

CLERK OF THE COURT

1 **NOAS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 **MCLEATCHIE SHELL LLC**

4 701 East Bridger Ave., Suite 520

5 Las Vegas, Nevada 89101

6 Telephone: (702) 728-5300

7 Facsimile: (702) 425-8220

8 Email: maggie@nvlitigation.com

9 *Attorney for Petitioner*

Electronically Filed
Dec 16 2016 02:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 TYRONE JAMES,

13 Petitioner,

14 vs.

15 STATE OF NEVADA,

16 Respondent.

CASE NO.: 10C265506

DEPT. NO.: XI

NOTICE OF APPEAL

17 **NOTICE OF APPEAL**

18 NOTICE IS HEREBY GIVEN that TYRONE JAMES, Petitioner in the above
19 entitled case, by and through his counsel of record, MARGARET A. MCLEATCHIE, of the
20 law firm MCLEATCHIE SHELL, LLC, hereby appeals to the Nevada Supreme Court from
21 the denial of his Petition for Writ of Habeas Corpus on November 9, 2016 pursuant to Nevada
22 Rule of Appellate Procedure 4(b)(1)(A).

23 DATED this 8th day of December, 2016.

24 /s/ Margaret A. McLetchie

25 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

26 **MCLEATCHIE SHELL LLC**

27 701 East Bridger Ave., Suite 520

28 Las Vegas, Nevada 89101

Telephone: (702) 728-5300

Attorney for Petitioner

CERTIFICATE OF SERVICE

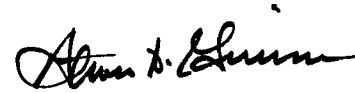
Pursuant to NRCP 5(b)(2)(B) I hereby certify that on the 8th day of December, 2016, I electronically filed and mailed a true and correct copy of the foregoing NOTICE OF APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to the following addresses:

ADAM LAXALT, Attorney General
10 North Carson Street
Carson City, NV 89701

STEVEN B. WOLFSON, District Attorney
JAMES SWEETIN, Chief Deputy District Attorney
200 Lewis Avenue
P.O. Box 552212
Las Vegas, Nevada 89155
Attorneys for Respondent, STATE OF NEVADA

TYRONE JAMES, ID # 1063523
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070
Petitioner

Certified by: /s/ Pharan Burchfield
An Employee of McLetchie Shell, LLC



CLERK OF THE COURT

ASTA

Margaret A. McLetchie, Nevada Bar No. 10931

MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

Telephone: (702) 728-5300

Facsimile: (702) 425-8220

Email: maggie@nvlitigation.com

Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

TYRONE JAMES,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO.: 10C265506

DEPT. NO.: XI

CASE APPEAL STATEMENT

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** Tyrone James
2. **Judge issuing the decision, judgment, or order appealed from:** The Honorable Elizabeth Gonzalez.

3. **Name and address of appellant's counsel:**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
MCLEATCHIE SHELL LLC
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101
Attorney for Petitioner, Tyrone James

4. **Name and address of respondent's counsel:**

STEVEN B. WOLFSON, Nevada Bar No. 1565
Clark County District Attorney
JAMES R. SWEETIN, Nevada Bar No. 5144
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, NV 89155
Attorneys for Respondent, the State of Nevada

- 1 5. **Attorneys not licensed to practice law in Nevada:** None.
- 2 6. **Whether appellant was represented by appointed or retained counsel in the**
- 3 **district court:** Appellant was represented by appointed counsel in the district court.
- 4 7. **Whether appellant is represented by appointed or retained counsel on appeal:**
- 5 Appellant is represented by appointed counsel on appeal.
- 6 8. **Whether appellant was granted leave to proceed in forma pauperis:** N/A
- 7 9. **Date the proceedings commenced in the district court:** June 21, 2010.
- 8 10. **A brief description of the nature of the action and result in the district court,**
- 9 **including the type of judgment or order being appealed and the relief granted by the**
- 10 **district court:** Appellant submitted his Petition for Writ of Habeas Corpus (post-conviction
- 11 relief) on March 14, 2013, arguing that his trial counsel ineffective, and a Supplemental
- 12 Petition for Writ of Habeas Corpus (Post-Conviction) on September 4, 2015. The district
- 13 court denied the Petition on July 25, 2016, and entered a Notice of Entry of Findings of Fact,
- 14 Conclusions of Law and Order on November 9, 2016. Appellant appeals from this denial of
- 15 Post-Conviction Relief.
- 16 11. **Whether the case has previously been the subject of an appeal to or original**
- 17 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
- 18 **number of the prior proceeding:** Yes, the trial proceeding stage of the case has been the
- 19 subject of appeals to the Nevada Supreme Court: Tyrone James vs. The State of Nevada,
- 20 docket number 57178.
- 21 12. **Whether the appeal involves child custody or visitation:** This case does not
- 22 involve child custody or visitation.
- 23 ///
- 24 ///
- 25 ///
- 26 ///
- 27 ///
- 28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

;

4

5

5

6

0

7

Q

8

9

10

11

12

13

14

15

16

17

18

15

20

2

22

24

25

26

27

28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b)(2)(B) I hereby certify that on the 8th day of December, 2016, I electronically filed and mailed a true and correct copy of the foregoing CASE APPEAL STATEMENT by depositing the same in the United States mail, first-class postage pre-paid, to the following addresses:

ADAM LAXALT, Attorney General
10 North Carson Street
Carson City, NV 89701

STEVEN B. WOLFSON, District Attorney
JAMES SWEETIN, Chief Deputy District Attorney
200 Lewis Avenue
P.O. Box 552212
Las Vegas, Nevada 89155
Attorneys for Respondent, STATE OF NEVADA

TYRONE JAMES, ID # 1063523
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070
Petitioner

Certified by: /s/ Pharan Burchfield
An Employee of McLetchie Shell, LLC

DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

State of Nevada
vs
Tyrone James

§ Location: Department 11
§ Judicial Officer: Gonzalez, Elizabeth
§ Filed on: 06/21/2010
§ Case Number History:
§ Cross-Reference Case Number: C265506
§ Defendant's Scope ID #: 1303556
§ ITAG Booking Number: 1000026255
§ ITAG Case ID: 1152658
§ Lower Court Case # Root: 10F09328
§ Lower Court Case Number: 10F09328X
§ Supreme Court No.: 57178

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. SEXUAL ASSAULT	F	01/01/1900	Case Flags:	Appealed to Supreme Court Custody Status - Nevada Department of Corrections
1. SEXUAL ASSAULT	F	01/01/1900		
2. OPEN OR GROSS LEWDNESS	G	01/01/1900		
3. SEXUAL ASSAULT	F	01/01/1900		
3. SEXUAL ASSAULT	F	01/01/1900		
4. OPEN OR GROSS LEWDNESS	G	01/01/1900		
5. ASSAULT AND BATTERY	F	01/01/1900		

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	10C265506
Court	Department 11
Date Assigned	01/22/2013
Judicial Officer	Gonzalez, Elizabeth



PARTY INFORMATION

		Lead Attorneys
Defendant	James , Tyrone D	Shell, Alina <i>Retained</i> 702-728-5300(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

06/21/2010	 Criminal Bindover <i>CRIMINAL BINDOVER Fee \$0.00</i>	10C2655060001.tif pages
06/21/2010	Hearing <i>INITIAL ARRAIGNMENT</i>	10C2655060002.tif pages
06/23/2010	 Information <i>INFORMATION</i>	10C2655060004.tif pages
06/24/2010	Initial Arraignment (1:30 PM) Events: 06/21/2010 Hearing <i>INITIAL ARRAIGNMENT Court Clerk: Sandra Harrell Relief Clerk: Nicole McDevitt /nm Reporter/Recorder: Kiara Schmidt Heard By: Randall Weed</i>	

DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

06/24/2010 **Plea** (Judicial Officer: Bell, Linda Marie)

1. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:

1. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:


2. OPEN OR GROSS LEWDNESS
Not Guilty
PCN: Sequence:

3. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:

3. SEXUAL ASSAULT
Not Guilty
PCN: Sequence:

4. OPEN OR GROSS LEWDNESS
Not Guilty
PCN: Sequence:


5. ASSAULT AND BATTERY
Not Guilty
PCN: Sequence:


06/29/2010  Notice of Witnesses and/or Expert Witnesses
NOTICE OF WITNESSES AND/OR EXPERT WITNESSES


10C2655060007.tif pages


07/08/2010  Order
*ORDER RELEASING ALL CONFIDENTIAL RECORDS FOR IN-CAMERA
INSPECTION BY COURT COURT*


10C2655060008.tif pages

07/27/2010  Reporters Transcript
Reporter's Transcript of Preliminary Hearing - Heard 06-17-10

08/05/2010  Motion
Filed By: Defendant James , Tyrone D
Discovery Motion











08/12/2010  **Motion for Discovery** (8:30 AM) (Judicial Officer: Glass, Jackie)
Discovery Motion

08/16/2010  Notice of Motion
Filed By: Plaintiff State of Nevada
Notice of Motion and Motion to Admit Evidence of other Crimes, Wrongs or Acts

08/16/2010  Notice of Witnesses
Party: Plaintiff State of Nevada
Supplemental Notice of Witnesses and/or Expert Witnesses (NRS 174.231)


08/17/2010 **CANCELED Calendar Call** (8:30 AM)
Vacated - per Judge


DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

08/23/2010	CANCELED Jury Trial (10:00 AM) <i>Vacated - per Judge</i>
08/25/2010	 Opposition Filed By: Defendant James , Tyrone D <i>Opposition to State's Motion to Admit Evidence of Other Acts</i>
08/26/2010	 Motion to Admit Evidence (8:30 AM) (Judicial Officer: Glass, Jackie) 08/26/2010, 09/10/2010 <i>Motion for Clarification of Sentence</i>
09/08/2010	 Motion in Limine <i>Defendants Motion In Limine To Preclude Lay Opinion Testimony That The Complaining Witness' Behavior Is Consistent With That Of A Victim Of Sexual Abuse</i>
09/10/2010	CANCELED Hearing (1:30 PM) (Judicial Officer: Villani, Michael) <i>Vacated - On In Error</i>
09/10/2010	Hearing (1:30 PM) (Judicial Officer: Glass, Jackie) <i>PETROCELLI HEARING: STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS</i>
09/10/2010	Motion in Limine (1:30 PM) (Judicial Officer: Glass, Jackie) Events: 09/08/2010 Motion in Limine <i>Defendants Motion In Limine To Preclude Lay Opinion Testimony That The Complaining Witness' Behavior Is Consistent With That Of A Victim Of Sexual Abuse</i>
09/10/2010	CANCELED All Pending Motions (1:30 PM) (Judicial Officer: Glass, Jackie) <i>Vacated</i>
09/10/2010	 All Pending Motions (1:30 PM) (Judicial Officer: Glass, Jackie) <i>ALL PENDING MOTIONS 9/10/10</i>
09/10/2010	 Opposition to Motion <i>State's Opposition to Defendant's Motion in Limine to Preclude lay Opinion Testimony that the Complaining Witness Behavior is Consistent with that of a Victim of Sexual Abuse</i>
09/14/2010	 Calendar Call (8:30 AM) (Judicial Officer: Glass, Jackie)
09/16/2010	 Transcript of Proceedings <i>Transcript of Proceedings: Petrocelli hearing: State's Notice of Motion and Motion to Admit Evidence of other Crimes, Wrongs or Acts September 10, 2010</i>
09/17/2010	 Overflow (9:00 AM) (Judicial Officer: Barker, David) <i>Overflow (5) C. Pandelis / B. Cox 2-3 Days 8-10 Witnesses / No Out Of State Witnesses</i>
09/17/2010	 Motion to Reconsider Filed By: Defendant James , Tyrone D <i>Defendant's Motion to Reconsider Motion To Admit Evidence of Other Crimes, Wrongs or Acts</i>
09/20/2010	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Glass, Jackie) <i>Vacated</i>
09/21/2010	 Motion to Reconsider (9:00 AM) (Judicial Officer: Bell, Linda Marie)


DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

Events: 09/17/2010 Motion to Reconsider
*Defendant's Motion To Reconsider Motion To Admit Evidence Of Other Crimes, Wrongs
Or Acts*


09/21/2010  **Jury Trial** (9:30 AM) (Judicial Officer: Bell, Linda Marie)
09/21/2010-09/23/2010


09/21/2010  Jury List


09/23/2010  Amended Jury List

09/23/2010  Verdict

09/23/2010  Instructions to the Jury

10/22/2010  Notice of Appeal (criminal)
Party: Defendant James , Tyrone D

11/16/2010  Case Appeal Statement
Filed By: Plaintiff State of Nevada
Case Appeal Statement

12/01/2010  **Sentencing** (8:45 AM) (Judicial Officer: Bell, Linda Marie)
12/01/2010, 01/19/2011

01/07/2011  PSI
Supplemental PSI

01/19/2011 **Disposition** (Judicial Officer: Bell, Linda Marie)

