even if good cause
20 were shown, however, and matters were considered on the merits, the
21 first two grounds that are raised that is whether sufficient proof was
22 presented at trial or whether the Defendant's statements were voluntarily
23 made or in violation of the Fifth Amendment, both of those were
24 presented and rejected on the direct appeal and that is law of the case
25 at this time.

1 The third ground that was raised is an assertion that it was a --
2 basically saying it's an illegal sentence on the deadly weapon
3 enhancement. However, under the statute that was in effect at the time
4 of the acts which form the basis for this conviction, the sentence that
5 was given was in accord with that statute that was in effect at that time.
6 So even if considered on the merits the habeas petition lacks merit at
7 this time. And so, I am denying the petition and dismissing it at this
8 time. So if State would prepare an order on that.

9 MS. LUZAICH: Of course.

10 THE DEFENDANT: Can I -- can I get that ASAP? The --

11 THE COURT: The order?

12 THE DEFENDANT: Yeah. The order.

13 THE COURT: After it's submitted it'll be provided to you. I'm
14 sure the State will take care of that.

15 THE DEFENDANT: Okay.

16 THE COURT: And we'll make sure a copy gets sent to you.

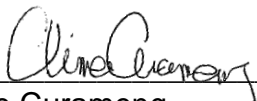
17 THE DEFENDANT: Thank you.

18 THE COURT: Okay. You're welcome.

19 [Proceeding concluded at 9:53 a.m.]

20 * * * * *

21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

24 
25 Aimee Curameng
 Court Recorder/Transcriber

ORIGINAL

Electronically Filed
5/31/2017 11:02 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 JUSTIN PORTER ID NO. 1042449
2 HIGH DESERT STATE PRISON
3 22010 COLD CREEK ROAD
4 POST OFFICE BOX 650
5 INDIAN SPRINGS, NEVADA 89070

6 Defendant In Proper Person

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA
10 PLAINTIFF

CASE NO.: 01C-174954

DEPT NO.: 6

11 vs.

12 Justin Porter
13 Defendant

DATE OF HEARING: 6-21-17

TIME OF HEARING: 8:30A

"MOTION TO DISMISS / SUBSTITUTE COUNSEL / MOTION TO DISMISS"

14 COMES NOW, Justin Porter, Defendant, In Proper Person and

15 moves this Honorable Court, to grant his motion
16 to dismiss / substitute counsel / motion to dismiss.
17 MADE PURSUANT TO EIGHTH JUDICIAL DISTRICT COURT
18 RULE(S) 740 b 2 II

19 THIS MOTION, is made and based upon the attached Memorandum of Points

20 and Authorities, all of the pleadings and other documents on file in this case, as well as
21 AFFIDAVIT OF JUSTIN PORTER.

22 DATED This 18 day of May, 2017.

23 Respectfully submitted,

24 Justin Porter #1042449
25 Justin Porter ID NO. 1042449
26 Defendant In Proper Person

RECEIVED

MAY 22 2017

CLERK OF THE COURT

CLERK OF THE COURT

CLERK OF THE COURT

RECEIVED
MAY 31 2017

RECEIVED
MAY 23 2017

11
1 "POINTS AND AUTHORITIES"

2 Procedural Background.
3 (IN PERTINENT PARTS)

4 ON APRIL 26, 2001, the State of Nevada, by
5 WAY OF INFORMATION, charged Justin Porter
6 (hereinafter "Defendant") with over 40 felony
7 counts, including sexual assault, kidnapping
8 murder, burglary, and robbery, related to
9 9 events over a 4-month period, involving
10 12 victims. ON MAY 2, 2001, an Amended
11 INFORMATION was filed reducing the total
12 charges to 38 counts, counts 30, 31 and 32
13 alleged Burglary while in possession of a
14 deadly weapon; Attempt Robbery with use
15 of a deadly weapon; and Murder with use
16 of a deadly weapon (open murder), respectively.
17 These three counts involved a single victim.

18 ON OR ABOUT MAY 3rd, 2001, Defendant was
19 manipulated and coerced into unknowingly
20 waiving his speedy trial rights.

21 ON October 11, 2001 a second Amended
22 INFORMATION was filed in open court to correct
23 a typographical error.

24 ON OR ABOUT Sept. 19, 2007 Defendant
25 appeared before the Honorable Judge LEE A.
26 GATES, AND DID RE-INVOKe HIS RIGHT(S)
27 TO A FAST AND SPEEDY TRIAL.

1 ON MAY 15, 2008, Defendant filed a motion to
2 SEVER COUNTS 30-32 FROM THE REMAINDER
3 OF THE CHARGES. ON JUNE 12, 2008, THE STATE
4 FILED ITS OPPOSITION. ON JUNE 18, 2008, THE
5 COURT GRANTED DEFENDANT'S MOTION TO
6 SEVER, AND ORDERED THE MURDER EVENT
7 BE TRIED SEPARATELY. THE STATE SUBSEQUENTLY
8 FILED A THIRD AMENDED INFORMATION ON
9 APRIL 30, 2009, CHARGING DEFENDANT
10 WITH: COUNT 1-BURGLARY WHILE IN POSSESSION
11 OF A DEADLY WEAPON; COUNT 2- ATTEMPT ROBBERY
12 WITH USE OF A DEADLY WEAPON, AND COUNT 3 -
13 MURDER WITH USE OF A DEADLY WEAPON.

14 ON MAY 8, 2009 A JURY FOUND DEFENDANT
15 ON COUNT 3 OF SECOND DEGREE MURDER WITH
16 USE OF A DEADLY WEAPON. DEFENDANT WAS
17 FOUND NOT GUILTY OF COUNTS 1 AND 2.

18 ON SEPT. 30, 2009 THE COURT SENTENCED
19 DEFENDANT TO THE NEVADA DEPT. OF CORRECTIONS
20 FOR 120 MONTHS TO LIFE, PLUS A CONSECUTIVE TERM
21 OF 120 MONTHS TO LIFE FOR THE USE OF A
22 DEADLY WEAPON, WITH 3,338 DAYS CREDIT FOR
23 TIME SERVED.

24 DEFENDANT'S REMAINING CHARGES
25 WENT ON, UNPROSECUTED.

26 ON NOV. 22, 2010 DEFENDANT
27 APPEARED BEFORE THE HONORABLE JUDGE

1 ELISSA CADISH AND DID [AGAIN] INVOKE
2 HIS RIGHTS TO A FAST AND SPEEDY
3 TRIAL.

4 THAT THERE AFTER, DEFENDANT DID
5 MAKE SEVERAL ORAL AND WRITTEN
6 REQUESTS UPON HIS ATTORNEY OF
7 RECORD MR. PHILIP J. KOHN, HIS
8 DEPUTY(IES).

9 DEFENDANT REQUESTED APPOINTMENT OF INVESTIGATOR
10 DEFENDANT REQUESTED INFORMATION AND MATERIALS.
11 DEFENDANT REQUESTED COMPLETE COPY OF ALL DISCOVERED
12 EVIDENCE. DEFENDANT REQUESTED A COPY OF THE
13 STATE'S WITNESS LIST. DEFENDANT REQUESTED
14 THE APPOINTMENT OF EXPERT FINGERPRINT ANALYZER
15 DEFENDANT REQUESTED THE APPOINTMENT OF EXPERT
16 D.N.A., ANALYZER. DEFENDANT REQUEST THAT
17 SEVERAL PRE-TRIAL MOTION(S) BE FILED ON
18 HIS BEHALF, AND DEFENDANT DID ALSO
19 REQUEST THAT WITNESSES BE SUBPOENA
20 TO TESTIFY AT HIS TRIAL.

21 THAT DEFENDANT'S ATTORNEY
22 OF RECORD, MR. PHILIP J. KOHN, HIS
23 DEPUTY(IES) HAVE REFUSED AND/OR FAILED
24 TO ACCOMMODATE THE AFORE-CITED REQUESTS
25 TO THE DATE OF THIS WRITING.

"POINTS AND AUTHORITIES"

LEGAL ARGUMENT(S).

Defendant Justin Porter. Hereinafter defendant, asserts that he is being denied his right to effective assistance of counsel, due to the wholly inadequate actions of his court-appointed counsel, Mr. Philip J. KOHN, the Clark County Public Defender. Further, counsel's action(s) comport to nothing more than a violation of defendant's due process rights, see the Due Process of Law clause(s) of the UNITED STATES CONSTITUTION, AND SEE ARTICLE 1 & 8, OF THE NEVADA STATE CONSTITUTION. ALSO see AFFIDAVIT OF JUSTIN PORTER, ALL ATTACHED Hereto, BY Reference.

Defendant has written numerous requests to counsel and counsel has refused and/or failed to accommodate the same, although said requests are lawful and timely made. Please see attached exhibits marked NO. 1, 2, 3, 4, 5, 6, 7, and 8.

That counsel has never discussed a trial strategy with defendant, although

1 defendant Has Always maintained
2 A Desire to go to TRIAL AND Prove
3 His Factual INNOCENSE. This
4 Fact Has been the case over the
5 Past 17 yrs. Since Counsel was
6 Appointed.
7 Defendant has an UNQUALIFIED Right to
8 legal Assistance that expresses
9 loyalty to defendant. "The Right
10 to Counsel is the Right [also] to
11 effective Assistance of Counsel".
12 see CUYLER V. SULLIVAN, 100 S.Ct. 1708
13 (1980); AND FRAZIER V. U.S., 18 F.3d.
14 778 (9th Cir. 1994). Thus... The
15 Adversarial Process Protected by the Sixth
16 Amendment to the UNITED STATES CONSTITUTION
17 Requires that the ACCUSED have "counsel
18 Acting in the Role of AN ADVOCATE". see
19 ANDERS V. CALIFORNIA, 87 S.Ct. 1396 and
20 1480 (1967).
21 A PARTY whose Counsel is UNABLE to Provide
22 effective OR Adequate Assistance is NO
23 better than one who has NO Counsel AT ALL;
24 AND ANY APPEAL(S) would be Futile in it's
25 gesture. see EVITTS V. LUCEY, 105 S.Ct.
26 830 (1985); AND see DOUGLAS V. CALIFORNIA,
27 83 S.Ct. 814 (1963).

1 APPOINTED COUNSEL FOR THIS DEFENDANT
2 HAS DONE NOTHING TO FAIRLY, PROPERLY
3 REPRESENT DEFENDANT SINCE HIS
4 APPOINTMENT, OVER (16 1/2) - "SIXTEEN
5 AND ONE HALF YEARS AGO". THIS ALONE
6 IS A VIABLE CLAIM AS TO INEFFECTIVE
7 ASSISTANCE OF COUNSEL. SEE STRICKLAND
8 V. WASHINGTON, 466 U.S. 668, 687 (1984).

9 Therefore, defendant contends
10 that although counsel has been appointed
11 in the instant case, the actions of
12 counsel, or... lack thereof, have
13 created UNFAIR PREJUDICE AND
14 obstacles which do not comport the
15 FAIR PROCEDURES OWED TO THE DEFENDANT
16 AND HAVE CREATED IREPAIRABLE
17 HARM TO DEFENDANT'S DEFENSE.
18 I.E. A "17yr. delay in his trial."

19 The PLURALITY OPINION IN EVITT
20 AND DOUGLAS, INFERA, MADE IT VERY
21 CLEAR THAT;

22 "There is lacking that equality demanded
23 by the Fourteenth Amendment, where the "rich man"
24 ENJOYS the benefit of the law being RIGHTEOUSLY
25 PRACTICED; IN THAT, COUNSEL'S EXAMINATION STEP-
26 BY-STEP (INTO THE RECORD OF THE CASE), AND
27 RESEARCH OF THE LAW, AND A MARSHALLING OF THE

1 facts and arguments on his behalf is done,
2 as should befit an advocate of defense;
3 while the indigent, so burdened by a
4 preliminary determination that his
5 case is without merit, is forced to
6 shift for himself," 105 S.Ct. At
7 842; 83 S.Ct. At 816-17.

8 NOTWITHSTANDING the strong
9 policy favoring autonomy, "ethical,
10 professional AND constitutional principals"
11 establish counsel's standards owed
12 to his client. See: American BAR
13 Association (ABA), AND Professional
14 Responsibility Code (CPR).

15 SO... CLEARLY, A conflict of
16 interest now exist between counsel,
17 MR. Philip J. KOHN, AND defendant,
18 AS ALL faith AND trust has been
19 diminished AS A result of counsel's
20 actions OR lack thereof, AND A
21 "showing" of conflict of interest
22 requires NO showing of Prejudice.
23 See CUYLER V. SULLIVAN, 100 S.Ct. At 1717.

24 The law addresses itself to
25 actualities.

26 Ad Judication is NOT A mere
27 mechanical Process, NOR does it compel
28

1 ANY either OR determination. see
2 GRIFFIN V. ILLINOIS, 76 S. CT. 585
3 592-594 (1956).

4 Therefore, fundamental fairness
5 requires the abolition of [Prejudice]
6 which defendant is presently suffering.
7 This is an actuality that the law
8 must address. Anything short of
9 abdication would further a manifest
10 of injustice. The "effectiveness
11 (in assistance) of counsel" is an
12 individual's most fundamental right,
13 for without it, every other right
14 defendant has to assert becomes
15 affected. I. E., DEFENDANT'S
16 RIGHT TO A FAST AND SPEEDY TRIAL
17 DENIED TO HIM FOR 17 yrs.

18
19 DATED THIS 18 DAY OF May, 2017
20

21
22 BY: *Justin Porter*
23 JUSTIN PORTER-DEFENDANT
24

25 I, Justin Porter, do herein solemnly
26 swear, under the penalty and pains
27 of perjury, pursuant to N.R.S. 171.102

28

1 AND N.R.S. 208.165
2 That I Did MAKE, OR Did CAUSE
3 to have made, the Above, AFORE:
4 - DRAFTED, MOTION TO DISMISS AND
5 SUBSTITUTE COUNSEL / MOTION
6 TO DISMISS. That the Same is
7 Accurate and is Correct to the best of my
8 Knowledge, memory and belief, except those
9 matters which I have had to Rely upon
10 Information, and AS to those matters I
11 believe them to be true Also.

12
13 DATED THIS 18 DAY OF MAY, 2017

14
15 BY: Justin Porter
16 JUSTIN PORTER - DEFENDANT - Pro. Per.

"MOTION TO DISMISS"

AS CAUSE FOR SAID MOTION
TO DISMISS, defendant asserts as
follows;

The 6th Amend. to the U.S. Const., sets
forth the following mandate upon the state's
through the Fourteenth Amend.,

"In All Criminal Prosecutions, the
Accused Shall Enjoy the Right to a Speedy
and Public TRIAL..."

This Constitutional Mandate has been
codified in the state of Nevada, in the
N.R.S., under Section 178, 556 (2);

That Herein, I At the Instant
case, Defendant has made several
futile attempts to exercise his Constitutionally
Protected Liberties, to a Speedy and Public
TRIAL.

That over the course of the Past (17 yrs.) Seven-
teen Years, defendant has Begged, and...
Pleaded, to have his Case Brought to
trial, wherein He can Prove his Factual
INNOCENCE. See TRANSCRIPT(S) OF HEARING
DATES, "Sept. 19, 2007 AND NOV. 22, 2010, AND ALSO
see defendant's "MOTION FOR DISMISSAL FOR LACK
OF SPEEDY AND TIMELY PROSECUTION", Received by

1 this Honorable Court, ON OR ABOUT the 16 day
2 OF JUNE, 2016.

3
4 The HIGH COURT OF OUR GREAT
5 COUNTRY HAS LONG AGO SETTLED ALL DIFFERENCES
6 CONCERNING DEFENDANTS [CONSTITUTIONAL
7 GUARANTY] TO A SPEEDY TRIAL, see
8 BARKER V. WINGO, 407 US 514, 33 L.Ed.
9 2d 101, 92 S.Ct. 2182

10 FURTHER...

11 IN BARKER V. WINGO, SUPRA.
12 THE HIGH COURT HELD THAT,
13 "While a defendant's Assertion of, or
14 Failure to Assert, his Right to a speedy trial
15 is one of the factors to be considered in
16 an inquiry into the deprivation of such a
17 Right. The PRIMARY burden REMAINS on the
18 COURTS and the Prosecutors to ASSURE
19 that cases are speedily brought to TRIAL

20
21 The Instant Case AT BAR is 17 YRS. old.
22 For 17 YRS. the Court and the
23 DISTRICT ATTORNEY HAS FAILED AND REFUSED TO
24 BRING the Instant Case to trial.

25
26 The Same OVERT, deliberate, PLAIN ON IT'S
27 FACE, CONSTITUTIONAL INFRINGEMENTS HAVE

1 made it impossible for defendant to
2 HAVE A FAIR TRIAL, which also violates
3 the 6th amend. to the U.S.C.

4
5 FINALLY, because defendant, AFTER
6 17 yrs. of unduly, delay, on the part
7 of the prosecutor(s) and INEFFECTIVE
8 Assistance of Defense Counsel, Defendant
9 CANNOT POSSIBLY be given a FAIR TRIAL,
10 could not possibly gather evidence,
11 NOR contact his witnesses or otherwise
12 prepare a defense.

13 Defendant Prays this
14 Honorable Court, DISMISS THE INSTANT
15 CASE, for lack of Prosecution AND...
16 FOR IRREPAIRABLE VIOLATIONS of defendant's
17 SPEEDY TRIAL Rights.

18
19
20 DATED THIS 18 DAY OF May, 2017

21
22 BY: Justin Porter
23 JUSTIN PORTER-DEFENDANT-PROPER

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

TO DISMISS AND SUBSTITUTE COUNSEL
(Title of Document)

filed in District Court Case number DIC-174954

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Justin Porter
Signature

5-18-17
Date

JUSTIN PORTER
Print Name

Title

CERTIFICATE OF SERVICE BY MAILING

I, Justin Porter, hereby certify, pursuant to NRCP 5(b), that on this 18
day of MAY, 2017, I mailed a true and correct copy of the foregoing, "MOTION
TO DISMISS AND SUBSTITUTE COUNSEL"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

BRIAN Williams
WARDEN - H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV. 89070

STEVEN WOLESKY
DISTRICT ATTORNEY
200 Lewis Ave.
LAS VEGAS, NV. 89155-2212

STEVEN GRIERSON
CLERK OF THE COURT
200 Lewis Ave.
LAS VEGAS, NV. 89155-1160

CC: FILE

DATED: this 18 day of MAY, 2017.

Justin Porter #1042449
JUSTIN PORTER #1042449
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

JUSTIN PORTER # 1042449
P.O. BOX 650 (H.O.S.A.)
INDIAN SPRINGS, NV. 89070

EXHIBIT # 1

APRIL 10, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
Las Vegas, NV. 89055

RE: CASE NO. OLC-174954 / "REQUEST FOR
APPOINTMENT OF INVESTIGATOR".

DEAR MR. MANINGO, I am requesting that you, your
good office, please provide me with an investigator,
within (10) TEN WORKING DAYS OF RECEIPT OF
this missive, so that I can assist with my
defense and prove my factual innocence.

In Advance, Thank You Sincerely
for your prompt compliance.

Justin Porter
Justin Porter

RECEIVED

MAY 22 2017

CLERK OF THE COURT

JUSTIN PORTER #1042449
P.O. Box 650 (H.D.S.P.)
INDIAN SPRINGS, NV. 89070

APRIL , 12 , 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
LAS Vegas, NV. 89155

RE: CASE NO. OLC174954 / "REQUEST FOR
INFORMATION AND MATERIALS".

DEAR MR. MANINGO, I Am requesting that You,
Your good office, Please Provide me with
the below listed Information and
materials within 30 days from receipt of
this missive, so that I can Assist with
my Defense and Prove my Factual
INNOCENCE.

COPIES OF CRIMINAL AND CIVIL COMPLAINTS FILED
AGAINST ANY PERSONS WHO WORKED DIRECTLY
OR INDIRECTLY ON THE INSTANT CASE,
COPY OF MILITARY RECORDS OF THE SAME PERSONS
LISTED ABOVE.

COPIES OF ANY AND ALL STATEMENTS, DEPOSITIONS
AND/OR REPORTS MADE BY OFFICERS, INFORMANTS,
CONFIDENTIAL INFORMANTS, NURSES, DOCTORS,
EXPERTS, DETECTIVES, INVESTIGATORS, ETC.,
WHO WORKED DIRECTLY AND OR INDIRECTLY.

ON the INSTANT CASE.

COPIES OF PICTURES, VIDEO TAPES, AUDIO TAPES RECORDINGS, IN THE CUSTODY OF THE STATE OF NEVADA, U.S. GOVERNMENT, DISTRICT ATTORNEY, ect., THAT ARE RELATED DIRECTLY AND/OR INDIRECTLY TO THE INSTANT CASE, AND/OR DEFENDANT.

COPIES OF THE NAMES OF ANY PERSONS WHO WORKED DIRECTLY AND/OR INDIRECTLY ON THE INSTANT CASE, AND/OR RELATED TO DEFENDANT. THIS MUST INCLUDE, BUT IS NOT LIMITED TO THE FOLLOWING;

OFFICERS, AGENTS, INFORMANTS, CONFIDENTIAL INFORMANTS, DOCTORS, NURSES, DETECTIVES, INVESTIGATORS, PROSECUTORS, ect.,

FINALLY,

DEFENDANT REQUESTS COPIES OF ANY AND ALL EXCULPATORY INFORMATION AND OR MATERIALS IN THE CUSTODY OF METRO POLICE OFFICERS (LAS VEGAS), LAW ENFORCEMENT AGENTS, CHICAGO POLICE OFFICERS, INFORMANTS, CONFIDENTIAL INFORMANTS, DOCTORS, NURSES, DETECTIVES, INVESTIGATORS, PROSECUTORS, BOTH STATE AND FEDERAL.

IN ADVANCE - THANK YOU, FOR YOUR PROMPT COMPLIANCE

Justin Porter

JUSTIN PORTER - DEFENDANT

2 of 2

JUSTIN PORTER # 1042449
P.O. Box 650 (H.D.S.A.)
Indian Springs, NV. 89070

APRIL 17, 2017

JEFFREY S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
Las Vegas, NV. 89155

RE: CASE NO. OIC174954 / REQUEST FOR COMPLETE
COPY OF ALL DISCOVERED EVIDENCE.

DEAR MR. MANINGO, I am requesting that you, your
good office, please provide me with a copy of all
discovered evidence in the instant case within
(10), TEN WORKING DAYS OF RECEIPT OF THIS
MISSIVE, SO THAT I CAN ASSIST WITH MY
DEFENSE AND PROVE MY FACTUAL INNOCENCE.

In Advance, Thank You, Justin Porter
Justin Porter

EXHIBIT #4

JUSTIN PORTER #1042449
P.O. Box 650 (H.D.S.P.)
INDIAN SPRINGS, NV. 89070

APRIL 18, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
LAS VEGAS, NV. 89155

RE: CASE NO. 01C174954 / REQUEST FOR
COPY OF STATE'S WITNESS LIST."

DEAR MR. MANINGO, Herein I am requesting
that you, your good office, please forward
to me a copy of the state's witness
list, so that I can assist with my
defense.

In advance, thank you
for your prompt compliance and professional
assistance.

Justin Porter
JUSTIN PORTER

JUSTIN PORTER #1042449
P.O. Box 650 (H.D.S.A.)
INDIAN SPRINGS, NV. 89070

EXHIBIT #5

APRIL 20, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
LAS VEGAS, NV. 89155

RE: CASE NO. 01C-174954 / "REQUEST FOR
THE APPOINTMENT OF EXPERT FINGER-
- PRINT ANALYZER"

DEAR MR. MANINGO, I am requesting that you,
your good office, APPOINT A EXPERT FINGER -
- PRINT ANALYZER, to my case.

IN ADVANCE, THANK YOU SINCERLY
FOR YOUR TIME AND PROFESSIONALISM.

Justin Porter
JUSTIN PORTER - DEFENDANT

JUSTIN PORTER # 1042449
P.O. Box 650 (H.D.S.P.)
INDIAN SPRINGS, NV, 89070

EXHIBIT #6

APRIL 23, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
Las Vegas, NV, 89155

RE: CASE NO. OIC-174954 / REQUEST FOR
THE APPOINTMENT OF EXPERT D.N.A. ANALYZER

DEAR MR. MANINGO, I AM requesting that you,
your good office, please, appoint a expert
D.N.A. ANALYZER to my case.

In Advancer thank You Sincerely
for Your time and Professionalism.

Justin Porter
Justin Porter - Defendant

EXHIBIT #7

Justin Porter # 1042449
P.O. Box 650 (H.D.S.P.)
Indian Springs, NV. 89070

MARCH 31, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
Las Vegas, NV. 89155

RE: CASE NO. 01C174954 / Pre Trial MOTIONS
Which MUST BE filed on behalf of Defendant

1. Formal Written MOTION FOR COPY OF ALL DISCOVERED EVIDENCE
2. MOTION TO DISMISS - All charges.
3. MOTION TO SUPPRESS IN-VOLUNTARY STATEMENTS BY
DEFENDANT / OR EXCLUSIONARY HEARING.
4. MOTION FOR INDEPENDANT, PRIVATE INVESTIGATOR,
NOT UNDER CONTRACT WITH STATE OF NEVADA OR
COUNTY OF CLARK.
5. MOTION FOR EVIDENTIARY HEARING
6. MOTION FOR INDEPENDANT D.N.A. EXPERT, to
be APPOINTED.
7. MOTION FOR INDEPENDANT Ballistics Expert,
to be APPOINTED.

DEAR MR. MANINGO, I am requesting that You, Your good office,
Please file the Afore-listed motions on my behalf.

In Advance, Thank You.

Justin Porter
Justin PORTER

JUSTIN PORTER #1042449
P.O. Box 650 (H.D.S.P.)
INDIAN SPRINGS, NV. 89070

APRIL 27, 2017

Jeffrey S. MANINGO, ESQ.
309 S. Third Street
P.O. Box 552610
Las Vegas, NV. 89155

RE: CASE NO. OLC-174954 / "WITNESSES WHO
MUST BE SUBPOENA, TO TESTIFY AT TRIAL."

