

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

BRIAN KERRY O'KEEFE,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: 04C202793

Docket No: 86804

# RECORD ON APPEAL VOLUME 3

**ATTORNEY FOR APPELLANT**  
BRIAN O'KEEFE # 90244,  
PROPER PERSON  
1200 PRISON RD.  
LOVELOCK, NV 89419

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

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1 saying that you have to write me at a certain address  
2 because my people don't want you around me anymore.

3 We will introduce these letters and I'll show  
4 them to her when she's on the stand and I'll ask her,  
5 Did you write these letters to her?

6 I think we will show that if she was out of  
7 custody -- or he was out of custody and they met  
8 tonight, they would be back together again in 20  
9 minutes. I think after you listen to all of this  
10 evidence that you will find that there was intercourse.  
11 It was consensual. It was submissive. It was drug  
12 introduced. It was a way of life that they went by for  
13 two and a half years.

14 They will introduce pictures that will  
15 probably turn your stomach about her being beaten. But  
16 why did she go back time and time again? If you could  
17 answer those questions, if you can say, and you will  
18 hear one time from her on this stand that it was she  
19 said, no, no, no, you won't hear it. She'll say, I was  
20 scared.

21 Ladies and gentlemen, that doesn't cut it in a  
22 sexual assault. We intend to show it tomorrow morning.  
23 Thank you.

24 THE COURT: Thank you, Counsel.

25 Ladies and gentlemen, we will be in recess

1 until 10:30 tomorrow morning.

2 -oOo-

3 The foregoing transcript is an uncertified rough draft  
4 transcription of my stenotype notes of said  
5 proceedings. This transcript has not been edited,  
6 proofread, indexed or certified.

7

8 Dated this 10<sup>th</sup> day of April 2005.

9

10 *Julie M. Lever*  
JULIE M. LEVER, RPR, CSR 582

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ROUGH DRAFT TRANSCRIPT

CASE NO. C202793

DEPT. NO. XV

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED  
2005 JUN 13 A 9:53  
ORIGINAL

-ooo-

STATE OF NEVADA,	)	
	)	
Plaintiff,	)	REPORTER'S
	)	
vs.	)	TRANSCRIPT
	)	
BRIAN KERRY O'KEEFE,	)	OF
	)	
Defendant.	)	SENTENCING

BEFORE THE HON. STEWART L. BELL, DISTRICT JUDGE

MONDAY, DECEMBER 27, 2004  
0945

APPEARANCES:

For the State:	SUSAN KRISKO, ESQ.
	Deputy District Attorney
For the Defendant:	JAMES L. BUCHANAN II, ESQ.

Reported by: CHERYL GARDNER, RMR-RPR  
CCR No. 230

CHERYL GARDNER, CCR 230, RPR, RMR

RECEIVED  
JUN 13 2005  
COUNTY CLERK

1 LAS VEGAS, CLARK COUNTY, NV, MON, DECEMBER 27, 2004

2 0945

3 -oOo-

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

5 THE COURT: State of Nevada versus  
6 Brian O'Keefe, case C202793.

7 MS. KRISKO: Judge, are you going to  
8 be sentencing him?

9 THE COURT: Yeah. That's why we're  
10 here today. Who is your lawyer, Mr. O'Keefe?

11 THE DEFENDANT: It was Mr. Buchanan.

12 (Whereupon different matters  
13 were heard.)

14 THE COURT: State of Nevada versus  
15 Brian O'Keefe, Case No. C202793. Let the record  
16 reflect the presence of the defendant in custody,  
17 Mr. Buchanan, Ms. Krisko for the State of Nevada.

18 Any reason judgment should be not  
19 imposed at this time?

20 MR. BUCHANAN: Not on behalf of the  
21 defendant.

22 THE COURT: In accordance -- is this a  
23 jury verdict or a plea?

24 MR. BUCHANAN: Jury verdict.

25 THE COURT: According to the jury

CHERYL GARDNER, CCR 230, RPR, RMR

1 verdict, the defendant is hereby adjudged guilty.

2 Would the State like to say anything?

3 MS. KRISKO: I'd just like to point  
4 out yet again Mr. O'Keefe is back to blaming  
5 everybody else and claiming the D.A.'s office is  
6 the one that basically committed this crime.

7 THE COURT: That's not true?

8 MS. KRISKO: No.

9 THE COURT: Did the victim show up?

10 MS. KRISKO: I talked to her on Friday  
11 and what -- she's afraid he's just going to get a  
12 slap on the wrist and she doesn't want to watch  
13 that.

14 THE COURT: He's looking at 24 to 120  
15 suspended. Mr. Buchanan, anything you want to  
16 add?

17 MR. BUCHANAN: This is just one count  
18 of burglary.

19 THE COURT: 24 to 120 suspended placed  
20 on probation. Anything more than you want to add?

21 MR. BUCHANAN: That's more than they  
22 recommended.

23 THE COURT: If he does his probation  
24 successfully, it doesn't matter if he gets life,  
25 does it? It's a fairly serious offense. I want

1 him to understand if he screws up his probation --

2 MR. BUCHANAN: He was found not  
3 guilty, though. That's the whole thing. You know,  
4 you're just like the police. You say just because  
5 he was charged he was guilty. He was found not  
6 guilty by a jury. He was only found guilty of  
7 burglary and so that's one to ten and I think they  
8 recommended 18 to 72.

9 THE COURT: Okay. Anything you want  
10 to add, Mr. O'Keefe?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: \$25 administrative  
13 assessment, \$150 DNA fee and testing; underlying  
14 sentence 24 to 120, placed on probation not to  
15 exceed five years following conditions; one, no  
16 contact with the victim.

17 MR. BUCHANAN: May I be heard on  
18 that?

19 THE COURT: Yeah.

20 MR. BUCHANAN: She's calling him  
21 whenever we have the jury verdict and he was and  
22 Judge Loehrer gave an O.R. He's not in on that  
23 case.

24 THE COURT: It's not going to be a  
25 violation on his part if she calls him.

1 MR. BUCHANAN: She called him that  
2 night to go and pick him up at the jail when he got  
3 out. This is a love/hate relationship and with  
4 that condition in there if he stays in this town,  
5 she could be right on him. She'll be on him  
6 like --

7 THE COURT: If she initiates the  
8 contact, it won't be a problem for him. I want him  
9 to stay away from her because if they have contact  
10 in this love/hate relationship, he's going to end  
11 up in trouble. Search for burglary tools.  
12 Counseling. No. 4, maintain full-time employment.  
13 No. 5 mental health counseling as deemed necessary  
14 by the Department. No. 6, resolve the warrant in  
15 Ohio within 120 days.

16 MR. BUCHANAN: That's what he's being  
17 held on.

18 THE COURT: If he gets it resolved so  
19 he can be released, then that condition is met. If  
20 they don't extradite him and he's then released to  
21 probation. He needs to call a lawyer back there  
22 and get that straightened out. No. 7, four hours  
23 of community service a week.

24 MS. KRISKO: Your Honor, is it going  
25 to be a six month or a year long DV? He's already

1 done the six months and it didn't help.

2 THE COURT: I'll let P and P decide  
3 that. Okay. Anything else? You should be  
4 released as soon as Ohio decides not to extradite  
5 you or if they extradite you, you'll go back once.

6 MR. BUCHANAN: I don't think they're  
7 going to.

8 THE COURT: That's why I did this,  
9 Mr. Buchanan. A lot of times they don't. They put  
10 the hold on there. When it comes to the  
11 nitty-gritty, they're not paying to send an officer  
12 out. He's going to have to call a lawyer back  
13 there. You know the drill.

14 MR. BUCHANAN: We tried to do that  
15 before, but he has no one back there.

16 THE COURT: You know how the drill  
17 goes. Maybe you can refer him to a lawyer. Okay.  
18 Done.

19 -oOo-


20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF  
21 PROCEEDINGS.

22

23

24

25

  
CHERYL GARDNER, RPR, RMR  
CCR No. 230

CHERYL GARDNER, CCR 230, RPR, RMR



ORIGINAL

FILED

JUN 15 3 44 PM '05

*Shirley B. Pangloss*  
CLERK

1 REQ  
2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. #754  
4 300 South Maryland Parkway  
5 Las Vegas, Nevada 89101  
6 (702) 382-9103  
7 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

8 THE STATE OF NEVADA, )  
9 Plaintiff, )  
10 vs. )  
11 BRIAN O'KEEFE, )  
12 Defendant. )

CASE NO. : C202793  
DEPT. NO. 15

REQUEST FOR ROUGH DRAFT TRANSCRIPT

14 TO: Renee Silvaggio/Joann Orduna, Court Reporters in Dept. 7:

15 BRIAN O'KEEFE, Defendant named above, requests preparation  
16 of a rough draft transcript of the following proceedings before  
17 the District Court as follows:

18 1. A copy of the sentencing transcript of 12/27/04.

19 This request has been ordered by the Supreme Court pursuant  
20 to the attached Order filed June 9, 2005.

21 I recognize that I must personally serve a copy of this form  
22 on the above named court reporter and opposing counsel, and that

23 ///

24 ///

25 ///

26 ///

27  
28  
RECEIVED  
JUN 15 2005  
CLARK COUNTY

1 the above named court reporter shall have ten (10) days from the  
2 receipt of this notice to prepare and submit to the District  
3 Court the rough draft transcript requested herein.

4  
5 DATED this 14 day of June, 2005.

6  
7  
8  
9 JAMES P. KELLY, ESQ.  
10 Nevada Bar No. #8140  
11 300 South Maryland Parkway  
12 Las Vegas, Nevada 89101  
13 702-382-9103

14 RECEIPT OF COPY

15 RECEIPT OF A COPY of the attached REQUEST FOR ROUGH DRAFT  
16 TRANSCRIPT is hereby acknowledged this 15 day of June, 2005.

17 DISTRICT ATTORNEY'S OFFICE

18  
19 Karen Miller  
20 DEPUTY DISTRICT ATTORNEY  
21 200 S. THIRD STREET  
22 LAS VEGAS, NV 89155

23  
24 R. Silvaggio/ J. Orduna  
25 COURT REPORTERS, DEPT. 7  
26 200 S. THIRD STREET  
27 LAS VEGAS, NV 89155  
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44644

**FILED**

JUN 09 2005

CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER

This appeal is subject to the fast track provisions of Nevada Rule of Appellate Procedure 3C. This court notes that the transcript of the sentencing hearing has not yet been filed. A review of the rough draft transcripts request form, however, reveals that it was not served on the correct court reporter or recorder. Sentencing was conducted in Dept. 7 on December 27, 2004, but the rough draft transcript request form was directed to and served on the court reporters for Dept. 15.

Counsel for appellant is ordered to file a rough draft transcript request form within 5 days of this order, and file 2 copies of the transcript request form and proof of service on court reporter or recorder Cheryl Gardner in this court within 10 days of this order.

It is so ORDERED.

Becker, C.J.

cc: James L. Buchanan II  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Cheryl Gardner

State of Nevada  
DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY  
Division of Parole and Probation  
Carson City, NV 89706

File # V05-2324

8

Corrected

Required to pay \$25 Administrative Assessment fee and pay the  
\$150 DNA Evaluation Fee to the County Clerk 200 S 3rd St, LV,  
NV, 89155.

**FILED****PROBATION AGREEMENT AND RULES**

Criminal Case No. C202793

JUL 20 5 21 PM '05

THE STATE OF NEVADA,

Plaintiff,

vs.

**ORDER ADMITTING DEFENDANT TO PROBATION  
AND FIXING THE TERMS THEREOF**  
CLERK

O'KEEFE, Brian Kerry

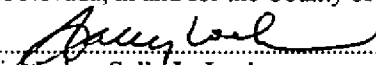
Defendant

DEFENDANT is guilty of the Crime of **Count I - Battery (M); Count VI - Burglary (a Felony)**.

DEFENDANT is sentenced to a term of imprisonment in the Nevada Department of Corrections for **Count VI - 24-120 months; Count I - (CTS) credit for time served + Submit to DNA testing to determine genetic markers**. Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for an indeterminate period not to exceed 5 years under the following conditions:

1. **Reporting/Release:** Upon release by the Court, you are to report directly and in person to the Division of Parole and Probation. You are required to submit a written Monthly Report to your Supervising Officer on the first of each month on forms supplied by the Division of Parole and Probation. This report shall be true and correct in all respects; in addition, you shall report as directed by your Supervising Officer.
2. **Residence:** You shall not change your place of residence without first obtaining permission from your Supervising Officer, in each instance.
3. **Intoxicants:** You shall not drink or partake of any alcoholic beverages to excess. Upon request by any Parole/Probation or Peace Officer, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase nor possess any narcotic drugs, nor any dangerous drugs, unless first prescribed by a licensed physician; you shall immediately notify your Supervising Officer of any prescription received. You shall submit to narcotic or drug testing as required by any Parole/Probation Officer.
5. **Weapons:** You shall not possess, own, carry, or have under your control, any type of weapon.
6. **Associates:** You shall not associate with individuals who have criminal records or other individuals as deemed inappropriate by the Division. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by your supervising officer and the correctional institution.
7. **Cooperation:** You shall, at all times, cooperate with your Supervising Officer and your behavior shall justify the opportunity granted to you by this probation.
8. **Laws and Conduct:** You shall comply with all municipal, county, state and federal laws, and ordinances; and conduct yourself as a good citizen.
9. **Out-of-State Travel:** You shall not leave the State without first obtaining written permission from your Supervising Officer.
10. **Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission.
11. **Supervision Fees:** You shall pay monthly supervision fees while under supervision of the Division.
12. **Special Conditions of your probation:** PER THE COURT ORDER OUTLINED BY THE JUDGMENT OF CONVICTION

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 7-18-05 day of \_\_\_\_\_, in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

  
District Judge Sally L. Loehrer

**AGREEMENT BY PROBATIONER**

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

APPROVED

  
Probation Officer Jeffrey Jeanquart/Date

  
Probationer Brian Kerry O'Keefe/Date

**RECEIVED**

7/11/05/mrf

JUL 20 2005

**CLARK COUNTY**

DISTRICT - COURT 15  
CLARK COUNTY; NEVADA

FILED

DEC 12 2 03 PM '05

*Shirley B. Pangloss*  
CLERK

CASE NO. C202793

Dept. No. XV

Docket No. \_\_\_\_\_

SUPREME CASE NO. 44644

HONORABLE SALLY LOETHER

STATE OF NEVADA,  
plaintiff,

- VS. -

BRIAN KERRY O'KEEFE,  
defendant.

# 1447732

Per Rule

7.40 (b)(2)(ii)

MOTION TO DISCHARGE  
COUNSEL OF APPOINTMENT

Comes Now, BRIAN Kerry O'Keefe, defendant on  
record for the above named case, in PROPER-PERSON,  
to request an order relieving Counsel of  
his appointment.

This Motion is based on points  
and facts herein, and at time of hearing set.

DATED this 5<sup>th</sup> day of December, 2005.

By: Respectfully Submitted,

BRIAN KERRY O'KEEFE

*Brian Kerry O'Keefe*

# 1447732

330 S. Casino Ctr. Blvd.

Las Vegas, NV. 89155

Room 3A 44

ALL INTERESTED PARTIES :

PLEASE TAKE NOTICE :

ORIGINAL COPY

17  
CMC  
COUNTY CLERK  
DEC 13 2005  
RECEIVED  
COUNTY CLERK  
DEC 19 2005  
RECEIVED  
COUNTY CLERK

## STATEMENT

1 Rule 106. Declining or terminating representation.

2 1.) Except as stated in subsection 3, a lawyer shall not  
3 represent a client or where representation has commenced,  
4 shall withdraw from the representation of a client if:

5 (a) etc; etc; etc:

6 (b) etc; etc; etc:

7 (c) The lawyer is discharged.

8  
9 Defendant declares communications have more  
10 than broken down and that there are more than  
11 irreconcilable differences.

12 Cover-ups and lies must  
13 and will cease.

14 My intention and right to be  
15 represented or not, is a decision solely for the  
16 defendant to make.

17  
18 It needed not to be said  
19 why he substituted in as (counsel), on APPEAL!

20 "After being granted my right to proceed  
21 Pro-Se IN D.C. #2 November 29<sup>th</sup> 2005 on record  
22 and for the record I request to be placed  
23 on calendar to rightfully be "heard" on this  
24 motion.

25 I solemnly swear, under the penalty of perjury  
26 the Motion to be accurate and true to the best of my  
27 knowledge.

28 N.R.S. 171.102 AND N.R.S. 208.1165

486(2)

By: Brian Kerry O'Keefe  
BRIAN Kerry O'Keefe

BRAND O'KEefe

330 S CARLSON CENTER

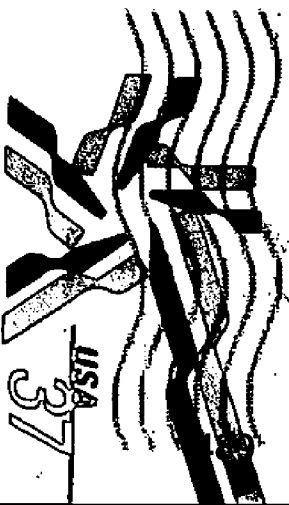
LAS VEGAS, NV 89155

# 1447732

Room 3A 44

LAS VEGAS NV 890

08 DEC 2005 PM 1 L



SHARLEY FARRAGUINE, County Clerk

200 S Third ST.

P.O. Box 551601

LAS VEGAS, NV. 89155-1601

89155+1601

Postage and Fees Paid

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

DEC 21 2 17 PM '05

12-21-05  
H-H

Shirley S. Buchanan  
CLERK C202793

DEPT. NO. XV

DOCKET NO. C202793

STATE OF NEVADA,  
Plaintiff

-vs-

BRIAN KERRY O'KEEFE

# 1447732 Defendant

Rule 7.40 (b)(2)(ii)

Honorable Sally Lochner  
006024 Krisko, Susan R.  
STATE of Nevada  
000754 Buchanan, James L. II  
Attorney on Record

MOTION for SENTENCE CLARIFICATION

Comes Now, BRIAN KERRY O'KEEFE, in PROPER-PERSON,  
to request this Motion for Sentence Clarification to be  
concurrently heard and or joined with the prior  
scheduled Motion to Discharge Counsel, scheduled  
for December 21<sup>st</sup>, 2005. In addition, defendant  
humbly request the Judge to have present or  
order Deputy District Attorney, Susan Krisko to  
be present at the scheduled time. Serious  
prosecutorial and Judicial misconduct needs to be  
addressed, pertaining to sentencing. Citing;  
McCall vs. State 634 P.2d 1210, 1212 (1981)

Dated this 18<sup>th</sup> day of December, 2005.

Respectfully Submitted  
By: Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE  
# 1447732

All Parties Interested o  
Please Take Notice o  
N.R.S. 171.102 AND 208.165

330 S. Casino Ctr.  
Las Vegas, NV 89155  
Room 4903 A 4A

18  
25  
COUNTY CLERK  
RECEIVED  
DEC 21 9AM '05



IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

BRIAN K. O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 44644

2006 FEB 22 P 2:35

District Court Case No. C202793

*Janette M. Bloom*  
CLERK

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 23rd day of January, 2006.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 17th day of February, 2006.

Janette M. Bloom, Supreme Court Clerk

By: *A. Alvarado*  
Chief Deputy Clerk

RECEIVED

FEB 21 2006

COUNTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 44644

District Court Case No. C202793

**REMITTITUR**

TO: Shirley Parraguirre, Clark County Clerk

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

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

DATE: February 17, 2006

Janette M. Bloom, Clerk of Court

By: C. Alvarado  
Chief Deputy Clerk

cc: Hon. Stewart L. Bell, District Judge  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
James L. Buchanan II

**RECEIPT FOR REMITTITUR**

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 2-21-06.

Deputy NORRETA CALDWELL  
County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44644

FILED

JAN 23 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of misdemeanor battery and one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Brian O'Keefe was sentenced to a time served disposition for the battery, and a prison term of 24-120 months for the burglary. The district court suspended the sentence and placed O'Keefe on probation.

O'Keefe's sole ground for appeal is his assertion that the district court erred in its decision to admit other bad acts into evidence. Specifically, O'Keefe contends the district court abused its discretion in its decision to admit a photograph taken of the victim after a previous battery by O'Keefe. O'Keefe admitted under cross-examination that he was arrested twice for domestic violence battery against the same victim, and that one case was dismissed in exchange for his plea to the other. O'Keefe asserts the prior bad acts committed against the victim were not relevant, nor admissible. In the alternative, O'Keefe suggests even if relevant, the prejudicial value of the prior bad acts substantially outweigh the probative value.

RECEIVED  
FEB 7 1 2006  
COUNTY CLERK

SUPREME COURT  
OF  
NEVADA

(C) 1947A

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. But NRS 48.045(2) further provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and determine that: (1) the evidence is relevant to the crime charged; (2) the other act is proven by clear and convincing evidence; and (3) the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.<sup>1</sup> On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.<sup>2</sup>

Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence of the prior uncharged battery was relevant as proof of appellant's intent, knowledge, and the absence of mistake, that the State had proven the act by clear and convincing evidence, and that the probative value of the acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not

---

<sup>1</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

<sup>2</sup>See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), holding modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

commit manifest error in admitting the evidence of O'Keefe's prior battery of the victim.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Stewart L. Bell, District Judge  
James L. Buchanan II  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

1 BRIAN Kerry O'Keeffe  
2 330 S Casino Ctr.  
3 Las Vegas, Nv 89155  
4 144 7732

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

FEB 27 2 20 PM 1986

*Sally L. Loehrer*  
CLERK

5 STATE OF NEVADA,

6 Plaintiff

7 -vs-

8 BRIAN KERRY O'KEEFE

9 # 1447732 Defendant

3-13-06  
CASE NO. C202793

DEPT. NO. XV

DOCKET NO. \_\_\_\_\_

HONORABLE Sally Loehrer

10 Rule 7.40(b)(2)(ii)

11 MOTION TO DISCHARGE COUNSEL

12  
13  
14 Comes Now again, BRIAN KERRY O'KEEFE,  
15 in PROPER-PERSON, to have counsel on  
16 record relieved of his duties.

17 As of a negative decision  
18 has been reached on Direct-Appeal against  
19 the defendant and the Supreme Court of  
20 Nevada rejected Appellant's Proper-Persons'  
21 Rehearing En-Banc for having a said  
22 attorney on record.

23 Request to simply now  
24 be Placed on calendar to have said attorney  
25 removed as attorney on record and to  
26 proceed next with my Writ.

27  
RECEIVED THIS 22 day of February, 2006.

FEB 27 2006

COUNTY CLERK

496

Respectfully Submitted  
Bri KERRY O'Keeffe  
BRIAN Kerry O'Keeffe

FILED

MAR 15 4 03 PM '06

Shirley L. Mangione  
CLERK

1 AFFT  
 2 JAMES L. BUCHANAN II, ESQ.  
 3 Nevada Bar No. 754  
 4 300 South Maryland Parkway  
 5 Las Vegas, Nevada 89101  
 6 (702) 382-9103  
 7 Attorney for Defendant

8 DISTRICT COURT  
 9 CLARK COUNTY, NEVADA

10  
 11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 BRIAN O'KEEFE,

15 Defendant.

CASE NO. : C202793

DEPT. NO.: 15

AFFIDAVIT OF DELIVERY

16 STATE OF NEVADA )  
 17 ) SS.  
 18 COUNTY OF CLARK )

19 Deborah L. Cowan, being duly sworn, says: That at all times  
 20 herein affiant was and is a citizen of the United States, over 18  
 21 years of age, not a party to nor interested in the proceeding in  
 22 which this affidavit is made.

23 That I provided Defendant all papers and pleadings in his  
 24 file pursuant to the following:

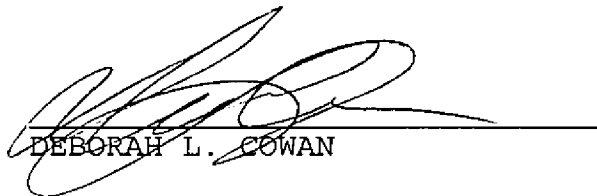
- 25 1. Photographs of Victim  
 26 2. Jury list  
 27 3. Judgment of Conviction  
 28 4. Motion to Proceed in Forma Pauperis  
 5. Order and Notice of Entry of Order  
 6. Sentencing Transcript

COUNTY CLERK

RECEIVED  
 MAR 15 2006

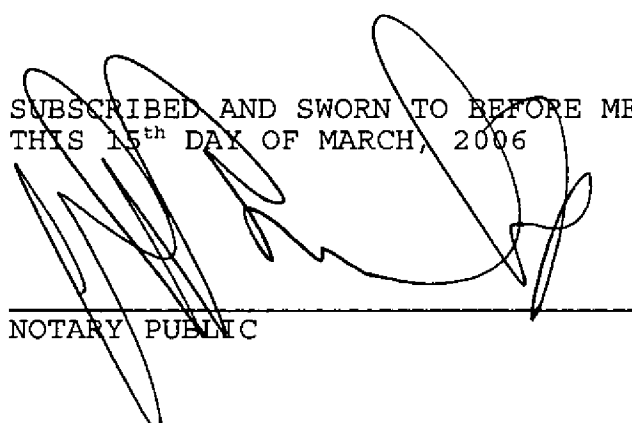
1 7. Reporter's Transcript of Trial 10/26/04  
2 8. Reporter's Transcript of Verdict  
3 9. Reporter's Transcript of Sentencing  
4 10. Request for Rough Draft Transcript  
5 11. Motion for Modification of Sentence  
6 12. Motion to Discharge Counsel  
7 13. Motion for Extension of Time to File Track Stmt.  
8 14. Order Granting Motion  
9 15. Appellant's Request for Rough Draft Transcript  
10 16. Appellant's Fast Track Statement  
11 17. Appellant's Motion to Withdraw  
12 18. Appellant's Appendix  
13 19. Order Striking Fast Track Statement and Appendix  
14 20. Appellant's Fast Track Statement  
15 21. Appellant's Appendix to the Fast Track Statement  
16 22. Order  
17 23. Appellant's Notice of Filing Proof of Request for  
18 Rough Draft Transcript  
19 24. Order  
20 25. Order  
21 26. Motion for Rehearing En Banc  
22 27. Order of Affirmance  
23 28. 11 Supreme Court letters

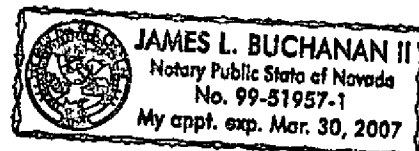
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DEBORAH L. COWAN

17 SUBSCRIBED AND SWORN TO BEFORE ME  
18 THIS 15<sup>th</sup> DAY OF MARCH, 2006

19  
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28

  
NOTARY PUBLIC





**LAW OFFICE OF JAMES L. BUCHANAN II**  
**A PROFESSIONAL CORPORATION**  
300 South Maryland Parkway  
Las Vegas, Nevada 89101  
(702) 382-9103  
Fax (702) 387-6368

---

March 15, 2006

HAND-DELIVERED TO CCDC

Brian O'Keefe, #1447732  
CCDC  
330S. Casino Center Blvd.  
Las Vegas, NV 89101

RE: Your File of Case No. C202793 including Supreme Court documents

Dear Mr. O'Keefe:

Pursuant to a court hearing on March 13, 2006, and the Judge's order, enclosed is a copy of your entire file with our office. Please see the attached Affidavit of a list of all of the documents now in your possession.

Sincerely,



JAMES L. BUCHANAN II, ESQ.

Enc.

# 90244

BRIAN KERRY O'KEEFE  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV 89618  
POD 5C-4B

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

JUN 12 12 40 PM '06

STATE OF NEVADA,

Plaintiff

-vs-

BRIAN KERRY O'KEEFE

# 1497732 Defendant

RULE 7.40 (b)(2)(ii)

*Shirley B. Pungimura*  
CLERK

CASE NO. C202793

DEPT. NO. XV

DOCKET NO. \_\_\_\_\_

JUDGE SALLY LOEBNER

2 PAGE MOTION WITH  
EXHIBITS A & B.

TOTAL - 4 PAGES

7-3-04

PROPER PERSON MOTION TO COMPEL

STATEMENT

COMES NOW BRIAN KERRY O'KEEFE, IN PROPER-PERSON,  
TO REQUEST THAT THE ABOVE PROPER-PERSON MOTION  
BE PLACED UPON THE COURT CALENDAR.

"FAILURE" TO COMPLY WITH THE  
DISTRICT COURTS' ORDER OF SUPPLYING APPELLANT  
WITH A COMPLETE COPY OF HIS RECORDS HAS  
BEEN EXECUTED. ATTORNEY HAS RECORDS. (SEE EXHIBITS  
A & B)  
FOR THE REASONS AND LAW  
HERE-IN, APPELLANT SUBMITS THIS MOTION TO BE  
HEARD WITH PHYSICAL PRESENCE OF INMATE, REQUESTED.

ALL PARTIES INTERESTED:

PLEASE TAKE NOTICE:

ORIGINAL

BY: BRIAN KERRY O'KEEFE  
*Brian Kerry O'Keefe* #90244

DATED THIS 7<sup>TH</sup> DAY OF JUNE, 2006.

POINTS / AUTHORITY

ON MARCH 13, 2006, IN OPEN COURT, JUDGE LOHRER  
ORDERED THE LAW OFFICE OF JAMES L. BUCHANAN TO  
SUPPLY HIS CLIENT WITH A COPY OF COMPLETE RECORDS.

ONLY A PORTION OF THE TRIAL TRANSCRIPTS  
WERE PROVIDED. (SEE EXHIBIT A & B)

THE U.S. 14<sup>th</sup> AMENDMENT AND NEVADA  
ARTICLE 1 § 8 WHICH REQUIRES ALL CRIMINAL DEFENDENTS  
WITH AN AUTOMATIC RIGHT TO APPEAL AND IS PROVIDED A  
TRANSCRIPT OF HIS TRIAL PROCEEDINGS. (1)

FOR APPELLANT TO COMPLETE A PROPER  
POST-CONVICTION WRIT OF HABEAS CORPUS, DUE PROCESS IS  
REQUIRED IN BEING SUPPLIED WITH THE FOLLOWING:

- A.) TRIAL TRANSCRIPTS
- B.) CLOSING ARGUMENTS
- C.) JURY INSTRUCTIONS

DATED THIS 7<sup>th</sup> day of JUNE, 2006.

I, BRIAN KERRY O'KEEFE - #90244, do  
solemnly swear, under the penalty of perjury, that  
the above MOTION TO COMPEL is accurate,  
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted

*Brian Kerry O'Keefe*

Defendant

BRIAN KERRY O'KEEFE - #90244

1 - HERNANDEZ V. STATE, 117 NEV 463 & 467, 24 P.3d 767 (2001)

*Shirley B. Pangione*

MAR 3 9 14 AM '05

FILED

1 REQ  
2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. #754  
4 300 South Maryland Parkway  
5 Las Vegas, Nevada 89101  
6 (702) 382-9103  
7 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

8 THE STATE OF NEVADA,  
9 Plaintiff,  
10 vs.  
11 BRIAN O'KEEFE,  
12 Defendant.

CASE NO. : C202793  
DEPT. NO. 15

REQUEST FOR ROUGH DRAFT TRANSCRIPT

13 TO: M. Cook and L. Makowski, Court Reporters in Dept. 15:

14 BRIAN O'KEEFE, Defendant named above, requests preparation  
15 of a rough draft transcript of the following proceedings before  
16 the District Court as follows:

17 1. The trial transcript, including opening statements and  
18 closing arguments with the following dates: 10/25/04 and 10/26/04  
19 (opening statements); 10/27/04 (trial); and 10/28/04 (closing  
20 arguments).

21 2. A copy of the sentencing transcript of 12/27/04.

22 This notice requests the above District Court proceedings  
23 which counsel reasonably and in good faith believes are necessary  
24 to determine whether appellate issues are present.  
25

26 ///

1 I recognize that I must personally serve a copy of this form  
2 on the above named court reporter and opposing counsel, and that  
3 the above named court reporter shall have ten (10) days from the  
4 receipt of this notice to prepare and submit to the District  
5 Court the rough draft transcript requested herein. The Fast  
6 Track Statement is due to the Supreme Court on March 11, 2005.

7 DATED this 2 day of March, 2005.

8  
9  
10  
11 JAMES P. KELLY, ESQ.  
12 Nevada Bar No. #8140  
13 300 South Maryland Parkway  
14 Las Vegas, Nevada 89101  
15 702-382-9103

16 RECEIPT OF COPY

17 RECEIPT OF A COPY of the attached REQUEST FOR ROUGH DRAFT  
18 TRANSCRIPT is hereby acknowledged this 3rd day of March, 2005.  
19 DISTRICT ATTORNEY'S OFFICE

20  
21 DMH  
22 DEPUTY DISTRICT ATTORNEY  
23 200 S. THIRD STREET  
24 LAS VEGAS, NV 89155

25 MB Cook  
26 M. COOK/ L. MAKOWSKI  
27 COURT REPORTERS, DEPT. 15  
28 200 S. THIRD STREET  
LAS VEGAS, NV 89155

1 BRIAN KERRY O'KEEFE # 90244

DISTRICT COURT

FILED

2 HIGH DESERT STATE PRISON

3 PO BOX 650

CLARK COUNTY, NEVADA

JUN 27 2 08 PM '06

4 INDIAN SPRINGS, NV 89018

5 STATE OF NEVADA,

*Shirley S. Longoria*  
CLERK

6 Plaintiff

CASE NO. 0202793

DEPT. NO. XV

7 -VS-

DOCKET NO. \_\_\_\_\_

8 BRIAN KERRY O'KEEFE

- HEARING DATE . 7/3/2006

9 # 144773Z Defendant

10 RULE 7.40 (b)(2)(ii)

11 PROPER PERSON MOTION TO PRODUCE

12  
13 COMES NOW, BRIAN KERRY O'KEEFE, IN PROPER PERSON,  
14 TO ENSURE THAT THE PHYSICAL ATTENDANCE TO HIS  
15 SCHEDULED MOTION TO BE HEARD ON JULY 3, 2006 BE  
16 ACCOMPANIED WITH AN "ORDER TO TRANSPORT" INMATE.  
17 (SEE EXHIBIT-A) IT IS IMPERATIVE THAT THE APPELLANT,  
18 UNDER DUE PROCESS OF LAW, IS AFFORDED THE RIGHT  
19 TO ARGUE HIS CASE SINCE THE COURT HAS DENIED ME  
20 APPOINTMENT OF COUNSEL.

21  
22 THIS DOCUMENT BEING TRUE IN  
23 ACCORDANCE WITH N.R.S. 171.102 & 208.165.

24  
25 DATED THIS 17<sup>th</sup> DAY JUNE 2006.

26  
27 ALL PARTIES INTERESTED:  
28 PLEASE TAKE NOTICE :

RECEIVED

JUN 27 2006

COUNTY CLERK

Respectfully Submitted,  
*Brian Kerry O'Keefe*  
BRIAN KERRY O'KEEFE  
# 90244

ORIGINAL

**PROPER PERSON SETTINGS**

CASE #: C202793

DEPARTMENT: 15

DEFENDANT: BRIAN KERRY O'KEEFE

DATE FILED: 6/12/2006

MATTERS TO BE HEARD: MOTION TO COMPEL

HEARING DATE: 7/3/2006

**COPIES GIVEN TO:**

- ☐ DISTRICT ATTORNEY
- ☐ PUBLIC DEFENDER
- ☒ PROPER PERSON
- ☐ ATTORNEY GENERAL
- ☐ ATTORNEY OF RECORD

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[EXHIBIT - A]

Brian Kerry O'Keefe - # 90244

H.D.S.P.

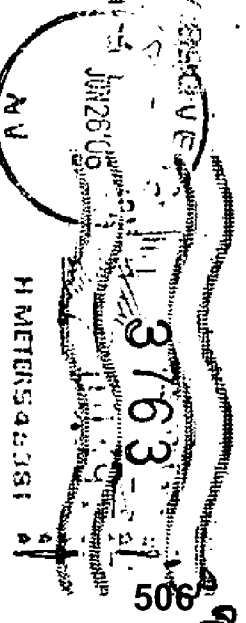
P.O. Box 650

INDIAN SPRINGS, NV. 89018

POD SC-4B

LAS VEGAS NV 89018

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



SHIRLEY B. PARK ALVARADO, County Clerk

200 DEWIS AVE.

PO BOX 551601

245 WEGAS, NV. 89155-1601

"LEGAL MAIL"

89155-1601

Postnet barcode



RECEIVED

JUN 23 2006

HIGH DESERT STATE PRISON  
LAW LIBRARY

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

JUN 28 11 14 AM '06

*Shirley B. Longoria*

CASE ~~FILED~~ 202793

DEPT. NO. XV

DOCKET NO. \_\_\_\_\_

STATE OF NEVADA,

Plaintiff

-vs-

BRIAN KERRY O'KEEFE

# 1447732 Defendant

SCHEDULED HEARING DATE :

RULE 7.40 (b)(2)(ii) PROPER PERSON  
DEMAND FOR PRIOR DISCOVERY

COMES NOW, BRIAN KERRY O'KEEFE, IN  
PROPER-PERSON TO REQUEST DOCUMENTS ACCORDING  
TO THE STATUTES LISTED AND PLEADINGS WITHIN.

DATED THIS 26<sup>th</sup> DAY OF JUNE, 2006.

BY: BRIAN KERRY O'KEEFE  
*Brian Kerry O'Keefe*

ALL PARTIES INTERESTED :  
PLEASE TAKE NOTICE :

HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV. 89018  
POD 5C-4B  
# 90244

ORIGINAL

STATEMENT AND AUTHORITIES

UPON DEFENDENTS WRITTEN REQUEST PER FEDERAL  
RULE 16, DISCOVERY AND INSPECTION, (2)(1)(E) AND  
NEVADA REVISED STATUTE 174.235, ANY DEFENDENT  
MUST BE PROVIDED WITH REQUESTED DOCUMENTS,  
SPECIFICALLY UNDER N.R.S. 174.235 1(A)

I REQUEST :

- 1) VOLUNTARY STATEMENT OF VICTORIA  
WHITMARGH UNDER POLICE EVENT NUMBER 040529002232.
- 2) PRELIMINARY HEARING TRANSCRIPT  
TO RELATED CASE, JC CASE NO. 04F09774X HELD ON  
JULY 1, 2004, 09:00AM BEFORE THE HONORABLE JIM GUBLER.

ALSO UNDER 174.235 1(B),  
APPELLANT IS ENTITLED TO ALL RESULTS OF  
MEDICAL REPORTS INDICATING RESULTS SWORN TO.  
THIS INCLUDES RESULTS OF THE SAME  
EXAMINATION AND THE RESULTS OF THE D.N.A.  
TEST COMPLETED BY THE LAS VEGAS METROPOLITAN  
FORENSICS DEPARTMENT.

CURRENTLY, DEFENDENT IS  
SCHEDULED FOR A MOTION TO COMPEL TRIAL  
TRANSCRIPTS AND OTHER DOCUMENTS, SCHEDULED

STATEMENT AND AUTHORITIES

JULY 3, 2006, MONDAY.

DEFENDENT REQUESTS

ANY ORDER NEEDED FOR JUDGE'S SIGNATURE  
BE FORWARDED FOR THAT HEARING IF  
CLERK CANNOT PROVIDE REPORTS PERTAINING  
TO MEDICAL RESULTS.

VOLUNTARY STATEMENT AND  
PRELIMINARY TRANSCRIPTS CAN BE MAILED TO  
DEFENDENT AT PRISON.


JUDGE LOEHNER INSTRUCTED  
ME TO SEND HER MY POST CONVICTION WRIT OF  
HABEAS CORPUS. I NEED MY REPORTS TO  
EFFECTIVELY DO SO.

DATED THIS 26<sup>th</sup> day of JUNE, 2006.

I, BRIAN KELLY O'KEEFE, do  
solemnly swear, under the penalty of perjury, that  
the above PROPER-PERSON DEMAND FOR PRIOR is accurate,  
DISCOVERY  
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

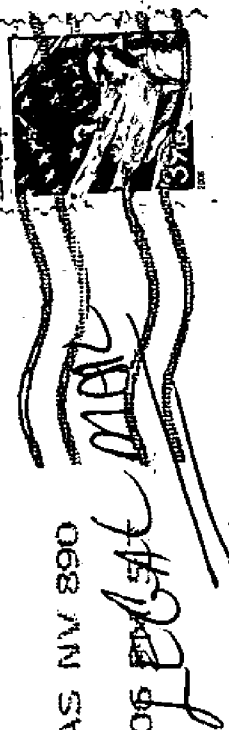
Respectfully submitted

 - #90244  
Defendant

BRIAN KERRY O'KEEFE - #90244  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV 89018  
POD SC-4B

LAS VEGAS NV 890

27 JUN 2006



SHIRLEY B. PARRAGUIRRE, County Clerk

200 LEWIS AVE.

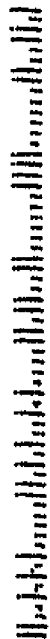
PO BOX 551601

LAS VEGAS, NV

89155-1601

LEGAL MAIL

89155+1601



HIDSP

JUN 26 2005

UNIT 520

DISTRICT COURT  
CLARK COUNTY, NEVADA

# 90244  
BRIAN KERRY O'KEEFE  
HIGH DESERT STATE PRISON  
PO BOX 650

INDIAN SPRINGS, NV  
F/155 SC-4B 89017

BRIAN KERRY O'KEEFE,  
Appellant,

vs.

STATE OF NEVADA,  
Respondent.

JUL 3 2 45 PM '06  
DISTRICT COURT NO. C202793  
JUL 3 2 45 PM '06  
JUL 3 2 45 PM '06

RULE 7.46 (b)(2)(ii)

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: DICK KANGAS, REPORTER/RECORDER

COMES NOW BRIAN O'KEEFE, IN PROPER-  
PERSON TO REQUEST PREPARATION OF THE PETROCELLI-  
HEARING HEARD BY JACKIE GLASS, JUDGE; DEPT. 5  
HELD ON 10/08/04, AT 09:00 A.M.

APPELLANT DEEMS THE TRANSCRIPT  
IS NECESSARY AND VITAL IN REGARDS TO COMPLETING  
HIS LAWFUL AND RIGHTFUL POST-CONVICTION WRIT  
OF HABEAS CORPUS.

UNDER THE NEVADA CONSTITUTION  
ARTICLE 1 § 8, ALL DEFENDENTS ARE ENTITLED TO BE  
HEARD UNDER THE ADVERSARY SYSTEM AND ARE  
ENTITLED TO A COPY OF THEIR PROCEEDINGS.

DATED THIS 28<sup>th</sup> DAY OF JUNE, 2006.  
ORIGINAL:

By: *Brian O'Keefe*  
PER N.R.S. 171.102 AND 208.165

RECEIVED  
JUL 3 2 45 PM '06  
COUNTY CLERK

FILED

JUL 13 3 56 PM '06

*Shirley C. Ransiquiera*  
CLERK

1 **AFFT**  
2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. 754  
4 300 South Maryland Parkway  
5 Las Vegas, Nevada 89101  
6 (702) 382-9103  
7 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN O'KEEFE,

12 Defendant.

CASE NO. : C202793

DEPT. NO.: 15

**AFFIDAVIT OF MAILING**

13 STATE OF NEVADA )

) SS.

14 COUNTY OF CLARK )

15 Deborah Malone, being duly sworn, says: That at all times  
16 herein affiant was and is a citizen of the United States, over 18  
17 years of age, not a party to nor interested in the proceeding in  
18 which this affidavit is made.

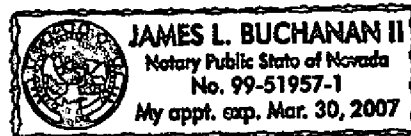
19 That I provided Defendant all papers and pleadings in his  
20 file pursuant to the following:

- 21 1. Victim's medical records
- 22 2. Preliminary hearing transcript
- 23 3. Letter to Brian o'Keefe

24 SUBSCRIBED AND SWORN TO BEFORE ME  
25 THIS 13<sup>TH</sup> DAY OF JULY, 2006

26 NOTARY PUBLIC

*Deborah Malone*  
DEBORAH MALONE



COUNTY CLERK

RECEIVED  
JUL 13 2006



**LAW OFFICE OF JAMES L. BUCHANAN II**  
**A PROFESSIONAL CORPORATION**  
300 South Maryland Parkway  
Las Vegas, Nevada 89101  
(702) 382-9103  
Fax (702) 387-6368

July 13, 2006

Brian O'Keefe, #90244  
HDSP  
P.O. Box 650  
Indian Springs, NV 89018

Dear Mr. O'Keefe:

Mr. Kelly appeared at a court hearing on July 5, 2006, and the Judge ordered the District Attorney to provide you with victim statements, preliminary hearing transcript and the victim's medical records. I contacted the District Attorney and all they had in their file was the preliminary hearing transcript and the victim's medical records. They are enclosed. A copy of this letter is being filed with the Court to let them know that we have complied with your request.

Sincerely,



Deborah L. Malone  
Office Manager to  
JAMES L. BUCHANAN II, ESQ.

Enc.

5  
FILED

JUL 19 2 53 PM '06

*Shirley L. Miller*  
Clerk

DISTRICT COURT  
CLARK COUNTY, NEVADA

1 BRIAN KERRY O'KEEFE - #90244  
2 Defendant/ In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

5  
6  
7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 BRIAN KERRY O'KEEFE  
12 Defendant.  
13 #90244

HONORABLE SALLY LUHRER

Case No. C202793

Dept No. XV

Docket

\* TOTAL PAGES: 19

14 N.R.S. 34.160 - 34.320

PROPER - PERSON

PETITION FOR WRIT OF HABEAS CORPUS

FOR SPECIFIC DOCUMENTS LISTED ON EXHIBIT "A"

Date of Hearing: \_\_\_\_\_

Time of Hearing: \_\_\_\_\_

"ORAL ARGUMENT REQUESTED, Yes ☒ No ☐

19 COMES NOW, Defendant, BRIAN KERRY O'KEEFE, proceeding in proper person,  
20 hereby moves this Honorable Court for its ORDER for the production of all documents, papers,  
21 pleadings and tangible property in the possession of: JAMES L. BUCHANAN II, ESQ.

22 SUSAN KRISKO, D.D.A., ROSS MILLER, D.D.A., COUNTY CLERK'S, CLARK

23 This Motion is made and based upon all papers and pleadings on file with the Clerk of the Court  
24 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
25 Affidavit of Defendant.

26 DATED: this 17<sup>th</sup> day of July, 2006.

27 \* PETITION FOR WRIT - 7 PAGES  
28 SUPPORTING EXHIBITS  
B THRU M - 12 PAGES

BY: Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE # 90244  
Defendant/In Propria Personam

ORIGINAL

RECEIVED

JUL 19 2006

COUNTY CLERK



## POINTS AND AUTHORITIES

The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

"An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property which belong to or were prepared for that client."

As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s) of record, were appointed by the Court to represent the defendant, who was an indigent, in Case Number, C202793 in Department No. XV.

N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and deliver to the defendant in his/her possession, which states:

"A client who, after demand therefore and payment of the fee due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers, Documents, pleadings and other property."

In numerous cases throughout this great land, the courts have held attorneys to a high degree of professional responsibility and integrity. This carried from the time of hiring to and through the attorney's termination of employment.

Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a "... prompt accounting of all his client's ... property in his possession." This is echoed in Canon 2 of the Code of Professional Responsibility of the American Bar Association, which states in pertinent part EC 2-32: "A lawyer should protect the welfare of his client by ... delivering to the client all papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with applicable laws on the subject.

In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney censured.

(2)  
1- TO INCLUDE DEPUTY DISTRICT ATTORNEYS: ROSS MILLER, D.D.A.  
SUSAN KRISKO, D.D.A.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce  
6 and deliver to the Defendant all documents and personal property in his/their possession belonging to  
7 him or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers.  
8 The attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203. - SEE EXHIBIT - "A" ATTACHED.

10  
11 DATED: this 17<sup>th</sup> day of July, 2006, UNDER THE PENALTY OF  
12 PERJURY PER N.R.S. 171.102 AND N.R.S. 208.165.