1. SEXUAL ASSAULT
Guilty
PCN: Sequence:

1. SEXUAL ASSUALT
Guilty
PCN: Sequence:

2. OPEN OR GROSS LEWDNESS
Dismissed
PCN: Sequence:







3. SEXUAL ASSAULT
Guilty
PCN: Sequence:

3. SEXUAL ASSUALT
Guilty
PCN: Sequence:

4. OPEN OR GROSS LEWDNESS
Dismissed
PCN: Sequence:













5. ASSAULT AND BATTERY
Guilty
PCN: Sequence:

DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506














01/19/2011	Sentence (Judicial Officer: Bell, Linda Marie) 1. SEXUAL ASSAULT Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after:25 yrs Year												
01/19/2011	Sentence (Judicial Officer: Bell, Linda Marie) 1. SEXUAL ASSUALT Adult Adjudication												
01/19/2011	Sentence (Judicial Officer: Bell, Linda Marie) 3. SEXUAL ASSAULT Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after:25 yrs Year Concurrent: Charge 1												
01/19/2011	Sentence (Judicial Officer: Bell, Linda Marie) 3. SEXUAL ASSUALT Adult Adjudication												
01/19/2011	Sentence (Judicial Officer: Bell, Linda Marie) 5. ASSAULT AND BATTERY Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life with the possibility of parole after:2 yrs Year Concurrent: Charge 1 & 3 Credit for Time Served: 250 Days Condition 1. Lifetime Supervision Fee Totals: <table border="0" style="margin-left: 40px;"><tr><td>Administrative</td><td></td></tr><tr><td>Assessment Fee</td><td>25.00</td></tr><tr><td>\$25</td><td></td></tr><tr><td>DNA Analysis Fee</td><td>150.00</td></tr><tr><td>\$150</td><td></td></tr><tr><td>Fee Totals \$</td><td>175.00</td></tr></table>	Administrative		Assessment Fee	25.00	\$25		DNA Analysis Fee	150.00	\$150		Fee Totals \$	175.00
Administrative													
Assessment Fee	25.00												
\$25													
DNA Analysis Fee	150.00												
\$150													
Fee Totals \$	175.00												
02/09/2011	 Judgment of Conviction <i>Judgment Of Conviction (Jury Trial)</i>												
03/07/2011	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D												
03/07/2011	 Case Appeal Statement Filed By: Defendant James , Tyrone D												
03/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript RE: Overflow Calendar Call - Heard 09/17/2010</i>												
04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Calendar Call - Heard September 14, 2010</i>												
04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Plaintiff's Notice of Motion and Motion to Admit Evidence of</i>												

DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506














Other Crimes, Wrongs or Acts - Heard August 26, 2010

04/06/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Defendant's Motion for Discovery - Heard August 12, 2010</i>
04/22/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript of Hearing Re: Arraignment - Heard Thursday, June 24, 2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Trial by Jury Day 2 - Volume II - Heard 09/22/2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Trial by Jury Day 3 - Volume III - Heard 09/23/2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Transcript Re: Defendant's Motion to Reconsider Motion to Admit Evidence of Other Crimes, Wrong or Acts Trial by Jury Day 1 - Volume I - Heard 09/21/2010</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript of Sentencing - Heard 01/19/2011</i>
04/29/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada <i>Recorder's Transcript of Sentencing - Heard 12/01/2010</i>
08/06/2012	Case Reassigned to Department 9 <i>Case reassigned from Judge Bell</i>
11/30/2012	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
01/22/2013	Case Reassigned to Department 11 <i>Case reassigned from Judge Jennifer Togliatti Dept 9</i>
03/14/2013	 Petition for Writ of Habeas Corpus Filed by: Defendant James , Tyrone D <i>Petition for Writ of Habeas Corpus (Post - Conviction)</i>
03/14/2013	 Motion Filed By: Defendant James , Tyrone D <i>Motion to Appoint Counsel</i>
03/20/2013	 Order for Petition for Writ of Habeas Corpus
05/07/2013	 Response Filed by: Plaintiff State of Nevada <i>Response to Defendant's Petition for Writ of Habeas Corpus</i>


DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

05/13/2013	 Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 05/13/2013, 05/20/2013, 06/17/2013, 11/18/2015, 06/08/2016, 07/25/2016, 10/03/2016
07/18/2013	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulation and Order</i>
07/23/2013	 Notice of Entry of Order <i>Notice of Entry of Order</i>
11/05/2013	 Ex Parte Order Filed By: Defendant James , Tyrone D <i>Ex Parte Motion and Order to File Under Seal</i>
11/05/2013	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex Parte Motion for Expert-Motion for Supplemental fees.</i>
12/03/2013	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
12/03/2013	 Order Filed By: Plaintiff State of Nevada <i>Stipulated Extension of Habeas Petition Dates and Propsed Order</i>
02/26/2014	 Stipulation and Order Filed by: Plaintiff State of Nevada <i>Stipulated Extension of Habeas Petition Dates and Proposed Order</i>
03/03/2014	 Notice of Entry Filed By: Defendant James , Tyrone D <i>Notice of Entry and Stipulation and Order</i>
06/18/2014	CANCELED Status Check (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Vacated - per Stipulation and Order</i> <i>Status Check: Briefing Schedule</i>
07/09/2014	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
07/09/2014	 Stipulation and Order Filed by: Defendant James , Tyrone D <i>Stipulated Extension of Habeas Petition Dates and Proposed Order</i>
10/13/2014	 Stipulation and Order Filed by: Defendant James , Tyrone D <i>Stipulated Extension of Habeas Petition Dates and Proposed Order</i>
10/24/2014	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>














DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

11/24/2014	 Stipulation and Order Filed by: Defendant James , Tyrone D <i>Stipulated Extension of Habeas Petition Dates and Proposed Order</i>
11/24/2014	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
01/15/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex-Parte Motion for Expert- Motion for Supplemental Fees</i>
01/15/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex Parte Motion and Order to File Under Seal</i>
01/15/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Proposed Order for Ex Parte Motion for Expert-Motion for Supplemental Fees</i>
01/26/2015	 Notice Filed By: Defendant James , Tyrone D <i>Notice of Appearance</i>
02/12/2015	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
02/12/2015	 Order to Release Medical Records Filed By: Defendant James , Tyrone D <i>Proposed Order for Ex Parte Motion to Release Medical Records</i>
03/12/2015	 Motion Filed By: Defendant James , Tyrone D <i>Petitioner's Request for the Extension of Time to File Supplemental Petition (Seventh Request)</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex Parte Motion and Order to File Under Seal</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Ex parte Motion for Paralegal Services-Motion for Supplemental Fees</i>
03/12/2015	 Filed Under Seal Filed By: Defendant James , Tyrone D <i>Proposed Order for Ex Parte Motion for Paralegal Services Motion for Supplemental Fees</i>
03/13/2015	 Notice <i>Notice of Change of Hearing</i>













DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

03/20/2015	 Opposition Filed By: Plaintiff State of Nevada <i>Opposition to Defendant's Request For Extension Of Time To File Supplemental Petition (Seventh Request)</i>
03/23/2015	 Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) Events: 03/12/2015 Motion <i>Petitioner's Request for Extension of Time to File Supplemental Petition (Seventh Request)</i>
04/06/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
04/07/2015	 Motion Filed By: Defendant James , Tyrone D <i>Motion for Order to Release Medical Records and LVMPD Reports</i>
04/16/2015	 Response Filed by: Plaintiff State of Nevada <i>Response to Defendant's Motion For Order To Release Medical Records And Lvmpd Records</i>
04/20/2015	 Motion (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 04/20/2015, 05/27/2015 <i>Defendant's Motion for Order to Release Medical Records and LVMPD Reports</i>
04/22/2015	 Amended Certificate of Mailing Filed By: Defendant James , Tyrone D <i>Amended Certificate of Service</i>
04/24/2015	 Reply Filed by: Defendant James , Tyrone D <i>Reply to State's Response in Opposition to Petitioner's Motion for Order to Release Medical Records and LVMPD Reports</i>
05/04/2015	 Response Filed by: Plaintiff State of Nevada <i>Department of Family Services Response to Defendant's Motion for Order to Release Medical Records and LVMPD Records</i>
05/20/2015	 Reply Filed by: Defendant James , Tyrone D <i>Reply to Department of Family Service's Response to Petitioner's Motion for Order to Release Medical Records</i>
06/08/2015	 Order Filed By: Defendant James , Tyrone D <i>Order Releasing Records For In Camera Inspection By Court</i>
06/08/2015	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
06/09/2015	 Order


DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

	Filed By: Defendant James , Tyrone D <i>Order Releasing Records for in Camera Inspection by Court</i>
06/09/2015	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>
06/19/2015	 Status Check (3:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 06/19/2015, 06/26/2015 <i>Status Check: In Camera Review</i>
07/02/2015	 Minute Order (3:00 PM) (Judicial Officer: Gonzalez, Elizabeth) <i>Minute Order re In Camera Review of Records from LVMPD</i>
07/07/2015	 Notice of Change of Firm Name Filed By: Defendant James , Tyrone D <i>Notice of Change of Law Firm Affiliation</i>
08/04/2015	 Notice of Change of Address Filed By: Defendant James , Tyrone D <i>Notice of Change of Address</i>
09/04/2015	 Motion for Order Filed By: Defendant James , Tyrone D <i>Renewed Motion for Order to Release Medical Records and LVMPD Reports</i>
09/04/2015	 Petition Filed by: Defendant James , Tyrone D <i>Supplemental Petition for Post-Conviction Writ of Habeas Corpus</i>
09/14/2015	 Motion to Release (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Defendant's Renewed Motion for Order to Release Medical Records and LVMPD Reports</i>
09/17/2015	 Response Filed by: Plaintiff State of Nevada <i>Las Vegas Metropolitan Police Department's Response to Defendant's Renewed Motion for Order to Release Medical Records and LVMPD Reports</i>
09/18/2015	 Motion Filed By: Defendant James , Tyrone D <i>Motion for a Subpoena to Sunrise Hospital to Release Medical Records</i>
10/09/2015	 Motion Filed By: Defendant James , Tyrone D <i>Motion and Notice of Motion to File Under Seal</i>
10/15/2015	 Order to Release Medical Records Filed By: Defendant James , Tyrone D <i>Ex Parte Motion for a Subpoena to Sunrise Hospital to Release Medical Records and [Proposed] Order</i>
10/23/2015	 Exhibits Filed By: Defendant James , Tyrone D <i>Appendix of Exhibits to Petitioner's Supplement to Petition For Writ of Habeas Corpus</i>

DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

10/23/2015	 Supplemental Filed by: Defendant James , Tyrone D <i>Supplemental Motion to File Under Seal</i>
10/28/2015	 Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Motion and Notice of Motion to File Under Seal</i>
11/02/2015	 Exhibits Filed By: Defendant James , Tyrone D <i>Second Amended Appendix of Exhibits to Petitioner's Supplement to Petition for Writ of Habeas Corpus</i>
11/02/2015	 Minute Order (3:00 PM) (Judicial Officer: Gonzalez, Elizabeth) <i>Minute Order: In Camera Review</i>
11/09/2015	 Acknowledgment Filed By: Plaintiff State of Nevada
11/18/2015	Status Check (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Status Check: Records</i>
11/18/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
12/30/2015	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate</i>
01/15/2016	 Supplement Filed by: Defendant James , Tyrone D <i>Supplement to Supplemental Petition for Writ of Habeas Corpus</i>
01/15/2016	 Exhibits Filed By: Defendant James , Tyrone D <i>Appendix of Exhibits to Supplement to Supplemental Petition for Writ of Habeas Corpus</i>
03/29/2016	Minute Order (10:15 AM) (Judicial Officer: Gonzalez, Elizabeth) <i>Minute Order: In Camera Review</i>
04/21/2016	 Response <i>Response to Defendant's Supplemental Petition for Post-Conviction Writ of Habeas Corpus and Supplement to Supplemental Petition for Post-Conviction Writ of Habeas Corpus</i>
05/27/2016	 Request Filed by: Defendant James , Tyrone D <i>Request for Extension of Time</i>
05/31/2016	 Reply Filed by: Defendant James , Tyrone D <i>Reply to State's Response to Petitioner's Supplemental Petition for Post-Conviction Writ of Habeas Corpus</i>
07/25/2016	Evidentiary Hearing (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth) 07/25/2016, 10/03/2016

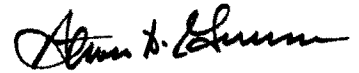
DEPARTMENT 11
CASE SUMMARY
CASE NO. 10C265506

	<i>Evidentiary Hearing: Expert Issue</i>	
07/25/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)	
08/01/2016	 Order Filed By: Defendant James , Tyrone D <i>Order for Supplemental Fees</i>	
10/03/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)	
10/11/2016	 Order Filed By: Plaintiff State of Nevada <i>Application and Order for Transcripts</i>	
10/19/2016	 Recorders Transcript of Hearing <i>Recorder's Transcript re: Defendant's Petition for Writ of Habeas Corpus; Evidentiary Hearing: Expert Issue</i>	
11/08/2016	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada	
11/09/2016	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	
11/10/2016	 Order Filed By: Defendant James , Tyrone D <i>Order Appointing Margaret A. McLetchie as Court-Appointed Counsel</i>	
11/10/2016	 Notice of Entry of Order Filed By: Defendant James , Tyrone D <i>Notice of Entry of Order</i>	
12/08/2016	 Notice of Appeal (criminal) Party: Defendant James , Tyrone D <i>Notice of Appeal</i>	
12/08/2016	 Case Appeal Statement Filed By: Defendant James , Tyrone D <i>Case Appeal Statement</i>	

DATE	FINANCIAL INFORMATION	
	Defendant James , Tyrone D	
	Total Charges	175.00
	Total Payments and Credits	0.00
	Balance Due as of 12/12/2016	175.00
	Plaintiff State of Nevada	
	Total Charges	3.50
	Total Payments and Credits	3.50
	Balance Due as of 12/12/2016	0.00

ORIGINAL

Electronically Filed
11/08/2016 10:03:37 AM



CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY L. KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
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-

TYRONE JAMES,
#1303556

Defendant.

