

1 that, in fact, that is what the state of the evidence was.

2 Q You didn't feel by stating that that you were somehow alleviating the
3 State's burden in the case?

4 A I do not.

5 Q And with regards to the rap song that was read in closing argument, the
6 record shows you didn't make an objection there as well. And the State argued that
7 that was an admission by the Defendant. Why didn't you object at that point with
8 regards to whether it was an admission or not?

9 A Perhaps I made a mistake. I don't know the answer to that.

10 Q And in the jury instructions was there an instruction regarding
11 admissions?

12 A There may have been.

13 Q Finally, the last area I want to touch on is when you discussed your
14 frustration with Mr. Budd, you entered a lot of notes in your case notes, in Justware
15 that reflect that he was detached, disengaged. He answered with one or two
16 syllable words and you testified he really didn't give you anything to help you
17 prepare for his defense. At any point did you feel like that maybe he should have
18 been evaluated for any mental deficiencies or mental illness?

19 A I met with Mr. Budd a lot during this case and I've dealt with literally,
20 probably more than 2,000 defendants. And there's certain things that happened that
21 trigger a concern on my part about a person's mental competency. One is obvious
22 delusions. One is extremely inappropriate comments that suggest a absence of
23 knowing where he is or what's going on. None of that was happening with Glenford.

24 Glenford was polite most all the time. He – his statements were very
25 limited but they were totally appropriate. I did not see anything that suggested a

1 problem with competency. He also, when he got impatient about what I was doing,
2 he was able to file a motion for discovery, which I thought suggested some under-
3 standing of what's going on.

4 And then, of course, we had him evaluated by Dr. Paglini. And Paglini
5 did not have any concerns about his competency. Paglini did say he had low
6 intelligence but did not suggest any concerns about competency. So I never had a
7 problem with the competency issue here.

8 Q Do you recall Mr. Budd saying that the Clark County Detention Center
9 was like daycare and that he was coming home soon?

10 A Yes.

11 Q Didn't those types of comments concern you at all regarding his
12 competency or dealing with the reality of the situation?

13 A He always – he was always in denial about the case. And I would ask
14 him what he wanted and he said I just want to go home. But I didn't feel that was –
15 that necessarily suggested a competency issue.

16 Q Now, in the trial phase you didn't retain any defense experts, is that
17 correct?

18 A That's correct.

19 Q Why did you feel it wasn't necessary to get a defense expert for
20 perhaps the rap song, to look at – to see if you could possibly get somebody to say
21 it couldn't have come from Mr. Budd?

22 A I suppose that I – I don't really have a reason for that, I just did not think
23 it was going to lead anywhere.

24 Q And how about not retaining an expert to look at – well, there was one
25 witness, a Celeste Palau, I think that's how you pronounce it P-a-l-a-u, that testified

1 she saw Mr. Budd from her balcony on his balcony. But then during cross-
2 examination you figured out that that was quite a distance and she possibly didn't
3 see it as she did because she was nearsighted. Was there any concern prior to that
4 testimony of perhaps getting some type of expert to discuss perception and
5 distances?

6 A We sent out an investigator who measured the distance and looked at
7 the viewpoint from where she was to where Glenford was. And then I challenged
8 this in cross-examination at trial. However, in terms of hiring an expert on this point,
9 the problem with it is that even if we can discredit Ms. Palau's eyewitness testimony,
10 it doesn't solve the fundamental problem that we have these different other
11 witnesses providing testimony that overwhelmingly show what happened at the
12 scene. Therefore, while Ms. Palau's testimony could be discredited in part – and I
13 think we did that in part – it ultimately leads nowhere because of all the independent
14 testimony that says essentially the same thing, about what happened at the killings.

15 Q Now, Mr. Brooks, approximately how many trials have you conducted?

16 A I've done 43 trials and this was my 42nd trial.

17 Q Would those be capital trials?

18 A No, I did 26 trials that were not murder cases and then I did, I guess, 17
19 murder case trials.

20 Q Now that's a significant number of trials. In your experience of doing
21 trials, do you occasionally find jurors hang up on a single issue, meaning you have a
22 single issue juror, instead of taking everything as a whole?

23 A Yes, that's true.

24 Q Did that thought ever occur to you in Mr. Budd's case that, perhaps,
25 there might be a single issue that the jurors might focus on? For instance, maybe

1 the rap song or Celeste Palau's perception of what she saw?

2 A I think that's a completely legitimate point. But I didn't really focus on
3 that, no.

4 Q Now would it be safe to say – I don't want to put words in your mouth –
5 but would you agree to me that you feel this was a defense victory because he did
6 not get the death penalty?

7 A Absolutely.

8 MR. CARLING: I'll pass the witness.

9 THE COURT: Cross-examination

10 MS. PANDUKHT: First, I'm going to ask to approach your clerk. I'd like an
11 exhibit marked, the full letter from the Defendant to Greg Lewis, including the rap
12 song. And, if I can get a copy of this [indicating] after we're done I'd appreciate it.
13 It's my only copy. Thank you.

14 And what I'm going to do, actually, is I'm going to go in order – I'm
15 going to go in the order that Mr. Carling went in, but I'm going to keep the issues
16 together and I'm going to let you know what ground each one is, as I go through
17 them.

18 **CROSS-EXAMINATION**

19 BY MS. PANDUKHT:

20 Q So I'm going to start first with his first issue, which is ground zero. His
21 first issue he raised was regarding the competency allegedly of the Defendant. So
22 you had spoken already regarding an expert that you did retain, Dr. John Paglini,
23 correct?

24 A I spoke with Dr. Paglini after he examined Glenford Budd.

25 Q Okay. And Mr., I mean Dr. Paglini in fact had seen the Defendant

1 seven different days during 2004?

2 A That's what his report states, yes.

3 Q And, in fact, you had a report prepared by Dr. Paglini, which you
4 handed over to the State, correct?

5 A Correct.

6 Q And it's also true that Dr. Paglini said that he was not mentally ill in any
7 way?

8 A Correct.

9 Q And that he was not mentally retarded in any way?

10 A Correct.

11 Q That he may have had a lower IQ, but it didn't rise to the level of being
12 mentally retarded?

13 A Correct.

14 Q And, in fact, Dr. John Paglini testified at the penalty phase of the trial
15 and was actually one of the – would you admit, one of the reasons why you were
16 able to secure a non-death verdict?

17 A Yes.

18 Q He was instrumental in your penalty defense, wasn't he?

19 A Yes.

20 Q Now, he also as you stated, the Defendant sent you a motion for
21 discovery that was quite detailed?

22 A Yes.

23 Q And he was talking about how he was evaluating the strength or lack of
24 strength of your case?

25 A Yes.

1 Q He also talked to you about the letter from Greg Lewis and said that it
2 wasn't his handwriting?

3 A Correct.

4 Q And he never gave you any indication that he didn't understand the
5 charges?

6 A Correct.

7 Q And he never gave you any indication that he was incapable of
8 assisting in your defense --

9 A Correct.

10 Q -- or in his defense? He just sometimes didn't want to talk to you?

11 A He would just say very, very little.

12 Q Now, isn't it also true in going through your case notes, which were
13 quite voluminous in this case, there were 33 pages of typed case notes that were
14 prepared --

15 A Yes.

16 Q -- right?

17 A Yes.

18 Q And I went through and I counted all the times you personally visited
19 the Defendant in the jail and it was 18 times at least, does that sound about right?

20 A I'll accept that.

21 Q And that doesn't even count the times your cocounsel, Timothy O'Brien,
22 visited or Emily Reeder or your investigator, that's just you personally --

23 A Correct.

24 Q -- visiting the Defendant? You were always honest with the Defendant
25 about either the strengths or weaknesses of the case?

1 A I tried to be.

2 Q And you did tell him that the evidence was overwhelming?

3 A I did.

4 Q And just so the record is clear, that overwhelming evidence consisted of

5 eyewitnesses in the case –

6 A Yes.

7 Q -- which we've already heard from -- about Celeste Palau, that she was

8 an eyewitness?

9 A Yes.

10 Q There was another eyewitness in the case, who was supposed to be

11 the fourth victim , Lazon Jones, he was in the apartment, correct?

12 A Yes.

13 Q And he was also one of the people that were there that was able to

14 escape?

15 A Yes.

16 Q And he was a critical eyewitness for the State?

17 A Yes.

18 Q There was also the admissions that the Defendant made to his uncle,

19 Winston Budd?

20 A Yes.

21 Q There was also the rap letter?

22 A Yes.

23 Q In addition, too, there was another witness I believe, Tracy Edwards,

24 that you or someone in your office had talked to, where he had made admissions to

25 and you determined not to call her?

1 A Yes.

2 Q So there was no indication that he was in need of a competency
3 evaluation in your opinion?

4 A Correct.

5 Q And you have dealt with hundreds and hundreds, maybe thousands of
6 Defendants, haven't you?

7 A Oh, probably two thousand.

8 Q And I'm sure you've sent many defendants in for competency
9 evaluations in your career?

10 A Probably more than a hundred.

11 Q Let me move on now to Ground H. This is where the defense alleges in
12 Ground H that you had a conflict of interest with the Defendant.

13 Isn't it true that you would have the same goal as the Defendant to get
14 him the best possible result at trial?

15 A That's correct.

16 Q You didn't want to be unsuccessful in trial for the Defendant?

17 A That's correct.

18 Q You get paid by the County for doing your job?

19 A Correct.

20 Q So it doesn't really matter to you whether or not he gets convicted or
21 not in terms of your getting paid?

22 A Yeah, that's correct.

23 Q So in the end it's your job to assess all of the facts of the case, to do the
24 best that you can do; and, in the end, hopefully secure the best possible result for
25 the Defendant?

1 A Yes.

2 Q And in this case, based upon your extensive experience, I mean you
3 were on the murder team for many years, weren't you?

4 A Eleven years.

5 Q And that's quite a long time for a Deputy Public Defender to be on the
6 murder team, based on what I know.

7 A As of 2005, no one had – no in the Public Defender's office had been
8 on the team longer than I had and no one had done more trials than I had.

9 Q And so in the end when you reviewed what has actually been deter-
10 mined to be an overwhelming evidence case, you determined that what you needed
11 to do and what would have been a victory for you was to secure him not receiving
12 the death penalty?

13 A Correct.

14 Q Because he executed three people, one right after the other?

15 A Those are the allegations.

16 Q It is your job, as well as the State's job, as well as the Court's job, to
17 protect the record and to make a clear statement of everything that could possibly
18 be important for the record on appeal, isn't that correct?

19 A Yes.

20 Q So you would have to make a record of anything that you deemed
21 might be significant for the case and that's what you were doing on the first day of
22 trial when you were talking about the communication with the family?

23 A Yeah. I felt at that time that, obviously, considering the incredible non-
24 cooperation of the family, plus the continuing problem of getting Glenford to try to
25 deal with the situation, that I had to make a record.

1 Let me say this, we started the trial, we had no idea if Glenford was
2 going to testify, he wouldn't tell us. We had no idea he was going to say something,
3 what happened; he wouldn't tell us. I tried to get Glenford to tell me, if you're going
4 to testify, what are you going to say? He wouldn't tell me. So I had no idea what he
5 was going to do.

6 Q And you had received significant lack of cooperation from his family,
7 despite your best efforts, as detailed in your case notes?

8 A Yes, his mother was missing appointments with counsel.

9 Q And there were numerous people that you asked to testify on Glenford's
10 behalf that absolutely refused to testify, according to your case notes?

11 A That's true.

12 Q Either they didn't want to come in from some other jurisdiction or, they
13 were here but didn't want to testify?

14 A Correct.

15 Q And for the record I'll refer to page 8 and 9 of your case notes and page
16 4 of your case notes, with regard to just the record about those witnesses that didn't
17 want to come in and testify.

18 Now with regard to legal advice from the bench, at that point that was
19 the first day of trial?

20 A Correct.

21 Q And the Judge wanted to – well, why did you want to have this brought
22 up before Justice Saitta or Judge Saitta at the time?

23 A We just wanted to – well, what had happened is when we made those
24 records the Defendant's mother had just missed a session with us, I think it was the
25 night before. And I mean we'd had so many difficulties, so many frustrations in

1 dealing with her and we just felt that at this point we needed to let the record know
2 this, because someday we may well have a PCR lawyer claiming that we didn't
3 cooperate with the family or something, so we decided to make a record.

4 Q And isn't it true, Mr. Brooks, that after Justice Saitta made those state-
5 ments on the record that you actually had increased cooperation from the
6 Defendant's family?

7 A Yes, we did.

8 Q Now I'm going to go to the next issue raised by Mr. Carling, which is
9 actually Ground A, the first issue. This is trial preparation. You did in fact file over
10 14 motions in this case?

11 A Correct.

12 Q And you have done as you stated many death penalty trials and murder
13 trials in the past?

14 A Yes.

15 Q With regard to preparing for trial when you had filed the initial motion to
16 continue trial, 22 months before the actual trial commenced, you did so so that you
17 could be properly prepare for trial?

18 A Yes.

19 Q In your opinion at that point is there anything that you could have done
20 more, given the facts of the case and given the cooperation from the defense,
21 Defendant and his family, to have further prepared for trial at that point?

22 A Do you mean as of December or November of 2005?

23 Q Yes.

24 A I think the case was ready to go at that point. I don't think there was
25 anything significant – anything major, significant left to be done. This issue with

1 regards to the witness who claimed some knowledge that he had been into PCP, in
2 retrospect I would liked to have done more investigation regarding what, exactly,
3 she was talking about, but I'm pretty sure that she was talking about something
4 somebody had told her.

5 Q Um-huh.

6 A And there was no evidence she'd been at the scene. So at that point
7 this was an issue. And, also, I might add Glenford never told us that he was using
8 PCP that day, so I mean.

9 Q That was actually -- I'll move onto that issue. I'm trying to find it in my
10 notes. But, basically -- do you want me to use your memo? Do you still have it
11 here?

12 MR. CARLING: Yeah, that one [indicating], yeah, you got it.

13 MS. PANDUKHT:

14 Q So let me move on then to the memorandum, which -- oh, here it is, it's
15 Ground C. So this memorandum, that was going to be my first question was
16 whether the Defendant ever told you or anyone ever told you that he was actually on
17 PCP at the time?

18 A No.

19 Q And this memo which you spoke about, talks about neighbors. And
20 isn't it possible that the neighbors that this memo could have been referring to were
21 the victims? Because when I first read it that's what I thought, so did that ever cross
22 your mind?

23 A Well, essentially, we have three victims who are dead. And then we
24 have Lazon who fled the scene, Lazon Jones fled the scene. I don't know who in
25 the world they're talking about as far as the neighbors, have no idea.

1 Q But the way it reads and I'm going to quote from page 2, it's very much
2 towards the end, it says: "Tamara says that she heard" again that would be
3 hearsay, correct?

4 A Yes.

5 Q "that some of Glenford's neighbors robbed him of his marijuana awhile
6 before the incident". And, in this case, isn't it true that that's what all of this was
7 allegedly over, were the victims allegedly robbing of his marijuana?

8 A Yes, apparently – yes. Yes, Glenford's neighbors in that case would be
9 the three men who died I guess.

10 Q And if she didn't actually witness the incident maybe it's possible that
11 her saying it as awhile ago was just because she didn't really have accurate know-
12 ledge of the incident?

13 A Perhaps.

14 Q Okay. Now in terms of Mr. Carling's allegation that this could have
15 mitigated premeditation in this case, there was extensive evidence of premeditation
16 in this case, wouldn't you agree?

17 A Yes.

18 Q And the State could have easily rebutted this allegation that might have
19 been made or might have been admitted by Tamara Steel with regard to the
20 Defendant. There was testimony that the Defendant accused one of the victims,
21 Derrick Jones of stealing his marijuana, remember at the basketball court?

22 A Yes.

23 Q 'Cause they would play basketball together, 'cause the Defendant was
24 a big basketball fan. And, in fact, the Defendant's nickname was A.I. –

25 A Yes.

1 Q -- which I think has something to do with somebody famous in
2 basketball, but I don't really know.

3 A Something Iverson.

4 Q Yes, there you go. And then later there was evidence that the
5 Defendant confronted Derrick at that basketball game and said he wasn't going to
6 fight him, he was going to put some slugs in him?

7 A Yes.

8 Q And then there was evidence that later, when they're hanging out at the
9 apartment, he leaves and comes back a few minutes later and that's when the
10 murders occur?

11 A Yes.

12 Q And then there was evidence of exactly how those murders occurred
13 where the Defendant first goes to the back bedroom and shoots the youngest victim,
14 who's 14 years old, DaJon Jones, shoots him in the head and the neck.
15 Immediately thereafter, goes outside in the hallway and starts shooting seven or
16 more times at Derrick Jones in the hallway?

17 A Yes.

18 Q Derrick Jones is trying to defend himself with a big bag of multiple rolls
19 of toilet paper and the bullets just keep going through him, hitting him everywhere in
20 his body. And there's --

21 A I don't remember --

22 Q You don't remember that?

23 A -- those details, but they may well be correct.

24 Q And there was evidence -- and this is all from Lazon Jones. And then
25 all of its corroborated by crime scene evidence at the scene, but then Celeste

1 Palau's testimony becomes important, because the Defendant then, very shortly,
2 immediately goes outside to the balcony and then he shoots the third victim on the
3 balcony of the house and then flees?

4 A Yes.

5 Q All of it happening within, what a minute, maybe two minutes, not long?

6 A Yes.

7 Q In addition to the admissions that would've come through that he killed
8 those people to family members or friends of his, not to cops, okay, so all of that
9 would've negated what Tamara Steel might have said?

10 A Yes.

11 Q Now with regard to – the next issue in order I believe is the rap song.
12 This is Ground B, failing to object. In fact, you did object to the admission of the rap
13 song, but you did it on foundational grounds?

14 A That's correct.

15 Q And isn't it true that you objected on foundational grounds because you
16 felt that was the better argument to try and get it excluded?

17 A That's correct. I always felt that the State had the burden to show – to
18 connect it to the client and I didn't know how they were going to do that, because
19 you don't – they didn't have a handwriting expert, which I'm not sure that would've
20 helped in any case. So I always felt that there was no foundation for the admission
21 of it.

22 MS. PANDUKHT: May I approach? I want to approach to show Mr. Brooks
23 the full letter.

24 THE COURT: Yes, you can approach.

25 MS. PANDUKHT: Thank you.

1 Q Because all we've talked about is the rap lyrics, but it actually came
2 with an envelope; it came with a letter. And I wanted to ask you about those things.
3 Can you – thank you – flip all the way to the end to the envelope? Let's do that first.

4 A [Reviewing document], I had forgotten all about the letter part.

5 Q Oh.

6 A So I apologize.

7 Q That's all right.

8 A So there is handwriting of the client there. So I'd forgotten all about
9 that.

10 Q No problem. First can you go to the end with the envelope, the
11 envelope is addressed by whom, the name?

12 A The – G. Budd, number 1900089, 330 South Casino Center, Boulevard,
13 Las Vegas, Nevada 89101, addressed to Greg Lewis, also there at the Clark County
14 Detention Center.

15 Q And then that handwriting is not written in any kind of stylized form? It
16 looks different from the rap letter?

17 A That's correct. That's his – that's a handwriting. Yes, regular
18 handwriting.

19 Q And then on the first page of State's Proposed Exhibit 1 there is also –
20 let's see, one, two – two pages of regular handwriting?

21 A That's correct.

22 Q And then there is on the third page the rap song?

23 A Correct.

24 Q And that's written in a very different letterhead?

25 A That's correct.

1 Q And isn't it true that this letter was identified at trial by Greg Lewis as
2 being the handwriting he recognized of the Defendant?

3 A Yes.

4 Q And with regard to the defense or Mr. Carling's allegation that you
5 should've hired some sort of an expert, was there any concern on your part that had
6 you hired either a handwriting or a fingerprint expert that perhaps the results
7 could've shown that it absolutely was the Defendant's handwriting or fingerprints on
8 the letter?

9 A That was a big concern of mine.

10 Q And wasn't it one of your, from what I recall, fairly major arguments that
11 Greg Lewis could've lied about the letter?

12 A Correct.

13 Q Or written the letter himself?

14 A Correct.

15 Q Because, in fact, you argued that more than once during the trial and in
16 your closing argument?

17 A Yes.

18 Q And weren't there also ways in the letter itself that identified the
19 contents of the letter as perhaps pertaining to this Defendant? In the letter, isn't it
20 true that he refers to himself to A.I., which was his nickname?

21 A Yes.

22 Q And that in the letter he talks about how he only -- I only killed three, but
23 I should've killed four?

24 A Yes.

25 Q He left them dead on the floor --

1 A Yes.

2 Q – just right before? He also talked about you can all keep the weed
3 because you can't smoke it now?

4 A Yes.

5 Q And there were things in this letter that actually, A, would have been
6 relevant to this case, making an objection by yourself of irrelevance, probably not
7 going to go anywhere with the Court; isn't that true?

8 A Yes.

9 Q And also ways to tie in the contents of the letter to the facts of this
10 case?

11 A Yes.

12 Q You also spoke about how you didn't want to fight about things that
13 were going to go nowhere and lose credibility in front of the jury?

14 A That's correct.

15 Q Had you made arguments or objections that were completely ridiculous
16 and quickly overturned by the Court, would you have been able to, in your opinion,
17 garner the same kind of credibility in the penalty phase that you otherwise did?

18 A I think that had we tried to – had we tested a lot of things in the trial
19 phase and it's entirely possible we would've lost some credibility. And I think that
20 our credibility was enhanced by not doing that and I think that we had more
21 credibility in the penalty phase by not doing that.

22 Q And in fact it worked; he did not get the death penalty?

23 A It did.

24 Q Would it have been futile to object in closing argument to the rap letter,
25 as it already had been admitted into evidence?

1 A I don't know. I think maybe we should've objected again, but I don't
2 think it would've been sustained at that point. Whether we would've gotten
3 anywhere on appeal or not, I don't know. I just don't know.

4 Q Okay. With regard to the next issue raised by Mr. Carling, Ground G,
5 the Winston Budd preliminary hearing transcript, I think you covered this pretty well,
6 but I just wanted to make sure that I asked you about it. You weren't able to reach
7 Winston Budd very quickly or easily, were you?

8 A It was very difficult.

9 Q So you –

10 A He didn't have a telephone.

11 Q Oh, go ahead.

12 A I think that he – he had – we had to call a neighbor and they had to get
13 him to the telephone or something like that.

14 Q And you had access to not only the Defendant but all of the Defendant's
15 family helping you get in contact with Mr. Budd?

16 A That's correct.

17 Q You certainly had more resources with getting his cooperation than the
18 State did?

19 A That's – I guess, yes.

20 Q At least in terms of information?

21 A Yes.

22 Q But you weren't able to speak to Mr. Budd until very close to the trial,
23 from your case notes?

24 A That's correct.

25 Q And Mr. Budd testified to the Defendant's admissions at preliminary

1 hearing?

2 A Yes.

3 Q He also told you he was going to reaffirm his preliminary hearing
4 testimony and testify to those admissions at trial?

5 A That's correct.

6 Q So you decided not to bring him in?

7 A Correct.

8 Q Which was a strategy decision?

9 A Yes.

10 Q And the State read the preliminary hearing transcript as ruled by the
11 Court?

12 A Yes.

13 Q Now with regard to Ground J, admitting some evidence in opening, I
14 think you've sufficiently covered that issue. I'm not going to ask you any more
15 questions on that.

16 With regard to Ground Q was the next issue raised by Mr. Carling. This
17 was failing to retain expert witnesses. I think we've already covered with the rap
18 song why you may not have retained fingerprint or handwriting experts with regard
19 to the song. With regard to Celeste Palau, it sounds like – and I didn't know this –
20 that you had an investigator measure the distance between those apartments. But I
21 wanted to also clarify that where Derrick Jones was shot was the second floor of the
22 apartment. Do you remember that?

23 A Yes.

24 Q And were Celeste's apartment was was also the second floor?

25 A Yes.

1 Q So they were level?

2 A Yes.

3 Q And it was actually – her apartment was actually across from the
4 Defendant's –

5 A That's correct.

6 Q – or the victim's? So she would have had the ability to see what
7 happened?

8 A Correct.

9 Q And, in fact, Celeste Palau admitted – because I remember you did
10 cross her about her eyesight?

11 A Yes.

12 Q And, in fact, she did admit that while she's seeing the Defendant
13 shooting at Derrick Jones – I mean, I forget now – but the third victim on the patio,
14 as he's shooting him, because shoots him three times, if you'll recall?

15 A Yes.

16 Q By the time he falls to the ground she couldn't see him anymore,
17 because there was a wall that was in front of the balcony?

18 A Correct.

19 Q So she admitted all that in front of the jury?

20 A Yes.

21 MS. PANDUKHT: There are many issues that were not actually raised by Mr.
22 Carling that I guess I'm – unless you would like me to ask questions about those
23 issues, then I'm going to submit it then. I'll return the exhibits.

24 THE COURT: So you pass the witness on cross.

25 MS. PANDUKHT: I'll pass the witness.

1 THE COURT: Redirect examination, Mr. Carling.

2 [Colloquy between counsel]

3 MS. PANDUKHT: Oh, I'm going to – yeah, thank you. I'm going to move to
4 admit the State's Proposed Exhibit 1 into evidence.

5 THE COURT: One is offered. Any objection?

6 MR. CARLING: No.

7 MS. PANDUKHT: Or whatever number it is.

8 MR. CARLING: We'll stipulate.

9 THE COURT: One is received.

10 [Exhibit 1, admitted]

11 MR. CARLING: And, Your Honor, while it's on my mind, I'd move to admit
12 Defense Exhibit A, the memorandum.

13 THE COURT: Any objection to A?

14 MS. PANDUKHT: No. No objection.

15 THE COURT: A is received.

16 [Exhibit A, admitted]

17 MR. CARLING: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. CARLING:

20 Q Mr. Brooks, I want to ask you – I want to follow-up on some questions.
21 With regard to the letter that accompanied the rap song, is it your understanding that
22 if the State conducts some type of test on the handwriting and it comes back that it
23 was not Mr. Budd's handwriting, they'd have to disclose that to you as potential
24 exculpatory evidence, correct?

25 A Yes.

1 Q Now if you did an independent test as the defense counsel and it came
2 back as Mr. Budd's handwriting, would you be required to disclose that to the State?

3 A Only if I intended to use that at trial.

4 Q But you could make the decision to not disclose what you found out
5 through an expert?

6 A Correct. Correct.

7 Q Now would you agree with that more information the better you can
8 prepare a defense for a client?

9 A In some circumstances, yes.

10 Q And would you agree that it might make sense to find out if in fact that
11 was his writing, for the chance that it may not be his writing?

12 A In a perfect world, yes.

13 Q I can appreciate that.

14 A Yeah.

15 Q With regards to cross-examination, regarding the process it took for – to
16 get Mr. Winston Budd, do you recall explaining in detail about the visas and the
17 consulate's office and getting these witnesses to the states?

18 A Do you mean on the record?

19 Q Yes.

20 A Yes.

21 Q So you basically explained that it was extremely difficult; that you had to
22 jump through a myriad of hoops with both governments to get these people here?

23 A Yes.

24 Q But you, in fact, did?

25 A Yes.

1 Q And would it have been possible to get Mr. Winston Budd here as well if
2 you had chose to have him come?

3 A Yes.

4 MR. CARLING: I have no further questions, Mr. Brooks.

5 THE COURT: Recross?

6 MS. PANDUKHT: No further questions.

7 THE COURT: Anything else from this witness either side. Please step down,
8 Mr. Brooks. Thank you for you testimony.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Carling, anything else? Any additional witnesses?

11 MR. CARLING: No, Your Honor.

12 THE COURT: State, any witnesses?

13 MS. PANDUKHT: No, Your Honor.

14 THE COURT: Mr. Carling, you can have the floor, closing argument.

15 MR. CARLING: Your Honor, my reply brief basically sets out the arguments
16 in detail. I don't want to rehash all those, but I want to focus on three areas. And
17 based on what mister – first, may we approach the bench, Your Honor, before I –

18 THE COURT: Yes.

19 MR. CARLING: – do arguments?

20 [Bench conference transcribed as follows:]

21 THE COURT: Do you want to go – you want this off the record or on the
22 record?

23 MR. CARLING: Yeah. Off the record. [9:14:59] I need to make a record.
24 You're probably wondering why I didn't call Tamara Steel, the subject of the memo.

25 MS. PANDUKHT: It's okay.

1 MR. CARLING: He's got a couple of family members. I did contact her.

2 THE COURT: Okay.

3 MR. CARLING: But I don't want them to hear what she's saying, because
4 they're – I know they're in contact with her.

5 THE COURT: Uh-huh.

6 MR. CARLING: Is it possible to make a record and excuse them briefly and
7 then go back to closing argument?

8 THE COURT: Excuse these two women that are here?

9 MR. CARLING: Yeah.

10 THE COURT: I'm not going to close the courtroom. I'm not – this is an open
11 public courtroom.

12 MS. PANDUKHT: Do you not want to argue – what is it you don't want to
13 argue?

14 MR. CARLING: Well, Tamara basically – what I wanted to put on the record
15 is the reason I don't want them –

16 THE COURT: You're on the record right now, sidebar.

17 MR. CARLING: Okay. Well, the reason I don't want to – that I didn't call
18 Tamara is because she basically said I don't recall telling Emily Reeder that he was
19 on PCP. She said I didn't say that. Emily says –

20 THE COURT: Is this Emily out here?

21 MR. CARLING: No, no, no. Emily's not here. If it's in the memo; she said it.
22 I don't add things to memos.

23 THE COURT: 'Cause the record will reflect we have two women in the
24 courtroom and, again, I'm not going to close –

25 MR. CARLING: Okay.

1 THE COURT: – the courtroom.

2 MR. CARLING: Okay.

3 THE COURT: It's public.

4 MR. CARLING: Yeah. If that's on the record, that's fine. I just – I didn't want
5 to bring it up.

6 MS. PANDUKHT: That's not your fault that [inaudible].

7 MR. CARLING: I know. No, I – but that's why I didn't call her.

8 MS. PANDUKHT: Okay.

9 THE COURT: Okay.

10 MR. CARLING: Because she wasn't going to help.

11 MS. PANDUKHT: Okay.

12 THE COURT: Okay.

13 MR. CARLING: All right, thanks.

14 THE COURT: All right.

15 [Bench conference concluded]

16 THE COURT: Let's move to argument.

17 CLOSING ARGUMENT

18 BY MR. CARLING:

19 Okay. Three areas I want to focus on. First of all, with regard to the – I
20 guess the forest versus looking at the trees. Mr. Brooks did testify that his theory,
21 his strategy was to focus on the penalty phase and not the guilt phase of this trial.
22 And because of that, there were lots of smaller things that alone probably would've
23 been insignificant, but their cumulative effect, failing to object to certain things,
24 failing to do – to call certain witnesses. You know basically what he argued and
25 what's in the brief I think need – the Court needs to focus on that. There were

1 some –

2 THE COURT: The cumulative error argument outlined in Section R of your
3 petition?

4 MR. CARLING: Correct.

5 THE COURT: Okay.

6 MR. CARLING: Specifically with Tamara Steel. The issue of whether or not
7 she was told by neighbors that Mr. Budd was on drugs at the time. Thus negating or
8 mitigating the premeditation factor. He admitted that he didn't know who the
9 neighbors were and their office didn't follow up on that. I think that would've been
10 significant, even though it was during the guilt phase.

11 The second issue was with regards to Winston Budd. If you look at the
12 record, Mr. Brooks essentially convinced the Court that it would have been
13 impossible for the State to bring in Mr. Budd, when in fact it wasn't. Yeah. You did
14 have to go through a consulate, secure visas and do that; and, he did that with two
15 witnesses. But he spelled out – and it's in two pages of the transcript – on how that
16 happened, how that was supposed to do. And then Mr. Kane basically says I think
17 counsel has made the record for me better than I could have, both early in the trial
18 and today, explaining it is so hard to get a witness from Belize here. So I think he
19 did essentially an injustice and prejudiced Mr. Budd in a sense; that he made the
20 State's argument for him.

21 And, finally, I – and this doesn't go to any specific allegation. I elicited
22 testimony that sometimes in cases jurors hang their hat on one issue and one issue
23 alone. Mister – I think Mr. Brooks' testimony was that a fair statement, fair
24 assumption; it does happen. But that goes to the heart of the issue of whether or
25 not they hung their hat on this rap letter, whether they hung their hat on some of the

information that came in that he could've objected to.

And I think, based on what he testified was his theory of coming after or focusing on the penalty phase, that the standard dropped below the reasonableness standard here, according to *Strickland*, that he didn't do some things that he should have. He should have investigated certain things with regards to premeditation. He should have investigated whether or not that letter, which was certainly prejudicial -- he even admitted it was prejudicial; it is prejudicial. It basically says how it happened. It would have been beneficial to know whether or not the letter that accompanied that rap song in fact was from Glenford Budd, but they didn't do that. They didn't follow that. What they were focused on was the penalty phase here. They were focused on saving this young man's life and not so much as getting an acquittal.

And based on that, Your Honor, the testimony we heard from Mr. Brooks, who I feel is a fine attorney, and the arguments of how we spell it out and the references to the case notes, we'd ask that the Court grant the petition.

THE COURT: The State's argument.

CLOSING ARGUMENT

BY MS. PANDUKHT:

In speaking to the jurors at the end of this trial, we were two votes away from the death penalty. Mr. Brooks was not ineffective in any way, shape or form. He was absolutely responsible, along with his co-counsel, Tim O'Brien, in saving this man's life. We almost go the death penalty for him. And this case had abhorrent facts. He did execute these three individuals one right after another. There was overwhelming evidence of guilt. There were multiple confessions to different people. And the issues that Mr. Carling has raised do not in any way,

1 shape or form rise to the level of you granting this petition.

2 With regard to competency, there was no evidence that the Defendant
3 was incompetent. There was no evidence he was mentally ill or mentally retarded.
4 In fact, you had testimony to the contrary by the defense expert, Dr. Paglini.

5 Mr. Brooks was not self-interested, was not in conflict with this
6 defendant's interests. Mr. Brooks wrote 33 pages of case notes in this case. He
7 visited him personally over 18 times. He filed over 14 motions. He was essentially
8 – as you read these case notes, he's essentially pleading with the Defendant to help
9 him. Ms. Reeder is pleading with the Defendant to give them anything that they
10 could use, to the point where they even had to ask Justice Saitta to help. And, in
11 fact, it worked. After Justice Saitta made that statement on the first day of trial, they
12 did obtain more cooperation from the Defendant's family. So his interest was
13 directly in line with the Defendant's interest and it was ultimately successful.

14 The trial preparation ground wasn't even argued in closing, because it
15 simply is not true. He absolutely prepared extensively for trial. With regard to the
16 rap song, I admitted the full contents of the envelope, the letter. The envelope
17 shows that it was from Mr. Budd to Greg Lewis. There was an actual handwriting
18 portion of the letter that Greg Lewis testified that he recognized and that – there's a
19 statute on that fact that says that's admissible testimony. And that was the
20 testimony at trial. The – while the rap lyrics itself, of course they were prejudicial.
21 All good evidence that's inculpatory against a defendant is prejudicial, but it was
22 absolutely relevant. It said his nickname in there. It talked about the three people
23 he killed, about the fourth one that got away, that it was all over the marijuana that
24 he thought they robbed him of. It was absolutely probative. And that ground would
25 have been denied by Justice Saitta.

1 The fact that he didn't get an expert, *Harrington versus Richter*, 131
2 *Supreme Court*, 770, 2011. Supreme Court case states that *Strickland* does not
3 require for every prosecution expert an equal and opposite expert from the defense.
4 In many instances cross-examination will be sufficient to expose the defects in an
5 expert's presentation. And when defense counsel does not have a solid case, the
6 best strategy can be to say that there is too much doubt about the State's theory to
7 convict.

8 This was really raised quite extensively by Mr. Brooks and Mr. O'Brien
9 in their case; that Greg Lewis was lying and that the letter was probably written by
10 him. And had there been an expert, it could have decided the issue once and for all
11 in the State's favor. The State also, for the record, did not retain an expert in this
12 area, either handwriting or fingerprints.

13 With regard to Ms. Reeder's memo, the memorandum itself, there was
14 good reason for Mr. Brooks not calling this person to testify. First of all, she wasn't
15 there. All her testimony would have been hearsay. But in addition to that, if you
16 read the entirety of the letter, there were also other damaging things that this
17 witness could've brought up, such as the fact that he was drug dealer and they were
18 Bonnie and Clyde, which bring up armed robbery connotations. So there was good
19 reason and a strategy decision for him not to call her.

20 With regard to the Winston Budd issue, the State followed all of the
21 procedures the State was required to do. The defense took – it took them a long
22 time, through extensive efforts, while they had all the benefit of the Defendant and
23 his family to help them get Winston Budd to come in and testify and he didn't even
24 want to come in and testify. Winston Budd didn't want to come and he would've
25 reaffirmed all of his preliminary hearing testimony, which was adverse to the

1 Defendant's interest, because the Defendant confessed to Mr. Budd.

2 So none of these issues rise to the level of Mr. Brooks being ineffective
3 and, therefore, there can be no cumulative error. And no single claim even warrants
4 any relief and I think none of his claims rise to the level of Mr. Brooks being
5 ineffective in this case.

6 THE COURT: All right.

7 Ladies and gentlemen, having listened to the testimony and reviewed
8 the successive petitions filed, I make these findings of facts and conclusions of law.
9 As to the conclusions or application of law, I do apply the *Strickland* standard.
10 *Padilla versus Kentucky* is also case authority I draw to, as is *Means versus State at*
11 *120 Nevada 1011 – 1001*, a 2004 case.

12 Basically, I start this analysis with a presumption of effectiveness and it
13 must be demonstrated to by a preponderance of the evidence that counsel was
14 ineffective. I make the following conclusions – findings of fact that Mr. Brooks was
15 not ineffective in this area. There was overwhelming evidence of guilt. Frankly, the
16 *Strickland* standard is a high bar and it should be a high bar as a function of the
17 efforts that's put forth by the parties and the system as a function of the trial and
18 appeal. I've gone through and listened. I don't see a grounds for relief individually
19 A through R or R individually, as a cumulative finding of fact. I direct the State
20 prepare findings of fact, conclusion of law consistent with that – those decisions.
21 This petition, again, is denied. Run the findings by Mr. Carling and submit it for my
22 review and signature.

23 MS. PANDUKHT: Your Honor, due to the transition in our office with law
24 clerks being moved up to deputy and everything going on with hiring, I have to do
25 this myself. I don't have the benefit of any assistance from appeals.

1 THE COURT: Okay.

2 MS. PANDUKHT: So what I always do is ask that the transcript of today's
3 hearing be emailed to me, if that's okay, and then if I could have some time –

4 THE COURT: We have a lot of transcripts in the stack right now.

5 MS. PANDUKHT: Okay.

6 COURT RECORDER: Video.

7 THE COURT: What's that?

8 COURT RECORDER: We can have the video right now.

9 THE COURT: You can have video.

10 MS. PANDUKHT: Well, I'm not in a hurry. I just ask that if I can have time
11 after I get the transcript, because I mean I'm very busy. So I just would ask for
12 some time.

13 THE COURT: It's going to be a while. I need –

14 MS. PANDUKHT: Do you want to do the – you want to give me the video
15 then? Can I still have 30 days to get it done?

16 THE COURT: Certainly. Yeah.

17 MS. PANDUKHT: Oh.

18 THE COURT: Thirty days is more than sufficient.

19 MS. PANDUKHT: I just need time because of all my trial schedule in the
20 gang unit.

21 THE COURT: That's fine.

22 MS. PANDUKHT: I just can't do it, because no one's going to help me do it,
23 so.

24 THE COURT: All right, I know there will be an appeal. I anticipate an appeal
25 on the decision here and a transcript will be prepared, but that's in the ordinary

1 course.

2 MS. PANDUKHT: Okay.

3 THE COURT: That's down the way.

4 MS. PANDUKHT: Okay.

5 THE COURT: Is that fair?

6 MS. PANDUKHT: So -- yeah. Can I get then the video and 30 days?

7 THE COURT: Well, I'm just directing that you prepare it. If it takes 30 days --

8 MS. PANDUKHT: Oh, you're not giving me a deadline.

9 THE COURT: Because the appeal on a notice doesn't run on the 30-day
10 notice until to you file the order, so --

11 MR. CARLING: Right.

12 THE COURT: I mean if it's 30 days that's fine. I'm not setting a status check
13 on it.

14 MS. PANDUKHT: Oh, okay. Good.

15 MR. CARLING: Yeah, take 60. He's not prejudiced.

16 THE COURT: Mr. Carling, you --

17 MS. PANDUKHT: Okay. Thank you.

18 MR. CARLING: Yeah, that's fine. He's not prejudiced at all. Take 60.

19 THE COURT: He's not prejudiced at all.

20 MS. PANDUKHT: Is there any idea when the transcript might be done?

21 COURT RECORDER: Not right now, I can't tell you.

22 MS. PANDUKHT: Okay. Just let me know. So I'll just wait to hear from you.

23 You know where to find me.

24 THE COURT: So you're waiting for the transcript?

25 MS. PANDUKHT: Or the video.

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COURT RECORDERS: I'm swamped with appeals.

MS. PANDUKHT: Oh, yeah. Just --

THE COURT: Yes.

MS. PANDUKHT: However you want to do --

COURT RECORDER: The video you can have today --

MS. PANDUKHT: Oh, okay.

COURT RECORDER: -- before you leave.

THE COURT: All right?

MS. PANDUKHT: Thanks.


THE COURT: Thank you all. We're in recess.

[Proceedings concluded, 9:27 a.m.]

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



DEBRA WINN, Court Transcriber


CLERK OF THE COURT

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7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 GLENFORD ANTHONY BUDD
13 #1900089

14 Defendant.

CASE NO: 03C193182

DEPT NO: XVIII

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: AUGUST 22, 2014
18 TIME OF HEARING: 8:15 AM

18 THIS CAUSE having come on for hearing before the Honorable DAVID BARKER,
19 District Judge, on the 22nd day of August, 2014, the Petitioner being present, REPRESENTED
20 BY MATTHEW D. CARLING, the Respondent being represented by STEVEN B.
21 WOLFSON, Clark County District Attorney, by and through TALEEN R. PANDUKHT,
22 Chief Deputy District Attorney, and the Court having considered the matter, including briefs,
23 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
24 makes the following findings of fact and conclusions of law:

25 **FINDINGS OF FACT**

26 1. On June 26, 2003, the State filed an Information charging GLENFORD
27 ANTHONY BUDD (hereinafter "Defendant") with three (3) counts of MURDER WITH USE
28 OF A DEADLY WEAPON.

1 2. Defendant's jury trial began on December 5, 2005. On December 13, 2005, the
2 jury found Defendant guilty on all three (3) counts as alleged in the Information.

3 3. The penalty phase of Defendant's jury trial began on December 14, 2005. On
4 December 16, 2005, the jury returned a penalty verdict of LIFE Without The Possibility Of
5 Parole on each of the three (3) counts. On February 22, 2006, this court sentenced Defendant
6 as follows: COUNT 1 – LIFE Without The Possibility Of Parole plus an equal and consecutive
7 LIFE Without The Possibility Of Parole for use of a deadly weapon; COUNT 2 – LIFE
8 Without The Possibility Of Parole plus an equal and consecutive LIFE Without The Possibility
9 Of Parole For Use Of A Deadly Weapon, to run consecutive to COUNT 1; and COUNT 3 –
10 LIFE Without The Possibility Of Parole plus an equal and consecutive LIFE Without The
11 Possibility Of Parole for use of a deadly weapon, to run consecutive to COUNT 2, with NINE
12 HUNDRED NINETY-FIVE (995) DAYS credit for time served. On March 1, 2006, the
13 Judgment of Conviction was filed.

14 4. On March 23, 2006, Defendant filed a Notice of Appeal. On January 9, 2007,
15 the Nevada Supreme Court affirmed Defendant's conviction. On February 6, 2007, Remittitur
16 was issued.

17 5. On July 5, 2007, Defendant filed a motion to hold his attorney in contempt. On
18 July 23, 2007, this court denied Defendant's motion. On August 10, 2007, Defendant filed a
19 Notice of Appeal. On September 7, 2007, the Nevada Supreme Court dismissed the appeal.
20 On October 2, 2007, Remittitur was issued.

21 6. On September 21, 2007, Defendant filed a pro per Petition for Writ of Habeas
22 Corpus (Post-Conviction). On November 27, 2011, the State filed a Response to Defendant's
23 Petition. On November 30, 2007, this court denied Defendant's Petition, and on January 7,
24 2008, it filed its Findings of Fact, Conclusions of Law and Order.

25 7. On January 23, 2008, Defendant filed a Notice of Appeal from the denial of his
26 Petition. On September 25, 2009, the Nevada Supreme Court reversed the denial of
27 Defendant's Petition on grounds that Defendant should have been appointed post-conviction
28

1 counsel; the Nevada Supreme Court remanded the case to this court. On October 20, 2009,
2 Remittitur was issued.

3 8. On May 23, 2013, represented by counsel, Defendant filed a First Supplemental
4 Petition for Writ of Habeas Corpus Post Conviction. On October 25, 2013, Defendant filed a
5 Second Supplemental Petition for Writ of Habeas Corpus. On November 6, 2013, the State
6 filed its Response to Defendant's Petition and First Supplement. On December 12, 2013,
7 Defendant filed a Third Supplemental Petition for Writ of Habeas Corpus and a Memorandum
8 Regarding Petitioner's Exhibits (*In Camera* Review). On December 17, 2013, the State filed
9 its Response to Defendant's Memorandum. On December 26, 2013, Defendant filed a Fourth
10 Supplemental Petition for Writ of Habeas Corpus. On January 10, 2014, the Court filed an
11 Order granting the State's request for Public Defender Howard Brooks' case notes.

12 9. On January 31, 2014, the Court conducted a hearing regarding the Defendant's
13 original Petition, along with the first through fourth supplemental Petitions. As outlined in
14 Defendant's First Supplemental Petition, the Court struck Ground "A," and ordered an
15 evidentiary hearing on the remaining claims.

16 10. On August 22, 2014, this court held an evidentiary hearing regarding
17 Defendant's claims of ineffective assistance of counsel. At the hearing, Howard Brooks, Esq.,
18 was sworn and testified. The Court finds Mr. Brooks to be credible.

19 11. Defendant first claims in Ground B that his counsel was ineffective for failing
20 to object to the State's use of the letter containing a rap song on the grounds that it would
21 unfairly prejudice Defendant. Counsel's choice to object on foundational, rather than
22 prejudicial, grounds was a reasonable strategy, and Defendant fails to show that an objection
23 based on prejudice would not have been futile. Further, Defendant fails to show a reasonable
24 probability for a more favorable outcome if his counsel had objected based on prejudice.

25 12. Defendant next claims in Ground B that his counsel was ineffective for failing
26 to object to the authentication of the letter by the State's witness, Greg Lewis. However, Lewis
27 was familiar with Defendant's handwriting, thus Defendant fails to show that an objection
28 would not have been futile. Defendant failed to demonstrate that his counsel's failure to object

1 during the proceedings fell below an objective standard of reasonableness. Further, Defendant
2 failed to demonstrate a reasonable probability of a more favorable outcome had counsel
3 objected to the authentication.

4 13. Defendant's claim in Ground B that his counsel was ineffective for failing to
5 object to hearsay is without merit. Defendant fails to show that the testimony was offered for
6 the truth of the matter asserted, or that the testimony would not have qualified as an excited
7 utterance. Defendant failed to demonstrate that his counsel's failure to object during the
8 proceedings fell below an objective standard of reasonableness. Further, Defendant failed to
9 demonstrate a reasonable probability of a more favorable outcome had counsel objected to the
10 testimony.

11 14. Lastly, Defendant claims in Ground B that his counsel was ineffective for
12 objecting to the testimony from a crime scene analyst regarding where one of the victims was
13 on the ground. Defendant fails to show that this objection would not have been futile because
14 the prior witness testified as to where he personally found the body and saw it removed.
15 Further, the analyst diagramed the scene to explain where she found a cartridge casing. Thus,
16 Defendant failed to demonstrate that his counsel's failure to object during the proceedings fell
17 below an objective standard of reasonableness. Further, Defendant failed to demonstrate a
18 reasonable probability of a more favorable outcome had counsel objected to the testimony.

19 15. Defendant's claim in Ground C that his trial counsel was ineffective for failing
20 to present evidence that would have created a reasonable doubt regarding premeditation is
21 rendered moot based on the overwhelming evidence of Defendant's guilt, including evidence
22 that defendant threatened to kill one of the victims and later confessed to his uncle why he
23 killed the victims. Thus, Defendant failed to show that his counsel's representation was
24 objectively unreasonable and that he was prejudiced by it.

25 16. Defendant's claim in Ground D that his counsel was ineffective by preventing
26 him from participating in the preparation of his own defense is belied by the record, wherein
27 despite Defendant's unwillingness to cooperate and participate in his defense, his counsel met
28 with Defendant and his family numerous times to discuss the case. This is reflected in his

1 counsel's case notes. Exhibit A to Defendant's Second Petition, 10/25/13. His counsel even
2 sought the Court's aid in addressing Defendant's unwillingness to cooperate. Defendant's
3 claim is further unsupported by legal authority. Thus, Defendant failed to show that his
4 counsel's representation was objectively unreasonable and that he was prejudiced by it.

5 17. Defendant's claim in Ground E that his counsel was ineffective for failing to
6 object when the Court provided legal advice to Defendant is belied by the record, wherein the
7 Court simply encouraged Defendant to cooperate with his counsel. Defendant fails to show
8 that any objection would not have been futile. Thus, Defendant failed to show that his
9 counsel's representation was objectively unreasonable and that he was prejudiced by it.

10 18. Defendant claims in Ground F that his counsel was ineffective for referring to
11 the trial as the "guilt phase" twice during voir dire. Since the jury was properly instructed
12 regarding the presumption of innocence and the burden of proof, Defendant fails to show how
13 this prejudiced him.

14 19. Defendant's first claim in Ground G that his counsel was ineffective for failing
15 to zealously represent his interests by informing the Court that Defendant's family did not
16 understand the facts of the case is a conclusory allegation and belied by the record.
17 Defendant's trial counsel attempted to meet with Defendant's family and sought the Court's
18 assistance. Thus, Defendant failed to show that his counsel's representation was objectively
19 unreasonable and that he was prejudiced by it.

20 20. Defendant next claims in Ground G that his counsel was ineffective for objecting
21 to the use of the preliminary hearing transcript of Winston Budd's testimony, since he was
22 unavailable at trial. Winston Budd is Defendant's uncle, who testified that Defendant
23 confessed to him after the crimes occurred. Defendant's trial counsel objected and argued that
24 the State failed to exercise reasonable diligence in attempting to obtain this witness for trial,
25 which is a reasonable strategy. Thus, Defendant failed to show that his counsel's
26 representation was objectively unreasonable and that he was prejudiced by it.

27 21. Defendant's claim in Ground H that his counsel was ineffective because his
28 counsel was conflicted is unsupported by any evidence of an actual conflict. Defendant's

1 counsel was objectively reasonable in explaining to the Court his frustration with Defendant
2 and his family in hopes that the Court might be able to encourage them to aid in the defense.
3 Further, Defendant failed to demonstrate a reasonable probability of a more favorable outcome
4 had counsel performed differently.

5 22. Defendant's claim in Ground I that his counsel was ineffective for failing to
6 preserve the record on appeal regarding a sidebar discussion is belied by the record.
7 Defendant's counsel made the appropriate record regarding his objection as to the foundation
8 for the letter containing the rap song. Thus, Defendant failed to show that his counsel's
9 representation was objectively unreasonable and that he was prejudiced by it.

10 23. Defendant claims in Ground J that his counsel was ineffective and violated his
11 right to remain silent when he stated during the opening statement that "some evidence will
12 show that [Defendant] killed these three (3) people," which Defendant claims was an
13 admission of guilt without his consent. RT, 12/8/05, at 58. However, Defendant's counsel
14 then explained that the evidence was insufficient to overcome reasonable doubt, which was an
15 objectively reasonable strategy given the overwhelming evidence against Defendant.
16 Moreover, Defendant did not receive the death penalty, thus Defendant cannot show that he
17 suffered prejudice.

18 24. Defendant claims in Ground K that his counsel's admission in the opening
19 statement, as discussed in Ground J, constituted ineffective assistance by eliminating the
20 presumption of innocence. However, counsel's strategy in approaching the State's
21 overwhelming evidence was reasonable. Therefore, Defendant fails to demonstrate that his
22 counsel's representation was objectively unreasonable and that he was prejudiced.