13 BY: Brian KERRY O'KEEFE # 90244  
14 Defendant/In Propria Personam

15 H.D.S.P.

16 PO BOX 650

17 INDIAN SPRINGS, NV. 89018

18 POB SC-4B

19 COMMENTARY CANON - 3C(2)

20 2. A JUDGE SHALL REQUIRE STAFF, COURT OFFICIALS AND OTHERS  
21 SUBJECT TO THE JUDGE'S DIRECTION AND CONTROL TO  
22 OBSERVE THE STANDARDS OF FIDELITY AND DILIGENCE  
23 THAT APPLY TO THE JUDGE ... OF THEIR OFFICIAL DUTIES.

24 COMMENTARY CANON - 3D(2)

25 2. A JUDGE WHO RECEIVES INFORMATION INDICATING A SUB-  
26 STANTIAL LIKELIHOOD THAT A LAWYER HAS COMMITTED A VIOLATION  
27 OF THE RULES OF PROFESSIONAL CONDUCT SHOULD TAKE APPROPRIATE  
28 ACTION. A JUDGE HAVING THAT A LAWYER HAS COMMITTED A  
VIOLATION ... (3) SHALL INFORM THE APPROPRIATE AUTHORITY.

1 BRIAN KERRY O'KEEFE - # 90244  
2 H.D.S.P.  
3 POST OFFICE BOX 660  
4 INDIAN SPRINGS, NV. 89018  
5 POD 5C-4B

6 DISTRICT COURT  
7 CLARK COUNTY NEVADA

8 THE STATE OF NEVADA,  
9 Plaintiff,

10 VS.

11 BRIAN KERRY O'KEEFE,  
12 # 90244 Defendant.

HONORABLE SALLY LOHRER  
CASE NO. C202793  
DEPT NO. XV

13  
14 EXHIBIT - "A"

15 SPECIFIC DOCUMENTS REQUESTED

- 16 1. - JURY INSTRUCTIONS  
17 2. - OPENING STATEMENTS - 10-25-04  
18 3. - TRIAL TRANSCRIPT COMPLETE - ALL WITNESSES 10-26-04. DIRECT/CROSS  
19 4. - TRIAL TRANSCRIPT COMPLETE - ALL WITNESSES 10-27-04. DIRECT/CROSS  
20 5. - SCIENTIFIC TEST RESULT OF D.N.A. ANALYSIS - EXHIBIT 36.  
21 TO INCLUDE SYNOPSIS OF D.N.A. RESULTS.  
22 6. - VOLUNTARY STATEMENT OF VICTORIA WHITMARSH.  
23 7. - VOLUNTARY STATEMENT OF BRIAN K. O'KEEFE.  
24 8. - CLOSING ARGUMENT - 10-27-04.  
25 9. - WITNESS LIST AND REBUTTAL WITNESS LIST.  
26 10. - LESSER CITES SUBMITTED TO COURT.  
27  
28

(4)

By: *Brian Kerry O'Keefe*  
BRIAN KERRY O'KEEFE

MR. BRAD KERRY O'KEEFE - #90244  
H. D. S. P.

PO Box 658

INDIAN SPRINGS, NV. 89018

POD 50-4B

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BRIAN KERRY O'KEEFE  
#90244/ In Propria Personam  
Post Office Box 650 [HDSP]  
Indian Springs, Nevada 89018

FILED

JUL 19 2 48 PM '06

*Shirley L. Rasmussen*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

BRIAN KERRY O'KEEFE,  
Defendant.  
#90244

Case No. C202793  
Dept No. XV  
Docket \_\_\_\_\_

NOTICE OF WRIT OF MANDAMUS

YOU WILL PLEASE TAKE NOTICE, that Jim KELLY, SUSAN  
KRISKO AND/OR ROSS MILLER

will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M. In Department \_\_\_\_\_, of said Court.

CC:FILE

DATED: this \_\_\_\_\_ day of July, 2006.

BY: Brian Kerry O'Keefe  
Brian Kerry O'Keefe #90244  
/In Propria Personam

RECEIVED  
JUL 19 2006  
COUNTY CLERK



(6)

**CERTIFICATE OF SERVICE BY MAILING**

I, BRIAN KERRY O'KEEFE, hereby certify, pursuant to NRCP 5(b), that on this 17<sup>th</sup> day of JULY, 2006, I mailed a true and correct copy of the foregoing, "PETITION FOR WRIT OF HABEAS CORPUS FOR SPECIFIC DOCUMENTS ON EXHIBIT-A" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

SHIRLEY B. PARAGUIRE, COUNTY CLERK  
REGIONAL JUSTICE CENTER  
200 LEWIS AVE.  
PO BOX 551601  
LAS VEGAS, NV. 89155-1601

DAVID ROGERS, DISTRICT ATTORNEY  
REGIONAL JUSTICE CENTER  
200 LEWIS AVE.  
LAS VEGAS, NV 89155  
ATTENTION: SUSAN KRISKI, D.D.A.  
ROSS MILLER, D.D.A.

LAW OFFICE OF JAMES L BUCHANAN II  
300 S. MARYLAND PARKWAY  
LAS VEGAS, NV 89101  
ATTENTION: JIM KELLY

CC: FILE

DATED: this 17<sup>th</sup> day of JULY, 2006.

Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE # 90244  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

(7)



## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA vs O'Keefe, Brian K  
CONTINUED FROM PAGE: 013

07/03/06 08:30 AM 00 DEFT'S PRO PER MOTION TO COMPEL/22

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Jennifer Kimmel, Court Clerk  
Sharon Howard, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007480 Pate, Susan

Y  
Y

Court reviewed Deft's Motion and NOTED, Deft's prior counsel, Mr. Kelly has filed an Affidavit of Delivery itemizing specific documents sent to the Deft. COURT ORDERED, Deft's Motion to compel shall be GRANTED in that the Preliminary Hearing Transcript, copy of statement made by Victoria Whitmarsh and medical record(s) shall be copied and sent to Deft. FURTHER ORDERED, matter CONTINUED. Court's Law Clerk is directed to contact Mr. Kelly and advise him that his presence will be required next date.

NDC (COC)

CONTINUED TO: 07/05/06 08:30 AM 01

07/05/06 08:30 AM 01 DEFT'S PRO PER MOTION TO COMPEL/22

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Jennifer Kimmel, Court Clerk  
Sharon Howard, Reporter/Recorder

PARTIES: STATE OF NEVADA  
007480 Pate, Susan

Y  
Y

0001 D1 O'Keefe, Brian K  
008140 Kelly, James P.

N  
Y

Court directed Mr. Kelly to mail a copy of Deft's Preliminary Hearing Transcript, copy of statement made by Victoria Whitmarsh and medical record(s) to the Deft. and prepare a Certificate of Mailing itemizing the items sent.

NDC

CLERK'S NOTE: A copy of this minute order mailed to Deft. 7/7/06. jk

LAW OFFICE OF JAMES L. BUCHANAN II  
A PROFESSIONAL CORPORATION  
300 South Maryland Parkway  
Las Vegas, Nevada 89101  
(702) 382-9103  
Fax (702) 387-6368

July 13, 2006

Brian O'Keefe, #90244  
HDSP  
P.O. Box 650  
Indian Springs, NV 89018

Dear Mr. O'Keefe:

Mr. Kelly appeared at a court hearing on July 5, 2006, and the Judge ordered the District Attorney to provide you with victim statements, preliminary hearing transcript and the victim's medical records. I contacted the District Attorney and all they had in their file was the preliminary hearing transcript and the victim's medical records. They are enclosed. A copy of this letter is being filed with the Court to let them know that we have complied with your request. Z

Sincerely,



Deborah L. Malone  
Office Manager to  
JAMES L. BUCHANAN II, ESQ.

Enc.

- 1- JUDGE ORDERED MR. KELLY, NOT D.A. !
- 2- MY REQUEST BECAME A JUDGE'S ORDER  
FOR THE 2ND TIME !!

**LAW OFFICE OF JAMES L. BUCHANAN II**  
**A PROFESSIONAL CORPORATION**  
300 South Maryland Parkway  
Las Vegas, Nevada 89101  
(702) 382-9103  
Fax (702) 387-6368

March 15, 2006

HAND-DELIVERED TO CCDC

Brian O'Keefe, #1447732  
CCDC  
330S. Casino Center Blvd.  
Las Vegas, NV 89101

RE: Your File of Case No. C202793 including Supreme Court documents

Dear Mr. O'Keefe:

Pursuant to a court hearing on March 13, 2006, and the Judge's order, enclosed is a copy of your entire file with our office. Please see the attached Affidavit of a list of all of the documents now in your possession.

Sincerely,



JAMES L. BUCHANAN II, ESQ.

Enc.

1 **AFFT**

2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. 754  
300 South Maryland Parkway  
4 Las Vegas, Nevada 89101  
(702) 382-9103  
Attorney for Defendant

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 BRIAN O'KEEFE,

12 Defendant.

CASE NO. : C202793

DEPT. NO.: 15

AFFIDAVIT OF MAILING

13 STATE OF NEVADA )

14 ) SS.

COUNTY OF CLARK )

15 Deborah Malone, being duly sworn, says: That at all times  
16 herein affiant was and is a citizen of the United States, over 18  
17 years of age, not a party to nor interested in the proceeding in  
18 which this affidavit is made.

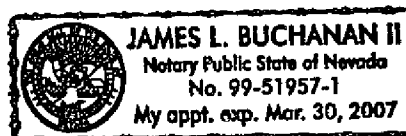
19 That I provided Defendant all papers and pleadings in his  
20 file pursuant to the following:

- 21 1. Victim's medical records  
22 2. Preliminary hearing transcript  
23 3. Letter to Brian o'Keefe

24 SUBSCRIBED AND SWORN TO BEFORE ME  
25 THIS 13<sup>TH</sup> DAY OF JULY, 2006

26 NOTARY PUBLIC

27 DEBORAH MALONE



1 AFFT

2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. 754  
4 300 South Maryland Parkway  
5 Las Vegas, Nevada 89101  
6 (702) 382-9103  
7 Attorney for Defendant

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10  
11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 BRIAN O'KEEFE,

15 Defendant.

CASE NO. : C202793  
DEPT. NO.: 15

AFFIDAVIT OF DELIVERY

16 STATE OF NEVADA )  
17 ) SS.  
18 COUNTY OF CLARK )

19 Deborah L. Cowan, being duly sworn, says: That at all times  
20 herein affiant was and is a citizen of the United States, over 18  
21 years of age, not a party to nor interested in the proceeding in  
22 which this affidavit is made.

23 That I provided Defendant all papers and pleadings in his  
24 file pursuant to the following:

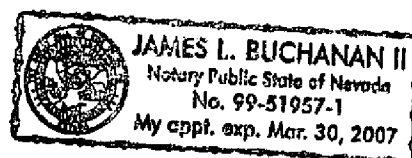
- 25 1. Photographs of Victim
- 26 2. Jury list
- 27 3. Judgment of Conviction
- 28 4. Motion to Proceed in Forma Pauperis
5. Order and Notice of Entry of Order
6. Sentencing Transcript

- 1 7. Reporter's Transcript of Trial 10/26/04 - SEE BELOW  
2 8. Reporter's Transcript of Verdict  
3 9. Reporter's Transcript of Sentencing  
4 10. Request for Rough Draft Transcript  
5 11. Motion for Modification of Sentence  
6 12. Motion to Discharge Counsel  
7 13. Motion for Extension of Time to File Track Stmt.  
8 14. Order Granting Motion  
9 15. Appellant's Request for Rough Draft Transcript  
10 16. Appellant's Fast Track Statement  
11 17. Appellant's Motion to Withdraw  
12 18. Appellant's Appendix  
13 19. Order Striking Fast Track Statement and Appendix  
14 20. Appellant's Fast Track Statement  
15 21. Appellant's Appendix to the Fast Track Statement  
16 22. Order  
17 23. Appellant's Notice of Filing Proof of Request for  
18 Rough Draft Transcript  
19 24. Order  
20 25. Order  
21 26. Motion for Rehearing En Banc  
22 27. Order of Affirmance  
23 28. 11 Supreme Court letters

DEBORAH L. COWAN

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 15<sup>th</sup> DAY OF MARCH, 2006

NOTARY PUBLIC



10/26/04 TRANSCRIPTS INCLUDE ONLY  
OFFICER SHANNON KELLY'S TESTIMONY - DIRECT/CROSS EXAMINATION AND  
VICTORIA WHITMARSH TESTIMONY - DIRECT EXAMINATION ONLY.

WHERE IS CROSS EXAMINATION?

WHERE IS THE OTHER 7 WITNESSES FOR THAT DAY ALONE? (10-26-04)

WHERE IS COMPLETE TRANSCRIPTS, DIRECT-CROSS FOR 10-27-04?

WHERE IS JURY INSTRUCTIONS?

WHERE IS SCIENTIFIC TEST RESULTS PERTAINING TO D.O.A.?

1 ORDR

JAMES L. BUCHANAN II, ESQ.

2 Nevada Bar #754

300 S. Maryland Parkway

3 Las Vegas, NV 89101

4 Attorney for Defendant

FILED

FEB 28 9 24 AM '05

*Shirley B. Rungius*  
CLERK

5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA, )

Case No. C202793

8 Plaintiff, )

Dept. No. 15

9 vs. )

ORDER

10 BRIAN O'KEEFE, )

11 Defendant. )

12  
13 This matter having come on regularly on the 23<sup>RD</sup> day of  
14 February, 2005, and the Court having heard evidence and being fully  
15 advised in the premises, and good cause appearing therefor:

16 IT IS HEREBY ORDERED that Defendant's Motion to Proceed in  
17 Forma Pauperis is hereby GRANTED.

18 IT IS FURTHER ORDERED that the State shall pay for the Rough  
19 Draft Transcripts requested by JAMES L. BUCHANAN II, ESQ., attorney  
20 for Defendant.

21 DATED this 25<sup>th</sup> day of February, 2005

22 ~~BALLY LOHRE~~

23 DISTRICT COURT JUDGE

24 SUBMITTED BY:

25  
26 *James L. Buchanan II*  
27 JAMES L. BUCHANAN II, ESQ., #754  
28 300 S. Maryland Parkway  
Las Vegas, NV 89101  
Attorney for Defendant

[EXHIBIT-H]

*Shirley B. Ransgum*

MAR 3 9 14 AM '05

FILED

1 REQ  
2 JAMES L. BUCHANAN II, ESQ.  
3 Nevada Bar No. #754  
4 300 South Maryland Parkway  
5 Las Vegas, Nevada 89101  
6 (702) 382-9103  
7 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

8 THE STATE OF NEVADA,	)	CASE NO. : C202793
9 Plaintiff,	)	DEPT. NO. 15
10 vs.	)	
11 BRIAN O'KEEFE,	)	
12 Defendant.	)	

REQUEST FOR ROUGH DRAFT TRANSCRIPT

14 TO: M. Cook and L. Makowski, Court Reporters in Dept. 15:

15 BRIAN O'KEEFE, Defendant named above, requests preparation

16 of a rough draft transcript of the following proceedings before

17 the District Court as follows:

18 1. The trial transcript, including opening statements and

19 closing arguments with the following dates: 10/25/04 and 10/26/04

20 (opening statements); 10/27/04 (trial); and 10/28/04 (closing

21 arguments).

22 2. A copy of the sentencing transcript of 12/27/04.

23 This notice requests the above District Court proceedings

24 which counsel reasonably and in good faith believes are necessary

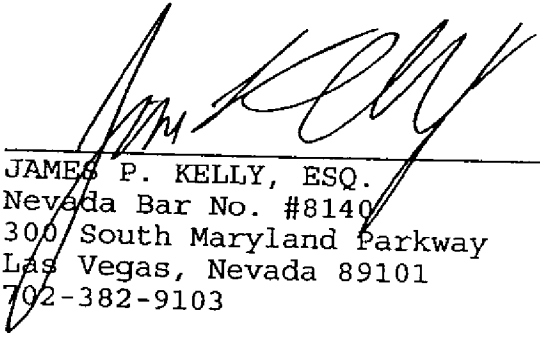
25 to determine whether appellate issues are present.

26 ///



1 I recognize that I must personally serve a copy of this form  
2 on the above named court reporter and opposing counsel, and that  
3 the above named court reporter shall have ten (10) days from the  
4 receipt of this notice to prepare and submit to the District  
5 Court the rough draft transcript requested herein. The Fast  
6 Track Statement is due to the Supreme Court on March 11, 2005.

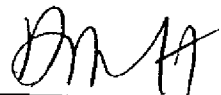
7 DATED this 2 day of March, 2005.

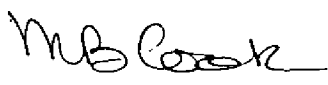
8  
9  
10  
11   
12 JAMES P. KELLY, ESQ.  
13 Nevada Bar No. #8140  
14 300 South Maryland Parkway  
15 Las Vegas, Nevada 89101  
16 702-382-9103

17 RECEIPT OF COPY

18 RECEIPT OF A COPY of the attached REQUEST FOR ROUGH DRAFT  
19 TRANSCRIPT is hereby acknowledged this 3rd day of March, 2005.

20 DISTRICT ATTORNEY'S OFFICE

21   
22 DEPUTY DISTRICT ATTORNEY  
23 200 S. THIRD STREET  
24 LAS VEGAS, NV 89155

25   
26 M. COOK/ L. MAKOWSKI  
27 COURT REPORTERS, DEPT. 15  
28 200 S. THIRD STREET  
LAS VEGAS, NV 89155

MAILING CERTIFICATE

On June 13, 2005, I sent by Priority Mail, Delivery Confirmation No. 0304 1560 0000 2313 6233 U.S. Postal Service, a copy of the following transcript to the Clerk of the Supreme Court:

District Court, Clark County, Case No. C202793, State of Nevada -v- Brian Kerry O'Keefe, Reporter's Transcript of Proceedings, held on Monday, December 27, 2004, before the Hon. Stewart L. Bell, Department XV.

A copy of the above proceedings had been filed with James L. Buchanan II, Esq., and David Roger, District Attorney. The original transcript has been filed with the Clerk of Court for Clark County, Nevada.

  
Cheryl Gardner, CCR 230

HAVE COUNTY CLERK'S OFFICE SEND  
EVERYTHING. THEY HAVE IT ALL ON ARCHIVE.

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3  
4 BRIAN KERRY O'KEEFE, )

5 Appellant, )

6 v. )

NO. 44644

7 STATE OF NEVADA , )

8 Respondent. )

9  
10 MOTION TO WITHDRAW

11  
12 COMES NOW, JAMES L. BUCHANAN II, ESQ., trial counsel for  
13 Appellant, BRIAN O'KEEFE, and does hereby move this Honorable  
14 Court to withdraw as attorney for Appellant.

15 That on or about April 1, 2005, Appellant had a telephone  
16 conversation with James P. Kelly, Esq., associate attorney  
17 affiliated with the law offices of James L. Buchanan II, Esq.,  
18 attorney of record for Appellant, and in that conversation  
19 Appellant and upon a review of the rough draft transcripts, finds  
20 there are no material issues or arguments for appeal.

21 ///

22 ///

23 ///

24 ///

25 ///

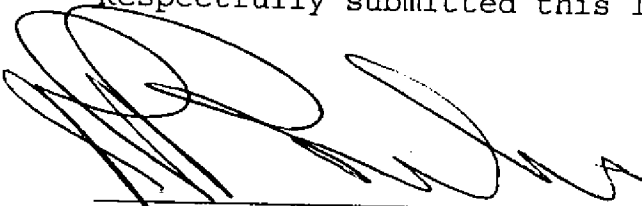
26 ///

27 ///

LIAR, TRIED TO KILL MY APPEAL!

1 Therefore, ~~Attorney James L. Buchanan II~~, prays this  
2 Honorable Court grant this Motion to Withdraw as Appellant  
3 O'Keefe's counsel.

4 Respectfully submitted this 1<sup>st</sup> day of June, 2005.

5   
6  
7

8 JAMES L. BUCHANAN, II, ESQ.  
9 Nevada Bar # 754  
300 South Maryland Parkway  
Las Vegas, Nevada 89101  
(702) 382-9103  
10 Attorney for Appellant BRIAN K. O'KEEFE  
11  
12  
13  
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27  
28

5  
**FILED**

JUL 20 10 57 AM '06

*Shirley B. Langston*  
CLERK

1 BRIAN KERRY O'KEEFE 90244  
2 Petitioner/In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 BRIAN KERRY O'KEEFE . )

9 Petitioner, )

10 -vs.- )

11 THE STATE OF NEVADA, et al. . )

12 Respondent. )

HONORABLE JACKIE GLASS

Case No. C202793

Dept. No. XV

Docket

8/14/03

13  
14 MOTION FOR TRANSCRIPTS AT STATE EXPENSE

15 Date of Hearing: \_\_\_\_\_

16 Time of Hearing: \_\_\_\_\_

17 "ORAL ARGUMENT REQUESTED, Yes \_\_\_ No ☒

18 COMES NOW, Petitioner, BRIAN KERRY O'KEEFE, proceeding  
19 in Proper Person, hereby move this Honorable Court for an Order  
20 for the production of all transcripts, papers, pleadings, and any  
21 other documents in regards to the above-entitled action.

22 This Motion is made and based upon all papers and pleadings  
23 on file with the Clerk of the Court, which are hereby incorporated  
24 by this reference, the Memorandum of Points and Authorities herein,  
25 and attached Affidavit of Petitioner.

26 DATED: this 13<sup>th</sup> day of JULY, 2006

27 Brian Kerry O'Keefe  
28 BRIAN KERRY O'KEEFE 90244  
Petitioner/In Propria Personam

1 - PETROCELLI HEARING

ORIGINAL

24  
RECEIVED

JUL 19 2006

COUNTY CLERK

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Petitioner respectfully requests that this Court Order  
3 the production of all transcripts, papers, pleadings and any other  
4 documents with regard to the above-entitled case. That these  
5 transcribed material(s) and documents are to be furnished to the  
6 Petitioner at state expense, due to his poverty.

7 That only with proper review of those transcribed material(s)  
8 and documents will Petitioner be able to adequately prepare a  
9 post-conviction petition or a direct appeal, that would allege  
10 all issues and grounds for relief that he is seeking. Peterson v.  
11 Warden, 87 Nev. 134, 483 P.2d 204 (1971), holds that:

12 "... does not contemplate that a record will be furnished at  
13 State Expense upon mere unsupported request of a petitioner  
14 who is unable to pay for them. . .so he must satisfy the points,  
15 raise merit and such merit will be supported by the record. . ."

16 Moreover, Petitioner would be prejudiced absent the Court's  
17 Granting of the within Motion. Petitioner would not have a means  
18 necessary to file a proper person petition for writ of habeas  
19 corpus, post-conviction or direct appeal to the Nevada Supreme  
20 Court, that would allow Petitioner to allege all available issues.

21 WHEREFORE, Petitioner, BRIAN KERRY O'KEEFE  
22 prays that this Honorable Court enter an Order directing the  
23 reporter to prepare the foregoing requested transcripts.

24 DATED: this 19<sup>th</sup> day of July, 2006

25 BY: Brian Kerry O'Keefe  
26 BRIAN KERRY O'KEEFE # 90244  
27 Petitioner/in Propria Personam  
28 Post Office Box 650 [HDSF]  
Indian Springs, Nevada 89018

SEE ATTACHED EXHIBIT - A

GUARANTEED PER THE NEVADA CONSTITUTION, ARTICLE 1 § 8.

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA vs O'Keefe, Brian K

CONTINUED FROM PAGE: 013

07/03/06 08:30 AM 00 DEFT'S PRO PER MOTION TO COMPEL/22

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Jennifer Kimmel, Court Clerk  
Sharon Howard, Reporter/RecorderPARTIES: STATE OF NEVADA  
007480 Pate, SusanY  
Y

Court reviewed Deft's Motion and NOTED, Deft's prior counsel, Mr. Kelly has filed an Affidavit of Delivery itemizing specific documents sent to the Deft. COURT ORDERED, Deft's Motion to compel shall be GRANTED in that the Preliminary Hearing Transcript, copy of statement made by Victoria Whitmarsh and medical record(s) shall be copied and sent to Deft. FURTHER ORDERED, matter CONTINUED. Court's Law Clerk is directed to contact Mr. Kelly and advise him that his presence will be required next date.

NDC (COC)

CONTINUED TO: 07/05/06 08:30 AM 01

07/05/06 08:30 AM 01 DEFT'S PRO PER MOTION TO COMPEL/22

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Jennifer Kimmel, Court Clerk  
Sharon Howard, Reporter/RecorderPARTIES: STATE OF NEVADA  
007480 Pate, SusanY  
Y0001 D1 O'Keefe, Brian K  
008140 Kelly, James P.N  
Y

Court directed Mr. Kelly to mail a copy of Deft's Preliminary Hearing Transcript, copy of statement made by Victoria Whitmarsh and medical record(s) to the Deft. and prepare a Certificate of Mailing itemizing the items sent.

NDC

CLERK'S NOTE: A copy of this minute order mailed to Deft. 7/7/06. jk

MR BRIAN KERRY O'KEEFE - # 90244

4541

PO Box 650

INDIAN SPRINGS, NV 89018

# LEGAL MAIL

LEGAL MAIL

538

100-443887-1

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Algeria	2001	0.00
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Algeria	2017	0.00
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Algeria	2100	0.00

SHIRLEY PARAGUIRE, County Clerk  
200 LEWIS AVE.  
PO BOX 551601

LAS VEGAS, NV. 89155-1601

**LAS VEGAS NV 890**

THE  
CITY OF  
NEW YORK  
COUNTY OF  
NEW YORK

Jul 17 06

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MEMORANDUM



HIGH DESERT STATE PRISON  
LAW LIBRARY

JUL 13 2006

RECEIVED

5  
FILED

JUL 24 1 01 PM '06

Shirley S. Ruggins  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

VS.

BRIAN KERRY O'KEEFE,  
Defendant.  
#90244

N.R.S. 34.160 - 34.320

HONORABLE SALLY LEHRER

Case No. C202793

DEPT. No. XV

DOCKET

8/14/06

PROPER - PERSON

PETITION FOR WRIT OF MANDAMUS

Date of Hearing: \_\_\_\_\_

Time of Hearing: \_\_\_\_\_

"ORAL ARGUMENT REQUESTED, YES ☒ NO ☐

25  
COMES NOW, Defendant, BRIAN O'KEEFE, PROCEEDING IN PROPER-  
PERSON, HEREBY MOVES THIS HONORABLE COURT FOR ITS ORDER  
FOR THE PRODUCTION OF ALL DOCUMENTS WHEN PAID FOR AND  
REQUESTED IN THE POSSESSION OF: CLARK COUNTY CLERK'S OFFICE.

THIS PETITION IS MADE AND BASED UPON ALL PAPERS AND PLEADINGS ON  
FILE WITH THE CLERK OF THE COURT WHICH ARE HEREBY INCORPORATED  
BY THIS REFERENCE, THE POINTS AND AUTHORITIES HEREIN, AND ATTACHED  
AFFIDAVIT OF DEFENDANT.

DATED: this 20<sup>th</sup> day of JULY, 2006.

ORIGINAL

BY:

Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE  
Defendant / IN PROPRIA PERSONA

## POINTS AND AUTHORITIES

DEFINITION OF THE WORD "PUBLIC" IS DEFINED AS FOLLOWS:

" of or concerning the public as a whole; not private; open to general observation and knowledge."

THE PUBLIC INFORMATION ACT ENTITLES ALL INTERESTED PARTIES THE LAWFUL RIGHT TO OBTAIN AND PROCURE ANY AND ALL DOCUMENTS FILED WITHIN THE ARCHIVES OF THE CLARK COUNTY CLERK'S OFFICE.

NOW, DEFENDENT CAN PROVE CONTEMPTUOUS ACTS BEING CONDUCTED AMONG AND BY THE CLERK'S OF THE COUNTY CLERK'S OFFICE HEADED BY SHIRLEY PARRAGUIRRE. IN, STATE EX REL. KAUFMAN V. SUTTON, 231 SO.2D 874 (FLA), THE POWER TO MAKE ANY DECISION CONCERNING THE PROPRIETY OF ANY PAPER SUBMITTED, OR THE RIGHT OF A PERSON TO FILE A PAPER OR REQUEST, IS VESTED IN THE PEOPLE AND THE COURT, NOT THE CLERK! THE CLERK DOES NOT HAVE JUDICIAL DISCRETION IN WHO CAN FILE AND REQUEST DOCUMENTS. SEE FISHER V. GLASS, 44 NEV. 235, 192 P. 472

N.R.S. 22.010 AND N.R.S. 199.340 LIST ACTS OR OMISSIONS WHICH CONSTITUTE CONTEMPT. ALL CLERKS FALL UNDER THIS UMBRELLA.

BEING DENIED APPOINTMENT OF COUNSEL, ON MARCH 13, 2006, DEFENDENT IS SIMPLY TRYING TO OBTAIN VARIOUS DOCUMENTS WHICH LAWFULLY IS ALLOWED, ON HIS OWN. DEFENDENT HAS WRITTEN THE SUPREME CLERK OF COURT AND WAS INSTRUCTED TO CONTACT THE CLARK COUNTY CLERK'S OFFICE. (SEE EXHIBIT-A).

THREE TIMES NOW, DEFENDENT HAS WRITTEN THE CLARK COUNTY CLERK'S OFFICE WITH FINALLY

1 BEING RETURNED INMATE CORRESPONDENCE. (SEE EXHIBIT-B)

2 PURE AND SIMPLE AS IT MAY BE, IT PROVES  
3 THE MISCONDUCT. IN "OTHER", IT CLEARLY STATES THAT  
4 THE WRIT OF HABEAS CORPUS HAS NOT BEEN FILED!

5 CONCISELY, MY REPEATED REQUESTS HAVE  
6 BEEN FOR THE NUMBER OF PAGES INVOLVED CONCERNING  
7 THE ACTUAL FILED POST-CONVICTION PETITION FOR WRIT OF  
8 HABEAS CORPUS IN ROSS ERIC BARTON V. STATE OF NEVADA.  
9 (SEE EXHIBIT-C)

10 IF YOU READ IN THE OPINION IT  
11 CLEARLY STATES QUOTE, "BARTON THEN FILED A POST-  
12 CONVICTION PETITION FOR A WRIT OF HABEAS CORPUS,"

13 ONLY SCARED PEOPLE DO STUPID ACTS.

14 DO THEY ACTUALLY EXPECT DEFENDENT TO BELIEVE  
15 IT WAS NOT FILED AND IN THE ARCHIVES. NOTICE, NO  
16 CLERK WOULD INITIAL "OR" SIGN THE LETTER. (SEE EXHIBIT B)

17 SIMPLY, DUMBFOUNDED AGAIN  
18 BY WHAT I TRULY EXPECTED. SIMPLY AMAZING!

## 21 CONCLUSION

22  
23 CANON 1(A); CLEARLY OUTLINES THAT,  
24 "JUDGES SHOULD PARTICIPATE IN ESTABLISHING, MAINTAINING AND  
25 ENFORCING HIGH STANDARDS OF CONDUCT." ADDITIONALLY, COMMENTARY  
26 CANON 1(A) - "JUDGES ARE KNOWN FOR THEIR PROBITY, FAIRNESS,  
27 HONESTY, UPRIGHTNESS, AND SOUNDNESS OF CHARACTER."  
28

DEFENDENTS HUMBLE REQUEST IS SUCH THAT THE  
HONORABLE SALLY LOEHNER ORDER THE CLARK COUNTY  
CLERKS OFFICE TO AID THE DEFENDENT IN HIS FUTURE  
REQUESTS AND FILING OF PETITIONS AND OR MOTIONS.

THIS IS SIMPLY DENYING PETITIONER HIS LEGAL  
RIGHT UNDER "DUE PROCESS" OF THE LAW.

(5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT) HAVING STATED ALL, DEFENDENT  
REQUEST THAT HIS PETITION FOR WRIT OF MANDAMUS WILL  
BE GRANTED AND THAT THE CLARK COUNTY CLERK  
WILL BE ORDER TO MANIFEST THE NUMBER OF PAGES  
OF THE TRULY FILED WRIT OF HABEAS CORPUS SO  
DEFENDENT CAN HAVE FAMILY PAY THE COST OF \$1.00  
PER PAGE AND TO INCLUDE THE COST OF MAILING!

DATED THIS 20<sup>th</sup> day of JULY, 2006.

I, BRIAN KERRY O'KEEFE, do  
solemnly swear, under the penalty of perjury, that  
the above PETITION FOR WRIT OF MANDAMUS is accurate,  
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

WRIT 5 Pages PLUS EXHIBITS A, B, C.  
TOTAL NO. PAGES 8

Respectfully submitted

By 0

Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE - #90244  
Defendant IN PROPRIA PERSONAM

H.D.S.P.

PO BOX 650

INDIAN SPRINGS, NV. 89018

POB SC-4B

**CERTIFICATE OF SERVICE BY MAILING**

I, BRIAN KERRY O'KEEFE, hereby certify, pursuant to NRCP 5(b), that on this 20<sup>th</sup> day of JULY, 2006, I mailed a true and correct copy of the foregoing, "PETITION FOR WRIT OF MANDAMUS" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

SHIRLEY B. PARAGUIRRE, COUNTY CLERK, CLARK  
REGIONAL JUSTICE CENTER  
200 LEWIS AVE.  
PO BOX 551601  
LAS VEGAS, NV. 89155-1601

DAVID ROGERS, DISTRICT ATTORNEY  
REGIONAL JUSTICE CENTER  
200 LEWIS AVE.  
LAS VEGAS, NV 89155

CC:FILE

DATED: this 20<sup>th</sup> day of JULY, 2006.

By: Brian Kerry O'Keefe

Brian Kerry O'Keefe # 90244  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS



SUPREME COURT OF NEVADA  
OFFICE OF THE CLERK  
JANETTE M. BLOOM, CLERK  
201 SOUTH CARSON STREET, SUITE 201  
CARSON CITY, NEVADA 89701-4702

Telephone  
(775) 684-1600

March 14, 2006

Brian K. O'Keefe #1447732  
Clark County Detention Center  
330 S. Casino Dr.  
Las Vegas, NV 89101

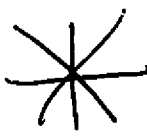
Re: O'Keefe vs. State. Case No. 44644\_\_\_\_\_

Dear Mr. O'Keefe:


This is in reply to your letter dated March 7, 2006, and received in this office on March 10, 2006.

Because of the time and expense involved in locating, retrieving, copying and mailing documents, this court is unable to provide documents at no charge.

The number of pages requested is 12 for the Appellant's Opening Brief in Case No. 13326. The charge for photocopying is a \$1.00 per page. The copy for postage for mailing the document(s) to you is \$0.87, for a total of \$12.87. If you wish to obtain a copy of the document(s), please mail a check or money order made payable to the Clerk of the Supreme Court.

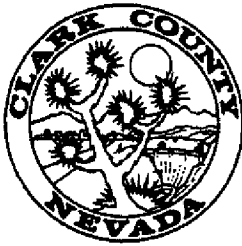
 Please note, that this court does not have a copy of the Petition for Writ of Habeas Corpus filed in Case No. 33143. Please contact the county clerk's office for a copy of this document. Also, enclosed is a copy of the docket sheet you requested in case no. 44644.

Sincerely,

  
Annette Alvarado  
Deputy Clerk

Enclosure

[EXHIBIT - A]



## Office of the County Clerk

*Shirley B. Parraquiere*  
County Clerk  
Commissioner of Civil Marriages

200 Lewis Avenue  
P. O. Box 551601  
Las Vegas NV 89155-1601  
(702) 671-0300  
(702) 382-3611 -- Fax

*Diana Alba*  
*Rita Reid*  
Assistant County Clerks

### INMATE CORRESPONDENCE

Date: JULY 12, 2006

Case No: C202793  
INMATE NAME BRIAN K. O'KEEFE

Your request is being denied -or- the attachment is being returned to you because:

- ☐ A Court order is required to complete the request.
  - ☐ Documents are sealed, required court order to reproduce.
  - ☐ Documents requested are not in court file.
  - ☐ Transcripts have not been filed, require court order.
  - ☐ Copies are \$1.00 per page or by court order.
  - ☒ Consult your law library for this information.
- Other: PETITION FOR WRIT OF HABEAS CORPUS HAS NOT BEEN FILED

Cordially yours,

#

Deputy Clerk of the Court

1 - SEE EXHIBIT - C - PETITION HAS BEEN FILED.

Ex-Officio Clerk of:  
Eighth Judicial District Court • Board of County Commissioners • Board of Equalization  
Clark County Liquor and Gaming Board • Mt. Charleston Fire Protection District  
Clark County Water Reclamation District • Clark County Debt Management Commission

EXHIBIT - B



BARTON v. STATE

Cite as 30 P.3d 1103 (Nev. 2001)

Nev. 1103

Ross Eric BARTON, Appellant,

v.

The STATE of Nevada, Respondent.

No. 33143.

Supreme Court of Nevada.

Sept. 12, 2001.

After direct appeal from conviction of second-degree murder was dismissed, petitioner sought writ of habeas corpus. The Eighth Judicial District Court, Clark County, Lee A. Gates, J., denied petition. Petitioner appealed. The Supreme Court, Shearing, J., held that: (1) petitioner was not entitled to lesser included offense instruction on reckless driving causing death, overruling *Owens v. State*, 100 Nev. 286, 680 P.2d 593, and (2) statute setting forth offense of involuntary manslaughter is not unconstitutionally vague or ambiguous.

Affirmed.

Maupin, C.J., filed dissenting opinion in which Rose, J., concurred.

1. Criminal Law §1134(3)

The question of whether a defendant has received ineffective assistance of counsel in violation of the Sixth Amendment is a mixed question of fact and law that is subject to independent review. U.S.C.A. Const.Amend. 6.

2. Criminal Law §641.13(1)

In order to show the inadequacy of his counsel's representation, defendant must show: (1) that counsel's performance was deficient, and (2) that he was prejudiced by this deficiency. U.S.C.A. Const.Amend. 6.

3. Criminal Law §29(1)

An offense is not a "lesser included offense" unless the elements of the lesser offense are an entirely included subset of the elements of the charged offense; overruling

*Owens v. State*, 100 Nev. 286, 680 P.2d 593, N.R.S. 175.501.

See publication Words and Phrases for other judicial constructions and definitions.

4. Criminal Law §795(2.50)

Murder defendant was not entitled to lesser included offense instruction on reckless driving causing death; charged offense of murder could have been committed without committing reckless driving. N.R.S. 175.501, 200.010, 484.377.

5. Constitutional Law §258(3.1)

Criminal Law §13.1(7)

Statute setting forth offense of involuntary manslaughter is not unconstitutionally vague or ambiguous. N.R.S. 200.070.

Christopher R. Oram, Las Vegas, for Appellant.

Frankie Sue Del Papa, Attorney General, Carson City; Stewart L. Bell, District Attorney, and James Tufeland, Chief Deputy District Attorney, Clark County, for Respondent.

Before the Court En Banc.

OPINION

By the Court, SHEARING, J.

In 1995, Ross Eric Barton was convicted of second-degree murder pursuant to a jury verdict and sentenced to life imprisonment. In 1996, this court dismissed his direct appeal.<sup>1</sup> Barton then filed a post-conviction petition for a writ of habeas corpus alleging: (1) ineffective assistance of trial counsel for failing to request a jury instruction on the lesser charge of reckless driving causing substantial bodily harm; and (2) ineffective assistance of appellate counsel for failing to argue effectively that NRS 200.070, which defines "involuntary manslaughter," upon which the jury was instructed, is unconstitutionally vague and ambiguous. We conclude that under the traditional elements analysis,

1. *Barton v. State*, Docket No. 27076, 112 Nev. 1705, 999 P.2d 365 (Order Dismissing Appeal,

December 20, 1996).

[EXHIBIT - C]

BRIAN KEENE DIKEE - #90244

H.D.S.P.

PO BOX 650

INDIAN SPRINGS, NV. 89018

POD SA - 4B

SEP 27 1983

13

  
CLERK

**OPPS**

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LYNN M. ROBINSON  
Chief Deputy District Attorney  
Nevada Bar #003801  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,  
#1447732

Defendant.

CASE NO: C202793

DEPT NO: XV

STATE'S OPPOSITION TO DEFENDANT'S PRO PER  
MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE AND  
PETITION FOR WRIT OF MANDAMUS

DATE OF HEARING: 08-14-06  
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through LYNN M. ROBINSON, Chief Deputy District Attorney, and hereby submits the State's Opposition to Defendant's Pro Per Motion for Transcripts at State's Expense and Petition for Writ of Mandamus.

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

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 In July of 2004, Brian Kerry O'Keefe ("Defendant") was charged in District Court by  
4 way of Information with the crimes of BATTERY WITH INTENT TO COMMIT A CRIME  
5 (Felony - NRS 200.400); SEXUAL ASSAULT (Felony - NRS 200.364, 200.366);  
6 ATTEMPT SEXUAL ASSAULT (Felony - NRS 193.330, 200.334, 200.366) and  
7 BURGLARY (Felony - NRS 205.060). Defendant was convicted, after a jury trial, of  
8 BATTERY (Misdemeanor); and BURGLARY (Category B Felony), in violation of NRS  
9 200.481 and NRS 205.060.

10 On December 27, 2004, Defendant was sentenced as to BURGLARY (Felony) to a  
11 minimum of twenty-four (24) months and a maximum of one hundred twenty (120) months  
12 in the Nevada Department of Corrections; SUSPENDED; placed on probation for an  
13 indeterminate period not to exceed five (5) years, and as to BATTERY (Misdemeanor) to  
14 credit for time served. He was also required to pay various administrative fees. In addition,  
15 the Court set the conditions of his sentence as follows: 1) No contact with the victim initiated  
16 by the Defendant; 2) Search clause/burglary tools; 3) Complete domestic violence  
17 counseling; 4) Secure and maintain full time employment; 5) Mental Health counseling as  
18 deemed necessary by Parole and Probation; 6) Resolve the warrant from the State of Ohio  
19 within one hundred twenty (120) days; 7) Four (4) hours of community service each week.

20 On February 1, 2005, Defendant filed a timely Notice of Appeal in proper person.  
21 His appeal was dismissed. That month Defendant also filed a Motion to Proceed in Forma  
22 Pauperis and a Request for Rough Draft Transcripts. On February 25, 2005, the Court  
23 granted Defendant's Motion to Proceed Forma Pauperis and ordered that the State shall pay  
24 for the rough draft transcripts he requested. The transcripts were delivered to Defendant in  
25 March of 2005. In December of 2005, and February of 2006, Defendant filed motion to  
26 discharge counsel. The Court granted his motion. In June of 2006, Defendant filed a  
27 Motion to Compel which the Court granted. On July 19, 2006, Defendant filed a Petition for  
28 Writ of Mandamus and on July 20, 2006, he filed a Motion for Transcripts at States Expense.

1 The State's opposition to Defendant's most recent request for transcripts and his writ of  
2 mandamus is as follows.

### 3 **ARGUMENT**

#### 4 **I. The Defendant Is Not Entitled To Transcripts At States Expense.**

5 While an indigent appellant's right to have access to needed transcripts in post-  
6 conviction proceedings was established in Griffin v. Illinois and extended in Smith v.  
7 Bennett, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961) and Douglas v. Green, 363 U.S.  
8 192, 80 S.Ct. 1048, 4 L.Ed.2d 1142 (1960) (docket fees in habeas corpus proceedings), the  
9 State is not required to furnish transcripts at its expense upon the unsupported request of an  
10 indigent petitioner. Peterson v. Warden, 87 Nev. 134, 135-36, 483 P.2d 204, 205 (1971).  
11 *See also* Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U.S. 214,  
12 216, 78 S.Ct. 1061, 1062, 2 L.Ed.2d 1269 (1958) (citing Griffin v. Illinois, 351 U.S. 12, 76  
13 S.Ct. 585, 100 L.Ed. 891 (1956)). In order to receive transcripts at the State's expense, first a  
14 defendant must clearly set forth the grounds upon which his petition is based and, then, show  
15 that the requested review is not frivolous. Id at 136. Specifically, a defendant must  
16 demonstrate the points raised in his motion have merit and that such merit will tend to be  
17 supported by a review of the record. Id.

18 Defendant has “failed to make the necessary threshold showing of need for state-  
19 supplied transcript[s] so as to show further the merit of his appeal.” Id. While he contends  
20 that the requested transcripts are necessary to adequately prepare a post-conviction petition  
21 and that he would be prejudiced absent the court's granting his motion he has not stated with  
22 any particularity how he would be prejudiced if his request were denied. Peterson v.  
23 Warden, 87 Nev. 134, 135-36, 483 P.2d 204, 205 (1971). In his motion, Defendant claims  
24 the transcripts he received of the trial in February of 2005 were not complete. However, the  
25 Affidavit of Delivery provides a detailed list of the transcripts and documents the county  
26 supplied Defendant with on his request, including the Reporter's Transcript of the Trial  
27 10/26/04. Further, in response to Defendant's Motion to Compel, in July of 2006, the Court  
28 ordered copies of the preliminary hearing transcript, a copy of the victim's statement and

1 medical records sent to Defendant. The Court has already complied with Defendant's  
2 request for transcripts and documents on two occasions and has no obligation to do so again  
3 at this juncture. Moreover, none of Defendant's claims relate to any irregularity or mistake  
4 by the trial court on which Defendant plans to seek post conviction relief. He has failed to  
5 allege and demonstrate that any irregularity occurred in his court proceedings to justify the  
6 State providing further records and transcripts at its expense. Mere unsupported requests  
7 such as these will not be honored and Defendant's request for transcripts should be denied.

## 8 **II. The Defendant has not shown a Writ of Mandamus is Warranted.**

9 NRS 34.170 provides that a writ of mandamus "shall be issued in all cases where  
10 there is not a plain, speedy and adequate remedy in the ordinary course of law." Further, the  
11 court in State v. Eighth Judicial District Court, 116 NW 374, 997 P2d 126 (2000) held that  
12 "a writ of mandamus is available to compel the performance of an act which the law requires  
13 as a duty resulting from an office, trust of station, NRS 34.160, or to control an arbitrary or  
14 capricious exercise of discretion." A writ of mandamus is an extraordinary remedy that is  
15 within the discretion of the court to decide whether a petition will be considered.

16 Defendant has failed to show that a writ of mandamus is warranted at this point in his  
17 case. He has other options available to him which are adequate and speedy remedies, such  
18 as requesting his file from his attorney. In fact, pursuant a court hearing on March 13, 2006,  
19 and the Judge's order, Defendant's former attorney, James Buchanan, has sent Defendant a  
20 copy of the entire file from his office.

21 Further, the State does not oppose Defendant requesting again that his former attorney  
22 send him his file. However, the Deputy District Attorneys have no obligation to give him  
23 discovery at this point in the case. NRS 174.235 provides that the prosecuting attorney shall  
24 permit the discovery and inspection of any relevant material. This statute permits the  
25 defendant to inspect and copy or photograph written or recorded statements of the defendant,  
26 witnesses the prosecuting attorney intends to call during the case, results or reports of  
27 physical or mental examinations, and scientific tests or experiments made in connection with  
28 the case, or copies thereof, which are within the possession, custody, or control of the State,

1 upon a showing of materiality to the preparation of the defendant's case. In addition, NRS  
2 34.780(2) states that "after the writ has been granted and a date set for the hearing, a party  
3 may involve any method of discovery available under the Nevada Rules of Civil Procedure  
4 if, and to the extent that, the judge or justice for good cause shown grants leave to do so."  
5 NRS 34.780 also states that the Nevada Rules of Civil Procedure are not inconsistent with  
6 NRS 34.360 to 34.830 and apply to proceedings pursuant petitions for post conviction relief.  
7 However, according to the plain language of NRS 34.780(2), Defendant is not entitled to  
8 discovery because a writ of habeas corpus has not been filed or granted at this point in his  
9 case.

10 Since a writ of mandamus is an extraordinary remedy, the State has not opposed  
11 Defendant's request that his former attorney send him his file, and the Deputy District  
12 Attorneys are under no obligation to give Defendant discovery at this time. Defendant's Writ  
13 of Mandamus should be denied.

#### 14 **CONCLUSION**

15 For the above stated reasons, the State respectfully requests that Defendant's Motion  
16 for Transcripts at States Expense and his Petition for Writ of Mandamus be denied.