CASE NO: 10C265506

DEPT NO: XI

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: OCTOBER 3, 2016
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable ELIZABETH GONZALEZ, District Judge, on the 3rd day of October, 2016; the Petitioner being present, represented by ALINA SHELL, ESQ.; the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STACEY L. KOLLINS, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel and documents on file herein, the Court now therefore makes the following findings of fact and conclusions of law:

//

//

//

1 On March 7, 2011, James filed a Notice of Appeal. On October 31, 2012, the Nevada
2 Supreme Court issued an Order of Affirmance. Remittitur issued on November 26, 2012.

3 On March 14, 2013, James filed a post-conviction Petition for Writ of Habeas Corpus
4 and Motion to Appoint Counsel. The State filed its Response to James's Petition on May 7,
5 2013. On May 20, 2013, Robert Langford Esq., was appointed as counsel. On September 4,
6 2015, James filed a Supplemental Petition for Post-Conviction Writ of Habeas Corpus
7 ("Supplement"). On January 15, 2016, James filed another Supplement to Supplemental
8 Petition for Writ of Habeas Corpus ("Second Supplement"). On April 21, 2016, the State filed
9 its Response to James's Second Supplement. On October 3, 2016, this Court heard sworn
10 testimony from Bryan Cox, Esq., and Dr. Joyce Adams. This Court now orders that James's
11 Petition be DENIED.

12 STATEMENT OF THE FACTS

13 On May 14, 2010, 15 – year-old T.H. was home alone sleeping when she awoke to find
14 James in her home. Transcript Re: Trial by Jury Day 2 – Volume II, ("Transcript: Day 2, Vol
15 II") filed April 29, 2011, 13-17. T.H. knew James because he was involved in a dating
16 relationship with T.H.'s mother, Theresa Allen ("Theresa"). Id. at 8.

17 T.H. testified that while she was in her bedroom, she heard a noise and then James came
18 into her bedroom and jumped on top of her. Id. at 17-19. When James jumped on top of T.H.,
19 she was trying to call her mother on her cell phone. Id. at 19. T.H.'s cell phone fell on the
20 side of the bed and James picked it up and put it in his pocket. Id. T.H. then moved to her
21 sister's bed, which was next to hers, and James again jumped on top of her and began to choke
22 her. Id. at 20. When T.H. began to scream and cry, James told her to shut up or he would
23 snap her neck. Id.

24 After James jumped on top of T.H., he took off her shirt and underwear and pulled her
25 into the living room. Id. Once in the living room, James made T.H. lay on the floor and he
26 sat on top of her. Id. at 21-22. While James was on top of T.H., he continued choking her.
27 Id.

28 //

1 While James was on top of T.H. on the living room floor with his hand around her neck,
2 he opened up T.H.'s legs and stuck his finger in her vagina. Id. T.H. noticed that James had
3 a glove on the hand he used to digitally penetrate her vagina. Id. at 22-23. James then pulled
4 his penis out from his pants and rubbed it inside T.H.'s vagina. Id. at 24-26. T.H. could not
5 see James's penis but she felt something rubbing the inside of her vagina. Id. at 25.

6 T.H. testified that once James stopped rubbing his penis in her vagina, he told her to
7 get up and sit on the couch. Id. at 26. Then, James asked her why she did not like him. Id. at
8 26-27. Afterwards, T.H. got dressed for school and James drove her to school. Id. at 27.
9 During the ride, James asked T.H. who she was going to tell and if she wanted him to buy her
10 a new case for her cell phone. Id. at 28. T.H.'s phone case broke when it fell in her bedroom.
11 Id. As soon as T.H. arrived at school she texted her sister Denise and told her what happened.
12 Id. at 29. Denise then told their mother what happened. Id. Theresa, T.H.'s mother,
13 immediately called T.H. who was still at school. Id. at 93. T.H. picked up the phone crying.
14 Id. Because she was in class, T.H.'s teacher told her to hang up the phone. Id. Theresa asked
15 to speak to T.H.'s teacher and had T.H. sent to the office where Theresa could pick her up. Id.
16 When Theresa picked T.H. up from school, T.H. was crying so hard that she was "gasping for
17 air." Id. at 96-97. Once T.H. and Theresa were alone in their car, T.H. was able to tell Theresa
18 what happened. Id. After T.H. told Theresa what happened, Theresa called James and told
19 him what T.H. had said. Id. at 99-100. James accused T.H. of lying and asked Theresa where
20 he could meet her. Id. at 100. She told James to meet her at the house. Id. When James came
21 to the house, Theresa met him outside. Id. at 101. James continued accusing T.H. of lying.
22 Id. T.H. looked James in the face and told him exactly what she told Theresa he had done to
23 her. Id. at 100. After her conversation with James, Theresa called the police. Id. at 102.

24 Theresa testified that she had spoken to James earlier that day because he was supposed
25 to pay her power bill for her. Id. at 88-89. However, despite James's contentions that he went
26 to her house to drop off his dog and pick up the power bill, Theresa testified that she never
27 gave James permission to go into her home that day for either purpose. Id. at 87-89. Theresa
28 testified that there was no reason whatsoever for James to go to her home. Id. at 89.

1 Theresa testified that after the incident, T.H. did not want to stay at the house so they
2 stayed with family members for a few weeks. Id. at 107-08. About a week after the assault,
3 Theresa went to the home to get more clothes and shoes. Id. at 106-07. While looking under
4 her bed for her shoes she found a box of rubber gloves, exactly the kind that T.H. had described
5 James wearing during the assault. Id. Theresa contacted police who collected the gloves. Id.
6 at 109. Theresa testified that T.H.'s behavior drastically changed after the assault; she did not
7 want to sleep at home and Theresa had to sleep in the living room with her once they did return
8 home. Id. at 109-11.

9 Dr. Theresa Vergara ("Dr. Vergara") examined T.H. after the assault. Id. at 155. Dr.
10 Vergara testified that T.H. had no bruising to the externa genitalia. Id. at 158. However, there
11 was generalized swelling to the introitus (vaginal opening), which could be caused from
12 trauma. Id. at 158-59. Dr. Vergara testified that while other things, such as a urinary tract
13 infection, could cause the swelling, the findings were consistent with T.H.'s complaint of
14 sexual assault. Id. at 159. However, Dr. Vergara testified that the findings were categorized
15 as "non-specific findings." Id. at 165.

16 At trial, pursuant to the State's Motion to Admit Other Bad ACTS, N.F. also testified
17 about James sexually assaulting her. Id. at 187-207. N.F. met James when she was a little girl
18 because he was married to her mother Tanisha. Id. at 187. Tanisha and James divorced when
19 N.F. was twelve years old after he was caught touching her inappropriately. Id. at 189. One
20 night when N.F. was about twelve years old, James came into her bedroom around midnight.
21 Id. at 192. James took N.F. to another room and told her that he felt like "someone was
22 touching her." Id. James instructed N.F. to lay on the bed and removed her pants. Id. at 194.
23 Then, James inserted his finger in her vagina. Id. at 194. N.F. told James to stop, which he
24 did. Id. Once James stopped, he told N.F. to go back to her room. Id. During another incident,
25 James entered N.F.'s room again around midnight, while she was sleeping. Id. at 199-200.
26 James jerked N.F. out of her bed and took her into the same room as the previous time. Id. at
27 200-01. James put N.F. on the bed and pulled her pants off. Id. at 201. N.F. could feel James's
28 penis on her leg. Id. N.F. kept telling James to stop. Id. When N.F. tried to yell for help,

1 James threatened to kill her family. Id. James tried inserting his penis in N.F.'s vagina but
2 was unsuccessful because it would not fit. Id. at 202. James then inserted his penis in N.F.'s
3 butt. Id. N.F. again asked James to stop, which he did. Id.

4 During a third incident, N.F. was in the house with only James and her younger sister;
5 her mother had left for work. Id. at 194. James was chasing N.F. around the house and they
6 ended up in the living room. Id. at 195. N.F. and James started to play wrestle but James
7 began to get aggressive. Id. Every time N.F. tried to get up James would pull her back down.
8 Id. N.F. kept telling James to leave her alone. Id. Eventually James let her go and told her to
9 get in the shower. Id. N.F. stated that she did not want to get in the shower but James insisted
10 stating that he was not going to do anything to her. Id. N.F. went into the bathroom and James
11 locked the door stating, "See, I'm not going to do anything to you." Id. at 196. While N.F.
12 was in the shower she heard a pop at the door and saw James enter the bathroom. Id. James
13 told her to put her foot on top of the bathtub. Id. N.F. refused and James kept persisting. Id.
14 Scared that James might hurt her, N.F. put her foot on top of the bathtub and James inserted
15 his fingers into her vagina. Id. at 197. When N.F. tried calling for help, James put his hands
16 on her neck to try to shut her up. Id. at 198. Afterwards, James instructed N.F. to get out of
17 the shower. Id. at 197. James picked N.F. up and put her on the floor on her back. Id. James
18 got on top of her and attempted to insert his penis into her vagina but was unable to because it
19 would not fit. Id. During the last incident, James entered N.F.'s room while she was laying
20 on her bed. Id. at 203. James attempted to pull her pants off. Id. at 203-04. While James was
21 trying to pull her pants off, his mother Carol came into N.F.'s bedroom. Id. at 204. James
22 jumped off the bed and hid in N.F.'s closet. Id. at 205. Carol began screaming to Tanisha that
23 James was touching N.F. Id. Tanisha told James to get out of her house and took N.F. to
24 Southwest Medical, where N.F. eventually talked to the police. Id. at 207.

25 //

26 //

27 //

28 //

PETITION CLAIMS

I. JAMES RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment provides that, “[I]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.” U.S. Const. amend. VI. It has long been recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 706-707 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). To prove ineffectiveness, a claimant must show that his counsel was deficient and that that deficiency prejudiced the defense. Strickland, 466 U.S. at 687 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Deficient performance is representation that falls below an objective standard of reasonableness. Kirksey, 112 Nev. at 987, 923 P.2d at 1107. To show prejudice, the claimant must show a reasonable probability that but for counsel’s errors the result of the proceeding would have been different. Id. This Court may consider either prong of the Strickland test, in any order, and need not consider both when a defendant’s showing on either prong is insufficient. Kirksey, 112 Nev. at 987, 923 P.2d at 1107. “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), quoting McMann v. Richardson, 397 U.S. 759, 771 (1970).

The role of a reviewing court considering allegations of ineffective assistance 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), citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

Even if a defendant can demonstrate that his counsel’s representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel’s errors, the result of the trial would have been different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing

1 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064).

2 Importantly, when raising a Strickland claim, the defendant bears the burden to
3 demonstrate the underlying facts by a preponderance of the evidence. Means v. State, 120
4 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). When ineffective assistance of counsel claims are
5 asserted in a petition for post-conviction relief, the claims must be supported with specific
6 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100
7 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient,
8 nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part,
9 “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to
10 allege specific facts rather than just conclusions may cause your petition to be dismissed.”
11 (emphasis added).

12 **A. Counsel Was Reasonably Effective In Not Retaining An Expert Witness**

13 James claims that counsel was ineffective for failing to retain an expert witness.
14 However, this claim is denied because counsel was reasonably able to attack Dr. Vergara’s
15 expert testimony through cross-examination after requesting and reviewing the medical
16 evidence. Transcript: Day 2, Vol II, 151-82. Bryan Cox, James’s initial attorney, testified at
17 James’s evidentiary hearing that he has hired expert witnesses in past sexual assault cases but
18 did not believe this case turned on physical evidence, and that he believed he could get Dr.
19 Vergara to say that her findings were not conclusive and had an alternative explanation..
20 Reporter’s Transcript (“RT”) 6-7, 13, 15. Indeed, Dr. Vergara acknowledged as much on
21 cross-examination. Such was a reasonable strategic decision.

22 Further, assuming *arguendo* that counsel was able to retain an expert who would have
23 been able to testify to as Dr. Adams did at the evidentiary hearing, this Court nonetheless finds
24 James still cannot show a reasonable likelihood of a different outcome at trial based on the
25 other overwhelming evidence against him. See McNelson, 115 Nev. at 403, 990 P.2d at 1268.
26 As stated by Cox, this case did not hinge on physical findings by Dr. Vergara and the testimony
27 of Defendant’s other bad acts by N.H. was far more probative. James completely ignores
28 N.F.’s damning testimony. N.F., just like T.H., met James because of his relationship with her

1 mother. Transcript: Day 2, Vol II at 187. Just like T.H., James sexually assaulted N.F. when
2 her mother was at work. Id. at 194-98. Just like T.H., James tried choking N.F. to prevent her
3 from getting help. Id. at 198. Just like T.H., James inserted his fingers in N.F.'s vagina and
4 tried putting his penis in her vagina. Id. at 192-202. In N.F.'s case, James was caught touching
5 N.F. inappropriately by his own mother. Id. at 207. Thus, even if trial counsel had consulted
6 and/or spoken to a medical expert and entirely neutralized the State's expert, the overwhelming
7 corroboration of T.H.'s testimony by evidence related to N.F.'s sexual abuse would have led
8 to the same result. Based on the evidence presented at trial, James fails to demonstrate a
9 reasonable probability that, but for counsel's decision not to retain an expert, the result of the
10 trial would have been different. Therefore, James fails to demonstrate that counsel was
11 ineffective or that he suffered prejudiced. Accordingly, James's claim is denied.