DEAR MR. MANINGO, the following is a list of
Persons/Witnesses who MUST BE SUBPOENA TO TESTIFY AT
MY TRIAL, so that I can Prove my Factual Innocence.

1. KRISTOPHER Deloney
2. DOROTHY Deloney
3. Beverly Porter
4. Pookie RAY
5. Bill

Justin Porter
Justin PORTER

CERTIFICATE OF SERVICE BY MAILING

I, Justin D. Porter, hereby certify, pursuant to NRCP 5(b), that on this 3
day of MAY, 2017, I mailed a true and correct copy of the foregoing, "MEMORANDUM / NOTICE TO THE COURT EX-PARTE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D. GRIERSON, C.C.
200 Lewis Ave. 3RD Floor
Las Vegas, NV 89155-1160

Steven B. Wolfson
200 Lewis Ave.
Las Vegas, NV 89155-2212

Jeffrey S. Maningo
309 S. Third Street
P.O. Box 552610
Las Vegas, NV 89155

CC: FILE

DATED: this 3 day of MAY, 2017.

Justin D. Porter 1042449
Justin D. Porter #1042449
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Justin Porter #1042449 3762
P.O. Box 650
Indian Springs, NV 89070

Hasler 2 FIRST CLASS MAIL
05/19/2017
US POSTAGE \$001.82
ZIP 89101
011E12550757

Confidential

STEVEN D. GRIERSON, CLERK OF THE COURT
200 Lewis Ave., 3RD FLOOR
Las Vegas, NV 89155-1160

(CONFIDENTIAL)

CONFIDENTIAL

LEGAL MAIL

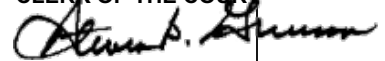
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HIGH DESERT STATE PRISON
LAW LIBRARY

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MAY 18 2017

HIGH DESERT STATE PRISON
LAW LIBRARY



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JUSTIN D. PORTER,

12 Defendant.

CASE NO. 01C174954

DEPT. NO. VI

13
14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE

15 WEDNESDAY, JULY 18, 2018

16 **RECORDER'S TRANSCRIPT OF PROCEEDING:**

17 **STATUS CHECK: COUNSEL**

18 **(UNSEALED PORTION ONLY)**
19

20 **APPEARANCES:**

21 For the State:

STEVEN ROSE, ESQ.
Deputy District Attorney

22
23 For the Defendant:

JEFFREY S. MANINGO, ESQ.
Deputy Public Defender

24
25 RECORDED BY: DE'AWNA CREWS, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, July 18, 2018

2 [Unsealed proceeding commenced at 11:27 a.m.]

3
4 THE MARSHAL: Page 15, the State of Nevada v. Porter,
5 Justin.

6 THE COURT: Okay. So what we're on calendar for today is
7 about issues between Mr. Porter and his counsel and possible change
8 of counsel at this point. So as I indicated last week we would need to
9 have a hearing outside the presence of the State to fully address that.
10 And so I don't know --

11 MR. ROSE: I'd be right outside, Judge.

12 THE COURT: Okay. All right.

13 MR. ROSE: Thank you.

14 THE COURT: Thank you. So let's go off the record.

15 [Sealed proceedings 11:28 a.m. to 12:25 p.m. - not transcribed]

16 THE COURT: We're back on the record. I think.

17 THE COURT RECORDER: Yeah.

18 THE COURT: Okay. We're back on the record being in open
19 court. And I really -- I hate to say this given the very long history of this
20 case, but given the issues that have been raised by both Mr. Porter and
21 Mr. Maningo I find at this point that there is a conflict of interest between
22 Mr. Porter and his counsel and I have dismissed the Public Defender as
23 his counsel which means I need to bring in new counsel for him which
24 we'll ask Mr. -- I assume it'll go to the Special Public Defender, but I
25 think I need to go through Mr. Christensen to get there.

1 MR. MANINGO: Yes.

2 THE COURT: So we will do that and we've -- Mr. Porter has
3 asked that we put that out a couple of weeks for confirmation of counsel.
4 Let me get the date.

5 THE COURT CLERK: August 1st, 8:30, confirmation of
6 counsel.

7 THE COURT: Okay. Go ahead. What else did you need?

8 THE DEFENDANT: I was going to say the Special Defenders
9 and --

10 THE COURT: It's a separate office.

11 MR. MANINGO: Unrelated.

12 THE COURT: It's an office that represents defendants on
13 some matters where the Public Defender's Office has a conflict of
14 interest. It's a --

15 THE DEFENDANT: Okay.

16 THE COURT: -- it's a different office with different attorneys
17 and different people in charge. Okay.

18 THE DEFENDANT: Okay.

19 THE COURT: All right. I understand that could be confusing.

20 MR. ROSE: Your Honor, just --

21 THE COURT: Obviously we'll need to set a new trial date.

22 MR. ROSE: -- we will [indiscernible] we'll do it at that point in
23 time.

24 THE COURT: Yeah.

25 MR. ROSE: And just out of an abundance of caution given

1 although the case obviously is not before Your Honor, without getting to
2 any that was said, there was no request for a *Faretta* or anything like
3 that?

4 THE COURT: There was some discussion about a possible
5 *Faretta*. At this point we are going forward to appoint counsel. If Mr.
6 Porter decides he would rather represent himself, we'll need to raise that
7 again --

8 MR. ROSE: Perfect.

9 THE COURT: -- in Court and then I'll deal with it if I need too.

10 MR. ROSE: Perfect. Thank you, Your Honor.

11 THE COURT: Okay. No. I appreciate it. I'm glad to have a
12 record of that in open Court.

13 MR. ROSE: Thank you. Thank you for your patience.

14 THE COURT: Thank you.

15 MR. MANINGO: Thank you, Judge. See you in an hour.

16 [Unsealed proceeding concluded at 12:26 p.m.]

17
18 * * * * *

19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed
21 the audio/video proceedings in the above-entitled case to the best of my
22 ability.

23 
24 Michelle Ramsey
25 Court Recorder/Transcriber

AUG 12 2019

BY 
KEITH REED, DEPUTY

Justin Porter #1042449
P.O. Box 650 (H DSP)
Indian Springs, NV 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

JUSTIN D. PORTER,
Defendant,

VS.

THE STATE OF NEVADA,
Plaintiff.

CASE NO. 01C-174954

DEPT. NO. 6

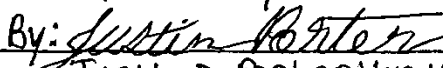
"MOTION TO DISMISS"

COMES NOW, Defendant Justin D. Porter, in pro se,
and moves that this Honorable Court GRANT this
motion to dismiss. This motion is made and based
upon the UNITED STATES CONSTITUTION, THE NEVADA
STATE CONSTITUTION.

This motion is further made and based upon
Attached Points and Authorities, all of the pleadings
and other documents on file in this case, as well
as herein.

DATED this 12 day of August, 2019.

Respectfully submitted,

By: 
Justin D. Porter #1042449

01C174954
MDSM
Motion to Dismiss
4858202



Points and Authorities

ARGUMENT

The defendant's Counsel's fail to protect the defendant constitutional rights. Defendant had to demand a trial because his right to a speedy trial was and still is being violated. Counsel's was ineffective assistance of Counsel for violating defendant's speedy trial right. *Strickland v. Washington*, 466 U.S. 668 (1984); *Barker v. Wingo*, 407 U.S. 514, 530 (1972). On the day of September 19, 2007 Defendant appeared before Judge Lee A. Grates and demanded a trial because Counsel's violated defendant right to a trial. A demand is a necessary condition of the right to a speedy trial; and such an approach by Presuming waiver of a "Fundamental right" from inaction is ~~inconsistent~~ inconsistent with the United States Supreme Court's Pronouncements on waiver of constitutional rights. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

It's been 14 years and defendant has unprosecuted charges, which is a violation of defendant's 6th Amendment Right to the United States Constitution. ~~Defendant~~ Defendant is Prejudice by the delay.

1 on the day of November 19, 2010 defendant
2 made another demand for trial. The demand
3 for a trial is a right to a speedy trial. *Barker*
4 *V. Wingo*, 407 U.S. 514, 530 (1972).

5
6 Because it's been 19 years defendant
7 ABILITY to defend himself is not possible,
8 and defendant had the hand of prejudice
9 take away his ability to defend himself. *Doggett*
10 *V. United States*, 505 U.S. 647, 651-52 (1992); *Barker*
11 *V. Wingo*, 407 U.S. 514, 530 (1972).

12
13 On the day of, June 16, 2016 this Honorable Court
14 Received the motion to dismiss for LACK OF speedy
15 and timely Prosecution. It was sent to defendant's
16 Counsel, all Counsel knew that defendant demanded
17 to have a trial, everyone of defendant's Counsel.
18 Because Counsel knew that defendant wanted
19 a trial, but Counsel FAIL to do so violated
20 defendant's right to Effective assistance of
21 Counsel. *STRICKLAND V. Washington*, 466 U.S. 668 (1984).
22 Also violated ~~both~~ defendant's 6th Amendment
23 Right to the speedy Trial Act. Defendant never
24 consented to, nor believe that there was
25 sufficient cause shown by either party, or ever
26 a Affidavit or Application even motion to postpone
27 his "demand for Trial." NRS 174.515.

1 ON May 31, 2017 defendant Filed A motion to
2 dismiss counsel / Dismiss for speedy Trial violation.
3 And on or about July 5, 2017 motion was heard
4 and again defendant 6th Amendment right to
5 the U.S. Const. was violated. Barker V. Wingo, 407
6 U.S. 514, 530 (1972).

7
8 And defendant asserted his rights to a
9 Speedy Trial on or about August 15, 2018 OR on the
10 day of August 8, 2018. Defendant U.S. Const amend,
11 of the 6th Amendment was violated again. Barker
12 V. Wingo, 407 U.S. 514, 530 (1972).

13 It is clear that the defendant's
14 6th Amendment of the U.S. Const. has been
15 violated.

16 Defendant made numerous demands
17 to have a trial. It's been 19 years, this lengthy
18 delay is not the defendant's fault. The state
19 has the duty of bringing a defendant to a
20 trial, as well as the duty of insuring that the
21 trial is consistent with "due process." The
22 defendant has no duty of bringing himself to
23 trial. Barker V. Wingo, 407 U.S. 514, 530 (1972).

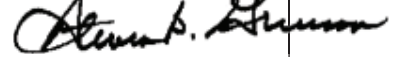
24 The Sixth Amendment's guaranty to an
25 accused of the right to a speedy trial is
26 "Fundamental" and is imposed by the due process
27 Clause of the Fourteenth Amendment on the states.

1 The primary burden is on the courts and the
2 Prosecutors to assure that cases are brought
3 to trial. A defendant's assertion of his right
4 to a trial is entitled to strong weight in
5 determining whether he has been deprived
6 of his right. *Barker v. Wingo*, 407 U.S. 514, 530
7 (1972).

8 The state court, equally with Federal
9 court, and are under an obligation to guard and
10 enforce every right secured by the Federal
11 constitution. This Honorable court must and
12 shall also will protect defendant's constitutional
13 rights. *Mooney v. Holohan*, 79 LEd 791, 294 U.S. 103-115
14 (1935).

17 CONCLUSION

18
19 Based upon the foregoing, it is Respectfully
20 Requested that all unprosecuted charges, OR as
21 well as criminal complaints, Informations and
22 OR Indictments, must and shall also will be
23 Dismiss with PREJUDICE.



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	CASE NO. 01C174954
)	
vs.)	
)	DEPT. NO. VI
PORTER, JUSTIN D.,)	
)	
Defendant(s).)	
)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,

DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 18, 2019

RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiffs:	ELISSA LUZAICH
For the Defendants:	JUSTIN PORTER
	ADAM L. GILL
	(Standby counsel)

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 Las Vegas, Nevada, Wednesday, September 18, 2019

2 [Case called at 11:59 a.m.]

3 *****

4 THE COURT: All righty. So let's call -- oh, are
5 we -- sorry. Are we on?

6 THE COURT RECORDER: Yes.

7 THE COURT: All right. Let's call the Porter matter
8 first, which is page 5, C174954. Mr. Porter is present, in
9 custody, representing himself. Mr. Gill is here as standby
10 counsel. Ms. Luzaich on behalf of the State.

11 All right. So I -- I read all of Mister --

12 THE DEFENDANT: Excuse me, ma'am.

13 THE COURT: Mm-hmm.

14 THE DEFENDANT: For the record, on the day of
15 September 16, 2019, which was Monday, I was actively at the
16 court in the holding cells where we're being held for court
17 and, all of a sudden I'm told by the officer when they come
18 to get us to leave, that I was booted today.

19 THE COURT: Yes.

20 THE DEFENDANT: And I -- I would like to know what
21 reason was that because that's a due process violation because
22 I am representing myself and any time I have the right to
23 organize the organization of my case and the conduct of it, I
24 have to be able to hear the process of it. And I was not.

1 THE COURT: So --

2 THE DEFENDANT: And I don't know what happened.

3 THE COURT: Because I was in a trial on Monday with
4 an evident -- excuse me. 'Cause I was in trial on Monday, and
5 I knew this was going to take a considerable amount of time,
6 and I was in the middle of a two-week trial. And on Monday I
7 was still on the first witness. And so there was no way I was
8 going to keep that jury from waiting. So I moved it till
9 Wednesday.

10 THE DEFENDANT: And I was not informed. And that
11 day was the day that we were supposed to hear from the
12 opposition of the prosecution to my motions and my pretrial
13 writ. And I know the Court needs no reminders of judicial
14 ethics, and I'm just trying to make sure the Court is
15 impartial and fair and diligent and they're seekys (phonetic)
16 of law.

17 THE COURT: And the what?

18 THE DEFENDANT: In the seekings of law.

19 THE COURT: Mm-hmm.

20 THE DEFENDANT: And findings of law. And my only
21 thing is now I received, from the bailiff today, the
22 opposition, which was filed today. According to the
23 Eighth Judicial District Court rules, when -- pursuant of
24 Rule 3.20, when motions are being filed -- and I'm supposed to

1 have, after they're filed, supposed to have seven days for --
2 to have an opposition. And any time that has not been handed
3 to me or -- at a certain amount of time, then it's already a
4 confession of error.

5 And today I'm receiving a stamp file copy today, which
6 was, I guess, done in court today is the 18th of --
7 September 18, 2019, which now I notice that this is what I'm
8 being handed. And my lawyer -- my standby counsel come trying
9 to hand me papple -- paper -- paperwork and some type of source
10 of paper that I didn't receive because he said it was from the
11 DA.

12 And I felt as though I wanted a stamp file copy, and I
13 don't know if he's in -- acted in concert with the DA or
14 District Attorney or what's going on, but as far as that
15 matter, and he's upset with me. You know, he -- he kind of
16 got mad with me when I asked him to come here to speak to him
17 about some things. He's just brushing me off. But I
18 understand. He's ineffective in his own way.

19 But the whole thing that I'm trying to come to now is I
20 don't want to overlook the Court with so much words, you know,
21 stress myself. You just got to just take your time with me,
22 man. And I know you -- you know a little bit more about law
23 than I do. But at the same time, I also -- even with the --
24 the writ of habeas corpus, the writ of habeas corpus ruled

1 3.40 of Eighth Judicial District Court rules as well that in
2 ten days of the filing of -- of, you know, the -- the writ
3 that they were supposed to respond.

4 The -- the Courts gave the District Attorney well over a
5 month. I did not consent to them getting a month. But now
6 here we are. And Monday I didn't come to court -- I mean,
7 well, I was here, but they didn't bring me up because of the
8 Court's issue, which has nothing to do with me. I just have
9 just as much equal protection as anybody else and I do have
10 due process of the law myself. And I'm just asking for my due
11 process of law and, you know, the Courts should have taken
12 consideration what the Defendant is saying.

13 THE COURT: Okay. And how were your due process
14 rights violated by --

15 THE DEFENDANT: Well, Your Honor --

16 THE COURT: -- moving this from Monday to Wednesday?

17 THE DEFENDANT: Because I wasn't informed of the
18 continuance. Any time -- the United States Supreme Court
19 recognize that any time that a Defendant that's representing
20 himself, he has every right to be present at every stage of
21 the proceedings.

22 THE COURT: Right. And it wasn't a stage. It was
23 moved.

24 THE DEFENDANT: Right. Well --

1 THE COURT: So there was no case.

2 THE DEFENDANT: The proceedings as well, Your Honor.
3 Because any time you continue and I'm supposed to be at court,
4 then you're taking away my right to be here to deny or confirm
5 the continuance. And I understand the Court's --

6 THE COURT: You can't deny the continuance.

7 THE DEFENDANT: Well, I understand the Courts have
8 they -- they -- they -- they jurisdiction of how they do
9 things. I understand that, ma'am. But at the same time I
10 realize that if I don't speak upon these and put it on the
11 record and I have no chance to say "Hey, listen, I spoke about
12 this years ago," or the time being, at the time.

13 THE COURT: Okay. Ms. Luzaich, do you have anything
14 to say to that?

15 MS. LUZAICH: Just as far as the opposition -- I do
16 apologize. I was in a two-week trial. I was in trial before
17 that. I had sent it to the Court's chambers yesterday before
18 I filed it. I handed Mr. Gill, because I saw him be -- long
19 before court started, a copy so that he could give it to the
20 Defendant so he would have at least the opportunity to review
21 it.

22 I filed it in court this morning. Apparently he didn't
23 want to take it earlier this morning. He took it from your
24 bailiff -- or your marshal.

1 And I filed one opposition to all the motions. As I look
2 at the calendar, I see there's a motion to suppress. I -- I
3 don't have a motion to suppress and I didn't see it in
4 Odyssey. I did not respond to that. I don't -- I don't know
5 what the grounds are, but I will tell the Court that, years
6 ago, with Mr. Abood and Mr. Brown, we litigated, at length,
7 all suppression issues. We had a multi-day evidentiary
8 hearing where the State called quite a few witnesses and the
9 Defense called quite a few witnesses --

10 THE DEFENDANT: Uh --

11 MS. LUZAICH: -- and we briefed --

12 THE COURT: Just one sec. You had your chance.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: The underlying support for that is
15 because there was no arrest warrant, he was illegally arrested
16 in his house and, therefore, all the evidence obtained was a
17 result of an unlawful invasion. And the statements made while
18 in illegal custody should be excluded.

19 MS. LUZAICH: Okay. They didn't -- I guess they
20 didn't litigate the -- whether or not it was a lawful arrest
21 in the apartment. Although, I don't know. I would have to go
22 back. I know that the -- after the evidentiary hearing, my
23 responded brief was 75 pages. So their opening brief would
24 have been over hundred pages. I don't -- I don't know if

1 that, specifically, was litigated. But I did not oppose
2 almost all of his motions. I only -- I mean, I had no
3 position or not opposition to anything except the writ of
4 habeas corpus and the motion to dismiss.

5 THE COURT: Go ahead.

6 THE DEFENDANT: Oh, and you said previously -- the
7 Prosecution said she sent the -- a copy to the chambers,
8 somebody in chambers?

9 MS. LUZAICH: A courtesy copy to the law clerk,
10 which is --

11 THE DEFENDANT: Okay.

12 MS. LUZAICH: -- what we do every time.

13 THE DEFENDANT: All right. 'Cause I just wanted to
14 make sure I heard that clear.

15 As I've been saying, Your Honor, from the beginning, with
16 the -- the motion to suppress, of course, you know, all we
17 have to do is get the -- the data, the issuings of the arrest
18 warrant and compare it to the time that I was illegally
19 obtained.

20 And it shows in Matt versus Ohio, clearly, that you --
21 any time somebody is taken illegally from their home and
22 seized, anything that the State has received from the illegal
23 obtaining of the Defendant, then, therefore, they cannot use
24 it at all in any proceedings, whether it's evidentiary

1 hearing, trial, or anything of such matter. Because it's
2 illegally obtained. It's a violation of the 4th Amendment.

3 THE COURT: Okay.

4 THE DEFENDANT: I actually have the arrest warrant.
5 Or would Your Honor look for herself?

6 THE COURT: No. No. I'm okay.

7 MS. LUZAICH: There was -- there was testimony
8 during the course of the evidentiary hearing on the entry into
9 and the arrest of the Defendant. I just don't know if we
10 specifically briefed that one tiny issue or not. And that
11 would have been back -- well , it was in front of
12 Judge McGroarty. That's how long ago it was.

13 THE DEFENDANT: Yeah, that's true. But even in the
14 process of -- what was stated at the hearing was that they
15 did, Officer Kato, I believe it was, stated in his -- because
16 I don't think you did the preliminary hearing.

17 MS. LUZAICH: Oh, I -- I did all of it.

18 THE DEFENDANT: You -- you was there for the
19 preliminary hearing? Okay. I'm sorry.

20 At the preliminary hearing -- oh, I got to go look back.
21 Officer Kato stated (indiscernible) number of other officers
22 that I can't remember, that said they were -- it was -- I
23 remember from the transcripts that I was reading, that it was
24 a search warrant on the premises, but they didn't know who had

1 it. But he said "Oh, I realized it was when I seen one, but
2 I don't know who had it at the time."

3 Even entering the dwelling of my grandmother's building
4 and coming to the front of my door, even the door was knocked
5 off the hinges. My stepmother, she could contest -- I mean,
6 she could -- she could confirm what I'm saying. Even when
7 officer speaks and says on -- on -- at the hearing that the
8 door was open by a -- a female.

9 And when the door was opened, they asked where I was.
10 And she looked and she indicated or hinted that I was
11 somewhere. That's not giving you the -- the right to enter
12 anyone's dwelling because they look somewhere. Mere look
13 alone doesn't just say "hey, you can come right in."

14 They say once the look was indicated where I was, they
15 walked past her, came into the house -- I mean, apartment, at
16 that time, put me in handcuffs, took me out -- other officers
17 had they -- their weapons drawn. Took me up and then took me
18 to the precinct.

19 And I believe my lawyer asked, well, was I able to leave?
20 And they said, "No, he wasn't able to leave because we -- we
21 had, at that time, restrain him." Only be (indiscernible).

22 THE COURT: Okay. But was this matter already
23 litigated?

24 THE DEFENDANT: No, not this matter. Not the

1 illegal seizure. They did -- since I was a juvenile, they did
2 something -- I forgot what was the other hearing. What was
3 the other hearing?

4 MS. LUZAICH: There were numerous hearings.

5 THE DEFENDANT: Numerous hearings. But it was
6 another hearing. This is not one of the matters that was
7 brought up.

8 MS. LUZAICH: Can we -- can we at least put this --
9 today's Wednesday; right? Could we put this over -- this
10 issue over till Monday and I'll pull the briefs --

11 THE COURT: Because I'm not gonna relitigate
12 something that was already litigated.

13 THE DEFENDANT: Well, it wasn't relitigate -- I
14 mean, it -- it's not -- it wasn't litigated at first. It
15 never was. That's why it's a new issue --

16 MS. LUZAICH: That's why --

17 THE DEFENDANT: -- I'm bringing up.

18 MS. LUZAICH: That's why I ask --

19 THE DEFENDANT: It was never brought forward.

20 THE COURT: Just -- okay.

21 MS. LUZAICH: That's why I asked if we could have
22 just till Monday -- or Friday. Whatever the Court wants, so
23 that I can find the -- the briefs and see what was litigated.

24 THE COURT: Okay. So let's -- let's stop with that

1 (indiscernible).

2 THE DEFENDANT: Okay.

3 THE COURT: So in regards to -- I'm gonna go in the
4 order that I have it in my file. So the petition for writ of
5 habeas --

6 THE DEFENDANT: Excuse me, ma'am. Before you
7 proceed on with that, because I have to say this and I have to
8 get this on record, for the record, ma'am.

9 THE COURT: What.

10 THE DEFENDANT: Like I said, it's meritorious and
11 it's a confession --

12 THE COURT: Wait. What are you talking about? What
13 is meritorious?

14 THE DEFENDANT: A confession of error of me filing
15 all my writ of habeas corpus, my motions, and not having 'em
16 answer at the appropriate time when they were supposed to be
17 answered. Due to any -- due to the hands of the -- the
18 prosecutor's attorney saying she was on, I guess --

19 THE COURT: In another trial. So it's --

20 THE DEFENDANT: No, she didn't say she was in
21 another -- she said she was on vacation.

22 MS. LUZAICH: I most certainly did not.

23 THE COURT: No, she didn't. She just said she was
24 in back to back trials.

1 MS. LUZAICH: I was in trial.

2 THE COURT: Here's the deal --

3 THE DEFENDANT: No, I'm talking about on -- on the
4 day of August 12th. She said, Your Honor, I -- I haven't --
5 when -- when -- when the motions came, she said to
6 Your Honor -- I had then filed the motions previously in July.
7 And all the motions that I was filing before I was having the
8 problem with the Clerk of the Courts -- Clerk of the Courts to
9 have my motions filed, that's when I filed the motion to have
10 them to stop -- have -- have the Clerk of the Courts to start
11 filing my motions because they weren't letting me at first.

12 THE COURT: Okay. But you want to talk about EDCR
13 3.20. And EDCR 3.20 says that any motion that you file must
14 have a points of -- points and authority section --

15 THE DEFENDANT: I --

16 THE COURT: -- with the law. Every -- almost every
17 single one of these, except your motion to suppress, does not
18 have any points and authorities.

19 THE DEFENDANT: And my writ of habeas corpus had
20 point of authority -- points of authority, ma'am.

21 THE COURT: All right. So then we're going to go to
22 your petition of writ of habeas corpus --

23 THE DEFENDANT: Thank you.

24 THE COURT: -- that was filed on August 12th of

1 2019. So let me pull it up.

2 THE DEFENDANT: Yes, ma'am. I don't mean to make
3 the Courts mad at me. Just asking --

4 THE COURT: Well, you just have to follow the same
5 rules as you're telling her --

6 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

7 THE COURT: -- that she needs to file [sic].

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. So you are discussing that your
10 right to a speedy trial has been violated because you've been
11 held here for 19 years on unprosecuted charges. And you cite
12 Docket, which is some -- which is a Supreme Court case.