17 DATED this 7th day of August, 2006.

18 Respectfully submitted,

19 DAVID ROGER  
20 Clark County District Attorney  
Nevada Bar #002781

21  
22 BY /s/ LYNN M. ROBINSON

23 LYNN M. ROBINSON  
24 Chief Deputy District Attorney  
Nevada Bar #003801

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing, was made this 7th day of  
3 August, 2006, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 BRIAN KERRY O'KEEFE #90244  
5 HIGH DESERT STATE PRISON  
6 P O BOX 650  
7 INDIAN SPRINGS NV 89018

8 /s/ D. ANDERSON

9 Secretary for the District Attorney's Office

10  
11  
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28 BAUMG/da



ORIGINAL

FILED

AUG 17 5 12 PM '06

*Shirley S. Ruggins*  
CLERK

1 **ORDR**

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 SUSAN M. PATE  
6 Deputy District Attorney  
7 Nevada Bar #007480  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BRIAN KERRY O'KEEFE,  
14 #1447732

15 Defendant.

Case No. C202793  
Dept No. XV

ORDER DENYING DEFENDANT'S PRO PER MOTION  
FOR TRANSCRIPTS AT STATE'S EXPENSE AND  
PETITION FOR WRIT OF MANDAMUS

DATE OF HEARING: 8/14/06  
TIME OF HEARING: 8:30 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the  
22 14th day of August, 2006, the Defendant not being present, in Proper Person, the Plaintiff  
23 being represented by DAVID ROGER, District Attorney, through SUSAN M. PATE,  
24 Deputy District Attorney, ~~and the Court having heard the arguments of counsel~~ and good  
25 cause appearing therefor,

26 ///

27 ///

28 RECEIVED

///

AUG 17 2006

COUNTY CLERK

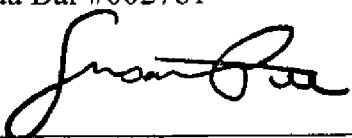
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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Transcripts at  
2 State's Expense and Petition for Writ of Mandamus, shall be, and it is Denied.

3 DATED this 17<sup>th</sup> day of August, 2006.

4  
5   
6 DISTRICT JUDGE RB

7  
8 DAVID ROGER  
9 DISTRICT ATTORNEY  
10 Nevada Bar #002781

11   
12 SUSAN M. PATE  
13 Deputy District Attorney  
14 Nevada Bar #007480  
15  
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28 kb

# EDITH JUDICIAL

FILED

OCT 19 2 44 PM '06

*Shirley S. Rungione*  
CLERK

CASE NO. C202793

DEPT. NO. XV

DOCKET NO. \_\_\_\_\_

DATE OF HEARING. \_\_\_\_\_

TIME OF HEARING. \_\_\_\_\_

MOTION 21 PAGES  
INDEX OF EXHIBITS 28 EXHIBITS

82 TOTAL PAGES  
OF EXHIBITS

MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE

1 BARN K. O'KEEFE - # 90244 DISTRICT COURT  
2 C% TONOPAH CONSERVATION CAMP  
3 PO BOX 8045 CLARK COUNTY, NEVADA  
4 TONOPAH, NEVADA 89049-8045  
5 IN PROPRIA - PERSONAM

6 STATE OF NEVADA,

7 Plaintiff

8 -VS-

9 BRIAN KERRY O'KEEFE

10 #90244 Defendant

11 RULE 7.4D(b)(2)(ii)

12 COMES NOW, APPELLANT, BRIAN KERRY O'KEEFE, IN PROPER-

13 PERSON WHO SUBMITS THE ATTACHED POINTS AND AUTHORITIES IN  
14 THIS MOTION FOR A NEW TRIAL.

15 THIS MOTION IS MADE AND BASED UPON ALL THE PAPERS  
16 AND PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES  
17 IN SUPPORT HEREOF, AND ORAL ARGUMENT AT THE TIME OF HEARING  
18 DEEMED NECESSARY BY THIS HONORABLE COURT.

19 THIS MOTION IS TIMELY SUBMITTED, UNDER THE PROVISIONS  
20 OF NRS 176.515 BY AN INDIGENT PRISONER UNDER THE EXPRESS DICTATES  
21 OF HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) AS TO "LIBERAL"  
22 READING OF PRO'S SUBMISSIONS.

23 DATED THIS 18<sup>th</sup> DAY OF OCTOBER 2006.

24 ALL INTERESTED PARTIES  
25 PLEASE TAKE NOTICE

26 ORIGINAL COPY

27 *Brian K. O'Keefe*  
28 RESPECTFULLY SUBMITTED,

29 Brian K. O'Keefe  
30 BRIAN KERRY O'KEEFE  
#90244 / 1447732

## STATEMENT OF THE CASE

ELECTRONICALLY FILED ON 07/06/2004, DEFENDANT WAS CHARGED BY WAY OF INFORMATION WITH BATTERY WITH THE INTENT TO COMMIT SEXUAL ASSAULT, THREE COUNTS OF SEXUAL ASSAULT, ATTEMPT SEXUAL ASSAULT AND BURGLARY. ON JULY 19, 2004 THE STATE FILED A NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF A MISDEMEANOR DOMESTIC VIOLENCE CONVICTION. DEFENDANT'S PUBLIC DEFENDER FILED OPPOSITION ON AUGUST 31, 2004, AND A PETROCELLI HEARING WAS HELD ON OCTOBER 8, 2004. THE DISTRICT COURT RULED UNDER JUDGE GLASS, DEPT. V, THAT IT WILL ALLOW THE ONE MISDEMEANOR CONVICTION FROM 2/12/04. (ON) 10/22/04, INSTANT CASE IS PUT INTO OVERFLOW AND ASSIGNED TO DEPARTMENT XV FOR TRIAL COMMENCING 10/25/04. DEFENDANT WAS CONVICTED OF A REDUCED COUNT OF SIMPLE MISDEMEANOR BATTERY ON COUNT I, AND COUNT VI BURGLARY, FELONY. JUDGMENT OF CONVICTION WAS ENTERED ON JANUARY 3, 2005.

AFTER THE JURY'S GUILTY VERDICT, BUT BEFORE FORMAL SENTENCING, DEFENDANT FILED A PROPER-PERSON APPEAL ON 12/03/04. SUPREME COURT FILED A JANUARY 7, 2005 ORDER DISMISSING O'KEEFE'S APPEAL AS PREMATURE. DEFENDANT THEN FILED A TIMELY PROPER-PERSON NOTICE OF APPEAL ON FEBRUARY 1, 2005. ON JUNE 6, 2005 TRIAL COUNSEL FILED A FAST TRACK STATEMENT WITH THE NEVADA SUPREME COURT FILING A COURT ORDER TO STRIKE THE F.T.S. BECAUSE OF DEFICIENCIES. TRIAL COUNSEL THEN FILED SECOND F.T.S. WITH SINGLE ARGUMENT VICARIOUSLY EFFECTING DEFENDANTS DIRECT APPEAL CONSEQUENTING WITH AN ORDER OF AFFIRMANCE FILED JANUARY 23, 2006. DEFENDANT THEN MAILED MOTION FOR REHEARING EN BANC ONLY BEING STAMPED BY THE NEVADA SUPREME COURT AS RECEIVED AND RETURNED<sup>2</sup>. NOW, COMES THIS MOTION FOR NEW TRIAL.

2 - STAMPED RECEIVED 2/13/06

(2)

## ARGUMENT

IN THE INSTANT

CASE, DEFENDANT'S MOTION TO PROCEED IN FORMA PAUPERIS /16 WAS GRANTED 02/23/2005, SUBSEQUENTLY BEING CHARGED BY THE STATE WITH A NEW CHARGE "AFTER" THE INSTANT CASE RESULTED FINALLY WITH DEFENDANT REQUESTING TO REPRESENT HIMSELF WITH THE COURT REQUIRING FIRST THAT THE COURT CONDUCT FERRETTA CANVASS AND FOUND THE DEFENDANT SATISFIED THE REQUIREMENTS ON 11/29/05 IN DEPARTMENT 2, UNDER JUDGE VEGA. WHAT HOLDS TRUE IN ONE DEPARTMENT SURELY WILL SUFFICE IN THE NEXT.

IN ORDER TO ESTABLISH A CLAIM FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, THE DEFENDANT MUST SHOW THAT THE 1) EVIDENCE IS NEWLY DISCOVERED, 2) IT MUST BE MATERIAL TO THE DEFENSE, 3) SUCH THAT EVEN WITH THE EXERCISE OF REASONABLE DILIGENCE IT COULD NOT HAVE BEEN DISCOVERED AND PRODUCED FOR TRIAL, 4) IT MUST NOT BE CUMULATIVE, 5) IT MUST INDICATE THAT A DIFFERENT RESULT IS PROBABLE UPON RETRIAL, 6) IT MUST NOT ONLY BE AN ATTEMPT TO CONTRADICT AND IMPEACH OR DISCREDIT A FORMER WITNESS UNLESS THE WITNESS IS SO IMPORTANT THAT A DIFFERENT RESULT WOULD BE REASONABLY PROBABLE, AND 7) IT MUST BE THE BEST EVIDENCE THE CASE ADMITS.

MY ATTEMPT TO GET THE COURT'S ATTENTION IS FIRST TO REMIND THE COURT AN OPINION THAT DEFENDANT READ IN PEOPLE V. PERRY (MICH. 1999)! I BEG THE COURT'S INDULGENCE FOR NOT HAVING THE CITE BUT MAINLY CONCERNED WITH DISSENT I READ; "THE FUNDAMENTAL PURPOSE OF A CRIMINAL TRIAL IS THE DISCOVERY OF THE TRUTH."

TO MANY TIMES, IN CRIMINAL TRIALS, THE STATE MANIPULATES AND DISTORTS THE TRUTH IN AID AND TO ONLY BENEFIT THEIR OWN CASE. FORGET ABOUT THE TRUTH. THEY MUST PROSECUTE.

(3)

PEOPLE V. PERRY 59 1- CITE LOCATED; 460 MICHES, 594 N.W. 2d 471 (1999)  
BRICKLEY B, DISSENTING

1 IN PEOPLE V. DE OLIVEIRA, 636 N.Y.S. 2d 441, 223 A.D. 2d 766 (3 Dept. 1996)  
2 RESULTS OF THE DNA TESTING WOULD NOT HAVE ANY EFFECT ON HIS  
3 CONVICTION FOR THERE WAS NO CRITICAL TESTIMONY THAT COULD BE  
4 SERIOUSLY IMPEACHED BY TEST RESULTS.

5 HOWEVER, AFTER RECEIVING  
6 SEVERALS LETTERS AGAIN FROM THE SO-CALLED VICTIM, SHE  
7 CLEARLY IS IN DENIAL OF THE RESULTS FOR THE TRUE ANALYSIS  
8 OF THE DNA WAS NEVER ADMITTED IN TRIAL. THESE LETTERS  
9 WERE WRITTEN AFTER THE TRIAL TO THE DEFENDANT.

10 IN A LETTER DATED MAY 30, 2005  
11 VICTORIA WHITMARSH WRITES; "I CAN'T BELIEVE THAT UP TO THIS  
12 DAY YOU ARE STILL CONVINCED THAT I DID YOU WRONG AND  
13 SHACKED UP WITH ANOTHER MAN. [ALSO] I HAVE AND HAD  
14 BEEN SO SINCERE TO YOU FROM THE VERY BEGINNING AND YOU  
15 TOTALLY BRAINWASHED YOURSELF THAT I COMMITTED INFIDELITY.  
16 BOY YOUR GOOD! MAYBE IT'S THE OTHERWAY AROUND. YOU PROBABLY  
17 COMMITTED INFIDELITY & BY CONVINCING YOURSELF & ACCUSING OF  
18 SUCH WILL MAKE YOU FEEL JUSTIFIED W/IN YOURSELF.. TO HELL WITH  
19 YOUR DNA EVIDENCE. THE STATEMENT IS SO VAGUE - IT'S  
20 HARD TO DECIPHER WHAT IT MEANS." (SEE EXHIBIT-1; 378 LETTER)

21 IN A LETTER DATED JANUARY 26, 2005  
22 SHE WRITES; "THERE IS NOT MUCH I CAN DO IF YOU ARE  
23 PRETTY MUCH CONVINCED OF YOURSELF & BELIEVING THAT PIECE OF  
24 DNA PAPER. HOW DO I KNOW THAT CAN BE A PLOY FROM YOUR  
25 LAWYER OR DA'S OFFICE FOR YOUR DEFENSE. (SEE EXHIBIT-2)

26 AFTER DEFENDANT READ THESE LETTERS HE HAD  
27 THE D.N.A. REPORT LOOKED AT. (SEE EXHIBIT-3)

28 IT WAS DISCLOSED THAT VICTORIA  
HAD BEEN MORE THAN PROMISCUOUS. HER STORY WAS A COVER UP.  
NOW, FOCUSING ON HER  
VOLUNTARY STATEMENT, (SEE EXHIBIT-4 & 5), HER HONESTY

1 STARTS TO BE MORE THAN JEOPARDIZED. SHE FURTHER DAMAGES  
2 THE STATE'S CASE FROM READING THE PRELIMINARY HEARING  
3 TRANSCRIPT WHICH WAS HELD JULY 1, 2004. (SEE EXHIBIT-6)

4 NOW CONSIDER, WE HAVE AT THE TIME OF THE  
5 ARREST, A PROVEN, MORE THAN DRUNK, AND COMPOUNDED  
6 BY THE FACT SHE IS UNDER THE INFLUENCE OF AN  
7 ILLEGAL DRUG, COCAINE, MAKING STATEMENTS THAT THE  
8 DEFENDANT CLAIMS "HER" TO BE PROMISCUOUS, THEN RAPED HER.

9 AT THAT TIME, THE  
10 DETECTIVE TAKING HER STATEMENT AT THE S.A.N.E.  
11 ROOM HAD "NO IDEA" SHE WAS DRUNK AND UNDER THE  
12 INFLUENCE OF COCAINE AND HAD BEEN PROMISCUOUS AND  
13 ENTERTAINMENT FOR "OTHER" MEN.

14 THEY HAD TO BELIEVE  
15 HER STATEMENT BUT WHEN THE RESULTS CAME BACK  
16 THE STATE WAS IN GREAT TROUBLE WITH THEIR  
17 STAR WITNESS. [DNA RESULTS WERE NOT OBTAINED YET]  
18 (RESULTS TOOK 2 MONTHS)

19 NOT ONLY DID SHE LIE  
20 TO THE DETECTIVE, SHE LIED TO THE SAME NURSE AND  
21 STATED SHE NEVER DID DRUGS AND ONLY DRANK SOME  
22 BEERS AFTER THE EVENT HAPPENED. [SEE EXHIBIT-7] COMPARE TO EXHIBIT 4

23 - - CONVENIENTLY,  
24 SHE HAD COMPLETELY NOT REMEMBERED THAT UPON  
25 THE DEFENDANT RETURNING HOME HE BROUGHT A  
26 BOTTLE OF WHISKEY AND IT WAS DRANK IN  
27 ITS ENTIRETY BY HER AND DEFENDANT AND SMOKED COCAINE.

28 NOW, LOOKING AT A PAGE FROM THE  
TRIAL, VICTORIA AGAIN STATES HER INNOCENCE. (SEE EXHIBIT-8)

SHE POINT BLANK SAYS, "SHE HAS NO IDEA WHAT  
DEFENDANT WAS TALKING ABOUT." THE INNOCENT LITTLE ANGEL.  
FOR ALL TO COMPLETELY DENY  
THE TRUE ANALYSIS OF THE D.N.A. IS PURELY MORE

1 THAN PROSECUTORIAL MISCONDUCT.

2 IN BRADY V. MARYLAND, 373 U.S. 83,  
3 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) AND See UNITED STATES V. AGURS,  
4 427 U.S. 97, 110, 96 S.Ct. 2392, 2401, 49 L.Ed.2d 342-353, 354, (1976)

5 "[T]here ARE SITUATIONS IN WHICH EVIDENCE IS OBVIOUSLY OF SUCH  
6 SUBSTANTIAL VALUE TO THE DEFENSE THAT ELEMENTARY FAIRNESS REQUIRES  
7 IT TO BE DISCLOSED EVEN WITHOUT A SPECIFIC REQUEST."

8  
9 THERE IS, AND WITH NO POSSIBLE REBUTTAL  
10 WHATSOEVER BY THE STATE, A PROVEN MISTAKE AND IDENTITY  
11 PROBLEM INVOLVED WITH THE INDIVIDUALS' SEMEN AT HAND.

12 DEFENDANT DISCOVERED THIS STATEMENT IN THE NEVADA  
13 STATE CRIMINAL COURT MINUTES AFTER MONTHS OF INVESTIGATION.

14 THEY HAVE THE MISCONDUCT AND AUDACITY TO  
15 STATE DEFENDANT STIPULATED TO THE DNA RESULTS BEING HIS. LIARS!

16 (SEE EXHIBIT-9) ← "THE JURY" NOR "MYSELF" KNEW THIS FOR

17 THE SEVERE LIABILITIES THIS WOULD PLACE UPON THE SO-  
18 CALLED VICTIM'S TESTIMONY, NEED NOT BE EXPLAINED!!!

19  
20 THE COMPLETE STORY LINE AND  
21 DOCTRINE OF THE ENTIRE CASE NOW BECAME OR WAS TAINTED O

22 AT TRIAL, THE "JURY" WAS LED WITH THE MISTAKEN  
23 IMPRESSION THAT DNA WAS SIMPLY TAKEN AS PROOF TO THE  
24 FACT THAT DEFENDANT DID PARTAKE IN SEXUAL ACTS WITH  
25 THE SO-CALLED VICTIM FOR THE SOLE PURPOSE OF ANY POSSIBLE  
26 DENIAL BY THE DEFENDANT. THE "JURY" WAS NEVER PRESENTED  
27 WITH THE MOST DAMAGING, IMPEACHMENT EVIDENCE MADE BY VICTORIA.



1 THIS EVIDENCE BY ANY MEANS IS IN NO WAY, CUMULATIVE!

2 THE JURY HAD BEEN PURPOSELY LED ASTRAY.

3 IN, HENNIE V. NEV., 114 NEV. 1285, 968 P.2d 761, DEFENDANT WAS  
4 CONVICTED BY KEY WITNESS TESTIMONY.

5 HOWEVER, THE JURY WAS NEVER  
6 PRESENTED WITH CRUCIAL IMPEACHMENT TESTIMONY THAT ULTIMATELY  
7 WOULD MORE THAN INCREASE THE PROBABILITY OF A DIFFERENT  
8 RESULT ON RETRIAL. (REVERSED AND REMANDED FOR A NEW  
9 TRIAL.)

10  
11 FURTHER, NEWLY DISCOVERED IMPEACHMENT EVIDENCE  
12 MAY BE SUFFICIENT TO JUSTIFY GRANTING A NEW TRIAL IF THE  
13 WITNESS IMPEACHED IS SO IMPORTANT THAT IMPEACHMENT WOULD  
14 NECESSITATE A DIFFERENT VERDICT. KING V. STATE, 93 NEV. 497,  
15 500, 596 P.2d 501, 503 (1979)

16  
17 THE IRONIC THING IS SUCH. NOT ONLY  
18 DID THE SO CALLED VICTIM LIE, THE PROSECUTION AND RETAINED  
19 DEFENSE ATTORNEY ONLY INGRATIATED EACH OTHER BY  
20 ALLOWING SUCH "PERJURY". (THEY HAD THE D.N.A. RESULTS.)

21 NOW, ADDING INSULT TO INJURY, THE NEXT ACT THE  
22 STATE COMMITTED WAS MORE THAN PROSECUTORIAL MISCONDUCT  
23 AND AN ACT OF COMPLETE DESPERATION FOR THE STATE'S CASE  
24 WAS SHOT AND THE DEFENDANT COULD AND WOULD NOT TAKE  
25 A DECK OR BE "INTIMIDATED" BY ALL.

26  
27 CLEARLY IN, ROEVER V. STATE, 114 NEV. 867, 963 P.2d 503,  
28 (NEV. 1998) CONCLUSION THAT PRIOR BAD ACT EVIDENCE WAS

1 IMPROPERLY ADMITTED AND SERVED ONLY TO VIOLATE ROEVER'S  
2 FUNDAMENTAL RIGHT TO A FAIR TRIAL. HERE, DURING THE STATE'S  
3 CASE-IN-CHIEF, THE STATE CALLED A SERIES OF CHARACTER  
4 WITNESSES WHO TESTIFIED TO NUMEROUS BAD ACTS MADE  
5 BY ROEVER. ROEVER CONTENDED THAT BEFORE EVIDENCE  
6 OR AN ISSUE CAN BE SAID TO BE RAISED, IT MUST FIRST  
7 HAVE BEEN "RAISED BY THE DEFENSE". "APPROPRIATELY,"  
8 THE JUDGE'S RULED THAT THE DISTRICT COURT ERRED BY  
9 ALLOWING THE STATE TO REBUT CHARACTER EVIDENCE THAT HAD  
10 NOT YET BEEN PRESENTED BY THE ACCUSED.  
11 REVERSED AND REMANDED FOR A NEW TRIAL.

12  
13 IN THE INSTANT CASE, A PETROCELLI HEARING WAS CONDUCTED  
14 ON 10/08/04. <sup>First</sup> THEY FALSELY JUSTIFIED THE HOLDING OF THE  
15 HEARING BY STATING, "BURGLARY ADMISSABLE UNDER THE BAD  
16 ACTS AND SET THIS MATTER FOR A PETROCELLI-HEARING." (EXHIBIT-10)

17  
18 DEFENDANT PREVIOUSLY HAD NEVER BEEN CONVICTED  
19 OF ANY FELONY IN HIS ENTIRE LIFE! (SEE EXHIBIT-12, P. 68 LINE 18-19)

20  
21 SECONDLY, THE STATE AGREED TO ONE  
22 BATTERY BUT DID NOT ASK FOR THE OTHER BECAUSE THE CASE  
23 WAS DISMISSED. FINALLY, THE COURT RULED THAT IT WILL  
24 ALLOW THE "ONE MISDEMEANOR CONVICTION". (SEE EXHIBIT-10)

25  
26 NOW AFTER DEFENDANT MADE CLAIMS OF FOUL PLAY  
27 THE INSTANT CASE HAS NOW BEEN REASSIGNED FROM D.C. #V  
28 TO D.C. # XV. TRIAL NOW BEGINS AND JUDGE  
LUEHRER PUTS ON RECORD, COURT "ORDERS" THE DOMESTIC

1 VIOLENCE IS A MISDEMEANOR AND WILL NOT BE ALLOWED  
2 PER THE "LAW". (SEE EXHIBIT-11) FEDERAL RULE 609(2)(1)  
3 AND NRS 50.095(1) SUPPORT IT.

4 THE COURT THEN ASKED THE DEFENSE  
5 IF THEY INTENDED TO USE IT BUT MAINLY THAT UNLESS WE  
6 BROUGHT IT UP THAT IT COULD NOT EVEN BE MENTIONED.

7  
8 NOW, SUPPORTING MORE THE FACT THAT MISDEMEANOR  
9 CONVICTIONS CANNOT BE UTILIZED IS DISSENTED IN;

10 (1988) SHERIFF, WASHOE COUNTY V. HAWKINS, 104 NEV. 70, 752 P.2d 769

11 MEAR ARRESTS AND CONVICTIONS FOR MISDEMEANORS MAY NOT  
12 BE ADMITTED EVEN FOR THE LIMITED PURPOSE OF ATTACKING A WITNESS'S  
13 CREDIBILITY (NRS 50.095(5))

14 NOW, JUST AS IN ROEYER V. STATE (SUPRA),  
15 THE STATE OPENS UP IN THEIR CASE-IN-CHIEF, WITH A SERIES OF  
16 WITNESSES DESTROYING THE DEFENDANTS CHARACTER BY EXAGGERATED  
17 EVENTS OF A MISDEMEANOR BATTERY DOMESTIC VIOLENCE EVENT  
18 STEMMING FROM AN NOV. 14, 2003 INCIDENT.

19  
20 WITNESSES, VICTORIA WHITMARS-1,  
21 MICHELLE MOTT AND EVEN THE ARRESTING OFFICER, TED WON G TESTIFIED  
22 TO INCREDIBLE EVENTS THAT MADE DEFENDANTS FUNDAMENTAL RIGHT TO  
23 A FAIR TRIAL FLY OUT OF THE COURTROOM. DEFENDANT HAD NOT  
24 TESTIFIED YET. (SEE EXHIBIT-13) THE DISTRICT COURT ERRED  
25 BY ALLOWING CHARACTER EVIDENCE THAT HAD NOT YET BEEN PRESENTED  
26 BY THE ACCUSED. BETTER STILL, THE JUDGE JUST RULED  
27 THAT THE DOMESTIC VIOLENCE WAS A MISDEMEANOR AND CANNOT  
28

1 BE ALLOWED BY THE LAW. COUNSEL WAS ORDERED  
2 NOT TO MENTION IT UNLESS THE DEFENSE OPENED THE DOOR.

3 ADDING AGAIN MAJOR INSULT TO INJURY,

4 THE STATE HAD THEIR STAR WITNESS GO INTO GREAT  
5 LENGTH INTO DETAILS OF ANOTHER INCIDENT THAT HAD BEEN  
6 DISMISSED BY THE STATE. THIS CASE HAD SUCH DAMAGING  
7 PHOTOS OF THE WITNESS THAT ANYONE SANE COULD NOT  
8 SAY THE PREJUDICE OF THE PHOTOS CLEARLY OUTWEIGHED  
9 THE PROBATIVE VALUE. (SEE EXHIBIT-14, FAMOUS EXHIBIT #AA)

10 (SEE VICTORIA'S TESTIMONY TRANSCRIPT  
11 EXHIBIT-15 PG 26-50) DEFENDANTS TRIAL NOW TRULY/  
12 BECAME THE ISSUE OF A DISMISSED CASE AND NOT ABOUT  
13 THE INSTANT CASE AT HAND.

14 REGARDLESS, CLEARLY WITHOUT  
15 A DOUBT, THE STATE, DEFENSE ATTORNEY, AND DEFENDANT  
16 CLAIMS, EVEN THE JUDGE WAS AWARE THAT THEIR ACTIONS  
17 WERE IMPROPER AND UNFAIRLY PREJUDICED THE DEFENDANT  
18 TO A FAIR TRIAL ACCORDING TO OUR CONSTITUTION.

19 THEY WERE VERY WELL  
20 INFORMED THAT THEIR STAR WITNESS WAS UNTRUTHFUL.

21 NOT ONLY ABOUT ALCOHOL & DRUGS BUT UNTRUTHFULNESS  
22 ABOUT HER PROMISCUITY. NOT ONLY WAS THE DEFENDANT  
23 NOT INFORMED BUT THE "JURY" HAD NO IDEA ABOUT  
24 THE TRUE STORY AND DOCTRINE OF THE CASE.

25 THE STATE HAD NO PROBLEMING CHARGING,  
26 BY WAY OF INFORMATION, THE DEFENDANT WITH  
27

CHARGES THAT WOULD PUT HIM AWAY FOR LIFE BUT IN DEFENSE  
ONE IS PERMITTED A TRIAL BY JURY. A TRIAL WHICH  
SHOULD HAVE HEARD AN "OVERWHELMING MOTIVE" FOR  
THEIR STAR WITNESS TO LIE.

THAT IN FACT DEALS  
WITH THE DNA. COVER-UP AND THE FACT SHE SIMPLY  
WAS MORE THAN PROMISCUOUS.

WHAT DEFENDANT HAS MORE  
THAN A MAJOR PROBLEM WITH IS HE ULTIMATELY WOULD BE  
THE ONE TAKING THE CHANCE AND I WANTED THAT  
CHANCE BY A JURY TRIAL TO HEAR THE TRUTH.

HOWEVER, THEY CONFIRMED THE EVIDENCE  
TO FIT THEIR CASE. STATEMENTS MADE AND D.N.A.

IN ADDITION, THE STATE WILL ANSWER  
THAT THEY DID NOTHING WRONG. (BLAH, BLAH, BLAH, ETC., ETC., ETC.)

WELL, LET'S LOOK AT A  
FEW MORE SIMPLE MISTAKES TO BETTER VALIDATE MY  
MOTION AND SUPPORT IT THEREOF.

IN TRYING TO SCARE DEFENDANT INTO  
TAKING A DEAL THEY HOLD A PETROCELLI-HEARING  
ON A DOMESTIC VIOLENCE CASE THAT WAS A MISDEMEANOR  
CONVICTION. JUDGE GLASS RULES THEY WILL ALLOW THE  
SINGLE MISDEMEANOR CONVICTION. SCREAMING FOUL, BY  
DEFENDANT, SHE PASSES THE CASE. JUDGE LOEHNER  
RULES PROPERLY THAT THE MISDEMEANOR CONVICTION

CANNOT BE ALLOWED. PROSECUTION FOR THE STATE, ROSS MILLER, IGNORES THE "RULING" AND OPENS UP THE STATE'S CASE-IN-CHIEF WITH THE MISDEMEANOR CONVICTION AND INTO THE DISMISSED CASE.

THEN ON APPEAL, THE STATE AND MY ONCE RETAINED ATTORNEY, WHO SUBSTITUTED IN ON DIRECT APPEAL, BOTH WRONGFULLY FILE THE FAST TRACK STATEMENT AND RESPONSE FALLING BACK ON JUDGE GLASS'S RULING. BOTH PARTIES FAILED TO MENTION THE SUBSEQUENT RULING.

SEVERAL PROBLEMS, EASILY RECOGNIZABLE, FALL WITH THIS.

FIRST, JUDGE GLASS RULED ONE BAD ACT WOULD BE ALLOWED WHICH WAS THE MISDEMEANOR CONVICTION DOMESTIC VIOLENCE. SHE DID NOT RULE THAT (2) TWO BAD ACTS WOULD BE ALLOWED.

SECONDLY, JUDGE LOEHNER RULED THE ONE BAD ACT COULD NOT BE ALLOWED BY LAW.

THEN, THAT MEANS "NO" BAD ACTS. HOWEVER, THE SUPREME COURT OF NEVADA, GOING ON ONLY WHAT IS PRESENTED, DISSENTS;

ON APPEAL, WE WILL GIVE GREAT "DEFERENCE" TO THE TRIAL COURT'S DECISION TO ADMIT OR EXCLUDE EVIDENCE AND WILL NOT REVERSE THE TRIAL COURT ABSENT MANIFEST ERROR. (SEE EXHIBIT-16, 17, 18)

(F.T.S., F.T.R., & AFFIRMANCE ORDER) THE NEVADA SUPREME COURT WAS LIED TO. THAT'S OKAY I GUESS, RIGHT?

1 SPEAKING OF LIES, DEFENDANT WANTS TO CLEARLY POINT OUT  
2 THAT AFTER SUCCESSFULLY FILING HIS NOTICE OF APPEAL, WHEN  
3 IT CAME TIME TO BE APPOINTED AN ATTORNEY YOURS  
4 TRULY, JAMES L. BUCHANAN, SUBSTITUTED IN ON APPEAL.

5 ONCE RECOGNIZING THAT A FAST TRACK  
6 WOULD BE FILED THEY TOOK THE EXTREME PLEASURE  
7 OF FILING AND SWEARING THAT AFTER SPEAKING WITH  
8 APPELLATE THERE ARE NO ISSUES AND DEFENDANT  
9 DOESN'T WANT TO APPEAL. "LIARS" (SEE EXHIBIT-19)

11 NEVADA SUPREME COURT STRIKES ATTORNEYS' F.T.S.  
12 AGAIN AFTER DEFENDANT SCREAMING FOUL. (SEE EXHIBIT-20)

13 DEFENDANT FEELS ADAMANTLY  
14 THIS WAS NOTHING BUT AN UNSUCCESSFUL ATTEMPT IN  
15 COVERING UP THE PROCEEDINGS OF THE TRIAL.

16 ALSO, IF YOU'LL NOTICE IN  
17 THE FAST TRACK RESPONSE THE STATE SWEARS I  
18 WAS CONVICTED OF A FELONY ON COUNT 1 BEING  
19 BATTERY WITH INTENT TO COMMIT A CRIME.

21 MORESO, DEFENDANT  
22 FILED ON HIS OWN, ANOTHER MOTION FOR REHEARING EN BANC  
23 WHICH WAS KILLED. STAMPED ONLY RECEIVED & RETURNED (EXH. 21)

24 MORE DAMAGING EVENTS ONLY DISCOVERED  
25 BY DILIGENT RESEARCH BY DEFENDANT FOLLOW.

26 REQUESTING MY POLICE  
27 CRIMINAL SCORE THEY HAVE NOW WRONGFULLY ADVERTISED  
28

1 TO THE WORLD THAT DEFENDANT WAS DEMANDED BACK INTO  
2 CUSTODY FOR BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT.  
3 (SEE EXHIBIT-22) FURTHERMORE, BLACKSTONE, WHO REPORTS  
4 CRIMINAL/CIVIL COURT MINUTES, IS ADVERTISING I PLED  
5 GUILTY TO COUNT 1 AND COUNT 6. THIS IS ONLY ALSO  
6 PUT ON THE INTERNET TO THE WORLD. (SEE-EXHIBIT-23)

8 FINALLY, THE NEVADA DEPARTMENT  
9 OF PAROLE AND PROBATION IS FALSELY UNDER THE IMPRESSION  
10 THAT DEFENDANT PLED GUILTY TO THE BURGLARY. (EXHIBIT-24)

11 P.E.P. WAS ACTUALLY GOING TO VIOLATE ME  
12 BECAUSE I WOULDN'T AGREE TO SIGN AND STIPULATE TO  
13 TWO BURGLARIES. THIS IS HOW DEFENDANT DISCOVERED  
14 P.E.P. SAID I SIGNED A GUILTY PLEA TO BURGLARY.  
15 (EXHIBIT-25)  
16 BEFORE DEFENDANT MOVES TO ANOTHER FACT OF

17 PROVEN MISCONDUCT THIS PARTICULAR ACT JUST VALIDATES  
18 PURE EVILNESS THAT DEFENDANT SWEARS VENGEANCE  
19 ACCORDINGLY, BY THE LAW!

20 LOOKING AT THE PHOTOGRAPH, (EXHIBIT-14),  
21 YOU'LL CLEARLY SEE AT THE BOTTOM DEFENDANT'S NAME AND  
22 (2) CASE NUMBERS. AT THE PETROCELLI HEARING, UNDER JUDGE  
23 GLASS, INITIALLY, THE PHOTOGRAPH HAD ONLY THE FIRST CASE  
24 NUMBER WITHOUT THE LAST FIVE DIGITS CROSSED OUT. THE PHOTO  
25 SIMPLY HAD DEFENDANT'S NAME AND THEN THE CASE NUMBER  
26 WHICH WOULD HAVE READ AT THAT TIME, 03M25901X, NOW FALSELY  
27 REFLECTING THAT WOULD HAVE BEEN DEFENDANT'S MISD. CONVICTION. (SEE EXH. 26)



1 ASSISTANT DISTRICT ATTORNEY SUSAN KRISKO SWEARS UNDER OATH  
2 THAT THE PHOTOGRAPH DERIVED FROM THAT CASE, AND JUDGE  
3 GLASS ASKED HER IF DEFENDANT PLED GUILTY AND OF  
4 COURSE SHE SAID "YES".

5 NOW, YOU HAVE VALIDATED PROOF  
6 THAT OUR HONEST A.D.A.'S WILL TAMPER EVIDENCE AND  
7 PERJURE THEMSELVES ON RECORD. (LIE TO THE JUDGE, JUST  
8 DON'T GET CAUGHT!)

9 AFTER THE JUDGE RULED  
10 AND BEFORE DEFENDANT REQUESTED A DISCOVERY SHE CONVENIENTLY  
11 MARKS OUT THE LAST (6) DIGITS AND ANNOTATES THE  
12 CORRECT CORRESPONDING DIGITS ON THE PHOTOGRAPH. (6791X)

13 SO, NOW THE PHOTO REFLECTS THE CORRECT  
14 JUSTICE COURT NUMBER. HOWEVER, THE PETRUCELLI HEARING IS  
15 OVER AND THE JUDGE HAS BEEN INFORMED THE PHOTOGRAPH  
16 BELONGS TO THE MISDEMEANOR CASE NOT THE DISMISSED CASE.

17 WELL, DEFENDANT REALIZES TWO THINGS  
18 HERE. FIRST DISMISSED CASES CANNOT BE UTILIZED. EITHER  
19 CAN MISDEMEANOR CONVICTIONS. IT WAS A PLOY TO  
20 SCARE DEFENDANT. SO IN FACT, THEY VIOLATED  
21 MY RIGHTS BY DELAYING MY TRIAL TO HOLD A PETRUCELLI  
22 HEARING ON ACTS THAT DO NOT JUSTIFY OR NECESSITATE  
23 THE HOLDING OF A PETRUCELLI HEARING. (WHAT BURGLARY  
24 JUSTIFIES THE PETRUCELLI HEARING? DEF. HAD NONE) WHEN DEFENDANT  
25 BROUGHT THIS FACT OF TAMPERING THE PHOTO'S OUT TO MY RETAINED  
26 ATTORNEY HIS COMMENT WAS, "SO, LOOK WHERE YOU'RE AT!"

1 NOW AGAIN DEFENDANT CAN NOT EXPLAIN ENOUGH ABOUT ALL  
2 THE LITTLE PLOYS OF INJUSTICE BUT I'M ADAMANT  
3 ABOUT LETTING SPECIFIC UNJUST, UNFAIR, PURE WRONGFUL  
4 ACTS THAT SHOULD BE KNOWN, BE KNOWN!

5 WITH EVERY THING ELSE  
6 YOU JUSTIFY AND EXPLAIN THIS. AS LONG AS ALL  
7 THIS HAS HAPPENED TO DEFENDANT, AND NOT ANYONE ELSE,  
8 READING THIS MOTION THE GENERAL CONSENSUS IS  
9 SO WHAT! HE'S JUST MAD BECAUSE HE GOT CONVICTED.

10  
11 WELL, YOU TELL ME HOW A PUBLIC DEFENDER  
12 CAN SIMPLY LOSE A LETTER, "PERSONAL", THAT WAS WRITTEN  
13 TO THE DEFENDANT BY THE ACCUSER DURING THE PROCEEDINGS  
14 OF THE TRIAL. IN FACT, SHE HAD WRITTEN (3) AND  
15 WHEN I TURNED THEM OVER TO HER ON A VISIT AT  
16 JAIL SHE PROMISED SHE WOULD COPY THEM AND BRING  
17 THEM BACK THE NEXT DAY.

18  
19 WELL SHE WAS FIRED, AND  
20 WHEN SHE TURNED OVER MY FILE TO MY RETAINED ATTORNEY,  
21 IT WAS LOST. WHY?

22 BECAUSE THE SO-CALLED VICTIM  
23 HAD SIGNED THE LETTER TO THE DEFENDANT BY STATING  
24 "GOOD LUCK" AT THE END. AS GOD IS MY WITNESS  
25 THIS IS TRUE. MR. BUCHANAN STATED THEY COULDN'T  
26 LOCATE IT. NOW, WHAT TRUE RAPE VICTIM WOULD  
27 WRITE SUCH A LETTER. A POLYGRAPH WILL PROVE, EASILY.  
28

1 DEFENDANT'S LAST ISSUE, TO SUPPORT MY MOTION, IS OF SUCH  
2 IMPORTANCE THAT TO "MAKE MANIFEST", WILL IN ITSELF GIVE  
3 GREAT SIGNIFICANT MEANING TO MY PURPOSE.

4 BY NO MEANS  
5 IS DEFENDANT STATING IT WAS INTENTIONALLY COMMITTED.

6 HOWEVER, THE FULL BLOW AND RESULTING IMPLICATIONS CAN  
7 NEVER BE MEASURED. THE EFFECT IT HAD ON THE "JURY" WILL  
8 ALWAYS REMAIN SUSPECT!

9  
10 THE STATE'S CASE WAS WEAK.

11 WHAT VERDICT THAT DID RETURN REFLECTS THAT. IMAGINE IF  
12 THE JURY WOULD NOT HAVE HEARD THIS CRITICAL STATEMENT  
13 AT THE MOST CRUCIAL TIME OF THE TRIAL. (???)

14 REALIZING ALSO THAT THE JURY  
15 CONSISTS OF AVERAGE LAW ABIDING CITIZENS IN FACT WITH NO  
16 JURISPRUDENCE WHATSOEVER.

17  
18 DEFENDANT SUBMITS THAT AT THE  
19 MOST CRUCIAL TIME, BEING CLOSING ARGUMENT, THE STATE  
20 IS STATING DEFENDANT IS BASICALLY GUILTY AND MUST PROVE  
21 MYSELF INNOCENT. DEFENDANT'S ATTORNEY OBJECTS POINTING  
22 OUT THAT THE DEFENDANT IS INNOCENT UNTIL FOUND "GUILTY"  
23 BY THE JURY. "THE JUDGE" STATES QUOTE:

24 "WELL, YOUR OBJECTION IS NOTED. HOWEVER, THIS IS CLOSING ARGUMENT,  
25 AND THE STATE IS ALLOWED TO DISCUSS HOW THE EVIDENCE HAS  
26 STRIPPED HIM OF THAT CLOAK OF INNOCENCE, SO OBJECTION IS  
27 NOTED BUT OVERRULED." DEFENDANT STATES THAT WAS FOR  
28

1 THE "JURY" TO DECIDE.

2 THIS WAS WRONG, WRONG, WRONG !!!  
000

3 CANON AND COMMENTARY 3B(4) FORBIDS THIS.

4 5) A JUDGE SHALL PERFORM JUDICIAL DUTIES WITHOUT  
5 BIAS OR PREJUDICE. A JUDGE SHALL NOT, IN THE PERFORMANCE  
6 OF JUDICIAL DUTIES, "BY WORDS" OR CONDUCT MANIFEST BIAS  
7 OR PREJUDICE.

8  
9 OF COURSE, WITH A SMILE, THE PROSECUTOR'S  
10 REPLY WAS, THANK YOU YOUR HONOR!

11 NOW COMMON SENSE TELLS US THIS.

12 IF, OR MORE LIKELY, THE JURY IS NOW TOLD THE  
13 DEFENDANT IS GUILTY AND IF YOU DON'T UNDERSTAND  
14 THE LAW WELL, YOU JUST GOT THE JUDGE'S  
15 OPINION. THERE OPINION WOULD BE, WELL

16 SHE'S BEEN DOING THIS A LONG TIME AND WELL!  
17  
18 (SEE EXHIBIT - 28) HE MUST BE GUILTY, THE JUDGE JUST,  
19 SAID SO.

20 CONCLUSION

21  
22 WITHOUT A DOUBT, DEFENDANT CAN NEVER BE  
23 TOLD OTHERWISE THAT THERE ARE MORE THAN VALID  
24 JUST ARGUMENTS. YOUR HONOR, I WAS LOOKING AT  
25 LIFE. ALL I WANTED WAS A FAIR TRIAL PROVIDED  
26 TO ALL BY THE U.S. CONSTITUTION. HOW WOULD YOU  
27 FEEL IF THIS WAS YOU?  
28

1 REMEMBER,  
2 "THE TWO FOLD AIM OF WHICH IS THAT GUILT  
3 SHOULD NOT ESCAPE OR INNOCENCE SUFFER,"

4  
5 "THUS, " IT IS AS MUCH  
6 [A PROSECUTOR'S] DUTY TO REFRAIN FROM IMPROPER METHODS  
7 CALCULATED TO PRODUCE A WRONGFUL CONVICTION AS IT  
8 IS TO USE EVERY LEGITIMATE MEANS TO BRING ABOUT  
9 A JUST ONE". BERGER V. UNITED STATES 295 U.S. 78, 88 (1935)  
10 THAT IN, PEOPLE V. SMITH, 665 N.Y.S. 2d 648, 245 A.D. 2d 79 (1st Dep. 1997)  
11 IN PROSECUTION FOR FIRST DEGREE RAPE, 1) FACT THAT DEFENDANT WAS  
12 NOT SOURCE OF SEMEN WAS CONSISTENT WITH VICTIM'S TESTIMONY.

13  
14 IN DEFENDANT'S CASE, THE SEMEN  
15 WAS NOT CONSISTENT WITH VICTIM'S TESTIMONY. " " "  
16 HOWEVER, THE "JURY" NEVER  
17 GOT TO HEAR THIS. I KNOW WHY!

18  
19 NOW IT MAKES PERFECT SENSE WHY YOU SAID  
20 TO ME THAT, "MR. O'KEEFE, IF YOU KNEW WHAT  
21 I KNEW, IF THIS WOMAN EVER CONTACTED YOU, YOU  
22 WOULD TURN AROUND AND RUN AS FAST AS HUMANLY  
23 POSSIBLE IN THE OTHER DIRECTION!" THANKS!

24  
25 FROM THE BEGINNING I REAFFIRM THIS;

26 PEOPLE V. PERRY, (SUPRA)

27 THE FUNDAMENTAL PURPOSE OF A CRIMINAL TRIAL IS THE DISCOVERY  
28 OF THE TRUTH.

(19)

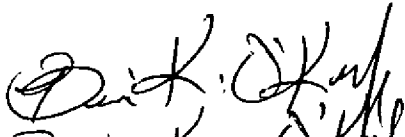
DATED: OCT 18, 2006

575

# 1447732

1 WHEREFORE, BRIAN KERRY O'KEEFE, PRAYS THAT THE COURT GRANT  
2 MOTION FOR A NEW TRIAL RELIEF TO WHICH HE MAY BE ENTITLED  
3 BASED ON NEW EVIDENCE  
4 IN THIS PROCEEDING.

5 EXECUTED AT TONOPAH CONSERVATION CAMP  
6 ON THE 18<sup>th</sup> DAY OF OCTOBER 2006.

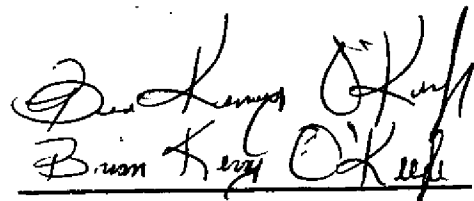
7   
8 BY: Brian Kerry O'Keefe  
9 BRIAN KERRY O'KEEFE

10 # 90244

11 VERIFICATION

12  
13  
14 UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 et seq.,  
15 AND THE LAWS OF THE UNITED STATES OF AMERICA, 28 U.S.C. § 1746 AND  
16 18 U.S.C. § 1621, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER  
17 NAMED IN THE FOREGOING PETITION AND KNOWS THE CONTENTS THEREOF,  
18 THAT THE PLEADING IS TRUE AND CORRECT OF HIS OWN PERSONAL  
19 KNOWLEDGE, EXCEPT AS TO THOSE MATTERS BASED ON INFORMATION  
20 AND BELIEF, AND TO THOSE MATTERS, HE BELIEVES THEM TO BE  
21 TRUE.  
22

23  
24  
25  
26 BRIAN KERRY O'KEEFE  
27 TONOPAH CONSERVATION CAMP  
28 PO Box 8045  
TONOPAH, NEVADA 89049-8045  
# 90244

  
Brian Kerry O'Keefe

SIGNATURE OF PETITIONER

IN PROPRIA PERSONA

CERTIFICATE OF MAILING

I, BRIAN KERRY O'KEEFE, HEREBY CERTIFY, PURSUANT TO  
NRCP 5(b), THAT ON THIS 18<sup>TH</sup> DAY OF OCTOBER, 2006, I MAILED  
A TRUE AND CORRECT COPY OF THE FOREGOING, "MOTION  
FOR A NEW TRIAL BASED ON NEW EVIDENCE" BY DEPOSITING IT  
IN THE TONOPAH CONSERVATION CAMP MAILBOX, FIRST-CLASS  
POSTAGE, FULLY PREPAID, ADDRESSED AS FOLLOWS:

SHIRLEY PARRAGUIRRE, COUNTY CLERK  
200 LEWIS AVE.  
PO BOX 551601  
LAS VEGAS, NV. 89155-1601

DAVID ROGER, DISTRICT ATTORNEY  
200 LEWIS AVE.  
PO BOX 552212  
LAS VEGAS, NV. 89155-2212

DATED: THIS 18<sup>TH</sup> DAY OF OCTOBER 2006.



BRIAN KERRY O'KEEFE #9024A  
Brian Kerry O'Keefe  
TONOPAH CONSERVATION CAMP  
PO BOX 8045  
TONOPAH, NEVADA 89049-8045  
IN PROPRIA PERSONAM

  
CLERK

**OPPS**

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SUSAN R. KRISKO  
Deputy District Attorney  
Nevada Bar #006024  
200 South Third Street  
Las Vegas, Nevada 89155-2211  
(702) 455-4711  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO: C202793
	)	
-vs-	)	DEPT NO: XV
	)	
BRIAN KERRY O'KEEFE,	)	
#90244	)	
	)	
Defendant.	)	

OPPOSITION TO DEFENANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: December 4, 2006  
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through SUSAN R. KRISKO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for New Trial.