12 **B. Counsel Was Reasonably Effective In Not Challenging The Admission Of**
13 **The Latex Gloves**

14 This Court denies James's claim that counsel was ineffective for failing to challenge
15 the admission of the latex gloves. James fails to show how a motion or objection to exclude
16 the gloves would have been meritorious and James's claim that the evidence was more
17 prejudicial than probative is unsupported by law.

18 The threshold question for the admissibility of evidence is relevance. Brown v. State,
19 107 Nev. 164, 168, 807 P.2d 1379, 1382 (1991). Under NRS 48.035(1), relevant evidence is
20 inadmissible "if its probative value is substantially outweighed by the danger of unfair
21 prejudice." Because all evidence against a defendant will on some level "prejudice" (i.e.,
22 harm) the defense, NRS 48.035(1) focuses on "unfair" prejudice. State v. Eighth Judicial Dist.
23 Court of Nev., 127 Nev. ___, ___, 267 P.3d 777, 781 (2011). "By requiring the prejudicial effect
24 of evidence to 'substantially outweigh' its probative value, NRS 48.035 implies a favoritism
25 toward admissibility." Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 45-46, 910
26 P.2d 271, 273 (1996).

27 //

28 //

1 In this case, the gloves were relevant as they tended to corroborate T.H.'s recounting
2 of the assault and the State laid sufficient foundation for their introduction. James neglects to
3 provide any explanation why the evidence of the gloves was prejudicial. This Court finds the
4 evidence did not appeal to the emotional tendencies of the jury. Rather, the jury was able to
5 evaluate the evidence and make its own determination and inference regarding the gloves.
6 Accordingly, any objection to the admissibility of the gloves would have been futile. Ennis,
7 122 Nev. at 706, 137 P.3d at 1103. Furthermore, as demonstrated by James's own exhibits,
8 counsel investigated the gloves. See, Defense Exhibit 7, James 0089. Thus, any tactical
9 decisions taken after investigation are unchallengeable. Dawson, 108 Nev. at 117, 825 P.2d
10 at 596. Therefore, Defendant's claim is denied.

11 **C. Counsel Was Not Ineffective In Investigating**

12 This Court denies James's claim that counsel was ineffective for failing to conduct
13 adequate investigation. The Nevada Supreme Court has made it clear that a defendant who
14 contends that his attorney was ineffective because he did not adequately investigate the case
15 must show how a better investigation would have rendered a more favorable outcome
16 probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d, 533, 538 (2004).

17 In this claim, James makes nothing more than a bare allegation that counsel failed to
18 conduct a reasonable investigation. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Cox testified
19 that he would not do anything differently if he had the opportunity to do the trial again. RT at
20 18. James fails to demonstrate what further investigation counsel should have done, much less
21 how that investigation would have rendered a more favorable outcome. Such a bare allegation
22 does not warrant relief. Therefore, James's claim is denied.

23 To the extent that James claims counsel was ineffective for not following up on his
24 investigator's conversation with Theresa regarding the latex gloves, such a claim is without
25 merit and denied. James fails to demonstrate what further investigation would have revealed
26 and how it would have rendered a more favorable outcome. Similarly, James's claim that
27 counsel was ineffective for not cross-examining Theresa about her statement to the defense
28 investigator regarding where the gloves were found is meritless and denied. First, James

1 erroneously claims that Theresa told the investigator she found the gloves under her kitchen
2 sink. Theresa stated that, “police seized a box of white latex gloves from under her bathroom
3 sink.” See Defense Exhibit 9, James 0091. Second, trial counsel has the “immediate and
4 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and
5 what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).
6 Accordingly, the cross-examination of witnesses is a strategic decision for counsel to make
7 and this Court declines to challenge it. Id.; Dawson 108 Nev. at 117, 825 P.2d at 596.

8 Additionally, James fails to show a reasonable probability that, but for counsel’s failure
9 to cross-examine Theresa regarding her statement to the investigator, the result of the trial
10 would have been different. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Accordingly, James
11 fails to demonstrate that counsel’s representation fell below an objective standard of
12 reasonableness or that he was prejudiced. Therefore, James’s claim is denied.

13 **D. Counsel Was Reasonably Effective In Not Objecting During The State’s**
14 **Closing Argument**

15 This Court denies James’s claim that counsel was ineffective for not objecting to the
16 State’s use of a PowerPoint slide during closing argument containing James’s booking
17 photograph with the word “GUILTY” superimposed across it. James’s reliance on Watters v.
18 State, 129 Nev. ___, 313 P.3d 243 (2013), is misplaced. In Watters, the Nevada Supreme Court
19 held that the State’s use of a PowerPoint during *opening* statement that included a slide of
20 defendant’s booking photo with the word “GUILTY” superimposed across it constituted
21 improper advocacy and undermined the presumption of innocence essential to a fair trial. Id.
22 at ___, 313 P.3d at 249. However, in this case, unlike Watters, the photo was briefly used
23 during the State’s *closing argument*. Unlike opening statements, closing arguments are made
24 after all the evidence has been presented and are an entirely appropriate occasion for argument.
25 See Morales v. State, 122 Nev. 966, 972, 143 P.3d 463, 467 (2006) (finding that the State can
26 contend during closing argument that the “presumption of innocence has been overcome”);
27 State v. Green, 81 Nev. 173, 176, 400 P.2d 766, 767 (1965)(“[A] prosecutor has the right to
28 state fully his views as to what the evidence shows”). Moreover, in Artiga-Morales v. State,

1 the Nevada Supreme Court found no impropriety and prejudice of the sort demonstrated in
2 Watters, where the State used defendant's photograph during closing argument with the word
3 "GUILTY" superimposed on it. 130 Nev. ___, ___, 335 P.3d 179, 182 (2014).

4 Further, James fails to demonstrate that the outcome of the trial would have been
5 different had the jury not viewed the State's slide. James fails to proffer how he was
6 prejudiced. McNelton, 115 Nev. at 403, 990 P.2d at 1268. James makes nothing more than a
7 bare conclusory statement that the prosecutor's visual proclamation of guilt affected the jury's
8 verdict. As such, James's claim is a bare allegation that warrants no relief. Hargrove, 100
9 Nev. at 502, 686 P.2d at 225. Because James fails to establish that counsel was objectively
10 unreasonable or that he was prejudiced by counsel's failure to object, this claim is denied.

11 **II. THERE WAS NO CUMULATIVE ERROR**

12 This Court denies James's claim that the cumulative error of his trial counsel violated
13 his right of due process, equal protection, and effective assistance of counsel. Without
14 expressly endorsing an approach for cumulative error in the context of ineffective assistance
15 of counsel claims, the Nevada Supreme Court has acknowledged that other courts have held
16 that "multiple deficiencies in counsel's performance may be cumulated for purposes of the
17 prejudice prong of the Strickland test when the individual deficiencies otherwise would not
18 meet the prejudice prong." McConnell v. State, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318
19 n.17 (2009) (utilizing this approach to note that the defendant is not entitled to relief).
20 However, the doctrine of cumulative error is strictly applied, and a finding of cumulative error
21 is extraordinarily rare. State v. Hester, 979 P.2d 729, 733 (N.M. 1999); Derden v. McNeel,
22 978 F.2d 1453, 1461 (5th Cir. 1992). Cumulative error review should not be utilized in the
23 post-conviction context. Middleton v. Ruper, 455 F.3d 838, 851 (8th Cir. 2006) cert. denied
24 549 U.S. 1134, 1275 S.Ct. 980 (2007) ("habeas petitioner cannot build a showing of prejudice
25 on a series of errors, none of which would by itself meet the prejudice tests").

26 Even if cumulative error review were available, a defendant must first make a threshold
27 showing that his counsel's performance was deficient and counsel's representation fell below
28 an objective standard of reasonableness. State v. Theil, 655 N.W.2d 305, 323 (Wis. 2003);

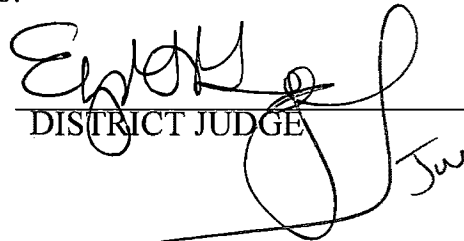
1 State v. Sheahan, 77 P.3d 956, 976 (Idaho 2003); State v. Savo, 108 P.3d 903, 916 (Alaska
2 2005); State v. Maestas, 299 P.3d 892, 990 (Utah 2012). In fact, logic dictates that cumulative
3 error cannot exist where the defendant fails to show that any violation or deficiency existed
4 under Strickland. McConnell, 125 Nev. at 259, 212 P.3d at 318; United States v. Franklin,
5 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007);
6 Pearson v. State, 12 P.3d 686, 692 (Wyo. 2000); Hester, 979 P.2d at 733. Further, in order to
7 cumulate errors, the defendant must not only show that an error occurred regarding his
8 counsel's representation, but that at least two errors occurred. Rolle v. State, 236 P.3d 259,
9 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d 1148, 1194-95 (10th Cir. 2012).

10 James has failed to make a single showing that his counsel's representation was
11 objectively unreasonable. Further, even if James had made such a showing, he has not shown
12 that the cumulative effect of these errors was so prejudicial as to undermine the court's
13 confidence in the outcome of his case. Collins, 742 F.3d at 542. Therefore, James's claim of
14 cumulative error is without merit and is denied.

15 **ORDER**

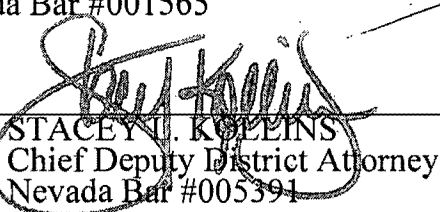
16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
17 Corpus shall be, and is, DENIED.

18 DATED this 4th day of Nov ~~October~~, 2016.

19 
20 DISTRICT JUDGE
21

22 STEVEN B. WOLFSON
23 Clark County District Attorney
Nevada Bar #001565

24 BY

25 
26 STACEY L. KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
27
28

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 31ST day of
OCTOBER 2016, to:

MARGARET MCLETCHIE, ESQ.
maggie@nvlitigation.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

Howard Conrad

From: Howard Conrad
Sent: Monday, October 31, 2016 1:45 PM
To: 'Rose, Laura'
Cc: 'maggie@nvlitigation.com'
Subject: 10F09328-FCL-(James_Tyrone_10_03_2016)-001
Attachments: 10F09328-FCL-(James_Tyrone_10_03_2016)-001.pdf

THE STATE OF NEVADA,

Plaintiff,

-VS-

**TYRONE JAMES,
#1303556**

Defendant.

CASE NO: **10C265506**

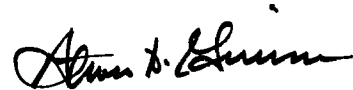
DEPT NO: **XI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: OCTOBER 3, 2016

TIME OF HEARING: 9:00 AM



CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TYRONE JAMES,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C265506

Dept No: XI

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

PLEASE TAKE NOTICE that on November 8, 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 November 9, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 9 day of November 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:

Tyrone James # 1063523
P.O. Box 650
Indian Springs, NV 89070

Alina Shell
701 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101

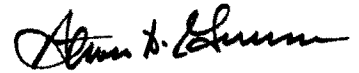
Margaret McLetchie, Esq.
701 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

ORIGINAL

Electronically Filed
11/08/2016 10:03:37 AM



CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY L. KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
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-

TYRONE JAMES,
#1303556

Defendant.

CASE NO: 10C265506

DEPT NO: XI

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: OCTOBER 3, 2016
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable ELIZABETH GONZALEZ, District Judge, on the 3rd day of October, 2016; the Petitioner being present, represented by ALINA SHELL, ESQ.; the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STACEY L. KOLLINS, Chief Deputy District Attorney; and having considered the matter, including briefs, transcripts, arguments of counsel and documents on file herein, the Court now therefore makes the following findings of fact and conclusions of law:

//

//

//

1 On March 7, 2011, James filed a Notice of Appeal. On October 31, 2012, the Nevada
2 Supreme Court issued an Order of Affirmance. Remittitur issued on November 26, 2012.

3 On March 14, 2013, James filed a post-conviction Petition for Writ of Habeas Corpus
4 and Motion to Appoint Counsel. The State filed its Response to James's Petition on May 7,
5 2013. On May 20, 2013, Robert Langford Esq., was appointed as counsel. On September 4,
6 2015, James filed a Supplemental Petition for Post-Conviction Writ of Habeas Corpus
7 ("Supplement"). On January 15, 2016, James filed another Supplement to Supplemental
8 Petition for Writ of Habeas Corpus ("Second Supplement"). On April 21, 2016, the State filed
9 its Response to James's Second Supplement. On October 3, 2016, this Court heard sworn
10 testimony from Bryan Cox, Esq., and Dr. Joyce Adams. This Court now orders that James's
11 Petition be DENIED.

12 STATEMENT OF THE FACTS

13 On May 14, 2010, 15 – year-old T.H. was home alone sleeping when she awoke to find
14 James in her home. Transcript Re: Trial by Jury Day 2 – Volume II, ("Transcript: Day 2, Vol
15 II") filed April 29, 2011, 13-17. T.H. knew James because he was involved in a dating
16 relationship with T.H.'s mother, Theresa Allen ("Theresa"). Id. at 8.