23 25. Defendant again claims in Ground L that his counsel's admission in the opening
24 statement, as discussed in Ground J, constituted ineffective assistance by alleviating the State's
25 burden of proof. However, counsel's strategy in approaching the State's overwhelming
26 evidence was reasonable. Therefore, Defendant fails to demonstrate that his counsel's
27 representation was objectively unreasonable and that he was prejudiced.

28 //

1 26. Defendant claims in Ground M that his counsel was ineffective for waiving
2 Defendant's right to confront witnesses when his counsel declined to cross-examine a witness
3 regarding relocation assistance payment from the State, which was requested based on the
4 witness' concern for her safety. Defendant's counsel made a tactical decision not to cross-
5 examine the witness about the money, which was reasonable in order to avoid any insinuation
6 that Defendant made the witness concerned for her safety. Further, Defendant fails to show
7 that if the jury had known about the received relocation assistance, the outcome would have
8 been different.

9 27. Defendant's claim in Ground N that his counsel was ineffective for violating
10 Defendant's right against self-incrimination when his counsel stated that Defendant and Mr.
11 Lewis were in jail together is belied by the record. Mr. Lewis testified specifically about his
12 relationship with Defendant while they were in jail. Further, Defendant's counsel discussed
13 their relationship in closing to argue that Lewis actually wrote the damaging letter. Therefore
14 Defendant fails to show that his counsel's representation was objectively unreasonable and
15 that Defendant was prejudiced.

16 28. Defendant claims in Ground O that his counsel was ineffective for failing to
17 request a competency hearing to determine whether Defendant was competent to stand trial.
18 Defendant fails to show that his counsel was aware of any information prior to trial that would
19 have indicated that Defendant was incompetent to stand trial. The record further belies
20 Defendant's claim because his conduct throughout the pendency of his case indicates that he
21 had sufficient ability to understand the charges against him, the strength and weaknesses of
22 his case, and the strength and weaknesses of the State's case. Therefore, Defendant fails to
23 show that his counsel's representation was objectively unreasonable and that Defendant was
24 prejudiced.

25 29. Defendant's claim in Ground P that his counsel was ineffective for failing to
26 communicate with him regarding his case thereby preventing him from participating in his
27 defense is belied by the record. Defendant's counsel diligently met with Defendant to discuss
28 case strategy, potential defenses, and all key trial decisions. Defendant's unwillingness to

1 cooperate at times in the preparation of his case does not render his counsel's performance
2 deficient, thus Defendant fails to demonstrate that his counsel failed to adequately
3 communicate with Defendant regarding the management of his case. Therefore, Defendant
4 fails to show that his counsel's representation was objectively unreasonable and that Defendant
5 was prejudiced.

6 30. Defendant claims in Ground Q that his counsel was ineffective for failing to
7 retain expert defense witnesses to evaluate Defendant's competency to stand trial, to refute the
8 State's eyewitness testimony, and to contest that Defendant actually wrote the letter. The
9 record belies Defendant's claim that he was incompetent to stand trial, showing that Defendant
10 fully understood and participated in the proceedings. Therefore, Defendant fails to show that
11 his counsel's representation was objectively unreasonable and that Defendant was prejudiced.

12 31. Further, Defendant fails to show what information an expert would have
13 provided to refute the State's eyewitness. Any information to attack the eyewitness's
14 recognition of Defendant was effectively accomplished by counsel on cross-examination,
15 wherein the witness admitted that she never saw Defendant's face and had eyesight problems.
16 Therefore, Defendant fails to show that his counsel's representation was objectively
17 unreasonable and that Defendant was prejudiced.

18 32. Defendant further fails to show that a handwriting expert would have revealed
19 any exculpatory evidence, and given the overwhelming evidence against Defendant, an expert
20 would likely have discovered incriminating evidence. This further would have limited
21 Defendant's counsel from arguing the lack of evidence that Defendant committed the killings
22 and wrote the letter. Therefore, Defendant fails to show that his counsel's representation was
23 objectively unreasonable and that Defendant was prejudiced.

24 33. Defendant claims in Ground R that he was denied a fair trial based on the
25 cumulative effect of his counsel's alleged errors. Defendant has failed to provide any claims
26 to warrant relief, thus there is no cumulative effect. This is merely a bare allegation, and
27 therefore his claim is denied.

28 //

34. Defendant failed to demonstrate that counsel's performance fell below an objective standard of reasonableness.

35. Defendant failed to demonstrate prejudice based on any alleged errors of counsel.

36. Defendant did not receive ineffective assistance of counsel.

CONCLUSIONS OF LAW

1. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Under Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must prove that he was denied “reasonably effective assistance” of counsel by satisfying a two-pronged test. 466 U.S. at 686–687, 104 S.Ct. at 2063-64; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show first, that his counsel’s representation fell below an objective standard of reasonableness, and second, that but for counsel’s errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687–688, 694, 104 S.Ct. at 2065, 2068.

2. “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney’s representations amounted to incompetence under prevailing professional norms, “not whether it deviated from best practices or most common custom.” Harrington v. Richter, 131 S.Ct. 770, 778, 178 L.Ed.2d 624 (2011). Further, “[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)). Also, the United States Supreme Court specifically “reject[ed] the claim that the Sixth Amendment guarantees a ‘meaningful relationship’ between an accused and his counsel.” Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

3. The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was

1 ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in
2 considering alleged ineffective assistance of counsel is “not to pass upon the merits of the
3 action not taken but to determine whether, under the particular facts and circumstances of the
4 case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.
5 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir.
6 1977)).

7 4. In considering whether trial counsel was effective, the court must determine
8 whether counsel made a “sufficient inquiry into the information . . . pertinent to his client’s
9 case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466
10 U.S. at 690–91, 104 S.Ct. at 2066). Then, the court will consider whether counsel made “a
11 reasonable strategy decision on how to proceed with his client’s case.” Id. Counsel’s strategy
12 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
13 circumstances.” Id. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800
14 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

15 5. This analysis does not indicate that the court should “second guess reasoned
16 choices between trial tactics, nor does it mean that defense counsel, to protect himself against
17 allegations of inadequacy, must make every conceivable motion no matter how remote the
18 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
19 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of
20 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of
21 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. However, counsel cannot
22 be deemed ineffective for failing to make futile objections, file futile motions, or for failing to
23 make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

24 6. The court “need not consider both prongs of the test if the defendant makes an
25 insufficient showing on either one.” Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537
26 (2004). Even if a defendant can demonstrate that his counsel’s representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel’s errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687). ‘ A reasonable probability is a probability sufficient to undermine
3 confidence in the outcome.’ Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. “[O]verwhelming
4 evidence of guilt is relevant to the question of whether a client had ineffective counsel.” Ford
5 v. State, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) (citing Strickland, 466 U.S. at 697, 10
6 S.Ct. at 2069).

7 7. Finally, claims asserted in a petition for post-conviction relief must be supported
8 with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove
9 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” or “naked” allegations are not
10 sufficient, nor are those belied and repelled by the record. Id.; see also NRS 34.735(6).

11 8. “[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such
12 as deciding what witnesses to call . . . [Counsel], not the client, has the immediate—and
13 ultimate—responsibility of deciding if and when to object, which witnesses, if any, to call, and
14 what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (citation
15 omitted).

16 9. The management of a defendant’s case is for the attorney, not the Defendant, to
17 determine. Rhyne, 118 Nev. at 8, 38 P.3d at 167. This means that counsel, not the Defendant,
18 has the immediate and ultimate responsibility of deciding what motions to file, what defenses
19 to develop, and what witnesses to call. Id. Indeed, “[o]nce counsel is appointed, the day-to-
20 day conduct of the defense rests with the attorney.” Id. (internal quotation removed).

21 10. NRS 51.095 specifically states that “[a] statement relating to a startling event or
22 condition made while the declarant was under the stress of excitement caused by the event or
23 condition is not inadmissible under the hearsay rule.”

24 11. An actual conflict only exists when “an attorney is placed in a situation
25 conducive to divided loyalties.” Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992)
26 (internal quotation omitted). “Conflict of interest and divided loyalty situations can take many
27 forms, and whether an actual conflict exists must be evaluated on the specific facts of each
28 case.” Id. For example, in Clark, an actual conflict occurred where counsel representing a

1 client charged with first-degree murder also had a pending civil suit against that same client
2 during trial, and further, counsel obtained a default judgment against that client while he was
3 awaiting sentencing on the murder conviction. Id.

4 12. The United States Supreme Court specifically stated that a strategy wherein a
5 Defendant concedes guilt at a capital trial is not the functional equivalent of a guilty plea.
6 Florida v. Nixon, 543 U.S. 175, 188, 125 S.Ct. 551, 560-61 (2004). Moreover, counsel is not
7 automatically deemed ineffective in executing such a strategy without first obtaining the
8 client's express consent. Id. at 186-87, 125 S.Ct. at 560. "Attorneys representing capital
9 defendants face daunting challenges in developing trial strategies, not least because the
10 defendant's guilt is often clear. Prosecutors are more likely to seek the death penalty, and to
11 refuse to accept a plea to a LIFE sentence, when the evidence is overwhelming and the crime
12 heinous." Id. at 191, 125 S.Ct. at 562.

13 13. A defendant is only incompetent to stand trial if he is "'not of sufficient mentality
14 to be able to understand the nature of the criminal charges against him,'" rendering him unable
15 to assist in his defense. Hernandez v. State, 124 Nev. 978, 992, 194 P.3d 1235, 1244 (2008)
16 overruled on other grounds by Armenta-Carpio v. State, 306 P.3d 395 (Nev. 2013) (quoting
17 Hill v. State, 114 Nev. 169, 176, 953 P.2d 1077, 1082 (1998)). Importantly, "[a] bare
18 allegation of incompetence is not sufficient to raise a reasonable doubt as to competence."
19 Martin v. State, 96 Nev. 324, 325, 608 P.2d 502, 503 (1980) (citations omitted).

20 14. However, the Nevada Supreme Court has not endorsed application of its direct
21 appeal cumulative error standard to the post-conviction Strickland context. See McConnell v.
22 State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nevertheless, a cumulative error finding
23 in the context of a Strickland claim is extraordinarily rare and requires an extensive
24 aggregation of errors. See, e.g., Harris By and Through Ramseyer v. Wood, 64 F.3d 1432,
25 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the
26 defendant fails to demonstrate any single violation of Strickland. See Turner v. Quarterman,
27 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of
28 constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v.

1 Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D.
2 Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th Cir. 2005)).

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
5 shall be, and it is, hereby denied.

6 DATED this 14th day of October, 2014.

7
8 
DISTRICT JUDGE B

9
10 STEVEN B. WOLFSON
11 Clark County District Attorney
Nevada Bar #001565

12 BY  For

13 TALEEN R. PANDUKHT
14 Chief Deputy District Attorney
Nevada Bar #5734

15
16
17 **CERTIFICATE OF SERVICE**

18 I certify that on the 10th day of October, 2014, I mailed a copy of the foregoing
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 MATTHEW D. CARLING, Esq.
21 CARLING LAW OFFICE, PC
22 1100 S. TENTH STREET
LAS VEGAS, NV 89101

23 BY 

24 R. JOHNSON
25 Secretary for the District Attorney's Office
26
27
28

BS/TRP/rj/M-1


CLERK OF THE COURT

1 NEO

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 GLENFORD A. BUDD,

5
6 Petitioner,

Case No. 03C193182

Dept No: XVIII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER**

10
11 **PLEASE TAKE NOTICE** that on October 17, 2014, the court entered a decision or order in this matter,
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on October 20, 2014.

STEVEN D. GRIERSON, CLERK OF THE COURT

16 

17 Teodora Jones, Deputy Clerk

18
19 **CERTIFICATE OF MAILING**

20 I hereby certify that on this 20 day of October 2014, I placed a copy of this Notice of Entry in:

- 21 ☒ The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

- 22 ☒ The United States mail addressed as follows:
23 Glenford A. Budd # 90043 Matthew D. Carling, Esq.
24 P.O. Box 1989 1100 S. Tenth St.
Ely, NV 89301 Las Vegas, NV 89101
25 (Last Known Address)

26 

27 Teodora Jones, Deputy Clerk


CLERK OF THE COURT

1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN R. PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #005734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 03C193182

12 GLENFORD ANTHONY BUDD
13 #1900089

DEPT NO: XVIII

14 Defendant.

15 FINDINGS OF FACT, CONCLUSIONS OF
16 LAW AND ORDER

17 DATE OF HEARING: AUGUST 22, 2014
18 TIME OF HEARING: 8:15 AM

19 THIS CAUSE having come on for hearing before the Honorable DAVID BARKER,
20 District Judge, on the 22nd day of August, 2014, the Petitioner being present, REPRESENTED
21 BY MATTHEW D. CARLING, the Respondent being represented by STEVEN B.
22 WOLFSON, Clark County District Attorney, by and through TALEEN R. PANDUKHT,
23 Chief Deputy District Attorney, and the Court having considered the matter, including briefs,
24 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court
25 makes the following findings of fact and conclusions of law:

26 FINDINGS OF FACT

27 1. On June 26, 2003, the State filed an Information charging GLENFORD
28 ANTHONY BUDD (hereinafter "Defendant") with three (3) counts of MURDER WITH USE
OF A DEADLY WEAPON.

1 2. Defendant's jury trial began on December 5, 2005. On December 13, 2005, the
2 jury found Defendant guilty on all three (3) counts as alleged in the Information.

3 3. The penalty phase of Defendant's jury trial began on December 14, 2005. On
4 December 16, 2005, the jury returned a penalty verdict of LIFE Without The Possibility Of
5 Parole on each of the three (3) counts. On February 22, 2006, this court sentenced Defendant
6 as follows: COUNT 1 – LIFE Without The Possibility Of Parole plus an equal and consecutive
7 LIFE Without The Possibility Of Parole for use of a deadly weapon; COUNT 2 – LIFE
8 Without The Possibility Of Parole plus an equal and consecutive LIFE Without The Possibility
9 Of Parole For Use Of A Deadly Weapon, to run consecutive to COUNT 1; and COUNT 3 –
10 LIFE Without The Possibility Of Parole plus an equal and consecutive LIFE Without The
11 Possibility Of Parole for use of a deadly weapon, to run consecutive to COUNT 2, with NINE
12 HUNDRED NINETY-FIVE (995) DAYS credit for time served. On March 1, 2006, the
13 Judgment of Conviction was filed.

14 4. On March 23, 2006, Defendant filed a Notice of Appeal. On January 9, 2007,
15 the Nevada Supreme Court affirmed Defendant's conviction. On February 6, 2007, Remittitur
16 was issued.

17 5. On July 5, 2007, Defendant filed a motion to hold his attorney in contempt. On
18 July 23, 2007, this court denied Defendant's motion. On August 10, 2007, Defendant filed a
19 Notice of Appeal. On September 7, 2007, the Nevada Supreme Court dismissed the appeal.
20 On October 2, 2007, Remittitur was issued.

21 6. On September 21, 2007, Defendant filed a pro per Petition for Writ of Habeas
22 Corpus (Post-Conviction). On November 27, 2011, the State filed a Response to Defendant's
23 Petition. On November 30, 2007, this court denied Defendant's Petition, and on January 7,
24 2008, it filed its Findings of Fact, Conclusions of Law and Order.

25 7. On January 23, 2008, Defendant filed a Notice of Appeal from the denial of his
26 Petition. On September 25, 2009, the Nevada Supreme Court reversed the denial of
27 Defendant's Petition on grounds that Defendant should have been appointed post-conviction
28

1 counsel; the Nevada Supreme Court remanded the case to this court. On October 20, 2009,
2 Remittitur was issued.

3 8. On May 23, 2013, represented by counsel, Defendant filed a First Supplemental
4 Petition for Writ of Habeas Corpus Post Conviction. On October 25, 2013, Defendant filed a
5 Second Supplemental Petition for Writ of Habeas Corpus. On November 6, 2013, the State
6 filed its Response to Defendant's Petition and First Supplement. On December 12, 2013,
7 Defendant filed a Third Supplemental Petition for Writ of Habeas Corpus and a Memorandum
8 Regarding Petitioner's Exhibits (*In Camera* Review). On December 17, 2013, the State filed
9 its Response to Defendant's Memorandum. On December 26, 2013, Defendant filed a Fourth
10 Supplemental Petition for Writ of Habeas Corpus. On January 10, 2014, the Court filed an
11 Order granting the State's request for Public Defender Howard Brooks' case notes.

12 9. On January 31, 2014, the Court conducted a hearing regarding the Defendant's
13 original Petition, along with the first through fourth supplemental Petitions. As outlined in
14 Defendant's First Supplemental Petition, the Court struck Ground "A," and ordered an
15 evidentiary hearing on the remaining claims.

16 10. On August 22, 2014, this court held an evidentiary hearing regarding
17 Defendant's claims of ineffective assistance of counsel. At the hearing, Howard Brooks, Esq.,
18 was sworn and testified. The Court finds Mr. Brooks to be credible.

19 11. Defendant first claims in Ground B that his counsel was ineffective for failing
20 to object to the State's use of the letter containing a rap song on the grounds that it would
21 unfairly prejudice Defendant. Counsel's choice to object on foundational, rather than
22 prejudicial, grounds was a reasonable strategy, and Defendant fails to show that an objection
23 based on prejudice would not have been futile. Further, Defendant fails to show a reasonable
24 probability for a more favorable outcome if his counsel had objected based on prejudice.

25 12. Defendant next claims in Ground B that his counsel was ineffective for failing
26 to object to the authentication of the letter by the State's witness, Greg Lewis. However, Lewis
27 was familiar with Defendant's handwriting, thus Defendant fails to show that an objection
28 would not have been futile. Defendant failed to demonstrate that his counsel's failure to object

1 during the proceedings fell below an objective standard of reasonableness. Further, Defendant
2 failed to demonstrate a reasonable probability of a more favorable outcome had counsel
3 objected to the authentication.

4 13. Defendant's claim in Ground B that his counsel was ineffective for failing to
5 object to hearsay is without merit. Defendant fails to show that the testimony was offered for
6 the truth of the matter asserted, or that the testimony would not have qualified as an excited
7 utterance. Defendant failed to demonstrate that his counsel's failure to object during the
8 proceedings fell below an objective standard of reasonableness. Further, Defendant failed to
9 demonstrate a reasonable probability of a more favorable outcome had counsel objected to the
10 testimony.

11 14. Lastly, Defendant claims in Ground B that his counsel was ineffective for
12 objecting to the testimony from a crime scene analyst regarding where one of the victims was
13 on the ground. Defendant fails to show that this objection would not have been futile because
14 the prior witness testified as to where he personally found the body and saw it removed.
15 Further, the analyst diagramed the scene to explain where she found a cartridge casing. Thus,
16 Defendant failed to demonstrate that his counsel's failure to object during the proceedings fell
17 below an objective standard of reasonableness. Further, Defendant failed to demonstrate a
18 reasonable probability of a more favorable outcome had counsel objected to the testimony.

19 15. Defendant's claim in Ground C that his trial counsel was ineffective for failing
20 to present evidence that would have created a reasonable doubt regarding premeditation is
21 rendered moot based on the overwhelming evidence of Defendant's guilt, including evidence
22 that defendant threatened to kill one of the victims and later confessed to his uncle why he
23 killed the victims. Thus, Defendant failed to show that his counsel's representation was
24 objectively unreasonable and that he was prejudiced by it.

25 16. Defendant's claim in Ground D that his counsel was ineffective by preventing
26 him from participating in the preparation of his own defense is belied by the record, wherein
27 despite Defendant's unwillingness to cooperate and participate in his defense, his counsel met
28 with Defendant and his family numerous times to discuss the case. This is reflected in his

1 counsel's case notes. Exhibit A to Defendant's Second Petition, 10/25/13. His counsel even
2 sought the Court's aid in addressing Defendant's unwillingness to cooperate. Defendant's
3 claim is further unsupported by legal authority. Thus, Defendant failed to show that his
4 counsel's representation was objectively unreasonable and that he was prejudiced by it.

5 17. Defendant's claim in Ground E that his counsel was ineffective for failing to
6 object when the Court provided legal advice to Defendant is belied by the record, wherein the
7 Court simply encouraged Defendant to cooperate with his counsel. Defendant fails to show
8 that any objection would not have been futile. Thus, Defendant failed to show that his
9 counsel's representation was objectively unreasonable and that he was prejudiced by it.

10 18. Defendant claims in Ground F that his counsel was ineffective for referring to
11 the trial as the "guilt phase" twice during voir dire. Since the jury was properly instructed
12 regarding the presumption of innocence and the burden of proof, Defendant fails to show how
13 this prejudiced him.

14 19. Defendant's first claim in Ground G that his counsel was ineffective for failing
15 to zealously represent his interests by informing the Court that Defendant's family did not
16 understand the facts of the case is a conclusory allegation and belied by the record.
17 Defendant's trial counsel attempted to meet with Defendant's family and sought the Court's
18 assistance. Thus, Defendant failed to show that his counsel's representation was objectively
19 unreasonable and that he was prejudiced by it.

20 20. Defendant next claims in Ground G that his counsel was ineffective for objecting
21 to the use of the preliminary hearing transcript of Winston Budd's testimony, since he was
22 unavailable at trial. Winston Budd is Defendant's uncle, who testified that Defendant
23 confessed to him after the crimes occurred. Defendant's trial counsel objected and argued that
24 the State failed to exercise reasonable diligence in attempting to obtain this witness for trial,
25 which is a reasonable strategy. Thus, Defendant failed to show that his counsel's
26 representation was objectively unreasonable and that he was prejudiced by it.

27 21. Defendant's claim in Ground H that his counsel was ineffective because his
28 counsel was conflicted is unsupported by any evidence of an actual conflict. Defendant's

1 counsel was objectively reasonable in explaining to the Court his frustration with Defendant
2 and his family in hopes that the Court might be able to encourage them to aid in the defense.
3 Further, Defendant failed to demonstrate a reasonable probability of a more favorable outcome
4 had counsel performed differently.

5 22. Defendant's claim in Ground I that his counsel was ineffective for failing to
6 preserve the record on appeal regarding a sidebar discussion is belied by the record.
7 Defendant's counsel made the appropriate record regarding his objection as to the foundation
8 for the letter containing the rap song. Thus, Defendant failed to show that his counsel's
9 representation was objectively unreasonable and that he was prejudiced by it.

10 23. Defendant claims in Ground J that his counsel was ineffective and violated his
11 right to remain silent when he stated during the opening statement that "some evidence will
12 show that [Defendant] killed these three (3) people," which Defendant claims was an
13 admission of guilt without his consent. RT, 12/8/05, at 58. However, Defendant's counsel
14 then explained that the evidence was insufficient to overcome reasonable doubt, which was an
15 objectively reasonable strategy given the overwhelming evidence against Defendant.
16 Moreover, Defendant did not receive the death penalty, thus Defendant cannot show that he
17 suffered prejudice.

18 24. Defendant claims in Ground K that his counsel's admission in the opening
19 statement, as discussed in Ground J, constituted ineffective assistance by eliminating the
20 presumption of innocence. However, counsel's strategy in approaching the State's
21 overwhelming evidence was reasonable. Therefore, Defendant fails to demonstrate that his
22 counsel's representation was objectively unreasonable and that he was prejudiced.

23 25. Defendant again claims in Ground L that his counsel's admission in the opening
24 statement, as discussed in Ground J, constituted ineffective assistance by alleviating the State's
25 burden of proof. However, counsel's strategy in approaching the State's overwhelming
26 evidence was reasonable. Therefore, Defendant fails to demonstrate that his counsel's
27 representation was objectively unreasonable and that he was prejudiced.

28 //

1 26. Defendant claims in Ground M that his counsel was ineffective for waiving
2 Defendant's right to confront witnesses when his counsel declined to cross-examine a witness
3 regarding relocation assistance payment from the State, which was requested based on the
4 witness' concern for her safety. Defendant's counsel made a tactical decision not to cross-
5 examine the witness about the money, which was reasonable in order to avoid any insinuation
6 that Defendant made the witness concerned for her safety. Further, Defendant fails to show
7 that if the jury had known about the received relocation assistance, the outcome would have
8 been different.

9 27. Defendant's claim in Ground N that his counsel was ineffective for violating
10 Defendant's right against self-incrimination when his counsel stated that Defendant and Mr.
11 Lewis were in jail together is belied by the record. Mr. Lewis testified specifically about his
12 relationship with Defendant while they were in jail. Further, Defendant's counsel discussed
13 their relationship in closing to argue that Lewis actually wrote the damaging letter. Therefore
14 Defendant fails to show that his counsel's representation was objectively unreasonable and
15 that Defendant was prejudiced.

16 28. Defendant claims in Ground O that his counsel was ineffective for failing to
17 request a competency hearing to determine whether Defendant was competent to stand trial.
18 Defendant fails to show that his counsel was aware of any information prior to trial that would
19 have indicated that Defendant was incompetent to stand trial. The record further belies
20 Defendant's claim because his conduct throughout the pendency of his case indicates that he
21 had sufficient ability to understand the charges against him, the strength and weaknesses of
22 his case, and the strength and weaknesses of the State's case. Therefore, Defendant fails to
23 show that his counsel's representation was objectively unreasonable and that Defendant was
24 prejudiced.

25 29. Defendant's claim in Ground P that his counsel was ineffective for failing to
26 communicate with him regarding his case thereby preventing him from participating in his
27 defense is belied by the record. Defendant's counsel diligently met with Defendant to discuss
28 case strategy, potential defenses, and all key trial decisions. Defendant's unwillingness to

1 cooperate at times in the preparation of his case does not render his counsel's performance
2 deficient, thus Defendant fails to demonstrate that his counsel failed to adequately
3 communicate with Defendant regarding the management of his case. Therefore, Defendant
4 fails to show that his counsel's representation was objectively unreasonable and that Defendant
5 was prejudiced.

6 30. Defendant claims in Ground Q that his counsel was ineffective for failing to
7 retain expert defense witnesses to evaluate Defendant's competency to stand trial, to refute the
8 State's eyewitness testimony, and to contest that Defendant actually wrote the letter. The
9 record belies Defendant's claim that he was incompetent to stand trial, showing that Defendant
10 fully understood and participated in the proceedings. Therefore, Defendant fails to show that
11 his counsel's representation was objectively unreasonable and that Defendant was prejudiced.

12 31. Further, Defendant fails to show what information an expert would have
13 provided to refute the State's eyewitness. Any information to attack the eyewitness's
14 recognition of Defendant was effectively accomplished by counsel on cross-examination,
15 wherein the witness admitted that she never saw Defendant's face and had eyesight problems.
16 Therefore, Defendant fails to show that his counsel's representation was objectively
17 unreasonable and that Defendant was prejudiced.

18 32. Defendant further fails to show that a handwriting expert would have revealed
19 any exculpatory evidence, and given the overwhelming evidence against Defendant, an expert
20 would likely have discovered incriminating evidence. This further would have limited
21 Defendant's counsel from arguing the lack of evidence that Defendant committed the killings
22 and wrote the letter. Therefore, Defendant fails to show that his counsel's representation was
23 objectively unreasonable and that Defendant was prejudiced.

24 33. Defendant claims in Ground R that he was denied a fair trial based on the
25 cumulative effect of his counsel's alleged errors. Defendant has failed to provide any claims
26 to warrant relief, thus there is no cumulative effect. This is merely a bare allegation, and
27 therefore his claim is denied.

28 //

1 34. Defendant failed to demonstrate that counsel's performance fell below an
2 objective standard of reasonableness.

3 35. Defendant failed to demonstrate prejudice based on any alleged errors of
4 counsel.

5 36. Defendant did not receive ineffective assistance of counsel.

6 CONCLUSIONS OF LAW

7 1. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S.
8 668, 104 S.Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Under
9 Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must
10 prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-
11 pronged test. 466 U.S. at 686-687, 104 S.Ct. at 2063-64; see State v. Love, 109 Nev. 1136,
12 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show first, that his
13 counsel's representation fell below an objective standard of reasonableness, and second, that
14 but for counsel's errors, there is a reasonable probability that the result of the proceedings
15 would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S.Ct. at 2065, 2068.

16 2. "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky,
17 559 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney's
18 representations amounted to incompetence under prevailing professional norms, "not whether
19 it deviated from best practices or most common custom." Harrington v. Richter, 131 S.Ct.
20 770, 778, 178 L.Ed.2d 624 (2011). Further, "[e]ffective counsel does not mean errorless
21 counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded
22 of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474
23 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).
24 Also, the United States Supreme Court specifically "reject[ed] the claim that the Sixth
25 Amendment guarantees a 'meaningful relationship' between an accused and his counsel."
26 Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983).

27 3. The court begins with the presumption of effectiveness and then must determine
28 whether the defendant has demonstrated by a preponderance of the evidence that counsel was

1 ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in
2 considering alleged ineffective assistance of counsel is “not to pass upon the merits of the
3 action not taken but to determine whether, under the particular facts and circumstances of the
4 case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.
5 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir.
6 1977)).

7 4. In considering whether trial counsel was effective, the court must determine
8 whether counsel made a “sufficient inquiry into the information . . . pertinent to his client’s
9 case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466
10 U.S. at 690–91, 104 S.Ct. at 2066). Then, the court will consider whether counsel made “a
11 reasonable strategy decision on how to proceed with his client’s case.” Id. Counsel’s strategy
12 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
13 circumstances.” Id. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800
14 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

15 5. This analysis does not indicate that the court should “second guess reasoned
16 choices between trial tactics, nor does it mean that defense counsel, to protect himself against
17 allegations of inadequacy, must make every conceivable motion no matter how remote the
18 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
19 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of
20 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of
21 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. However, counsel cannot
22 be deemed ineffective for failing to make futile objections, file futile motions, or for failing to
23 make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

24 6. The court “need not consider both prongs of the test if the defendant makes an
25 insufficient showing on either one.” Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537
26 (2004). Even if a defendant can demonstrate that his counsel’s representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel’s errors, the result of the trial would have been

1 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
2 Strickland, 466 U.S. at 687). “A reasonable probability is a probability sufficient to undermine
3 confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. “[O]verwhelming
4 evidence of guilt is relevant to the question of whether a client had ineffective counsel.” Ford
5 v. State, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) (citing Strickland, 466 U.S. at 697, 10
6 S.Ct. at 2069).

7 7. Finally, claims asserted in a petition for post-conviction relief must be supported
8 with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove
9 v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” or “naked” allegations are not
10 sufficient, nor are those belied and repelled by the record. Id.; see also NRS 34.735(6).

11 8. “[T]he trial lawyer alone is entrusted with decisions regarding legal tactics such
12 as deciding what witnesses to call . . . [Counsel], not the client, has the immediate—and
13 ultimate—responsibility of deciding if and when to object, which witnesses, if any, to call, and
14 what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (citation
15 omitted).

16 9. The management of a defendant’s case is for the attorney, not the Defendant, to
17 determine. Rhyne, 118 Nev. at 8, 38 P.3d at 167. This means that counsel, not the Defendant,
18 has the immediate and ultimate responsibility of deciding what motions to file, what defenses
19 to develop, and what witnesses to call. Id. Indeed, “[o]nce counsel is appointed, the day-to-
20 day conduct of the defense rests with the attorney.” Id. (internal quotation removed).

21 10. NRS 51.095 specifically states that “[a] statement relating to a startling event or
22 condition made while the declarant was under the stress of excitement caused by the event or
23 condition is not inadmissible under the hearsay rule.”

24 11. An actual conflict only exists when “an attorney is placed in a situation
25 conducive to divided loyalties.” Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992)
26 (internal quotation omitted). “Conflict of interest and divided loyalty situations can take many
27 forms, and whether an actual conflict exists must be evaluated on the specific facts of each
28 case.” Id. For example, in Clark, an actual conflict occurred where counsel representing a

1 client charged with first-degree murder also had a pending civil suit against that same client
2 during trial, and further, counsel obtained a default judgment against that client while he was
3 awaiting sentencing on the murder conviction. Id.

4 12. The United States Supreme Court specifically stated that a strategy wherein a
5 Defendant concedes guilt at a capital trial is not the functional equivalent of a guilty plea.
6 Florida v. Nixon, 543 U.S. 175, 188, 125 S.Ct. 551, 560-61 (2004). Moreover, counsel is not
7 automatically deemed ineffective in executing such a strategy without first obtaining the
8 client's express consent. Id. at 186-87, 125 S.Ct. at 560. "Attorneys representing capital
9 defendants face daunting challenges in developing trial strategies, not least because the
10 defendant's guilt is often clear. Prosecutors are more likely to seek the death penalty, and to
11 refuse to accept a plea to a LIFE sentence, when the evidence is overwhelming and the crime
12 heinous." Id. at 191, 125 S.Ct. at 562.

13 13. A defendant is only incompetent to stand trial if he is "not of sufficient mentality
14 to be able to understand the nature of the criminal charges against him," rendering him unable
15 to assist in his defense. Hernandez v. State, 124 Nev. 978, 992, 194 P.3d 1235, 1244 (2008)
16 overruled on other grounds by Armenta-Carpio v. State, 306 P.3d 395 (Nev. 2013) (quoting
17 Hill v. State, 114 Nev. 169, 176, 953 P.2d 1077, 1082 (1998)). Importantly, "[a] bare
18 allegation of incompetence is not sufficient to raise a reasonable doubt as to competence."
19 Martin v. State, 96 Nev. 324, 325, 608 P.2d 502, 503 (1980) (citations omitted).

20 14. However, the Nevada Supreme Court has not endorsed application of its direct
21 appeal cumulative error standard to the post-conviction Strickland context. See McConnell v.
22 State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nevertheless, a cumulative error finding
23 in the context of a Strickland claim is extraordinarily rare and requires an extensive
24 aggregation of errors. See, e.g., Harris By and Through Ramseyer v. Wood, 64 F.3d 1432,
25 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the
26 defendant fails to demonstrate any single violation of Strickland. See Turner v. Quarterman,
27 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of
28 constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v.

1 Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D.
2 Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-53 (5th Cir. 2005)).

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
5 shall be, and it is, hereby denied.

6 DATED this 14th day of October, 2014.

7
8 
DISTRICT JUDGE 

9
10 STEVEN B. WOLFSON
11 Clark County District Attorney
Nevada Bar #001565

12 BY  FOR

13 TALEEN R. PANDUKHT
14 Chief Deputy District Attorney
Nevada Bar #5734

15
16
17 **CERTIFICATE OF SERVICE**

18 I certify that on the 10th day of October, 2014, I mailed a copy of the foregoing
19 proposed Findings of Fact, Conclusions of Law, and Order to:

20 MATTHEW D. CARLING, Esq.
21 CARLING LAW OFFICE, PC
22 1100 S. TENTH STREET
LAS VEGAS, NV 89101

23 BY 

24 R. JOHNSON
25 Secretary for the District Attorney's Office
26
27
28

BS/TRP/rj/M-1


CLERK OF THE COURT

SUPP
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)
Cedarlegal@gmail.com
Court Appointed Attorney for Petitioner
GLENFORD ANTHONY BUDD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

GLENFORD ANTHONY BUDD,

Petitioner,

vs.

MIKE BYRNE, WARDEN,
ELY STATE PRISON,

Respondent.

Case No: C193182
Dept. No.: XVIII

DATE: 12/18/13
TIME: 8:15 AM

EVIDENTIARY HEARING REQUESTED

FOURTH SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by
and through his attorney of record, Matthew D. Carling, and hereby submits this Fourth
Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). Pursuant to the Court's
order on December 18, 2013, this Supplemental contains case notes submitted for *in camera*
review on or about December 12, 2013.

///

///

003000

1 This Fourth Supplemental is for reference purposes only and does not contain any new
2 arguments.

3 Respectfully submitted this 26th day of December, 2013.

4
5 CARLING LAW OFFICE, PC

6
7 */s/ Matthew D. Carling, Esq.*

8
9 MATTHEW D. CARLING, Esq.

10 Nevada Bar No.: 007302

11 1100 S. Tenth Street

12 Las Vegas, NV 89101

13 (702) 419-7330 (Office)

14 (702) 446-8065 (Fax)

15 CedarLegal@gmail.com

16 *Court Appointed Attorney for Petitioner*

17 GLENFORD ANTHONY BUDD
18
19

20 **CERTIFICATE OF SERVICE**

21
22 This is to certify that on this the 26th day of November, 2013, service of the foregoing
23 document without exhibits was caused *via* electronic mail to the following individual:

24 TALEEN R. PUNDUKHT, ESQ.

25 Chief Deputy District Attorney

26 ethancotter@me.com
27

28 CARLING LAW OFFICE, PC

29
30 */s/ Matthew D. Carling, Esq.*

31
32 MATTHEW D. CARLING, Esq.

33 Nevada Bar No.: 007302

34 *Court Appointed Attorney for Petitioner*

35 GLENFORD ANTHONY BUDD
36
37

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977

State ID: 1900089

Agency: CCPD Support

Local ID: F-2003-04254

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

Case

8/21/2008 | Konie J. Baldwin

four banker's boxes ordered for emily reeder from RMS

12/27/2007 | Carrie M. Connolly

Four banker's boxes back to closed

2/7/2007 | Carrie M. Connolly

FILE MAILED TO GLENFORD with LETTER FROM HSB

2/7/2007 | Carrie M. Connolly

FOUR BANKERS BOXES TO CLOSED

10/15/2006 | Howard S. Brooks - PD

Have added a file with all Justware Casenote entries

10/15/2006 | Howard S. Brooks - PD

E-Mail Re: Reorganization of Boxes

Sent to Carrie Connolly and Annette Collins by HSB.

Here's the status of the Budd files.

I have moved all four boxes to the Appellate storage area. There is a Justware entry in case notes summarizing generally the contents of each box.

On top of those four boxes is the photo album from the case along with one miscellaneous file. I'm not sure, but I think this info came late from social worker Emily Reeder.

One of the four boxes is not a banker box, but rather a paper box.

I would like to have a fifth banker box added to this group, and have placed in that box the photo album and the one file. When the appeal is over, we can put the appellate file in there too.

I would like to have the stuff in box 2 placed in a banker box.

And I would like to have new labels made up so we have all five boxes identified as a set of five.

Any questions, please let me know.

This guy got life without, and this collection of boxes will get a lot of use in the next ten to fifteen years.

Howard.

Case Notes

Glenford Anthony Budd - Murder

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10/15/2006 | Howard S. Brooks - PD

HSB moved four boxes to Appellate Storage

Box One contains (generally):

Mitigation work

PSI Report

Investigation and other notes

Correspondence

Pleadings

Witness statements

Preliminary hearing transcript

Box Two contains:

Trial witness statements (dup copy)

Emily Reeder Notes

Box Three contains:

Trial transcripts

Jury Questionnaires

Jury Selection Notes

Box four contains:

Trial appendix

Misc. transcripts

Chronology

10/15/2006 | Howard S. Brooks - PD

HSB is not filing a Reply Brief

9/26/2006 | Martha E. Castillo

sending photo album to appeals

8/17/2006 | Howard S. Brooks - PD

HSB finished Opening Brief.

The document will be mailed late today.

the only real issue here is the sufficiency of the evidence. The other arguments go nowhere in light of the overwhelming evidence.

8/16/2006 | Howard S. Brooks - PD

HSB still reviewing transcripts for appeal

8/9/2006 | Howard S. Brooks - PD

HSB Reviewing Transcripts & Appendix.

3/7/2006 | Howard S. Brooks - PD

Identified Transcripts for Appeal

Case Notes

Glenford Anthony Budd - Murder

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2/24/2006 | Emily J. Reeder

Call from Glenford

He asked about the transcript from Greg Lewis.

Emailed Howard.

2/23/2006 | Howard S. Brooks - PD

Notified Carrie About Appeal

2/23/2006 | Howard S. Brooks - PD

Sentencing

Glenford was sentenced on Wednesday, 2/22/06, in DC 18. Received three consecutive life without sentences.

2/23/2006 | Howard S. Brooks - PD

Visited Client; Discussed PSI

I visited Glenford on Tuesday, 2/21/06. Gave him a copy of the PSI, discussed the sentencing scheduled for the next day.

Also discussed the appellate process and the pcr process.

1/19/2006 | Howard S. Brooks - PD

Files in Boxes

This is a brief review of the three boxes the Glenford Budd file currently occupies.

District Court witness statements

Pleadings

Notes

Investigation

Mitigation Investigation

Box Two

Paglini Reports

Notes & Files belonging to Tim O'Brien

Box Three

Jury Selection Materials

Questionnaires

Transcripts of Trial & Penalty Phase

Miscellaneous

Case Notes

Glenford Anthony Budd - Murder

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Case Age: 3130 days

1/19/2006 | Howard S. Brooks - PD

Budd sentenced to Life Without by Jury

A tremendous break.

1/19/2006 | Howard S. Brooks - PD

Budd Convicted of 3 cts First Degree Murder with Use

Jury deliberated about an hour.

1/13/2006 | Kristina N. O'Reilly

Defense ntc of oral statement was givene and recived to TPO

12/22/2005 | Emily J. Reeder

Contact Visit

Tim and I went to see Glen. He seemed in good spirits and relaxed.

He asked for a copy of his transcripts from the trial.

12/16/2005 | Emily J. Reeder

Witness Vouchers

Got the witness vouchers and gave them to the family this morning. Gave Angela's and Raheem's to Karen because they weren't there.

12/13/2005 | Emily J. Reeder

Witness Updates

Faxed a letter to the US Embassy in Belize for Sharmaine who was applying for a visa today. Karen provided to money to Sharmaine so that she could apply for the visa. Heard from Sharmaine who said that she got the visa.

Went to Erika's house and picked up her letters from Glenford. There isn't much artwork, with the exceptions of a few envelopes. While there, Erika told me that Glen called her after the shooting and told her that he did "something bad." Erika says that Glenford told her that he was going to run away, but she encouraged him to turn himself in. She says that Glenford told her to turn on the news to find out what was happening.

Have spoken with Adele, Glenford's English teacher, many times. Her principal also called and expressed concern because Adele is supposed to do a teacher in-service. Tim and I called the principal and he said it was ok to bring her out.

Talked to Adele again and faxed her the sub. She was concerned about her mother who is 87 and very ill in hospice care. Tried to encourage Adele to get on the plane and then see what happens and if she needs to go back earlier.

Refaxed the sub to Eddie Bird's PO. Tim called and made sure that Eddie got the ok to travel from his PO.

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977

State ID: 1900089

Agency: CCPD Support

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Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

12/9/2005 | Emily J. Reeder

Witness Travel - Updates

Spoke with Kathleen in Belize - gave her all the flight information for Tuesday. Asked Kathleen to bring pictures.

Spoke with Louise Deudeux, gave her all of the flight information. Asked her to bring pictures, but she says that most were destroyed in Hurricane Katrina.

Tried to call Sonya again but she was at work. Spoke with Eddie who said that she doesn't get home until after 5 pm.

Tried calling Karen because she wasn't in court yesterday. The number was not in service.

Called Stephanie. Asked her to look for pictures of her and Glenford. She said she would bring them to court later this morning.

12/8/2005 | Howard S. Brooks - PD

Jury Selection Complete

12 Jurors

3 blacks

2 Asians

7 whites

No Hispanics

7 women 5 men.

alternates:

1 white woman; 1 black woman.

Overall, this is an excellent jury.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

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Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

12/8/2005 | Howard S. Brooks - PD

Summary-12-8-05

HSB moved to restrict ability by State to present testimony of Winston Budd because he was not, in fact, unavailable.

Court ruled State could present the evidence.

Court considered Defense objection to 911 tape, and ruled State could bring it in.

Jury Selection continued.

Jury Selection finished.

Ed Kane gave State's Opening.

HSB gave Defense Opening.

State presented testimony of Lezon Jones. Taleen Pandukht presented direct. HSB crossed.

No major progress. He admitted it was very dark outside apartment.

He admitted that they had been drinking.

He admitted that Jason Moore and Derrick Jones had been inside.

State presented testimony of coroner.

HSB did cross.

she testified all three died of gunshot wounds.

She testified all three had marijuana in their systems.

She said none of them had alcohol in their systems.

Adjourned for the evening at about 5:15.

12/8/2005 | Howard S. Brooks - PD

Off-12-7-05

No court today. Ed Kane had a preliminary hearing, so we took the day off.

12/8/2005 | Howard S. Brooks - PD

Off December 7, 2005

We took Wednesday, December 7, 2005, off because Ed Kane had a preliminary hearing today in a murder case.

12/8/2005 | Howard S. Brooks - PD

Meeting With Family Tuesday night

Discussed immigration status; reviewed files and HSB read them certain witness statements and police reports.

They are becoming much more cooperative.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977

State ID: 1900089

Agency: CCPD Support

Local ID: F-2003-04254

Type: F - Felony

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Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

12/8/2005 | Howard S. Brooks - PD

Summary-December 6, 2005

Jury Selection continued

Started at 1:30 p.m.

Finished at about 5:30.

HSB made record regarding lack of cooperation of family. Karen was supposed to be in HSB's office this a.m., but she did not show up.

12/8/2005 | Howard S. Brooks - PD

Summary-December 5, 2005

This was the first day of jury selection in the trial of this case.

HSB took notes of the first day on a yellow legal pad.

We started at 1:30 in the afternoon, adjourned about 5:30. Started questioning jurors.

12/8/2005 | Emily J. Reeder

Witness Updates

Spoke with Erika, arranged to go and see her tomorrow at noon to pick up Glenford's artwork.

Left a message for Sonya at home.

Did a sub for Eddie Bird and faxed it to PO tinsley at 626-442-0063.

12/7/2005 | Steven Y. Yoshida - PD

CCDC Mail Procedure

I called CCDC, Karen Deering, Commissary/Mail- Inmate Services Supervisor. She told me that all inmate to inmate mail is opened. I gave her an example of gang style written letter being forwarded on to another inmate that had reference to "killing". She shut me off and told me that she would call me back.

Officer Matthew Zucker from CCDC Intelligence called me back. He said that all mail is opened. The primary reason it is opened is for contraband (drugs, etc). Don't have the personnel to read each piece of mail. Gang style writing does not attract suspicion, because there are a lot of mail like that going through CCDC. The word "killer" does not mean anything either, because it could be referring to a moniker rather than referring to an act of killing.

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

12/6/2005 | Emily J. Reeder

Witness updates

Spoke with Eddie Bird, he is willing to come out.

Spoke with Sonya Dudley, she is not willing to come out because she suffers from extreme anxiety and cannot get in an elevator.

Spoke with the consulate of Belize and then the US Embassy in Belize. It takes awhile to get a visa, and it costs \$200 Belize dollars for the application even if they don't get approved. Spoke with Sharmaine, she doesn't have the money to get the visa.

Spent a long time talking with Karen, Jennifer, and Stephanie. The issue that they don't want to testify is because they are all here illegally and Karen has a warrant for her arrest in CA.

Karen also brought Rahim in the evening and then there was a conference with the family and Howard and Tim.

12/5/2005 | Emily J. Reeder

Old Entry

On 11-23-05, Tim and I met with Karen and her nephew, Kevin Morgan here in the office.

We talked about what she would testify about, and she told some good stories, for example:

-how Glenford tried to defend Karen from Winston when he thought that he was going to hit her, then they talked about it and began to respect each other

-when Winston died, Glenford said that he would take care of Karen and how Glenford was worried about her when Winston died

-Glenford's last Xmas in Belize, his dad made him a boat that he played with in the water

-Glenford would call Karen saying that he was hungry when he was living with Rose and Kurt in LV - also how Kurt left Glenford alone with Rose when he went back to live with Marsha in CA

-how Karen still hears her sister's voice in her head telling her when she left Belize with Glenford to "take care of that boy"

12/5/2005 | Emily J. Reeder

CCDC records

Received CCDC records. See justware memo.

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977
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State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

12/5/2005 | Emily J. Reeder
Witness updates

Spoke with Tim. Karen has stood him up twice this weekend. He spoke with Glenford who told him that he wants to get a new attorney.

Amber has the travel worksheets for Kathleen, Sharmaine, and Louise.

Left a message for Sonya. The concern being that she cannot get in an elevator and cannot fly. The courtroom is on the 11th floor. Called Pam Hatty at court admin 671-4536 to ask how we would get access to the stairs.

Tired calling Erika, ex-girlfriend, 641-0045 to see about getting the art work that Glenford sent to her. There was no answer.

Tried calling Karen, her number was not in service.

11/29/2005 | Emily J. Reeder
Kathleen Glenn

Spoke with Kathleen today. She is feeling better and she confirms that she does have a visa. She is willing to come out if needed.

11/28/2005 | Emily J. Reeder
CCDC sub

Did a sub for CCDC psych, med, and classification records.

11/28/2005 | Emily J. Reeder
Witnesses

Tim and I met to talk about potential witnesses. Here is the list so far:

Karen Gill
Eddie Bird
Kathleen Glenn
Sharmaine Glenn
Jennifer Gentle
Jennifer's daughter with the small child (Stephanie)
Wilbur Budd
Louise Deudeux
Sonya Dudley

Spoke with Edward in Belize, who was at Kathleen and Sharmaine's home. They both were gone at work but Edward says that Kathleen does have a visa. He wasn't sure about Sharmaine, but he said he would check.

Spoke with Stephanie, Jennifer's daughter. She is the one with the small baby. She says that she doesn't want to testify, and she is not going to do it. Asked her if she would be willing to keep an open mind about it, and she said she would. Also asked her to have Jennifer call me, and asked her to look for pictures of Glenford. She said Jennifer doesn't want to testify either. She also said that she doesn't have any other number for Karen.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

11/2/2005 | Howard S. Brooks - PD

Meeting with client

Tim O'Brien and HSB visited client today in a contact visit on the tenth floor of the jail.

The first purpose of the visit was to tell Glenford what happened this morning at court. We were in District Court 18 this morning, but the Judge was not there, so we were heard in District Court 20 before Judge Wall. We intended to pass the motions (at Schwartz's request), but the State wanted to confirm the December 5 trial date.

(We were originally scheduled to go November 28, but Schwartz heard the judge would not be in town that week, so I called the law clerk and he told me the trial was moved by the Court to December 5.)

Ed Kane, standing in for Schwartz, and Taleen Pandukht and Tim O'Brien and HSB all went back to chambers to see the law clerk for 18, and we agreed the motions would be heard November 14.

Later, we received word that the motions were passed to the Calendar Call date of November 23.

So I explained all this to Budd.

Then we discussed the case a bit.

HSB explained that we talked to Winston Budd, Glenford's uncle. HSB explained that Winston says he does not remember precisely what Glenford told him, but he does remember that he told the police the truth and he testified truthfully at the preliminary hearing. He says he was not coerced in any way. He also said he was not deported, but left the country of his own accord.

Glenford had no response to that.

HSB explained that we are still in a bind here. This is an overwhelming evidence case. The jury will definitely return three first degree murder verdicts.

HSB asked Glenford's view of this, and he said that he did not do the crime and he just hopes for the best. HSB asked how the verdict could be anything other than first degree murder, and Glenford reiterated that he just hopes for the best.

HSB asked him whether he wants to testify, and Glenford said he does.

HSB explained the problems with that: how it will hurt his credibility.

HSB asked if he any other witnesses, and he said he did not. HE said no one would tell the truth.

We discussed the case again, and he said he was inside the living room when the shooting occurred, but he does not know who the shooter was.

He also said that he, Glenford, ran out of the room before the other person who ran out.

WE discussed allocution statements. He said he does not know whether he would want to give one.

We discussed aggravators and mitigators.

We discussed clothing, and he said his mother will take care of that.

At some point, HSB smiled, and he perceived that to be laughing at him, so he kicked us out of the room.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

11/2/2005 | Emily J. Reeder
Contact Visit

Went to see Glenford at CCDC on 11-01-05 with Pam, social work student.

Asked him how it went with Howard and Tim, he said that it went fine. Asked about what he thought about his family and how his trial would impact them. He asked how was thinking about his family going to help him and said that his family knows him well enough that they should already know what he is thinking. He says that he will talk to them when he is ready, and he thinks that it might be after his trial.

Gave him an update about friends and family we had talked to. He seems to open up a lot more when talking about friends and family and how they are doing.

10/31/2005 | Howard S. Brooks - PD
Winston Budd Conversation

The day after we last met with Glenford's Mother, Emily Reeder and I called Winston Budd in Belize. Emily has the phone number. We called him late in the day because he had to finish work.

I asked him about his statements to the police. Was he coerced? No, he said.

Did he tell them the truth? Yes, he said.

Does he remember precisely what he told the police? NO.

Does he now remember precisely what Glenford told him? No.

Did he testify to the truth at the preliminary hearing? Yes.

My impression is that the uncle will not help us at all at the preliminary hearing. He stands by what he told the police and by what he testified to at the preliminary hearing.

10/19/2005 | Howard S. Brooks - PD
HSB, O'Brien Meet With Budd

On Tuesday, 10/18/05, HSB and O'Brien went to the jail and had a contact visit with Budd.

Glenford looks the same. He remains generally pleasant, though generally inarticulate.

We discussed the case and went over the facts.

HSB thought he was more forthcoming than he has been in the past.