13 But when I have gone back and looked through the history
14 of this case, sir, it seems like in every stage of this
15 process, you have been the reason that this has been continued
16 over and over and over again. Especially your failure to get
17 along with counsel in multiple times. So how is this a State
18 issue?

19 THE DEFENDANT: Ma'am, on the day of September --

20 MS. LUZAICH: And I apologize. Just for purposes of
21 recordkeeping, if you're talking about his petition for writ
22 of habeas corpus, a pretrial petition must be filed within
23 21 days of the first appearance of district court. So I would
24 ask you to deny it as untimely. And you're going to rule on

1 the speedy trial, I would ask you to rule on it under the
2 motion to dismiss, just for recordkeeping.

3 THE DEFENDANT: According to the -- the -- according
4 to Rule 3.4, it doesn't state anything about 20 days after
5 being arrested or anything.

6 THE COURT: All -- all petitions for writ of habeas
7 corpus, unless they're post conviction, have to be filed
8 within 21 days.

9 THE DEFENDANT: All right. Yes, ma'am. Okay. All
10 right. I need to go back and look at my facts.

11 THE COURT: So if you wish to file a motion to
12 dismiss or if you're asking me to -- if you're ask -- so we
13 don't need to come back here, if you're asking me to handle
14 this state as a motion to dismiss --

15 MS. LUZAICH: I have a motion to dismiss that the
16 Defendant filed with those same grounds.

17 THE DEFENDANT: Yep.

18 MS. LUZAICH: Does the Court not have it?

19 THE COURT: Yeah. No. No. I do. So -- all right.
20 So the Defendant's petition for writ of habeas corpus is
21 denied in regards to the timeliness aspect.

22 So now we can go down to the motion to dismiss --

23 MR. GOODWIN: Okay.

24 THE COURT: -- which is August 12th of 2019. So let

1 me pull that up on my computer.

2 All right. And in regards to your motion to dismiss, did
3 you wish to be heard?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. Go ahead.

6 THE DEFENDANT: As I simply was saying, I also
7 have -- I'm sorry about the speaker. Yeah. I have -- the
8 days that you say where it's all contributed to me, ma'am, on
9 the day of -- let me go to my -- excuse me. Okay. Take my
10 time here, Your Honor. Apologize. I have -- okay. Here we
11 go.

12 On the day of September 19, 2007 -- also the Barker
13 versus Wingo, states that any time a Defendant demands to have
14 a trial, a demand is simply a right for a speedy trial. And
15 on the day of September 19, 2007, I appeared before Judge Lee
16 Gates and I demanded a trial. The DA knows, as well as
17 counsel know, I demanded to have a speedy trial.

18 Not only did I demand then, but I demand again also in
19 front of Cadish, Judge Cadish. And that was on the date of --
20 on the day of November 19, 2010, I demanded, again. And the
21 demand was for trial -- for a speedy trial. I was not
22 accommodated to me.

23 And then on the day of June 16, 2016, again, I -- I tried
24 to file a motion for timely -- motion to dismiss for lack of

1 speedy and timely prosecution. Again, they sent it to my
2 counsel. I asked my counsel to file the motions. I even
3 asked Mr. Adam Gill. I even sent requests to all counsels,
4 through the Clerk of the Courts to send to counsel to make the
5 request. Because all I ever heard from Your Honor and other
6 judges is that it's up to my counsel to do it.

7 So I'm making requests upon my counsel and all they
8 trying to do is offer me deals. And I'm telling, I don't want
9 no deal. I want to go to trial. I invoke my right to a
10 speedy trial. I want to do trial. I even wrote letters to
11 the prosecuting attorney to let her know, "Hey, all my
12 counsels is violating my constitutional right. And the -- and
13 the judge is still not getting 'em off my case."

14 Curtis Brown and Joseph Abood, they declined to represent
15 me. They walked away themselves. I didn't fire them. I -- you
16 never see no motion on file for me firing them. Adam Gill --
17 I mean, Jeff Maningo, I tried to fire him and the judge denied
18 that motion. Then he turn around, months later, he withdraw
19 himself, tell the judge -- and if -- if the honor -- if
20 Your Honor want to get the record and see that the proceedings
21 for -- for me getting rid of him, if I'm correct, the days
22 that he was -- withdrew, I think it was August 15th or
23 August 8th, he -- he removed himself from my case on his own.

24 And then he told the Court lies that I said a certain

1 thing and then turn around when I say, "No, I didn't say
2 that." Then he confirm with the Court, "Yes. No, he didn't
3 tell me that." So once again -- and then I tell the judges --
4 the judge, Cadish, I said, "I -- I don't mind going to trial
5 with him" 'cause he was telling her I might put a pencil in
6 his neck or something like of that matter. And I said, "No,
7 I'm not gonna do that. I just don't want him saying I'm gonna
8 do something."

9 He saying that I'm -- I'm -- I'm talking crazy to him on
10 the phone. And then he saying I -- he never even heard me say
11 anything to him. I just called one of the head district -- I
12 mean, not district, public defenders and I made a request that
13 he file motions for me and stop playing and just file the
14 motions.

15 So he took it upon himself to come to the courts, months
16 later, and say, "Oh, he was" -- I was threatening him. And
17 then he didn't hear me threaten him. And so much went on in
18 that proceeding that the judge -- finally, when I say I -- I
19 don't mind going to trial with him, then the judge say -- but
20 I -- I told the judge that I don't mind -- I'm gonna speak up
21 for my rights. And any time he's not doing something right,
22 I'm gonna speak out on him. And I don't mind going to trial
23 with him.

24 First thing the judge did say, "No. No. No. No. No.

1 I'm -- I'm gonna get rid of him." Then they give me
2 Adam Gill. And when I get Adam, I sent Adam numerous
3 requests, file it -- file this motion. I even have them with
4 me today. File for speedy trial for -- for -- for
5 constitutional violation of my 6th Amendment. He never
6 accommodate that. He never accommodate me.

7 I wrote letters to the District Attorney -- I wrote
8 letters to the District Attorney allowing the
9 District Attorney understand that, hey, my counsel had
10 evidence that I'm trying to receive. My counsels are not
11 filing or they are not going to get any evidence that I
12 don't -- that I don't even know who my investigator is. I'm
13 trying to get things done.

14 All they keep telling me is "take a deal," "take a deal,"
15 "take a deal." And I'm trying to complain to him. I'm trying
16 to get things done. And nobody's accommodating.

17 THE COURT: All right. But here's the thing. You
18 waived your right to a speedy trial on May 2nd of 2001.

19 THE DEFENDANT: And -- and it wasn't --

20 THE COURT: This matter has been on several times --

21 THE DEFENDANT: Right.

22 THE COURT: -- in fact, every time you've attempted
23 to fire your attorneys, the State has been objecting to it
24 because they wanted to keep this case moving. So you've made

1 your record --

2 THE DEFENDANT: No, ma'am. I don't remember nobody
3 to prosecuting attorney object. Is that on record? Do I
4 need --

5 THE COURT: Ms. Luzaich?

6 MS. LUZAICH: Every single time the Public
7 Defender's Office -- originally Joe Abood and Curtis Brown
8 represented the Defendant --

9 THE DEFENDANT: Yeah.

10 MS. LUZAICH: -- he waived his right to a speedy
11 trial, as the Court indicated in 2001. We litigated numerous
12 severance going back to -- or going -- remanding to juvenile
13 court. And ultimately, Judge Gates severed the murder
14 incident from the rest of 'em.

15 We actually went to trial on the murder incident. So
16 when he's mentioned in 2007 and 2009 that he was requesting a
17 speedy trial, we wanted to try it all along. But when the
18 judge severed it, we went to trial on the murder in -- after
19 he had asked for his speedy trial.

20 After that, the Defendant got violent with Mr. Abood.
21 That's why Mr. Brown and Mr. Abood stopped representing the
22 Defendant. I objected even to that. I -- I mean, I -- just
23 because I felt that I needed to move the case along and it
24 shouldn't exclude the entire Public Defender's Office. And

1 that is why Mr. Min -- usually when a public defender
2 withdraws, the whole office is --

3 THE COURT: Right.

4 MS. LUZAICH: -- is taken from the case. But
5 because I had objected, they at least put Mr. Maningo and
6 Mr. Basher on it. And we litigated things. And, yes, we did
7 try to resolve the case because this is a case that very
8 easily could resolve due to the overwhelming nature of the
9 evidence.

10 But anyway, so there was a situation where Mr. Maningo
11 represented to the Court that Mr. Richards, Darren Richards,
12 who was the number two in the office at the time, got a phone
13 call from the Defendant where in Mr. Basher and Mr. Maningo
14 were threatened. And I objected to them being removed from
15 the case.

16 At that point I wanted an evidentiary hearing. But
17 Judge Cadish did remove them from the case. And that's when
18 Mr. Gill was appointed.

19 So I have tried to move this case through the system for
20 almost all of the 18 years. I've been litigating it the whole
21 time it's been in district court. And as the Court indicated,
22 the Supreme Court said that you can't create your own
23 conflict, which is what I kept arguing about not taking the
24 attorneys off, but you also can't create your own prejudice --

1 oops -- so to speak.

2 Every time this case has been continued, it was at the
3 request of the Defense, whether it was investigation, whether
4 it was getting things together. We went so far as to -- I
5 have seven boxes of documentary evidence in this case and
6 audios and videos and we enabled the Defense investigator,
7 come over here and copy each and every thing.

8 So we have done everything we can to move this case
9 forward, short of forcing a judge to let us try the case. So
10 I -- I don't see that there's anything else that the State
11 could have done.

12 THE DEFENDANT: And I have to disagree with that,
13 Your Honor. Because I never threatened my attorney. Once
14 again, I never threatened him. And I only ask that -- and it
15 hasn't been 18 years, it's been 19 years. And a month,
16 roughly so -- and the Court's recognized, any time this --
17 it's not upon the Defendant to bring himself to trial, but
18 it's upon the prosecution attorney --

19 THE COURT: Right. And they've been trying.
20 They've --

21 THE DEFENDANT: And -- and I -- and -- and now --
22 and I'm saying, Your Honor, I've been trying. I've been
23 trying. I have documents right here --

24 THE COURT: Okay. No, I've heard enough on this.

1 THE DEFENDANT: Your Honor, let me --
2 THE COURT: No --
3 THE DEFENDANT: Can I enter --
4 THE COURT: No, that's not happening.
5 THE DEFENDANT: -- introduce my exhibits?
6 THE COURT: You're done. No. This is not a
7 hearing.
8 THE DEFENDANT: Because Defendant state he does not
9 want to --
10 THE COURT: Okay. Defendants --
11 THE DEFENDANT: -- to accept negotiation.
12 (Indiscernible) proceed to trial --
13 THE COURT: Mr. Porter --
14 MR. GILL: Stop.
15 THE DEFENDANT: That's all I'm saying this is --
16 THE COURT: No.
17 MR. GILL: No --
18 THE DEFENDANT: -- September 2000 --
19 MR. GILL: (Indiscernible) you've been told to stop.
20 THE DEFENDANT: (Indiscernible)
21 THE COURT: Defendant's motion to --
22 THE DEFENDANT: I'm just saying, Your Honor. I'd
23 like --
24 THE COURT: Do you need to go back?

1 THE DEFENDANT: No, I just need a moment to be able
2 to --

3 THE COURT: Because you --

4 THE DEFENDANT: -- make a record -- record.

5 THE COURT: Let me tell you what happens. If you
6 cannot abide by court rules, then you forfeit your right to
7 represent yourself. So when I tell you I'm done hearing
8 argument, I'm done hearing argument.

9 The Defendant's motion to dismiss is denied.

10 THE DEFENDANT: Okay.

11 THE COURT: I have looked through the previous
12 record. I have found the amount of continuances; I have found
13 the amount of times that you have failed to get along with
14 each and every attorney that you have been given. I was even
15 here when you made all the representations against Mr. Gill.
16 So Defendant's motion to dismiss is denied.

17 THE DEFENDANT: Excuse me, Your Honor. May I say
18 one thing --

19 THE COURT: No, you may not.

20 THE DEFENDANT: -- for the record?

21 THE COURT: No.

22 MR. GILL: No.

23 THE DEFENDANT: I'm not able to say that my
24 counsel --

1 THE COURT: No, you may not.

2 MR. GILL: No, have a seat.

3 THE DEFENDANT: I've -- I've been asking 'em --
4 well, can I -- may -- may I -- may I leave? Because I'm not
5 receiving the -- the --

6 THE COURT: No.

7 THE DEFENDANT: I understand. I understand what you
8 all doing. Understand. You failing to give me my due process
9 right and I'm not here to -- to cause any problems for the
10 Courts.

11 THE COURT: Okay. So --

12 THE DEFENDANT: But I'm here to defend myself. I --
13 I --

14 THE COURT: Are you (indiscernible) Mr. Porter? Can
15 we move on to your next motion or are you just -- are you --

16 THE DEFENDANT: Oh, yeah. I --

17 THE COURT: -- going to continue talking?

18 THE DEFENDANT: Okay. Next motion.

19 THE COURT: All right. So in regards to the motion
20 for transport of inmate report, the State has no opposition to
21 that. That's granted. The Defendant should be transported to
22 court for the substantive proceedings. He has a right to do
23 so.

24 In regards to the motion for stopping of sabotaging

1 Defendant's legal filing, I don't -- I mean, I don't even
2 really understand --

3 THE DEFENDANT: Act -- actually what was occurring
4 was I wasn't able to file my -- my -- my writ of habeas
5 corpus. And they filed it under a -- a different -- the --
6 the -- well, that judicial --

7 THE COURT: A different -- a different --

8 THE DEFENDANT: A different -- they end up filing on
9 a different case number.

10 THE COURT: Right. That's what happens in every --
11 every writ is assigned a different case number.

12 THE DEFENDANT: No, this was supposed to be for --
13 well --

14 THE COURT: No, I'm --

15 THE DEFENDANT: -- case number C174954. But they
16 turned it -- I mean, they changed it to A -- case number
17 A19798035, slash -- dash, W. So they changed it --

18 THE COURT: Okay. Mr. Porter, listen to what I'm
19 saying to you. Every petition for writ of habeas corpus is
20 assigned a new number.

21 THE DEFENDANT: Yes, ma'am. Okay.

22 THE COURT: Okay? So Defendant's motion for
23 stopping of sabotaging Defendant's legal filing is denied.
24 There is no sabotaging. Every case that files a petition for

1 writ of habeas corpus is given a different case number for
2 that writ.

3 THE DEFENDANT: Okay.

4 THE COURT: Everything else will be filed under the
5 case number that we have before us.

6 THE DEFENDANT: Okay. But -- yes, ma'am. What's
7 next?

8 THE COURT: The motion for appointment of
9 independent forensic expert.

10 THE DEFENDANT: Okay. Hold on. Motion for
11 independent -- okay. Got it.

12 THE COURT: So this is one of the ones that I was
13 discussing with you that does not have any points and
14 authorities showing me any law that backs up this claim.

15 THE DEFENDANT: I -- I apologize, Your Honor. If I
16 knew that I needed that all the way, I would have reverted
17 back to --

18 THE COURT: So if you wish --

19 THE DEFENDANT: Can the Court just give me a moment?

20 THE COURT: Well, no. I mean, the issue is, I don't
21 have points and authorities. So I can't rule on it.

22 THE DEFENDANT: Okay. I --

23 THE COURT: So this matter --

24 THE DEFENDANT: I would have to rewrite it back up,

1 ma'am.

2 THE COURT: Right.

3 THE DEFENDANT: Can I give an oral motion as of
4 right now, an oral motion?

5 THE COURT: So motion for appointment of independent
6 forensic expert is denied pursuant to 3.20 because --

7 THE DEFENDANT: Okay.

8 THE COURT: -- there is no points and authorities
9 attached. So I'm unable to evaluate the law that the
10 Defendant would base his argument on.

11 So next would be motion for appointment of investigator.
12 Also, again, there was no case law --

13 THE DEFENDANT: Okay.

14 THE COURT: -- points and authorities that support
15 this position.

16 THE DEFENDANT: Oh, (indiscernible).

17 THE COURT: So (indiscernible). So the motion for
18 appointment of investigator, again, pursuant to 3.20, is
19 denied. There were no supplemental points and authorities
20 attached explaining why the Defendant felt like this was
21 necessary or why those services were necessary.

22 So in order for me to be able to evaluate this, I need
23 the points and authorities that you're relying on. And I also
24 need to know exactly what you feel you need an investigator to

1 do. 'Cause that's something --

2 THE DEFENDANT: What --

3 THE COURT: -- that I have to evaluate.

4 THE DEFENDANT: Okay. Well, for the purpose of
5 having an appointed an investigator, I need to have an
6 investigator to go speak to people that I know that could --
7 that could testify to my behalf as well as receiving evidence
8 from me and --

9 THE COURT: What do you mean "receiving evidence"?

10 THE DEFENDANT: Well, I -- as far as I need to be
11 sure that -- it's somebody I know named Bill that would
12 testify to -- to -- to my -- him knowing certain people that's
13 supposed to be victims in this case. And he could testify to
14 certain things as to the matter of --

15 THE COURT: All right. So when you write your
16 points and authorities, write out what you need that --

17 THE DEFENDANT: Okay.

18 THE COURT: -- person to do and why.

19 THE DEFENDANT: All right. Yes, ma'am. Thank you.
20 What about motion for subpoena of witnesses?

21 THE COURT: So you -- you can't just file something
22 that says "witnesses to be subpoenaed."

23 THE DEFENDANT: Right.

24 THE COURT: So there's no case law, there's no

1 statute that you pointed, so there's no points and
2 authorities. And also, all these people say all "address
3 unknown."

4 THE DEFENDANT: Yeah, because I don't -- like I --
5 like I once said, Your Honor, I -- I've -- I believe most of
6 these people -- so I, the Defendant, could cross-examine them
7 and not only that, have certain people in here that I know
8 that could testify on my behalf to certain incidents and
9 things of that matter. And -- and on and on and on, more and
10 more.

11 I'm just -- right now, Your Honor, I'm just -- I need to
12 take a -- a moment to realize something.

13 Yeah. Yeah. Sorry about that.

14 People that's gonna testify in my -- in my -- in my
15 behalf. Whew. It's hot in here. I'm just about
16 (indiscernible) sweating.

17 Yes, Your Honor. Peoples gonna testify to places I've
18 been, where I was at, at the time that they say a lot of
19 this -- the incidents happened or the crimes that occurred and
20 a lot of these -- and certain things that certain people said
21 that I can prove that what they said was not the truth.

22 THE COURT: Okay. So when you -- if you'd like to
23 re-file that --

24 THE DEFENDANT: Okay.

1 THE COURT: -- get some points and authorities that
2 attach the law --

3 THE DEFENDANT: Okay.

4 THE COURT: -- and also you need to follow, when you
5 do find that law, what information you need to give --

6 THE DEFENDANT: Yeah.

7 THE COURT: -- so that the State does -- excuse me.
8 If the State does not oppose it or if the Court grants it,
9 then the individual would know where to find those. All
10 right.

11 THE DEFENDANT: Okay. Yes, ma'am.

12 THE COURT: So motion for information of misconduct.

13 THE DEFENDANT: Okay.

14 MS. LUZAICH: And -- and back to the witnesses. It
15 sounds like he is trying to present an alibi defense.

16 THE DEFENDANT: Yes, an alibi --

17 MS. LUZAICH: If he's gonna do that, he needs to
18 file --

19 THE DEFENDANT: -- alibi defense.

20 MS. LUZAICH: -- a notice of alibi and comply with
21 the statute.

22 THE DEFENDANT: Okay. And you said the other one
23 was --

24 THE COURT: Misconduct.

1 THE DEFENDANT: Misconduct. Okay. I got it.
2 (Indiscernible) information of misconduct.

3 THE COURT: So pursuant to 3.20, there are no points
4 and authorities attached in regards to the law that supports
5 this motion (indiscernible).

6 So motion to preserve evidence --

7 THE DEFENDANT: Pursuant -- oh.

8 THE COURT: Motion to preserve evidence is one page,
9 does not have any points and authorities that establish any
10 type of law to back up the Defendant's request. So it is
11 denied pursuant to EDCR 33.20.

12 Motion to --

13 THE DEFENDANT: What subsection? What section?

14 THE COURT: 3.20.

15 THE DEFENDANT: 3.20. Okay.

16 THE COURT: A party filing a motion must also serve
17 and file with it a memorandum of points and authorities in
18 support of each ground there of.

19 THE DEFENDANT: Yeah.

20 THE COURT: The absence of such memorandum may be
21 construed as an admission that the motion is not meritorious
22 or cause for its denial.

23 Moving on to the motion to compel Clerk of the Court to
24 file pro se Defendant's motions. I mean, we already discussed

1 the fact that the petition for writ of habeas corpus are given
2 different -- different case numbers.

3 THE DEFENDANT: Mm-hmm.

4 THE COURT: But, obviously, yes. Anything -- that's
5 granted because anything that the Defendant files, as long as
6 he files the appropriate documents, then --

7 THE DEFENDANT: Say -- say that again one more time,
8 Your Honor.

9 THE COURT: So the motion to compel the Clerk of the
10 Court to file pro se Defendant's motions is granted, as long
11 as you are following all the rules of the court in filing
12 those documents.

13 THE DEFENDANT: Okay. So you gonna grant that for
14 me, huh?

15 THE COURT: Yep.

16 THE DEFENDANT: That ain't got no authority to it.

17 THE COURT: Right. But I want you -- I don't want
18 to be on record as denying. You want me to deny your right to
19 file records?

20 THE DEFENDANT: No. No. No. No. No. What I'm
21 saying is, Your Honor, I see that all my other --

22 THE COURT: Yeah, because you're not following the
23 rules --

24 THE DEFENDANT: Yes, ma'am.

1 THE COURT: -- which is what happens when you
2 represent yourself.

3 THE DEFENDANT: I understand.

4 THE COURT: So that should be it. so the only thing
5 left is calendar call.

6 THE DEFENDANT: Okay. As far as you say the motion
7 to -- the motion to suppress --

8 THE COURT: Yeah, so the motion for suppress,
9 Ms. Kollins would like the opportunity to see --

10 MS. LUZAICH: That would be Luzaich.

11 THE COURT: What did I say?

12 MS. LUZAICH: Kollins.

13 THE COURT: Oh, Kollins. Sorry. I've been --

14 MS. LUZAICH: You spent a long time with her. It's
15 okay. 'Cause we look so much alike.

16 THE DEFENDANT: I have to --

17 THE COURT: No, I've just been with her for two
18 weeks.

19 THE DEFENDANT: Okay. I have to say, Your Honor, as
20 far as that, that motion, it -- I know she received it, but at
21 the same time --

22 THE COURT: She's just saying that she needs time --
23 time to look at her records to see if this matter was
24 litigated.

1 THE DEFENDANT: Okay.

2 THE COURT: So let's deal with the calendar call
3 'cause today's the date for calendar call.

4 THE DEFENDANT: Okay. Your Honor, can I also put
5 something on the record?

6 THE COURT: After we discuss calendar call.

7 THE DEFENDANT: All right. I need to really speak
8 on -- on my behalf as far as I believe that -- and I don't
9 mean no harm or no disrespect to anyone, but I believe the
10 Court is -- is conducting itself in a manner that is very
11 disappointing to -- to the system. Because at the same time
12 as me trying to establish the truth, the DA is sitting here
13 telling lies upon me just as well as my lawyers have been of
14 threatening 'em.

15 And it's upsetting because the Courts are not allowing me
16 to speak on my own behalf when it comes to a matter of
17 somebody saying that I am the reason -- I am the reason for my
18 case being put on and on -- I mean, off and off when I'm
19 telling the Courts, "Hey, listen. I'm ready to go to trial."
20 I have evidence right here, court minutes where I'm trying to
21 show the Court that, hey, it shows you what the
22 (indiscernible) say we recognize that he -- he's not -- he
23 don't want to take the deal. He want to go to trial. And
24 then it's continued for on and on.

1 Who's ineffective here? It's the counsel, not me. And
2 I'm trying to explain this to the Courts, and the Courts just
3 keep slapping my motion down and telling me, no, don't --
4 don't speak just listen to me. And I think it's wrong because
5 I should have the right to be able to speak on my own behalf
6 when I'm representing myself. This is self-representation.
7 So I should have these rights, pursuant to -- for Etta versus
8 California.

9 Not only that, other -- the -- the Supreme Court
10 recognized just the 6th Amendment have so much in it alone
11 that allows the Defendant to do certain things. And when the
12 Court violate and abuse that right, then they have taken from
13 the Defendant his right --

14 THE COURT: Did you know that it's actually not a
15 right to be heard in court? That there are many courts that
16 just allow the writings and the pleadings. And if you don't
17 have anything to add outside of those pleadings, that you
18 can't be heard? So what you're talking about actually doesn't
19 exist. You talk all of the time, most of the time over
20 everybody else.

21 THE DEFENDANT: Right.

22 THE COURT: The issue is if you go back and you look
23 at the minutes in this case, it shows time and time and time
24 again you not getting along with investigators, you not

1 getting along --

2 THE DEFENDANT: I never even spoke --

3 THE COURT: -- with --

4 THE DEFENDANT: -- to one investigator. But the one
5 Adam -- and I get along with him.

6 THE COURT: With defense --

7 THE DEFENDANT: And that's the one I was trying to
8 get --

9 MR. GILL: Stop (indiscernible)

10 THE COURT: -- with defense attorney.

11 THE DEFENDANT: Yeah.

12 THE COURT: So you can't create your own issues when
13 you have been a problem with every attorney that has ever been
14 appointed to you.

15 So what we're gonna do is we're gonna continue the matter
16 over in regard to the petition -- or motion to dismiss to
17 see -- and I'll look through the --

18 MS. LUZAICH: Suppress?

19 THE COURT: Yeah. The motion to suppress to -- so I
20 can go through and also look and see how much of that was
21 litigated before. But what I need to discuss is calendar
22 call.

23 THE DEFENDANT: And, also, I never received my
24 transcripts that the Courts ordered for me to receive. I

1 never even received them. So I'm not able to bring forth the
2 evidence that I'm speaking upon.