17 T.H. testified that while she was in her bedroom, she heard a noise and then James came
18 into her bedroom and jumped on top of her. Id. at 17-19. When James jumped on top of T.H.,
19 she was trying to call her mother on her cell phone. Id. at 19. T.H.'s cell phone fell on the
20 side of the bed and James picked it up and put it in his pocket. Id. T.H. then moved to her
21 sister's bed, which was next to hers, and James again jumped on top of her and began to choke
22 her. Id. at 20. When T.H. began to scream and cry, James told her to shut up or he would
23 snap her neck. Id.

24 After James jumped on top of T.H., he took off her shirt and underwear and pulled her
25 into the living room. Id. Once in the living room, James made T.H. lay on the floor and he
26 sat on top of her. Id. at 21-22. While James was on top of T.H., he continued choking her.
27 Id.

28 //

1 While James was on top of T.H. on the living room floor with his hand around her neck,
2 he opened up T.H.'s legs and stuck his finger in her vagina. Id. T.H. noticed that James had
3 a glove on the hand he used to digitally penetrate her vagina. Id. at 22-23. James then pulled
4 his penis out from his pants and rubbed it inside T.H.'s vagina. Id. at 24-26. T.H. could not
5 see James's penis but she felt something rubbing the inside of her vagina. Id. at 25.

6 T.H. testified that once James stopped rubbing his penis in her vagina, he told her to
7 get up and sit on the couch. Id. at 26. Then, James asked her why she did not like him. Id. at
8 26-27. Afterwards, T.H. got dressed for school and James drove her to school. Id. at 27.
9 During the ride, James asked T.H. who she was going to tell and if she wanted him to buy her
10 a new case for her cell phone. Id. at 28. T.H.'s phone case broke when it fell in her bedroom.
11 Id. As soon as T.H. arrived at school she texted her sister Denise and told her what happened.
12 Id. at 29. Denise then told their mother what happened. Id. Theresa, T.H.'s mother,
13 immediately called T.H. who was still at school. Id. at 93. T.H. picked up the phone crying.
14 Id. Because she was in class, T.H.'s teacher told her to hang up the phone. Id. Theresa asked
15 to speak to T.H.'s teacher and had T.H. sent to the office where Theresa could pick her up. Id.
16 When Theresa picked T.H. up from school, T.H. was crying so hard that she was "gasping for
17 air." Id. at 96-97. Once T.H. and Theresa were alone in their car, T.H. was able to tell Theresa
18 what happened. Id. After T.H. told Theresa what happened, Theresa called James and told
19 him what T.H. had said. Id. at 99-100. James accused T.H. of lying and asked Theresa where
20 he could meet her. Id. at 100. She told James to meet her at the house. Id. When James came
21 to the house, Theresa met him outside. Id. at 101. James continued accusing T.H. of lying.
22 Id. T.H. looked James in the face and told him exactly what she told Theresa he had done to
23 her. Id. at 100. After her conversation with James, Theresa called the police. Id. at 102.

24 Theresa testified that she had spoken to James earlier that day because he was supposed
25 to pay her power bill for her. Id. at 88-89. However, despite James's contentions that he went
26 to her house to drop off his dog and pick up the power bill, Theresa testified that she never
27 gave James permission to go into her home that day for either purpose. Id. at 87-89. Theresa
28 testified that there was no reason whatsoever for James to go to her home. Id. at 89.

1 Theresa testified that after the incident, T.H. did not want to stay at the house so they
2 stayed with family members for a few weeks. Id. at 107-08. About a week after the assault,
3 Theresa went to the home to get more clothes and shoes. Id. at 106-07. While looking under
4 her bed for her shoes she found a box of rubber gloves, exactly the kind that T.H. had described
5 James wearing during the assault. Id. Theresa contacted police who collected the gloves. Id.
6 at 109. Theresa testified that T.H.'s behavior drastically changed after the assault; she did not
7 want to sleep at home and Theresa had to sleep in the living room with her once they did return
8 home. Id. at 109-11.

9 Dr. Theresa Vergara ("Dr. Vergara") examined T.H. after the assault. Id. at 155. Dr.
10 Vergara testified that T.H. had no bruising to the externa genitalia. Id. at 158. However, there
11 was generalized swelling to the introitus (vaginal opening), which could be caused from
12 trauma. Id. at 158-59. Dr. Vergara testified that while other things, such as a urinary tract
13 infection, could cause the swelling, the findings were consistent with T.H.'s complaint of
14 sexual assault. Id. at 159. However, Dr. Vergara testified that the findings were categorized
15 as "non-specific findings." Id. at 165.

16 At trial, pursuant to the State's Motion to Admit Other Bad ACTS, N.F. also testified
17 about James sexually assaulting her. Id. at 187-207. N.F. met James when she was a little girl
18 because he was married to her mother Tanisha. Id. at 187. Tanisha and James divorced when
19 N.F. was twelve years old after he was caught touching her inappropriately. Id. at 189. One
20 night when N.F. was about twelve years old, James came into her bedroom around midnight.
21 Id. at 192. James took N.F. to another room and told her that he felt like "someone was
22 touching her." Id. James instructed N.F. to lay on the bed and removed her pants. Id. at 194.
23 Then, James inserted his finger in her vagina. Id. at 194. N.F. told James to stop, which he
24 did. Id. Once James stopped, he told N.F. to go back to her room. Id. During another incident,
25 James entered N.F.'s room again around midnight, while she was sleeping. Id. at 199-200.
26 James jerked N.F. out of her bed and took her into the same room as the previous time. Id. at
27 200-01. James put N.F. on the bed and pulled her pants off. Id. at 201. N.F. could feel James's
28 penis on her leg. Id. N.F. kept telling James to stop. Id. When N.F. tried to yell for help,

1 James threatened to kill her family. Id. James tried inserting his penis in N.F.'s vagina but
2 was unsuccessful because it would not fit. Id. at 202. James then inserted his penis in N.F.'s
3 butt. Id. N.F. again asked James to stop, which he did. Id.

4 During a third incident, N.F. was in the house with only James and her younger sister;
5 her mother had left for work. Id. at 194. James was chasing N.F. around the house and they
6 ended up in the living room. Id. at 195. N.F. and James started to play wrestle but James
7 began to get aggressive. Id. Every time N.F. tried to get up James would pull her back down.
8 Id. N.F. kept telling James to leave her alone. Id. Eventually James let her go and told her to
9 get in the shower. Id. N.F. stated that she did not want to get in the shower but James insisted
10 stating that he was not going to do anything to her. Id. N.F. went into the bathroom and James
11 locked the door stating, "See, I'm not going to do anything to you." Id. at 196. While N.F.
12 was in the shower she heard a pop at the door and saw James enter the bathroom. Id. James
13 told her to put her foot on top of the bathtub. Id. N.F. refused and James kept persisting. Id.
14 Scared that James might hurt her, N.F. put her foot on top of the bathtub and James inserted
15 his fingers into her vagina. Id. at 197. When N.F. tried calling for help, James put his hands
16 on her neck to try to shut her up. Id. at 198. Afterwards, James instructed N.F. to get out of
17 the shower. Id. at 197. James picked N.F. up and put her on the floor on her back. Id. James
18 got on top of her and attempted to insert his penis into her vagina but was unable to because it
19 would not fit. Id. During the last incident, James entered N.F.'s room while she was laying
20 on her bed. Id. at 203. James attempted to pull her pants off. Id. at 203-04. While James was
21 trying to pull her pants off, his mother Carol came into N.F.'s bedroom. Id. at 204. James
22 jumped off the bed and hid in N.F.'s closet. Id. at 205. Carol began screaming to Tanisha that
23 James was touching N.F. Id. Tanisha told James to get out of her house and took N.F. to
24 Southwest Medical, where N.F. eventually talked to the police. Id. at 207.

25 //

26 //

27 //

28 //

PETITION CLAIMS

I. JAMES RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment provides that, “[I]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.” U.S. Const. amend. VI. It has long been recognized that “the right to counsel is the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 706-707 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). To prove ineffectiveness, a claimant must show that his counsel was deficient and that that deficiency prejudiced the defense. Strickland, 466 U.S. at 687 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Deficient performance is representation that falls below an objective standard of reasonableness. Kirksey, 112 Nev. at 987, 923 P.2d at 1107. To show prejudice, the claimant must show a reasonable probability that but for counsel’s errors the result of the proceeding would have been different. Id. This Court may consider either prong of the Strickland test, in any order, and need not consider both when a defendant’s showing on either prong is insufficient. Kirksey, 112 Nev. at 987, 923 P.2d at 1107. “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), quoting McMann v. Richardson, 397 U.S. 759, 771 (1970).

The role of a reviewing court considering allegations of ineffective assistance 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), citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977).

Even if a defendant can demonstrate that his counsel’s representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel’s errors, the result of the trial would have been different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing

1 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064).

2 Importantly, when raising a Strickland claim, the defendant bears the burden to
3 demonstrate the underlying facts by a preponderance of the evidence. Means v. State, 120
4 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). When ineffective assistance of counsel claims are
5 asserted in a petition for post-conviction relief, the claims must be supported with specific
6 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100
7 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient,
8 nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part,
9 “[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to
10 allege specific facts rather than just conclusions may cause your petition to be dismissed.”
11 (emphasis added).

12 **A. Counsel Was Reasonably Effective In Not Retaining An Expert Witness**

13 James claims that counsel was ineffective for failing to retain an expert witness.
14 However, this claim is denied because counsel was reasonably able to attack Dr. Vergara’s
15 expert testimony through cross-examination after requesting and reviewing the medical
16 evidence. Transcript: Day 2, Vol II, 151-82. Bryan Cox, James’s initial attorney, testified at
17 James’s evidentiary hearing that he has hired expert witnesses in past sexual assault cases but
18 did not believe this case turned on physical evidence, and that he believed he could get Dr.
19 Vergara to say that her findings were not conclusive and had an alternative explanation..
20 Reporter’s Transcript (“RT”) 6-7, 13, 15. Indeed, Dr. Vergara acknowledged as much on
21 cross-examination. Such was a reasonable strategic decision.

22 Further, assuming *arguendo* that counsel was able to retain an expert who would have
23 been able to testify to as Dr. Adams did at the evidentiary hearing, this Court nonetheless finds
24 James still cannot show a reasonable likelihood of a different outcome at trial based on the
25 other overwhelming evidence against him. See McNelson, 115 Nev. at 403, 990 P.2d at 1268.
26 As stated by Cox, this case did not hinge on physical findings by Dr. Vergara and the testimony
27 of Defendant’s other bad acts by N.H. was far more probative. James completely ignores
28 N.F.’s damning testimony. N.F., just like T.H., met James because of his relationship with her

1 mother. Transcript: Day 2, Vol II at 187. Just like T.H., James sexually assaulted N.F. when
2 her mother was at work. Id. at 194-98. Just like T.H., James tried choking N.F. to prevent her
3 from getting help. Id. at 198. Just like T.H., James inserted his fingers in N.F.'s vagina and
4 tried putting his penis in her vagina. Id. at 192-202. In N.F.'s case, James was caught touching
5 N.F. inappropriately by his own mother. Id. at 207. Thus, even if trial counsel had consulted
6 and/or spoken to a medical expert and entirely neutralized the State's expert, the overwhelming
7 corroboration of T.H's testimony by evidence related to N.F.'s sexual abuse would have led
8 to the same result. Based on the evidence presented at trial, James fails to demonstrate a
9 reasonable probability that, but for counsel's decision not to retain an expert, the result of the
10 trial would have been different. Therefore, James fails to demonstrate that counsel was
11 ineffective or that he suffered prejudiced. Accordingly, James's claim is denied.

12 **B. Counsel Was Reasonably Effective In Not Challenging The Admission Of**
13 **The Latex Gloves**

14 This Court denies James's claim that counsel was ineffective for failing to challenge
15 the admission of the latex gloves. James fails to show how a motion or objection to exclude
16 the gloves would have been meritorious and James's claim that the evidence was more
17 prejudicial than probative is unsupported by law.

18 The threshold question for the admissibility of evidence is relevance. Brown v. State,
19 107 Nev. 164, 168, 807 P.2d 1379, 1382 (1991). Under NRS 48.035(1), relevant evidence is
20 inadmissible "if its probative value is substantially outweighed by the danger of unfair
21 prejudice." Because all evidence against a defendant will on some level "prejudice" (i.e.,
22 harm) the defense, NRS 48.035(1) focuses on "unfair" prejudice. State v. Eighth Judicial Dist.
23 Court of Nev., 127 Nev. ___, ___, 267 P.3d 777, 781 (2011). "By requiring the prejudicial effect
24 of evidence to 'substantially outweigh' its probative value, NRS 48.035 implies a favoritism
25 toward admissibility." Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 45-46, 910
26 P.2d 271, 273 (1996).

27 //

28 //

1 In this case, the gloves were relevant as they tended to corroborate T.H.'s recounting
2 of the assault and the State laid sufficient foundation for their introduction. James neglects to
3 provide any explanation why the evidence of the gloves was prejudicial. This Court finds the
4 evidence did not appeal to the emotional tendencies of the jury. Rather, the jury was able to
5 evaluate the evidence and make its own determination and inference regarding the gloves.
6 Accordingly, any objection to the admissibility of the gloves would have been futile. Ennis,
7 122 Nev. at 706, 137 P.3d at 1103. Furthermore, as demonstrated by James's own exhibits,
8 counsel investigated the gloves. See, Defense Exhibit 7, James 0089. Thus, any tactical
9 decisions taken after investigation are unchallengeable. Dawson, 108 Nev. at 117, 825 P.2d
10 at 596. Therefore, Defendant's claim is denied.