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

POINTS AND AUTHORITIES

Defendant now moves this court for a new trial based upon new evidence. The pro per ramblings go on for pages and include a myriad of issues having absolutely nothing to do with supposed new evidence but the Claim of "new evidence" seems to boil down to DNA evidence. It is important to note that the DNA evidence was in reference to the sexual



1 assault charges, charges that the defendant was acquitted of at his jury trial. A copy of the  
2 DNA report is attached as State's Exhibit #1. It should that the semen found was the  
3 defendant's semen and due to the defendant's lack of knowledge on the subject, when a  
4 "mixture" is mentioned, that was the mixture of the defendant's DNA and the victim's DNA;  
5 not another man's semen.

#### 6 NEW EVIDENCE

7 **N.R.S. 176.515** states: 1. The court may grant a new trial to a defendant if required as  
8 a matter of law or on the ground of newly discovered evidence.

9 However, that is not the end of the analysis. First, the standard "calls for an exercise  
10 of discretion by the trial court and, on review, the inquiry is whether an abuse of discretion  
11 has occurred." Pacheco v. State, 81 Nev. 639, 641, 408 P.2d 715, 716 (1965). Next, the  
12 movant must show "that the evidence is newly discovered, material to his defense, and could  
13 not with reasonable diligence have been discovered and procured for the trial." *Id.* at 640,  
14 408 P.2d 715.

15 The defendant does not provide *any* new evidence. The DNA results were submitted  
16 to the jury and the DNA shows the defendant's semen was located. All of the defendant's  
17 other rambling are not "new evidence" just a review of all the injustices he has convinced  
18 himself occurred due to his inability to take responsibility for his own actions.

19 As such, based on the above arguments, the defendant's request for a new trial must  
20 be denied.

21 DATED this 14th day of November, 2006.

22 Respectfully submitted,

23 DAVID ROGER  
24 Clark County District Attorney  
25 Nevada Bar #002781

26 BY /s/SUSAN R. KRISKO  
27 SUSAN R. KRISKO  
28 Deputy District Attorney  
Nevada Bar #006024

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 14th day of November, 2006, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BRIAN KERRY O'KEEFE, #902404  
TONOPAH CONSERVATION CAMP  
P.O. BOX 8045  
TONOPAH, NV 89049-8045

BY Aileen Collins  
Secretary for the District Attorney's Office

/ajc

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FQ NSIC LABORATORY REPORT OF EXAMINATIONNAME: O'KEEFE, Brian (suspect)  
WHITMARSH, Victoria (victim)CASE: 04 0529-2232  
AGENCY: LVMPD  
DATE: August 23, 2004

INCIDENT: SEXUAL ASSAULT

BOOKED BY: Ebbert  
REQUESTED BY: SA / Moniot

SEP 9 2004

I, DAVID P. WELCH, do hereby declare:

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on November 23, 1977, I first qualified in the Eighth Judicial District Court of Clark County, Nevada, as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

DW 1 - Sealed sexual assault evidence kit containing the following from Victoria Whitmarsh:

- Item A - consent form
- Item B - assault information
- Item C - anatomical drawings
- Item D - blood samples
- Item E - buccal swab standards
- Item F - vaginal swabs
- Item G - rectal swabs
- Item H - oral swabs
- Item J - debris/bitemarks/secretions

DW 2 - One sealed buccal swab kit taken from Brian O'Keefe

DW 3 - One sealed bag booked by Horn (1928-3) containing:  
Item 3 - one (1) black and white dress with fecal stainsDW 4 - One sealed bag booked by Horn (1928-6) containing:  
Item 5 - white toilet paper with fecal stainsDW 5 - One sealed bag booked by Horn (1928-4) containing:  
Item 4 - black shorts with fecal stains  
opened but not examinedCONCLUSION:

Semen was detected on a black and white dress and on some toilet paper. Brian O'Keefe cannot be excluded as a source of the semen. The estimate of this DNA profile in the population is rarer than 1 in 600 billion (identity assumed). See DNA Summary Chart.

Semen was detected on the vaginal swabs of the victim, Victoria Whitmarsh. A DNA mixture was indicated, however, Brian O'Keefe cannot be excluded as the minor source of the DNA.

Semen was not detected on the oral or rectal swabs of the victim.

04 0529-2232

By: DW/pg 1 of 4

The above items were subjected to PCR amplification at the following STR genetic loci: D3S1358, vWA, FGA, D6S1179, D21S11, D18S51, D5S818, D13S317, D7S820, D16S539, TH01, TPOX, and CSF1PO. The sex determining amelogenin locus was also examined.

I returned the evidence to the vault.

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

Executed on:

8/23/04

David P. Welch, #1418

DAVID P. WELCH, #1418  
Criminalist II

Brent Henry, #6161

Reviewer

04 0529-2232

By: DW pg 2 of 4

**Denotes Lesser peak height relative to other peaks; NR - No Typing Results Obtained; n/a - Inconclusive**

11. 3. 11



ORIGINAL

FILED

Nov 17 1 50 PM '06

*Shirley B. Rungius*  
CLERK

OPI  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SUSAN R. KRISKO  
Chief Deputy District Attorney  
Nevada Bar #006024  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,  
#1447732

Defendant.

Case No. C202793

Dept No. XV

ORDER FOR PRODUCTION OF INMATE  
BRIAN KERRY O'KEEFE, BAC # 90244

DATE OF HEARING: 12/4/06  
TIME OF HEARING: 8:30 A.M.

TO: Warden, Tonopah Conservation Camp;

TO: Bill Young, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID ROGER, District Attorney, through SUSAN R. KRISKO, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that , Warden of Northern Nevada Correctional Center shall be, and is, hereby directed to produce BRIAN KERRY O'KEEFE, Defendant in Case No.C202793, on a charge of Battery (M) and Burglary (F) wherein THE STATE OF

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NOV 17 2006

CLERK OF DISTRICT COURT  
CLARK COUNTY, NEVADA

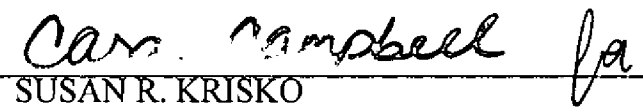
1 NEVADA is the Plaintiff, inasmuch as the said Defendant is currently incarcerated in the  
2 Tonopah Conservation Camp located in Tonopah, Nevada and his presence will be required  
3 in Las Vegas, Nevada commencing on December 4, 2006, at the hour of 8:30 o'clock A.M.  
4 and continuing until completion of the prosecution's case against the said Defendant.

5 IT IS FURTHER ORDERED that Bill Young, Sheriff of Clark County, Nevada, shall  
6 accept and retain custody of the said Defendant in the Clark County Detention Center, Las  
7 Vegas, Nevada, pending completion of said matter in Clark County, or until the further  
8 Order of this Court; or in the alternative shall make all arrangements for the transportation of  
9 the said Defendant to and from the Nevada State Prison facility which are necessary to  
10 insure the Defendant's appearance in Clark County pending completion of said matter, or  
11 until further Order of this Court.

12 DATED this 15<sup>th</sup> day of November, 2006.

13   
14 DISTRICT COURT JUDGE 15

16 DAVID ROGER  
17 Clark County District Attorney  
18 Nevada Bar #002781

19  
20 BY   
21 SUSAN R. KRISKO  
22 Chief Deputy District Attorney  
23 Nevada Bar #006024  
24  
25  
26  
27  
28



NOTC

BRIAN KERRY O'KEEFE - #90244

H.D.S.P.

PO BOX 650

INDIAN SPRINGS, NV. 89018

POD SB-27

IN FORMA PAUPERIS / 16

IN PROPRIA PERSONAM

FILED

NOV 25 4 27 PM '06 CASES C202793 C207835

Shirley D. Thompson DC II & DC XV  
CLERK

BRIAN KERRY O'KEEFE

PETITIONER,

V.

STATE OF NEVADA,

RESPONDENT.

EIGHTH JUDICIAL COURT  
CLARK COUNTY  
LAS VEGAS, NV

NOTICE OF CHANGE OF ADDRESS

THIS IS TO NOTIFY THE OFFICIAL  
RECORDER THAT INMATE HAS BEEN OFFICIALLY  
MOVED FROM T.C.C. TO HIGH DESERT  
STATE PRISON ON NOVEMBER 16, 2006.

INMATE IS REQUESTING  
THE FOLLOWING MOVED TO BE RECORDED FOR  
RECORD. (FOR BOTH CASES STATED ABOVE)

IN ADDITION, INMATE REQUESTS

THE FOLLOWING

A) STATE OF NEVADA  
CRIMINAL COURT MINUTES, CASE C202793

B) RECEIPT OF WRIT OF HABEAS  
CORPUS POST CONVICTION, CASE, C207835

UNDER PENALTY OF PERJURY PER

N.R.S. 208.165

DATED: NOV. 20, 2006

RESPECTFULLY SUBMITTED,

By 587 Deanna O'Keefe - #90244  
BRIAN KERRY O'KEEFE

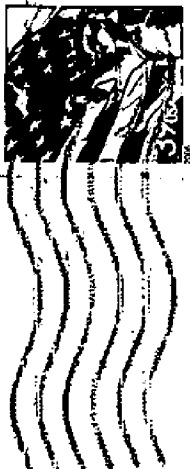
COUNTY CLERK

RECEIVED

MR. BRIAN KERRY O'KEEFE - #90244  
H.G.H. DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018

LAS VEGAS NV 890

21 NOV 2006 PM 5 T



CHARLEY PARAGUERRA, County Clerk  
200 LEWIS AVE.  
PO BOX 551601  
LAS VEGAS, NV. 89155 -1601

89155+1601



HIDSP  
NOV 21 2006  
UNITS 413

9

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*Shirley D. Longenecker*  
CLERK

OPI  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SUSAN R. KRISKO  
Chief Deputy District Attorney  
Nevada Bar #006024  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

BRIAN KERRY O'KEEFE,  
#1447732

Defendant.

Case No. C202793

Dept No. XV

ORDER FOR PRODUCTION OF INMATE  
BRIAN KERRY O'KEEFE, BAC # 90244

DATE OF HEARING: 12/18/06  
TIME OF HEARING: 8:30 A.M.

TO: Warden, Tonopah Conservation Camp;  
TO: Bill Young, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID ROGER, District Attorney, through SUSAN R. KRISKO, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that , Warden of Northern Nevada Correctional Center shall be, and is, hereby directed to produce BRIAN KERRY O'KEEFE, Defendant in Case No.C202793, on a charge of Battery (M) and Burglary (F) wherein THE STATE OF

COUNTY CLERK  
REC - 6 2006

RECEIVED

1 NEVADA is the Plaintiff, inasmuch as the said Defendant is currently incarcerated in the  
2 Tonopah Conservation Camp located in Tonopah, Nevada and his presence will be required  
3 in Las Vegas, Nevada commencing on December 18, 2006, at the hour of 8:30 o'clock A.M.  
4 and continuing until completion of the prosecution's case against the said Defendant.

5 IT IS FURTHER ORDERED that Bill Young, Sheriff of Clark County, Nevada, shall  
6 accept and retain custody of the said Defendant in the Clark County Detention Center, Las  
7 Vegas, Nevada, pending completion of said matter in Clark County, or until the further  
8 Order of this Court; or in the alternative shall make all arrangements for the transportation of  
9 the said Defendant to and from the Nevada State Prison facility which are necessary to  
10 insure the Defendant's appearance in Clark County pending completion of said matter, or  
11 until further Order of this Court.

12 DATED this 6<sup>th</sup> day of December, 2006.

13 *Barry Cook*  
14 DISTRICT COURT JUDGE *ps*

15  
16 DAVID ROGER  
17 Clark County District Attorney  
18 Nevada Bar #002781

19  
20 BY

*Cara Campbell*  
21 SUSAN R. KRISKO  
22 Chief Deputy District Attorney  
23 Nevada Bar #006024  
24  
25  
26  
27  
28

COA

BRIAN KERRY O'KEEFE - #90244 DISTRICT COURT  
HIGH DESERT STATE PRISON CLARK COUNTY, NEVADA  
PO BOX 650  
INDIAN SPRINGS, NV. 89018  
IN PROPRIA PERSONAM  
STATE OF NEVADA,

Plaintiff

-vs-

~~BRIAN KERRY O'KEEFE~~

#90244 Defendant

RULE 7.40 (b)(2)(ii)

MOTION TO NOTIFY CHANGE OF ADDRESS

COMES NOW, BRIAN KERRY O'KEEFE, IN PROPRIA PERSON, TO NOTIFY THE COUNTY RECORDER FOR CLARK COUNTY, UNDER SHIRLEY PARAGURRO, OF DEFENDANT'S TRANSFER FROM T.C.C. TO HIGH DESERT STATE PRISON, DURING COMMENCEMENT OF HIS COURT PROCEEDINGS.

PLEASE ACKNOWLEDGE THIS ADDRESS CHANGE AND MAKE NOTE FOR MAILING PURPOSES. CASE C202793 PENDING, D.C. XV AND CASE C207835 PENDING D.C. II UNDER THE PENALTY OF PERJURY ACCORDING TO NRS. 208.165.

DATED THIS 9<sup>th</sup> DAY OF DECEMBER, 2006.

ALL PARTIES INTERESTED:  
PLEASE TAKE NOTICE:

FILED

DEC 12 11 08 AM '06

C202793

C202793

CLERK CASE NO. C207835

DEPT. NO. II / 2

XV / 15

DOCKET NO.

JUDGE V. YEGA

JUDGE S. LOEHRER

RECEIVED

DEC 11 2006

COUNTY CLERK

RESPECTFULLY SUBMITTED,  
Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE

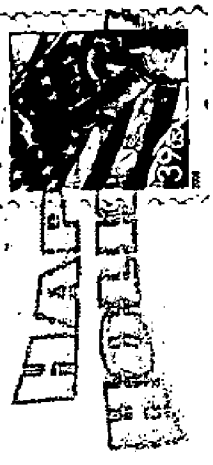
DERMAN KERRY O'KEEFE - #90244  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV. 89018

"REGAL MAIL"

SHIRLEY PARROTT, County Clerk  
200 LEWIS AVE.  
PO BOX 551601  
LAS VEGAS, NV. 89155-1601

LAS VEGAS NV 890

11 DEC 2005 PM 11



8915531601

EIGHTH JUDICIAL

DISTRICT COURT

FILED

DEC 13 2 35 PM '06

SUPP

BRIAN KERRY O'KEEFE - #90244

HIGH DESERT STATE PRISON

CLARK COUNTY, NEVADA

PO BOX 650

INDIAN SPRINGS, NV. 89018

IN PROPRIA-PERSONAM

STATE OF NEVADA,

Plaintiff

-VS-

BRIAN KERRY O'KEEFE-----

#90244

Defendant

*Shirley E. Rungtina*

CLERK  
CASE NO. C202793

DEPT. NO. XV

DOCKET NO. \_\_\_\_\_

SUPPLEMENT 8 PAGES

EXHIBITS 5 PAGES

TOTAL PAGES 13

RULE 7.40(b)(2)(ii)

SUPPLEMENT

TO MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE

COMES NOW, DEFENDANT, BRIAN KERRY O'KEEFE, IN PROPER-PERSON,  
WHO SUBMITS THIS SUPPLEMENT WITH THE ATTACHED PRINTS AND  
AUTHORITIES.

THIS SUPPLEMENT IS MADE AND BASED UPON ALL THE  
PAPERS AND PLEADINGS ON FILE HEREIN, AND WITH THE ADDITIONAL  
ARGUMENTS AND EXHIBITS ATTACHED HERETO.

DEFENDANT HOPES AND REQUESTS  
THE HONORABLE SALLY LOEHRER VIEW THIS SUPPLEMENT TO BETTER  
AID HER DECISION IN DEFENDANT'S REQUEST FOR A NEW TRIAL,  
IN ABSENTEEISM OF THE DEFENDANT.

AGAIN, THIS SUPPLEMENT IS TIMELY  
SUBMITTED, BY AN INDIGENT PRISONER UNDER THE EXPRESS DICTATES  
OF HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) AS TO THE "LIBERAL"  
READING OF PRO-SE SUBMISSIONS.

DATED THIS 7<sup>TH</sup> DAY OF DECEMBER, 2006.

RESPECTFULLY SUBMITTED,  
*Brian Kerry O'Keefe*  
BRIAN KERRY O'KEEFE #90244



## STATEMENT & ARGUMENT

CONCERNING DEFENDANT'S MOTION FOR A NEW TRIAL WITH "OVER-  
WHELMING IMPEACHMENT EVIDENCE" BY THE SO-CALLED VICTIM,  
VICTORIA WHITMARSH, STATE'S PROSECUTION TEAM, ROSS MILLER  
AND SUSAN KRISKO AND EVEN ATTORNEY'S FOR THE DEFENSE,  
PUBLIC DEFENDER, BITA KHAMSI AND RETAINED ATTORNEY  
JAMES L. BUCHANAN, HAVE ALL SURREPTITIOUSLY AND  
MALICIOUSLY WITHHELD THE TRUE ANALYSIS OF THE D.N.A.  
RESULTS.

THE ANSWER TO WHY THEY COMMITTED THIS  
ACT IS SIMPLE. THE JURY WOULD HAVE RETURNED A SWIFT AND  
COMPLETE DEFEAT! NOW, ON DECEMBER 6<sup>th</sup>, 2006, APPROXIMATELY  
8:00PM, DEFENDANT FINALLY RECEIVES HIS STATE OF NEVADA  
CRIMINAL COURT MINUTES. SEE EXHIBIT-1 (LEGAL MAIL RECEIVED)

AGAIN, AFTER THE  
FACT, IT REFLECTS THAT THE STATE WAS GRANTED A  
RESPONSE TO DEFENDANT'S MOTION FOR A NEW TRIAL  
AND IF NOTIFIED DEFENDANT COULD HAVE REPLIED.

HOWEVER, DEFENDANT WAS NOTIFIED (2)  
DAYS AFTER HIS ARGUMENT HELD. DEC. 4, 2006.

WHERE IS DEFENDANT'S COPY  
OF THE STATE'S RESPONSE? AGAIN, I WILL STATE  
THIS IS JUSTICE BEYOND BEING PUTRESCENT!

DEFENDANT'S THEORY IS THE STATE DOESN'T  
WANT TO CREATE ANYMORE LIES WHICH WILL BE CONSTRUED  
AS INTRINSIC EVIDENCE, AGAINST THEM.

BRAVO, MR. KRISKO!  
HATS OFF TO YOU! (2)

1 HOWEVER, DEFENDANT'S TRUE CONCERN IS WHY THE JUDGE  
2 IS HAVING SUCH A PROBLEM WITH COMING TO THE ONLY  
3 CONCLUSION POSSIBLE.

4 A NEW TRIAL!

5 SO MANY  
6 WILES AND LIES AND IMPROPER ACTIONS HAVE TAKEN  
7 PLACE IN THE INSTANT CASE THAT DEFENDANT  
8 CAN ONLY PRAY THAT JUSTICE WILL FINALLY PREVAIL.

9 AGAIN YOUR HONOR, IF THE  
10 JURY OR MYSELF WOULD HAVE KNOWN THE OVER-  
11 WHELMING REASON THAT VICTORIA WOULD HAVE LIED  
12 I WOULDN'T BE WAITING THIS SUPPLEMENT.

13 THE DETECTIVES TAKING HER STATE-  
14 MENT AT THE TIME OF THE INITIAL ARREST ASKED  
15 HER PLAIN AND CLEAR IF SHE HAD BEEN  
16 PERMISCUOUS. SHE LIED TO THE POLICE, SHE  
17 LIED TO THE PROSECUTORS, THE PROSECUTORS LIED  
18 TO THE COURT AND IT'S IN THE RECORDS.

19 IT CANNOT BE CHANGED.

20 THEN THEY, STATE AND DEFENSE, STIPULATE AT  
21 TRIAL THAT THE D.N.A. IS DEFENDANT'S.

22 HOLD ON YOUR HONOR, WE BOTH WERE  
23 AT THAT TRIAL. LINDA EBBERT, SAME NURSE,  
24 COULD NOT GIVE ANALYSIS AND THE STATE DID  
25 NOT CALL THEIR D.N.A. EXPERT THEY HAD  
26 SCHEDULED. WE KNOW WHY. YOU WERE THERE.

27 THE JURY DID HEAR THAT, ALSO.

28 ONLY THAT!

1 MS. KRISO AGAIN JEOPARDIZES HERSELF BY  
2 STATING I BETTER LEARN HOW TO READ THE  
3 RESULTS. SHE'S INSANE. I CHALLENGE "ALL"  
4 TO THE RESULTS! I DID NOT

5 EJACULATE MY SEMEN INSIDE HER VAGINA. WE DID  
6 NOT EVEN HAVE VAGINAL SEX!!!

7 SOMEBODY ELSE DID, HOWEVER.

8 THE VICTIM AS YOU CALL HER IS NOT  
9 AND WAS NOT A VICTIM. I AM.

10 SHE, VICTORIA, WAS NEVER CONFRONTED  
11 ABOUT THIS D.N.A.. WHY, THE STATE WAS  
12 SO VICARIOUSLY EFFECTED THEY DID NOT KNOW  
13 WHAT TO DO. SHE HAD MADE SUCH DAMAGING  
14 STATEMENTS IN HER VOLUNTARY STATEMENT, PG 28, 29,  
15 AND AT THE PRELIMINARY HEARING WITH THE  
16 D.N.A. RESULTS COMING BACK (2) MONTHS AFTER.

17 SEE EXHIBIT 3 IN MOTION FOR NEW TRIAL. (FILED OCT, 19, 2006)

18 HOW CAN THE LETTERS WRITTEN  
19 SUBSEQUENT THE TRIAL NOT BE CONSIDERED OVER-  
20 WHELMING EVIDENCE? SHE GOT AWAY WITH HER  
21 LIES IN COURT AND NOW SHE'S TRYING TO  
22 WOO ME AND GET ME TO BELIEVE HER.

23 SHE HAD NO IDEA I COULD  
24 MOTION FOR A NEW TRIAL BASED ON NEW  
25 EVIDENCE. STUPID WOMAN. STUPID, STUPID, STUPID.

26 NOW EVERYONE WANTS  
27 TO TRY AND IGNORE THE TRUTH!  
28 WHAT IS WRONG WITH YOU PEOPLE?

MUST DEFENDANT REMIND AGAIN WITH PEOPLE V. PERRY?<sup>①</sup>

" THE FUNDAMENTAL PURPOSE OF A  
CRIMINAL TRIAL IS THE DISCOVERY OF THE TRUTH!  
BRADY V MARYLAND.<sup>②</sup>

RESULTS SO IMPORTANT  
MUST BE DISCLOSED WITHOUT A REQUEST.

WAIT A MINUTE, TRUE RESULTS!  
THEY HAVE LIED. IT'S IN THE RECORD.

THEIR MOCKING YOU AND YOUR  
CLOAK! WHEN YOU PUT IT ON DOES IT  
NOT STAND FOR SOMETHING?

JUSTICE? !?!

AS FAR AS THE MISDEMEANOR CONVICTION  
AND DISMISSED CASE BEING UTILIZED HOW ABOUT  
THIS!

AGAIN ON DECEMBER 4, 2004 MRS. KRISKO  
STATE'S WE HAD A BAD ACTS HEARING! LIAR

[SEE EXHIBIT-2]

WHAT WAS THE PETRILLI HEARING  
FOR? OH, YEAH, FALSE BURGLARY!

NOW, OUR TRIAL  
STARTED MONDAY, OCTOBER 25, 2004. THIS WAS  
FRIDAY, OCTOBER 22, 2004. |||

YOU RULED ON THAT.  
[SEE EXHIBIT-3] BEFORE TRIAL YOU SAID IT CANNOT  
BE ALLOWED BY LAW. ALSO, YOU RULED IT WAS  
NOT TO BE MENTIONED. ROSE MILLER, IGNORES!

① 460 MICH 55, 594 N.W. 2d 477 (1999)  
BRICKLEY J. DISSENTING

(5)

② 373 U.S. 83, 83 S.Ct. 1194,  
10 L.Ed.2d (1963)

IN MS KRISO'S MOTION TO ADMIT OTHER BAD ACTS,  
HEARD BY JUDGE GLASS, SHE CLEARLY PUTS THAT  
THE STATE MUST PROVE BEYOND A REASONABLE DOUBT  
THAT THE DEFENDANT ENTERED THE VICTIM'S RESIDENCE  
WITH THE INTENT TO COMMIT A SEXUAL ASSAULT AND THAT  
HE BATTERED THE VICTIM WITH "THE INTENT" TO COMMIT  
A SEXUAL ASSAULT AND THAT HE ATTEMPTED TO COMMIT  
SEXUAL ASSAULT, TO BE GUILTY OF THOSE CRIMES  
AND BURGLARY. READ PAGE 4 YOURSELF

DEFENDANT WAS ACQUITTED  
OF ALL FELONIOUS INTENT. SEE EXHIBIT-4

IN HERNANDEZ V. STATE <sup>(3)</sup> ONE MUST HAVE FELONIOUS INTENT TO BE FOUND  
GUILTY OF BURGLARY.

ALSO, THE JURY  
WAS LOST. THEY WERE SCREAMING FOR BETTER  
INSTRUCTION AND EVEN REQUESTED HELP.

SEE EXHIBIT-5 TRESPASS SHOULD HAVE  
BEEN AN LESSER INCLUDED OFFENSE TO THE  
BURGLARY. "ESPECIALLY" SINCE THE FIRST  
WITNESS FOR THE STATE WAS OFFICER SHAWN  
KELLY WHO STATED ON RECORD, HE WAS  
DISPATCHED FOR NOTHING BUT A SIMPLE TRESPASS!

ISN'T UNDER THE LISBY <sup>(4)</sup> TEST  
WHERE DOUBLE JEOPARDY LIES? CONVICTED OF  
BATTERY COUNT 1 AND BATTERY IS INCLUDED  
IN BURGLARY ALSO. THE BURGLARY CANNOT STICK!  
UNDER BLOCKBURGER <sup>(5)</sup> IF ELEMENTS ARE ENTIRELY INCLUDED.

<sup>(3)</sup> 50 P.3d 1100 (NEV-2002)

<sup>(4)</sup> 82 NEV. 183, 186-187, 414 P.2d 592, 594 (1966)  
<sup>(5)</sup> 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)

VERIFICATION & CONCLUSION

YOUR HONOR, IN ALL MY COURT APPEARANCES,  
OVER 100 IN BOTH CASES, YOU HEAR AND LEARN ALOT.  
INMATES ALSO TALK.

I STILL BELIEVE,  
WITHOUT A DOUBT, YOU ARE A HARD, STRAIGHT  
TO THE POINT, NO POPPY COCK JUDGE.

YOU HAVE NO TREPIDATION  
ABOUT WHAT ANYONE THINKS BECAUSE OF YOUR  
EXPERIENCE AND PROBITY. IN OUR SPOT PLEASE  
RULE AND GRANT MY MOTION. ALSO, IN ALL TRUTH,  
YOU'RE JUST LIKE MY MOTHER. A VERY  
HARD AND TRUTHFUL WOMAN THAT PUTS  
IT TO ME WITH NO SUGAR-COATING. LIFE.  
YOU EVEN LOOK ALIKE AND OUR THE SAME AGE.  
YOU DEFINITELY ARE MAKING ME WORK FOR THIS!

DATED THIS 7<sup>th</sup> day of DECEMBER, 2006.

I, BRIAN KERRY O'KEEFE, #90244, do  
solemnly swear, under the penalty of perjury, that  
the above SUPPLEMENT is accurate,  
correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted

Brian Kerry O'Keefe - #90244  
BRIAN KERRY O'KEEFE  
Defendant

HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NEVADA 89018  
IN PROPRIA PERSONAM

(606)

CERTIFICATE OF MAILING

I, BRIAN KERRY O'KEEFE, HEREBY CERTIFY, THAT  
ON THIS 11<sup>th</sup> DAY OF DECEMBER, 2006, I MAILED A  
TRUE AND CORRECT COPY OF THE FOREGOING, "SUPPLEMENT"  
BY DEPOSITING IT IN AND WITH LEGAL LIBRARY  
LOGGING, IN THEIR LOG BOOK OF SUCH ACTION.

THESE COPIES WERE, FIRST CLASS POSTAGE,  
FULLY PREPAID. ADDRESSED AS FOLLOWS :

- 1.) SHIRLEY PARANGUIRE, COUNTY CLERK (2.) DAVID ROBER, DISTRICT ATTORNEY  
200 LEWIS AVE. 200 LEWIS AVE  
PO BOX 551601 PO BOX 552212  
LAS VEGAS, NV. 89155-1601 LAS VEGAS, NV. 89155-2212  
[ORIGINAL] [COPY - ATTENTION S. KRISKO]

- 3.) REGIONAL JUSTICE CENTER  
200 LEWIS AVE  
LAS VEGAS, NV. 89155  
ATTENTION: JUDGE SALLY LOENHNER/DR. XV  
[COPY]

UNDER THE PENALTY OF PERJURY AND N.R.S. 208.165.

DATED: DECEMBER 17<sup>th</sup>, 2006.

By: Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE  
#98244

(8)

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA vs O'Keefe, Brian K  
CONTINUED FROM PAGE: 015

11/13/06 08:30 AM 01 DEFT'S PRO PER MOTION FOR A NEW TRIAL  
BASED ON NEW EVIDENCE/27

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Jennifer Kimmel, Court Clerk  
Mary Beth Cook, Reporter/Recorder

PARTIES: STATE OF NEVADA Y  
009182 Scow, Richard H. Y

Court entertained no argument this date. Mr. Scow advised Ms. Krisko has requested more time to prepare a Response to this Motion. COURT ORDERED, request is GRANTED, State to prepare and file Response by 11/17/06 and Deft. shall have until 11/27/06 to Respond to same. FURTHER ORDERED, matter CONTINUED. Court directed the State to prepare an Order for Transport for Deft. to be present next date.

NDC (COC)

CLERK'S NOTE: A copy of this minute order mailed to Deft. 11/14/06 jk.

CONTINUED TO: 12/04/06 08:30 AM 02



## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 004

10/22/04 09:30 AM 00 MINUTE ORDER RE: OVERFLOW (V)

HEARD BY: Stewart L. Bell, Judge; Dept. 7

OFFICERS: Carole D'Aloia, Relief Clerk  
Diann Prock, Reporter/RecorderPARTIES: STATE OF NEVADA  
006024 Krisko, Susan R.  
0001 D1 O'Keefe, Brian K  
000754 Buchanan II, James L.Y  
Y  
N  
Y

Ms. Krisko advised this matter was sent to Overflow from Department V on Tuesday of this week. Court advised this matter does not appear on the Overflow calendar and Clerk noted that when she checked the computer, this matter was set on Overflow, however, the Department V Clerk did not change the judge code in the computer. Ms. Krisko expressed her frustration, since this matter is now being continued for the second time. Mr. Buchanan stated he was going to ask for a continuance since he just substituted in as attorney of record. Ms. Krisko advised this is a sexual assault case and there is a prior bad acts motion that needs to be heard prior to trial. Court advised counsel it will refer the matter back to Department V for resetting of the trial. COURT ORDERED, matter set for STATUS CHECK.

CUSTODY

10/26/04 9:00 AM STATUS CHECK: TRIAL SETTING/BACK FROM OVERFLOW

10/22/04 09:31 AM 00 MINUTE ORDER RE: TRIAL GOING  
TO DEPT 15

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk  
Dick Kangas, Reporter/Recorder

PARTIES: NO PARTIES PRESENT

Judicial Executive Assistant informed the clerk this case would be heard in Department XV for trial on Monday.

CUSTODY

10/25/04 10:00 AM TRIAL BY JURY

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 005

10/25/04 01:30 PM 00 TRIAL BY JURY

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Court Clerk  
Lisa Makowski, Reporter/Recorder

PARTIES:	STATE OF NEVADA	
	006024 Krisko, Susan R.	Y
	008190 Miller, Ross J.	Y
	0001 D1 O'Keefe, Brian K	Y
	000754 Buchanan II, James L.	Y

OUTSIDE PRESENCE OF JURY, Deft STIPULATED to the DNA testing, that it was him, SO ORDERED. Ms. Krisko stated she has a motion re discovery. Defense is going to bring in medical records that she has not been able to obtain. Mr. Buchanan stated there are employment security records on the alleged victim that she defrauded the system. Objection by Ms. Krisko, defense did not bring a bad acts motion. Court stated it goes to credibility and to truthfulness and honesty. Mr. Buchanan requested the Court sign an order for release of the Monte Vista medical records signed by the Court, they will not accept a subpoena, SO ORDERED, Order for Release of Medical records from Monte Vista with regard to the victim signed and FILED IN OPEN COURT. Arguments by counsel re the content of the medical records. Court noted deft and the victim met at Monte Vista, they were not strangers. Further arguments by counsel. Court noted the Monte Vista records are four years old. COURT ORDERED, the medical records are too remote in time and will not be admitted, however, they will be marked and accompany the record for appellate purposes. Further arguments by counsel. Mr. Buchanan stated he wants to call Dr. Roitman as a rebuttal witness to rebut the Pltf's testimony. Court stated the State listed their Expert in a timely manner, and ORDERED, Dr. Roitman will not be called as a witness, he was listed too late. Mr. Buchanan stated he substituted in this case one week ago. Ms. Krisko stated a petrocelli hearing was held and a prior Domestic Violence was allowed in which deft pled guilty. Further arguments by counsel. COURT ORDERED, the domestic violence is a misdemeanor and will not be allowed. Court advised Mr. Buchanan the Court needs to know if he intends to mention the prior domestic violence charge in front of the jury. Mr. Buchanan stated he and his client have not discussed same, however, he will inform the Court prior to his opening statement. COURT ORDERED, until that decision is made, counsel are not to mention it. JURY PANEL PRESENT AND SWORN. Jury selection commenced. At the hour of 4:41 P.M. Jury and two Alternates selected and sworn. Introduction by the Court. Clerk read Information stated deft's pleas thereto. Mr. Buchanan INVOKED EXCLUSIONARY RULE. Ms. Krisko stated she would like to give her opening statement today. Mr. Buchanan reserved his opening statement until tomorrow morning. Opening statement by Ms. Krisko. Mr. Buchanan stated based upon the opening statement given by the State, he will make his opening statement this evening. Opening statement by Mr. Buchanan. Jury EXCUSED 5:24 P.M. until

CONTINUED ON PAGE: 007

PRINT DATE: 07/08/05

PAGE: 006

MINUTES DATE: 10/25/04

(EXHIBIT 604<sup>3</sup>)

1 seeks this evidence to show intent, knowledge, and absence of mistake. The defendant is  
2 charged with Battery with the Intent to Commit Sexual Assault, Sexual Assault, Burglary  
3 and Attempt Sexual Assault. The State must prove beyond a reasonable doubt that the  
4 defendant entered the victim's residence with the intent to commit a sexual assault and that  
5 he battered the victim with the intent to commit a sexual assault and that he attempted to  
6 commit sexual assault. The State's burden is to show the prior conduct meets NRS  
7 48.045(2). Once the requirements of NRS 48.045(2) are met, this Court must hold a  
8 Petrocelli hearing and a three prong test must be met. *Walker v. State*, 116 Nev. 442, 446,  
9 997 P.d. 803, 806 (2000). A(1) the incident is relevant to the crime charged; (2) the act is  
10 proven by clear and convincing evidence; and (3) the probative value of the evidence is not  
11 substantially outweighed by the danger of unfair prejudice. *Id. citing Tench v. State*, 113  
12 Nev. 1170, 1176, 946 P.2d. 1061, 1064-65 (1997).

#### 13 Intent

14 "A plea of not guilty puts in issue every material allegation of the information. NRS  
15 174.350." *Overton v. State*, 78 Nev. 198, 205, 370 P.2d 677, 680 (1962). In the case at bar,  
16 the defendant has necessarily put every material allegation of the Information in issue.  
17 Furthermore, the defendant's statements dispute the victim's version of events.

18 NRS 48.045(2) is identical to Federal Rules of Evidence, Rule 404(3)(b), and there  
19 is a wealth of Federal cases interpreting this statute, which provide assistance in determining  
20 the admissibility of evidence under 48.045(2). In *United States v. Kirk*, 528 F.2d 1057 (5th  
21 Cir. 1976), defendant was charged with threatening the life of the President of the United  
22 States of America. At trial, the prosecution presented evidence showing that three years  
23 earlier the defendant had committed the same offense. The court ruled this evidence to be  
24 properly admissible to show the defendant's intent, holding in 528 F.2d at 1061:

25  
26 Whether the prior conviction tended to show that defendant made this threat  
27 intentionally or as the result of "alcohol taking," was a matter for the jury's  
28 determination. The fact that the former offense occurred three years prior to the  
offense charged does not make it so remote as to be excluded.

In *United States v. Beechum*, 582 F.2d 898 (5th Cir. 1978):

PLEASE CLARIFY  
THE DIFFERENCE BETWEEN  
"BATTERY WITH INTENT  
TO COMMIT A CRIME"  
AND BATTERY. DOES  
THE "INTENT TO  
COMMIT A CRIME"  
HAVE TO INCLUDE  
SEXUAL ASSAULT?

D. A. B.

Please refer to and re-read Instructions number 3 and 4

*Jacques Lochrer*

Judge Lochrer

10/28/04 11:20 am

EXHIBIT-5

NOTC

BRIAN KERRY O'KEEFE - #90244  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV. 89018  
IN PROPRIA-PERSONAM

FILED

DEC 26 2 07 PM '06

STATE OF NEVADA  
PLAINTIFF,

V

BRIAN KERRY O'KEEFE,  
DEFENDANT.

# 1447732

EIGHTH JUDICIAL  
DISTRICT COURT  
CLARK COUNTY, NEVADA

Shelley B. Pangloss  
CLERK

CASE NO. - C202793  
D.C. NO. - XV / 15  
JUDGE S. LEHRER

RULE 7.40 (b)(2)(ii)

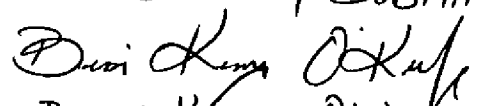
## NOTICE OF APPEAL

COMES NOW, BRIAN KERRY O'KEEFE, IN PROPER-  
PERSON, TO GIVE HIS NOTICE OF APPEAL TO HIS  
DENIAL OF HIS MOTION FOR A NEW TRIAL BASED  
ON NEW EVIDENCE RENDERED DECEMBER 18<sup>TH</sup>, 2006.

PLEASE BE ADVISED THAT  
DEFENDANT'S MOTION WAS SUPPORTED WITH AND  
BY AN SUPPLEMENT, CONSISTING OF 8 PAGES.  
ACKNOWLEDGE FILING  
NOTICE OF APPEAL TO THE NEVADA SUPREME  
COURT.

DATED THIS 19<sup>TH</sup> DAY OF DEC.  
2006, UNDER AND BY  
N.R.S. 208.165.

By 

RESPECTFULLY SUBMITTED,  
  
BRIAN KERRY O'KEEFE - #90244  
IN PROPRIA-PERSONAM

RECEIVED

DEC 26 2006

COUNTY CLERK

ORIGINAL

FILED

2006 DEC 27 A 10:48

*[Signature]*  
CLERK

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

BRIAN KERRY O'KEEFE,

Defendant(s),

)  
) Case No: C202793  
) Dept No: XV  
)  
)  
)  
)  
)  
)  
)

**CASE APPEAL STATEMENT**

1. Appellant(s): BRIAN KERRY O'KEEFE

2. Judge: SALLY LOEHRER

3. All Parties, District Court:

Plaintiff, THE STATE OF NEVADA

Defendant(s), BRIAN KERRY O'KEEFE

4. All Parties, Appeal:

Appellant(s), BRIAN KERRY O'KEEFE

Respondent, THE STATE OF NEVADA

5. Appellate Counsel:

*Appellant/Proper Person*  
Brian Kerry O'Keefe #90244  
P.O. Box 650  
Indian Springs, NV 89018

*Respondent*  
David Roger, District Attorney  
200 Lewis Ave.  
Las Vegas, NV 89101  
(702) 671-2700

1 6. District Court Attorney, Appointed

2 7. On Appeal, N/A

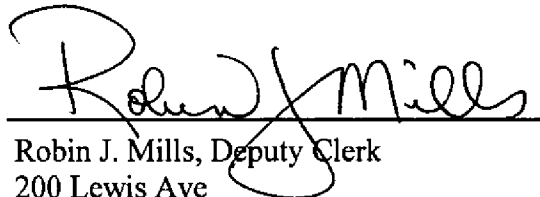
3 8. Forma Pauperis, Granted

4 9. Date Commenced in District Court: July 6, 2004

5 Dated This 27 day of December 2006.

6 Shirley B. Parraguirre, Clark County Clerk

7  
8 By:



9 Robin J. Mills, Deputy Clerk  
10 200 Lewis Ave  
11 PO Box 551601  
12 Las Vegas, Nevada 89155-1601  
13 (702) 671-0512  
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FILED

JAN 5 3 12 PM '07

*Shirley D. Langhinna*  
CLERK

1 **ORDR**

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 SUSAN R. KRISKO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006024  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 BRIAN KERRY OKEEFE,  
14 #1447732

15 Defendant.

Case No. C202793  
Dept No. XV

17 ORDER

18 DATE OF HEARING: 12/18/06  
19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the  
21 18th day of December, 2006, the Defendant being present, In Propria Persona, the Plaintiff  
22 being represented by DAVID ROGER, District Attorney, through SUSAN R. KRISKO,  
23 Chief Deputy District Attorney, and the Court having heard the arguments of counsel and  
24 good cause appearing therefor,

25 ///

26 ///

27 ///

28 ///

COUNTY CLERK

JAN 15 2007

RECEIVED



1 IT IS HEREBY ORDERED that the Defendant's Motion for New Trial, shall be, and  
2 it is denied.

3 DATED this 2nd day of January 2007  
4 December, 2006.

5  
6 *Gregory Cook*  
DISTRICT JUDGE *13*

7  
8 DAVID ROGER  
9 DISTRICT ATTORNEY  
Nevada Bar #002781

10  
11 *Cara Campbell* *for*  
12 SUSAN R. KRISKO  
13 Chief Deputy District Attorney  
14 Nevada Bar #006024  
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ac

0232

BRIAN KERRY O'KEEFE  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018  
# 90244  
IN PROPRIA PERSONAM

FILED 16

FEB 5 11 38 AM '07

*Chaf*  
CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT  
COURT  
CLARK COUNTY, NEVADA

BRIAN O'KEEFE  
# 90244

PETITIONER,

V.

MR. D.W. NEVEN, H.D.S.P.

WARDEN, N.S.P./STATE OF NEVADA,

et al, RESPONDENTS.

CASE NO. C-202793

D.C. # XV

JUDGE LOHRER

PETITION FOR WRIT OF HABEAS

CORPUS (POST CONVICTION)  
NRS 34.720

NOTE: THIS PETITION IS TIMELY SUBMITTED, UNDER THE PROVISIONS OF  
NRS CHAPTER 34, [BY AN INDIGENT PRISONER] UNDER THE EXPRESS DICTATES  
OF HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) (AS TO "LIBERAL"  
READING OF PRO SE SUBMISSIONS).

ADDITIONALLY, PETITIONER ASKS OF THE COURT TO TAKE JUDICIAL NOTICE  
THAT PETITIONER IS EMOTIONALLY CONNECTED TO THIS SUBMISSION AND, AS  
SUCH, BEGS OF THIS COURTS INDULGENCE AS TO ANY UNINTENTIONAL  
REDUNDANCIES OR LIKE CONTENTS.

//

I - P&R N.R.S - 34.726(1) - REMITTITUR FILED FEBRUARY 17, 2006, SUPREME COURT No. 44644

1 MOREOVER, IN KEEPING WITH THE PROVISIONS OF NRS 34.720 et seq.,  
2 PETITIONER HAS DECIDED TO NOT USE THE CHAPTER 34 FORMAT IN  
3 THIS INSTANT CASE. PETITIONER BELIEVES HIS PETITION IS  
4 BETTER PRESENTED VIA THIS HANDWRITTEN FORUM.  
5

6 RESPECTFULLY SUBMITTED:

7 Brian Kerey (Kup) - # 90244

8 GROUNDS PRESENTED [8]

9 WRIT TOTAL PAGES [39]

10 EXHIBIT TOTAL PAGES [34] WAIT APPENDIX

11 DATED: JANUARY 29, 2007  
12 [MONDAY]

13 [PETITION FOR WRIT]

- 14 1. PETITIONER IS PRESENTLY IMPRISONED, AND THUS RESTRAINED OF HIS LIBERTY  
15 AT THE HIGH DESERT STATE PRISON, COUNTY OF CLARK, IN AND FOR THE STATE OF NEVADA.  
16
- 17 2. PETITIONER WAS ADJUDICATED GUILTY IN THE COUNTY OF CLARK, IN DEPT.  
18 VII, WITH THE HONORABLE BELL PRESIDING. JURY  
19 NOTE: TRIAL HELD BY JUDGE LOEHNER. VERDICT READ OCT. 28, 2004.  
20 SENTENCED BY JUDGE BELL. SENTENCING HELD DEC. 27, 2004.
- 21 3. THE DATE OF THE JUDGMENT OF CONVICTION, PURSUANT TO A JURY VERDICT,  
22 IS ON THE 3<sup>RD</sup> DAY OF JANUARY, 2005.  
23
- 24 4. THE CASE NUMBER IS C-202793.  
25

26 //

27 //

28

5. (2) THE LENGTH OF SENTENCE IS :

24 - 120 MONTHS, SUSPENDED, PLACED ON 5 YRS. PROBATION.

NOTE: SUBSEQUENT CONVICTION, CASE C207835, BATTERY CONSTITUTING DOMESTIC VIOLENCE, (F). SENTENCED TO 24 - 60 MONTHS, NOT SUSPENDED. ASCERTAINMENT MADE THAT SUBSEQUENT CONVICTION PRECEDED INSTANT CASE. THEREFORE, PROBATION WAS NOT VIOLATED. DAY FOR DAY CREDIT BEING ACCRUED.

6. PETITIONER IS PRESENTLY SERVING A SENTENCE FOR A CONVICTION OTHER THAN THE CONVICTION UNDER ATTACK IN THIS PETITION.

BATTERY CONSTITUTING DOMESTIC VIOLENCE (F)

NRS: 200.481, 200.485, 33-018, CATEGORY: C  
SENTENCED, 2-5 YRS, HIGH DESERT STATE PRISON.

7. NATURE OF THE OFFENSE IN CONVICTION BEING CHALLENGED IS:

COUNT I - BATTERY [REDUCED COUNT OF MISDEMEANOR] NRS-200.481

COUNT VI - BURGLARY [FELONY] - NRS. 205.060

NOTE: ACQUITTED OF COUNT 1. FELONY, BUT CONVICTED OF REDUCED COUNT OF MISDEMEANOR BATTERY LESSER INCLUDED OFFENSE.

8. PETITIONER'S PLEA WAS "NOT GUILTY" AND PROCEEDED TO A JURY TRIAL.

9. NOT APPLICABLE (HEREINAFTER "N/A") - PROCEEDED TO A JURY TRIAL.

10. (2) PETITIONER WAS ADJUDICATED GUILTY BY A JURY.

11. PETITIONER "DID" TESTIFY AT TRIAL.

12. YES, PETITIONER DID APPEAL FROM THE JUDGMENT OF CONVICTION.  
FIRST NOTICE OF APPEAL FILED PREMATURE BY PETITIONER. [CASE DISMISSED].  
SECOND NOTICE OF APPEAL FILED TIMELY, RESULTING IN CASE # 44644.

13. (a) PETITIONER APPEALED TO THE NEVADA STATE SUPREME COURT.

(b) CASE NUMBER ASSIGNED 44644.

(c) THE SUPREME COURT AFFIRMED THE LOWER COURTS JUDGMENT.

(d) SAID AFFIRMANCE WAS FILED ON JANUARY 23, 2006.

See Exhibit 1. - [AFFIRMANCE ORDER] [REMITTITOR FILED FEB. 17, 2006]  
PERTAINING TO DIRECT APPEAL

A REHEARING EN BANC MOTION FILED BY PETITIONER ONLY BEING  
STAMPED "RECEIVED AND RETURNED FEB. 15, 2006."