He described the events of

Case Notes

Glenford Anthony Budd - Murder

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10/19/2005 | Howard S. Brooks - PD

Notes Re: meeting With Mom and 2 others

Howard, Tim O'Brien, and Emily met in Nancy Van Houten's office with Karen, Stephanie, and Jennifer.

HSB took the hard-line position of again pointing out to these people that the evidence in this case is overwhelming. Tim O'Brien was more conciliatory with them.

For HSB, this conversation is almost precisely the same as the last contact I had with these people. They want to believe Glenford that he's not guilty, and they want to know how we're going to prove that. HSB tried to explain that there is no evidence that would suggest Glenford did not do it.

See other memos for a rehash of that argument.

We explained that Glenford remains disconnected from the case and refuses to deal with reality. We asked them to help persuade Glenford to start dealing with things.

HSB promised to send Karen the discovery.

She's at

1322 1/4 West Jefferson
Los Angeles, CA 90007

10/17/2005 | Emily J. Reeder

Howard, Tim and I met with the family again to talk about the case.

10/13/2005 | Emily J. Reeder

Had set appts this week with Kendra and Jennifer; both were no shows.

10/13/2005 | Emily J. Reeder

Yesterday, Glenford's grandpa Wilbur dropped off some pictures to be scanned, and then he waited while we scanned them in.

10/12/2005 | Emily J. Reeder

Discussed mitigation concerns with Tim.

10/10/2005 | Emily J. Reeder

Tried calling the family in Belize; no answer.

10/10/2005 | Emily J. Reeder

Andi and I met with the family on 10-7-05; please see memo.

10/10/2005 | Emily J. Reeder

Left a follow up msg with Laverne to try and get Wilbur Sr.'s pictures.

10/10/2005 | Emily J. Reeder

Went to see Wilbur Budd Sr. on 10-5-05; please see justware memo.

Case Notes

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10/5/2005 | Steven Y. Yoshida - PD

Winston Budd Criminal History

Emily has asked me on several different occasions if we could get criminal history especially from California and I have told her that it is impossible, because NCIC is restricted. California DOJ requires that the information be restricted to consent of the person your checking.

I have read your memos regarding Ronald Calvin's history. Just to make sure, on 10/4/05, I ran Winston Budd through Lexis-Nexis and Auccurint for criminal history and it came up negative. Negative meaning those two databases had no record. Also meaning that neither of those databases collect information on criminal history from California, because California is not automated.

10/3/2005 | Emily J. Reeder

Went to see Glenford on 9-29-05. Please see memo.

9/13/2005 | Howard S. Brooks - PD

HSB Met with Client

See dictated memo regarding this visit. Told him I think we're in court tomorrow on motions.

9/12/2005 | Emily J. Reeder

Went to see Glenford with Adrienne at CCDC.

Talked to him about some more mitigation witnesses and some generic background questions.

Went in the morning, and he had just woken up but he seemed really disengaged from the whole process - he said afternoon visits are better.

Most answers to questions were in one or two syllable words with no elaboration.

8/4/2005 | Emily J. Reeder

Went to see Glenford on 7-28-05 with Sharon.

We talked about how he felt about his case. He said that he doesn't like thinking about it. We talked about how important it was to start thinking about it so that he can better help us. When asked what was going to help save him at trial, he said God. Asked him for something more tangible, but couldn't get it. He says he understands what we are trying to say about his case.

We also talked about the letter. He says that another inmate who was friends with his roommate used to work on music together. Apparently Glenford says that this other roommate wrote to him first and Glenford says that this other inmate wrote the letter. He says that the handwriting is not the same and the letter is signed in a way that Glenford never usually signs his name. He thinks that this other inmate might have gotten info about his case from the news.

We talked about basketball for quite awhile and how there is a big inmate in his module that pushes others around and cheats so Glenford doesn't play basketball anymore. We talked about the LA Lakers and Shaq and Kobe Bryant (Glenford loves basketball).

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7/26/2005 | Howard S. Brooks - PD
HSB, Luem Contact Visit with client

HSB and Andy Luem visited Glenford in the jail today. Our purpose was to check in with him.

He looks the same. Attitude the same.

We talked about what he intends to do at the trial. He said he would testify if necessary.

HSB asked what he would testify to. He said he and the three dead men had been friends for about a month. He said he made his living selling marijuana. He had left some marijuana upstairs at their apartment. It was about two pounds of pot worth about \$1400.

A man named Shawna (LNU) who lived downstairs told him that the guys upstairs stole his marijuana. The two pounds he left there.

On the day in question, Glenford says he was at the apartment with the other men. He was sitting in the den. He heard a gunshot from the bedroom. Then, as he was running down the stairs to escape, he heard two more shots. He says he did not shoot anyone and he does not know who shot anyone. He says he was picked up by the girl (Tracey?) and one other person he calls Young Freeman. He cannot explain why Tracey lied about being alone when she picked Glenford up. Young was later killed, Glenford says, in an incident that occurred December 22 or 23, 2004 near Tropicana and Paradise. He thinks Lezon did this.

I asked Glenford whether he thought people would believe the other witnesses or would they believe him. He suspects they will believe the other witnesses.

I asked him if he was interested in the State's offer of Life without, and he said no.

4/25/2005 | Emily J. Reeder

Went to see Glenford at CCDC on 4-21-05 with Nikki.

He says that he has been doing well. He feels ok about his trial getting continued.

We talked about his time in Belize. A typical day would be waking up, eating breakfast, going to school, coming home from lunch, and then going back to school. In the afternoons, he was supposed to do homework, but he said he just pretended. Then he would play outside, eat dinner, and go to bed.

He was disciplined by his grandmother by not being able to go outside or being spanked with a belt.

His grandmother is Kathleen Glenn, and her address is 3064 Central American Blvd, Belize City, Belize. I emailed Steve about finding her, but our resources are limited to the US only.

We talked about his mitigation worksheet (he has never filled one out). He said he would prefer to talk because he doesn't like writing about his life.

We also talked about how he doesn't like to talk about what happened, and he doesn't like to think about it either.

Overall, a good visit.

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4/20/2005 | Howard S. Brooks - PD

Trial Date Vacated & Reset

HSB appeared in Court with client, and case was vacated and reset as follows:

Trial 11/28/05

CC 11/23/05

Motions 8/1/05

4/19/2005 | Howard S. Brooks - PD

Conv. with Schwartz

Schwartz says October is good time for this trial. HSB agreed.

4/19/2005 | Howard S. Brooks - PD

HSB visited client at jail/contact visit

HSB visited client, explained what will happen tomorrow in court. Explained that trial will likely be continued until October; motions continued about two months.

We also reviewed each of the 14 motions filed so far. HSB gave Glenford a copy of each. HE said he understood them all.

He didn't seem interested in talking about much else.

4/5/2005 | Howard S. Brooks - PD

Motions Set for 4-11-05

4/5/2005 | Howard S. Brooks - PD

HSB visited client in contact visit at jail.

Glenford is the same. No real concern about the case. No feeling that he should "do" anything.

He does say he would like to go over the motions which have been filed in the case.

HSB explained that he thought they would be on calendar this a.m., but they were not.

HSB explained that trial will likely be reset to August or October. Client had no problem with that.

12/16/2004 | Emily J. Reeder

Spoke with Glenford.

He said he has been "relaxed," and he feels very confident in his legal case. He says he "can't" worry about it, but he wasn't able to elaborate on why.

He says he spends his time reading romance books and playing chess. He says that they have been on lockdown in the jail for the past week, but he has been playing basketball when he gets the chance.

He also says he has been writing letters to his friends on the outside; let him know to be careful because the jail monitors everything.

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11/18/2004 | Emily J. Reeder

Went to see Glenford on 11-9-04 with Nikki (social work student).

We spoke about him growing up playing basketball with some of his best friends. He played basketball with Eddie Bird, Vernon Glass, Tyrese (? a friend of Vernon's), and Victor (who is "Mexican but black inside"). He says he started playing from the tenth grade until he was 18 years old.

He also recounted stories of the police bothering him and his friends. For example, he states that he was in the car with four other people when the police turned on their lights to pull them over. Glenford says he was in the car, and the driver kept going. After they finally stopped, Glenford says that the cops had an attitude. Eventually Glenford ended up getting arrested for something involving the officer. After he was arrested, Glenford says that his friend kicked the cop car because he didn't want Glenford to have to go to jail alone.

Glenford also told us stories about how he had his girlfriend paying for his traffic tickets, and he had more than one girlfriend at once. One of his girlfriends' names is Sulma.

He also told us about an old neighbor named "Woody" who chided the cops in Glenford's neighborhood after they stopped him for no reason. Glenford says he was a cool older guy.

11/10/2004 | Howard S. Brooks - PD

Court Vacated & Reset TD to 5/2/05

CC 4/27/05

Motions 1/12/05 10:30

11/10/2004 | Howard S. Brooks - PD

Sent Letter to Paglini informing him of changes

10/20/2004 | Howard S. Brooks - PD

HSB, Tim O'Brien have lunch with Paglini

Pag says there's a fair amount of mitigation, but believes it would be helpful to get some of the people in Belize to testify at the penalty proceeding.

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Prohibit Reference to File Phase as Guilt Phase

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Strike Aggravating Circumstances

10/18/2004 | Howard S. Brooks - PD

HSB files motion to Preclude Evidence About Character of Victims

10/18/2004 | Howard S. Brooks - PD

HSB files Motion to Prohibit Cumulative Victim Impact Evidence

10/18/2004 | Howard S. Brooks - PD

HSB files Motion to Dismiss Notice of Intent Because Scheme is Uncon

10/18/2004 | Howard S. Brooks - PD

State files Amended Notice of Intent to Seek Death

Drops alleged aggravator of Avoid Lawful Arrest.

The only aggravator is that he killed more than one person.

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion in Limine to Prohibit Prosecutorial Misconduct

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion Exchange of Jury Instructions

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10/18/2004 | Howard S. Brooks - PD

HSB filed Motion for Recordation of All Proceedings

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Disqualify Jurors Who KNew Victims

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Disqualify Jurors Auto. in Favor of Death Penalty

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion in Limine to Prohibit Use of Peremptories to Remove Minorities

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Bifurcate Penalty Phase

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion to Allow Defense to Argue Last

10/18/2004 | Howard S. Brooks - PD

HSB filed Motion for Completion of Jury Questionnaire One Week Before Trial

10/6/2004 | Howard S. Brooks - PD

Dave Schwartz called HSB about snitch

Said he had a statement about jailhouse snitch and there's a letter our client wrote which includes a RAP song describing killing. Said he's sending it to HSB.

10/6/2004 | Howard S. Brooks - PD

HSB received Greg Lewis Statement plus Budd letter

9/28/2004 | Laurie A. Tucker - PD

NTC of Witnesses and NTC of Expert Witnesses were rec'd and placed in HSB mailbox

9/1/2004 | Howard S. Brooks - PD

HSB visited client at CCDC.

HSB visited client to see how things are going, and whether he has met with Dr. Paglini. He said Dr. Paglini has visited him, but he has not gone to Dr. Paglini's office yet.

Client is in very good spirits. Has been playing basketball.

He had a big bruise on his forehead, and he assured me that it was from playing basketball, not from any fighting in the jail.

7/21/2004 | Steven Y. Yoshida - PD

Winston Budd Whereabouts

On 7/21/04, I called Jennifer Gentle, but she was not home. Her daughter was and told me that she didn't know when Jennifer was going to be home. The daughter did not know the phone number for Winston.

On 7/21/04, I called Karen Gill or Karen Budd, Glenford's mother and she told me that she did not know Winston's phone number either. She said that she would get hold of Jennifer and together they would try to get Winston's phone number.

7/19/2004 | Howard S. Brooks - PD

HSB and Paglini met with client

7/19/2004 | Howard S. Brooks - PD

HSB drafted letter to Dr. Paglini requesting neuro-psych examination

SEnt documents; see letter.

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7/19/2004 | Howard S. Brooks - PD

HSB drafted letter to Tena Francis for investigation of our client's family

Sought authorization for \$5000

7/18/2004 | Howard S. Brooks - PD

HSB prepared INvestigation Memo for Steve Yoshida

Four Tasks

Interview the four main witnesses. See Investigation Memo.

Date for completion: August 30, 2004.

7/18/2004 | Howard S. Brooks - PD

HSB sent package of discovery documents to Roy YOUNG, Consul General Belize

Not all documents, just the main ones. See letter.

7/12/2004 | Emily J. Reeder

Spoke with Karen.

We arranged to meet here on Thursday at 2 pm. Let her know that the contact visit was not authorized.

7/12/2004 | Emily J. Reeder

Spoke with Karen.

She states that she would prefer to meet on Wed. instead of tomorrow because she is getting married. Told her I would check with Howard and let her know.

Checked with HSB about the contact visit - it will not be until at least September.

Called Karen back and left her a message with that information. Asked her if she could still make it out here to have a meeting with HSB and myself.

7/6/2004 | Howard S. Brooks - PD

HSB visit with Budd at CCDC

HSB visited client in contact visit.

Discussed having psych talk to him.

Discussed consequences of not admitting crime to psych when there's overwhelming evidence.

Discussed the "quadrangle" of convicting evidence, all of which Glenford denies.

See dictated HSB memo regarding meeting.

6/28/2004 | Emily J. Reeder

Conference call with Karen and Glenford

I also called Karen, and then we both spoke with Glenford. We talked about Karen coming out July 13 to have a visit with Glenford.

6/28/2004 | Emily J. Reeder

Spoke with Glenford.

He doesn't want me to visit him because he's not in the mood. He said it's ok if I call him to check on him periodically to see how he's doing.

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6/18/2004 | Emily J. Reeder

Met with Karen Gill, Glenford's mother, on 6-14-04.

She was teary and upset because Glenford tells her that he is going to be coming home and CCDC is just like daycare. She said that she doesn't know what to think, and she doesn't know if Glenford understands what is going on.

She can be reached at 323-734-6261 or 818-915-0128.

6/18/2004 | Emily J. Reeder

Spoke with Glenford on the phone.

Let him know that I wanted to come and see him to talk about the last visit we had with him. He said he has too much on his mind right now for a visit. I asked if I might be able to give him a call next week, and he said that was fine.

6/16/2004 | Howard S. Brooks - PD

Contact Meeting With Budd

HSB and Emily Reeder visited client in a contact visit today to discuss the meeting with Mother and other things.

HSB told client that Mother said Glenford told her we were not doing anything to help him. We also told him she said he talks about coming home soon.

HSB wanted to know what he wants us to do that we're not doing. He had no response.

HSB explained that this is not a case where Glenford is going home anytime soon. With three killings, this is going to be a case where he spends virtually the rest of his life in prison or receives the death penalty.

Glenford had no reaction to all of this. He just sat there, arms folded, not engaged at all.

He then asked to go back to his cell; he said he does not want to talk about any of this.

So we left.

6/14/2004 | Howard S. Brooks - PD

Meeting With Mother

See HSB memo.

5/25/2004 | Howard S. Brooks - PD

Budd Trial Continued to November

We appeared before Judge Pav, substituting for Judge Saltta.

The reason we changed the date is that Schwartz has a vacation scheduled for late January, and I have now scheduled a vacation for the same time.

New trial date: November 15 with calendar call of November 10, 2004.

5/24/2004 | Anita Harrold

file to hsb

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5/23/2004 | Howard S. Brooks - PD

HSB meets with client to discuss continuance

Discussed state of evidence.

Discussed very candidly the state of the evidence and the high likelihood of being convicted of three first degree murders.

Discussed fact that this case is about death versus life without (one way or another).

Client doesn't want to deal with any of this. "I don't know" is his answer to everything.

Discussed continuance, and he had no problems with it.

5/19/2004 | Howard S. Brooks - PD

HSB meets with Jennifer Gentle & Stephanie Card

Aunt and cousin.

Very helpful visit.

See memorandum dictated by HSB.

5/19/2004 | Howard S. Brooks - PD

HSB visits client again in contact visit

We discussed the main problem he has:

1. Eyewitness at scene says he-Budd-shot people.
2. Eyewitness across complex says she sees Budd shoot someone.
3. Girlfriend (Tracy) says Budd came to her house, slept, woke up, said he had a dream where he killed three people over some weed.
4. Uncle (Winston) says Budd came to his house and said he shot three people because they were going to rob him of some weed.

Now, who should the jury believe? The four people, who do not know each other, or Budd, who is saying all of them are lying.

Glenford admitted that most people would believe the four people.

I asked him what we should do about that. He said he did not know.

I asked him to think about that.

5/18/2004 | Howard S. Brooks - PD

HSB visited client in contact visit.

Picked up the mitigation worksheet left by Emily some time ago.

Discussed his version of the facts on the evening of the killing.

See HSB memo dictated tonight for his account of the evening.

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5/18/2004 | Howard S. Brooks - PD

Mitigation Worksheet Picked UP by HSB at Jail

4/12/2004 | Emily J. Reeder

Went to visit Glenford at CCDC. Took him a mitigation worksheet to fill out.

4/1/2004 | Emily J. Reeder

Received a message from Jennifer, Glenford's aunt 431-5114. Called her back and left a message.

3/4/2004 | Emily J. Reeder

Went to visit Glenford with Megan (social work student).

He states that he is doing well.

He states that he only knew his grandfather for about 5 months before he was arrested.

He reports that his biological father was with him from his birth until he was about 11 years old.

He states that his stepdad and Uncle Kurt were arrested for trafficking in 2001. He reports that he figured out that something was going on when anything he asked for would show up in the house - even expensive items. He states that he didn't get involved or talk about it with his stepfather or uncle.

2/20/2004 | Emily J. Reeder

Received a message from Roy Young at the Consulate of Belize.

Re: confirming our appointment for Monday

2/20/2004 | Emily J. Reeder

Left a message for Roy from the Consulate of Belize.

Re: that we were still on for Monday

2/11/2004 | Anita Harrold

file to hsb

2/5/2004 | Emily J. Reeder

Received a letter from Roy Young at the Belize Consulate.

It states that he is working on getting the school and medical records for Glenford in Belize, and they are trying to find his family in Belize as well.

2/5/2004 | Emily J. Reeder

Received messages from Karen on 1-26-04 and 1-29-04.

2/4/2004 | Emily J. Reeder

Received a message from Roy Young, from the Belize Consulate on 1-23-04.

2/4/2004 | Emily J. Reeder

Spoke with Roy Young, Consulate from Belize.

He states that he has requested some of Glenford's medical and school records from Belize. He reports that he will be here on Monday, February 23. We agreed to meet at 1 pm. He states that he will try and bring some of Glenford's records with him at that time.

2/4/2004 | Emily J. Reeder

Received messages from Jennifer on 1-27-04 and 1-29-04.

2/4/2004 | Emily J. Reeder

Left a message for Jennifer, Glenford's aunt at 431-3489.

2/4/2004 | Emily J. Reeder

Left a message for Winston at 314-8867.

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2/4/2004 | Emily J. Reeder

Called the NLV Jail.

Kurt Budd, Glenford's uncle, is currently in custody over there.

Arranged a contact visit with Kurt on 2-5-04 at 2 pm.

1/28/2004 | Anita Harrold

file to hbs

1/27/2004 | Howard S. Brooks - PD

Motion to Continue Filed. Set for 2/11/04.

1/26/2004 | Howard S. Brooks - PD

HSB dictated a motion to vacate and continue trial date

1/26/2004 | Howard S. Brooks - PD

HSB notified Team Chief of intent to continue trial date

1/23/2004 | Emily J. Reeder

Received a call from Karen.

We agreed to meet here next Tuesday at 11 am.

Asked her to bring any pictures or home videos, etc. of Glenford.

1/22/2004 | Emily J. Reeder

Received a message from Roy Young, Consul General of the Belize Consulate on 1-20-04.

He states that he might like to come and see Glenford to talk with him.

1/22/2004 | Emily J. Reeder

Left a message for Roy Young 323-469-7343.

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1/22/2004 | Emily J. Reeder

Went to see Glenford at CCDC with a social work student on 1-21-04.

Glenford states that when he was growing up in Belize, sometimes the family lived paycheck to paycheck. However, he reports that he always had meals, and his mom would help support the family financially. He recalls that Angela, Charmaine, and himself lived with their grandma in Belize.

He recalls that he attended the Salvation Army church in Belize when he was young, and he states the family went on holidays like Christmas and Easter.

Once he turned eleven, Glenford states that he went to live in Los Angeles with his mother, and he remembers that his sisters stayed with their grandma. He reports that he didn't see Angela until he was 19, and he hasn't seen Charmaine since he left Belize when he was 11 years old.

When Glenford was living in LA, he recalls that he was living in a small community called Montebello. He describes the community as composed predominantly of people from Mexico. He states that it was mostly middle class, and he remembers that there were only 5 black families in Montebello.

Glenford admits that there was racial tension in Montebello, and he reports that he tried to stay away from those situation. He reports that comments would be made, especially when he and his friends would play basketball. Around this time when he was 15, Glenford states that he got a tattoo on his back that says "only God can judge me." He states that this tattoo had a lot of meaning for him.

Glenford also recalls an incident when he was in an accident in LA. He recalls that he stopped to help some friends who had car trouble, and he was hit by a motorcycle. He remembers that he blacked out because he was dragged about 20 feet by the motorcycle. He recalls that after the incident, he couldn't remember his name, the year, or his location. He states that he was taken to the hospital for about 6 hours. He remembers that he had a cat scan, and it showed that he was fine.

1/20/2004 | Howard S. Brooks - PD

HSB has contact visit with client

Provides discovery to client.

Also discusses continuance. Client has no problem with continuing the trial.

1/20/2004 | Emily J. Reeder

Left a message for Jennifer.

1/20/2004 | Howard S. Brooks - PD

HSB organized file

1/20/2004 | Howard S. Brooks - PD

HSB copied discovery for client

HSB went through and blacked out confidential info and then re-copied those pages.

1/15/2004 | Emily J. Reeder

Spoke with Carolyn at the Belize Consulate.

She asked what kinds of records we would need - I let her know his school records and his medical records would be appreciated. She reports that the General Consulate may call for more information, and she suggested that he might want to come and visit Glenford here.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

1/15/2004 | Emily J. Reeder

Met with Jennifer and Mark (Glenford's aunt).

She reports that it is stressful for her because Glenford always asks her when she will come to get him. She affirms that she is very close with Glenford. Jennifer reports that Glenford told her that he is innocent, and so she states that she believes him.

Jennifer had some concerns also that Glenford was being housed with a family member of the victim. (Note: I called Glenford, and he states that it was a friend of the victim, but he is no longer there and it wasn't a problem)

We talked about Glenford's mitigation, and she gave me some phone numbers of family members.

Rhoda Glenford's aunt 323-750-7343

Queenie Glenford's cousin 323-750-7343

Winston Glenford's uncle 314-8867

Sharon Glenford's cousin 431-3489/323-304-6181

Asked Jennifer to start gathering phone numbers of family here in the US and in Belize. Also asked her to look for pictures, home movies, etc. of Glenford.

Asked her how I could reach Karen. Jennifer states that she is going to try and bring Karen with her to Las Vegas. Let her know I would love to meet with them anytime they are available.

1/15/2004 | Emily J. Reeder

Spoke with Glenford.

Let him know that I met with Jennifer and what the status was on his mitigation.

Asked him if there was a victim's family member on his same module. He said that the person was gone now, and it wasn't a problem when he was there.

He reports that everything is "smooth," and he's just waiting.

1/15/2004 | Emily J. Reeder

Left a message for Carolyn at the Belize Consulate.

1/13/2004 | Emily J. Reeder

Spoke with Jennifer, Glenford's aunt at 431-5114.

We agreed to meet on Thursday at 10 am.

1/5/2004 | Howard S. Brooks - PD

HSB sent Team Chief E mail re: Second attorney

We need a second attorney because this is a death penalty case.

Case is currently set to go to trial on February 23, 2004. HSB does not anticipate being ready.

Case Notes

Glenford Anthony Budd - Murder

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1/5/2004 | Howard S. Brooks - PD

HSB received letter from client.

Note: HSB has not been able to pay attention to this case, so before reading the letter, HSB assumed the client was unhappy with our representation.

The document he sends is a motion for discovery.

12/23/2003 | Emily J. Reeder

Tried calling Karen at 818-508-2495.

That phone number has been disconnected.

12/23/2003 | Emily J. Reeder

Tried calling Uncle Kurt at 759-0172.

It was a wrong number.

12/23/2003 | Emily J. Reeder

Tried calling Karen at 431-5114.

Left her a message to call me back.

12/15/2003 | Emily J. Reeder

Received records from Cedars-Sinai Medical Center.

12/15/2003 | Emily J. Reeder

Received a message from Karen; called her back and left a message.

12/9/2003 | Emily J. Reeder

Received a message from Karen Gill.

Tried calling her back twice.

12/1/2003 | Emily J. Reeder

Received a fax from Cedars-Sinai.

It states that they will not honor an out of state subpoena.

Spoke with medical records at Cedars-Sinai, and asked if they would honor the request with a release.

12/1/2003 | Emily J. Reeder

Faxed a letter and release to Cedars-Sinai requesting Glenford's records.

11/25/2003 | Emily J. Reeder

Left a message with Carolyn McKenzie from the Belize Consulate 323-469-7343 x6.

11/18/2003 | Emily J. Reeder

Spoke with Glenford.

Asked him for his Uncle Kurt's number. It is 759-0172.

11/18/2003 | Emily J. Reeder

Left a message with Ms. Clark at Dorsey High School.

11/18/2003 | Emily J. Reeder

Faxed a sub to Cedars-Sinai in Los Angeles, CA.

11/18/2003 | Emily J. Reeder

Spoke with Ramon at 759-0172.

He said Kurt was not at that number.

11/18/2003 | Emily J. Reeder

Tried calling Glenford's Aunt Jennifer; there was no answer.

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Glenford Anthony Budd - Murder

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11/14/2003 | Emily J. Reeder

Spoke with Carolyn at the Belize Consulate in LA, CA.

She let me know that they would be able to help get records from Belize. She advised faxing her something in writing.

11/14/2003 | Emily J. Reeder

Spoke with Glenford.

He let me know his aunt's phone number. Her name is Jennifer, and her number is 323-735-3928.

Glenford reports that he went to Queen Square Middle School in Belize City. He states that he can't remember what the names of the elementary schools he went to. He also mentioned that he went to the hospital in Belize City, as well as Cedar-Sinai in LA.

11/14/2003 | Emily J. Reeder

Faxed a letter to the Belize Consulate to request information on Glenford from Belize.

11/6/2003 | Emily J. Reeder

Tried calling Karen Gill on 11/5/03; the number is no longer in service.

11/6/2003 | Emily J. Reeder

Spoke with Glenford on 11/5/03.

He reports that he is doing well, and he is going to Bible studies. He states that he doesn't know his mom's new phone number, but he is going to try and find his aunt's number. He thinks his uncle, Kurt Budd, is in custody and might be deported to Belize (I haven't been able to locate him yet). He also mentioned that he has heard from his sister.

Glenford recalls that he never went to see any doctor here in Las Vegas, and the only medical facility he has ever been to is Cedar-Sinai in California.

10/29/2003 | Emily J. Reeder

Left a message for Karen.

10/16/2003 | Emily J. Reeder

Spoke with Karen.

She reports that she is not doing too well, and she is really concerned about Glenford. She states that is so hard for her because Glenford tells her that he is going to come home, and she doesn't think he knows the state is seeking the death penalty for him. She was very tearful, and she acknowledges that she knows Glenford is innocent. She is going to fly down to Las Vegas, and we tentatively agreed to meet next Tuesday.

10/14/2003 | Emily J. Reeder

Left a message for Karen Gill, Glenford's mother.

9/29/2003 | Emily J. Reeder

Spoke with Adele Levy, Glenford's former teacher.

She reports that she was Glenford's language arts teacher at a continuation school. She recalls that Glenford was not a star student, but he was a "sweet child." She remembers that she and Glenford would banter back and forth, and they would tease each other. Adele recalls that he had problems, although she is not sure what specific problems they were. She reports that she will check his school records, and then call back in 2 weeks when she returns from vacation. She states that she is very sad about the situation.

9/25/2003 | Janet Brown-Tamargo - PD

Add'l disco rec'd and put in HSB mailbox

9/19/2003 | Emily J. Reeder

Left a message for Adele Levy, a former teacher of Glenford's.

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9/18/2003 | Emily J. Reeder

Faxed a sub to Dorsey High School.

9/17/2003 | Sonia Maturana - PD

Left message for Peter Wong.

I left a message for Peter Wong who is the controller in the Montebello Unified School District.

9/17/2003 | Sonia Maturana - PD

Spoke with Mrs. Clark.

Mrs. Clark is a counselor at Dorsey Senior High School. She explained she could not return my call, but for me to call back in one hour.

9/17/2003 | Sonia Maturana - PD

Spoke with Mr. Wong.

Mr. Wong said he will honor the subpoena's, and the release via fax signed by Glenford.

9/17/2003 | Sonia Maturana - PD

Left message for Dorsey.

I spoke with Mrs. Clark, she said I had to speak with the office manager.

9/17/2003 | Sonia Maturana - PD

Called Los Angeles Unified School District.

Los Angeles said I had to contact the School.

9/17/2003 | Sonia Maturana - PD

Left message for Principal at Dorsey.

I was told by L.A. Unified School District to contact the Principal there. I left a message for Dr. Mahmud.

9/17/2003 | Sonia Maturana - PD

Faxed subpoena to Mr. Wong.

I faxed Mr. Wong the subpoena's for La Merced Intermediate School, Vail High School, and Montebello High School.

Mr. Wong called confirming receiving the faxes, and reported he was going to forward them to Virginia Gutierrez in the People and Community Services Dept. Her contact number is (323) 887-2272.

I am still having a difficult time contacting someone on Dorsey Senior High School.

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9/16/2003 | Emily J. Reeder

Met with Glenford and Sonia (social work student) on 9/11/03.

Glenford reports that his mom's name is Karen Gill, and her number is 818-508-2495.

Worked on a family tree with Glenford.

He states that the things he remembers about Belize City are going shopping in the market and staying close to his grandmother's house. He recalls that his grandmother had a pretty large piece of land, and he spent most of the time there playing.

Glenford explains that 2 years ago, he had a very traumatic death in the family. He recalls that his stepfather, who was Jamaican, was killed in a car accident by a drunk driver. Glenford states that he was at a party with relatives in California, and he left with some friends. He explains that as he was driving with his friends, he drove by the scene of the accident, but he clarifies that he did not see any cars because they had already been cleared from the scene. Throughout this time, Glenford remembers paging his stepfather numerous times because he was so late to the family gathering. Glenford explains that he kept putting the numbers 143 in the pager because that meant "I love you." Glenford recalls that when he arrived at a friends' home, they told him that his stepfather had been killed. He explains that it was at this point that he realized that he had seen the accident scene without knowing that it was his stepfather.

After Glenford received the news, he recalls that he was devastated. He remembers that his little brother had to pick out the casket because the family was so distraught. After the death of his stepfather, Glenford reports that he became dedicated to helping out his younger siblings. He recalls that he would go to their school and help them to make sure that they were doing ok. Glenford reports that it was at this point that he dropped out of school so that he could help his younger siblings. He remembers that it was a stressful time for him, especially because everyone loved his stepfather so much.

Throughout the conversation, Glenford appeared very sad. His eyes welled, but there were no tears. He often looked at the ground when talking about his stepfather's death, and it appeared at times that he was disassociating when he was talking about those memories.

9/11/2003 | Emily J. Reeder

Met with Glenford and HSB on 8/29/03.

Glenford reports that he was born in Belize, City, Belize on Dec. 23, 1982. He reports that he lived with his grandmother, Kathleen Glenn, in Belize City until he was 10. Glenford discloses that his mother left Belize when he was about 3. He recalls that he moved to Los Angeles, CA to be with his mother when he was 10. He reports that his grandmother is still currently in Belize.

Glenford explains that he went to different school in Los Angeles. He states that he went to Larnerset Intermediate in Montebello, CA; Montebello High in Montebello, CA; Vail High in Montebello, CA; and Dorsey High in Los Angeles, CA. He reports that math and English were his favorite subjects. Glenford relates that he had a very good relationship with his English teacher at Vail High, Adele Levy. Glenford recalls that she helped him with schoolwork after school. He relates that he was quiet and popular in school; he reports that he had a good relationship with his teachers. He denies any history of special education. Glenford admits that he did not graduate, and he dropped out of school 3-4 months before graduation because he had fallen behind in his classes.

Glenford denies that he is involved with a gang. He admits that he has been hustling drugs off and on since he graduated from school. He reveals that his Uncle Kurt was arrested when he was young.

Glenford denies any family history of suicide, mental illness, and medical problems.

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9/11/2003 | Emily J. Reeder

Did subs for Glenford.

They were for Dorsey Sr. High, Vail High School, Montebello High School, and La Merced Intermediate School.

8/29/2003 | Howard S. Brooks - PD

Conference With Emily Reeder Re: Doing Background of client

She's very enthusiastic.

8/29/2003 | Howard S. Brooks - PD

Meeting With Client at Jail

Emily Reeder and HSB went over to see client today. Spent about thirty minutes with him. He was very cooperative and pleasant. Explained what Emily will be doing, got some preliminary information.

HSB explained fact that HSB will be on vacation for next three weeks.

8/6/2003 | Laurie A. Tucker - PD

PH-trans. Volume II from 6/25/03 came in and was placed in HSB mailbox

7/1/2003 | Howard S. Brooks - PD

Contact visit with client

HSB met with client in a contact visit at the jail.

Discussed what happened at the prelim. Client insists the eyewitness of the shooting, who testified last week, was either lying or mistaken.

So far, Budd says: the eyewitness is lying; his uncle is lying (about saying he told the uncle he shot three people because they ripped him off); and his friend (the girl he stayed with after the shooting) is lying when she said he told her he had a dream in which he killed three people.

We also discussed the court date on Wednesday, when he will be pleading not guilty.

And we discussed what happens in a death penalty case (investigation, motions, length of time). I predicted the court date would be next year, early next year, if he waives his right to a speedy trial.

I also told him that if he invoked his right to a speedy trial, I will be out of the country in September.

We discussed witnesses. AS far as guilt witnesses, he has none.

As far as character witnesses, he couldn't think of anyone, but members of his family, and two friends in southern California.

6/27/2003 | Howard S. Brooks - PD

Preliminary Hearing, Part II

On Wednesday, June 25, HSB appeared with client for continuation of the preliminary hearing.

A coroner medical examiner testified. Described the bullet trajectories and toxicology tests for the three dead persons.

Then an eyewitness testified and gave a description of watching Al kill one of the victims.

Client was held to answer; will appear in DC 18 on 7/2/03.

Case Notes

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6/18/2003 | Howard S. Brooks - PD

HSB has contact visit with client

HSB visited client in a contact visit today. We discussed the prelim, and he said:

1. Lejon Jones was lying.
2. Tracey Richards is lying.
3. His uncle, Winston Budd, is lying.
4. The detective is telling the truth (when he said Budd told him that he was there, but was not the shooter).

HSB read the client the entire statement of Celeste Palau, and he says she's lying, too.

I don't think he's figuring out his situation, yet.

6/18/2003 | Howard S. Brooks - PD

HSB dictated Memo Re: Contact Visit on 6/18/03

6/18/2003 | Howard S. Brooks - PD

HSB dictated Inventory of Discovery Received

6/16/2003 | Howard S. Brooks - PD

Contact Visit at jail.

HSB visited client in contact visit at jail. Discussed again what happens at prelim. Discussed discovery received. REviewed that discovery.

Discussed client's background.

Client is cooperative, but doesn't seem to think he faces any liability. Unfortunately, HSB thinks the evidence is sufficient for conviction of three homicides, but has not told the client that, yet.

6/16/2003 | Howard S. Brooks - PD

HSB receives Media Request

From KLAS TV for coverage of prelim on Monday, 6/16/03.

6/16/2003 | Howard S. Brooks - PD

HSB objects to two tv networks.

When HSB went over for the prelim, all three networks had cameras there, but only KLAS had done the required paperwork. Therefore, HSB went back with David Schwartz, the prosecutor, and objected to the two others. The Judge said he would exclude them, which he did. So only KLAS covered the prelim.

Schwartz asked the judge to not show the witnesses, which he also ordered.

6/16/2003 | Howard S. Brooks - PD

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6/16/2003 | Howard S. Brooks - PD

Case Notes

Preliminary Hearing, Part I

IN discussions with David Schwartz before the hearing, Schwartz wanted to bifurcate the hearing to allow the coroner to testify. Also, Schwartz just learned this morning of a new witness, Celeste Palau, who was an eyewitness to the shooting. HSB wants her to testify. So we agreed to have a bifurcated prelim, if the Judge agrees, which he readily agreed to.

So we will have the second part of the hearing on June 25, 2003 at 10:00 a.m.

The hearing this morning had four witnesses.

Witness Lezon Jones:

Lezon Jones (flown in from out of state) is a brother of victim Daton Jones, but not of victim Derrick Jones. He testified he had known "Al" for about a month. He said they hung out together. On May 26, a Monday, they had been playing basketball. Al was angry about some marijuana. There was also a disagreement during the game on some point about the basketball game.

Afterward, they all came back to Lezon Jones' apartment.

They were there for several hours. Five people: Al, Lezon, Derrick Jones, Dajon Jones, and Jason Moore.

Then Al left to go get something to drink at the 7/11. When he came back, he said he was going to the bathroom. But he went into the bedroom and closed the door. Lezon heard two shots. He was in the living room with Moore and Dajon Jones.

Lezon said the shots came from the bedroom; the other two thought they came from outside. Lezon got up, ran to the door, was at the door when he heard a third shot. He then went to the 7/11 and called the police on 911.

Lezon is a decent witness. Soft-spoken young black man. Generally credible. The only thing I doubt is that he claimed that they did not smoke marijuana or do drugs or sell drugs.

Tracy Richards

Tracy Richards is a 30ish black woman with an attitude.

She lives in Henderson, but visited the Saratoga apartments because her sister lives there. She claimed to know all these people, and she knew Al. She said Al had been around for about a year.

On May 27, Tracy was driving around, and Al yelled to her. She stopped, picked him up, he said his girlfriend had broken up with him and he wanted a place to rest. So she drove him to her house where he went to sleep. Tracy knew nothing about the shooting. The next day, on May 28, Al was up, and he said to her that he dreamed he had killed three people because they owed him some weed.

She left a little while later, and he was gone when she returned.

Winston Budd

Winston Budd, from Belize City, is the uncle of Al. He received a phone call from Al, and Al told him to contact Al's Mom, because he needed some money to leave town.

Winston went and picked Al up from a house in Henderson.

Al told Winston he had been trying to get some money, but the people were trying to rob him, so he shot them. He said he gave the gun back to a friend. Winston testified that Al had cut his hair. Winston told Al to turn himself into the police, but Al didn't want to.

Jimmy Vacarro, Detective

Testified he arrested Al and Al told him that he was present when the shooting occurred, but he didn't do the

Case Notes

shooting.

WE continued the remainder of the prelim until Wednesday, June 25, so the coroner can testify and also Celeste Palau, a new witness that has just been found. Palau claims to have seen the shooting of two of the victims from her nearby apartment.

6/12/2003 | Janet Brown-Tamargo - PD

Disco rec'd and put in HSB mailbox

6/12/2003 | Janet Brown-Tamargo - PD

Add'l Disco rec'd and put in HSB mailbox

6/10/2003 | Janet Brown-Tamargo - PD

Disco rec'd and put in HSB mailbox

6/3/2003 | Curtis S. Brown - PD

Message from mother.

I received a phone message from Glenford's mother, Karen Gill this morning. She asked that I call her at 818-515-7178. I placed the call but received no answer and the phone message indicated that no voice mail account has been set up for this number. I will try again later this afternoon. Howard is working at elections today and is unavailable.

6/2/2003 | Curtis S. Brown - PD

Met with client's mother today.

I met with Glenford's mother today for about an hour. She is in from L.A. and will be leaving tonight after visiting her son. She had two nieces (glenford's cousins) with her, but I did not get their names.

Glenford's mother's name is Karen Gill and her contact information is:
818 (or 318) 515-7178 cell; 310-562-2561 cell; or 323-733-2344 hm.

I explained the arraignment process as well as our office being appointed. I told her that Howard Brooks will be her son's attorney and that I would have him contact her this week. We discussed how she must not allow her son to talk about his case with her over the phone or in a live visit. She agreed and understood.

She says that Glenford does not seem to appreciate his situation. He tells his mother to come get him because he is bored and doesn't want to be in jail any longer.

Karen expressed personal concerns over retaliation against her and her young son in L.A. as well as concerns over rumors about Glenfor in the jail being in danger.

Karen claims that Glenford insists he didn't shoot anybody but he was there.

I gave her my card with my phone number and I introduced her to Steve Yoshida who interviewed her after I left.

6/2/2003 | Howard S. Brooks - PD

State files complaint

The initial complaint in Justice Court alleges three counts of murder with use of a deadly weapon.

Count 1....Dajon Jones, victim

Count 2....Derrick Jones, victim

Count 3....Jason Moore, victim

The State reserved the right to file a notice of intent.

6/2/2003 | Howard S. Brooks - PD

Initial appearance: JC 3

HSB appeared with client. Client seems cooperative in court, but insists he's hiring his own lawyer.

Judge Abba set the prelim for 6/16/03.

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Status Date: 2/7/2007

Case Age: 3130 days

6/2/2003 | Howard S. Brooks - PD

HSB visits client in contact visit.

HSB visited client in contact visit Monday night, 6:30 p.m.

Reviewed standard warnings with him.

Reviwed the limited discovery we have received.

6/2/2003 | Howard S. Brooks - PD

HSB requests conflict check.

Dictated the memo to Bruce McAllister. We have only very limited discovery.

6/2/2003 | Howard S. Brooks - PD

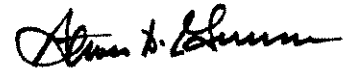
HSB receives report from Steve Yoshida.

The gist of his report is that we need more info on the victims to ascertain who they are. Without the birthdates, the names Jason Moore and Derrick Jones are meaningless.

6/2/2003 | Howard S. Brooks - PD

HSB dictated second conflicts memo

HSB asked STEve Yoshida to contact the detectives and obtain enough info so we can do a conflicts check. We just don't have the info in our file as of right now.



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: 03C193182

DEPT NO: XVIII

ORDER GRANTING STATE'S REQUEST FOR ALL THIRTY-THREE (33) PAGES OF
PUBLIC DEFENDER BROOKS' CASE NOTES

DATE OF HEARING: DECEMBER 18, 2013
TIME OF HEARING: 8:15 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
18th day of December, 2013, the Defendant not being present, REPRESENTED BY
MATTHEW CARLING, Esq., the Plaintiff being represented by STEVEN B. WOLFSON,
District Attorney, through TALEEN R. PANDUKHT, Chief Deputy District Attorney, and
the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the State's request for all thirty-three (33) pages of
2 Public Defender Brooks' case notes, shall be, and it is GRANTED and the documents shall
3 be provided to State.

4 DATED this JAN 02 2014 day of ~~December, 2013.~~

5
6
7 DISTRICT JUDGE  (P)

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

10 BY 
11 TALEEN R. PANDUKHT
12 Chief Deputy District Attorney
13 Nevada Bar #005734
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28 TRP/rj/M-1

COSCC


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA VS
GLENFORD A BUDD

CASE NO.: 03C193182
DEPARTMENT 18

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☒ Other Manner of Disposition

DATED this 22nd day of August, 2014.



DAVID BARKER
DISTRICT COURT JUDGE

003029


CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
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-

CASE NO: 03C193182

DEPT NO: XVIII

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

ORDER FOR TRANSCRIPT

Upon the ex-parte application of the State of Nevada, represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through, MARC DIGIACOMO, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that a transcript of the hearing heard on the 22nd day of August, 2014, be prepared by Cheryl Carpenter, Court Recorder for the above-entitled Court.

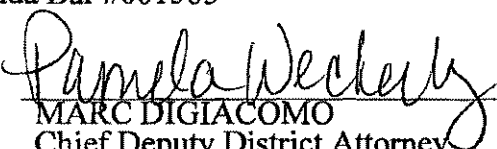
DATED this 18th day of September, 2014.



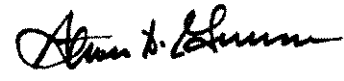
DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY


MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

rj/M-1



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 GLENFORD ANTHONY BUDD,

11 Defendant.
12

CASE NO. 193182

DEPT. XVIII

13
14 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

15 FRIDAY, AUGUST 22, 2014
16

17 **TRANSCRIPT OF PROCEEDINGS RE:**
18 **ARGUMENT RE: DEFENDANT'S PETITION FOR WRIT OF**
19 **HABEAS CORPUS – POST CONVICTION – REMAND**
20 **EVIDENTIARY HEARING**

21 APPEARANCES:

22 For the State:

TALEEN R. PANDUKHT, ESQ.
Chief Deputy District Attorney

23 For the Defendant:

MATTHEW D. CARLING, ESQ.

24
25 RECORDED BY: CHERYL CARPENTER, Court Recorder

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DEFENSE'S EXHIBITS

A Memorandum 38

1 FRIDAY, AUGUST 22, 2014; 8:14 A.M.

2
3 THE COURT: All right. When all are ready, we're on the record in C193182,
4 State of Nevada versus Glenford Budd, record should reflect the presence of Mr.
5 Budd from the Nevada Department of Corrections, Mr. Carling assisting him; Ms.
6 Pandukht for the State. Time set, argument – hearing and argument regarding
7 Defendant's petition for writ of habeas corpus, post-conviction.

8 Let's put four corners around the efforts we'll be making this morning. I
9 have first petition, I have a first supplemental petition, second supplemental petition
10 and third.

11 MS. PANDUKHT: The third is basically the case notes, I believe.

12 MR. CARLING: Yeah.

13 THE COURT: Right and a fourth supplemental petition, State's response and
14 reply and petitioner's reply. Those are the documents I'm working from, brief of
15 those documents and minutes from January 31, '14, in terms of trying to put four
16 corners again around this effort.

17 I note on the first supplemental petition A has been withdrawn. So let's
18 – Mr. Carling why don't you take us through where you believe we're headed as a
19 function of this effort this morning, 'cause you have B – and, basically, started with A
20 through R.

21 MS. PANDUKHT: Yes.

22 THE COURT: And I know some of them were stricken, some of them were –
23 you wanted to focus more on others, so why don't we walk through that.

24 MR. CARLING: Okay. I think at the last hearing instead of striking, you said
25 let's just put them – let's just have an evidentiary hearing and see where we're going

1 'cause some of these are going to be combined I think.

2 THE COURT: They really do.

3 MR. CARLING: I think – the only witness I have is Mr. Brooks, he's outside.
4 And I don't think his testimony is going to be very long. I don't know what the State
5 is going to do as far as cross-examination, but with one witness probably no more
6 than an hour I would think.

7 THE COURT: So what we're really doing right now is developing the
8 information evidence.

9 MR. CARLING: Yes.

10 MS. PANDUKHT: And we've both talked to Mr. Brooks in advance.

11 THE COURT: Okay. Super, all right; excuse me, excellent. Well done.
12 Let's go to work. All right. Call your witness.

13 MR. CARLING: Okay. Defense calls Mr. Brooks.

14 THE WITNESS: Good morning, Judge.

15 THE COURT: Good morning, Mr. Brooks.

16 **HOWARD BROOKS**

17 [called as a witness, duly sworn, testified as follows:]

18 THE COURT CLERK: State your name and spell it for the record.

19 THE WITNESS: Howard Brooks, H-o-w-a-r-d, Brooks, B-r-o-o-k-s.

20 THE COURT: Mr. Carling, your witness.

21 MR. CARLING: Thank you, Your Honor.

22 First of all Your Honor for the record the Defendant is waiving the
23 attorney/client privilege for the purpose of this hearing.

24 THE COURT: Mr. Budd, do you understand what that means?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Under Chapter 34, ineffective assistance of counsel, in order to
2 examine your previous trial counsel completely, you would necessarily need to
3 waive that attorney/client privilege, so the conversations between you and Mr.
4 Brooks and his efforts on your behalf you're agreeing could be fully explored, is that
5 correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Fair enough.

8 Mr. Carling you have the witness.

9 **DIRECT EXAMINATION**

10 BY MR. CARLING:

11 Q Mr. Brooks, my name is Matthew Carling. I represent Glenford Budd. I
12 believe we had the opportunity to speak about this case. Can you inform the Court
13 for the record which documents you reviewed in preparation for this case?

14 A I reviewed all of my just word notes. I reviewed the PCR petition filed
15 by the Defendant. And I reviewed some of my – some but not all of my regular
16 notes, the ones that were dictated memos.

17 Q I want to focus initially first on the relationship with Mr. Budd. On the
18 first and second days of trial you stated that Mr. Budd was unhappy and he really
19 wasn't helping you at all with the preparation of this case. Could you explain that a
20 little more in detail as to why you felt that was happening?

21 A Throughout the entire case Mr. Budd seemed uninterested in helping
22 the defense. He never provided us any significant information to help in the
23 defense.

24 I would not describe him as hostile. I only recall one time where he got
25 mad at us in a contact visit. But it was just in dealing with him, I just – we could

1 never get him to engage on the allegations and what we had to do. His position was
2 always that it'll just work out. Or I think at one time he may have cited that God was
3 going to help him or something like that.

4 Q Now, in your notes that have been submitted on the record here, you
5 indicated that when you told him the evidence was overwhelming, he really didn't
6 have any response to that?

7 A That's correct.

8 Q Do you recall that?

9 A That's correct.

10 Q Was that generally the tone of the conversations? The reaction you got
11 from Mr. Budd when you spoke to him about the evidence in the case?

12 A His response was always they're all lying. And I would point out to him
13 the problem we had is that we had a bunch of different people, independent people
14 who are providing accounts that all come together. And these are not people who
15 are connected to each other. And the story was generally coherent from all these
16 different angles and his response was they're all lying. And I said, well, how do we
17 show they're lying? And he didn't know and I don't know either.

18 Q Now, on those – do you recall the statements you made on the first and
19 second days of trial regarding this information?

20 A Just very generally.

21 Q Would you agree with me that those types of statements were self-
22 protective in nature?

23 A I think they were geared towards making sure the record was clear with
24 regards to post conviction relief later on the situation the defense was in. And so if
25 someone wants to characterize those as self-protective, I suppose in a sense they

1 are.

2 Q Now, do you recall at one point where the Judge almost chastised Mr.
3 Budd saying that, hey, you know, if you're setting something up for ineffective
4 assistance of counsel, it's not going to work. Do you recall statements to that
5 affect?

6 A I think she did say that.

7 Q And do you recall the Judge comparing your trial experience, I think it
8 was with John Momot's trial experience and that she's not going to continue this
9 case? Do you recall that conversation?

10 A I believe that happened, yes.

11 Q And do you recall her giving the Defendant some advice to the affect
12 that you better listen to Mr. Brooks, he's here to help you?

13 A Yes, I think she said that.

14 Q Do you -- would you agree that that's almost akin to giving the
15 Defendant legal advice from the bench?

16 A No, I don't think that's the same as giving legal advice.

17 Q Do you feel like the Court may have been bolstering you?

18 A I've never thought about what bolstering means in this context. I think
19 the Judge was basically telling the Defendant you got a lawyer; you need to use the
20 lawyer. And I don't know if that's bolstering or not.

21 Q Do you feel that the statements that came from the Judge at that time
22 were complimentary towards you?

23 A They were.

24 Q Now, there was also some discussion with regards to trial preparation
25 and motions in limine that were filed. The motions in limine there were a battery of

1 them, over 14 that I could count, there may have been some more. Are those types
2 of motions considered stock motions on a capital case in your office?

3 A There are motions that are generally filed in death penalty cases. And
4 what I do is I take each individual motion and I go through it and I change things to
5 make it fit the facts of the case.

6 And so I think that the general concept of each motion was a stock
7 motion. There may have been one or two that were not stock. For example, the
8 motion on the -- to preclude Winston Budd from testifying that was not a stock
9 motion. But some of those motions were what would be considered standard
10 motions to be filed in death penalty cases.

11 Q Does your office have a list of the types of motions that can be filed that
12 you would go through to see if it applies to your particular case?

13 A The office itself doesn't actually have any kind of collection of things. I,
14 personally, had a collection of things just because I had done a number of death
15 penalty cases before. And I originally, going back to my very first death penalty
16 case, I had originally gotten those documents from a project that was done in the
17 1990s called the Death Penalty Information Center or something like that, which
18 Michael Pescetta was involved with in the 1990s.

19 Q One of those motions, if I recall correctly, was to exclude any statement
20 regarding guilt phase versus penalty phase. Do you recall that motion?