11 **C. Counsel Was Not Ineffective In Investigating**

12 This Court denies James's claim that counsel was ineffective for failing to conduct
13 adequate investigation. The Nevada Supreme Court has made it clear that a defendant who
14 contends that his attorney was ineffective because he did not adequately investigate the case
15 must show how a better investigation would have rendered a more favorable outcome
16 probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d, 533, 538 (2004).

17 In this claim, James makes nothing more than a bare allegation that counsel failed to
18 conduct a reasonable investigation. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Cox testified
19 that he would not do anything differently if he had the opportunity to do the trial again. RT at
20 18. James fails to demonstrate what further investigation counsel should have done, much less
21 how that investigation would have rendered a more favorable outcome. Such a bare allegation
22 does not warrant relief. Therefore, James's claim is denied.

23 To the extent that James claims counsel was ineffective for not following up on his
24 investigator's conversation with Theresa regarding the latex gloves, such a claim is without
25 merit and denied. James fails to demonstrate what further investigation would have revealed
26 and how it would have rendered a more favorable outcome. Similarly, James's claim that
27 counsel was ineffective for not cross-examining Theresa about her statement to the defense
28 investigator regarding where the gloves were found is meritless and denied. First, James

1 erroneously claims that Theresa told the investigator she found the gloves under her kitchen
2 sink. Theresa stated that, “police seized a box of white latex gloves from under her bathroom
3 sink.” See Defense Exhibit 9, James 0091. Second, trial counsel has the “immediate and
4 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and
5 what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).
6 Accordingly, the cross-examination of witnesses is a strategic decision for counsel to make
7 and this Court declines to challenge it. Id.; Dawson 108 Nev. at 117, 825 P.2d at 596.

8 Additionally, James fails to show a reasonable probability that, but for counsel’s failure
9 to cross-examine Theresa regarding her statement to the investigator, the result of the trial
10 would have been different. McNelson, 115 Nev. at 403, 990 P.2d at 1268. Accordingly, James
11 fails to demonstrate that counsel’s representation fell below an objective standard of
12 reasonableness or that he was prejudiced. Therefore, James’s claim is denied.

13 **D. Counsel Was Reasonably Effective In Not Objecting During The State’s**
14 **Closing Argument**

15 This Court denies James’s claim that counsel was ineffective for not objecting to the
16 State’s use of a PowerPoint slide during closing argument containing James’s booking
17 photograph with the word “GUILTY” superimposed across it. James’s reliance on Watters v.
18 State, 129 Nev. ___, 313 P.3d 243 (2013), is misplaced. In Watters, the Nevada Supreme Court
19 held that the State’s use of a PowerPoint during *opening* statement that included a slide of
20 defendant’s booking photo with the word “GUILTY” superimposed across it constituted
21 improper advocacy and undermined the presumption of innocence essential to a fair trial. Id.
22 at ___, 313 P.3d at 249. However, in this case, unlike Watters, the photo was briefly used
23 during the State’s *closing argument*. Unlike opening statements, closing arguments are made
24 after all the evidence has been presented and are an entirely appropriate occasion for argument.
25 See Morales v. State, 122 Nev. 966, 972, 143 P.3d 463, 467 (2006) (finding that the State can
26 contend during closing argument that the “presumption of innocence has been overcome”);
27 State v. Green, 81 Nev. 173, 176, 400 P.2d 766, 767 (1965)(“[A] prosecutor has the right to
28 state fully his views as to what the evidence shows”). Moreover, in Artiga-Morales v. State,

1 the Nevada Supreme Court found no impropriety and prejudice of the sort demonstrated in
2 Watters, where the State used defendant's photograph during closing argument with the word
3 "GUILTY" superimposed on it. 130 Nev. ___, ___, 335 P.3d 179, 182 (2014).

4 Further, James fails to demonstrate that the outcome of the trial would have been
5 different had the jury not viewed the State's slide. James fails to proffer how he was
6 prejudiced. McNelton, 115 Nev. at 403, 990 P.2d at 1268. James makes nothing more than a
7 bare conclusory statement that the prosecutor's visual proclamation of guilt affected the jury's
8 verdict. As such, James's claim is a bare allegation that warrants no relief. Hargrove, 100
9 Nev. at 502, 686 P.2d at 225. Because James fails to establish that counsel was objectively
10 unreasonable or that he was prejudiced by counsel's failure to object, this claim is denied.

11 II. THERE WAS NO CUMULATIVE ERROR

12 This Court denies James's claim that the cumulative error of his trial counsel violated
13 his right of due process, equal protection, and effective assistance of counsel. Without
14 expressly endorsing an approach for cumulative error in the context of ineffective assistance
15 of counsel claims, the Nevada Supreme Court has acknowledged that other courts have held
16 that "multiple deficiencies in counsel's performance may be cumulated for purposes of the
17 prejudice prong of the Strickland test when the individual deficiencies otherwise would not
18 meet the prejudice prong." McConnell v. State, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318
19 n.17 (2009) (utilizing this approach to note that the defendant is not entitled to relief).
20 However, the doctrine of cumulative error is strictly applied, and a finding of cumulative error
21 is extraordinarily rare. State v. Hester, 979 P.2d 729, 733 (N.M. 1999); Derden v. McNeel,
22 978 F.2d 1453, 1461 (5th Cir. 1992). Cumulative error review should not be utilized in the
23 post-conviction context. Middleton v. Ruper, 455 F.3d 838, 851 (8th Cir. 2006) cert. denied
24 549 U.S. 1134, 1275 S.Ct. 980 (2007) ("habeas petitioner cannot build a showing of prejudice
25 on a series of errors, none of which would by itself meet the prejudice tests").

26 Even if cumulative error review were available, a defendant must first make a threshold
27 showing that his counsel's performance was deficient and counsel's representation fell below
28 an objective standard of reasonableness. State v. Theil, 655 N.W.2d 305, 323 (Wis. 2003);

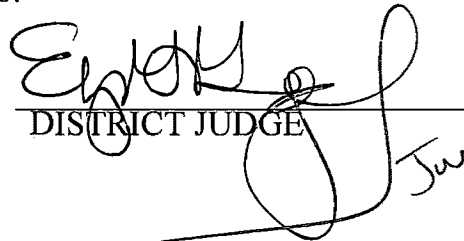
1 State v. Sheahan, 77 P.3d 956, 976 (Idaho 2003); State v. Savo, 108 P.3d 903, 916 (Alaska
2 2005); State v. Maestas, 299 P.3d 892, 990 (Utah 2012). In fact, logic dictates that cumulative
3 error cannot exist where the defendant fails to show that any violation or deficiency existed
4 under Strickland. McConnell, 125 Nev. at 259, 212 P.3d at 318; United States v. Franklin,
5 321 F.3d 1231, 1241 (9th Cir. 2003); Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007);
6 Pearson v. State, 12 P.3d 686, 692 (Wyo. 2000); Hester, 979 P.2d at 733. Further, in order to
7 cumulate errors, the defendant must not only show that an error occurred regarding his
8 counsel's representation, but that at least two errors occurred. Rolle v. State, 236 P.3d 259,
9 276-77 (Wyo. 2010); Hooks v. Workman, 689 F.3d 1148, 1194-95 (10th Cir. 2012).

10 James has failed to make a single showing that his counsel's representation was
11 objectively unreasonable. Further, even if James had made such a showing, he has not shown
12 that the cumulative effect of these errors was so prejudicial as to undermine the court's
13 confidence in the outcome of his case. Collins, 742 F.3d at 542. Therefore, James's claim of
14 cumulative error is without merit and is denied.

15 **ORDER**

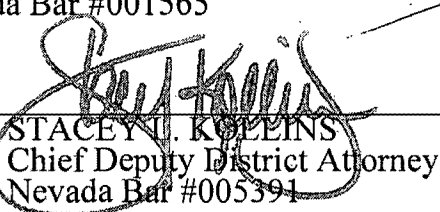
16 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
17 Corpus shall be, and is, DENIED.

18 DATED this 4th day of Nov ~~October~~, 2016.

19 
20 DISTRICT JUDGE
21

22 STEVEN B. WOLFSON
23 Clark County District Attorney
Nevada Bar #001565

24 BY

25 
26 STACEY L. KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4

7

8

Howard Conrad

From: Howard Conrad
Sent: Monday, October 31, 2016 1:45 PM
To: 'Rose, Laura'
Cc: 'maggie@nvlitigation.com'
Subject: 10F09328-FCL-(James_Tyrone_10_03_2016)-001
Attachments: 10F09328-FCL-(James_Tyrone_10_03_2016)-001.pdf

THE STATE OF NEVADA,

Plaintiff,

-VS-

**TYRONE JAMES,
#1303556**

Defendant.

CASE NO: **10C265506**

DEPT NO: **XI**

FINDINGS OF FACT, CONCLUSIONS OF

LAW AND ORDER

DATE OF HEARING: OCTOBER 3, 2016

TIME OF HEARING: 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 24, 2010**

10C265506

State of Nevada

vs

Tyrone

James

June 24, 2010**1:30 PM****Initial Arraignment****INITIAL****ARRAIGNMENT****Court Clerk: Sandra****Harrell Relief Clerk:****Nicole McDevitt /nm****Reporter/Recorder:****Kiara Schmidt Heard****By: Randall Weed****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Miller, James J.

Attorney

Public Defender

Attorney

Tyrone, James

Defendant

JOURNAL ENTRIES

- DEFT. TYRONE ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

8/17/10 8:30 AM CALENDAR CALL (DEPT 5)

8/23/10 10:00 AM JURY TRIAL (DEPT 5)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 12, 2010**

10C265506

State of Nevada

vs

Tyrone

James

August 12, 2010**8:30 AM****Motion for Discovery****Defendant's Motion
For Discovery****HEARD BY:** Glass, Jackie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sandra Jeter**RECORDER:** Rachelle Hamilton**REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Pandelis, Christopher P.

Attorney

Public Defender

Attorney

State of Nevada

Plaintiff

Tyrone, James

Defendant

JOURNAL ENTRIES

- Defendant TYRONE present in custody. Conference at the bench. Mr. Pandelis advised he provided Mr. Cox with alot of the requested discovery this morning. Further, he and his investigator ran a search on LMRS and found some additional police reports which will be provided to Mr. Cox later today. Mr. Cox just received the Preliminary Hearing transcript within the last couple of days and, in light of the last-minute discovery received, he is concerned that he may be ineffective if forced to go to trial on August 23 date; however, defendant invoked. Defendant acknowledged his attorney just received additional discovery but he does not wish to waive his right to a speedy trial. Colloquy. Motion GRANTED as all issues have been resolved. The Court FINDS that it is in the best interests of the defendant to RESET the TRIAL within 30 days as defendant is facing life sentences. Therefore, COURT ORDERED, current trial date VACATED and RESET.

CUSTODY

10C265506

9/14/10 8:30 AM CALENDAR CALL

9/20/10 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 26, 2010**

10C265506

State of Nevada

vs

Tyrone

James

August 26, 2010**8:30 AM****Motion to Admit Evidence****State's Notice of
Motion and Motion
to Admit Evidence of
Other Crimes,
Wrongs or Acts****HEARD BY:** Glass, Jackie**COURTROOM:** RJC Courtroom 15A**COURT CLERK:** Sandra Jeter
Billie Jo Craig**RECORDER:** Rachelle Hamilton**REPORTER:****PARTIES
PRESENT:**

JOURNAL ENTRIES

- Deputy District Attorney Pandelis present for the State. Deputy Public Defender Cox present for Defendant. Defendant present.

Counsel requested a Petrocelli Hearing. COURT ORDERED, matter SET for a Petrocelli Hearing. Trial date STANDS.

CUSTODY**9/10/10 1:30 PM PETROCELLI HEARING**

bjc

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 10, 2010**

10C265506 State of Nevada
 vs
 Tyrone James

September 10, 2010 1:30 PM All Pending Motions

HEARD BY: Glass, Jackie **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sandra Jeter

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A.	Attorney
	Pandelis, Christopher P.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant TYRONE present in custody.

DEFENDANT'S MOTION IN LIMINE (currently set for 9/21/10 but heard this date): State's Opposition to Defendant's Motion In Limine to Preclude Lay Opinion Testimony That The Complaining Witness's Behavior Is Consistent With That Of A Victim Of Sexual Abuse FILED IN OPEN COURT. Colloquy and arguments. COURT ORDERED, motion GRANTED and the State is urged to caution their lay witnesses that they are not to give any testimony that the alleged victim's behavior was consistent with a victim of sexual abuse.

Mr. Pandelis advised that, based on the testimony today, there maybe new charges forthcoming in relation to the witness and the forensic interview is currently being scheduled. Mr. Cox acknowledged same and the COURT SO NOTED.

PETROCELLI HEARING: STATE'S NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS: Mr. Cox INVOKED the EXCLUSIONARY RULE and the COURT SO ORDERED. Defendant's mother present and left under protest. Nefertia Charles

SWORN and TESTIFIED. During testimony, Mr. Cox objected to proceeding without first receiving the report from the examination done on the witness in 2005 from Southwest Medical. Mr. Pandelis does not have a copy of that report. Arguments. Objection NOTED; request to continue, DENIED. Following the conclusion of the testimony, arguments by counsel. Court stated its FINDINGS and ORDERED, motion GRANTED. Mr. Pandelis requested a copy of the transcript from today. COURT SO ORDERED and the Court Recorder is DIRECTED to have it prepared by the end of next week.