14. PETITIONER DID APPEAL; See 13. (a), (b), (c), AND (d).

15. PETITIONER DID FILE A MOTION FOR MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE.

N.R. 8-176.515

FILED: OCTOBER 19, 2006.

ALSO, PETITIONER FILED MOTION FOR REHEARING EN BANC FILED RECEIVED BUT RETURNED.

16. (a) (1) EIGHTH JUDICIAL DISTRICT COURT, DEPARTMENT XV, JUDGE LOEHRER.

(2) THE NATURE OF THE PROCEEDING WAS: COLLATERALLY ATTACK.  
IMPEACHMENT OF D.N.A.

STATE OPENING TRIAL UTILIZING MISDEMEANOR CONVICTION  
AGAINST JUDGE'S RULING THAT IT CANNOT BE ALLOWED.

STIPULATION TO D.N.A. THAT IS A COVER-UP.

(3) PERSONAL LETTERS SUBSEQUENT TRIAL FROM SO-CALLED VICTIM.

(4) YES. [ORAL ARGUMENT GIVEN BY PETITIONER DEC. 4, 2006]

(5) CONTINUED FOR JUDGE'S DECISION UNTIL DEC. 18, 2006

(6) JUDGE ORALLY DENIED MOTION ON DEC. 18, 2006. ①

(7) JUDGE'S DECISION, QUOTE, "BASED ON YOUR OPENING  
STATEMENT YOUR MOTION FOR A NEW TRIAL IS DENIED."

(b) N/A - THIS PETITION IS NEXT STEP IN PROCESS.

(c) N/A - SEE, SUPRA, (b.)

(d) N/A

(1) //

(2) //

① - PETITIONER'S APPEAL TO THE NEVADA SUPREME COURT OF HIS  
DENIAL OF MOTION FOR NEW TRIAL FILED DEC. 30, 2006, # 48673

1 17. GROUNDS IN PETITIONER'S MOTION FOR A NEW TRIAL BASED ON NEW  
2 EVIDENCE RELATE TO NEW EVIDENCE PRESENTED BY WAY OF  
3 PERSONAL LETTERS WRITTEN TO DEFENDANT, SUBSEQUENT THE  
4 TRIAL. ALSO THE FOLLOWING GROUNDS LISTED:

5 (2.) BAD ACTS THAT WERE RULED NOT TO BE MENTIONED.

6 (b.) D.N.A. - COVER-UP - FALSE STIPULATION.

7 (c.) JUDICIAL MISCONDUCT.

8 (d.) PETITIONER BEING ACQUITTED OF ALL FELONIES YET CONVICTED  
9 OF COUNT (6) FELONY BURGLARY.

10 18. A MAJOR GROUND THAT HAS NOT YET BEEN PRESENTED  
11 IN ANY PRIOR MOTION, EXCEPT ORALLY ARGUED ON DEC.  
12 4, 2006, (SEE MINUTES) IS THE FACT OF PETITIONER  
13 BEING ACQUITTED OF ALL FELONIES YET STILL BEING  
14 CONVICTED OF FELONY BURGLARY ON HIS COHABITED  
15 APARTMENT. PETITIONER ADAMANTLY FEELS HIS MOTION FOR  
16 A NEW TRIAL SHOULD HAVE BEEN GRANTED, HOWEVER  
17 PETITIONER IS NOW UTILIZING HIS STATE POST CONVIC-  
18 TION WRIT OF HABEAS CORPUS TO PROPERLY ADDRESS  
19 ALL CONCERNS; [PLUS AWAITING APPEAL ON DENIAL OF MOTION,  
20 CASE #48673.] PETITIONER PRAYS THAT IF NEEDED,  
21 THE NEVADA SUPREME COURT WILL REFLECT BACK TO  
22 PETITIONER'S MOTION FOR A NEW TRIAL BASED ON  
23 NEW EVIDENCE IN CONJUNCTION WITH HIS OR  
24 THIS STATE POST CONVICTION WRIT OF HABEAS CORPUS.  
25 ALSO NOTE, THE PRIOR AFFIRMANCE ORDER ON DIRECT  
26 APPEAL WILL GREATLY REFLECT SEVERE PREJUDICE NOW.

19. NO PETITIONER IS NOT FILING THIS PETITION AFTER THE (1) YEAR  
DEADLINE OF THE FILING OF AFFIRMANCE ORDER ON DIRECT  
APPEAL / RIGHT OF APPEAL. [TIMELY FILED PER N.R.S. 34.726(1)]
20. YES, PETITIONER HAS JUST RECEIVED HIS NOTICE OF APPEAL  
FILED DECEMBER 26, 2006 BACK FROM THE COUNTY CLERK.  
THIS APPEAL WAS TAKEN ON HIS ORAL DENIAL OF HIS  
MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE  
PRONOUNCED DECEMBER 18, 2006, D.C. # XV BY JUDGE LOENRER.  
SUPREME COURT NO. 48673 ASSIGNED TO APPEAL OF MOTION.
21. THE LAW OFFICE OF JAMES L. BUCHANAN, WHO WAS MY  
ONCE RETAINED TRIAL ATTORNEY WRONGFULLY SUBSTITUTED  
IN ON DIRECT APPEAL FOR FREE. BITA KHAMSI OF THE  
CLARK COUNTY PUBLIC DEFENDER'S OFFICE WAS THE  
INITIAL PUBLIC DEFENDER ON THE INSTANT CASE.
22. PETITIONER IS CURRENTLY SERVING ON CASE C207835.  
SUBSEQUENT THE TRIAL, PETITIONER WAS RE-CHARGED  
WITH AN OLD DOMESTIC VIOLENCE CASE AND CONVICTED  
BY A JURY TRIAL NOW SERVING [2-5] YRS AT  
HIGH DESERT STATE PRISON. INMATE IS OFFICIALLY  
ON PROBATION AND INCARCERATED AS ASCERTAINED  
BY PAROLE AND PROBATION. [CASE C207835, D.C. #2,  
JUDGE VALORIE VEGA, SENTENCED, MARCH 2, 2006.]

NOTE:

GROUND 1

Page 1 of 5

23. (2) THIS IS THE STATE'S FAIR NOTICE THAT PETITIONER'S STATE CONVICTION IS IN VIOLATION OF THE U.S. CONSTITUTION ON ALL THE GROUNDS LISTED. [I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE

ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO EFFECTIVE COUNSEL, DUE PROCESS, EQUAL PROTECTION OF THE LAW

BASED ON THESE FACTS: (FAULTY, DEFECTIVE INFORMATION) ON COUNT (6) FELONY BURGLARY MY LAWYER WAS INEFFECTIVE FOR

"FAILING TO ARGUE", THAT WHEN DEFENDANT WAS ACQUITTED OF ALL FELONIES, THAT IN FACT COUNT (6), BURGLARY SHOULD HAVE BEEN STRUCK IN SOA SPONTE BY THE JUDGE.

JUST AS IN SHERIFF, CLARK COUNTY, NEVADA V. HICKS, 89 NEV. 78, 506 P.2d 766 (NEV. 1973) IN PROSECUTION FOR MURDER, ATTEMPTED MURDER, BURGLARY AND CONSPIRACY TO COMMIT BURGLARY, DEFENDANT FILED FOR HABEAS PETITION. PETITIONER'S ARGUMENT BEING THAT WHEN THE JUDGE DISMISSED THE "FELONIES" OF MURDER AND ATTEMPTED MURDER BUT SUBSTAINED BURGLARY AND CONSPIRACY TO COMMIT BURGLARY THAT IN FACT THE BURGLARY AND CONSPIRACY TO COMMIT BURGLARY COULD NOT HOLD. "IN FACT", SUPREME COURT, MOWBRAY, J., HELD THAT [WHEN] THE FELONIES OF MURDER AND ATTEMPTED MURDER WERE STRUCK DOWN THAT BURGLARY AND CONSPIRACY TO COMMIT BURGLARY WERE AUTOMATICALLY FATALLY DEFECTIVE AND HAD TO BE DISMISSED.

IN PETITIONER'S CASE, THE JURY CLEARLY ACQUITTED PETITIONER'S COUNT (1) OF

[NOTE: CONTINUED]



BATTERY WITH INTENT TO COMMIT A CRIME (FELONY) IN VIOLATION  
N.R.S. 200.400. INSTEAD, THE JURY DETERMINED THAT  
PETITIONER COMMITTED A SIMPLE BATTERY, (MISDEMEANOR) IN  
VIOLATION OF N.R.S. 200.481 DURING THE COURSE OF  
THE EVENT, THAT DAY MAY 29, 2004, (SEE EXHIBIT-2)  
"HIGHLIGHTING NO INTENT."

NOW, AS SEVERAL ATTORNEYS,  
WHO REMAIN TO BE ANNOUNCED LATER, WISH TO BE  
ANONYMOUS AT THIS TIME, HAVE CLEARLY ADVISED PETITIONER  
THAT IN FACT AN CONVICTION FOR A MISDEMEANOR DOES  
NOT SUPPORT FELONY BURGLARY, IN THIS INSTANT CASE.

MANIFESTING, [HERNANDEZ V. STATE OF NEVADA],  
50 P.3d 1100 (NEV. 2002) ARGUMENTS 26, CLEARLY ENFORCE  
PETITIONERS ARGUMENT.

THE NEVADA SUPREME COURT RULED  
THAT "ONLY IF" THE DEFENDANT ENTERED HIS WIFE'S  
HOME WITH FELONIOUS INTENT, WOULD SUPPORT A  
BURGLARY CONVICTION IN ADDITION TO THE OTHER FELONIES.

[ALSO SEE id.; [BARRETT V STATE] 105 NEV. 361, 369, 775 P.2d 1276, 1277 (1989)]

IN PETITIONER'S CASE, THE JURY INSTRUCTIONS  
WERE AMBIGUOUS WITHOUT A DOUBT. PINPOINTING INSTRUCTION  
(13) IT STATES, "THE GIST OF BURGLARY IS THE UNLAWFUL ENTRY  
WITH CRIMINAL INTENT". (SEE EXHIBIT-3) THE INSTRUCTION  
WAS OBJECTED TO, HOWEVER ADMITTED. THEY FORGOT FELONIOUS INTENT.

[NOTE: CONTINUED] [THE ABOVE (13) FITS TRESPASS]

ALSO, NOTE INSTRUCTION # 4. (SEE EXHIBIT-4)

AGAIN, IT HIGHLIGHTS THE FACT OF BATTERY WITH INTENT. AFTER THE JURY HEARD WHAT EVIDENCE THAT WAS PRESENTED THEY DID IN FACT, "STRIKE THE INTENT"!

DEFINING EVEN MORESO IS INSTRUCTION # 3. THE INFORMATION ITSELF. COUNT (1) STATES WITH INTENT TO COMMIT SEXUAL ASSAULT. COUNT (6) STATES "FELONIOUSLY" ENTER WITH INTENT TO COMMIT BATTERY. (SEE EXHIBIT 5)

NOW, WHAT IS SIMPLY A WILE OF THE STATE, IS THEY FORGOT CONVENIENTLY TO INFORM THE JURY, THAT HAS ZERO JURISPRUDENCE, THAT TO FIND DEFENDANT GUILTY OF FELONY BURGLARY, THEY WOULD HAVE HAD TO FIND HIM GUILTY OF ONE OF THE "UNDERLYING FELONIES". [UNANIMOUSLY ACQUITTED OF ALL FELONY COUNTS 1 THRU 5.]

READING PART OF THE TRIAL TRANSCRIPTS CLEARLY PROVES THIS. [PAGES 177-184] - (SEE EXHIBIT-6)

SO, NOW WHAT THE JURY IS THINKING IS, SINCE THE WORD "BATTERY" IS LISTED AS AN ELEMENT OF BURGLARY, IT WOULD BE, MR. O'REEFE FELONIOUSLY ENTERED HIS COHABITED APARTMENT, TO BE FOUND BY A JURY, WITH THE PURPOSE OF COMMITTING A SIMPLE MISDEMEANOR. AMBIGUOUS IS IT NOT? !?

NOTE: CONTINUED

SO THE PETITIONER'S ARGUMENT IS THIS!

HE FELONIOUSLY ENTERED TO COMMIT  
A MISDEMEANOR; [BY A JURY DECISION]

THE JURY WAS LOST! (SEE EXHIBIT-7)

THE JURY WAS REQUESTING HELP WHICH THE JUDGE  
IGNORED. THE COURT SIMPLY RESPONDED, SEE INSTRUCTIONS  
3 & 4.

THE JURY INSTRUCTIONS WERE UNCONSTITUTIONAL  
FOR THEY DID NOT TELL THE JURY THAT THE PROSECUTION  
MUST PROVE ALL ELEMENTS OF GUILT BEYOND A  
REASONABLE DOUBT, OR THE JURY WAS NOT CLEARLY  
INFORMED THE INSTRUCTIONS WERE VAGUE AND AMBIGUOUS  
AND THAT THE PROSECUTION MUST OVERCOME A PRESUMPTION  
OF INNOCENCE TO PROVE THEIR CASE BEYOND A  
REASONABLE DOUBT.

IN, [BOYD V. CALIFORNIA, 494 U.S. 370, 380, 110 S.Ct. 1190, 1198,  
108, L.Ed. 316, 329 (1990)]

HOLDING THAT IN, "WHETHER THERE IS A  
REASONABLE LIKELIHOOD THAT THE JURY HAS APPLIED THE  
CHALLENGED INSTRUCTION IN A WAY THAT PREVENTS THE  
CONSIDERATION OF CONSTITUTIONALLY RELEVANT EVIDENCE."

PETITIONER MUST BRING OUT  
THAT THE STATE'S OWN ADMITTANCE, IN PAGE 4 OF THEIR MOTION  
TO ADMIT PRIOR BAD ACTS. IN THE HOLDING OF A

[NOTE: CONTINUED]

PETROCELLI HEARING, THEY PLAINLY ADMIT THEY MUST PROVE BEYOND A REASONABLE DOUBT THAT THE PETITIONER ENTERED THE COHABITED RESIDENCE WITH THE INTENT TO COMMIT A SEXUAL ASSAULT AND THAT HE BATTERED WITH THE INTENT TO COMMIT A SEXUAL ASSAULT AND THAT HE ATTEMPTED TO COMMIT SEXUAL ASSAULT TO BE FOUND GUILTY OF THOSE FELONIES AND BURGLARY. (SEE EXHIBIT-8)

JUST RECENTLY IN, SILVAR V. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, 129 P3d. 682, (NEV, 2006) [NO. 44825, MARCH 16, 2006]

THE NEVADA SUPREME COURT HEED THAT:

A STATUTE IS UNCONSTITUTIONALLY VAGUE AND SUBJECT TO FACIAL ATTACK IF IT, (1) FAILS TO PROVIDE NOTICE SUFFICIENT TO ENABLE PERSONS OF ORDINARY INTELLIGENCE TO UNDERSTAND WHAT CONDUCT IS PROHIBITED.

SIMPLY, WHEN THE JURY READ IN COUNT (6) THE WORD "BATTERY" THEY ASSUMED, HOWEVER ASKED FOR GUIDANCE, THAT EVEN THOUGH THEY ACQUITTED PETITIONER OF COUNT (1) FELONY BATTERY, A SIMPLE BATTERY, WITHOUT INTENT, WOULD SUFFICE TO CONVICT OF FELONY BURGLARY.

WHERE WAS THE LESSER INCLUDED OFFENSE OF TRESPASS TO BURGLARY?

[NOTE: CONTINUED]

[SEE GROUND-3]

23. (b)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO EFFECTIVE COUNSEL, FUNDAMENTAL RIGHT TO A FAIR TRIAL, DUE PROCESS, EQUAL PROTECTION OF THE LAW. BASED ON THESE FACTS:

JUDICIAL MISCONDUCT  
MY LAWYER WAS INEFFECTIVE FOR

"FAILING TO ARGUE" REMARKS MADE BY JUDGE CONSTITUTED MORE THAN PLAIN ERROR AND PREJUDICED THE DEFENDANT'S RIGHT TO A FAIR TRIAL AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA, UNDER 5<sup>th</sup> AND 14<sup>th</sup> AMENDMENTS, DUE PROCESS AND EQUAL PROTECTION IN, [CADE V. STATE], (NOV. 1998) 114 NEV. 619, 960 P.2D 336, THE TRIAL JUDGE MADE MULTIPLE REMARKS ABOUT EVIDENCE FOR THE DEFENSE WHICH LESSENED THE CREDITABILITY OF THE DEFENSE. THE NEVADA SUPREME COURT RULED IT WAS A CLEAR ERROR AND WARRANTED A REVERSAL OF THE DEFENDANT'S CONVICTION.

WITHOUT A DOUBT IN PETITIONERS CASE, THE HARM INFLICTED UPON HIM BY THE JUDGE WAS OVERWHELMINGLY AN ERROR. BY READING THE TRANSCRIPT, (SEE EXHIBIT-9) ON PG 53, LINE 14-19 THIS CLEARLY HARMS PETITIONER. THIS IS TRIVIAL TO WHAT COMES SUBSEQUENT. WHAT REALLY HURTS THE DEFENDANT/PETITIONER, IS AT THE MOST CRITICAL TIME OF THE ENTIRE TRIAL, THE FOLLOWING OCCURRED.

NOTE: CONTINUED

DURING CLOSING ARGUMENT THE STATE IS BASICALLY  
STATING THE NOW PETITIONER IS "GUILTY". PETITIONER'S  
ATTORNEY OBJECTS, STATING HIS CLIENT IS INNOCENT  
UNTIL FOUND GUILTY BY THE "JURY".

THE JUDGE  
"LOUDLY" ASSERTS THAT OBJECTION IS NOTED BUT OVERRULED.

THE JUDGE THEN STATES THAT THE EVIDENCE  
"HAS" STRIPPED PETITIONER OF THAT CLOAK OF  
INNOCENCE.

NOT THAT THE EVIDENCE COULD HAVE  
OR COULD NOT HAVE, BUT "HAS". THE JURY DID  
NOTHING BUT ZONE IN ON THE JUDGE'S COMMENT. PETITIONER UNDERSTANDS  
THAT THE STATE CAN ARGUE THEY FEEL THE EVIDENCE  
HAS "OR" HAS NOT DONE SOMETHING BUT THE  
JUDGE MAY NOT. (SEE EXHIBIT-10) T.T., PG. 175, LINE 16-20

UNDER THE CODE OF JUDICIAL CONDUCT,  
COMMENTARY CANON 3 B(5), A JUDGE SHALL NOT PERFORM  
JUDICIAL DUTIES WITHOUT BIAS OR PREJUDICE, BEING  
PLACED UPON THE PETITIONER. ESPECIALLY STATES BY  
"WORDS" OR "CONDUCT". FURTHER IT STATES, A JUDGE  
WHO MANIFESTS BIAS ON ANY BASIS IN A PROCEEDING  
IMPAIRS THE FAIRNESS OF THE PROCEEDING AND BRINGS THE  
JUDICIARY INTO DISREPUTE. SEE ALSO, [RANDOLPH V. STATE],  
117 NEV. 970, 22 984, 36 P3d 424 (2001)

[NOTES CONTINUED]

GROUND 2

Page 3 of 2

THIS CLEARLY IS MORE THAN AN HARMLESS ERROR.  
THE JURY HAVING NO JURISPRUDENCE WHAT-SO-EVER  
NOW JUST GOT THE PERSONAL OPINION OF  
THE JUDGE. HE'S "GUILTY".

THIS WILL ALWAYS  
REMAIN "SUSPECT" AND THEREFORE CAN ONLY BE  
CONSTRUED AS SUCH, A VIOLATION OF THE U.S. CONSTITUTION.

PETITIONER'S FAIR TRIAL JUST  
FLEW OUT THE DOOR OF THE COURTROOM.

[VIOLATION OF THE 5<sup>TH</sup>, 14<sup>TH</sup> AMD. OF THE U.S. CONSTITUTION] LET'S ALLOW ANY  
JUDGE READING THIS PETITION, TO ALLOW THE  
SAME ORAL COMMENTS TO BE MADE DURING YOUR  
TRIAL, IF SUCH WOULD HAPPEN!?

IN, KENTUCKY V. WHORTON, 441 U.S. 786,  
99 S.Ct. 2088, 60 L.Ed.2d 640 (1979), THE TRIAL COURT REFUSED  
TO GIVE THE INSTRUCTION THAT THE DEFENDANT IS INNOCENT  
UNTIL PROVEN GUILTY. THE SUPREME COURT HELD THAT  
FAILURE TO GIVE PROPER INSTRUCTION TO THE JURY ON  
PRESUMPTION OF INNOCENCE VIOLATES THE CONSTITUTION.

CONTRARY TO WHAT THE LAW OF  
OUR CONSTITUTION SAYS, IN PETITIONER'S CASE, THE  
JUDGE DID THE OPPOSITE.

THE OPPOSITE.  
SHE SAID PETITIONER, WAS GUILTY !!!

INVOKED YOUR RIGHT TO A FAIR TRIAL IN NEVADA. THIS IS WHAT YOU GET!

23. (c)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO EFFECTIVE COUNSEL, DUE PROCESS VIOLATION, EQUAL PROTECTION

BASED ON THESE FACTS: (FAILURE TO REQUEST TRESPASS AS A LESSER CHARGE TO BURGLARY)  
MY LAWYER WAS INEFFECTIVE FOR

"EGREGIOUSLY" FAILING TO ARGUE TRESPASS AS AN LESSER INCLUDED CHARGE TO FELONY BURGLARY ON COUNT (6) IN THE INFORMATION. N.R.S. 175.501 HAS IDENTICAL LANGUAGE TO FEDERAL RULE OF CRIMINAL PROCEDURE 31(c).

AS SUCH THAT, "[T]HE DEFENDANT MAY BE FOUND GUILTY OF AN OFFENSE NECESSARILY INCLUDED IN THE OFFENSE CHARGED".

UNDER [STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)] THERE IS NO DOUBT THAT PETITIONER'S INSTANT CASE WILL SHOW THE INADEQUACY OF HIS COUNSEL'S REPRESENTATION IN VIOLATION OF THE SIXTH AMENDMENT.

EASILY BY PETITIONER MANIFESTING (1) THAT COUNSEL'S PERFORMANCE WAS DEFICIENT AND (2) THAT HE WAS PREJUDICED BY THIS DEFICIENCY, HAS NOW SUBSTANTIALLY HARMED THE PETITIONER.

UNDER N.R.S. 178.602, CODIFICATION  
 IS, "PLAIN ERRORS"

REPEATED COLLOQUY AND ARGUMENT BETWEEN THE JUDGE, STATE AND DEFENSE ATTORNEY,  
[NOTE: CONTINUED]



GROUND 3 Page 2 of 5

ABOUT "SIMPLE BATTERY" AS A LESSER INCLUDED CHARGE TO  
COUNT (1) BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT THAT  
THEY WRONGFULLY FAIL TO OFFER TRESPASS TO COUNT (6)  
BURGLARY. SO MUCH EMPHASIS WAS PLACED

ON COUNT (1), READING OF THE TRANSCRIPT WILL MANIFEST.

[SEE EXHIBIT-11], TRIAL TRANSCRIPT, PGS. 73-96] → [MUST READ TO GET FULL CUST.]

NOW, POINTING OUT

THAT THEY STATE, IN THE NEVADA CRIMINAL COURT MINUTES,  
THAT THREE ADDITIONAL INSTRUCTIONS ARE PROFFERED.

[(SEE EXHIBIT-12) (COURT MINUTES) PG. 8] ALSO, IN TRIAL TRANSCRIPTS

THIS IS STATED. [(SEE EXHIBIT-13) TRIAL TRANSCRIPT, PG. 2, LINE 14-15]

HOWEVER, THE TRUTH IS NOW REVEALED THAT  
THE TRESPASS WAS GOING TO BE OFFERED BUT WASN'T.

WHEN THE JUDGE ASKED DEFENSE  
COUNSEL FOR THOSE HE NOW STATES, "THEY ARE ACTUALLY  
JUST STATUTES SO THERE'S NO —"! [(SEE EXHIBIT-14) TRIAL  
TRANSCRIPT, PG. 6, LINES 2-9] WHERE WAS TRESPASS?

IN [PECK V. NEVADA] 116 NEV. 840, 7 P.3D 470, WHERE  
THERE IS EVIDENCE WHICH WOULD ABSOLVE THE DEFENDANT FROM  
GUILT OF THE GREATER OFFENSE OR DEGREE BUT WOULD  
SUPPORT A FINDING OF GUILT OF THE LESSER OFFENSE OR DEGREE,  
AN INSTRUCTION ON THE LESSER-INCLUDED OFFENSE IS  
"MANDATORY" EVEN IF NOT REQUESTED. [MOOREY STATE] 105 NEV. 378, 383,  
776 P.2D 1235 (1999) MY OWN ATTORNEY ARGUES ON RECORD

[NOTE 8 CONTINUED]

1 THAT HE HAS OVER "500" JURY TRIALS AND HE HAS NEVER  
 2 BEEN DENIED AN INSTRUCTION. [EXHIBIT-15], TRIAL TRANSCRIPT, PG 97, LINES 22 ON]

3 WELL, FIRST YOU HAVE TO  
 4 TRAVELY OFFER THE INSTRUCTION! SECOND, YOU HAVE SUCH  
 5 VAST EXPERIENCE AS A "CRIMINAL", OF COURSE I  
 6 MEAN CRIMINAL ATTORNEY, THAT YOU SHOULD REALIZE  
 7 THIS. [SEE EXHIBIT-15] TRIAL TRANSCRIPT, PG. 97 LINE-22

8 THE JUDGE ADMITS ON  
 9 PAGE 98 OF (EXHIBIT-15) THAT, THAT'S WHAT APPELLATE  
 10 COURTS ARE FOR!

11 [TRIAL TRANSCRIPT PGS 6, 7, 8] WELL AGAIN, THE INITIAL ARRESTING  
 12 OFFICER'S TRIAL TESTIMONY STATES THAT THE INITIAL  
 13 DISPATCH CALL WAS NOTHING MORE THAN A SIMPLE  
 14 TRESPASS. [SEE EXHIBIT-16] [THE JUDGE HERSELF EVEN  
 15 CONFIRMS WHY THE OFFICER WAS DISPATCHED] REMEMBERING THAT THE  
 16 NEVADA SUPREME COURT HAS ALREADY RULED AND HOLD TO,  
 17 [2] DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO A JURY  
 18 INSTRUCTION ON HIS THEORY OF THE CASE SO LONG AS THERE  
 19 IS SOME EVIDENCE, NO MATTER HOW WEAK OR INCREDIBLE, TO SUPPORT IT.  
 20 [HARRIS V. STATE] 106 NEV. 667, 670, 799 P.2d 1104, 1105-06 (1990)

21 SEE ALSO, [PEOPLE V. GEIGER], 35 CAL. 3d 510, 199 CAL. RPT. 45,  
 22 674, P.2d 1303, 1304 (1984)

23 PETITIONER MUST POINT OUT THAT EVEN  
 24 THE SO-CALLED VICTIM'S TESTIMONY, OVER AND OVER, CONFIRMS  
 25 IN FACT THAT PETITIONER LIVED THERE AND MORESO

26 [NOTE & CONTINUED]

ALL PETITIONER'S PERSONAL BELONGINGS WERE THERE.

[SEE EXHIBIT-17], PRELIMINARY HEARING TRANSCRIPT, PG 18] SEE ALSO FOLLOWING.

[SEE EXHIBIT 18], PRELIM. TRANSCRIPT, PG. 21]

ABOVE, VICTORIA'S OWN

TESTIMONY CONFIRM THAT, 1) WE WERE BOYFRIEND AND GIRLFRIEND,  
2) WE LIVED TOGETHER, 3) SHE LET ME IN. [PETITIONER  
DIDN'T HAVE HIS KEY.] THIS TESTIMONY WAS GIVEN IN  
HER VOLUNTARY STATEMENT AND AT THE PRELIMINARY HEARING.

IN [PEOPLE V RILEY] 101 A.D.2d 710, 475 N.Y.S. 2d 691 (1984)

FAILURE TO USE RECORDS OF PREVIOUS PROCEEDINGS IN EXAMINING  
ANY WITNESS INDICATES INEFFECTIVE ASSISTANCE OF COUNSEL.

NOW, ENFORCING MY PRIOR ARGUMENT OF  
A VERY EXPERIENCED TRIAL LAWYER NOT REQUESTING A  
JURY INSTRUCTION FOR A LESSER OFFENSE WAS AGAIN  
RULED AND FOUND THAT INEFFECTIVE COUNSEL EXISTED IN,

SEE [PEOPLE V. NORFLEET] 267 A.D. 2d 881, 704 N.Y.S. 2d 146 (1999)

SEE ALSO [PEOPLE V. WILEY], 120 A.D. 2d 66, 507 N.Y.S. 2d 928 (1986), WHERE

AN ATTORNEY WHO FAILS TO REQUEST PROPER JURY INSTRUCTIONS  
OR CHARGES IS FOUND INEFFECTIVE. ALSO FROM ABOVE  
THEY FOUND THAT, "COUNSEL'S FAILURE TO SEEK JURY  
INSTRUCTIONS FOR LESSER OFFENSE WAS INEFFECTIVE  
ASSISTANCE BY THE SIXTH AMENDMENT."

GOING BACK TO [PECK V. NEV], SUPRA,  
ALLOWING AN INSTRUCTION ON A LESSER-RELATED OFFENSE GIVES  
THE FACTFINDER MORE CHOICES, AND CONSEQUENTLY GIVES JURORS  
THE ABILITY TO CONVICT A DEFENDANT FOR THE CRIME THAT IS BEST

[NOTE: CONTINUED]

SUBSTANTIATED BY THE EVIDENCE.

CLEARLY, IV.R.S. 207.200, (1)

TRESPASS READS, "ANY PERSON WHO, UNDER CIRCUMSTANCES NOT AMOUNTING TO BURGLARY (2) GOES UPON THE LAND OR INTO A BUILDING OF ANOTHER WITH INTENT TO VEX OR ANNOY THE OWNER OR OCCUPANT THEREOF, OR TO COMMIT ANY UNLAWFUL ACT,"

WOULD NOT THE REDUCED COUNT (1) OF SIMPLE BATTERY RETURNED BY THE JURY BE THAT UNLAWFUL ACT?

THERE IS WITHOUT A DOUBT A HARMFUL ERROR THAT DOES AFFECT THE RELIABILITY OF THE VERDICT!

IN PECK V NEV., SUPRA, SUPREME COURT JUDGES, LEAVITT, J., ROSE, C.J., AND MAUPIN J., ALL HELD BECAUSE OF THE OVERWHELMING EVIDENCE OF GUILT PRESENTED AT TRIAL, IN THAT CASE, THEY CANNOT SEE HOW THE FAILURE TO INSTRUCT ON THESE MISDEMEANDORS WOULD HAVE IN ANY WAY AFFECTED THE FELONY VERDICTS IN THAT CASE.

IN PETITIONER'S TRIAL I WAS ACQUITTED OF ALL FELONIES, COUNTS 1 THRU 5.

I KNOW IT HAD AFFECT ON MY BURGLARY. IF THE JURY WOULD HAVE HAD TRESPASS I WOULDN'T BE WRITING THIS. FAILURE TO INSTRUCT MISDEMEANOR TRESPASS CAUSED THIS.

23. (d.)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO DUE PROCESS, DOUBLE JEOPARDY, EFFECTIVE COUNSEL, EQUAL PROTECTION.

BASED ON THESE FACTS: [DOUBLE JEOPARDY]

MY LAWYER WAS INEFFECTIVE FOR

FAILING TO ARGUE THE FACT OF DOUBLE JEOPARDY EXISTING WHEN PETITIONER WAS CONVICTED OF SIMPLE BATTERY UNDER COUNT (1) AND BATTERY EXISTING AS AN ELEMENT OF BURGLARY. NEVADA HAS ADOPTED THE DOUBLE JEOPARDY TEST SET FORTH IN [BLOCKBURGER V. UNITED STATES], 284 U.S. 299, 304, 52 S. (2-180, 182 76 L. ED. 306 (1932)

IF THE ELEMENTS OF ONE OFFENSE ARE ENTIRELY INCLUDED WITHIN THE ELEMENTS OF A SECOND OFFENSE, THE FIRST OFFENSE IS A LESSER INCLUDED OFFENSE AND THE DOUBLE JEOPARDY CLAUSE PROHIBITS A CONVICTION FOR BOTH OFFENSES. SEE ALSO [LISBY V STATE] 82 NEV 183, 186-187, 414 P2d 592, 594 (1966)

HERE, IF THE LESSER-INCLUDED CHARGE OF TRESPASS [207.200, N.R.S.] WOULD HAVE BEEN INSTRUCTED TO THE BURGLARY [205.060, N.R.S.] COUNT (6), THE STATE'S ABILITY AND CONVICTION ON THE BATTERY, COUNT (1) AND CONVICTION OF TRESPASS ON COUNT (6) WOULD HOWEVER THEN POSSIBLY HOLD. BY NOT OFFERING TRESPASS, NOW THE DOUBLE JEOPARDY CLAUSE TRULY IS MANIFESTED. BY PETITIONER BEING FOUND GUILTY

[NOTE : CONTINUED]

BY A JURY OF SIMPLE BATTERY, THAT WAS PROFFERED AS A LESSER INCLUDED CHARGE TO COUNT (1) OF BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (NRS 200.400)

THE JURY WAS AFFORDED NO OTHER OPTION ON COUNT (6) BURGLARY. HOWEVER, BATTERY IS A TOTAL ELEMENT OF BOTH COUNTS (1) AND (6).

PETITIONER MUST POINT OUT THAT HE WAS ACQUITTED BY A JURY OF ALL FELONIES LISTED IN THE INFORMATION IN THE INSTANT CASE.

COUNT'S (1) THRU (5) WERE RIGHTFULLY UNANIMOUSLY ACQUITTED BY A JURY. THEREFORE, PETITIONER IS VERY ADAMANT THAT SINCE BATTERY IS AN LESSER INCLUDED OFFENSE AND A COMPLETE ELEMENT OF THE BURGLARY COUNT (6) THAT THE FELONY BURGLARY SHOULD BE REVERSED.

DEFENDANT WAS CONVICTED OF SIMPLE MISDEMEANOR BATTERY COUNT (1) AND BATTERY BEING THE ELEMENT OF BURGLARY COUNT (6). IN PETITIONERS CASE, ★ WHERE LIES THE PREREQUISITE OF FELONIOUS INTENT NEEDED FOR BURGLARY?

PETITIONER WAS ACQUITTED OF ALL FELONIES! IF TRESPASS WOULD HAVE BEEN PROFFERED IT WOULD HAVE BEEN SELECTED BY THE JURY. HOWEVER, NOW DEFENDANT WAS CONVICTED OF SIMPLE BATTERY TO BE CONVICTED OF FELONY BURGLARY. CANNOT HOLD. SEE [HERNANDEZ V NEV] 50 P.2D 1100 (2002)

23. (e.)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO DUE PROCESS, FAIR TRIAL, EFFECTIVE COUNSEL, EQUAL PROTECTION.

BASED ON THESE FACTS: ILLEGAL USE OF MISDEMEANOR AND DISMISSED MISDEMEANOR  
MY LAWYER WAS INEFFECTIVE FOR  
EGREGIOUSLY FAILING TO ARGUE AND OBJECT TO THE STATE OPENING UP THE TRIAL IN IT'S, CASE-IN-CHIEF, WITH AN MISDEMEANOR CONVICTION AND DISMISSED MISDEMEANOR. N.R.S. 50.095(1) AND FEDERAL RULE 609(2)(1) DISTINCTLY SPECIFY THAT "ONLY" IF A CRIME WAS PUNISHABLE BY DEATH OR IMPRISONMENT IN EXCESS OF ONE YEAR UNDER THE LAW FOR WHICH THE ACCUSED HAS BEEN CONVICTED, WHICH MEANS "FELONY", THEN IS SUBJECT TO RULE (FEDERAL) (403) WHICH ALLOW FELONIES WITHIN [10] YEARS AND UNCHARGED RELEVANT EVIDENCE AFTER HOLDING A HEARING TO DETERMINE IF THE EVIDENCE IS RELEVANT AND THE PROBATIVE VALUE IS NOT OUTWEIGHED BY THE UNFAIR PREJUDICE.

IN THE INSTANT CASE AT HAND, A PETROCELLI HEARING WAS HELD UNDER JUDGE GLASS ON OCT. 8, 2004. AT THE CONCLUSION OF THAT HEARING SHE WRONGFULLY RULES THAT A SINGLE MISDEMEANOR CONVICTION CAN BE USED. SORRY, BUT FEDERAL RULE (403) CLEARLY IS WRITTEN IN THAT THE ONE INSTANCE IN WHICH RULE (403) DOES NOT ACCORD DISCRETION TO A TRIAL JUDGE IS IN THE RULING ON THE ADMISSIBILITY OF CONVICTIONS,

[NOTE: CONTINUED]

PER RULE 609 & 609.5

INSTANT CASE IS THEN PUT INTO OVERFLOW AND JUDGE LOEHNER RULES ON THE SO CALLED BAD ACTS. AND CLEARLY STATES IT IS A MISDEMEANOR AND CANNOT BE ALLOWED BY LAW.

[SEE EXHIBIT 19] HOWEVER, JUST LIKE, [ROEVER V. NEV.] 114 NEV 867, 963 P.2d 503

DURING ITS CASE-IN-CHIEF, THE STATE CALLED A SERIES OF CHARACTER WITNESSES TO DESTROY THE CHARACTER OF THE ACCUSED.

NOW, THE RULING WAS JUST GIVEN BUT THE STATE DOES IT ANYWAY. MY ATTORNEY ALLOWS MY CHARACTER TO BE DESTROYED WITH A MISDEMEANOR CONVICTION THAT MAKES ME SOUND, THE BIGGEST BEAST IN THE WEST.

THEN THE STATE INTRODUCES THE MOST PREJUDICIAL PHOTOS FROM A DISMISSED MISDEMEANOR CHARGE. HE THEN OBJECTS BUT THE JUDGE JUST CONTRADICTED HER OWN RULING GIVEN. THREE WITNESSES TESTIFIED TO THOSE ACTS AND BY THEN I KNOW THE JURY STARTED TO FORM A VERY BAD PICTURE OF ME IN THEIR MINDS.

[ANYONE WOULD] IF THIS EVIDENCE WOULD NOT HAVE BEEN INTRODUCED, PETITIONER WOULD HAVE BEEN COMPLETELY ACQUITTED OF NOT (S) FELONIES BUT ALSO TO

INCLUDE THE LAST AND ONLY FELONY CONVICTION, I RECEIVED. IS NOT THE LAW ABOUT RULES?

WELL, THEY HAD THEIR PETROCELLI HEARING. JUDGE GLASS RULED. I SAY ONE, NOT TWO, BUT ONE SINGLE MISDEMEANOR COULD BE USED. HOWEVER, SUBSEQUENT, JUDGE LOEHNER CHANGED IT.

[NOTE: CONTINUED] MISDEMEANORS CANNOT BE USED, SEE [SHERIFF V. HAWKINS] 104 NEV 70, (1988) 752 P.2d 769



IN THE NEVADA CRIMINAL COURT MINUTES, PG. (6), WHAT AND WHY  
DIDN'T ANYONE HEAR ME OR SEE WHAT IS MANIFESTED.

THEY SIMPLY BROKE THE LAW AND UNDER-  
ESTIMATED PETITIONER IN TRYING TO BE HEARD.

DO YOU WANT MORE PROOF?

ON DIRECT APPEAL,

STATE FILING FAST TRACK RESPONSE AND MY OWN CRIMINAL  
ATTORNEY FILING THE FAST TRACK STATEMENT, BOTH AGREE  
AND WE AND SAY A PETROCELLI HEARING WAS HELD  
AND THE DISTRICT COURT RULED (2) BAD ACTS  
COULD BE USED. IT SAYS (2) NOT (1).

SO THE NEVADA SUPREME COURT AFFIRMS  
THE CONVICTION AND STATES, "WE GIVE GREAT DEFERENCE  
ON THE LOWER COURT'S RULING CONCERNING BAD ACT EVIDENCE".

WELL, WAKE UP AND SMELL THE COFFEE.

THE SUBSEQUENT RULING GIVEN BY THE NEW  
TRIAL JUDGE, HEARING THE CASE, SAYS NOT TO  
USE ANYTHING FOR THEY WERE MISDEMEANORS AND  
IT'S AGAINST THE LAW! [SEE AGAIN EXHIBIT-19]

JUDGE LOEHRER PROPERLY PERFORMED TASK RULE 403. AS IN [U.S. V. VERDUZCO] <sup>SEE</sup> <sub>CITE</sub>  
AGAIN, JUDGE GLASS RULED (1) ACT COULD BE USED, NOT (2). <sub>BELOW</sub>

THAT'S NOT WAS REPORTED TO THE NEVADA SUPREME COURT ON APPEAL.

THEY NEVER REPORTED TO THE NEVADA SUPREME COURT  
ON DIRECT APPEAL THAT JUDGE LOEHRER SAID IT'S A NO, NO!  
I WONDER WHY? [UNITED STATES V. VERDUZCO, 373 F.3d 1022, 1029 n.2  
(9th CIRCUIT 2004)]

23. (f.)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE  
ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 6<sup>th</sup> AMENDMENT  
RIGHT TO EFFECTIVE TRIAL COUNSEL AND APPELLATE COUNSEL

BASED ON THESE FACTS: [INEFFECTIVE COUNSEL AT TRIAL  
FAILURE TO PROCURE WITNESSES [INEFFECTIVE COUNSEL ON DIRECT APPEAL  
FAILURE TO USE CRITICAL EVIDENCE] MY LAWYER WAS INEFFECTIVE FOR  
FAILING TO CALL OR SUBPOENA ANY WITNESSES! THE KEY TESTIMONY  
OF A FRIEND NAMED ALI, WHO IS MORE INVOLVED IN THIS CASE  
THAN WHAT WAS REPORTED, WAS THE MOST CRUCIAL  
WITNESS NEEDED. THIS INDIVIDUAL VISITED THE PETITIONER  
AT THE COUNTY JAIL AT THE END OF JUNE OR BEGINNING OF  
JULY IN 2004, DURING THE CASE OF COURSE.

NOW FIRST,

PETITIONER REALIZES THAT THE JAIL RECEIVING VISITORS  
NEED GENERALLY A DRIVERS LICENSE AS A FORM OF I.D. AND  
THEY RECORD VISITATIONS TO INMATES, ESPECIALLY IN A CASE  
LIKE MINE. ALSO, I GAVE HIS ADDRESS, EMPLOYERS, AND  
EVEN HIS CURRENT CELL PHONE NUMBER, TO BOTH  
ATTORNEYS FOR THE DEFENSE. ON A VISIT, THIS INDIVIDUAL  
EVEN INFORMED PETITIONER THAT IN FACT HE WAS THE  
MAN THAT STOPPED BY DEFENDANT'S AND SO-CALLED VICTIMS  
COHABITED APARTMENT AT 3:00 AM TO 4:00 AM. THE MORNING  
OF THE ARREST ON MAY 29, 2004. I'll SUBMIT HIS  
DNA, IS THE DNA, IN THE MIXTURE DETECTED BY FORENSICS.

[NOTE: CONTINUED]

PETITIONER'S INITIAL PUBLIC DEFENDER, BITA KHAMSI, REPORTED TO DEFENDANT THAT ALI WAS IN FACT CONTACTED BY HER INVESTIGATOR AND HAD GIVEN A LOT OF SUPPORTING TESTIMONY TO DEFENDANT'S CASE. HOWEVER, IT WAS NOTED THAT ALI WAS PETRIFIED AND ON AN ADDITIONAL ATTEMPT TO CONTACT HIM HE HAD HAD A HEART ATTACK. HE KNEW HIS SEMEN WAS DETECTED AND WAS TERRIFIED OF ANY REPERCUSSION TO HIM FROM DEFENDANT. TRUTHFULLY, WHO WOULDN'T BE!

HE IS THE CULPIT TO ALL THE BRUISES ON VICTORIA'S BODY. MORE IMPORTANTLY, HIS TESTIMONY WOULD HAVE BEEN ABSOLUTELY CONTRARY TO ALL STATEMENTS MADE BY VICTORIA. ESPECIALLY IN HER VOLUNTARY STATEMENT WHERE SHE FLAT OUT TELLS AN UNTRUTH THAT SHE HASN'T BEEN PROMISCUOUS.

PETITIONER CANNOT STATE THE INJUSTICE IN NOT HAVING HIM ISSUED A SUBPOENA.

IN HIS VISIT TO DEFENDANT AT THE COUNTY JAIL, HIS STATEMENTS TO ME WERE, VICTORIA WAS CRYING AND UPSET THAT SHE HAD CALLED THE POLICE CAUSING DEFENDANT TO BEING TOLD BY AN OFFICER TO LEAVE FOR JUST A 24 HR. COOLING OFF PERIOD. NOT FOREVER AS SUGGESTED BY THE STATE. HE ALSO TOLD ME SHE HAD CALLED HIM TO COME OVER BUT ALSO IF HE HAD HEARD FROM ME YET. IT'S ONE OF THE OLDEST

[NOTE: CONTINUED]

WISE TALES TOLD. SEE, ALI AND DEFENDANT WORKED TOGETHER AND WERE SOMEWHAT FRIENDS. [WATCH YOUR BUDDIES.]

ALI'S OWN STATEMENT'S TO THE INVESTIGATOR AND DEFENDANT WERE SO CRUCIAL THAT HIS TESTIMONY NOT BEING HEARD BY THE JURY WAS A DELIBERATE ACT. IN FACT, I NOW FIND OUT THAT WHEN I CALLED VICTORIA (ON MAY 29, 2004,) FROM ANOTHER LOCATION, [EARLY MORNING], HE WAS THERE. OF COURSE NOONE TOLD ME AT THAT TIME.

WHEN DEFENDANT TOLD VICTORIA HE WAS ON THE WAY HOME OF COURSE ALI LEFT BEFORE I GOT THERE. ALI'S STATEMENTS TO ME AT THE TIME OF THE VISIT WAS VICTORIA WAS MORE CONCERNED IF I HAD CALLED OFF AT WORK AND IF ALI KNEW, IF IN FACT I HAD CALLED OFF WORK. THIS DOESN'T SOUND LIKE SHE WANTED ME OUT OF HER LIFE AND THE JURY SHOULD HAVE HEARD THIS.

GOOD LORD, THE MAN VISITED ME AT JAIL, TOLD IMPERATIVE TESTIMONY THAT WOULD CONTRADICT VICTORIA'S! PUBLIC DEFENDER BITA KHAMSI HAD THIS INFORMATION BUT YOU ALL WANT PETITIONER TO BELIEVE THAT A TRIAL, CRIMINAL DEFENSE ATTORNEY LIKE JAMES L BUCHANAN, WHO JUST GOT DONE STATING THAT IN OVER 500 TRIALS AND WITH ALL HIS EXPERIENCE, THOUGHT HIS NOT HAVING ALI

[NOTE & CONTINUED]

MR. BUCHANAN STATED ALI COULDN'T BE LOCATED.  
PUBLIC DEFENDER'S INVESTIGATOR FOUND HIM EASILY.

GROUND 6 Page 4 of 8

TESTIFY WAS A PROPER DEFENSE? [THIS WAS A SURREPTITIOUS  
THOUGHT FOR I REQUESTED ALI. (BUT KNEW THIS)] AT THE TIME OF VICTORIA'S  
AND ALI'S SURREPTITIOUS SEX CAPADE, BEFORE DEFENDANT  
RETURNED HOME, NOT A SINGLE THOUGHT CAME TO THEIR  
MINDS THAT (12) HRS. LATER THE DAY WOULD UNFOLD  
LIKE IT DID. DEFENDANT RETURNS HOME. WE MAKE  
UP. DRINK, SMOKE COCAINE, HAD SEX, BUT NOT VAGINAL  
SEX. WE GET INTO ANOTHER ARGUMENT. COPS COME  
AGAIN. SHE CLAIMS I RATED HER. SHE'S DRUNK  
UNDER DRUGS AND STATES I'M ACCUSING HER  
OF SLEEPING AROUND. SHE DOESN'T KNOW THAT  
WHEN THEY HEAR THAT THEY HAVE TO SEARCH FOR  
DNA. THEY ASK HER IF THERE IS ANY  
TRUTH TO DEFENDANT'S ALLEGATIONS. OF COURSE  
SHE SAYS NO. THEY BELIEVE HER. THE TESTS  
DONE SHOW CONTRARY TO HER STORY. SHE LIED  
TO THE COPS, SAME NURSE, A.D.A'S THAT SHE  
HAD NOT BEEN DRINKING EXCEPT A FEW SIPS  
OF BEER, NEVER DID DRUGS, AND SHE HAS NEVER  
BEEN AN ADULTEROUS WOMAN. NOW, BY THE STATE'S  
OWN TESTING SHE'S PROVED TO BE A LIAR IN ALL.

