IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON JEFFERSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	DOCKET NUMBER: 70732

APPELLANT'S FAST TRACK APPENDIX

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BRANDON JEFFERSON

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Attorney for Respondent
THE STATE OF NEVADA

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COURT MINUTES

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CLERK OF THE COURT

INFO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 11/01/2010
10:30 A.M.
PUBLIC DEFENDER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRANDON MONTANE JEFFERSON, #2508991

Defendant.

Case No: **C268351-1**
Dept No: **II**

I N F O R M A T I O N

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That **BRANDON MONTANE JEFFERSON**, the Defendant above named, having committed the crime of **LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony - NRS 201.230)** in the manner following, to-wit: That the said Defendant, on or between July 1, 2010, and September, 2010, at and within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

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COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the genital area of the said the CAITLIN JEFFERSON, and/or causing and/or directing the said CAITLIN JEFFERSON to use her genital area to touch and/or rub the penis of said Defendant and/or placing the hand(s) and/or finger(s) of the said the CAITLIN JEFFERSON on the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the anal area of the said the CAITLIN JEFFERSON, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY /s/ W. JAKE MERBACK
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126

DA#10F17735X/hjc/SVU
LVMPD EV#1009142950
(TK10)

AINF
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
NOV 05 2010
BY, Carole D'Aloia
CAROLE D'ALOIA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-10-268351-1
AINF
Amended Information
1040279

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRANDON MONTANE JEFFERSON,
#2508991

Defendant.

Case No. C268351
Dept No. II

AMENDED

INFORMATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BRANDON MONTANE JEFFERSON, the Defendant(s) above named, having committed the crimes of **SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (Felony - NRS 200.364, 200.366) and LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Felony - NRS 201.230)**, on or about the 1st day of August, 2010, and the 14th day of September, 2010, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

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COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis into the genital opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the genital area of the said the CAITLIN JEFFERSON, and/or causing and/or directing the said CAITLIN JEFFERSON to use her genital area to touch and/or rub the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis into the genital opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the genital area of the said the

CAITLIN JEFFERSON, and/or causing and/or directing the said CAITLIN JEFFERSON to use her genital area to touch and/or rub the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: anal intercourse, by said Defendant inserting his penis into the anal opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the anal area of the said the CAITLIN JEFFERSON, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: anal intercourse, by said Defendant inserting his penis into the anal opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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COUNT 8 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the anal area of the said the CAITLIN JEFFERSON, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into the tongue and/or mouth of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into the tongue and/or mouth of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 11 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant placing the hand(s) and/or finger(s) of the said the CAITLIN JEFFERSON on the

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penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY _____
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

NAME	ADDRESS
ANDERS, RUSSELL – LVMPD P#12877	
BELLO, GERARD – LVMPD P#6793	
DEMAS, MATTHEW – LVMPD P#6173	
JEFFERSON, CAITLIN – 1525 PINTO LANE, #1-6, LVN 89106	
EFFERSON, BRANDON – 1525 PINTO LANE, #1-6, LVN 89106	
ATOWICH, TODD – LVMPD P#6360	
LOSTERMAN, OLIVIA – LVMPD P#13177	
AMUG-JEFFERSON, CINDY – 1525 PINTO LANE, #1-6, LVN 89106	

DA#10F17735X/mmw/SVU
LVMPD EV#1009142950
(TK10)

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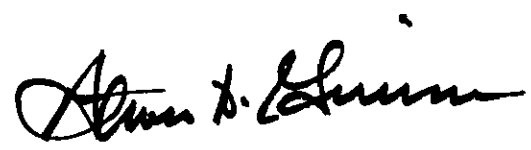

CLERK OF THE COURT

AINF
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126
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-

BRANDON MONTANE JEFFERSON,
#2508991

Defendant.

Case No. **C-10-268351-1**
Dept No. **II**

SECOND AMENDED INFORMATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That **BRANDON MONTANE JEFFERSON**, the Defendant above named, having committed the crimes of **SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (Category A Felony - NRS 200.364, 200.366)** and **LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony - NRS 201.230)**, on or between the July, 2010, and September, 2010, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

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COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis into the genital opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the genital area of the said the CAITLIN JEFFERSON, and/or causing and/or directing the said CAITLIN JEFFERSON to use her genital area to touch and/or rub the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: sexual intercourse, by said Defendant inserting his penis into the genital opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the genital area of the said the

CAITLIN JEFFERSON, and/or causing and/or directing the said CAITLIN JEFFERSON to use her genital area to touch and/or rub the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: anal intercourse, by said Defendant inserting his penis into the anal opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the anal area of the said the CAITLIN JEFFERSON, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: anal intercourse, by said Defendant inserting his penis into the anal opening of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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COUNT 8 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant using his penis to touch and/or rub and/or fondle the anal area of the said the CAITLIN JEFFERSON, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

COUNT 9 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into the tongue and/or mouth of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14

did, then and there, willfully, unlawfully, and feloniously sexually assault and subject CAITLIN JEFFERSON, a child under fourteen (14) years of age, to sexual penetration, to-wit: fellatio, by said Defendant placing his penis on and/or into the tongue and/or mouth of the said CAITLIN JEFFERSON, against her will, or under conditions in which Defendant knew, or should have known, that the said CAITLIN JEFFERSON was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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COUNT 11 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, a child, to-wit: CAITLIN JEFFERSON, said child being under the age of fourteen (14) years, by said Defendant placing the hand(s) and/or finger(s) of the said the CAITLIN JEFFERSON on the penis of said Defendant, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 
W. JAKE MERBACK
Deputy District Attorney
Nevada Bar #009126

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

ANDERS; LVMPD #12877

BELLO; LVMPD #06793

DEMAS; LVMPD #06173

JEFFERSON, CAITLIN; 1525 PINTO LANE #1/6, LVN 89106

EFFERSON, BRANDON, 1525 PINTO LANE #1/6, LVN 89106

ATOWICH; LVMPD #06360

LOSTERMAN; LVMPD #13177

AMUG-JEFFERSON, CINDY; 1525 PINTO LANE #1/6, LVN 89106

DA#10F17735X/hjc/SVU
LVMPD EV#1009142950
(TK10)

VER

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

AUG - 8 2012

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Nora Peña
NORA PEÑA, DEPUTY

5:54 pm

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRANDON MONTANE JEFFERSON,

Defendant.

CASE NO: C268351

DEPT NO: II

VERDICT

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☑ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

☑ Guilty of Lewdness With a Child Under the Age of 14

☐ Not Guilty

C-10-268351-1
VER
Verdict
1926385

000013

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☐ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☑ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

☑ Guilty of Lewdness With a Child Under the Age of 14

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☐ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☑ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

☐ Guilty of Lewdness With a Child Under the Age of 14

☑ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☐ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☑ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 8 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(please check the appropriate box, select only one)

☐ Guilty of Lewdness With a Child Under the Age of 14

☑ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 9- SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☑ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant BRANDON MONTANE JEFFERSON, as follows:

COUNT 10- SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☑ Guilty of Sexual Assault With a Minor Under Fourteen Years of Age

☐ Not Guilty

DATED this 8 day of August, 2012

FOREPERSON

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10/30/2012 10:36:32 AM

CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BRANDON MONTANE JEFFERSON
#2508991

Defendant.

CASE NO C268351

DEPT. NO. II

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 3, 5, 7, 9 & 10 – SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF FOURTEEN (Category A Felony) in violation of NRS 200.364, 200.366; and COUNTS 2, 4, 6, 8 & 11 – LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN (Category A Felony) in violation of NRS 201.230; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 9 & 10 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF FOURTEEN (Category A Felony) in violation of NRS 200.364, 200.366 ; and

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☐ Nolle Prosequi (before trial)	Bench (Non-Jury) Trial	Jury Trial
☐ Dismissed (after diversion)	☐ Dismissed (during trial)	☐ Dismissed (during trial)
☐ Dismissed (before trial)	☐ Acquittal	☐ Acquittal
☐ Guilty Plea with Sent (before trial)	☐ Guilty Plea with Sent. (during trial)	☐ Guilty Plea with Sent. (during trial)
☐ Transferred (before/during trial)	☐ Conviction	☒ Conviction
☐ Other Manner of Disposition		

COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN (Category A Felony) in violation of NRS 201.230; thereafter, on the 23rd day of October, 2012, the Defendant was present in court for sentencing with his counsel BRYAN COX, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, Restitution in the amount of $7,427.20 as to Count 1, payable as follows: $4,480.00 to Victims of Crime, $1,000.00 to DA Victim Witness and $1,947.20 to Clark County Social Services and $150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - LIFE with the possibility of parole after a MINIMUM of THIRTY-FIVE (35) YEARS have been served; AS TO COUNT 4 – LIFE with the possibility of parole after a MINIMUM of TEN (10) YEARS have been served, Count 4 to run CONCURRENT with Count 1; AS TO COUNT 9 - LIFE with the possibility of parole after a MINIMUM of THIRTY-FIVE (35) YEARS have been served, Count 9 to run CONSECUTIVE to Counts 1 & 4; and AS TO COUNT 10 – LIFE with the possibility of parole after a MINIMUM of THIRTY-FIVE (35) YEARS have been served, Count 10 to run CONCURRENT with Counts 1, 4 & 9, with SEVEN HUNDRED SIXTY-NINE (769) DAYS credit for time served. Remaining Counts – DISMISSED.

FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of imprisonment, probation or parole. In addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of the Mental health and Development Services of the Department of

Human Resources or his designee; the director of the Department of corrections or his designee; and a psychologist licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must certify that the Defendant does not represent a high risk to re-offend based on current accepted standards of assessment.

ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from custody.

DATED this 29th day of October, 2012.

VALORIE J. VEGA
DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON MONTANE JEFFERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62120
District Court Case No. C268351

FILED
SEP 03 2014
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 29th day of July, 2014.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this August 26, 2014.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk

C-10-268351-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4202948

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON MONTANE JEFFERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62120

FILED

JUL 29 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault and one count of lewdness. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant Brandon Jefferson was convicted based largely upon the testimony of his daughter C.J., who testified that when she was five years old her father engaged in vaginal, anal, and oral intercourse with her. C.J.'s mother first contacted police when C.J. stated that her father had forced her to perform oral sex on him. Detectives arrested Jefferson and conducted an interview, during which Jefferson admitted to having some sexual contact with his daughter, including oral intercourse. He denied having vaginal or anal intercourse with her. Prior to trial, Jefferson moved unsuccessfully to have his confession suppressed.

On appeal, Jefferson alleges the following errors require reversal of his conviction: (1) the district court erred in denying his motion to suppress his confession; (2) multiple instances of prosecutorial misconduct; (3) the district court abused its discretion in admitting evidence of jail phone calls between Jefferson and his wife; (4) the district court abused its discretion in admitting certain expert testimony from Dr. Theresa Vergara; (5) the district court abused its discretion in admitting

the testimony of Jefferson's wife and son as to C.J.'s statements; (6) the district court erred in denying his request for a hearing pursuant to *Summitt v. State*, 101 Nev. 159, 697 P.2d 1374 (1985), to determine whether C.J. had prior sexual experiences; (7) there was insufficient evidence to support the jury's verdict; (8) his two consecutive life sentences constitute cruel and unusual punishment; (9) the district court abused its discretion in failing to give his proposed jury instructions; (10) the district court abused its discretion in denying his motion to dismiss counsel and appoint new counsel; and (11) cumulative error. Because we conclude that any error that occurred in this case was harmless, we affirm the judgment of conviction.

The district court did not err in denying Jefferson's motion to suppress his confession

Jefferson argues that the district court erred in denying his motion to suppress the statements he made to law enforcement. He argues that his confession was involuntary because he was subjected to repeated and prolonged questioning, as well as deceptive interrogation techniques.

"A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement." *Passama v. State*, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987). "To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant." *Id.* at 214, 735 P.2d at 323. Factors relevant to voluntariness include: "the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep." *Id.* "On appeal, if substantial evidence

supports the district court's finding that the confession was voluntary, then the district court did not err in admitting the confession." *Brust v. State*, 108 Nev. 872, 874, 839 P.2d 1300, 1301 (1992).

We conclude that substantial evidence supports the district court's conclusion that Jefferson's confession was voluntary. Jefferson, an adult, does not claim that he misunderstood what was happening; he responded cogently to the detectives' questions; his interrogation began with an explanation of his *Miranda* rights; it took place at a reasonable time (9:00 p.m.) and lasted only 45 minutes; and, while one of his hands was handcuffed to a bar, he was free to leave any time for water or to use the restroom.

Additionally, Jefferson's argument that his confession was rendered involuntary by the detectives' deceptive interrogation techniques is unavailing. Jefferson argues that the detectives misrepresented DNA evidence by exaggerating what DNA evidence could reveal to them and the time frame in which they would learn the information. However, "an officer's lie about the strength of the evidence against the defendant is, in itself, insufficient to make the confession involuntary." *Sheriff, Washoe Cnty. v. Bessey*, 112 Nev. 322, 325, 914 P.2d 618, 619 (1996). The question is whether the tactics "'interject[ed] the type of extrinsic considerations that would overcome [Jefferson's] will by distorting an otherwise rational choice of whether to confess or remain silent.'" *Id.* at 325, 914 P.2d at 620 (quoting *Holland v. McGinnis*, 963 F.2d 1044, 1051 (7th Cir. 1992)). In this case, such tactics would not likely overcome Jefferson's will because, if Jefferson was truly innocent, he would not be concerned that DNA evidence would implicate him. Rather, he would know that it would

exonerate him. Thus, nothing about the detectives' tactics appears coercive or likely to produce a false confession.

Jefferson's arguments that the detectives impermissibly implied that the prosecutor would be informed that he refused to cooperate, and threatened to take away his children are equally unavailing. The detectives indicated that if the DNA showed something different than what Jefferson had told them, then the DA would be aware of the discrepancy, which would likely be bad for Jefferson. But that is not the equivalent of a threat to inform the DA that Jefferson was not cooperating. Likewise, the detectives told Jefferson that, given the allegations against him, he might not be able to be around his children for a while. However, this statement was only made in response to Jefferson's own questions regarding his children. This was not a coercive tactic to get Jefferson to confess, but merely a true statement of the current situation.[1]

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[1]Jefferson's argument to this court appears to conflate two separate legal issues—waiver of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and whether his statement was voluntary. To the extent that Jefferson is also arguing that his waiver of his *Miranda* rights was not voluntary, we conclude that argument lacks merit. "A valid waiver of rights under *Miranda* must be voluntary, knowing, and intelligent." *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006). "[T]he question of whether a waiver is voluntary is a mixed question of fact and law that is properly reviewed de novo." *Id.* In this case, detectives explained to Jefferson that he was in their custody and that they were trying to clear up an investigation. They then read him his *Miranda* rights, and asked him if he understood, to which he replied yes. The detectives began asking him questions, and he responded without further prompting. Thus, the circumstances show Jefferson voluntarily waived *Miranda*.

Prosecutorial misconduct does not warrant reversal

Jefferson argues that the prosecutor committed numerous acts of misconduct that warrant reversal of his conviction. In assessing claims of prosecutorial misconduct, this court must first determine whether the prosecutor's conduct was improper, and, if so, the court must then determine whether such conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Reversal is not warranted if the misconduct is determined to be harmless error. *Id.* Under harmless-error review, errors that are not of a constitutional dimension will only warrant reversal if they substantially affected the jury's verdict. *Id.* at 1188-89, 196 P.3d at 476.

Jefferson argues that the prosecutor improperly argued with the defense's expert, Dr. Chambers, and denigrated his credibility by offering the personal opinion that he was not qualified to opine as to how police interrogation techniques can lead to false confessions. Because it is improper for the prosecutor to state his or her own distrust of the testimony of the expert, *Yates v. State*, 103 Nev. 200, 204-05, 734 P.2d 1252, 1255 (1987), we conclude the prosecutor committed misconduct when she stated, "I have not heard one citation of any study, of any documentation, of any conference. . . nothing that you've done that has allowed you to come in and make the generalizations, and educate the jury as you have today." However, we conclude the error was harmless because the court sustained the objection to that comment, and the State's case did not rely entirely on Jefferson's confession.

Jefferson also argues that the prosecutor committed misconduct by referencing testimony from Jefferson's son that his father beat his mother. On cross-examination, when asked by the defense if his parents fought, Jefferson's son stated for the first time that his father beat

his mother. The defense then questioned him further, which ultimately resulted in him admitting that he never saw his father beating his mother. The defense also questioned him about why he never told this to the prosecutors. On redirect, the prosecution questioned Jefferson's son about why he had never mentioned the beatings before. We conclude that the prosecutor did not commit misconduct because the prosecutor did not solicit the comment, and only brought it up in an attempt to rehabilitate the witness from the defense's attempt to discredit him. Furthermore, any misconduct or prejudice to Jefferson was remedied by the fact that the court gave a curative instruction to the jury which stated that "[a]ny allegations of domestic abuse between the defendant and [his wife] . . . are not matters for your consideration, and shall not be considered by you in any way."[2]

The district court abused its discretion in admitting evidence of jail phone calls between Jefferson and his wife

Jefferson argues that the district court abused its discretion when it admitted recordings of phone calls between him and his wife during the time he was incarcerated because the calls held minimal relevance, were highly prejudicial and contained inadmissible hearsay. The State argues that the calls were relevant to the family dynamic, which the defense put at issue, and more importantly, they contained admissions from Jefferson regarding the charged crimes. The State admitted into evidence and played for the jury four calls between Jefferson and his wife, three of which had been redacted, but the fourth was played in its entirety, over Jefferson's objection.

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[2]We conclude that Jefferson's remaining contentions of prosecutorial misconduct lack merit and we decline to address them.

A district court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Ramet v. State*, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009). We conclude that while certain portions of the calls were relevant and admissible, the district court erred in allowing the jury to hear conversations that held little relevance, were highly prejudicial, and contained statements that constituted inadmissible hearsay. For example, the jury heard the following statements from Jefferson's wife: "you touched her, it can't be fixed," "you were planning on doing this for the rest of her life, was she your little back up?" and "remember when you said she's gonna be hot one day, she needs to start shaving her legs." These statements were not necessary to give context to Jefferson's admissions, as the State argues, because Jefferson did not respond to them with any admissions.

Furthermore, those statements, as well as other portions of the calls, were highly emotional and inflammatory. In all four calls, Jefferson's wife was clearly distraught and repeatedly expressed that Jefferson had ruined her and her children's lives. She also used inflammatory language, calling Jefferson a pedophile and stating he would do it again. Thus, we conclude that the district court erred in admitting certain portions of the phone calls because the prejudicial value substantially outweighed the probative value. Nevertheless, we conclude the error was harmless given the other evidence against Jefferson; specifically, Jefferson's confession and C.J.'s testimony.

The district court abused its discretion in admitting expert testimony from Dr. Vergara as to the behavior of perpetrators

Jefferson next argues that the district court abused its discretion when it allowed the State's medical expert, Dr. Vergara, to offer testimony that vouched for the victim and improperly speculated as to

why a sexual assault victim might have normal physical findings. Dr. Vergara testified that her examination of C.J. revealed no abnormal results, but that "normal is normal" with child sex abuse victims, meaning that a normal examination is typical even though a child has been abused. Because Jefferson did not object to that particular testimony at trial, we review it for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). We conclude that the district court did not commit plain error in allowing the testimony.

NRS 50.345 provides that "[i]n any prosecution for sexual assault, expert testimony is not inadmissible to show that the victim's behavior or mental or physical condition is consistent with the behavior or condition of a victim of sexual assault." Thus, Dr. Vergara's testimony that child victims of sexual assault often have normal findings was proper. This in no way vouched for C.J.'s credibility. *See Marvelle v. State*, 114 Nev. 921, 931, 966 P.2d 151, 157 (1998) (holding that an expert may not testify to the veracity of another witness), *abrogated on other grounds by Koerschner v. State*, 116 Nev. 1111, 13 P.3d 451 (2000).

Jefferson also argues that it was improper for Dr. Vergara to speculate as to how a sexual assault might occur without physical trauma. Specifically, she stated: "[I]f I was going to approach a child with my intentions, I can't hurt that child. Because if I make that child cry, I will never have a chance or opportunity to approach that child again. So, the initial encounter with a child and their perpetrator could be hugging, kissing, rubbing." Jefferson objected to this testimony as improper speculation, and the objection was overruled. We conclude that this testimony was outside the scope of NRS 50.345. It went beyond a discussion of how C.J.'s normal findings were consistent with those of

other sexually abused children and became speculation on the behavior of perpetrators in general. However, we conclude that given the other evidence in the case, this was harmless error that did not "substantially affect[] the jury's verdict." *Valdez*, 124 Nev. at 1189, 196 P.3d at 476.

The district court did not abuse its discretion in admitting the testimony of C.J.'s mother and brother as to C.J.'s statement that her father abused her

Jefferson also argues that the district court abused its discretion when it denied his motion in limine to preclude hearsay testimony from his wife regarding C.J.'s statement to her that her father was sexually abusing her. Pursuant to NRS 51.385, hearsay evidence regarding the statement of a child describing sexual conduct is admissible if "[t]he court finds . . . that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness" and "[t]he child testifies at the proceeding." NRS 51.385(1)(a)-(b). In determining the trustworthiness of the statement, the court shall consider, without limitation, whether: "(a) The statement was spontaneous; (b) The child was subjected to repetitive questioning; (c) The child had a motive to fabricate; (d) The child used terminology unexpected of a child of similar age; and (e) The child was in a stable mental state." NRS 51.385(2)(a)-(e).

In this case, C.J. was not subject to repetitive questioning regarding sexual abuse, but rather made the statement to her mother after her mother told the children that she might be leaving their father, and that they should not have any secrets between them. Thus, because C.J. was the one to raise the issue of sexual abuse and it was spontaneous, we conclude that the district court did not err in admitting the statement because there were "sufficient circumstantial guarantees of trustworthiness." NRS 51.385(1)(a).

Jefferson argues it was also impermissible to allow C.J.'s brother to testify about C.J.'s statement to her mother. Her brother was also present in the room when she told her mother about the alleged abuse. However, we conclude that C.J.'s brother's testimony as to C.J.'s statement is admissible pursuant to NRS 51.385, for the same reasons C.J.'s mother's testimony as to C.J.'s statement was admissible, and the district court did not abuse its discretion in admitting the brother's testimony.

The district court did not err in denying Jefferson's request for a hearing pursuant to Summitt v. State, *to determine whether C.J. had prior sexual experiences*

Jefferson argues that the district court committed reversible error when it refused to grant him a hearing pursuant to *Summitt v. State*, 101 Nev. 159, 697 P.2d 1374 (1985), so he could determine if there was another basis for C.J.'s knowledge of sexual matters. In *Summitt*, the district court denied the defendant's request to introduce a specific incident of prior sexual contact involving the six-year-old victim in order to explain why the child victim had "prior independent knowledge" of sexual matters. 101 Nev. at 160, 697 P.2d at 1375. This court determined that the defendant, upon motion, "'must be afforded the opportunity to show, *by specific incidents of sexual conduct*, that the [alleged victim] has the experience and ability'" to fabricate the crime. *Id.* at 164, 697 P.2d at 1377 (quoting *State v. Howard*, 426 A.2d 457, 462 (N.H. 1981) (emphasis added)).

In this case, Jefferson moved for a hearing pursuant to *Summitt*, in order to determine whether C.J. had any prior experiences that might explain her knowledge of sexual matters. We conclude that the district court did not err in denying Jefferson's request because *Summitt* is

entirely distinguishable and inapplicable to this situation. The premise of *Summitt* is that the defense already has knowledge of this evidence and believes it is constitutionally entitled to present it to the jury. *See* 101 Nev. at 162-63, 697 P.2d at 1376-77. Here, Jefferson sought a hearing to learn whether such evidence existed. Therefore, the district court properly denied the motion.

There was sufficient evidence to support the jury's verdict

Jefferson next argues that there was insufficient evidence to support the jury's verdict. The standard of review for a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (internal quotations omitted). In rendering its decision, the jury is tasked with "assess[ing] the weight of the evidence and determin[ing] the credibility of witnesses." *Id.* at 202-03, 163 P.3d at 414 (internal quotations omitted). Furthermore, in a sexual assault case, "the victim's testimony alone is sufficient to uphold a conviction" and need not be corroborated so long as the victim testifies "'with *some* particularity regarding the incident.'" *Id.* at 203, 163 P.3d at 414 (quoting *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992)).

In this case, C.J. testified with specificity as to four separate occasions of sexual abuse—three in Jefferson's bedroom, and one in her bedroom. She testified that on each of the three occasions in the master bedroom, Jefferson put his penis in her mouth, vagina, and anus, and on the fourth occasion, in her bedroom, he put his penis in her mouth and vagina. Finally, Jefferson's own confession also supports the lewdness and sexual assault charges as he stated that on different occasions C.J. rubbed

her vagina against his penis, touched his penis, and put his penis in her mouth. Therefore, we conclude there was sufficient evidence supporting the jury's conviction because in viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found Jefferson guilty of three counts of sexual assault and one count of lewdness beyond a reasonable doubt. *Rose*, 123 Nev. at 202, 163 P.3d at 414; *see* NRS 200.366(1); NRS 201.230.

Jefferson's sentences do not constitute cruel and unusual punishment

Jefferson contends that his sentence amounts to cruel and unusual punishment because it constitutes the remainder of his natural life for conduct that did not result in the loss of human life or permanent physical damage.

This court reviews constitutional issues de novo. *Jackson v. State*, 128 Nev. ___, ___, 291 P.3d 1274, 1277 (2012). "A sentence does not constitute cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience." *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979). A punishment is unconstitutionally excessive "'if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime.'" *Pickard v. State*, 94 Nev. 681, 684, 585 P.2d 1342, 1344 (1978) (quoting *Coker v. Georgia*, 433 U.S. 584, 592 (1977)).

In this case, Jefferson's only argument is that his punishment is harsher than a murderer would receive. However, given the fact Jefferson was convicted of repeatedly sexually assaulting his five-year old

daughter, we conclude that the punishment is not so disproportionate to the severity of the crimes as to shock the conscience. Moreover, the punishment serves the purpose of protecting C.J. and other young children from being subjected to sexual assault, and thus accomplishes an acceptable goal of punishment. Therefore, we conclude that Jefferson's sentences do not constitute cruel and unusual punishment.

The district court did not abuse its discretion in failing to give Jefferson's proposed jury instructions

Jefferson argues that the district court erred in rejecting his proposed jury instructions. Jefferson sought to have the jury instructed on attempted sexual assault, as well as the possible redundancy of the lewdness and sexual assault counts.

"The district court has broad discretion to settle jury instructions," and its decisions will be reviewed for abuse of discretion or judicial error. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). "This court evaluates appellate claims concerning jury instructions using a harmless error standard of review." *Barnier v. State*, 119 Nev. 129, 132, 67 P.3d 320, 322 (2003).

Jefferson first argues that the district court was required to instruct the jury on his theory of attempt because of the lack of physical findings and C.J.'s ambiguous testimony. We conclude that this argument lacks merit and that the district court did not abuse its discretion by refusing to give this instruction. Although the defense has a right to have the jury instructed on its theory of the case, here the defense's theory was that C.J. fabricated the story and Jefferson falsely confessed; thus attempt is actually inconsistent with the defense's theory and the evidence presented. *Cf. Margetts v. State*, 107 Nev. 616, 619, 818 P.2d 392, 394 (1991). As such, Jefferson was not entitled to have the jury so instructed.

Jefferson also argues that the district court was required to give his proposed instruction explaining that the State bears the burden of proving any acts of lewdness were not incidental to the sexual assault, and thus, if the jury finds lewdness charges to be redundant, then it must return the verdict of not guilty. We conclude the district court abused its discretion in failing to give the instruction; however, the error was harmless. While the defense was entitled to the redundancy instruction as part of its theory of the case and it was a proper statement of law, the jury only convicted Jefferson of two of the lewdness counts. The prosecution ultimately agreed to dismiss one of those counts as redundant. Therefore, while the district court erred in failing to give the instruction, the error was harmless.[3]

Jefferson further argues that the district court abused its discretion in giving jury instruction no. 12, which stated that the jury must consider whether the State proved that Jefferson's confession was voluntary by "a preponderance of the evidence." This instruction was an accurate statement of the law. *See Falcon v. State*, 110 Nev. 530, 534, 874 P.2d 772, 775 (1994). Moreover, jury instruction no. 11 made it clear that the State needed to prove every element of the charged crimes beyond a

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[3]Jefferson also argues the district court erred in rejecting his proposed instruction on deliberation, which informed the jury that the verdict needed to be unanimous and each juror must decide the case for themselves. We conclude that this was not an error because the instruction was not related to the defense's theory of the case and it was redundant to other instructions given to the jury. *See Earl v. State*, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995) (stating that it is not reversible error to refuse a jury instruction that is "substantially covered by other instructions").

reasonable doubt. Therefore, we conclude the district court did not abuse its discretion in allowing this instruction.

The district court did not abuse its discretion in denying Jefferson's motion to dismiss counsel and appoint new counsel

Jefferson argues the district court erred when it denied his motion to dismiss counsel and appoint new counsel. This court reviews a district court's "denial of a motion for substitution of counsel for abuse of discretion." *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). This court considers the following three factors when reviewing a district court's decision: "'(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion.'" *Id.* (quoting *United States v. Moore*, 159 F.3d 1154, 1158-59 (9th Cir. 1998)).

In this case, the district court conducted an inquiry into Jefferson's request. The court determined that Jefferson was unhappy because he believed his counsel had not provided to him everything obtained through discovery, and his counsel had not obtained his work records. Jefferson's attorney explained that the work records were not relevant and that leaving the records with a client in custody is risky because nothing is private in jail; however, he further expressed that he would provide anything Jefferson requested up to that point. We conclude that based on the factors above, the district court did not err in denying the motion. The district court's inquiry demonstrates the conflict was minimal and could easily be resolved. Furthermore, Jefferson's request was untimely as it was made only a few days prior to trial.

Cumulative error does not warrant reversal

Finally, Jefferson contends that cumulative error violated his right to a fair trial. Cumulative error may deny a defendant a fair trial even if the errors, standing alone, would be harmless. *Valdez v. State*, 124

Nev. 1172, 1195, 196 P.3d 465, 481 (2008). "When evaluating a claim of cumulative error, we consider the following factors: (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." *Id.* (internal quotations omitted).

In this case, while Jefferson was charged with very serious crimes, the issue of guilt was not close given the overwhelming evidence presented by the State. Furthermore, despite the number of errors Jefferson alleges, the majority of his contentions are meritless, and the cumulative effect of the few errors committed did not amount to the denial of a fair trial. Therefore, after reviewing the entire record, we conclude that Jefferson's cumulative error challenge is unavailing.