21 A I do and I will just say up front that your petition is absolutely correct that
22 I violated that myself. And that is the weird thing that we -- in terms of what we do in
23 courts, we often -- we discuss the guilt phase and the penalty phase and we know
24 we don't want to do that in the trial and then you go into the courtroom and, by golly,
25 you keep doing the same thing. And I'm totally guilty of that in this case. I did refer

1 to the trial phase as the guilt phase.

2 Q Now, I want to talk – in the petition I made some arguments regarding
3 some objections that I felt like maybe counsel should have made. I want to focus on
4 the rap song. Are you familiar with the rap song in this case?

5 A Yes.

6 Q Did the Defendant tell you he never wrote that?

7 A He did say that.

8 Q And do you recall that the State introduced that through Greg Lewis?

9 A Yes. I can't remember if that was from the guilt phase or the penalty
10 phase.

11 Q Well, do you recall them reading the rap song in their opening
12 statement?

13 A Yes.

14 Q And in closing argument?

15 A Yes.

16 Q And would that be during the guilt phase of the trial?

17 A Yeah, the trial phase.

18 Q The trial phase.

19 A The trial or guilt phase, yes.

20 Q Okay. Now, during this – during the trial of this did you ever – prior to
21 Mr. Lewis laying a foundation, did you know that he had only received one other
22 letter from Glenford Budd prior to receiving this rap song?

23 A No, I did not know that.

24 Q Would you feel that one letter would – when somebody gets up there
25 and says I know this is Mr. Budd's handwriting, do you feel that one letter is

1 sufficient of a foundation to identify handwriting?

2 A I don't know the answer to that but it was my memory that I'm not sure
3 he did identify that as his handwriting because it was not his handwriting, it was a
4 stylized, almost artistic thing and it was separate and apart from the handwriting,
5 that's why I didn't do a handwriting analysis. And then I also felt that the State
6 should have the burden of getting that in and the State should be the one that
7 authenticated the handwriting or whatever they were going to do on that.

8 Q Now your – have you – did you read through that song?

9 A Yes.

10 Q In your opinion did that song have any probative value in this case?

11 A In the context of the guilt – the trial or guilt phase, I think it was
12 completely cumulative. I think that there was so much evidence that Glenford had
13 killed the three people, I think it was completely unnecessary in the trial or guilt
14 phase.

15 In the penalty phase, I think it clearly had probative value because of its
16 showing of Glenford's complete lack of remorse and his stated purpose that he
17 would have killed another one, if he'd had the chance.

18 Q In the trial phase would you agree that that rap song was extremely
19 prejudicial to your client?

20 A Yes.

21 Q And did you ever make any objection as to the prejudicial effect
22 outweighing the probative value of that song?

23 A I don't remember but I don't think I did.

24 Q Do you know why – if you didn't, and I'll represent that you didn't – do
25 you know why you wouldn't have done that?

1 A I don't think that it was any kind of strategy. I think it was something
2 that at that point – let me say this, we felt that we had a case where the evidence of
3 guilt was overwhelming. We wanted the jury to see the defense as being completely
4 open and transparent and not obstructionist. So I did not want to be fighting about
5 things coming into evidence, when it was obvious what happened in the guilt phase.
6 And, so, we didn't feel it was worth fighting in the guilt phase, perhaps that was a
7 mistake, I don't know.

8 Q With that being said, would you agree that you focused more on the
9 penalty phase of this entire process, trying to save Mr. Budd's life than trying to
10 focus on getting an acquittal at the trial phase?

11 A Correct. I believed then and I believe now that the only issue in this
12 case was whether or not he was going to receive the sentence of death or sentence
13 of life without. And everything that we were doing was about trying to persuade the
14 jury that we're not hiding anything from them and this man, as he sits here in the
15 courtroom, is already in custody; he's already rendered harmless and he did not
16 pose any kind of danger to anyone while he was in custody. That's what our case
17 was.

18 And we did not feel that we had anything to gain in the guilt phase or
19 trial phase by trying to pretend this was second degree murder, which would be the
20 only conceivable argument I think, under the circumstances and I don't think that
21 would have worked.

22 Q Based on the fact that you felt like the only issue was to focus on
23 preventing the death penalty, would it be not uncommon to simply miss objections or
24 opportunities to fight the State's evidence at the trial phase?

25 A Well, I think – well, you can say we would miss something, I think that

1 the answer is that we chose not to engage on issues that we thought were going
2 nowhere.

3 Q Okay. Now, you just testified that the only conceivable issue you might
4 see at the trial phase would be a possible lesser included or a second degree
5 offense?

6 A Correct.

7 Q Now – may I approach the witness, Your Honor?

8 THE COURT: Yes.

9 MR. CARLING: I'm handing you what's been previously –

10 THE COURT: Show opposing counsel what you're referring to.

11 MR. CARLING: Yes, she's seen it.

12 MS. PANDUKHT: Yes, I know, thank you.

13 THE COURT: All right.

14 BY MR. CARLING:

15 Q I'm handing you what's been previously marked as Defense Exhibit A
16 and I've given a copy to counsel. Do you recognize that memo?

17 A I do.

18 Q And what is the subject of that memo?

19 A Emily Reeder did some – Emily Reeder works in the Clark County
20 Public Defender's office as either, you could call her a mitigation specialist or a
21 social worker, I'm not sure how she was classified, but she essentially helps the
22 murder team, particularly in interviewing witnesses, in getting information, especially
23 about the social background of the Defendant.

24 And somehow or another in 2005 she wound up interviewing Tamara
25 Grierson Steel [phonetic]. And I'll be honest with you I don't know how this person's

1 name came up, all I know is that we have a memo that she prepared October 17th,
2 2005 regarding Tamara's knowledge of the case.

3 Q Did you happen to review that memo prior to this hearing?

4 A I did.

5 Q Now, I want to focus on the second page, the last – second to the last
6 paragraph titled the incident. In there, I've made some arguments that Tamara's
7 testimony may have alluded to the fact that Mr. Budd spontaneously committed this
8 crime and it wasn't – he didn't premeditate or think about it prior to that. Do you
9 recall that subject coming up during your investigation?

10 A I apologize but I have no independent memory of ever discussing
11 Tamara's testimony with anyone back in 2005.

12 In reviewing the memorandum, I'm fairly certain that when I reviewed
13 this memorandum in 2005 I would have said – I believe that the conclusion was that
14 she was not present at the scene but, rather, her knowledge of the events
15 surrounding the killings in this case were solely from what people told her.

16 Q Now that memo, it reflects that perhaps some neighbor, she uses a
17 pronoun they explained that perhaps Mr. Budd was robbed and he didn't do any-
18 thing about it and he was being laughed at or mocked. Did the office, based on your
19 recollection, do any investigation to find out who these neighbors or who they may
20 have been, to see if this information could possibly be valid?

21 A No, and if I was doing the case today I would try to find out who they
22 were.

23 Q But you don't know if your office investigated –

24 A I'm sure we did not.

25 Q And would you agree that if this information was confirmed that some-

1 body had given Mr. Budd PCP and he snapped, would that mitigate a first degree
2 murder offense?

3 A Absolutely.

4 Q Court's indulgence. Now, I want to focus your attention on Winston
5 Budd, the uncle of Mr. Budd here. He was present at the preliminary hearing, do
6 you recall that?

7 A Yes.

8 Q But at the trial phase he was not present and the State moved to have
9 his transcript read into the record?

10 A That's correct.

11 Q Do you recall – you made – I'll represent that you made an objection.
12 Do you recall what you told the Court at that point with regards to your objection?

13 A I think my record was basically that the State had not done the due
14 diligence necessary to allow the preliminary hearing to be read into the record. And
15 I represented to the Court the factual circumstances as I understood them to be,
16 which were Winston Budd was in Belize. We had talked to him on the telephone.
17 The State could do that if they wanted to. And we were bringing witnesses in from
18 Belize in this case. The State could bring him in from Belize. And under the
19 circumstances, I did not believe they had met the burden to introduce his preliminary
20 hearing testimony.

21 Q Was it your strategy not to call Mr. Budd, Winston Budd?

22 A That's correct. We did not want to bring him in because I had talked to
23 him on the telephone and Mr. Budd had confirmed that all the things he had testified
24 to at the preliminary hearing were accurate and he would testify to exactly the same
25 thing.

1 Q Do you recall explaining the process of obtaining witnesses from Belize
2 to come to the United States?

3 A I'm sorry. I don't understand.

4 Q Was there a process involved with the consulate in California?

5 A All I remember is it was extremely complicated. We had to get a visa
6 and it was expensive, that's sort of all I remember; it was very complicated though.

7 Q But you were successful in obtaining two witnesses from Belize for your
8 case?

9 A That's correct.

10 Q Court's indulgence just a moment. Now, going back to that rap song, in
11 closing arguments is it – well, let me ask you this, is it your I guess habit or
12 preference not to make objections during closing argument?

13 A Generally speaking, I try to always make objections in closing
14 argument. This case was different from the other murder cases that I have tried in
15 the sense that we were trying very hard to show the jury that we were not being
16 obstructionist in any way. We're letting it all hang out here, because we're trying to
17 build trust, so the jury can hopefully look to us as honest brokers when it comes time
18 for the penalty decision.

19 Q Do you recall making a statement in opening and in closing that some
20 of the evidence will show that Glenford committed these murders?

21 A Yes.

22 Q And what was the purpose for saying something like that?

23 A Well, that was simply a recognition of what the evidence would in fact
24 show. There would be some evidence, in fact there would be a lot of evidence that
25 Glenford did, in fact, commit these crimes. And we were simply making that record

1 conduct demonstrates that he had sufficient mental ability to understand the charges against
2 him.

3 Counsel's case notes also indicate that, closer to the start of trial, Defendant
4 understood the nature of the case against him. Specifically, notes dated August 4, 2005 state
5 that employees of counsel's office met with Defendant to discuss the case:

6 Went to see Glenford on 7-28-05 with Sharon.

7 We talked about how he felt about his case. He said the he
8 doesn't like thinking about it. We talked about how important it
9 was to start thinking about it so that he can better help us. When
10 asked what was going to help save him at trial, he said God.
11 Asked him for something more tangible, but couldn't get it. *He*
12 *says he understands what we are trying to say about his case.*

13 Second Supplement, Exhibit "A", 3 (emphasis added). Thus, Defendant explicitly
14 stated he understood the nature of his case. Further, the fact that Defendant stated he did not
15 like thinking about his case shows that, while Defendant may not have been ready to accept
16 responsibility for his actions, he was well aware of the gravity of the situation. Moreover,
17 during that same visit, Defendant also demonstrated his ability to assist in his defense when
18 he discussed the letter that implicated Defendant in the killings:

19 We also talked about the letter. He says that another inmate who
20 was friends with his roommate used to work on music together.
21 Apparently Glenford says that this other roommate wrote to him
22 first and Glenford says that this other inmate wrote the letter. He
23 says that the handwriting is not the same and the letter is signed
24 in a way that Glenford never usually signs his name. He thinks
25 that this other inmate might have gotten info about his case from
26 the news.

27 Second Supplement, Exhibit "A", 3. Thus, Defendant actively participated in a
28 defense against the credibility of a letter that implicated him in the killings. Therefore,
29 Defendant's behavior almost two (2) years prior to trial as well as only a few months before
30 the trial began demonstrates that Defendant was fully aware that he was charged with three
31 (3) murders and that, when willing, he was more than capable of assisting in his defense.

32 Defendant's conduct when the trial began, moreover, shows that he fully understood
33 the nature of the proceedings. Indeed, on the first day of trial, Defendant directed counsel to

1 file an oral motion to continue the trial so that Defendant could obtain new counsel. RT,
2 12/5/05, 2-3. The fact that Defendant wanted new counsel implies that he was concerned
3 about his attorneys' ability to adequately defend him against such serious charges. That is
4 not the behavior of a defendant who lacks the mental ability to even understand the charges
5 he is facing.

6 Further, Defendant's own witness during the penalty phase, clinical psychologist Dr.
7 John Paglini, testified that Defendant was not mentally retarded or mentally ill. RT,
8 12/15/05, 49-50. Dr. Paglini had met with Defendant on seven (7) different days during
9 2004. RT, 12/15/05, 8.

10 There was no reason for counsel to believe that Defendant was not legally competent
11 to stand trial, and thus counsel's decision not to seek a competency hearing was objectively
12 reasonable. Moreover, Defendant fails to demonstrate any prejudice due to counsel's
13 decision. Rather, Defendant makes a single conclusory statement that there was prejudice
14 because, if Defendant was declared incompetent, no trial would have occurred. Thus,
15 without any factual support whatsoever, Defendant assumes that he is the extremely rare
16 defendant who never regains competency and faces trial. Of course, competency
17 proceedings would have temporarily delayed the trial, but the trial would have proceeded as
18 soon as Defendant was eventually declared competent. As Defendant's sole argument
19 regarding prejudice is that no trial would have occurred, Defendant's fails to satisfy his
20 burden to prove that there is a reasonable probability that Defendant would have never been
21 declared competent and thus would never have stood trial. Therefore, Defendant received
22 effective assistance of counsel and his claim warrants no relief.

23 **P. Counsel Was Not Ineffective For Allegedly Failing To Communicate With**
24 **Defendant.**

25 Defendant claims that counsel was ineffective for allegedly failing to communicate
26 with Defendant regarding the case which purportedly prevented Defendant from
27 participating in his own defense. Supplement at 64-65. However, Defendant fails to
28 demonstrate how counsel's performance was ineffective under Strickland analysis.

1 The management of a defendant's case is for the attorney, not the Defendant, to
2 determine. Rhyne, 118 Nev. at 8, 38 P.3d at 167. This means that counsel, not the
3 Defendant, has the immediate and ultimate responsibility of deciding what motions to file,
4 what defenses to develop, and what witnesses to call. Id., 38 P.3d at 167. Indeed, "[o]nce
5 counsel is appointed, the day-to-day conduct of the defense rests with the attorney." Id., 38
6 P.3d at 167 (internal quotation removed). Further, Defendant is not entitled to a particular
7 "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 103 S.Ct. 1610 (1983).
8 There is no requirement for any specific amount of communication and/or collaboration
9 regarding discovery as long as counsel is reasonably effective in his representation. See id.,
10 103 S.Ct. 1610.

11 Here, Defendant fails to demonstrate that counsel was deficient in failing to
12 adequately communicate with Defendant regarding the case because management of the case
13 is fully within the purview of the attorney. Thus, counsel need not have discussed such items
14 with Defendant more than counsel deemed necessary to provide effective representation.
15 Notwithstanding, the record demonstrates that counsel diligently met with Defendant to
16 discuss case strategy and potential defenses. For example, in the mere five (5) pages out of
17 thirty-three (33) pages of electronic case notes and other memoranda that Defendant selected
18 to provide in his Second Supplement, counsel or his associates discussed the case with
19 Defendant in person or via telephone on eight (8) occasions and met with Defendant's family
20 on six (6) occasions. Thus, there is no indication that counsel failed in any way to
21 communicate with Defendant regarding his case. The mere fact that Defendant on several
22 occasions refused to answer counsel's questions about the case or to provide meaningful
23 input when given the opportunity to do so does not render counsel's performance deficient.
24 Moreover, the case notes indicate counsel discussed all key trial decisions with Defendant,
25 i.e. whether Defendant would testify at trial and whether Defendant would provide an
26 allocution at the penalty phase. Second Supplement, Exhibit "A", 1. Further, the case notes
27 reveal that counsel discussed many other aspects of the case with Defendant, such as
28 Defendant's version of events, potential aggravators and mitigators, whether Defendant had

1 any input regarding witnesses to call, the status of motions, details of meetings with
2 Defendant's family, and key items of evidence. Second Supplement, Exhibit "A", 1-3.

3 Defendant also fails to explain how there is a reasonable probability that the outcome
4 of the case would have been more favorable had counsel provided Defendant more
5 opportunities for communication. Again, Defendant's unwillingness to cooperate does not
6 represent a lack of opportunity to participate in his own defense. Considering Defendant did
7 not even avail himself of the numerous opportunities counsel provided for Defendant to
8 participate in the defense, Defendant cannot demonstrate that he was prejudiced by a lack of
9 additional opportunities. Therefore, Defendant fails to satisfy either Strickland prong and his
10 claim warrants no relief.

11 **Q. Counsel Was Not Ineffective In Failing To Retain Expert Witnesses.**

12 Defendant claims that counsel was ineffective for failing to retain certain expert
13 witnesses. Supplement at 66. However, Defendant fails to demonstrate that counsel's
14 strategic decisions fell below an objective standard of reasonableness or that Defendant was
15 prejudiced by counsel's performance.

16 The management of a defendant's case is for the attorney, not the Defendant, to
17 determine. Rhyne, 118 Nev. at 8, 38 P.3d at 167. This means that counsel, not the
18 Defendant, has the immediate and ultimate responsibility of deciding what motions to file,
19 what defenses to develop, and what witnesses to call. Id., 38 P.3d at 167. Indeed, "[o]nce
20 counsel is appointed, the day-to-day conduct of the defense rests with the attorney." Id., 38
21 P.3d at 167 (internal quotation removed). Counsel's strategy decision is a "tactical" decision
22 and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112
23 Nev. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175,
24 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

25 Here, Defendant first claims that counsel was deficient for failing to retain an expert
26 to evaluate Defendant's competency to stand trial. Supplement at 66. As explained in detail
27 above, there was no indication that Defendant was not mentally able to understand the nature
28 of the charges against him, and the record actually demonstrates Defendant fully understood

1 and participated in the proceedings. Thus counsel was not ineffective when he decided not
2 to retain a competency expert. Further, even if counsel had retained an expert to evaluate
3 Defendant's competency, and assuming arguendo that the evaluation actually led to this
4 Court declaring Defendant incompetent, the only reasonably probable result would have
5 been a short delay in the trial. Therefore, there was no prejudice to Defendant.

6 Defendant next claims that counsel was ineffective in failing to retain expert services
7 to "refute" eyewitness Palau's testimony. Supplement at 66. However, Defendant fails to
8 provide any information as to what information such an expert could provide that would
9 have "refuted" her testimony. Further, as Defendant fails to even allege what information
10 such an expert would have provided, Defendant makes no attempt to demonstrate any
11 likelihood that this Court would have even allowed such an expert to testify at trial.
12 Nonetheless, even if this Court allowed an expert on eyewitness evidence to testify, a fact
13 which cannot be readily assumed, this is not a case where an eyewitness observed a person
14 he or she had never seen before and thus was subject to recall issues; Palau knew Defendant
15 and recognized him. RT, 12/9/05, 131-32, 135-37, 150. Considering Palau knew Defendant
16 before the killings, Defendant presumably contends that an expert would have challenged
17 Palau's ability to observe due to lighting and distance conditions. Yet, counsel specifically
18 accomplished that task through cross-examination. In fact, counsel got Palau to admit that
19 she never saw Defendant's face due to lighting, that she could only see the balcony at a
20 diagonal view from some distance away, and that she previously told police she had eyesight
21 problems. RT, 12/9/05, 156-58, 164. Counsel made a reasonable tactical decision regarding
22 challenging the credibility of eyewitness testimony, and thus counsel's performance was
23 objectively reasonable. Moreover, Defendant fails to identify what information such an
24 expert would have produced that would have, with reasonable probability, changed the
25 outcome of the case, and thus Defendant fails to satisfy the Strickland prejudice prong.

26 Defendant lastly claims that counsel was deficient in not hiring a handwriting or
27 fingerprint expert to contest the jailhouse letter wherein Defendant implicated himself in the
28 killings. Supplement at 66. However, there is no indication whatsoever that any such expert

1 analysis would have revealed exculpatory evidence. To the contrary, considering the
2 overwhelming evidence of Defendant's guilt, counsel would have assumed incredibly high
3 risk that such experts would have discovered *incriminating* evidence. Counsel specifically
4 argued to the jury that the State had very little physical evidence that Defendant committed
5 the killings, and further, that Greg Lewis actually wrote the incriminating letter. RT,
6 12/13/05, 56-58. Thus, had counsel obtained fingerprint and handwriting experts, he would
7 have manufactured physical evidence that counsel could have reasonably expected would, at
8 a minimum, undermine his argument, and possibly even directly link Defendant to a letter
9 admitting the crimes. Therefore, counsel's tactical decision not to hire experts who might
10 have implicated Defendant was objectively reasonable. Moreover, as Defendant fails to
11 show that such experts would have discovered exculpatory evidence, Defendant fails to
12 demonstrate prejudice under Strickland. Accordingly, counsel was not ineffective for failing
13 to retain experts and Defendant's claim is without merit.

14 **R. Defendant Was Not Denied A Fair Trial Based On Cumulative Errors Of**
15 **Counsel.**

16 Defendant claims that cumulative effect of counsel's alleged errors denied Defendant
17 a fair trial. Supplement at 67. However, the Nevada Supreme Court has not endorsed
18 application of its direct appeal cumulative error standard to the post-conviction Strickland
19 context. See McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009).
20 Nevertheless, a cumulative error finding in the context of a Strickland claim is
21 extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris By and
22 Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that
23 there can be no cumulative error where the defendant fails to demonstrate any single
24 violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007)
25 ("where individual allegations of error are not of constitutional stature or are not errors, there
26 is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993));
27 Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d
28 543, 552-53 (5th Cir. 2005)). Because Defendant has not demonstrated any single claim

1 warranting relief, there is nothing to cumulate. Moreover, even assuming arguendo that the
2 direct appeal cumulative error standard applies, Defendant fails to even address the three (3)
3 cumulative error factors per Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-5 (2000).
4 Thus, Defendant's allegation of cumulative error is nothing more than a bare, conclusory
5 allegation that warrants no relief under Hargrove and NRS 34.735(6). Therefore,
6 Defendant's cumulative error claims should be denied.

7 **CONCLUSION**

8 Based on the foregoing, the State respectfully requests that Defendant's Petition be
9 DENIED.

10 DATED this 6th day of November, 2013.

11 Respectfully submitted,

12 STEVEN B. WOLFSON
13 Clark County District Attorney
Nevada Bar #001565

14
15 BY Pamela Weckuly Ser
16 TALEEN R. PANDUKHT
17 Chief Deputy District Attorney
Nevada Bar #005734

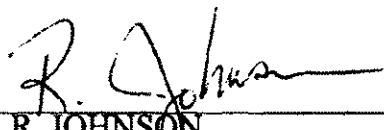
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CERTIFICATE OF SERVICE

I certify that on the 6th day of November, 2013, I e-mailed a copy of the foregoing
State's Response To Defendant's Petition For Writ Of Habeas Corpus (Post-Conviction)
And First Supplemental Petition For Writ Of Habeas Corpus Post-Conviction, to:

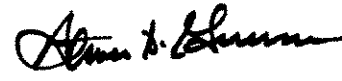
MATTHEW D. CARLING, Esq.
Cedarlegal@gmail.com

BY



R. JOHNSON
Secretary for the District Attorney's Office

WF/TRP/rj/M-1



CLERK OF THE COURT

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Court Appointed Attorney for Petitioner

GLENFORD ANTHONY BUDD

**DISTRICT COURT
CLARK COUNTY, NEVADA**

GLENFORD ANTHONY BUDD,

Petitioner,

vs.

**MIKE BYRNE, WARDEN,
ELY STATE PRISON,**

Respondent.

Case No: C193182

Dept. No.: XVIII

DATE: 12/04/13

TIME: 9:15 AM

**EVIDENTIARY HEARING
REQUESTED**

**PETITIONER'S REPLY BRIEF TO THE STATE'S RESPONSE TO DEFENDANT'S
PETITION FOR WRIT OF HABEAS CORPUS AND FIRST SUPPLEMENTAL
PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)**

COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by and through his attorney of record, Matthew D. Carling, and hereby submits this Petitioner's Reply Brief to the State's Response to Defendant's Petition for Writ of Habeas Corpus and First Supplemental Petition for Writ of Habeas Corpus (Post Conviction). For the reasons set forth in the Petition, First Supplemental Petition, and this Reply, the Court should grant an evidentiary hearing on the issues presented in these documents.

REPLY ARGUMENTS

A. Failure to Adequately Prepare for Trial

The State argues that the Defendant provides no examples of the specific preparation which was not provided by counsel. The Defendant specifically disagrees. The State argues that while there is no support provided, the Defendant nonetheless supports the argument by providing examples of an alleged lack of preparation to go to trial in January, 2004, yet the matter actually went to trial in December, 2005. The State argues that the Defendant failed to provide any evidence that counsel was not prepared to go to trial when the matter was actually tried. Finally, the State argues that the mere fact that the Defense filed twenty motions in limine is evidence of adequate trial preparation. Each of these is addressed more fully below.

The case file in this matter is in excess of 10,000 pages. Buried within those pages were express admissions by Defense counsel that he was not prepared for trial at the time the trial was scheduled. The fact that the trial was continued at the request of unprepared counsel does not mitigate the consequences of a failure to timely prepare. To the contrary, because Defense counsel was not adequately prepared at the time trial was scheduled, witnesses became unavailable and memories had to be refreshed. This is the very essence of prejudicial.

Moreover, the State's argument that the filing of twenty (20) pretrial motions in limine is clear evidence that counsel was "actively working the case" does not equate to being timely and adequately prepared for trial. All such motions could have been canned briefs which counsel had previously submitted in other cases. The filing of motions in limine is no evidence of adequate preparation for trial.

1 The facts are clear. The trial was scheduled and had to be continued based on counsel's
2 own admission that he was not prepared. This is ineffective assistance of counsel which was
3 prejudicial to Budd.

4 This was a capital murder case. The absolute admission that the defense: (a) was "not
5 able to pay attention to the case"; (b) was "completely unable to focus on preparing"; and (c)
6 had "not received necessary records" was undeniably prejudicial to Budd's defense. But for this
7 admitted failure to adequately prepare, the outcome of the proceedings would have been
8 different.

9 **B. Failure to Object**

10 Trial counsel was ineffective for failure to lodge objections during many of the pretrial
11 and trial proceedings. The failure to object may result in a properly laid ineffective assistance of
12 counsel claim. *See e.g. Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504 (1984), cert. denied, 471
13 U.S. 1004 (1985). In addition, the failure to object leads to a failure to preserve error for
14 purposes of direct appeal. The failure to preserve issues for appellate review can constitute
15 ineffective assistance of counsel. *See e.g. Martin v. State*, 501 So.2d 1313 (Fla. 1st DCA 1986);
16 *Crenshaw v. State*, 490 So.2d 1054 (Fla. 1st DCA 1986).

17 During the State's opening, it quoted from a highly prejudicial rap song allegedly
18 authored by Budd. (*Id.* at 56-57). An objection was lodged resulting in an unrecorded sidebar.
19 (*Id.* at 55). However, no pretrial Motion in Limine was filed to exclude the evidence because its
20 probative value was outweighed by its prejudicial effect. The State argues that such a motion
21 would have been futile or otherwise was a strategic trial decision on the part of counsel. The
22 Defendant respectfully disagrees.

1 Where counsel fails to object to the admission of evidence or otherwise fails to lodge an
2 appropriate objection, the standard of review is plain error affecting the Defendant's substantial
3 rights. *See e.g. People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999); *see also*
4 *People v. Guizar*, 180 Cal.App.3d 487 (1986); Substantial rights are affected when the defendant
5 is prejudiced, meaning the error affected the outcome of the trial. *Id. at* 763.

6 The letter containing the rap had little probative value. First, there was no evidence that
7 the Defendant in fact authored the letter. Moreover, the Defendant specifically told his attorney
8 that he did not author the letter which he claimed was not in his handwriting. Despite this
9 statement, defense counsel failed to obtain a handwriting expert to determine whether in fact
10 Budd had authored the letter. The State used the letter as an admission by Budd that he
11 committed the murders. This was highly prejudicial. The substantial prejudice outweighed the
12 probative value of the letter. Yet despite this fact, defense counsel failed to lodge the obvious
13 objection. Simply put, there is no strategic reason for failing to object to this evidence based on
14 its substantial prejudicial effect outweighing its limited probative value.

15 During the trial, the State called Patricia Spencer. (TT4 at 15). Spencer was on patrol for
16 Las Vegas Metropolitan Police Department with her partner Michael Wallace on the evening of
17 the incident. (*Id.* at 15-16). While Spencer and her partner patrolled the apartments, She
18 stopped her vehicle at an angle facing the apartment, got out and the boy who had been on the
19 stairs ran up to her saying "somebody needs help up there. They're hurt." (*Id.* at 26). No
20 objection was made to this hearsay statement. The State argues this was not offered for the truth
21 of the matter asserted. Then, without explanation, the State argues that even if offered for the
22 truth of the matter asserted, it falls under the excited utterance exception to the hearsay rule. The
23 State argues that any such objection would have been futile.

Rap
Song

1 In *Medina v. State*, 43469, 122 Nev. Adv. Op. No. 31, 143 P.3d 471 (Nev. 10-5-2006),
2 the Court stated,

3 The proper focus of the excited utterance inquiry is whether the declarant made
4 the statement while under the stress of the startling event. The elapsed time
5 between the event and the statement is a factor to be considered but only to aid in
6 determining whether the declarant was under the stress of the startling event when
7 he or she made the statement.
8

9 *Id.* Yet, in the absence of any objection, there was no focus on these factors. The evidence was
10 admitted without so much as a second thought. While alone this may not have been sufficiently
11 prejudicial to effect the outcome of the proceedings, when coupled with all of the other evidence
12 of ineffective assistance of counsel, the cumulative effect was sufficient.

13 The State next argues that in the context of explaining where the crime scene analyst
14 found casings, she was permitted to testify to matters about which she lacked personal
15 knowledge. This is in error. A fundamental requirement to be competent to testify is that
16 sufficient foundation is laid to establish personal knowledge. Where no such foundation is laid
17 or where there is an admission of a lack of personal knowledge, the witness is not permitted to
18 testify regarding those matters. Yet despite these admission by Louise Renhard, no objection
19 was lodged.

Where bodies
were

20 The State called Greg Lewis, an inmate who had been in the CCDC at the time Budd was
21 housed at the CCDC. (TT5 at 8). Througout the examination, the State lead Lewis but no
22 objection was lodged. *Id.* Lewis then testified about a letter he received from Budd. (*Id.* at
23 22). Lewis identified the handwriting as Budd's. However, in so identifying the letter, the sole
24 foundational basis was because he had before received a single letter from Budd. (*Id.*). No
25 objection was lodged by the defense. Ultimately, the letter was admitted over an objection that
26 the summary was not an exact duplicate of the more difficult to read hand written letter. (*Id.* at

Cellmate

1 28). No objection was made regarding the prejudicial effect of the letter outweighing any
2 probative value. (*Id.*). Further, at no time did counsel retain the services of an expert witness to
3 determine whether Budd had in fact penned the letter.

4 These failures to object fell well below an objectively reasonable standard. In addition,
5 there was no trial tactic or strategic advantage which flowed from failing to lodge proper
6 objections resulting in evidence being admitted which otherwise should have been excluded.
7 Most significantly, among the most damning pieces of evidence was the letter containing the rap
8 song. The admission of this evidence was extremely prejudicial to Budd. It was argued as an
9 admission by the State. It was admitted with the flimsiest foundation, if any at all. No objection
10 was lodged that the prejudicial effect of the letter so far outweighed any probative value that it
11 should have been excluded. Instead, the State beat that rap song drum throughout its arguments,
12 ultimately closing with the lyrics of the song. But for the admission into evidence of the letter
13 and its contents, the outcome of the trial would have been different. The failure to properly
14 object and seek the exclusion of the letter deprived Budd of the effective assistance of counsel
15 which is constitutionally guaranteed to Budd.

16 **C. Failure to Present Evidence Supporting Reasonable Doubt on Question of**
17 **Premeditation**
18

19 The State argues that counsel's failure to support the allegation that Tamara Grierson
20 Steel purportedly would have testified that Budd was on PCP and went crazy before the killing
21 was waived for failure to produce documents in support of this allegation. The Defendant
22 disagrees. It is the very purpose of the requested evidentiary hearing that such evidence be
23 submitted to this Court during said evidentiary hearing. If the burden were on the Petitioner to
24 produce every shred of evidence in support of the Petition, there would be no need for

1 evidentiary hearings as all such Petitions would be resolved summarily. The argument was not
2 waived based on the failure to produce the documentation.

3 A claim for ineffective assistance of counsel claim lies where counsel failed to present
4 evidence which could have created reasonable doubt regarding premeditation. The Due Process
5 Clause of the Fourteenth Amendment prohibits a criminal conviction "except upon proof beyond
6 a reasonable doubt of every fact necessary to constitute the crime." *In re Winship*, 397 U.S. 358,
7 364 (1970).

8 The key to whether the instant case could have resulted in a conviction of the lessor
9 included offense of second degree murder was evidence of the lack of premeditation. During the
10 alleged preparation for trial, defense counsel or its investigator interviewed Tamara Grierson
11 Steel. (See Memorandum of the Clark County Public Defender, dated October 17, 2005,
12 Subject: Tamara Grierson Steel). During this interview, Tamara informed Budd's counsel that
13 she was aware that someone had stolen marijuana from Budd and that some new neighbors made
14 fun of Budd for not doing anything about the theft. Tamara then stated, "they gave him PCP,
15 and then he 'went crazy'." (*Id.*).

16 At trial, the defense failed to call Tamara to testify. Tamara's testimony would have
17 created reasonable doubt on the issue of premeditation. Tamara's own testimony during the
18 interview was that Budd was high on PCP and "snapped." (*Id.*). The failure to present such
19 evidence was ineffective assistance. In addition, Budd suffered extreme prejudice. But for the
20 failure of counsel to present this evidence, the evidence would have created reasonable doubt on
21 the issue of premeditation. Such reasonable doubt would have resulted in a conviction, but a
22 conviction of the lessor included offense of second degree murder done without malice
23 aforethought but rather based on the intoxication and Budd's resulting snapping. The prejudice

1 which flowed was the substantially greater sentence imposed against Budd. Had counsel not
2 been ineffective, the outcome of the trial would have been different.

3 **D. Refusal to Allow Defendant to Participate in his Own Defense**

4 The refusal to permit the Defendant to participate in the preparation of his own defense is
5 ineffective assistance of counsel. *Faretta v. California*, 422 U.S. 806, 816-17, 834, 935 S.Ct.
6 2525 (1975) grants defendants the right not only to manage, but also to conduct, their own
7 defenses. This right was recognized in *McKaskle v. Wiggins*, 465 U.S. 168, 174, 104 S.Ct. 944
8 (1984) which focuses on whether "the defendant had a fair chance to present his case in his own
9 way." The State's argument is that no legal authority supports the contention that when counsel
10 fails to permit the Defendant to participate in his own defense such acts constitute ineffective
11 assistance of counsel. Again, the Petitioner disagrees. Both *Faretta* and *McKaskle* stand for the
12 proposition that a defendant has a constitution right to meaningfully participate in the preparation
13 of his own defense.

14 When the trial commenced on December 5, 2005, counsel for Budd made an oral motion
15 to continue the trial due to Budd's unhappiness with his representation and an affirmative
16 representation that another attorney was willing to take the case over. (TT1 at 2-4). Specifically,
17 Brooks represented to the Court that his relationship with Budd was non-existent. (TT1 at 6).
18 He further represented that as to the guilt phase, he didn't feel the lack of a relationship would
19 make any difference in the outcome of the proceedings. (*Id.*).

△'s unhappiness

20 Day 2 of the trial did not start any better. (See Trial Transcript, Volume II, cited herein
21 as "TT2"). Budd's counsel started day two off by complaining to the Court again about his
22 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
23 mother stating she did not know the facts of the case, despite Brooks protestations that he had

1 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
2 who failed to appear at the appointment. (*Id.*). This complaint resulted in the Court stating the
3 following:

4 I think I need to note for the record and Mr. Budd, you need to understand to the
5 best of your abilities, you need to try to have your family understand this, if the
6 design or plan is to somehow segue this lack of cooperation into an ineffective
7 assistance of counsel claim, it's not going to work.
8

9 *Id.* at 4. This again is evidence of the lack of communication between Budd and his counsel.

10 These statements by counsel are an admission of inadequate communication between
11 Budd and Brooks. Because of this inadequate communication, Budd was not permitted to
12 participate in his own defense. Such a failure fell well below the objectively reasonable standard
13 of conduct by counsel in a death penalty case.

14 In addition Budd was prejudiced. He was not permitted to provide alibi witnesses,
15 discuss potential defenses, or other assist in rebutting the facts presented by the State. This
16 prejudice resulted in a conviction which otherwise would not have occurred. Had Budd been
17 permitted to participate in the creation and formulation of his defense, the outcome of the trial
18 could have been different. Therefore, this admitted failure to communicate resulted in prejudice
19 to Budd and constituted ineffective assistance of counsel.

20 **E. Failure to Object to the Court rendering Legal Advice to Defendant**

21 The failure of counsel to object when the Court provided legal advice to the Defendant
22 constitutes ineffective assistance of counsel. The failure to object may result in a properly laid
23 ineffective assistance of counsel claim. *See e.g. Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504
24 (1984), cert. denied, 471 U.S. 1004 (1985).

25 The law is very clear. The Court cannot give legal advice to a party to the proceedings.
26 However, in the instant case, this precisely what the Court did. The trial commenced on

1 December 5, 2005. (See Trial Transcript, Volume 1 cited to hereinafter as "TT1"). At the
2 beginning of the trial, the Defense made an oral motion to continue the trial due to Budd's
3 unhappiness with his representation and an affirmative representation that another attorney was
4 willing to take the case over. (TT1 at 2-4). Specifically, Brooks represented to the Court that his
5 relationship with Budd was non-existent. (TT1 at 6). He further represented that as to the guilt
6 phase, he didn't feel the lack of a relationship would make any difference in the outcome of the
7 proceedings. (*Id.*). The Court then bolstered Brooks and specifically stated to Budd that it is
8 absurd for Budd not to work with them. (TT1 at 8). Defense counsel did not object to this
9 statement by the Court. Thus, the Court gave legal advice to Budd regarding who was best
10 positioned to represent him during the proceedings. The Court then denied the Motion to
11 Continue. (*Id.*).

12 This legal advice by the court, which was not objected to by Budd's counsel, was
13 ineffective assistance of counsel. First, any objectively reasonable attorney would have objected
14 to the Court rendering such advice to Budd. However, because the Court was bolstering the
15 performance capabilities of defense counsel, obviously defense counsel was not going to object.
16 This failure to object coupled with the advice of the Court prejudiced Budd. Specifically,
17 counsel admitted that he had no relationship with Budd, and that he did not feel that his
18 relationship would have any impact on the guilt phase of the proceedings. These representations
19 resulted in the Budd being represented by an unprepared attorney with whom he had no
20 relationship. Under the circumstances, the outcome of the proceedings would have been
21 different but for this improper conduct.

22 **F. Violating Court Orders to the Defendant's Prejudice**

1 The Defendant suffered from ineffective assistance of counsel where defense counsel
2 violated the trial court's orders. The standard test set forth in *Strickland* apply. The State admits
3 defense counsel violated the Court's orders. Yet despite this admission, the State implies that
4 such conduct had a low possibility of prejudicing the Defendant. Budd disagrees. The very
5 reason the Court imposed the order was to prevent the very prejudice which resulted from the
6 counsel's violation. In so many words, defense counsel told the jury that Budd was guilty..

7 On September 14, 2004, Brooks filed a Motion to Preclude any Reference during the
8 Trial as the "Guilt Phase" of the proceedings. (*See* Motion). The State opposed the Motion to
9 Preclude reference to the trial as the Guilt Phase, arguing that it has faith the Jury will decide the
10 case on the evidence and not its characterization. (*See* Opposition). On November 23, 2005, the
11 Court heard argument on the pretrial motions. (*See* Transcript of Defendant's Pretrial Motions,
12 hereinafter referred to as "TDPM"). On November 23, 2005, the Court heard argument on the
13 pretrial motions. The Court also granted the motion to preclude reference to the trial as anything
14 other than the trial, including all references to the "guilt phase." (*Id.* at 8).

15 Despite Brooks' Motion to exclude all references to the "guilt phase" during the trial, and
16 despite the Court granting the motion as requested, Brooks violated the Court's order by
17 referring to the trial as the "guilt phase." (TT1 at 39). Specifically, Brooks stated during initial
18 discussions with the jury venire, "Whether we call witnesses in the guilt phase will be
19 determined entirely and according to what the State presents." (*Id.*). The use of the phrase
20 "guilt phase" by Brooks was not an isolated incident. (TT1, P. 174).

21 Brooks moved for the very order he violated. This clearly fell well below the reasonably
22 objective performance by defense counsel. In addition, it resulted in the very prejudice counsel
23 sought to preclude by so moving in the first place. Defense counsel prejudiced Budd by

1 referring to the trial as the guilt phase, which implied that Budd was guilty. But for these
2 violations of the Court's order, the outcome of the trial would not have been suggested to the
3 jury. Had such a violation occurred from the mouth of the prosecutor, it would have been
4 grounds for a mistrial. The prejudice was not less coming from the mouth of defense counsel.
5 This is clearly ineffective assistance of counsel.

6 **G. Failure to Zealously Represent Interests of Client**

7 Counsel's failure to zealously represent the interests of his client constitutes ineffective
8 assistance of counsel. A lawyer's first duty is zealously to represent his or her client. *Sanders v.*
9 *Ratelle*, 21 F.3d 1446 (9th Cir. 1994). In *Anderson v. Calderon*, 276 F.3d 483 (9th Cir. 2001),
10 the Court stated the failure to zealously represent the interests of his client, an attorney "violated
11 his duty of loyalty" to the client. *Id.* Not only does this type of conduct violate the duty of
12 loyalty and constitute ineffective assistance of counsel, it actively serves the interests of the
13 prosecution. *Id.*

14 After day one's jury voir dire and selection, the trial entered day two on December 6,
15 2003 with the continuation of the same. (See Trial Transcript, Volume II, cited herein as "TT2").
16 Budd's counsel started day two off by complaining to the Court again about his frustrations
17 regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's mother
18 stating she did not know the facts of the case, despite Brooks protestations that he had previously
19 explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother, who failed to
20 appear at the appointment. (*Id.*). This complaint resulted in the Court stating the following:

21 I think I need to note for the record and Mr. Budd, you need to understand to the
22 best of your abilities, you need to try to have your family understand this, if the
23 design or plan is to somehow segue this lack of cooperation into an ineffective
24 assistance of counsel claim, it's not going to work.

25
26 (*Id.* at 4).

1 In addition, Day three of the trial commenced on December 8, 2005. (See Trial
2 Transcript Vol. III-A cited to herein as "TT3A"). This day commenced with an evidentiary
3 ruling regarding the admission of Winston Budd's Preliminary Hearing testimony because he
4 was no residing in Belize. (TT3A, P. 2, *et seq.*). Brooks argued that the State had not engaged in
5 sufficient conduct to establish that Winston was an unavailable witness. Incredibly Brooks made
6 the argument for the State resulting in the Court finding Winston unavailable and tacitly granting
7 the oral motion to use the Preliminary Hearing transcript in lieu of live testimony. (TT3A, P. 5-
8 9).

Winston
Budd
Process?
Witness from
Belize?

9 In each example above, counsel failed to zealously represent Budd's interest. This duty
10 is clearly defense counsel's paramount interest in exercising loyalty to his client. Thus, a breach
11 of the duty to zealously represent Budd falls below the objectively reasonable standard of
12 conduct. In addition, it is clearly prejudicial to Budd. Counsel was not interested in defending
13 Budd zealously. To the contrary, the evidence does and will reveal that counsel did not believe
14 that Budd had any defense to assert in the trial phase of the proceedings. Clearly, had counsel
15 believed that any defense existed, he would have presented one, which he did not. Counsel
16 admitted that he was not prepared, failed to object, failed to introduce evidence, and otherwise
17 failed to zealously represent Budd's interest. All of this prejudiced Budd as the outcome of the
18 trial would have been difference but for counsel's failure to zealous represent him during the trial
19 phase of the proceedings.

20 **H. Continued Representation in Face of Conflict of Interest**

21 When counsel has a conflict of interest, it may constitute ineffective assistance of
22 counsel. If a petitioner shows that a conflict of interest actually affects the adequacy of his

1 representation, there is no requirement to show prejudice in addition in order to obtain relief.
2 *Mickens v. Taylor*, 535 U.S. 162, 171 (2001).

3 The State argues that the defendant had the duty of presenting evidence of an actual
4 conflict, which appears to be a misunderstanding of the rule of law set forth in *Mickens*. *Mickens*
5 requires that the conflict sufficient to constitute ineffective assistance is one which actually
6 affects the adequacy of representation. Budd has shown sufficient conflict.

7 What is clear at the beginning of the proceedings is that counsel developed a conflict of
8 interest with Budd which was so unyielding that the objects of the representation were thwarted.
9 the trial entered day two on December 6, 2003 with the continuation of the same. (See Trial
10 Transcript, Volume II, cited herein as "TT2"). Budd's counsel started day two off by
11 complaining to the Court again about his frustrations regarding the Defendant's family. (TT2, P.
12 3-4). Brooks complained about Budd's mother stating she did not know the facts of the case,
13 despite Brooks protestations that he had previously explained them to her. (*Id.*). Brooks set up
14 an appointment with Budd's mother, who failed to appear at the appointment. *Id.* This
15 complaint resulted in the Court stating the following:

16 I think I need to note for the record and Mr. Budd, you need to understand to the
17 best of your abilities, you need to try to have your family understand this, if the
18 design or plan is to somehow segue this lack of cooperation into an ineffective
19 assistance of counsel claim, it's not going to work.

20
21 (*Id.* at 4). Thus, Brooks engaged in a self protective action to the prejudice of his own client. At
22 the conclusion of the second day of trial, jury selection remained unfinished.

23 Brooks self interest was promoted well before and above Budd's interest. This conflict
24 was so constant in Brooks preparation and the proceedings, that it added to Budd's failure to
25 zealously represent Budd's interest. In addition, it resulted in the complete abandonment of any
26 defense in the trial phase of the proceedings. This clearly fell well below the standard of

1 objectively reasonable conduct. In addition, it resulted in prejudice. Brooks did not protect
2 Budd's interest. Rather, he protected his own interests. Absent the conflict of interest, the
3 outcome of the case would have been different. A defense would have been presented which
4 would have created reasonable doubt regarding premeditation and resulted at the least of a
5 conviction of the lesser included offense. Budd was prejudiced by the conflict of interest.

6 **I. Failure to Preserve Record on Appeal**

7 Ineffective assistance of counsel lies where counsel fails to preserve the record for
8 appeal. The failure to preserve issues for appellate review can constitute ineffective assistance of
9 counsel. *See e.g. Martin v. State*, 501 So.2d 1313 (Fla. 1st DCA 1986); *Crenshaw v. State*, 490
10 So.2d 1054 (Fla. 1st DCA 1986). The State argues that merely filing the Motion that all
11 proceedings be recorded evidences an intent to preserve the record of appeal. However, where
12 counsel as failed to preserve issues, including but not limited to putting objections on the record
13 so that they are not waived on appeal, this constitutes ineffective assistance of counsel.

14 The State made its Opening Statement. (TT3B, P. 41, *et seq.*). During the State's
15 opening, it quoted from a highly prejudicial rap song allegedly authored by Budd. *Id.* at 56-57.
16 An objection was lodged resulting in an unrecorded sidebar. (*Id.* at 55). However, no pretrial
17 Motion in Limine was filed to exclude the evidence because its probative value was outweighed
18 by its prejudicial effect. After the close of opening statements, some kind of record was made
19 of the sidebar. (*Id.* at 67-68). The record was summary and contrary to the Court's ruling that
20 all proceedings would be recorded.

21 The failure to properly preserve the record for appeal was significant. First, it falls well
22 below the standard of objectively reasonable performance. This is particularly true in the context
23 of a capital murder case. In addition it resulted in prejudice. Because counsel failed to preserve

1 a record on appeal, including not only of the foregoing examples, but also the failures to timely
2 object during the proceedings, the scope of the direct appeal was severely limited. In fact, the
3 only issue appealed was the failure of the State to meet its burden of proof. The Orders were
4 affirmed on appeal. But for the failure to properly and timely preserve the issues on appeal, the
5 result from the appeal would have been different. Thus, Budd suffered from ineffective
6 assistance of counsel.

7 **J. Unauthorized Admissions Which Violate Defendant's Right to Remain Silent**

8 Where counsel makes admissions on behalf of this client, without prior client approval,
9 such admissions constitute both ineffective assistance of counsel and a violation of the
10 Defendant's Fifth Amendment Right to Remain Silent. In such cases, the standard *Strickland*
11 analysis applies. The State argues that whether to make admissions is a strategic trial decision
12 within the sound discretion of defense counsel. However, Budd argues that in no case does
13 counsel for the defendant have to right to make admissions without the client's consent.

14 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short. (*Id.*).
15 But more troubling, Brooks so much as admitted that Budd was responsible for the killings.
16 (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that Glenford
17 killed these three people." (*Id.* at 58). Such a statement was tantamount to unilaterally changing
18 Glenford's plea and violating his Fifth Amendment Right to Remain Silent. In effect, counsel
19 was admitting guilt, something that Budd had not done nor had he ever authorized counsel to do.
20 In addition, it was an admission effectively by Budd through counsel which eliminated his right
21 to remain silent.

22 This conduct fell below a standard of objectively reasonable conduct. In addition, it
23 clearly prejudiced Budd. It was an admission that Budd was guilty, despite his having denied

Admission?

1 guilt. Effectively, counsel spoke for Budd who had invoked his right to remain silent by doing
2 so. By admitting that evidence will show that Budd killed three people, counsel violated Budd's
3 constitutional right of silence. This was highly prejudicial. It was an admission of guilt. But for
4 this admission, the outcome of the proceedings would have been difference. The jury would not
5 have been tainted by these admissions. This constituted ineffective assistance of counsel.

6 **K. Admissions which Eliminated Presumption of Innocence**

7 If counsel makes admissions which have the effect of gutting the presumption of
8 innocence, this is a violation of the right to effective assistance of counsel. Again, the standard
9 analysis set forth in *Strickland* applies.

10 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short. (*Id.*).
11 But more troubling, Brooks so much as admitted that Budd was responsible for the killings.
12 (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that Glenford
13 killed these three people." (*Id.* at 58).

14 Again, this statement was unauthorized. The effect of the statement was to eliminate or
15 diminish the State's burden of proof. Specifically, counsel told the jury that Budd was guilty.
16 By so doing, he effectively eliminated the presumption of innocence. This fell below an
17 objectively reasonable standard of conduct. In addition, it prejudiced Budd. The State no longer
18 had to prove each of the elements of the crimes charged. Instead, counsel effectively admitted
19 Budd's guilt. This prejudiced Budd by eliminating the duty on the part of the State to prove each
20 element beyond a reasonable doubt. But for this elimination of the presumption innocence, the
21 outcome would have been different.

22 **L. Alleviated State's Burden of Proof**

1 Where counsel's conduct eliminates the burden upon the State to prove each element of
2 the crime charged beyond a reasonable doubt, such burden shifting or elimination constitutes
3 ineffective assistance of counsel. To prevail on a claim of ineffective assistance of trial or
4 appellate counsel, a defendant must demonstrate (1) that counsel's performance was deficient and
5 (2) that counsel's deficient performance prejudiced the defense. *Strickland* at 687.

6 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short. (*Id.*).
7 But more troubling, Brooks so much as admitted that Budd was responsible for the killings.
8 (*Id.*). Brooks stated, " Let me make it absolutely clear, some evidence will show that Glenford
9 killed these three people." (*Id.* at 58).

10 Again, this statement was unauthorized. The effect of the statement was to eliminate or
11 diminish the State's burden of proof. Specifically, counsel told the jury that Budd was guilty.
12 By so doing, he effectively eliminated the State's duty to prove each element of the crimes
13 charged. This fell below an objectively reasonable standard of conduct. In addition, it
14 prejudiced Budd. The State no longer had to prove each of the elements of the crimes charged.
15 Instead, counsel effectively admitted Budd's guilt. But for this elimination of the presumption
16 innocence, the outcome would have been different.

17 **M. Waiver of Right to Confront Witnesses**

18 The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall
19 enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.
20 The right to confrontation is a fundamental constitutional right. *See Pointer v. Texas*, 380 U.S.
21 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). In *Wilson v. Gray*, 345 F.2d 282, 286 (9th Cir.
22 1965), cert. denied, 382 U.S. 919, 86 S.Ct. 288, 15 L.Ed.2d 234 (1965), the 9th Circuit
23 determined that counsel may waive the accused's Sixth Amendment right to cross-examination

1 and confrontation as a matter of trial tactics or strategy. *Id.* However, in order for such conduct
2 to constitute a trial strategy, it must be a knowing trial strategy and not merely an unintended
3 consequence of otherwise substandard representation. In the latter cases, any unintended waiver
4 is ineffective assistance of counsel.

5 The State argues that the failure to confront a witness about a relatively inconsequential
6 relocation fee in the amount of \$300.00 was a tactical decision. However, where counsel simply
7 fails to obtain an opportunity to impeach a witness, such conduct falls below the reasonable
8 expectation of the performance of competent counsel.