BY READING ANOTHER PERSONAL LETTER AGAIN  
WRITTEN TO THE DEFENDANT ALMOST (1) YEAR LATER,  
SUBSEQUENT THE TRIAL, SHE ADMITS ON PAPER, THE TRUTH.

[SEE EXHIBIT-20] LETTER DATED SEPT. 8, 2005

NOTE: CONTINUED

GROUND 6 Page 5 of 8

WHEN I GET OUT, & WE HAVE ALL THE TIME IN THE WORLD WITHOUT GETTING ANGRY, DEFENSIVE, NOR PINPOINTING WHO DID WHAT OR WHO DID WHO.

BY NOT HAVING ALI TESTIFY PER  
[STRICKLAND V WASHINGTON] 466 U.S. 668, 104 S.Ct. 2052, (1984)

CAN ONLY BE CONSTRUED AS INEFFECTIVE COUNSEL.

IN [BROWN V. MYERS] 137 F.3d 1154, (9<sup>th</sup> CIRCUIT, 1998)

COUNSEL EGREGIOUSLY FAILED TO INVESTIGATE AND PRESENT AVAILABLE TESTIMONY SUPPORTING PETITIONER'S STORY.

THIS ALSO CAN ONLY BE WITHOUT DOUBT A MISCARRIAGE OF JUSTICE FOR THE JURY TO NEVER HEAR VICTORIA'S MOTIVE TO LIE AND COVER UP HER ADULTEROUS WAYS AND IMPEACHMENT OF HER SIDE OF THE STORY.

SEE ALSO [SCHULP V. DELO] 513 U.S. 298, 327, 115 S.Ct. 851, 867.

NOTE THAT ALSO RULED IN [PEOPLE V RILEY] 101 A.D.2d 710, 475 N.Y.S. 2d 691 (1984)

THAT FAILURE TO USE RECORDS OF PREVIOUS PROCEEDINGS IN EXAMINING ANY WITNESS INDICATES INEFFECTIVE ASSISTANCE OF COUNSEL.

PLEASE KEEP IN MIND THAT BESIDES NOT IMPEACHING VICTORIA AND SHOWING THE JURY ALL HER INCONSISTENT STATEMENTS PART OF ALI'S STATEMENTS TO ALL THAT HE WAS WAITING TO SEE IF I NEEDED A RIDE TO WORK.

THIS ALONE PROVES EVERYONE KNEW I LIVED THERE AT THAT TIME. OF COURSE, THAT WAS PART OF HIS STORY

[NOTE : CONTINUED]

## GROUND 6 Page 6 of 8

TO EXPLAIN WHY HE WAS THERE. OUR CAR WAS HAVING TRANSMISSION PROBLEMS AND REGULARLY HE WOULD PICK DEFENDANT UP AROUND 5:00AM TO 6:00AM DAILY. THE SITUATION JUST PRESENTED ITSELF THAT I WASN'T TO COME BACK FOR 24 HRS AND THEY WERE ALONE, BEHIND CLOSED DOORS! SHE HAD MY KEY ALSO.

IN ADDITION TO ALI NOT BEING ISSUED A SUBPOENA, HOW ABOUT ANY WITNESSES IN MY DEFENSE?

AGAIN WITH MR BUCHANAN'S OWN TESTIMONY HE HAD OVER "500" TRIALS WORTH OF EXPERIENCE.

HOW ABOUT AN EXPERT TO TRULY DISCLOSE THE DNA RESULTS INSTEAD OF SPECULATION! HOW ABOUT NOT BEING INFORMED THAT HE WAS TO LATE BY THE JUDGE IN A REQUEST FOR DR. ROTHMAN FOR THE DEFENSE. HOW ABOUT WHEN HE HAD STAN WELCH ON THE STAND HE DIDN'T INQUIRE ABOUT HIS CONTACT AND INQUIRY MADE WITH ALI? IF YOU LOOK AT THE (3) DAYS OF TESTIMONY MADE HE QUESTIONED (1)

WITNESS, ABOVE, STAN WELCH AND DIDN'T ASK ABOUT ALI. THIRTY SECONDS OF TESTIMONY. HOWEVER, THE STATE SUBPOENAED (15) TO (20) PEOPLE.

[NOBODY FOR THE DEFENSE] THE ONLY PERSON HE SUCCESSFULLY SUBPOENAED WAS TROY RAY, ANOTHER FRIEND THAT COULD HAVE GAVE TESTIMONY TO THE FACT

[NOTE: CONTINUED]

GROUND 6 Page 7 of 8

THAT DEFENDANT LIVED THERE AND ABOUT VICTORIA'S LIFESTYLE AND DRUG USE. HOWEVER, THE JUDGE STRUCK DOWN DEFENDANT'S RIGHT TO HAVE DEFENDANTS WISH UNDER THE COMPULSORY PROCESS TO GIVE SUPPORTING TESTIMONY TO HIS STORY, PER THE 6<sup>TH</sup> AMENDMENT.

NOT ONLY AT TRIAL BUT THEN ON DIRECT APPEAL, MY ONCE RETAINED ATTORNEY SUBSTITUTES IN ON APPEAL AFTER DEFENDANT FINALLY FILES A TIMELY NOTICE OF APPEAL. HE THEN HAS HIS ASSISTANT, JIM KELLY, FILE AN AFFIDAVIT, FLAT OUT TELLING AN COMPLETE LIE AND THAT APPELLANT DIDN'T WANT TO APPEAL. PETITIONER SCREAMS LAR TO THE NEVADA SUPREME COURT AND THEN THEY STRIKE HIS FAST TRACK STATEMENT.

THEN HE FILES AN (1) ISSUE F.T.S. ! ONE ISSUE !!! TO ADD INSULT TO INJURY MY OWN ATTORNEY LIES WITH THE STATE ABOUT THE USAGE OF BAD ACTS. THEY BOTH FALL BACK ON JUDGE'S (GLASS) RULING GIVEN AFTER THIS HOLDING OF AN ILLEGAL PETROLEUM HEARING. HOW IRONIC HE DOESN'T REPORT THE TRUE SUBSEQUENT RULING CONCERNING THE BAD ACTS GIVEN BY NOW THE TRIAL JUDGE, LOEHNER ON DAY (1). UNDER LOZADA V DEEDS 964 F.2d 956, 958-959 (9<sup>TH</sup> CIRCUIT, 1992) COUNSEL'S DECISION TO NOT FILE NOTICE OF APPEAL AND FAILURE TO NOTIFY

NOTE & CONTINUED



GROUND 6 Page 8 of 8

DEFENDANT OF HIS ACTIONS CONSTITUTED DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE DECISION WAS MADE WITHOUT DEFENDANT'S CONSENT.

GOD LORD, WHAT IS NOT AGAIN MADE MANIFEST?

PETITIONER DIDN'T WANT MR BUCHANAN AS HIS APPELLATE ATTORNEY.

APPELLATE HIMSELF HAD TO FILE (2) NOTICE'S TO TRY AND BE HEARD. THEN BUCHANAN'S OFFICE FIRST FILE A LIE TRYING TO KILL MY APPEAL.

SECOND, WHEN THEY DO FILE A F.T.S. THEY LIE ABOUT THE RULING CONCERNING THE BAD ACT'S RULING GIVEN.

IT'S CALLED COVERING YOUR ACTIONS. JUST AS IN [LOZADA V. DEEDS] SUPRA, THEY DID NOT EVER GET ANY CONSENT TO TRY AND KILL MY DIRECT APPEAL KNOWN AS YOUR RIGHT TO APPEAL. WHO WOULD DENY THE EXTRA SHOT TO TRY AND GET YOUR WRONGFUL CONVICTION OVERTURNED. NOBODY WOULD!

My DIRECT APPEAL FINALLY FILED WAS FRIVOLOUS AND A LIE. THAT'S OK BECAUSE HE WRONGFULLY STILL HAS A LICENSE TO PRACTICE.

23. (g.)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> AMENDMENT RIGHT TO DOE PROCESS, EFFECTIVE COUNSEL, EQUAL PROTECTION OF THE LAW

BASED ON THESE FACTS: DNA RESULTS NOT DISCLOSED BEFORE TRIAL AND COVERING UP RESULTS  
BRADY VIOLATION  
MY LAWYER WAS INEFFECTIVE FOR

FAILING TO SUBPOENA AN EXPERT TO DISCLOSE THE TRUE RESULTS OF THE DNA EXAMINATION AND BY NOT ALLOWING THE TRUTH TO BE HEARD. PETITIONER SURREPTITIOUSLY ALREADY HAD THE RESULTS VERIFIED. I'LL CHALLENGE ANYONE. HOW MANY PEOPLE WILL NOW INGRATiate THEMSELVES AND COMMIT PERJURY TO COVER THE RESULTS BEING REPORTED BY ONE, A.D.A., SUSAN KRISKO, # 6024? [ONLY TIME WILL TELL.] I'LL SUGGEST AN AVENUE FOR HER TO TRAVEL. THAT BEING THAT SHE WAS IGNORANT TO THE MEANING OF THE, "PRINTED SYNOPSIS," SINCE SHE DID NOT CALL HER EXPERT TO DIVULGE THE MEANING OF THE DNA PROFILES FOUND IN THE SEMEN. [SEE EXHIBIT 21, DNA CONCLUSION] MS. KRISKO SHOULD REMEMBER SHE DIDN'T SLEEP WITH ALI, VICTORIA DID!

VICTORIA'S TESTIMONY TO THE FACT OF HER "NOT" BEING PROMISCUOUS DURING HER VOLUNTARY STATEMENT, DURING THE PRELIMINARY HEARING AND AT TRIAL CANNOT BE CHANGED. THE CLEAR CONCLUSION OF THE DNA

[NOTES & CONTINUED]

RESULTS TELL THE TRUE STORY.

THE "JURY" NEVER GOT TO HEAR ABOUT HER TRUE WAYS AND ABOUT WHY SHE WOULD LIE. IF VICTORIA HAD NOTHING TO HIDE, WHY DID SHE LIE? IF FOR ONE SECOND ANYONE BELIEVES THAT THE FACT OF THE JURY NOT HEARING THIS, WOULDN'T MATTER YOU NEED COUNSELING. SERIOUS COUNSELING AT THAT!

IT'S NOT SO MUCH THE STATE LIED ABOUT THE DNA, BUT IT'S WHAT THEY DIDN'T TELL!

IN [UNITED STATES V. VOZZELLA] 124 F.3d 389, (2d Cir. 1997) VACATING CONVICTIONS WHERE PROSECUTION RELIED ON EVIDENCE THAT WAS KNOWN TO BE PARTIALLY FALSE AND EVIDENCE WAS NOT MADE KNOWN TO THE DEFENDANT PRIOR TO TRIAL.

WHEN THE DNA REPORT CAME BACK ON AUGUST 23, 2004, IT SHOULD HAD BEEN PART OF THE DISCOVERY GIVEN TO INITIAL PUBLIC DEFENDER, BITA KHANZI.

SHE SWEARS THE STATE HID IT AND DID NOT DISCLOSE TO HER. IT WOULD HAVE OPENED SO MANY AVENUES OF DEFENSE, IT'S JUST SIMPLE OR TRUTHFUL TO SAY THAT'S WHY IT WASN'T PRODUCED TO THE DEFENSE.

BECAUSE VICTORIA LIED TO

SUSAN KRISKO, PETITIONER MUST SIMPLY PAY.

[NOTE 8 CONTINUED]

1 UNDER HABEAS CORPUS RELIEF AND THE BRADY  
2 OBLIGATION (ALSO KNOWN AS THE BRADY MATERIALS DOCTRINE)

3 [BRADY V MARYLAND] 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963)

4  
5 UNDER THIS OBLIGATION, THE PROSECUTION IN A CRIMINAL  
6 CASE MUST REVEAL ANY EVIDENCE THAT MAY PROVE YOUR  
7 INNOCENCE. NOTE, HOWEVER, THAT THE EVIDENCE REFERRED  
8 TO IS THE RESULTS OF AND FROM DNA TESTING, NOT  
9 THE MATERIAL BEING TESTED. IF EVIDENCE WAS  
10 SUBJECTED TO DNA TESTING, THE PROSECUTION WITHHELD  
11 THE RESULTS OF THAT TEST FROM YOU, AND THE RESULTS  
12 MAY HAVE HELPED TO PROVE YOUR INNOCENCE, YOU  
13 WOULD HAVE A CLAIM FOR HABEAS CORPUS RELIEF.

14  
15 WHAT'S GREAT ABOUT THIS FOR PETITIONER IS IT  
16 STATE'S VERY CLEARLY THAT IF THE RESULTS ONLY  
17 MAY HAVE HELPED TO PROVE YOUR INNOCENCE YOU  
18 WOULD HAVE A VALID CLAIM. IT DOESN'T SAY  
19 IT HAS TO IN AN ABSOLUTE MANNER, AGAIN, ONLY  
20 THAT IT MAY HAVE HELPED.

21  
22 HOWEVER, WE ALL KNOW  
23 IN PETITIONER'S CASE IT WOULD HAVE! THAT'S WHY  
24 THEY HID IT. [SHAME, SHAME] IN [PEOPLE V. DE OLIVEIRA],  
25 636 N.Y.S.2d 441, 223 A.D.2d 766 (3d DEPT. 1996) NO CRITICAL TESTIMONY  
26 COULD SERIOUSLY IMPERICH DNA TEST RESULTS IN THAT CASE. IN  
27 PETITIONER'S CASE, THE DNA RESULTS ARE CONTRARY TO ALL!  
28

23. (h)

[I] ALLEGE THAT MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF MY <sup>5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup></sup> AMENDMENT RIGHT TO DUE PROCESS, EFFECTIVE COUNSEL, EQUAL PROTECTION

BASED ON THESE FACTS: VICTORIA'S CREDITABILITY  
DEFENSE TO BURGLARY  
DURING JURY SELECTION, VOIR DIRE BY DEFENSE COUNSEL  
MY LAWYER WAS INEFFECTIVE FOR

FAILING TO EFFECTIVELY ARGUE AN MULTITUDE OF THINGS. FIRST OFF, THE ACTUAL LEGAL STANDING OF PETITIONER WHEN THE SO-CALLED VICTIM MAKING THE ALLEGATIONS WERE FOUND TO BE, TWICE THE LEGAL LIMIT OF INTOXICATION COMPOUNDED BY THE FACT SHE WAS UNDER AN ILLEGAL DRUG COCAINE, BY THE POLICE'S OWN EXAMINATIONS PERFORMED.

PETITIONER ADAMANTLY FEELS THE WITNESSES CREDITABILITY WAS BY LAW, NOT LEGALLY BINDING.

SECOND, NO DEFENSE ANYWHERE WAS GIVEN BY DEFENSE ATTORNEY OR REQUESTED ON PETITIONER BEING CHARGED WITH BURGLARY ON HIS COHABITED LIVING ARRANGEMENT. DEFENSE ATTORNEY SHOULD HAVE INTERJECTED THE POINT TO THE JURY THAT THE CHARGE WAS WRONG. ALSO, HE SHOULD HAVE FOUGHT FOR THE FACT THAT ONE OF THE UNDERLYING FELONIES HAD TO BE SUCCESSFULLY VOTED ON AGAINST PETITIONER FOR THE BURGLARY TO STICK.

[NOTE : CONTINUED]

THIRDLY, MY ATTORNEY'S EGREGIOUS IMPATIENCE  
IN SELECTION OF THE JURY DURING VOIR-DIRE.

AFTER JUST SEVERAL QUESTIONS TO  
THE ENTIRE JURY BOX, HE SIMPLY IMPOSES THE  
QUESTION TO ALL SUCH BEING, "WILL ANYONE  
HEAR NOT GIVE MY CLIENT A FAIR TRIAL"?,  
WHICH IN COURSE THE ENTIRE JURY JUST LOOKED  
AT HIM AND BASICALLY IT WAS HE ASSUMED,  
EVERYONE WAS OK WITH HIM.

PETITIONER CANNOT  
INTERJECT ENOUGH THAT THIS WAS A VERY  
UNPROFESSIONAL ACT. VERY EFFECTIVE FOR TIME  
CONSUMPTION BUT VERY INEFFECTIVE FOR PETITIONER  
TO THE FACT OF POSSIBLE BIAS AND PREJUDICE  
TOWARD THE DEFENDANT.

PETITIONER UNDERSTANDS  
ALL INDIVIDUALS TIME IS IMPORTANT TO EACH OF US  
HOWEVER, HOW ABOUT DEFENDANT'S TIME ALSO.

NOW PETITIONER IS LOOKING AT (2) TO  
(10) YEARS. I WAS LOOKING AT LIFE.

PLEASE BE AND UNDERSTAND PETITIONER  
KNOWS THE VALUE OF TIME.

1 WHEREFORE, BRIAN KERRY O'KEEFE, PRAYS THAT THE COURT GRANT  
2 PETITION FOR WRIT OF HABEAS CORPUS RELIEF TO WHICH HE MAY BE ENTITLED  
3 IN THIS PROCEEDING.

4 EXECUTED AT HIGH DESERT STATE PRISON LAW LIBRARY  
5 ON THE 29<sup>th</sup> DAY OF JANUARY 2007.  
6

7 BY: Brian Kerry O'Keefe  
8 BRIAN KERRY O'KEEFE  
9 # 90244  
10

11 VERIFICATION  
12

13  
14 UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 et seq.,  
15 AND THE LAWS OF THE UNITED STATES OF AMERICA, 28 U.S.C. § 1746 AND  
16 18 U.S.C. § 1621, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER  
17 NAMED IN THE FOREGOING PETITION AND KNOWS THE CONTENTS THEREOF,  
18 THAT THE PLEADING IS TRUE AND CORRECT OF HIS OWN PERSONAL  
19 KNOWLEDGE, EXCEPT AS TO THOSE MATTERS BASED ON INFORMATION  
20 AND BELIEF, AND TO THOSE MATTERS, HE BELIEVES THEM TO BE  
21 TRUE.  
22  
23

24  
25  
26 BRIAN KERRY O'KEEFE  
27 HIGH DESERT STATE PRISON  
28 PO BOX 650  
INDIAN SPRINGS, NV, 89018.  
# 90244

25 BY: Brian Kerry O'Keefe  
26 SIGNATURE OF PETITIONER  
27 IN PROPRIA PERSONAM  
28

CERTIFICATE OF MAILING

I, BRIAN KERRY O'KEEFE, HEREBY CERTIFY, PURSUANT  
TO N.R.C.P. 5(b), THAT ON THIS 29<sup>th</sup> DAY OF JANUARY, 2007,  
I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING,  
" PETITION FOR WRIT OF HABEAS CORPUS STATE POST CONVICTION "  
BY DEPOSITING IT IN THE HIGH DESERT STATE PRISON LAW  
LIBRARY MAILBOX BEING LOGGED IN ON ABOVE DATE,  
FIRST-CLASS POSTAGE, FULLY PREPAID, ADDRESSED TO °

CLERK OF THE COURT  
200 LEWIS AVENUE  
3RD FLOOR  
LAS VEGAS, NV. 89155

DAVID ROGER, DISTRICT ATTORNEY  
200 LEWIS AVENUE  
PO BOX 552212  
LAS VEGAS, NV. 89155 - 2212

D.W. NEVEN, WARDEN  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018

CATHERINE CORTEZ MASTO  
ATTORNEY GENERAL  
CAPITAL COMPLEX  
100 N. CARSON STREET  
CARSON CITY, NV. 89701-4717

DATED ° THIS 29<sup>th</sup> DAY OF JANUARY, 2007.

By °  
°

BRIAN KERRY O'KEEFE - #90244

Brian Kerry O'Keefe

HIGH DESERT STATE PRISON  
PO BOX 650

INDIAN SPRINGS, NV. 89018  
IN PROPRIA - PERSONAM



0232

1 BRIAN O'KEEFE  
H.D.S.P.  
2 PO BOX 650  
INDIAN SPRINGS, NV 89018  
3 IN. PROPRIETARY - PERSONAL  
# 90244

EIGHTH JUDICIAL DISTRICT  
COURT  
CLARK COUNTY, NEVADA

APPELLANT'S APPENDIX  
INDEX OF EXHIBITS TO  
WARRANT OF HABEAS CORPUS

JANUARY 29, 2007  
CASE NO. C202793  
D.C. NO. XV  
TOTAL EXHIBITS - [21]  
TOTAL PAGES - [34]

- 8 EXHIBIT 1 - ORDER OF AFFIRMANCE [CASE 44644] 3 PGS.  
9 EXHIBIT 2 - JUDGMENT OF CONVICTION, (JURY TRIAL) C202793, 2 PGS.  
10 EXHIBIT 3 - JURY INSTRUCTION NO. [13]  
11 EXHIBIT 4 - JURY INSTRUCTION NO. [4]  
12 EXHIBIT 5 - JURY INSTRUCTION NO. [3], 2 PGS.  
13 EXHIBIT 6 - ROUGH DRAFT TRIAL TRANSCRIPTS, PGS. 177-184, 2 PGS.  
14 EXHIBIT 7 - JURY'S QUESTION DURING DELIBERATION.  
15 EXHIBIT 8 - PAGE 4 TO STATE'S MOTION TO ADMIT PRIOR BAD ACTS.  
16 EXHIBIT 9 - TRIAL TESTIMONY TRANSCRIPT, PGS. 53-56  
17 EXHIBIT 10 - TRIAL TESTIMONY TRANSCRIPT, PGS. 173-176  
18 EXHIBIT 11 - TRIAL TESTIMONY TRANSCRIPT, PGS. 73-96, 6 PGS.  
19 EXHIBIT 12 - STATE OF NEVADA CRIMINAL COURT MINUTES, PG. 8  
20 EXHIBIT 13 - TRIAL TESTIMONY TRANSCRIPT, PGS. 1-4  
21 EXHIBIT 14 - TRIAL TESTIMONY TRANSCRIPT, PGS. 5-8  
22 EXHIBIT 15 - TRIAL TESTIMONY TRANSCRIPT, PGS. 97-100  
23 EXHIBIT 16 - TRIAL TESTIMONY TRANSCRIPT, PGS. 6, 7, 8, 3 PGS.  
24 EXHIBIT 17 - PRELIMINARY HEARING TRANSCRIPT, PG. 18  
25 EXHIBIT 18 - PRELIMINARY HEARING TRANSCRIPT, PG. 21  
26 EXHIBIT 19 - STATE OF NEVADA CRIMINAL COURT MINUTES, PG. 6  
27 EXHIBIT 20 - PERSONAL LETTER FROM VICTORIA [DATED: SEPT 8, 2005]  
28 EXHIBIT 21 - LVMPD FORENSIC EXAMINATION REPORT DNA RESULTS

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44644

**FILED**

JAN 23 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of misdemeanor battery and one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Brian O'Keefe was sentenced to a time served disposition for the battery, and a prison term of 24-120 months for the burglary. The district court suspended the sentence and placed O'Keefe on probation.

O'Keefe's sole ground for appeal is his assertion that the district court erred in its decision to admit other bad acts into evidence. Specifically, O'Keefe contends the district court abused its discretion in its decision to admit a photograph taken of the victim after a previous battery by O'Keefe. O'Keefe admitted under cross-examination that he was arrested twice for domestic violence battery against the same victim, and that one case was dismissed in exchange for his plea to the other. O'Keefe asserts the prior bad acts committed against the victim were not relevant, nor admissible. In the alternative, O'Keefe suggests even if relevant, the prejudicial value of the prior bad acts substantially outweigh the probative value.

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. But NRS 48.045(2) further provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and determine that: (1) the evidence is relevant to the crime charged; (2) the other act is proven by clear and convincing evidence; and (3) the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.<sup>1</sup> On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.<sup>2</sup>

Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence of the prior uncharged battery was relevant as proof of appellant's intent, knowledge, and the absence of mistake, that the State had proven the act by clear and convincing evidence, and that the probative value of the acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not

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<sup>1</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

<sup>2</sup>See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), holding modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

commit manifest error in admitting the evidence of O'Keefe's prior battery of the victim.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas J.  
Douglas

Becker J.  
Becker

Parraguirre J.  
Parraguirre

cc: Hon. Stewart L. Bell, District Judge  
James L. Buchanan II  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

1 JOCP  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 200 South Third Street  
6 Las Vegas, Nevada 89155-2212  
7 (702) 455-4711  
8 Attorney for Plaintiff

FILED

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DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,  
9 Plaintiff,

10 -vs-

11 BRIAN KERRY OKEEFE,  
12 #1447732

13 Defendant.  
14

Case No: C202793

Dept No: XV

JUDGMENT OF CONVICTION (JURY TRIAL)

15 The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNT 1 -  
16 BATTERY WITH INTENT TO COMMIT A CRIME (Felony); COUNT 2 - SEXUAL  
17 ASSAULT (Felony); COUNT 3 - SEXUAL ASSAULT (Felony); COUNT 4 - SEXUAL  
18 ASSAULT (Felony); COUNT 5 - ATTEMPT SEXUAL ASSAULT (Felony); and COUNT  
19 6 - BURGLARY (Felony), in violation of NRS 200.400; 200.364, 200.366; 193.330,  
20 200.364, 200.366; 205.060, and the matter having been tried before a jury, and the  
21 Defendant being represented by counsel and having been found guilty of the crime(s) of  
22 COUNT I - BATTERY (Misdemeanor); and COUNT VI - BURGLARY (Category B  
23 Felony), in violation of NRS 200.481; 205.060; and thereafter on the 27th day of December,  
24 2004, the Defendant was present in Court for sentencing with his counsel, JAMES L.  
25 BUCHANAN, II, ESQ., and good cause appearing therefor,  
26

27 THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the  
28 jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, a \$150.00 DNA

1 Analysis Fee and submit to testing to determine genetic markers, the Defendant is sentence  
2 as follows: on COUNT 6 - to a minimum of twenty-four (24) months and a maximum of on  
3 hundred twenty (120) months in the Nevada Department of Corrections; SUSPENDED  
4 placed on probation for an indeterminate period not to exceed five (5) years, and on COUNT  
5 1 - Defendant sentenced to CREDIT FOR TIME SERVED. CONDITIONS: 1) No contact  
6 with the victim initiated by Defendant. Court advised Defendant any contact that the victim  
7 initiates will not be a problem for him; 2) Search clause/burglary tools; 3) Complete  
8 Domestic Violence counseling; 4) Secure and maintain full time employment; 5) Mental  
9 Health counseling as deemed necessary by Parole and Probation; 6) Resolve the warrant  
10 from the State of Ohio within the next one hundred twenty (120) days; 7) Four (4) hours of  
11 community service work each week. Case closed.

12 DATED this 30 day of December, 2004.

13  
14 STEWART L. BELE *for GARY LOMBERG*  
15 DISTRICT JUDGE  
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CLERK OF DISTRICT COURT  
JAN -3 P 4:03  
da [Signature]  
CLERK

INSTRUCTION NO. 13

It is not necessary that the State prove the defendant actually committed a battery and/or sexual assault and/or a felony after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the apartment with the intent to commit a battery and/or sexual assault and/or a felony, regardless of whether or not that crime occurred.

[EXHIBIT - 3]

INSTRUCTION NO. 4

Battery means any willful and unlawful use of force or violence upon the person of another.

Any person who commits a battery upon another with the specific intent to commit a Sexual Assault is guilty of the offense of Battery With Intent to Commit Sexual Assault.

[EXHIBIT - 4]



An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 29th day of May, 2004, the Defendant committed the offense(s) of BATTERY WITH INTENT TO COMMIT A CRIME; SEXUAL ASSAULT; ATTEMPT SEXUAL ASSAULT and BURGLARY.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there willfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: VICTORIA WHITMARSH, with intent to commit sexual assault, by striking the said VICTORIA WHITMARSH about the head and/or body with his hands.

COUNT 2 - SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously sexually assault and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: fellatio; by placing his penis on or in the mouth of the said VICTORIA WHITMARSH, against her will.

COUNT 3 - SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously sexually assault and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: sexual intercourse; by placing his penis into the genital opening of the said VICTORIA WHITMARSH, against her will.

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[EXHIBIT - 5]

1 COUNT 4 - SEXUAL ASSAULT

2 did then and there willfully, unlawfully, and feloniously sexually assault and subject  
3 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal intercourse  
4 by placing his penis into the anal opening of the said VICTORIA WHITMARSH , against  
5 her will.

6 COUNT 5 - ATTEMPT SEXUAL ASSAULT

7 did then and there willfully, unlawfully, and feloniously attempt to sexually assault  
8 and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal  
9 intercourse; by attempting to place his penis into the anal opening of the said VICTORIA  
10 WHITMARSH, against her will.

11 COUNT 6 - BURGLARY

12 did then and there willfully, unlawfully, and feloniously enter, with intent to commit  
13 battery and/or sexual assault and/or a felony, to-wit: battery and/or sexual assault, that  
14 certain building occupied by VICTORIA WHITMARSH, located at 2219 North Rancho, No.  
15 2083, Las Vegas, Clark County, Nevada.

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[EXHIBIT-5]

1 No. 12 and burglary says that every person who by  
2 day or night enters any apartment with the intent  
3 to commit battery and/or sexual assault and/or a  
4 felony therein is guilty of burglary.

5 And you recall that Victoria Whitmarsh  
6 testified, and she testified that the defendant  
7 came to her apartment that morning about 12 or one  
8 o'clock in the afternoon, somewhere in that time  
9 period and that she had received a call from him  
10 early that day in response to him having kicked  
11 her out the night or her kicked him out the night  
12 before, and that when he got there he began to  
13 explain he just needed to get his clothes, and she  
14 said she believed him, and it is at that point  
15 under that ruse she feels compelled to open the  
16 door and she let's him in for the purpose of  
17 allowing him to get his thing.

18 The further instruction on burglary will  
19 inform you that the consent to entry is no defense  
20 to burglary. The fact that she opens the door  
21 voluntarily and allows the defendant to come in is  
22 not a defense to burglary. What we are concerned  
23 with ladies and gentlemen is the defendant's  
24 intent when he makes that entry. And when  
25 determining the defendant's intent the law further

1 instructs you that you can rely upon the  
2 circumstances and the other facts in the case to  
3 determine what it was that the defendant intended  
4 to do and we know what he intended to do when he  
5 first made entry in the apartment because the  
6 first thing he does and what Victoria Whitmarsh  
7 testifies to that he grabs her by the throat as he  
8 had done before and throws her to the couch, the  
9 battery, ladies and gentlemen, that's the first  
10 thing that occurs, and that's one of the elements  
11 in burglary that makes him culpable for burglary  
12 it is enters with intent to commit battery and/or  
13 a sexual assault and/or a felony.

14 He entered with the intent to commit  
15 battery and he entered with the intent to commit  
16 sexual assault. It is important to note that you  
17 need not reach an unanimous verdict as to which  
18 criteria you believe the defendant entered with.  
19 Six of you could easily that he entered with the  
20 intent to commit battery. The other six of you  
21 can find that the defendant instead entered with  
22 the intent to commit sex assault. The important  
23 thing is you reach a unanimous verdict that the  
24 defendant entered with one of those three  
25 criteria, and we know he entered with the intent

1 to commit battery, ladies and gentlemen, because  
2 that's the first thing he did.

3 He is a man who had been kicked out of  
4 the apartment the night before. He initiates the  
5 response the next day by calling her at six  
6 o'clock in the morning. He initiates the response  
7 by going to the apartment. He is frustrated that  
8 she kicked him out, and he's going to confront her  
9 and that's exactly what he does when he enters the  
10 apartment.

11 He confronts her about infidelity he  
12 confronts her about being kicked out. He  
13 confronts her about a number of things, and we  
14 know he had the intent to do that when he first  
15 entered the door.

16 The second offense I want to address is  
17 actually Count 1 in the Information which is  
18 battery with the intent to commit a crime and  
19 that's related to the incident we just talked the  
20 about but the law further instructs you that  
21 because he is guilty of a battery and also of a  
22 burglary that there are two separate and distinct  
23 offenses and that the law punishes differently for  
24 each of those offenses and battery is defined for  
25 you instruction No. 4 and battery is defined as

1 any willful and unlawful use of force or violence  
2 upon the person of a another.

3 Now what's important with the offense of  
4 battery with intent to commit a crime that it is  
5 different than the other offense we have charged  
6 and your verdict form is different than the other  
7 offense we have charged for this offense. You  
8 will note that with your verdict form for the sex  
9 assault and the burglary your faced with two  
10 options, either guilty of sexual assault or not  
11 guilty. Guilty of battery with intent to commit a  
12 crime or not guilty.

13 The battery with intent to commit a  
14 crime is a little bit different. You have three  
15 options here. Battery with intent to commit a  
16 crime, guilty of battery and not guilty, and  
17 that's because battery is a lesser included, what  
18 we refer to as a lesser included of battery with  
19 intent to commit a crime, and it requires an  
20 additional element to be proved and that is that  
21 not only must there be a willful and lawful use of  
22 force or violence upon the person of another in  
23 order to find a finding of guilty of battery with  
24 intent to commit a crime you must further find  
25 that any person who commits a battery upon another

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-6]

1 with the specific intent to commit a sexual  
2 assault is guilty of the offense of battery with  
3 the intent to commit sexual assault.

4 When you go back there to deliberate,  
5 you will determine your own way upon reaching a  
6 verdict as to this count, but I suggest you do the  
7 following, that is you take the battery with  
8 intent to commit a crime, the Count I, and you  
9 determine whether or not you can reach a unanimous  
10 verdict as to whether or not, one, it was willful  
11 and unlawful use of force or violence upon  
12 Victoria Whitmarsh and, two, whether that use of  
13 force or violence was committed with the specific  
14 intent to commit sexual assault. If you can't  
15 reach a unanimous verdict as to that, the finding  
16 should be guilty of simple battery. And if you  
17 can't find a unanimous verdict as to any willful or  
18 unlawful use of force or violence against Victoria  
19 Whitmarsh, then your finding is not guilty.

20 And I start with what it isn't, ladies  
21 and gentlemen. In order to find not guilty, you  
22 have to find that there wasn't any willful or  
23 unlawful force or violence. The defendant  
24 submitted to you on the stand, certainly we see  
25 the photos of the bloody lip, the bruises that are

1 on Victoria Whitmarsh. He testified that he had  
2 in fact slapped her.

3 There is plenty of evidence, ladies and  
4 gentlemen, that we have at least a simple battery.  
5 But we also have more than that. We know that the  
6 defendant when he was battering her had a specific  
7 intent and the intent that the defendant had at  
8 this point was to create an atmosphere whereupon  
9 he could sexually assault her, that he was taking  
10 advantage of the situation, that he was making her  
11 submissive, as she said she was, that he  
12 repeatedly battered her for the purpose of then  
13 being able to sexually assault her.

14 And it relates to the cycle of violence  
15 that you heard Dr. Mortillaro testified to. That  
16 this battering was part of beating her down and  
17 taking away her self esteem and it is part of  
18 creating the submission so when he asked give me a  
19 blow job she would no longer feel like she would  
20 be able to resist, that despite the fact she was  
21 not a willing participant to the blow job that she  
22 was afraid of the violence he had just inflicted  
23 upon her and that's the purpose for inflicting  
24 that violence, ladies and gentlemen, and for that  
25 reason you should find him guilty of battery with

1 intent to commit a crime.

2 Counts two through five, address sexual  
3 assault or attempts to commit sexual assaults. In  
4 your information, you will note that Count II is  
5 sexual penetration that's identified in the sexual  
6 assault as fellatio, and that's defined for you by  
7 placing his penis on or in the mouth of said  
8 Victoria Whitmarsh.

9 Count III is defined as sexual  
10 intercourse by placing his penis into the genital  
11 opening of Victoria Whitmarsh. Count IV is sexual  
12 penetration, anal intercourse by placing the penis  
13 into the anal opening, and, Count V, anal  
14 intercourse by attempting to place his penis into  
15 the anal opening of Victoria Whitmarsh and number  
16 five, instruction No. 5 gives you a brief  
17 description as to what is meant when we define  
18 that criteria. Instruction five instructs you  
19 that sexual intercourse is the placing of the  
20 penis of the perpetrator in the vagina of the  
21 victim, and Victoria Whitmarsh testified to that,  
22 in fact, the defendant also testified to that,  
23 that there was penile to vaginal entry that took  
24 place between the two of them.

25 The anal intercourse is the intrusion of

1 the penis into the anal opening of another person  
2 and you will find there is no discrepancy that  
3 both of them testified that this in fact happened  
4 and fellatio is the male penis entering the mouth  
5 of another person. She called it a blow job. He  
6 described for you what happened, that's what we  
7 are referring to in this Count II.

8 Count V is an attempt sexual assault and  
9 the law further provides you with a little more  
10 instruction on what constitutes an attempt in the  
11 State of Nevada and they are enumerated in  
12 instruction No. 9 it says the elements of an  
13 attempt to commit are the the intent to commit the  
14 crime the performance of some act toward its  
15 commission and the failure to consummate its  
16 commission.

17 And we know this occurred, ladies and  
18 gentlemen, in this case on the second incident of  
19 anal intercourse, that the defendant, in fact,  
20 intended to place his penis inside the anal  
21 opening of Victoria Whitmarsh, that there was  
22 performance of some act toward this commission.  
23 He in fact took his penis and attempted to do so  
24 but he was unable to do it so he failed to commit  
25 consummate its commission.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT - 6]

PLEASE CLARIFY  
THE DIFFERENCE BETWEEN  
"BATTERY WITH INTENT  
TO COMMIT A CRIME"  
AND BATTERY. DOES  
THE "INTENT TO  
COMMIT A CRIME"  
HAVE TO INCLUDE  
SEXUAL ASSAULT?

D. L. B.

Please refer to and re-read Instructions number 3 and 4



Judge Lochrer

10/28/04 11:20 am

EXHIBIT-7

1 seeks this evidence to show intent, knowledge, and absence of mistake. The defendant is  
2 charged with Battery with the Intent to Commit Sexual Assault, Sexual Assault, Burglary  
3 and Attempt Sexual Assault. The State must prove beyond a reasonable doubt that the  
4 defendant entered the victim's residence with the intent to commit a sexual assault and that  
5 he battered the victim with the intent to commit a sexual assault and that he attempted to  
6 commit sexual assault. The State's burden is to show the prior conduct meets NRS  
7 48.045(2). Once the requirements of NRS 48.045(2) are met, this Court must hold a  
8 Petrocelli hearing and a three prong test must be met. *Walker v. State*, 116 Nev. 442, 446,  
9 997 P.d. 803, 806 (2000). A(1) the incident is relevant to the crime charged; (2) the act is  
10 proven by clear and convincing evidence; and (3) the probative value of the evidence is not  
11 substantially outweighed by the danger of unfair prejudice. *Id. citing Tench v. State*, 113  
12 Nev. 1170, 1176, 946 P.2d. 1061, 1064-65 (1997).

13 *Intent*

14 "A plea of not guilty puts in issue every material allegation of the information. NRS  
15 174.350." *Overton v. State*, 78 Nev. 198, 205, 370 P.2d 677, 680 (1962). In the case at bar,  
16 the defendant has necessarily put every material allegation of the Information in issue.  
17 Furthermore, the defendant's statements dispute the victim's version of events.

18 NRS 48.045(2) is identical to Federal Rules of Evidence, Rule 404(3)(b), and there  
19 is a wealth of Federal cases interpreting this statute, which provide assistance in determining  
20 the admissibility of evidence under 48.045(2). In *United States v. Kirk*, 528 F.2d 1057 (5th  
21 Cir. 1976), defendant was charged with threatening the life of the President of the United  
22 States of America. At trial, the prosecution presented evidence showing that three years  
23 earlier the defendant had committed the same offense. The court ruled this evidence to be  
24 properly admissible to show the defendant's intent, holding in 528 F.2d at 1061:

25  
26 Whether the prior conviction tended to show that defendant made this threat  
27 intentionally or as the result of "alcohol taking," was a matter for the jury's  
28 determination. The fact that the former offense occurred three years prior to the  
offense charged does not make it so remote as to be excluded.

In *United States v. Beechum*, 582 F.2d 898 (5th Cir. 1978):

1 Q. There is probably as many possibilities  
2 for anything to happen; correct?

3 A. That's correct.

4 Q. Can you tell us is it consistent to call  
5 this consensual with injuries that you saw and the  
6 history that you got from the patient?

7 MR. BUCHANAN: To which I object that's  
8 a compound question.

9 THE COURT: Overruled.

10 MR. BUCHANAN: But, your Honor, that's  
11 asking by taking something that's non technical to  
12 what she said to try to equate to an injury. I  
13 don't think that is permissible.

14 THE COURT: Well, taking everything into  
15 consideration including all the bruising, the  
16 mouth injury and the history, and her physical  
17 findings, is that consistent with consensual or  
18 non consensual. She is allowed to answer that  
19 question.

20 THE WITNESS: It was definitely  
21 consistent with the history that the patient gave  
22 me of sexual assault.

23 BY MS. KRISKO:

24 Q. So non consensual?

25 A. Non consensual, that's correct.

1 Q. Now there was a lot of questions you  
2 were asked about anal sex basically, is there any  
3 way have you ever seen somebody come in and say  
4 that they engaged in consensual anal intercourse  
5 and there were no tears?

6 MR. BUCHANAN: I object to that. That's  
7 asking a negative. People aren't going to come in  
8 and ask the nurse if they had anal sex.

9 THE COURT: Overruled. Mr. Buchanan, we  
10 don't know whether she examined such people or  
11 not. Let's find out.

12 MR. BUCHANAN: Well, let's take a  
13 statistic and ask her that way. How many people  
14 have anal sex come in and ask her if it is okay.

15 THE COURT: Mr. Buchanan, I don't think  
16 anybody ask that.

17 MR. BUCHANAN: I don't think so either.

18 THE COURT: So you may ask your  
19 questions, Ms. Krisko.

20 MS. KRISKO: Thank you.

21 BY MS. KRISKO:

22 Q. Do you remember my question.

23 A. Would you repeat it?

24 Q. I don't even remember it.

25 Has there ever been a way, and you have

1 done quite a few years as a nurse; correct?

2 A. Yes, I have.

3 Q. Not always just sexual assault exams?

4 A. Correct.

5 Q. Are you familiar with ever examining  
6 somebody that you knew had consensual anal sex and  
7 were able to for whatever reason examine their  
8 anal area?

9 A. That's correct, I have.

10 Q. Is it likely that if it is consensual  
11 that there can be no tearing?

12 A. That's correct. They can have  
13 absolutely no trauma when it is consensual.

14 Q. Can you give us some factors why that  
15 would be?

16 A. Because when it is consensual partners  
17 usually work together so not to traumatize the  
18 other partner as well as lubrication is often  
19 used. Some people practice anal sex on a regular  
20 basis and the more times that this happens the  
21 less times you will find trauma.

22 MS. KRISKO: Nothing further.

23 THE COURT: Any recross, Mr. Buchanan?

24 MR. BUCHANAN: Yes, a couple since we  
25 are going to that.

3 RECROSS-EXAMINATION

4 BY MR. BUCHANAN:

5 Q. You were asked about bruises?

6 A. Yes, sir.

7 Q. Can you state to the ladies and  
8 gentlemen of the jury that those bruises were made  
9 at the time of the sexual encounter?

10 A. I can't tell them that that was part of  
11 the encounter. I can say that they were  
12 consistent with the history I gave of in doing  
13 those pictures.

14 Q. Not history that is consistent with  
15 history. I'm asking you a medical question. Can  
16 you state right now to this jury that those  
17 bruises were made when they were having sexual  
18 encounters? I use the word encounters which  
19 includes oral sex, vaginal sex, and anal sex?

20 A. I cannot say they happened during the  
21 sex act.

22 Q. Now you also said something about watery  
23 eyes?

24 A. Yes, sir.

25 Q. Could that also be from the fact she was

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-9]

MR. BUCHANAN: Defense rest, your Honor.

THE COURT: State have any rebuttal witnesses?

MS. KRISKO: No.

THE COURT: All right, ladies and gentlemen, that concludes the evidentiary portion of the trial. We will take our noon recess. We will be in recess until 20 minutes to four.

During the afternoon recess, you are admonished not to talk amongst yourselves or with anyone else on any subject related to or read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information including, but not limited to, television, radio or newspapers or form or express any opinion on any subject connected with the trial until the case is finally submitted to you. We will be in recess until twenty minutes to four.

(The jury left the courtroom.)

THE COURT: F will be lodged with the court.

MR. BUCHANAN: Pardon me?

THE COURT: F will be lodged with the court.

MR. BUCHANAN: Thank you, your Honor.

good afternoon, ladies and gentlemen. Welcome back to trial in the State of Nevada versus O'Keefe. The record will reflect the presence of parties and counsel all officers of the court and the full jury and missing juror. We are short one, John.

Record will now reflect presence of full jury and alternate jurors. You each have a set of jury instructions that you can have back with you when you deliberate. I will read them for you because the law requires that I do that and then the attorneys will be giving you closing arguments.

MR. TURNER: Hugs and kisses and wild and passionate sex that's the defendant's narration of events and his account of what happened and how he explains the evidence that we mounted against him over the past three days.

Before the instruction on the presumption of innocence and the judge instructed you in the law of presumption of innocence both before this case and just as the instructions were read to you. The State submits to you with every

witness we introduced, with every photograph we brought forward and with the expert testimony that we brought forward to explain the injuries that happened to Victoria Whitmarsh, the defendant no longer has that presumption of innocence the shroud of presumption of innocence was removed with these pieces of evidence we brought forth and now this defendant sits before you in all of his naked guilt. This was a violent act one that was admitted against Victoria Whitmarsh's will.

MR. DEFS: To which I object, that's not the law the presumption of innocence stays with him until there's a verdict and that is presumed innocent and this is not cloaked with guilt. That's improper argument and that's not the law.

THE COURT: Well, your objection is noted. However, this is closing argument, and the State is allowed to discuss how the evidence has stripped him of that cloak of innocence, so your objection is noted but overruled.

MR. MILLER: Thank you. And State would submit to you this defendant is guilty of everything we charged him with in the information that has been provided to you. In every criminal case there are two fundamental questions. Who

committed the crime and what crime has been committed identity is it not the issue in this case. They had two parties that were in that room and two parties that testified to what happened.

We know the defendant was one of those parties. The bigger question in this case is what crime was committed and the law provides you a lot of guidance and instruction on how you are to apply the facts as provided you in the case with the law and it is my duty to try to explain to you how to apply those facts to the law that's just been read to you. You will note in your instructions, instruction No. 3 are offenses that state has charged the defendant with. Count I is battery with intent to commit a crime. Count II sexual assault; Count III sexual assault; Count IV a third count of sexual assault; Count V attempt sexual assault and count VI burglary. And applying the law to the facts instead of take it not chronologically as we have it charged in the information but rather I explain it to you chronologically as to how the offenses occurred and first offense we are faced with is what happened on May 29th, 2004 is burglary?

Burglary is defined in instruction

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-10]



1 the trial or any person connected with the trial  
2 by any medium of information including, but not  
3 limited to, television, radio or newspapers or  
4 form or express any opinion on any subject  
5 connected with the trial until the case is finally  
6 submitted to you. We will be in recess until 1:40.

7 MR. BUCHANAN: Your Honor, can I check  
8 the hall one minute to see if that other person is  
9 here.

10 THE COURT: Certainly.

11 MR. BUCHANAN: They are not here I will  
12 bring them in at 1:20.

13 (A lunch recess was taken.)

14 THE COURT: Good afternoon, ladies and  
15 gentlemen. This is continuation of trial in State  
16 of Nevada versus O'Keefe. The record will reflect  
17 the counsel for both sides and officers of the  
18 court, the absence of the defendant.

19 We need to review the proposed jury  
20 instructions outside the presence of the jury and  
21 so hopefully we can get them resolved, and they  
22 can be printed while the last witnesses are  
23 testifying.  
24  
25

1 The record will now reflect the presence  
2 of the defendant.

3 All right. We are going to number some  
4 of these as we go along. The ones that are stock  
5 we don't have a problem with.