Having considered Jefferson's contentions and concluded that they do not warrant reversal, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

cc: Hon. Valorie J. Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office
DATE: August 26th, 2014
Supreme Court Clerk, State of Nevada
By [signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON MONTANE JEFFERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62120
District Court Case No. C268351

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk ✓

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

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

DATE: August 26, 2014

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):
Hon. Valorie J. Vega, District Judge
Brandon Montane Jefferson
Clark County Public Defender
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on SEP 03 2014.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
AUG 29 2014
CLERK OF THE COURT

C-10-268351-1

Case No. C268351

Dept. No. II

FILED
OCT 02 2014
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK.

C-10-268351-1
PWHC
Petition for Writ of Habeas Corpus
4307220

Brandon M. Jefferson,
Petitioner,

v.

Renee Baker,
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED
OCT 02 2014
CLERK OF THE COURT

87

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON ELY, NEVADA

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT DEPARTMENT II CLARK COUNTY, NEVADA

3. Date of judgment of conviction: OCTOBER 30, 2012

4. Case number: C268351

5. (a) Length of sentence: MANDATORY MINIMUM OF SEVENTY YEARS BEFORE PAROLE ELIGIBILITY

(b) If sentence is death, state any date upon which execution is scheduled: _____

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No ✓

If "yes", list crime, case number and sentence being served at this time: _____

7. Nature of offense involved in conviction being challenged: SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN, LEWDNESS WITH A MINOR UNDER FOURTEEN.

8. What was your plea? (check one):

(a) Not guilty ✓ (b) Guilty _____ (c) Nolo contendere _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ✓ (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No ✓

12. Did you appeal form the judgment of conviction? Yes ✓ No _____

13. If you did appeal, answer the following:

(a) Name of Court: THE SUPREME COURT OF NEVADA

(b) Case number or citation: 62120

(c) Result: REMITTITUR

(d) Date of result: AUGUST 26, 2014
(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: _____

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?
Yes ✓ No ____

16. If your answer to No. 15 was "yes", give the following information:
(a)(1) Name of court: U.S. DISTRICT COURT OF NEVADA
(2) Nature of proceeding: PRE-TRIAL CHALLENGE TO INFORMATION
(3) Grounds raised: ABUSE OF DISCRETION, INADMISSABLE HEARSAY, PROSECUTOR MISCONDUCT
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ____ No ✓
(5) Result: DISMISSED WITHOUT PREJUDICE.
(6) Date of result: MARCH 26, 2012
(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

(b) As to any second petition, application or motion, give the same information:
(1) Name of court: EIGHTH JUDICIAL DISTRICT COURT DEPT. II
(2) Nature of proceeding: MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATE.
(3) Grounds raised: MISSING DISCOVERY, INADEQUATE INVESTIGATION
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ✓ No ____
(5) Result: MOTION DENIED
(6) Date of result: NOVEMBER 1, 2011
(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same Information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?
(1) First petition, application or motion? Yes ____ No ✓
Citation or date of decision: _____
(2) Second petition, application or motion? Yes ____ No ✓
Citation or date of decision: _____
(3) Third or subsequent petitions, applications or motions? Yes ____ No ____
Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) PETITIONER HAD NOT EXHAUSTED CLAIMS IN STATE COURT PROCEEDINGS.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: Miranda violation, involuntary confession, prosecutor misconduct, Abuse of discretion by court, double jeopardy, insufficient evidence, cumulative error, INADMISSABLE HEARSAY

(b) The proceedings in which these grounds were raised: DISTRICT COURT, APPELLATE COURT

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) INEFFECTIVE ASSISTANCE OF COUNSEL, TO EXHAUST STATE REMEDIES, TO PRESERVE ANY AND ALL GROUNDS FOR FEDERAL REVIEW, State Court ajudication Contrary to established federal law.

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Perjured testimony, judicial bias, government intrusion, actual innocence, ineffective trial counsel, ineffective appellate counsel, ineffective counsel failed to adress issues.

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ✓

If yes, state what court and case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Bryan Cox, Kevin Speed (Trial Counsel) Audrey Conway (appellate Counsel.)

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ✓

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: petitioner's waiver of Miranda was involuntary

Supporting facts: (tell your story briefly without citing cases or law.):
Petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated the supporting facts of all other grounds of this petition in support hereof.

On September 14, 2010 the petitioner placed a 911 call with the intent to file a Missing person's Report for his wife and two children. Detectives' instructed the dispatcher to Send the petitioner to the Missing persons Bureau. (EXHIBIT#1 pg.1148 lns.10-20.) Shortly thereafter, detectives met the petitioner on the street, and said they were there to file the Missing persons Report.

The detectives stated since I was riding in their vechicle, I would need to be handcuffed. The detectives did not advise the petitioner he was under arrest, suspected in crimes or advised Miranda warnings. (EXHIBIT#2 pg.52) The petitioner had no criminal background, and was unaware the detectives were being deceptive, or that they knew were his family was.

Arriving at the Missing person's Bureau, The petitioner was taken to a small room and left to ponder. The petitioner fell asleep when the detectives' returned roughly, two hours later. The petitioner's wrist had been cuffed to a bar the entire time. The detectives explained that I was in their custody, but could un-arrest me for cooperating with the investigation. To this I responded "OKAY." The detective then advised the Miranda warning. (SEE EXHIBIT # 3 pg. 2.)

As the interview progressed, I came to realization that the detectives' were not filing a Missing person's Report, but were accusing me of sexually assaulting my own child. Detectives' refused to accept petitioner's denials, and I grew frustrated quickly. So, I interrupted the detective and said I did not do this, that's my story. as I was done speaking with them at that point. (SEE EXHIBIT # 4 pg. 20-22.) However, the detective continued to badger me while I remained silent, and restarted the interview by asking me the question whether my child was a liar. (SEE EXHIBIT # 4 pg. 22.)

Once I was deprived of my free will the detectives should have read my rights, and not be concerned about my embarrassment. The detectives' lying to the petitioner about bieng un-arrested to induce a waiver is the equivalent to starting interrogation without advising Miranda at all, and when I tried to invocate my right to stop talking with them petitioner was ignored.

The admittance of the incriminating statements at the petitioner's trial violated his rights under the Fifth, Sixth, and Fourteenth amendments to the U.S. Constitution.

WHEREFORE based on the above the petitioner's Convictions and sentence must be vacated.

(b) Ground two: The petitioner's confession was the result of improper inducement and impermissable threats.

Supporting facts: (Tell your story briefly without citing cases or law.):

The petitioner hereby swears, avers and states that the following is true and correct to my personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, The petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

On September 14, 2010 the petitioner was engaged in custodial interrogation with two detectives' accusing him of sexual assault. After several denials, The petitioner asked if his children would be taken away. The detective's response to this specific question was "NO THEY ARE WITH YOUR WIFE." Silence ensued, and The petitioner never asked the detective another question regarding my children. The detective restarted the interrogation with statements that my children were not safe with me, and if I wanted to see them again, I had better confess. (SEE EXHIBIT #5 pg.27.)

This type of extortion induced an admission. As the interrogation progressed, the detective stated that once the District Attorney reviewed this investigation he would Conclude The petitioner was "LYING." And that the District Attorney would be concerned for other children.

(SEE EXHIBIT #6 pg.40.)

The detectives assurance of harsher treatment from the District Attorney caused the petitioner to admit to allegations described to him. For clarification, the detectives exaggerations about DNA evidence was a theme used at the outset of the interview which produced no admissions because no crime had been committed. Furthermore, the detectives mishandled C.J's interview and as a result the court decided the complaint lacked circumstantial truth.

This being an actual fact the detectives' had no legitimate reason to threaten to seperate the petitioner from his children to obtain an admission. In essence the detectives' knowingly manufactured a charge against the petitioner to effect an arrest.

The detective's threat to impose his own penalty by seperating the petitioner from his children until he confessed, coupled with indication of stiffer punishment from the District Attorney for refusing to submit to fabricated crimes violated his right to remain silent. The admittance of the incriminating statement at the petitioner's trial violated the Fifth, Sixth and Fourteenth amendments of the U.S. Constitution.

WHEREFORE based on the above the petitioner's convictions and sentence must be vacated.

(c) Ground three: The prosecution committed misconduct when:

(a): withheld evidence requested.

(b) Impermissably led C.J'S testimony

(c) Solicited perjured testimony

(d) Intruded the attorney-client relationship

Supporting facts: (Tell your story briefly without citing cases or law.) petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated the supporting facts of all other grounds of this petition in support hereof.

3(a): A motion in limine was filed for Brady material where the defense requested any and all video, audio recordings for events of September fourteenth, two thousand-ten. (SEE EXHIBIT #7 pgs. 6, 7.) The State failed to produce the video recording of the petitioner's interrogation. At a subsequent suppression hearing the prosecutor Solicited testimony from the arresting detective, that the video "MIGHT BE" available. (SEE EXHIBIT #8 pg. 15 lines 4-10.) The petitioner later moved to dismiss counsel for failing to obtain full discovery, wherein the court informed the petitioner of recent "additions" to discovery. (SEE EXHIBIT #9 pg. 3 lines 4-12.)

Even at that point the video was not produced, and was material to the petitioner's guilt as the detectives' unfairly testified that the petitioner was extended courtesy, and detained for only forty-four minutes. This Prosecutor had constructive knowledge of the video requested, and without it the petitioner could not discredit the detectives'.

3(b): The petitioner's trial started with C.J as the state's second witness. during direct examination, the prosecutor suggested answers within the questions to prove the petitioner's guilt, over sustained defense objection. There was no indication C.J was having difficulty testifying truthfully, in fact many of C.J's responses were "I DON'T KNOW or NO." To criminal acts, or knowledge thereof. C.J's testimony was the result of leading to which the petitioner was convicted.(SEE EXHIBIT #10 pg(s) 916, 917, 921, 922, 924, 925, 926, 933.)

3(c): The prosecutor knowingly solicited false testimony from C.J when the question was asked had the petitioner done anything else to C.J. the response was "NO."(SEE EXHIBIT #10 pg(s) 921 lines 20 - pg 922 lines 1-9.) when the question was asked had C.J seen the petitioner's penis C.J answered "NO." (SEE EXHIBIT#10 pg. 933 lines 7-19.) This prosecutor ignored C.J's answers and repeated the same question until she lied to everyone observing.

The prosecutor solicited further false testimony from detective katowich when he asked the question was a forensic interview conducted with C.J. the detective lied about a matter material to whether C.J fabricated charges against the petitioner and answered "YES." (SEE EXHIBIT #11 pg(s) 1156-1157.)

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known to the prosecutor was this testimony was false. (SEE EXHIBIT #12 pg. 65 lines 1-7.) if the jurors' believed that the detectives' took precautions to avoid a false disclosure when there was evidence not presented to prove otherwise, the petitioner was denied a fair trial and convicted with perjured testimony.

3(d) The prosecutor intruded into the attorney-client relationship as the court heard the petitioner on a pro-se Motion to dismiss counsel. The Prosecutor invaded into arguement in an unsolicited opposition against the petitioner, utterly condoning petitioner's trial counsel's reluctance to produce discovery, and develop a working relationship to best prepare for trial. (SEE EXHIBIT # 13 lines 12-18 pg. 6) This disparagement contributed to the petitioner being represented by ineffective trial counsel. (SEE EXHIBIT # 13 pg. 6 lines 7-20.)

The four seperate incidents of prosecutorial misconduct deprived the petitioner of his Fifth, Sixth and Fourteenth amendments under the U.S. Constitution, deeming this trial unfair

WHEREFORE based upon the above the petitioner's convictions' and sentence must be vacated.

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(d) Ground four: The District Court abused it's discretion when:

(a) The court tainted the jury

(b) admitted inadmissable hearsay

(C) permitted Jurors to learn petitioner was incarcerated.

Supporting facts: (tell your story briefly without citing cases or law.): petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

4(a) The petitioner's right to a trial by impartial Jury was violated when during voir dire of a potential Jury the Jury panel was exposed to the district court's professional view of the popular opinion for "CHILD MOLESTATION." (SEE EXHIBIT #14 pg. 586 lines 2-7.) The court attempted to correct itself, However the court's state of mind came into play with potential Jurors that impartial and fair Judgement of "CHILD MOLESTATION." is unlikely. The court contaminated the group as a whole rendering the petitioner's convictions unconstitutional.

4(b) The district court erred in admitting testimony from C.J's mother and brother recounting C.J's hearsay allegations of abuse because the court did not consider the reliability of EACH statement INDIVIDUALLY. C.J's brother was not present for the hearing, unfairly prejudicing the petitioner. (SEE EXHIBIT #15 pg.2) The district court also erred in placing the burden of proof on the petitioner to prove the hearsay statements unreliable, when NRS. 51.385 clearly places the burden on the state to have hearsay admitted into evidence. (SEE EXHIBIT #16 lns. 8-9.)

The record also establishes that the mother was upset with the petitioner, and transmitted those negative feelings into small children actively involving C.J and her brother into a marital dispute, prompted them to choose sides in the attempt to retain custody, and share "SECRETS." Triggering the motive to fabricate, and the statement alleging abuse lacking circumstantial guarantees of trustworthiness. (SEE EXHIBIT #17 pg. 938 lines 2-17.) Additionally the prosecutor expressed distrust of C.J's mother's recounting of hearsay in closing arguements (SEE EXHIBIT #18 pg. 1570 lines 16-22.) The hearsay admitted at trial left the petitioner in the position of not being afforded the opportunity to effectively cross-examine C.J.

The prosecution admitted this testimony recounting hearsay after C.J. had been excused as a witness. The petitioner should have been afforded the opportunity to cross-examine C.J. on the inconsistent testimony elicited through C.J's mother. C.J's mother testified C.J made no allegation of being subjected to anal penetration. (SEE EXHIBIT #19 pg 1084 lines 4-9.) C.J's testimony conflicted (SEE EXHIBIT #17 pg. 938 lines 18-24.) The petitioner was acquitted of this allegation, but probably would have been acquitted entirely had the petitioner been given the proper opportunity to discredit C.J's testimony.

The hearsay was inadmissable, and the petitioner's sixth amendment right to effective cross-examination was violated. Recalling state witnesses is placing the defense in an unfair situation.

4(C) The District Court abused it's discretion in admitting a Jail phone call between the petitioner and C.J's mother because the Jurors learned of the petitioner's incarceration. (SEE EXHIBIT #20 pg. 1192 lines 9-13.) This unconstitutional ruling undermined the petitioner's right to be presumed innocent, as there was no imediate situation present for the juror's to be informed of this information.

The three incidents presented violated the petitioner's FiFth Sixth, and Fourteenth amendments under the U.S. constitution.

WHEREFORE based upon the above the petitioner's convictions and sentence must be vacated.

(e) Ground 5: Double Jeopardy

Supporting facts: (Tell your story briefly without citing cases or law.):
The petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I sincerely believe them to be true.

Further, Petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

The petitioner was subjected to double jeopardy when he was convicted of three counts of Sexual assault, and two counts of lewdness, based on non-specific evidence adduced at trial. C.J did not testify, specifically as to two seperate counts of lewdness. (SEE EXHIBIT #10.) while the state dismissed one count of lewdness for redundancy, The Nevada Supreme Court found error with the District Court for denying the petitioner's jury instruction on redundancy. It is impossible to ascertain two seperate alleged incidents of lewdness without C.J's specific, independent testimony. The petitioner's Fifth and fourteenth amendments under the U.S. constitution were violated when I was subjected to double jeopardy.

WHEREFORE based upon the above the Petitioner's Sentence and conviction must be vacated.

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(f) Ground six: Insufficient evidence to sustain Jury's guilty findings

Supporting facts: (Tell your story briefly without citing cases or law.):

The petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

As presented in foregoing grounds, C.J's testimony was without independent details. In fact, C.J's testimony was derived completely from leading questions offered by the prosecutor. The prosecutor treated C.J in a hostile fashion when she testified she had not seen the petitioner's genitals, and forced C.J. to change her testimony (EXHIBIT #10 pg. 933 lines 7-19.) C.J's testimony Compared to the mother's conflicted.

There was testimony from C.J. that the mother prompted C.J. and her brother for "SECRETS" to get out of the marriage with petitioner while retaining custody. The District Court also allowed C.J's brother to testify without determining if the recounting of C.J's hearsay met the criteria set forth within NRS. 51.385. The hearsay was admitted after C.J. had been excused, making cross-examination an unfair process.

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The petitioner's statement was coerced, detectives' detained the petitioner without informing him he was under arrest or Suspected in crimes. The detectives' lied about the petitioner's custodial status to induce the Miranda Waiver, and when he tried to invoke the right to silence he was ignored. The detectives' threatened to seperate the petitioner's family until he confessed, and assured even stiffer punishment from the district attorney.

Despite C.J's testimony the medical evidence proves penetration did not occur, and that C.J's exam revealed Non-Specific findings of Sexual abuse. This evidence also undermines the physician's "Normal is Normal" testimony because the "Normal exam/ Normal variant" was a factor left unconsidered, and equally trial Counsel should have impeached the physician with her own report which was made available for this trial. (SEE EXHIBIT #21.) (SEE EXHIBIT #24 pg.8.) The prosecution argued "Normal is Normal" in closing.

Evidence not presented at trial was the detectives discounting C.J's denials, and following the assumption an incident occured which a preconceived agenda involving Creating false memories, providing terminology and Coercive questioning resulted in C.J. reapeating what C.J's mother was telling law enforcement, and what detectives' expected C.J. to report. The foundation of these allegations are apparent. (SEE EXHIBIT # 22 pg(s) 9,12,13,14,15.) Thus, C.J never made accusations, C.J told detectives the mother called police with them. C.J. was ignored. C.J. was forced to conform with the detectives and C.J.S mother.

The petitioner was deprived of evidence which was critical to the determination of his guilt or innocence. The convictions rested primarily upon the testimony of C.J. C.J's credibility was the central issue in this case. Available evidence would have had great weight in the assertion that C.J's testimony was not trve. This evidence, statement was not used, and the jury had no knowledge of it. There is a reasonable probability that had C.J's original statement been introduced at trial, The result would have been different. The Nevada Supreme Court ruling that sufficient evidence upholds the convictions, violated the petitioner's Fourteenth amendment right under the U.S. Constitution.

WHEREFORE based upon the above the petitioner's Convictions and sentence must be vacated.

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(g) Ground Seven: Ineffective trial Counsel violated the petitioner's sixth and fourteenth amendments to the U.S Constitution when:

(a) Counsel refused to file motions for trial.

(b) Moved to preclude C.J's statement to detectives.

(c) failed to object to prejudicial remarks made by the Court.

(d) failed to cross-examine C.J. with inconsistent statement.

(e) failed to impeach medical expert with EMT report/Medical report

(f) failed to move for continuance to investigate jail calls.

(g) failed to raise the Corpus delicti issue at trial.

(h) failed to raise the issue of insufficient evidence after trial.

(I) There existed irreconcilable conflict of intrest

Supporting facts:(Tell your story briefly without citing cases or law.):
The petitioner hereby swears, avers and states that the following is true and correct to my own personal knowledge and belief, and as to any matters stated upon belief, I sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

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7(a) Defense counsel refused to file a motion in limine two months before the petitioner's trial that would have prevented the state's medical expert from testifying outside their area of expertise. See (EXHIBIT #23.) On direct appeal, the court held the state's expert went outside the scope of NRS. 50.345 (EXHIBIT #24 pgs 8-9.) The petitioner suffered undue prejudice because of Counsel's unwillingness to develop a working relationship with the petitioner and prepare for trial.

7(b) Trial counsel was ineffective for moving to omit C.J's statement to police as it was tantamount to her impeachment, the first question the prosecution asked was did someone touch C.J. the response was "Yes" (EXHIBIT #25 pg. 91 lines 22-25.) which is different from her original statement. (EXHIBIT #22 pg. 14.) This cannot be Considered sound strategy, Counsel abandoned the petitioner's defense that detectives' forced C.J to fabricate allegations to effect an arrest. It appears counsel was ill prepared to try this case.

Further, Counsel misinterpeted the statute and improperly shifted unecessary burden to the petitioner to prove C.J's statement unreliable (SEE EXHIBIT # 26 lines 23-26.)

7(c) Trial Counsel was ineffective for failing to object, move for a new jury, or declaring a mistrial when during voir dire, the court stated "HOW MANY OF YOU LIKE CHILD MOLESTATION? I AM NOT GOING TO GET PEOPLE RAISING THEIR HANDS TO THAT." (EXHIBIT #14 pg. 586 lines 2-7.) Counsel should have attempted to correct the situation as the court's statement is prejudicial in nature.

7(d) Trial Counsel was ineffective for failing to impeach C.J. with inconsistent statements C.J made to detectives, the district court ruled the statement could be used for rebuttal, or recent fabrication. As mentioned C.J's testimony conflicted with the out of court statement, and the Court ruled that either defense or the state could supplement their case with it (EXHIBIT #12 lines 18-24.) Trial counsel obviously was unprepared.

7(e) Trial Counsel had evidence that C.J's examining physician did not conduct an accurate observation. C.J's disclosure entailed an assault within Seventy-two hours of the petitioner's arrest. According to the physician that is the timeline for a sexual assault kit to be adminstered. The physician testified that the rape kit was not requested by detectives, and specifically because of delay to the emergency room. (EXHIBIT #27 pg(s) 875-876.) the EMT report verifies that C.J was imediately transferred to hospital staff (EXHIBIT #28.) with allegations of assault on September 11, 2010 trial counsel allowed the physician to be excused without confronting her with this evidence.

7(f) Trial Counsel was ineffective for failing to move for continuance to investigate Jail phone calls admitted into evidence. There was a record of twenty-one phone calls, one of which C.J's mother informed the petitioner that the prosecutor was forcing her to testify, that she just wanted me home, and she wished they would offer me a "deal" so I could come home in five years. If investigated and presented the prosecution would have found themselves in an awkward position. Trial counsel's willingness to except the state's version of events, without investigation constitutes ineffectiveness.

7(g) The state relied solely of the petitioner's confession to solidify the lewdness conviction. As mentioned, C.J offered no testimony to support that charge. Trial counsel failed to raise the Corpus delicti issue at trial based on the lack of corroborating evidence.

7(h) Trial counsel failed to raise the issue that insufficient evidence was adduced at trial. The fact that the prosecutor led C.J's testimony and treated C.J as hostile when she told the truth, and used perjured testimony from detectives. Trial counsel's failure to establish that the detectives produced a false complaint, which explains no medical signs of abuse constitutes ineffective counsel. petitioner's trial counsel did little more than stand beside him while the prosecuting attorney's manipulated the court and the jurors.

7(i) During the course of trial Counsel's representation an irreconcilable conflict of interest developed in the form of a pro se Motion to Dismiss counsel and appoint alterrate Counsel. (EXHIBIT # 26 line 19.) (EXHIBIT #9 pg. 3.) The petitioner also informed Counsel's Supervisor of the conflict in the attempt to get relief (EXHIBIT #23.)

The petitioner also filed a complaint with the Nevada Bar Association (EXHIBIT #29.) this all occured before the petitioner's trial, So clearly conflict was present, and it is likely that Counsel was less interested in protecting the petitioner's interest, or expending the time necessary to prepare the best defense.

The nine incidents of undue prejudice violated the the petitioner's Sixth and fourteenth amendments under the U.S. Constitution to effective representation of Counsel

WHEREFORE based upon the above the petitioner's Convictions and Sentence must be vacated.

(h) Ground eight: Ineffective Counsel on appeal

(a) Counsel failed to adequately present miranda violations

(b) Failed to present the use of perjured testimony through detective and C.J.

(c) failed to present prosecutorial intrusion into the attorney-client relationship.

(d) Failed to present the District court contaminated the jury.

(e) Failed to adequately present the use of inadmissable hearsay.

(f) failed to present actual innocence based on evidence not used at trial.

Supporting facts: (tell your story briefly without citing cases or law.):

The petitioner hereby swears, avers and states that the following is true and Correct to my own personal knowledge and belief, and as to any matters stated upon belief, I Sincerely believe them to be true.

Further, petitioner would incorporate herein as if fully stated herein the supporting facts of all other grounds of this petition in support hereof.

8(a) Appellate counsel omitted the fact that upon being handcuffed, detectives did not inform the petitioner that he was under arrest, suspected in any crimes, or advised him of Miranda warnings. This proves detectives planned to isolate the petitioner from anyone who may have lended moral support, and that the petitioner truly believed that the detectives were assisting him in filing a missing person's Report. upon arrest, the petitioner should have been given Miranda. (EXHIBIT #1 pg. 1148 lns. 10-20.) (EXHIBIT #2 p. 52.)

Appellate Counsel also failed to enlighten the court that during interrogation the petitioner attempted to end the interview, but the detectives refused him that right. The petitioner did not restart the interview, it was the detective who in fact asked a question. (EXHIBIT # 4 pg(s) 20-22.)

8(b) Appellate Counsel did not present the prosecution knowingly used perjured testimony through Detective katowich. C.J was not subject to a forensic interview, much like the prosecutor detectives assumed an incident occured. much like the prosecutor, detectives provided C.J. with details, and insisted C.J. make allegations over the denials. (EXHIBIT # 11 pg(s) 1156-1157.) if the Jury believed the detective's testimony, when evidence proves they should not appellate counsel should have adressed the issue. (EXHIBIT # 12 pg. 65 lns. 1-7.)

Additionally, appellate counsel failed to direct the court to the fact that the prosecution suborned perjury by forcing C.J. to change testimony to prove guilt of the petitioner. (EXHIBIT # 10 pg(s) 921 lns 20 - pg. 922 lns. 1-9.) (EXHIBIT # 10 pg. 933 lns. 7-19.). The prosecutor, through repetitive questioning, precluded the development of facts which resulted in false testimony.

8(c) Appellate counsel should have presented the issue that the prosecuter was culpable in the ineffective assistance of counsel placed on the petitioner. the heacing for a pro se motion to dismiss reveals trial Counsel was hesitant to work with the petitioner, and the prosecitor argued in conjunction against the petitioner (EXHIBIT #13 pg.6 lns.7-20.) At that point the petitioner believed he had no counsel at all.

8(d) Appellate counsel failed to recognize the most basic right a Criminal defendant has and present that issue on direct appeal. To be tried before an impartial Jury, and an impartial court. The structural error of the trial court infecting voir dire with statements of personal opinion involving "CHILD MOLESTATION" would have required the Nevada Supreme Court to reverse. (EXHIBIT #14 pg.586 lns.2-7.)

8(e) Appellate counsel did not cover the issue that the court admitted C.J's brother's testimony without having him present at the hearing to determine the reliability of his individual recountation of C.J's hearsay statements. (EXHIBIT #15 pg.2) Appellate counsel failed to raise the issue that the prosecutor discredited C.J's mother's hearsay statements in closing, yet presented her as a witness to recount hearsay. (EXHIBIT #18 pg. 1570 lns.16-22.) Appellate Counsel also overlooked the issue that the petitioner could not adequately Cross-examine C.J on hearsay that conflicted because C.J was excused as a witness.

8(f) The petitioner was deprived of evidence that formed the basis of his defense, that detectives' convinced C.J. to fabricate being abused. the medical evidence does not support repeated abuse, or the "Normal is Normal" testimony and arguement (SEE EXHIBIT # 21.) C.J. and the mother's testimony conflicted about what was disclosed, and the prosecutor treated C.J. with hostility for denying being repeatedly abused (SEE EXHIBIT #10 pg. 921 lns. 17- pg. 922 lns. 1-9.) or ever seeing the petitioner's genitals despite multiple frequent abuse (SEE EXHIBIT#10 pg. 933 lns. 7-19.)

Appellate counsel should have presented actual innocence based on evidence not introduced during trial (SEE EXHIBIT #22 pg(s) 9,12,13,14,15.) Compounded with the state demanding C.J. alter the testimony, and the lack of an accurate medical observation, That covers the false complaint. Appellate counsel's performance fell below an objective standard, and the omitted issues have a reasonable probability of success on appeal. The petitioner was denied his sixth amendment right to effective counsel.

WHEREFORE based upon the above the petitioner's convictions and sentence must be vacated.

(I) Ground Nine: Cumulative error on trial and Appeal

Supporting facts: (tell your story briefly without citing cases or law.):

The petitioner would incorporate herein as if fully stated the supporting facts of all other grounds of this petition in support hereof.

As shown in the foregoing grounds the petitioner's convictions followed several constitutional errors. The trial court made a blanket ruling regarding the reliability of C.J's brother and Mother's recount of hearsay. The trial court's extrajudicial view of the particular crime for which the petitioner faced, during voir dire was of a condemning nature that lowered the State's burden of proof. To add injury to insult, the trial court denied the petitioner's right to be presumed innocent by way of allowing the Jurors to be informed of his custodial status, without relevant reason.

The prosecutor's actions of withholding evidence requested, and having knowledge of the video recording without making it available to the petitioner is unacepptable. The prosecutor's interference with the Attorney-client relationship, the arguement that the petitioner's own recollection of the events had no real basis in preparing a defense, or that the petitioner had a defense at all contributed to the petitioner being represented ineffectively.

The prosecutor led C.J. into testimony that would convict the petitioner, and supplied the expected responses over sustained objections. When C.J's testimony was independent of suggestion, The prosecutor through repetitive questioning demanded C.J. alter the testimony to best suit the state. The prosecutor knowingly allowed detective Katowich to perjure himself about interview techniques used on C.J. The prosecutor introduced hearsay, strategically when C.J. could not be confronted with obvious inconsistencies.

Trial Counsel was deficient and conflict existed the petitioner moved to dismiss counsel and filed other complaints to which Counsel refused to file motions, adequately investigate the state's information, and utterly failed to discredit C.J. and the physician with available evidence. Trial Counsel abandoned the petitioner and his defense. Appellate Counsel failed to present viable claims on appeal, while omitting significant arguements for several claims presented on direct appeal. There is evidence that the detectives' manipulated C.J. into making allegations over the denials, and neither Trial or Appellate Counsel addressed the issue.

The petitioner suffered convictions never testified to, and the medical evidence does not support C.J's testimony of a recent attack, or repeated abuse. The evidence is insufficient. The ends of Justice require relitigation.

The detectives' engaged in interrogation before advising the petitioner of his right to Counsel or Self incrimination warnings when detective Demas' lied to the petitioner about being unarrested for Cooperating in what the petitioner believed was a Missing persons' investigation, to Secure the Miranda Waiver. The detectives' admit to not informing the petitioner of his arrest or any other formalities once he was detained, on the Street. When the petitioner tried to invoke his right to Silence, the detective ignored him, and restarted the interview with a question regarding his child.

