

Case No: 27 CV-WR1-2025-0198

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR COUNTY OF PERSHING

JOHNNY E. McMAHON,
Petitioner,

VS.

THE STATE OF NEVADA, et al.
Respondents,

PETITIONER'S MOTION FOR
COURT TO ORDER STATE
RESPONDENTS TO PRODUCE
STATES EXHIBITS # 32-33
TO HAVE DNA EVIDENCE
FORENSICALLY ANALYZED
PURSUANT TO NRS 176.0918(3)(c)
TO DETERMINE PROBATIVE VALUE,

COMES NOW, McMahon, Petitioner, Pro se, moves this Honorable Court to Grant the above captioned Petitioner's Motion for Court to Order State Respondents to Produce States Exhibits # 32-33 to have DNA Evidence Forensically Analyzed Pursuant to NRS 176.0918(3)(c) to Determine Probative Value. Based upon the compelling and overwhelming evidence on file, proving conclusively that Mr. McMahon's bedding confiscated by LVMPD in Oct. 2004 was/ consisted of by-product of witness accuser, E.H.'s, menstrual period discharge, yet at trial State prosecutors deliberately misled jury to believe that the bloody bedding was the by-product of E.H.'s initial hymenal tear in April, 2004, by Mr McMahon, which is belied by the record and prima facie evidence, and the DNA evidence was central to the jury guilty verdict.

STATEMENT OF CASE/FACTS

(1). Subsequent to Mr. McMahon firing baby sitter of (4) four months, E.H., for Mr McMahon's 4 year old infant daughter R.M. while Mr. McMahon was finishing his undergraduate studies at UNLV. E.H. was fired for going on Mr McMahon's rental computer accessing adult websites, and sexual chat rooms, falsifying her true age of 15 as being 21. Upon driving E.H. back to her apt., Mr McMahon additionally inquired as to who the two men were who she let into Mr McMahon's apt? E.H. informed Mr McMahon that they were FBI agents, one whom she was communicating with on the sexual chat room, from Phoenix, AZ., and that they informed her that if she didn't get Mr. McMahon in trouble that she would be placed in a juvenile detention center, and that her mother, L.R.K., would be put in a mental institution. Mr McMahon had written down the license plate and vin number on their vehicle and called an attorney who verified that the vehicle was registered to the federal government.

(2). On, or about, the following day adult complainant mother, L.R.K., for minor witness accuser, E.H., filed a criminal complaint with the LVMPD alleging that Mr McMahon was engaging in sexual acts with E.H., subsequently there after LVMPD came to Mr McMahon's apt. and informed him of the complaint and requested a voluntary search of the apt. Mr McMahon consented to the search and denied any sexual involvement with E.H. During the search an officer sat at Mr McMahon's computer downloading IT data and various items were confiscated including Mr McMahon's bedding, bedding sheets and comforter both blood stained from E.H.'s menstrual period discharge while Mr McMahon and R.M. were in Texas and New York. (See Ex. # 5).

(3). During the consensual search a Det. A.C. requested that Mr. McMahon follow him to his office, to give a voluntary statement. During the interview Det. A.C. lied to Mr. McMahon, claiming that he had spoken to E.H. and that she was pregnant and requested a DNA buccal swab from Mr. McMahon. At trial in May, 2008, Det. A.C. called the lie a ruse used by detectives to sometimes get suspects to confess. Moreover, E.H. evaded Det. A.C. for a year to finally give a voluntary statement in Oct. 2005, claiming that she had a menstrual period in Oct. 2004, on Mr McMahon's bedding, when he and R.M. were out of town, (See Ex's # 3) and (7-8).

(4). When Mr McMahon was arrested, in a setup, the warrantless arrest, Dec. 12, 2005, Mr McMahon retained attorney, Paul Wommer, who failed to challenge the illegally obtained DNA evidence, and warrantless arrest as between Dec. 12-15, 2005 the court failed to conduct a probable cause Gernstein hearing, and on Dec. 15, 2005 State Respondents failed to present a proper charging instrument to the court at the initial hearing to hold Mr. McMahon to any crime. Justice Court Magistrate, KBH, released Mr McMahon on his own recognizance, as opposed to dismissing the case without prejudice, and again attorney Wommer failed to challenge the jurisdictional defect occurring between Dec. 15, 2005 and April 06, 2006. During that 100 day period of time State Respondents failed to legally secure a valid arrest warrant to properly refile the case pursuant to NRS 173.035.