6 The first one of course is No. 1, if in  
7 these instruction any rule direction or idea.

8 Number two -

9 MR. BUCHANAN: Just a minute. You are  
10 going a little fast for me Judge. I'm not too  
11 swift.

12 THE COURT: I will give you a photocopy  
13 with all the numbered ones in there.

14 MR. BUCHANAN: I might have an objection  
15 to some.

16 THE COURT: If you go along - the  
17 information is but a formal method is three and  
18 that's a two page instruction.

19 MR. BUCHANAN: And information is not.

20 THE COURT: Now yours are going to be  
21 out of order. Now you have to go back in the  
22 stack and pull out the specials because I give  
23 specials right behind the charging document.

24 So the first special is battery. Now  
25 the State has a five line instruction submitted to

1 me which says -

2 MR. BUCHANAN: They put down second line  
3 if a person commits battery with specific intent  
4 to commit sexual assault and I don't think that  
5 should be on that.

6 THE COURT: Here is a way to fix that,  
7 Mr. Buchanan. You ask for a lesser included on  
8 the verdict form under Count I. Count I would be  
9 the form as prepared says battery with intent to  
10 commit a crime. You put down guilty of battery  
11 with intent to commit a crime already on there is  
12 just plain battery and not guilty so the State's  
13 already provided for that situation. There's  
14 nothing wrong with the instruction. The jury gets  
15 to pick.

16 MR. BUCHANAN: Okay. Let me get my  
17 verdicts. I'm missing the first page, wait a  
18 minute.

19 THE COURT: Should be the last page of  
20 your instructions. Verdict should be the very  
21 tail end of your instructions.

22 MR. BUCHANAN: I dropped them and they  
23 got mixed up and then my secretary put them back  
24 together.

25 THE COURT: Take Ms. Krisko's front page

1 of the verdict form and take -

2 MS. KRISKO: He can have it. I have an  
3 extra copy.

4 THE COURT: See how that's taken care  
5 of, Mr. Buchanan?

6 MR. BUCHANAN: So Count I, you are  
7 saying battery with intent and guilty of battery  
8 if he slammed or banged her it wasn't to commit  
9 sexual assault, then it is just plain battery.

10 THE COURT: If they think that he  
11 slammed her and banged her for the purpose of  
12 committing sexual assault then it is the first  
13 one.

14 Battery means any willful or unlawful  
15 touching that subjects another person to sexual  
16 penetration against the victim's will or under  
17 conditions in which the perpetrator knew or should  
18 have known.

19 Have you read these?

20 MR. BUCHANAN: Yes.

21 THE COURT: Do you have any problem with  
22 this one, this is the definition of sexual  
23 penetration? It can be oral vaginal or anal.

24 MR. BUCHANAN: No.

25 THE COURT: That's No. 5. The next one

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-11]

1 reads physical force is not a necessary  
2 ingredient. That's the one from Hardaway and let  
3 me take a look at Hardaway. Under the facts of  
4 Hardaway

5 Instruction No. 6, there is no problem  
6 with that one. Instruction No. 6, physical force  
7 is not a necessary ingredient to the crime of  
8 sexual assault. The crucial question is not  
9 whether physical force, but whether the act was  
10 committed without her consent. That's first  
11 paragraph.

12 Now the next instruction that was used  
13 in Hardaway says there is no consent where the  
14 victim is induced to submit to sexual acts through  
15 fear of death or serious bodily injury, so that's  
16 what was instruction No. 7 in Hardaway and this  
17 one says when a woman yields to an act of sexual  
18 assault by a male aggressor if her yielding has  
19 been induced by fear necessary to save her from  
20 violence or other physical harm --

21 This is what I asked you. Where in the  
22 world did the instructions come from? Did the  
23 Supreme Court say that instruction seven needed to  
24 be modified as the way you wrote it?

25 MS. KRISKO: What I said before is that

1 we did modify this. That's why I gave you that  
2 case. That's why I also gave the other one in  
3 case you didn't want to go with this one.

4 THE COURT: The other one you gave me  
5 instead of this one is --

6 MS. KRISKO: It talks about.

7 THE COURT: There's no requirement, no,  
8 so which is an alternative.

9 MS. KRISKO: Law does not explicitly  
10 require the use of overt force, then it talks  
11 about.

12 THE COURT: Let me find that one.

13 MR. BUCHANAN: Do you have an extra of  
14 that?

15 THE COURT: I think I don't have it. I  
16 don't know what I did with it. Wait a minute. I  
17 put it at the end of the stack. I know what I did  
18 with it because I put it at the end of the stack  
19 because I didn't know where to put it, but I think  
20 my -- I got it. Okay. So the alternative to that  
21 is the 12 line instruction that says the law does  
22 not explicitly require the use of overt force as a  
23 an element of sexual assault. That means that  
24 physical force is not a necessary element in the  
25 law of rape. The penetration must be against the

1 will of the victim. A rape victim is not required  
2 to do more than her age, strength and the  
3 surrounding facts and attending circumstances  
4 would reasonably dictate as a manifestation of her  
5 opposition. In other words, whether the victim  
6 manifested opposition or did in fact consent  
7 depends on the facts of a particular case.  
8 Submission is not the equivalent of consent, while  
9 consent inevitably involves submission submission  
10 does not inevitably involve consent. Lack of  
11 protest by a victim is simply one among a totality  
12 of circumstances to be considered by the jury.

13 MS. KRISKO: And that was taken directly  
14 from McNair.

15 THE COURT: All right. All right. I  
16 believe that these two instructions are  
17 substantially the same, Mr. Buchanan. Do you have  
18 a preference as to which one?

19 MR. BUCHANAN: I object to both, and I  
20 object, first of all, I think you objected to one  
21 in there, but I also object to ten, on line ten  
22 through 12.

23 THE COURT: That's the Court has given  
24 this instruction before the one that at is the 12  
25 line instruction. I have given that and it does

1 come directly out of the case and the case which  
2 is 108 Nevada it is Kimball McNair, the doctor,  
3 and the Supreme Court says we initially noted that  
4 the Nevada statute does not explicitly require the  
5 use of overt force as an issue of sexual assault,  
6 commission of crime citing Denkins versus State a  
7 1976 case.

8 Our statute only requires sexual  
9 penetration against the will of the victim and  
10 then the next head note, rape victim is not  
11 required to do more than age, strength -- it goes  
12 on and does say submission is not the equivalent  
13 of consent while submission does not inevitably --  
14 lack of protest by victim is one among totality of  
15 circumstances to be considered by the jury.

16 So I'm going to use the McNair  
17 instruction. On states requested not used the  
18 McNair instruction which No. 6 is being used in as  
19 substitute or alternative to State requested  
20 instruction not given

21 MR. BUCHANAN: Are you using the word  
22 rape instead of sexual assault? I that thought  
23 that was a no-no.

24 MS. KRISKO: If you want to change it,  
25 there is a couple of things in here.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-11]

1 MR. BUCHANAN: In going back, before  
2 when it was not back to McNair, when it was not  
3 sexual assault, it was -- now they are saying  
4 rape.

5 THE COURT: Let's fix it and say sexual  
6 assault victim. How about victim is not required  
7 to do more than age, strength and surrounding  
8 circumstances would reasonably dictate.

9 MR. BUCHANAN: Says crime of rape.

10 MS. KRISKO: I ask to keep it sexual  
11 assault.

12 THE COURT: In the commission of a crime  
13 of sexual assault. All right. Now would you have  
14 Debbie retype that for me, please.

15 The next one in the pack says there is  
16 no requirement that the testimony of a victim of a  
17 sexual assault be corroborated and her testimony  
18 standing alone, if believed beyond a reasonable  
19 doubt is sufficient to sustain a verdict of  
20 guilty. That's a correct statement of the law  
21 that one is number --

22 MR. BUCHANAN: Wait a minute. Find that  
23 one.

24 THE COURT: That's four lines. I think  
25 it is one of the ones that Ms. Krisko gave you

1 this morning.

2 MR. BUCHANAN: Well, I don't have it.

3 THE COURT: That's No. 7.

4 MR. BUCHANAN: I'd like to have it so I  
5 can number it.

6 THE COURT: I will give you, when we are  
7 all done, a complete set. There will be  
8 photocopies with the right numbers on them.

9 All right. She gave it to you today,  
10 something she gave you this morning, No. 7.

11 MR. BUCHANAN: I don't have any problem  
12 with that one.

13 THE COURT: The next one reads, when  
14 multiple sexual acts occur as part of a single  
15 criminal encounter, each separate and distinct act  
16 is a separate offense. That used to be the law  
17 until the Supreme Court did something strange in  
18 the last year which is unfathomable by me where  
19 foreplay is not a lewd and lascivious act, but --

20 MS. KRISKO: I think given the facts of  
21 this case --

22 THE COURT: That's what the Supreme  
23 Court will do. I will give this instruction that  
24 will be eight.

25 Next one reads there are three elements

1 of attempt to commit a crime. One, the intent to  
2 commit the crime; two, performance of some act  
3 towards its commission and, three, failure to  
4 consummate its commission. That's a correct  
5 statement of the law also. That's No. 9.

6 Then the next one in the stack reads,  
7 while it is true the overt act ought to be a  
8 direct unequivocal act done toward the commission  
9 of the offense whenever the design of a person to  
10 commit a crime slight act done in furtherance  
11 thereof will constitute an offense, and that one  
12 came from People versus Buffum which is a  
13 California 1952 case cited in Larsen versus State  
14 of Nevada a 1970 case and this one is copied word  
15 for word while it is true the overt act ought to  
16 be direct unequivocal act done toward still, as  
17 was recognized in People versus Downer, whenever  
18 the design of a person to commit a crime is  
19 clearly shown slight acts done in furtherance  
20 thereof will constitute an attempt which is all  
21 one sentence. And they are stating State versus  
22 Mandell for being in accordance with that. I  
23 guess that's a correct statement of the law. I  
24 would never start out an instruction with while it  
25 is true, I don't think it tends to instruct the

1 jury on much that will be No. 10.

2 And the next one in the stack says when  
3 a person has once done things which constitute an  
4 attempt to commit a crime, he cannot avoid  
5 responsibility by failing to proceed further to  
6 commit that crime either by a reason of  
7 voluntarily abandoning his purpose or because he  
8 was prevented or interfered with in committing the  
9 crime. That's a correct statement. That's  
10 No. 11.

11 Any person who by day or by night enters  
12 any apartment with the intent to commit battery  
13 and or sexually assault and or a felony therein,  
14 that would be burglary that would be correct.  
15 That is 12.

16 Next one in the stack says, it is not  
17 necessary in defendant committed battery and/or  
18 sexual assault and/or felony after he entered in  
19 order for you to find him guilty of burglary. The  
20 gist of the crime of burglary is the unlawful  
21 entry with criminal intent, therefore if the  
22 defendant entered the apartment with the intent to  
23 commit battery and/or sexual assault and/or a  
24 felony regardless of whether or not the crime  
25 occurred. That's a correct statement of the law

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-11]

1 that is 13.

2 The intention with which entry was made  
3 is a question of fact. That's 14. Consent to  
4 enter is not a defense. That's 15.

5 Every person who in the commission of a  
6 burglary commits any other crime may be prosecuted  
7 for each crime separately, that is 16. That's a  
8 correct statement of the law.

9 Then we get to sexual assault as general  
10 intent crime, therefore, any claim or evidence of  
11 drinking alcohol or voluntary intoxication of the  
12 defendant is no excuse for criminal conduct and no  
13 defense to the charge of sexual assault.

14 MR. BUCHANAN: Wait a minute. My stack  
15 went different there.

16 THE COURT: It is a three line  
17 instruction.

18 MR. BUCHANAN: I don't have that one at  
19 all. All right. I have no objection to that one.

20 THE COURT: That's 17. And then the  
21 next one I'm not going to give that one, that one  
22 was withdrawn. The next one is withdrawn.

23 Voluntary intoxication is, keep that  
24 one. Then next one after that --

25 MR. BUCHANAN: I object to that one.

1 THE COURT: I have not decided I will  
2 give this. Let's just look at them all.

3 The next one says evidence that the  
4 defendant committed an offense other than that for  
5 which he is on trial if believed was not received  
6 and may not be considered by you to prove that he  
7 is a person of bad character or to prove that he  
8 has a disposition to commit crimes, such evidence  
9 was received and may be considered by you only for  
10 the limited purpose of proving the defendant's  
11 intent to commit the crimes alleged. Knowledge or  
12 absence of mistake or accident you must weigh  
13 evidence in the same manner as you do all other  
14 evidence in the case.

15 So I guess that's what the first one  
16 does is, a little bit that on line three where he  
17 says committed other offense for which he  
18 committed other than what he is on trial if  
19 believed. I think the first one tells you what  
20 kind of evidence you have to have before you can  
21 believe it. But I don't know that it adds  
22 anything.

23 MR. BUCHANAN: I don't think --

24 THE COURT: To have believed.

25 MR. BUCHANAN: I would object to the one

1 liner. I don't think that's the law if they find  
2 evidence that he committed a battery on her and I  
3 think we have whatever day it was, January 13th.

4 THE COURT: November 14th.

5 MR. BUCHANAN: November 14th. That  
6 doesn't mean that proves the other acts.

7 THE COURT: Right. This one is State's  
8 proposed objected to by defense not given.

9 MS. KRISKO: Which one?

10 MR. BUCHANAN: The three liner.

11 THE COURT: So I will not define, if you  
12 believe. I will not define clear and convincing,  
13 whatever.

14 Now the next one says, evidence that the  
15 defendant committed an offense other than that  
16 which he is on trial for, if believed. I have to  
17 give that because it is a limiting instruction.  
18 The law requires that I give it. You can object  
19 to it but I believe the law requires that I give  
20 it.

21 Now there are two versions of this one  
22 of them lands on line 11. One lands on line 6.  
23 Second version, any evidence that defendant  
24 committed offense other than that for which he is  
25 on trial if believed may not be considered by you

1 to prove he is a person of bad character or prove  
2 he has a disposition to commit crimes, such  
3 evidence was received because it was not possible  
4 to admit other relevant evidence and at the same  
5 time exclude evidence of other crimes.

6 Now the second version has to do with  
7 the cocaine use at the apartment. The first one  
8 has to do with the November 14th domestic violence  
9 incident so but I hate to read the thing over  
10 again. I'm wondering if there is some way to  
11 combine them. Well, I don't know if there is some  
12 way to combine them.

13 MR. BUCHANAN: Well, I object to any  
14 evidence. I think that's --

15 THE COURT: So let's use the first one  
16 which is eight lines that will be 16, then let's  
17 modify 19 so everybody knows what we are talking  
18 about why don't we put in here evidence that the  
19 defendant smoked crack cocaine, used cocaine, how  
20 do you want to put it, just used cocaine?

21 MR. BUCHANAN: Yes.

22 THE COURT: All right. So the defendant  
23 used cocaine and then we strike out committed  
24 other acts than for which he is on trial, evidence  
25 that the defendant used cocaine if believed may

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-11]

1 not be considered by you to prove he is a person  
2 of bad character or prove that he has a  
3 disposition to commit crimes. Such evidence was  
4 received because it was not possible to receive  
5 other credible evidence and at the same time  
6 exclude this evidence. I think that as revised  
7 would be more beneficial to the jury. You got a  
8 problem with it as revised?

9 MR. BUCHANAN: No.

10 THE COURT: This one will be number 19  
11 and Teri we will preserve this one so tell Debbie  
12 I have to have this one back. Have her retype it.  
13 Make it 19 and. This one will be preserved as  
14 State's proposed four not given and modified as  
15 given 19, then the next one to constitute the  
16 crime charged that's a stock instruction that  
17 would be 20. The evidence which you are to  
18 consider is 21. That's stock.

19 MR. BUCHANAN: And what's No. 20?

20 THE COURT: Twenty is constitute crime  
21 charged must exist a union or joint operation.  
22 Ends on line ten. They were early on in your  
23 stock stack.

24 MR. BUCHANAN: But as I said, I dropped  
25 them and they got all screwed up.

1 THE COURT: You have an extra one there,  
2 constitute the crime charged. It is number 20.  
3 All right, to constitute the crime charged. 21  
4 evidence which you are to consider ends on line  
5 20. Defendant presumed innocent is 22.  
6 Credibility or believability is 23.

7 MR. BUCHANAN: What's 23?

8 THE COURT: Credibility or believability  
9 is 23. Witness who has special education,  
10 knowledge, skill, 24. Although you are to  
11 consider only the evidence, 25. In your  
12 deliberation, you may not discuss or consider  
13 punishment is 28.

14 When you retire to consider your verdict  
15 you must is 27. Now you will listen to the  
16 argument of counsel is 28.

17 Okay, now Mr. Buchanan, you proposed --

18 MR. BUCHANAN: There is one other one.  
19 There is one other one I want to bring in. It is  
20 not here. It is stock and it does that the fact  
21 that they about lying, they can disregard her  
22 other testimony, and I know that's stock.

23 THE COURT: It is in credibility or  
24 believability.

25 MR. BUCHANAN: I don't know whether it

1 is or not.

2 THE COURT: I think it is.  
3 Twenty-three, if you believe a witness has lied  
4 about any material fact in the case, you may  
5 disregard the entire testimony which is not proved  
6 by other evidence. So it is in there.

7 Now counsel for the state, you are  
8 familiar with instructions, proposed instructions  
9 one through 28 inclusive. Are there any in one  
10 through 28 that State opposes court giving?

11 MS. KRISKO: No.

12 THE COURT: Are there any additional  
13 instructions other than the one which proposed  
14 which have been preserved by clerk that state  
15 wants given?

16 MS. KRISKO: No.

17 THE COURT: Mr. Buchanan, you are  
18 familiar with courts proposed instructions one  
19 through 28 inclusive. Are there any in one  
20 through 28 that you oppose the court giving?

21 MR. BUCHANAN: You have not given the  
22 Allen instruction, the Allen charge.

23 THE COURT: That's not given unless the  
24 jury can't reach a verdict. You want it?

25 MR. BUCHANAN: Yes. I have objections

1 to number, the giving of instruction No. 13, and I  
2 have objections to the giving of instruction  
3 No. 19.

4 THE COURT: Thirteen will be given  
5 because that's an accurate definition of burglary.  
6 Nineteen is the one that's being retyped. You  
7 said you didn't have any objection to it as we  
8 modified it. That's use of cocaine.

9 MR. BUCHANAN: All right.

10 THE COURT: What other one you object  
11 to?

12 MR. BUCHANAN: None.

13 THE COURT: All right, then I don't know  
14 where my bailiff went. Are there any additional  
15 instructions that you want?

16 MR. BUCHANAN: What about my instruction  
17 on the definition of -- instruction on definition  
18 of battery domestic violence straight out of the  
19 statute, directly on point.

20 MS. KRISKO: If I can --

21 THE COURT: Are you proposing that be  
22 the lesser included offense any place here?

23 MR. BUCHANAN: Yes, I am.

24 THE COURT: Where do you think it should  
25 go?

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT - 11]

1 MS. KRISKO: Before we get that far,  
2 definition so a person getting a restraining order  
3 if they are the victim and it showing it is  
4 domestic related of any of those crimes it is not  
5 definition of battery domestic violence for  
6 purposes of prosecution. It is for purpose of  
7 granting a temporary restraining order.

8 MR. BUCHANAN: That is the definition of  
9 the charge as related to the definition of --  
10 that's the definition of the charge from the  
11 statute, how battery domestic violence is stated  
12 when you go back and look at the penalty there is  
13 no definition it refers you back to that statute.

14 MS. KRISKO: That's true, however, the  
15 logic behind that, if we follow that is if you are  
16 the victim of a domestic battery you are never  
17 going to get any further justice other than  
18 misdemeanor because they say it is domestic  
19 related then it is you know if it is sexual  
20 assault it talks about carrying with permit,  
21 stalking, trespass, larceny.

22 MR. BUCHANAN: This is the definition.

23 THE COURT: Including sexual assault?

24 MR. BUCHANAN: DV, sexual assault.

25 THE COURT: All right. For that reason,

1 Mr. Buchanan, the court is not going to give the.

2 MR. BUCHANAN: Judge, you know, I'm  
3 entitled to have my theory of defense to which I  
4 think and I'm saying that my argument is he is  
5 only guilty of battery domestic violence, and I  
6 think that's the theory of my case, and I'm  
7 entitled to have an instruction on that.

8 THE COURT: You have an instruction  
9 which is simple battery.

10 MR. BUCHANAN: That's not battery  
11 constituting domestic violence.

12 THE COURT: This is not a correct  
13 definition of the crime. What you proposed the  
14 court giving is not a definition of the crime of  
15 battery domestic violence.

16 MR. BUCHANAN: Then I'm requesting I  
17 want to have a lesser included offense of battery  
18 constituting domestic violence. I am entitled to  
19 that. In fact --

20 THE COURT: You have to bring me the  
21 instruction. You have not done so.

22 MR. BUCHANAN: Well, I brought that one  
23 and it is --

24 THE COURT: That's not a correct  
25 instruction and you had to have them here at ten

1 o'clock this morning. I'm not going to give it.  
2 It's not a correct definition. It may -- those  
3 acts may be part of domestic violence, but  
4 domestic violence, domestic violence itself is not  
5 a crime. It is called battery slash domestic  
6 violence and the criteria that make a regular  
7 battery, battery slash domestic violence is if you  
8 are in one of those relationships that's the  
9 gravamen of battery slash domestic violence; child  
10 in common, living together, related by ex number  
11 of degrees of consanguinity.

12 MR. BUCHANAN: Then I ask it be given as  
13 part of that instruction. If you want to strike  
14 out the other part, I want the instruction on  
15 battery domestic violence, and that's the first  
16 part of my statute about that. I go back down and  
17 list the other grounds which I know they are  
18 objecting to is because one of grounds in that  
19 statute is sexual assault.

20 THE COURT: You get me the right  
21 instruction. You call somebody at your office to  
22 do it. I'm not doing it for you. Call somebody  
23 at your office, tell them get it, get it over here  
24 by 2:15.

25 MS. KRISKO: If I can respond on the

1 lesser included that might even save him that  
2 work, the lesser included has to have the same  
3 exact elements as the offense charged. We are not  
4 charging this as battery domestic violence. We  
5 don't have to charge it that way. That adds  
6 another element, the relationship. They don't  
7 have to have that in sexual assault, so it is not  
8 a lesser included of sexual assault. It is not a  
9 lesser included of battery with intent to commit  
10 sexual assault or burglary, so he is not entitled  
11 to that even if it is his theory.

12 The law is clear. If it is not really a  
13 lesser included, even if that is his theory, he  
14 doesn't get it. There has to be a lesser  
15 included, and battery domestic violence is not a  
16 lesser included of the other charges because it  
17 adds another element.

18 MR. BUCHANAN: It doesn't have to be a  
19 lesser included offense. It has something,  
20 period. They live together and they cohabitated  
21 together, and he committed battery on her.

22 THE COURT: That's on there. That's  
23 Count I, that is Count I, Mr. Buchanan.

24 MR. BUCHANAN: In the --

25 THE COURT: No, sir, Count I.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT -11]

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 007

Instruction SETTLED in open court on the record. Court advised Mr. Buchanan if he is proposing lesser included offense verdicts he is to present them in the morning along with their cites. The Court will continue to resolve jury instructions during the noon recess tomorrow. ADJOURNED 4:55 P.M.

CUSTODY

CONTINUED TO: 10/27/04 10:30 AM 02

10/27/04 10:30 AM 02 TRIAL BY JURY

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Court Clerk  
Lisa Makowski, Reporter/Recorder

PARTIES: STATE OF NEVADA  
006024 Krisko, Susan R.  
008190 Miller, Ross J.  
  
0001 D1 O'Keefe, Brian K  
000754 Buchanan II, James L.

Y  
Y  
Y  
  
Y  
Y

OUTSIDE PRESENCE OF JURY. [Mr. Buchanan presented three additional Jury Instructions to the Court. Court inquired re the case cites. Arguments by counsel. JURY PRESENT. Testimony and exhibits presented. (See worksheets.) STATE RESTED 11:38 P.M. Mr. Buchanan called Mr. Welch as a witness. Ms. Krisko requested a CONFERENCE AT THE BENCH, SO ORDERED. Jury EXCUSED for arguments outside presence of Jury. COURT ORDERED, Deft's motion to admit Deft's Exhibit E, the medical records is DENIED. Mr. Buchanan requested the exhibit made a Court's Exhibit. Court stated the exhibit will be a defense exhibit and accompany the record on appeal. Jury Instruction SETTLED in open court on the record. JURY PRESENT. Testimony and exhibits presented. (See worksheets.) DEFT RESTED 3:43 P.M. Court instructed the jury and listened to closing arguments by counsel. At the hour of 5:19 P.M. the Jury retired to DELIBERATE. Jury EXCUSED for the evening to return at 8:30 A.M. to continue deliberating.

CUSTODY

CONTINUED TO: 10/28/04 08:30 AM 03

TRAN  
CASE NO. C202793  
DEPT. NO. XV

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
BRIAN KERRY O'KEEFE,  
Defendant.

REPORTER'S TRANSCRIPT  
OF  
JURY TRIAL

BEFORE THE HONORABLE  
SALLY LOENRER, DISTRICT COURT JUDGE  
WEDNESDAY, OCTOBER 27, 2004  
10:30 a.m.

APPEARANCES:

For the Plaintiff: SUSAN KRISKO, ESQ.  
ROSS MILLER, ESQ.  
Deputy District Attorney  
For the Defendant: JAMES BUCHANAN III, ESQ.  
Attorney at Law

Reported by: LISA MAKOWSKI, CCR No. 345

LAS VEGAS, CLARK COUNTY, NEVADA  
WEDNESDAY, OCTOBER 27, 2004  
10:30 a.m.

PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen. This is the time set for trial in State of Nevada versus Brian O'Keefe. The record reflect the presence of the parties and counsel all officers of the court and absence of the jurors before we conclude, the State's witnesses this morning. Are there any matters we need to take care of outside the presence of the jury?

MR. BUCHANAN: Well, I have three potential instructions I would like to give the court.

THE COURT: Please do so ending it Ms. Krisko you have citation I asked for yesterday on once I was concerned about.

MS. KRISKO: I do. If I can give you and Mr. Buchanan one I'm withdrawing the top portion of the paragraph and then the other I have a citation for, but I also have a substitution in case we need it, so, but I have the citation for the other.

MR. BUCHANAN: I will have to think about this last one that they have a cite on that.

THE COURT: I asked for the cites on it.

MS. KRISKO: You did.

THE COURT: Physical force is not a necessary ingredient in the commission and then the second paragraph when a woman yields to the act of sexual assault. Do you have a citation on that or you have a substitute instruction?

MS. KRISKO: I have a citation and also that is a substitute in case.

THE COURT: I thought you were going to give me or the instruction that had the citation on it.

MS. KRISKO: It is 112 Nevada 1208 Hardaway versus State, and I will tell you what we did is changed some of the wording to make it more user friendly like woman, man, yield, things like that. And then the citation on the substitute one that talks about, the longer one is McNair versus State 108 Nevada 53. Did you want the citations on all rest of them also?

THE COURT: 108 Nevada 527

MS. KRISKO: 53. And it is McNair.

THE COURT: Now, yes, the next one that

I wanted the citation on was it is rarely perpetrated in the presence of other witnesses thus the presence or absence of other evidence which would support or refute has the potential for great significance. Where did that one come from?

MS. KRISKO: That one that I handed you the substitution, we are withdrawing that. That was in our stocks to sexual assault but I couldn't find anything that talked about that wording so it was May versus state 89 Nevada 277, but when I looked at it it didn't track that wording so I gave you the proposed which is the four line?

THE COURT: All right. Thank you. So this one is being withdrawn and this one going in in its place?

MS. KRISKO: Yes.

MR. BUCHANAN: You have got me lost.

THE COURT: Don't worry about it.

MR. BUCHANAN: Okay. I won't. We are going to settle these in chambers.

THE COURT: Not right now, that's for sure. But I wanted to have information so I can have Jake and Kelly look some of this stuff up, okay, and print the cases for me and highlight

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-13]



1 from the cases where they came from so this one is  
2 out and this one is in at the end of so what I  
3 need you to do is get those to Jake, tell him to  
4 look on the one that has yellow marks on them,  
5 don't get them out of order and print out citation  
6 for me and highlight the language that's on the  
7 instruction. There were a couple more you had a  
8 question about overt acts, all right. Hold on for  
9 a second.

10 MS. KRISKO: That's Larson versus State  
11 89 Nevada 451, and I have copy of these cases if  
12 you want me to give them to you.

13 THE COURT: That would be fine then they  
14 wouldn't have to print them, and --

15 MS. KRISKO: And then voluntary  
16 intoxication is no excuse for a crime and this is  
17 so even when intoxication is so extreme that we  
18 make a person unconscious of what he was doing or  
19 to create temporary insanity.

20 MS. KRISKO: That comes from Arellano  
21 but on reading it again and the citation 68 Nevada  
22 134, there's another jury instruction that they  
23 say has to be given at the same time, so we will  
24 withdraw that.

25 THE COURT: Withdrawn by State.

1 MS. KRISKO: May I approach.  
2 THE COURT: You may. So just is have  
3 Jake go through these with this and portion that  
4 jury instruction all right and Bucky your proposed  
5 instructions are.

6 MR. BUCHANAN: They are actually just  
7 statutes so there's no -- I don't have the cite on  
8 them. I didn't have much time. I just put down  
9 the statute and definition.

10 THE COURT: So you got the definition of  
11 domestic violence, definition of battery and  
12 definition of assault.

13 MR. BUCHANAN: I think they might have  
14 definition of battery already in there. If they  
15 do, that's fine, I know they don't have, and I  
16 will need a different verdict for battery of found  
17 guilty of battery with domestic violence.

18 MS. KRISKO: Well, I ask we wait on  
19 that. We certainly arguing against it.

20 THE COURT: We are not doing them right  
21 now, just collecting them.

22 MR. BUCHANAN: One other thing we talked  
23 about the tape last night.

24 THE COURT: Did you watch it?

25 MR. BUCHANAN: I thought I would have it

1 about 5:30 and I could have watched it. I don't  
2 know there was probably technical problem in any  
3 event they called me, said it has to be in real  
4 time so I mean at that point it couldn't be done  
5 until 10 or 11 and hopefully I gave them cell  
6 number, but they -- I never heard back from them.  
7 That doesn't mean they didn't call, but I didn't  
8 get to look at it.

9 THE COURT: What time did it get  
10 finished.

11 MS. KRISKO: When I told him it would be  
12 ready at ten he said I wanted to be called so at  
13 ten it was done, actually at 9:54 it was done. I  
14 called and I paged and I never got a response.

15 THE COURT: So do you have your copy  
16 yet?

17 MR. BUCHANAN: Yes, we just got it this  
18 morning.

19 THE COURT: You got anybody watching it?

20 MR. BUCHANAN: No, that's all right. I  
21 mean we thought -- we feel we have been ambushed  
22 because we didn't have the tape, and it wasn't in  
23 the discovery anywhere, any place, any time, and  
24 he said he picked it up yesterday, so it wasn't  
25 available until yesterday under any circumstances,

1 so anyway we object to the testimony on that and  
2 the tape because we never had notice, never had  
3 knowledge and, of course, never had a chance to  
4 look at it, but I probably will take that the  
5 officer looked at it. He is not lying.

6 MS. KRISKO: Well, and only --

7 THE COURT: Your client hasn't testified  
8 either, Mr. Buchanan, only you have made an  
9 opening statement.

10 MR. BUCHANAN: I know. I understand  
11 that, Judge. If I was a prosecutor, I would have  
12 done it differently.

13 MS. KRISKO: If I can just make a quick  
14 record on the that because I know it will be an  
15 appeal issue it is in his statement that the  
16 officer said I looked at your tape as early as his  
17 statement in the discovery. It is there.

18 Now it didn't actually happen at that  
19 time, but certainly they would be on notice if  
20 that happened and quite frankly we had no  
21 intention of ever getting that tape and using  
22 because it shows a negative, but because in  
23 opening they made that their defense we had to  
24 deal with it, so that's when the tape it had  
25 previously been asked to be held on to it, could

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

[EXHIBIT-14]

1 MR. BUCHANAN: That's battery not  
2 constituting domestic violence, and that's where  
3 it is. In fact, I went to court to ask him  
4 whether or not I can argue for that misdemeanor  
5 pursuant to Supreme Court law, and I want that  
6 instruction and I'm entitled to that instruction.  
7 I'm entitled to my theory of the case to which I  
8 feel the evidence shows.

9 THE COURT: No, that's not true because  
10 the State is the one that gets to charge people.  
11 You as defense counsel do not get to charge your  
12 client with another crime that he may have  
13 committed. That's the prerogative of the State of  
14 Nevada. The only thing, as Ms. Krisko has  
15 correctly pointed out is that is another element.  
16 It is not an element of battery. It is not an  
17 element of sexual assault, nor is it an element of  
18 attempt sexual assault. For that reason, you are  
19 not entitled to, even though you are, you can  
20 stand up and you can argument that state has  
21 incorrectly charged this case.

22 MR. BUCHANAN: In over 500 jury trials,  
23 I never had a judge ever deny me an instruction on  
24 what I thought was my theory of the case and the  
25 evidence supports that.

1 THE COURT: There is a first time for  
2 everything, Mr. Buchanan.

3 MR. BUCHANAN: There is a first time and  
4 if he's convicted we will find out whether you are  
5 right or wrong.

6 THE COURT: That's what appellate courts  
7 are for.

8 MR. BUCHANAN: It's for trial court to  
9 be able to argue to jury what I think offense is.  
10 Are you denying me that right?

11 THE COURT: No. I'm telling you -- you  
12 can tell the jury that he has been charged with  
13 the wrong crimes and the only thing he is guilty  
14 of is domestic violence and that was not charged  
15 by the State. Now you have to find him not guilty  
16 of everything.

17 MR. BUCHANAN: They don't have a verdict  
18 to find him guilty of domestic violence if they  
19 want to.

20 THE COURT: It is not a lesser included.  
21 You don't get it, and you don't get the right, you  
22 as defense, do not get to pick the offense you  
23 think your client would plead guilty to or is  
24 guilty of. That's the State's prerogative, not  
25 yours and that's why you don't get the

1 instruction.

2 MS. KRISKO: Actually, there is another  
3 issue that came up if we can bring that up.  
4 Mr. Miller went out and interviewed the witness  
5 that Mr. Buchanan is intending on calling, Troy  
6 Ray. Obviously we expressed some concern about  
7 sexual acts. It is my understanding what his  
8 testimony is going to be is that the victim did  
9 other drugs, and we are right back to the fact  
10 that the defense had a duty. They were going to  
11 try to bring in other bad act to do a motion for  
12 that. In addition, it is extrinsic evidence to  
13 say I have seen her do drugs, so under the law  
14 that is prohibited. We ask he be instructed not  
15 to allow him to testify to that.

16 THE COURT: I'm sorry. I'm not capable  
17 of doing two things at once. My right hand staff  
18 member is off today because the county gives her  
19 her birthday off so I have substitute staff  
20 typing, so now I have these lovely papers with no  
21 numbers on them for me to try to figure out where  
22 they fit.

23 Was this No. 6?

24 THE CLERK: Yes, ma'am.

25 Q. So here is 6 and 19. These are proposed

1 by the State. These are proposed by State  
2 modified as given in 6 and 19.

3 Now, Ms. Krisko you indicated that Tony  
4 Ray is going to be called by Mr. Buchanan and that  
5 Mr. Miller from your office interviewed him and  
6 that he intends to testify that what? What was  
7 that? Intends to testify.

8 MS. KRISKO: That he, two things, one of  
9 them is hearsay but the one that I'm talking about  
10 right now is that he knows that the victim and  
11 defendant had done other kinds of drugs together  
12 previously.

13 THE COURT: That's not relevant and not  
14 admissible.

15 MS. KRISKO: The second is that he knows  
16 by the defendant telling him that they have wild  
17 sex.

18 THE COURT: Hearsay, absolutely hearsay.

19 MS. KRISKO: I just ask that the witness  
20 be instructed and Mr. Buchanan instruct the  
21 witness not to because he is not going admit that  
22 he had a three way with them.

23 MR. BUCHANAN: There's nothing about  
24 three way, there is nothing about sexual conduct,  
25 nothing to do with her sexual conduct.

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

EXHIBIT-15

1 have already --

2 THE COURT: Just specific to that date, that's  
3 correct. All right. Jonathan, please bring in the  
4 panel. Let's get going.

5 MR. BUCHANAN: If nothing else for those  
6 documents, I would like to have -- well, just as a  
7 court exhibit --

8 THE COURT: I'm not --

9 MR. BUCHANAN: Okay.

10 THE COURT: Good morning, ladies and  
11 gentlemen. Welcome back to trial in the State of  
12 Nevada versus Brian O'Keefe.

13 Let the record reflect the presence of the  
14 full jury and alternate jurors. Yesterday,  
15 the attorneys presented their opening statements to you  
16 and now we're ready to call witnesses.

17 Ms. Krisko, you may call your first  
18 witness.

19 MS. KRISKO: Shanan Kelly, please.

20 OFFICER SHANAN KELLY

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

23 THE CLERK: Please state and spell your name  
24 for the record.

25 THE WITNESS: Officer Shanan Kelly.

ROUGH DRAFT TRANSCRIPT

1 S-h-a-n-a-n.

2 DIRECT EXAMINATION

3 BY MS. KRISKO:

4 Q. Where are you employed?

5 A. Las Vegas Metropolitan Police Department.

6 Q. How long have you been there?

7 A. Over four years.

8 Q. What division or unit are you in?

9 A. I work out of Bolden area command as a patrol  
10 officer.

11 Q. I'd like to direct your attention to May 29 of  
12 2004 at about 4:59 p.m. Did you receive a dispatch in  
13 relation to this case?

14 A. I did.

15 Q. What was that about?

16 A. It was a trespass --

17 MR. BUCHANAN: Which I object. It would be  
18 hearsay, unless it is for probable cause.

19 THE COURT: Your objection is noted, but  
20 overruled. It's simply to indicate why he responded  
21 wherever he responded, not for the truth of the  
22 purpose.

23 BY MS. KRISKO:

24 Q. Go ahead.

25 A. It was a call of a trespass in custody, being

ROUGH DRAFT TRANSCRIPT

1 somebody was in custody by security for trespass,  
2 possible battery and sexual assault.

3 Q. When you arrived, where did you  
4 arrive at?

5 A. I arrived at the Budget Suites, the front  
6 office.

7 Q. Is that at 2219 North Rancho?

8 A. Yes, at the time.

9 MR. BUCHANAN: Object, leading.

10 THE COURT: The objection is sustained.

11 BY MS. KRISKO:

12 Q. Do you know the address of it?

13 A. Yes, 2219 North Rancho.

14 Q. Where is that? Is that in this state?

15 A. Yes, in Las Vegas.

16 Q. What county?

17 A. Clark County.

18 Q. When you arrived, who was it that you  
19 contacted?

20 A. I made contact with one of the security  
21 officers that is in employed by the Budget Suites.

22 Q. What, if anything happened, then?

23 A. He advised me --

24 MR. BUCHANAN: Which I object. That would be  
25 hearsay.

ROUGH DRAFT TRANSCRIPT

[EXHIBIT-16] 3 of 3

1 CROSS-EXAMINATION OF VICTORIA WHITMARSH

2 BY MS. KHAMSI:

3 Q. Ms. Whitmarsh, you said that you've been  
4 boyfriend/girlfriend with Mr. O'Keefe for three and a  
5 half years?

6 A. Around there.

7 Q. Have you lived together?

8 A. Yes.

9 Q. When did you live together?

10 A. We lived together for off and on two and a  
11 half years.

12 Q. And at this time in May, were you also  
13 living together?

14 A. I'm sorry?

15 Q. At this time in May, were you living  
16 together?

17 A. Yes.

18 Q. So when you say that you were at that  
19 Budget Suites, he also was there with you, is that  
20 correct?

21 A. Yes.

22 Q. And you said that he came to the apartment  
23 and you let him in?

24 A. Because he said he wanted to get his  
25 belongings.

1 acting violent and I told him I'm not going to put up  
2 with this thing any more. He took my cell phone and  
3 he put it in the bushes and I walked away. I said,  
4 I'm not going to up with this any more, so I'm going  
5 to have to do something about it.

6 Q. So you told him he needed to find another  
7 place to live basically?

8 A. Not at that point.

9 Q. He was living there with you, correct?

10 A. Yes. And I --

11 Q. Hold on. Let me ask the question. Then  
12 you had him kicked out, meaning that security would  
13 not allow him back on the property, is that correct?

14 A. Yeah, he's not allowed on the property.

15 Q. Okay. And then so the afternoon of May  
16 29th, he knocked on the door. He said that he needed  
17 to get some stuff and you let him in.

18 Correct?

19 A. Yeah. He pleaded. He wanted to get his  
20 belongings, and he said he'd leave as soon as he get  
21 his belongings, but that was not the case.

22 Q. And you said he pushed you onto the couch?

23 A. Yes.

24 Q. Now, just imagine that apartment in your  
25 mind for me a minute. If you're looking at the front

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 005

10/25/04 01:30 PM 00 TRIAL BY JURY

HEARD BY: Sally Loehrer, Judge; Dept. 15

OFFICERS: Theresa Lee, Court Clerk  
Lisa Makowski, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	006024 Krisko, Susan R.	Y
	008190 Miller, Ross J.	Y
	0001 D1 O'Keefe, Brian K	Y
	000754 Buchanan II, James L.	Y

OUTSIDE PRESENCE OF JURY, Deft STIPULATED to the DNA testing, that it was him, SO ORDERED. Ms. Krisko stated she has a motion re discovery. Defense is going to bring in medical records that she has not been able to obtain. Mr. Buchanan stated there are employment security records on the alleged victim that she defrauded the system. Objection by Ms. Krisko, defense did not bring a bad acts motion. Court stated it goes to credibility and to truthfulness and honesty. Mr. Buchanan requested the Court sign an order for release of the Monte Vista medical records signed by the Court, they will not accept a subpoena, SO ORDERED, Order for Release of Medical records from Monte Vista with regard to the victim signed and FILED IN OPEN COURT. Arguments by counsel re the content of the medical records. Court noted deft and the victim met at Monte Vista, they were not strangers. Further arguments by counsel. Court noted the Monte Vista records are four years old. COURT ORDERED, the medical records are too remote in time and will not be admitted, however, they will be marked and accompany the record for appellate purposes. Further arguments by counsel. Mr. Buchanan stated he wants to call Dr. Roitman as a rebuttal witness to rebut the Pltf's testimony. Court stated the State listed their Expert in a timely manner, and ORDERED, Dr. Roitman will not be called as a witness, he was listed too late. Mr. Buchanan stated he substituted in this case one week ago. Ms. Krisko stated a petrocelli hearing was held and a prior Domestic Violence was allowed in which deft pled guilty. Further arguments by counsel. COURT ORDERED, the domestic violence is a misdemeanor and will not be allowed. Court advised Mr. Buchanan the Court needs to know if he intends to mention the prior domestic violence charge in front of the jury. Mr. Buchanan stated he and his client have not discussed same, however, he will inform the Court prior to his opening statement. COURT ORDERED, until that decision is made, counsel are not to mention it. JURY PANEL PRESENT AND SWORN. Jury selection commenced. At the hour of 4:41 P.M. Jury and two Alternates selected and sworn. Introduction by the Court. Clerk read Information stated deft's pleas thereto. Mr. Buchanan INVOKED EXCLUSIONARY RULE. Ms. Krisko stated she would like to give her opening statement today. Mr. Buchanan reserved his opening statement until tomorrow morning. Opening statement by Ms. Krisko. Mr. Buchanan stated based upon the opening statement given by the State, he will make his opening statement this evening. Opening statement by Mr. Buchanan. Jury EXCUSED 5:24 P.M. until

CONTINUED ON PAGE: 007



EVERYTHING IS TO GO ON AS USUAL  
A FEW MORE WEEKS TO SEE YOU WON'T BE SO BAD, ALTHOUGH I  
I DAYDREAM ABOUT THAT DAY (THE SPECIAL DAY WE CAN BE  
TOGETHER AGAIN TALK LAUGH HOLD HANDS LOOK AT EACH  
OTHER IN THE EYES NO ARGUING (I PROMISE JUST AS LONG  
AS YOU DON'T ASK STUPID NONSENSE QUESTIONS YOU KNOW  
WHAT I MEAN). THERE'S A VERY LONG ROAD AHEAD OF US,  
THERE ARE TIMES I GET SO BOGGLED I HAVE TO SNAP  
OUT OF IT & TELL MYSELF TO THINK POSITIVE & ONLY GOOD  
THINGS TO COME.

AS YOU KNOW MY FAMILY IS SO AGAINST YOU, I GET SO  
PETRIEVED THAT THEY WILL FIND OUT AND CREATE GREAT CHAOS  
TOWARDS US BEING TOGETHER AGAIN IN THE FUTURE - THIS IS ONE  
ONE THE REASONS WHY I DON'T WANT TO JUMP INTO A RELATIONSHIP SO FAST  
ALSO, I AM STILL LEGALLY MARRIED, I AM HOPING TIME WILL HEAL  
THE PAST & SLOWLY BUT SURELY THIS TIME ~~IS~~ WILL BE FOR SURE  
I AM NOT QUITE SURE HOW YOU FEEL ABOUT THIS. I KNOW FOR A FACT  
YOU ARE GETTING ANGRY AS WHILE YOU'RE READING THIS LETTER.  
WE DEFINITELY NEED TO DISCUSS THIS NOT WHEN I VISIT YOU  
FOR 25 MINS BUT WHEN YOU GET OUT & WE HAVE ALL THE TIME IN  
THIS WORLD (WITHOUT GETTING ANGRY ~~OR~~ DEFENSIVE NOR PINPOINTING  
WHO DID WHAT OR WHO DID WHO).

It's 2:30 in the morning (Friday 9/9/05) I must end this letter

SEPT 8 2005

DEAR KERRY:

EXHIBIT 20

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY REPORT OF EXAMINATION

NAME: O'KEEFE, Brian (suspect)

CASE: 04 0529-2232

WHITMARSH, Victoria (victim)

AGENCY: LVMPD

DATE: August 23, 2004

INCIDENT: SEXUAL ASSAULT

BOOKED BY: Ebbert

REQUESTED BY: SA / Moniot

SEP 9 2004

I, DAVID P. WELCH, do hereby declare:

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on November 23, 1977, I first qualified in the Eighth Judicial District Court of Clark County, Nevada, as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

DW 1 - Sealed sexual assault evidence kit containing the following from Victoria Whitmarsh:

- Item A - consent form
- Item B - assault information
- Item C - anatomical drawings
- Item D - blood samples
- Item E - buccal swab standards
- Item F - vaginal swabs
- Item G - rectal swabs
- Item H - oral swabs
- Item J - debris/bite marks/secretions

DW 2 - One sealed buccal swab kit taken from Brian O'Keefe

DW 3 - One sealed bag booked by Horn (1928-3) containing:  
Item 3 - one (1) black and white dress with fecal stainsDW 4 - One sealed bag booked by Horn (1928-6) containing:  
Item 6 - white toilet paper with fecal stainsDW 5 - One sealed bag booked by Horn (1928-4) containing:  
Item 4 - black shorts with fecal stains  
opened but not examinedCONCLUSION:

Semen was detected on a black and white dress and on some toilet paper. Brian O'Keefe cannot be excluded as a source of the semen. The estimate of this DNA profile in the population is rarer than 1 in 600 billion (identity assumed). See DNA Summary Chart.

Semen was detected on the vaginal swabs of the victim, Victoria Whitmarsh. A DNA mixture was indicated, however, Brian O'Keefe cannot be excluded as the minor source of the DNA. ———

Semen was not detected on the oral or rectal swabs of the victim.

04 0529-2232

By: DK pg 1 of 4

[EXHIBIT - 21]

FILED

2007 FEB -6 P 2:28

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Chaf* *SR*  
CLERK OF THE COURT

BRIAN K. O'KEEFE,

Petitioner,

vs.

D.W. NEVEN, H.D.S.P.  
WARDEN N.S.P./STATE  
OF NEVADA,

Respondent,

Case No: C202793  
Dept No: XV

ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on February 5, 2007. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

Calendar on the 11<sup>th</sup> day of April, 2007, at the hour of

8:30 A o'clock for further proceedings.