The detectives threatened if the petitioner did not confess, they would Seperate him from his family, and when he did make an admission the detectives Stated that the District Attorney would punish me even more for LYING to them. The State of Nevada admitted the Statement and violated the petitioner's right to a fair trial. Cumulative error has denied the petitioner his Fifth, Sixth, and fourteenth amendments, and I have Suffered behind popular opinion resulting in a Sentence that is cruel and unjustified.

WHEREFORE based upon the above the petitioner's Convictions and Sentence must be vacated.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 25 day of the month of September of the year 2014.

Brandon M. Jefferson
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Brandon M. Jefferson
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Brandon M. Jefferson, hereby certify pursuant to N.R.C.P. 5(b), that on this 25 day of the month of September, of the year 2014 I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Renee Baker
Respondent prison or jail official

Ely State Prison, P.O. Box 1989
Ely, Nevada 89301
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

Steven B. Wolfson
District Attorney of County of Conviction

200 Lewis Ave 3rd floor
Las Vegas, Nevada 89155
Address

Brandon M. Jefferson
Signature of Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT THAT IS ENTITLED: PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION.), DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON, UNDER THE PAINS AND PENALTIES OF PERJURY, THIS, 25, DAY OF, September, 2014.

SIGNATURE: Brandon M. Jefferson

INMATE NAME PRINTED: Brandon M. Jefferson
INMATE NUMBER: 1094051
ADDRESS: **ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301**

(EXHIBIT #1)

A It was really soon into the interview, yes. I mean, the interview was only --

Q You received a --

A -- 40 minutes-long.

Q Oh, I'm sorry.

A I said, the entire interview was only 44 minutes-long. It was five minutes into it.

Q Right. And that was at page 5, that section?

A Yeah, yeah.

Q You received a telephone call on Detective Demas's phone while you were interviewing one of the other three individuals at Sunrise Hospital; isn't that right?

A Yes.

Q And when you spoke to the 9-11 dispatcher, you knew at that time that she had been speaking with Brandon, yes?

A Yes.

Q And you instructed the 9-11 dispatcher to tell Brandon that he was going to the missing person's bureau, right?

A Yes.

Q And your testimony this morning is that the building located at 4750 West Oakey is the central detective bureau, as well as the missing person's bureau, right?

A It was.

Q It was then?

(EXHIBIT#2)

TK: I mean, _____ we treated you, did we treat you fairly and everything?

A: Hey, come on, man, no.

TK: How, how did we treat you unfairly?

A: I just –

TK: I mean, you're in a difficult position, we're in a difficult position.

A: It's – I, I just thought that I was coming down here cause my wife got mad at me. And I was nervous about that.

Q: She did get mad at you.

TK: She did. She was mad at you, dude.

Q: Yeah. She, she made the allegation _____ before, we didn't ____, you know, we probably – but here's the thing, A – I'm not about to explain to you on the street, where your neighbors can hear what's going on. You have privacy –

A: _____ I understand that.

Q: That would be _____.

A: _____ thanks guys.

Q: How embarrassing is that. Out in there, we arrest you, jump on you and say you're arrested for _____.

A: _____ hey, when you guys came, um, did they see you guys take my kids and stuff like that away too?

(EXHIBIT#3)

Q: Okay, _____, _____(Both talking) _____.

A: Yeah.

Q: Okay. That, that's what it—it, it doesn't mean we can't, you know un-arrest you either as well. We're tryin' to clear up a, an investigation some are made.

A: Okay.

Q: But basically because you're technically in our custody and that you're handcuffed to a bar, happens to a lot of these. Okay?

A: Okay.

Q: You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to the presence of attorney. If you can't afford attorney, one will be appointed before and during questioning. Do you understand these rights?

A: Yes.

Q: Okay. Um, alright. Basically _____earlier today with your—or an argument with your wife?

A: _____(Both talking). Not even.

Q: Not even?

A: Not even.

Q: What was it about.

A: She came to me with a business card for a, a job called Easter Seals. And um asked me did she want me to throw the card away, and I, I ignored her.

(EXHIBIT #4)

Q: We have that monster we were talking about earlier. Because there is nobody who is going to sit here and tell us that didn't happen, you know that didn't happen, that didn't happen, that didn't happen when you we have proof of it. Because if they can sit there and lie to our face and act—show absolutely no remorse, we know that, that person in—in that chair—

A: ___--

Q: --is not a good person. And they're—they're not—and that's what happens when we show them their DNA. What is—what is the guy telling me after I show him? You know, I made a mistake. It's kind—then I'm kind of like, now you're telling me. I—I know you made a mistake. We had your proof. The guy is telling me he's sorry but he's not sorry. He's sorry he got caught.

A: --_____--

Q: And I write that in there. Subject tells me after I show him the results—

A: _____--

Q: Brandon.

A: Yeah, it's like I—you know what, I _____. I'm screwed but I'm telling you I didn't do it.

Q: Brand—

A: That's my story.

Q: --there's no either way that, the fact—here Brandon.

A: (No Audible Response)

(EXHIBIT #4)

Q: You realized that there are over 280 _____, you know bleeding subconscious movements of your body that indicate deception. Okay?

A: (No Audible Response)

Q: I don't need to see all 280, I can see about 8 of them. 'Cause that's my job. Okay?

A: (No Audible Response)

Q: I—I would be nervous too and concerned. I would but yet at the same time you got to think about your daughter. Okay?

A: (No Audible Response)

Q: She's going to want to understand why this is going on. 'Cause that's the biggest thing. Either you're a—you're a good father. "Cause and I'm saying but I'm saying this with this assurity because we have the DNA. Like I said, we just got your sample so I can't sit there and say it's back. What I try to do is give you the opportunity because the fact that your daughter named you who she loves and couldn't say anything bad about you, you know she was brave enough to stand up and tell me this as smart as she is and descriptive and there's no way a 5 year old is that descriptive about sex acts. Okay?

A: (No Audible Response)

Q: She could stand up and do this—this the one person—the one male figure she loves must in life. And you're telling me that you're going to sit here and say, no

(EXHIBIT#4)

I—you know, let me ask you this Brandon. When she tells us that this happened, is she a liar?

A: I would—I—my—she piss me off with this right here, actually to tell you the truth. I don't know where she's getting this. Ever since you know—

Q: You're not answering my question. I'm asking you this—

A: No, yes—

Q: --Is she a liar?

A: --Yes, she's a liar.

Q: You're saying you're five year little girl—

A: Yes.

Q: -- is a liar?

A: --_____ with me, yes. With me—

Q: She's lying about this?

A: --_____ ah, performing oral sex? Yes.

Q: She's lying about that?

A: She's lying on—from _____, yes. Yes, I would say me, yes. 'Cause I'm-- ____--

Q: Brandon, you're aren't even sure you--_____.

A: I am sure.

Q: You know what's good—it's—it tells me you're so a good person 'cause you're not a good liar.

(EXHIBIT #5)

A: They're not—they're going to take my kids away, aren't they?

Q: No. Not at this point, they're not. They—they are with your wife right now. So,no but like I said, they're not going to—they're not going to throw us—you know, until they know—you have to tell us what's causing it. We know what happened. Okay?

A: (No Audible Response)

Q: In other words, once we know what's causing it, we can figure out what will keep this from happening again. Until we know what will keep this from happening again, you're kids aren't safe with you right now because you make bad decisions sometimes. So we need to know what's causing those bad decisions so that you can be around your kids in the future. If we don't know what's causing those bad decisions we—how can we fix the problem?

A: I'll do anything to be with my kids, sir.

Q: So,--_____ we want to know is what's causing this behavior.

A: I—what—I maybe—maybe um, what—what—me not having money. You know, I having a beer every now and then. That's about it. That's all I can say.

Q: What goes through you—

A: ___--

Q: --when—when you ask her to come to your room? What goes on?

A: I don't ask her to come to my room, sir. I mean it's—I mean I give her a little hug, a little kiss or something like that—

(EXHIBIT #6)

said. This—and then, then the DNA report's gonna come. And it's gonna say yep, he was truthful about this.

Q: No.

Q: Okay, what do you wanna do about this _____? The D. A.'s gonna look at that and go _____, wait a minute. You know he, he would—he tries ta, you know be the martar, and say one thing, and then he's lyin' about the rest? Ha...how do I know what else he's ly...lying about? You know, are there more kids who might be in danger? I mean, you know—

(Unknown Sigh)

--even though this is—it's kinda fucked up, but it was with your daughter? Listen Brandon—

A: I'm listenin'.

Q: --it'd be worse or _____scary if it was a stranger? If you were takin' little kids off the street? That's their fear. Are you gonna be the guy to hang around the schools pickin' up peoples kids? And they wanna make sure you're not that person? And we work those cases.

A: I understand.

Q: We work those cases. And I tell ya those people will never have a chance, ever.

A: Oh man.

Q: But they also can't convince us that they're just a person who made a mistake either. Where you have that opportunity sittin' in front of you? You have the

(EXHIBIT# 7)

prosecutor's open file policy does not in any way substitute for or diminish the State's obligation to turn over Brady material.

There can be little question, therefore, that despite its "open file policy," the prosecution has an affirmative duty to seek out the previously discussed Brady material, regardless of whether such material is in the hands of the prosecutor or in the hands of some other entity acting on behalf of the State.

DEFENDANT'S SPECIFIC REQUESTS FOR BRADY MATERIAL

I am in receipt of the following discovery: Las Vegas Metropolitan Police Department Declaration of Arrest, Event: 100914-2950; Las Vegas Metropolitan Police Department Arrest Report, ID# 2508991; Las Vegas Metropolitan Police Department Incident Report, Event #100914-2950; Cindy Grace Lamug-Jefferson voluntary Statement dated September 14, 2010; Brandon Jefferson Voluntary Statement dated September 14, 2010; and, Caitlin Jefferson Voluntary Statement dated September 4, 2010.

The following specific requests are meant to help assist the State in their duty to find and turn over the required Material. This request is not in any way intended to be a substitute for the generalized duties described above.

1. Any and all Child Protective Service Records to include any and all notes of CPS workers or their agents or assistants. This includes notes of social workers and employees of Child Haven or any other institution where the subject minors may have had contact with CPS while involved with the case. This also includes all information on all referrals to any physicians, psychologists, psychiatrists, social workers or other mental health workers or health care providers.

2. Any and all records and notes of any mental health workers who have had contact with the subject minor or other family members or anyone else related to events in this case.

3. Any and all notes, records, or photographs related to any physical exams done on the subject minor or anyone else in connection with this case.

4. Any and all records and notes from the victim witness office of the District Attorney to include any and all records of any monetary assistance given to the subject minor and his or her relatives or other family members or guardians. This

(EXHIBIT #7)

also includes any benefits received in the way of services or favors or favorable treatment. This is to include the names of any and all agencies and workers that were given to any family member, relative or guardian in connection with this case, or relevant to this case. This includes any services or benefits given to any witness who is related to this case.

5. Any and all notes of all interviews of subject minor and material witnesses in the case. To include any and all audio and video recordings of such interviews. This includes any notes of interviews that were not later recorded, such as notes of patrol officers, or notes of phone calls made to potential witnesses, or attempts to contact such witnesses. To include any and all contact information known about all material witnesses in the case, if not otherwise provided in the discovery given.

6. Any information on any criminal history of any material witness in the case, to include any juvenile record, misdemeanors, or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

7. Any and all information known or which could be known by the diligent actions of the State of any previous allegations of sexual misconduct made by the subject minor or any material witness in the case. To include any and all information or any possible false accusations made by the subject minor or any material witness in the case. This includes as well, any and all information relating to sources of sexual knowledge, outside the alleged events, which are known or which the State should find by a diligent search.

8. Any and all information which shows that the defendant did not commit the crimes alleged.

9. Any notes of any statements by the defendant, to include any notes of patrol officers or other agents of the State who have had contact with the defendant, if not given already in discovery. This includes any and all notes and reports of any polygraph done by the State, including all of the raw data and graphs, preliminary reports and printouts from such polygraph(s).

10. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.

11. Any inconsistent statements made by the subject minor or any material witness in the case. This includes any inconsistent statements made to any employee or representative of the District Attorney's office.

12. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.

(EXHIBIT #8)

Q And you used – it's your digital recorder that you use; is that correct?

A Yes.

Q And you said that there would also have been a video recording?

A There might be. The room's automatically always audio and video recorded, but our DBR recorder doesn't always work either. That's why we use an audio recorder just in case.

Q So there's a video/audio recording system in the room that's permanently on kind of thing?

A Yeah. It runs in a loop.

Q Okay. But because that doesn't always work sometimes – because that doesn't always work, you will use your own digital recorder?

A Yes. Yes.

Q Did you do that in this case?

A Yes.

Q Okay. Did you eventually have that digital recording copied onto CD's?

A Yes.

Q And did you eventually have that digital recording of the interview transcribed into a statement?

A Yes.

MR. MERBACK: Judge, for purposes of this hearing only by stipulation of the parties, I'm going to move to admit State's Proposed Exhibit 1, which is the CD recording of that interview, and State's Proposed Exhibit 2, which is the transcript of that interview.

(EXHIBIT #9)

have my full discovery yet. I just – just things he said to me, I just – I don't feel comfortable with him.

THE COURT: What is it that he has not done?

THE DEFENDANT: Well, I've asked him to subpoena for some – my work records from my job and he hasn't done that. I've asked him to make some phone calls to my family and he hasn't done that. And I've asked for my full discovery. I've been here for almost 14 months and I still don't have my full discovery.

THE COURT: Making calls to family members would be a courtesy. It's not part of his job duties. There is some discovery that's recently arrived that I was going to address with counsel today, but Mr. Cox, as to the discovery that you have been provided by the State, has that been shared with Mr. Jefferson?

MR. COX: Judge, there's been lots of visits. As far as any specific item I'd have to look at it, and sometimes my memory fails but I do have my discovery generally with me when I visit my client for him to view at any time. I can tell you I am hesitant to simply give copies of things to just leave in the jail simply because all my clients are generally in the same module, and unfortunately just recently I've had two cases I had to get off of because people see each other's discovery and then, you know, there's allegations made.

So I'd like to make the discovery available. I'm very hesitant to drop things off because I feel sometimes it creates a conflict, but I'll obey the Court's order on this.

THE COURT: So it's your standard operating procedure to meet with your client –

MR. COX: Yes.

(EXHIBIT #10)

pants.

Q Okay. You said he took off his pants partway?

A Yes.

Q Where did his pants go down to? How far down did his pants go when he took them off partway?

A Somewhere close to his knees.

Q Okay. And then you said he took off your pants partway?

A Yes.

Q Okay, and how far down did your pants go?

A All the way down to my shin.

Q Okay. And then what happened?

A He stuck his penis in my vagina.

Q Okay. When he put his penis in your vagina, where was your dad? Was he standing up in the room, was he lying down on the bed, was he sitting down, or was he doing something else; do you remember?

A I don't remember.

Q Okay. Do you remember where you were when your dad put his penis in your vagina?

A I was on the bed.

Q Okay. And where were you -- how were you on the bed; do you remember?

A I was sitting.

Q What were you sitting on?

(EXHIBIT #10)

A His legs.
Q Whose legs?
A My dad's legs.
Q Okay. So, how was your dad sitting -- or how was your dad when you were sitting on his legs? What was he doing?
MR. COX: Judge, objection. Can we approach?
THE COURT: Yes.
(Off-record bench conference)
MS. FLECK: Judge, can we approach one more time?
THE COURT: Yes.
(Off-record bench conference)
THE COURT: The objection was sustained, and Mr. Merback's going to ask a new question.
MR. MERBACK: Thank you, Your Honor.
BY MR. MERBACK:
Q So, Caitlin, you just said that when your dad put his penis in your vagina, that you were sitting -- you were sitting on his legs; is that what you just said?
A Yes.
Q Okay. So, what was your dad doing when you were sitting on his legs?
A I don't really remember.
Q Okay. Do you remember what his position was? Does that make sense; what position his body was in?

(EXHIBIT #10)

the bed?

A I was sitting.

Q What were you sitting on?

A My dad's legs.

Q Now, when you were -- you said that when you were -- when your dad put his penis in your vagina, that you were sitting on his legs; and then when he put his penis in your butt, you were sitting on his legs. Were you facing the same direction both times, or were you facing different directions?

A Facing different directions.

Q Which direction were you facing when he put his penis in your vagina?

A Towards his face.

Q Okay. And then, which direction were you facing when he put his penis in your butt?

A Towards his feet.

Q When your dad put his penis in your butt and you were facing towards his feet, could you see what he was doing?

A No.

Q Did he do anything else to you that time besides put his penis in your mouth, and in your vagina, and in your butt?

A No.

Q Okay. Are there any other times that you can remember where your dad did something to a private part of your body?

(EXHIBIT #10)

A No.
Q Okay. Now, I'm going to use kind of a hard word. Do you know what the word "specific" means?
A Yes.
Q Okay. What does it mean?
A Like at a certain time.
Q Okay. Do you remember any other specific times when your dad did something to you?
A Yes.
Q Can you tell us about another specific time?
A When he told me not to tell anyone.
Q Okay. Can you tell us about the time when he told you not to tell anyone; what he did?
A He stuck his penis in my vagina.
Q On this time, were you -- what part of the house -- I'm sorry. Was this at the same apartment, the apartment on Pinto Lane?
A Yes.
Q What part of the apartment was this in?
A The master bedroom.
Q And how did you get to the master bedroom this time?
A He told me to come in there.
Q Did he ever -- strike that. Let me -- that wasn't a very good question for you. Once -- when you came in the master bedroom this time, was the door open, or was the door

(EXHIBIT #10)

were you positioned in a different way? Do you understand what that word "positioned" means? It's kind of a tricky word. Do you understand what that means?

A Yes.

Q Okay. What does it mean?

A It means like were you in the same spot.

Q So, were you positioned the same way when he put his penis in your mouth as you were the time before?

A Yes.

Q Okay. Did he do anything else to you besides putting his penis in your vagina and in your mouth?

A No.

Q What did he tell you about not telling anyone? What did he say?

A Don't tell anyone.

Q Did he say why you shouldn't tell?

A No.

Q Was there ever a time -- did you ever cry when any of these things were happening?

A Yes.

MR. COX: Judge, I object. We've been supplied another answer the State's looking for.

MR. MERBACK: The question is, did you ever cry. It's not suggesting the answer.

MR. COX: I asked that the answer be -- the question

(EXHIBIT #10)

and answer be stricken.

THE COURT: The Court sustains the objection and grants the motion. The question and answer are stricken. The jury will disregard them. You may ask your next question.

MR. MERBACK: Thank you, Your Honor.

BY MR. MERBACK:

Q When your dad was doing these things to you, how did it feel?

A Horrible.

Q How else did it feel?

A Disgusting.

Q Did you ever do anything -- when it felt horrible and disgusting, did you ever do anything because of that?

A No.

Q Were you ever upset?

MR. COX: Objection, Your Honor. Same objection as previously.

THE COURT: Sustained.

MR. COX: Thank you.

BY MR. MERBACK:

Q How did you feel?

A Horrible.

Q Okay. Did you ever do anything when you felt horrible?

A No.

(EXHIBIT#10)

Q Do you remember any other specific times that anything ever happened?

A No.

Q Okay. When these things were going on, you said that your brother was in the front room playing video games; is that right?

A Yes.

Q Did your brother ever say anything to you -- was your brother ever concerned about anything while these things were going on?

MR. COX: Your Honor, again, I think we've supplied the answer.

MR. MERBACK: Your Honor, may we approach?

THE COURT: That was compound.

(Off-record bench conference)

THE COURT: The Court sustains the objection as compound.

BY MR. MERBACK:

Q When all of these things were going on, Caitlin, did you -- was there ever a time when you cried, or did you never cry?

A I cried once.

MR. COX: Your Honor, object. I ask that question and the answer be stricken.

MR. MERBACK: It's a different question. It's

(EXHIBIT #10)

MR. MERBACK: It's not, Your Honor. There's --

THE COURT: I'm going to overrule. You may answer.

BY MR. MERBACK:

Q Can you remember everything that ever happened, or is it hard to remember?

A It's hard to remember.

Q When your dad would put his penis either in your mouth, or in your vagina, or in your butt, did you ever -- did you ever actually see his penis? Did you ever actually look at it?

A No.

Q Did you ever see it?

MR. COX: Judge, asked and answered. I object.

THE COURT: Overruled.

THE WITNESS: I can't remember.

BY MR. MERBACK:

Q Okay. Can you remember -- do you remember what it looked like at all?

A Yes.

Q You do?

A Yes.

Q What did it look like?

A Brown.

Q Anything else?

A No.

(EXHIBIT # 11)

with a child, where you're basically trying to extrapolate all the information they have, without giving them the information.

Q To avoid leading a child into something?

A Exactly.

MR. SPEED: Objection, Your Honor, leading.

THE COURT: Sustained.

BY MR. MERBACK:

Q What's the purpose behind a forensic interview?

A To avoid leading a child into a false disclosure.

Q Okay. You talked about the purpose of using the techniques you use in a suspect interview, or to elicit the truth. Do you remember saying that?

A Yes.

Q What's the purpose of conducting a forensic interview with a child?

A To elicit the truth.

Q Is it fair to say that, often, interviews with suspects versus interviews with children require different types of approaches?

A Absolutely.

Q You wouldn't approach the five year-old the same way you would approach an adult?

A Correct.

Q Have there been times in your career where you have

(EXHIBIT #11)

been interviewing a victim or an alleged victim, and you have used the types of techniques that you use in suspect interviews with an alleged victim?

A All the time.

Q Okay. And why would you do that?

A To elicit the truth.

Q You didn't do that in this -- was -- were any of those techniques used, however, in the interview in this case with five year-old Caitlin Jefferson?

A I don't believe so. But like I say, I would have to go through the interview and see if that specific technique was used or not.

Q How -- would you characterize the interview with Caitlin Jefferson as a forensic interview?

MR. SPEED: Objection, Your Honor, leading.

BY MR. MERBACK:

Q How would you characterize the interview with Caitlin Jefferson?

A As a forensic interview.

THE COURT: The question was withdrawn, and a new question asked, so the Court need not rule on the objection.

BY MR. MERBACK:

Q Mr. Speed asked you some questions about the type of weapons that you and Detective Demas were carrying; is that correct?

(EXHIBIT #12)

THE COURT: In looking at NRS 51.385(2), A factor, the statement was spontaneous, the Court finds that the two statements made to the mother were spontaneous, that the statement made to Detective Demas was not. As to the second factor, the B factor, that the child was subjected to repetitive questioning, the Court finds that the child was not subjected to repetitive questioning by the mother but was by Detective Demas.

The next factor, C, the child had a motive to fabricate. While the mother was upset with the Defendant the child was not. The child had no motive to fabricate as to any of the statements. The next factor, D, the child used terminology expected of a child of similar age. The Court finds that the child did use appropriate age terminology. The next factor, E, the child was in a stable mental state. The mother so indicated she didn't notice anything mentally abnormal at the time but the statement was given to the mom. From listening to the statement that was given to the Detective in reviewing the transcript thereof, I didn't know any indicia of an unstable mental state.

The Court, therefore, finds that under the totality of the circumstances, the statements made to the mother have guarantees of trustworthiness, that the statement given to Detective Demas is lacking in a couple of those factors, therefore, the statements to the mother would be admissible, the statement to Detective Demas would not be unless it comes in for a different purpose such as rebuttal or to rehabilitate upon an accusation of recent fabrication or some other evidentiary rule.

(EXHIBIT #13)

have alibis in our general lives unless it's a very specific matter. There is a specific timeframe which we don't have here. I didn't realize his work records was a hanging point, and for that that's why – another reason why I just didn't get them.

THE COURT: Okay. So it doesn't appear that they have any relevance?

MR. COX: Judge, you know, I don't think I'm showing my hand here, but, you know, I didn't see it as being relevant, a thing that's really going to substantively, you know, defend the case in any way. You know, I don't think it's in dispute he had a job. The State and the State's witnesses have not made a specific date or time when these things have said to have taken place.

MR. MERBACK: He actually indicated in his statement to the police that he had lost his job. That was part of the reason that he was home when these events occur is because he had been employed and then he became unemployed. So I mean that's from his statement, and obviously that's just my recollection; but I recall that very specifically from his statement he indicated that he had lost his job and that was making it difficult for him.

THE COURT: It appears that the relief sought is not warranted and the Court, therefore, denies the motion. The Court will ask that the State prepare the order. We have –

MR. COX: Judge, I do have an issue with our trial date and I want to bring it up now rather than calendar call. My issue is it is a short week and I have retained Mr. Mark Chambers. I had sent the State a notice of that. We do have – the State does intend to argue in its case in chief that my client made

(EXHIBIT #14)

MS. FLECK: Okay. Okay. Thank you.

THE COURT: It's kind of like what I talked about earlier, is there's nobody -- if I'm going to ask the question, how many of you like violence? How many of you like rape? How many of you like child molestation? How many -- you know, I'm not going to get people raising their hand in response to that.

But as Ms. Fleck just clearly covered, it's just an accusation. And you said you believed that you'd be able to keep an open mind and listen to the -- listen to the testimony before you came to any conclusion. Would you be able to deliberate with your fellow jurors toward reaching a verdict?

PROSPECTIVE JUROR NO. 245: I believe I said that I wouldn't be able to keep an open mind based on the charges. [Inaudible]. Did I not say that? That's what I thought I said.

THE COURT: I think you changed your position kind of during the questioning, so that's why I went back over it to clarify with you. You have not heard one word of testimony, nor seen one piece of evidence at this point.

PROSPECTIVE JUROR NO. 245: I understand that.

THE COURT: Are you saying that you're entirely closed-minded and unable to deliberate?

PROSPECTIVE JUROR NO. 245: No, no. I'm not saying that I'm entirely closed-minded, but I'm just saying that I --

(EXHIBIT # 15)

INDEXOF WITNESSES

STATE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Cindy Lamug	4	15	22	
Matthew Demas	31	39	51	

INDEX OF EXHIBITS

STATE'S EXHIBITS	IDENTIFIED	ADMITTED
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3	10	
4	26	30

(EXHIBIT #16)

INDEX
BRANDON JEFFERSON
Case No. 62120

(EXHIBIT #17)

A Yes.
Q Do you remember when there was a time your mommy told you that your daddy's gone, and it's just going to be you and your mommy and your brother?
A Yes.
Q Did your mommy ask her if you could help her out --
A Yes.
Q -- and be on the same team with her?
A Yes.
Q Did she tell you that daddy didn't treat her very well?
A Yes.
Q Did she make a pinky-promise with you?
A Yes.
Q And tell you that you need to tell her all the secrets?
A Yes.
Q Now, you didn't tell your mom about anybody putting anything in your bottom, did you -- in your butt, did you?
A I did.
Q You did? Okay. Did you tell your mom about anything about your dad putting his hands on your tee-tee or your butt?
A Yes.
Q Okay. Do you know who this man is here?

(EXHIBIT #18)

And we heard from the detective about this three-day, at the most, five-day time frame in which DNA can be collected. And we actually heard specifically from Dr. Vergara that really it needs to be less than 72 hours; less than three days before there can be any kind of a legitimate chance of collecting DNA.

Now, the defense called Mr. Teague, the ambulance driver, to come in here, the ambulance -- the paramedic in the ambulance, to talk about Cindy's statement to him on -- about the date of September 11th. Remember, he never talked to Caitlin. This is not something that Caitlin told him. Detective Demas talked -- Detective Katowich talked directly to Caitlin, but he never did. He simply obtained this statement from Cindy, and Cindy had told him about the date of September 11th, 2010.

So, are we to believe that Caitlin said to her mom, yeah, mom, the last time it happened was September 11th of 2010? Is that -- is that what we're supposed to believe? Does that make any sense? What makes sense is that Caitlin told her mother, the last time it happened, you were at work. And her mom thought about, okay, when's the last day I worked? September 11th, 2010, so that's what she tells the paramedic.

And even beyond that, September 11th to September 14th is four days. That's beyond the 72-hour time period; the 72-hour window that Dr. Vergara is really required if you're

(EXHIBIT#19)

Q -- it not? So, it's not just words; you're making a gesture with it?

A Yes.

Q Okay. Now, on September 14th, when you called the police and you talked to the police, you did not tell the police that there had been an allegation of penetration or -- or I'm sorry, of contact between Brandon Jefferson's penis and Caitlin's anus, was there?

A No.

MR. COX: Court's indulgence.

BY MR. COX:

Q Now, on September 14th, is it fair to say the children were already fluent in Tagalog?

A Yes.

Q Okay. On September 14th, were you speaking to them in Tagalog or English?

A English.

Q English?

MR. COX: I'd pass the witness, Judge. Thank you, Cindy.

MR. MERBACK: Court's indulgence.

THE COURT: Yes.

MR. MERBACK: We have no further questions, Your Honor.

THE COURT: You may step down from the stand. State

(EXHIBIT #20)

guilt. And again, moreover, an issue that the defense has put into issue, which is that there is no bias within this family. And you know, they have a right now to hear conversations between the defendant and Cindy because the defense has made part of the trial that there's so much animosity between Cindy and the defendant that young Caitlin is willing to make something like this up about her father. So, they've put it directly at issue in the case.

THE COURT: The Court finds that with the prerecording announcement, that there's no reasonable expectation of privacy. The motion therefore is denied at this time. The Court's going to ask that the marshal bring in and seat the jury. We'll be at ease.

MR. SPEED: Will the Court -- I'm sorry, Your Honor. Will -- will the Court allow for -- okay.

(Off the record at 1:35 P.M. until 1:41 P.M.)

(Within the presence of the jury panel)

THE MARSHAL: All rise. District Court 2 is now session. The Honorable Judge Valorie J. Vega presiding. Please be seated.

THE COURT: Record shall reflect we're resuming trial in State vs. Jefferson, in the presence of Mr. Jefferson, his two counsel, their assistant, the two prosecuting attorneys are present, and the ladies and gentlemen of the jury are present as well.

(EXHIBIT #21)

100914.3950

Genital/Anal Medical Exam Findings: (Refer to dictation and genital drawings)

___**Normal exam/normal variant:** (i.e. hymenal tags, bumps, ridges): The lack of physical exam findings does not exclude the possibility of sexual abuse.

X**Non-specific findings:** (i.e. swelling, erythema, labial adhesion, lichen sclerosis, molluscum, anal fissure): these findings may occur in sexually abused children, but may also be from other causes.

___**Concerning for abuse or trauma:** (i.e. acute bruising of labia or penis, laceration of posterior fourchette, bite marks): these findings have been noted in children with documented sexual abuse and are consistent with, though not conclusive of, sexual abuse.