(5) At the Preliminary Hearing on March 23, 2006 State flew in from the State of Washington another witness accuser, S.K., and her adult complainant mother, D.R., who alleged at some unknown time Mr McMahon lewdly touched SK's vagina at R.F.'s apt. in Henderson, NV., designed to misjoin the cases to

(5). (Cont): showcase prior bad act evidence before the court. Again, attorney Wommer failed to motion the court in limine to dismiss the gross misdemeanor count, as the jurisdiction was legally conferred to justice court of Henderson, NV., then at some unknown time the witness accuser changed the location to allege the lewd touching event occurred in Clark County at Dr. P.C. house, again, at some unknown time. Systemic with both witness accusers, they testify that they didn't report the sex acts immediately, because they didn't want to get into trouble - typical canned answers, whereby prosecutors load the lips of witness accusers, to justify not immediately reporting the events. At the said hearing, DDA, C.K., in colloquy with magistrate, KBH, began the campaign of lies, asserting that Mr McMahon was in arrest warrant status since April, 2005. The court strongly rebutted the allegations declaring that an arrest warrant was not a part of the clerks file. The very reason that DDA C.K. engaged in this campaign of fraud upon the court was designed to overcome the want of subject-matter jurisdiction, pursuant to NRS 173.035, knowing full well that absent the existence of an arrest warrant that the instant case would constitute as a void judgment. Again, attorney Wommer failed to challenge the non-existence of an arrest warrant, as he filed two Discovery Requests, on Dec. 15, 2005 and Jan. 11, 2006, to the Clark County District Attorney's Office to turn over all exculpatory evidence. The court went on to severely chastise DDA, C.K.'s office for engaging in a modus operandi in failing to properly refile cases in a timely manner, to satisfy the statute, and protect Mr McMahon's constitutional rights, the court remanded the case to district court judge Saitta to address the jurisdictional defect (See Ex's # 14 and 17).

(6). In July, 2007 DDA, G.O., presented a plea agreement to Mr McMahon for one count of statutory sexual seduction, a probational count, as knowing full well that at trial the Clark County District Attorney's Office could not meet their burden of proof standard, as to sexual assault, based upon witness accuser, E.H., uncorroborated testimony, as E.H. freely came and went from her job as a baby sitter for R.M. For over a four month period of time, which pursuant to the essential elements of statute NRS 200.366 being: violence, force, threat, coercion and intimidation, had no application. Attorney Wommer rendered faulty legal advise informing Mr McMahon that he would secure the exculpatory evidence, with private investigator, J.T., to impeach the witness accusers at trial. Had Mr McMahon accepted the plea offer he would have been released on probation, invoked an Alford plea, fired attorney Wommer, hired a competent law firm to challenge the want of subject-matter jurisdiction and prevailed, avoiding prison, as the manufactured sex case would have been dismissed based upon a void judgment. (See Ex's #27-28).

(7). At trial the State prosecutors, G.O. and P.S., engaged in vindictive prosecutorial misconduct by the fraudulent concealment of exculpatory DNA evidence, of E.H.'s voluntary statement of the menstrual period on Mr McMahon's bedding, States Exhibits #32-33. The State called expert witness, R.H., from the Utah crime lab, who testified that the commingled DNA evidence was 1-38,000 against the defendant, as the State asserted that the DNA evidence was the by-product of hymenal blood sac tear by the defendant, during the initial sex act in June, 2005, intentionally misleading the lay jury, and States witness, P.S., a nurse practitioner from SAINT, who was a part-time employee of the State, testifying over 64