*Dorey Lockner*  
District Court Judge  
2-6-07

CLERK OF THE COURT

FEB 06 2007

RECEIVED

0232

BRIAN KERRY O'KEEFE  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018  
# 90244  
IN PROPRIA-PERSONAM

FILED

FEB 15 10 41 AM '07

CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT  
COURT  
CLARK COUNTY, NEVADA

BRIAN O'KEEFE

# 90244

PETITIONER,

VS.

MR. D.W. NEVEN, H.D.S.P.

WARDEN, N.S.P./STATE OF NEVADA,

et al, RESPONDENTS.

CASE NO. C-202793

D.C. # XV

JUDGE LOEHNER

SUPPLEMENT TO PETITIONER'S  
PETITION FOR WRIT OF HABEAS

CORPUS (POST CONVICTION)  
N.R. # 34.720

SPECIAL NOTE: THIS SUPPLEMENT IS SOLELY TO "ADD" GROUND 9 TO ORIGINAL WRIT FILED, FEB. 5, 2007.

NOTE: THIS PETITION IS TIMELY SUBMITTED, UNDER THE PROVISIONS OF § 34.720  
NRS CHAPTER 34, [BY AN INDIGENT PRISONER] UNDER THE EXPRESS DICTATES  
OF HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) (AS TO "LIBERAL"  
READING OF PRO SE SUBMISSIONS).

ADDITIONALLY, PETITIONER ASKS OF THE COURT TO TAKE JUDICIAL NOTICE  
THAT PETITIONER IS EMOTIONALLY CONNECTED TO THIS SUBMISSION AND, AS  
SUCH, BEGS OF THIS COURT'S INDULGENCE AS TO ANY UNINTENTIONAL  
REDUNDANCIES OR LIKE CONTENTS.

RECEIVED

1 - PER N.R.S. - 34.726(1) - REMITTITUR FILED FEBRUARY 17, 2007, SUPREME COURT No. 44644

ORIGINAL - CLERK OF COURT  
686

CLERK OF THE COURT

FEB 15 2007

1 MOREOVER, IN KEEPING WITH THE PROVISIONS OF NRS 34.720 et seq.,  
2 PETITIONER HAS DECIDED TO NOT USE THE CHAPTER 34 FORMAT IN  
3 THIS INSTANT CASE. PETITIONER BELIEVES HIS PETITION IS  
4 BETTER PRESENTED VIA THIS HANDWRITTEN FORUM.

5 *Don L. O'Neil*

6 RESPECTFULLY SUBMITTED:

7 *Brian Xeray O'Neil* - # 90244

8 DATED: *361 6X0*  
9 *JANUARY 29, 2007*

10 *[MONDAY] FEBRUARY 12, 2007*

11 MAILBOX RULE

IN PETITION FILED FEB. 15, 2007  
GROUNDS PRESENTED [8]

WRIT TOTAL PAGES [39]

EXHIBIT TOTAL PAGES [34] WRIT APPENDIX

IN SUPPLEMENT PETITION

GROUNDS PRESENTED [1] WHICH IS GROUND 9.

WRIT TOTAL PAGES [16]

EXHIBIT TOTAL PAGES [22]

TOTAL EXHIBITS [11]

12 SUPPLEMENT TO  
13 PETITION FOR WRIT

14 *[SEE EXHIBIT - 1]*

15 NOTE: INFORMATION SAME. ADDITION OF GROUND 9. [NOT A SUCCESSIVE PETITION.]

16 1. PETITIONER IS PRESENTLY IMPRISONED, AND THUS RESTRAINED OF HIS LIBERTY  
17 AT THE HIGH DESERT STATE PRISON, COUNTY OF CLARK, IN AND FOR THE STATE OF NEVADA.

18 2. PETITIONER WAS ADJUDICATED GUILTY IN THE COUNTY OF CLARK, IN DEPT.

19 VII, WITH THE HONORABLE BELL PRESIDING.

20 NOTE: TRIAL HELD BY JUDGE LOEHNER. VERDICT READ OCT. 28, 2004.  
21 SENTENCED BY JUDGE BELL. SENTENCING HELD DEC. 27, 2004.

22 3. THE DATE OF THE JUDGMENT OF CONVICTION, PURSUANT TO A JURY VERDICT,  
23 IS ON THE 3<sup>RD</sup> DAY OF JANUARY, 2005.

24 4. THE CASE NUMBER IS C-202793.

25 //  
26 //

5. (2) THE LENGTH OF SENTENCE IS :

24 - 120 MONTHS, SUSPENDED, PLACED ON 3 YRS. PROBATION.

NOTE: SUBSEQUENT CONVICTION, CASE C20735, BATTERY CONSTITUTING DOMESTIC VIOLENCE, (F). SENTENCED TO 24 - 60 MONTHS, NOT SUSPENDED. ASCERTAINMENT MADE THAT SUBSEQUENT CONVICTION PRECEDED INSTANT CASE. THEREFORE, PROBATION WAS NOT VIOLATED. DAY FOR DAY CREDIT BEING ACCRUED.

6. PETITIONER IS PRESENTLY SERVING A SENTENCE FOR A CONVICTION OTHER THAN THE CONVICTION UNDER ATTACK IN THIS PETITION.

BATTERY CONSTITUTING DOMESTIC VIOLENCE (F)

NRS: 200.481, 200.485, 33-018, CATEGORY: C

SENTENCED, 2-5 YRS, HIGH DESERT STATE PRISON.

7. NATURE OF THE OFFENSE IN CONVICTION BEING CHALLENGED IS:

COUNT I - BATTERY [REDUCED COUNT OF MISDEMEANOR] NRS-200.481

COUNT VI - BURGLARY [FELONY] - NRS. 205.060

NOTE: ACQUITTED OF COUNT 1 FELONY, BUT CONVICTED OF REDUCED COUNT OF MISDEMEANOR BATTERY LESSER INCLUDED OFFENSE.

8. PETITIONER'S PLEA WAS "NOT GUILTY" AND PROCEEDED TO A JURY TRIAL.

9. NOT APPLICABLE (HEREINAFTER "N/A") - PROCEEDED TO A JURY TRIAL.

10. (2) PETITIONER WAS ADJUDICATED GUILTY BY A JURY.

11. PETITIONER "DID" TESTIFY AT TRIAL.

12. YES, PETITIONER DID APPEAL FROM THE JUDGMENT OF CONVICTION.  
FIRST NOTICE OF APPEAL FILED PREMATURE BY PETITIONER. [CASE DISMISSED].  
SECOND NOTICE OF APPEAL FILED TIMELY, RESULTING IN CASE # 44644.

13. (a) PETITIONER APPEALED TO THE NEVADA STATE SUPREME COURT.  
(b) CASE NUMBER ASSIGNED 44644.  
(c) THE SUPREME COURT AFFIRMED THE LOWER COURTS JUDGMENT.  
(d) SAID AFFIRMANCE WAS FILED ON JANUARY 23, 2006.

See Exhibit 1. - [AFFIRMANCE ORDER] [REMITTITOR FILED FEB. 17, 2006  
PERTAINING TO DIRECT APPEAL

A REHEARING EN BANC MOTION FILED BY PETITIONER ONLY BEING  
STAMPED RECEIVED AND RETURNED FEB. 15, 2006.  
14. PETITIONER "DID" APPEAL; See 13. (a), (b), (c) AND (d).

15. PETITIONER DID FILE A MOTION FOR MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE.  
N.R.S. 176.515 FILED: OCTOBER 19, 2006.

ALSO, PETITIONER FILED MOTION FOR REHEARING EN BANC. FILED RECEIVED BUT RETURNED.

16. (a) (1) EIGHTH JUDICIAL DISTRICT COURT, DEPARTMENT XV, JUDGE LOENRER.

(2) THE NATURE OF THE PROCEEDING WAS: COLLATERALLY ATTACK.  
IMPEACHMENT OF D.N.A.

STATE OPENING TRIAL UTILIZING MISDEMEANOR CONVICTION  
AGAINST JUDGE'S RULING THAT IT CANNOT BE ALLOWED.

- (3) STIPULATION TO D.N.A. THAT IS A COVER-UP.  
PERSONAL LETTERS SUBSEQUENT TRIAL FROM SO-CALLED VICTIM.

(4) YES. [ORAL ARGUMENT GIVEN BY PETITIONER DEC. 4, 2006]

(5) CONTINUED FOR JUDGE'S DECISION UNTIL DEC. 18, 2006

(6) JUDGE ORALLY DENIED MOTION ON DEC. 18, 2006. ①

(7) JUDGE'S DECISION, QUOTE, "BASED ON YOUR OPENING  
STATEMENT YOUR MOTION FOR A NEW TRIAL IS DENIED."

(b) N/A - THIS PETITION IS NEXT STEP IN PROCESS.

(c) N/A - SEE, SUPRA, (b.)

(d) N/A

(1) //

(2) //

① - PETITIONER'S APPEAL TO THE NEVADA SUPREME COURT OF HIS  
DENIAL OF MOTION FOR NEW TRIAL FILED DEC. 30, 2006, #48673

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17. GROUNDS IN PETITIONER'S MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE RELATE TO NEW EVIDENCE PRESENTED BY WAY OF PERSONAL LETTERS WRITTEN TO DEFENDANT, SUBSEQUENT THE TRIAL. ALSO THE FOLLOWING GROUNDS LISTED:

(2) BAD ACTS THAT WERE RULED NOT TO BE MENTIONED.

(b) D.N.A. - COVER-UP - FALSE SITUATION.

(c) JUDICIAL MISCONDUCT.

(d) PETITIONER BEING ACQUITTED OF ALL FELONIES YET CONVICTED OF COUNT (6) FELONY BURGLARY

18.

A MAJOR GROUND THAT HAS NOT YET BEEN PRESENTED IN ANY PRIOR MOTION, EXCEPT ORALLY ARGUED ON DEC. 4, 2006, (SEE MINUTES) IS THE FACT OF PETITIONER BEING ACQUITTED OF ALL FELONIES YET STILL BEING CONVICTED OF FELONY BURGLARY ON HIS COHABITED APARTMENT. PETITIONER ADAMANTLY FEELS HIS MOTION FOR A NEW TRIAL SHOULD HAVE BEEN GRANTED, HOWEVER PETITIONER IS NOW UTILIZING HIS STATE POST CONVICTION WRIT OF HABEAS CORPUS TO PROPERLY ADDRESS ALL CONCERNS; [PLUS AWAITING APPEAL ON DENIAL OF MOTION, CASE #48673.] PETITIONER PRAYS THAT IF NEEDED, THE NEVADA SUPREME COURT WILL REFLECT BACK TO PETITIONER'S MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE IN CONJUNCTION WITH HIS OR THIS STATE POST CONVICTION WRIT OF HABEAS CORPUS. ALSO NOTE, THE PRIOR AFFIRMANCE ORDER ON DIRECT APPEAL WILL GREATLY REFLECT SEVERE PREJUDICE NOW.



19. NO PETITIONER IS NOT FILING THIS PETITION AFTER THE (1) YEAR  
DEADLINE OF THE FILING OF AFFIRMANCE ORDER ON DIRECT  
APPEAL / RIGHT OF APPEAL. [TIMELY FILED PER N.R.S. 34.726(1)]
20. YES, PETITIONER HAS JUST RECEIVED HIS NOTICE OF APPEAL  
FILED DECEMBER 26, 2006 BACK FROM THE COUNTY CLERK.  
THIS APPEAL WAS TAKEN ON HIS ORAL DENIAL OF HIS  
MOTION FOR A NEW TRIAL BASED ON NEW EVIDENCE  
PRONOUNCED DECEMBER 18, 2006, D.C. # XV BY JUDGE LOENRER.  
SUPREME COURT NO. 48673 ASSIGNED TO APPEAL OF MOTION.
21. THE LAW OFFICE OF JAMES L. BUCHANAN, WHO WAS MY  
ONCE RETAINED TRIAL ATTORNEY WRONGFULLY SUBSTITUTED  
IN ON DIRECT APPEAL FOR FREE. BITA KHANSI OF THE  
CLARK COUNTY PUBLIC DEFENDER'S OFFICE WAS THE  
INITIAL PUBLIC DEFENDER ON THE INSTANT CASE.
22. PETITIONER IS CURRENTLY SERVING ON CASE C207835.  
SUBSEQUENT THE TRIAL, PETITIONER WAS RE-CHARGED  
WITH AN OLD DOMESTIC VIOLENCE CASE AND CONVICTED  
BY A JURY TRIAL NOW SERVING [2-5] YRS AT  
HIGH DESERT STATE PRISON. INMATE IS OFFICIALLY  
ON PROBATION AND INCARCERATED AS ASCERTAINED  
BY PAROLE AND PROBATION. [CASE C207835, D.C. #2,  
JUDGE VALORIE VEGA, SENTENCED, MARCH 2, 2006.]

## GROUND 9

Page 1 of 8

23. (i) THIS IS THE STATE'S FAIR NOTICE THAT PETITIONER'S STATE  
 CONVICTION IS IN VIOLATION OF THE NEVADA CONSTITUTION AND MORESO  
 IN VIOLATION OF THE "UNITED STATES CONSTITUTION". THEREFOR,  
 [I] ALLEGE THAT MY STATE COURT (CONVICTION) AND OR SENTENCE  
 ARE UNCONSTITUTIONAL, [IN] VIOLATION OF MY ARTICLE 1 §8 OF  
 THE NEVADA STATE CONSTITUTION AND MY [5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup>] AMENDMENTS  
 RIGHT TO; EFFECTIVE COUNSEL, DUE PROCESS, EQUAL PROTECTION OF THE LAW.

THEREFOR, BASED ON THE FOLLOWING FACTS: [FAULTY INFORMATION  
 FATALLY DEFECTIVE]

MY ATTORNEY WAS INEFFECTIVE FOR FAILING TO ARGUE AND OR  
 SUBMIT TO THE COURT A MOTION TO DISMISS FOR A FATALLY  
 FAULTY AND DEFECTIVE INFORMATION. FAILURE TO REVIEW  
 ANY PRIOR PROCEEDINGS AND DOCUMENTS AND TRANSCRIPTS  
 CAUSED THIS EGREGIOUS ACTION AND OVERSIGHT OF WILES  
 BY THE STATE. IN, [PEOPLE V. DONOVAN] 184 A.D. 2d 654, 585 N.Y.S. 2d 70,  
 (DEPT. 2 1992) INEFFECTIVE COUNSEL WILL BE FOUND WHERE THERE IS FAILURE TO INVESTIGATE.

WHERE LIES THE INTEGRITY AND DUTY OF A "RETAINED ATTORNEY"  
 WHEN PETITIONER POINTS OUT THE FOLLOWING FLAGRANT PROSECUTORIAL  
 MISCONDUCT? WHY MUST PETITIONER WAIT TO FILE HIS PETITION  
 TO BRING UP THIS BLATANT MISCONDUCT? WAS IT NOT HIS  
 DUTY?

AFTER THE HOLDING OF A PRELIMINARY HEARING HELD  
 JULY 1, 2004, (9:00 AM) BEFORE JUDGE JIM GUBLER, SUPPOSEDLY PROBABLE  
 CAUSE WAS FOUND TO BIND PETITIONER OVER TO DISTRICT COURT!

[NOTE: CONTINUED]

AT THAT TIME THEY ALSO ADDED THIS CHARGE OF BURGLARY.

IN THE ACTUAL DOCUMENT FILED AFTER THE HOLDING OF THE PRELIMINARY HEARING SOMETHING IS SO EGBREIGIOUS, IT'S FLAT OUT SHOCKING. THEY SHOULD "ENACT" A NEW N.R.S. BEING, N.R.S. 666, CRIME, STUPID AND EVIL ACT'S DONE, DRAFTED FROM AND BY A.D.A., SUSAN KRISKO!

AFTER THE POLICE D.R. # IS ASSIGNED, WHICH WAS # 040529-2232, IF CHARGED, IT GOES TO JUSTICE COURT WITH A ALPHA-NUMERIC NUMBER ASSIGNED. [IT'S PERMANENT.] IF BOUND OVER, AFTER THE HOLDING OF A PRELIMINARY HEARING, DEFENDANT IS BOUND OVER WITH THE DATE, TIME, COURTROOM NUMBER FOR THE ARRAIGNMENT PLEA. THE PRELIMINARY HEARING TRANSCRIPT MUST BE THEN DRAFTED AND PROPERLY FILED WITH THE CLERK OF THE COURT BEFORE ARRAIGNMENT. YOU ALL KNOW THIS BETTER THAN ME.

NOW, IF A DEFENDANT IS BOUND OVER IN JUSTICE COURT THE SCREEN ON THE COMPUTER HAS A FIELD SELECTION TO ANSWER BOUND/BIND OVER? TYPE Y FOR YES. THE COMPUTER SYSTEM HAS A FAIL SAFE SYSTEM TO ASSIGN THE NEXT SERIES OR NEXT ALPHA-NUMERIC NUMBER. "AGAIN", IT'S FOOL-PROOF AND FAIL SAFE.

THIS FELONY DISTRICT CASE NUMBER IS LOGGED AND WRITTEN OR TYPED ONTO THE TRANSCRIPT. NOW THE A.D.A. HERSELF HAS A COPY AND ONE IS ALSO FILED

[NOTE: CONTINUED]

WITH THE PUBLIC DEFENDER'S OFFICE.

AGAIN, BEFORE

ARRAIGNMENT, THE PRELIMINARY TRANSCRIPT MUST THEN BE FILED WITH THE CLERK OF THE COURT. FILING WITH THE CLERK OF THE COURT MAKES IT A PERMANENT RECORD THUS THEREFOR "PERFECTING THE DOCUMENT."

ONCE FILED, IT BECOMES PART OF THE PERMANENT HISTORY IN "ARCHIVES." IT'S THE SAME AS A "DEED." ALSO, LIKE A SOCIAL SECURITY NUMBER.

NOW, LOOKING AT PETITIONERS PRELIMINARY HEARING TRANSCRIPT COVER, THE DISTRICT CASE NUMBER "INITIALLY" ASSIGNED AND "FILED UNDER" WAS "C202969". [SEE EXHIBIT-2]

NOW KEEPING IN MIND PETITIONER'S PRELIMINARY WAS HELD ON JULY 1, 2004.

MY ARRAIGNMENT IS JULY 13, 2004, (9:00 AM) [SEE EXHIBIT-3]

PLEASE DON'T BE CONFUSED OR MISLED BY THE WILES OF THE STATE. IT'S THE SAME CASE. NOW IT MAKES SENSE ALSO WHY AT THE END OF THE PRELIMINARY HEARING, IN THE TRANSCRIPT, IT DOESN'T SHOW WHERE THE JUDGE IS SUPPOSED TO INFORM YOU THAT YOUR BOUND OVER, FOR WHAT CHARGE AND WHEN AND WHERE YOU WILL BE ARRAIGNED. NOT IN MY COPY AT LEAST! NOW, THEY HAD THIS FOR (12) DAYS

[NOTE: CONTINUED]

GROUND 9

Pg. 4 of 8

AND HERE IS MY THEORIES. PETITIONER REFUSING ANY DEALS  
 THE STATE KNOWS THEIR IN GREAT TROUBLE IN PROSECUTING  
 THE INSTANT CASE. PETITIONER HAS A SINGLE MISDEMEANOR  
 AND DISMISSED MISDEMEANOR BATTERY DOMESTIC VIOLENCE CASE  
 THAT THE STATE NEEDS GREATLY TO UTILIZE IN HOPES  
 OF A SUCCESSFUL CONVICTION. HOWEVER, THE LAW FORBIDS  
 THOSE UNDER FEDERAL RULE 403 ESPECIALLY. IT  
 STATES THAT THE ONE INSTANCE THAT DOESN'T AFFORD  
 DISCRETION TO A TRIAL JUDGE IN ADMISSIBILITY OF  
 BAD ACTIONS OR BAD ACTS IS THE ADMISSIBILITY  
OF "CONVICTIONS." POINT BLANK MEANING MISDEMEANORS  
 AND FELONIES (WITHIN) THE RANGE OF (10) YRS, CANNOT  
 BE USED. SEE, THE DISMISSED MISDEMEANOR BATTERY D.V.  
 CASE HAD, WITHOUT A DOUBT, VERY PREJUDICIAL PHOTO'S  
 OF VICTORIA WHITMARSH. THEY <sup>SUSAN</sup> WANTED THESE PHOTO'S.

SO, THEY DECIDE TO HOLD A PETROCELLI -  
 HEARING ON BAD ACTS THAT DO NOT NECESSITATE  
 OR JUSTIFY THE HOLDING OF A PETROCELLI HEARING.

SO, WHAT DO THEY DO? THEY SURREPTITIOUSLY  
 CLOSE OUT CASE NUMBER C202969 AND CONNECT IT  
 AS A BURGLARY CONVICTION. THEY THEN STATE IN  
 THE MINUTES, "COURT RULED THE BURGLARY ADMISSIBLE  
 UNDER THE BAD ACTS AND SET THIS MATTER FOR A  
 PETROCELLI HEARING. [SEE EXHIBIT 4] WHAT BURGLARY?  
[NOTE & CONTINUED]

## GROUND 9

page 5 of 8

IN THE TRIAL TRANSCRIPTS ALREADY FILED IN MY OPENING BRIEF I PROVE JUDGE LOEHRER READS MY I.C.I.C. SCOPE BEFORE I TESTIFY. PETITIONER HAD NO FELONIES READ BY THE JUDGE.

NOW, INCLUDED IS PETITIONER'S INFORMATION FILED. [SEE EXHIBIT 5, 4 PAGES]

I WILL SUBMIT

THAT AT ARRAIGNMENT HELD JULY 13, 2004 9:00AM, THAT WHEN PETITIONER PLED THEY CALLED CASE NUMBER, C202969, STATE OF NEVADA VS BRIAN KERRY O'KEEFE. SO, I PLED NOT GUILTY AND INVOKED MY RIGHT TO A SPEEDY TRIAL.

WHERE DID PETITIONER EVER PLEA TO C202793? WILL THEY JUST TAMPER THE AUDIO TAPE THAT SHIRLEY PARRAGUIRRE HAS ADMITTED THEM DOING IN SERIOUS CRUNCHES? DOESN'T

MATTER THOUGH. PETITIONER'S <sup>PRELIMINARY HEARING</sup> ARRAIGNMENT WAS OFFICIALLY LOGGED AND HELD UNDER C202969.

WHEN FILED AT THEIR OWN COURT OF RECORDS, IT BECAME PERMANENT. GOOD JOB MS KRISKO!

HATS OFF AGAIN TO YOU! SATAN IS GOING TO REWARD HIS CHILD AND UPGRADE YOU TO FIRST CLASS ON YOUR TRIP TO "HADES". NOW IT MAKES SENSE WHY THE CASE WORKERS, P.E.P. DEPT. AND BLACKSTONE

THANK I PLED GUILTY TO BATTERY RAPE, BURGLARY.

[NOTE: CONTINUED]

## GROUND 9

page 6 of 8

[SEE EXHIBIT-6] IN THIS DOCUMENT JEFFREY SEANQUART FOR P & P TELLS ME I PLED GUILTY

[SEE EXHIBIT-7] IN THIS DOCUMENT BLACKSTONE REPORTS I PLED GUILTY TO COUNT 1 & 6.

[SEE EXHIBIT-8] IN THIS DOCUMENT JEFFREY SEANQUART TRIES TO TRICK PETITIONER INTO SIGNING FOR A COUPLE OF BURGLARIES WHICH WOULD THEN COMPORT TO THEIR RECORDS. IT WOULD SATISFY THE PETROCELLI HEARING BURGLARY THEY REPORT (FALSELY) AND THE BURGLARY CONVICTION AT TRIAL. I REFUSED. CAN YOU BELIEVE HE GOT MAD AT ME FOR NOT SIGNING! THE AUDACITY!

[SEE EXHIBIT-9] IN THIS DOCUMENT, THEY REMAND ME BACK INTO CUSTODY FOR SENTENCING SCHEDULED DEC. 27, 2004. NOTICE, THEY REMAND ME ON RAPE.

TRIAL VERDICT READ OCT. 28, 2004. THIS IS DEC 1, 2004. I WAS ACQUITTED OF ALL RAPE CHARGES !!!

NOW NOTICE ON THE NEXT DOCUMENTS.

[SEE EXHIBIT-10, GURY SCREEN, PGS. 2 THRU 8, TOTAL 7 PGS.]

THEY SHOW A DIFFERENT DATE OF THE INFORMATION BEING FILED ON PG 2. THEY SHOW A DATE OF 7/2/04? ALSO, THEY SHOW ME GOING TO TRIAL, BY A JURY VERDICT OF (8) FELONY COUNTS? NOT (6) AS BY THE INFORMATION; AND TRIAL TRANSCRIPTS.

[NOTE: CONTINUED]

## GROUND 9 PG. 7 of 8

GETTING BACK TO THE FILING OF THE PRELIMINARY HEARING TRANSCRIPT. IT SHOWS HELD TO ANSWER ON 7/13/2004. IT SHOWS BEING FILED AT THE CLERK OF THE COURTS UNDER SHIRLEY PARRAGUIRRO AT 3:28 PM ON JULY 12, 2004. IT SHOWS BEING FILED AT THE PUBLIC DEFENDERS OFFICE AT 4:36 PM, JULY 12, 2004, [THE END OF THE DAY.]

THERE IS NO PRELIMINARY REPORT FILED BY 5:00 PM SHOWING A DIFFERENT CASE NUMBER AND THEY CERTAINLY DON'T CHANGE IT BY THE NEXT MORNING BEFORE I PLEA.

PETITIONER MUST INFORM IT MAKES ALOT OF SENSE NOW WHEN IN SEPT, OCT OF 2004, ANY CORRESPONDENCE OR PAPERS I REQUESTED REVERTED FROM THE D.C. # BACK TO THE J.C. #. THEN PAPERS STARTING SHOWING THE NEW D.C. # BACK FROM THE J.C. #. I THOUGHT SOMETHING WAS STRANGE. NOW WE HAVE A SPEEDY TRIAL VIOLATION BY MEANS OF MALICIOUS PROSECUTION. HOW? I STILL HAVEN'T GONE TO TRIAL ON C202969.

I DID NOT WAIVE MY PRELIMINARY HEARING! I WENT TO TRIAL ON C202793. I WANT MY OFFICIAL PRELIMINARY HEARING TRANSCRIPT BY LAW.

[SEE EXHIBIT - II] THIS DOESN'T CUT IT. NO, NO, NO. [NOTES CONTINUED] DOCUMENT IS NOT FILED THAT WAY!



GROUND 9Page 8 of 8

NOW AGAIN IT ALSO MAKES SENSE WHY THEY TRANSFERRED THE CASE FROM GLASS TO LOHRER. ALSO, AFTER TRIAL WAS CONCLUDED AND PETITIONER WAS ACQUITTED OF ALL FELONIES, INSTEAD OF JUDGE LOHRER, IN SUA-SPONTE CORRECTING THE BURGLARY SINCE PETITIONER WAS ACQUITTED OF ALL FELONIES, SHE PASSES SENTENCING TO JUDGE BELL AND PROBABLY IS INFORMED I PLED GUILTY! OF COURSE, HOW CAN JUDGE BELL SENTENCE ME WHEN HE WAS THE D.A.


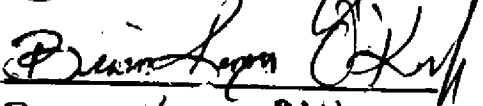
WHEN I WAS FIGHTING MY CASE ALL YEAR, AND THEN WHEN ELECTED TO THE BENCH HE SENTENCES ME!? THE STATE'S, GO TO GUY!

THE GOOD OLD BOY AND GIRL CLUB OF THE EIGHTH JUDICIAL HAS SEVERAL LEAKS AND THOSE LEAKS, IN THEIR CLUB, HAVE SURREPTITIOUSLY AIDED DEFENDANT. NOW, THE FEDERAL COURTS WILL EAT THIS FOR LUNCH. THE LAW SAYS SUBJECT MATTER JURISDICTION AS FOLLOWS: THE COURT ONLY GETS PROPER JURISDICTION OVER SUBJECT MATTER IF A PROPER INFORMATION HAS BEEN ISSUED. VIOLATION DUE PROCESS 5<sup>TH</sup>, 14<sup>TH</sup> AMENDMENTS OF THE U.S. CONSTITUTION. IT WOULD CAUSE DEFENDANTS AND COURTS GREAT CONFUSION WITH THOUSANDS OF UNWARRANTED CASE NUMBERS. I DIDN'T PLEA TO C202793, AND I DIDN'T GO TO TRIAL UNDER C202969. WHAT HAPPENED TO C202969. ONLY SUSAN KRISKO KNOWS! HATE OFF!

[END] MOST HAVE PROPER INFORMATION 699 [EX FRATE LIVINGSTON] 114 FLAG 90, 156 SO. 012 (1934)

1 WHEREFORE, BRIAN KERRY O'KEEFE, PRAYS THAT THE COURT GRANT  
2 PETITION FOR WRIT OF HABEAS CORPUS RELIEF TO WHICH HE MAY BE ENTITLED  
3 IN THIS PROCEEDING, DISMISS ENTIRE CASE PER FAULTY INFORMATION.


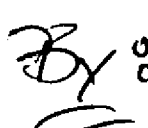
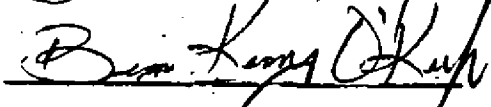
4 <sup>BKO</sup> EXECUTED AT HIGH DESERT STATE PRISON LAW LIBRARY  
5 ON THE 29<sup>th</sup> DAY OF <sup>BKO</sup> ~~JANUARY~~ 2007  
6 1221 FEBRUARY

7   
8 BY:   
9 BRIAN KERRY O'KEEFE  
10 # 90244

11  
12 VERIFICATION

13  
14 UNDER PENALTY OF PERJURY, PURSUANT TO N.R.S. 208.165 et seq.,  
15 AND THE LAWS OF THE UNITED STATES OF AMERICA, 28 U.S.C. § 1746 AND  
16 18 U.S.C. § 1621, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER  
17 NAMED IN THE FOREGOING PETITION AND KNOWS THE CONTENTS THEREOF,  
18 THAT THE PLEADING IS TRUE AND CORRECT OF HIS OWN PERSONAL  
19 KNOWLEDGE, EXCEPT AS TO THOSE MATTERS BASED ON INFORMATION  
20 AND BELIEF, AND TO THOSE MATTERS, HE BELIEVES THEM TO BE  
21 TRUE.  
22

23  
24  
25  
26 BRIAN KERRY O'KEEFE  
27 HIGH DESERT STATE PRISON  
28 PO BOX 650  
INDIAN SPRINGS, NV. 89018  
# 90244

23  
24   
25 BY:   
26   
27 SIGNATURE OF PETITIONER  
28 IN PROPRIA-PERSONAM  
#90244

CERTIFICATE OF MAILING

BY ADDING THIS SUPPLEMENT TO THE ORIGINAL PETITION,  
FILED [2-5-07] I, BRIAN KERRY O'KEEFE, HEREBY CERTIFY, PURSUANT  
TO N.R.C.P. 5(b), THAT ON THIS <sup>BK</sup> 29<sup>th</sup> DAY OF ~~JANUARY~~ <sup>FEBRUARY</sup> 2007,  
I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING,  
" PETITION FOR WRIT OF HABEAS CORPUS STATE POST CONVICTION "

BY DEPOSITING IT IN THE HIGH DESERT STATE PRISON LAW  
LIBRARY MAILBOX BEING LOGGED IN ON ABOVE DATE,  
FIRST-CLASS POSTAGE, FULLY PREPAID, ADDRESSED TO °  
[NOTE] ADDITION OF GROUND 9. NOT A SUCCESSIVE PETITION.

CLERK OF THE COURT  
200 LEWIS AVENUE  
3RD FLOOR  
LAS VEGAS, NV. 89155

DAVID ROGER, DISTRICT ATTORNEY  
200 LEWIS AVENUE  
PO BOX 552212  
LAS VEGAS, NV. 89155 - 2212

D.W. NEVEN, WARDEN  
HIGH DESERT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018

CATHERINE CORTEZ MASTO  
ATTORNEY GENERAL  
CAPITAL COMPLEX  
100 N. CARSON STREET  
CARSON CITY, NV. 89701-4717

DATED ° THIS <sup>BK</sup> 29<sup>th</sup> DAY OF ~~JANUARY~~ <sup>FEBRUARY</sup> 2007.  
<sub>12<sup>th</sup></sub>

Brian Kerry O'Keefe  
BRIAN KERRY O'KEEFE - #90244

Brian Kerry O'Keefe  
HIGH DESERT STATE PRISON  
PO BOX 650

INDIAN SPRINGS, NV. 89018

IN PROPRIA - PERSONAM

Brian Kerry O'Keefe

0232

BRIAN KERRY O'KEEFE  
HIGH DESERT STATE PRISON  
PO BOX 650

ANDERSON SPRINGS, NV 89018

IN PROPRIA - PERSONAM

#90244

FEB. 12, 2007

JUDGE LOEHNER

FEBRUARY 12, 2007

CASE NO. C202793

D.C. XV

TOTAL EXHIBITS 00

TOTAL PAGES [22]

EIGHTH JUDICIAL DISTRICT TO GROUND(9)  
COURT  
CLARK COUNTY, NEVADA

APPELLANT'S APPENDIX OF EXHIBITS TO SUPPLEMENTAL PETITION OF GROUND 9

- [CASE C-202793] [FILED FEB. 5, 2007] [8 GROUNDS]
- EXHIBIT - 1 - "COVER" OF PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION
- EXHIBIT - 2 - PRELIMINARY HEARING TRANSCRIPT (PG. 1), #C202969
- EXHIBIT - 3 - STATE OF NEVADA CRIMINAL COURT MINUTES, (PG. 1) #C202793
- EXHIBIT - 4 - STATE OF NEVADA CRIMINAL COURT MINUTES, (PG. 3) #C202793
- EXHIBIT - 5 - INFORMATION CASE, C202793 (4 PGS.)
- EXHIBIT - 6 - P & P VIOLATION REPORT (2 PGS.)
- EXHIBIT - 7 - BLACKSTONE REPORTING DISTRICT CASE INQUIRY (2 PGS.)
- EXHIBIT - 8 - PROBATION AND AGREEMENT RULES
- EXHIBIT - 9 - LVMPD CRIMINAL SCORE
- EXHIBIT - 10 - QUAY SCREEN PRINTOUT (PGS. 2-8) #04F09779X S.C. #
- EXHIBIT - 11 - PRELIMINARY HEARING TRANSCRIPT, C202969? (7 PGS.)  
C202793?

EXHIBIT-1

FILED

FEB 5 11 48 AM '07

CLERK OF THE COURT

0232

BRIAN KERRY O'KEEFE  
HIGH DESEAT STATE PRISON  
PO BOX 650  
INDIAN SPRINGS, NV. 89018  
# 90244  
IN PROPRIA PERSONAM

EIGHTH JUDICIAL DISTRICT  
COURT  
CLARK COUNTY, NEVADA

BRIAN O'KEEFE  
# 90244

PETITIONER,

V.

MR. D.W. NEVEN, H.D.S.P.

WARDEN, N.S.P./STATE OF NEVADA,

et al, RESPONDENTS.

CASE NO. C-202793

D.C. # XV

JUDGE LOEHRER

PETITION FOR WRIT OF HABEAS

CORPUS (POST CONVICTION)  
N.R.S. 34.720

NOTE: THIS PETITION IS TIMELY SUBMITTED, UNDER THE PROVISIONS OF  
N.R.S CHAPTER 34, [BY AN INDIGENT PRISONER] UNDER THE EXPRESS DICTATES  
OF HAINES V. KERNER, 404 U.S. 519, 42 S.CT. 594 (1972) (AS TO "LIBERAL"  
READING OF PRO SE SUBMISSIONS).

ADDITIONALLY, PETITIONER ASKS OF THE COURT TO TAKE JUDICIAL NOTICE  
THAT PETITIONER IS EMOTIONALLY CONNECTED TO THIS SUBMISSION AND, AS  
SUCH, BEGS OF THIS COURTS INDULGENCE AS TO ANY UNINTENTIONAL  
REDUNDANCIES OR LIKE CONTENTS.

1 - PER N.R.S. - 34.726(1) - REMITTITOR FILED FEBRUARY 17, 2004, SUPREME COURT No. 44644

TRAN

PUBLIC DEFENDERS OFFICE

2004 JUL 12 P 4:36

JUL 12 3 28 PM '04

*Shirley S. Rungtjorn*  
 JUSTICE COURT CLERK  
 CLARK COUNTY, NEVADA

STATE OF NEVADA )

Plaintiff )

vs. )

BRIAN O'KEEFE )

Defendant. )

*F-0485034*  
*7/13/04 10:10 AM*  
*K. B. W. 8/1*  
 JC Case No. 04F09774X  
 DC Case No. C202969  
 Dept. No. 5

PRELIMINARY HEARING

Before the Honorable Jim Gubler  
 Thursday, July 1, 2004, 9:00 a.m.  
 Reporter's Transcript of Proceedings

## APPEARANCES:

For the State:

Susan Krisko, Esq.  
 200 South Third Street  
 7th Floor  
 Las Vegas, Nevada 89101

For the Defendant:

Bitu Khamisi, Esq.  
 Office of the Public Defender  
 309 South Third Street  
 Room 226  
 Las Vegas, Nevada 89155-1234

REPORTED BY: JACKIE NELSON, RPR, CCR No. 809TRAN

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA vs O'Keefe, Brian K

07/13/04 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk  
Dick Kangas, Reporter/RecorderPARTIES: STATE OF NEVADA  
008190 Miller, Ross J.  
0001 D1 O'Keefe, Brian K  
PUBDEF Public Defender  
005686 Khamisi, BitiY  
Y  
Y  
Y  
Y

DEPT.. OKEEFE ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

08/31/04 9:00 AM CALENDAR CALL

09/07/04 10:00 AM TRIAL BY JURY

08/31/04 09:00 AM 00 CALENDAR CALL

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk  
Dick Kangas, Reporter/RecorderPARTIES: STATE OF NEVADA  
006024 Krisko, Susan R.  
0001 D1 O'Keefe, Brian K  
PUBDEF Public Defender  
005686 Khamisi, BitiY  
Y  
Y  
Y  
Y

State's ready for three day trial, ten to thirteen witnesses, no out of state witnesses. Upon Courts inquiry if Ms. Khamisi is ready for trial, Ms. Khamisi stated it depends on Courts ruling of her motion for petrocelli hearing. Ms. Krisko stated she has a guilty plea from the incident in November if the defendant wants to take the plea. Ms. Khamisi argued that it out ways the probative value. Arguments by counsel as to case history and other charges. COURT ORDERED, there needs to be a petrocelli hearing before the trial and matter passed to Thursday to check Courts availability.

CUSTODY

CONTINUED TO: 09/02/04 09:00 AM 01

EXHIBIT-3

## CRIMINAL COURT MINUTES

04-C-202793-C STATE OF NEVADA

vs O'Keefe, Brian K

CONTINUED FROM PAGE: 002

10/08/04 09:00 AM 01 PETROCELLI HEARING

HEARD BY: Jackie Glass, Judge; Dept. 5

OFFICERS: Georgette Byrd, Court Clerk  
Dick Kangas, Reporter/RecorderPARTIES: STATE OF NEVADA  
006024 Krisko, Susan R.0001 D1 O'Keefe, Brian K  
000754 Buchanan II, James L.Y  
Y  
Y  
Y

Mr. Buchanan stated he just received the case and wants to know what the Court ruled on the other bad acts.

Ms. Krisko stated she agreed to one battery and did not ask for the other ones to come in because of resolution or dismissal. Court ruled the burglary admissible under the bad acts and set this matter for a petrocelli hearing. Ms. Krisko stated she made an offer of proof under case law to that case (03M25901X), involving the same victim occurring in 2003 and the conviction in 2004. The State withdrew all other events of domestic violence and agreed to the one case the defendant plead guilty to. COURT ORDERED, it will allow the one misdemeanor conviction from 2/12/04 in, the rest will not come in. If during trial Mr. Buchanan wants to bring the other cases up he can however, he will be subject to rebuttal witnesses by the State.

State made an offer of proof to the record; Selgado v State 114 NV (1998).

Mr. Buchanan objected to it coming in at this point as the probative outweighs the prejudicial effect. Due to Courts ruling defense is forced to bring out other bad acts to prove this did not result in a sexual assault.

Ms. Krisko stated she asked Mr. Buchanan to come up with some of these things before the court even if he wanted to do an in camera review before trial.

Mr. Buchanan stated the Defense is going to show every time the victim was drunk she would Metro and sometimes she was so drunk Metro would not even talk to her. COURT ORDERED, as far as it ruling, the probative value does not outweigh the probative because it is the same victim, similar circumstances at the same time and it is admissible by the State as to prior bad acts.

Mr. Buchanan requested bail with stay away order.

Objection by Ms. Krisko due to prior domestic violence battery charge, warrants, failures to appear and numerous sexual assaults. Ms. Krisko requested no changes be made in defendants the custody status.

CONTINUED ON PAGE: 004

PRINT DATE: 01/16/07

PAGE: 003

MINUTES DATE: 10/08/04



*Shirley Blanton*  
CLERK

1 **INFO**

2 **DAVID ROGER**  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 **SUSAN R. KRISKO**  
6 Deputy District Attorney  
7 Nevada Bar #006024  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

12 I.A. 7/13/04  
13 9:00 A.M.  
14 PD

DISTRICT COURT  
CLARK COUNTY, NEVADA

15 ~~THE STATE OF NEVADA,~~

16 Plaintiff,

17 -vs-

18 **BRIAN KERRY OKEEFE,**  
19 #1447732

20 Defendant.

Case No: C202793  
Dept No: V

**INFORMATION**

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

23 DAVID ROGER, District Attorney within and for the County of Clark, State of  
24 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That BRIAN KERRY OKEEFE, the Defendant(s) above named, having committed  
26 the crimes of BATTERY WITH INTENT TO COMMIT A CRIME (Felony - NRS  
27 200.400); SEXUAL ASSAULT (Felony - NRS 200.364, 200.366); ATTEMPT SEXUAL  
28 ASSAULT (Felony - NRS 193.330, 200.364, 200.366) and BURGLARY (Felony - NRS  
205.060), on or about the 29th day of May, 2004, within the County of Clark, State of  
Nevada, contrary to the form, force and effect of statutes in such cases made and provided,  
and against the peace and dignity of the State of Nevada,

///

///

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EXHIBIT - 5, 701 of 4

1 COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

2 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
3 the person of another, to-wit: VICTORIA WHITMARSH, with intent to commit sexual  
4 assault, by striking the said VICTORIA WHITMARSH about the head and/or body with his  
5 hands.

6 COUNT 2 - SEXUAL ASSAULT

7 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
8 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: fellatio; by  
9 placing his penis on or in the mouth of the said VICTORIA WHITMARSH, against her will.

10 COUNT 3 - SEXUAL ASSAULT

11 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
12 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: sexual  
13 intercourse; by placing his penis into the genital opening of the said VICTORIA  
14 WHITMARSH, against her will.

15 COUNT 4 - SEXUAL ASSAULT

16 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
17 VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal intercourse  
18 by placing his penis into the anal opening of the said VICTORIA WHITMARSH, against  
19 her will.

20 COUNT 5 - ATTEMPT SEXUAL ASSAULT

21 did then and there wilfully, unlawfully, and feloniously attempt to sexually assault  
22 and subject VICTORIA WHITMARSH, a female person, to sexual penetration, to-wit: anal  
23 intercourse; by attempting to place his penis into the anal opening of the said VICTORIA  
24 WHITMARSH, against her will.

25 ///

26 ///

27 ///

28 ///

1 COUNT 6 - BURGLARY

2 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit  
3 battery and/or sexual assault and/or a felony, to-wit: battery and/or sexual assault, that  
4 certain building occupied by VICTORIA WHITMARSH, located at 2219 North Rancho, No.  
5 2083, Las Vegas, Clark County, Nevada.

6  
7 DAVID ROGER  
DISTRICT ATTORNEY  
8 Nevada Bar #002781

9 BY /s/ S. Krisko

10 SUSAN R. KRISKO  
Deputy District Attorney  
11 Nevada Bar #006024

12  
13 Names of witnesses known to the District Attorney's Office at the time of filing this  
14 Information are as follows:

15	<u>NAME</u>	<u>ADDRESS</u>
16	HORN, David R.	LVMPD P#1928
17	STEIBER, Raymond C.	LVMPD P#3542
18	MONIOT, Timothy Sanford	LVMPD P#4664
19	MORGENSTERN, Kevin John	LVMPD P#4665
20	RAMIREZ, Vicente R.	LVMPD P#4916
21	KELLY, Shanan D.	LVMPD P#6836
22	MAJORS, William J.	LVMPD P#7089
23	BARRERA, Roger	LVMPD P#8050
24	WHITMARSH, Victoria	2992 Orchard Mesa Dr., Henderson, NV 89052
25	EBBERT, Linda	UMC/SANE, 1800 W. Charleston, LVN 89102
26	TURON, Besse Tobias	2219 N. Rancho Dr., LVN 89107
27	CUSTODIAN OF RECORDS	LVMPD - Records
28	CUSTODIAN OF RECORDS	LVMPD - Dispatch

[EXHIBIT 5, PG 3 OF 4]

	<u>NAME</u>	<u>ADDRESS</u>
1		
2	CUSTODIAN OF RECORDS	UMC, 1800 W. Charleston, LVN 89102
3	PENO, Tammy	2219 N. Rancho, LVN
4	LNU, Tracy	Budget Suites
5	LNU, Missy	Budget Suites
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DA#04F09774X/rad  
LVMPD EV#0405292232  
BAT W/INT; S/A; ATT S/A; BURG - F  
(TK4)

[EXHIBIT 5, pg 4 of 4]

KENNY C. GUINN  
Governor

DISTRICT OFFICES

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CARSON CITY, NEVADA 89706  
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www.ps.state.nv.us

GEORGE TOGLIATTI  
Director

AMY WRIGHT  
Chief

JOHN GONSKA  
Deputy Chief

VIOLATION REPORT

JULY 1, 2005

TO THE HONORABLE JUDGE SALLY L. LOEHRER  
EIGHTH JUDICIAL DISTRICT COURT  
DEPARTMENT XV  
CLARK COUNTY, NEVADA

NAME: O'KEEFE, Brian Kerry  
FILE#: V05-2324  
CC#: C202793  
SUPERVISION GRANT: 12-27-2004  
EXPIRATION: 12-27-2009

**CRIME:** COUNT VI - BURGLARY (CATEGORY B FELONY)  
**SENTENCE:** \$25 ADMINISTRATIVE ASSESSMENT FEE AND \$150 DNA ANALYSIS FEE,  
MAXIMUM TERM 120 MONTHS WITH A MINIMUM PAROLE ELIGIBILITY OF 24 MONTHS  
NEVADA DEPARTMENT OF CORRECTIONS, AND SUBMIT TO DNA TESTING TO DETERMINE  
GENETIC MARKERS OR SECRETOR STATUS, SUSPENDED; PROBATION NOT TO EXCEED  
FIVE YEARS.

I. VIOLATION:

**Rule #7 - Cooperation:** On June 3, 2005, Officer Jeanquart with the Nevada Division of Parole and Probation, met with Mr. O'Keefe at the Clark County Detention Center on behalf of Mr. O'Keefe's supervising officer who was unavailable at that time. The intake process was begun, whereby Mr. O'Keefe was explained the rules and regulations regarding his probationary status. Several documents were signed, however, it was learned at that time that the Probation Agreement was typed in error. Mr. O'Keefe was informed that the officer would return at a later time with a corrected document for him to sign.

On July 1, 2005, Officer Jeanquart met once again with Mr. O'Keefe at the Clark County Detention Center. At that time, he acknowledged his refusal to sign the Probation Agreement, stating that his attorney, James Buchanan, II, had previously informed him that he would be pleading guilty to a Category C Felony - Burglary which carried a penalty of one to five years in the Nevada Department of Corrections. Mr. O'Keefe was informed that he had signed a guilty plea memorandum for Count VI - Burglary, Category B Felony, carrying a penalty of a minimum of one year to a maximum of ten years in the Nevada Department of Corrections. He continued

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**