9 The trial continued on Tuesday, December 13, 2005 at 1:35 p.m. (*See* Trial Transcript
10 Vol. VI, cited to herein as TT6). For the first time, the State revealed that it had provided
11 relocation assistance in the approximate amount of \$300.00 to witness Palau, the woman who
12 allegedly was an eyewitness to the shooting on the balcony. (*Id.* at 7-8). The State explained
13 that it told Brooks about this fact after Palau had testified and that as a “tactical decision” there
14 was no point in bringing this out in the presence of the jury. (*Id.* at 8). When the Court asked
15 Brooks if he wished to be heard, defense counsel declined. (*Id.* at 9).

why not?

16 The foregoing was a waiver of Budd’s right to confront witnesses, a right which is
17 fundamental. Had this information been timely provided, Budd’s counsel should have examined
18 Palau about the incentives provided for her testimony. However, this information was not timely
19 provided. In the face of this information, counsel should have moved for a mistrial. He did not.
20 Instead, he remained silent. This was not a tactical decision but rather a complete failure to meet
21 the objectively reasonable standard of performance.

22 Moreover, Palau was an alleged eyewitness. The confrontation of that witness would
23 have undermined the credibility of her eye witness account. Because she specifically testified

1 that she saw the shooting of one of the witnesses, undermining her credibility could well have
2 created reasonable doubt as to whether she actually saw what she testified seeing. But for this
3 failure to meet the objectively reasonable standard of performance, the outcome of the matter
4 would have been different. Therefore, this Petition should be granted.

5 **N. Violating Defendant's Right Against Self Incrimination**

6 The Fifth Amendment right contains the right against self-incrimination. The right
7 against self-incrimination may be waived, but any such waiver must be knowing and voluntary.
8 See *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); see also
9 *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). "[A] heavy
10 burden rests on the government to demonstrate that the defendant knowingly and intelligently
11 waived his privilege against self-incrimination. . . ." *Miranda v. Arizona*, 384 U.S. 436, 475, 86
12 S.Ct. 1602 (1966). If a defendant decides to waive his right against self-incrimination based
13 upon the advice of counsel, then that decision is knowing and voluntary for purposes of the Fifth
14 Amendment, as long as counsel's advice was constitutionally reasonable under the Sixth
15 Amendment and Strickland. See *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d
16 203 (1985). However, if counsel implicitly waives the right against self-incrimination, without
17 consulting with the defendant and without the defendant's knowing, voluntary consent, such
18 conduct is ineffective assistance of counsel.

19 The defense made its closing argument. (*Id.* at 47). During the closing argument, Brooks
20 discussed Greg Lewis testimony and specifically stated, "And we're not going to play games
21 here. They were in jail together." (*Id.*). Such a statement was incriminating. Just as the State is
22 not permitted to reference incarceration because of the prejudicial effect, Brooks mention of the
23 same was equally prejudicial. Again, it tainted the juries' view of Budd. If he was in jail, he

1 must have committed the crime. This prejudiced Budd. But for this violation of Budd's right
2 against self incrimination, the jury would not have been tainted and the outcome would have
3 been different.

4 **O. Failure to Evaluate Budd's Competency to Stand Trial**

5 Counsel was ineffective for failing to request a competency hearing to determine whether
6 Budd was competent to stand trial. This claim depends in large measure on facts outside the
7 record. *See Massaro v. United States*, ___ U.S. ___, 123 S.Ct. 1690, 1694, 155 L.Ed.2d 714
8 (2003). In addition to the standard *Strickland* analysis, Budd can put before the Court
9 circumstantial evidence regarding the basis of the claim of incompetency at the time of trial.
10 Again, the State argues that it was a tactical decision and that any such request for a competency
11 evaluation would be futile.

12 During the representation, counsel maintained case notes. On November 28, 2005,
13 Brooks met with Bud. During this meeting, Budd denied he committed the crime and when
14 Budd told him the evidence was overwhelming that Budd would be convicted on all three counts.
15 Budd responded that he would just "hope for the best." (*See Case Notes*, P. 7). Brooks asked if
16 Budd wanted to testify to which Budd's response was in the affirmative. (*Id.*). Throughout the
17 notes and case files, counsel noted that Budd was disconnected and apparently did not appreciate
18 the seriousness of the proceedings against him.

19 In addition, the Case Notes contain the following relevant entries:

- 20 A) On June 16, 2004, Brookes notes that he told Budd that this was not a case
21 where he was going home anytime soon, but rather one where he would
22 probably spend the rest of his life in prison or alternatively get the death
23 penalty. Budd literally had no reaction to this statement at all. He was not
24 engaged. (*See Case Notes*, P. 19 .
25
26 B) On June 18, 2004, Brooks notes that he spoke with Budd's grandmother,
27 Karen who indicates that Budd tells her he will be coming home soon, and

1 that the CCDC is just like daycare. She confesses that she does not believe
2 that Budd understands what is going on. (See Case Notes, P. 19).

3
4 C) On September 12, 2005, Brooks made an entry indicating that Budd was
5 disengaged in the whole process and his responses were generally only one or
6 two syllables. (See Case Notes, P. 13).

7
8 D) On October 19, 2005, Brooks made an entry in the notes indicating that Budd
9 remains disconnected from the case and unwilling to deal with reality. (See
10 Case Notes, P. 12).

11
12 (*Id.* emphasis supplied).

13 At no time did counsel file a motion to determine Budd's competency. Further, counsel
14 did not retain the services of an expert to independently determine Budd's competency. Based
15 on Budd's reaction to the charges against him, counsel's evaluation of his understanding of the
16 proceedings, and his irrational reactions, it was well below the standard of objectively reasonable
17 conduct of defense counsel in a capital homicide case.

18 In addition, Budd was prejudiced. Had counsel sought a competency hearing, the results
19 of the trial may well have been different. In fact, had Budd been declared not competent to stand
20 trial, no trial would have occurred. Therefore, the outcome would have been different.

21 **P. Failure to Communicate with Defendant**

22 Counsel's representation may be deficient constituting ineffective assistance of counsel
23 for failing to communicate with the Petitioner. Adequate consultation between attorney and
24 client is an essential element of the effective assistance of counsel. *Strickland*, 466 U.S. at 688,
25 104 S.Ct. at 2065. "From counsel's function as assistant to the defendant derive the overarching
26 duty to advocate the defendant's cause and the more particular duties to consult with the
27 defendant on important decisions and to keep the defendant informed of important developments
28 in the course of the prosecution." *Id.* See also *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct.
29 1029 (2000) and *Johnson v. Parker*, Civil Action No. 1:06CV217-SA-JAD (N.D.Miss. 9-12-

1 2008)(failure to communicate may be both a symptom and cause of ineffective assistance). The
2 State argues that any failure to communicate was occasioned by Budd.

3 When the trial commenced on December 5, 2005, counsel for Budd made an oral motion
4 to continue the trial due to Budd's unhappiness with his representation and an affirmative
5 representation that another attorney was willing to take the case over. (TT1 at 2-4). Specifically,
6 Brooks represented to the Court that his relationship with Budd was non-existent. (TT1 at 6).
7 He further represented that as to the guilt phase, he didn't feel the lack of a relationship would
8 make any difference in the outcome of the proceedings. (*Id.*).

9 Day 2 of the trial did not start any better. (*See* Trial Transcript, Volume II, cited herein
10 as "TT2"). Budd's counsel started day two off by complaining to the Court again about his
11 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
12 mother stating she did not know the facts of the case, despite Brooks protestations that he had
13 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
14 who failed to appear at the appointment. (*Id.*). This complaint resulted in the Court stating the
15 following:

16 I think I need to note for the record and Mr. Budd, you need to understand to the
17 best of your abilities, you need to try to have your family understand this, if the
18 design or plan is to somehow segue this lack of cooperation into an ineffective
19 assistance of counsel claim, it's not going to work.

20
21 (*Id.* at 4). This again is evidence of the lack of communication between Budd and his counsel.

22 These statements by counsel are an admission of inadequate communication between
23 Budd and Brooks. Because of this inadequate communication, Budd was not permitted to
24 participate in his own defense. Such a failure fell well below the objectively reasonable standard
25 of conduct by counsel in a death penalty case.

1 In addition Budd was prejudiced. He was not permitted to provide alibi witnesses,
2 discuss potential defenses, or other assist in rebutting the facts presented by the State. This
3 prejudice resulted in a conviction which otherwise would not have occurred. Had Budd been
4 permitted to participate in the creation and formulation of his defense, the outcome of the trial
5 could have been different. Therefore, this admitted failure to communicate resulted in prejudice
6 to Budd and constituted ineffective assistance of counsel.

7 **Q. Failure to Retain Expert Defense Witnesses**

8 A claim for ineffective assistance of counsel may lie for failing to retain defense experts.
9 Ineffective assistance of counsel claims are analyzed under the two-prong test of *Strickland v.*
10 *Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under *Strickland*, Castor must show both that
11 his counsel's performance was deficient and that the deficient performance prejudiced his
12 defense such that he was deprived of a "fair trial, a trial whose result is reliable." *Id.* at 687, 104
13 S.Ct. at 2064.

14 During the trial phase of the proceedings, counsel did not retain the services of an expert
15 witness. While counsel did retain the services of John Paglini, PhD, during the penalty phase of
16 the proceedings, no such expert was retained during the pretrial or trial phase of the case. As
17 discussed above, counsel had objective evidence that Budd lacked the competency to stand trial.
18 Yet despite this evidence, he did not seek a competency hearing. He did not retain the services
19 of an independent evaluator to determine Budd's competency. He did not retain the services of
20 an expert witness to refute the long range alleged observations of Palau, which observations were
21 unlikely based on distance and lighting. Counsel did not retain the services of a handwriting
22 expert to analyze the letter containing the rap song which was extremely prejudicial. In short,
23 counsel not only failed to put on any defense at all to the facts of the case, he further failed to put

1 on a defense in the form of retained expert witness testimony during the trial phase of the
2 proceedings.

3 This failure fell well below the objectively reasonable standard of performance. In a
4 capital homicide case, experts are regularly retained to examine all forms of evidence which will
5 be offered by the State. However, in the instant case, no such experts were retained. The
6 prejudice is cavernous. Budd was tried without so much as a determination of competency.
7 Witnesses with no real ability to see made eyewitness identifications. (Palau, *supra*). Most
8 significantly, the letter which allegedly contained admissions was admitted with little to no
9 foundation, and without so much as a hand writing expert analysis or finger printing to determine
10 whether Budd's finger prints appeared anywhere on the letter.

11 But for these failures, the outcome of the trial would have been different. Two witnesses
12 who received incentives for their testimony would most likely have been determined to lack
13 credibility in the eyes of the jurors. Most significantly, the letter which the State latched onto
14 with both jaws clinched may well have been found to have not been authored by Budd. But for
15 the admission of this evidence and its impact, the resulting verdict would have been different.
16 Therefore, Budd suffered prejudice.

17 **R. Cumulative Effect of All Errors**

18 Finally, where the errors of counsel are numerous, their cumulative effect may constitute
19 ineffective assistance of counsel. *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d 1100, 1115
20 (2002). Thus, "[t]he cumulative effect of errors may violate a defendant's constitutional right to
21 a fair trial even though errors are harmless individually." *Id.*

1 As discussed in both the Petition and this Supplement, there were numerous grounds of
2 ineffective assistance of counsel. While Budd believes that each alone is sufficient to grant this
3 Petition, collectively they are overwhelming. This Court should grant this Petition.

4 **WHEREFORE, GLENFORD ANTHONY BUDD** prays that the Court conduct an
5 evidentiary hearing and grant habeas corpus relief to which he may be entitled in this proceeding.

6 **DECLARATION AND VERIFICATION**

7 I, Matthew Carling, am an attorney licensed to practice law in the State of Nevada who
8 was duly appointed to represent the Petitioner, Glenford Anthony Budd, in preparation and filing
9 of the above Petition for Writ of Habeas Corpus (Post-Conviction), and that I filed the foregoing
10 document at the specific instruction of the Petitioner, and based on the order of the appointment
11 by the Court.

12 Respectfully submitted this 20th day of November, 2013.

13
14 CARLING LAW OFFICE, PC

15
16 */s/ Matthew D. Carling, Esq.*
17

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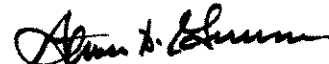
26 GLENFORD ANTHONY BUDD
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H. LEON SIMON, ESQ.
Deputy District Attorney
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/s/ Matthew D. Carling, Esq.

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CLERK OF THE COURT

1 SUPP

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10 GLENFORD ANTHONY BUDD

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15
16 GLENFORD ANTHONY BUDD,

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18 Petitioner,

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20 vs.

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22 MIKE BYRNE, WARDEN,
23 ELY STATE PRISON,

24
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26 Respondent.
27

Case No: C193182

Dept. No.: XVIII

DATE: 12/18/13

TIME: 8:15 AM

EVIDENTIARY HEARING REQUESTED

28
29 **THIRD SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**
30 **(POST-CONVICTION)**
31

32 COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by
33 and through his attorney of record, Matthew D. Carling, and hereby submits this Third
34 Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). This Supplemental
35 contains an exhibit that was inadvertently not attached to the First Supplemental Petition filed on
36 or about May 23, 2013 or the Second Supplemental Petition filed on October 25, 2013.

37 ///

38 ///

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1 This Third Supplemental is for reference purposes only and does not contain any new
2 arguments.

3 Respectfully submitted this 12th day of December, 2013.

4
5 CARLING LAW OFFICE, PC

6
7 */s/ Matthew D. Carling, Esq.*

8
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15 CedarLegal@gmail.com

16 *Court Appointed Attorney for Petitioner*

17 GLENFORD ANTHONY BUDD
18
19

20 **CERTIFICATE OF SERVICE**

21
22 This is to certify that on this the 20th day of November, 2013, service of the foregoing
23 document without exhibits was caused *via* electronic mail to the following individual:

24 TALEEN R. PUNDUKHT, ESQ.

25 Chief Deputy District Attorney

26 ethancotter@me.com
27

28 CARLING LAW OFFICE, PC

29
30 */s/ Matthew D. Carling, Esq.*

31
32 MATTHEW D. CARLING, Esq.

33 Nevada Bar No.: 007302

34 *Court Appointed Attorney for Petitioner*

35 GLENFORD ANTHONY BUDD
36
37

MEMORANDUM

OFFICE OF THE CLARK COUNTY PUBLIC DEFENDER

Public Defender
Philip J. Kohn
Assistant Public Defender
Daren B. Richards

October 17, 2005

TO: HOWARD BROOKS, TIM CLIENT: GLENFORD ANTHONY
O'BRIEN, ANDI LUEM, STEVE YOSHIDA BUDD

FROM: EMILY REEDER CASE NO.: C193182X

SUBJECT: TAMARA GRIERSON STEEL

**CONFIDENTIAL COMMUNICATION PROTECTED BY ATTORNEY-CLIENT AND
WORK-PRODUCT PRIVILEGES**

Spoke with Tamara, Glenford's ex-girlfriend, on 10-11-05.

The Relationship

Tamara states that she dated Glenford from the time she was sixteen until she was eighteen. She reports that Glenford was quiet, smart, good in school, and nice. Tamara notes that Glenford's hobbies were "chasing girls and playing basketball." She says that Glenford was a "square," and she was his "ghetto girlfriend." Tamara says that they used to call each other "Bonnie and Clyde," and she notes that she was the one who "loosened (Glenford) up."

While they were together, Tamara says that she caught Glenford cheating with on her another girl. She says that she had to beat up two other girls because Glenford was cheating on her. Tamara states that she used to beat on Glenford, and Glenford was never the violent type. Eventually, Tamara says that she broke up with Glenford.

Glenford's Family

Tamara says that Glenford's mother used to sell clothes that they got from Jamaica out of their garage. She states that the family was "whole selling" under the table from their garage.

After Glenford's Stepfather's Death

Tamara reports that Glenford's family "went down" after his stepfather died. She says that they lost their apartment because Karen couldn't afford to pay for it, and then Wink (aka Winston Jr.) went back to Jamaica. Tamara says that the family was too embarrassed to say that they didn't have a place to stay, and she states that they were staying in a hotel and going from place to place. In addition, Tamara reports that Karen started "sexing" to pay for the hotel room and buy food for the family after Glenford's stepfather died. She clarifies that sexing means getting back together with ex-boyfriends for money, and she says that it is not prostituting. Eventually, Tamara says that she let Glenford and his family stay with her for a week because they had no where else to go.

Tamara says that Glenford was sad when his stepfather died because he was the only role model he had, and she says that Glenford's stepfather was always very strict with him.

Selling Drugs

Tamara states that Glenford started selling drugs when he was about seventeen years old. She reports that she knew that he was doing "little time hustling" because he had no money, but then he started getting expensive clothes. Tamara says that she and Glenford both loved shoes. She notes that Marcus Bird also knows about Glenford selling drugs.

Tamara reports that Glenford did not start doing drugs until he was eighteen, and then he started smoking marijuana with her. She notes that the police used to pick on Glenford in Montebello, and they knew him as "Mr. Budd."

How Glenford Came to Las Vegas

Tamara reports that Glenford came to Las Vegas because there were Mexican gangs in Montebello that wanted to beat him up. She explains that Glenford was lying about where he was from, and he was "messing with other people's Mexican girls" who had boyfriends that were in gangs. Tamara says that Glenford just wanted to fit in, and he was very susceptible to peer pressure. Eventually, Tamara reports that Glenford didn't like to fight so he went to live in Las Vegas to get away from the situation.

The Incident

Tamara reports that Glenford called her a few months before the incident, and he told her that he wanted to come back and live with her because she was well established. She says that Glenford told her that he didn't like Las Vegas because he was broke and bored.

Tamara says that she heard that some of Glenford's neighbors robbed him of his marijuana a while before the incident. After that, she says that some new neighbors made fun of him because he didn't do anything to the other people who took his marijuana. She says that they gave him PCP, and then he "went crazy."

Miscellaneous

Tamara says that she still loves Glenford, and she was very supportive of him.

Her address is:

Tamara Steel
215 S. Whitmer Apt. 310
Los Angeles, CA 90026

213-250-9658

(Note: She needs to call us collect)


CLERK OF THE COURT

1 **MEMO**

2 **MATTHEW D. CARLING, ESQ.**
3 Nevada Bar No.: 007302
4 1100 S. Tenth Street
5 Las Vegas, NV 89101
6 (702) 419-7330 (Office)
7 (702) 446-8065 (Fax)
8 Cedarlegal@gmail.com
9 *Court Appointed Attorney for Petitioner*
10 **GLENFORD ANTHONY BUDD**

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

15
16 **GLENFORD ANTHONY BUDD,**

17
18 **Petitioner,**

19
20 **vs.**

21
22 **MIKE BYRNE, WARDEN,**
23 **ELY STATE PRISON,**

24
25
26 **Respondent.**
27

Case No: C193182
Dept. No.: XVIII

DATE: 12/18/13
TIME: 8:15 AM

EVIDENTIARY HEARING REQUESTED

28
29 **MEMORANDUM REGARDING PETITIONER'S EXHIBITS**
30 **(IN CAMERA REVIEW)**
31

32 COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by and
33 through his attorney of record, Matthew D. Carling, and hereby submits this Memorandum
34 regarding the Petitioner's Exhibits cited in his First and Second Supplements and his Reply to
35 the State's Response to Defendant's Petition and Supplement Petitions. Petitioner specifically
36 objects to the disclosure of 28 of 33 pages of case notes that were not referenced in the
37 Supplements. The remaining 28 pages of case notes are work product and, therefore, privileged
38 and not relevant to the issues raised by the Petitioner.

39 **///**

1 **OVERVIEW**

2
3 On October 25, 2013, the Petitioner filed his Second Supplemental Petition for Writ of
4 Habeas Corpus (Post-Conviction) for the express purpose of submitting 5 pages of case notes
5 that were referenced in his First Supplement filed on May 23, 2013.¹ The State filed it
6 Response on November 6, 2013. The Petitioner filed his Reply on November 20, 2013.

7 This matter was set for a Status Hearing on December 4, 2013. Counsel for the Petitioner
8 was unable to make the appearance due to inclement weather in Southern Utah. That hearing
9 was rescheduled to December 11, 2013. On December 4, 2013, the State's prosecutor, Taleen R.
10 Pandukht, made a request *via* email for all 33 pages of trial counsel case notes as well the
11 memorandum referencing an interview with Tamara Grierson Steel, a potential defense witness.
12 After review of the pleadings, it is apparent that the memorandum of Tamara Grierson Steele
13 was inadvertently left out of the Second Supplement as it was referenced in the First
14 Supplemental Petition on page 49. That memorandum dated October 17, 2005, has since been
15 supplemented in the record and forwarded to Ms. Pandukt pursuant to the Petitioner's Third
16 Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed on December 12, 2013.

17 **OBJECTION**

18 At issue is whether the State is entitled to all 33 pages of the case notes, 28 pages of
19 which were not mentioned or referenced in the Petitioner's Supplements. Counsel has
20 previously submitted the 5 pages that were referenced in the First Supplement. However,
21 Counsel objects to the disclosure of the remaining pages as work product and, therefore,
22 privileged. The scope of the Petitioner's use of the 5 pages is limited to the issues presented in

¹ The references to the specific pages where the case note references are made can be found in the Petitioner's Second Supplemental Petition filed on October 25, 2013. The Memorandum of Tamara Grierson Steele is found at page 49 (Subsection "C") of the Petitioner's First Supplemental Petition filed on May 23, 2013.

1 the Supplements. In this regard, the remaining pages are not relevant. The State is simply not
2 entitled to trial counsel's file. The State will have ample opportunity to cross-examine Howard
3 Brooks should this Court decide that an Evidentiary Hearing is necessary pursuant to NRS
4 34.770.

5 Respectfully submitted this 12th day of December, 2013.

6
7 CARLING LAW OFFICE, PC

8
9 */s/ Matthew D. Carling, Esq.*

10
11 MATTHEW D. CARLING, Esq.

12 Nevada Bar No.: 007302

13 1100 S. Tenth Street

14 Las Vegas, NV 89101

15 (702) 419-7330 (Office)

16 (702) 446-8065 (Fax)

17 CedarLegal@gmail.com

18 *Court Appointed Attorney for Petitioner*

19 GLENFORD ANTHONY BUDD
20

21
22 **CERTIFICATE OF SERVICE**

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24 This is to certify that on this the 12th day of December, 2013, service of the foregoing
25 document without exhibits was caused *via* electronic mail to the following individual:

26 TALEEN R. PUNDUKHT, ESQ.

27 Chief Deputy District Attorney

28 ethancotter@me.com
29

30 CARLING LAW OFFICE, PC

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32 */s/ Matthew D. Carling, Esq.*

33
34 MATTHEW D. CARLING, Esq.

35 Nevada Bar No.: 007302

36 *Court Appointed Attorney for Petitioner*

37 GLENFORD ANTHONY BUDD
38
39


CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
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-

CASE NO: 03C193182

GLENFORD ANTHONY BUDD,
#0190089

DEPT NO: XVIII

Defendant.

STATE'S RESPONSE TO DEFENDANT'S MEMORANDUM REGARDING
PETITIONER'S EXHIBITS (IN CAMERA REVIEW)

DATE OF HEARING: DECEMBER 18, 2013

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Memorandum Regarding Petitioner's Exhibits (In Camera Review).

This Response 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.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On June 26, 2003, the State filed an Information charging GLENFORD ANTHONY
4 BUDD (hereinafter "Defendant") with three (3) counts of MURDER WITH USE OF A
5 DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165) stemming from the
6 shooting deaths of Dajon Jones, Derrick Jones, and Jason Moore. The State filed a Notice of
7 Intent to Seek Death Penalty on July 25, 2003.

8 Defendant's jury trial began on December 5, 2005. On December 13, 2005, the jury
9 found Defendant guilty on all three (3) counts as alleged in the Information.

10 The penalty phase of Defendant's jury trial began on December 14, 2005. On
11 December 16, 2005, the jury returned a penalty verdict of LIFE IN PRISON WITHOUT
12 THE POSSIBILITY OF PAROLE on each of the three (3) counts. On February 22, 2006,
13 this Court sentenced Defendant as follows: as to COUNT 1 - to LIFE WITHOUT THE
14 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE WITHOUT THE
15 POSSIBILITY OF PAROLE for use of a deadly weapon; as to COUNT 2 - to LIFE
16 WITHOUT THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE
17 WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon to run
18 CONSECUTIVE to COUNT 1; and as to COUNT 3 - to LIFE WITHOUT THE
19 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE WITHOUT THE
20 POSSIBILITY OF PAROLE for use of a deadly weapon to run CONSECUTIVE to COUNT
21 2 with NINE HUNDRED NINETY-FIVE (995) DAYS credit for time served. The
22 Judgment of Conviction was filed on March 1, 2006.

23 On March 23, 2006, Defendant filed a Notice of Appeal. On January 9, 2007, the
24 Nevada Supreme Court affirmed Defendant's conviction. Remittitur issued on February 6,
25 2007.

26 On September 21, 2007, Defendant filed a pro per Petition for Writ of Habeas Corpus
27 (Post-Conviction) ("Petition"). The State filed a Response to Defendant's Petition on
28

1 November 27, 2007. This Court denied Defendant's Petition on November 30, 2007 and
2 filed its Findings of Fact, Conclusions of Law and Order on January 7, 2008.

3 Defendant filed a Notice of Appeal on January 23, 2008. On September 25, 2009, the
4 Nevada Supreme Court reversed this Court's denial of Defendant's Petition on grounds that
5 Defendant should have been appointed post-conviction counsel; the Nevada Supreme Court
6 remanded the case to this Court. Remittitur issued on October 20, 2009.

7 Represented by counsel, Defendant filed a First Supplemental Petition for Writ of
8 Habeas Corpus Post Conviction. Defendant filed a Second Supplemental Petition for Writ of
9 Habeas Corpus on October 25, 2013. The State filed a Response to Defendant's Petition and
10 Supplements on November 6, 2013. Defendant filed a Reply on November 20, 2013. On
11 December 12, 2013, Defendant filed a Third Supplemental Petition for Writ of Habeas
12 Corpus and a Memorandum Regarding Petitioner's Exhibits (In Camera Review).

13 The State files this Response to Defendant's Memorandum Regarding Petitioner's
14 Exhibits (In Camera Review) and respectfully requests that this Court order Defendant to
15 produce the remaining twenty-eight (28) pages of Defendant's trial counsel's case notes as
16 discussed in detail below.

17 ARGUMENT

18 **I. THE STATE IS ENTITLED TO REVIEW THE FULL VERSION OF CASE**
19 **NOTES BECAUSE THEY ARE RELEVANT TO DEFENDANT'S CLAIMS,**
20 **DEFENDANT PLACED THE NOTES DIRECTLY INTO ISSUE, AND**
DEFENDANT WAIVED THE ATTORNEY-CLIENT PRIVILEGE
PURSUANT TO NRS 34.735(6).

21 Defendant's Supplements and Reply repeatedly cite Defendant's trial counsel's
22 electronic case notes in an attempt to support a variety of Defendant's claims. Particularly,
23 Defendant cites the case notes to claim that Defendant was detached from the pre-trial and
24 trial proceedings and thus trial counsel should have requested competency proceedings.
25 However, Defendant only provided the five (5) pages of notes to which he cites rather than
26 the thirty-three (33) pages of case notes that exist. Especially in light of Defendant's claim
27 that counsel failed to recognize that Defendant was detached *throughout* the proceedings, a
28 sample selected by Defendant's post-conviction counsel from only a few days of a more than

1 two (2) year pretrial process is not sufficient to adequately inform this court regarding
2 Defendant's purported detachment. Thus, Defendant should provide the full case notes such
3 that the State can adequately respond to Defendant's claims and provide this Court with full
4 analysis.

5 At a status check on December 11, 2013, the State represented to this Court that the
6 State had orally and via email requested the full case notes from Defendant's post-conviction
7 counsel, Mr. Carling. Mr. Carling objected on grounds that the twenty-eight (28) omitted
8 pages are work-product. Mr. Carling then filed Defendant's Memorandum Regarding
9 Petitioner's Exhibits on December 12, 2013, objecting to producing the documents on
10 grounds that the documents are work product and irrelevant to the issues raised in the
11 Petition. As explained above, the documents are highly relevant to Defendant's claims of
12 ineffective assistance of counsel, and particularly his claim that trial counsel should have
13 requested competency proceedings.

14 Mr. Carling need not be concerned with work-product, moreover, because Defendant
15 necessarily waived attorney-client privilege for these proceedings when he filed his post-
16 conviction Petition alleging ineffective assistance of counsel. Indeed, NRS 34.735(6)
17 specifically states, in pertinent part, as follows:

18 If your petition contains a claim of ineffective assistance of
19 counsel, that claim will operate to waive the attorney-client
20 privilege for the proceeding in which you claim your counsel
was ineffective.

21 Thus, there is no basis for Defendant to claim that the attorney-client or work-product
22 privilege protects all but a selected five pages of trial counsel's electronic case notes.
23 Defendant specifically placed the electronic case notes in issue when he repeatedly cited
24 them throughout his pleadings. Fairness dictates that the State should have a reasonable
25 opportunity to evaluate the full body of case notes to evaluate the credibility of Defendant's
26 claims and respond accordingly. See Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004).
27 Therefore, the State requests that this Court order Defendant to provide the State with copies
28 of all thirty-three (33) pages of trial counsel's electronic case notes.

1 CONCLUSION

2 Based on the foregoing, the State respectfully requests that this Court order Defendant
3 to provide the State with all thirty-three (33) pages of trial counsel's electronic case notes.

4 DATED this 17th day of December, 2013.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY

Taleen R. Pandukht
10 TALEEN R. PANDUKHT
11 Chief Deputy District Attorney
12 Nevada Bar #5734

13 CERTIFICATE OF SERVICE

14 I certify that on the 6th day of November, 2013, I e-mailed a copy of the foregoing
15 State's Response To Defendant's Memorandum Regarding Petitioner's Exhibits (In Camera
16 Review), to:

17 MATTHEW D. CARLING, Esq.
18 Cedarlegal@gmail.com

19 BY

R. Johnson
20 R. JOHNSON
21 Secretary for the District Attorney's Office
22
23
24
25
26
27

28 WF/TRP/rj/M-1


CLERK OF THE COURT

OPI
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #002626
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-

GLENFORD ANTHONY BUDD,
#1900089

Defendant.

CASE NO: 03C193182

DEPT NO: XVIII

**ORDER FOR PRODUCTION OF INMATE
GLENFORD ANTHONY BUDD, BAC #90043**

**DATE OF HEARING: 1/31/14
TIME OF HEARING: 8:15 A.M.**

TO: E.K. MCDANIELS, Warden of the Ely State Prison;

TO: DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through TALEEN R. PANDUKHT, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that E.K. MCDANIELS, Warden of the Ely State Prison shall be, and is, hereby directed to produce GLENFORD ANTHONY BUDD, in Case No. 03C193182, on a charge wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said GLENFORD ANTHONY BUDD is currently incarcerated in the Ely State Prison located in Ely, Nevada and his presence will be required in Las Vegas, Nevada commencing

//

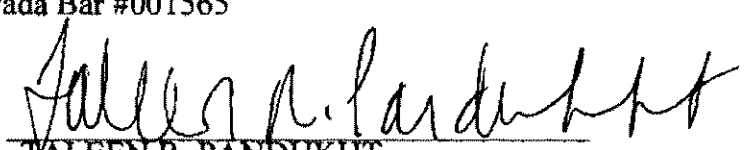
1 on 1/31/14, at the hour of 8:15 o'clock A.M. and continuing until completion of the
2 prosecution's case against the said Defendant.

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

11 DATED this 19th day of December, 2013.

12
13 
14 _____
DISTRICT COURT JUDGE

15 STEVEN B. WOLFSON
16 District Attorney
Nevada Bar #001565

17
18 BY 
19 TALEEN R. PANDUKHT
Chief Deputy District Attorney
20 Nevada Bar #002626
21
22
23
24
25
26
27

28 03F09137X/jr for rj/M-1

1 Counsel's failure to zealously represent the interests of his client constitutes ineffective
2 assistance of counsel. A lawyer's first duty is zealously to represent his or her client. *Sanders*
3 *v. Ratelle*, 21 F.3d 1446 (9th Cir. 1994). In *Anderson v. Calderon*, 276 F.3d 483 (9th Cir.
4 2001), the Court stated the failure to zealously represent the interests of his client, an attorney
5 "violated his duty of loyalty" to the client. *Id.* Not only does this type of conduct violate the
6 duty of loyalty and constitute ineffective assistance of counsel, it actively serves the interests of
7 the prosecution. *Id.*

9 After day one's jury voir dire and selection, the trial entered day two on December 6,
10 2003 with the continuation of the same. (See Trial Transcript, Volume II, cited herein as
11 "TT2"). Budd's counsel started day two off by complaining to the Court again about his
12 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
13 mother stating she did not know the facts of the case, despite Brooks protestations that he had
14 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
15 who failed to appear at the appointment. (*Id.*). This complaint resulted in the Court stating the
16 following:
17

19 I think I need to note for the record and Mr. Budd, you need to understand to the
20 best of your abilities, you need to try to have your family understand this, if the
21 design or plan is to somehow segue this lack of cooperation into an ineffective
22 assistance of counsel claim, it's not going to work.

22 (*Id.* at 4).

23 In addition, Day three of the trial commenced on December 8, 2005. (See Trial
24 Transcript Vol. III-A cited to herein as "TT3A"). This day commenced with an evidentiary
25 ruling regarding the admission of Winston Budd's Preliminary Hearing testimony because he
26 was no residing in Belize. (TT3A, P. 2, *et seq.*). Brooks argued that the State had not engaged
27 in sufficient conduct to establish that Winston was an unavailable witness. Incredibly Brooks
28

1 made the argument for the State resulting in the Court finding Winston unavailable and tacitly
2 granting the oral motion to use the Preliminary Hearing transcript in lieu of live testimony.
3 (TT3A, P. 5-9).

4
5 In each example above, counsel failed to zealously represent Budd's interest. This duty
6 is clearly defense counsel's paramount interest in exercising loyalty to his client. Thus, a
7 breach of the duty to zealously represent Budd falls below the objectively reasonable standard
8 of conduct. In addition, it is clearly prejudicial to Budd. Counsel was not interested in
9 defending Budd zealously. To the contrary, the evidence does and will reveal that counsel did
10 not believe that Budd had any defense to assert in the trial phase of the proceedings. Clearly,
11 had counsel believed that any defense existed, he would have presented one, which he did not.
12 Counsel admitted that he was not prepared, failed to object, failed to introduce evidence, and
13 otherwise failed to zealously represent Budd's interest. All of this prejudiced Budd as the
14 outcome of the trial would have been difference but for counsel's failure to zealous represent
15 him during the trial phase of the proceedings.

16
17
18 **H. Continued Representation in Face of Conflict of Interest**

19 When counsel has a conflict of interest, it may constitute ineffective assistance of
20 counsel. If a petitioner shows that a conflict of interest actually affects the adequacy of his
21 representation, there is no requirement to show prejudice in addition in order to obtain relief.
22 *Mickens v. Taylor*, 535 U.S. 162, 171 (2001).

23
24 What is clear at the beginning of the proceedings is that counsel developed a conflict of
25 interest with Budd which was so unyielding that the objects of the representation were
26 thwarted. the trial entered day two on December 6, 2003 with the continuation of the same.
27 (See Trial Transcript, Volume II, cited herein as "TT2"). Budd's counsel started day two off by
28

1 complaining to the Court again about his frustrations regarding the Defendant's family. (TT2,
2 P. 3-4). Brooks complained about Budd's mother stating she did not know the facts of the case,
3 despite Brooks protestations that he had previously explained them to her. (*Id.*). Brooks set up
4 an appointment with Budd's mother, who failed to appear at the appointment. *Id.* This
5 complaint resulted in the Court stating the following:
6

7 I think I need to note for the record and Mr. Budd, you need to understand to the
8 best of your abilities, you need to try to have your family understand this, if the
9 design or plan is to somehow segue this lack of cooperation into an ineffective
assistance of counsel claim, it's not going to work.

10 (*Id.* at 4). Thus, Brooks engaged in a self protective action to the prejudice of his own client.

11 At the conclusion of the second day of trial, jury selection remained unfinished.

12 Brooks self interest was promoted well before and above Budd's interest. This
13 conflict was so constant in Brooks preparation and the proceedings, that it added to Budd's
14 failure to zealously represent Budd's interest. In addition, it resulted in the complete
15 abandonment of any defense in the trial phase of the proceedings. This clearly fell well below
16 the standard of objectively reasonable conduct. In addition, it resulted in prejudice. Brooks did
17 not protect Budd's interest. Rather, he protected his own interests. Absent the conflict of
18 interest, the outcome of the case would have been different. A defense would have been
19 presented which would have created reasonable doubt regarding premeditation and resulted at
20 the least of a conviction of the lesser included offense. Budd was prejudiced by the conflict of
21 interest.
22
23

24 **I. Failure to Preserve Record on Appeal**

25 Ineffective assistance of counsel lies where counsel fails to preserve the record for
26 appeal. The failure to preserve issues for appellate review can constitute ineffective assistance
27
28

1 of counsel. *See e.g. Martin v. State*, 501 So.2d 1313 (Fla. 1st DCA 1986); *Crenshaw v. State*,
2 490 So.2d 1054 (Fla. 1st DCA 1986).

3 The State made its Opening Statement. (TT3B, P. 41, *et seq.*). During the State's
4 opening, it quoted from a highly prejudicial rap song allegedly authored by Budd. *Id.* at 56-57.
5 An objection was lodged resulting in an unrecorded sidebar. (*Id.* at 55). However, no pretrial
6 Motion in Limine was filed to exclude the evidence because its probative value was
7 outweighed by its prejudicial effect. After the close of opening statements, some kind of
8 record was made of the sidebar. (*Id.* at 67-68). The record was summary and contrary to the
9 Court's ruling that all proceedings would be recorded.
10

11 The failure to properly preserve the record for appeal was significant. First, it falls well
12 below the standard of objectively reasonable performance. This is particularly true in the
13 context of a capital murder case. In addition it resulted in prejudice. Because counsel failed to
14 preserve a record on appeal, including not only of the foregoing examples, but also the failures
15 to timely object during the proceedings, the scope of the direct appeal was severely limited. In
16 fact, the only issue appealed was the failure of the State to meet its burden of proof. The
17 Orders were affirmed on appeal. But for the failure to properly and timely preserve the issues
18 on appeal, the result from the appeal would have been different. Thus, Budd suffered from
19 ineffective assistance of counsel.
20

21
22 **J. Unauthorized Admissions Which Violate Defendant's Right to Remain Silent**

23 Where counsel makes admissions on behalf of this client, without prior client approval,
24 such admissions constitute both ineffective assistance of counsel and a violation of the
25 Defendant's Fifth Amendment Right to Remain Silent. In such cases, the standard *Strickland*
26 analysis applies.
27
28

1 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short.
2 (*Id.*). But more troubling, Brooks so much as admitted that Budd was responsible for the
3 killings. (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that
4 Glenford killed these three people." (*Id.* at 58). Such a statement was tantamount to
5 unilaterally changing Glenford's plea and violating his Fifth Amendment Right to Remain
6 Silent. In effect, counsel was admitting guilt, something that Budd had not done nor had he
7 ever authorized counsel to do. In addition, it was an admission effectively by Budd through
8 counsel which eliminated his right to remain silent.
9

10 This conduct fell below a standard of objectively reasonable conduct. In addition, it
11 clearly prejudiced Budd. It was an admission that Budd was guilty, despite his having denied
12 guilt. Effectively, counsel spoke for Budd who had invoked his right to remain silent by doing
13 so. By admitting that evidence will show that Budd killed three people, counsel violated
14 Budd's constitutional right of silence. This was highly prejudicial. It was an admission of
15 guilt. But for this admission, the outcome of the proceedings would have been difference. The
16 jury would not have been tainted by these admissions. This constituted ineffective assistance
17 of counsel.
18

19
20 **K. Admissions which Eliminated Presumption of Innocence**

21 If counsel makes admissions which have the effect of gutting the presumption of
22 innocence, this is a violation of the right to effective assistance of counsel. Again, the standard
23 analysis set forth in *Strickland* applies.
24

25 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short.
26 (*Id.*). But more troubling, Brooks so much as admitted that Budd was responsible for the
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1 killings. (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that
2 Glenford killed these three people." (*Id.* at 58).

3 Again, this statement was unauthorized. The effect of the statement was to eliminate or
4 diminish the State's burden of proof. Specifically, counsel told the jury that Budd was guilty.
5 By so doing, he effectively eliminated the presumption of innocence. This fell below an
6 objectively reasonable standard of conduct. In addition, it prejudiced Budd. The State no
7 longer had to prove each of the elements of the crimes charged. Instead, counsel effectively
8 admitted Budd's guilt. This prejudiced Budd by eliminating the duty on the part of the State to
9 prove each element beyond a reasonable doubt. But for this elimination of the presumption
10 innocence, the outcome would have been different.

13 **L. Alleviated State's Burden of Proof**

14 Where counsel's conduct eliminates the burden upon the State to prove each element of
15 the crime charged beyond a reasonable doubt, such burden shifting or elimination constitutes
16 ineffective assistance of counsel. To prevail on a claim of ineffective assistance of trial or
17 appellate counsel, a defendant must demonstrate (1) that counsel's performance was deficient
18 and (2) that counsel's deficient performance prejudiced the defense. *Strickland* at 687.

20 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short.
21 (*Id.*). But more troubling, Brooks so much as admitted that Budd was responsible for the
22 killings. (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that
23 Glenford killed these three people." (*Id.* at 58).

25 Again, this statement was unauthorized. The effect of the statement was to eliminate or
26 diminish the State's burden of proof. Specifically, counsel told the jury that Budd was guilty.
27 By so doing, he effectively eliminated the State's duty to prove each element of the crimes
28

1 charged. This fell below an objectively reasonable standard of conduct. In addition, it
2 prejudiced Budd. The State no longer had to prove each of the elements of the crimes charged.
3 Instead, counsel effectively admitted Budd's guilt. But for this elimination of the presumption
4 innocence, the outcome would have been different.
5

6 **M. Waiver of Right to Confront Witnesses**

7 The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall
8 enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.
9 The right to confrontation is a fundamental constitutional right. *See Pointer v. Texas*, 380 U.S.
10 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). In *Wilson v. Gray*, 345 F.2d 282, 286 (9th
11 Cir. 1965), cert. denied, 382 U.S. 919, 86 S.Ct. 288, 15 L.Ed.2d 234 (1965), the 9th Circuit
12 determined that counsel may waive the accused's Sixth Amendment right to cross-examination
13 and confrontation as a matter of trial tactics or strategy. *Id.* However, in order for such
14 conduct to constitute a trial strategy, it must be a knowing trial strategy and not merely an
15 unintended consequence of otherwise substandard representation. In the latter cases, any
16 unintended waiver is ineffective assistance of counsel.
17
18

19 The trial continued on Tuesday, December 13, 2005 at 1:35 p.m. (*See* Trial Transcript
20 Vol. VI, cited to herein as TT6). For the first time, the State revealed that it had provided
21 relocation assistance in the approximate amount of \$300.00 to witness Palau, the woman who
22 allegedly was an eyewitness to the shooting on the balcony. (*Id.* at 7-8). The State explained
23 that it told Brooks about this fact after Palau had testified and that as a "tactical decision" there
24 was no point in bringing this out in the presence of the jury. (*Id.* at 8). When the Court asked
25 Brooks if he wished to be heard, defense counsel declined. (*Id.* at 9).
26
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1 The foregoing was a waiver of Budd's right to confront witnesses, a right which is
2 fundamental. Had this information been timely provided, Budd's counsel should have
3 examined Palau about the incentives provided for her testimony. However, this information
4 was not timely provided. In the face of this information, counsel should have moved for a
5 mistrial. He did not. Instead, he remained silent. This was not a tactical decision but rather a
6 complete failure to meet the objectively reasonable standard of performance.
7

8 Moreover, Palau was an alleged eyewitness. The confrontation of that witness would
9 have undermined the credibility of her eye witness account. Because she specifically testified
10 that she saw the shooting of one of the witnesses, undermining her credibility could well have
11 created reasonable doubt as to whether she actually saw what she testified seeing. But for this
12 failure to meet the objectively reasonable standard of performance, the outcome of the matter
13 would have been different. Therefore, this Petition should be granted.
14

15 **N. Violating Defendant's Right Against Self Incrimination**
16

17 The Fifth Amendment right contains the right against self-incrimination. The right
18 against self-incrimination may be waived, but any such waiver must be knowing and voluntary.
19 See *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); see also
20 *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). "[A] heavy
21 burden rests on the government to demonstrate that the defendant knowingly and intelligently
22 waived his privilege against self-incrimination. . . ." *Miranda v. Arizona*, 384 U.S. 436, 475,
23 86 S.Ct. 1602 (1966). If a defendant decides to waive his right against self-incrimination
24 based upon the advice of counsel, then that decision is knowing and voluntary for purposes of
25 the Fifth Amendment, as long as counsel's advice was constitutionally reasonable under the
26 Sixth Amendment and Strickland. See *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88
27
28

1 L.Ed.2d 203 (1985). However, if counsel implicitly waives the right against self-
2 incrimination, without consulting with the defendant and without the defendant's knowing,
3 voluntary consent, such conduct is ineffective assistance of counsel.

4 The defense made its closing argument. (*Id.* at 47). During the closing argument,
5 Brooks discussed Greg Lewis testimony and specifically stated, "And we're not going to play
6 games here. They were in jail together." (*Id.*). Such a statement was incriminating. Just as
7 the State is not permitted to reference incarceration because of the prejudicial effect, Brooks
8 mention of the same was equally prejudicial. Again, it tainted the juries' view of Budd. If he
9 was in jail, he must have committed the crime. This prejudiced Budd. But for this violation of
10 Budd's right against self incrimination, the jury would not have been tainted and the outcome
11 would have been different.

12
13
14 **O. Failure to Evaluate Budd's Competency to Stand Trial**

15 Counsel was ineffective for failing to request a competency hearing to determine
16 whether Budd was competent to stand trial. This claim depends in large measure on facts
17 outside the record. *See Massaro v. United States*, ___ U.S. ___, 123 S.Ct. 1690, 1694, 155
18 L.Ed.2d 714 (2003). In addition to the standard *Strickland* analysis, Budd can put before the
19 Court circumstantial evidence regarding the basis of the claim of incompetency at the time of
20 trial.

21
22 During the representation, counsel maintained case notes. On November 28, 2005,
23 Brooks met with Bud. During this meeting, Budd denied he committed the crime and when
24 Budd told him the evidence was overwhelming that Budd would be convicted on all three
25 counts. Budd responded that he would just "hope for the best." (*See Case Notes*, P. 7). Brooks
26 asked if Budd wanted to testify to which Budd's response was in the affirmative. (*Id.*).
27
28

1 Throughout the notes and case files, counsel noted that Budd was disconnected and apparently
2 did not appreciate the seriousness of the proceedings against him.

3 In addition, the Case Notes contain the following relevant entries:
4

5
6 A) On June 16, 2004, Brookes notes that he told Budd that this was not a case
7 where he was going home anytime soon, but rather one where he would
8 probably spend the rest of his life in prison or alternatively get the death
9 penalty. Budd literally had no reaction to this statement at all. He was not
10 engaged. (See Case Notes, P. 15).

11 B) On June 18, 2004, Brooks notes that he spoke with Budd's grandmother,
12 Karen who indicates that Budd tells her he will be coming home soon, and
13 that the CCDC is just like daycare. She confesses that she does not believe
14 that Budd understands what is going on. (See Case Notes, P. 14).

15 C) On September 12, 2005, Brooks made an entry indicating that Budd was
16 disengaged in the whole process and his responses were generally only one or
17 two syllables. (See Case Notes, P. 10).

18 D) On October 19, 2005, Brooks made an entry in the notes indicating that Budd
19 remains disconnected from the case and unwilling to deal with reality. (See
20 Case Notes, P. 9).

21 (*Id.* emphasis supplied).

22 At no time did counsel file a motion to determine Budd's competency. Further, counsel
23 did not retain the services of an expert to independently determine Budd's competency. Based
24 on Budd's reaction to the charges against him, counsel's evaluation of his understanding of the
25 proceedings, and his irrational reactions, it was well below the standard of objectively
26 reasonable conduct of defense counsel in a capital homicide case.

27 In addition, Budd was prejudiced. Had counsel sought a competency hearing, the
28 results of the trial may well have been different. In fact, had Budd been declared not competent
to stand trial, no trial would have occurred. Therefore, the outcome would have been different.

1 **P. Failure to Communicate with Defendant**

2 Counsel's representation may be deficient constituting ineffective assistance of counsel
3 for failing to communicate with the Petitioner. Adequate consultation between attorney and
4 client is an essential element of the effective assistance of counsel. *Strickland*, 466 U.S. at 688,
5 104 S.Ct. at 2065. "From counsel's function as assistant to the defendant derive the overarching
6 duty to advocate the defendant's cause and the more particular duties to consult with the
7 defendant on important decisions and to keep the defendant informed of important
8 developments in the course of the prosecution." *Id.* See also *Roe v. Flores-Ortega*, 528 U.S.
9 470, 120 S.Ct. 1029 (2000) and *Johnson v. Parker*, Civil Action No. 1:06CV217-SA-JAD
10 (N.D.Miss. 9-12-2008)(failure to communicate may be both a symptom and cause of
11 ineffective assistance).
12

13
14 When the trial commenced on December 5, 2005, counsel for Budd made an oral
15 motion to continue the trial due to Budd's unhappiness with his representation and an
16 affirmative representation that another attorney was willing to take the case over. (TT1 at 2-4).
17 Specifically, Brooks represented to the Court that his relationship with Budd was non-existent.
18 (TT1 at 6). He further represented that as to the guilt phase, he didn't feel the lack of a
19 relationship would make any difference in the outcome of the proceedings. (*Id.*).
20

21 Day 2 of the trial did not start any better. (*See* Trial Transcript, Volume II, cited herein
22 as "TT2"). Budd's counsel started day two off by complaining to the Court again about his
23 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
24 mother stating she did not know the facts of the case, despite Brooks protestations that he had
25 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
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1 who failed to appear at the appointment. (*Id.*). This complaint resulted in the Court stating the
2 following:

3 I think I need to note for the record and Mr. Budd, you need to understand to the
4 best of your abilities, you need to try to have your family understand this, if the
5 design or plan is to somehow segue this lack of cooperation into an ineffective
6 assistance of counsel claim, it's not going to work.

7 (*Id.* at 4). This again is evidence of the lack of communication between Budd and his counsel.

8 These statements by counsel are an admission of inadequate communication between
9 Budd and Brooks. Because of this inadequate communication, Budd was not permitted to
10 participate in his own defense. Such a failure fell well below the objectively reasonable
11 standard of conduct by counsel in a death penalty case.

12 In addition Budd was prejudiced. He was not permitted to provide alibi witnesses,
13 discuss potential defenses, or other assist in rebutting the facts presented by the State. This
14 prejudice resulted in a conviction which otherwise would not have occurred. Had Budd been
15 permitted to participate in the creation and formulation of his defense, the outcome of the trial
16 could have been different. Therefore, this admitted failure to communicate resulted in
17 prejudice to Budd and constituted ineffective assistance of counsel.
18

19 **Q. Failure to Retain Expert Defense Witnesses**

20 A claim for ineffective assistance of counsel may lie for failing to retain defense
21 experts. Ineffective assistance of counsel claims are analyzed under the two-prong test of
22 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under *Strickland*, Castor must
23 show both that his counsel's performance was deficient and that the deficient performance
24 prejudiced his defense such that he was deprived of a "fair trial, a trial whose result is reliable."
25 *Id.* at 687, 104 S.Ct. at 2064.
26
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1 During the trial phase of the proceedings, counsel did not retain the services of an
2 expert witness. While counsel did retain the services of John Paglini, PhD, during the penalty
3 phase of the proceedings, no such expert was retained during the pretrial or trial phase of the
4 case. As discussed above, counsel had objective evidence that Budd lacked the competency to
5 stand trial. Yet despite this evidence, he did not seek a competency hearing. He did not retain
6 the services of an independent evaluator to determine Budd's competency. He did not retain
7 the services of an expert witness to refute the long range alleged observations of Palau, which
8 observations were unlikely based on distance and lighting. Counsel did not retain the services
9 of a handwriting expert to analyze the letter containing the rap song which was extremely
10 prejudicial. In short, counsel not only failed to put on any defense at all to the facts of the case,
11 he further failed to put on a defense in the form of retained expert witness testimony during the
12 trial phase of the proceedings.
13

14
15 This failure fell well below the objectively reasonable standard of performance. In a
16 capital homicide case, experts are regularly retained to examine all forms of evidence which
17 will be offered by the State. However, in the instant case, no such experts were retained. The
18 prejudice is cavernous. Budd was tried without so much as a determination of competency.
19 Witnesses with no real ability to see made eyewitness identifications. (Palau, *supra*). Most
20 significantly, the letter which allegedly contained admissions was admitted with little to no
21 foundation, and without so much as a hand writing expert analysis or finger printing to
22 determine whether Budd's finger prints appeared anywhere on the letter.
23
24

25 But for these failures, the outcome of the trial would have been different. Two
26 witnesses who received incentives for their testimony would most likely have been determined
27 to lack credibility in the eyes of the jurors. Most significantly, the letter which the State latched
28

1 onto with both jaws clinched may well have been found to have not been authored by Budd.
2 But for the admission of this evidence and its impact, the resulting verdict would have been
3 different. Therefore, Budd suffered prejudice.

