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JUDI BAILEY, CLERK  
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1 Case No. CR91-858

2 Dept. No. 9

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

8 THE STATE OF NEVADA,  
9 Plaintiff,  
10 vs.  
11 MARRITTE FUNCHES,  
12 Defendant.

OPPOSITION TO STATE'S MOTION TO  
RECONSIDER GRANTING OF NEW TRIAL

12 COMES NOW, Defendant above-named by and through his at-  
13 torney the Washoe County Public Defender's Office, CARL F.  
14 HYLIN, counsel of record and hereby opposes the State's Motion  
15 to Reconsider this Court's Order granting a new trial in this  
16 matter.

17 This opposition is based upon the attached Points and  
18 Authorities along with all documents, transcripts and testimony  
19 previously heard in this case.

20 RESPECTFULLY SUBMITTED this 16 day of December,  
21 1992.

22 MICHAEL R. SPECCHIO  
23 Washoe County Public Defender

24 Carl F. Hylin  
25 CARL F. HYLIN  
26 Deputy Public Defender

1 POINTS AND AUTHORITIES IN OPPOSITION TO THE STATE'S MOTION  
2 TO RECONSIDER GRANTING OF A NEW TRIAL

3 I.

4 JURISDICTION

5 While under Nevada District Court Rule 13 (7), this Court  
6 has the authority to entertain a rehearing on motions which have  
7 been previously decided or disposed of. However, in a more  
8 narrow sense, under the Rules of Criminal Procedure as outlined  
9 in the Nevada Revised Statutes, no authority can be found which  
10 grants this Court the power to entertain a Motion for Reconsid-  
11 eration, particularly in a situation where the Court has vacated  
12 a jury verdict and ordered a new trial.

13 Thus, although NRS 176.515 specifically grants the Court  
14 authority to entertain and grant motions for a new trial in  
15 criminal matters, there is no concomitant statutory authority  
16 for this Court to grant any relief based on a request for a  
17 rehearing of the original motion for a new trial.

18 For instance, in the criminal arena, if a Judge were  
19 grievously dissatisfied with a jury's verdict of guilty as being  
20 contrary to the evidence presented at trial, the Judge possesses  
21 no inherent power to simply declare the jury's verdict null and  
22 void and acquit the Defendant. The only statutory remedies  
23 available to the Judge would be a non-binding advisory verdict  
24 of acquittal (NRS 175.381) or to grant a new trial based on  
25 "other grounds" found in NRS 176.515. Washington v. State, 98  
26 Nev 601, 655 P2d.. 531 (1982). In other words, without a sta-

1 tutorially authorized procedure in the criminal arena, this  
2 Court would appear to be without a remedy for altering its order  
3 vacating the verdict in this matter and ordering a new trial  
4 based on a statement that was made after the order was issued in  
5 open court.

6 II.

7 THE ORDER GRANTING A NEW TRIAL ON THIS MATTER SHOULD STAND.

8 In support of the Motion for Reconsideration the State  
9 intends to introduce testimony which, in essence, refutes the  
10 testimony which was presented at the two prior motions for a new  
11 trial by KENNETH VISER and CHARLES FRISTCHE. Obviously, the  
12 Court has already ordered that a new trial be had in this par-  
13 ticular matter. The fact that the State has produced contra-  
14 dictory testimony only underscores the necessity of presenting  
15 all of the testimony to a jury of twelve.

16 In the previous two motions for a new trial, counsel for  
17 Mr. FUNCHES simply argued that credibilty of the new witnesses  
18 is not an issue. Rather, such testimony merely deserves to be  
19 put in front of a jury for their determination. State v.  
20 Crocket, 84 Nev. 516, 444 P2d.. 896 (1968). Indeed, the very  
21 fact that contrary evidence appears underscores the need for a  
22 new trial.

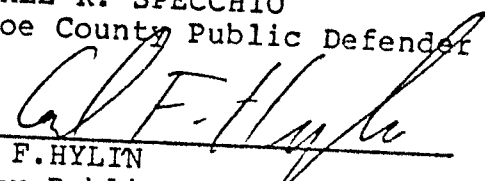
23 Clearly, the State is not precluded from presenting tes-  
24 timony by STEVEN KINGSLEY to the jury; therefore, it is request  
25 of Mr. <sup>Funches</sup> FRISTCHE here that the District Court allow its order

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1 granting a new trial to stand and merely allow all parties to  
2 present their newly discovered evidence to a jury of twelve.

3 RESPECTFULLY SUBMITTED this 16 day of December,  
4 1992.

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6 MICHAEL R. SPECCHIO  
Washoe County Public Defender



8 CARL F. HYLIN  
9 Deputy Public Defender

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