(7).(Cont): times favorable to the State, testifying that she examined E.H. months after the fact, claiming that E.H.'s hymenal tear was consistent with a sexual assault- as if vaginas can talk- however, the jurors passions were already inflamed by the misjoinder, and again Attorney Wommer failed to motion the court to sever the counts, as the testimony of E.H. had absolutely nothing to do with the testimony of, S.K., and vice versa, as neither witness accuses testimony was cross-admissable. Attorney Wommer acting in the capacity of a second prosecutor in failing to sever the cases and preserve the record at the lower level, in his unauthorized first-direct appeal opening brief, he raised the ground of retroactive enjoinder, claiming that at one point the joinder was proper, then at another point joinder became improper, which is erroneous as joinder was never proper. At the jury trial, Det. A.C., claimed that his lie, in obtaining the DNA buccal swab, was a ruse used by detectives to sometimes get a suspect to confess. Again Attorney Wommer failed to motion the court in limine to suppress the illegally obtained DNA evidence as Det. A.C., clearly violated Mr. McMahon's 4th Amendment right. Det. A.C. additionally testified that he drafted out an arrest warrant, then on re-direct by DD A.G.O., Det. A.C. recanted to now claim that when defendant was arrested, in Dec. 2005, that an arrest warrant was not in place. (See Ex's #7, 8 and 11).

CASE LAW AND AUTHORITY

There is no legal question in dispute, based upon the prima facie evidence on file in support, that the jury verdict was not worthy of confidence, as the jurors unanimously convicted Mr McMahon of both

Consensual and non-consensual sex crimes. As Judge Wyzanski in Twoomey supra eloquently opined: "The trial lawyer tossed his unarmed client into an arena of gladiators and he got slaughtered." Attorney Wommer committed so many constitutional structural errors and omissions and procedural errors and omissions that any one could have changed the outcome of the proceedings. However, based upon court opinions, attorney Wommer was protected up and down the appellate road, and his ex-prosecutor co-hart, Judge David Barker, who would spoon feed Wommer cases on the overflow docket of the public defender, to the tune of \$500,000 dollars the year Wommer was indicted, prosecuted and convicted in the U.S. District Court for fraud, money laundering and tax evasion.

Fraud upon the court by rogue prosecutors has been addressed by the United States Supreme Court in *Napue v. Illinois*, 360 US 264, 79 S Ct 1173 (1959) and *Giglio v United States*, 405 US 150, 154 (1959). The Court in *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 372 US 238 (1944) addressed Fed. R. Civ. P. Rule 60(b)(6)(d)(3) fraud upon the court as upsetting the integrity of the judicial process which citizens rely on to render just verdicts. The Framers also put in place provisions, that can bypass AEDPA provisions, with a "savings clause" enabling petitioners to collaterally attack their conviction and sentence in perpetuity.

Mr McMahon strongly asserts that all courts, State and Federal, have addressed the impact that DNA evidence has on lay jurors, and fraud upon the court cannot be waived or barred and when proven to exist must reverse the case and a decision by State courts based upon fraud upon the court does not bar federal review under the manifest of

of injustice standard. A decision based on fraud upon the court, is not in essence a decision at all and never becomes final. See *Kenner v. Comm'r.*, 357 F2d 689, 691 (7th Cir 1968). FRCP 60(d)(3), this rule does not limit a courts power to set aside a judgment for fraud upon the court as [A]ll appellate courts must be gate keepers to preserve the integrity of the judicial machinery going forward for the sake of public trust. FRCP 60(d)(3) as held in *Zirich W'amv. Matrix Seau Inc.*, 426 F3d 1281, 1290-91 (10th Cir 2005), The Court held that fraud cannot be allowed supercedes of fundamental fairness rendering any verdict not worthy of confidence.

The term fraud upon the court has been defined as; "[as] embracing only that species of fraud which does, or attempts to, defile the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudicating cases that are presented for adjudication". See *Moore's Federal Practice*, para 60.33 at 511 (1971), Cited in *Mendez v. Chase*, 2019 US Dist Lexis 73809, In the case of *Aoude v. Mobil Oil Corp.* 892 F2d 1118 (1st Cir 1989) citing *Alexander v. Robertson*, 882 F2d 421, 424 (9th Cir 1989) the court held;

"Fraud on the court occurs where it can be demonstrated clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial systems ability to impartially adjudicate a matter by improperly influencing the trier, or unfairly hampering the presentation of the opposing party's claim or defense". See also, *In re Levander*, 180 F.3d 1114, 1119 (9th Cir 1999).

Similiarly, the Nevada Supreme Court in *Murphy v. Murphy*, 103 Nev

185, 734 P.2d 738 (1987) citing *Savage v. Salzman*, 88 Nev 193, 195, 495 P2d 367, 368 (1972) identified that:

"Fraud upon the court consists of, inter alia, 'such conduct as prevents a real trial upon the issues'."

Whereas, *Savage* had reaffirmed an earlier ruling by the Nevada Supreme Court which had defined "extrinsic fraud" as fraud by reason which:

"... there was, in fact, no adversarial trial or decision of the issues in the case; where there has never been a real contest in the trial or hearing of the case." See *Villalón v. Bowen*, 70 Nev 456, 469, 273 P.2d 409 (1954) citing *United States v. Throckmorton*, 98 US 61 (1878).

Wherefore, there is no legal question in dispute that attorney Wommer failed to put States case to a meaningful adversarial testing in challenging fraudulent concealment of exculpatory DNA evidence and motion the court to suppress the illegally obtained DNA buccal swab. Notwithstanding the fact that the record does not repel the instant claim of rogue prosecutors intentionally, with malice and aforethought, to mislead the jury, as such Mr McMahon submits that it would be a clear abuse of a courts' discretion to refuse review of such claims. Especially in light of a courts' inherent authority to correct fraud perpetrated upon the court. See *Murphy*, 103 Nev at 185, 734 P2d at 738, citing *Kupferman v. Consolidated Research & Manufacturing*, 459 F2d 1072, 1074 n.1 (2nd Cir 1972). The *Murphy* Courts finding that:

"[I]f a court can proceed *sua sponte*, we perceive no reason to limit the avenues by which the courts' attention may be directed to the fraud." See *Murphy*, 103 Nev at 185, citing *Accord Goodyear Tire and Rubber v. H.K. Porter Co.*,

521 F2d 699 (6th Cir 1975); Kupferman *supra* and Taft Donellan Jerome Inc. 407 F2d 807 (7th Cir 1969). Thus, if Mr McMahon's claims are found to be true, such error would entitle petitioner to relief from his convictions as a matter of State law. Whereas, the *prima facie* evidence submitted along with the pleadings, make no less than a colorable showing that the State has committed a fraud upon the District Court in the context of the trial proceedings in Case No: 06C220825 Eighth Judicial District Court and the substantial case law precedent plead by the petitioner herein, demonstrates that, if upon review, the petitioner's claims of fraud upon the court are proven, then as a matter of law the petitioner is entitled to relief from his convictions. It is a matter of well established Nevada State law that;

"... courts which mistakenly render a judgment which works to the extreme detriment of the defendant, will not allow the erroneous judgment to stand uncorrected, where the court has inherent power to reconsider a judgment for good cause shown." See *Osborn v. Fogliani*, 82 Nev 300, 417 P2d 148 (1966). (Cited in *Warden v. Peters*, 83 Nev 289 (1967); *State v. Eighth Judicial District Court*, 100 Nev 9 (1984); and *Edwards v. State*, 112 Nev. 704 (1996).

In *Smith v. Groose*, 205 F3d 1045 (8th Cir 2000). The Smith Court concluded, "the use of inherently contradictory theories violates the principles of due process." (Smith *supra* 205 F3d at p. 1052) for "[t]he States duty to its citizens does not allow it to pursue as many convictions as possible without regard to fairness and the search for truth." Inconsistent theories render convictions unreliable". *Stumpf supra* 367 F3d at p. 613.

Because it undermines the reliability of the convictions or sentences, the prosecutors use of inconsistent evidence, and inconsistent theories, has also been criticized as inconsistent with the principles of public prosecution and the integrity of the criminal trial system. A criminal prosecutor's function "is not merely to prosecute crimes, but also to make certain that the truth is honored to the fullest extent possible during the course of the criminal prosecution and trial". *United States v. Kattar*, 840 F2d 118, 127 (1st Cir 1988). (His or her goal must be "not simply to obtain a conviction, but to obtain a fair conviction". *Brown v Borg*, 951 F2d 1011, 1015 (9th Cir 1991). ("Although the prosecutor must prosecute with earnestness and vigor and 'may strike hard blows, he is not at liberty to strike foul ones.'" *Smith supra*, 205 F3d at p. 1049, quoting *Berger v. United States*, 295 U.S. 78, 88 (1935). See also ABA Model Code of Professional Responsibility EC 7-13, (which mirrors the Nev. Bar Assn. Model Rules of Professional Conduct Rule 3.8). ("The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice not merely to convict"). For the government's representative, in the grave matter of a criminal trial, to "change[] his theory of what happened to suit the State" is unseemly at best. *Drake v Kemp*, *supra* 762 F2d at p. 1479. ("The State cannot divide and conquer in this manner. Such actions reduce criminal trials to mere gamesmanship and rob them of their supposed purpose of a search for truth".

Mr. McMahon strongly asserts that the very reason that rogue fascist prosecutors, in the State of Nevada, are given carte blanche to engage in such nefarious misconduct, is because no court dares to hold

them accountable at any critical stage of the case, especially if the vehicle is being driven by a pro se prisoner petitioner who is treated like dog shit on a waffle tennis shoe. Which equally attaches to the Nev. State Bar Assn., who refuses to get involved, as long as the case is pending on appeal, or until the lawyer is convicted of a criminal violation and disbarred. Which runs afoul of the Nev. State Bar Assn. Model Rules of Professional Conduct Rule 3.8, which directs prosecutors to correct all plain error, especially if the error had an injurious affect on the verdict. However Rules, Policies, Procedures, Statutes and Court Orders do not apply to State prosecutors as they are protected and allowed to invoke inapplicable AEDPA provisions when they have no defense, to bar jurisdictional review, prosecutorial misconduct, fraud on the court and judicial bias. When ex-prosecutors, Doug Herndon, of the Nevada Supreme Court, and 8th Judicial Dist. Court Judge, William Kephart, demonstrated what personifies vindictive prosecutorial misconduct, in Fred Steese case, to go out-of-state to intimidate witnesses, or a Vanity Fair called: "Kafka in Las Vegas". Which equally extends to Andre Dow v. State, whereby DDA DiGiacomo Used a convict, working against criminal prosecution, to lie about Dow's involvement in a double murder, the prosecutor knew full well that their Star witness, Antione Mouton, was sitting in the Fulton County Jail in Georgia, during the time frame of the crime, Mouton has since recanted. In Rene Gato v. State, the prosecution knew that Mr Gato was in California in a motel during the commission of the crime by Mr. Gato's co-defendants, who have been paroled while Mr Gato still languishes in prison for a crime in which he had no involvement. Look at Mike Niphong DA involved in Duke LaCrosse players sexual assault, which resulted in his disbarment.

As in the instant case, the campaign of lies and fraud upon the court, beginning with Clark County Deputy District Attorney, C.K., claiming that the DA's office is in possession of a valid arrest warrant of 2005 for McMahon, to DDA's, G.O. and P.S., at trial to engage in vindictive prosecutorial misconduct to fraudulently conceal the exculpatory DNA evidence to hoodwink the court and mislead the jury, using an out-of-state Forensic DNA expert to claim that the commingled DNA evidence was 1-38,000 against the defendant, and for DDA's, G.O. and P.S., to change the theory of the case to assert that Mr McMahon's bedding and comforter, which he had slept on for months, to commit fraud upon the court to claim that States Ex's #32-33 consisted of the witness accuser, E.H.'s, blood from the initial sex act in June, 2004, whereby the defendant tore E.H.'s hymenal blood sac, knowing full well that the blood on Exhibits #32-33 were the by-product of E.H.'s menstrual period discharge in Oct, 2004, some four months later, as asserted by E.H. in her voluntary statement interview of Oct, 2005, while Mr McMahon and R.M. were in Texas and New York. Then in a post-conviction Strickland hearing before Judge Barker, on Dec. 16, 2011, after the court forced legally discharged, attorney Wommer, to prosecute Mr McMahon's first-direct appeal, creating a clear conflict of interest, DDA's, G.O. and C.B., paraded around the courtroom a bogus arrest warrant, the Declaration of Warrant/ Summons, which the court failed to physically inspect, the only court to physically inspect the said document was Judge Shirley who declared that the document held no legal force and effect and was not signed by a judge. As such the State was granted a windfall. The case manifested into criminal forgery, by the State DDA's, who forged the signature of magistrate, KBH, onto an uttered cut and paste TCR document