4
5 **R. Cumulative Effect of All Errors**

6 Finally, where the errors of counsel are numerous, their cumulative effect may
7 constitute ineffective assistance of counsel. *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d
8 1100, 1115 (2002). Thus, "[t]he cumulative effect of errors may violate a defendant's
9 constitutional right to a fair trial even though errors are harmless individually." *Id.*

10 As discussed in both the Petition and this Supplement, there were numerous grounds of
11 ineffective assistance of counsel. While Budd believes that each alone is sufficient to grant
12 this Petition, collectively they are overwhelming. This Court should grant this Petition.

13 **WHEREFORE**, GLENFORD ANTHONY BUDD prays that the Court conduct an
14 evidentiary hearing and grant habeas corpus relief to which he may be entitled in this
15 proceeding.
16

17
18 **DECLARATION AND VERIFICATION**

19 I, Matthew Carling, am an attorney licensed to practice law in the State of Nevada who
20 was duly appointed to represent the Petitioner, Glenford Anthony Budd, in preparation and
21 filing of the above Petition for Writ of Habeas Corpus (Post-Conviction), and that I filed the
22 foregoing document at the specific instruction of the Petitioner, and based on the order of the
23 appointment by the Court.
24

25 Respectfully submitted this 22nd day of May, 2013.

26 CARLING LAW OFFICE, PC

27 /s/ MATTHEW D. CARLING, ESQ.
28 Nevada Bar No.: 007302

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Court-Appointed Attorney for Petitioner,
GLENFORD ANTHONY BUDD

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CERTIFICATE OF SERVICE

This is to certify that on this the 22nd day of May, 2013, service of the foregoing document was caused *via* electronic mail to the following individual:

H. LEON SIMON, ESQ.
Deputy District Attorney
h.simon@ccdanv.com

CARLING LAW OFFICE, PC

/s/ MATTHEW D. CARLING, ESQ.

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(702) 446-8065 (fax)

CedarLegal@gmail.com

Court-Appointed Attorney for Petitioner,

GLENFORD ANTHONY BUDD


CLERK OF THE COURT

1 SAA
2 STEVEN D. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 EMILY MONTGOMERY
6 Deputized Law Clerk
7 Nevada Bar #012825
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

-vs-

15 GLENFORD A. BUDD,
16 # 0190089
17 Defendant.

Case No. 03C193182

Dept No. XVIII

HEARING DATE
ALREADY ENTERED
IN ODYSSEY

STIPULATION AND ORDER
EXTENDING TIME

18 IT IS HEREBY STIPULATED AND AGREED by and between the above named
19 parties, through their undersigned counsel of record, that the briefing schedule regarding
20 Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) is
21 continued as follows: State's Response is due on or about October 21, 2013. Defendant's
22 counsel, MATTHEW D. CARLING, ESQ., shall have thirty (30) days from the date the
23 State files its Opposition to file his Reply, and the date for Argument on Defendant's Petition
24 for Writ of Habeas Corpus (Post-Conviction) currently set for September 9, 2013, will be
25 vacated and reset to a date convenient to the Court.

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DATED this 18th day of July, 2013.

DATED this 19th day of July, 2013.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar#001565

MATTHEW D. CARLING, ESQ.
ATTORNEY FOR DEFENDANT

BY Emily Montgomery /s/
EMILY MONTGOMERY
Deputized Law Clerk

BY /s/ Matthew D. Carling, Esq.
MATTHEW D. CARLING, ESQ.

ORDER

IT IS HEREBY ORDERED that the briefing schedule regarding Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) is continued as follows: State's Response is due on or about October 21, 2013. Defendant shall have 30 days from the date the State files its Opposition to file Defendant's Reply, and the date for Argument on Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) currently set for September 9, 2013, will be vacated and reset to a date convenient to the Court. *December 4, 2013 @ 8:15 AM.*

DATED this 19th day of July, 2013.



DISTRICT JUDGE

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Stipulation and Order Extending
Time is hereby acknowledged this 19th day of July, 2013.

MATTHEW D. CARLING, ESQ.
ATTORNEY FOR DEFENDANT

BY: /s/ Matthew D. Carling, Esq.
1100 S. Tenth Street
Las Vegas, NV 89101


CLERK OF THE COURT

1 **SUPP**

2 MATTHEW D. CARLING, ESQ.

3 Nevada Bar No.: 007302

4 1100 S. Tenth Street

5 Las Vegas, NV 89101

6 (702) 419-7330 (Office)

7 (702) 446-8065 (Fax)

8 Cedarlegal@gmail.com

9 Court-Appointed Attorney for Petitioner

10 GLENFORD ANTHONY BUDD

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 * * * * *

14 GLENFORD BUDD,

15 Petitioner,

Case No.: 03C193182

Dept. No.: XVIII

16 vs.

17 RENEE BAKER, WARDEN, ELY STATE
18 PRISON,

19 Respondent.

**EVIDENTIARY HEARING
REQUESTED**

20 **SECOND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**
21 **(POST-CONVICTION)**

22 COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by
23 and through his attorney of record, Matthew D. Carling, and hereby submits this Second
24 Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). This Supplemental
25 contains references to certain exhibits that were not attached to the First Supplemental Petition
26 filed on or about May 23, 2013. This Second Supplemental is for reference purposes only and
27 does not contain any new arguments.

28 **REFERENCES**

Page 46, lines 5-10 state:

In the instant case, Brooks admitted that he was not adequately prepared for the trial. Throughout the case, Brooks maintained electronic case notes. These case notes are troubling and contain the following material entry: "On January 5, 2004, Brooks notes that while the case is set for trial on February 23, 2004, he

1 does not anticipate being ready. The note specifically states, "HSB has not been
2 able to pay attention to this case, so before reading the letter, HSB assumed the
3 client was unhappy with our representations." (See Case Notes, P. 19). Exhibit
4 A, page 5.

5 ***Page 62, lines 19-23 state:***

6 During the representation, counsel maintained case notes. On November 28,
7 2005, Brooks met with Budd. During this meeting, Budd denied he committed the
8 crime and when Budd told him the evidence was overwhelming that Budd would
9 be convicted on all three counts. Budd responded that he would just "hope for the
10 best." (See Case Notes, P. 7). Exhibit A, page 1.

11 ***Page 62-63, state:***

12 In addition, the Case Notes contain the following relevant entries:

- 13 A) On June 16, 2004, Brooks notes that he told Budd that this was not a case
14 where he was going home anytime soon, but rather one where he would
15 probably spend the rest of his life in prison or alternatively get the death
16 penalty. Budd literally had no reaction to this statement at all. He was not
17 engaged. (See Case Notes, P. 15). Exhibit A, page 2.
- 18 B) On June 18, 2004, Brooks notes that he spoke with Budd's grandmother,
19 Karen who indicates that Budd tells her he will be coming home soon, and
20 that the CCDC is just like daycare. She confesses that she does not believe
21 that Budd understands what is going on. (See Case Notes, P. 3). Exhibit A,
22 page 20.
- 23 C) On September 12, 2005, Brooks made an entry indicating that Budd was
24 disengaged in the whole process and his responses were generally only one or
25 two syllables. (See Case Notes, P. 10). Exhibit A, page 3.
- 26 D) On October 19, 2005, Brooks made an entry in the notes indicating that Budd
27 remains disconnected from the case and unwilling to deal with reality. (See
28 Case Notes, P. 9). Exhibit A, page 4.

Respectfully submitted this 24th day of October, 2013.

CARLING LAW OFFICE, PC

/s/ MATTHEW D. CARLING, ESQ.

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CERTIFICATE OF SERVICE

This is to certify that on this the 24th day of October, 2013, service of the foregoing document was caused *via* electronic mail to the following individual:

H. LEON SIMON, ESQ.
Deputy District Attorney
h.simon@ccdavn.com

WILLIAM FLINN, ESQ.
Deputy District Attorney
william.flinn@ccdavn.com

CARLING LAW OFFICE, PC

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CedarLegal@gmail.com
Court-Appointed Attorney for Petitioner,
GLENFORD ANTHONY BUDD

EXHIBIT “A”

002922

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

11/2/2005 | Howard S. Brooks - PD

Meeting with client

Tim O'Brien and HSB visited client today in a contact visit on the tenth floor of the jail.

The first purpose of the visit was to tell Glenford what happened this morning at court. We were in District Court 18 this morning, but the Judge was not there, so we were heard in District Court 20 before Judge Wall. We intended to pass the motions (at Schwartz's request), but the State wanted to confirm the December 5 trial date.

(We were originally scheduled to go November 28, but Schwartz heard the judge would not be in town that week, so I called the law clerk and he told me the trial was moved by the Court to December 5.)

Ed Kane, standing in for Schwartz, and Taleen Pandukht and Tim O'Brien and HSB all went back to chambers to see the law clerk for 18, and we agreed the motions would be heard November 14.

Later, we received word that the motions were passed to the Calendar Call date of November 23.

So I explained all this to Budd.

Then we discussed the case a bit.

HSB explained that we talked to Winston Budd, Glenford's uncle. HSB explained that Winston says he does not remember precisely what Glenford told him, but he does remember that he told the police the truth and he testified truthfully at the preliminary hearing. He says he was not coerced in any way. He also said he was not deported, but left the country of his own accord.

Glenford had no response to that.

HSB explained that we are still in a bind here. This is an overwhelming evidence case. The jury will definitely return three first degree murder verdicts.

HSB asked Glenford's view of this, and he said that he did not do the crime and he just hopes for the best. HSB asked how the verdict could be anything other than first degree murder, and Glenford reiterated that he just hopes for the best.

HSB asked him whether he wants to testify, and Glenford said he does.

HSB explained the problems with that: how it will hurt his credibility.

HSB asked if he any other witnesses, and he said he did not. HE said no one would tell the truth.

We discussed the case again, and he said he was inside the living room when the shooting occurred, but he does not know who the shooter was.

He also said that he, Glenford, ran out of the room before the other person who ran out.

WE discussed allocution statements. He said he does not know whether he would want to give one.

We discussed aggravators and mitigators.

We discussed clothing, and he said his mother will take care of that.

At some point, HSB smiled, and he perceived that to be laughing at him, so he kicked us out of the room.

Case Notes

Glenford Anthony Budd ~ Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

6/18/2004 | Emily J. Reeder

Met with Karen Gill, Glenford's mother, on 6-14-04.

She was teary and upset because Glenford tells her that he is going to be coming home and CCDC is just like daycare. She said that she doesn't know what to think, and she doesn't know if Glenford understands what is going on.

She can be reached at 323-734-6261 or 818-915-0128.

6/18/2004 | Emily J. Reeder

Spoke with Glenford on the phone.

Let him know that I wanted to come and see him to talk about the last visit we had with him. He said he has too much on his mind right now for a visit. I asked if I might be able to give him a call next week, and he said that was fine.

6/16/2004 | Howard S. Brooks - PD

Contact Meeting With Budd

HSB and Emily Reeder visited client in a contact visit today to discuss the meeting with Mother and other things.

HSB told client that Mother said Glenford told her we were not doing anything to help him. We also told him she said he talks about coming home soon.

HSB wanted to know what he wants us to do that we're not doing. He had no response.

HSB explained that this is not a case where Glenford is going home anytime soon. With three killings, this is going to be a case where he spends virtually the rest of his life in prison or receives the death penalty.

Glenford had no reaction to all of this. He just sat there, arms folded, not engaged at all.

He then asked to go back to his cell; he said he does not want to talk about any of this.

So we left.

6/14/2004 | Howard S. Brooks - PD

Meeting With Mother

See HSB memo.

5/25/2004 | Howard S. Brooks - PD

Budd Trial Continued to November

We appeared before Judge Pav, substituting for Judge Saitta.

The reason we changed the date is that Schwartz has a vacation scheduled for late January, and I have now scheduled a vacation for the same time.

New trial date: November 15 with calendar call of November 10, 2004.

5/24/2004 | Anita Harrold

file to hsb

Case Notes

Glenford Anthony Budd - Murder

Court: 46977

State ID: 1900089

Agency: GCPD Support

Local ID: F-2003-04254

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

10/5/2005 | Steven Y. Yoshida - PD
Winston Budd Criminal History

Emily has asked me on several different occasions if we could get criminal history especially from California and I have told her that it is impossible, because NCIC is restricted. California DOJ requires that the information be restricted to consent of the person your checking.

I have read your memos regarding Ronald Calvin's history. Just to make sure, on 10/4/05, I ran Winston Budd through Lexis Nexis and Auccurint for criminal history and it came up negative. Negative meaning those two databases had no record. Also meaning that neither of those databases collect information on criminal history from California, because California is not automated.

10/3/2005 | Emily J. Reeder
Went to see Glenford on 9-29-05. Please see memo.

9/13/2005 | Howard S. Brooks - PD
HSB Met with Client

See dictated memo regarding this visit. Told him I think we're in court tomorrow on motions.

9/12/2005 | Emily J. Reeder
Went to see Glenford with Adrienne at CCDC.

Talked to him about some more mitigation witnesses and some generic background questions.

Went in the morning, and he had just woken up but he seemed really disengaged from the whole process - he said afternoon visits are better.

Most answers to questions were in one or two syllable words with no elaboration.

8/4/2005 | Emily J. Reeder
Went to see Glenford on 7-28-05 with Sharon.

We talked about how he felt about his case. He said that he doesn't like thinking about it. We talked about how important it was to start thinking about it so that he can better help us. When asked what was going to help save him at trial, he said God. Asked him for something more tangible, but couldn't get it. He says he understands what we are trying to say about his case.

We also talked about the letter. He says that another inmate who was friends with his roommate used to work on music together. Apparently Glenford says that this other roommate wrote to him first and Glenford says that this other inmate wrote the letter. He says that the handwriting is not the same and the letter is signed in a way that Glenford never usually signs his name. He thinks that this other inmate might have gotten info about his case from the news.

We talked about basketball for quite awhile and how there is a big inmate in his module that pushes others around and cheats so Glenford doesn't play basketball anymore. We talked about the LA Lakers and Shaq and Kobe Bryant (Glenford loves basketball).

Case Notes

Glenford Anthony Budd - Murder

Court: 46977

State ID: 1900089

Agency: CCPD Support

Local ID: F-2003-04254

Type: F - Felony

CaseID: 3-10600

Status: Closed

Status Date: 2/7/2007

Case Age: 3130 days

10/19/2005 | Howard S. Brooks - PD

Notes Re: meeting With Mom and 2 others

Howard, Tim O'Brien, and Emily met in Nancy Van Houten's office with Karen, Stephanie, and Jennifer.

HSB took the hard-line position of again pointing out to these people that the evidence in this case is overwhelming. Tim O'Brien was more conciliatory with them.

For HSB, this conversation is almost precisely the same as the last contact I had with these people. They want to believe Glenford that he's not guilty, and they want to know how we're going to prove that. HSB tried to explain that there is no evidence that would suggest Glenford did not do it.

See other memos for a rehash of that argument.

We explained that Glenford remains disconnected from the case and refuses to deal with reality. We asked them to help persuade Glenford to start dealing with things.

HSB promised to send Karen the discovery.

She's at

1322 1/4 West Jefferson
Los Angeles, CA 90007

10/17/2005 | Emily J. Reeder

Howard, Tim and I met with the family again to talk about the case.

10/13/2005 | Emily J. Reeder

Had set appts this week with Kendra and Jennifer; both were no shows.

10/13/2005 | Emily J. Reeder

Yesterday, Glenford's grandpa Wilbur dropped off some pictures to be scanned, and then he waited while we scanned them in.

10/12/2005 | Emily J. Reeder

Discussed mitigation concerns with Tim.

10/10/2005 | Emily J. Reeder

Tried calling the family in Belize; no answer.

10/10/2005 | Emily J. Reeder

Andi and I met with the family on 10-7-05; please see memo.

10/10/2005 | Emily J. Reeder

Left a follow up msg with Laverne to try and get Wilbur Sr.'s pictures.

10/10/2005 | Emily J. Reeder

Went to see Wilbur Budd Sr. on 10-5-05; please see justware memo.

Case Notes

Glenford Anthony Budd - Murder

Court: 46977
Local ID: F-2003-04254

State ID: 1900089

Agency: CCPD Support

Type: F - Felony
Status: Closed

CaseID: 3-10600
Status Date: 2/7/2007

Case Age: 3130 days

1/5/2004 | Howard S. Brooks - PD
HSB received letter from client.

Note: HSB has not been able to pay attention to this case, so before reading the letter, HSB assumed the client was unhappy with our representation.

The document he sends is a motion for discovery.

12/23/2003 | Emily J. Reeder
Tried calling Karen at 818-508-2495.

That phone number has been disconnected.

12/23/2003 | Emily J. Reeder
Tried calling Uncle Kurt at 759-0172.

It was a wrong number.

12/23/2003 | Emily J. Reeder
Tried calling Karen at 431-5114.

Left her a message to call me back.

12/15/2003 | Emily J. Reeder
Received records from Cedars-Sinai Medical Center.

12/15/2003 | Emily J. Reeder
Received a message from Karen; called her back and left a message.

12/9/2003 | Emily J. Reeder
Received a message from Karen Gill.

Tried calling her back twice.

12/1/2003 | Emily J. Reeder
Received a fax from Cedars-Sinai.

It states that they will not honor an out of state subpoena.

Spoke with medical records at Cedars-Sinai, and asked if they would honor the request with a release.

12/1/2003 | Emily J. Reeder
Faxed a letter and release to Cedars-Sinai requesting Glenford's records.

11/25/2003 | Emily J. Reeder
Left a message with Carolyn McKenzie from the Belize Consulate 323-469-7343 x6.

11/18/2003 | Emily J. Reeder
Spoke with Glenford.

Asked him for his Uncle Kurt's number. It is 759-0172.

11/18/2003 | Emily J. Reeder
Left a message with Ms. Clark at Dorsey High School.

11/18/2003 | Emily J. Reeder
Faxed a sub to Cedars-Sinai in Los Angeles, CA.

11/18/2003 | Emily J. Reeder
Spoke with Ramon at 759-0172.

He said Kurt was not at that number.

11/18/2003 | Emily J. Reeder
Tried calling Glenford's Aunt Jennifer; there was no answer.


CLERK OF THE COURT

RSPN
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Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
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200 Lewis Avenue
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GLENFORD ANTHONY BUDD,
#0190089

Defendant.

CASE NO: 03C193182

DEPT NO: XVIII

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) AND FIRST SUPPLEMENTAL PETITION FOR WRIT
OF HABEAS CORPUS POST-CONVICTION**

DATE OF HEARING: DECEMBER 4, 2013

TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN R. PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and First Supplemental Petition for Writ of Habeas Corpus Post-Conviction.

This Response 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.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On June 26, 2003, the State filed an Information charging GLENFORD ANTHONY
4 BUDD (hereinafter "Defendant") with three (3) counts of MURDER WITH USE OF A
5 DEADLY WEAPON (Felony – NRS 200.010, 200.030, 193.165) stemming from the
6 shooting deaths of Dajon Jones, Derrick Jones, and Jason Moore.

7 Defendant's jury trial began on December 5, 2005. On December 13, 2005, the jury
8 found Defendant guilty on all three (3) counts as alleged in the Information.

9 The penalty phase of Defendant's jury trial began on December 14, 2005. On
10 December 16, 2005, the jury returned a penalty verdict of LIFE IN PRISON WITHOUT
11 THE POSSIBILITY OF PAROLE on each of the three (3) counts. On February 22, 2006,
12 this Court sentenced Defendant as follows: as to COUNT 1 – to LIFE WITHOUT THE
13 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE WITHOUT THE
14 POSSIBILITY OF PAROLE for use of a deadly weapon; as to COUNT 2 – to LIFE
15 WITHOUT THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE
16 WITHOUT THE POSSIBILITY OF PAROLE for use of a deadly weapon to run
17 CONSECUTIVE to COUNT 1; and as to COUNT 3 – to LIFE WITHOUT THE
18 POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE LIFE WITHOUT THE
19 POSSIBILITY OF PAROLE for use of a deadly weapon to run CONSECUTIVE to COUNT
20 2 with NINE HUNDRED NINETY-FIVE (995) DAYS credit for time served. The
21 Judgment of Conviction was filed on March 1, 2006.

22 On March 23, 2006, Defendant filed a Notice of Appeal. On January 9, 2007, the
23 Nevada Supreme Court affirmed Defendant's conviction. Remittitur issued on February 6,
24 2007.

25 On September 21, 2007, Defendant filed a pro per Petition for Writ of Habeas Corpus
26 (Post-Conviction) ("Petition"). The State filed a Response to Defendant's Petition on
27 November 27, 2007. This Court denied Defendant's Petition on November 30, 2007 and
28 filed its Findings of Fact, Conclusions of Law and Order on January 7, 2008.

1 Defendant filed a Notice of Appeal on January 23, 2008. On September 25, 2009, the
2 Nevada Supreme Court reversed this Court's denial of Defendant's Petition on grounds that
3 Defendant should have been appointed post-conviction counsel; the Nevada Supreme Court
4 remanded the case to this Court. Remittitur issued on October 20, 2009.

5 Represented by counsel, Defendant filed a First Supplemental Petition for Writ of
6 Habeas Corpus Post Conviction ("Supplement"). Defendant filed a Second Supplemental
7 Petition for Writ of Habeas Corpus on October 25, 2013. The State incorporates its
8 Response to Defendant's Petition here by reference and responds to Defendant's First and
9 Second Supplements as follows.

10 STATEMENT OF FACTS

11 At approximately midnight on May 26, 2003, detectives from the Las Vegas
12 Metropolitan Police Department (LVMPD) were on patrol in the Saratoga Palms East
13 Apartments in Las Vegas, Clark County, Nevada. The apartment complex had been plagued
14 with high levels of drug and gang activity. Reporter's Transcript ("RT"), 12/9/05, 16. Thus,
15 police drove through the complex slowly and with their windows down to detect the sound
16 of gunshots or other criminal activity. RT, 12/9/05, 16.

17 Detectives heard three (3) gunshots. RT, 12/9/05, 22. Within minutes, police were
18 able to determine that the shots had come from Apartment 2068. Detectives climbed the
19 stairs to find the first of three (3) victims, Jason Moore, lying dead on the front doorstep.
20 RT, 12/9/05, 29. Detectives later found Dajon Jones dead in a front bedroom. RT, 12/9/05,
21 30. Finally, detectives found the third victim, Derrick Jones, lying in the hallway clinging to
22 life. RT, 12/9/05, 31. Following a search of the house, described as smoke-filled and having
23 the smell of a shooting range, police secured the crime scene. RT, 12/9/05, 71, 82. A short
24 time later, police were able to identify Defendant as the shooter.

25 At the scene, crime scene analysts found eleven (11) bullet casings from a single nine
26 millimeter (9mm) semi-automatic handgun. RT, 12/9/05, 107, 120. The bullets from this
27 gun either remained in or passed through the three (3) victims. On May 28, 2003, autopsies
28 were performed on all three (3) victims. The medical examiner found that Dajon Jones

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1 suffered from two (2) fatal gunshot wounds to the neck.¹ RT, 12/8/05, 142-43. Derrick
2 Jones suffered from seven (7) wounds, including four (4) to the back; two (2) of the gunshot
3 wounds, both to the head, were fatal. RT, 12/8/05, 147-52. Jason Moore suffered from three
4 (3) gunshot wounds, including wounds to both the head and neck; two (2) of the gunshot
5 wounds were fatal. RT, 12/8/05, 138. Evidence of marijuana use was found during the
6 autopsies of Dajon and Derrick. RT, 12/8/05, 152.

7 Defendant fled the scene and went into hiding. During that time, he altered his
8 appearance by cutting his hair. RT, 12/12/05, 135, 139. Defendant initially told police that
9 he went to the apartment to inquire about his stolen one-half (½) pound of marijuana. RT,
10 12/12/05, 89. He told police that he heard a gunshot and fled the apartment along with
11 Lazon Jones. RT, 12/8/05, 89. Lazon Jones contradicted Defendant's statement.

12 Lazon Jones testified that he, Derrick, Dajon, and Jason were with Defendant all day
13 on May 26, 2003. RT, 12/8/05, 78-79. During the day, Defendant, known by Lazon as
14 "A.I.", was involved in altercations with both Derrick and Jason. RT, 12/8/05, 78-79. That
15 night, the group was in Apartment 2068. Defendant went to the store to get alcohol. RT,
16 12/8/05, 112-13. He came back with a single can. RT, 12/8/05, 117. Defendant went into
17 the room where Dajon was lying down. RT, 12/8/05, 83. Lazon heard Defendant say,
18 "Where's my stuff at?" RT, 12/8/05, 83. He then heard three (3) gunshots. RT, 12/8/05, 83.
19 Lazon fled the apartment and called 911. RT, 12/8/05, 91. After shooting Jason Moore on
20 the front doorstep, Defendant fled the scene. RT, 12/9/05, 141. In the interim, Derrick Jones
21 was shot and killed. As Defendant ran from the scene, Lazon saw that he still held a gun in
22 his hand. RT, 12/8/05, 93.

23 While on the run, Defendant admitted to his uncle, Winston Budd, that he had shot
24 three (3) people. RT, 12/12/05, 133. Defendant had cut his distinctive braids after the
25 Memorial Day shooting. RT, 12/12/05, 135. When his uncle told Defendant to turn himself
26 in, Defendant said that he "preferred to run." RT, 12/12/05, 133. Defendant was eventually
27 arrested.

28
¹ A third shot missed; the bullet was found in a closet near where Dajon's body was found.

1 After being booked into the Clark County Detention Center (CCDC) to await trial,
2 Defendant made contact with another inmate, Greg Lewis. RT, 12/12/05, 9. Defendant and
3 Lewis knew each other before the incident. RT, 12/12/05, 10. During Defendant's
4 incarceration at CCDC, Defendant admitted to Lewis that he had shot and killed the three (3)
5 victims because they stole his half (½) pound of marijuana. RT, 12/12/05, 12-17. Lewis
6 contacted the police to reveal what he had learned. RT, 12/12/05, 17, 92. Lewis was not
7 promised anything in exchange for his statement to police. RT, 12/12/05, 18, 92. The
8 District Attorney's Office did write to the Parole Board to inform them of Lewis' assistance
9 in solving the triple homicide, but this did not result in a reduced sentence or his release.
10 RT, 12/12/05, 21.

11 Defendant did not know about Lewis' cooperation. He sent a letter addressed to
12 Lewis that included lyrics to a song Defendant wrote about the murders. RT, 12/12/05, 23-
13 33. He titled the song "Killer in Me" and hoped to have the song released on the "Murda
14 Music CD" upon his release. RT, 12/12/05, 33. The letter contained the following lyrics to
15 the rap song:

16 The call me Smalls, a.k.a. A.I.
17 Everyday on the street, I used to get high
18 There's rules for a killa, Don't get it confused
19 I'm wearing county blues, with my face on the news
20 Blew these niggas off the earth. That's the way it had to go
21 I only killed three, but I should have killed four
22 Left them dead on the floor, but just right before
23 They was crying and pleading, screaming for Jesus
24 Y'all can keep the weed, because you can't smoke it now
25 Because your ass is in the ground
26 Cross me, I blow like a bomb,
27 took three niggas from their moms,
28 I'm a thrilla killa.
Ask Saratoga Palms.

27 RT, 12/12/05, 33. Defendant's handwriting was identified by Lewis based on a prior letter
28 Defendant had sent to Lewis. RT, 12/12/05, 25. Defendant's distinctive handwriting for the

1 lyrics, which he admitted was done to prevent "snitches" from reading, was recognized by
2 Lewis from a prior event where he observed Defendant use that style of handwriting. RT,
3 12/12/05, 26, 33.

4 ARGUMENT

5 **I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL** 6 **AND THUS HIS PETITION SHOULD BE DENIED.**

7 Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668,
8 104 S.Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Under
9 Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must
10 prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-
11 pronged test. Strickland 466 U.S. at 686-687, 104 S.Ct. at 2063-64; see State v. Love, 109
12 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show first,
13 that his counsel's representation fell below an objective standard of reasonableness, and
14 second, that but for counsel's errors, there is a reasonable probability that the result of the
15 proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S.Ct.
16 at 2065, 2068.

17 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
18 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney's
19 representations amounted to incompetence under prevailing professional norms, "not
20 whether it deviated from best practices or most common custom." Harrington v. Richter,
21 131 S.Ct. 770, 778, 178 L.Ed.2d 624 (2011). Further, "[e]ffective counsel does not mean
22 errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence
23 demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91
24 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759,
25 771, 90 S.Ct. 1441, 1449 (1970)).

26 The court begins with the presumption of effectiveness and then must determine
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel
28 was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in

1 considering alleged ineffective assistance of counsel is “not to pass upon the merits of the
2 action not taken but to determine whether, under the particular facts and circumstances of the
3 case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94
4 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166
5 (9th Cir. 1977)).

6 In considering whether trial counsel was effective, the court must determine whether
7 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
8 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S.
9 at 690–91, 104 S.Ct. at 2066). Then, the court will consider whether counsel made “a
10 reasonable strategy decision on how to proceed with his client’s case.” Id., 921 P.2d at 280
11 (citing Strickland, 466 U.S. at 690–91, 104 S.Ct. at 2066). Counsel’s strategy decision is a
12 “tactical” decision and will be “virtually unchallengeable absent extraordinary
13 circumstances.” Id., 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d
14 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

15 This analysis does not indicate that the court should “second guess reasoned choices
16 between trial tactics, nor does it mean that defense counsel, to protect himself against
17 allegations of inadequacy, must make every conceivable motion no matter how remote the
18 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
19 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of
20 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of
21 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. However, counsel
22 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
23 failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103
24 (2006).

25 The court “need not consider both prongs of the test if the defendant makes an
26 insufficient showing on either one.” Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537
27 (2004). Even if a defendant can demonstrate that his counsel’s representation fell below an
28 objective standard of reasonableness, he must still demonstrate prejudice and show a

1 reasonable probability that, but for counsel's errors, the result of the trial would have been
2 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
3 Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to
4 undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S.Ct. at 2068.
5 "[O]verwhelming evidence of guilt is relevant to the question of whether a client had
6 ineffective counsel." Ford v. State, 105 Nev. 850, 852, 784 P.2d 951, 952 (1989) (citing
7 Strickland, 466 U.S. at 697, 10 S.Ct. at 2069.

8 Finally, claims asserted in a petition for post-conviction relief must be supported with
9 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
10 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" or "naked" allegations are not
11 sufficient, nor are those belied and repelled by the record. Id., 686 P.2d at 225; see also NRS
12 34.735(6).

13 Here, Defendant failed to satisfy his burden to prove that his counsel's representation
14 fell below an objective standard of reasonableness, and Defendant failed to prove that he was
15 prejudiced by counsel's alleged errors, as explained in the State's November 27, 2007
16 Response to Defendant's Petition incorporated here and as explained in detail below in
17 response to Defendant's First and Second Supplements.

18 **A. Counsel Was Not Ineffective For Allegedly Failing To Prepare For Trial.**

19 Defendant initially claims that counsel was ineffective because he inadequately
20 prepared for trial. Defendant, however, provides no specific preparation that was not
21 completed. Further, Defendant makes the conclusory statement that the outcome of the
22 proceedings would have been different absent the alleged failure to adequately prepare.
23 Defendant seemingly attempts to support his claim by citing counsel's case notes that
24 indicate counsel was unprepared for trial as of January 5, 2004 and that counsel subsequently
25 requested a continuance on January 27, 2004. Supplement at 46. Yet, Defendant's trial did
26 not begin until December 12, 2005, *almost two (2) years later*. Defendant offers no
27 evidence whatsoever that counsel failed to prepare for trial during the twenty-two (22)
28 month span between the motion for a continuance and the start of the trial. The mere fact

1 that Defendant's counsel filed twenty (20) motions in limine during that time period
2 indicates counsel was actively working Defendant's case. Therefore, Defendant fails to
3 show that counsel's performance fell below an objective standard of reasonableness and that
4 the outcome of the trial would have been different had counsel prepared in a manner that
5 Defendant fails to even specify. Defendant's claim warrants no relief and there is no
6 likelihood that an Evidentiary Hearing would reveal the contrary.

7 **B. Counsel Was Not Ineffective For Failing To Object During Pretrial And**
8 **Trial Proceedings.**

9 Defendant fails to demonstrate that his counsel's alleged failure to object during the
10 proceedings fell below an objective standard of reasonableness and that, had counsel made
11 such objections, Defendant would have received a more favorable outcome at trial.

12 Strickland analysis does not dictate that the court should "second guess reasoned
13 choices between trial tactics, nor does it mean that defense counsel, to protect himself
14 against allegations of inadequacy, must make every conceivable motion no matter how
15 remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing
16 Cooper, 551 F.2d at 1166 (9th Cir. 1977)). In essence, the court must "judge the
17 reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as
18 of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. Counsel
19 cannot be deemed ineffective for failing to make futile objections, file futile motions, or for
20 failing to make futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

21 Defendant first claims the counsel was ineffective during the State's opening
22 statement because he objected to the State's reference to a letter containing rap lyrics on
23 foundational grounds rather than on grounds that the probative value was substantially
24 outweighed by the risk of unfair prejudice. Counsel contemporaneously objected to the
25 State's reference at a bench conference and subsequently made a complete record of the
26 objection outside the jury's presence. RT, 12/12/05, 55, 65-66. In fact, through his
27 objection, counsel forced the State to accept the risk of a mistrial if the letter was not later
28

1 admitted into evidence. RT, 12/12/05, 65-66. Accordingly, counsel's decision as to the
2 grounds upon which to object was an objectively reasonable strategy decision.

3 Defendant, moreover, fails to demonstrate any likelihood that an objection to the
4 letter based on unfair prejudice would not have been futile, and counsel cannot be deemed
5 ineffective for failing to make futile objections. Notably, throughout Defendant's
6 Supplement, Defendant incorrectly states that relevant evidence is inadmissible if the
7 probative value is outweighed by prejudicial effect; the correct standard is that relevant
8 evidence is admissible so long as the probative value is not *substantially* outweighed by the
9 danger of *unfair* prejudice. See NRS 48.035(1). The letter at issue contained a rap song in
10 which Defendant implicated himself in the killings. Such evidence was highly probative of
11 Defendant's culpability, and considering counsel had the opportunity to cross-examine the
12 informant about the letter and its reliability, the risk of *unfair* prejudice was low. Defendant
13 concedes that he believes the letter was "admitted with the flimsiest foundation, if any at
14 all[.]" thus directly supporting counsel's decision to object to foundation as the ground most
15 likely to exclude the evidence. See Supplement at 48.

16 Even if counsel erred in not objecting based on the risk of unfair prejudice, Defendant
17 fails to demonstrate that, but for the alleged error, there is a reasonable probability that he
18 would have received a more favorable outcome at trial. Considering the overwhelming
19 direct and circumstantial evidence of Defendant's guilty beyond the letter, as detailed above,
20 there is no reasonable probability that Defendant would have been found not guilty if the
21 letter had not been admitted.

22 Defendant similarly claims that counsel was ineffective for failing to object on
23 prejudice grounds when the letter was actually admitted at trial during the testimony of Greg
24 Lewis. However, the analysis is the same because, of course, whether it was proper for the
25 State to comment on the letter during its opening statement depends on whether the letter
26 was likely to be admitted as evidence. As explained above, the probative value of the letter
27 was not substantially outweighed by the danger of unfair prejudice, and thus any objection
28 on such grounds would have been futile.

1 Even so, Defendant asserts that counsel should have objected to the foundational
2 basis for the witness' handwriting comparison that authenticated the letter, but "[n]onexpert
3 opinion as to the genuineness of handwriting is sufficient for authentication or identification
4 if it is based upon familiarity not acquired for purposes of the litigation." NRS 52.035. As
5 such, the witness' testimony that he recognized Defendant's handwriting from previous
6 correspondence satisfied the NRS 52.035 authentication requirement, so objecting to the
7 authentication would have been futile. Counsel reasonably used the only available means to
8 challenge the credibility of the witness' authentication, cross-examination. Moreover, when
9 the State sought to have the witness read a typed duplicate of the handwritten letter, counsel
10 appropriately objected. Therefore, counsel's performance was objectively reasonable, and
11 Defendant fails to demonstrate that, had counsel objected to the letter based on danger of
12 unfair prejudice, there is a reasonable probability Defendant would have received a more
13 favorable outcome at trial.

14 Defendant next claims that counsel was ineffective for failing to object on hearsay
15 grounds when a police officer who arrived first on the scene of the murders testified that a
16 boy ran up to her and said, "Somebody needs help up there. They're hurt." Supplement at
17 47. However, any such objection would have been futile for at least two (2) reasons. First,
18 the officer was merely describing the events as she arrived on the scene of the murders, and
19 thus the statement was not offered for the truth of the matter asserted and was not hearsay.
20 Second, even if offered for its truth, the boy's statement was an excited utterance which is
21 admissible under the hearsay rule. NRS 51.095 specifically states that "[a] statement
22 relating to a startling event or condition made while the declarant was under the stress of
23 excitement caused by the event or condition is not inadmissible under the hearsay rule." A
24 boy pleading with the police to come help victims moments after three (3) people were shot
25 plainly fits the NRS 51.095 excited utterance exception to the hearsay rule, and thus any
26 hearsay objection would have been overruled. Counsel cannot be deemed ineffective for
27 failing to make futile objections, and thus his conduct was objectively reasonable.
28

1 Moreover, Defendant fails to even attempt to demonstrate how the admission of the boy's
2 statement had any impact on the outcome of the trial.

3 Defendant also claims that counsel was ineffective for failing to object when Crime
4 Scene Analyst Louise Renhard, who diagramed the murder scene, testified to a location in
5 the apartment from where a victim had been removed to receive medical attention because
6 she did not personally observe the paramedics remove the victim. Supplement at 47-48. In
7 context, however, Renhard was explaining the location of a cartridge casing, which she
8 personally marked at the scene, in proximity to a large blood stain on the floor. RT, 12/9/05,
9 111-12. Moreover, Renhard explained that the casing outside the door of the southwest
10 bedroom near a large amount of blood, and this Court admitted a photo of that location. RT,
11 12/9/05, 106-07, 111-12. Immediately prior to Renhard's testimony, Detective Wallace
12 testified to where he personally found Derrick Jones' body and that he was present when
13 medical personnel arrived and removed Derrick; the Court admitted a photo of that location.
14 RT, 12/9/05, 74, 80-81. Accordingly, the State laid proper foundation for Renhard's
15 subsequent testimony as to finding the cartridge casing in proximity to where a victim was
16 removed for medical treatment, and any objection by defense counsel would have been
17 futile. Moreover, Defendant makes no attempt to demonstrate how this testimony caused
18 prejudice to Defendant.

19 Defendant's claims that counsel was ineffective for failing to object, therefore, are
20 without merit. Defendant fails to demonstrate that counsel's performance fell below an
21 objective standard of reasonableness. Moreover, Defendant fails to demonstrate that, but for
22 counsel's alleged errors, there is a reasonable probability that the outcome of Defendant's
23 trial would have been different in light of the overwhelming evidence of Defendant's guilt.

24 **C. Counsel Was Not Ineffective For Failing To Present Evidence.**

25 Defendant claims that counsel was ineffective for failing to present evidence that
26 allegedly would have supported reasonable doubt as to premeditation. Supplement at 49.
27 Defendant's sole support for that assertion is that Tamara Grierson Steel purportedly would
28 have testified that Defendant was on PCP and "went crazy" before the killings. Supplement

1 at 49. In making such a claim, Defendant cites to a "Memorandum of the Clark County
2 Public Defender, dated October 17, 2005, Subject: Tamara Grierson Steel", yet Defendant
3 did not provide such a document to this Court or the State. Considering Defendant bears the
4 burden to prove counsel's performance was ineffective, and that Defendant provides no
5 other evidence to support his allegation, Defendant's failure to provide the document
6 constitutes a waiver of his claim.

7 Notwithstanding, "the trial lawyer alone is entrusted with decisions regarding legal
8 tactics such as deciding what witnesses to call . . . [Counsel], not the client, has the
9 immediate—and ultimate—responsibility of deciding if and when to object, which
10 witnesses, if any, to call, and what defenses to develop. Rhyne v. State, 118 Nev. 1, 8, 38
11 P.3d 163, 167 (2002) (citation omitted). The mere fact that Defendant claims a witness
12 would have testified that he was on PCP is not sufficient to show that counsel's performance
13 was unreasonable. Defendant offers no evidence that this alleged witness would have even
14 cooperated with the defense, which she was under no obligation to do, or that the alleged
15 witness had any credibility whatsoever. Counsel could have reasonably determined that the
16 witness was not credible and may have even harmed the defense, either in the guilt phase,
17 penalty phase, or both. Defendant fails to demonstrate otherwise, and counsel's performance
18 was objectively reasonable.

19 The State, moreover, provided ample evidence of premeditation that would have
20 overwhelmingly contradicted the alleged witness' purported claim. First, on the day of the
21 killings, Defendant accused one (1) of the victims, Derrick Jones, of stealing Defendant's
22 "weed." RT, 12/8/05, 78. Later that day, when Defendant got into a confrontation Derrick
23 during a basketball game, Defendant said "that he wasn't going to fight [the victim]; he was
24 going to put some slugs in him." RT, 12/8/05, 79. Only a few hours later, while all hanging
25 out at the apartment, Defendant told the victims he was leaving to get something to drink,
26 and only a few minutes later, Defendant came back and shot all three (3) victims. RT,
27 12/8/05, 80-86. Moreover, the day after the killings, Defendant admitted to his uncle,
28 Winston Budd, that he killed people because they stole his marijuana. RT, 12/12/05, 132-33.

1 Therefore, considering the overwhelming evidence of premeditation, even if this
2 alleged witness testified as Defendant claims, there is no reasonable probability that the
3 result of the trial would have been different.

4 **D. Counsel Was Not Ineffective For Allegedly Preventing Defendant From**
5 **Participating In His Own Defense.**

6 Defendant claims that counsel was ineffective because Defendant was somehow
7 prohibited from participating in his own defense. Supplement at 50. However, there is an
8 important distinction between a case where an attorney does not allow the defendant to
9 participate and a case where the defendant declines to participate on certain occasions; the
10 latter is the case here. Defendant cites instances where counsel described his relationship
11 with Defendant as poor, but all of those instances stemmed from Defendant's own lack of
12 cooperation. Indeed, Defendant's Second Supplement contains a series of counsel's case
13 notes that describe numerous attempts to meet with Defendant and Defendant's family to
14 discuss the case. Second Supplement, Exhibit "A" at 1-5.

15 Defendant, moreover, provides no relevant legal authority to support his position that
16 counsel was ineffective for allegedly preventing Defendant's participation. Instead,
17 Defendant cites to Faretta v. California, 422 U.S. 806, 816-17, 834, 935 S.Ct. 2525 (1975),
18 and McKaskle v. Wiggins, 465 U.S. 168, 174, 104 S.Ct. 944 (1984), but those two (2) cases
19 concern a defendant's right to participate in his defense *when the defendant is representing*
20 *himself in proper person*. The United States Supreme Court specifically "reject[ed] the
21 claim that the Sixth Amendment guarantees a 'meaningful relationship' between an accused
22 and his counsel." Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617 (1983). Therefore,
23 not only does Defendant fail to show factually that Defendant was precluded from
24 participation in his own defense, Defendant purported legal basis for his claim is directly
25 contradicted by established United State Supreme Court precedent.

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1 **E. Counsel Was Not Ineffective For Failing To Object To This Court's**
2 **Statements To Defendant.**

3 Defendant claims that counsel was ineffective for failing to object when this Court
4 “provided legal advice” to Defendant. Supplement at 51. However, this Court did not
5 provide Defendant legal advice, but rather encouraged Defendant to cooperate with his own
6 attorneys so as to protect his own interests. In the context of declining Defendant’s Motion
7 to Withdraw Counsel and Continue on the first day of trial, this Court informed Defendant
8 that the trial was moving forward with current counsel, who were competent, and thus
9 encouraged Defendant to participate in his own case. It is incongruent for Defendant to
10 argue on the one hand that he was deprived of effective assistance because he lacked a
11 meaningful relationship with his attorney and was thus prevented from participating in his
12 case, and then on the other hand claim that his attorneys’ should have objected to this
13 Court’s recommendation that Defendant participate in his own defense.

14 Counsel’s performance was objectively reasonable when he carried out Defendant’s
15 wishes in moving to withdraw; counsel cannot be deemed ineffective merely because this
16 Court denied the motion. Moreover, considering this Court denied Defendant’s Motion to
17 Withdraw Counsel and Continue, there was no reasonably likelihood that objecting to this
18 Court’s statements would have been anything other than futile. Accordingly, Defendant fails
19 to demonstrate a reasonable probability that the result of his trial would have been different
20 if counsel had objected to this Court’s comments.

21 **F. Counsel Was Not Ineffective For Violating This Court’s Order.**

22 Defendant claims that counsel was ineffective for referring to the “guilt phase” of the
23 trial during voir dire because this Court had previously granted Defendant’s Motion in
24 Limine to preclude use of the term “guilt phase” in front of the jury. However, Defendant
25 only cites to two (2) uses of the phrase during voir dire and none during the remainder of the
26 trial. Although counsel inadvertently referenced the guilt phase twice, there is no indication
27 of prejudice to Defendant. After a five (5) day trial, the likelihood is extremely low that the
28 jury ignored extensive court instructions on the presumption of innocence, the burden of

1 proof, and the required elements to prove each crime and convicted Defendant of three (3)
2 first-degree murders simply because counsel twice referenced the guilt phase during voir
3 dire. Therefore, Defendant fails to demonstrate that, but for counsel's errors, the outcome of
4 the trial would have been different.

5 **G. Counsel Was Not Ineffective For Allegedly Failing To Zealously**
6 **Represent Defendant's Interests.**

7 Defendant claims that counsel was ineffective because they did not zealously
8 represent Defendant based on two (2) purported examples. Supplement at 54. However,
9 neither example demonstrates that counsel's performance was objectively unreasonable.

10 First, Defendant essentially rehashes his argument that he did not have a meaningful
11 relationship with counsel. However, as explained above, the Sixth Amendment does not
12 guarantee Defendant a meaningful relationship with counsel. Morris, 461 U.S. at 14, 103
13 S.Ct. at 1617. Moreover, Defendant's claim that counsel's decision to inform the court that
14 Defendant's family was being uncooperative somehow demonstrates that counsel "was not
15 interested in defending Budd zealously" is nothing more than a conclusory allegation.
16 Defendant fails to show what a more zealous advocate would have done under the
17 circumstances so as to demonstrate that counsel's performance was not objectively
18 reasonable. In fact, the record belies Defendant's claim because counsel's statements to the
19 court show that counsel attempted to meet with Defendant's family and sought this Court's
20 assistance in garnering Defendant's and his family's assistance with the case. RT, 12/6/05,
21 3-6. Bare allegations and allegations belied by the record are not sufficient to satisfy
22 Defendant's burden on an ineffective assistance of counsel claim per Hargrove and NRS
23 34.735(6).

24 Second, Defendant claims counsel did not zealously advocate when he objected to the
25 State's use of a transcript in lieu of live testimony for an allegedly unavailable witness. NRS
26 51.055(d) provides that, for the purpose of the hearsay rule, a declarant is unavailable if the
27 declarant is "[a]bsent from the hearing and beyond the jurisdiction of the court to compel
28 appearance and the proponent of the declarant's statement has exercised reasonable diligence

1 but has been unable to procure the declarant's attendance or to take the declarant's
2 deposition." Thus, in attempting to prevent the State from presenting damaging evidence at
3 trial via transcript, counsel strategically argued that the State had failed to exercise
4 reasonable diligence in attempting to procure the witness' attendance. In so arguing, counsel
5 stated that the defense had no problem contacting the witness at issue, and thus the State
6 merely leaving a phone message for the witness was not sufficient to demonstrate
7 unavailability under NRS 51.055(d). Counsel's argument was an objectively reasonable
8 strategic choice. Moreover, Defendant makes no attempt to show how any alternative
9 argument would have created a reasonable probability that this Court would have ruled
10 against the State, i.e. ruled that a witness living in Belize who does not return the State's
11 phone calls is not unavailable. Therefore, Defendant fails to demonstrate that counsel was
12 ineffective under Strickland.

13 **H. Counsel Had No Conflict Of Interest With Defendant So As To Render**
14 **Counsel's Assistance Ineffective.**

15 Defendant claims that counsel was ineffective because counsel was conflicted, but
16 Defendant offers no evidence that any actual conflict existed. Rather, Defendant strains to
17 argue that counsel was conflicted between his duty of loyalty to Defendant and his desire to
18 protect himself from an ineffective assistance of counsel claim. An actual conflict only
19 exists when "an attorney is placed in a situation conducive to divided loyalties." Clark v.
20 State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (internal quotation omitted).
21 "Conflict of interest and divided loyalty situations can take many forms, and whether an
22 actual conflict exists must be evaluated on the specific facts of each case." Id., 831 P.2d at
23 1376. For example, in Clark, an actual conflict occurred where counsel representing a client
24 charged with first-degree murder also had a pending civil suit against that same client during
25 trial, and further, counsel obtained a default judgment against that client while he was
26 awaiting sentencing on the murder conviction. Id., 831 P.2d at 1376.

27 Here, Defendant seemingly misunderstands the meaning of "conflict" in these
28 circumstances. Counsel expressed frustration to this Court on day two (2) of trial that

1 Defendant's family was not cooperating with the defense. RT, 12/6/05, 3-6. That frustration
2 does not represent divided loyalty, but rather it reflects counsel's desire to provide the best
3 defense possible. Thus, counsel was objectively reasonable in bringing the frustration to this
4 Court's attention such that this Court might encourage Defendant and his family to assist in
5 obtaining the best results possible for Defendant. Notwithstanding, even if counsel sought to
6 make a record of his performance, there is no logic to Defendant's notion that merely
7 making such a record prejudiced Defendant. If counsel's goal was to protect his own
8 reputation, as Defendant purports, common sense dictates that counsel would have wanted
9 the best possible result at trial for his client, which is precisely in line with Defendant's
10 interests. Therefore, Defendant fails to demonstrate any actual conflict of interest, and thus
11 his Strickland claim on such grounds has no merit.

12 **I. Counsel Was Not Ineffective For Allegedly Failing To Preserve The**
13 **Record For Appeal.**

14 Defendant claims that counsel was ineffective for failing to preserve the record for
15 appeal and largely attempts to rely on the fact that a bench conference regarding the rap song
16 letter previously discussed was not recorded. However, Defendant's claim is belied by the
17 record and thus fails under Hargrove and NRS 34.735(6).

18 Counsel filed a Motion for Recording of All Proceedings Pursuant to Supreme Court
19 Rule 250, which demonstrates counsel proactively attempted to preserve the record.
20 Notably, "SCR 250 and due process do not require the presence of the court reporter at every
21 sidebar conference, but the court must make a record of the contents of such conferences at
22 the next break in the trial and allow the attorneys to comment for the record." Daniel v.
23 State, 119 Nev. 498, 508, 78 P.3d 890, 897 (2003). After the sidebar conference wherein
24 counsel objected to the letter, counsel made an appropriate record of his objection as to
25 foundation for the letter during the next break. RT, 12/12/05, 55, 65-66. In fact, through his
26 objection, counsel forced the State to accept the risk of a mistrial if the letter was not later
27 admitted into evidence. RT, 12/12/05, 65-66. Thus, the record was within SCR 250 and not

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1 contrary to this Court ruling on Defendant's Motion for Recording, and counsel properly
2 preserved the issue for appeal.