3 THE COURT: We have the transcripts. Some of them
4 were filed under seal so we couldn't send them via mail.

5 THE DEFENDANT: Okay. Well, that -- that alone --
6 that's why I'm -- I'm sitting here arguing on a half of -- a
7 half standing of my facts versus the -- the -- the
8 Prosecution's in a verbal debate when I don't have the full
9 layout of the paperwork that the Courts say.

10 The Courts told me when I was trying to tell them that
11 my -- my counsel is not doing their job, which was Adam Gill,
12 they told me that he can construct the case however he wants
13 to. That he can -- and that is not true when it comes to --
14 when the Courts in McCoy versus Louisiana says the counsel is
15 only assist. He's to only assist and aid the Defendant when
16 he needs stuff done or when he want to pursue the case, the
17 Defense, the way he want to pursue -- present it.

18 The counsel can't come along, no matter how he feels, and
19 say, "Well, no. The Defendant says he's guilty" -- I mean,
20 "he's not guilty or something but I say he's guilty." No,
21 counsel cannot do that.

22 THE COURT: Okay. That's not what McCoy says at
23 all.

24 THE DEFENDANT: It --

1 THE COURT: That's literally not what McCoy says.
2 THE DEFENDANT: That's not what McCoy say?
3 THE COURT: No. So anyways, I'm gonna ask you one
4 more time about calendar call.
5 THE DEFENDANT: You know the Court's just really --
6 THE COURT: Calendar call.
7 THE DEFENDANT: They really --
8 THE COURT: Calendar call. Are you ready?
9 THE DEFENDANT: I understand. But I'm just so
10 upset --
11 THE COURT: Are you ready?
12 THE DEFENDANT: I'm just so upset, I'm just trying
13 to fight my case. I'm saying my 6th Amendment right has been
14 violated and I'm ready to invoke -- I'm invoked my right,
15 again, to speak at trial --
16 THE COURT: You waived --
17 THE DEFENDANT: And it's not me, it's counsel.
18 THE COURT: You -- okay. So are you ready to go to
19 trial?
20 THE DEFENDANT: It's counsel. It's the counsel.
21 I've been ready to go to trial. I've been --
22 THE COURT: Okay. Are you ready to start Monday?
23 THE DEFENDANT: -- (indiscernible) trial. And --
24 and I need -- well, I need my -- come on. Let's go. I need

1 my -- I need my defense. I ain't got no defense. I got no
2 witnesses. Okay. I'm ready to go. Forget. I mean, the
3 Courts just forcing me, then I'm gonna go.

4 THE COURT: Oh, my gosh.

5 THE DEFENDANT: The Courts can do whatever the
6 Courts want to do. All I'm saying is -- to the Courts is to
7 allow me to defend myself appropriately. And the Courts are
8 not allowing me because they feel as they being that I'm
9 representing myself, a per -- a pro se litigant, that they
10 can do whatever they want to do. And it's not right. Sorry
11 about that.

12 THE COURT: So is that a "yes" or a "no"?

13 THE DEFENDANT: It -- it's not right. I -- I --

14 THE COURT: Mr. Porter, look at me.

15 THE DEFENDANT: The Court's already heard what I
16 said already --

17 MR. GILL: Mr. Porter --

18 THE DEFENDANT: -- man.

19 THE COURT: Are you ready to go to trial?

20 THE DEFENDANT: I'm not --

21 THE COURT: "Yes" or "no."

22 THE DEFENDANT: I've been saying (indiscernible)
23 6th Amendment right. I've been saying it. The Courts just
24 heard what I just said.

1 THE COURT: Okay. So, yes, you're ready to start on
2 Monday.

3 THE DEFENDANT: We go today. Right now.

4 THE COURT: So that's a "yes."

5 THE DEFENDANT: We go right now. Forget it. We
6 going right now.

7 THE COURT: Okay. Do you see a jury here?

8 THE DEFENDANT: Well, we could pick. In Baxton
9 versus Kentucky --

10 THE COURT: Oh --

11 THE DEFENDANT: -- please pick the jury in -- in an
12 appropriate manner and don't exclude jurors from -- because it
13 ain't -- they -- they --

14 MS. LUZAICH: Okay. Well, for the record --

15 THE DEFENDANT: -- (indiscernible) huh? Oh, sorry.

16 MS. LUZAICH: He has told the Court he has not
17 subpoenaed any witnesses. He has not --

18 THE DEFENDANT: (Indiscernible)

19 MS. LUZAICH: -- he has an alibi defense and has not
20 filed a notice of alibi so --

21 THE DEFENDANT: Well, and that's what I tried to do
22 in the motion --

23 MS. LUZAICH: -- it appears the Defendant is --

24 THE COURT: Stop talking.

1 THE DEFENDANT: I'm sorry.

2 MS. LUZAICH: It appears the Defendant is not ready
3 for trial next week.

4 THE DEFENDANT: Well, no. I didn't say I wasn't.
5 Are you saying I'm under --

6 THE COURT: You don't -- you don't have --

7 THE DEFENDANT: -- how do you know (indiscernible).

8 THE COURT: -- one witness and you don't even have
9 your transcripts yet.

10 THE DEFENDANT: Because the Courts haven't supplied
11 me with 'em. And that's what I've been saying the whole time.
12 I've been needing everything that I've been requesting --
13 okay. I didn't put the point and authorities to it. Now I'm
14 saying, under the United States Supreme Court, under the
15 Constitution of -- of United States, under the 6th Amendment,
16 I'm -- I need a -- a -- I need to be able to subpoena all the
17 witnesses that I subpoenaed. Even though I didn't put case
18 law -- state case law, the NRS, orally, I'm saying --

19 THE COURT: Okay. But let me ask you this: Do you
20 think I have to follow the rules?

21 THE DEFENDANT: Of course. You have judicial
22 evidence.

23 THE COURT: Okay. So one of the rules I have to
24 follow is make sure you follow the rules. That's what I took

1 an oath to do is follow the rules and laws (indiscernible).

2 THE DEFENDANT: And I'm not trying --

3 THE COURT: So if the rule says I have to have
4 points and authorities, then I have to have points and
5 authorities. I have to follow the rules. That's what the
6 rules say.

7 You are going to walk into a trial with -- you just --
8 you have no witnesses. You don't have a Defense investigator.
9 And now you're saying you're ready. You're clearly not ready.
10 You don't have one witness. That means you get to call no
11 one; right? So clearly, you're not ready and you need more
12 time to prepare your case.

13 THE DEFENDANT: I feel as though the Courts gonna do
14 what the Courts want to do. And all I'm trying to do is abide
15 by the United States Constitution. All I'm asking for is the
16 due process of law --

17 THE COURT: Sir, you're just saying legal terms that
18 you know.

19 THE DEFENDANT: I -- I --

20 THE COURT: You can't just say, "The
21 Constitution" --

22 THE DEFENDANT: You right, ma'am.

23 THE COURT: -- and "due process" and "Baxton versus
24 Kentucky" --

1 THE DEFENDANT: The 14th Amendment.

2 THE COURT: -- that's not what this is about. There
3 are laws --

4 THE DEFENDANT: The 6th Amendment.

5 MR. GILL: Shh.

6 THE DEFENDANT: Yeah.

7 THE COURT: -- you can't just say "6th Amendment,"
8 "14th Amendment" --

9 THE DEFENDANT: You're right.

10 THE COURT: -- be able to back up what you say.
11 Right now, you're not backing up what you say. So you need to
12 tell me if you are ready for trial.

13 THE DEFENDANT: Well, all I'm saying, ma'am --

14 THE COURT: No. No. No.

15 THE DEFENDANT: -- is under the 6th Amendment --

16 THE COURT: It's not -- no, I am tired --

17 THE DEFENDANT: -- I have a right to a defense -- I
18 understand you tired. And I'm not trying to make the Courts
19 tired --

20 THE COURT: But you just --

21 THE DEFENDANT: -- but I'm gonna --

22 THE COURT: You don't care about anything except
23 yourself.

24 THE DEFENDANT: I -- I do, ma'am. I do care --

1 THE COURT: Do you --
2 THE DEFENDANT: -- about the Courts.
3 THE COURT: Are you ready to go to trial?
4 THE DEFENDANT: I do care about the system.
5 THE COURT: Are you ready to go to trial?
6 THE DEFENDANT: I've been saying I'm ready to do
7 whatever I have to do to get to where I need to be --
8 THE COURT: And who would you --
9 THE DEFENDANT: -- and my sister --
10 THE COURT: -- be -- who will you be calling as a
11 witness?
12 THE DEFENDANT: Everybody that I put in the motion
13 to subpoena.
14 THE COURT: You can't --
15 THE DEFENDANT: I know it doesn't -- but I -- I'm
16 stating now, on record, under the United States Constitution
17 of the 6th Amendment, I want to subpoena --
18 THE COURT: Great. Follow the laws. Follow the
19 rules that has to get you there.
20 THE DEFENDANT: And -- and I'm not trying to make
21 the Courts mad --
22 THE COURT: Also, just so you know --
23 THE DEFENDANT: -- and nothing like that, man.
24 Apologize. Take the -- take your time with me, man. Because

1 all I know is --

2 THE COURT: Sir, all you do is talk --

3 THE DEFENDANT: -- (indiscernible) the Constitution.

4 THE COURT: Okay. You --

5 MR. GILL: Judge, I -- I know I'm standby counsel.

6 Can I have one moment?

7 THE COURT: Sure.

8 THE DEFENDANT: All I know is the Constitution. All
9 I know is the Constitution.

10 If you helping me, you would have been (indiscernible)
11 you ain't been trying to help me. I didn't kick you off the
12 case. I just want to represent myself. I've been -- you --
13 you've been acting in concert with the DA the whole time.

14 MR. GILL: All right.

15 THE COURT: Okay.

16 MR. GILL: Never mind, Judge. Thank you.

17 THE COURT: Yeah.

18 THE DEFENDANT: You ain't filed one of my motions.

19 THE COURT: No worries.

20 So just so you know, there is a statute, NRS 174, that
21 deals with the filing of notice of witnesses.

22 THE DEFENDANT: Uh-huh.

23 THE COURT: As of right now, you have not noticed
24 any witnesses.

1 THE DEFENDANT: I don't even know where they at.
2 It's been -- I don't even know where they at.

3 THE COURT: Okay.

4 THE DEFENDANT: But I'm asking the Courts to assist
5 me --

6 THE COURT: Okay. Let me explain something for you.
7 If you start trial on Monday, five days before that Monday,
8 you have to file what's referred to as "a notice of witness."
9 You have not done that, which means you have no witnesses.
10 You don't get to call any witnesses, even if you could find
11 them.

12 THE DEFENDANT: So a motion is not good, Your Honor?

13 THE COURT: No, you need to file a notice of
14 witness -- I think it's 174.235 --

15 THE DEFENDANT: Okay.

16 THE COURT: -- within five days --

17 THE DEFENDANT: That's NRS?

18 THE COURT: -- of trial. Yes.

19 THE DEFENDANT: But what about constitution?

20 THE COURT: What about the Constitution? What are
21 you talking about? A notice of witness, pursuant to Nevada
22 law, must be filed five days before trial. An alibi witness,
23 I believe, is either ten --

24 MS. LUZAICH: Ten.

1 THE COURT: Ten -- it's ten. So if those people are
2 alibi witnesses, that means ten days before the start of the
3 trial, which is Monday, ten days ago --

4 THE DEFENDANT: No, they -- they not alibi witness.
5 They witnesses that can contest to what's being said that's
6 against me. They can -- they -- they here to let the Courts
7 know that, "Hey, listen, at this time" -- like I kept saying
8 and I continue saying, I advise counsel, the Courts,
9 everything I did. All the Courts have to do is look at the
10 record --

11 THE COURT: Okay.

12 THE DEFENDANT: -- and see that I have asked them --

13 THE COURT: All right.

14 THE DEFENDANT: -- numerous times the ask counsels
15 to point a -- to -- to have investigators and to -- to -- to
16 go and receive -- and go and talk to the people they need to
17 speak to.

18 THE COURT: Okay. So explain to me how you're going
19 to start trial on Monday without one witness?

20 THE DEFENDANT: Ma'am, all I'm saying is --

21 THE COURT: No, I --

22 THE DEFENDANT: -- under the Constitution --

23 THE COURT: I want you -- if you say "the
24 Constitution" one more time, I'm gonna lose it. I'm not

1 kidding you.

2 THE DEFENDANT: I'm so sorry --

3 THE COURT: Answer the question --

4 THE DEFENDANT: -- the Constitution has you upset,
5 ma'am.

6 THE COURT: No, sir. You have -- 'cause you just
7 think you can just say all these legal words and I'm gonna be
8 like "okay." No, I went to law school.

9 THE DEFENDANT: I know.

10 THE COURT: Get it? I know more about the
11 Constitution than you could ever. So what I'm trying to say
12 to you --

13 THE DEFENDANT: Dang, I got the bailiff to tell me
14 to stop talking --

15 THE COURT: -- is how are you going to start trial
16 on Monday without one witness? Can you start trial on Monday
17 without one witness?

18 THE DEFENDANT: Of course you can always start trial
19 without one witness, ma'am.

20 THE COURT: And that's what you'd like to do.

21 THE DEFENDANT: Hell, I need all my witnesses. Of
22 course the Courts know I need all my witnesses. But I'm tired
23 of waiting. I've been waiting the past 19 years --

24 THE COURT: Ms. Luzaich, are you ready for trial on

1 Monday?

2 THE DEFENDANT: -- what am I gonna do?

3 MS. LUZAICH: I could be if I have to be, Judge.

4 But I can't go to trial with this record.

5 THE COURT: I agree. You cannot have 10 or 12
6 motions that you believe are important to your case and not
7 file pursuant to the Nevada law --

8 THE DEFENDANT: I'm going off the Constitution,
9 ma'am.

10 THE COURT: -- points and authorities.

11 THE DEFENDANT: All I know is the United States
12 Supreme Court law.

13 THE COURT: All right. So the calendar call was
14 today. The trial is vacated. Mr. Porter states that he needs
15 witnesses, he needs independent forensic testing --

16 THE DEFENDANT: I'm saying --

17 THE COURT: -- he needs -- he filed a motion for
18 independent forensic testing. He filed a motion to subpoena
19 witnesses. He filed a motion in regards to misconduct.

20 THE DEFENDANT: You denied 'em all.

21 THE COURT: And I told you, you could re-file them
22 with points and authorities supporting why. Also --

23 THE DEFENDANT: I said I was ready to go to trial.

24 THE COURT: -- I'm showing that he also wants to

1 call, I don't know, minimum of somewhere between 10 and 20
2 witnesses. He has not filed a witness notice.

3 THE DEFENDANT: I did a motion, though.

4 THE COURT: Doesn't count. So the trial date is
5 vacated.

6 Ms. Luzaich, the next go-around is actually going to be a
7 firm -- a firm set. Like, you either have everything or you
8 don't and we're going. 'Cause I'm not doing this game
9 anymore. This is absolutely asinine.

10 So, Ms. Luzaich, what month can your trial schedule
11 accommodate this?

12 MS. LUZAICH: February?

13 THE COURT: And how long will this be? This trial.

14 MS. LUZAICH: Having done several pro per jury
15 trials before, in those circumstances, the sides, both parties
16 provided voir dire questions to the Court --

17 THE COURT: Yeah.

18 MS. LUZAICH: -- and the Court conducted all the
19 voir dire based on that. If the Court is willing to do that,
20 jury selection will go a lot faster and we can do the trial in
21 maybe three weeks. If the Court wants the parties to question
22 the jurors themselves, I think it will take an extra week.

23 THE COURT: No. With pro per, to facilitate a
24 better voir dire process, both -- both sides will need to

1 submit questions to me that they would like to ask the jury
2 and I'll ask them on behalf of both parties.

3 We'll give it the February 10th date to ensure that we
4 stay within our criminal trial status.

5 THE CLERK: Calendar call will be
6 February 3rd, 2020 --

7 THE DEFENDANT: One more last --

8 THE CLERK: -- 9:30.

9 UNIDENTIFIED: Stop.

10 THE DEFENDANT: Oh, sorry.

11 THE CLERK: Jury trial will be February 10, 2020,
12 10:00 o'clock.

13 THE DEFENDANT: Your Honor, one last thing. I don't
14 understand this. I've been saying I am confused. That the
15 Courts just doing this to me. I am just so, so upset with the
16 Courts.

17 THE COURT: Noted --

18 THE DEFENDANT: The Courts have just really
19 dishonored the Constitution.

20 THE COURT: Okay. It's noted for the record.

21 THE DEFENDANT: And violated the -- the --

22 THE MARSHAL: Okay. Let's go.

23 THE DEFENDANT: -- the rules and regulations of the
24 Constitution. Can I say one last thing 'cause --

1 THE MARSHAL: No.

2 THE DEFENDANT: -- I have the right to say this.

3 THE COURT: I'm not listening. I've stopped
4 listening.

5 THE DEFENDANT: Okay. Well, can I say this? Under
6 the 6th Amendment I -- I want a right to counsel right now
7 because I need a counsel 'cause the -- the -- they are not
8 gonna give me -- they tell me I need my counsel. I have a
9 right to a counsel. I need a counsel.

10 THE COURT: Uh, sir -- if you could just -- you can
11 take Mr. Porter back, but I do need to get him his
12 transcripts. So if you wouldn't mind --

13 THE DEFENDANT: I need a counsel. Please give me a
14 counsel on the 6th Amendment of United States of America.

15 MS. LUZAICH: Did the Court want to appoint counsel?

16 THE COURT: Is that what he's asking for?

17 MS. LUZAICH: Yeah. That's what he's saying. "I
18 need counsel under the 6th Amendment." No? Okay.

19 THE COURT: Okay. So his transcripts are right
20 here. Let the record reflect that the transcripts that he
21 requested are in this manilla folder. If those could be
22 handed to the transporting officers to give to Mr. Porter, I
23 appreciate that.

24 MS. LUZAICH: Are those in Odyssey with the

1 exception of the one that you said was --

2 THE COURT: Sealed.

3 MS. LUZAICH: -- sealed?

4 THE COURT: Yes. And then in regards to --

5 Ms. Luzaich, how much time did you need in regards to look
6 into the -- the suppress, motion to suppress?

7 MS. LUZAICH: And the only reason I would say a
8 little while, it was back in the way early 2000s. So I don't
9 know if I can pull it out of Odyssey.

10 THE COURT: All right.

11 MS. LUZAICH: So can I have a week?

12 THE COURT: Yeah.

13 THE CLERK: Okay.

14 THE COURT: Is that Wednesday (indiscernible)?

15 MS. LUZAICH: Oh, you know what? Can I have a week
16 to do that and then I'll mail it to him, and I'll send a copy
17 to the Court as well?

18 THE COURT: That is what?

19 MS. LUZAICH: If you give me a week to find it,
20 whatever I find, I will mail to the Defendant. 'Cause he had
21 made a comment earlier to Mr. Gill about he wanted things
22 mailed to him. So will you put it back on calendar in two
23 weeks, then I'll mail it to him and I'll send to the Court
24 whatever I find.

1 THE COURT: Okay. Well, he'll probably be back here
2 in two weeks. You know what I mean? He'll be here in two
3 weeks so -- so he needs to be back in two weeks, just so you
4 guys know.

5 THE CLERK: It'll be October 2nd, 9:30, motion to
6 suppress.

7 UNIDENTIFIED: What is it? October 3rd?

8 THE CLERK: October 2nd, 9:30.

9 UNIDENTIFIED: Thank you. Thank you.

10 MS. LUZAICH: He just took an a sap (phonetic) too.

11 THE COURT: He has to go to the bathroom
12 (indiscernible).

13 MS. LUZAICH: Oh, oh, oh, okay. Oh, my God.

14 [DISCUSSION OFF THE RECORD]

15 [Hearing concluding at 12:57 p.m.]

16 *****

17 ATTEST: I do hereby certify that I have truly and
18 correctly transcribed the audio/video proceedings in the
19 above-entitled case to the best of my ability.

20 
21 ALLISON SWANSON, CSR NO. 13377
22 CERTIFIED SHORTHAND REPORTER
23 FOR THE STATE OF CALIFORNIA
24

1. JUSTIN D. PORTER #1042449
2. P.O. BOX 650 (HDSR)
3. Indian SPRINGS, NV 89070

FILED

NOV 15 2019

Ann L. Blum
CLERK OF COURT

4. DISTRICT COURT
5. CLARK COUNTY, NEVADA

6.
7. JUSTIN D. PORTER,
8. Defendant,

CASE NO. DIC-174954

DEPT NO.

9. VS.

10. THE STATE OF NEVADA,

December 9, 2019
9:30 AM

11. Plaintiff.

12.
13. MOTION FOR DISMISS OF INFORMATION.
14.

15. COMES NOW, Defendant Justin D. Porter, in PRO SE,
16. and moves this Honorable Court to GRANT this
17. MOTION FOR DISMISS OF INFORMATION. This motion is
18. based upon Attached Points and Authorities, and
19. Affidavit, and EXHIBITS Contained Herein.

20.
21.
22.
23. DATED this 12 day OF November, 2019

24. Respectfully submitted

25. *Justin Porter*

26. Justin D. Porter #1042449
In PRO SE

27.

28.

STATEMENT OF THE CASE

1. On August 12, 2000, Chicago Police illegally Arrested
2. the Defendant at his Father's Residence based upon
3. an false representation of a arrest warrant that
4. had been forwarded to them by LVMPD detectives.
5. The state charged Justin D. Porter, a Juvenile, on
6. August 22, 2000, in An Amended Complaint, with 58
7. Felonies, including murder and multiple counts of
8. Kidnapping, Robbery and sexual assault. After a Preliminary
9. hearing in Justice Court (I: 98-101), the Justice Court
10. Ordered Porter to Answer 40 counts in District Court.
11. (I: 102-03). The District Attorney filed an Amended
12. Information alleging 42 Felony counts. Porter Plead
13. not guilty to all the charges (V: 1055). After the
14. Defense litigated a Petition for a writ of Habeas
15. Corpus (V: 1055-~~57~~) which resulted in the dismissal
16. of more ~~counts~~ counts, the state Filed a Second
17. Amended Information alleging 38 felony counts.
18. ~~A motion was for the sever to sever counts 30-32~~
19. A Motion for the Severance of counts 30-32 was
20. granted. A Finding of guilty of Second Degree
21. Murder with use of a deadly weapon for the severed
22. counts. The remaining counts are unprosecuted.

Points and Authorities

Argument

- 1.
2. The constitutional Safeguards Against Post-Accusation
3. Delay. The Sixth Amendment to the constitution
4. Provides a fundamental right to a speedy Trial
5. that serves to (1) "prevent undue and oppressive
6. incarceration Prior to Trial"; (2) "minimize anxiety
7. and concern accompanying Public accusation"; and (3)
8. "limit the possibilities that long delay will impair
9. the ability of an accused to [Present a defense]."
10. U.S. V. Ewell, 383 U.S. 116, 120 (1966); see also Klopfer
11. V. N.C., 386 U.S. 213, 222-24 (1967). The Sixth Amendment
12. Provides that "in all Criminal Prosecutions, the
13. accused shall enjoy the right to a speedy and
14. Public trial". U.S. Const. amend. VI. The Sixth
15. Amendment speedy trial guarantee is binding
16. On the States through the Due Process Clause
17. OF the Fourteenth Amendment. Klopfer V. N.C., 386
18. U.S. 213, 222-23 (1967); see also Smith V. Hoey, 393 U.S. 374,
19. 377 (1969) (State is responsible For speedy Trial even
20. Where defendant is in Federal Prison). To determine
21. Whether a defendant has been deprived of the
22. right to a speedy trial, courts consider the
23. Conduct of the defendant and the Prosecution,
24. focusing on the four Factors articulated by
25. the Supreme Court in Barker V. Wingo: (1) length
26. of delay; (2) reason for delay; (3) whether, when, and
27. how the defendant asserted the speedy Trial
28. Right; and (4) whether the defendant was

1. Prejudiced by the delay. Barker, 407 U.S. 514, 534 (1972).
2.
3. A. The first Barker Factor, the length of delay,
4. is "a triggering mechanism" because "until there is
5. some delay which is presumptively prejudicial, there
6. is no necessity for inquiry into the other factors."
7. Barker, 407 U.S. 530; see also Doggett v. U.S., 505 U.S.
8. 647, 652 (1992) (defendant cannot complain government
9. denied speedy trial if it prosecuted case with
10. "customary promptness").
11. The defendant was arrested on the day of August 12, 2000,
12. by Chicago Police on the behalf of LVMPD detectives
13. for these unprosecuted charges. The right to a
14. speedy trial attaches at the time of arrest
15. or formal charge, whichever comes first. See
16. U.S. v. Marion, 404 U.S. 307, 313, 320 (1971) (right
17. attaches "only when a criminal prosecution has
18. begun and extends only to those... who have been
19. "accused" in the course of that prosecution"; it is either
20. a formal indictment or information or else the
21. actual restraints imposed by arrest... that engage
22. the... protections of the speedy trial provision of the
23. Sixth Amendment); see also Dillingham v. U.S., 423 U.S.
24. 64, 65 (1975) (if arrest precedes indictment or
25. arraignment, time must be calculated from date of
26. arrest). The delay of (19) years for trial has endangered
27. the values that the right protects, prejudice, the
28. defendant's defense is impaired because of the delay.

1. B. The second Barker Factor is the reason for
2. the delay. Barker, 407 U.S. at 531. The burden of
3. explaining delay most commonly rests with the
4. government. Deliberate Attempts to hamper the
5. defense weigh heavily against the government.
6. Barker, 407 U.S. at 531 (noting that "deliberate
7. attempt(s) to delay the trial in order to hamper
8. the defense should be weighed heavily against the
9. government"). Neutral reasons, such as overloaded
10. courts and negligence, also weigh against the govern-
11. ment. see Doggett v. U.S., 505 U.S. 647, 657 (1992)
12. (8½-year delay clearly attributable to government's
13. negligence weighed against government). For there
14. may be a situation in which the defendant has
15. been represented by incompetent counsel, has been
16. severely prejudiced, or even cases in which the
17. continuances were granted ex parte. Id. Barker,
18. 407 U.S. at 536 (There may be a situation in which
19. the defendant was represented by incompetent
20. counsel, was severely prejudiced, or even cases in
21. which the continuances were granted ex parte").
22. Because of incompetent counselors recommended
23. advice to the defendant on May 2, 2001 the defendant
24. waived the 60 day Rule. The court has defined
25. waiver as "an intentional relinquishment or
26. abandonment of a known right or privilege."
27. Johnson v. Zerbst, 304 U.S. 458, 464, 82 L Ed 1466, 58
28. S Ct 1019, 146 ALR 357 (1938) (in addressing

1. whether defendants waived their 6th Amendment
2. right, holding that such a waiver must be
3. "intelligent". If it had not been for incompetent
4. Counsel advising Defendant to waive the 60 day
5. Rule Defendant would have not waived the
6. 60 day Rule.

7.

8.

9. **C.** The Third Barker Factor Focuses on whether
10. and how the defendant asserted his right to
11. a speedy Trial. See Barker V. Wingo, 407 U.S. 514,
12. 529, 532 (1972) ("Frequency and Force of the Objections"
13. Should be taken into account). Barker, 407 U.S. 514,
14. 529, 532 (1972). On the day of September 19, 2007, the
15. Defendant stated he does not want to accept
16. negotiations and "want to Proceed to TRIAL".
17. (See EXHIBIT #A). Id. Barker, 407 U.S. 514-531.
18. And On the day of November 22, 2010, the
19. Defendant Presented argument in opposition
20. of the continuance of the trial and requested
21. a Sooner setting for trial, the Defendant
22. Objection was noted for the record.
23. (See EXHIBIT #B) Id. Barker, 407 U.S. 514-531.
24. And On the day of September 18, 2019,
25. the Prosecuting Attorney continued the
26. Defendant's Trial that was set for
27. September 26, 2019, again Defendant
28. objected but was overruled by the court.

1.. It was 'Bad Faith' on the Prosecuting Attorney
2.. to delay the Defendant's Trial again for NO
3.. Reason, weigh heavily against the Prosecuting
4.. Attorney. Barker, 407 U.S. 21531 (1972). IF the
5.. government acted in bad faith or with
6.. dilatory motive then the government is
7.. responsible for delay, and it's 'Bad Faith'. See
8.. U.S. v. Loud Hawk, 474 U.S. 302, 316 (1986).
9.. On the days of September 19, 2007, Defendant
10.. demanded a Trial; November 22, 2010, Defendant
11.. demanded a Trial; July 5, 2017, Defendant deman-
12.. ded a Trial; and on the day of September 18, 2019.
13.. A Prior demand is a necessary condition to the
14.. consideration of the Speedy Trial right. Barker, 407
15.. U.S. 525 (1972). "A Defendant has no duty to bring
16.. himself to trial; the state has that duty as well
17.. as the duty of insuring that the trial is
18.. consistent with due process." Barker, 407 U.S.
19.. 527 (1972). "Since under the demand-waiver rule
20.. no time runs until the demand is made, the
21.. government will have whatever time is otherwise
22.. reasonable to bring the defendant to trial after a
23.. demand has been made." Therefore, the rule that a
24.. Defendant who fails to "demand a Speedy Trial
25.. forever waives his right." This does not mean, however,
26.. that the defendant has no responsibility to assert
27.. his right. Id. Barker, 407 U.S. 527, 528 (1972).
28..

1. **D.** The Fourth and Final Barker Factor is Prejudice.
2. Courts assess Prejudice "in the light of the interests
3. of defendants which the speedy Trial Right was
4. designed to protect", including oppressive Pretrial
5. incarceration, anxiety and concern, and impairment
6. of the defense. Barker, 407 U.S. at 532.

7. The Defendant's Alibi witnesses for his
8. defense is unavailable and cannot be found.
9. Pookie Ray is a Alibi witness that would have
10. testified to the fact that on the day of June 7, 2000,
11. between the hours of 1:30 and 2:00 am, I was not
12. at the apartment of Joni Hall that the defendant
13. was with him Pookie Ray on the day of June 6, 2000,
14. June 7, 2000 and June 8, 2000.

15. Pookie Ray would have also testified to the fact
16. that on the day of March 7, 2000, Defendant was
17. also with him all day long, and that defendant and
18. himself know the person name Shawn Carter that
19. Leona case said victimized her. She also told
20. Paramedic Diaz Fun that Shawn Carter was
21. the suspect and as well as investigator's
22. Heve Robert and Chief Hort.

23. Defendant was suppose to call as witnesses
24. for his defense Mr. Robert and Mr. Hort, defendant
25. do not know the whereabouts of the two witnesses.

26.

27.

28.

1. Bill was the defendant's Alibi witness that
2. Know Ramona Leyva and her African-American
3. husband. An would have testify to the fact that
4. on or about the day of March 25, 2000, Defendant
5. was with him all that day and staid the night
6. at his apartment to the next day. That the
7. Defendant could not be the suspect that
8. victimized Ramona Leyva because Defendant was
9. with him all night to the next day.
10. Defendant was going to call the Bonanza Spring
11. apartment security officer, Maurice Carson, as a
12. witness because he seen the suspect face in the
13. case of Ramona Leyva but Mr. Maurice whereabouts
14. is unknown to the Defendant.
15. Defendant was going to call a number of
16. Alibi witnesses that their whereabouts
17. is unknown to the Defendant,
18. Kurtis, Richards.
19. David G.
20. AKA Peanut.
21. DAVID P. Welch.
22. Kristopher Deloney.
23. Kristopher Deloney was going to testify to
24. the Event of the case of Teresa Tyler.
25.
26. The Defendant's defense is impair because the
27. defendant's alibi witnesses whereabouts is unknown
28. to the Defendant, and the Presentability rely

1. on the defense and the defense rely on the
2. Defendant's Alibi witnesses. Barker, 407 U.S. 27532.

3.
4.
5.
6. CONCLUSION

7.
8. The Defendant's defense is impaired by
9. the length of delay, and the loss of Alibi
10. witnesses Prejudice the Defendant's defense;
11. therefore the Information shall be dismissed
12. with Prejudice. Defendant Prays that the court
13. grant defendant relief to which defendant
14. may be entitled in this proceeding.

15.
16.
17.
18.
19.
20.
21.
22.
23. DATED this 12 day of November, 2019.

24. *Justin D. Porter*

25. Justin D. Porter #1042449

26. In Pro Se

01C174954

Exhibit # B

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 22, 2010

01C174954

The State of Nevada vs Justin D Porter

November 22, 2010 8:30 AM

Status Check

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed
Tiffany Lawrence
Sharon Coffman

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT:	Abood, Joseph K.	Attorney
	Luzaich, Elissa	Attorney
	Porter, Justin D	Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. Porter acknowledged the trial setting, presented argument in opposition of the continuance of the trial and requested a sooner setting. Colloquy between Court and Deft. regarding the continuance of the trial and the reason for the continuance. Court stated findings noting the continuance is due to an unavoidable conflict with counsels schedule and ORDERED, trial STANDS as calendared; Deft's objection noted for the record.

CUSTODY(COC-NDC)

4-11-11 9:30 AM CALENDAR CALL

4-18-11 10:00 AM JURY TRIAL

PRINT DATE: 10/27/2015

Page 282 of 316

Minutes Date: May 02, 2001

RA 134

01C174954

EXHIBIT # A

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 19, 2007

01C174954

The State of Nevada vs Justin D Porter

September 19, 2007

9:00 AM

Status Check

STATUS CHECK:
NEGOTIATIONS
Relief Clerk: Carole
D'Aloia/cd//Phyllis
Irby
Reporter/Recorder:
Sonia Riley Heard
By: Lee Gates

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:

Abood, Joseph K.
Brown, Curtis
Luzaich, Elissa
Porter, Justin D
Public Defender

Attorney
Attorney
Attorney
Defendant
Attorney

JOURNAL ENTRIES

- Statements by Mr. Brown regarding the history of the case. Mr. Brown advised parties have been in discussions on trying to negotiate the matter. Ms. Luzaich stated she did make an offer to resolve the matter. Defendant stated he does not want to accept negotiations and wants to proceed to trial. Mr. Brown advised he cannot be prepared for trial until June of 2008 because of this trial schedule and the amount of work that needs to be done on this case. COURT ORDERED, matter set for JURY TRIAL AND ADVISED THIS IS A FIRM DATE.
CUSTODY

PRINT DATE: 10/27/2015

Page 199 of 316

Minutes Date: May 02, 2001

RA 135

1 AFFIDAVIT OF Justin D. Porter

2
3 STATE OF NEVADA }
4 } ss...
5 COUNTY OF CLARK }

6 Pursuant to case No. 01C-174954:

7 I, Justin D. Porter, being First duly Sworn upon
8 OATH, Deposes and swears, to the Following:

9 That I am the Affiant herein, of sound mind,
10 good Physical Health, and above the age of 21 yrs.
11 Old, therefore qualified to testify to all matters
12 Herein. That I make this Affidavit in support
13 of any motion, Pleading or Document filed by
14 or on behalf of Justin D. Porter. That I make
15 this Affidavit in opposition to any motion,
16 Pleading or Document filed by or on behalf
17 of the State of Nevada. Pursuant to case 01C-174954

18 That on the day of August 12, 2000, Chicago Police
19 illegally Arrested me at my Father's Residence
20 based upon False representation of a arrest warrant
21 that had been forwarded to them by LVMPD
22 detectives.

23 That on or about the day of May 2, 2001, if it
24 had not been for Defendant's Attorneys
25 Curtis Brown and Joseph K. Aboud advising
26 me Justin D. Porter to waive the 60 day Rule
27 I would have not.

28

A

1 I made numerous request to Curtis Brown and
2 Joseph K. Aboud to have a Trial, but they told me
3 that the District Attorney and them was
4 working on a negotiation for me, and that the
5 district attorney and them thought it will
6 be best for me to plead guilty, but I
7 would not. So because of my Attorneys Failure
8 to accommodate my request, and the want of me
9 to plead guilty, I became frustrated and told
10 Judge LEE GATES I am not accepting no
11 negotiation and I want to proceed to trial,
12 this was on the day of September 19, 2007.

13
14 On the day of November 22, 2010, I objected
15 to another continuance, and at this point
16 the unprosecuted Charges had been going
17 on for 10 years, so I request a soon
18 Trial setting, I was overruled for Trial.
19

20 On the day of ~~November~~ JULY 5, 2017 I
21 made a demand for Trial.

22
23 On the day of September 18, 2019, again I
24 Justin D. Porter stated in open COURT that
25 I want to have my trial that was set
26 for September 26, 2019. But the District
27 Attorney requested another continuance
28 against my Objection.

2 of A

1 I Justin D. Porter have been prejudice because of
2 the long delay of 19 years For my Trial.

3 I do not know the whereabouts of my
4 Alibi witnesses, Pookie Ray, Bill and the list
5 that follows of other witnesses I was go
6 to call to the witness stand for my Trial;

7 Diaz Fun: witness

8 David G: witness

9 Kristopher Deloney: witness

10 Maurine Carson: witness

11 Heve Robert: witness

12 Chief, Hort: witness

13 Kurtis Richards: witness

14 DAVID P. Welch: witness

15 AKA Peanut: witness

16 TERESA TYLER: witness

17 LEONA CASE: witness

18 RAMONA LEYVA: witness

19 JONI Hall: witness

20 MARLENE LIVINGSTON: witness

21

22 And numerous other witnesses I was go
23 to call to the witness stand.

24 Affiant made the accompanying motion for
25 Dismiss of Information, have read the same, finds
26 that it is true and correct to the best of my
27 memory and belief, except those matters wherein
28 I've had to rely on informatio, and believe

1 them true also.

2 Further Affiant sayeth nought, subscribed
3 and sworn to, Pursuant to NRS 171.102 (2) and NRS 208.165
4 Under Penalty of PerJury.

5

6

7

8

9 DATED This 12, day of November, 2019.

10 By: *Justin Porter*

11

12 Justin D. Porter - AFFIANT - PRO SE.

13

14

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Certificate of Service By mail

I, Justin D. Porter, hereby certify pursuant to N.R.C.P. 5(b),
that on this 12 day of the month of November, 2019,
I mailed a true and correct copy of the foregoing
Motion for Dismiss of Information / Affidavit of
Justin D. Porter.

Addressed to:

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3RD Floor
Las Vegas, NV 89155-1160



Justin D. Porter
#1042449

P.O. Box 650 (HDSF)
Indian Springs, NV 89070

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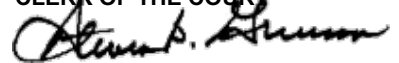
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Steven D. Grierson, Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

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LEGAL MAIL



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	CASE NO. 01C174954
)	
vs.)	
)	DEPT. NO. VI
PORTER, JUSTIN D.,)	
)	
Defendant(s).)	
_____)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,

DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 7, 2022

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 4

APPEARANCES:

For the Plaintiffs:	STACY L. KOLLINS
	ELISSA LUZAICH
For the Defendants:	ADAM L. GILL
	CHARLES R. GOODWIN

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER
TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

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1 Las Vegas, Nevada, Wednesday, September 7, 2022

2 [Case called at 9:41 a.m.]

3 *****

4 [OUTSIDE THE PRESENCE OF THE JURY]

5 THE COURT: We're on the record. State of Nevada
6 versus Justin Porter, C174954. Mr. Porter is present in
7 custody with Mr. Gill. Ms. Luzaich as well as Ms. Kollins are
8 present on behalf of State. We're outside the presence of the
9 jury.

10 So I'm gonna have a --

11 MS. KOLLINS: Judge, Teresa Tyler -- Stacy Kollins
12 on behalf of the State, 5391.

13 Teresa Tyler was here. She is the February 1st victim in
14 this case. She came to speak with us. She seemed cooperative
15 and that she would come in. Now discussions are being had
16 that she just plain doesn't want to testify.

17 THE COURT: Okay.

18 MS. KOLLINS: So she is here this morning with our
19 investigator.

20 THE COURT: Perfect.

21 MS. KOLLINS: I --

22 THE COURT: Okay.

23 MS. KOLLINS: -- would just like the Court to have a
24 conversation with her.

1 MS. LUZAICH: Her sister is the one that's telling
2 her she doesn't have to.

3 THE COURT: Sure.

4 UNIDENTIFIED: So where are we, Your Honor? Do you
5 want her --

6 THE COURT: Ms. Tyler? Oh, Teresa, come on in.

7 MS. KOLLINS: And then if you could have her sister
8 wait outside.

9 UNIDENTIFIED: Okay.

10 MS. KOLLINS: Thank you.

11 THE COURT: Hi, Teresa. Come on up.

12 You can just stay right here on the podium. How, are
13 you, ma'am?

14 MS. TYLER: Oh, good.

15 THE COURT: Good. Thank you for coming in today.
16 So I think -- Ms. Kollins, is Ms. Tyler our first witness?

17 MS. KOLLINS: She can be.

18 THE COURT: Okay. All right. So, Ms. Tyler, it's
19 my understanding that you're not too crazy about being here;
20 is that fair?

21 MS. TYLER: This is correct.

22 THE COURT: Okay. All right. So because you're
23 technically under subpoena, you do have to testify.

24 MS. TYLER: Uh --

1 THE COURT: Yes, ma'am.

2 MS. TYLER: I was never given a subpoena.

3 THE COURT: Okay. I mean, they could serve you
4 right now if you'd like.

5 MS. TYLER: Okay.

6 MS. KOLLINS: I think the communication with our
7 investigator is a promise to appear.

8 THE COURT: Oh, okay. So, basically, subpoenas can
9 be served via hand; right? They can be left or if you give a
10 promise to appear or promise not to appear to the
11 investigator, that can be used as well.

12 And so they're going to call you first, so we can get you
13 in and out of here as soon as possible. But technically, you
14 are under subpoena to testify. And so, I don't know, this is
15 a hard position --

16 MS. TYLER: Okay.

17 THE COURT: -- for you to be in --

18 MS. TYLER: Understandable.

19 THE COURT: Okay. All right. So if you would
20 just -- wouldn't mind just stepping outside into that -- what
21 we call the "anteroom," where your sister is waiting.

22 MS. TYLER: Mm-hmm.

23 THE COURT: And then we're going to bring the jury
24 in and then we'll bring you right in and we'll get this

1 started, okay?

2 MS. TYLER: Okay.

3 THE COURT: Thank you, ma'am. I appreciate it.

4 MS. KOLLINS: Judge, may we approach just a moment?

5 THE COURT: Uh-huh. Yep.

6 And then, Mr. Porter, I did have a conversation --
7 Justin?

8 THE DEFENDANT: Yes.

9 THE COURT: I did have a conversation with the jail
10 last night. So are you sure you brought the books down from
11 the prison?

12 THE DEFENDANT: Yes, ma'am. They --

13 THE COURT: All right. Do you think they're in your
14 personal property?

15 THE DEFENDANT: Maybe in my personal property. They
16 in a tub, a bin.

17 THE COURT: A bin?

18 THE DEFENDANT: Yeah.

19 THE COURT: Tell me what it looks like.

20 THE DEFENDANT: Uh, they're in --

21 THE COURT: 'Cause I've got everybody over there
22 looking.

23 THE DEFENDANT: Yeah, they are -- they're -- there
24 is four books. It's --

1 MR. GILL: Is it like a plastic moving bin?

2 THE DEFENDANT: Yeah, it's in a bag. It's really in
3 the bag. They -- they have it a bag.

4 THE COURT: In a bag --

5 THE DEFENDANT: The name is "Porter" and my prison
6 bag number, 1042449, is written on the book.

7 THE COURT: Oh, is written on each of the books?

8 THE DEFENDANT: Each of the books.

9 THE COURT: And then what does the bag look like?

10 THE DEFENDANT: It's a clear plastic bag that they
11 handed me.

12 THE COURT: Okay. Four books. And then I did an
13 order for the hair cutting things, whatever.

14 THE DEFENDANT: Yeah.

15 THE COURT: And they -- the attorney for Metro
16 e-mailed today and said, "Listen, we don't allow sheers in the
17 jail, but if -- as long as he requests it, I can get him a
18 fresh set of clippers, a smock, and" -- I don't know what the
19 other thing was. I can look it up.

20 MR. GILL: Right. I think, Judge -- I don't mean to
21 interrupt.

22 THE COURT: Go ahead.

23 MR. GILL: He's been able to find some stuff to cut
24 his face.

1 THE DEFENDANT: They have clippers there --
2 MR. GILL: Yeah.
3 THE DEFENDANT: -- in the unit.
4 MR. GILL: Yeah. So he's been able to at least do
5 that, Your Honor.
6 THE COURT: Okay.
7 MR. GILL: I know, yesterday --
8 THE DEFENDANT: But they don't let you use 'em all
9 the time. Or when you need 'em.
10 THE COURT: Right. Yeah. And I --
11 THE DEFENDANT: They have specific --
12 THE COURT: -- explained to her that -- that you
13 need them -- what? -- like every two days, you think?
14 THE DEFENDANT: Every two days.
15 THE COURT: Every two days. Okay.
16 So they're working on the books as we speak. They just
17 don't have possession -- they don't believe they have
18 possession of them right now. But I think if I can give more
19 particulars --
20 THE DEFENDANT: They have 'em. They -- 'cause
21 they -- they explain to me books aren't authorized. They
22 still on my property. So they -- they have 'em down there,
23 it's just --
24 THE COURT: Remember when you were in -- in NSP

1 brought you --

2 THE DEFENDANT: Uh-huh.

3 THE COURT: -- and I was like "I'll remand you so
4 you can have conversations with Adam"?

5 THE DEFENDANT: Uh-huh.

6 THE COURT: Did you have your books with you that
7 day?

8 THE DEFENDANT: Yeah, the COs left them particularly
9 where they -- they keep us at. They kept -- one of the other
10 COs that work down there that watches over us while we go to
11 court and come back.

12 THE COURT: Okay.

13 THE DEFENDANT: So it was in a specific spot. And
14 it was in a bag. And they had left right there. When I came
15 back, the CO picked 'em up and took 'em with me to booking.

16 THE COURT: Okay. All right.

17 THE DEFENDANT: The CO -- his signature's on --

18 MR. GILL: Okay. And it's in a -- in a bin --

19 THE DEFENDANT: It's --

20 MR. GILL: -- within -- in a bag within a bin.

21 THE DEFENDANT: In a plastic bag in the bin.

22 THE COURT: Okay. Got it.

23 [BENCH CONFERENCE BEGIN]

24 THE COURT: All right.

1 MS. KOLLINS: Okay. So Lisa has a Spanish
2 interpreter coming for our first planned witness. We didn't
3 know if we were gonna -- Teresa. So I just -- I'm gonna go
4 spend a minute with her and kind of talk to her a little bit
5 and then let Lisa do the other witness, okay?

6 THE COURT: Yeah, whatever -- whatever works. I was
7 just trying to --

8 MS. KOLLINS: No, I --

9 THE COURT: -- get her to --

10 MS. KOLLINS: Well, and two words from you. I mean,
11 I've been on the phone for 20 times. So -- well, and then
12 she's like, "I don't have a subpoena. I'm not coming." I'm
13 like --

14 THE COURT: Yeah. (Indiscernible) okay. All right.
15 Well, we'll get the --

16 MS. KOLLINS: And Lisa's printing out her pictures
17 right now and be --

18 THE COURT: (Indiscernible)

19 MS. KOLLINS: Okay.

20 MR. GILL: Thank you.

21 THE COURT: Perfect.

22 MS. KOLLINS: Great.

23 THE COURT: Great. Awesome.

24 [BENCH CONFERENCE END]

1 THE COURT: All right. I will e-mail jail right
2 now. Let's see here.

3 MS. KOLLINS: If anyone needs me, I'll be right
4 there.

5 THE COURT: Got it.

6 [RECESS AT 9:48 A.M.; PROCEEDINGS RESUMED AT
7 9:51 A.M.]

8 [IN THE PRESENCE OF THE JURY]

9 THE COURT: All right. Good morning, everybody.
10 Welcome back. Please be seated.

11 We're on the record on State of Nevada versus
12 Justin Porter, C174954. Mr. Porter is present with Mr. Gill.

13 UNIDENTIFIED JUROR: We're six. You have that
14 reversed. You just need to hand it --

15 UNIDENTIFIED JUROR: Sorry. The notebooks are all
16 mixed-up.

17 THE COURT: Oh, that's okay.

18 [JURY DISCUSSION]

19 THE COURT: All right. We're off to a great start.

20 All right. So Mr. Porter is present with Mr. Gill.
21 Ms. Luzaich is present on behalf of State. Ms. Kollins will
22 be joining us shortly. She's just outside the doors.

23 Do the parties stipulate to the presence of the jury?

24 MS. LUZAICH: Yes, Judge.

1 MR. GILL: Yes, Your Honor.

2 THE COURT: All right. Next witness, State.

3 MS. LUZAICH: Ramona Leva.

4 THE COURT: Right up here, ma'am.

5 THE MARSHAL: If she could just raise her right hand
6 so the clerk can swear her in.

7 RAMONA LEVA,
8 [Having been called as a witness and being first duly
9 sworn testified as follows:]

10 THE WITNESS: I swear.

11 THE CLERK: Please be seated. And will you please
12 state your name and spell it for the record.

13 THE WITNESS: Ramona Leva Reyes. R-A-M-O-N-A
14 (English). Ramona's spelled R-A-M-O-N-A. L-E-V-A.

15 THE COURT: Mr. Interpreter, so the jury's gonna
16 need to see her. So if you want to stand behind her or I'm
17 happy to get you a chair.

18 THE INTERPRETER: Right here.

19 THE COURT: Would you like a chair?

20 THE INTERPRETER: Oh, well, yeah.

21 THE MARSHAL: I got it. I gotch you.

22 THE INTERPRETER: Thank you much.

23 THE MARSHAL: Sure.

24 THE COURT: And if you wouldn't mind asking Ms. Leva

1 to scoot a little bit closer towards me because it will need
2 to be your voice on the microphone.

3 Perfect. Thank you.

4 Ms. Luzaich, when you're ready.

5 MS. LUZAICH: Thank you.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q Good morning, Ms. Leva. May I call you Ramona?

9 A Of course.

10 Q Thank you. Ramona, did there come a time when you
11 moved to Las Vegas?

12 A Yes, there was a time I lived here almost five
13 years.

14 Q Do you recall when that was?

15 A 2000.

16 Q When you lived here in 2000, who did you live with?

17 A Lowry (phonetic), my husband, Lowry Reyes.

18 Q When you and your husband lived here, did you have
19 family that was elsewhere?

20 A No, it was just he and I.

21 Q Okay. And was there a time that you were living in
22 the downtown area?

23 A Yeah. There was, for a while, when we first got
24 here, a person rented us an apartment for one month near lamb

1 'cause we got here with nothing. Our truck broke down in --
2 on the way. But then we moved to an apartment and rented an
3 apartment near Bonanza and Las Vegas Boulevard.

4 Q Okay. Could it have been an apartment at 600 East
5 Bonanza?

6 A Yes.

7 Q Number 144, does that ring a bell?

8 A Yes.

9 Q And that's here in Las Vegas, Clark County; is that
10 right?

11 A Yes.

12 Q So when you and your husband came here in around
13 2000, were you working?

14 A Yes, the same company that I worked for in
15 Albuquerque, New Mexico, gave me a transfer here to Las Vegas.

16 Q And do you recall the name of the place that you
17 worked at while you were here in Las Vegas?

18 A Flying Jay Truck Stops.

19 Q What did you do there?

20 A Cook.

21 Q Did your husband also work while you were living
22 here?

23 A Yeah, within a week of being here, he got a job with
24 Jagermay (phonetic). They supply food at the airport.

1 Q Okay. And do you recall what hours you worked?

2 A Yeah, I worked eight hours, from 7:00 a.m. to, I
3 think it was 2:00 p.m.

4 Q Okay. And what hours did your husband work?

5 A He -- he went in at 10:00 p.m. and worked until
6 7:00 a.m.

7 Q And while you were living here, were you able to buy
8 a car?

9 A Yeah, with the little that we made, that he made he
10 bought me a little car so that I didn't have to take the bus.

11 Q And so would you drive your car to work?

12 A Yeah. And sometimes I'd give a ride to him. But,
13 yeah, I used my car to get to work.

14 Q Okay. You said and sometimes you drove him to work?

15 A Yes.

16 Q When you drove him to work, how did that work out?
17 What would you do?

18 A Yes, well, we'd have to eat early. And then after
19 supper, he'd say, you know, "Dear, could you give me a ride to
20 work?"

21 And I'd say, "Well, sure. Of course."

22 And so then I'd give him a ride to work and I'd get back
23 in time to bathe and get myself ready for work in the morning.

24 Q Okay. So when you would take him to work, do you

1 know around what time you would leave?

2 A Well, maybe 8:00, maybe 9:00 o'clock. We like to go
3 slowly. He worked on -- where he worked was on Maryland. And
4 so, you know, within an hour I could go and come back.

5 Q Okay. And when you would come back, where would you
6 park your car?

7 A Right in front of the door so that I could get to
8 the car quickly when I went out at 6:00 in the morning.

9 Q Okay. And you said that when you come home from
10 taking your husband to work, you would bathe to get ready for
11 the next morning?

12 A Yeah, usually that's what I would do. Yeah.

13 Q Okay. Was --

14 A So I'd have more time, I wouldn't be late in the
15 morning.

16 Q Was there an occasion on March 25th of 2000 that you
17 took your husband to work and something happened when you got
18 home?

19 A Yes. I -- I don't recall the exact date but, yes,
20 there was a time when I came back and -- and I was getting
21 ready. And after leaving my husband and I was in the
22 bathroom, and I heard a very, very loud noise, a bang like I
23 thought somebody had -- had crashed.

24 Q Where were you when you heard that noise?

1 A In the bathroom.

2 Q What were you doing in the bathroom?

3 A I was using the toilet and then I was gonna bathe.

4 Q Were you dressed? Undressed?

5 A I -- I don't recall if I still had my clothes on or
6 if I was all ready to get in the bath. But I'm sure that I
7 was about to go to bathe.

8 Q Okay. So what happened after you heard that really
9 loud noise?

10 A I looked up -- I -- I looked up and I saw the person
11 that was in the door 'cause -- see, it was just a studio
12 apartment. So everything was right there: The bathroom, the
13 bed, the stove, kitchen. And seeing him, of course I was
14 surprised. I was scared. I was -- and he grabbed me by the
15 hair.

16 And from my own table he picked up a knife and put it to
17 my throat. And he -- he dragged me out of the bathroom and
18 into the other room, where it was -- you know, it was just
19 that one room, the bed, the kitchen, everything there. And --
20 and he started -- he dragged me out by my hair and he started
21 looking around in the closet for things.

22 Q Was he saying anything while he was doing this?

23 A He -- he was talking, but I -- I don't know what he
24 was saying. Mostly 'cause I hardly know any English. And I

1 was talking too, asking him what he was looking for, giving
2 myself to God's help. But there was a dialogue going on, but
3 we weren't really understanding each other.

4 Q What language were you speaking?

5 A Spanish.

6 Q Did it appear to you that the individual was
7 speaking English?

8 A He was speaking English.

9 Q What -- how did he appear? What did he sound like
10 while this was happening?

11 A Well, you know, I was so terrified, I didn't --
12 didn't get a good look, but I -- I could tell he was tall.
13 Course, I'm very short. He was tall, slender, but he had his
14 face covered.

15 Q What was his face covered with?

16 A Like a bandana. It covered the ears and half the
17 face.

18 Q 'Kay. And when you said that he was tall, taller
19 than you, how -- how tall are you?

20 A Five feet.

21 Q Could you tell or estimate an approximate age of the
22 individual?

23 A Well, based on his voice and his build, I would of
24 thought he was young.

1 Q Okay. Could you tell whether he was Asian?
2 Hispanic? White? African American? Or something else?

3 A I would guess Afro American 'cause I could see his
4 hair and it was like a colored man.

5 Q Okay. What -- and could you tell what his hair
6 looked like, how it was, I don't know, cut or not cut?

7 A Well, short, but nice looking.

8 Q Okay. What was his tone of voice?

9 A He sounded nervous, desperate, emotional.

10 Q Was he loud?

11 A No. No, not really shouting, more just anxious. So
12 anxious to find what he was looking for. Desperate. Doing
13 things very -- very fast, very quickly.

14 Q Do you know what he was looking for?

15 A I suppose money, but I didn't have any.

16 Q So you said that he had dragged you from the
17 bathroom by your hair and that he had a knife. Where was the
18 knife?

19 A He -- the knife was in a drawer in my kitchen. He
20 opened the drawer and looked around and found this little
21 knife that I used for cooking.

22 Q What did he do with the knife?

23 A That -- that was when he dragged me into the bedroom
24 by my hair and told me to be quiet. 'Cause I was shouting,

1 ask -- crying out for help, crying out for -- to God for help.

2 Q And did he do something with the knife?

3 A He put it at my neck.

4 Q And you said he dragged you over, did you say to the
5 bed?

6 A Yes, after looking and not finding any money or
7 anything. So he, like, threw me angrily down on the ground.
8 And he picked me up again. And he threw me on the bed and
9 started to touch my body and touch his private parts.

10 Q Where on your body did he touch?

11 A My breast and my intimate parts.

12 Q Okay. You said he touched himself as well?

13 A Yeah. He touched his private part and I could see
14 that he was excited.

15 Q Okay. Then what did he do, if anything?

16 A He threw me on the -- he -- he threw me on the bed
17 and started to lower his pants. And then I don't remember too
18 much, but in the report it says I -- I was crying out asking
19 him to use protection --

20 Q Okay.

21 A -- and --

22 Q Ramona, don't worry about what the report says. Did
23 you have the opportunity to review the statement that you gave
24 to the police?

1 A Yes. Twenty-three years ago. Yes, there are a lot
2 of details I didn't remember 'cause I've been very sick since
3 then. I've had a tumor, been operated for. But, yes, there
4 were some details.

5 Q Okay. Do you remember telling the police that he
6 put something on himself?

7 A Yes, a rubber glove that --

8 Q Okay. And then once he put the -- do you know where
9 he put the rubber glove?

10 A He -- he used it for protection, like a condom.

11 Q Okay. And then what did he do after that?

12 A Well, after he did what he did, I guess he threw it
13 out or I don't know if he threw it in the toilet or I did.

14 Q Okay. When you say "he did what he did," can you
15 tell me what he did?

16 A He raped me. He had sexual relations with me.

17 Q Okay. And I'm sorry to ask you this. When you say
18 that, do you mean he put his penis in your vagina?

19 A Yes. Yes. He put one hand on my throat like this
20 (indicating) and with the other hand he was manipulating
21 himself, and I mean having sex.

22 Q When you say he put one hand on your throat "like
23 this," you put your hand up to the front of your neck. Is
24 that correct?

1 A Yes, he put a hand on my throat and with his other
2 hand he was manipulating, I imagine to put his member in.

3 Q Okay. What happened when he was finished?

4 A He grabbed the car keys. He looked at -- I thought
5 he'd come back. He -- he was on his phone. I thought he had
6 come back to do -- do me more harm. Then he left again.

7 Q Did -- before he left, besides what you just
8 described for me, did he hurt you physically in any other way?

9 A No, he pulled up his pants, he put down the knife,
10 and -- but he was looking desperately for something on the
11 table and everywhere, but not finding anything, then he left.

12 Q Okay. Excuse me. I'm so sorry. When he left, what
13 did you do?

14 A I -- I stayed, terrified, afraid to leave. And then
15 he came back again. That's when he checked the telephone and
16 then he left again. And then he didn't -- and then, when I
17 thought -- when he was gone and I didn't hear anything for a
18 little while, then I went running out, shouting to the
19 neighbors, "Help, help."

20 Q When you say he came back and he looked at the
21 phone, what did he do to the phone, if anything?

22 A I just saw him come back, pick up the phone, put it
23 to his ear and listen for a while, and then put it back down
24 and then he left.

1 Q When he left, did you also go outside?

2 A After a few minutes. Yes. And that's when I asked
3 for help from the neighbors, but nobody helped me.

4 Q And I'm sorry. That was a bad question. How long
5 after he left did you go outside?

6 A I think it was, like, one to five -- less than five
7 minutes until I was -- didn't think anyone was around.

8 Q Did you notice anything outside when you went
9 outside?

10 A No, I -- I went out. I didn't see anyone. I ran to
11 the front -- the first door and knocked and nobody answered.
12 And then I went running down to the street, where there were
13 people.

14 Q Did you see your car when you went outside?

15 A No. No. But the car was parked right in front of
16 the door. But I heard when he started the car and left in the
17 car.

18 Q Okay. So did he take your car keys?

19 A Yes, they were beside my purse there on the table,
20 next to the television. He took 'em and left.

21 Q Okay. Were you able to contact the police?

22 A No, I was terrified. I ran to the street. In front
23 of the apartments there was a restaurant called Tacos Mexico.
24 And -- and a couple there helped me. They took me to where my

1 husband was.

2 Q And what did you do when you got with your husband?

3 A Well, when he saw me arrive crying and all, he came
4 out from the job. And he called the police.

5 Q Okay. So did you talk to the police and explain
6 what had happened?

7 A Yes, they spoke to me and I was extremely
8 frightened.

9 Q Okay. Did you try to give the best description of
10 the person that you could?

11 A Yes. Yes. And I think that's -- everything I knew
12 is what I told the police that they have there.

13 Q Did you go to the hospital and have an exam?

14 A Yes.

15 Q What kind of an exam was it?

16 A I don't know. It wasn't very pleasant. It's not
17 like the kind of exam that when you're gonna have a baby.
18 It's -- it's ugly. It's quite traumatic. Quite ugly.
19 They -- they examine you under very bright lights with, like,
20 tweezers, looking for hairs or anything.

21 Q Okay. And was that in your vaginal area?

22 A Yes.

23 Q And did they take swabs as well, as far as you know?

24 A Yes. Yeah. Yeah, they did a lot. Yeah, and they,

1 like, cleaned me with cotton swabs inside.

2 MS. LUZAICH: Your Honor, I have State's Proposed
3 Exhibits 188 through 194.

4 THE COURT: Okay.

5 MS. LUZAICH: They were shown to the Defense. I
6 would move them into evidence.

7 MR. GILL: Without objection, Your Honor.

8 THE COURT: Okay. Those will be admitted and you
9 can publish if needed.

10 [STATE'S EXHIBITS 188-194 ADMITTED.]

11 MS. LUZAICH: Thank you.

12 BY MS. LUZAICH:

13 Q Ramona, what year were you born?

14 A March 8, '54. Yeah. '54.

15 Q So in 2000, were you around 45?

16 A Yes.

17 Q Showing you State's Exhibit 188, is that a
18 photograph of you?

19 A Yes.

20 Q And is that in your home?

21 A Yes.

22 Q Does that look like a little hospital bracelet on
23 your wrist?

24 A Yes. When I came back from the hospital, the police

1 were there.

2 Q Showing you State's Exhibit 189, does that look like
3 your apartment?

4 A Yes.

5 Q Showing you State's Exhibit 190, does that look like
6 the door knob and lock?

7 A Yes.

8 Q Was it injured or damaged like that before he got
9 there?

10 A No. No, he left it like that.

11 Q State's Exhibit 191. Is that in your home as well?

12 A Yes.

13 Q What are we looking at?

14 A I see some salsa, instant coffee, a television,
15 telephone on top of the television.

16 Q Okay. Is it items sitting on a table?

17 A Yes. Yeah, it's everything I had in that apartment.

18 Q State's 192. Is that a close up of what we just
19 looked at?

20 A Yes.

21 Q And is that an other rubber glove?

22 A Yeah. Yes, the other one he used for protection.

23 Q State's Exhibit 193. Does that appear to be a
24 bruise on the side of your neck -- or sorry, a discoloration?

1 A Yes, where he scratched me with the knife that he
2 had.

3 Q And finally, State's 194. Is that your car?

4 A That was my car.

5 MS. LUZAICH: Thank you. I would pass the witness.

6 MR. GOODWIN: May I have a brief Court's indulgence?

7 THE COURT: Sure.

8 CROSS-EXAMINATION

9 BY MR. GOODWIN:

10 Q Good morning, Ms. Leva.

11 A Good morning.

12 Q I'm just gonna ask you a couple of questions, okay?

13 A Of course.

14 Q So this person kicked in your door; right?

15 A I don't know how he opened it, if -- kicking or with
16 his body, but --

17 Q Okay.

18 A -- he opened it.

19 Q But he was -- you suddenly saw him in your house;
20 right?

21 A Yes, I was in the bathroom. I was in the bathroom
22 when I heard this noise so loud that I thought it was a car
23 crash. And when I looked up, he was there in the apartment.

24 Q Perfect. And his face was covered; right?

1 A He always -- he had his face covered all the time,
2 even when we had sex.

3 Q Sure. And I'll get up to all that. But you could
4 see his eyes; right?

5 A I could see his eyes and his head.

6 Q And you saw his hair?

7 A Yes.

8 Q His hair was short?

9 A (Spanish)

10 Q And you don't --

11 A It -- it was like a clean cut.

12 Q Clean cut?

13 And you could not tell at that time if the hair was
14 curly; correct?

15 MS. LUZAICH: Was what?

16 MR. GOODWIN: Curly. The hair was curly.

17 MS. LUZAICH: Oh.

18 THE WITNESS: Yes. Yes. Because I could see.
19 There was light. I could see his hair and I could tell it was
20 like a colored person's hair.

21 BY MR. GOODWIN:

22 Q Okay. And you testified that he was taller than
23 you; right?

24 A Yeah. I could see 'cause when he had me -- holding

1 me, grabbing me, he was almost as tall as my husband. So,
2 yeah, he was tall. Six or seven.

3 Q Sure. And I'm just gonna go through this. So this
4 was scary -- right? -- the whole incident?

5 A It was terrifying.

6 Q Right. And it was traumatic; right?

7 A Horrible. Ugly.

8 Q And a lot happened in that short period of time,
9 would you agree?

10 A I think it was all very quick, yes.

11 Q Sure. And --

12 A He was doing everything very quickly. He seemed so
13 desperate.

14 Q And at the time you were just trying to comply;
15 correct?

16 A Yeah. I didn't want him to kill me.

17 Q Right. 'Cause you didn't want to get hurt; right?

18 A Yes. Yes. I didn't put up any resistance. I just
19 was crying out for God's help. But when he told me "shh," I
20 stopped shouting and I didn't -- I didn't want him to kill me.

21 Q Sure. Okay. And just really quickly on that. Is
22 it fair to say during that incident you didn't think to myself
23 [sic] "wow, he's about as tall as my husband"?

24 A I -- I say that because when my husband would

1 embrace me, I would come up to about here on him (indicating).
2 And when he grabbed me, with the knife and held me, I came up
3 to about that place on him.

4 Q Sure. I -- I understand -- I understand that part.
5 And I'm not saying -- the question I'm trying to get at is, in
6 the moment, were you thinking about his height?

7 A No, I -- no, I wasn't thinking about anything. I
8 only thought about that when they asked me how tall, how heavy
9 he was.

10 Q Sure.

11 A I -- I didn't -- it wasn't in my mind to think about
12 anything like that.

13 Q Of course. And you spoke to the police roughly four
14 hours after; correct?

15 A I -- I don't know because first they had to give me
16 a ride to where my husband was working and then we had no car
17 so we had to come back on the bus. And when we got back, the
18 police were there.

19 Q Okay. And at that time did you speak to them
20 about -- about the description of this individual?

21 A Well, first they took me to the hospital and then
22 they took me to the police station and I looked through lots
23 of books. And, you know, I gave 'em the same description I'd
24 given 'em before, but I didn't see the face.

1 Q Sure. What I'm trying to say here is, you started
2 thinking about the description of this individual after the
3 event occurred; correct?

4 A I never thought anything. I just answered when they
5 asked me questions. I didn't think if he was fat or thin. I
6 answered questions when they started asking me if he was like
7 this or like that. But, no, I wasn't thinking of anything.

8 Q Of course. So they asked you, "Is he about 5-6 or
9 5-7"; is that right?

10 A No, they just asked me how tall or how short he was.

11 Q Okay.

12 A And that's when I remembered that when my husband
13 embraced me, I would come up to about here on his chest and
14 then I remembered that when he grabbed me, that I also -- my
15 head came up to about there on his chest.

16 Q Sure. And really quickly on this one, he looked at
17 your telephone; correct?

18 A He went out and he came back and he picked up the
19 telephone. I thought maybe he was listening to see if there
20 was service. And then I thought maybe he was gonna yank it
21 out, but he didn't.

22 Q So he never cut that telephone cord?

23 A No. No. He didn't do any damage or anything. He
24 just grabbed the knife that he used to threaten me with and

1 when he had sex with me and then when he was done, he threw it
2 outside and that's where the police found it later.

3 Q Sure. Now, I'm just -- you don't have to answer a
4 whole lot when I ask these questions; right? Just a quick
5 answer for the question asked. So the only question was, did
6 he cut the cord on the telephone?

7 A No, he didn't.

8 Q And did he cut any cords in your house?

9 A No, he didn't do any like that.

10 Q And did he tie you up with anything?

11 A No.

12 Q And you had just taken your husband to work when
13 this occurred; correct?

14 A Yes.

15 Q And you had just come home.

16 A Yes.

17 Q So -- so it's about 9:30 at night; is that accurate?

18 A More or less. 'Cause he has -- he had to start work
19 at 10:00, and I had to leave him there before 10:00.

20 Q And then getting back took about 30 minutes?

21 A In an hour, I would go and come.

22 Q But we could safely say it was before midnight;
23 correct?

24 A Yes.

1 Q And this event did not occur between midnight and
2 5:00 a.m.; is that right?

3 A No, I had to get ready for work the next day.

4 Q Okay. And the glove that was used, that was you who
5 wanted that; correct? And I'm sorry. Can I rephrase --

6 THE COURT: So just --

7 THE WITNESS: Yes --

8 THE COURT: Just one second, Mr. Interpreter. He's
9 gonna rephrase the question.

10 MR. GOODWIN: Because I -- I used the word "want"
11 and I think --

12 THE COURT: Yeah.

13 MR. GOODWIN: -- that that's not --

14 THE INTERPRETER: Oh.

15 MR. GOODWIN: -- that's not what I wanted to say.

16 THE INTERPRETER: Oh, okay.

17 BY MR. GOODWIN:

18 Q What I said was you told him to use protection;
19 correct?

20 A Yes, when I saw that he was gonna rape me, yes,
21 because I didn't know what kind of -- please.

22 Q And he stopped and looked around; correct?

23 A Yes, and I showed him where the gloves were.

24 Q And so it was your idea -- it was you telling him,

1 "If you're gonna do this, use the glove"; correct?

2 A Well, that's -- that's what I don't know how -- what
3 he understood because I told him to use protection. But the
4 gloves were there, there were no condoms.

5 Q Okay. But prior to you telling him "use
6 protection," you did not believe that he was going to use
7 protection; correct?

8 MS. LUZAICH: Well, objection. Speculation.

9 MR. GOODWIN: I'm just asking about what her -- just
10 asking what her understanding is of that situation --

11 THE COURT: That's fine.

12 MR. GOODWIN: -- (indiscernible) I'm not asking
13 her --

14 THE COURT: Overruled.

15 THE INTERPRETER: Would you repeat the question,
16 please?

17 BY MR. GOODWIN:

18 Q Prior to her pointing it out, she believed that he
19 was likely not going to use protection; correct?

20 A Well, yeah. I mean, I didn't -- I suppose somebody
21 who's gonna do something like that isn't gonna be thinking
22 about protection or anything.

23 Q Okay.

24 MR. GOODWIN: No further questions, Your Honor.

1 Thank you.

2 THE COURT: Thank you. Redirect, State?

3 MS. LUZAICH: Just one.

4 REDIRECT EXAMINATION

5 BY MS. LUZAICH:

6 Q Ramona, while the individual was in your apartment,
7 did you only speak Spanish to him?

8 A Yes. Yes, just Spanish.

9 MS. LUZAICH: Thank you. Nothing further.

10 THE COURT: Ladies and gentlemen, any questions?

11 So, Chris --

12 THE MARSHAL: Uh, yeah --

13 THE COURT: Yeah, thank you.

14 THE MARSHAL: -- (indiscernible) if you could just
15 write it on the full page.

16 THE COURT: It's okay.

17 THE MARSHAL: And just make sure you sign your name
18 and your, just, seat number.

19 MR. GILL: Are we approaching, Your Honor?

20 THE COURT: Yeah. We're just -- you can. Yeah.
21 We're just gonna wait for that.

22 [BENCH CONFERENCE BEGIN]

23 MR. GILL: I'm stealing a Mento.

24 MS. KOLLINS: He's stealing.

1 THE COURT: What?

2 MS. KOLLINS: He stole a Mento.

3 MR. GILL: It's for her own good.

4 MS. KOLLINS: Hmm?

5 MR. GILL: It's for her own good, if I'm gonna be

6 standing there.

7 THE COURT: (Indiscernible)

8 MS. LUZAICH: Greater good.

9 MR. GILL: The greater good.

10 MS. LUZAICH: Just for scheduling purposes,

11 witnesses, approximately, when will you break for lunch?

12 THE COURT: Probably at 12:30.

13 MS. LUZAICH: Okay. Thanks.

14 MR. GILL: I don't mind that one.

15 MS. LUZAICH: Oh, sorry. Did you see it?

16 MR. GILL: Did you see it?

17 THE COURT: (Indiscernible)

18 MS. KOLLINS: No, it's fine.

19 THE COURT: Okay.

20 [BENCH CONFERENCE END]

21 THE COURT: Ramona, did he remove his mask at any

22 time, even when he was leaving your apartment?

23 THE WITNESS: I never saw his face.

24 THE COURT: (Indiscernible) State?

1 MS. LUZAICH: No, Judge.

2 THE COURT: Mr. Goodwin?

3 MR. GOODWIN: No, Your Honor.

4 THE COURT: Ramona, please don't share your
5 testimony with anyone else involved in the case since it's an
6 ongoing trial. Thank you for being here. You are excused.

7 THE WITNESS: Of course.

8 THE COURT: Thank you.

9 Ladies and gentlemen, we're going to take a quick
10 ten-minute break before our next witness.

11 Please remember during this break not to discuss or
12 communicate with anyone, including fellow jurors, in any way
13 regard the case or its merits either by voice, phone, e-mail,
14 text, internet, or other means of communication or social
15 media. Please do not read, watch, or listen to any news,
16 media accounts, or comments about the case; do any research,
17 such as consulting dictionaries, using the internet, or using
18 reference materials.

19 Please do not make any investigation, test a theory of
20 the case, recreate any aspect of the case, or in any other way
21 attempt to learn or investigate the case on your own. And
22 please do not form or express any opinion on this matter until
23 it's formally submitted to you.

24 If you could be back out, lined up at 11:00 o'clock,

1 please. Thank you.

2 THE MARSHAL: All rise.

3 [RECESS AT 10:52 A.M.; PROCEEDINGS RESUMED AT
4 11:10 A.M.]

5 [IN THE PRESENCE OF THE JURY]

6 THE COURT: All right. Thank you, everyone. Please
7 be seated.

8 We are on the record in State of Nevada versus
9 Justin Porter, C174954. Mr. Porter is present with counsel,
10 Mr. Gill as well as Mr. Goodwin. Both Chief Deputy District
11 Attorneys, Ms. Luzaich as well as Ms. Kollins are present on
12 behalf of the State.

13 Next witness, please -- sorry. I should first ask, do
14 the parties stipulate to the presence of the jury?

15 MS. KOLLINS: Yes, ma'am.

16 MR. GILL: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 Next witness, Ms. Kollins.

19 MS. KOLLINS: Next witness is Teresa Tyler. And I'm
20 gonna retrieve her from the hallway.

21 THE COURT: All right. Sounds great.

22 THE MARSHAL: Just step up there and remain standing
23 and raise your right hand so the clerk can swear you in.

24 THE CLERK: Right over here, ma'am.

1 THE MARSHAL: Right over there.

2 TERESA TYLER,

3 [Having been called as a witness and being first duly
4 sworn testified as follows:]

5 THE WITNESS: Yes.

6 THE CLERK: Please be seated. Will you please state
7 your name and spell it for the record.

8 THE WITNESS: Teresa Tyler, T-E-R-E-S-A, T-Y-L-E-R.

9 THE CLERK: Thank you.

10 THE COURT: And, Teresa, would you do me a favor.
11 I -- the last witness needed an interpreter. That's why your
12 chair's so close. But that microphone right there is what
13 you'll use. So, yeah, if you want to scoot more to the middle
14 for me, that would be helpful.

15 THE WITNESS: Okay.

16 THE COURT: Thank you, ma'am.

17 THE WITNESS: You're welcome.

18 DIRECT EXAMINATION

19 BY MS. KOLLINS:

20 Q Good morning, Teresa. Thank you for waiting. How
21 are you?

22 A Oh, great. And you?

23 Q I'm good. Thank you for asking.

24 Ma'am, how old are you today?

1 A Fifty.

2 Q Fifty years old. And how old were you on

3 February 1st of 2000?

4 A Believe I was 30.

5 Q Okay. Who do you live with now?

6 A My cousin.

7 Q Your cousin.

8 A Yes.

9 Q And how long have you lived with your cousin?

10 A About a month and a half now.

11 Q Okay. And where did you live before that?

12 A With my uncle.

13 Q Okay. And how long did you live with your uncle?

14 A About two and a half years.

15 Q Okay. Did you ever live by yourself?

16 A Yes.

17 Q When did you live by yourself?

18 A Believe it was when I stayed on Eastern and --

19 Eastern and Charleston, I think -- I think it was.

20 Q Eastern and Charleston?

21 A Yes.

22 Q And that's here in Las Vegas?

23 A Yes.

24 Q Okay. And was that back in 2000?

1 A Yes.

2 Q All right. And back in 2000, did you work?

3 A Yes.

4 Q Where did you work at?

5 A Albertsons.

6 Q Do you still work at Albertsons?

7 A Yes.

8 Q And what do you do at Albertsons?

9 A Work in the bakery.

10 Q At the same Albertsons now as you did back in 2000?

11 A A different location.

12 Q Okay. The place that you lived in February of 2000,

13 was that a house or an apartment or something different?