that States DDA's fraudulently affixed the signature to the document to overcome the challenge of the unwarranted arrest by claiming that magistrate KBH signed the document asserting that a probable cause Gernstein hearing was conducted, which runs afoul of the United States Supreme Courts controlling standard in *Gernstein v. Pugh*, 420 US 103 (1975), for the hearing to be conducted and recorded with the parties in attendance. In the instant case no court minutes or trial transcripts are available to prove that any such hearing was conducted.

Mr McMahon even filed pro se motions back to justice court magistrate KBH, to confirm that a hearing was conducted and to authenticate her signature as being true and valid. All to no avail. The Standard of Review has been addressed by numerous courts as to fraud on the court Rule 60(b). In *Delay v. Gordon*, 475 F3d 1039 (9th Cir 2007). The court reviews the district courts denial of a Rule 60(b) motion for an abuse of discretion. In *People v. Harrison*, 35 Cal 4th 208 (2005), Under well established principles of due process, the prosecution cannot present evidence it knows is false and must correct any falsity of which it is aware in the evidence it presents. In *Smith v. Phillips*, 455 US 209, 219, 102 S Ct 940, 71 L Ed 2d 78 (1982) the Court held. The touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of prosecutor. By virtue of the prosecutorial misconduct and fraudulent injection of faulty DNA evidence into the trial shifted the burden of proof standard to the State Respondents to justify such misconduct). See *State v. Gregory*, 158 Wash 2d 759, 147 P 3d 1201 (2006). The Standard of Review in a petition to set aside the verdict under Rule 60(b) fraud cannot be dissimilar to that of a habeas corpus petition. The Standard

for review starts with a showing the state courts' decisions were clearly contrary to, or an unreasonable application of federal law as decided by the U.S. Supreme Court 28 USC § 2254(d). "If that threshold is met, the habeas petitioner must then argue and prove that the error had a substantial, or injurious effect on the jury's verdict." *Brecht v. Abrahamson*, 507 US 619 (1993).

The Court in *Giglio supra* held. ("[W]here a prosecutor deceived a jury regarding the true nature of the evidence reversal is required if the evidence could in any reasonable likelihood have affected the judgment of the jury"). In *Napue supra* the Court held. ("A conviction obtained through the use of false evidence, known to be such by representatives of the State, violates 14th Amendment. The Court went on to hold: (1) the testimony was actually false; (2) the prosecutor knew it was false; and (3) the false testimony was material. Which again, the fraudulent concealment of faulty DNA evidence, whereby DDA's, G.O. and P.S., misled the jury to believe that the bloody bedding, States Exs[#] 32-33, was the by-product of E.H.'s hymenal tear of blood sac during the initial sex act by defendant, when the true evidence was E.H.'s menstrual period discharge on bedding in Oct. 2004 while Mr McMahon was out of town.

When assessing whether misconduct caused substantial prejudice most circuits look to three factors: (1) the severity of the misconduct; (2) the effect of any curative instruction given; and (3) the strength of evidence supporting the conviction. See also *Trillo v. Biter*, 754 F3d 1035, 1090 (9th Cir 2014). The DNA evidence was central to the conviction, and neither attorney Wommer (who failed to present a single jury instruction) nor the State filed a curative instruction.

As attorney Wommer claimed on Dec. 16, 2011 in the Strickland hearing "The case was a he said, she said", absent a scintilla of supporting or corroborating evidence, which is exactly why the State prosecutors created an unlevel playing field and moved the goal posts to secure a conviction.

The 9th Circuit Court of Appeals in *E.L. Cord v. Smith*, 370 F2d 418, 423 (9th Cir 1966), ("There is firmly established in the laws the doctrine confirming the power of the court to set aside at any time any mandate that was procured by effecting a fraud on the court"). Again, SCOTUS weighed in on fraud in *Pickfore v. Talbot*, 322 US at 244-45, 64 Sct 225 ("The spirit of fraud on the court rule is applicable whenever the integrity of the judicial process or functioning has been undercut"),

The Nevada Supreme Court in *Pellegrini v. State*, 117 Nev. 860, 887, 34 P3d 519, 537 (2001) the court held to overcome barrments or laches a petitioner must prove that State court decision is contrary to, or involved an unreasonable application of clearly established federal law, or it was based on unreasonable determination of the facts in light of the evidence presented in State courts proceedings. See *Wiggins*, 539 US at 520. See also *Lockyer*, 538 US at 75-76. ("To overcome State courts decision requires that its ultimate conclusion be so unreasonable that if there is no possibility for fair-minded disagreement"). See also *Avala*, 135 Sct at 2199.

Probably, next to the instant case, fraud by rogue prosecutors occurred in *Miller v. Pate*, 386 US 2, 87 Sct 785 (1967). Prosecutor also paraded a pair of shorts, claiming that the blood was evidence central to the crime, however the prosecutor knew that the red spot was paint. *Miller*

Spent years in prison on a life sentence, which is exactly what Mr McMahon has been subjected to, 6238 days of false imprisonment, due to judicial activism in protecting State Respondents, and attorney Wommes, to secure a conviction equally egregious as Millers.

More than 30 years ago the Court held that the 14th Amendment cannot tolerate a State criminal conviction obtained by the use of false evidence. *Mooney v. Holohan*, 299 US 103, 55 Sct 340. There can be no retreat from that principal here. (Judgment of Court of Appeals reversed). Miller was finally exonerated.

There is no legal question in dispute that the erroneous opinions and orders of the district courts invoking inapplicable AEDPA provisions as: time barment, procedural default, and claim preclusion, reserved for pro se prisoner petitioners, will not pass constitutional scrutiny in U.S. District Court, as in rare cases as Mr. McMahon's, as held by the Court in *House v. Bell*, 547 US 518, 126 Sct 2069 (2006). The "principles of comity and finality that inform the concepts of cause and prejudice" must yield to the imperative of correcting a fundamentally unjust incarceration").

Accordingly, liars and cheaters, as the State Respondents, should not be allowed to prosper has long been central to the moral fabric of our society and one of the underpinnings of our legal system. For this Honorable Court to grant exigency to government actors, and not hold them accountable would be a travesty and fundamental miscarriage of justice. The faulty DNA evidence constitutes unfounded forensics, as when evidence is purported to possess probative value to a crime then the evidence should be admissible, however in contrast, should faulty DNA be used to establish a requisite to allow

Such evidence to be central to a conviction, then Petitioner's Motion for Court to Order State Respondents to Produce States Exhibits # 32-33, used at trial, to convict Mr McMahon, then to have the DNA Evidence Forensically Analyzed Pursuant to NRS 176.0918(3)(c) to Determine Probative Value is warranted and will aid this courts task in determining if the DNA Evidence is, or is not, material and played no part as evidence related to a sex act involving Mr McMahon.

IT IS SO PRAYED.

Dated: day of January, 2026.

Respectfully submitted,

Johnny E. McMahon

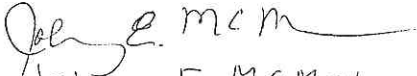
Johnny E. McMahon

Pro se

VERIFICATION/AFFIRMATION NRS 239B.030

Mr McMahon declares under penalty of perjury that the following and foregoing statements, evidence and pleading is true and accurate to the best of his ability and possesses first-hand knowledge of the truth and accuracy of the events and that no document contains the social security number of anyone.

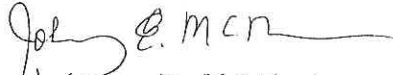
Dated: day of January, 2026.


Johnny E. McMahon

CERTIFICATE OF SERVICE

Mr McMahon declares that a true and correct copy of Petitioner's Motion for Court to Order State Respondents to Produce States Exhibits #32-33 to Have DNA Evidence Forensically Analyzed Pursuant to NRS 176.0918(3)(c) to Determine Probative Value, was placed in U.S. mail postage pre-paid on day of January, 2026 to:

Aaron Ford
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701


Johnny E. McMahon
Pro se