3 In as much as Defendant attempts to restyle his claims of failure to object as claims of
4 failure to preserve, the State incorporates its above response to the substance of those claims
5 here as there is no need for counsel to attempt to preserve meritless issues for appeal.
6 Further, Defendant makes no attempt to show that, if preserved through objection, there is a
7 reasonable probability that such issues would have been successful on appeal. The mere fact
8 that Defendant only challenged sufficiency of the evidence on appeal does not alone
9 demonstrate that counsel failed to preserve issues reasonably probable to lead to a reversal.
10 Moreover, Defendant's conclusory statement that "[b]ut for the failure to properly and
11 timely preserve the issues on appeal, the result from the appeal would have been different"
12 falls woefully short of satisfying Defendant's burden to show prejudice under Strickland.
13 Therefore, Defendant fails to demonstrate the counsel was ineffective in preserving the
14 record for appeal.

15 **J. Counsel Was Not Ineffective For Allegedly Making Unauthorized**
16 **Admissions.**

17 Defendant claims that counsel was ineffective because he "so much as admitted that
18 Budd was responsible for the killings." Supplement at 58. However, in context, counsel
19 took a reasonable strategic approach in his opening statement to preserve credibility with the
20 jury by acknowledging that the State had at least "some" evidence to implicate Defendant.
21 RT, 12/8/05, 58. Counsel then proceeded to explain that such evidence was not sufficient to
22 overcome reasonable doubt. RT, 12/8/05, 59. Thus, counsel's strategy was objectively
23 reasonable in light of the overwhelming evidence of Defendant's guilt.

24 Even assuming arguendo that counsel's statements could be construed as admissions,
25 Defendant completely misstates the law when he claims that admissions without prior client
26 approval constitute both ineffective assistance of counsel and a violation of the Defendant's
27 right to remain silent. Indeed, the United States Supreme Court specifically stated that a
28 strategy wherein a Defendant concedes guilt at a capital trial is not the functional equivalent

1 of a guilty plea. Florida v. Nixon, 543 U.S. 175, 188, 125 S.Ct. 551, 560-61 (2004).
2 Moreover, counsel is not automatically deemed ineffective in executing such a strategy
3 without first obtaining the client's express consent. Id. at 186-87, 125 S.Ct. at 560.
4 "Attorneys representing capital defendants face daunting challenges in developing trial
5 strategies, not least because the defendant's guilt is often clear. Prosecutors are more likely
6 to seek the death penalty, and to refuse to accept a plea to a life sentence, when the evidence
7 is overwhelming and the crime heinous." Id. at 191, 125 S.Ct. at 562. Accordingly,
8 Defendant's counsel's strategy was objectively reasonable under circumstances where there
9 was overwhelming evidence of Defendant's guilt. Moreover, after Defendant systematically
10 murdered three (3) men, counsel's performance spared Defendant from the death penalty,
11 and Defendant fails to demonstrate how any alternative strategy would have been reasonably
12 likely to produce a more favorable result.

13 **K. Counsel Did Not Eliminate The Presumption Of Innocence With**
14 **Unauthorized Admissions.**

15 Defendant claims the counsel was ineffective because counsel's opening statement
16 allegedly eliminated the presumption of innocence. Supplement at 58-59. However,
17 Defendant's entire argument on this issue is simply a restatement of his claim that counsel's
18 opening statement violated his right to remain silent. For the same reasons explained above,
19 counsel's strategic approach to addressing the State's overwhelming evidence was
20 objectively reasonable and did not prejudice Defendant.

21 **L. Counsel Did Not Alleviate The State's Burden Of Proof With**
22 **Unauthorized Admissions.**

23 Defendant claims the counsel was ineffective because counsel's opening statement
24 allegedly lessened the State's burden of proof. Supplement at 59. However, Defendant's
25 entire argument on this issue is simply a restatement of his claim that counsel's opening
26 statement violated his right to remain silent. For the same reasons explained above,
27 counsel's strategic approach to addressing the State's overwhelming evidence was
28 objectively reasonable and did not prejudice Defendant.

1 **M. Counsel Was Not Ineffective For Allegedly Waiving Defendant's Right To**
2 **Confrontation.**

3 Defendant claims that counsel was ineffective because he somehow waived
4 Defendant's right to confrontation when counsel declined to cross-examine a witness
5 regarding a \$300.00 relocation assistance payment from the State. Supplement at 60-61.
6 However, the record demonstrates that counsel made a tactical decision not to recall the
7 witness and cross-examine her about a relatively insignificant amount of money. RT,
8 12/13/05, 8. Moreover, the witness requested the assistance because she was concerned for
9 her safety, RT, 12/13/05, 8, and thus counsel could have reasonably determined the best
10 course was to avoid any insinuation in front of the jury that Defendant was responsible for
11 her concern. Counsel's strategy decision is a "tactical" decision and will be "virtually
12 unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d
13 at 280. Defendant fails to demonstrate any extraordinary circumstances that render
14 counsel's performance deficient on this issue. Further, Defendant fails to demonstrate that,
15 if the jury had known this witness received \$300.00 to relocate for her safety, the jury would
16 have discounted her testimony to the extent that the trial would have turned out differently.
17 Therefore, counsel's assistance was effective and Defendant's claim warrants no relief.

18 **N. Counsel Was Not Ineffective For Allegedly Violating Defendant's Right**
19 **Against Self-Incrimination.**

20 Defendant claims that counsel was ineffective for allegedly violating Defendant's
21 right against self-incrimination merely because counsel stated during closing argument that
22 Defendant and a State witness, Greg Lewis, were in jail together. Supplement at 61-62.
23 Defendant neglects to note that Lewis testified extensively to his relationship with Defendant
24 while in jail because it was necessary to explain conversations between Defendant and Lewis
25 in which Defendant made admissions and was relevant to explain the letter Defendant sent to
26 Lewis while both were in jail. RT, 12/12/05, 10-12. Thus, counsel's statement during
27 closing that Defendant and Lewis were in jail together was not new information for the jury.
28

1 Accordingly, Defendant's claim is belied by the record and thus fails per Hargrove and NRS
2 34.735(6).

3 Defendant, moreover, takes counsel's statement out of context because counsel was
4 actually attempting to use that information to show that Lewis, instead of Defendant, could
5 have written the letter:

6 Now, [Lewis] has sold his soul for the promise of parole. And,
7 now, let's talk about just how easy it was for him to do this. He
8 talked about conversations he had with [Defendant] in jail. And
9 we're not going to play games here. They were in jail together.
10 They had every chance to talk about it. They had chances to talk
not only about what [Defendant] said, but what the State's
alleging. He could have learned the facts that the State's claimed
happening just from talking to [Defendant].

11 RT, 12/13/05, 59-60. Accordingly, not only did the jury already know from Lewis'
12 testimony that he and Defendant were in jail together, but counsel used that information to
13 Defendant's advantage in attempting to show that Lewis could have drafted the letter.
14 Therefore, Defendant fails to show that counsel's performance was objectively unreasonable,
15 and further, considering the jury already knew of Defendant's incarceration, there was
16 absolutely no prejudice to Defendant due to counsel's statement.

17 **O. Counsel Was Not Ineffective For Failing To Request Defendant's**
18 **Competency To Stand Trial Be Evaluated.**

19 Defendant claims that counsel was ineffective for failing to request a competency
20 hearing to determine whether Defendant was competent to stand trial. However, a defendant
21 is only incompetent to stand trial if he is "not of sufficient mentality to be able to
22 understand the nature of the criminal charges against him," rendering him unable to assist in
23 his defense. Hernandez v. State, 124 Nev. 978, 992, 194 P.3d 1235, 1244 (2008) overruled
24 on other grounds by Armenta-Carpio v. State, 306 P.3d 395 (Nev. 2013) (quoting Hill v.
25 State, 114 Nev. 169, 176, 953 P.2d 1077, 1082 (1998)). Importantly, "[a] bare allegation of
26 incompetence is not sufficient to raise a reasonable doubt as to competence." Martin v.
27 State, 96 Nev. 324, 325, 608 P.2d 502, 503 (1980) (citations omitted). Defendant fails to
28 demonstrate that counsel was aware of any information prior to trial that would have raised a

1 reasonable doubt as to whether Defendant was mentally unable to understand the nature of
2 the charges against him or mentally capable of aiding in his defense; Defendant's lack of
3 cooperation with counsel simply is not sufficient to show a lack of legal competence to stand
4 trial.² Accordingly, counsel's request for a competency hearing would have been futile, and
5 counsel cannot be deemed ineffective for failing to file futile motions or make futile
6 arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

7 Despite Defendant's attempt to frame his lack of acceptance of responsibility for the
8 murders and his occasional refusal to cooperate with counsel as a competency issue, the
9 record demonstrates that Defendant had sufficient mental ability to understand the charges
10 against him, which is all that was necessary for Defendant to stand trial. Counsel's case
11 notes reveal that, on January 5, 2004, nearly two (2) years before trial, counsel received
12 correspondence from Defendant:

13 [Counsel] received letter from client.

14 Note: [Counsel] has not been able to pay attention to this case,
15 so before reading the letter, [Counsel] assumed the client was
unhappy with our representation.

16 *The document he sends is a motion for discovery.*

17 Second Supplement, Exhibit "A", 5 (emphasis added). The fact that Defendant
18 prepared a motion for discovery and sent it to his counsel shows that Defendant was engaged
19 in the case and was seeking information to evaluate the strength of the case against him. The
20 only logical inference from that behavior is that Defendant knew he was facing serious
21 charges and wanted to information to help evaluate his circumstances. Thus, Defendant's
22

23 ² Defendant repeatedly cites trial counsel's electronic case notes in an attempt to show that Defendant was detached from the
24 proceedings (Defendant also cites those notes repeatedly throughout the brief to support a variety of his claims). Defendant did not
25 include the case notes as an exhibit to his Supplement, so the State contacted Defendant's counsel to provide an opportunity to file the
26 notes and thus provide the State a reasonable opportunity to respond. Defendant then filed the Second Supplement containing the case
27 notes to which he cites. However, Defendant selectively only included five (5) pages of the case notes. The pagination on the case
28 notes indicates thirty-three (33) total pages exist, and the notes specifically refer to memoranda outside the notes detailing counsel's
conversations with Defendant. Accordingly, the omission of the remaining twenty-eight (28) pages of case notes and the related
memoranda creates a negative inference for Defendant as to their content. Considering Defendant waived attorney-client privilege by
the nature of these proceedings per NRS 34.735(6) and by citing to work-product, there was simply no reason for Defendant not to
provide this Court and the State the complete records. Notably, as referenced supra, Defendant also cited a Memorandum of the Clark
County Public Defender as the sole support for his claim that counsel failed to present evidence, yet Defendant has not provided this
Court or the State with the purported document. NRS 34.370(4) specifically states that affidavits, records, or other evidence
supporting the allegations must be attached to the petition.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD A BUDD,
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No.:
District Court Case No.: 03C193182
Electronically Filed
Nov 10 2014 09:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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CLERK OF THE COURT

1 **SUPP**

2 **MATTHEW D. CARLING, ESQ.**

3 Nevada Bar No.: 007302

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5 Las Vegas, NV 89101

6 (702) 419-7330 (Office)

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9 *Court-Appointed Attorney for Petitioner*

10 **GLENFORD ANTHONY BUDD**

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 * * * * *

14 **GLENFORD BUDD,**

15 **Petitioner,**

Case No.: 03C193182

Dept. No.: XVIII

16 vs.

17 **RENEE BAKER, WARDEN, ELY STATE**
18 **PRISON,**

19 **Respondent.**

EVIDENTIARY HEARING
REQUESTED

20 **FIRST SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS**
21 **(POST-CONVICTION)**

22 COMES NOW, the Petitioner, GLENFORD ANTHONY BUDD ('Budd'), by and
23 through his attorney of record, Matthew D. Carling, and hereby submits this Supplemental
24 Petition for Writ of Habeas Corpus (Post Conviction). This Court should grant an evidentiary
25 hearing on the issues presented in this Petition for the reasons set forth below.

26 1. **Name of Institution and county in which Petitioner is presently imprisoned**
27 **or where and who Petitioner is presently restrained of his liberty:** Ely State Prison, White
28 Pine County, Nevada.

2. **Name and location of court which entered the judgment of conviction under**
attack: Eighth Judicial District Court, Clark County, Nevada.

3. **Date of Judgment of Conviction:** February 26, 2006.

- 1 4. **Case Number:** C193182.
- 2 5. **(a) Length of Sentence:** Three (3) separate sentences of Life without the
- 3 Possibility of Parole plus an equal and consecutive term of Life without the Possibility of
- 4 Parole for use of a deadly weapon.
- 5
- 6 **(b) If sentence is death, state any date upon which execution is scheduled:**
- 7 N/A.
- 8 6. **Is Petitioner presently serving a sentence for a conviction other than the**
- 9 **conviction under attach in this motion. NO. If "Yes", list the crime, case number and**
- 10 **sentence being served at this time:** N/A.
- 11
- 12 7. **Nature of offense involved in conviction being challenged:** Three (3) counts
- 13 of Murder With The Use of a Deadly Weapon in violation of NRS 200.010, 200.030, 193.165.
- 14
- 15 8. **What was Petitioner's Plea?** Not Guilty.
- 16
- 17 9. **If Petitioner entered a guilty plea to one count of an indictment or**
- 18 **information, and a not guilty plea to another count of an indictment or information, or if**
- 19 **a guilty plea was negotiations, give details:** N/A.
- 20
- 21 10. **If Petitioner was found guilty after a plea of not guilty, the finding was**
- 22 **made by:** Jury.
- 23
- 24 11. **Did the Petitioner testify at trial:** No.
- 25
- 26 12. **Did Petitioner appeal from his judgment of conviction:** Yes.
- 27
- 28 13. **If Petitioner appealed, answer the following:**
- (1) Name of the Court:** Nevada Supreme Court
- (2) Case number or citation:** 46977
- (3) Result:** Affirmed.

- 1 **(4) Date of Appeal:** March 23, 2006.
- 2 14. **If Petitioner did not appeal, explain briefly why he did not:** N/A.
- 3 15. **Other than a direct appeal from the judgment of conviction and sentence,**
4 **has Petitioner previously filed any petition, applications, or motion with respect to this**
5 **judgment in any court, state or federal:** No.
- 6 16. **If you answer to No. 15 was "Yes", give the following information:**
7 **(A)Name of the Court:** N/A
8 **(B) Nature of Proceedings:** N/A
9 **(C) Grounds raised:** N/A
10 **(D)Did Petitioner receive an evidentiary hearing on his petition,**
11 **application, or motion?** N/A
12
13 17. **Has any ground being raised in this petition been previously presented to**
14 **this or any other Court by way of petition for habeas corpus, motion or application or any**
15 **other post-conviction proceeding? If so, identify:**
16 **(a) Which of the grounds is the same:** N/A
17 **(b) The proceedings in which these grounds were raised:** N/A
18 **(c) Briefly explain why you are again raising these grounds:** N/A
19
20 18. **If any of the grounds listed in Nos. 23(a) *et seq.* or listed on any additional**
21 **pages you have attached, were not previously presented in any other court, state or**
22 **federal, list briefly what grounds were not so presented, and give your reasons for not**
23 **presenting them:** N/A.
24
25 19. **Is Petitioner filing this petition more than one (1) year following the filing of**
26 **the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly**
27
28

1 **the reasons for the delay:** Remittitur issued on February 6, 2007. Counsel was appointed to
2 file the instant supplement and promptly did so seeking only a single extension based on the
3 voluminous nature of the documents attendant to the instant writ.
4

5 20. **Does Petitioner have a petition or appeal now pending in any court, either**
6 **state or federal, as to the judgment under attack?** No, other than the pending Petition to
7 which this is the supplement.
8

9 21. **Give the name of each attorney who presented you in the proceeding**
10 **resulting in your conviction and on direct appeal:** Howard Brooks (trial/appeal) and Philip
11 Kohn (appeal).
12

13 22. **Does Petitioner have any future sentences to serve after you complete the**
14 **sentence imposed by the judgment under attack?** No.
15

16 **STATEMENT OF FACTS**

17 On May 29, 2003, a Declaration of Warrant/Summons was issued for Glenford Anthony
18 Budd. Marty Wildemann, a police officer with the Las Vegas Metropolitan Police Department
19 declared that Budd was the suspect in a triple homicide.
20

21 Glenford Budd was charged by Criminal Complaint in the Justice Court of Las Vegas
22 Township with three counts of Murder With The Use of a Deadly Weapon in violation of NRS
23 200.010, 200.030, 193.165. (See Justice Court Docket and Criminal Complaint). Budd made
24 his initial appearance before the Justice Court on June 2, 2003. After an initial continuance, the
25 preliminary hearing was held on June 16, 2003. (See Transcript of Preliminary Hearing,
26 hereinafter referred to as "TPH").
27

28 Lazon Jones was called to testify. (TPH, P. 6). He testified on the night of the events,
present in the apartment were himself, Dajon Jones, Derrick Jones, Jason Moore, and "A.I."

1 (*Id.* at 8). Lazon identified Budd as "A.I.". (*Id.* at 9). Lazon testified that A.I. said he had to
2 use the bathroom, went into the master bedroom, and then Lavon heard two gunshots. (*Id.* at
3 10-11). Lazon heard a total of three shots. (*Id.* at 11). Lazon ran to the 7-11 and called the
4 police. (*Id.* at 12). Lazon testified that earlier during the night there was an argument over
5 marijuana. (*Id.* at 14). On cross examination, Lazon testified that all three shots he heard
6 came from the bedroom. (*Id.* at 31).

8 The State then called Tracey Richards. (*Id.* at 32). Tracey identified "A.I." as Budd.
9 (*Id.* at 33). On the night of the incident, Tracey was driving with her three children, when
10 Budd called out to her from a bench along the road. (*Id.* at 36-38). She pulled over, talked to
11 him, and offered for him to come to her house and get some sleep. *Id.* at 39. The next day,
12 Budd told Tracey he had a dream that he killed three people over some weed. (*Id.* at 43).

14 The State called Winston Budd. *Id.* at 48. Winston is Budd's Uncle and identified him
15 in Court. (*Id.* at 49-50). Winston testified that he received a call from Budd asking him to get
16 some money so Budd could get out of Nevada. (*Id.* at 51). Winston testified that Budd told
17 him some people were trying to rob him so he shot them. (*Id.* at 52). Winston ultimately
18 picked up Budd and took him to Winston's house, where the police arrived looking for Budd.
19 (*Id.* at 54-55). Winston told Budd to turn himself in. (*Id.* at 55-56).

21 James Vaccaro was called. (*Id.* at 60). Vaccaro is a homicide detective for Las Vegas
22 Metropolitan Police Department. (*Id.*). Vaccaro arrived at the scene and went through the
23 apartment, locating the victims. (*Id.* at 61-65). On May 29th, Vaccaro interviewed Budd. (*Id.*
24 at 65-66). Vaccaro identified Budd in Court as the person he interviewed. (*Id.* at 66). The
25 interview took place in the Clark County Detention Center, and Vaccaro testified that he read
26 Budd his *Miranda* rights. (*Id.* at 66). Vaccaro told Budd during the interview that there were
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28

1 five people in the apartment, three were dead, one called the police and asked where Budd fit in
2 the events. (*Id.* at 67-68). Budd then invoked his *Miranda* rights and requested a lawyer.
3 (*Id.*). The Preliminary Hearing was then continued until June 25th.
4

5 The Preliminary Hearing was continued on June 25th. (*See* TPH Volume II,
6 hereinafter cited as to TPH2). The State called Rexene Worrell. (TPH2, P. 3). Worrell is
7 employed as the medical examiner. (*Id.* at 4). Brooks stipulated to Worrell's qualifications for
8 purposes of the Preliminary Hearing. (*Id.*). Worrell performed the examination of Jason
9 Moore, finding three gunshot wounds as the cause of death. (*Id.* at 5). Worrell performed the
10 examination of Dajon Jones. (*Id.* at 6). Dajon was shot twice in the neck which was the cause
11 of death. (*Id.*). Worrell performed the examination of Derrick Jones. (*Id.* at 7). Derrick was
12 shot seven (7) times. (*Id.*). This was the cause of his death. (*Id.* at 8). On Cross
13 Examination, Worrell detailed each gunshot wound, its impact, survivability, and the
14 approximate distance of the gunfire to the victim. (*Id.* at 7-24). Worrell testified that all three
15 victims tested positive for marijuana. (*Id.*).
16

17 The State then called Celeste Palau. (*Id.* at 24). She identified Budd in the
18 Courtroom. (*Id.* at 24-25). Palua lives in the apartments where the incident occurred. (*Id.*) At
19 approximately 10:45 on May 26, 2003, she was on her apartment patio. (*Id.* at 27-29). She
20 testified that she could see what was going on at the Jones' apartment. (*Id.* at 28). She heard
21 what she thought were fireworks. (*Id.* at 29). She saw the younger Jones boy run down the
22 stairs and thought they were playing around, but then she saw Budd pointing a gun and
23 shooting someone on the patio. (*Id.* at 30-31). Then she witnessed Budd walking down the
24 stairs like it was an everyday thing. (*Id.* at 31). On cross examination, Palua testified that she
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1 had a clear view of the apartment where the incident occurred. (*Id.* at 41). However, she could
2 not see into the apartment because of the blinds. (*Id.* at 42).

3 Following Palau's testimony the State rested. (*Id.* at 49). The Defense did not call any
4 witnesses. (*Id.*). Following the preliminary hearing, Budd was bound over as charged to the
5 District Court.
6

7 On June 26, 2003, an Information was filed in the District Court, Clark County,
8 Nevada. (*See* Information). Budd was charged with three (3) counts of Murder with the Use of
9 a Deadly Weapon for the alleged murders of Dajon Jones, Derrick Jones, and Jason Moore.
10 (*Id.*).
11

12 On July 2, 2003, the arraignment was held. (*See* Transcript of Arraignment, hereinafter
13 referred to as "TA"). Budd entered a plea of not guilty. (TA at 2). Budd waived his right to a
14 speedy trial. (*Id.* at 3).

15 On July 25, 2003, the State filed its Notice of Intent to Seek Death Penalty. (*See*
16 Notice of Intent to Seek Death Penalty). The basis for the motion was stated "The Defendant,
17 has, in the immediate proceeding, been convicted of more than on offense of murder in the first
18 or second degree." At the time of the filing of the Motion, Budd had not been convicted.
19

20 Because it appeared that nothing was happening on his case, Budd filed his own
21 handwritten Memorandum to the Courts/Howard Brooks, Motion for Discovery. (*See* Motion
22 for Discovery). Budd requested the production of documents
23

24 On January 27, 2004, Brooks moved to vacate and continue the trial date. (*See*
25 Defendant's Motion to Vacate and Continue Trial Date). The Declaration attached to the
26 Motion stated that since November, 2003, Brooks case load has exploded from five cases to
27 eleven cases set for trial, all of which were murder cases, and three of which were death penalty
28

1 cases. (*Id.* at ¶5). Brooks states, "I have been completely unable to focus on preparing for the
2 Glenford Anthony Budd murder case." (*Id.* at ¶6). Brooks further stated, "Because of my
3 lack of preparation, because I have not received necessary records, and because we have not
4 been able to prepare a mitigation case yet, this case is not ready to go to trial." (*Id.* at ¶7).

5
6 On September 14, 2004, Brooks filed a Motion in Limine Prohibiting Prosecution
7 Misconduct in Argument; and For Order that Court takes Judicial Notice of Authority Cited in
8 Motion If Defense Objects at Trial to Improper Argument. (*See* Motion 1). The singular
9 purpose was to prevent the State from making arguments which violate decisions rendered by
10 the United States and Nevada Supreme Court. (*Id.*). The Motion and Supporting
11 Memorandum was exhaustive and comprehensive. (*Id.*). The State filed its opposition to the
12 Motion on September 21, 2004. (*See* Opposition). The State denied that it engaged in
13 misconduct.
14

15 On September 14, 2004, Brooks filed a Motion to Compel exchange of Jury Instructions
16 on the First Day of Trial. (*See* Motion to Compel Jury Instructions). In addition, Brooks filed
17 a Motion to Compel Recording of All of Proceedings. (*See* Motion to Compel Recording).
18 On September 14, 2004, Brooks filed a Motion to Exclude All Jurors who knew or are
19 acquainted with the Victims or their Families. (*See* Motion). On the same date, Brooks filed
20 a Motion to Disqualify all Jurors who would automatically vote for the Death Penalty. (*See*
21 Motion). Brooks also moved to bifurcate the penalty phase from the guilt phase of the
22 proceedings. (*See* Motion). Brooks filed a Motion to Permit the Defense to Argue last in the
23 penalty phase. (*See* Motion). Brooks also filed a Motion to have the Jury Questionnaire to be
24 completed one week prior to the trial. (*See* Motion). Brooks filed a Motion to Preclude any
25 Reference during the Trial as the "Guilt Phase" of the proceedings. (*See* Motion).
26
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28

1 On September 14, 2004, Brooks filed a Motion to Strike Allegations of Certain
2 Aggravating Circumstances Alleged in State's Notice of Intent to Seek Death Penalty. (*See*
3 Motion). The argument was that there was no evidence that the alleged killings occurred to
4 avoid a lawful arrest. (*Id.*). In addition, Brooks argued that using the multiple killings was an
5 unconstitutional *ex post facto* application. (*Id.*)

7 During the trial and on appeal, Budd was represented by Howard S. Brooks
8 ("Brooks"). On September 15, 2004, Brooks filed his Notice of Qualifications pursuant to
9 Supreme Court Rule 250(2)(g) and (h). (*See* Notice of Qualifications).

11 On September 21, 2004, the State filed its Opposition to Recording all Proceedings.
12 (*See* Opposition). The State argued that recording all proceedings would be unduly
13 burdensome. (*Id.*). In addition, the State opposed the Motion to Exclude Jurors who knew the
14 Victims or their Families. (*See* Opposition). The State argued that such a blanket order was
15 impermissible. (*Id.*). The State also opposed the Motion to Exclude all Jurors who would
16 automatically vote for the death penalty. (*See* Opposition). The State acknowledged that a
17 juror who would automatically vote for the death penalty was no impartial. (*Id.*). The State
18 also opposed the Motion to Bifurcate the penalty phase from the guilt phase of the proceedings.
19 (*See* Opposition). The State opposed the Motion to Allow the Defense to argue last in the
20 Penalty Phase relying on NRS 175.14(5) which provides that the State must open and conclude
21 the proceedings. (*Id.*). The State opposed the Motion to have Jury Questionnaire completed a
22 week prior to trial arguing that the current process is adequate. (*See* Opposition). The State
23 opposed the Motion to Preclude reference to the trial as the Guilt Phase, arguing that it has faith
24 the Jury will decide the case on the evidence and not its characterization. (*See* Opposition).

1 On September 28, 2004, the State filed its Notice of Witnesses. (*See* Notice of
2 Witnesses). Pursuant to this Notice, the State intended to call: Winston Budd, COR, Lazon
3 Jones, Sheryl Jones, Terry Key, Greg Lewis, Celeste Palau, Tracey Richard, Krissy Smith, P.
4 Spencer, J. Vaccaro, M. Wallace, Nakia Washington, and M. Wildemann., (*Id.*). In addition,
5 the State filed its Notice of Expert Witnesses. (*See* Notice of Expert Witnesses). In this
6 Notice, the State identified the following experts: Louise Renhard (crime scene analysis);
7 David Welch (DNA analysis); James Krylo (firearm/toolwork analysis); Marc Washington
8 (crime scene analysis); Dr. Rexenne Maxwell (cause and manner of death); David Horn (
9 crime scene analysis); and Thomas Kern (crime scene analysis). (*Id.*).
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12 On October 4, 2004, the State opposed the Motion to Strike Allegations of Certain
13 Aggravating Factors. (*See* Opposition). The State argued there was nothing unconstitutional
14 about the aggravating factors alleged. (*Id.*).
15

16 On October 4, 2004, Brooks filed a Motion to Preclude the Admission, During the
17 Possible Penalty Phase, of Evidence of the Personal Characteristics of the Victims and the
18 Impact of the Victim's death on their Families. (*See* Motion No. 12). Brooks relied on *Booth*
19 *v. Maryland*, 482 U.S. 496 (1987) which precludes impact evidence. In addition, Brooks filed
20 a separate motion to exclude cumulative impact evidence. (*See* Motion No. 13). Brooks filed
21 a Motion to Dismiss the Notice of Intent to Because the Nevada Death Penalty Scheme
22 Violates Due Process. (*See* Motion 14).
23

24 On October 6, 2004, the State filed its Opposition to Defendant's Motion in Limine to
25 Prohibit the State from Using Preemptory Challenges to Remove Minorities from the Jury.
26 (*See* Opposition). The State denied that it ever used its Preemptory Challenges in such a
27 manner, asserting that race has nothing to do with the matters before the Court.
28

1 On October 8, 2004, the State filed an Amended Notice of Intent to Seek the Death
2 Penalty. (*See* Amended Notice). By means of Amendment, the State added as the factual
3 basis for the Amendment the transcript of the Preliminary Hearing.

4 On October 12, 2004, the State opposed the Impact Evidence Motion. (*See*
5 Opposition). The State argued that anyone can introduce impact evidence at the penalty phase
6 of the proceedings. The State also opposed the Cumulative Impact Evidence motion. (*Id.*).
7

8 On October 13, 2004, the State filed its Opposition to Budd's Motion to Strike the Notice of
9 Intent. (*See* Opposition).

10 On October 11, 2005, the defense interviewed Tamara Grierson Steel who was Budd's
11 ex-girlfriend. (*See* Memorandum of the Office of the Clark County Public Defender, dated
12 October 17, 2005, Subject: Tamara Grierson Steel). During this interview, Tamara informed
13 Budd's counsel that she was aware that someone had stolen marijuana from Budd and that
14 some new neighbors made fun of Budd for not doing anything about the theft. Tamara then
15 stated, "they gave him PCP, and then he 'went crazy'." (*Id.*). The defense failed to call
16 Tamara to testify which would have created reasonable doubt on the issue of premeditation.
17

18 On November 21, 2005, the defense filed their Notice of Expert Witness pursuant to
19 NRS 174.234(2). (*See* Notice of Expert Witness pursuant to NRS 174.234(2)). Therein, Budd
20 designated John Paglini, PhD to testify during the penalty phase of the proceedings. This
21 designation was amended on December 1, 2005. (*See* Amended Notice of Expert Witness
22 pursuant to NRS 174.234(2)).
23

24 On November 23, 2005, the Court heard argument on the pretrial motions. (*See*
25 Transcript of Defendant's Pretrial Motions, hereinafter referred to as "TDPM). First, the
26 parties stipulated that jury instructions would be exchanged on the first day of trial. (TDPM at
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1 2). In addition, the parties stipulated that the juror questionnaire would be submitted to the jury
2 venire prior to beginning the process of jury selection. (*Id.* at 2-3). Next, the parties stipulated
3 that all proceedings would be recorded. (*Id.* at 3). As part of that motion and agreement, there
4 was discussion to insure that bench conferences are recorded. *Id.* With respect to the Motion
5 to Exclude Members of the Jury who know the victims or their families, the State argued the
6 Motion was premature. The Court agreed, reserving the ruling until it is discovered that some
7 potential jurors have knowledge of the victims or their families. (*Id.* at 4-5). The Court also
8 ruled that the motion relating to disqualifying jurors who would automatically vote for the
9 death penalty was also premature. (*Id.* at 5). The Court considered the motion to preclude the
10 State from excluding minority jurors as a preemptory *Batson* challenge. Again, the Court
11 found the motion premature reserving ruling until such a circumstance arose, if ever. (*Id.* at 6).
12 The Court granted the Defense motion to bifurcate the penalty phase from the guilt phase of the
13 proceeding. (*Id.* at 7). The Court also granted the motion to preclude reference to the trial as
14 anything other than the trial, including all references to the "guilt phase." (*Id.* at 8). The Court
15 denied the Motion to Strike the Allegations in Support of the Notice of Intention to Seek the
16 Death Penalty. (*Id.* at 8-9). First, the State withdrew its aggravation claim based on seeking to
17 avoid arrest. (*Id.*). Second, the Court found the aggravation based on convictions of multiple
18 murder one convictions was allowed by statute. (*Id.* at 9). The Court denied the Motion to
19 exclude impact evidence relating to the impact of the death of the victims or the impact upon
20 their respective families. (*Id.* at 10). With respect to the Motion to exclude cumulative impact
21 evidence, the Court granted the motion with respect to that part which addresses the Court's
22 authority to always exclude cumulative evidence, but ruled that the motion was premature until
23 presented with with cumulative evidence. (*Id.* at 11). The Court denied the Motion with
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1 respect to the unconstitutionality of the death penalty. (*Id.* at 11-12). Finally, the Court granted
2 the Motion that the State should not engage in an misconduct it is conducting or arguing the
3 case. (*Id.* at 14).

4 The trial commenced on December 5, 2005. (*See* Trial Transcript, Volume 1 cited to
5 hereinafter as "TT1"). At the beginning of the trial, the Defense made an oral motion to
6 continue the trial due to Budd's unhappiness with his representation and an affirmative
7 representation that another attorney was willing to take the case over. (TT1 at 2-4).
8 Specifically, Brooks represented to the Court that his relationship with Budd was non-existent.
9 (TT1 at 6). He further represented that as to the guilt phase, he didn't feel the lack of a
10 relationship would make any difference in the outcome of the proceedings. (*Id.*). The Court
11 then bolstered Brooks and specifically stated to Budd that it is absurd for Budd not to work
12 with them. (TT1 at 8). The Court then denied the Motion to Continue. *Id.* Jury selection
13 began. (TT1 at 30).

14 Despite Brooks' Motion to exclude all references to the "guilt phase" during the trial,
15 and despite the Court granting the motion as requested, Brooks violated the Court's order by
16 referring to the trial as the "guilt phase." (TT1 at 39). Specifically, Brooks stated during
17 initial discussions with the jury venire, "Whether we call witnesses in the guilt phase will be
18 determined entirely and according to what the State presents." (*Id.*). The use of the phrase
19 "guilt phase" by Brooks was not an isolated incident. (TT1, P. 174).

20 After day one's jury voir dire and selection, the trial entered day two on December 6,
21 2003 with the continuation of the same. (*See* Trial Transcript, Volume II, cited herein as
22 "TT2"). Budd's counsel started day two off by complaining to the Court again about his
23 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
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1 mother stating she did not know the facts of the case, despite Brooks' protestations that he had
2 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
3 who failed to appear at the appointment. (*Id.*). This complaint resulted in the Court stating the
4 following:
5

6 I think I need to note for the record and Mr. Budd, you need to understand to the
7 best of your abilities, you need to try to have your family understand this, if the
8 design or plan is to somehow segue this lack of cooperation into an ineffective
9 assistance of counsel claim, it's not going to work.

10 (*Id.* at 4). Thus, Brooks engaged in a self-protective action to the prejudice of his own client.

11 At the conclusion of the second day of trial, jury selection remained unfinished.

12 On December 8, 2005, the defense filed Defendant's Summary of Developments
13 Regarding Jury Questionnaire. (*See* Defendant's Summary of Developments Regarding Jury
14 Questionnaire). The purpose of this document was to preserve the record for appeal. (*Id.*).
15 Specifically, the declaration of Brooks provided that the questionnaire was provided to the jury
16 commissioner on November 23, 2005. (*Id.*). Potential jurors completed the questionnaire on
17 November 29, 2005. (*Id.*). The completed questionnaires were provided to the defense on
18 November 30, 2005. (*Id.*). On December 6, 2005, defense requested the questionnaires
19 become a part of the permanent record in this case, to which the request the Court agreed. (*Id.*).
20

21 Day three of the trial commenced on December 8, 2005. (*See* Trial Transcript Vol. III-
22 A cited to herein as "TT3A"). This day commenced with an evidentiary ruling regarding the
23 admission of Winston Budd's Preliminary Hearing testimony because he was no residing in
24 Belize. (TT3A, P. 2, *et seq.*). Brooks argued that the State had not engaged in sufficient
25 conduct to establish that Winston was an unavailable witness. Incredibly Brooks made the
26 argument for the State resulting in the Court finding Winston unavailable and tacitly granting
27 the oral motion to use the Preliminary Hearing transcript in lieu of live testimony. (TT3A, P. 5-
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1 9). The balance of the morning of day three was voir dire of the potential jurors. After a
2 recess, jury voir dire continued. (See Trial Transcript Vol. III-B cited to herein as "TT3B").
3 Ultimately, jury selection was concluded. (TT3B, P. 34). The State made its Opening
4 Statement. (TT3B, P. 41, *et seq.*). During the State's opening, it quoted from a highly
5 prejudicial rap song allegedly authored by Budd. *Id.* at 56-57. An objection was lodged
6 resulting in an unrecorded sidebar. (*Id.* at 55). However, no pretrial Motion in Limine was
7 filed to exclude the evidence because its probative value was outweighed by its prejudicial
8 effect. After the close of opening statements, some kind of record was made of the sidebar.
9 (*Id.* at 67-68). The record was summary and contrary to the Court's ruling that all proceedings
10 would be recorded.
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13 The Defense then made its opening statement. (TT3b, P. 57, *et seq.*). It was short.
14 (*Id.*). But more troubling, Brooks so much as admitted that Budd was responsible for the
15 killings. (*Id.*). Brooks stated, "Let me make it absolutely clear, some evidence will show that
16 Glenford killed these three people." (*Id.* at 58).
17

18 Lazon Jones ("Lazon") was called to testify. (TT3B, P. 68). Lazon lived at the
19 Saratoga Apartments. *Id.* Lazon gave preliminary testimony regarding the apartment complex
20 and its layout. (*Id.* at 69-71). Lazon lived in the apartment with his brother, two friends,
21 mother and sister. (*Id.* at 72). Lazon's brother's name was Dajon. (*Id.* at 73). The two friends
22 were Derrick Jones and Jason Moore. *Id.* Lazon testified that he knew someone named "A.I."
23 and he identified Budd as that person. (*Id.* at 74).
24

25 Lazon testified that on May 26, 2003, he and the others spent the majority of the day
26 with A.I. playing basketball and chilling. (*Id.* at 77). During the game, A.I. and Derrick got
27 into a confrontatation. (*Id.* at 78). A.I. stated that someone had stolen his weed. (*Id.*). During
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1 the game, Jason and A.I. got into a confrontation over a foul. (*Id.* at 79). According to Lazon,
2 Budd allegedly told Jason that there wasn't going to be a fight, but that Budd was going to put
3 some "slugs" in him. (*Id.*). After the basketball game, they all went back to the apartment
4 where they were just "kickin' it." (*Id.* at 81).

5
6 Lazon testified that at approximately 11:30, Budd left the apartment to go to the store
7 to get something to drink. (*Id.* at 83). Budd returned ten to fifteen minutes later and said that
8 he needed to use the bathroom. (*Id.*). According to Lazon, Budd opened the door and went
9 into the room where Dajon was laying down, and then Lazon heard two gunshots. (*Id.* at 83).
10 Lazon heard A.I. say "Where's my stuff?" followed by another gunshot and then he ran. (*Id.*).
11 Lazon testified that approximately two minutes elapsed between the second and third shot. (*Id.*
12 at 86). Lazon ran to the 7-11 and called the police. (*Id.* at 91).

13
14 Lazon was subjected to cross examination. (*Id.* at 97). Lazon testified that A.I. was
15 considered a friend, who he trusted and by whom he was not frightened. (*Id.* at 104). Lazon
16 testified that at no time was Krissy, who as A.I.'s girlfriend in the apartment on evening the
17 altercation. (*Id.* at 109-110). Lazon testified that they all gave Budd money to go get drinks,
18 which were anticipated to be alcoholic beverages. (*Id.* at 112-113). Lazon testified that
19 evening they were drinking. (*Id.*). However, Lazon denied that they were smoking weed. (*Id.*
20 at 115). Both he and A.I. were buzzed from drinking. (*Id.*).

21
22 Lazon testified that when A.I. returned after leaving to get the drink, he returned with a
23 single can. (*Id.* at 117). Lazon testified that A.I. said he had to go to the bathroom, opened and
24 closed the master bedroom door where Dajon was sleeping. (*Id.* at 117-119). Lazon testified
25 that he heard two gunshots and knew immediately that it came from the bedroom. (*Id.* 119-
26 120). When he heard the third shot, Lazon left. (*Id.* at 123). Lazon testified that after he left
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1 and called the police, he saw Budd walking down the street with the gun in his hand. (*Id.* at
2 125). Lazon testified that he knew A.I. did the shooting. (*Id.* at 131).

3 The State then called Dr. Rexene Worrell to testify. (*Id.* at 132). Worrell worked for
4 Clark County as the medical examiner doing autopsies. (*Id.* at 134). Worrell was first
5 qualified as an expert without objection. (*Id.* at 135). Worrell performed the autopsies on
6 Jason Moore, Dajon Jones and Derrick Jones. (*Id.* at 136). The first case she did was Jason
7 Moore. (*Id.*). The autopsy started at 8:30 a.m. and was completed by 11:30 a.m. (*Id.* at 136-
8 137). Worrell testified that Moore had three (3) gunshot wounds: back of the head, right side
9 of the neck, and back of right shoulder. (*Id.* at 138). The gunshot wounds were fatal. (*Id.* at
10 139). The cause of death was multiple gunshot wounds. (*Id.* at 142).

11 Worrell then performed the autopsy on Dajon Jones. (*Id.* at 142). This autopsy
12 occurred between 11:30 a.m. and 1:30 p.m. (*Id.*). Dajon had two gunshot wounds to the neck.
13 (*Id.* at 143). Both gunshot wounds would be fatal. (*Id.* at 145). Dajon's cause of death was
14 multiple gunshot wounds. (*Id.* at 146).

15 Worrell performed the autopsy on Derrick Jones. (*Id.* at 146). This autopsy
16 commenced at 1:30 and was completed by 5:00 p.m. (*Id.*). Derrick suffered seven gunshot
17 wounds. (*Id.*). Derrick's cause of death was multiple gunshot wounds. (*Id.* at 150). In each
18 instance, Worrell testified that the manner of death was homicide. (*See e.g. Id.*). Worrell
19 testified that all three victims tested positive for marijuana which shows up in the system for
20 approximately thirty (30) days. (*Id.* at 151).

21 On cross examination, Worrell testified that all three victims were negative for alcohol.
22 (*Id.* at 152). Worrell testified that her conclusion that all three victims died as a result of
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1 homicide is nothing more than the conclusion that one person took the life of another, and is
2 not a legal conclusion regarding the degree of culpability. (*Id.* at 154-155).

3 Trial resumed on December 9, 2005. (*See* Trial Transcript, Vol. IV cited to herein as
4 TT4). At the commencement of the proceedings, Brooks brought to the Court's attention issues
5 surrounding Greg Lewis as a witness. (TT4 at 4-6). Brooks informed the Court that Lewis and
6 Budd were cellmates at CCDC. (*Id.* at 4). Brooks then stated that as trial strategy they were
7 not going to pretend Budd has not been in jail and that they would be waiving objections which
8 relate to Budd's jail time. (*Id.* at 5-6). This waiver occurred despite the Court specifically
9 informing Brooks that such references would otherwise constitute impermissible prejudice
10 based on the references that Budd was in jail. (*Id.*).

13 After further discussion, the State called Patricia Spencer. (*Id.* at 15). Spencer was on
14 patrol for Las Vegas Metropolitan Police Department with her partner Michael Wallace on the
15 evening of the incident. (*Id.* at 15-16). They regularly patrol the Saratoga Apartments because
16 of narcotic and gang activity in the area. (*Id.*). Spencer was in an unmarked car. (*Id.* at 18).
17 As a matter of practice, when they cruise such complexes, they turn off their lights and roll
18 slowly through the complex. (*Id.* at 20). While cruising through the complex, Spencer
19 believed she heard gunshots. (*Id.* at 22). She drove the vehicle to the area in the complex
20 where they initially entered and saw a young man jogging from west to east with no shoes on.
21 (*Id.* at 23). He did not seem distressed. (*Id.*). After this young man exited from Spencer's
22 view, she saw a group of young juveniles, frantically running around and pointing upstairs. (*Id.*
23 at 25). One juvenile ran up the stairs, and turned in a panic coming back down. (*Id.*). She
24 stopped her vehicle at an angle facing the apartment, got out and the boy who had been on the
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1 stairs ran up to her saying "somebody needs help up there. They're hurt." (*Id.* at 26). No
2 objection was made to this hearsay statement.

3 Spencer testified that Detective Wallace led the way up the stairs, seeing the person on
4 the balcony and indicating he had been shot and was probably not alive. (*Id.* at 29). They
5 entered the apartment with some difficulty because a body was precluding fully opening the
6 door. (*Id.* at 30). Once the door was sufficiently open, they could see the victim who was not
7 responsive. (*Id.*). The Officers cleared the front room and kitchen, but needed assistance
8 before attempting to clear the two bedrooms with closed doors. (*Id.* at 30-31). Within literally
9 a minute, another detective entered the apartment. (*Id.* at 31). They saw the third victim who
10 was breathing but labored, and clutching something that looked like toilet paper. (*Id.*).
11 Realizing that the suspect was not in the apartment, they contacted medical. (*Id.*).
12

13 Spencer was cross-examined. (*Id.* at 32). Spencer testified that while it is a gated
14 community, in the five years she worked in the area she never saw the gates closed. (*Id.* at 34).
15 Spencer testified that the persons she saw jogging was dressed in shorts, a shirt, socks, but no
16 shoes. (*Id.* at 37). She has subsequently learned that the person jogging was Lazon Jones. (*Id.*
17 at 38). Spencer testified that she heard the shots before seeing Lazon, and the shots were in
18 rapid succession – boom, boom, boom. (*Id.* at 40). Spencer testified that from the car, she
19 could not see the victim on the balcony. (*Id.* at 47). Before entering the apartment, Detective
20 Wallace announced that they were police. (*Id.* at 50). Spencer testified that the crime scene
21 was secured. (*Id.* at 55). After a briefing with homicide detectives, Spencer's role in the
22 investigation ended. (*Id.* at 56).
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24 The State then called Detective Wallace. (*Id.* at 57). Wallace is employed by the Las
25 Vegas Metropolitan Police Department and was assigned to the Detective Bureau on the date of
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1 the incident. (*Id.* at 58). They had reports of criminal activity in the complex and were
2 cruising it to check on the validity of those reports. (*id.* at 59). Wallace testified that he did
3 not hear the gunshots. (*Id.* at 63). Wallace saw the young man trotting across their path. (*Id.*
4 at 64). While they took note of the man running, their pressing concern were the perceived
5 gunshots. (*Id.* at 65). Wallace saw people going up and then down the stairs of the apartment,
6 but was unsure whether this was one or two people. (*Id.* at 66). One of the people said
7 something bad happened up there, someone got hurt. (*Id.* at 67). Wallace and Spencer exited
8 their vehicle to investigate. *Id.* They saw the person on the balcony, coiled in the fetal
9 position, face down in a large pool of blood. (*Id.* at 68). Wallace identified the person on the
10 balcony as Jason Moore. (*Id.*). With respect to the bedroom with the door that would not
11 easily open, Wallace testified they pushed the door open and saw the body of Dajon lying face
12 down behind the door. (*Id.* at 69). Wallace looked toward the hallway and saw the feet of
13 another person flailing around and could hear his labored breathing. (*Id.* at 69-70). After
14 clearing the apartment, they tried to attend to Derrick Jones. (*Id.* at 71). Wallace testified that
15 he could tell Derrick Jones was struggling and they were encouraging him to hold onto life as
16 the paramedics were on their way. (*Id.* at 79). Derrick Jones did not communicate with
17 Wallace. (*Id.*). Wallace tried to document all of the changes to the crime scene which are
18 occasioned by emergency medical arriving and attempting to save lives. (*Id.* at 81). Wallace
19 had a vivid recall of the smoke and smell of gun powder when he entered the apartment. (*Id.* at
20 82). Wallace was subjected to nominal cross examination. (*Id.* at 83 *et seq.*)

21 The State then called Louise Renhard. (*Id.* at 95). Renhard is a crime scene analyst
22 for Las Vegas Metropolitan Police Department. (*Id.*). She explained what a crime scene
23 analyst does and what is included in the scope of work including photographing the scene,
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1 drawing diagrams, recovering evidence, and taking latent fingerprints. (*Id.* at 96). Renhard
2 explained the processes of documenting and sealing evidence such as a bullet, including
3 photographing, diagramming location recovered and sealing it for booking into evidence. (*Id.*)
4 Renhard was one of the crime scene analysts. (*Id.* at 100). She did the diagram and evidence
5 collection. (*Id.* at 101). She explained the diagram she drew of the crime scene. (*Id.* at 101-
6 102). Renhard testified that all of the cartridges recovered were for a 9mm. (*Id.* at 108). In
7 discussing the diagram, the following exchange occurred:
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9 Q: And again is it your understanding , although you didn't personally
10 observe it, there is where a person was removed for medical attention, and
11 that's related in that large blood stain?

12 A: My understanding was that this is where one of the victims had been prior
13 to the paramedics taking him.

14 (*Id.* at 112). Despite the admission of lack of personal knowledge and the lack of foundation,
15 Brooks did not lodge an objection. Brooks did not cross examine Renhard.

16 The State then called James Krylo. (*Id.* at 117). Krylo is a firearms and tool mark
17 examiner for the Las Vegas Metropolitan Police Department. (*Id.*). Krylo explained the
18 component parts of a bullet. (*Id.* at 119). He explained the individualized markings which
19 result from firing a bullet from a gun. (*Id.* at 121-122). Krylo stated that he could match the
20 bullet with a particular gun if he had both. (*Id.* at 122-123). However, in the instant case he
21 never had the gun to examine. *Id.* Krylo was asked to look at the evidence and determine the
22 caliber of the weapon from which they were fired and how many different weapons were fired.
23 (*Id.* at 124). Krylo examined eleven (11) cartridges, concluding they all came from the same
24 firearm which was a 9mm. (*Id.* at 125). On cross examination, Krylo admitted that whether
25 one could fire eleven cartridges from a single gun would depend upon the magazine capacity of
26 the gun. (*Id.* at 127).
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1 The State then called Celeste Palau. (*Id.* at 129). Palau was living in the apartment
2 complex. *Id.* She testified she witnessed the incident. *Id.* She was on her patio. (*Id.* at 130).
3 She was aware of a resident in the apartment complex who was known as A.I. (*Id.* at 131).
4 Palau heard what she thought were fireworks. (*Id.* at 135). After first looking in one direction,
5 she turned her attention to the apartment and saw two people running out of the apartment. (*Id.*
6 at 134). These people were a boy and a girl. (*Id.*). The boy she identified as Casper. (*Id.*).
7 The next thing she saw was A.I. coming out of the house and he was shooting somebody on the
8 patio. (*Id.* at 135-136). After hearing three shots on the patio, A.I. left. (*Id.* at 136). Palau
9 gave a voluntary statement to the police. (*Id.* at 140). When asked whether she had any doubt
10 that the person who was doing the shooting and walked down the stairs was A.I., Palau
11 responded that it was him. (*Id.* at 142). She then identified Budd as A.I. (*Id.* at 142-143).
12 Palau was subject to cross examination. (*Id.* at 143). She testified that as she was out on the
13 patio, she was sitting on a chair. (*Id.* at 144). However, when she heard the sounds, she stood
14 up and started looking around. (*Id.* at 146). She testified that when she saw the two people
15 leaving the building, they were clearly together and appeared to be playing a game. (*Id.* at
16 147). She specifically named these two people as Lazon Jones and Chrissy, A.I.'s girlfriend.
17 (*Id.* at 148-149). During the cross examination, Brooks introduced a photograph taken during
18 the daytime from Palau's patio showing the view and distance between her patio and the patio
19 where she alleged the shooting occurred. (*Id.* at 153-155). Palau admitted that she did not have
20 clear view into the apartment where the shootings occurred. (*Id.* at 156). She stated that she
21 identified A.I. based on his body structure and height. (*Id.* at 158). Despite allegedly
22 witnessing the shooting, Palau did not speak with the police on the night of the shooting. (*Id.* at
23 159). In fact, Palau waited two weeks before she spoke to the police. (*Id.* at 161). Palau was
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1 subject to redirect examination. (*Id.* at 163). On recross examination, despite having
2 previously testified that she did not wear glasses, Palau admitted that she previously told the
3 police that she had a history of nearsightedness and at one time was not able to see long
4 distances. (*Id.* at 164).