___**Specific physical findings are present that indicate abuse/trauma:** (i.e. acute laceration or bruising of the hymen, hymenal transection, deep perianal lacerations): Sexual abuse/contact is very likely.

___**Other: Bleeding, genital warts, vesicles (suspected HSV),** _____

Comments/concerns: _____

Infection:

___STD testing done. ***Results are pending.*** (Note, These tests are performed at the discretion of the examiner and are not required in all pediatric sexual abuse evaluations)

PATIENT IDENTIFICATION

JEFFERSON,CAITLIN
000101910998 REG ER
09/14/10 1729 PHYSICIAN,PEDIATRIC ER
DOB:11/26/04 SY OSH F MR# 0001940995
Sunrise Hospital and Med Ctr

Sunrise HOSPITAL & MEDICAL CENTER SUNRISE CHILDREN'S HOSPITAL

Child/Adolescent Sexual Abuse/Assault Forensic Medical Examination Report

SR-1930 (3/05)

WHITE - Medical Record YELLOW - Law Enforcement PINK - SCAN

(EXHIBIT#21) 100914-2950

LABS, X-RAYS, AND EKG

Bedside Tests: Urine dipstick; leukocytes negative; nitrite negative; protein negative; glucose normal; ketones negative; urobilinogen normal; bilirubin negative; blood negative.

PROGRESS AND PROCEDURES

Course of Care: Placed in room 8

20:04. Patient is stable.

20:04. Tolerated videotap colposcopy. Mom bedside
GU. Tanner 1. No lesions or bruising to external genitalia. With gentle retraction of labia majora able to see moist introitus. Has adequate hymenal tissue, smooth rim. Has a small hymenal mound asso with intravaginal ridge. No local reddness, no transection, no vaginal discharge. Negative perineum. Rectal with good sphincter tone, no lesions or tears.
Exam reviewed with Mom.

CLINICAL IMPRESSION

Vaginitis (Non specific).
SCAN-S.

INSTRUCTIONS

Drink plenty of fluids.

Warnings: Further evaluation is necessary.

Warnings: See your physician or return immediately If your child becomes irritable, difficult to console, listless, sleeps more than usual, has a decreased fluid intake; has decreased urination; or if other concerns arise. Likewise, if your child's condition does not improve as expected, be sure to see your physician or return to the emergency department.

Follow-up:
Follow up with doctor PMD and authorities.

Follow-up with:
Neighborhood Pediatric Clinics, If you do not have a doctor, contact one of the following low-cost neighborhood clinics:, KIDS HEALTH: 702-992-6868, 3006 S.Maryland Parkway; LIED CLINIC: 702-383-3842, 1524 Pinto Lane; HELPING KIDS CLINIC: 702-732-7001, 968 E.Sahara Avenue.
Follow up. Call for the next available appointment.

Understanding of the discharge instructions verbalized by parent.

All diagnostic orders, medications, interventions, and other treatment has been authorized and reviewed by the treating physician.

(Electronically signed by Theresa Vergara, MD 09/14/2010 20:47)

Any laboratory data incorporated in this document has been entered by the emergency clinician and may have been summarized or otherwise modified. The original full report is available in Meditech. Please refer to PCI for the Performing site information.

(EXHIBIT #22)

Q: Okay. And what about tickles? Who gives you tickles?

A: My dad.

Q: Where?

A: At my feet.

Q: Oh. Um and are all those touches okay?

A: Um...

Q: I can't hear you.

A: Yeah.

Q: Okay. Do you ever get um touches you don't like or that are strange?

A: Sometimes my classmates push, pushes me.

Q: Oh, I don't like those touches either. So what happens when you do that, when they do that?

A: I told my mom.

Q: Okay. Um, any other touches that you don't like or that are strange to you?

A: Mm-mm.

Q: I can't hear you.

A: No.

Q: Okay. Um now um, you got any secrets?

A: No.

Q: No? Okay. Um, so say you and Brandon are outside, you guys are outside playing. You guys play games outside?

(EXHIBIT#22)

Q: Is there like a name in another language that you use?

A: Mm...

Q: Well what do you call it then?

A: Mm...

Q: Some girls call it like a thingy. Do you want to call it that?

Q: You can call it whatever you want.

A: Okay.

Q: What do you want to call it?

A: Thingy.

Q: Okay. What do you call this right here?

A: Arm.

Q: What do you call this right here?

A: Belly button.

Q: What do you call this right here?

A: Finger.

Q: 'Kay. What do you call this right here?

A: Mm...

Q: Well sometimes when I talk to girls your age they call it like, like a private area or a pookie (sic) or a titi (Laugh). Do you want to, what name do you call it?

A: Private.

Q: What about what's that called?

(EXHIBIT #22)

A: Leg.

Q: 'Kay. What do you call this right here?

A: Um, the back of your head.

Q: And what do you call this right here?

A: Back.

Q: Okay. What do you call this right here?

A: —

Q: Okay. What do you call this right here?

A: Leg. Back of your leg.

Q: Okay. Now is this private the same as this private?

A: Mm-hmm.

Q: It's the same exact thing?

A: No.

Q: Oh. Is there a different name we can use? Like sometimes when I talk to girls your age they call it like a butt or a booty or a behind. You want to use one of those? What do you want to use?

A: Private.

Q: Okay. We'll use that then.

Q: You know you can't get in trouble for anything you say in here. Right? This is a special room, so you can use whatever word you want. You're not gonna get in any trouble. You know that?

(EXHIBIT #22)

Q: Even if you want to use a Tagalog word.

A: I am Tagalog.

Q: I know. So you can use Tagalog words and ___. And that's okay. Okay?

A: Okay.

Q: Okay. When you look at the picture of this girl here, are there parts on her body that nobody's supposed to touch?

A: Mm-hmm.

Q: I can't hear you.

A: Yeah, some of the parts.

Q: Where are they? Okay. What are those called again?

A: Privates.

Q: Okay. For the purpose of the recording, she pointed at the butt. Okay. Anywhere else?

A: I don't know.

Q: You don't know? Okay. Well, have you ever had a problem with anybody touching you in the privates.

A: Nobody touches me at the privates.

Q: Nobody does?

A: Mm-mm.

Q: Oh, okay. But I heard something a little different today?

A: Huh?

(EXHIBIT #22)

EVENT #: 100914-2950
STATEMENT OF: CAITLIN JEFFERSON

Q: I heard something different. Um, um do you know what? Why were the police called today?

A: Uh... I don't know.

Q: You don't know? Oh. Did you tell somebody that somebody might have touched your private?

A: Um...

Q: Huh?

A: Nobody touched my private.

Q: Oh.

Q: Have you ever had anybody make you touch their privates?

A: Mm-mm.

Q: Did you tell, did you tell somebody that?

A: Uh...

Q: 'Cause you know you're not in trouble for anything, right?

A: Somebody made me touched their private.

Q: Who did?

A: My mom called the police and said like mm my dad made me touch all his privates.

Q: He did? How did he do that?

A: (No audible response)

Q: How did he do that?

(EXHIBIT #23)

March 28, 2012

Dear Mr. Kohn,

As the Supervisor of the Sexual Assault unit I'd ke to adress an issue that I am deeply concerned with. Mr. Bryan 'ox, D.P.D. has been assigned to me. My trial is set for April 16, 2012. he thing is I would like to go into credibility as to Statements made n my case, not provide "Alibi" as Mr. Cox sees it. It is very relevant nd holds some promise to my defense. Financial Circumstances and tress lead to motive everyone knows, Mr. Cox has expressed that the .A.'s office will raise these issues to prosecute me. The question r reality is how can it be refuted if Mr. Cox Can not or Will not ubpoena Certain information I've requested So the jury will get the hole picture of this half baked attempt on my life. These are ritical circumstances for my case. Money and Sex are things that raw people to Certain junctures in their lives where they do or in y case "Say" things that they would not otherwise. I Simply eed offers of proof not "ALIBI" as to the reason I am unfairly offering ill will at the mercy of my own loved ones. Mr. kohn, lease motivate or redirect Mr. Cox in assisting me reasonably nd adequately for trial. As I've been rotting in C.C.D.C for 18 onths without an assigned investigator and proof of my innocence ading away over time wasted as Mr. Cox just won't do what can't to prove my innocence. please. Fairness is all I ask.

Thank you,

Brandon Jefferson.

(EXHIBIT #23)

5-22-12

To Mr. Philip Kohn,

How are you today I hope all is well with you. My name is Brandon Jefferson I have sent you a letter before regarding DPD Mr. Bryan Cox, briefly I do not want Mr. Cox to represent me any further, and I do not feel I should be obligated to inform you to get assistance or the Judge, but as it appears I must inform my judge I wish to represent myself. Today Mr. Cox and Investigator "Jane" paid Me a visit I asked Mr. Cox to file a Motion in limine to preclude the state's experts from improper vouching and to prevent "Experts" from testifying outside their area of expertise." He played dumb like he didn't understand why I need this motion, and frankly he is scared of the District Attorney not me! His advise is simply sit back and do nothing. if I ask him to do Something he says "No I won't do it." He Should get off my case. I have enough stress, and my life is on the line not his, I need to be ready for trial and appeal He is unorganized and lazy while prosecuting me for errors I have no control over I cannot trust him anylonger. He has I assume certification to fight trials to win but his mindset is apparently failure. I would like to be released and he is in my opinion prejudice toward me, these types of cases and he feels I belong in prison and is definetly trying to rush me into that place I am not ready for trial and neither is he, I just had contact with an investigator after 20 months what does that say? where is the experts report on my behalf? for my review?

- Mr. Brandon Jefferson -

(EXHIBIT#24)

why a sexual assault victim might have normal physical findings. Dr. Vergara testified that her examination of C.J. revealed no abnormal results, but that "normal is normal" with child sex abuse victims, meaning that a normal examination is typical even though a child has been abused. Because Jefferson did not object to that particular testimony at trial, we review it for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). We conclude that the district court did not commit plain error in allowing the testimony.

NRS 50.345 provides that "[i]n any prosecution for sexual assault, expert testimony is not inadmissible to show that the victim's behavior or mental or physical condition is consistent with the behavior or condition of a victim of sexual assault." Thus, Dr. Vergara's testimony that child victims of sexual assault often have normal findings was proper. This in no way vouched for C.J.'s credibility. *See Marvelle v. State*, 114 Nev. 921, 931, 966 P.2d 151, 157 (1998) (holding that an expert may not testify to the veracity of another witness), *abrogated on other grounds by Koerschner v. State*, 116 Nev. 1111, 13 P.3d 451 (2000).

Jefferson also argues that it was improper for Dr. Vergara to speculate as to how a sexual assault might occur without physical trauma. Specifically, she stated: "[I]f I was going to approach a child with my intentions, I can't hurt that child. Because if I make that child cry, I will never have a chance or opportunity to approach that child again. So, the initial encounter with a child and their perpetrator could be hugging, kissing, rubbing." Jefferson objected to this testimony as improper speculation, and the objection was overruled. We conclude that this testimony was outside the scope of NRS 50.345. It went beyond a discussion of how C.J.'s normal findings were consistent with those of

(EXHIBIT #24)

other sexually abused children and became speculation on the behavior of perpetrators in general. However, we conclude that given the other evidence in the case, this was harmless error that did not "substantially affect[] the jury's verdict." *Valdez*, 124 Nev. at 1189, 196 P.3d at 476.

The district court did not abuse its discretion in admitting the testimony of C.J.'s mother and brother as to C.J.'s statement that her father abused her

Jefferson also argues that the district court abused its discretion when it denied his motion in limine to preclude hearsay testimony from his wife regarding C.J.'s statement to her that her father was sexually abusing her. Pursuant to NRS 51.385, hearsay evidence regarding the statement of a child describing sexual conduct is admissible if "[t]he court finds . . . that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness" and "[t]he child testifies at the proceeding." NRS 51.385(1)(a)-(b). In determining the trustworthiness of the statement, the court shall consider, without limitation, whether: "(a) The statement was spontaneous; (b) The child was subjected to repetitive questioning; (c) The child had a motive to fabricate; (d) The child used terminology unexpected of a child of similar age; and (e) The child was in a stable mental state." NRS 51.385(2)(a)-(e).

In this case, C.J. was not subject to repetitive questioning regarding sexual abuse, but rather made the statement to her mother after her mother told the children that she might be leaving their father, and that they should not have any secrets between them. Thus, because C.J. was the one to raise the issue of sexual abuse and it was spontaneous, we conclude that the district court did not err in admitting the statement because there were "sufficient circumstantial guarantees of trustworthiness." NRS 51.385(1)(a).

(EXHIBIT #25)

A Yes.
Q So, are there places on your body that no one is supposed to touch?
A Yes.
Q Do you have names for those places on your body?
A Yes.
Q What are the names that you have?
A Vagina, butt, and breast.
Q Vagina, butt, and breast. Are there other names that you sometimes use for those parts of your body, or are those the names you always use?
A The names I always use.
Q When you were younger, were there different names that you used; do you remember?
A Yes.
Q What was the name you used when you were younger?
A Tee-tee.
Q Tee-tee? What does tee-tee mean?
A Penis.
Q Okay. Does it mean anything else?
A No.
Q Okay. So, has anyone ever touched you in those private places then, in your vagina, or in your butt, or in your breasts?
A Yes.

(EXHIBIT#26)

(EXHIBIT #27)

Q Okay. Do you remember off the top of your head how old Caitlin was when you saw her?

A Five-and-a-half.

Q And what generally was the complaint regarding Caitlin?

A Alleged sexual abuse. SCAN, S.

Q So, what was the first thing that you did then as part of the physical examination on Caitlin?

A So, the patient was placed into the -- well, after the history -- after the interviewing by the -- both Metro and the detectives, they guide me as far as the requirements of what I need to do.

So, for example, if the injury was just hours ago, they probably want me to do a rape kit, which, in a situation like this, the initial trauma was more than that. So -- and the rape kit was not indicated or requested by the detectives. So, I went into the room and did the head-to-toe examination. And then I proceeded with the genitalia, and it was documented with either -- 2010; either video or digital photos.

Q Okay. So that -- I want to just touch upon then, you said that, depending on the time frame -- we get then back to the time frame, and within that 72 hours that you didn't do a sex assault kit. What does that mean?

A Based on the interviews, again, interview by the detective, basically, the presentation was delayed; meaning

(EXHIBIT #27)

the injury occurred with a prolonged period of time before they presented.

Q So, the disclosure came a number of days after -- or weeks after the last contact; is that what you're saying?

A Correct, where many times, the exam would be normal. Again, like I said, like any kind of redness to your lips after -- heck, after the end of the day, that redness is gone. So, if you get examined when all the redness is gone, well, it's, quote, unquote, "a normal examination." All you have is a history of a child saying, this and this happened. But the physical examination, if I examine that child days later, is -- everything has healed up, and redness is gone, and --

Q Okay.

A -- basically a normal examination.

Q And I want to go through that a little bit in -- at the end of me speaking with you. But on just that particular day with Caitlin, you didn't do a full sexual assault kit because of the delayed disclosure; is that correct?

A Delayed disclosure and delayed -- and subsequent delayed presentation to the emergency room.

Q Okay.

A Yes.

Q So, you didn't do a full sexual assault kit; you just went on to use certain equipment and do a visual examination of her genitalia?

(EXHIBIT #28)

n	(Normal)	Cool	Hot	Diaphoretic	Cyanotic	Pale	Jaundice
id	(Normal)					
ils	PERL	Pinpoint	Dilated	Fixed	Unequal	Jaundice
k	(Normal)	JVD	Trach Deviation	R	L	C Spine
est	(Normal)	Open Wound	Contusion	Paradoxical	Movement	
g Sounds	(Clear)	Diminished	Wheezing	Rhonchi	Rales	R L
lomen	(Normal)	Pulsatile Mass	Distended	Rigid	Tender	R L/U L
remity	Circulation	Sensation & Motor Function	(Intact)	Absent	RUE	LUE	RLE	LLE
pper Ext	Rt			Lt			
ower Ext	Rt			Lt			
k	Normal	(Not Visualized)	C Collar	Backboard			

diac Rhythm / 12 Lead

ical Impression: SA

rse PTA:

ative: Per Mom, Pt 5 y/o F told her today that her father has been touching her "private part" and making Pt put fathers penis in her mouth. Mom states I told her the last time this happened was when he was at work on Saturday 9/11/2010. Mom states told her that it has been happening for a while when she is gone to work. Mom states Pt told her that father said not to tell Mom and that it was "our secret". Pt denies any pain at this time.

Initial BGL	BY			Lock / Line / IO
IV	Location	Size	Attempts	By
1				

Last BGL	BY			Lock / Line / IO
IV	Location	Size	Attempts	By
2				

Intubation: Success Y N | Medic: PTA | Tube Size:
Attempts _____ | Location at Teeth:

Placement Verified by:	Movement	Tube Confirmed
Visualization		Y N
Auscultation		Y N
ETCO2		Y N

Time	Medication/ Intervention	Dose and Route	Response

TRANSFERED TO: ☒ HOSP. STAFF ☐ LOBBY ☐ OTHER _____ | REPORT GIVEN TO: ☐ RN ☐ MD ☐ OTHER _____ | ☐ CQI REVIEW

PATIENT BELONGINGS TO: Pt

ATTENDANT NAME (PRINT)	ATTENDANT SIGNATURE	ATTEND #	DRIVER #	OTHER
TEAGUE		2073	3004	

M 500 8/09 WHITE - ADMINISTRATION/BILLING YELLOW - CQI PINK - HOSPITAL

STATE BAR OF NEVADA

(EXHIBIT #29)

600 East Charleston Blvd.
Las Vegas, NV 89104-1563
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
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fax 775.329.0522

www.nvbar.org

November 3, 2011

Brandon Jefferson, #2508991
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

RE: Grievance File #SC11-1536 / Bryan Cox, Esq.

Dear Mr. Jefferson:

The Office of Bar Counsel is in receipt of your complaint concerning attorney Bryan Cox, a copy of which has been forwarded to him. He has been directed to respond to this office in writing.

The time necessary to conduct the investigation and review process cannot be estimated, as it is dependent upon the complexity and volume of the complaints received at any given time.

You should recognize that this office cannot and does not give legal advice, does not have jurisdiction over malpractice claims, and cannot alter or affect in any way the outcome of private legal matters in court. Our function is to determine whether an attorney has violated the Rules of Professional Conduct, and if so, to take measures sufficient to avoid a recurrence.

Sincerely,

Phillip Pattee
Assistant Bar Counsel

PJP/rc

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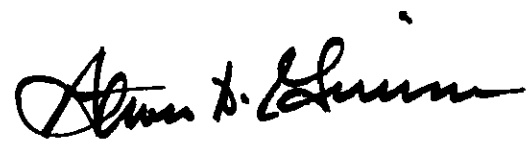

CLERK OF THE COURT

SUPP
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BRANDON JEFFERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Respondent, v. BRANDON JEFFERSON, Petitioner.	Case Number: C-10-268351-1 Dept. Number: IV

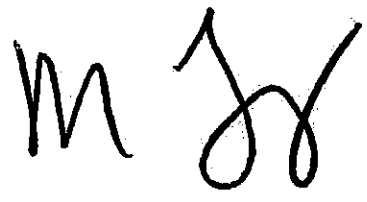
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

COMES NOW the Petitioner, BRANDON JEFFERSON, by and through his court-appointed attorney of record, MATTHEW LAY, ESQ., and hereby brings this Supplemental Petition for Writ of Habeas Corpus (Post-Conviction).

This Supplement is made and based upon all the papers and pleadings on file herein, and any oral argument at the time set for hearing this Supplement.

DATED this 22nd day of December, 2015.

NGUYEN & LAY



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STATEMENT OF PROCEDURAL HISTORY

The State of Nevada filed a Complaint on September 16, 2010, alleging five counts of sex assault on a minor under fourteen, and two counts of lewdness with a minor under fourteen. On October 15, 2010, the State filed an Amended Complaint adding three counts of lewdness and one count of sex assault. Pursuant to negotiations, Mr. Jefferson waived his right to a preliminary hearing, and, on October 15, 2010, the justice court bound him over to the district court. On October 26, 2010, the State filed an Information alleging two counts of lewdness. When the case did not resolve, the State filed an Amended Information on November 05, 2010, alleging six counts of sex assault on a minor under fourteen and five counts of lewdness with a minor under fourteen. Brandon was arraigned and pled not guilty. On November 16, 2011, the State filed a Second Amended Information. Jurors convicted Mr. Jefferson on Counts I, IX, and X, sex assault on a minor under fourteen, and Counts II and IV, lewdness with a minor under fourteen. The Court granted the defense motion to dismiss Count XI. Jurors acquitted Mr. Jefferson of all other counts. The Court dismissed Count II. On October 30, 2012, the State filed the Judgment of Conviction. The Court sentenced Mr. Jefferson to thirty-five years to life on Count I; ten years to life on Count IV, concurrent; thirty-five years to life on Count IX, consecutive to Counts I and IV; and thirty-five years to life on Count X, concurrent with Count IX, plus fees, restitution and lifetime supervision. Mr. Jefferson timely filed a Notice of Appeal on November 14, 2012.

On July 29, 2014, the Nevada Supreme Court entered an Order of Affirmance. On September 09, 2014, the Court issued Remittitur. On October 02, 2014, Mr. Jefferson filed a proper person, post-conviction petition for writ of habeas corpus. The undersigned was appointed to represent Mr. Jefferson on October 28, 2014.

STATEMENT OF FACTUAL HISTORY

In 2010, Brandon and Cindy Jefferson had been together for ten years and were raising their five-year-old daughter, C., and seven-year-old son, Brandon Jr., in Las Vegas, Nevada. In September of 2010, Brandon and Cindy were not getting along. Cindy was angry that Brandon had lost his job and felt that he wasn't trying hard enough to find a new position. Cindy worked at a retail store, and Brandon watched the children while she worked.

On September 14, 2010, Brandon left the apartment. Cindy searched for him. When she could not locate Brandon, Cindy picked the children up from school and made them dinner. Cindy told the children that Brandon was being mean, that she was going to leave him, and that it would just be the three of them. Cindy told the children they could have no secrets from her. Cindy told C. and Brandon Jr. that the three of them had to be a team, and Cindy made them hook their pinky fingers with hers in a solemn promise not to keep secrets. About a half-hour later, Cindy claimed that C. said she had a secret that Brandon had told her to keep from Cindy. Cindy asked about the secret, and claims that C. said, "Daddy makes me suck his tee-tee." Cindy screamed, "What?" and C. began to cry. Cindy asked C. repeatedly, "are you sure?" When Cindy asked what else had happened, she claimed that C. said Brandon puts his penis "down there." Cindy called 9-1-1. Cindy admitted that, on the day she spoke to the children, she had already made up her mind that she would keep custody during the pending separation.

An examination revealed no signs of trauma or other physical findings. When Brand returned to find his family missing from the apartment, he called the police to file a missing persons report. Detective found him wandering the neighborhood and immediately arrested him. After repeatedly denying these allegations in an interview with police, Brandon ultimately admitted to three acts of touching only after officers began using interrogative techniques and

triggers to elicit a confession, including promises of leniency and references to Brandon's ability to see his children.

At trial, C. ultimately testified that when she was five-years-old, Brandon penetrated her mouth, vaginal, and anal areas with his penis. C. claimed she was sitting on Brandon's legs when some of the penetrations occurred. C. claimed that mouth, vaginal, and anal penetration occurred a second and third time in the master bedroom, and a fourth time in her bedroom. Brandon Jr. Never witnessed any assault on his sister, although C. claimed one of the assaults occurred when he was asleep in the bunk bed over C.'s bed. After an eight-day trial, jurors convicted Brandon of five counts and acquitted him of five counts.

ARGUMENT

The Sixth Amendment to the United States Constitution guarantees that, "in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI. The right to confrontation is incorporated in the Fourteenth Amendment and, therefore, available in state proceedings. Olden v. Kentucky, 488 U.S. 227, 232, 109 S. Ct. 480, 102 L. Ed. 2d 513 (1988) (per curiam) (citing Pointer v. Texas, 380 U.S. 400 (1965)); see also Cox v. State, 102 Nev. 253, 256, 721 P.2d 358, 360 (1986)). "'[T]he right to counsel is the right to the effective assistance of counsel.'" Strickland v. Washington, 466 U.S. 668, 686 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970)). The Sixth Amendment right to counsel attaches when "judicial proceedings have been initiated" against a defendant. Coleman v. State, 109 Nev. 1, 4, 846 P.2d 276, 278 (1993) (citing Brewer v. Williams, 430 U.S. 387, 398 (1977)). Attorneys appointed to represent defendants should be competent. Ex parte Kramer, 61 Nev. 174, 207, 122 P.2d 862, 876 (1942). The ineffective assistance of counsel denies a defendant of due process. Id.

In Nevada, the appropriate vehicle for reviewing whether counsel was effective is a post-conviction relief proceeding. McKague v. Warden, 112 Nev. 159, 164 n.4, 912 P.2d 255, 258 n.4 (1996). In order to assert a claim for ineffective assistance of counsel, a defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-pronged test enunciated in Strickland. 466 U.S. at 687; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under Strickland, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 697. "[A] reasonable probability is a probability sufficient to undermine confidence in the outcome." Wiggins v. Smith, 539 U.S. 510, 533 (2003); see Ennis v. State, 122 Nev. 694, 137 P.3d 1095, 1102 n.44 (2006). "A court may evaluate the questions of deficient performance and prejudice in either order and need not consider both issues if the defendant fails to make a sufficient showing on one." Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004) (citing Strickland, 466 U.S. at 689).

"In order to avoid the distorting effects of hindsight," a reviewing court begins the evaluation of an ineffective assistance of counsel claim "with a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Ennis, 122 Nev. 694, 137 P.3d at 1102 (quoting Strickland, 466 U.S. at 689). A petitioner must prove the "factual allegations underlying his ineffective assistance of counsel claim by a preponderance of the evidence." Id. at 1012, 103 P.3d at 33. The benchmark for assessing claims of ineffective assistance of counsel is "'whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.'" Paine v. State, 110 Nev. 609, 620, 877 P.2d 1025, 1031 (1994) (quoting Strickland, 466 U.S. at 686).

Defense counsel has a duty to "make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Love, 109 Nev. At 1138, 865 P.2d at 323 (quoting Strickland, 466 U.S. at 691).

I. MR. JEFFERSON'S TRIAL AND APPELLATE COUNSEL ACTIVELY REPRESENTED CONFLICTING INTERESTS THAT ADVERSELY AFFECTED COUNSEL'S PERFORMANCE.

Mr. Jefferson's trial and appellate counsel actively represented conflicting interests that adversely affected counsel's performance, because Mr. Jefferson filed a bar complaint against his trial attorney prior to trial. Consequently, Mr. Jefferson trial and appellate counsel represented Mr. Jefferson despite the existence of a concurrent conflict of interest.

The Sixth Amendment guarantees a criminal defendant the right to conflict-free representation. Coleman v. State, 109 Nev. 1, 3, 846 P.2d 276, 277 (1993) (citing Clark v. State, 108 Nev. 324, 831 P.2d 1374 (1992)). When counsel is burdened by an actual conflict of interest, "counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties." Strickland v. Washington, 466 U.S. 668, 692 (1984). The Court of Appeals for the Ninth Circuit has noted "an attorney is 'not inclined to seek out and assert his own prior ineffectiveness.'" United States v. Del Muro, 87 F.3d 1078, 1080 (9th Cir. 1996) (quoting Abbamonte v. United States, 160 F.3d 922, 925 (2nd Cir. 1998)).

Similarly, Nevada Rule of Professional Conduct 1.7(a) prohibits lawyers from representing a client if the representation involves a concurrent conflict of interest. Nev. R. Prof. Conduct 1.7(a). Under Rule 1.7(a)(2), a "concurrent conflict of interest" exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to … a personal interest of the lawyer." Nev. R. Prof. Conduct 1.7(a)(2). Pursuant to Rule 1.7(b)(4), the attorney must also secure the informed consent of each affected client in writing before engaging in the dual representation. Nev. R. Prof. Conduct 1.7(b)(4).

Additionally, Rule 1.10(a) provides that, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, "unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm."

Where a defendant claims error based on counsel's conflict of interest, he must show that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 404 (2001) (quoting Strickland v. Washington, 466 U.S. 668, 692 (1984)). "'Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties.'" Clark v. State, 108 Nev. 326, 831 P.2d 1376 (1992) (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)). A defendant who establishes an actual conflict "'need only show that some effect on counsel's handling of particular aspects of the trial was likely.'" Del Muro, 87 F.3d at 1078 (quoting United States v. Miskinis, 966 F.2d 1263, 1268 (9th Cir. 1992).

Where counsel faces a conflict of interest, a defendant may continue to be represented by that attorney if he makes a voluntary, knowing, and understanding waiver of conflict-free representation. Kabase v. Eighth Judicial Dist. Court, 96 Nev. 471, 473, 611 P.2d 194, 195 (1980). The United States Supreme Court has stated that a valid waiver of a fundamental constitutional right ordinarily requires "'an intentional relinquishment or abandonment of a known right or privilege.'" Gallego v. State, 117 Nev. 348, 368, 23 P.3d 227, 241 (2001) overruled on other grounds by Nunnery v. State, 127 Nev. Adv. Rep. 69, *45-*46 n.12, 263 P.3d 235 (2011) (quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)). Thus, when a criminal defendant offers to waive

objections to a conflict, the district judge "'should fully explain … the nature of the conflict, the disabilities which it may place on counsel in his conduct of the defense, and the nature of the potential claims which appellants will be waiving.'" Kabase, 96 Nev. at 473, 611 P.2d at 195-96 (citing United States v. Armedo-Sarmiento, 524 F.2d 591, 593 (2d Cir. 1975), United States v. Garcia, 517 F.2d 272, 278 (5th Cir. 1975), and Zuck v. Alabama, 588 F.2d 436, 440 (5th Cir. 1979)). However, "[c]ourts should indulge every reasonable presumption against waiver and should not presume acquiescence in the loss of fundamental rights." Gallego, 117 Nev. at 368, 23 P.3d at 241 (citing Barker v. Wingo, 407 U.S. 514, 525-26 (1972)).

When a defendant knowingly, intelligently, and voluntarily waives her right to conflict-free representation, the waiver is binding on the defendant throughout trial, on appeal, and in habeas proceedings. Ryan v. Eighth Judicial Dist. Court, 123 Nev. 419, 430, 168 P.3d 703, 711 (2007) (citing Gomez v. Ahitow, 29 F.3d 1128, 1135-36 (7th Cir. 1994) (holding that where the defendant knowingly and intelligently waives the right to conflict-free counsel, the waiver precludes claims of ineffective assistance of counsel based on the conflict)). In Ryan, the Nevada Supreme Court considered whether the district court abused its discretion when it refused to substitute in counsel as defendant's counsel of choice. Id. at 421, 168 P.3d at 705. The defendant and her husband were accused of murdering their roommate, stuffing her body in the trunk of their vehicle, and setting the vehicle on fire to cover up the alleged crimes. Id. The defendant sought to have an attorney represent her at trial whose partner already represented her codefendant. Id.

The law firm drafted a conflict-waiver letter, which both defendants signed. Ryan, 123 Nev. at 423, 168 P.3d at 706. The conflict-waiver letter stated, in pertinent part, the following:

> (1) neither defendant has implicated the other in the crimes charged; (2) after a thorough review of discovery and lengthy discussions with multiple counsel, neither defendant intends to plead guilty or cooperate with the State; (3) a joint defense agreement has been prepared to be executed by both defendants and both attorneys; (4) either defendant's decision to cooperate with the State might change the firm's ability to continue representation; (5) in the event of a serious conflict or

> disagreement, the firm would be required to withdraw and represent neither defendant; and (6) the firm's withdrawal would be 'inconvenient and potentially adverse to each [defendant],' but the defendants understood that the 'present benefits of dual representation outweigh this contingent problem.'

Id.

The district court held several hearings on the defendant's motion for substitution. Ryan, 123 Nev. at 423, 168 P.3d at 706. Additionally, the district court appointed advisory counsel to speak with the defendant about the ramifications of dual representation. Id. Moreover, the district court canvassed both defendants regarding the ramifications of dual representation. Id. at 424, 168 P.3d at 706. Ultimately, however, the district court ruled that there was "an actual or serious potential conflict inherent in the dual representation, and issued a written order denying [the defendant's] request for substitution of counsel." Id. at 425, 168 P.3d at 707. Consequently, the defendant filed a petition for a writ of mandamus challenging the district court's order denying the defendant's motion to substitute counsel. Id. at 421, 168 P.3d at 705.

The Nevada Supreme Court reasoned that a district court "has broad discretion to balance a non-indigent criminal defendant's right to choose her own counsel against the administration of justice." Ryan, 123 Nev. at 428, 168 P.3d at 709. Therefore, the Supreme Court concluded that a district court must honor a criminal defendant's voluntary, knowing, and intelligent waiver of conflict-free representation so long as the conflicted representation will not interfere with the administration of justice. Id. at 422-23, 168 P.3d at 705. Additionally, the Nevada Supreme Court concluded that before engaging in dual representation, the attorney must advise the criminal defendant of his right to consult with independent counsel to review the potential conflicts of interest posed by the representation. Id. at 422, 168 P.3d at 705. And, if the defendant chooses not to seek independent counsel, then the defendant must expressly waive his right to do so before the defendant's waiver of conflict-free representation can be valid. Id. Ultimately, the Court granted the defendant's petition, and issued a writ directing the district court to canvass both defendants to

determine whether they knowingly, intelligently, and voluntarily waived their right to conflict-free representation. Id. at 421, 168 P.3d at 705.

In Middleton v. Warden, 120 Nev. 664, 664, 98 P.3d 694, 695 (2004), the Nevada Supreme Court considered whether a district court erred in denying a defendant's post-conviction petition for a writ of habeas corpus. The defendant was convicted of two counts of first-degree murder, sentenced to death. Id. at 665, 98 P.3d at 695. The Court affirmed the defendant's murder convictions and death sentences on direct appeal. Id. The defendant filed a post-conviction habeas corpus petition in the district court. Id. The district court appointed public defenders to represent the defendant. Id. Later, the district court removed the public defenders as the defendant's counsel due to a perceived conflict of interest. Id. The district court subsequently appointed private attorneys to represent the defendant. Id. The district court denied the defendant's post-conviction petition for a writ of habeas corpus. Id. The defendant sought review of the district court's order denying his petition. Id. at 664, 98 P.3d at 695. One of the private attorneys appointed by the district court represented the defendant on appeal to the Court. Id. at 665, 98 P.3d at 695.

The Nevada Supreme Court found that the defendant's appointed private attorney had "repeatedly violated [the Nevada Supreme Court's] orders and procedural deadlines," and "the work product he ultimately submitted was wholly substandard and unacceptable." Middleton, 120 Nev. at 665, 98 P.3d at 695. Therefore, the Court removed the appointed private attorney as counsel, vacated the district court order denying the defendant's habeas corpus petition, and remanded with an instruction to the district court to appoint new post-conviction counsel to represent the defendant. Id. at 669, 98 P.3d at 698. More importantly, however, in remanding the case to the district court, the Nevada Supreme Court noted, "[b]ecause the [public defender] represented [the defendant] in his direct appeal and because post-conviction claims respecting that

representation may again be presented below, the [public defender] should not be appointed as [the defendant's] new post-conviction counsel." Id. at 665 n.3, 98 P.3d at 695 n.3.

In United States v. Del Muro, 87 F.3d 1078, 1080 (9th Cir. 1996), the United States Court of Appeals for the Ninth Circuit considered whether a federal district court erroneously denied a defendant's request for the appointment of substitute counsel. The defendant charged under federal law with falsely claiming to be a United States citizen. Id. A jury found the defendant guilty, and he was sentenced to a term of imprisonment. Id. The defendant filed a motion for new trial, claiming trial counsel had rendered ineffective assistance by failing to interview or subpoena witnesses suggested by the defendant. Id. The defendant requested that the federal district court appoint substitute counsel to present the motion on his behalf. Id. The federal district court denied the defendant's request. Id. The federal district court held an evidentiary hearing on the motion at which it reviewed declarations and heard live testimony of the potential witnesses. Id. The federal district court required trial counsel to examine the potential trial witness who testified, and argue that counsel's own failure to investigate and call this witness and two others prejudiced the defendant's case. Id. The federal district court denied the motion on the ground that the witness' testimony would not have affected the outcome of the trial. Id. On appeal, the defendant argued that the federal district court created an inherent conflict of interest by forcing trial counsel to prove his own ineffectiveness, and thereby deprived the defendant of his Sixth Amendment right to effective assistance of counsel. Id.

The Ninth Circuit found that "[t]here was an actual, irreconcilable conflict between [the defendant] and his trial counsel at the hearing on the motion for new trial." Del Muro, 87 F.3d at 1080. Specifically, the Court found that, "[w]hen [the defendant's] allegedly incompetent trial attorney was compelled to produce new evidence and examine witnesses to prove his services to the defendant were ineffective, he was burdened with a strong disincentive to engage in vigorous

argument and examination, or to communicate candidly with his client." Id. Thus, this conflict was "likely to affect counsel's performance." Id. Therefore, the Ninth Circuit vacated the sentence and remanded the case to the federal district court to conduct a hearing on the defendant's motion for a new trial with the defendant represented by appointed substitute counsel. Id. at 1081.

Here, Mr. Jefferson's trial and appellate counsel were ineffective, because counsel actively represented a concurrent conflict of interest that affected their performance. Specifically, attorney Bryan Cox of the Clark County Public Defender's office represented Mr. Jefferson throughout the proceedings in the district court. Similarly, attorney Audrey Conway, also of the Clark County Public Defender's office, represented Mr. Jefferson during the appellate stages of the instant case. As this Court is well aware, the appropriate vehicle for reviewing claims of ineffective assistance of counsel is a timely post-conviction petition for writ of habeas corpus. This is the only means of assigning error to the ineffective assistance of both trial and appellate counsel. However, in this case, Mr. Cox actively represented a conflicting interest, because he represented Mr. Jefferson despite the fact that Mr. Jefferson filed a complaint with the Nevada State Bar on October 18, 2011, during the course of that representation. See Exhibit A, "Letter from State Bar of Nevada to Brandon Jefferson," March 11, 2015, 2. The conflict should be imputed to Ms. Conway, because she and Mr. Cox both work for the public defender.

Additionally, in the instant matter, Mr. Jefferson never made a voluntary, knowing, or understanding waiver of his right to conflict-free representation. Unlike Ryan, in which this Court acknowledged a defendant's ability to waive the right to conflict-free counsel, Mr. Cox never drafted a conflict waiver letter, nor did Mr. Jefferson ever sign such a waiver. Furthermore, unlike Ryan, the district court never held a hearing regarding a waiver. Additionally, unlike Ryan, the district court never appointed advisory counsel to speak with Mr. Jefferson about the ramifications of his counsel's active conflict of interest. Moreover, unlike Ryan, the district court never

canvassed Mr. Jefferson regarding the ramifications of a waiver of his right to conflict-free representation.

Here, the district court failed to explain the nature of the conflict to the defendant. Moreover, the district court failed to explain the disabilities that the conflict placed on counsel in his conduct of the defense. Furthermore, the district court failed to explain the nature of the potential claims that Mr. Jefferson would be waiving. Instead, Mr. Jefferson asserts that he never discussed the disqualification issue with Mr. Cox, or that the representation was barred by existing case law.

"[I]n certain limited instances, a defendant is relieved of the responsibility of establishing the prejudicial effect of his counsel's actions." Clark v. State, 108 Nev. 326, 326, 831 P.2d 1376, 1376 (1992). A presumption of prejudice arises when an actual conflict of interest adversely affects counsel's performance. Nika v. State, 120 Nev. 600, 97 P.3d 1140 (2004) (citing Clark, 108 Nev. at 326, 831 P.2d at 1376); see also Strickland v. Washington, 466 U.S. 668, 692 (1984) ("Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, … it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest."); Coleman, 109 Nev. at 3-4, 846 P.2d at 277-278 (citing Holloway v. Arkansas, 435 U.S. 475 (1978) and Clark, 108 Nev. at 326, 831 P.2d at 1376 (1992)). "'To hold otherwise would engage a reviewing court in unreliable and misguided speculation as to the amount of prejudice suffered by a particular defendant. An accused's constitutional right to effective representation of counsel is too precious to allow such imprecise calculations.'" Coleman, 109 Nev. at 3, 846 P.2d at 277 (quoting United States v. Alvarez, 580 F.2d 1251, 1259 (5th Cir. 1978)).

Prejudice may be presumed where counsel's actions are improper per se. Jones v. State, 110 Nev. 730, 738, 877 P.2d 1052, 1057 (1994).

In the instant matter, Mr. Jefferson need not establish the prejudicial effect of counsels' representation, because, under the Nevada Supreme Court's holding in Jones, Mr. Cox's active conflict of interest is improper per se. Specifically, in the instant matter, Mr. Cox represented Mr. Jefferson after Mr. Jefferson filed a bar complaint. The public defender's office continued to represent at the appellate stages through Ms. Conway. Post-conviction is the vehicle by which a court measures the question of whether counsel rendered ineffective assistance. Therefore, counsel's active conflict of interest amounts to prejudice per se, and Mr. Jefferson should be relieved of his burden of demonstrating any prejudice resulting from Mr. Jefferson's conflict of interest.

In the instant matter, Mr. Jefferson was prejudiced by counsels' ineffective assistance, because he filed a bar complaint against Mr. Cox prior to trial in this case. Therefore, the existence of the bar complaint is prima facie evidence of counsel's ineffective assistance.

II. MR. JEFFERSON IS ENTITLED TO AN EVIDENTIARY HEARING, BECAUSE HIS CLAIMS ARE SUPPORTED BY FACTUAL ALLEGATIONS THAT, IF TRUE, WOULD ENTITLE HIM TO RELIEF, AND HIS CLAIMS ARE NOT BELIED BY THE RECORD.

A petitioner is entitled to an evidentiary hearing if he raises claims supported by sufficient factual allegations that, if true, would entitle him to relief and that are not belied by the record. Toston v. State, 127 Nev. Adv. Rep. 87, 267 P.3d 795, 799 (2011) (citing Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984)).

Here, Mr. Jefferson is entitled to an evidentiary hearing because, as demonstrated above, his claims are supported by sufficient factual allegations that, if true, entitle him to relief, and his claims are not belied by the record. Therefore, this court should order an evidentiary hearing pursuant to Toston.

III. THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS VIOLATED MR. JEFFERSON'S RIGHT TO A FAIR TRIAL.

"'The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually.'"[1] Maestas v. State, 128 Nev. Adv. Rep. 12, 275 P.3d 74, 90 (2012) (quoting Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002)). When evaluating a claim of cumulative error, an appellate court considers the following factors: "'(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.'" Valdez v. State, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008) (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000)).

Here, as is evident from his pro se post-conviction petition and the instant Supplemental Petition, Mr. Jefferson was further prejudiced by the cumulative impact of trial and appellate counsel's ineffective assistance.

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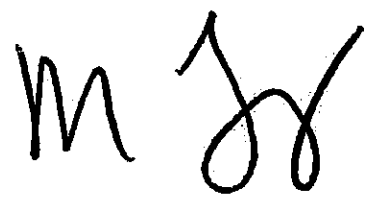
[1] According to the Nevada Supreme Court, this is the cumulative error standard that the Nevada Supreme Court applies on direct appeal from a judgment of conviction. McConnell v. State, 125 Nev. Adv. Rep. 24, 212 P.3d 307, 318 n.17 (2009). However, in McConnell, the Nevada Supreme Court acknowledged that "some courts have taken an approach similar to cumulative error in addressing ineffective-assistance claims, holding that multiple deficiencies in counsel's performance may be cumulated for purposes of the prejudice prong of the Strickland test when the individual deficiencies otherwise would not meet the prejudice prong." Id. Ultimately, however, the McConnell Court noted that, "[a]ssuming that multiple claims of constitutionally deficient counsel may be cumulated to demonstrate prejudice," the petitioner still was not entitled to relief. Id.

CONCLUSION

After consideration of Mr. Jefferson's Petition for Writ of Habeas Corpus and this Supplemental Petition for Writ of Habeas Corpus, Mr. Jefferson respectfully requests that this Court grant his post-conviction petition. Specifically, this Court should vacate the previous judgment of conviction and set this case for a new trial free of the extremely prejudicial constitutional violations that occurred in Mr. Jefferson's trial as a result of counsel's ineffective assistance. Alternatively, this court should conduct an evidentiary hearing to allow meaningful examination of trial counsel regarding their ineffective representation of Mr. Jefferson.

DATED this 22nd day of December, 2015.

NGUYEN & LAY



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ATTORNEY FOR PETITIONER
BRANDON JEFFERSON

CERTIFICATE OF ELECTRONIC FILING

I certify that service of the foregoing SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) was made this 22nd day of December, 2015, by electronic filing to:

CLARK COUNTY DISTRICT ATTORNEY
Email address: pdmotions@clarkccountyda.com

By_____
MATTHEW LAY, ESQ.
Nevada Bar Number 12249
Nguyen & Lay
732 South Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200
Facsimile: (702) 675-8174
Email: dml@lasvegasdefender.com
ATTORNEY FOR PETITIONER
BRANDON JEFFERSON

CERTIFICATE OF MAILING

The undersigned hereby declares that on December 22, 2015, a true and correct copy of the foregoing SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) was sent via United States First Class mail to the following:

Brandon Jefferson, 1094051
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

NGUYEN & LAY

By_____

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BRANDON JEFFERSON

EXHIBIT A

STATE BAR OF NEVADA

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March 11, 2015

Brandon Jefferson, #1094051
Ely State Prison
PO Box 1989
Ely, NV 89301

RE: Grievance File #SC11-1536 / Bryan Cox, Esq.

Dear Mr. Jefferson:

Per your request, here is a copy of your original grievance.

Sincerely,

Phillip J. Pattee
Assistant Bar Counsel

PJP/rc

Enclosure

TO WHOMEVER CAN HELP:

HELLO, GOOD DAY/EVENING, MY NAME IS BRANDON M. JEFFERSON A BORN AND RAISED LAS VEGAN. I AM CURRENTLY BEING HELD AT CLARK COUNTY DETENTION CENTER ON SOME VERY SERIOUS ALLEGATIONS. I AM BEING REPRESENTED BY THE CLARK COUNTY PUBLIC DEFENDER'S OFFICE, BUT I AM HAVING A BIT OF AN ISSUE WITH MY APPOINTED COUNSEL MR. BRYAN COX. AS ALWAYS WHEN I HAVE A "CONTACT" VISIT WITH HIM HE EITHER "LIGHTLY" VERBALLY ABUSES ME OR IGNORES MY OUTLOOK. BUT TODAY OCTOBER 11 2011 VISIT HE TOLD ME "PEOPLE LIKE YOU BELONG IN HELL NOT PRISON." THIS HURT, I DON'T KNOW IF HE MEANT THAT BECAUSE OF THE NATURE OF MY CRIME OR SIMPLY BECAUSE OF MY AFRICAN AMERICAN HERITAGE. I'VE SENT A LETTER TO THE NEVADA BAR, AS WELL FILED MY OWN HANDWRITTEN MOTION FOR HIS DISMISSAL, HOWEVER I STILL FEEL SINGLED OUT. PLEASE HELP ME IN ANYWAY POSSIBLE. GOD BLESS.

ACCUSED OF SEXUAL ASSAULT/LEWDNESS W/MINOR UNDER FOURTEEN.

RESTPECTFULLY,

BRANDON M. JEFFERSON

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pp
DA
AOR: Matthew LAY

Case No. C-10-268351-1 Dept No. IV

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Electronically Filed
06/29/2016 11:56:58 AM

CLERK OF THE COURT

BRANDON M. JEFFERSON
Appellant,

vs.

THE STATE OF NEVADA
Respondent.

NOTICE OF APPEAL

Notice is hereby given that BRANDON M. JEFFERSON, Apellant above named, hereby appeals to the NEVADA SUPREME COURT from the Order Denying petitioner's Writ of Habeas Corpus.

Entered in this action on the 16TH day of JUNE, 2016.

BRANDON M. JEFFERSON
NDOC # 1094051
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED
JUN 29 2016
CLERK OF THE COURT

4

CERTIFICATE OF SERVICE BY MAIL

I, BRANDON M. JEFFERSON, hereby certify pursuant to Rule 5(b) of the NRCP. that on this 26TH day of JUNE, 2016, I Served a true and Correct COPY of the above entitled NOTICE OF APPEAL Postage paid and adressed as follows:

EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

STEVEN B. WOLFSON, C.C.D.A.
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

Signature Brandon M. Jefferson

Print name BRANDON M. JEFFERSON #1094051
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO NRS 239B.030

I, BRANDON M. JEFFERSON, NDOC # 1094051, Certify that I am the undersigned individual and that the attached document entitled NOTICE OF APPEAL does not contain the Social Security Numbers of any persons, under the pains and penalties of perjury. DATED THIS 26TH day of JUNE, 2016.

SIGNATURE: Brandon M. Jefferson

INMATE PRINTED NAME: BRANDON M. JEFFERSON

INMATE NDOC # 1094051

INMATE ADRESS: ELY STATE PRISON
P.O. Box 1989
Ely, Nevada 89301

Brandon Jefferson #1094051

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301

LAS VEGAS NV 890

27 JUN 2016 PM 4 L

STEVEN D. GRIERSON, Clerk of the Court

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada 89155-1160

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ELY STATE PRISON

JUN 26 2016

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ORIGINAL

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Deputy District Attorney
Nevada Bar #005144
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-

BRANDON JEFFERSON,
#2508991

Defendant.

CASE NO: **10C268351**

DEPT NO: **IV**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: MAY 19, 2016
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable KERRY EARLEY, District Judge, on the 19th day of May, 2016; the Petitioner not being present, represented by his counsel MATTHEW D. LAY, ESQ.; the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD E. ZADROWSKI, Chief Deputy District Attorney; and the Court having considered the matter, including briefs, transcripts, documents on file herein, and without arguments of counsel; now therefore, the Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT

CONCLUSIONS OF LAW

On November 5, 2010, the State filed an Amended Information charging Brandon Jefferson as follows: Counts 1, 3, 5, 7, 9, and 10: Sexual Assault with a Minor Under the Age of 14 (Category A Felony – NRS 200.364; 200.366); Counts 2, 4, 6, 8, and 11: Lewdness with a Child Under the Age of 14 (Category A Felony – NRS 201.230). That same day, Jefferson pleaded "not guilty."

On March 25, 2011, Jefferson filed a "Motion to Suppress Unlawfully Obtained Statement" in which he argued that he did not knowingly and voluntarily waive his Miranda[1] rights and that his confession to police was coerced. The State opposed the Motion on April 6, 2011. On June 2, 2011, the Court held a Jackson v. Denno[2] hearing, during which the Court received several exhibits and testimony from Detective Matthew Demas. After entertaining argument from counsel, the Court verbally denied Jefferson's Motion. A written order followed thereafter on June 16, 2011.

Meanwhile, on April 13, 2011, Jefferson also filed a Motion in Limine to Preclude Inadmissible 51.385 Evidence, in which he argued that the child victim's statements to other people regarding sexual abuse were hearsay and that admission of the statements would violate the Confrontation Clause. The State opposed the Motion on April 27, 2011, reasoning that it was premature because the availability of the child victim, as well as other witnesses, was not yet confirmed. The Court held an evidentiary hearing on the matter, thereafter, it decided that statements the victim made to her mother were admissible, but statements made to Detective Demas were not, barring additional developments. A written order denying in part and granting in part Jefferson's Motion was then filed on January 17, 2012.

On October 19, 2011, Jefferson filed in a proper person a Motion to Dismiss Counsel in which he expressed dissatisfaction with counsel's performance, particularly counsel's alleged disregard of Jefferson's strategy suggestions. Jefferson advised the Court that his issues with counsel were: 1) counsel had not given Jefferson his full discovery; 2) counsel had

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).
[2] 378 U.S. 368, 84 S. Ct. 1774 (1964).

not made phone calls to Jefferson's family members as Jefferson asked; and 3) counsel failed to obtain Jefferson's work records. After a discussion, the Court verbally denied the Motion. A written order then followed on November 1, 2011.

On November 16, 2011, the State filed a Second Amended Information which included the same substantive charges and minor grammatical/factual corrections.

On July 16, 2012, the State filed a Motion in Limine to Preclude Improper Testimony from Defendant's Expert Witness. Primarily, the Motion argued that defense expert Dr. Chambers could not argue about Jefferson's psychiatric state during his interview with Dr. Chambers, as the State would not have a fair opportunity to rebut the "state of mind" evidence. Alternatively, the State requested a psychiatric evaluation of Defendant. Defense counsel then informed the Court, on July 26, 2012, that it did not intend to present such evidence. Accordingly, the Court denied the State's Motion as moot.

Jury selection began on July 30, 2012. On August 1, 2012, the jury was sworn and Jefferson's jury trial began. A week later, the jury retired to deliberate. Two hours later, the jury found Jefferson guilty of Counts 1, 2, 4, 9, and 10, and not guilty of Counts 3, 5, 6, 7, and 8.[3]

On October 23, 2012, Jefferson appeared with counsel for a sentencing hearing. At the outset, the parties discussed whether Counts 1 and 2 merged, and the State informed the Court that it was not opposed to dismissing Count 2. The Court then adjudicated Jefferson guilty pursuant to the jury's verdict and entertained argument from the State and defense counsel. The Court then sentenced Jefferson to a $25 Administrative Assessment Fee, $150 DNA Analysis Fee, and incarceration in the Nevada Department of Corrections as follows: Count 1 – Life with parole eligibility after 35 years; Count 4 – Life with parole eligibility after 10 years, to run concurrent with Count 1; Count 9 – Life with parole eligibility after 35 years, to run consecutive with Counts 1 and 4; and Count 10 – Life with parole eligibility after 35 years, to run concurrent with Counts 1, 4, and 9, with 769 days' credit for time served. The Court also ordered Jefferson to pay $7,427.20 in restitution, and held that if he were released from

[3] The State voluntarily dismissed Count 11 on August 7, 2012, and the relevant jury instructions and verdict form were amended accordingly.

prison, Jefferson would be required to register as a sex offender pursuant to NRS Chapter 179D, and would be subject to lifetime supervision pursuant to NRS 179.460.

The Court filed a Judgment of Conviction on October 30, 2012, and Jefferson filed a Notice of Appeal on November 14, 2012. In a lengthy unpublished order, the Nevada Supreme Court affirmed Jefferson's Convictions and Sentence, reasoning that none of his 11 contentions of error were meritorious. Jefferson v. State, No. 62120 (Order of Affirmance, July 29, 2014). In particular, the Nevada Supreme Court ruled that the Court did not err by denying Jefferson's Motion to Suppress Unlawfully Obtained Statement because Jefferson was properly read his Miranda rights, the discussion with detectives was appropriate and not coercive, and the detectives' allegedly "deceptive interrogation techniques," were neither coercive nor likely to produce a false confession. Id. at 3-4. The Supreme Court further rejected Jefferson's allegations of prosecutorial misconduct and held that the Court did not abuse its discretion by admitting evidence of jail phone calls between Jefferson and his wife, admitting testimony from the victim's mother and brother about the sexual abuse, or declining to give Jefferson's proposed jury instructions. Id. at 5-10; 13-14. Finally, the Supreme Court held that sufficient evidence supported the jury's verdict because "the issue of guilt was not close given the overwhelming evidence presented by the State." Id. at 11-12, 16. Thereafter, remittitur issued on August 26, 2014.

On October 2, 2014, Jefferson filed, in proper person, a timely Post-Conviction Petition for Writ of Habeas Corpus. Shortly thereafter, the State filed a Motion to Appoint Counsel, reasoning that that it was in everyone's best interest to appoint counsel to assist Jefferson in post-conviction matters. The Court granted the Motion and Attorney Matthew Lay confirmed as counsel on October 28, 2014. That same day, the Court set a briefing schedule.

On December 22, 2015, Jefferson filed, with the assistance of counsel, a Supplemental Petition for Writ of Habeas Corpus. On April 5, 2016, the State filed its Response to both the original Petition and the Supplemental Petition. On May 19, 2016, the Court denied Jefferson's Petition and Supplemental Petition.

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PETITION ARGUMENTS

I. JEFFERSON'S GROUNDS 1 AND 2 REGARDING HIS CONFESSION TO DETECTIVES ARE BARRED BY THE LAW-OF-THE-CASE DOCTRINE

"Under the law of the case doctrine, issues previously determined by [the Nevada Supreme Court] on appeal may not be reargued as a basis for habeas relief." Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001). See also Dictor v. Creative Mgmt. Servs., LLC, 126 Nev., Adv. Op. 4, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequence proceedings in that case."). Here, this Court finds that Jefferson's first and second arguments in his Pro-Per Petition regarding admission of his incriminating statements to the detectives were already raised and thoroughly briefed in his direct appeal. Compare Petition at 5-7 with Jefferson's Opening Appellate Brief ("AOB") at 6-15. The Nevada Supreme Court rejected his argument, reasoning that "the circumstances show Jefferson voluntarily waived Miranda," Jefferson v. State, No. 62120 at 4 n.1, and that "substantial evidence supported the district court's conclusion that Jefferson's confession was voluntary." Id. at 3.

Thus, because the Nevada Supreme Court already considered and rejected Jefferson's argument regarding Miranda, as well as his related argument regarding coercion, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing those issue in his Petition for a Writ of Habeas Corpus. As such, Grounds 1 and 2 are denied.

II. JEFFERSON'S ARGUMENTS REGARDING PROSECUTORIAL MISCONDUCT ARE WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 3, Jefferson contends that the State committed prosecutorial misconduct in four instances. This Court finds that his contention, namely, that the State "[i]mpermissably led CJ's testimony," Petition at 10, is barred by the law of the case because the Nevada Supreme Court already rejected his "contentions of prosecutorial misconduct." Jefferson v. State, No. 62120 at 6 n.2; AOB 21-22. Jefferson raised this exact issue in his opening brief and it was rejected by the Nevada Supreme Court.

In addition, this Court finds that all of the Jefferson's arguments regarding prosecutorial misconduct are waived and must be dismissed pursuant to NRS 34.810, which provides:

> The court *shall* dismiss a petition if the court determines that:
>
> . . .
>
> The petitioner's conviction was the result of a trial and the grounds for the petition could have been: (1) Presented to the trial court; (2) Raised in a direct appeal or a prior petition for writ of habeas corpus or post conviction relief; or (3) Raised in any other proceeding that the petitioner has taken to secure relief from his conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

(Emphasis added); see also Great Basin Water Network v. State Eng'r, 126 Nev., Adv. Op. 20, 234 P.3d 912, 916 (2010) ("'[S]hall' is a term of command; it is imperative or mandatory, not permissive or directory."); Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001) ("A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner."). Indeed, the Nevada Supreme Court has held that all "claims that are appropriate[4] for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Accordingly, this Court finds that Jefferson's arguments regarding prosecutorial misconduct should have been raised, if at all, on direct appeal, and his failure to do so precludes review because his arguments are considered waived. Id.; NRS 34.810(1)(b)(2). Further, this Court finds that because Jefferson fails to offer any good cause to excuse his failure to raise these particular arguments on direct appeal, Ground 3 is denied.

III. JEFFERSON'S ALLEGATIONS OF EVIDENTIARY ERROR ARE ALSO WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 4, Jefferson argues that the Court abused its discretion by "tainting the jury," admitting admissible hearsay, and permitting jurors to learn that Jefferson was incarcerated. Petition at 13-15.

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[4] Claims of ineffective assistance of counsel must be raised in the first instance in post-conviction proceedings. Pellegrini, 117 Nev. at 882, 34 P.3d at 534. Other non-frivolous, properly preserved contentions of error are appropriate for appeal.

Jefferson alleges that the jury venire was tainted after the Court made, in reference to the difficult nature of the charges involved in this case, a broad statement to the effect that no one likes violence or sexual offenses. Petition at 13. In context, the purpose of the statement was not to voice a "professional opinion" on the matter, but to clarify that a juror is not disqualified simply because he or she has understandable negative feelings about violence and sexual offenses. This Court finds that because Jefferson could have raised this issue on direct appeal but failed to do so, it is waived and must be dismissed. See NRS 34.810(1)(b)(2).

Jefferson's second argument focuses on testimony from CJ's mother and brother regarding CJ's statements to them about the sexual abuse perpetrated by Jefferson. Jefferson previously raised this issue in his direct appeal, AOB 37-41, and the Nevada Supreme Court rejected the argument as meritless. Jefferson v. State, No. 62120 at 9-10. As such, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing this issue in the instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538.

The third and final argument in this section alleges that jurors wrongfully learned of Jefferson's incarceration because of admission of phone calls between Jefferson and his wife, the victim's mother. Petition at 15. Jefferson previously raised this issue on direct appeal, AOB 27-30, and while the Nevada Supreme Court held that portions of the calls were more prejudicial than probative, it held that any error in admitting the calls was harmless. Jefferson v. State, No. 62120 at 6-7. In so holding, the Supreme Court focused on the use of inflammatory language and the clear anguish in Jefferson's wife's voice. Id. It did not, however, give credence to Jefferson's arguments that the phone calls erroneously permitted jurors to learn that he was incarcerated. Id. As such, this Court finds that this argument is without merit because the Nevada Supreme Court found no error in the admission of the calls and any argument that his incarceration status undermined his presumption of innocence was undermined by the trial judge's repeated verbal and written instructions that Jefferson was innocent until proven guilty. Glover v. Eighth Judicial Dist. Court of Nev., 125 Nev. 691, 719, 220 P.3d 684, 703 (2009) (Courts presume that juries will follow instructions). Further, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing this issue in the

instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538. As such, Ground 4 is denied.

IV. JEFFERSON'S ARGUMENTS REGARDING DOUBLE JEOPARDY AND/OR REDUNDANCY ARE WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 5, Jefferson argues that he was wrongfully convicted and sentenced in violation of Double Jeopardy and/or Nevada's redundancy doctrine because the evidence of at trial was non-specific. Petition at 16.

This Court finds that this argument is waived because Jefferson could have raised it on direct appeal but failed to do so. See NRS 34.810(1)(b)(2); Franklin, 110 Nev. at 752, 877 P.2d at 1059.

Further, this Court finds that Jefferson's argument also fails because of the law-of-the-case-doctrine as the Nevada Supreme Court affirmed Jefferson's Judgment of Conviction in its entirety because evidence supporting the jury's verdict was "overwhelming." Jefferson v. State, No. 62120 at 16; see also id. at 12 ("[A] rational trier of fact could have found Jefferson guilty of three counts of sexual assault and one count of lewdness beyond a reasonable doubt."). Moreover, while Jefferson claims that the evidence was "non-specific," the Nevada Supreme Court found that "CJ testified with specificity as to four separate occasions of sexual abuse." Id. at 11. Thus, this Court finds that Jefferson cannot reargue this issue in the instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538. As such, Ground 5 is denied.

V. JEFFERSON CANNOT REARGUE SUFFICIENCY OF THE EVIDENCE

In Ground 6, Jefferson alleges insufficient evidence largely because "CJ's testimony was without independent details." Petition 17. This Court finds that this argument is without merit because the Nevada Supreme Court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction." LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992); see also Gaxiola v. State, 121 Nev. 633, 648, 119 P.3d 1225, 1232 (2005). Moreover, this Court finds that Jefferson's argument also fails because the Nevada Supreme Court rejected the same argument on appeal, reasoning that "the issue of guilt was not close given the overwhelming evidence presented by the State." See Jefferson v. State, No. 62120 at 11-12; 16; see also Pellegrini, 117 Nev. at 888, 34 P.3d at 538 ("[I]ssues

previously determined . . . on appeal may not be reargued as a basis for habeas relief."). Thus, Ground 6 is denied.

VI. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In Jefferson's Ground 7 and the subsequent Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Jefferson raises multiple grounds of ineffective assistance of trial counsel.

A. A Rigorous Two-Prong Test Applies To Ineffective Assistance Of Counsel Claims

"[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation . . . [but] simply to ensure that criminal defendants receive a fair trial." Cullen v. Pinholster, ___ U.S. ___, ___, 131 S. Ct. 1388, 1403 (2012) (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) ("Effective counsel does not mean errorless counsel"). To prevail on a claim of ineffective assistance of counsel, a defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See also 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, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. This Court need not consider both prongs, however if a defendant makes an insufficient showing on either one. Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686, 104 S. Ct. at 2052. Indeed, 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, 562 U.S. 86, 105, 131 S. Ct. 770, 788 (2011); see also Strickland, 466 U.S. at 689, 104 S. Ct. at 2065 ("There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way."). Accordingly, the role of a court in considering alleged ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence.").

Further, even if counsel's performance was deficient, "it is not enough to show that the errors had some conceivable effect on the outcome of the proceeding." Harrington, 562 U.S. at 104, 131 S. Ct. at 787 (quotation and citation omitted). Instead, the defendant must demonstrate that but for counsel's incompetence the results of the proceeding would have been different:

> In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Instead, Strickland asks whether it is reasonably likely the results would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.

Id. at 111-12, 131 S. Ct. at 791-92 (internal quotation marks and citations omitted). All told, "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371,130 S. Ct. 1473, 1485 (2010). "A petitioner for post-conviction relief cannot rely on conclusory claims for relief." Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002). Instead, the petition must set forth specific factual allegations that are not belied by the record,

and if true, would entitle the petitioner to relief. See NRS 34.735; Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). For the foregoing reasons, this Court finds that none of Jefferson's contentions of error, including his arguments in the Supplemental Petition, satisfy this standard.

GROUND 7(A) – Jefferson faults counsel for failing to file a Motion in Limine to prohibit Dr. Vergara from testifying outside her area of expertise. Petition at 21. He also states, in general, that counsel was unwilling to "develop a working relationship with the petitioner and prepare for trial." Id.

This Court finds that Jefferson's first argument fails because motion practice is a strategic matter that is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992) ("Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable."); Davis v. State, 107 Nev. 600, 603, 817 P.2d 1169, 1171 (1991) ("[T]his court will not second-guess an attorney's tactical decisions where they relate to trial strategy and are within the attorney's discretion. This remains so even if better tactics appear, in retrospect, to have been available."). Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision not to file the Motion in Limine, especially given the Nevada Supreme Court's holding that any errors with regard to Dr. Vergara were harmless. Jefferson v. State, No. 62120 at 8-9; see also Molina, 120 Nev. at 192, 87 P.3d at 538 (holding that petitioners must demonstrate how they were prejudiced by alleged errors).

Further, this Court finds that Jefferson's other claims fail because "[a] petitioner for post-conviction relief cannot rely on conclusory claims for relief." Colwell, 118 Nev. at 812, 59 P.3d at 467; see also NRS 34.735; Hargrove, 100 Nev. at 502, 686 P.2d at 225 (holding that a petition must set forth specific factual allegations that are not belied by the record, and if true, would entitle the petitioner to relief). Further, the Sixth Amendment does not guarantee a "meaningful relationship" between a defendant and his counsel, only that counsel be effective. Morris v. Slappy, 461 U.S. 1, 13, 103 S. Ct. 1610, 1617 (1983).

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As such, this Court finds that this claim is also nothing more than a conclusory claim for relief without any supporting facts. As such, this Court denies this claim.

GROUND 7(B) – Jefferson alleges trial counsel was ineffective for moving to omit CJ's statement to police and that defense counsel "misinterpreted" NRS 51.385. Both of these arguments apparently relate to the April 13, 2011, Motion in which counsel moved, on Jefferson's behalf, to preclude alleged testimonial statements CJ made to her mother and law enforcement regarding the sexual abuse. In support of his argument, Jefferson cites to portions of of CJ's voluntary statement to law enforcement to support his contention that law enforcement forced CJ to "fabricate allegations to effect an arrest." Petition at 21. This Court finds that Jefferson's contentions fail because they boil down to strategic decisions.

Jefferson cites to only 5 pages out of the total 29 page voluntary statement CJ gave to police. However, a read of the entire statement reveals that after the initial denial by the 5 year-old victim, once detectives revealed that they were aware of CJ's disclosure to her mother, CJ immediately proceeded to disclose the sexual abuse perpetrated by Jefferson. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court; see also Evidentiary Hearing Transcript, December 8, 2011, pp. 31-54. CJ disclosed to detectives that Jefferson made her perform oral sex on Jefferson and that "liquid" came out of his penis, Jefferson made CJ touch his penis, also that Jefferson put his privates in her privates and that she cried because it hurt. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court. Thus, this Court finds that defense counsel made the strategic decision to fight the admission of these statements and was successful.[5] Defense counsel did not misinterpret NRS 51.385 and never improperly shifted the burden. Instead, this Court finds that defense counsel made the strategic decision to oppose the admission of the CJ's disclosure to detectives. Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision. Had the statement been used, the jury would have heard that this 5 year-old victim initially stated

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[5] The Court precluded the statements to law enforcement; however, granted admission of the statements to CJ's mother subject to CJ's availability. See Order Partially Denying Jefferson's Motion to Preclude 51.385 Testimony and Order Denying State's Oral Motion to Terminate Jefferson's Outside Privileges, filed Jan. 17, 2012.

nobody touched her private areas, but upon being told that detectives already knew what CJ had told her mother, CJ went into detail about the sexual abuse committed against CJ. As such, this Court denies this claim.

GROUND 7(C) – Jefferson alleges trial counsel was ineffective for failing to object and/or move for a new jury panel and/or failing to move for a mistrial based on the District Court's question during jury voir dire. Jefferson argues that trial counsel should have objected and/or moved for a new jury panel and/or moved for a mistrial when the Court asked the panel, "How many of you like child molestation? I am not going to get people raising their hands to that." However, this Court finds that Jefferson's argument fails.

In context, the purpose of the statement was not to voice any sort of opinion on the matter, but to clarify that a juror is not disqualified simply because he or she has understandable negative feelings about violence and sexual offenses. While the State individually questioned Prospective Juror No. 245, she indicated, "I have a real problem with the charges." Trial Transcript ("TT") July 30, 2012, p. 126, 23-24. She went on to indicate, "[I]n my mind, that's one of the worst charges. I mean, anything else, I could probably look at it openly, but not when children are involved." Id. at p. 127, 8-11. As a result, the prosecutor asked anybody that had strong feelings should raise his or her hand so that she could discuss this issue with the prospective juror(s). Id. at p. 128, 2-7. The prosecutor then asked a series of questions to Prospective Juror No. 245 regarding the presumption of innocence. Id. at p.128 lines 15-25, pp. 129-30. It was in this context that the Court stated to Prospective Juror No. 245:

> It's kind of like what I talked about earlier, is there's nobody -- if I'm going to ask the question, how many of you like violence? How many of you like rape? How many of you like child molestation? How many -- you know, I'm not going to get people raising their hand in response to that.
> But as Ms. Fleck just clearly covered, it's just an accusation. And you said you believed you'd be able to keep an open mind and listen to the – listen to the testimony before you came to any conclusions. Would you be able to deliberate with your fellow jurors toward reaching a verdict?

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> I think you changed your position kind of during the questioning, so that's why I went back over it to clarify with you. You have not heard one word of testimony, nor seen one piece of evidence at this point.
>
> ****
> Are you saying that you're entirely close-minded and unable to deliberate?

Id. at p. 131, lines 2-12.

Thus, in this context, the Court was merely establishing that at this stage in the proceeding, the criminal charges were only an accusation and that the relevant inquiry was whether the potential juror could keep an open mind while listening to the evidence. Contrary to Jefferson's assertion, this Court finds that this statement was not prejudicial. It was understandable that none of the prospective jurors would like violence or child molestation, but that was not the relevant inquiry and the Court was emphasizing this to Prospective Juror No. 245.

Because there was no wrongdoing by the Court, this Court finds that any objection by counsel and/or any request for a new jury panel and/or moving for a mistrial by defense counsel would have been futile. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (Counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments.). Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision not to raise this issue. As such, this Court denies this claim.

GROUND 7(D) – Jefferson alleges that trial counsel was ineffective for failing to impeach CJ with a prior inconsistent statement. This argument is related to supra Ground 7(B). This Court finds that Jefferson's contention fails because this again boils down to a strategic decision. Defense counsel did not elicit that when 5 year-old CJ initially sat down with two detectives, she stated nobody had touched her privates. This was because then the State would have been able to elicit the rest of the statement where CJ disclosed to detectives that Jefferson made her perform oral sex on Jefferson and that "liquid" came out of his penis, Jefferson made CJ touch his penis, also that Jefferson put his privates in her privates and that she cried because

it hurt. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court.

Thus, this Court find that defense counsel made the strategic decision to not attempt to impeach the 5 year-old victim which very well may have backfired with the jury and would have opened the door for the State to introduce the entirety of CJ's statement. See Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision. As such, this Court denies this claim.

GROUND 7(E) – Jefferson alleges that trial counsel was ineffective for failing to confront Dr. Vergara regarding not conducting a sexual assault kit. Specifically, Dr. Vergara testified that a sexual assault examination should be done no later than 72 hours after the trauma, in fact "the sooner the better" or "probably even sooner" than 72 hours. TT, Aug. 2, 2012, p. 7, 23-25; p. 8; p. 9, 1-3. Jefferson references an EMT report (which would have been taken the day CJ went to the hospital on September 14, 2010) where medical personnel indicated that Jefferson last assaulted CJ on September 11, 2010. However, this Court finds that defense counsel had no basis to "confront" Dr. Vergara for not conducting a sexual examination kit.

A reading of CJ's entire statement to police reveals that CJ disclosed that the last time Jefferson made CJ perform oral sex on him or that Jefferson sexually assaulted CJ was "a week and 2 days ago." See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court. Thus, there would have been no reason for Dr. Vergara to perform a sexual assault kit on CJ given that the last time Jefferson sexually assaulted CJ was well outside of the 72 hours. This information is also corroborated by CJ's mother's statement to detectives who never told law enforcement that CJ had been assaulted as recently as September 11, 2010. See Ex. 1, CJ's mom's Statement to LVMPD, filed December 8, 2011, with the Court. Additionally, CJ's and CJ's mother's testimony do not support this contention. TT, Aug. 2, 2012, pp. 41-78; TT, Aug. 3, 2012, pp. 10-45. Further, Detective Demas testified that CJ disclosed that the last time she had been sexually abused had been "approximately seven or eight days, so over the five-day period." TT, Aug. 6, 2012, p. 44, 11-16. Based on that information, Detective Demas advised

against doing a sexual assault kit. Id. at 17-25. Defense counsel successfully moved for inclusion of the report writer's testimony regarding the statement in question. TT, Aug. 8, 2012, pp. 27-35.

Based on all the witness' statements and testimony, this Court finds that defense counsel had no basis to confront Dr. Vergara for not doing a sexual assault kit on CJ. Any such attempt would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, this Court finds that Jefferson has failed to demonstrate how he was prejudiced by this. Any attempt to confront Dr. Vergara would have been successfully objected to. As such, this Court denies this claim.

GROUND 7(F) – Jefferson alleges that trial counsel was ineffective for failing to move for a continuance to "investigate" jail calls admitted into evidence. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Jefferson sets forth nothing more than a bare allegation that other jail calls would have somehow shown that CJ's mother was on his side and this would have put the State in an "awkward position." Petition at 23.

On August 6, 2012, defense counsel attempted to preclude admission of *all* of the jail calls by filing a Motion in Limine for an Order Preventing the State from Introducing Unlawfully Recorded Oral Communications. Thus, this Court finds that defense counsel made the strategic decision to attempt to preclude admission of *all* of the jail calls by arguing that there was an expectation of privacy at the time the calls were made. As such, this Court finds that defense counsel cannot be faulted for the strategic decision to attempt to keep out all jail calls because if they had been successful, Jefferson's argument would be moot as counsel would have successfully precluded admission of all jail calls. Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596.

Moreover, this Court finds that Jefferson fails to demonstrate how he was prejudiced by not being able to introduce this alleged information. For the aforementioned reasons, this Court denies this claim.

GROUND 7(G) – Jefferson alleges that trial counsel was ineffective for failing to challenge the lewdness conviction because the only evidence presented to support this conviction was Jefferson's confession to detectives. Because this issue was raised on appeal by and it failed, this Court finds that any effort by trial counsel to attempt to challenge the lewdness count would have been futile as the Nevada Supreme Court found that there was sufficient evidence to support the jury's verdict. Jefferson v. State, No. 62120 at 11-12; see also Ennis, 122 Nev. at 706, 137 P.3d at 1103. Indeed, the Nevada Supreme Court found that the "issue of guilt was not close given the overwhelming evidence presented by the State." Jefferson v. State, No. 62120 at 16.

Further, the jury heard more than just Jefferson's confession. The jury also heard CJ's own testimony about 4 separate occasions of sexual abuse—three in Jefferson's bedroom and one in her own bedroom. CJ testified that on each of the three occasions in the master bedroom, Jefferson put his penis in her mouth, vagina, and anus and on the fourth occasion, in her bedroom, Jefferson put his penis in her mouth and vagina. Further, the jury heard from CJ's mother about CJ's initial disclosure, also about an instance when Jefferson seemed eager for CJ's mother to go to bed and for CJ to stay up with Jefferson—CJ's mother later found a sad, disoriented CJ standing in a dark bedroom (consistent with CJ's testimony of sexual abuse). The jury also heard from CJ's brother who testified how Jefferson would take CJ into his bedroom while their mother was at work and on 1 occasion, heard CJ crying from the master bedroom—again, this was consistent with CJ's testimony regarding the abuse. The jury also heard jail calls, Jefferson's letters to CJ's mother after his arrest, and the 911 call Jefferson made the day that he was arrested. All of these things corroborated CJ's testimony of sexual abuse. Thus, this Court finds that the jury did not solely rely on Jefferson's confession and Jefferson's argument is belied by the record. Further, this Court finds that any argument by defense counsel would have been futile. As such, Jefferson's this claim is denied.

GROUND 7(H) – Jefferson alleges that trial counsel was ineffective for failing to raise sufficiency of the evidence at trial. Jefferson raises multiple other issues within this ground as well: the fact that the State "led" CJ's testimony, the State used perjured testimony from

detectives, trial counsel failed to establish that detectives produced a false complaint and that trial counsel did nothing more than stand beside him "while the prosecuting attorneys manipulated the court and the jurors." Petition at 23.

First, to the extent Jefferson argues that trial counsel was ineffective for failing to raise the issue of sufficiency of the evidence, Jefferson neglects to say exactly what counsel should have done to raise this issue. This issue was raised on appeal and was unsuccessful, as such, this Court finds that any attempt by trial counsel to raise this issue would have been futile as it would have been denied. Jefferson v. State, No. 62120 at 11-12 (Order of Affirmance finding that there was sufficient evidence to support all Jefferson's convictions); see also Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Second, the remainder of Jefferson's issues are either not cognizable in their current form as permissible claims in a post-conviction petition for writ of habeas corpus or are not sufficiently articulated as claims of ineffective assistance of counsel. Jefferson takes issue with the State allegedly leading the victim during their examination of CJ and/or with using perjured testimony from law enforcement; however, this Court finds such substantive claims are deemed waived. These argument are waived because Jefferson could have raised them on direct appeal but failed to do so. See NRS 34.810(1)(b)(2); Franklin, 110 Nev. at 752, 877 P.2d at 1059.

In the form of ineffective assistance of counsel claims, this Court finds that Jefferson's claim is a non-specific bare allegations that does not support his claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225. A close reading of CJ's testimony reveals that defense counsel objected repeatedly throughout her examination on the basis of "leading" or that the answer was suggested in the question. Also, appellate counsel raised this issue on appeal. See AOB at 21-22.[6] Jefferson fails to set forth exactly what more trial counsel should have done that would have changed the outcome of his case. In terms of Jefferson's allegation that the State used perjured testimony from detectives, this Court finds that this is a bare allegation that does not warrant relief.

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[6] To the extent Jefferson raised the issue of the State leading CJ on direct appeal as prosecutorial misconduct, this issue could be barred by law-of-the-case. Pellegrini, 117 Nev. at 888, 34 P.3d at 538.

Third, Jefferson claims that counsel failed to establish that "detectives produced a false complaint, which explains no medical signs of abuse;" this Court finds that this claim should have been raised, if at all, on direct appeal and is now waived. To the extent Jefferson claims this is ineffective assistance of counsel, this Court finds that the claim is bare and lacking any specific facts or argument. Again, the Nevada Supreme Court found overwhelming evidence of guilt. Further, there was no need for law enforcement or the State to produce "medical signs of abuse" to prove an allegation of sexual abuse. LaPierre, 108 Nev. at 531, 836 P.2d at 58; see also Gaxiola, 121 Nev. at 648, 119 P.3d at 1232 (The Nevada Supreme Court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction."). Thus, this Court finds that Jefferson errs in arguing that the State needed to set forth medical signs of abuse before prosecuting this case.

Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decisions set forth in Ground 7(H). As such, based on the foregoing, this claim is denied.

GROUND 7(I) – Jefferson alleges that he was prejudiced by the Court's failure to remove trial counsel from representing Jefferson based on a conflict of interest. Specifically, Jefferson argues that because he filed a bar complaint against trial counsel prior to trial that this created a conflict of interest. This argument is more thoroughly briefed in Jefferson's Supplemental Petition for Writ of Habeas Corpus.

The Sixth Amendment guarantees a criminal defendant the right to conflict-free representation. Coleman v. State, 109 Nev. 1, 3, 846 P.2d 286, 277 (1993) (citing Clark v. State, 108 Nev. 324, 831 P.2d 1374 (1992)). In order to demonstrate an error based on a conflict of interest, a defendant must show that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S. Ct. 1708 (1980)). A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. Nev. R. Prof'l Conduct 1.7(a). A concurrent conflict of exists if there is a significant risk that the representation of one or more clients will be materially limited by a

personal interest of the lawyer. See Nev. R. Prof'l Conduct 1.7(a)(2).

Here, this Court finds that Jefferson fails to show how trial counsel was limited by a "personal interest." Jefferson sets forth only that because he filed a bar complaint, this automatically created a conflict and that unless Jefferson waived this conflict, trial counsel could not continue to represent him. However, Jefferson fails to cite to *any* authority that an unsubstantiated bar complaint, along with other complaints about representation, creates an actual conflict that required any sort of waiver by Jefferson.

Further, this Court finds that Jefferson has not shown error based on a conflict of interest because he has not shown that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Strickland, 466 U.S. at 692 (quoting Cuyler, 446 U.S. at 348, 100 S. Ct. 1708). Instead, Jefferson cites to authority which is either not relevant to Jefferson's case or position in an attempt to convince this Court that there was an actual conflict in Jefferson's case that required him to waive such a conflict.

Here, Jefferson submitted a bar complaint received by the Nevada State Bar where the Bar apparently received it on October 18, 2011. Jefferson stated in the complaint that he was "having a bit of an issue" with his attorney. Exhibit A attached to Supplemental Petition. "A bit of an issue" is not an actual conflict. Jefferson goes on to say that when his attorney visited him, he "either 'lightly' verbally abuses him or ignores his outlook." Id. Jefferson then alleges that trial counsel told him on October 11, 2011, that "people like [Jefferson] belong in hell not prison." Id. Jefferson then went on to speculate why trial counsel allegedly made this comment, it could be due either to the serious charges Jefferson was facing of sexually assaulting his 5 year-old daughter or because Jefferson is African-American. Id. Notably, in Jefferson's Motion to Dismiss Counsel and Appoint Alternate Counsel filed on October 19, 2011, Jefferson never stated this at all. Even if the Motion was drafted prior to October 11, 2011, at the hearing for Jefferson's Motion, which post-dated the alleged bar complaint, Jefferson never once raised this issue. TT, Nov. 1, 2011, p.3.

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Instead, Jefferson took the opportunity he had to alert the Court as to the issues with trial counsel to raise three issues regarding why he wanted new counsel: 1) trial counsel failed to subpoena employment records; 2) trial counsel failed to call Jefferson's family members; and he failed to provide Jefferson with the full discovery in the case. Id. Yet, Jefferson expects this Court to believe that trial counsel made the statement, "people like [Jefferson] belong in hell not prison," yet he never once mentioned this to the Court when he had the chance.

Further, in his own exhibits to his instant Petition, Jefferson attached two letters he allegedly sent to Clark County Public Defender Phil Kohn. However, again, he never raised this statement in the letters to Kohn. Instead, Jefferson raises issues regarding trial strategy. The letters to Kohn are dated March 28, 2012, and May 22, 2012—well after the alleged statement was made.

Jefferson never filed any sort of motion with the Court nor did he ever raise the issue. Again, Jefferson expects this Court to believe that trial counsel made this statement when he never raised it with the Court nor with Kohn. There is no indication that trial counsel was even aware that Jefferson allegedly sent these letters to Kohn.

At the hearing on Jefferson's Motion, trial counsel stated that despite Jefferson filing his Motion, he wanted "what's best for [Jefferson]." TT, Nov. 1, 2011, p.2. Further, the Nevada Supreme Court held that Jefferson's conflict with counsel was "minimal" and easily resolved. Jefferson v. State, No. 62120 at 15. As such, this Court finds that Jefferson has not shown error based on a conflict of interest because he has not shown that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Thus, this Court denies this claim.

VII. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

For claims of ineffective assistance of appellate counsel, the prejudice prong is slightly different. Jefferson must demonstrate that the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1997); Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004). Appellate counsel is not

required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751-54, 103 S. Ct. 3308, 3312-14 (1983). After all, appellate counsel may well be more effective by not raising every conceivable issue on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

GROUND 8(A) – Jefferson alleges that appellate counsel was ineffective for failing to adequately present "Miranda violations." Petition at 25. However, Jefferson fails to set forth exactly what it is that appellate counsel should have raised. Jefferson alleges that appellate counsel should have raised other alleged issues related to Jefferson's confession such as that he was never read his Miranda rights. However, contrary to Jefferson's claim, Detectives did give Jefferson his Miranda rights prior to questioning him, thus, Jefferson's claim is belied by the record. Jefferson v. State, No. 62120 at 3.

Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones, 463 U.S. at 751-54, 103 S. Ct. at 3312-14. Because Jefferson was read his Miranda rights, this Court finds that trial counsel and then appellate counsel raised the issue they thought was best in relation to the confession. Moreover, appellate counsel did raise the issue that Jefferson did not properly waive his Miranda rights; however, the Nevada Supreme Court concluded that this argument lacked merit. Jefferson v. State, No. 62120 at 4, fn.1. Thus, this Court finds that any claim that Jefferson did not understand he was in police custody would have been unsuccessful. Again, appellate counsel raised the best issue given the facts surrounding Jefferson's confession and this Court finds that counsel cannot be faulted for not raising every colorable argument Jefferson believes appellate counsel should have raised. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(B) – Jefferson alleges that appellate counsel was ineffective for failing to present that the State knowingly used perjured testimony through Detective Katowich. Jefferson cites to two pages of Katowich's testimony wherein he testified that CJ in fact did have a forensic interview. This Court finds that Jefferson's allegation is bare and does not

warrant relief. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

Jefferson also argues that appellate counsel failed to "direct the court to the fact that the prosecution suborned perjury by forcing CJ to change testimony to prove guilt of the petitioner." Petition at 26. This Court finds that appellate counsel cannot be faulted for not raising a meritless, unsubstantiated allegation. Appellate counsel did raise the issue of prosecutorial misconduct alleging that the State had impermissibly, repeatedly led CJ and "supplied the preferred answers." See AOB at 21-22. This Court finds that Jefferson fails to set forth what more appellate counsel should have raised. Moreover, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(C) – Jefferson alleges that appellate counsel was ineffective for failing to adequately present the issue of the denial of his pro se Motion to Dismiss Counsel and Appoint Alternate Counsel. Jefferson alleges that appellate counsel should have elaborated in the argument that the State also made argument during the hearing on Jefferson's Motion and was "culpable in the ineffective assistance of counsel." Petition at 27.

This Court finds that Jefferson's argument is meritless and belied by the record. The State did not argue during this hearing. Upon review of the transcript related to Jefferson's Motion, there is 1 paragraph in the 6 pages of argument (the remainder of the transcript does not pertain to Jefferson's Motion) attributable to the State. TT, Nov. 1, 2011, p.6 at 12-17. The State did not take a position or argue in regards to Jefferson's Motion. Leading up to the State's statement, Jefferson had indicated to the Court that he wanted to terminate Mr. Cox because he failed to get employment records and failed to make phone calls to Jefferson's family. Id. at p.3. Mr. Cox indicated that he did not think the employment records were relevant to Jefferson's defense in the case. Id. at pp.5-6. This was especially true in light of the fact that there was no specific time period pled in the charging document. Id. at p.6. As a result of this

exchange, the State simply advised the Court that Jefferson had stated in his statement to police that he had lost his job. Id. Thus, Jefferson's complaint that he wanted the Court to dismiss defense counsel because counsel failed to get Jefferson's employment records was nonsensical as the employment records were not relevant to Jefferson's defense as Jefferson, by his own admission, was unemployed when he sexually abused his daughter.

The Court finds that this was a non-issue and appellate counsel cannot be faulted for failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(D) – Jefferson alleges that appellate counsel was ineffective for failing to present the issue raised supra Ground 7(C)—Jefferson alleges "structural error" in regards to the Court's statement to the jury panel. This Court finds that appellate counsel did not raise this issue because it was a non-issue with no probability of success on appeal. See supra Ground 7(C). This was a non-issue and appellate counsel cannot be faulted for failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(E) – Jefferson alleges that appellate counsel was ineffective for failing to present the issues: (1) CJ's brother testified without being at the evidentiary hearing to determine the reliability of his statements; (2) the State "discredited" CJ's mother's hearsay statement, yet used her as a witness; and (3) Jefferson was precluded from "adequately" cross-examining CJ on hearsay that conflicted because CJ was excused as a witness. All of Jefferson's arguments fail.

First, Jefferson seems to be arguing that CJ's brother should not have been able to testify about CJ's disclosure to their mother. These statements relate to Jefferson's Motion to Preclude Inadmissible 51.385 Evidence, see supra Ground 7(B). This Court finds that Jefferson's argument is belied by the record as appellate counsel did raise this claim. Hargrove,

100 Nev. at 502, 686 P.2d at 225; see also AOB at 39-41. As such, this claim is denied.

Jefferson's second argument within this Ground is a meritless, non-issue. As such, this Court finds that appellate counsel cannot be faulted for not raising the issue that the State, in Jefferson's opinion, "discredited" CJ's mother's hearsay statement, yet used her as a witness. During defense closing, defense counsel specifically made an allegation that CJ's mother lied about the last time that Jefferson sexually assaulted CJ and that the "story changed." TT, Aug. 8, 2012, p.93. This was in regards to why Dr. Vergara did not perform a sexual examination kit. In response to this, during rebuttal, the State argued, in relevant part:

> Detective Demas specifically told the doctor not to collect the DNA because the last abuse was beyond the minimum three to, at the max, five-day time frame. [CJ's brother] had said it'd been more than two weeks since he last saw his dad take his sister into the bedroom, and the detective learned from [CJ] during that interview that it'd been over a week since the last abuse occurred.
>
> And we heard from the detective about this three-day, at the most, five-day time frame in which DNA can be collected. And we actually heard specifically from Dr. Vergara that really it needs to be less than 72 hours; less than three days before there can be any kind of legitimate chance of collecting DNA.
>
> Now, the defense called Mr. Teague, the ambulance driver, to come in here, the ambulance -- the paramedic in the ambulance, to talk about [CJ's mother's] statement to him on -- about the date of September 11th. Remember, he never talked to [CJ]. This is not something that [CJ] told him. Detective Demas talked -- Detective Katowich talked directly to [CJ], but [Mr. Teague] never did. He simply obtained the statement from Cindy, and Cindy had told him about the date of September 11th, 2010.
>
> So, are we to believe that [CJ] said to her mom, yeah, mom the last time it happened? Is that – is that what we're supposed to believe? Does that make sense? What makes sense is that [CJ] told her mother, the last time it happened, you were at work. And her mom thought about, okay, when's the last day I worked? September 11th, 2010, so that's when she tells the paramedic.

TT, Aug. 8, 2012, p. 111.

Thus, the Court finds that the State never discredited CJ's mother. Rather, the State argued that it made no sense that this 5 year-old victim told her mom a specific date when telling her about the sexual abuse. Rather, it made sense that CJ's mother assumed this was the date, based on the manner in which CJ disclosed. Nothing within the State's argument

"discredited" CJ's mother. Further, this Court finds that it is up to the State how to present its case, not the defendant. As such, this Court finds that Jefferson could not have raised the issue that the State, allegedly, "discredited" CJ's mother, "yet presented her as a witness to recount hearsay." This Court finds that this non-issue would have had no chance of success on appeal. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

Third, Jefferson alleges that he was precluded from "adequately" cross-examining CJ on hearsay that conflicted because CJ was excused as a witness. This Court finds that this is a non-specific bare allegation. Hargrove, 100 Nev. at 502, 686 P.2d at 225. This Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(D) – Jefferson alleges substantive claims that are waived and must be dismissed pursuant to NRS 34.810. See also Pellegrini, 117 Nev. at 882, 34 P.3d at 534. Jefferson also alleges that appellate counsel should have presented actual innocence based on CJ's statement to police, see supra Ground 7(B); a bare allegation that the State demanded CJ alter her testimony; and the lack of an accurate medical observation, see supra Ground 7(H).

The United States Supreme Court has held that in order for a defendant to succeed based on a claim of actual innocence, he must prove that "'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995)). Procedurally barred claims may be considered on the merits, only if the claim of actual innocence is sufficient to bring the petitioner within the narrow class of cases implicating a fundamental miscarriage of justice. Schlup, 513 U.S. at 314 115 S. Ct. at 861). This Court finds that Jefferson fails to set forth any new evidence that would have made it more likely than not that no reasonable juror would have convicted him. As such, this Court finds that Jefferson fails to demonstrate that

the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532.

Appellate counsel did raise the issue of sufficiency of the evidence. Within this argument, appellate counsel raised issues regarding alleged inconsistencies in witness statements, the lack of physical evidence, the alleged unreliability of Jefferson's confession, and the fact that CJ never testified as to the any acts of lewdness. The Nevada Supreme Court could have agreed and reversed Jefferson's convictions, but it did not. As such, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

VIII. JEFFERSON IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). However, a defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605

In the instant case, this Court finds that Jefferson's arguments are waived and/or barred by the law of the case and/or meritless. To the extent he raises issues that the Court could address on the merits, this Court finds that his arguments are nevertheless belied by the record

or insufficient to warrant relief. As such, this Court finds that there is no need to expand the record to resolve Jefferson's Petition, his request for an evidentiary hearing is denied.

IX. CUMULATIVE ERROR DOES NOT WARRANT REVERSAL

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction *Strickland* context. *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. *Middleton v. Roper*, 455 F.3d 838, 851 (8th Cir. 2006), *cert. denied,* 549 U.S. 1134, 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.")

Nevertheless, even if cumulative error review is available, such a finding in the context of a *Strickland* claim is extraordinarily rare. *See, e.g., Harris by & Through Ramseyer v. Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995). After all, "[s]urmounting *Strickland*'s high bar is never an easy task," *Padilla*, 559 U.S. at 371,130 S. Ct. at 1485, and there can be no cumulative error where the defendant fails to demonstrate *any* single violation of *Strickland*. *See, e.g., Athey v. State*, 106 Nev. 520, 526, 797 P.2d 956 (1990) ("[B]ecause we find no error . . . the doctrine does not apply here."); *United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012) ("Where, as here, no individual ruling has been shown to be erroneous, there is no 'error' to consider, and the cumulative error doctrine does not warrant reversal"); *Turner v. Quarterman*, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is nothing to cumulate.") (internal quotation marks omitted).

Here, this Court finds that Jefferson has not demonstrated that any of his claims warrants relief, and as such, there is nothing to cumulate. Therefore, Jefferson's cumulative error claim is denied.

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ORDER

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

DATED this 14 day of June, 2016.

DISTRICT JUDGE

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

BY _____ for
BERNARD E. ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545

APPROVED AS TO FORM AND SUBSTANCE

BY _____
MATTHEW LAY, ESQ
732 S. SIXTH STREET #102
LAS VEGAS, NV 89101
Nevada Bar No. 12149

hjc/OM:SVU

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CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

BRANDON JEFFERSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-10-268351-1

Dept No: IV

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

PLEASE TAKE NOTICE that on August 3, 2016, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 4, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Chaunte Pleasant
Chaunte Pleasant, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 4 day of August 2016, I placed a copy of this Notice of Entry in:

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

☑ The United States mail addressed as follows:

Brandon Jefferson # 1094051
P.O. Box 1989
Ely, NV 89301

Matthew Lay, Esq.
732 South Sixth Street, Suite 102
Las Vegas, NV 89101

/s/ Chaunte Pleasant
Chaunte Pleasant, Deputy Clerk

ORIGINAL

Electronically Filed
08/03/2016 07:52:25 AM

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
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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-

BRANDON JEFFERSON,
#2508991

Defendant.

CASE NO: **10C268351**

DEPT NO: **IV**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: MAY 19, 2016
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable KERRY EARLEY, District Judge, on the 19th day of May, 2016; the Petitioner not being present, represented by his counsel MATTHEW D. LAY, ESQ.; the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD E. ZADROWSKI, Chief Deputy District Attorney; and the Court having considered the matter, including briefs, transcripts, documents on file herein, and without arguments of counsel; now therefore, the Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT

CONCLUSIONS OF LAW

On November 5, 2010, the State filed an Amended Information charging Brandon Jefferson as follows: Counts 1, 3, 5, 7, 9, and 10: Sexual Assault with a Minor Under the Age of 14 (Category A Felony – NRS 200.364; 200.366); Counts 2, 4, 6, 8, and 11: Lewdness with a Child Under the Age of 14 (Category A Felony – NRS 201.230). That same day, Jefferson pleaded "not guilty."

On March 25, 2011, Jefferson filed a "Motion to Suppress Unlawfully Obtained Statement" in which he argued that he did not knowingly and voluntarily waive his Miranda[1] rights and that his confession to police was coerced. The State opposed the Motion on April 6, 2011. On June 2, 2011, the Court held a Jackson v. Denno[2] hearing, during which the Court received several exhibits and testimony from Detective Matthew Demas. After entertaining argument from counsel, the Court verbally denied Jefferson's Motion. A written order followed thereafter on June 16, 2011.

Meanwhile, on April 13, 2011, Jefferson also filed a Motion in Limine to Preclude Inadmissible 51.385 Evidence, in which he argued that the child victim's statements to other people regarding sexual abuse were hearsay and that admission of the statements would violate the Confrontation Clause. The State opposed the Motion on April 27, 2011, reasoning that it was premature because the availability of the child victim, as well as other witnesses, was not yet confirmed. The Court held an evidentiary hearing on the matter, thereafter, it decided that statements the victim made to her mother were admissible, but statements made to Detective Demas were not, barring additional developments. A written order denying in part and granting in part Jefferson's Motion was then filed on January 17, 2012.

On October 19, 2011, Jefferson filed in a proper person a Motion to Dismiss Counsel in which he expressed dissatisfaction with counsel's performance, particularly counsel's alleged disregard of Jefferson's strategy suggestions. Jefferson advised the Court that his issues with counsel were: 1) counsel had not given Jefferson his full discovery; 2) counsel had

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).
[2] 378 U.S. 368, 84 S. Ct. 1774 (1964).

not made phone calls to Jefferson's family members as Jefferson asked; and 3) counsel failed to obtain Jefferson's work records. After a discussion, the Court verbally denied the Motion. A written order then followed on November 1, 2011.

On November 16, 2011, the State filed a Second Amended Information which included the same substantive charges and minor grammatical/factual corrections.

On July 16, 2012, the State filed a Motion in Limine to Preclude Improper Testimony from Defendant's Expert Witness. Primarily, the Motion argued that defense expert Dr. Chambers could not argue about Jefferson's psychiatric state during his interview with Dr. Chambers, as the State would not have a fair opportunity to rebut the "state of mind" evidence. Alternatively, the State requested a psychiatric evaluation of Defendant. Defense counsel then informed the Court, on July 26, 2012, that it did not intend to present such evidence. Accordingly, the Court denied the State's Motion as moot.

Jury selection began on July 30, 2012. On August 1, 2012, the jury was sworn and Jefferson's jury trial began. A week later, the jury retired to deliberate. Two hours later, the jury found Jefferson guilty of Counts 1, 2, 4, 9, and 10, and not guilty of Counts 3, 5, 6, 7, and 8.[3]

On October 23, 2012, Jefferson appeared with counsel for a sentencing hearing. At the outset, the parties discussed whether Counts 1 and 2 merged, and the State informed the Court that it was not opposed to dismissing Count 2. The Court then adjudicated Jefferson guilty pursuant to the jury's verdict and entertained argument from the State and defense counsel. The Court then sentenced Jefferson to a $25 Administrative Assessment Fee, $150 DNA Analysis Fee, and incarceration in the Nevada Department of Corrections as follows: Count 1 – Life with parole eligibility after 35 years; Count 4 – Life with parole eligibility after 10 years, to run concurrent with Count 1; Count 9 – Life with parole eligibility after 35 years, to run consecutive with Counts 1 and 4; and Count 10 – Life with parole eligibility after 35 years, to run concurrent with Counts 1, 4, and 9, with 769 days' credit for time served. The Court also ordered Jefferson to pay $7,427.20 in restitution, and held that if he were released from

[3] The State voluntarily dismissed Count 11 on August 7, 2012, and the relevant jury instructions and verdict form were amended accordingly.

prison, Jefferson would be required to register as a sex offender pursuant to NRS Chapter 179D, and would be subject to lifetime supervision pursuant to NRS 179.460.

The Court filed a Judgment of Conviction on October 30, 2012, and Jefferson filed a Notice of Appeal on November 14, 2012. In a lengthy unpublished order, the Nevada Supreme Court affirmed Jefferson's Convictions and Sentence, reasoning that none of his 11 contentions of error were meritorious. Jefferson v. State, No. 62120 (Order of Affirmance, July 29, 2014). In particular, the Nevada Supreme Court ruled that the Court did not err by denying Jefferson's Motion to Suppress Unlawfully Obtained Statement because Jefferson was properly read his Miranda rights, the discussion with detectives was appropriate and not coercive, and the detectives' allegedly "deceptive interrogation techniques," were neither coercive nor likely to produce a false confession. Id. at 3-4. The Supreme Court further rejected Jefferson's allegations of prosecutorial misconduct and held that the Court did not abuse its discretion by admitting evidence of jail phone calls between Jefferson and his wife, admitting testimony from the victim's mother and brother about the sexual abuse, or declining to give Jefferson's proposed jury instructions. Id. at 5-10; 13-14. Finally, the Supreme Court held that sufficient evidence supported the jury's verdict because "the issue of guilt was not close given the overwhelming evidence presented by the State." Id. at 11-12, 16. Thereafter, remittitur issued on August 26, 2014.

On October 2, 2014, Jefferson filed, in proper person, a timely Post-Conviction Petition for Writ of Habeas Corpus. Shortly thereafter, the State filed a Motion to Appoint Counsel, reasoning that that it was in everyone's best interest to appoint counsel to assist Jefferson in post-conviction matters. The Court granted the Motion and Attorney Matthew Lay confirmed as counsel on October 28, 2014. That same day, the Court set a briefing schedule.

On December 22, 2015, Jefferson filed, with the assistance of counsel, a Supplemental Petition for Writ of Habeas Corpus. On April 5, 2016, the State filed its Response to both the original Petition and the Supplemental Petition. On May 19, 2016, the Court denied Jefferson's Petition and Supplemental Petition.

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PETITION ARGUMENTS

I. JEFFERSON'S GROUNDS 1 AND 2 REGARDING HIS CONFESSION TO DETECTIVES ARE BARRED BY THE LAW-OF-THE-CASE DOCTRINE

"Under the law of the case doctrine, issues previously determined by [the Nevada Supreme Court] on appeal may not be reargued as a basis for habeas relief." Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001). See also Dictor v. Creative Mgmt. Servs., LLC, 126 Nev., Adv. Op. 4, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequence proceedings in that case."). Here, this Court finds that Jefferson's first and second arguments in his Pro-Per Petition regarding admission of his incriminating statements to the detectives were already raised and thoroughly briefed in his direct appeal. Compare Petition at 5-7 with Jefferson's Opening Appellate Brief ("AOB") at 6-15. The Nevada Supreme Court rejected his argument, reasoning that "the circumstances show Jefferson voluntarily waived Miranda," Jefferson v. State, No. 62120 at 4 n.1, and that "substantial evidence supported the district court's conclusion that Jefferson's confession was voluntary." Id. at 3.

Thus, because the Nevada Supreme Court already considered and rejected Jefferson's argument regarding Miranda, as well as his related argument regarding coercion, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing those issue in his Petition for a Writ of Habeas Corpus. As such, Grounds 1 and 2 are denied.

II. JEFFERSON'S ARGUMENTS REGARDING PROSECUTORIAL MISCONDUCT ARE WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 3, Jefferson contends that the State committed prosecutorial misconduct in four instances. This Court finds that his contention, namely, that the State "[i]mpermissably led CJ's testimony," Petition at 10, is barred by the law of the case because the Nevada Supreme Court already rejected his "contentions of prosecutorial misconduct." Jefferson v. State, No. 62120 at 6 n.2; AOB 21-22. Jefferson raised this exact issue in his opening brief and it was rejected by the Nevada Supreme Court.

In addition, this Court finds that all of the Jefferson's arguments regarding prosecutorial misconduct are waived and must be dismissed pursuant to NRS 34.810, which provides:

> The court *shall* dismiss a petition if the court determines that:
>
> . . .
>
> The petitioner's conviction was the result of a trial and the grounds for the petition could have been: (1) Presented to the trial court; (2) Raised in a direct appeal or a prior petition for writ of habeas corpus or post conviction relief; or (3) Raised in any other proceeding that the petitioner has taken to secure relief from his conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

(Emphasis added); see also Great Basin Water Network v. State Eng'r, 126 Nev., Adv. Op. 20, 234 P.3d 912, 916 (2010) ("'[S]hall' is a term of command; it is imperative or mandatory, not permissive or directory."); Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001) ("A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner."). Indeed, the Nevada Supreme Court has held that all "claims that are appropriate[4] for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Accordingly, this Court finds that Jefferson's arguments regarding prosecutorial misconduct should have been raised, if at all, on direct appeal, and his failure to do so precludes review because his arguments are considered waived. Id.; NRS 34.810(1)(b)(2). Further, this Court finds that because Jefferson fails to offer any good cause to excuse his failure to raise these particular arguments on direct appeal, Ground 3 is denied.

III. JEFFERSON'S ALLEGATIONS OF EVIDENTIARY ERROR ARE ALSO WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 4, Jefferson argues that the Court abused its discretion by "tainting the jury," admitting admissible hearsay, and permitting jurors to learn that Jefferson was incarcerated. Petition at 13-15.

[4] Claims of ineffective assistance of counsel must be raised in the first instance in post-conviction proceedings. Pellegrini, 117 Nev. at 882, 34 P.3d at 534. Other non-frivolous, properly preserved contentions of error are appropriate for appeal.

Jefferson alleges that the jury venire was tainted after the Court made, in reference to the difficult nature of the charges involved in this case, a broad statement to the effect that no one likes violence or sexual offenses. Petition at 13. In context, the purpose of the statement was not to voice a "professional opinion" on the matter, but to clarify that a juror is not disqualified simply because he or she has understandable negative feelings about violence and sexual offenses. This Court finds that because Jefferson could have raised this issue on direct appeal but failed to do so, it is waived and must be dismissed. See NRS 34.810(1)(b)(2).

Jefferson's second argument focuses on testimony from CJ's mother and brother regarding CJ's statements to them about the sexual abuse perpetrated by Jefferson. Jefferson previously raised this issue in his direct appeal, AOB 37-41, and the Nevada Supreme Court rejected the argument as meritless. Jefferson v. State, No. 62120 at 9-10. As such, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing this issue in the instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538.

The third and final argument in this section alleges that jurors wrongfully learned of Jefferson's incarceration because of admission of phone calls between Jefferson and his wife, the victim's mother. Petition at 15. Jefferson previously raised this issue on direct appeal, AOB 27-30, and while the Nevada Supreme Court held that portions of the calls were more prejudicial than probative, it held that any error in admitting the calls was harmless. Jefferson v. State, No. 62120 at 6-7. In so holding, the Supreme Court focused on the use of inflammatory language and the clear anguish in Jefferson's wife's voice. Id. It did not, however, give credence to Jefferson's arguments that the phone calls erroneously permitted jurors to learn that he was incarcerated. Id. As such, this Court finds that this argument is without merit because the Nevada Supreme Court found no error in the admission of the calls and any argument that his incarceration status undermined his presumption of innocence was undermined by the trial judge's repeated verbal and written instructions that Jefferson was innocent until proven guilty. Glover v. Eighth Judicial Dist. Court of Nev., 125 Nev. 691, 719, 220 P.3d 684, 703 (2009) (Courts presume that juries will follow instructions). Further, this Court finds that the law-of-the-case doctrine bars Jefferson from rearguing this issue in the

instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538. As such, Ground 4 is denied.

IV. JEFFERSON'S ARGUMENTS REGARDING DOUBLE JEOPARDY AND/OR REDUNDANCY ARE WAIVED AND BARRED BY THE LAW OF THE CASE

In Ground 5, Jefferson argues that he was wrongfully convicted and sentenced in violation of Double Jeopardy and/or Nevada's redundancy doctrine because the evidence of at trial was non-specific. Petition at 16.

This Court finds that this argument is waived because Jefferson could have raised it on direct appeal but failed to do so. See NRS 34.810(1)(b)(2); Franklin, 110 Nev. at 752, 877 P.2d at 1059.

Further, this Court finds that Jefferson's argument also fails because of the law-of-the-case-doctrine as the Nevada Supreme Court affirmed Jefferson's Judgment of Conviction in its entirety because evidence supporting the jury's verdict was "overwhelming." Jefferson v. State, No. 62120 at 16; see also id. at 12 ("[A] rational trier of fact could have found Jefferson guilty of three counts of sexual assault and one count of lewdness beyond a reasonable doubt."). Moreover, while Jefferson claims that the evidence was "non-specific," the Nevada Supreme Court found that "CJ testified with specificity as to four separate occasions of sexual abuse." Id. at 11. Thus, this Court finds that Jefferson cannot reargue this issue in the instant Petition. Pellegrini, 117 Nev. at 888, 34 P.3d at 538. As such, Ground 5 is denied.

V. JEFFERSON CANNOT REARGUE SUFFICIENCY OF THE EVIDENCE

In Ground 6, Jefferson alleges insufficient evidence largely because "CJ's testimony was without independent details." Petition 17. This Court finds that this argument is without merit because the Nevada Supreme Court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction." LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992); see also Gaxiola v. State, 121 Nev. 633, 648, 119 P.3d 1225, 1232 (2005). Moreover, this Court finds that Jefferson's argument also fails because the Nevada Supreme Court rejected the same argument on appeal, reasoning that "the issue of guilt was not close given the overwhelming evidence presented by the State." See Jefferson v. State, No. 62120 at 11-12; 16; see also Pellegrini, 117 Nev. at 888, 34 P.3d at 538 ("[I]ssues

previously determined . . . on appeal may not be reargued as a basis for habeas relief."). Thus, Ground 6 is denied.

VI. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL

In Jefferson's Ground 7 and the subsequent Supplemental Petition for Writ of Habeas Corpus (Post-Conviction), Jefferson raises multiple grounds of ineffective assistance of trial counsel.

A. A Rigorous Two-Prong Test Applies To Ineffective Assistance Of Counsel Claims

"[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation . . . [but] simply to ensure that criminal defendants receive a fair trial." Cullen v. Pinholster, ___ U.S. ___, ___, 131 S. Ct. 1388, 1403 (2012) (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) ("Effective counsel does not mean errorless counsel"). To prevail on a claim of ineffective assistance of counsel, a defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See also 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, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068. This Court need not consider both prongs, however if a defendant makes an insufficient showing on either one. Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686, 104 S. Ct. at 2052. Indeed, 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, 562 U.S. 86, 105, 131 S. Ct. 770, 788 (2011); see also Strickland, 466 U.S. at 689, 104 S. Ct. at 2065 ("There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way."). Accordingly, the role of a court in considering alleged ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence.").

Further, even if counsel's performance was deficient, "it is not enough to show that the errors had some conceivable effect on the outcome of the proceeding." Harrington, 562 U.S. at 104, 131 S. Ct. at 787 (quotation and citation omitted). Instead, the defendant must demonstrate that but for counsel's incompetence the results of the proceeding would have been different:

> In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Instead, Strickland asks whether it is reasonably likely the results would have been different. This does not require a showing that counsel's actions more likely than not altered the outcome, but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters only in the rarest case. The likelihood of a different result must be substantial, not just conceivable.

Id. at 111-12, 131 S. Ct. at 791-92 (internal quotation marks and citations omitted). All told, "[s]urmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371,130 S. Ct. 1473, 1485 (2010). "A petitioner for post-conviction relief cannot rely on conclusory claims for relief." Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002). Instead, the petition must set forth specific factual allegations that are not belied by the record,

and if true, would entitle the petitioner to relief. See NRS 34.735; Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). For the foregoing reasons, this Court finds that none of Jefferson's contentions of error, including his arguments in the Supplemental Petition, satisfy this standard.

GROUND 7(A) – Jefferson faults counsel for failing to file a Motion in Limine to prohibit Dr. Vergara from testifying outside her area of expertise. Petition at 21. He also states, in general, that counsel was unwilling to "develop a working relationship with the petitioner and prepare for trial." Id.

This Court finds that Jefferson's first argument fails because motion practice is a strategic matter that is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992) ("Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable."); Davis v. State, 107 Nev. 600, 603, 817 P.2d 1169, 1171 (1991) ("[T]his court will not second-guess an attorney's tactical decisions where they relate to trial strategy and are within the attorney's discretion. This remains so even if better tactics appear, in retrospect, to have been available."). Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision not to file the Motion in Limine, especially given the Nevada Supreme Court's holding that any errors with regard to Dr. Vergara were harmless. Jefferson v. State, No. 62120 at 8-9; see also Molina, 120 Nev. at 192, 87 P.3d at 538 (holding that petitioners must demonstrate how they were prejudiced by alleged errors).

Further, this Court finds that Jefferson's other claims fail because "[a] petitioner for post-conviction relief cannot rely on conclusory claims for relief." Colwell, 118 Nev. at 812, 59 P.3d at 467; see also NRS 34.735; Hargrove, 100 Nev. at 502, 686 P.2d at 225 (holding that a petition must set forth specific factual allegations that are not belied by the record, and if true, would entitle the petitioner to relief). Further, the Sixth Amendment does not guarantee a "meaningful relationship" between a defendant and his counsel, only that counsel be effective. Morris v. Slappy, 461 U.S. 1, 13, 103 S. Ct. 1610, 1617 (1983).

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As such, this Court finds that this claim is also nothing more than a conclusory claim for relief without any supporting facts. As such, this Court denies this claim.

GROUND 7(B) – Jefferson alleges trial counsel was ineffective for moving to omit CJ's statement to police and that defense counsel "misinterpreted" NRS 51.385. Both of these arguments apparently relate to the April 13, 2011, Motion in which counsel moved, on Jefferson's behalf, to preclude alleged testimonial statements CJ made to her mother and law enforcement regarding the sexual abuse. In support of his argument, Jefferson cites to portions of of CJ's voluntary statement to law enforcement to support his contention that law enforcement forced CJ to "fabricate allegations to effect an arrest." Petition at 21. This Court finds that Jefferson's contentions fail because they boil down to strategic decisions.

Jefferson cites to only 5 pages out of the total 29 page voluntary statement CJ gave to police. However, a read of the entire statement reveals that after the initial denial by the 5 year-old victim, once detectives revealed that they were aware of CJ's disclosure to her mother, CJ immediately proceeded to disclose the sexual abuse perpetrated by Jefferson. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court; see also Evidentiary Hearing Transcript, December 8, 2011, pp. 31-54. CJ disclosed to detectives that Jefferson made her perform oral sex on Jefferson and that "liquid" came out of his penis, Jefferson made CJ touch his penis, also that Jefferson put his privates in her privates and that she cried because it hurt. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court. Thus, this Court finds that defense counsel made the strategic decision to fight the admission of these statements and was successful.[5] Defense counsel did not misinterpret NRS 51.385 and never improperly shifted the burden. Instead, this Court finds that defense counsel made the strategic decision to oppose the admission of the CJ's disclosure to detectives. Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision. Had the statement been used, the jury would have heard that this 5 year-old victim initially stated

[5] The Court precluded the statements to law enforcement; however, granted admission of the statements to CJ's mother subject to CJ's availability. See Order Partially Denying Jefferson's Motion to Preclude 51.385 Testimony and Order Denying State's Oral Motion to Terminate Jefferson's Outside Privileges, filed Jan. 17, 2012.

nobody touched her private areas, but upon being told that detectives already knew what CJ had told her mother, CJ went into detail about the sexual abuse committed against CJ. As such, this Court denies this claim.

GROUND 7(C) – Jefferson alleges trial counsel was ineffective for failing to object and/or move for a new jury panel and/or failing to move for a mistrial based on the District Court's question during jury voir dire. Jefferson argues that trial counsel should have objected and/or moved for a new jury panel and/or moved for a mistrial when the Court asked the panel, "How many of you like child molestation? I am not going to get people raising their hands to that." However, this Court finds that Jefferson's argument fails.

In context, the purpose of the statement was not to voice any sort of opinion on the matter, but to clarify that a juror is not disqualified simply because he or she has understandable negative feelings about violence and sexual offenses. While the State individually questioned Prospective Juror No. 245, she indicated, "I have a real problem with the charges." Trial Transcript ("TT") July 30, 2012, p. 126, 23-24. She went on to indicate, "[I]n my mind, that's one of the worst charges. I mean, anything else, I could probably look at it openly, but not when children are involved." Id. at p. 127, 8-11. As a result, the prosecutor asked anybody that had strong feelings should raise his or her hand so that she could discuss this issue with the prospective juror(s). Id. at p. 128, 2-7. The prosecutor then asked a series of questions to Prospective Juror No. 245 regarding the presumption of innocence. Id. at p.128 lines 15-25, pp. 129-30. It was in this context that the Court stated to Prospective Juror No. 245:

> It's kind of like what I talked about earlier, is there's nobody -- if I'm going to ask the question, how many of you like violence? How many of you like rape? How many of you like child molestation? How many -- you know, I'm not going to get people raising their hand in response to that.
> But as Ms. Fleck just clearly covered, it's just an accusation. And you said you believed you'd be able to keep an open mind and listen to the – listen to the testimony before you came to any conclusions. Would you be able to deliberate with your fellow jurors toward reaching a verdict?

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> I think you changed your position kind of during the questioning, so that's why I went back over it to clarify with you. You have not heard one word of testimony, nor seen one piece of evidence at this point.
>
> ****
> Are you saying that you're entirely close-minded and unable to deliberate?

Id. at p. 131, lines 2-12.

Thus, in this context, the Court was merely establishing that at this stage in the proceeding, the criminal charges were only an accusation and that the relevant inquiry was whether the potential juror could keep an open mind while listening to the evidence. Contrary to Jefferson's assertion, this Court finds that this statement was not prejudicial. It was understandable that none of the prospective jurors would like violence or child molestation, but that was not the relevant inquiry and the Court was emphasizing this to Prospective Juror No. 245.

Because there was no wrongdoing by the Court, this Court finds that any objection by counsel and/or any request for a new jury panel and/or moving for a mistrial by defense counsel would have been futile. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (Counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments.). Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision not to raise this issue. As such, this Court denies this claim.

GROUND 7(D) – Jefferson alleges that trial counsel was ineffective for failing to impeach CJ with a prior inconsistent statement. This argument is related to supra Ground 7(B). This Court finds that Jefferson's contention fails because this again boils down to a strategic decision. Defense counsel did not elicit that when 5 year-old CJ initially sat down with two detectives, she stated nobody had touched her privates. This was because then the State would have been able to elicit the rest of the statement where CJ disclosed to detectives that Jefferson made her perform oral sex on Jefferson and that "liquid" came out of his penis, Jefferson made CJ touch his penis, also that Jefferson put his privates in her privates and that she cried because

it hurt. See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court.

Thus, this Court find that defense counsel made the strategic decision to not attempt to impeach the 5 year-old victim which very well may have backfired with the jury and would have opened the door for the State to introduce the entirety of CJ's statement. See Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decision. As such, this Court denies this claim.

GROUND 7(E) – Jefferson alleges that trial counsel was ineffective for failing to confront Dr. Vergara regarding not conducting a sexual assault kit. Specifically, Dr. Vergara testified that a sexual assault examination should be done no later than 72 hours after the trauma, in fact "the sooner the better" or "probably even sooner" than 72 hours. TT, Aug. 2, 2012, p. 7, 23-25; p. 8; p. 9, 1-3. Jefferson references an EMT report (which would have been taken the day CJ went to the hospital on September 14, 2010) where medical personnel indicated that Jefferson last assaulted CJ on September 11, 2010. However, this Court finds that defense counsel had no basis to "confront" Dr. Vergara for not conducting a sexual examination kit.

A reading of CJ's entire statement to police reveals that CJ disclosed that the last time Jefferson made CJ perform oral sex on him or that Jefferson sexually assaulted CJ was "a week and 2 days ago." See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the Court. Thus, there would have been no reason for Dr. Vergara to perform a sexual assault kit on CJ given that the last time Jefferson sexually assaulted CJ was well outside of the 72 hours. This information is also corroborated by CJ's mother's statement to detectives who never told law enforcement that CJ had been assaulted as recently as September 11, 2010. See Ex. 1, CJ's mom's Statement to LVMPD, filed December 8, 2011, with the Court. Additionally, CJ's and CJ's mother's testimony do not support this contention. TT, Aug. 2, 2012, pp. 41-78; TT, Aug. 3, 2012, pp. 10-45. Further, Detective Demas testified that CJ disclosed that the last time she had been sexually abused had been "approximately seven or eight days, so over the five-day period." TT, Aug. 6, 2012, p. 44, 11-16. Based on that information, Detective Demas advised

against doing a sexual assault kit. Id. at 17-25. Defense counsel successfully moved for inclusion of the report writer's testimony regarding the statement in question. TT, Aug. 8, 2012, pp. 27-35.

Based on all the witness' statements and testimony, this Court finds that defense counsel had no basis to confront Dr. Vergara for not doing a sexual assault kit on CJ. Any such attempt would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, this Court finds that Jefferson has failed to demonstrate how he was prejudiced by this. Any attempt to confront Dr. Vergara would have been successfully objected to. As such, this Court denies this claim.

GROUND 7(F) – Jefferson alleges that trial counsel was ineffective for failing to move for a continuance to "investigate" jail calls admitted into evidence. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. Jefferson sets forth nothing more than a bare allegation that other jail calls would have somehow shown that CJ's mother was on his side and this would have put the State in an "awkward position." Petition at 23.

On August 6, 2012, defense counsel attempted to preclude admission of *all* of the jail calls by filing a Motion in Limine for an Order Preventing the State from Introducing Unlawfully Recorded Oral Communications. Thus, this Court finds that defense counsel made the strategic decision to attempt to preclude admission of *all* of the jail calls by arguing that there was an expectation of privacy at the time the calls were made. As such, this Court finds that defense counsel cannot be faulted for the strategic decision to attempt to keep out all jail calls because if they had been successful, Jefferson's argument would be moot as counsel would have successfully precluded admission of all jail calls. Davis, 107 Nev. at 603, 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596.

Moreover, this Court finds that Jefferson fails to demonstrate how he was prejudiced by not being able to introduce this alleged information. For the aforementioned reasons, this Court denies this claim.

GROUND 7(G) – Jefferson alleges that trial counsel was ineffective for failing to challenge the lewdness conviction because the only evidence presented to support this conviction was Jefferson's confession to detectives. Because this issue was raised on appeal by and it failed, this Court finds that any effort by trial counsel to attempt to challenge the lewdness count would have been futile as the Nevada Supreme Court found that there was sufficient evidence to support the jury's verdict. Jefferson v. State, No. 62120 at 11-12; see also Ennis, 122 Nev. at 706, 137 P.3d at 1103. Indeed, the Nevada Supreme Court found that the "issue of guilt was not close given the overwhelming evidence presented by the State." Jefferson v. State, No. 62120 at 16.

Further, the jury heard more than just Jefferson's confession. The jury also heard CJ's own testimony about 4 separate occasions of sexual abuse—three in Jefferson's bedroom and one in her own bedroom. CJ testified that on each of the three occasions in the master bedroom, Jefferson put his penis in her mouth, vagina, and anus and on the fourth occasion, in her bedroom, Jefferson put his penis in her mouth and vagina. Further, the jury heard from CJ's mother about CJ's initial disclosure, also about an instance when Jefferson seemed eager for CJ's mother to go to bed and for CJ to stay up with Jefferson—CJ's mother later found a sad, disoriented CJ standing in a dark bedroom (consistent with CJ's testimony of sexual abuse). The jury also heard from CJ's brother who testified how Jefferson would take CJ into his bedroom while their mother was at work and on 1 occasion, heard CJ crying from the master bedroom—again, this was consistent with CJ's testimony regarding the abuse. The jury also heard jail calls, Jefferson's letters to CJ's mother after his arrest, and the 911 call Jefferson made the day that he was arrested. All of these things corroborated CJ's testimony of sexual abuse. Thus, this Court finds that the jury did not solely rely on Jefferson's confession and Jefferson's argument is belied by the record. Further, this Court finds that any argument by defense counsel would have been futile. As such, Jefferson's this claim is denied.

GROUND 7(H) – Jefferson alleges that trial counsel was ineffective for failing to raise sufficiency of the evidence at trial. Jefferson raises multiple other issues within this ground as well: the fact that the State "led" CJ's testimony, the State used perjured testimony from

detectives, trial counsel failed to establish that detectives produced a false complaint and that trial counsel did nothing more than stand beside him "while the prosecuting attorneys manipulated the court and the jurors." Petition at 23.

First, to the extent Jefferson argues that trial counsel was ineffective for failing to raise the issue of sufficiency of the evidence, Jefferson neglects to say exactly what counsel should have done to raise this issue. This issue was raised on appeal and was unsuccessful, as such, this Court finds that any attempt by trial counsel to raise this issue would have been futile as it would have been denied. Jefferson v. State, No. 62120 at 11-12 (Order of Affirmance finding that there was sufficient evidence to support all Jefferson's convictions); see also Ennis, 122 Nev. at 706, 137 P.3d at 1103.

Second, the remainder of Jefferson's issues are either not cognizable in their current form as permissible claims in a post-conviction petition for writ of habeas corpus or are not sufficiently articulated as claims of ineffective assistance of counsel. Jefferson takes issue with the State allegedly leading the victim during their examination of CJ and/or with using perjured testimony from law enforcement; however, this Court finds such substantive claims are deemed waived. These argument are waived because Jefferson could have raised them on direct appeal but failed to do so. See NRS 34.810(1)(b)(2); Franklin, 110 Nev. at 752, 877 P.2d at 1059.

In the form of ineffective assistance of counsel claims, this Court finds that Jefferson's claim is a non-specific bare allegations that does not support his claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225. A close reading of CJ's testimony reveals that defense counsel objected repeatedly throughout her examination on the basis of "leading" or that the answer was suggested in the question. Also, appellate counsel raised this issue on appeal. See AOB at 21-22.[6] Jefferson fails to set forth exactly what more trial counsel should have done that would have changed the outcome of his case. In terms of Jefferson's allegation that the State used perjured testimony from detectives, this Court finds that this is a bare allegation that does not warrant relief.

[6] To the extent Jefferson raised the issue of the State leading CJ on direct appeal as prosecutorial misconduct, this issue could be barred by law-of-the-case. Pellegrini, 117 Nev. at 888, 34 P.3d at 538.

Third, Jefferson claims that counsel failed to establish that "detectives produced a false complaint, which explains no medical signs of abuse;" this Court finds that this claim should have been raised, if at all, on direct appeal and is now waived. To the extent Jefferson claims this is ineffective assistance of counsel, this Court finds that the claim is bare and lacking any specific facts or argument. Again, the Nevada Supreme Court found overwhelming evidence of guilt. Further, there was no need for law enforcement or the State to produce "medical signs of abuse" to prove an allegation of sexual abuse. LaPierre, 108 Nev. at 531, 836 P.2d at 58; see also Gaxiola, 121 Nev. at 648, 119 P.3d at 1232 (The Nevada Supreme Court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction."). Thus, this Court finds that Jefferson errs in arguing that the State needed to set forth medical signs of abuse before prosecuting this case.

Moreover, this Court finds that Jefferson does not demonstrate how he was prejudiced by counsel's decisions set forth in Ground 7(H). As such, based on the foregoing, this claim is denied.

GROUND 7(I) – Jefferson alleges that he was prejudiced by the Court's failure to remove trial counsel from representing Jefferson based on a conflict of interest. Specifically, Jefferson argues that because he filed a bar complaint against trial counsel prior to trial that this created a conflict of interest. This argument is more thoroughly briefed in Jefferson's Supplemental Petition for Writ of Habeas Corpus.

The Sixth Amendment guarantees a criminal defendant the right to conflict-free representation. Coleman v. State, 109 Nev. 1, 3, 846 P.2d 286, 277 (1993) (citing Clark v. State, 108 Nev. 324, 831 P.2d 1374 (1992)). In order to demonstrate an error based on a conflict of interest, a defendant must show that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S. Ct. 1708 (1980)). A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. Nev. R. Prof'l Conduct 1.7(a). A concurrent conflict of exists if there is a significant risk that the representation of one or more clients will be materially limited by a

personal interest of the lawyer. See Nev. R. Prof'l Conduct 1.7(a)(2).

Here, this Court finds that Jefferson fails to show how trial counsel was limited by a "personal interest." Jefferson sets forth only that because he filed a bar complaint, this automatically created a conflict and that unless Jefferson waived this conflict, trial counsel could not continue to represent him. However, Jefferson fails to cite to *any* authority that an unsubstantiated bar complaint, along with other complaints about representation, creates an actual conflict that required any sort of waiver by Jefferson.

Further, this Court finds that Jefferson has not shown error based on a conflict of interest because he has not shown that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Strickland, 466 U.S. at 692 (quoting Cuyler, 446 U.S. at 348, 100 S. Ct. 1708). Instead, Jefferson cites to authority which is either not relevant to Jefferson's case or position in an attempt to convince this Court that there was an actual conflict in Jefferson's case that required him to waive such a conflict.

Here, Jefferson submitted a bar complaint received by the Nevada State Bar where the Bar apparently received it on October 18, 2011. Jefferson stated in the complaint that he was "having a bit of an issue" with his attorney. Exhibit A attached to Supplemental Petition. "A bit of an issue" is not an actual conflict. Jefferson goes on to say that when his attorney visited him, he "either 'lightly' verbally abuses him or ignores his outlook." Id. Jefferson then alleges that trial counsel told him on October 11, 2011, that "people like [Jefferson] belong in hell not prison." Id. Jefferson then went on to speculate why trial counsel allegedly made this comment, it could be due either to the serious charges Jefferson was facing of sexually assaulting his 5 year-old daughter or because Jefferson is African-American. Id. Notably, in Jefferson's Motion to Dismiss Counsel and Appoint Alternate Counsel filed on October 19, 2011, Jefferson never stated this at all. Even if the Motion was drafted prior to October 11, 2011, at the hearing for Jefferson's Motion, which post-dated the alleged bar complaint, Jefferson never once raised this issue. TT, Nov. 1, 2011, p.3.

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Instead, Jefferson took the opportunity he had to alert the Court as to the issues with trial counsel to raise three issues regarding why he wanted new counsel: 1) trial counsel failed to subpoena employment records; 2) trial counsel failed to call Jefferson's family members; and he failed to provide Jefferson with the full discovery in the case. Id. Yet, Jefferson expects this Court to believe that trial counsel made the statement, "people like [Jefferson] belong in hell not prison," yet he never once mentioned this to the Court when he had the chance.

Further, in his own exhibits to his instant Petition, Jefferson attached two letters he allegedly sent to Clark County Public Defender Phil Kohn. However, again, he never raised this statement in the letters to Kohn. Instead, Jefferson raises issues regarding trial strategy. The letters to Kohn are dated March 28, 2012, and May 22, 2012—well after the alleged statement was made.

Jefferson never filed any sort of motion with the Court nor did he ever raise the issue. Again, Jefferson expects this Court to believe that trial counsel made this statement when he never raised it with the Court nor with Kohn. There is no indication that trial counsel was even aware that Jefferson allegedly sent these letters to Kohn.

At the hearing on Jefferson's Motion, trial counsel stated that despite Jefferson filing his Motion, he wanted "what's best for [Jefferson]." TT, Nov. 1, 2011, p.2. Further, the Nevada Supreme Court held that Jefferson's conflict with counsel was "minimal" and easily resolved. Jefferson v. State, No. 62120 at 15. As such, this Court finds that Jefferson has not shown error based on a conflict of interest because he has not shown that counsel "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Thus, this Court denies this claim.

VII. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

For claims of ineffective assistance of appellate counsel, the prejudice prong is slightly different. Jefferson must demonstrate that the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1997); Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004). Appellate counsel is not

required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751-54, 103 S. Ct. 3308, 3312-14 (1983). After all, appellate counsel may well be more effective by not raising every conceivable issue on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

GROUND 8(A) – Jefferson alleges that appellate counsel was ineffective for failing to adequately present "Miranda violations." Petition at 25. However, Jefferson fails to set forth exactly what it is that appellate counsel should have raised. Jefferson alleges that appellate counsel should have raised other alleged issues related to Jefferson's confession such as that he was never read his Miranda rights. However, contrary to Jefferson's claim, Detectives did give Jefferson his Miranda rights prior to questioning him, thus, Jefferson's claim is belied by the record. Jefferson v. State, No. 62120 at 3.

Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones, 463 U.S. at 751-54, 103 S. Ct. at 3312-14. Because Jefferson was read his Miranda rights, this Court finds that trial counsel and then appellate counsel raised the issue they thought was best in relation to the confession. Moreover, appellate counsel did raise the issue that Jefferson did not properly waive his Miranda rights; however, the Nevada Supreme Court concluded that this argument lacked merit. Jefferson v. State, No. 62120 at 4, fn.1. Thus, this Court finds that any claim that Jefferson did not understand he was in police custody would have been unsuccessful. Again, appellate counsel raised the best issue given the facts surrounding Jefferson's confession and this Court finds that counsel cannot be faulted for not raising every colorable argument Jefferson believes appellate counsel should have raised. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(B) – Jefferson alleges that appellate counsel was ineffective for failing to present that the State knowingly used perjured testimony through Detective Katowich. Jefferson cites to two pages of Katowich's testimony wherein he testified that CJ in fact did have a forensic interview. This Court finds that Jefferson's allegation is bare and does not

warrant relief. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

Jefferson also argues that appellate counsel failed to "direct the court to the fact that the prosecution suborned perjury by forcing CJ to change testimony to prove guilt of the petitioner." Petition at 26. This Court finds that appellate counsel cannot be faulted for not raising a meritless, unsubstantiated allegation. Appellate counsel did raise the issue of prosecutorial misconduct alleging that the State had impermissibly, repeatedly led CJ and "supplied the preferred answers." See AOB at 21-22. This Court finds that Jefferson fails to set forth what more appellate counsel should have raised. Moreover, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(C) – Jefferson alleges that appellate counsel was ineffective for failing to adequately present the issue of the denial of his pro se Motion to Dismiss Counsel and Appoint Alternate Counsel. Jefferson alleges that appellate counsel should have elaborated in the argument that the State also made argument during the hearing on Jefferson's Motion and was "culpable in the ineffective assistance of counsel." Petition at 27.

This Court finds that Jefferson's argument is meritless and belied by the record. The State did not argue during this hearing. Upon review of the transcript related to Jefferson's Motion, there is 1 paragraph in the 6 pages of argument (the remainder of the transcript does not pertain to Jefferson's Motion) attributable to the State. TT, Nov. 1, 2011, p.6 at 12-17. The State did not take a position or argue in regards to Jefferson's Motion. Leading up to the State's statement, Jefferson had indicated to the Court that he wanted to terminate Mr. Cox because he failed to get employment records and failed to make phone calls to Jefferson's family. Id. at p.3. Mr. Cox indicated that he did not think the employment records were relevant to Jefferson's defense in the case. Id. at pp.5-6. This was especially true in light of the fact that there was no specific time period pled in the charging document. Id. at p.6. As a result of this

exchange, the State simply advised the Court that Jefferson had stated in his statement to police that he had lost his job. Id. Thus, Jefferson's complaint that he wanted the Court to dismiss defense counsel because counsel failed to get Jefferson's employment records was nonsensical as the employment records were not relevant to Jefferson's defense as Jefferson, by his own admission, was unemployed when he sexually abused his daughter.

The Court finds that this was a non-issue and appellate counsel cannot be faulted for failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(D) – Jefferson alleges that appellate counsel was ineffective for failing to present the issue raised supra Ground 7(C)—Jefferson alleges "structural error" in regards to the Court's statement to the jury panel. This Court finds that appellate counsel did not raise this issue because it was a non-issue with no probability of success on appeal. See supra Ground 7(C). This was a non-issue and appellate counsel cannot be faulted for failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(E) – Jefferson alleges that appellate counsel was ineffective for failing to present the issues: (1) CJ's brother testified without being at the evidentiary hearing to determine the reliability of his statements; (2) the State "discredited" CJ's mother's hearsay statement, yet used her as a witness; and (3) Jefferson was precluded from "adequately" cross-examining CJ on hearsay that conflicted because CJ was excused as a witness. All of Jefferson's arguments fail.

First, Jefferson seems to be arguing that CJ's brother should not have been able to testify about CJ's disclosure to their mother. These statements relate to Jefferson's Motion to Preclude Inadmissible 51.385 Evidence, see supra Ground 7(B). This Court finds that Jefferson's argument is belied by the record as appellate counsel did raise this claim. Hargrove,

100 Nev. at 502, 686 P.2d at 225; see also AOB at 39-41. As such, this claim is denied.

Jefferson's second argument within this Ground is a meritless, non-issue. As such, this Court finds that appellate counsel cannot be faulted for not raising the issue that the State, in Jefferson's opinion, "discredited" CJ's mother's hearsay statement, yet used her as a witness. During defense closing, defense counsel specifically made an allegation that CJ's mother lied about the last time that Jefferson sexually assaulted CJ and that the "story changed." TT, Aug. 8, 2012, p.93. This was in regards to why Dr. Vergara did not perform a sexual examination kit. In response to this, during rebuttal, the State argued, in relevant part:

> Detective Demas specifically told the doctor not to collect the DNA because the last abuse was beyond the minimum three to, at the max, five-day time frame. [CJ's brother] had said it'd been more than two weeks since he last saw his dad take his sister into the bedroom, and the detective learned from [CJ] during that interview that it'd been over a week since the last abuse occurred.
>
> And we heard from the detective about this three-day, at the most, five-day time frame in which DNA can be collected. And we actually heard specifically from Dr. Vergara that really it needs to be less than 72 hours; less than three days before there can be any kind of legitimate chance of collecting DNA.
>
> Now, the defense called Mr. Teague, the ambulance driver, to come in here, the ambulance -- the paramedic in the ambulance, to talk about [CJ's mother's] statement to him on -- about the date of September 11th. Remember, he never talked to [CJ]. This is not something that [CJ] told him. Detective Demas talked -- Detective Katowich talked directly to [CJ], but [Mr. Teague] never did. He simply obtained the statement from Cindy, and Cindy had told him about the date of September 11th, 2010.
>
> So, are we to believe that [CJ] said to her mom, yeah, mom the last time it happened? Is that – is that what we're supposed to believe? Does that make sense? What makes sense is that [CJ] told her mother, the last time it happened, you were at work. And her mom thought about, okay, when's the last day I worked? September 11th, 2010, so that's when she tells the paramedic.

TT, Aug. 8, 2012, p. 111.

Thus, the Court finds that the State never discredited CJ's mother. Rather, the State argued that it made no sense that this 5 year-old victim told her mom a specific date when telling her about the sexual abuse. Rather, it made sense that CJ's mother assumed this was the date, based on the manner in which CJ disclosed. Nothing within the State's argument

"discredited" CJ's mother. Further, this Court finds that it is up to the State how to present its case, not the defendant. As such, this Court finds that Jefferson could not have raised the issue that the State, allegedly, "discredited" CJ's mother, "yet presented her as a witness to recount hearsay." This Court finds that this non-issue would have had no chance of success on appeal. Further, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

Third, Jefferson alleges that he was precluded from "adequately" cross-examining CJ on hearsay that conflicted because CJ was excused as a witness. This Court finds that this is a non-specific bare allegation. Hargrove, 100 Nev. at 502, 686 P.2d at 225. This Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

GROUND 8(D) – Jefferson alleges substantive claims that are waived and must be dismissed pursuant to NRS 34.810. See also Pellegrini, 117 Nev. at 882, 34 P.3d at 534. Jefferson also alleges that appellate counsel should have presented actual innocence based on CJ's statement to police, see supra Ground 7(B); a bare allegation that the State demanded CJ alter her testimony; and the lack of an accurate medical observation, see supra Ground 7(H).

The United States Supreme Court has held that in order for a defendant to succeed based on a claim of actual innocence, he must prove that "'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in habeas proceedings." Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 867 (1995)). Procedurally barred claims may be considered on the merits, only if the claim of actual innocence is sufficient to bring the petitioner within the narrow class of cases implicating a fundamental miscarriage of justice. Schlup, 513 U.S. at 314 115 S. Ct. at 861). This Court finds that Jefferson fails to set forth any new evidence that would have made it more likely than not that no reasonable juror would have convicted him. As such, this Court finds that Jefferson fails to demonstrate that

the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532.

Appellate counsel did raise the issue of sufficiency of the evidence. Within this argument, appellate counsel raised issues regarding alleged inconsistencies in witness statements, the lack of physical evidence, the alleged unreliability of Jefferson's confession, and the fact that CJ never testified as to the any acts of lewdness. The Nevada Supreme Court could have agreed and reversed Jefferson's convictions, but it did not. As such, this Court finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

VIII. JEFFERSON IS NOT ENTITLED TO AN EVIDENTIARY HEARING

NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

> 1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
>
> 2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
>
> 3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). However, a defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605

In the instant case, this Court finds that Jefferson's arguments are waived and/or barred by the law of the case and/or meritless. To the extent he raises issues that the Court could address on the merits, this Court finds that his arguments are nevertheless belied by the record

or insufficient to warrant relief. As such, this Court finds that there is no need to expand the record to resolve Jefferson's Petition, his request for an evidentiary hearing is denied.

IX. CUMULATIVE ERROR DOES NOT WARRANT REVERSAL

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction *Strickland* context. *McConnell v. State*, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. *Middleton v. Roper*, 455 F.3d 838, 851 (8th Cir. 2006), *cert. denied,* 549 U.S. 1134, 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.")

Nevertheless, even if cumulative error review is available, such a finding in the context of a *Strickland* claim is extraordinarily rare. *See, e.g., Harris by & Through Ramseyer v. Wood,* 64 F.3d 1432, 1438 (9th Cir. 1995). After all, "[s]urmounting *Strickland*'s high bar is never an easy task," *Padilla*, 559 U.S. at 371,130 S. Ct. at 1485, and there can be no cumulative error where the defendant fails to demonstrate *any* single violation of *Strickland. See, e.g.*, *Athey v. State*, 106 Nev. 520, 526, 797 P.2d 956 (1990) ("[B]ecause we find no error . . . the doctrine does not apply here."); *United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012) ("Where, as here, no individual ruling has been shown to be erroneous, there is no 'error' to consider, and the cumulative error doctrine does not warrant reversal"); *Turner v. Quarterman*, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is nothing to cumulate.") (internal quotation marks omitted).

Here, this Court finds that Jefferson has not demonstrated that any of his claims warrants relief, and as such, there is nothing to cumulate. Therefore, Jefferson's cumulative error claim is denied.

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ORDER

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

DATED this 14 day of June, 2016.

DISTRICT JUDGE

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

BY _____ for
BERNARD E. ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545

APPROVED AS TO FORM AND SUBSTANCE

BY _____
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LAS VEGAS, NV 89101
Nevada Bar No. 12149

hjc/OM:SVU

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Attorney for Appellant
BRANDON JEFFERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

BRANDON JEFFERSON, Petitioner, vs. THE STATE OF NEVADA, Respondent.	CASE NO.: C-10-268351-1 DEPT. NO.: IV

NOTICE OF APPEAL

Notice is hereby given that BRANDON JEFFERSON, Appellant above named, by and through his court-appointed attorney of record, MATTHEW LAY, ESQ., of NGUYEN & LAY, hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order denying his post-conviction petition for writ of habeas corpus entered in this action on the 03rd day of August, 2016.

Dated this 02nd day of September, 2016.

NGUYEN & LAY

MATTHEW LAY, ESQ.
Nevada Bar Identification No. 12249
Attorney for Appellant
BRANDON JEFFERSON

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that electronic service of the foregoing NOTICE OF APPEAL was made on the 02nd day of September, 2016.

Clark County District Attorney's Office
Email: pdmotions@clarkcountyda.com

By: _____
Matthew Lay, Esq.
Nevada Bar Identification No. 12249
Nguyen & Lay
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Attorney for Appellant
BRANDON JEFFERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 19, 2016**

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

May 19, 2016 **11:00 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Skye Endresen

REPORTER: Dana J. Tavaglione

PARTIES PRESENT:
Lay, D. Matthew — Attorney for Deft.
Zadrowski, Bernard B. — Attorney for State

JOURNAL ENTRIES

- Deft. not present, in Nevada Department of Corrections (NDC). Mr. Lay advised he filed a supplement and requested an evidentiary hearing be set. Counsel submitted. Mr. Zadrowski noted Court will rule with no oral arguments by either counsel. COURT STATED FINDINGS and ORDERED, Petition and Supplement DENIED; State to prepare the order to form and content.

NDC

CLERK'S NOTE: A copy of this Minute Order was distributed to:
Brandon Jefferson #1094051
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301 -*se5/19/16*

TRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.
	)	
BRANDON JEFFERSON,	)	C-10-268351-1
	)	
Defendant.	)	DEPT. NO. IV
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE KERRY EARLEY

THURSDAY, MAY 19, 2016

APPEARANCES:

For the State: BERNARD E. ZADROWSKI,
DEPUTY DISTRICT ATTORNEY

For the Defendant: MATTHEW D. LAY, ESQ.

REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

LAS VEGAS, NEVADA, THURSDAY, MAY 19, 2016

* * * * *

THE MARSHAL: Your Honor, we can do page 25, Case C-268351, State of Nevada vs. Brandon Jefferson.

THE COURT: Okay. This is Defendant's Pro Per Petition for Writ of Habeas Corpus.

Good morning.

MR. LAY: Good morning, Your Honor. Matt Lay, appearing on behalf of Mr. Jefferson.

THE COURT: Okay.

MR. LAY: He's incarcerated in the Department of Corrections.

THE COURT: He is.

MR. LAY: I don't believe he's with us this morning.

THE COURT: He is not.

MR. LAY: I did file a Supplement. I'm presuming the Court has it.

THE COURT: Yes, I have it. Filed 12/22/2015?

MR. LAY: That's correct, Your Honor.

THE COURT: Okay.

MR. LAY: Our request is for an evidentiary

hearing. Unless the Court has any specific questions on the petition, I'm prepared to submit this morning.

MR. ZADROWSKI: The State will submit.

THE COURT: I did this earlier. Okay. I did note that you had requested an evidentiary hearing. All right. I'm ready to rule. I worked hard. Okay?

MR. LAY: Thank you, Your Honor.

THE COURT: All right. Okay. The Defendant's Pro Per Petition for Writ of Habeas Corpus --

MR. ZADROWSKI: Oh, I'm sorry, Your Honor.

Would Your Honor please make note in the record, make note and put it in the minute order that Your Honor is ruling with no oral argument by either counsel.

My concern is, because he wasn't brought down, that that has to be part of the record.

THE COURT: Okay. That's fine.

MR. ZADROWSKI: That's fine.

THE COURT: Do you want to bring him down?

MR. LAY: I don't --

THE COURT: I don't think --

MR. LAY: We don't typically bring down

defendants for the argument portion. If there's an evidentiary hearing, of course.

THE COURT: He has to be.

MR. ZADROWSKI: Understood.

THE COURT: All right. But thank you for doing that. Okay.

The Court finds that, pursuant to NRS 34.770 and the State, in the case of "Marshall vs. State" that no evidentiary hearing is necessary on this petition, as it can be resolved without expanding the record.

As to Defendant's Grounds 1 and 2, in support of his position, the Court finds that, as the Nevada Supreme Court has already considered and rejected Defendant's argument regarding "Miranda," as well as his related argument regarding coercion, the law of the case doctrine bars Defendant from rearguing those issues in the instant petition.

Defendant's arguments regarding prosecutorial misconduct are also barred by the law of the case as the Nevada Supreme Court has considered and rejected those arguments. Further, as Defendant failed to offer any good excuse -- any good cause to excuse his failure to raise those arguments on direct appeal, Ground 3 of his petition

is denied.

Ground 4 of Defendant's petition regarding allegations of evidentiary error is denied. His arguments regarding the tainted jury venire could have been raised on direct appeal but were not. Thus those arguments are dismissed, pursuant to NRS 34.810, Subsection (1), Subsection (b), Subsection (2). Further, his other arguments raised regarding any alleged evidentiary error are barred by the law of the case.

Ground 5 regarding double jeopardy is similarly denied, pursuant to NRS 34.810, Subsection (1), Subsection -- it's a small (b), Subsection (2), and Defendant's argument regarding redundancy is barred by the law of the case.

Ground 6 is denied as Defendant may not reargue the sufficiency of the evidence, pursuant to "LaPierre v. State" and "Pellegrini v. State."

Ground 7 regarding ineffective assistance of trial counsel is denied as the Defendant has not shown that, but for counsel's alleged incompetence, the results of the proceeding would have been different.

Further, Defendant has not shown that he was denied reasonable effective -- reasonably

effective assistance of counsel, nor that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result, pursuant to "Strickland vs. Washington."

Ground 8 regarding ineffective assistance of appellate counsel is denied as Defendant has not demonstrated that the issues he claimed were admitted would have had a reasonable probability of success on appeal, pursuant to "Kirksey v. State."

Finally, as to the cumulative errors alleged by the Defendant, Defendant has not demonstrated that any claim raised warrants relief and, as such, there is nothing to accumulate. Thus Defendant's cumulative error, I feel is also denied.

Therefore, Defendant's petition and the Supplemental Petition for Writ of Habeas Corpus are both denied.

I would like the State to prepare the order -- and I know this is a lot. I usually ask for form and content. I don't know if you guys do that in criminal.

MR. ZADROWSKI: The great thing is that the law clerk pool does it. So you can order it all day long, and I won't object.

THE COURT: Okay. Well, I would like --
MR. ZADROWSKI: I had to do it when I --
THE COURT: -- Counsel to make sure.
MR. ZADROWSKI: I get it.
THE COURT: I worked hard on this one.
MR. LAY: They typically send us a copy.
MR. ZADROWSKI: We will. Sure.
THE COURT: Okay. That's all I care about because if you think there's something that's not -- I want to clean this up. I want the best record I can, especially for this case. Okay.
MR. LAY: Thank you, Your Honor.
MR. ZADROWSKI: I always had to do it when I was a law clerk. So I'm okay with it.
THE COURT: Okay. I'm sure you did your dues, Mr. Zadrowski.
Thank you.
MR. LAY: Thank you.

(The proceedings concluded at 10:45 a.m.)

-oOo-

C E R T I F I C A T E

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, RPR, CCR 841, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. Kerry Earley, District Court Judge, presiding.

Dated at Las Vegas, Nevada, this 6th day of June 2016.

/S/Dana J. Tavaglione
_____
Dana J. Tavaglione, RPR, CCR NO. 841
Certified Court Reporter
Las Vegas, Nevada

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby declares that on January 09, 2017, an electronic copy of the foregoing APPELLANT'S FAST TRACK APPENDIX was sent via the master transmission list with the Nevada Supreme Court to the following:

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Clark County District Attorney

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Nevada Attorney General

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