Colloquy regarding the offer. Mr. Pandelis advised he will leave the offer open until Calendar Call. SO ORDERED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 14, 2010**

10C265506 State of Nevada
 vs
 Tyrone James

September 14, 2010 8:30 AM Calendar Call

HEARD BY: Glass, Jackie **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Sandra Jeter

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A.	Attorney
	Pandelis, Christopher P.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff
	Tyrone, James	Defendant

JOURNAL ENTRIES

- Defendant TYRONE present in custody. Both counsel announced ready. Mr. Pandelis moved to withdraw the offer advising the defendant rejected it and the COURT SO ORDERED. FURTHER, matter REFERRED to OVERFLOW; 9/20/10 trial date VACATED.

CUSTODY

9/17/10 9:00 AM OVERFLOW (V) - DEPT. XVIII

Chris Pandelis, DDA & Bryan Cox, DPD

8 - 10 witnesses; No OOS

2 - 3 days

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 17, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 17, 2010**9:00 AM****Overflow**

**Overflow (5) | C.
Pandelis / B. Cox | 2-
3 Days | 8-10
Witnesses / No Out
Of State Witnesses**

HEARD BY: Barker, David**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Sharon Chun**RECORDER:** Richard Kangas**REPORTER:****PARTIES****PRESENT:**

Cox, Bryan A.

Attorney

Pandelis, Christopher P.

Attorney

State of Nevada

Plaintiff

Tyrone, James

Defendant

JOURNAL ENTRIES

- COURT ORDERED, Trial set to start in Dept 7 on 9/20/10 at 9:30 A.M. Mr. Cox requested an afternoon start; COURT DIRECTED counsel to meet with Dept 7 Chambers to reschedule if necessary.

CUSTODY

9/20/10 9:30 AM JURY TRIAL (DEPT 7)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 21, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 21, 2010 9:00 AM**Motion to Reconsider****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present on behalf of Deft. James.

Deft. James not present. Court advised she has a couple of concerns. First, Court advised she does not believe it is appropriate practice, and she is not sure what authority she has, to overrule a ruling of another sitting District Court judge. That is the role of the Supreme Court. Second is the motion the Court received does not have any case law or legal citations so it does not provide any legal basis for her to reconsider. Court advised there are rules about when reconsideration is appropriate and those are not cited to. Finally, in reviewing the transcript, while the Court appreciates that Judge Glass probably has a different style, this Court does not believe there is anything in the transcript that shows she had any bias toward Deft. James. Her decision was based on the law. COURT ORDERED, motion DENIED. Mr. Cox advised they need to argue the limiting instruction. Court directed counsel to include that in their packet of instructions. Upon inquiry by Ms. Kollins, Court advised her judicial assistant does have the State's instructions. 9:14 a.m.--Off the record.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 21, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 21, 2010 9:30 AM**Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Stacy Kollins, DDA, and Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

9:20 A.M.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding procedure. Counsel agreed to blind alternates. 9:45 a.m.--Jury venire present. Introductions by Court and Counsel. Clerk called roll of the venire; voir dire oath administered. Jury selection commenced. 12:03 p.m.--Jury venire admonished and excused for lunch, to return at 1:15 p.m. this afternoon.

1:15 P.M.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding potential demonstrative exhibits. Mr. Pandelis advised he did not schedule any witnesses today and advised he believes jury selection will take well into the afternoon and then they have openings. Colloquy. 1:20 p.m.--Jury venire present. Jury selection continued. 3:40 p.m.--Fourteen (14) jurors selected and sworn. Court thanked and excused the remaining venire. Court read the opening charge to the Jury. Opening statements by Ms. Collins and Mr. Page. Testimony and exhibits presented. (See worksheets.) 5:02 p.m.--Court admonished the Jury and excused them for the evening, to return at 10:00 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Ms. Kollins advised she objected to the suggestion of lubricant without foundation and that was sustained, however, Mr. Cox cross-examined on that again. Mr. Cox argued he asked if he investigated regarding lubrication. Ms. Kollins argued, in her mind, lubrication and a lubricated glove are separate items. Now the Jury is

left with the impression that item does not exist or that the child lied about it. Court advised what she has is it was not in the detective's report and he does not recall it being an issue in the case. Court stated she does not believe this was the witness to clear it up. Ms. Kollins advised Detective Tomaino is under her subpoena and she can recall him on a limited issue if necessary. 5:08 p.m.--Court adjourned.

CUSTODY

CONTINUED TO 9-22-10 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 22, 2010**

10C265506 State of Nevada
 vs
 Tyrone James

September 22, 2010 10:00 AM Jury Trial**HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

10:17 A.M.--Court reconvened with all present as before. Further testimony and exhibits presented.

(See worksheets.) 10:47 a.m.--OUTSIDE THE PRESENCE OF THE JURY, Mr. Cox advised the State made an allegation of a penetrating injury by Deft. James and argued he has the right to go into that argument. In the exam, the victim advised she was sexually active with her boyfriend. Ms. Kollins argued she was not active within the preceding 72 hours and argued that is straight Rape Shield law.

Mr. Cox argued he was surprised in opening statements that there was a penetrating injury and is surprised by the testimony. Ms. Kollins argued swelling and redness is in the report which is consistent with a penetrating injury. Court read from statute. Further arguments by counsel.

COURT ORDERED, the defense may NOT go into the victim's sexual history. 11:01 a.m.--Jury

present. Further testimony and exhibits presented. 11:43 a.m.--Jury admonished and excused for lunch, to return at 1:00 p.m. this afternoon. OUTSIDE THE PRESENCE OF THE JURY, Deft. James

advised he has written a number of questions down and counsel has refused to ask them and he feels they need to come out for the Jury. Court advised she will let Deft. speak with Mr. Cox about it.

11:45 a.m.--Court adjourned to hear Grand Jury Returns.

1:04 p.m.--Court reconvened with all present as before. Further testimony and exhibits presented.

2:44 p.m.--OUTSIDE THE PRESENCE OF THE JURY, conference at the bench. Court advised, as to the prior ruling, statute states when any part of a writing comes in, an attorney can introduce other parts of that writing. 3:06 p.m.--OUTSIDE PRESENCE, Juror #6-Jennifer Mills brought in. Court stated she understand the juror may know one of the prospective witnesses in the hall. Juror Mills advised it will not affect her ability to be fair and advised she was concerned with the witness being comfortable as she knows her teachers because of a program the witness is in. Court acknowledged. 3:08 p.m.--JURY PRESENT. Further testimony and exhibits presented. Conference at the bench. 4:43 p.m.--Court admonished the Jury and excused them for the evening, to return at 9:30 a.m. tomorrow morning. OUTSIDE THE PRESENCE OF THE JURY, Court made a record that Ms. Charles became very emotional and Ms. Kollins approached her and asked if she was okay and did she need a break. Court advised there was no conversation regarding her testimony. Mr. Cox stated he did not realize the Court could hear and advised he wanted to at least hear what was being said. Court acknowledged. Court ADMONISHED Deft. James regarding his right to not be compelled to testify. Colloquy regarding jury instructions.

CUSTODY

CONTINUED TO: 9-23-10 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 23, 2010**

10C265506

State of Nevada

vs

Tyrone

James

September 23, 2010 9:30 AM**Jury Trial****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, and Stacy Kollins, DDA, present for the State of Nevada.

- Bryan Cox, DPD, and Daniel Page, DPD, present with Deft. James.

9:38 A.M.--OUTSIDE THE PRESENCE OF THE JURY, Juror #1-Cedric Griffin brought in and questioned regarding whether he overheard anything this morning about the trial on his way to court, to which the juror indicated he did not. Juror excused to the hallway. Court advised, for the record, Amy Coffee, DPD, had asked Mr. Cox outside how his case was going. She did not realize a juror was around that early. Jury Instructions settled on the record. 9:45 a.m.--Jury present. Further testimony and exhibits presented. (See worksheets.) 10:25 a.m.--OUTSIDE THE PRESENCE OF THE JURY, colloquy regarding verdict forms. 10:42 a.m.- Court reconvened with all present as before. Both sides having rested, Court instructed the Jury. Closing arguments by counsel. Bailiff sworn to take charge of the Jury. Clerk selected the alternates by random drawing:

Alternate #1: Juror #5 - Alisa Price

Alternate #2: Juror #14 - Vernon Zobian, Jr.

12:16 P.M.--Jury retired to deliberate.

2:15 P.M.--OUTSIDE THE PRESENCE OF THE JURY, Court addressed a question from the Jury. Ms. Kollins stated she thinks they are confused about which mom signed the consent to search what. Court and counsel reviewed Exhibit #2. Ms. Kollins stated the consent to search was for the van. The

residence was searched on an oral consent to search. Court advised the response to the Jury will read: "Tahisha Scott signed the consent to search form for the van and not for the apartment at 207 N. Lamb." Response provided to the Jury. Off the record at 2:23 p.m.

3:09 P.M.--Court reconvened. Ms. Kollins and Mr. Page not present. Jury returned with VERDICTS as follow:

GUILTY of COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F).

GUILTY of COUNTS 2 & 4 - OPEN OR GROSS LEWDNESS (GM).

GUILTY of COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F).

Jury polled at request of Mr. Cox; 12 affirmed. Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY, COURT ORDERED, matter referred to P&P and set for sentencing; Deft. to REMAIN IN CUSTODY.

CUSTODY

12-1-10 8:45 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 01, 2010**

10C265506

State of Nevada

vs

Tyrone

James

December 01, 2010**8:45 AM****Sentencing****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Chris Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, present with Deft. James.

Mr. Pandelis advised they need an amended PSI report. Mr. Cox advised they probably need 35 days and advised he was notified yesterday they left a count off. Colloquy. COURT ORDERED, matter CONTINUED 45 days. Court requested Mr. Pandelis clearly note what needs to be amended.

CUSTODY**CONTINUED TO:** 1-19-11 8:45 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 19, 2011**

10C265506

State of Nevada

vs

Tyrone

James

January 19, 2011**8:45 AM****Sentencing****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Christopher Pandelis, DDA, present for the State of Nevada.

- Bryan Cox, DPD, present with Deft. James.

Conference at the bench. Mr. Pandelis advised Counts 2 & 4 should be dismissed as they were intended to be lesser-included offenses of Counts 1 & 3. COURT ORDERED, Counts 2 & 4 DISMISSED. DEFT. JAMES ADJUDGED GUILTY OF COUNTS 1 & 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 16 (F) and COUNT 5 - BATTERY WITH INTENT TO COMMIT A CRIME (F). Matter argued and submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to the Nevada Department of Corrections (NDC) as follows:
Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWENTY FIVE (25) YEARS;

Count 3 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWENTY FIVE (25) YEARS, CONCURRENT with Count 1;

Count 5 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TWO (2) YEARS, CONCURRENT with Counts 1 & 3.

250 DAYS credit for time served. COURT FURTHER ORDERED, a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment and Deft. is to register as a sex offender in accordance with NRS 179D.460 within 48

hours after sentencing or prior to release from custody.

Court advised, before Deft. is eligible for parole, a panel must certify Deft. does not represent a high risk to reoffend based on current provisions at the time.

BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 13, 2013**

10C265506

State of Nevada

vs

Tyrone

James

May 13, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea
Tia Everett**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Kochevar, Brian J.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft not present, in custody at the Nevada Department of Corrections. Court ORDERED, matter CONTINUED one week for appointment of counsel. Drew Christensen, Esq., to be contacted to send someone for the appointment.

NDC

...CONTINUED TO: 5-20-13 9:00 AM

CLERK'S NOTE: A copy of the above minute order was distributed to Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 20, 2013**

10C265506

State of Nevada

vs

Tyrone

James

May 20, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Giordani, John

Attorney

Langford, Robert L

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections. COURT ORDERED, Mr. Langford CONFIRMED as counsel for Deft. Mr. Langford requested 30 more days to review the file before filing a supplemental brief.

NDC

....CONTINUED TO: 6-17-13 9:00 AM

CLERK'S NOTE: A copy of the above minute order was distributed to: Tyrone James, ID# 1063523, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 17, 2013**

10C265506

State of Nevada

vs

Tyrone

James

June 17, 2013**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Alice Jacobson**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Langford, Robert L
Rhoades, Kristina A.
State of NevadaAttorney
Attorney
Plaintiff**JOURNAL ENTRIES**

- Mr. Langford indicated he had not received the file from the Public Defender's officer, therefore, requested a continuance. Colloquy regarding briefing schedule. There being no objection. COURT ORDERED, matter CONTINUED; SET for Status Check for stipulated briefing schedule.

7/19/13 9:00 AM PETITION FOR WRIT OF H.C.

7/19/13 9:00 AM STATUS CHECK: BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 23, 2015**

10C265506

State of Nevada

vs

Tyrone

James

March 23, 2015**9:00 AM****Motion**

**Petitioner's Request
for Extension of Time
to File Supplemental
Petition (Seventh
Request)**

HEARD BY: Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
Adrienne Theeck
Anntoinette Naumec-Miller

RECORDER: Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James	, Tyrone	D	Defendant
	Langford, Robert	L		Attorney
	Laurent, Christopher	J		Attorney
	State of Nevada			Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections.

CONFERENCE AT BENCH. COURT ORDERED, Petitioner's Request for Extension of Time GRANTED and per discussions with counsel a more realistic briefing schedule SET: Deft's supplement DUE September 4, 2015; State's response DUE October 24, 2015; Deft's reply DUE November 4, 2015; argument on the Petition RESET on November 18, 2015.