5
6 The trial resumed on December 12, 2005. (*See* Trial Transcript, Vol. V, cited to herein
7 as "TT5"). This day started with a stipulation regarding the admissibility of the photographs
8 taken from Palau's patio and that the distance from one patio to the other was 218 feet. (*Id.* at
9 4-5). Greg Lewis was then called by the State. (*Id.* at 8). Lewis identified Budd. (*Id.* at 9).
10 Lewis knew Budd from both the CCDC and before that from the apartments. (*Id.* at 10-11).
11 While they were not cellmates at the CCDC, they were housed on the same floor. (*Id.* at 11).
12 Lewis admitted that he was a convicted felon. (*Id.* at 12). Lewis testified that he and Budd
13 discussed what happened at the apartments. (*Id.* at 12-13). Lewis testified that Budd told him
14 that some kids got killed about some weed that he thought they took from him and it happened
15 at the Saratoga apartments. (*Id.* at 13). Lewis testified that Budd told him that they died from
16 gunshots and that Budd was the shooter. *Id.* Throughout the examination, the State lead Lewis
17 but no objection was lodged. Lewis testified that Budd told him that he shot three people but
18 there was a fourth who got away. *Id.* Budd told him that the amount of weed that was taken
19 was about a half pound. (*Id.* at 13-14). Lewis stated that Budd described the victims as kids.
20 (*Id.* at 15). Lewis did not believe that Budd was high at the time of the shooting. (*Id.*). Lewis
21 testified that Budd told him that after the shooting, he cut off his hair. (*Id.* at 16). Budd told
22 Lewis he went to some girl's house to hide out. *Id.* Lewis then testified that Budd told him
23 that he was just like everyone else, he was just hanging out but that he didn't do the shooting.
24 (*Id.*). Lewis ultimately told Detective Vaccaro what Budd had told him. (*Id.*). Lewis
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1 contacted the Detective, although that contact did not occur until sometime in 2004. (*Id.* at 16-
2 17). Lewis stated that the Detective offered nothing in return for the statement. (*Id.* at 18).
3 However, despite the lack of promises, a letter was written to the parole board by David
4 Schwartz of the District Attorney's office. (*Id.* at 19-20). Lewis testified that he did not receive
5 a sentence reduction because of the letter. (*Id.* at 22). Lewis then testified about a letter he
6 received from Budd. *Id.* Lewis identified the handwriting as Budd's. However, in so
7 identifying the letter, the sole foundational basis was because he had before received a single
8 letter from Budd. (*Id.*). No objection was lodged by the defense. Lewis testified that he was
9 present when Budd was writing the contents of the letter. (*Id.* at 26). Lewis gave the letter to
10 the detectives. (*Id.* at 28). Ultimately, over an objection regarding a typed summary of the
11 letter, it was admitted over an objection that the summary was not an exact duplicate of the
12 more difficult to read hand written letter. No objection was made regarding the prejudicial
13 effect of the letter outweighing any probative value. Based on the admission, Lewis then read
14 the letter, which stated:

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18 This is part one of my song. I'm gonna release it when they release me. Killer
19 in Me off the Murda Music CD.
20 They call me Smalls aka AI.
21 Every day on the street I used to get high.
22 There's rules for a killa.
23 Don't get it confused.
24 I'm wearing county blues with my face on the news.
25 Blew these niggas of the earth.
26 That's the way it had to go.
27 I only killed three, but I should have killed four.
28 Left them dead on the floor,
But just right before they was crying and pleading,
Screaming for Jesus.
Ya'll can keep the weed,
Because you can't smoke it now, because your ass is in the ground.
Cross me, I blow like a bomb
Took three niggas from their moms.
I'm a thrilla killa.

1 Ask Saratoga Palms.

2 (*Id.* at 33).

3 Lewis was subjected to cross examination. Lewis testified that he was an acquaintance
4 of Budd's prior to going to CCDC. (*Id.* at 35). They had smoked marijuana together. (*Id.* at
5 34-35). He and Budd would talk at the CCDC. (*Id.* at 35). Lewis testified that a lot of people
6 in CCDC would make up rap songs. (*Id.* at 36). Lewis admitted that he had written Budd
7 letters while in the CCDC. (*Id.* at 40). The defense produced one such letter and had Lewis
8 identify that it was in his own handwriting. (*Id.* at 39-41). Lewis testified that he was sure that
9 the letter allegedly from Budd was not written by Lewis. (*Id.* at 43). However, Lewis
10 acknowledged that to the best of his knowledge, no one ever checked the letter for fingerprints.
11 (*Id.* at 43-44). Lewis admitted that he did not like to be in prison and wanted to get out. (*Id.* at
12 45-46). Lewis admitted that the letter from the district attorney to the parole board should help
13 him. (*Id.* at 47). Lewis admitted that he would go before the parole board in March of 2006.
14 (*Id.* at 52).

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16 The State then called Detective James Vaccaro. (*Id.* at 53). Vaccaro has been
17 employed by the Metropolitan Police Department for approximately 28 years. (*Id.* at 53).
18 Vaccaro is a homicide detective. (*Id.* at 54). Vaccaro was partnered with Martin Wildemann.
19 (*Id.* at 55). He was called out to the crime scene. (*Id.* at 55-56). When Vaccaro arrived, the
20 crime scene had been taped off. (*Id.* at 57). Vaccaro was the lead detective with the
21 responsibility to investigate the crime scene. (*Id.* at 58). He described the duties of a lead
22 detective. (*Id.* at 58-59). Upon arriving at the crime scene, Vaccaro was briefed. (*Id.* at 60).
23 He then walked the crime scene. (*Id.* at 61). Using photographs, Vaccaro presented a pictorial
24 statement of what he observed in the order of those observations. (*Id.* at 63-79). After
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1 completing his investigation, Vaccaro turned the apartment back to Cheryl Jones. (*Id.* at 79).
2 While the family was obtaining clothing to move out of the apartment, they discovered a bullet.
3 (*Id.* at 80). After investigating the crime scene, Vaccaro and his partner began looking for the
4 suspect. (*Id.* at 81). Vaccaro learned during the investigation that the suspect was known as
5 A.I. (*Id.* at 81). However, Vaccaro said that early on, they learned A.I.'s real name was
6 Glenford Budd. (*Id.* at 81). Vaccaro testified that approximately forty eight (48) hours later,
7 they apprehended Budd. (*Id.* at 82). Vaccaro identified Budd. (*Id.* at 84-85). Vaccaro
8 testified that when arrested, Budd had no visible injuries and his hair was nothing like it had
9 been described. (*Id.* at 86). Vaccaro testified that he read Budd his *Miranda* rights. (*Id.* at 87).
10 Vaccaro stated that Budd wanted to talk to him in order to clear some things up that happened
11 at the apartment. (*Id.* at 88). Budd told Vaccaro that he was in the apartment, but when he
12 heard gunshots he ran. (*Id.* at 89). Vaccaro then testified about his contacts with Greg Lewis.
13 (*Id.* at 90-95). Vaccaro testified that he told Schwartz about Lewis's cooperation with the
14 investigation, but he did not ask that the letter be written. (*Id.* at 94-95).

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18 Vaccaro was cross examined. (*Id.* at 95). Vaccaro testified that he did not interview
19 Lazon Jones. (*Id.* at 96). Vaccaro testified that by the 20th, the police released to the press that
20 they were looking for Budd in connection with the three murders. (*Id.* at 98). Further, he knew
21 that the dispute arose over a drug deal. *Id.* Vaccaro was cross examined about the lack of a
22 handwriting analysis regarding the letter containing the rap song. (*Id.* at 101). However,
23 Vaccaro would not admit that such an analysis would have been helpful. (*Id.* at 102). Further,
24 Vaccaro admitted that it would have been helpful to have a fingerprint analysis done on the
25 letter. (*Id.* at 103). Vaccaro testified that no fingerprint analysis was requested. (*Id.* at 104).
26 Vaccaro testified that he told Schwartz not to forget Greg Lewis. (*Id.* at 106).
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1 The State then called Krissy Smith. (*Id.* at 111). Smith identified Budd. (*Id.* at 113).
2 They were not dating on the date of the incident, but they remained friends. (*Id.* at 114). On
3 the day of the incident, she went on a picnic with Budd's family. (*Id.*). After the picnic,
4 Krissy and her friends were first hanging around on the stairs near the apartment where the
5 shooting occurred and following the boys over to the basketball court. (*Id.* at 115). Krissy was
6 not at the basketball game the entire time leaving to go to her friend's house. (*Id.* at 116). She
7 returned and after the basketball game, she returned to the apartment where the events
8 occurred. (*Id.* at 117). Krissy left the apartment when Dajon asked if he could borrow a CD,
9 but returned again approximately fifteen minutes later. (*Id.* at 118). She testified that she did
10 not see A.I. when she returned to the apartment, but that she stayed in the threshold responding
11 to a question asked by Derrick Jones when they heard the first gunshots. (*Id.* at 119). When
12 she heard the gunshots, she hit the grounds. (*Id.*). Lazon came out of the apartment and told
13 them to run. (*Id.* at 120). Derrick also came out of the apartment, but apparently decided to go
14 back inside, but Krissy ran. (*Id.*). Krissy testified that when she heard the first shots, she saw
15 gunpowder come out of the window. (*Id.*). Krissy ran to Shawn's house. (*Id.* at 121).
16 Shawn's apartment was immediately below the apartment where the shooting was occurring,
17 Krissy pounded on the door which Shawn opened and let her in. (*Id.* at 122). A couple of days
18 later, Krissy gave a statement to the police. (*Id.* at 123).

19 On cross examination, Krissy admitted that she spent almost the entire day of the
20 incident with A.I. (*Id.* at 123). That evening, Krissy was not actually in the apartment, just
21 sitting near the doorway. (*Id.* at 125). Krissy admitted that she did not see who fired the gun.
22 (*Id.*).

1 Following Krissy's testimony, the State read the preliminary hearing testimony of
2 Winston Budd, who previously had been declared an unavailable witness. Winston identified
3 Budd as his nephew. (*Id.* at 129-130). Winston testified that on the evening of the 27th, he
4 received a telephone call from his brother Kirk, which raised Winston's concern for his
5 nephew. (*Id.* at 130). On Tuesday morning, Winston received a telephone call from Budd.
6 (*Id.* at 131). Budd asked Winston to come pick him up. (*Id.* at 132). Winston didn't remember
7 whether Budd told him on the phone about his being in trouble. (*Id.*). Budd said that someone
8 was trying to rob him and so he shot them. (*Id.* at 133). Winston asked Budd what he did with
9 the gun and Budd told him he gave it back to a friend. (*Id.*). Winston drove to Henderson and
10 picked up Budd. (*Id.* at 134). Winston observed that Budd had cut his hair. (*Id.* at 135).
11 When he arrived at his home, his family was present. (*Id.*). Ultimately, the police arrived
12 looking for Budd. (*Id.* at 135-136). Winston told Budd he should turn himself in, but Budd
13 said he would rather run. (*Id.* at 135-36).

14 Following the reading of Winston's testimony, there was a stipulation regarding certain
15 evidence. Rather than bring the jury in and out, the Court agreed that the admonition and
16 colluquay should be made with Budd regarding his rights against self incrimination. (*Id.* at
17 146, *et seq.*). Budd informed the Court that he did not intend to testify. (*Id.* at 149). After the
18 stipulations were read to the jury, the State rested. (*Id.* at 153). Thereafter, the defense rested
19 without calling a witness. (*Id.* at 155). After the jury was excused, the counsel and the court
20 worked on finalizing the jury instructions. (*Id.* at 156, *et seq.*).

21 The trial continued on Tuesday, December 13, 2005 at 1:35 p.m. (*See* Trial Transcript
22 Vol. VI, cited to herein as TT6). Based on references made in the State's opening statement
23 regarding the anticipated testimony of Tracey Richards which included statements about
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1 alleged admissions by Budd, and the fact that ultimately Richards did not testify, the defense
2 moved for a mistrial. (TT6, P. 4-5). The State responded that she was subpoenaed, did not
3 appear, and it decided not to put her on a witness, but suggested the Court could find her an
4 unavailable witness, reopen the case, and permit the reading of her preliminary hearing
5 testimony. (*Id.* at 5-6). The defense argued that if the Court was not inclined to grant the
6 mistrial, that it permit the defense to comment on the absence of the evidence during closing.
7 (*Id.* at 6). The Court denied the motion for mistrial but stated that both sides could comment
8 on the absence of testimony from Richards. (*Id.* at 7).

10 In addition, for the first time, the State revealed that it had provided relocation
11 assistance in the approximate amount of \$300.00 to witness Palau, the woman who allegedly
12 was an eyewitness to the shooting on the balcony. (*Id.* at 7-8). The State explained that it told
13 Brooks about this fact after Palau had testified and that as a "tactical decision" there was no
14 point in bringing this out in the presence of the jury. (*Id.* at 8). When the Court asked Brooks
15 if he wished to be heard, defense counsel declined. (*Id.* at 9). Following this, the Court
16 instructed the jury on the law. (*Id.* at 11, *et seq.*). Following jury instruction, the State made its
17 closing statement. (*Id.* at 26, *et seq.*). The defense made its closing argument. (*Id.* at 47).
18 During the closing argument, Brooks discussed Greg Lewis testimony and specifically stated,
19 "And we're not going to play games here. They were in jail together." At the conclusion of
20 the defense closing, the State made rebuttal argument. (*Id.* at 65). The jury is then left to
21 deliberate. (*Id.* at 87). At nearly 7:00 p.m., the jury reached its verdict. (*Id.* at 89). The jury
22 found Budd guilty of three (3) counts of murder of the first degree. (*Id.*).

26 The matter resumed on December 14, 2005. (See Trial Transcript, Vol. VII cited to
27 herein as TT7). The record was augmented concerning jury notes. (*Id.* at 4-6). The penalty
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1 phase of the proceedings began with the State's opening argument. (*Id.* at 18). The defense
2 followed with its opening. (*Id.* at 21).

3 Lazon Jones was called to testify. (*Id.* at 33). He testified that Dajon was a good
4 person and they were very close. (*Id.* at 34-36). Lazon said it has been hard to get his life
5 back on track. (*Id.* at 36). Lazon testified the family moved out of Las Vegas because they
6 didn't feel safe any more. (*Id.*) Lazon testified that three years later, his mother was still not
7 right or back on her feet. (*Id.* at 37). Lazon testified that his father has been strong and that he
8 has a younger brother plus three sisters. (*Id.* at 37-38). Lazon wanted the jury to know that
9 Dajon was just too young and he didn't deserve what happened to him. (*Id.* at 38).

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12 Kokitha Jones was then called to testify. (*Id.* at 39). Kokitha was the eldest sister. (*Id.*
13 at 40). She stated that Dajon was the type of person who needed extra love and care, who was
14 devastated by his parents divorce. (*Id.* at 41). She loved her brother. (*Id.* at 41). Kokitha also
15 knew Jason and Derrick. (*Id.*). They were cool. (*Id.*). This really hurt Kokitha. (*Id.* at 43).
16 Kokitha testified that it devastated her mother. (*Id.*). Her mother blames herself for not
17 adequately protecting his son. (*Id.* at 44).

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19 Earl Moore was then called to testify. (*Id.* at 46). Earl was Jason Moore's father. (*Id.*).
20 Earl said Jason was the best son a father could have. (*Id.* at 47). He described him as lovable,
21 kind, generous, shy, and with very high standards. (*Id.*). Earl testified that the because of
22 Jason's murder, they will never be the same. (*Id.* at 48). When asked how it impacted the
23 family, Earl testified "There is no more holidays for us. We just, like there are no more
24 Christmases. There is no more Thanksgiving. There is no more holidays for us." (*Id.* at 49).

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26 Linda Moore testified. (*Id.* at 51). Linda was Jason's mother. (*Id.*). Linda testified
27 that it has been very hard and she is on medication. (*Id.* at 52). She stated, "I wish I could just
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1 stop the world and take a break or something, because every day, there's not a day that goes by
2 that I don't think about my baby." (*Id.*). Linda testified about a photograph which was Jason's
3 last Christmas and confirmed they have no more holidays. (*Id.* at 56). She testified that the
4 year before, she tried to do something, but it didn't work out "because he had an empty table, a
5 empty chair sitting at the table where Jason used to sit." (*Id.*). She said that Jason's murder has
6 torn the family part and for her, it's like a part of her heart is missing. (*Id.* at 58).

8 Lizzie Jones was called to testify. (*Id.* at 62). She was Derrick's grandmother who
9 ultimately adopted him. (*Id.*). Derrick loved sports. (*Id.* at 66). Derrick's girlfriend was
10 pregnant and he never got to see his son. (*Id.* at 68). His son will never get to know or even
11 speak to his father. (*Id.*). Derrick was a nice man. (*Id.*). Derrick did not deserve to die like
12 that. (*Id.* at 72).

14 James Esten was called to testify. (*Id.* at 75). Esten is a correctional consultant. (*Id.*).
15 As a correctional consultant, he reviews histories of inmates facing life, life without possibility
16 of parole, or death sentences and makes recommendations to their attorneys regarding
17 placement in a maximum security prison for the remainder of the inmate's life. (*Id.* at 78).
18 Esten testified that Nevada has only one maximum security prison, Ely State Prison and that
19 undoubtedly, Budd would be moved to that prison. (*Id.* at 81-82). Esten reviewed Budd's
20 disciplinary record while housed at CCDC and stated that record was minimal. (*Id.* at 101-
21 103).

24 Adele Levy was called to testify. (*Id.* at 109). Levy was Budd's former teacher. (*Id.*).
25 She stated she had nothing but positive things to say about Budd. (*Id.* at 110). He was a very
26 personable young man. (*Id.* at 111). On cross examination, Levy testified that she found Budd
27 to be of average intelligence. (*Id.* at 114).

1 The penalty phase continued on December 15, 2005. (See Transcript of Penalty Phase,
2 Vol. VIII, cited to herein as TT8). The defense called Louise De Deaux. (*Id.* at 3). Louise
3 lived on the same street as Budd in Montebello. (*Id.* at 5). Her son Eddie was friends with
4 Budd. (*Id.*). Budd and Eddie were hit by a vehicle while they attempted to repair a disabled
5 vehicle. (*Id.*). The boys became very close during the recovery. (*Id.*). Budd lived with Louise
6 for approximately four months. (*Id.* at 9). She had no problems with him. (*Id.*).

8 Angela Budd was called to testify. (*Id.* at 23). Angela was Budd's sister. (*Id.*). Budd
9 helped Angela transition when she came to the United States from Belize. (*Id.* at 26). She
10 explained the impact of the death of her stepfather on the family. (*Id.* at 28). Ultimately, the
11 family ended up splitting because of the economic pressures. (*Id.* at 31). She has written Budd
12 letters and visited him in jail. (*Id.* at 32).

14 Raheem Miller was called to testify. (*Id.* at 34). Raheem is Budd's little brother. (*Id.*).
15 Raheem testified that Budd was a good brother who helped care for him. (*Id.*).

16 Kehleen Glen was called to testify. (*Id.* at 40). Kehleen is Budd's grandmother. (*Id.* at
17 41). She testified that Budd was quiet, kind and gentle. (*Id.*). Budd never gave her any
18 trouble. (*Id.* at 44).

20 Karen Gill was called to testify. (*Id.* at 44). Karen is Budd's mother. (*Id.* at 45). She
21 testified that Budd was always quiet. (*Id.* at 46). Budd was shy. (*Id.* at 47). She testified that
22 when Winston passed away, she put a lot of pressure on Budd to assist with the household. (*Id.*
23 at 50). Since Budd had been incarcerated, Karen visited with him three times a month. (*Id.* at
24 59). She testified that her desire is to continue to visit him. (*Id.* at 60).

26 The defense then called Eddie Byrd. (*Id.* at 63). Eddie and Budd were close friends.
27 (*Id.* at 63). He testified that it was his desire to have that friendship continue. (*Id.* at 76).

1 Shermaine Budd was called. (*Id.* at 78). She is Budd's sister and resides in Belize. (*Id.*
2 at 79). She testified that Budd is her brother and she wants him to continue to have role in her
3 life. (*Id.* at 82).

4 James Paglini was called to testify. (TT8B, P. 3). Paglini is a licensed clinical
5 psychologist. (*See* Trial Transcript, Vol. VIII-B, cited to herein as TT8B at 4). Paglini
6 specializes in forensic psychology which is an evaluation of defendants, and in his practice
7 mostly in death penalty cases. (*Id.* at 7). Paglini evaluated Budd. (*Id.* at 8). His evaluation of
8 Budd consisted of psychological interviews, psychological testing, review of the discovery
9 provided and then collateral interviews. (*Id.* at 8). Paglini defined mitigation as multifaceted
10 and equates to moral culpability. (*Id.* at 11). Budd was born Belize and was healthy but his
11 father was an alcoholic who was abusive to his mother. (*Id.* at 17-18). When he was four, his
12 parents separated, his mother came to the United States, and Budd is raised by his maternal
13 grandmother, with his father residing across the street. (*Id.* at 18). Budd eventually moves to
14 the United States, is separated from his father, and is learning a new culture. (*Id.* at 19). For
15 almost seven years prior to his coming to the United States, he has not seen his mother. (*Id.*).
16 Once he moves to the United States, he does not hear from his father, who apparently had
17 cocaine problems and ends up in prison. (*Id.* at 20). Budd has a stepfather who Budd likes, but
18 the stepfather doesn't work and sells marijuana. (*Id.*).

19 By the eighth grade, Budd is having academic problems. (*Id.* at 21). Paglini stated that
20 his overall IQ is 80, which is considered low average intelligence. (*Id.* at 23). On assessment
21 tests, Budd's scores which in the sixth, seventh, and fourth grade levels. (*Id.* at 23). On
22 memory tests, Budd scored in the first percentile, meaning that out of 100 people, 99 would
23 score better. (*Id.*). These academic problems are compounded by the fact that during Budd's
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1 eighth grade year, his step father is sent to prison. (*Id.* at 26). By high school, Budd is
2 oppositional defiance, always getting into trouble and not doing well in school. (*Id.* at 26).

3 Budd's sophomore year in high school, he gets expelled. (*Id.* at 27). When his mother
4 discovers he has a bunch of kids in the house, she gets upset and sends him to his Uncle Budd's
5 house in Los Angeles for three months. (*Id.*). At this same time, Budd begins to smoke
6 marijuana. (*Id.* at 28). By his senior year, Budd realizes that he is credit deficient because of
7 F's obtained along the way and he drops out of school. (*Id.* at 29).

9 When Budd is 18, his step father is killed in a pedestrian automobile accident. (*Id.*).
10 Budd's mother is severely depressed and loses her job. (*Id.*). The family is destabilized and
11 financially distressed, and they are evicted. (*Id.* at 30). They move in with another family with
12 a total of eight people living in a studio apartment. (*Id.*). They are evicted again. (*Id.*).

14 Budd calls his Uncle in Las Vegas and asks if he can move in with him. (*Id.* at 32). But
15 without a job, Budd turns to selling marijuana. (*Id.*). Budd had little parental stability, no
16 economic stability and no academic success. (*Id.* at 33-35). Therefore, the resiliency factors
17 decreased and the risk factors increase making it more likely that there will be a propensity
18 toward drug dependency and criminal history. (*Id.* at 38). His juvenile history indicates mild
19 acting out. (*Id.* at 39). His record while in CCDC shows nothing more than minor conduct
20 issues and very few of those. (*Id.* at 42-43). All of the people interviewed by Paglini indicated
21 that Budd did not display violent behavior. (*Id.* at 43-45).

23 Paglini was cross examined. He admitted Budd is not mentally retarded. (*Id.* at 49).
24 Budd is not mentally ill. (*Id.*). Budd never had a job and made his living selling marijuana.
25 (*Id.* at 50). The State attempted to get Paglini to state the murders were a straight business
26 decision because of the loss of his profits arising from the theft of the marijuana. (*Id.* at 52).
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1 Following Paglini's testimony, the Court addressed the issue of whether Budd wanted
2 to address the jury. (*Id.* at 57-60). After the standard colloquy, the Court stated that it wanted
3 to speak to Budd in the presence of his counsel but without the State present, counseling that he
4 would make a record of this discussion. (*Id.* at 60-61). The State did not object so long as a
5 record was being made. (*Id.*). The Court then addressed Budd, expressing the Court's deep
6 concern about Budd's decision to not address the jury. (*Id.* at 60-61). Ultimately, the Court
7 told Budd it was the Court's personal and professional opinion that he should address the jury.
8 (*Id.* at 63). Thereafter, Budd agreed to address the jury. (*Id.* at 63). The Court and counsel
9 then ordered the instructions. (*Id.* at 64-78).

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12 Budd then addressed the jury. (*Id.* at 80). Budd expressed remorse. (*Id.*). Budd asked
13 the jury to spare his life. (*Id.* at 81).

14 Counsel made closing arguments. (*Id.* at 81, *et seq.*). The State specifically stated that
15 Budd deserves to die for the murders of Dajon Jones, Derrick Jones, and Jason Moore. (*Id.* at
16 81). The Defense made its closing argument. (*Id.* at 110, *et seq.*). The defense did not ask for
17 leniency, only mercy. (*Id.* at 114). It asked the jury to choose life. (*Id.*). Ultimately, the jury
18 was excused to deliberate. (*Id.* at 129).

19
20 During deliberations, the jury had two questions. First, jury wanted to clarification
21 regarding the meaning of its checking boxes on the mitigation special verdict form. (*See*
22 Transcript of Telephonic Hearing re: Post-Trial Jury Questions, P. 2). The Court felt the
23 answer was contained in the instructions. (*Id.*). The second question was whether life
24 sentences would be served consecutively or concurrently. (*Id.* at 3). The Court believed this
25 was not for the jury to concern itself with or about. (*Id.* at 4).

1 Deliberations concluded on December 16, 2005. (See Recorder's Transcript of Hearing
2 re: Verdict, cited herein as "TV"). It found the aggravating circumstances were the multiple
3 convictions in the same proceeding. (TV at 2). In mitigation, the jury found that: (a) Budd had
4 no significant prior criminal history; (b) the murder occurred while Budd was under extreme
5 mental disturbance; (c) he was a youth; (d) had diminished intelligence; (e) the impact Budd's
6 execution on his family members; and (f) Budd's apology. (*Id.*). Based on those mitigating
7 factors, the jury sentenced Budd to Life without the possibility of parole on all three counts.
8 (*Id.* at 3-4).

10 Following the reading of the jury's verdict, a record was made concerning jury
11 questions during deliberations. (*Id.* at 7). Two notes were submitted by the jury which
12 received responses from the judge stating that the answers were contained in the jury
13 instructions. The second of three notes asked whether any sentence less than death would run
14 consecutive or concurrent. (*Id.* at 7-8). Counsel agreed upon a response which was returned to
15 the jury. (*Id.* at 8).

18 A Presentence Report was prepared on January 24, 2006. (See PSI). The PSI indicated
19 that Budd had no prior criminal history. However, based on the circumstances of the crimes
20 committed, the PSI recommended life without the possibility of parole as to each offense,
21 followed by a consecutive sentence for the Use of a Deadly Weapon. (*Id.*).

23 The actual sentencing occurred on February 22, 2006. The Judgment of Conviction
24 (Jury Trial) was entered on February 26, 2006. (See Judge of Conviction). Budd was
25 convicted on all three counts and was sentenced to life without the possibility of parole on each
26 count plus an equal and consecutive life without the possibility of parole sentence on each
27 count for use of a deadly weapon. (*Id.*).

1 On July 12, 2007, Clark County Public Defender's filed its Response to Budd's Motion
2 to Hold Clark County Public Defender in Contempt. Budd sought to hold the Public
3 Defender's Officer in contempt for failing to turn over his complete file, including pages
4 therefrom which Budd identified as missing. Brooks averred that he turned over the file and it
5 was not his duty after having been discharged to track down missing pages.
6

7 Throughout the case, Brooks maintained electronic case notes. These case notes
8 contain the following material entries:

- 9
- 10 a) On January 5, 2004, Brooks notes that while the case is set for trial on
11 February 23, 2004, he does not anticipate being ready. The note specifically
12 states, "HSB has not been able to pay attention to this case, so before reading
the letter, HSB assumed the client was unhappy with our representations."
(See Case Notes, P. 19).
- 13 b) On June 16, 2004, Brooks notes that he told Budd that this was not a case
14 where he was going home anytime soon, but rather one where he would
15 probably spend the rest of his life in prison or alternatively get the death
16 penalty. Budd literally had no reaction to this statement at all. He was not
engaged. (See Case Notes, P. 15).
- 17 c) On June 18, 2004, Brooks notes that he spoke with Budd's grandmother,
18 Karen who indicates that Budd tells her he will be coming home soon, and
that the CCDC is just like daycare. She confesses that she does not believe
19 that Budd understands what is going on. (See Case Notes, P. 14).
- 20 d) On September 12, 2005, Brooks made an entry indicating that Budd was
21 disengaged in the whole process and his responses were generally only one or
two syllables. (See Case Notes, P. 10).
- 22 e) On October 19, 2005, Brooks made an entry in the notes indicating that Budd
23 remains disconnected from the case and unwilling to deal with reality. (See
Case Notes, P. 9).
- 24 f) On November 18, 2005, the State filed an Amended Notice of Evidence in
25 Aggravation. (See Amended Notice of Evidence in Aggravation). The State
26 sought to introduce evidence of aggravation consisting solely of the
anticipated conviction of more than one count of murder in the instant case.
27 *Id.*
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1 g) On November 28, 2005, Brooks met with Bud. During this meeting, Budd
2 denied he committed the crime and when Budd told him the evidence was
3 overwhelming that Budd would be convicted on all three counts. Budd
4 responded that he would just "hope for the best." (See Case Notes, P. 7).
Brooks asked if Budd wanted to testify to which Budd's response was in the
affirmative. *Id.*

5 The case was appealed, Supreme Court No. 46977. The Notice of Appeal was filed on
6 March 23, 2006. (See Notice of Appeal). Budd's Opening Brief was filed on or about August
7 17, 2006. (See Opening Brief). The sole claim on appeal was that there was insufficient
8 evidence to support his convictions. (See *Id.* and Order of Affirmance). The State filed its
9 Answering Brief on September 18, 2006. (See Respondent's Answering Brief). The Order of
10 Affirmance was entered on January 9, 2007. The Order of Remittur was entered February 6,
11 2007.
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15 Based on the foregoing facts, the Petitioner alleges the following grounds which support
16 his claim that he was denied his constitutional right to effective assistance of counsel:

- 17 1. Failure to Adequately Prepare for Trial;
- 18 2. Failure to Present Evidence Supporting Reasonable Doubt on Question of
Premeditation;
- 19 3. Refusal to Allow Defendant to Participate in his Own Defense;
- 20 4. Failure to Object to the Court rendering Legal Advice to Defendant;
- 21 5. Violating Court Orders to the Defendant's Prejudice;
- 22 6. Failure to Communicate with Defendant;
- 23 7. Failure to Zealously Represent Interests of Client;
- 24 8. Continued Representation in Fact of Conflict of Interest;
- 25 9. Failure to Preserve Record on Appeal;
- 26 10. Unauthorized Admissions Which Violate Defendant's Right to Remain Silent;
- 27 11. Admissions which Eliminated Presumption of Innocence;
- 28 12. Alleviated State's Burden of Proof;
13. Waiver of Right to Confront Witnesses;
14. Violating Defendant's Right Against Self Incrimination;
15. Failure to Evaluate Budd's Competency to Stand Trial;
16. Failure to Retain Expert Defense Witnesses; and
17. Cumulative Effect of All Errors.

1 Based on these grounds, as argued below, this Court should grant an evidentiary
2 hearing, following which it should grant this Petition for Writ of Habeas Corpus (Post-
3 Conviction).
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8 **ARGUMENT**

9 **I.**

10 **GENERAL LEGAL ARGUMENTS**

11
12 The Sixth Amendment to the United States Constitution provides:

13 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public
14 trial, by an impartial jury of the State and district wherein the crime shall have been
15 committed, which district shall have been previously ascertained by law, and to be
16 informed of the nature and cause of the accusation; to be confronted with the witnesses
against him; to have compulsory process for obtaining witnesses in his favor, and to
have the Assistance of Counsel for his defense.

17 VI Amend., U.S. Const. It is by this standard which the Petition for Writ of Habeas Corpus
18 must be judged.

19 Ineffective assistance of counsel claims are never heard on direct appeal. *Archanian v.*
20 *State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). While substantive arguments
21 presented on direct appeal may in some cases become the law of the case, because those
22 decision on the merits did not consider nor address whether such conduct constitutes ineffective
23 assistance of counsel, the law of the case doctrine does not bar consideration of those matters
24 on this Petition. See e.g. *McConnell v. State*, 125 Nev. Adv. Op. No. 24, 49722, fn. 1, 212 P.3d
25 307 (2009).
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1 A claim that counsel provided constitutionally inadequate representation is subject to
2 the two-part test established by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668
3 (1984). To prevail on a claim of ineffective assistance of trial or appellate counsel, a defendant
4 must demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient
5 performance prejudiced the defense. *Id.* at 687. A court need not consider both prongs of the
6 *Strickland* test if a defendant makes an insufficient showing on either prong. *Id.* at 697. "A
7 claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to
8 independent review." *Evans v. State*, 117 Nev. 609, 622, 28 P.3d 498, 508 (2001).

10 On the first prong of the analysis, the Petitioner's burden is to show that counsel's
11 performance fell below an "objective standard of reasonableness." *Strickland, supra*, at 689.
12 Obviously, there are a number of factors which must be evaluated to determine whether the
13 complained of act or omission fell below that standard, which factors vary based on the nature
14 of the allegation.

16 On the second prong, to establish prejudice the claimant must show that but for the
17 attorney's mistakes, there is a reasonable probability the result of the proceeding would have
18 been different. *Strickland, supra*, at 687-88. Obviously, there is a degree of speculation with
19 respect to the prejudice prong, as no one can to a degree of absolute certainty know whether a
20 jury would have concluded differently. A reasonable probability is "probability sufficient to
21 undermine confidence in the outcome." *Williams v. Taylor*, 529 U.S. 362, 390-391 (2000)
22 (citing *Strickland*, 466 U.S. at 687). Nonetheless, where there is a reasonably probability that
23 the error was sufficiently significant as suggest a potentially different outcome, ineffective
24 assistance of counsel should be found in order to exalt the protections of the Constitution over
25 mindless convictions.

1 In order to avoid the distorting effects of hindsight, the evaluation begins with the
2 strong presumption that "counsel's conduct falls within the wide range of reasonable
3 professional assistance." *Strickland, supra*, at 689. This rebuttable presumption is so despite
4 the clear fundamental liberty interests at stake. Nonetheless, the presumption is rebuttable
5 considering the totality of the circumstances.
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7 Counsel's representation may be deficient constituting ineffective assistance of counsel
8 for failing to communicate with the Petitioner. Adequate consultation between attorney and
9 client is an essential element of the effective assistance of counsel. *Strickland*, 466 U.S. at 688,
10 104 S.Ct. at 2065. "From counsel's function as assistant to the defendant derive the overarching
11 duty to advocate the defendant's cause and the more particular duties to consult with the
12 defendant on important decisions and to keep the defendant informed of important
13 developments in the course of the prosecution." *Id.* See also *Roe v. Flores-Ortega*, 528 U.S.
14 470, 120 S.Ct. 1029 (2000) and *Johnson v. Parker*, Civil Action No. 1:06CV217-SA-JAD
15 (N.D.Miss. 9-12-2008)(failure to communicate may be both a symptom and cause of
16 ineffective assistance).
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19 Trial counsel was ineffective for failure to lodge objections during many of the pretrial
20 and trial proceedings. The failure to object may result in a properly laid ineffective assistance
21 of counsel claim. See e.g. *Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504 (1984), cert. denied,
22 471 U.S. 1004 (1985). In addition, the failure to object leads to a failure to preserve error for
23 purposes of direct appeal. The failure to preserve issues for appellate review can constitute
24 ineffective assistance of counsel. See e.g. *Martin v. State*, 501 So.2d 1313 (Fla. 1st DCA 1986);
25 *Crenshaw v. State*, 490 So.2d 1054 (Fla. 1st DCA 1986).
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1 A claim for ineffective assistance of counsel may lie for failing to retain defense
2 experts. Ineffective assistance of counsel claims are analyzed under the two-prong test of
3 *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under *Strickland*, Castor must
4 show both that his counsel's performance was deficient and that the deficient performance
5 prejudiced his defense such that he was deprived of a "fair trial, a trial whose result is reliable."
6 *Id.* at 687, 104 S.Ct. at 2064

8 A claim for ineffective assistance of counsel may lie where counsel fails to inadequately
9 prepare for trial. The test set forth in *Strickland* applies.

10 A claim for ineffective assistance of counsel claim lies where counsel failed to present
11 evidence which could have created reasonable doubt regarding premeditation. The Due
12 Process Clause of the Fourteenth Amendment prohibits a criminal conviction "except upon
13 proof beyond a reasonable doubt of every fact necessary to constitute the crime." *In re Winship*,
14 397 U.S. 358, 364 (1970).

16 The refusal to permit the Defendant to participate in the preparation of his own defense
17 is ineffective assistance of counsel. *Faretta v. California*, 422 U.S. 806, 816-17, 834, 935 S.Ct.
18 2525 (1975) grants defendants the right not only to manage, but also to conduct, their own
19 defenses. This right was recognized in *McKaskle v. Wiggins*, 465 U.S. 168, 174, 104 S.Ct. 944
20 (1984) which focuses on whether "the defendant had a fair chance to present his case in his
21 own way."

23 The failure of counsel to object when the Court provided legal advice to the Defendant
24 constitutes ineffective assistance of counsel. The failure to object may result in a properly laid
25 ineffective assistance of counsel claim. *See e.g. Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504
26 (1984), cert. denied, 471 U.S. 1004 (1985). In addition, the failure to object leads to a failure to
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1 preserve error for purposes of direct appeal. The failure to preserve issues for appellate review
2 can constitute ineffective assistance of counsel. *See e.g. Martin v. State*, 501 So.2d 1313 (Fla.
3 1st DCA 1986); *Crenshaw v. State*, 490 So.2d 1054 (Fla. 1st DCA 1986).

4 The Defendant suffered from ineffective assistance of counsel where defense counsel
5 violated the trial court's orders. The standard test set forth in *Strickland* apply.
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7 Counsel's failure to zealously represent the interests of his client constitutes ineffective
8 assistance of counsel. A lawyer's first duty is zealously to represent his or her client. *Sanders*
9 *v. Ratelle*, 21 F.3d 1446 (9th Cir. 1994). In *Anderson v. Calderon*, 276 F.3d 483 (9th Cir.
10 2001), the Court stated the failure to zealously represent the interests of his client, an attorney
11 "violated his duty of loyalty" to the client. *Id.* Not only does this type of conduct violate the
12 duty of loyalty and constitute ineffective assistance of counsel, it actively serves the interests of
13 the prosecution. *Id.*

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15 When counsel has a conflict of interest, it may constitute ineffective assistance of
16 counsel. If a petitioner shows that a conflict of interest actually affects the adequacy of his
17 representation, there is no requirement to show prejudice in addition in order to obtain relief.
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19 *Mickens v. Taylor*, 535 U.S. 162, 171 (2001).

20 Ineffective assistance of counsel lies where counsel fails to preserve the record for
21 appeal. The failure to preserve issues for appellate review can constitute ineffective assistance
22 of counsel. *See e.g. Martin v. State*, 501 So.2d 1313 (Fla. 1st DCA 1986); *Crenshaw v. State*,
23 490 So.2d 1054 (Fla. 1st DCA 1986).

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25 Where counsel makes admissions on behalf of this client, without prior client approval,
26 such admissions constitute both ineffective assistance of counsel and a violation of the
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1 Defendant's Fifth Amendment Right to Remain Silent. In such cases, the standard *Strickland*
2 analysis applies.

3 If counsel makes admissions which have the effect of gutting the presumption of
4 innocence, this is a violation of the right to effective assistance of counsel. Again, the standard
5 analysis set forth in *Strickland* applies.
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7 Where counsel's conduct eliminates the burden upon the State to prove each element of
8 the crime charged beyond a reasonable doubt, such burden shifting or elimination constitutes
9 ineffective assistance of counsel. To prevail on a claim of ineffective assistance of trial or
10 appellate counsel, a defendant must demonstrate (1) that counsel's performance was deficient
11 and (2) that counsel's deficient performance prejudiced the defense. *Strickland* at 687.
12

13 The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall
14 enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI.
15 The right to confrontation is a fundamental constitutional right. See *Pointer v. Texas*, 380 U.S.
16 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). In *Wilson v. Gray*, 345 F.2d 282, 286 (9th
17 Cir. 1965), cert. denied, 382 U.S. 919, 86 S.Ct. 288, 15 L.Ed.2d 234 (1965), the 9th Circuit
18 determined that counsel may waive the accused's Sixth Amendment right to cross-examination
19 and confrontation as a matter of trial tactics or strategy. *Id.* However, in order for such
20 conduct to constitute a trial strategy, it must be a knowing trial strategy and not merely an
21 unintended consequence of otherwise substandard representation. In the latter cases, any
22 unintended waiver is ineffective assistance of counsel.
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25 The Fifth Amendment right contains the right against self-incrimination. The right
26 against self-incrimination may be waived, but any such waiver must be knowing and voluntary.
27 See *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); see also
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1 *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). "[A] heavy
2 burden rests on the government to demonstrate that the defendant knowingly and intelligently
3 waived his privilege against self-incrimination. . . ." *Miranda v. Arizona*, 384 U.S. 436, 475,
4 86 S.Ct. 1602 (1966). If a defendant decides to waive his right against self-incrimination
5 based upon the advice of counsel, then that decision is knowing and voluntary for purposes of
6 the Fifth Amendment, as long as counsel's advice was constitutionally reasonable under the
7 Sixth Amendment and *Strickland*. See *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88
8 L.Ed.2d 203 (1985). However, if counsel implicitly waives the right against self-
9 incrimination, without consulting with the defendant and without the defendant's knowing,
10 voluntary consent, such conduct is ineffective assistance of counsel.
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12
13 Counsel was ineffective for failing to request a competency hearing to determine
14 whether Budd was competent to stand trial. This claim depends in large measure on facts
15 outside the record. See *Massaro v. United States*, ___ U.S. ___, 123 S.Ct. 1690, 1694, 155
16 L.Ed.2d 714 (2003). In addition to the standard *Strickland* analysis, Budd can put before the
17 Court circumstantial evidence regarding the basis of the claim of incompetency at the time of
18 trial.
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20 Finally, where the errors of counsel are numerous, their cumulative effect may
21 constitute ineffective assistance of counsel. *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d
22 1100, 1115 (2002). Thus, "[t]he cumulative effect of errors may violate a defendant's
23 constitutional right to a fair trial even though errors are harmless individually." *Id.*
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25 II.

26 SPECIFIC CLAIMS OF INEFFECTIVE ASSISTANCE

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1 A: My understanding was that this is where one of the victims had been prior
2 to the paramedics taking him.

3 (*Id.* at 112). Despite the admission of lack of personal knowledge and the lack of foundation,
4 Brooks did not lodge an objection.

5 The State called Greg Lewis, an inmate who had been in the CCDC at the time Budd
6 was housed at the CCDC. (TT5 at 8). Throughout the examination, the State lead Lewis but no
7 objection was lodged. *Id.* Lewis then testified about a letter he received from Budd. (*Id.* at
8 22). Lewis identified the handwriting as Budd's. However, in so identifying the letter, the sole
9 foundational basis was because he had before received a single letter from Budd. (*Id.*). No
10 objection was lodged by the defense. Ultimately, the letter was admitted over an objection that
11 the summary was not an exact duplicate of the more difficult to read hand written letter. (*Id.* at
12 28). No objection was made regarding the prejudicial effect of the letter outweighing any
13 probative value. (*Id.*).

14 These failures to object fell well below an objectively reasonable standard. In addition,
15 These failures to object fell well below an objectively reasonable standard. In addition,
16 there was no trial tactic or strategic advantage which flowed from failing to lodge proper
17 objections resulting in evidence being admitted which otherwise should have been excluded.
18 Most significantly, among the most damning pieces of evidence was the letter containing the
19 rap song. The admission of this evidence was extremely prejudicial to Budd. It was argued as
20 an admission by the State. It was admitted with the flimsiest foundation, if any at all. No
21 objection was lodged that the prejudicial effect of the letter so far outweighed any probative
22 value that it should have been excluded. Instead, the State beat that rap song drum throughout
23 its arguments, ultimately closing with the lyrics of the song. But for the admission into
24 evidence of the letter and its contents, the outcome of the trial would have been different. The
25 evidence of the letter and its contents, the outcome of the trial would have been different. The
26 evidence of the letter and its contents, the outcome of the trial would have been different. The
27 evidence of the letter and its contents, the outcome of the trial would have been different. The
28 evidence of the letter and its contents, the outcome of the trial would have been different. The

1 failure to properly object and seek the exclusion of the letter deprived Budd of the effective
2 assistance of counsel which is constitutionally guaranteed to Budd.

3 **C. Failure to Present Evidence Supporting Reasonable Doubt on Question of**
4 **Premeditation**

5 A claim for ineffective assistance of counsel claim lies where counsel failed to present
6 evidence which could have created reasonable doubt regarding premeditation. The Due
7 Process Clause of the Fourteenth Amendment prohibits a criminal conviction "except upon
8 proof beyond a reasonable doubt of every fact necessary to constitute the crime." *In re Winship*,
9 397 U.S. 358, 364 (1970).
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11 The key to whether the instant case could have resulted in a conviction of the lessor
12 included offense of second degree murder was evidence of the lack of premeditation. During
13 the alleged preparation for trial, defense counsel or its investigator interviewed Tamara
14 Grierson Steel. (See Memorandum of the Clark County Public Defender, dated October 17,
15 2005, Subject: Tamara Grierson Steel). During this interview, Tamara informed Budd's
16 counsel that she was aware that someone had stolen marijuana from Budd and that some new
17 neighbors made fun of Budd for not doing anything about the theft. Tamara then stated, "they
18 gave him PCP, and then he 'went crazy'." (*Id.*).
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21 At trial, the defense failed to call Tamara to testify. Tamara's testimony would have
22 created reasonable doubt on the issue of premeditation. Tamara's own testimony during the
23 interview was that Budd was high on PCP and "snapped." (*Id.*). The failure to present such
24 evidence was ineffective assistance. In addition, Budd suffered extreme prejudice. But for the
25 failure of counsel to present this evidence, the evidence would have created reasonable doubt
26 on the issue of premeditation. Such reasonable doubt would have resulted in a conviction, but a
27 conviction of the lessor included offense of second degree murder done without malice
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1 aforethought but rather based on the intoxication and Budd's resulting snapping. The prejudice
2 which flowed was the substantially greater sentence imposed against Budd. Had counsel not
3 been ineffective, the outcome of the trial would have been different.
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7 **D. Refusal to Allow Defendant to Participate in his Own Defense**

8 The refusal to permit the Defendant to participate in the preparation of his own defense
9 is ineffective assistance of counsel. *Faretta v. California*, 422 U.S. 806, 816-17, 834, 935 S.Ct.
10 2525 (1975) grants defendants the right not only to manage, but also to conduct, their own
11 defenses. This right was recognized in *McKaskle v. Wiggins*, 465 U.S. 168, 174, 104 S.Ct. 944
12 (1984) which focuses on whether " the defendant had a fair chance to present his case in his
13 own way."
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15 When the trial commenced on December 5, 2005, counsel for Budd made an oral
16 motion to continue the trial due to Budd's unhappiness with his representation and an
17 affirmative representation that another attorney was willing to take the case over. (TT1 at 2-4).
18 Specifically, Brooks represented to the Court that his relationship with Budd was non-existent.
19 (TT1 at 6). He further represented that as to the guilt phase, he didn't feel the lack of a
20 relationship would make any difference in the outcome of the proceedings. (*Id.*).
21

22 Day 2 of the trial did not start any better. (*See* Trial Transcript, Volume II, cited herein
23 as "TT2"). Budd's counsel started day two off by complaining to the Court again about his
24 frustrations regarding the Defendant's family. (TT2, P. 3-4). Brooks complained about Budd's
25 mother stating she did not know the facts of the case, despite Brooks protestations that he had
26 previously explained them to her. (*Id.*). Brooks set up an appointment with Budd's mother,
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1 who failed to appear at the appointment. (*Id.*) This complaint resulted in the Court stating the
2 following:

3 I think I need to note for the record and Mr. Budd, you need to understand to the
4 best of your abilities, you need to try to have your family understand this, if the
5 design or plan is to somehow segue this lack of cooperation into an ineffective
assistance of counsel claim, it's not going to work.

6 *Id.* at 4. This again is evidence of the lack of communication between Budd and his counsel.

7 These statements by counsel are an admission of inadequate communication between
8 Budd and Brooks. Because of this inadequate communication, Budd was not permitted to
9 participate in his own defense. Such a failure fell well below the objectively reasonable
10 standard of conduct by counsel in a death penalty case.

11 In addition Budd was prejudiced. He was not permitted to provide alibi witnesses,
12 discuss potential defenses, or other assist in rebutting the facts presented by the State. This
13 prejudice resulted in a conviction which otherwise would not have occurred. Had Budd been
14 permitted to participate in the creation and formulation of his defense, the outcome of the trial
15 could have been different. Therefore, this admitted failure to communicate resulted in
16 prejudice to Budd and constituted ineffective assistance of counsel.

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19 **E. Failure to Object to the Court rendering Legal Advice to Defendant**

20 The failure of counsel to object when the Court provided legal advice to the Defendant
21 constitutes ineffective assistance of counsel. The failure to object may result in a properly laid
22 ineffective assistance of counsel claim. *See e.g. Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504
23 (1984), cert. denied, 471 U.S. 1004 (1985).

24 The law is very clear. The Court cannot give legal advice to a party to the proceedings.
25 However, in the instant case, this precisely what the Court did. The trial commenced on
26 December 5, 2005. (*See* Trial Transcript, Volume 1 cited to hereinafter as "TT1"). At the
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1 beginning of the trial, the Defense made an oral motion to continue the trial due to Budd's
2 unhappiness with his representation and an affirmative representation that another attorney was
3 willing to take the case over. (TT1 at 2-4). Specifically, Brooks represented to the Court that
4 his relationship with Budd was non-existent. (TT1 at 6). He further represented that as to the
5 guilt phase, he didn't feel the lack of a relationship would make any difference in the outcome
6 of the proceedings. (*Id.*). The Court then bolstered Brooks and specifically stated to Budd that
7 it is absurd for Budd not to work with them. (TT1 at 8). Defense counsel did not object to this
8 statement by the Court. Thus, the Court gave legal advice to Budd regarding who was best
9 positioned to represent him during the proceedings. The Court then denied the Motion to
10 Continue. (*Id.*).

13 This legal advice by the court, which was not objected to by Budd's counsel, was
14 ineffective assistance of counsel. First, any objectively reasonable attorney would have
15 objected to the Court rendering such advice to Budd. However, because the Court was
16 bolstering the performance capabilities of defense counsel, obviously defense counsel was not
17 going to object. This failure to object coupled with the advice of the Court prejudiced Budd.
18 Specifically, counsel admitted that he had no relationship with Budd, and that he did not feel
19 that his relationship would have any impact on the guilt phase of the proceedings. These
20 representations resulted in the Budd being represented by an unprepared attorney with whom
21 he had no relationship. Under the circumstances, the outcome of the proceedings would have
22 been different but for this improper conduct.

25 **F. Violating Court Orders to the Defendant's Prejudice**

26 The Defendant suffered from ineffective assistance of counsel where defense counsel
27 violated the trial court's orders. The standard test set forth in *Strickland* apply.
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1 On September 14, 2004, Brooks filed a Motion to Preclude any Reference during the
2 Trial as the "Guilt Phase" of the proceedings. (See Motion). The State opposed the Motion to
3 Preclude reference to the trial as the Guilt Phase, arguing that it has faith the Jury will decide
4 the case on the evidence and not its characterization. (See Opposition). On November 23,
5 2005, the Court heard argument on the pretrial motions. (See Transcript of Defendant's Pretrial
6 Motions, hereinafter referred to as "TDPM). On November 23, 2005, the Court heard
7 argument on the pretrial motions. The Court also granted the motion to preclude reference to
8 the trial as anything other than the trial, including all references to the "guilt phase." (Id. at 8).
9

10 Despite Brooks' Motion to exclude all references to the "guilt phase" during the trial,
11 and despite the Court granting the motion as requested, Brooks violated the Court's order by
12 referring to the trial as the "guilt phase." (TT1 at 39). Specifically, Brooks stated during initial
13 discussions with the jury venire, "Whether we call witnesses in the guilt phase will be
14 determined entirely and according to what the State presents." (Id.). The use of the phrase
15 "guilt phase" by Brooks was not an isolated incident. (TT1, P. 174).
16

17 Brooks moved for the very order he violated. This clearly fell well below the
18 reasonably objective performance by defense counsel. In addition, it resulted in the very
19 prejudice counsel sought to preclude by so moving in the first place. Defense counsel
20 prejudiced Budd by referring to the trial as the guilt phase, which implied that Budd was guilty.
21 But for these violations of the Court's order, the outcome of the trial would not have been
22 suggested to the jury. Had such a violation occurred from the mouth of the prosecutor, it would
23 have been grounds for a mistrial. The prejudice was not less coming from the mouth of defense
24 counsel. This is clearly ineffective assistance of counsel.
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27 **G. Failure to Zealously Represent Interests of Client**
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