14 A Apartment.

15 Q And who -- you lived there by yourself?

16 A Yes.

17 Q No kids, nothing else?

18 A No.

19 Q All right. And what size was that apartment?

20 A It -- it was a moderate size. Not too big, not too

21 small.

22 Q Okay. How many bedrooms did it have?

23 A One.

24 Q One bedroom?

1 A Yes.

2 Q And back then, when you were working at Albertsons,
3 what time of day would you usually go to work and what time
4 would you get home?

5 A Normally, it was like about 11:00 o'clock. And at
6 that time, I mean, I had no car, relying on the bus could be
7 between 9:00, 9:30, something like that.

8 Q Okay. So our friend over here is recording
9 everything that we talk about too.

10 A Okay.

11 Q All right. So I want you to scoot in and use your
12 outside voice --

13 A Okay.

14 Q -- okay?

15 A Okay.

16 Q Just a little bit higher so everybody over here can
17 hear --

18 A Okay.

19 Q -- and so the judge can hear, okay?

20 A Okay.

21 Q So you said 11:00 --

22 A No, 9:00 -- 9:30 -- go in at 11:00 -- yeah, 11:00
23 and be home by -- no later than 9:30.

24 Q Okay. So in at 11:00 a.m., home at 9:30 p.m.?

1 A Yes.

2 Q Okay. And would you drive yourself to work or did
3 you get there another way?

4 A Bus. Another way.

5 Q Okay. And was that your routine, to take the bus
6 both ways every day you'd go to work?

7 A Yes.

8 Q Okay. You know what we're here to talk about today.

9 A Yes.

10 Q Okay. So your apartment that was on Charleston, do
11 you remember the address?

12 A Not really, no.

13 Q Does 2895 East Charleston ring a bell?

14 A The number, don't remember, but I know it was
15 East Charleston, yes.

16 Q Okay. But here in Las Vegas, Clark County.

17 A Mm-hmm.

18 Q Is that a "yes"?

19 A Yes.

20 Q Okay. So in here, just like we talked about before,
21 we say "yes" or "no" --

22 A Yes.

23 Q -- because nobody knows "mm-mmm" or "mm-hmm" later.

24 A Yes. Yes.

1 Q If I showed you a picture of your apartment door,
2 would that refresh your recollection, maybe, about your
3 apartment number?

4 A Yes.

5 Q Okay. Showing you what's been admitted as
6 State's 195, do you recognize what's in that picture?

7 A Yes.

8 Q And how is it that you recognize what's in that
9 picture?

10 A Because I had to have a picture of them -- like a
11 little note on there of words I drew.

12 Q Okay. And when you say "note on there," are you
13 talking about the front door of your apartment?

14 A Yes.

15 Q Okay. And does that help you recall the apartment
16 number you were in?

17 A 1016?

18 MS. KOLLINS: Permission to publish, Your Honor?

19 THE COURT: Yeah. Or I'm sorry. And you said those
20 are already in; right?

21 MS. KOLLINS: Yes, ma'am.

22 THE COURT: Okay.

23 MR. GILL: Yeah, just for the record, I don't know
24 if we actually put it on the record --

1 THE COURT: Oh, okay.

2 MR. GILL: -- but whatever number she's got there,
3 I've seen and have no objection to.

4 THE COURT: Thank you.

5 BY MS. KOLLINS:

6 Q So that was back in February of 2000, apartment
7 1016, there on 2895 East Charleston, that was yours?

8 A Yes.

9 Q And that's here in Las Vegas?

10 A Yes.

11 Q And, if you know, here in Clark County? It's in
12 Las Vegas, Clark County; is that right?

13 A Yes.

14 Q Okay. On February 1st, did you go to work?

15 A I do not recall.

16 Q Okay. Between 7:30 and 8:30 at night, did someone
17 come to your door on February 1st?

18 A Yes.

19 Q Okay. Did you recognize the person that came to the
20 door?

21 A No.

22 Q Did the -- can you give me just a general
23 description of what that person looked like?

24 A He's a man.

1 Q He was a man.

2 A Mm-hmm.

3 Q Is that a "yes"?

4 A Yes.

5 Q Okay. You have a very pretty tone to your voice,
6 but it also fades off. So if you could please --

7 A Okay.

8 MS. KOLLINS: Let me get some books or something --

9 THE COURT: The officer --

10 MS. KOLLINS: -- to put under that microphone. And
11 that will help us out. No one's ever accused me of not having
12 a big mouth, so I'm not a problem.

13 BY MS. KOLLINS:

14 Q Where was I? So the person that came to your door,
15 had you ever seen them before?

16 A No.

17 Q And you said they were a man.

18 A Yes.

19 Q Were they -- what race was that man?

20 A Black.

21 Q Okay. Was he tall? Short? Fat? Skinny? Can you
22 describe any of those things about, physically, how he looked?

23 A He been average like.

24 Q Average height?

1 A Yeah. Not -- not remembering how tall, short,
2 average.

3 Q Okay. How at all are you?

4 A Five-four.

5 Q Was he taller than you?

6 A No.

7 Q Okay. Did the man want something when he came to
8 your door?

9 A Water.

10 Q And what -- did he knock on the door? Was the door
11 open?

12 A Knocked.

13 Q Okay. And when he knocked, you opened the door?

14 A Yes.

15 Q Okay. And there's no screen door on that apartment;
16 right? So you opened -- is it a solid door?

17 A No.

18 Q Okay. No screen door; correct?

19 A No screen door.

20 Q Okay. So you opened the solid door?

21 A Yes.

22 Q And then he asked you for water?

23 A Yes.

24 Q And what was your response to him asking you for

1 water?

2 A I actually do not recall my response.

3 Q Did you do something based on his question? Did you
4 go get him water?

5 A I may -- I may have went to get water. May have
6 went, yes.

7 Q Did he have a conversation with you right at near
8 that time that he was there to see your sister? Do you
9 remember that?

10 A I do not recall.

11 Q Okay. So you may have got him water --

12 A Mm-hmm.

13 Q -- what happened after you may have got him water?

14 A He -- he -- he entered in.

15 Q Okay. And why did he enter in? Do you remember?

16 A I do not know why he entered in, but I do know I did
17 not want him there.

18 Q Okay. When he entered in, what part of your
19 apartment did he first end up in?

20 A The living room.

21 Q When he was in the living room, do you remember
22 talking at all?

23 A I remember trying to pull him out.

24 Q And when you say "try to pull him out," how did you

1 do that?

2 A It was a -- and a gesture, grab his -- grab him and
3 tried to pull -- pull him out (indicating).

4 Q Okay. And you said you're five four and you said
5 he was not taller than you; is that correct?

6 A Yes.

7 Q Do you recall telling -- saying before that he was
8 5-8 to 5-9?

9 A I don't -- I don't recall seeing his height.

10 Q Okay. Would it refresh your recollection to review
11 a document to see where you might have said that?

12 A Maybe or maybe not. I'm not sure if that -- that
13 seeing it would refresh my memory.

14 Q Okay. Can we try?

15 A Sure.

16 Q Okay.

17 MS. KOLLINS: Page 2, Counsel, of the voluntary.

18 BY MS. KOLLINS:

19 Q I would just ask you to read that to yourself and
20 then I'll ask you some questions about it.

21 So, Teresa, do you recall giving that statement at UMC
22 back in 2000? I know it's been a long time. It's been
23 22 years.

24 A I don't recall -- I know I went, but I don't really

1 recall speaking to anyone stating how tall he was or big he
2 was.

3 Q Okay. So that doesn't help refresh your memory,
4 then, as to how tall you thought he was at the time, 20 years
5 ago?

6 A No.

7 Q Okay. Fair enough. So he gets in your apartment
8 and you're not sure why he wanted to come in -- is that
9 fair? -- based on what you just told me?

10 A Yes.

11 Q Okay. Did you let him in?

12 A No.

13 Q Okay. And we kind of left off and you said you were
14 trying to drag him out and --

15 A I grab -- grabbed his arm to pull him out.

16 Q You grabbed his arm to pull him out.

17 A Mm-hmm.

18 Q And when you grabbed his arm to pull him out, how
19 did -- what did he do?

20 A He (indiscernible) his hand down his side, he
21 actually pulled out a knife, to what I saw.

22 Q Okay. Pulled out a knife from his --

23 A Either his jacket or pants. I'm not sure what --
24 where he pulled it from.

1 Q And when he pulled out that knife, what did he do
2 with it?

3 A He just -- he put it in my face (indicating).

4 Q And how did you feel at that point?

5 A That point I -- I was a little scared.

6 Q Okay. After he pulled the knife out of his side
7 area of his body --

8 A Mm-hmm, yes.

9 Q -- was the next thing that happened?

10 A He gets to have me follow him around my apartment --
11 my apartment.

12 Q He wanted you to follow him around your apartment?

13 A Yes.

14 Q Okay. And what was he doing, looking around your
15 apartment as you were following him?

16 A He would go into my kitchen and go into my drawers,
17 my kitchen drawers.

18 Q Okay. Did he want something or did he tell you he
19 was looking for something?

20 A No.

21 Q Okay. Did -- during this time, did he ask you for
22 money?

23 A No.

24 Q Okay. So you followed him around your apartment

1 from, I guess, you said your kitchen. Did you follow him into
2 your bathroom?

3 A No, just kitchen, bedroom, and then the living room.
4 That's the only place.

5 Q Okay. So as you -- as he had you follow him into
6 the bedroom, did anything happen in there?

7 A My clothes had been taken off.

8 Q And where -- where in the apartment did your clothes
9 get taken off? Do you remember?

10 A I don't remember exactly where, but I do know they
11 had been taken off.

12 Q Okay. And did he tell you to take those off or did
13 he take them off or do you remember?

14 A That -- that part is -- I don't know which of the --
15 which of the two.

16 Q Okay. So that's -- you don't have a specific
17 recollection of how your clothes came off?

18 A Yes.

19 Q Okay. Did he still have the knife out?

20 A Yes.

21 Q Okay. So when your clothes came off and he had you
22 follow him into the bedroom, what else happened in the
23 bedroom?

24 A He had me on my bed.

1 MR. GILL: Your Honor, I'm having trouble even
2 hearing. I apologize.

3 THE COURT: It's okay.

4 MR. GILL: Don't mean to interrupt, Ms. Kollins.

5 MS. KOLLINS: Maybe one more book.

6 MR. GILL: Sorry, Ms. Kollins.

7 THE COURT: Maybe one more book.

8 MS. KOLLINS: It's like Jenga. Okay?

9 THE WITNESS: Okay.

10 BY MS. KOLLINS:

11 Q All right. Big voice, okay. 'Cause I don't want to
12 make you have to repeat this, all right?

13 A Okay.

14 Q Okay. So you said he had you on your bed.

15 A Yes.

16 Q Were you face up? Face down? Sitting?

17 A Face down.

18 Q And what happened when you were face down?

19 A Sexual intercourse.

20 Q And by "sexual intercourse," just so we're clear,
21 you mean penis to vagina; correct?

22 A Yes.

23 Q Did you want that to happen?

24 A No.

1 Q Were you fearful -- fearful at all when that was
2 happening?

3 A Yes.

4 Q Now, was -- well, let me back up. Did he use a
5 condom?

6 A To my -- I don't recall ever seeing him put a condom
7 on, or if he had one on, I did not see.

8 Q Okay. Now this first time that there was
9 intercourse, what made that stop?

10 A There was no other time.

11 Q Okay. What made intercourse stop?

12 A He -- he stopped.

13 Q Okay. And after he stopped, was there some money in
14 your bedroom that he located?

15 A I don't recall money in -- being taken or I don't
16 recall money.

17 Q Okay. Do you recall talking about \$40 being taken
18 from your bedroom?

19 A No.

20 Q Okay. Now, did he want you to -- after there was
21 intercourse, did he want you to use your mouth somewhere on
22 his body?

23 A No.

24 Q Do you recall discussing that before?

1 A No.

2 Q Is that something that you find difficult to speak
3 about?

4 A I don't speak about it because it didn't happen.

5 Q Okay. Do you recall him obtaining a towel?

6 A I believe he -- he gotten a towel or more so a cup
7 with water in it.

8 Q Okay. And when he got the towel and the cup with
9 water in it, what did you do or what did he do?

10 A At that time I -- he had had me in the closet. And
11 had tied me.

12 Q Okay.

13 A And tried to pour the water into my vagina area, as
14 if he's trying to clean the evidence.

15 Q Okay. And I'm talking before that, before we get to
16 that point --

17 A Mm-hmm.

18 Q -- okay? Because you're about to -- do you recall
19 you're in your bedroom with him once and then you were in
20 there with him a second time? Do you recall that?

21 A I (indiscernible) second time. After -- after he
22 had -- had done what he had done, that's when he put me into
23 the closet. Was before that (indiscernible) stated, he had me
24 walking around as I followed him.

1 Q Okay. Did he take a towel and either he used it or
2 had you use it to wipe your vaginal area?

3 A More or less, he would.

4 Q Okay.

5 A 'Cause at that point I couldn't do anything. I was
6 tied.

7 Q Okay. So that -- to your memory that was in the
8 closet, though.

9 A Yes.

10 Q Okay. You said he tied you up in the closet.

11 A Yes.

12 Q What did he use to tie you up with?

13 A I don't know what cloth or what he had found. I was
14 not looking at him. If I may say, as he's doing this, within
15 me, I was praying. So I -- I'm not paying attention to what
16 he's getting to tie me up with.

17 Q Okay. Do you recall discussing that he cut an
18 electrical cord of some kind in your apartment and he tied
19 your hands with that? Do you recall that?

20 A He may have. I don't recall what, yeah.

21 Q And do you recall saying that there were scarfs that
22 were from your job at Albertsons he used to tie your feet and
23 your hands together? Do you recall that?

24 A I do not recall.

1 Q Showing you what's been admitted as --

2 A Okay.

3 Q -- State's 201. Can we just look at that picture
4 forget -- together for a second. And looking at that, does
5 that refresh your recollection about any of the items that
6 were used to tie you?

7 A I know that those are the items that was used,
8 but -- however, as I stated, prayer to where it -- a lot of
9 things has basically -- is a blur. But however, that is the
10 items that were on (indicating).

11 Q So you recognized the items in that picture --

12 A Yes.

13 Q -- State's 201, as the items that were used to tie
14 you?

15 A Yes.

16 Q And specifically, can you just articulate what those
17 items are that you see in that picture that you say were used
18 to tie you.

19 A The red, beige, blue, white, that's a tie that we
20 used on my job.

21 Q Okay.

22 A That's a white shirt. But the tan item, I don't
23 recall what that is.

24 Q Okay. What about the wire?

1 A Sure it was used, but I'm not -- I -- I -- I don't
2 recall the wire, but I'm sure it was used.

3 MS. KOLLINS: Permission to publish 201?

4 THE COURT: Yep.

5 BY MS. KOLLINS:

6 Q Okay. So, Teresa, I want to go back a little bit.
7 Fair to say it's been a long time?

8 A Yes.

9 Q Is that -- remember, everybody's got to hear ya.

10 A Oh, yes. Yes. Yes.

11 Q Okay. And after all of this happened, did you have
12 some counseling or go through any treatment because of this?

13 A No.

14 MR. GILL: Your Honor, I'll -- I'll -- I'm gonna
15 object as to the question.

16 MS. KOLLINS: Withdrawn.

17 THE COURT: Okay.

18 BY MS. KOLLINS:

19 Q You told me a few moments ago that he never had you
20 use your mouth on his body --

21 A Correct.

22 Q -- do you remember that?

23 A Yes.

24 Q Do you recall telling that to the police?

1 A I did not tell that to police.

2 Q Would it refresh your recollection to look at your
3 statement? It's very --

4 A I can -- I can look at -- no, I don't -- I did not
5 say that.

6 Q Okay. So you don't think you ever said that?

7 A I did not say that.

8 Q Did you ever say that at a previous hearing?

9 A No.

10 Q Okay. Do you recall telling the police that he had
11 you -- or that he was looking around your house and went into
12 your purse for money?

13 A No, I don't recall that.

14 Q Would it --

15 THE COURT: What was that answer? That answer, I
16 didn't hear. What was it?

17 THE WITNESS: I do not recall.

18 THE COURT: You don't recall. Okay.

19 BY MS. KOLLINS:

20 Q Would it refresh your recollection to look at the
21 statement that you gave to police at the hospital?

22 A I could try to.

23 Q And so -- I mean, there's a difference between "I
24 don't remember today as I sit here" and "it didn't happen";

1 right?

2 A Mm-hmm.

3 Q Were you able to look at the first couple lines of
4 the page --

5 A Oh --

6 Q -- sorry -- nine?

7 So does that help you remember whether you told the
8 police that he took some money out of your purse?

9 A That actually does not help me to remember if he --
10 if I told 'em that (indiscernible) purse.

11 Q Does it help you remember whether or not that
12 happened?

13 A As I said, I --

14 Q Let's not talk about whether you said it, but do you
15 have an independent memory of him going through your stuff and
16 your purse and taking your money out, as you sit there today,
17 if you remember that?

18 A (Indiscernible) and he was -- me walking around and
19 he -- him looking through everything. Other than that, I -- I
20 would pray that my life would be spared. So as I walk around
21 and everything, he's going through the drawers and everything.

22 Q Okay.

23 A Prayer was within me. And I -- and a lot of things,
24 I don't recall, would come back, bits and pieces --

1 Q Sure.

2 A -- on to what occurred on that night.

3 Q Okay. Was it your practice to keep your cash in
4 your purse back then?

5 A Yes. Cash or (indiscernible) put into my bank.
6 Either or. Whichever.

7 Q Okay. So to kind of circle back to my question, you
8 said -- and -- and, you know -- and you survived this so --

9 A Yes. Yes.

10 Q -- you know, you did survive it.

11 A Yes.

12 Q And no one faults you for being distracted.

13 A Yes.

14 Q Okay. But what I'm trying to get to is, do you have
15 a memory of the money coming out of your purse and him taking
16 it?

17 A No.

18 Q Okay. When you were tied in the closet, was this
19 person talking to you?

20 A Yes.

21 Q Do you remember what the person was saying?

22 A Saying that after he had tied me up and had placed
23 the knife near me, he asked me was I able to get to it.

24 Q Okay. So the knife he placed near you, was it the

1 same knife he had been carrying around or a different knife?

2 A Different knife.

3 Q Okay. The knife that was placed next to you, the
4 closet, was that a knife from your house?

5 A Yes.

6 Q Did you see him go get that knife from your house or
7 did you just recognize it as your knife?

8 A No, he -- he had said -- he said something to the
9 fact that, "Oh, you -- you gonna try to use this on me," like
10 going through the -- going through the kitchen drawer.

11 Q Okay.

12 A (Indiscernible) and he picked it up.

13 Q Okay.

14 A I don't recall seeing (indiscernible) look at that
15 time but when in the bedroom -- in the closet, bedroom.

16 Q Okay. So then he left you that knife to free
17 yourself?

18 A Yes.

19 Q Okay. And what else did he talk about there in the
20 closet? Do you remember?

21 A He -- he didn't say -- yeah, he -- he had left.

22 Q Did -- did he tell you it was okay to release
23 yourself after he left?

24 A I don't recall him saying that to me.

1 Q Okay. Well, did he tell you why he was leaving you
2 the knife?

3 A No, he -- he just said, "Are you able -- are you
4 able to reach the knife?"

5 Q And did you take that to mean so you could get free?

6 A Yes.

7 Q Okay. You mentioned earlier him pouring some water
8 on you in the closet, like --

9 A Yes.

10 Q -- down by your vaginal area?

11 A Yes.

12 Q You kind of motioned and pulled up -- like motioned
13 your waistband. Did you have clothes back on by then?

14 A I would gather, but I'm not -- I -- I don't recall
15 how -- when my clothes was returned back on.

16 Q Did you finally get free?

17 A Yes.

18 Q And what did you do when you got free?

19 A Well, I -- actually, I been cautious and looking and
20 I would gather, try to walk to my sister's house, but in --
21 the fear come upon me. I stopped and turned back around and
22 go head to an old place called the Showboat.

23 Q And did somebody help you there?

24 A I called -- I called my sister on the phone.

1 Q Okay. And why did you not use the phone in your
2 apartment?

3 A I do not know why I didn't use the phone in the
4 apartment.

5 Q Okay.

6 A I -- I'm gathering I would have rather not be there
7 while -- be there, get away.

8 Q Okay. So you -- you've given me some information
9 about things that you remember --

10 A Yes.

11 Q -- you know, since we've been talking. But I want
12 to show you some other things that you've previously said, if
13 that's okay.

14 A Okay.

15 Q All right?

16 Do you recall telling the police, while you're at the
17 hospital the night this happened, that the Defendant took his
18 penis out and quote "asked you to suck it again." Do you
19 remember saying that?

20 A I did not say that.

21 Q Could I show you a copy of your voluntary statement
22 and have you take a look at it?

23 A Okay.

24 MR. GILL: Your Honor, could we approach very

1 quickly?

2 THE COURT: Sure.

3 [BENCH CONFERENCE BEGIN]

4 MR. GILL: Trying to be lenient, as I said I would
5 be.

6 THE COURT: Yeah.

7 MR. GILL: But her answers are a little definitive.
8 Like, "No, I didn't say that. " So is it just impeaching at
9 this point?

10 THE COURT: (Indiscernible) at this point
11 (indiscernible)

12 MS. KOLLINS: Well, right.

13 MR. GILL: That's fine.

14 MS. KOLLINS: And I was trying to softball it --

15 THE COURT: No, I know you were trying to soften
16 it --

17 MR. GILL: No. No. No.

18 THE COURT: -- but --

19 MR. GILL: If it's -- if it's impeachment, then --

20 THE COURT: If you try multiple times and she's like
21 "I didn't say it," so I think you're just gonna have to read
22 it in.

23 MS. KOLLINS: So pursuant to Crowley, I think I'm
24 safe and I'll just read it in and --

1 THE COURT: Yeah.

2 MS. KOLLINS: -- ask her if she said it.

3 MS. LUZAICH: Do you want the picture of the phone
4 cord cut?

5 MS. KOLLINS: Sure.

6 MS. LUZAICH: Let me mark it.

7 MR. GILL: No objection.

8 MS. KOLLINS: Dumpster fire.

9 THE COURT: (Indiscernible)

10 [BENCH CONFERENCE END]

11 BY MS. KOLLINS:

12 Q The attorney objected. And we're just gonna kind of
13 do this a different way now, okay?

14 A Mm-hmm.

15 Q All right. Do you recall telling police officers,
16 and I quote, "And then he -- he told me to unbuckle his pants
17 and take it out and suck him again." Do you recall saying
18 that?

19 A No.

20 Q Does that mean you didn't say it?

21 A I didn't say it.

22 Q Okay. Did you tell them that when you were done
23 with that, the second time, that he told you to lay on his --
24 on your stomach again?

1 A Laid on my stomach one time.

2 Q Do you recall telling the police, though, "And then,
3 uh, he told me to lay on my stomach," after this second --

4 A No.

5 Q -- incident?

6 MR. GILL: And, Ms. Kollins, this page number, if
7 you don't mind.

8 MS. KOLLINS: I'm sorry. Page 11.

9 MR. GILL: Thank you.

10 BY MS. KOLLINS:

11 Q And then you told the police, "Then he had -- went
12 and started having sex with me again." Do you remember that?

13 A No.

14 Q And then you told them, "And then he placed his
15 penis in my vagina." Is this --

16 A The second time or --

17 Q Yes.

18 A No.

19 Q So you don't recall saying any of those things.

20 A No.

21 Q Okay. All right. So earlier, when I asked you, you
22 said that -- your mouth on his penis, you didn't recall
23 that -- right? -- at all?

24 A No.

1 Q Okay.

2 A No.

3 Q Do you recall actually telling the police that that
4 happened twice?

5 A No.

6 Q Do you recall telling the police, quote, on page 7,
7 "That he told me to suck his penis."

8 A No.

9 Q Kind of going through the money that was in your
10 purse, you recall praying and walking around with him; right?

11 A Yes.

12 Q Okay. Do you recall telling the police, "And he
13 started, uh, he started looking through my house. I told him
14 no. And then he, uh, went to my purse and opened my purse and
15 found my money." At page 9. Do you remember saying that?

16 A No, I don't remember saying that.

17 Q Do you remember saying, in response to, "Okay. Did
18 he take your money?" You told the police, "Yes." Do you
19 remember saying that?

20 A No.

21 Q And you told the police he was still holding the
22 knife in his hand at that time.

23 A Yes. Yes.

24 Q Okay. So you recall that portion, that you told 'em

1 he was still holding the knife?

2 A That -- yes.

3 Q Okay. So, then, do you recall him taking the money
4 now or --

5 A No.

6 Q No. Okay. Do you recall saying -- or when he was
7 cleaning you, that we talked about before -- right? -- did he
8 insert his fingers into your vagina?

9 A I don't recall -- recall that. Just the putting the
10 water (indicating) -- pouring the water.

11 Q Would it refresh your recollection to look at
12 page 10 and see if that's what -- looking at the mid section
13 of the page?

14 A I don't recall that.

15 Q I'm sorry.

16 A I -- I don't recall.

17 Q Okay. So in response to the question at page 10,
18 "So he actually inserted his fingers into your vagina with the
19 red bandana." You responded, "Mm-hmm, positive." You don't
20 recall that?

21 A No.

22 Q And I'm gonna take you way back to the beginning.
23 Do you recall expecting your mom to come over that night?

24 A Yes.

1 Q Okay. Did that have anything to do with your
2 decision in answering the door?

3 A Yes.

4 Q Did you, back then, have a vase that had change in
5 it?

6 A I do not remember. I may have.

7 Q Do you recall the person that did this using the
8 word "raped" to you?

9 A I do not recall. I really may have.

10 Q Showing you State's admitted 202, do you recognize
11 that picture?

12 A (Indiscernible) myself.

13 Q Back in February of 2000 when this happened?

14 A Mm-hmm.

15 Q Is that a "yes"?

16 A Yes.

17 MS. KOLLINS: Permission to publish 202?

18 THE COURT: Yep.

19 MS. KOLLINS: Court's indulgence. Let me show these
20 to Defense counsel. Your Honor, I've showed 205 through 212
21 to Defense counsel and there's no objection.

22 THE COURT: Okay. Being no objection, those will be
23 admitted. You can publish when needed.

24 [STATE'S EXHIBITS 205-212 ADMITTED.]

1 MS. KOLLINS: As well as 203, I think.

2 MR. GILL: Correct.

3 MS. KOLLINS: Theresa, I'll be right back with ya,
4 okay?

5 THE WITNESS: Okay.

6 BY MS. KOLLINS:

7 Q So I did ask ya a little bit, the whole time this
8 person was there, he had his knife; is that right?

9 A Yes.

10 Q Yes? Okay.

11 And you remember I asked you why you didn't call any --
12 for any help from home. Do you remember that? A few minutes
13 ago --

14 A It's the ask -- (indiscernible) me calling at the
15 Showboat.

16 Q Okay. Showing you State's admitted 203, do you
17 recognize that picture?

18 A A picture of my phone.

19 Q Okay. And the phone --

20 A And it's cut.

21 Q Okay. From 2000?

22 A Yes.

23 Q Okay. Does that refresh your recollection that your
24 phone was cut at your apartment? Does that make you remember

1 that your phone was cut so you had to go call somewhere else?
2 Well, you didn't cut it, did ya?

3 A No. No.

4 Q Okay.

5 A No.

6 Q Was it cut before the person came that you didn't
7 know with the knife?

8 A It wasn't cut before, no.

9 Q Okay. So -- but after, it was cut?

10 A Yes.

11 Q Okay.

12 MS. KOLLINS: Permission to publish 203?

13 THE COURT: Yep.

14 BY MS. KOLLINS:

15 Q You said you gave the person a drink of water. You
16 remember that?

17 A Yes.

18 Q Do you remember what you might have given that
19 person a drink of water in? Was it a glass or a paper cup or
20 something different? Do you remember?

21 A I don't recall what -- what item I used.

22 Q Okay. Showing you what's been admitted as 205, does
23 that refresh your recollection as to what you might have
24 served the person water in?

1 A It doesn't refresh the memory.

2 Q Okay.

3 A Like I said, I don't know what -- I don't recall
4 what -- giving him.

5 Q All right. And showing you State's admitted 204, is
6 that a picture of -- of your bedroom back then?

7 A Yes.

8 Q Okay. You recognize that?

9 A Yes.

10 Q Okay.

11 MS. KOLLINS: Permission to publish 204.

12 THE COURT: Yep.

13 BY MS. KOLLINS:

14 Q So, Teresa, how many sex acts do you remember
15 happening?

16 A One.

17 Q And did that happen when the person first came in
18 the apartment or later, while the person had been -- after the
19 person had been looking around?

20 A Later, after looking.

21 Q And your clothes that came off, do you remember
22 where they went?

23 A No.

24 Q Okay. Do you remember what you were wearing?

1 A No.

2 Q Okay.

3 MS. KOLLINS: Court's indulgence for just a
4 moment --

5 THE COURT: Sure.

6 MS. KOLLINS: -- please.

7 BY MS. KOLLINS:

8 Q Here I come again. Okay. Doing all right? Need
9 some water or anything?

10 A Oh, I'm good.

11 Q All right. All right. So you don't remember this
12 person asking for your sister; right? You say you don't
13 remember that?

14 A No, I thought -- thought he was looking for my
15 sister.

16 Q Okay. So you did say -- you did tell them that --

17 A Yes.

18 Q -- that -- you told the police that back in
19 February 2000 that you thought he was looking for your sister.

20 A Yes.

21 Q Okay. Do you recall him asking for a glass of water
22 and wanting to come in? Do you recall that?

23 A He wanted -- he wanted to come in. He wants the
24 water.

1 Q Do you remember --

2 MR. GILL: I didn't -- I didn't hear that,
3 Ms. Kollins. I'm sorry.

4 BY MS. KOLLINS:

5 Q Sorry. I'm gonna ask -- have to ask you to keep
6 your voice up.

7 So you do recall that. That he wanted some water and he
8 wanted to come in?

9 A Yes.

10 Q Okay. Did you want to let him in?

11 A No.

12 Q Okay. Did you think that you may have seen him
13 before with your sister?

14 A I may have -- I may have thought that, yes.

15 Q You may have thought that?

16 A Yes.

17 Q So you remember that detail right now. You remember
18 that.

19 A I may have thought that (indiscernible).

20 Q Okay. Did he tell you what his name was? Did he
21 give you a name?

22 A Think he said Chris.

23 Q And do you recall saying he was a little taller than
24 you when you spoke at that last hearing?

1 A I may have said that, yes.

2 Q Okay. All right. And you said you were 5-4; right?

3 A Yes.

4 Q Okay. So now you remember you might have said he
5 was a little taller?

6 A Yeah. I may have said that, yes.

7 Q Okay. Do you remember telling -- testifying that he
8 was between 18 and 22 years old?

9 A Yes.

10 Q Okay. And was that as accurate as you could be at
11 that time?

12 A At that time, yes.

13 Q Okay. Do you recall giving the police a -- like a
14 weight range of how much you thought this person weighed?

15 A I'm sure I have, but I -- I don't remember the --
16 the weight, but I'm sure I have.

17 Q Page 44. Showing you bottom of page 44 of this
18 transcript --

19 THE COURT: And, Ms. Kollins, I'm sorry, just for
20 the record, is this the previous court hearing transcript?

21 MS. KOLLINS: Yes, ma'am.

22 THE COURT: Okay.

23 MS. KOLLINS: Yes, ma'am.

24 THE COURT: Thank you.

1 BY MS. KOLLINS:

2 Q Does that refresh your recollection?

3 A Yes.

4 Q Okay. And what do you remember now that you told
5 the police about body size?

6 A About that (indiscernible) what more --

7 THE COURT: That what?

8 THE WITNESS: Maybe still -- it could be like an --
9 still an average at that weight.

10 BY MS. KOLLINS:

11 Q Okay. Well, everybody can't read what we're
12 reading. So --

13 A At -- at that -- at -- at -- the weight of one --
14 170 may have been like an average size still.

15 Q Okay. So 170 is what you told them before. 170 --

16 A Yes.

17 Q -- to 180; fair? Okay.

18 And you don't dispute that memory now; right?

19 A No.

20 Q Okay. Was the person that came to your house
21 wearing anything over their face?

22 A No.

23 Q Patience, please, ma'am. I'm getting there.

24 A Okay.

1 Q Sorry. This is (indiscernible).

2 To the best of your memory, telling the police that after
3 he drank the water, he wanted to put the cup away himself and
4 come in the house. Do you remember saying that, at the
5 previous hearing?

6 A I may have said it, but I do not recall.

7 Q Okay. Would it refresh your recollection to look at
8 your prior testimony?

9 A [Witness nods head.]

10 Q And I'm on page 13, lines 16 through 21. Actually,
11 that can't be 13.

12 MS. KOLLINS: Sorry, Counsel. Just one second.
13 Forty-eight.

14 BY MS. KOLLINS:

15 Q So I'm asking you to read from line 16, right there,
16 to line 24 and see if that refreshes your recollection.

17 A Yes.

18 Q Okay. And what does that help you remember?

19 A Him coming -- him coming in.

20 Q Okay.

21 A Himself.

22 Q And that he -- so my question was, he wanted to come
23 in and you didn't want him to come in; right?

24 A I didn't, no.

1 Q Okay. And he insisted on coming in?

2 A Yes.

3 Q And you remember that now.

4 A Yes.

5 Q Okay. Do you remember testifying at the previous
6 hearing that, shortly after he came inside, he told you to go
7 to your room? Page 52.

8 A No, I don't remember that.

9 Q Do you remember -- well, do you remember saying that
10 he got the knife out soon after he came inside?

11 A From his body area.

12 Q Yes.

13 A As he got -- when I was pulling him, that's when he
14 pulled it out.

15 Q Okay. So recall that. And he told you to go in
16 your room at that point; right?

17 A I do not recall hearing him say that.

18 Q Do you recall testifying -- the question was, "Okay.
19 And what did he do or say once he pulled his knife out or
20 pulled this knife out?"

21 And your answer was, "He said, 'Get up and go in the
22 room.'"

23 Do you recall that testimony?

24 A No.

1 Q Would it refresh your recollection to review it?

2 A Maybe. I'm not sure.

3 Q Okay. Let me try.

4 A Okay.

5 Q Okay. We're at page 52. Sorry. So we were talking
6 page 52 --

7 MR. GILL: And, Your Honor, while she's reading
8 that, can we approach?

9 THE COURT: Sure.

10 MS. KOLLINS: Hold on just one moment, Ms. Tyler.

11 THE WITNESS: Okay.

12 [BENCH CONFERENCE BEGIN]

13 MR. GILL: Just while she's reading. I already made
14 the objection and I -- if you want to just impeach, you can
15 just go straight to reading. I -- I don't know if that was
16 the Court's --

17 MS. KOLLINS: I don't know --

18 MR. GILL: -- ruling, but I've made the objection.
19 So I'm good.

20 MS. KOLLINS: I don't even know that she's
21 traditionally impeachable. That's the problem.

22 THE COURT: What's that?

23 MS. KOLLINS: I don't even think she's traditionally
24 impeachable. That's the problem. Like, the answers she's

1 given are just weird.

2 MR. GILL: True.

3 MS. KOLLINS: I mean, I'm happy with just marking
4 the transcript and admitting it, if she'll acknowledge it. I
5 mean, 'cause this is --

6 MS. LUZAICH: The Court can take judicial notice of
7 the prelim trials (indiscernible).

8 MS. KOLLINS: Right.

9 MR. GILL: I mean, I can't argue that it didn't
10 happen, that the prelim didn't happen --

11 THE COURT: Yeah, I mean --

12 MR. GILL: -- so --

13 THE COURT: (Indiscernible)

14 MS. KOLLINS: Well, prior to sworn testimony
15 (indiscernible).

16 MS. LUZAICH: Prior inconsistent statement.

17 THE COURT: What?

18 MS. LUZAICH: It's all prior inconsistent
19 statements.

20 MS. KOLLINS: I mean, it's all Crowley. It's either
21 consistent or inconsistent. I just -- like, trying to
22 traditionally impeach her is not working. Like, "Do you
23 recall this?"

24 "No."

1 And she reads it. And she goes on about, like, a half
2 something she remembers.

3 THE COURT: Yeah.

4 MS. KOLLINS: It's just -- I -- I don't know how to
5 (indiscernible) --

6 MR. GILL: My concern is she's remembering more the
7 longer we go. And -- and I --

8 THE COURT: In some ways.

9 MS. KOLLINS: (Indiscernible)

10 THE COURT: Right.

11 MR. GILL: But --

12 THE COURT: I'm just trying to think of -- well, so
13 are you asking me to (indiscernible) or I didn't
14 (indiscernible).

15 MS. KOLLINS: I am -- well, I mean, I wasn't going
16 to until I came up here and I might of at the end. I just --
17 I don't know how --

18 MR. GILL: And the -- sorry, Stacy. But the reason
19 I even asked to approach is I did already kind of make an
20 objection and then the State -- Ms. Kollins says it's
21 impeachable. And I thought we were just gonna kind of read
22 from it to --

23 THE COURT: Sure.

24 MR. GILL: -- speed things along.

1 THE COURT: Just to impeach her.

2 MR. GILL: -- or whatever. Yeah, just to impeach
3 her.

4 THE COURT: Yeah. I think the issue is with the
5 impeaching; right? Like, under Crowley, as long as she's
6 saying "no," or "I don't know" you can impeach them.

7 MR. GILL: And she's --

8 THE COURT: So, I mean, I --

9 MR. GILL: -- giving a weird --

10 THE COURT: -- know she's, like, you're saying she's
11 not the traditional impeachable type. And I (indiscernible)
12 circumstance (indiscernible) on the -- the fellatio thing;
13 right? I mean, it's a flat out "no." You know --

14 MS. KOLLINS: Right.

15 THE COURT: -- like, "it didn't happen." "I never
16 said that." And so you can read that in till the cows come
17 home.

18 MS. KOLLINS: Well, and I did.

19 THE COURT: Yeah.

20 MR. GILL: Mm-hmm.

21 MS. KOLLINS: All right.

22 THE COURT: The money and the purse, again, same
23 thing. So I think that you're safe under Crowley to impeach
24 her and, you know, if she says "I didn't say that" or "I don't

1 remember," well, if it's in this transcribed statement, how --

2 MS. KOLLINS: Well -- and -- I mean, it's couple
3 times she said when I was up there "I didn't give that
4 statement." I mean, so it's not --

5 THE COURT: Did she say specifically I -- like --

6 MS. KOLLINS: She -- she was given both of those to
7 read to (indiscernible).

8 THE COURT: Oh, yeah. No, I know. Yeah. I'm just
9 trying to think of the -- the prior sworn testimony when you're
10 saying the prior sworn testimony in its entirety comes in, I'm
11 just trying to remember, is that --

12 MS. KOLLINS: It's by the statute.

13 THE COURT: By statute?

14 MS. KOLLINS: Yeah. I'm gonna have to go find it.

15 THE COURT: Under hearsay?

16 MS. KOLLINS: Maybe not.

17 THE COURT: 'Cause I know deposition -- like,
18 depositions usually are in civil cases. Just don't remember
19 under --

20 MS. LUZAICH: Well, past recollection recorded
21 and --

22 MR. GILL: And --

23 MS. LUZAICH: And it's all in (indiscernible)
24 because she's saying either she doesn't remember or it didn't

1 happen.

2 MR. GILL: And just so the record's clear, I'm
3 objecting to the whole statement coming in.

4 THE COURT: Yeah.

5 MR. GILL: I'm not objecting to impeaching --

6 THE COURT: Impeaching it.

7 MR. GILL: -- her with reading from her statement.

8 MS. LUZAICH: Of course you're not.

9 THE COURT: Right. I just need to look at -- I just
10 need to look it up. Because --

11 MS. KOLLINS: Just wait.

12 THE COURT: -- even with past recollection
13 recorded --

14 MS. KOLLINS: Can we just have a moment, then,
15 maybe?

16 THE COURT: Yeah. Well, we're gonna break for lunch
17 here soon. Do you want to finish her before then? Are we
18 gonna be able to keep her coming back?

19 MS. LUZAICH: Can't -- good -- how long is your
20 cross?

21 MR. GILL: It won't be long. Ten minutes.
22 Fifteen minutes, max.

23 MS. KOLLINS: Do you want to just pass her? I don't
24 know if I'm gonna get anywhere. What do you think?

1 MS. LUZAICH: Yeah. I mean, we're not getting
2 anywhere.

3 MR. GILL: And I don't want to --

4 MS. KOLLINS: I am gonna move for the prelim
5 transcript as soon as I get the authority for that.

6 THE COURT: Just get me -- I'm gonna look. Just get
7 me some (indiscernible).

8 MS. LUZAICH: Yeah.

9 [BENCH CONFERENCE END]

10 BY MS. KOLLINS:

11 Q So, Ms. Tyler, I have good news for you for a
12 moment.

13 A Okay.

14 Q I'm not gonna ask you any more questions.

15 A Okay.

16 Q Okay? All right. Mr. Gill is gonna ask you some
17 questions and then I may be back.

18 A Okay.

19 THE COURT: Mr. Gill, sir, whenever you're ready.

20 MR. GILL: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GILL:

23 Q And, Ms. Tyler, is it okay if I stand at the podium
24 as well?

1 A Okay.

2 Q And I'm going to ask you -- like Ms. Kollins said,
3 I'm gonna ask you some questions, but I'm not gonna try and
4 embarrass you, okay?

5 A Okay.

6 Q I just have to ask you a few follow-up questions.
7 Is that okay?

8 A Okay.

9 Q Now, I just want to talk about what you remember,
10 okay?

11 A Okay.

12 Q I'm not gonna pull you any statements or have you
13 read through anything. I just want to talk about your -- and
14 I know it's been 22 years, okay?

15 A Yes.

16 Q But I'm gonna ask you what you remember. You
17 remember one sex act; correct?

18 A Yes.

19 Q And that was penis to vaginal sex.

20 A Yes.

21 Q Okay. You remember -- well, let's back up just a
22 little bit. You remember a person coming to your door.

23 A Yes.

24 Q Without any mask or anything covering his face.

1 A Yes.

2 Q And that was at what time of day? Do you recall?

3 A Know it was night -- nighttime. Maybe between 7:00

4 or 9:00.

5 Q Between 7:00 at night --

6 A Between those -- that time. I know it was

7 nighttime.

8 Q Okay.

9 A Because it was dark outside.

10 Q Okay. I didn't mean to interrupt you. I apologize.

11 A Yes.

12 Q So between 7:00 and 9:00 p.m.?

13 A Yes.

14 Q And it was dark outside.

15 A Yes.

16 Q Now, initially you said the man was shorter than

17 5-foot-4 and -- and later you testified he was maybe a little

18 taller than that. You recall that? When Ms. Kollins was

19 questioning you?

20 A She said I -- I said he was taller than I was, yes.

21 Q Okay. So is -- and, again, I'm just asking what you

22 recall. Do you recall if he was taller or shorter than you?

23 A Maybe a little -- slightly taller, yes.

24 Q Okay. Slightly taller.

1 A Yes.

2 Q And did he ask for the water or did you offer it?

3 A He asked.

4 Q And you gave him the water; correct?

5 A Yes.

6 Q When you did that, he stayed outside of your door;

7 correct? He didn't come into the apartment to get the water.

8 A No.

9 Q So he's outside. And we saw a picture of your

10 door --

11 A Yes.

12 Q -- you recall that?

13 A Yes.

14 Q And there's no screen; correct?

15 A Correct.

16 Q And does that door just go out into kind of the

17 outside?

18 A It opens this -- it opens in (indicating).

19 Q Opens in.

20 A Yes.

21 Q And when you step through the threshold, you're

22 outside; correct?

23 A Yes.

24 Q Okay. So he was standing there while you got the

1 water?

2 A Yes.

3 Q And he -- he eventually made his way inside;
4 correct?

5 A Yes.

6 Q You didn't want him inside.

7 A Yes.

8 Q But he was inside the living room area?

9 A Yes.

10 Q And the living room area, is that the first area
11 that you would enter when you enter your apartment?

12 A Yes.

13 Q And, again, this is the apartment you lived in, in
14 2000?

15 A Yes.

16 Q Okay. Did he sit on the couch or have a seat?
17 Where did he go when he first entered?

18 A He was -- he was on the couch.

19 Q Okay. And is the couch --

20 A But I -- I didn't have any, like, light on in the
21 living room area.

22 Q Okay. My apologies. So you didn't have any lights
23 on?

24 A Uh-huh.

1 Q Is the couch close to the front door?

2 A More like -- it may have been -- I know had one, had
3 two couch -- I believe it was this one (indicating) more
4 like --

5 Q Okay.

6 A -- close, yes.

7 Q And you're positioning the -- the couch that was
8 closer to the front door?

9 A Yeah. It was more like right here. Couch and here
10 (indicating) but it was this couch (indicating).

11 Q And again, is that the couch closest to the front
12 door?

13 A Away.

14 Q Away from the front door. Okay.

15 And at some point you grabbed his arm; correct?

16 A Yes.

17 Q Trying to pull him out?

18 A Yes.

19 Q And that wasn't -- that wasn't successful; correct?

20 A Correct.

21 Q Okay. Now, you don't recall how your clothes came
22 off; is that right?

23 A Right.

24 Q And you do recall, again, having -- having sex one

1 time.

2 A Yes.

3 Q And were you on your stomach or your back?

4 A Stomach.

5 Q Okay. And then you also don't recall money being
6 taken.

7 A Correct.

8 Q And that includes cash or coin -- paper or coin;
9 correct?

10 A Correct.

11 Q You also recall being in the -- in the closet;
12 correct?

13 A Correct.

14 Q And you were given a knife. And if I can -- do you
15 guys have those photos or did they -- oh.

16 MS. KOLLINS: Right there.

17 BY MR. GILL:

18 Q I'm just gonna show you -- I'll get the number
19 here -- 201, State's 201. That's a picture of the closet;
20 correct?

21 A Correct.

22 Q Correct. And then that's the knife that -- that was
23 put near you; is that also correct?

24 A Correct.

1 Q And you can see it in the center there.

2 A Yes.

3 Q Next to the toilet paper; correct?

4 A Yes.

5 Q Did you actually use that knife to free yourself?

6 A No.

7 Q You got free in another way?

8 A I just struggled to (indicating) --

9 Q Okay.

10 A -- take the --

11 Q Just so the record's clear, she's indicating that

12 she's maneuvering her arms to free herself --

13 A [Witness nods head.]

14 THE COURT: Okay.

15 BY MR. GILL:

16 Q -- with no other object.

17 A Yes.

18 Q You didn't use the phone immediately; right? You

19 ended up at Showboat?

20 A Yes.

21 Q And then from there, you called your sister first or

22 your mother?

23 A My sister.

24 Q And just -- just going back, again, and I apologize,

1 Ms. Tyler, but when you were in the closet, you said -- you
2 described some cleaning that was -- of your vagina; correct?

3 A Pouring the water, yes.

4 Q Pouring water.

5 A Yes.

6 Q And you don't recall this person's fingers ever
7 entering your vagina?

8 A No.

9 Q Is that because you don't recall or it didn't
10 happen?

11 A I don't recall.

12 Q Don't recall. Okay.

13 Ms. Kollins asked you about this gentleman's name and --
14 and you gave the name "Chris."

15 A Yes.

16 Q Did -- did he tell you that or did you know him
17 previously by that? How did the name "Chris" come about?

18 A I'm thinking he said it.

19 Q To you.

20 A Yes.

21 MR. GILL: Court's indulgence.

22 Nothing further, Your Honor.

23 Thank you, Ms. Tyler.

24 THE COURT: Okay.

1 MS. KOLLINS: The State has no redirect, Your Honor.

2 THE COURT: Okay. Any questions?

3 All right, ma'am. Thank you so much for being here
4 today. Please don't share your testimony with anyone else
5 involved in the case as it is ongoing, an ongoing trial, okay?

6 THE WITNESS: Okay.

7 THE COURT: Thank you. You are excused.

8 All right. Lunch or --

9 MS. LUZAICH: Up to you. I have a crime scene
10 analyst if you want.

11 THE COURT: And how long would that, do you think,
12 be? The CSA?

13 MS. LUZAICH: Pretty quick.

14 MR. GILL: Yeah.

15 THE COURT: Why don't we let -- why don't we get
16 that person on so they don't have to --

17 MS. LUZAICH: I appreciate that. Thank you, Judge.

18 THE COURT: Yeah.

19 MS. LUZAICH: State calls Mike Atkin.

20 THE MARSHAL: Just remain standing there, raise your
21 right hand so the clerk can swear you in. Appreciate it.

22 MICHAEL ATKIN,
23 [Having been called as a witness and being first duly
24 sworn testified as follows:]

1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 So you please state your name and spell it for the
4 record.

5 THE WITNESS: Michael Atkin, A-T-K-I-N.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q Good afternoon, sir. Can you tell me, how are you
10 currently employed?

11 A I'm currently employed with the Department of
12 Defense.

13 Q What do you do for the Department of Defense?

14 A I do research in the field of biochemistry.

15 Q Now, how long have you been employed with the
16 Department of Defense, about?

17 A About three years now.

18 Q And prior to that, was there a time that you were a
19 crime scene analyst with the Las Vegas Metropolitan Police
20 Department?

21 A Yes.

22 Q Can you tell me, what does a crime -- or what is a
23 crime scene analyst? What do they do?

24 A Basically a crime scene analyst is someone who goes

1 out to crime scenes and collects evidence, processes for
2 fingerprints, look for anything that might have been involved
3 in the crime, maybe that a suspect left behind. Just kind of
4 documenting the scene and making it available at a later time
5 for detectives.

6 Q For how long were you a crime scene analyst?

7 A Just under four years.

8 Q And what four years were you a crime scene analyst,
9 from when to when?

10 A '97 to '01-ish.

11 Q Can you describe for us what training and education
12 you have that qualifies you to be a crime scene analyst?

13 A Prior to that, I had -- I currently hold degrees in
14 biology and chemistry. Prior to joining the department, I was
15 working for the Environmental Protection Agency as an
16 analytical inorganic chemist where my job was to analyze soil
17 and water sample for different heavy metals and contaminants.

18 In addition to that, we attend roughly a two-and-a-half
19 month crime scene analyst course kind of introduction to
20 forensics. I also took additional courses from the Institute
21 of Applied Forensic Science Northwestern University and the
22 US Secret Service.

23 Q So as a crime scene analyst, how would it come about
24 that you would go to a scene?

1 A We were assigned calls based on requests from either
2 the Patrol Division or the detectives.

3 Q So a patrol officer or detective would be at some
4 event where a crime had occurred and they would call you and
5 say, "Hey, can you come and do stuff."

6 A That's correct, yes.

7 Q When you would arrive at a scene, who would kind of
8 direct what you do?

9 A We would just kind of get an overall briefing from
10 either the detective or the patrol officer that was on scene.
11 Just kind of a general idea of what a victim may have reported
12 to them. From there, we kind of did our own deductions on
13 what things needed to be looked at.

14 Q Okay. On February 1st of 2000, were you working as
15 a crime scene analyst with Metro?

16 A Yes.

17 Q And were you called to a scene at -- sorry --
18 2895 East Charleston Boulevard, Apartment B -- 1016. Not B.
19 Sorry.

20 A That's correct, yes.

21 Q And when you go to a crime scene, do you take
22 overall photos so that you know how the scene appeared before
23 anybody kind of touches anything?

24 A Yes, we take -- you start off with just taking