NDC

11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: Following proceedings, COURT ORDERED Deft transported for the November 18, 2015 hearing and State to prepare the transport order. A copy of the above minute order was placed in the attorney folder(s) of the District Attorney, attn. Christopher Laurent, and Robert Langford, Esq., counsel for Deft (Langford McLetchie). / dr 3-24-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 20, 2015**

10C265506

State of Nevada

vs

Tyrone

James

April 20, 2015**9:00 AM****Motion**

**Defendant's Motion
for Order to Release
Medical Records and
LVMPD Reports**

HEARD BY: Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
Phyllis Irby

RECORDER: Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Laurent, Christopher J

Attorney

Rashbrook, Matthew J.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections.

Mr. Laurent submitted on the pleadings. Mr. Rashbrook advised they did not receive the State's response. State provided a copy. COURT ORDERED, matter CONTINUED for argument in 2 weeks.

NDC

5-4-15 9:00 AM DEFENDANT'S MOTION FOR ORDER TO RELEASE MEDICAL
RECORDS AND LVMPD REPORTS

11-18-15 9:00 AM PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 27, 2015**

10C265506

State of Nevada

vs

Tyrone

James

May 27, 2015**9:00 AM****Motion****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Kristen Brown**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Langford, Robert L

Attorney

State of Nevada

Plaintiff

Sweetin, James R.

Attorney

JOURNAL ENTRIES

- Arguments by counsel. COURT ORDERED, Motion GRANTED. Court stated the CPS/DCFS records are to be provided for an in-camera review prior to them being released to the defense and in addition, if counsel would like the Court to review the medical records prior to them being released to the deft., the Court will but its inclination is to release them subject to a limitation of them being used for any other purpose. Colloquy between Court and counsel as to obtaining the records. Mr. Langford is to prepare the Orders. Court DIRECTED Mr. Sweetin to provide the records to the Court once he, or if he does receive them. COURT FURTHER ORDERED, matter SET for a status check for the in-camera review on its chamber calendar and no parties need to appear.

NDC

6/19/15 3:00 AM STATUS CHECK: IN-CAMERA REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 19, 2015**

10C265506

State of Nevada

vs

Tyrone

James

June 19, 2015**3:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Court notes no documents submitted. Matter CONTINUED for one week.

6-26-15

CHAMBERS

STATUS CHECK

CLERK'S NOTE: A copy of the above minute order was distributed to parties via electronic mail. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 26, 2015**

10C265506

State of Nevada

vs

Tyrone

James

June 26, 2015**3:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court completed the in camera review of redacted documents 001-021, MARKED as Court's Exhibit 1 and SEALED. (See worksheet.) These records are to be released to the D.A. and Ms. McLetchie contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court.

CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 02, 2015**

10C265506

State of Nevada

vs

Tyrone

James

July 02, 2015**3:00 PM****Minute Order**

**Minute Order re In
Camera Review of
Records from
LVMPD**

HEARD BY: Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- The Court completed the in camera review of records from LVMPD 022 - 143, MARKED collectively as Court's Exhibit 2 and SEALED. (See worksheet.) These records are to be RELEASED to the District Attorney and Ms. McLetchie. The release of the following records is contingent upon both maintaining the confidentiality of these records and execution of the Court's receipt given the confidential nature of the victim and/or medical information: 026 - 90. If any additional disclosure of the records is to be made, counsel may seek an additional order of the Court.

CLERK'S NOTE: A copy of the above minute order was distributed to Deputy District Attorney Ryan McDonald and Attorney Margaret McLetchie. / dr 7-2-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 14, 2015**

10C265506

State of Nevada

vs

Tyrone

James

September 14, 2015 9:00 AM**Motion to Release****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Shelley Boyle**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**Burton, Chris
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Ms. Charlotte Bible present on behalf of Las Vegas Metropolitan Police Department (LVMPD). Ms. Alina Shell present on behalf of Deft.

Deft. not present. Ms. Shell stated she is seeking to obtain photos taken by the doctor during the assault examination as her expert witness needs these to determine if what the doctors testified to appears in the photos. Colloquy on the photo's actual existence and how they may be obtained. Ms. Bible stated all records have been provided, she contacted the Detective again and he looked through his file; there are no other photos or video of the examination in the LVMPD file. Mr. Burton stated as it was not clear from the motion what was missing; he has not reviewed the State's file. Colloquy regarding the State reviewing its file, obtaining the photos from Sunrise Hospital, the need for a subpoena, and the Court's review of the photo's prior to release if they are received. Colloquy regarding the Supplemental Petition; Court extended the Deft's. response to January 8th, 2016.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 28, 2015**

10C265506

State of Nevada

vs

Tyrone

James

October 28, 2015**9:00 AM****Motion to Seal/Redact
Records****Motion and Notice of
Motion to File Under
Seal****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

O'Halloran, Rachel

Attorney

Shell, Alina

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Deft not present. Ms. Shell requested to simply redact personally identifiable information instead of sealing it. COURT ORDERED, request to redact Exhibits 2, 3, 5, and 6 and file the originals under seal GRANTED. Counsel to prepare the order.

With regards to the petition for writ scheduled on November 18, Ms. Shell advised they have provided a courtesy copy of the appendix to the State; there is still the outstanding issue of the subpoena which was served on Sunrise Hospital on the 10th; they have not yet received a response. Court directed counsel to notify the Court if after the return date there is a problem, and ORDERED, status check on the records SET for November 18, 2015, at which time argument on the petition will be reset.

NDC

11-18-15

9:00 AM

STATUS CHECK: RECORDS...PETITION FOR WRIT OF HABEAS

PRINT DATE: 12/12/2016

Page 30 of 39

Minutes Date: June 24, 2010

10C265506

CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 02, 2015**

10C265506

State of Nevada

vs

Tyrone

James

November 02, 2015**3:00 PM****Minute Order****Minute Order: In
Camera Review****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Court reviewed records submitted for in camera review. Pages numbered 1-13 and CD containing medical records printed and numbered as 14-52 are relevant to Defense's investigation. Therefore, 1-13 are ORDERED released and 14-52 released with an acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to the expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court RETAINS original of submission as SEALED Court's Exhibit 1. CD containing medical records is available for review and comparison if deemed necessary by counsel. Documents numbered as 1-13 are marked as Court's Exhibit 2. Documents numbered as 14-52 are marked as Court's Exhibit 3 and SEALED.

NDC

CLERK'S NOTE: Exhibits LODGED with the Vault. (See worksheet.) A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Margaret McLetchie for the Petitioner. / dr 11-2-15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 18, 2015**

10C265506

State of Nevada

vs

Tyrone

James

November 18, 2015 9:00 AM**All Pending Motions****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James , Tyrone	D	Defendant
	O'Halloran, Rachel		Attorney
	Shell, Alina		Attorney
	State of Nevada		Plaintiff

JOURNAL ENTRIES**- STATUS CHECK: RECORDS...DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

Ms. Shell advised they have received the in camera submission; she also corresponded by email with their expert, who will have a report by Monday, November 23rd. Ms. Shell requested to file a supplement sometime in January. COURT ORDERED, matter SET for briefing: Defendant's supplement DUE by January 22, 2016; State's response DUE by April 15, 2016; final reply, if any, DUE by May 27, 2016. Hearing on Defendant's Petition SET on June 8, 2016. Deft requested that he be transported for the hearing. Court DIRECTED the State to prepare a transport order.

NDC

6-8-16 9:00 AM**DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 29, 2016**

10C265506

State of Nevada

vs

Tyrone

James

March 29, 2016**10:15 AM****Minute Order****Minute Order: In
Camera Review****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Court reviewed records submitted for in camera review on 09/16/15. Pages numbered 1-22 are relevant to Defense's investigation. Therefore, 1-7 ORDERED RELEASED and 8-22 RELEASED with an Acknowledgment that these records include information protected by HIPPA and counsel acknowledges any disclosure must be limited to expert who will keep records confidential and any filings to be submitted with an appropriate motion to seal those records. Court retains original of submission as SEALED Court's Exhibit 1. (See worksheet.) Documents numbered as 1-7 are marked as Court's Exhibit 2. Documents numbered as 8-22 are marked as Court's Exhibit 3 and SEALED.

CLERK'S NOTE: A copy of this minute order was distributed via electronic mail to Deputy District Attorney Ryan MacDonald and to Attorney Alina Shell and Attorney Margaret McLetchie for the Petitioner. / dr 3-29-16

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 08, 2016**

10C265506

State of Nevada

vs

Tyrone

James

June 08, 2016**9:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Debbie Winn**REPORTER:****PARTIES****PRESENT:**

Demonte, Noreen C.

James , Tyrone D

Shell, Alina

State of Nevada

Attorney

Defendant

Attorney

Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, Petition SET for evidentiary hearing regarding the expert issue on July 25, 2016. State to prepare new transport order for the Deft. Deft to be transported to court for 9:00 AM, but the hearing will be held at the end of that calendar. Counsel to check availability of witness/former counsel and if the July 25th date does not work counsel to notify the Court.

NDC

7-25-16

9:00 AM

DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 25, 2016**

10C265506	State of Nevada
	vs
	Tyrone James

July 25, 2016 9:00 AM All Pending Motions**HEARD BY:** Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**REPORTER:****PARTIES**

PRESENT:	James , Tyrone	D	Defendant
	Rogan, Jeffrey		Attorney
	Shell, Alina		Attorney
	State of Nevada		Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING:
EXPERT ISSUE

Ms. Shell advised she was contacted last week by Deputy D.A. Stacey Kollins requesting an extension of the hearing; no supplemental briefing is needed. Mr. Rogan advised Ms. Kollins should be appearing for this but if it is simply scheduling he can handle it. Ms. Shell noted that the only date that would work for the parties, including their expert, is October 3rd. Ms. Kollins appeared and confirmed the date. COURT ORDERED, matter CONTINUED to October 3, 2016. State to prepare new order to transport Deft for the October 3rd date.

Copies of records from the Court's in camera review released to Ms. Kollins in open court.
Acknowledgment signed.

NDC

10C265506

10-3-16 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS...EVIDENTIARY HEARING: EXPERT ISSUE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 03, 2016**

10C265506 State of Nevada
 vs
 Tyrone James

October 03, 2016 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	James , Tyrone D Defendant
	Kollins, Stacey L. Attorney
	Shell, Alina Attorney
	State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...EVIDENTIARY HEARING:
EXPERT ISSUE

Ms. Shell advised she was under the impression the hearing would be today and her expert is out in the hallway; hearing anticipated to last between a half to a full hour. COURT ORDERED, matter TRAILED to the end of the calendar.

Matter RECALLED. Bryan Cox and Joyce Adams, SWORN and TESTIFIED. Matter submitted on the briefing. COURT ORDERED, based upon the information presented in the lengthy, well-documented appendix as well as the testimony , it does not appear that the lack of an actual expert nor the lack of obtaining the photographs were sufficient to cause Mr. Cox to be ineffective; for that reason the Petition is DENIED. State to prepare the order.

Ms. Shell inquired if she can continue as counsel for Deft on appeal. Court noted counsel usually just continue from the petition; to the extent counsel will need an order the Court will sign one after Mr.

10C265506

Drew Christensen's approval.

NDC

STATE'S EXHIBITS

CASE NO. C265506

[illegible]

Court's EXHIBITS

CASE NO. C265506

[illegible]

VAULT EXHIBIT FORM

CASE NO: C265506	HEARING DATE: JUNE 26, 2015 (CHAMBERS)
DEPT. NO: XI	JUDGE: HON. ELIZABETH GONZALEZ
	CLERK: DULCE ROMEA
	RECORDER: N/A
PLAINTIFF: STATE OF NEVADA	JURY FEES: N/A
	COUNSEL FOR PLAINTIFF: DEPUTY DISTRICT ATTY. RYAN MCDONALD
DEFENDANT: TYRONE JAMES	
	COUNSEL FOR DEFENDANT: MARGARET MCLEITCHIE, ESQ.

COURT'S EXHIBIT		Date Offered	Objection	Date Admitted
1.	REDACTED RECORDS 001 – 021 *** SEALED BY ORDER OF THE COURT ***			6-26-15
2.	LVMPD RECORDS 022 – 143 *** SEALED BY ORDER OF THE COURT ***			7-2-15

AMENDED ON 7/2/15

(GL)

VAULT EXHIBIT FORM

CASE NO: C265506	HEARING DATE: NOVEMBER 2, 2015 – MINUTE ORDER
DEPT. NO: XI	JUDGE : HON. ELIZABETH GONZALEZ
	CLERK: DULCE ROMEA
	RECORDER: JILL HAWKINS
PLAINTIFF: STATE OF NEVADA	JURY FEES: N/A
	COUNSEL FOR THE STATE: DEPUTY DISTRICT ATTORNEY RYAN MACDONALD
DEFENDANT: TYRONE JAMES	
	COUNSEL FOR PETITIONER: MARGARET MCLETCHE, ESQ.

COURT'S EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.: **C265506**

Hearing Date:

MARCH 29, 2016 - MINUTE

ORDER: IN CAMERA REVIEW

Dept. No.: **XI**

Judge: *HON. ELIZABETH GONZALEZ*

Court Clerk: *DULCE ROMERA*

Recorder: *N/A*

Counsel for Plaintiff: DEPUTY D.A. RYAN

vs.

Defendant: **TYRONE JAMES**

MCDONALD

Counsel for Defendant: MARGARET MCLEITCH;

ALINA SHELL

HEARING BEFORE THE COURT

COURT'S EXHIBITS

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

TYRONE D. JAMES aka JAMES TYRONE,

Defendant(s).

Case No: 10C265506

Dept No: XI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 12 day of December 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk