

1 **NOAS**  
2 DAMIAN R. SHEETS, ESQ.  
3 Nevada Bar No. 10755  
4 MAYFIELD, GRUBER & SHEETS  
5 726 S. Casino Center Blvd. Suite 211  
6 Las Vegas, Nevada 89101  
7 (702) 598-1299  
8 dsheets@defendingnevada.com  
9 Attorney for Defendant/Appellant

Electronically Filed  
Sep 28 2017 10:21 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA, ) CASE NO. C-11-277650-1  
10 Plaintiff/Respondent, ) DEPT NO. XXIII  
11 vs. ) **NOTICE OF APPEAL**  
12 MICHAEL LEE, )  
13 #1699107 )  
14 Defendant/Appellant. )

15 **NOTICE IS HEREBY GIVEN** that Defendant/Appellant, MICHAEL LEE, hereby  
16 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and  
17 Order entered against him in this action on July 31, 2017, with Notice of Entry of Findings of  
18 Fact, Conclusions of Law and Order entered August 2, 2017.

19 DATED this 19th day of September, 2017.

20 MAYFIELD, GRUBER & SHEETS

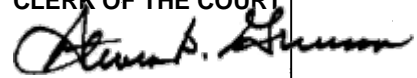
21  
22 BY /s/ Damian R. Sheets  
23 DAMIAN R. SHEETS, ESQ.  
24 Nevada Bar No. 10755  
25 Attorney for Defendant/Appellant  
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CLARK COUNTY DISTRICT ATTORNEY  
Regional Justice Center  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, Nevada 89155-2212  
*Counsel for Plaintiff/Respondent*

MICHAEL LEE  
NDOC No. 1699107  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650  
*Defendant/Appellant*

/s/ Gigi Fouillade  
AN EMPLOYEE OF THE LAW OFFICES  
OF MAYFIELD GRUBER & SHEETS



ASTA  
DAMIAN R. SHEETS, ESQ.  
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Las Vegas, Nevada 89101  
(702) 598-1299  
dsheets@defendingnevada.com  
Attorney for Defendant/Appellant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	CASE NO. C-11-277650-1
	)	DEPT NO. XXIII
Plaintiff/Respondent,	)	
vs.	)	
	)	
MICHAEL LEE,	)	
#1699107	)	
	)	
Defendant/Appellant.	)	

**CASE APPEAL STATEMENT**

1. **Name of petitioner filing this case appeal statement:**  
MICHAEL LEE
2. **Identify the judge issuing the decision, judgment, or order appealed from:**  
Honorable Stefany Miley
3. **Identify all parties to the proceedings in the district court:**  
Michael Lee, Defendant/Appellant;  
The State of Nevada, Plaintiff/Respondent
4. **Identify all parties involved in this appeal:**  
Michael Lee, Defendant/Appellant;  
The State of Nevada, Plaintiff/Respondent

///

///

1           **5. Set forth the name, law firm, address, and telephone number of all counsel**  
2 **on appeal and party or parties whom they represent:**

3 DAMIAN R. SHEETS, ESQ.  
4 Nevada Bar No. 10755  
5 MAYFIELD GRUBER & SHEETS  
6 726 S. Casino Center Blvd., Ste. 211  
7 Las Vegas, Nevada 89101  
8 (702) 598-1299

9 *Counsel for Defendant/Appellant*  
10 *Michael Lee*

STEVEN B. WOLFSON  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500

ADAM LAXALT  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1265

*Counsel for Plaintiff/Respondent State of Nevada*

11           **6. Indicate whether appellant was represented by appointed or retained**  
12 **counsel in the district court:** Appointed

13           **7. Indicate whether appellant is represented by appointed or retained counsel**  
14 **on appeal:** Retained

15           **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**  
16 **and the date of entry of the district court granting such leave:** N/A

17           **9. Date proceedings commenced in the district court (e.g., date complaint,**  
18 **indictment, information, or petition was filed):** Complaint filed November 18, 2011

19 DATED this 21st day of September, 2017.

20  
21 MAYFIELD, GRUBER & SHEETS

22 BY /s/ Damian Sheets  
23 DAMIAN R. SHEETS, ESQ.  
24 Nevada Bar No. 10755  
25 726 S. Casino Center Blvd., Suite 211  
26 Las Vegas, Nevada 89101  
27 (702) 598-1299  
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**CERTIFICATE OF MAILING**

**I HEREBY CERTIFY** that on the 21st day of September, 2017, I mailed a true and correct copy of the above and foregoing **CASE APPEAL STATEMENT**, by depositing the same in the United States mail, first class, postage prepaid, addressed as follows:

CLARK COUNTY DISTRICT ATTORNEY  
Regional Justice Center  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, Nevada 89155-2212  
*Counsel for Plaintiff/Respondent*

ADAM LAXALT  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
*Counsel for Respondent*

MICHAEL LEE  
NDOC No. 1699107  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650  
*Defendant/Appellant*

/s/ Gigi Fouillade  
AN EMPLOYEE OF THE LAW OFFICES  
OF MAYFIELD GRUBER & SHEETS

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

State of Nevada  
vs  
Michael Lee

§	Location:	Department 23
§	Judicial Officer:	Miley, Stefany
§	Filed on:	11/17/2011
§	Cross-Reference Case	C277650
§	Number:	
§	Defendant's Scope ID #:	1699107
§	Lower Court Case # Root:	11FH1653
§	Lower Court Case Number:	11FH1653A
§	Supreme Court No.:	66963

CASE INFORMATION

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>	<b>Felony/Gross Misdemeanor</b>
1. MURDER	F	06/13/2011		
2. CHILD ABUSE/NEGLECT WITH SUBSTANTIAL BODILY HARM	F	06/13/2011	<b>Case Flags:</b>	<b>Appealed to Supreme Court Custody Status - Nevada Department of Corrections</b>

**Statistical Closures**  
12/08/2014 Jury Trial - Conviction - Criminal

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	C-11-277650-1
Court	Department 23
Date Assigned	11/17/2011
Judicial Officer	Miley, Stefany

PARTY INFORMATION

**Defendant**      **Lee, Michael A**

*Lead Attorneys*  
**Sheets, Damian**  
*Retained*  
702-598-1299(W)






**Plaintiff**      **State of Nevada**

**Wolfson, Steven B**  
702-671-2700(W)

















DATE

EVENTS & ORDERS OF THE COURT

INDEX

11/09/2011	Bail Set \$20,000
11/17/2011	 Criminal Bindover
11/18/2011	 Information Information
11/21/2011	 <b>Initial Arraignment</b> (10:30 AM) (Judicial Officer: De La Garza, Melisa) Events: 11/17/2011 Criminal Bindover
11/23/2011	 Reporters Transcript Filed By: Plaintiff State of Nevada Reporter's Transcript of Preliminary Hearing - Heard November 8, 2011
12/02/2011	 Media Request and Order Media Request and Order for Camera Access to Court Proceedings

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**


12/12/2011	 Petition for Writ of Habeas Corpus Filed by: Defendant Lee, Michael A
12/13/2011	 Notice of Rescheduling <i>Notice Resetting Date and Time of Hearing</i>
12/13/2011	 Receipt of Copy Filed by: Defendant Lee, Michael A
12/15/2011	 Notice <i>Notice of Expert Witnesses</i>
12/15/2011	 Notice <i>Notice of Witnesses</i>
12/15/2011	 Notice <i>Notice of Witnesses</i>
12/22/2011	 Return <i>Return To Writ Of Habeas Corpus</i>
12/30/2011	 Reply Filed by: Defendant Lee, Michael A <i>Reply to State's Return to Petition for Writ of Habeas Corpus</i>
01/11/2012	 <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Miley, Stefany)
01/17/2012	<b>CANCELED Jury Trial</b> (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Vacated - per Judge</i>
01/18/2012	 Order for Production of Inmate <i>Michael A Lee BAC #81950</i>
01/30/2012	 <b>Petition for Writ of Habeas Corpus</b> (11:00 AM) (Judicial Officer: Miley, Stefany) Events: 12/12/2011 Petition for Writ of Habeas Corpus
05/01/2012	 Ex Parte Order <i>Ex Parte Order Declaring the Defendant's Indigent for Purposes of Authorizing Payment of Specific Categories of Ancillary Defense Costs</i>
05/01/2012	 Ex Parte <i>Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs</i>
06/19/2012	 Motion to Continue Trial <i>Motion to Continue Trial</i>
06/20/2012	 Receipt of Copy
07/02/2012	 <b>Motion</b> (9:30 AM) (Judicial Officer: Miley, Stefany) Events: 06/19/2012 Motion to Continue Trial


DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**


*Defendant's Motion to Continue Trial*


07/18/2012 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*Vacated - per Judge*


07/23/2012 **CANCELED Jury Trial** (1:00 PM) (Judicial Officer: Gonzalez, Elizabeth)  
*Vacated - per Judge*

01/11/2013  **Supplemental**  
*Supplemental Notice of Witnesses*

01/11/2013  **Supplemental**  
*Supplemental Notice of Expert Witnesses*


03/04/2013  **Request** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*DA Setting Slip - State's Request: Reset TD*


03/11/2013  **Order for Production of Inmate**  
*Order for Production of Inmate*


03/13/2013  **Confirmation of Counsel** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*(Nadia von Magdenko)*

05/08/2013 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*Vacated - per Judge*


05/13/2013 **CANCELED Jury Trial** (1:00 PM) (Judicial Officer: Miley, Stefany)  
*Vacated - per Judge*


10/17/2013  **Motion in Limine**  
*Motion in Limine to Exclude Prior Bad Acts of Defendant*


10/28/2013  **Motion in Limine** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant*


10/30/2013  **Notice of Motion**  
*Notice of Motion and Motion for Proper and Correct Service*

11/13/2013 **CANCELED Motion** (9:30 AM) (Judicial Officer: Miley, Stefany)  
*Vacated - Moot*  
*State's Notice of Motion and Motion for Proper and Correct Service*

12/11/2013  **Notice of Witnesses and/or Expert Witnesses**  
*Defendant Michael Allan Lee's Witness Disclosure*



12/11/2013  **Production of Documents**  
*Defendant Michael Allan Lee's Disclosure of Documents*

01/02/2014  **Motion in Limine**  
*Notice Of Motion And Motion In Limine Re: Defendant's Expert (Rundell) And To Foundational Aspects Of The Defense Experts' Opinion*
















01/08/2014  **Calendar Call** (9:30 AM) (Judicial Officer: Miley, Stefany)











DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

01/13/2014	<b>CANCELED Jury Trial</b> (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Vacated - per Judge</i>
01/17/2014	 <b>Notice of Motion</b> <i>State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures</i>
06/05/2014	 <b>Opposition</b> <i>Defendant's Opposition to Motion in Limine re: Defendant's Expert (Rundell) and to the Foundational Aspects of the Defense Experts' Opinion</i>
06/05/2014	 <b>Opposition</b> <i>Defendant's Opposition to State's Motion for Production of Discoverable Material</i>
06/10/2014	 <b>Motion in Limine</b> <i>Defendant's Motion in Limine to Exclude Autopsy Photographs</i>
06/10/2014	 <b>Motion</b> <i>Defendant's Motion for Dismissal</i>
06/13/2014	 <b>Opposition</b> <i>State's Opposiiton to Defendant's Motion for Dsimissal</i>
06/20/2014	 <b>Opposition</b> <i>State's Opposition To Defendant's Motion In Limine To Exclude Autopsy Photographs</i>
06/25/2014	<b>Motion in Limine</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>State's Motion in Limine Re: Defendant's Expert (Rundell) and to Foundational Aspects of the Defense Experts' Opinion</i>
06/25/2014	<b>Motion in Limine</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Motion in Limine to Exclude Autopsy Photographs</i>
06/25/2014	<b>Motion to Dismiss</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Motion for Dismissal</i>
06/25/2014	<b>Motion for Discovery</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures</i>
06/25/2014	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Miley, Stefany)
07/10/2014	 <b>Order</b> <i>Order Denying Defendant's Motion in Limine to Exclude Autopsy Photographs and Order Denying Defendant's Motion for Dismissal</i>
07/28/2014	 <b>Notice of Witnesses and/or Expert Witnesses</b> <i>Second Supplemental Notice of Witnesses</i>
07/30/2014	 <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Miley, Stefany)
08/04/2014	 <b>Jury Trial</b> (1:00 PM) (Judicial Officer: Miley, Stefany) <b>08/04/2014-08/08/2014, 08/11/2014, 08/14/2014-08/15/2014</b>

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

08/04/2014	 Jury List
08/06/2014	 Media Request and Order <i>Media Request And Order For Camera Access To Court Proceedings.</i>
08/14/2014	 Proposed Jury Instructions Not Used At Trial <i>Defendant's Proposed Jury Instructions Not Used At Trial</i>
08/14/2014	 Proposed Jury Instructions Not Used At Trial <i>State's Proposed Jury Instructions Not Used At Trial</i>
08/15/2014	 Verdict
08/15/2014	 Instructions to the Jury
08/15/2014	 Amended Jury List
08/15/2014	<b>Plea</b> (Judicial Officer: Miley, Stefany) 1. MURDER Adjudicated PCN: Sequence:  2. CHILD ABUSE/NEGLECT WITH SUBSTANTIAL BODILY HARM Adjudicated PCN: Sequence:
08/18/2014	 Motion <i>Motion for Judgment of Acquittal</i>
08/18/2014	 <b>Jury Trial</b> (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Jury Trial (Penalty Phase)</i>
08/18/2014	 Stipulation <i>Stipulation Pursuant to NRS 175.552 (2) Waiving Penalty Hearing And Agreeing To Have Sentence Imposed By Trial Judge</i>
08/20/2014	 Motion for New Trial <i>Motion for New Trial</i>
08/20/2014	 Receipt of Copy <i>Receipt of Copy</i>
08/20/2014	 Document Filed <i>Clarification Of Record No Hearing Requested</i>
08/21/2014	 Opposition <i>State's Opposition to Defendant's Motion for Judgment of Acquittal</i>
08/22/2014	 Opposition <i>State's Opposition to Defendant's Motion for New Trial</i>
08/29/2014	

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

	 Reply to Opposition <i>Reply to State's Opposition to Motion for Judgment of Acquittal and Motion for New Trial</i>
09/03/2014	<b>Motion for Judgment</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Motion for Judgment of Acquittal</i>
09/03/2014	<b>Motion for New Trial</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Motion for New Trial</i>
09/03/2014	 <b>All Pending Motions</b> (9:30 AM) (Judicial Officer: Miley, Stefany)
09/16/2014	 Order <i>Order Denying Defendant's Motion for Judgment of Acquittal and Order Denying Defendant's Motion for New Trial</i>
10/01/2014	 PSI
10/14/2014	 Memorandum <i>Sentencing Memorandum</i>
10/20/2014	 <b>Sentencing</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <b>10/20/2014-10/21/2014</b>
10/20/2014	 Order for Production of Inmate <i>Order For Production Of Inmate - Michael Alan Lee, BAC #81950</i>
10/21/2014	<b>Disposition</b> (Judicial Officer: Miley, Stefany) 1. MURDER Guilty PCN: Sequence:  2. CHILD ABUSE/NEGLECT WITH SUBSTANTIAL BODILY HARM Guilty PCN: Sequence:
10/21/2014	<b>Sentence</b> (Judicial Officer: Miley, Stefany) 1. MURDER Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life without the possibility of parole Consecutive: Case Number C199242
10/27/2014	 <b>Further Proceedings</b> (11:00 AM) (Judicial Officer: Miley, Stefany) <i>Further Proceedings: Clarification of Sentence on Count 2</i>
10/27/2014	<b>Sentence</b> (Judicial Officer: Miley, Stefany) 2. CHILD ABUSE/NEGLECT WITH SUBSTANTIAL BODILY HARM Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:96 Months, Maximum:240 Months Consecutive: Charge 1 Fee Totals: Administrative Assessment Fee 25.00 \$25 Fee Totals \$ 25.00 \$150.DNAF Previously Imposed










DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

11/10/2014	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (JURY TRIAL)</i>
11/24/2014	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
11/24/2014	 Case Appeal Statement <i>Case Appeal Statement</i>
12/08/2014	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Calendar Call January 11, 2012</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Defendant's Motion to Continue Trial July 02, 2012</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: State's Request: Reset Trial Date March 04, 2013</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Confirmation of Counsel (Nadia Von Magdenko) March 13, 2013</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant October 28, 2013</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Calendar Call January 8, 2014</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Calendar Call July 30, 2014</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Sentencing October 20, 2014</i>
01/15/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Re: Further Proceedings: Clarification of Sentence on Count 2 October 27, 2014</i>
01/21/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Defendant's Petition for Writ of Habeas Corpus 1/30/12</i>
01/21/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings October 21, 2014 Sentencing</i>
01/21/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Monday, January 30, 2012 Defendant's Petition for Writ of Habeas Corpus</i>

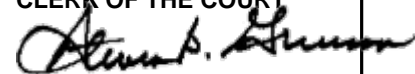
DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

01/21/2015	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Proceedings June 25, 2014 Defendant's Motion in Limine to Exclude Autopsy Photographs; Defendant's Motion for Dismissal; State's Motion for Production of Discoverable Material pursuant NRS 174.245's Reciprocal Discovery Provisions; State's Motion in Limine re: Defendant's Expert and to Foundational Aspects of the Defense Expert's Opinion.</i>
01/21/2015	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Proceedings September 3, 2014 Defendant's Motion for Judgment on Acquittal; Defendant's Motion for New Trial</i>
01/26/2015	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing Re: Arraignment</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 2 August 5, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 1 August 4, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 4 August 7, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 5 August 8, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 6 August 11, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 7 August 14, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 8 August 15, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 9 August 18, 2014</i>
03/30/2015	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014</i>
09/13/2016	 <b>NV Supreme Court Clerks Certificate/Judgment - Affirmed</b> <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
05/12/2017	 <b>Petition for Writ of Habeas Corpus</b> <i>Petition for Writ of Habeas Corpus</i>
06/19/2017	 <b>Errata</b>

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. C-11-277650-1**

	Filed By: Defendant Lee, Michael A <i>Errata to Petition for Writ of Habeas Corpus</i>
06/20/2017	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
06/28/2017	 <b>Petition for Writ of Habeas Corpus</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Petition for Writ of Habeas Corpus</i>
07/12/2017	 Recorders Transcript of Hearing <i>Recorder s Transcript of Proceedings: Defendant s Petition for Writ of Habeas Corpus June 28, 2017</i>
07/31/2017	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
08/02/2017	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
08/18/2017	 Motion to Withdraw As Counsel Filed By: Defendant Lee, Michael A <i>Potter Law Offices Motion to Witdraw as Counsel and Stay Proceedings</i>
08/30/2017	 <b>Motion to Withdraw as Counsel</b> (9:30 AM) (Judicial Officer: Miley, Stefany) <b>08/30/2017, 09/13/2017</b> <i>Potter Law Offices' Motion to Witdraw as Counsel and Stay Proceedings</i>
09/19/2017	 Notice of Appeal (criminal) Party: Defendant Lee, Michael A <i>Notice of Appeal</i>
09/21/2017	 Case Appeal Statement Filed By: Defendant Lee, Michael A <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
<b>Defendant</b> Lee, Michael A	
Total Charges	25.00
Total Payments and Credits	0.00
<b>Balance Due as of 9/25/2017</b>	<b>25.00</b>



**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #12615  
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-

MICHAEL ALAN LEE  
#1699107  
Defendant.

CASE NO: C-11-277650-1

DEPT NO: XXIII

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: JUNE 28, 2017  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable STEPHANY MILEY, District Judge, on the 28th day of June, 2017, the Petitioner being represented by CAL J. POTTER III, and JASMIN D. SPELLS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through DAVID STANTON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

On November 18, 2011, Michael Alan Lee ("Defendant") was charged by way of Information with: Count 1 – Murder (NRS 200.010, 200.030, 200.508) and Count 2: Child Abuse and Neglect With Substantial Bodily Harm (Felony – NRS 200.508).

1 Before trial on June 10, 2014, Lee filed a Motion in Limine to Exclude Autopsy  
2 Photographs. The State filed its Opposition on June 20, 2014. The court denied the Motion on  
3 June 25, 2014.

4 Lee's jury trial commenced on August 4, 2014. On August 15, 2014, the jury returned  
5 a verdict of guilty on both counts.

6 On August 18, 2014, Lee filed a Motion for Judgment of Acquittal. On August 20,  
7 2014, Lee filed a Motion for a New Trial. The State filed its Oppositions to the Motions on  
8 August 21 and 22, 2014. The court denied the Motions on September 3, 2014.

9 On October 21, 2014, Lee was adjudicated guilty and sentenced as follows: as to Count  
10 1: life without the possibility of parole; and as to Count 2: a minimum of 96 months and a  
11 maximum of 240 months, consecutive to Count 1. Lee received no credit for time served. A  
12 Judgment of Conviction was filed on November 10, 2014.

13 A Notice of Appeal was filed on November 24, 2014. On August 10, 2016, the Nevada  
14 Supreme Court Affirmed the Judgment of Conviction. Remittitur issued September 6, 2016.

15 On May 12, 2017, Petitioner filed the instant Petition for Writ of Habeas Corpus. On  
16 June 19, 2017, Petitioner filed an errata to the Petition for Writ of Habeas Corpus. The State  
17 responded on June 20, 2017. On June 28, 2017, this Court heard the Petition for Writ of  
18 Habeas Corpus and denied the Petition for the following reasons:

19 **I. COUNSEL WAS NOT INEFFECTIVE**

20 **A. Ineffective Assistance Of Counsel, Generally:**

21 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
22 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
23 defense." The United States Supreme Court has long recognized that "the right to counsel is  
24 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
25 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
26 (1993).

27 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
28 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of



1 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
2 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
3 representation fell below an objective standard of reasonableness, and second, that but for  
4 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
5 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
6 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
7 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach  
8 the inquiry in the same order or even to address both components of the inquiry if the defendant  
9 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

10 The court begins with the presumption of effectiveness and then must determine  
11 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
15 537 P.2d 473, 474 (1975).

16 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
17 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
18 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
19 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
20 (2002).

21 Based on the above law, the role of a court in considering allegations of ineffective  
22 assistance of counsel is "not to pass upon the merits of the action not taken but to determine  
23 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
24 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
25 (1978). This analysis does not mean that the court should "second guess reasoned choices  
26 between trial tactics nor does it mean that defense counsel, to protect himself against  
27 allegations of inadequacy, must make every conceivable motion no matter how remote the  
28 possibilities are of success." Id. To be effective, the constitution "does not require that counsel

1 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
2 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
3 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

4 “There are countless ways to provide effective assistance in any given case. Even the  
5 best criminal defense attorneys would not defend a particular client in the same way.”  
6 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
7 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
8 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
9 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
10 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
11 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

12 Even if a defendant can demonstrate that his counsel’s representation fell below an  
13 objective standard of reasonableness, he must still demonstrate prejudice and show a  
14 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
15 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
16 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
17 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
18 89, 694, 104 S. Ct. at 2064-65, 2068).

19 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
20 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
21 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
22 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
23 be supported with specific factual allegations, which if true, would entitle the petitioner to  
24 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
25 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
26 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
27 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
28 petition to be dismissed.” (emphasis added).

1 A defendant who contends his attorney was ineffective because he did not adequately  
2 investigate must show how a better investigation would have rendered a more favorable  
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

4 **B. Defendant Has Not Demonstrated Ineffectiveness At Trial**

5 **1. Counsel Was Not Ineffective For Failing To Challenge Jury Instructions**

6 Trial counsel was not ineffective for failing to challenge jury instructions because the  
7 State's theory of the case, and all argument and evidence presented, demonstrated that  
8 Defendant willfully, intentionally, and directly killed Brodie via blunt-force trauma.  
9 Defendant attempts to analogize the instant case to the unpublished Nevada Supreme Court  
10 case Thompson v. State, 2016 Nev. Unpub. LEXIS 79, \*2 2016 WL 315216 (Nev. 2016), and  
11 a published case, Labastida v. State, 115 Nev. 298, 986 P.2d 443 (1991). Petition 8-9. These  
12 cases, while facially similar, are inapplicable because the issues raised in those cases do not  
13 apply in Defendant's case.

14 In Labastida, the Court held that "we are not willing to read NRS 200.030(1)(a) so as  
15 to define first degree murder to include a murder which is perpetrated by means of child  
16 neglect." Labastida, 115 Nev. at 303, 986 P.2d at 446. Additionally, the Court found that  
17 because the jury did not convict Labastida of child abuse causing substantial bodily harm, "the  
18 evidence presented below simply [did not] justify an assumption that the jury could have found  
19 Labastida guilty of committing an act or acts with the intent to cause the child pain or suffering  
20 and at the same time acquitted her of willfully causing the child to suffer physical pain or  
21 mental suffering, either directly or by aiding and abetting Strawser." Id. at 304. In essence, the  
22 error committed allowed for the possibility that the jury could have convicted Labastida of  
23 felony murder by child abuse when they only found that she committed child neglect, as  
24 evidenced by their acquittal on the child abuse causing substantial bodily harm charge. The  
25 Thompson Court assigned the same error in that case, specifically addressing that "[b]ecause  
26 of the State's argument, it is unclear whether the jury convicted Thompson of first-degree  
27 felony murder for conduct prohibited by the felony murder statute or for conduct merely  
28 prohibited by NRS 200.508." Thompson, 2016 Nev. Unpub. LEXIS at \*5.

1 In the instant case, no such error was possible because the State never argued that  
2 Defendant could have allowed Brodie to die through neglect. Instead, the State argued only,  
3 and repeatedly, that Defendant directly killed Brodie through blunt force trauma. For example,  
4 the State, during introductions, summarized what the case was going to show as follows:

5 "This case involves the death of Brodie Aschenbrenner who was murdered on  
6 June 15th of 2011. The State alleges that the defendant beat Brodie  
Aschenbrenner to death."

7 Trial Transcript (T.T.), August 4, 2014, p. 15.

8 During opening statements, the State provided the following roadmap:

9 "Most importantly, [Dr. Gavin will] tell you that this was a homicide. This was  
10 child abuse. Someone inflicted these wounds. This isn't accidental."

11 ...

12 "At the end of this trial, we're going to ask you to find the defendant guilty of  
first degree murder for beating Brodie and causing his death."

13 T.T., August 5, 2014 at p. 25, 27-28.

14  
15 During closing arguments, the State further argued that Defendant beat Brodie and  
16 caused his death – a direct act of child abuse and not child neglect:

17 "The elements are listed here, somewhat similar as to the child abuse charge.  
18 The defendant willfully caused blunt force trauma in some unknown manner --  
19 same idea as with the other count -- to Brodie's abdomen. This one resulted in  
20 his death. As I stated previously, *it doesn't matter what the defendant intended*  
21 *when he beat Brodie. It only matters he intended to beat him. If he killed Brodie*  
22 *when he beat him, causing his death, and it was unintentional, he didn't want*  
23 *him to die, it doesn't matter for purposes of murder by child abuse. You beat a*  
24 *kid, you run the risk. Malice is implied. A malignant and abandoned heart is*  
25 *implied. You beat a kid, you run the risk of killing him, first degree murder. "*

26 ...

27 "So with that said, we know that the car accident or fender bender means nothing  
28 here. It wasn't an accident. We know that the nature, severity and extent of those  
injuries indicate they were caused by someone else.

We know it wasn't the Power Wheels incident. That's an accident, right?  
Well, it's not an accident what happened here. Those are eliminated for you. You  
don't have to worry about that.

///

1 Most importantly in my opinion is the Bambam injuries are ruled out.  
2 Bambam injuries are inherently accidental. If this is a kid running around  
3 banging his head on stuff and banging his body on stuff, those are accidents.  
That's ruled out. This was homicide. You don't have to worry about that."

4 ...  
5 "And most importantly, you can't ignore those symptoms when we're talking  
6 about timing of the injuries. You can't ignore those. That's common sense. This  
7 kid had a transected internal organ, completely severed internal organ. If you  
8 believe that he didn't show symptoms almost immediately after that, we disagree  
completely. That is a little boy with an internal injury so severe that it's only seen  
or usually seen in major car accidents, fatal car accidents. He's showing  
symptoms almost immediately after that injury's inflicted."

9 ...  
10 "Again I'll highlight for count two, the substantial bodily harm, who was alone  
11 with him during the operative time period? The defendant. *Who was alone with*  
12 *him during the operative time period that the fatal injury occurred? The*  
13 *defendant.* The head injury, we know now, happened after Monday night dinner,  
some point before Tuesday morning, because Brodie woke up on Tuesday, per  
Arica, and had a headache; his head hurt. That's the first sign of symptoms. Arica  
wasn't alone with him Monday night. The defendant was.

14 The duodenum. Remember the hair salon, they did -- they ran these  
15 errands throughout the day on Tuesday. They went to Shark Reef, they went to  
16 a number of different places. They got to the hair salon. Brodie's fast asleep  
17 already showing symptoms from the head injury. He's exhausted, didn't want to  
18 walk. He's fast asleep in the back in the center, facing forward in his car seat.  
19 She gets out, she closes the door gently so she doesn't wake her sleeping baby.  
20 She comes back within five minutes and that kid's screaming at the top of his  
lungs. *Once again the defendant is alone with him and the defendant blames it*  
*on something else; says when you closed the door, he started freaking out. That's*  
*when that fatal injury was inflicted.* That's within the operative time period.

21 Brodie starts vomiting later. Brodie won't eat his lasagna. Mom has to  
22 force feed him the lasagna. She wants him to eat.

23 *Those injuries are not accidental. Those injuries are not inflicted by*  
24 *Arica. They're inflicted by one person and one person alone.*

25 *Those injuries are not accidental. They're not inflicted by Arica. One*  
26 *person and one person alone inflicted them.*

27 *Those injuries. No accidental. Not inflicted by Arica. Those injuries.*  
28 *Definitely not accidental. Definitely not inflicted by Arica.*

*I'll remind you one more time it doesn't matter whether there was an*  
*intent to kill. It matters who beat him, who intended to beat him, and who caused*  
*his death. Find that defendant guilty of both those counts. Thank you."*

T.T. August 15, 2014 p. 4-5, 7, 13-14.

1 Finally, during rebuttal argument, the State again emphasized that Defendant killed  
2 Brodie through child abuse:

3 "Now, [Brodie's] body tells you that he was the victim of significant physical  
4 abuse over a period of time. Now we focused somewhat unfairly so on two  
5 injuries, the injuries to the head and the injuries to the abdomen. But he has a lot  
6 more injuries. And the most compelling evidence in this case and I would submit  
7 to you simply uncontroverted is the distinction between Bambam injuries and  
8 *non-accidental physical abuse*.

9 Every single person who took this witness stand in this trial told you that  
10 what you see at autopsy are not Bambam injuries. Every single person.

11 Even the defendant's sister, as you saw when I showed her the  
12 photographs at autopsy, had a physical reaction to what she was seeing. No one  
13 had seen those before. No one. *That is because they are indicative of physical*  
14 *abuse, child abuse, intentionally inflicted upon this child.* And as I just heard  
15 counsel's argument to you is that's the murder. That's the killer right in front of  
16 you."

17 ...

18 "Exhibit 66. That is a hand, ladies and gentlemen. And I'm going to ask you to  
19 do -- keep in mind two things about that. Number one is it's unmistakably  
20 because of the scalloped, the number, where the thumb would be of what's right  
21 underneath the skin. And the internal organs as you go from anatomically from  
22 what you just saw inside Brodie's body, you have the lower abdomen, but you  
23 also have his rib. His eighth rib was fractures. Another injury that we haven't  
24 talked a lot about. But once again indicative of child abuse."

25 ...

26 "Brodie was murdered. But not by Arica. By that man sitting right in front of  
27 you. And I respectfully submit the evidence is overwhelming to that effect. Hold  
28 him accountable and convict him of first degree murder."

Id. p. 27, 32-33.

21 The State's theory of the case, argument, and evidence presented demonstrated only  
22 that Defendant killed Brodie through the intentional act of beating him hard enough to break  
23 a rib and dissect Brodie's duodenum. For the purposes of felony murder: "'Child abuse' means  
24 physical injury of a nonaccidental nature to a child under the age of 18 years." NRS  
25 200.030(6)(b). The State consistently argued that Defendant willfully inflicted a physical  
26 injury of a non-accidental nature to Brodie, a child under the age of 18 years. Therefore, the  
27 State argued precisely the elements of felony murder child abuse.

1 Counsel was not ineffective for failing to challenge the jury instructions at trial because  
2 there was no evidence that supported a finding that Defendant had committed child neglect –  
3 only child abuse. As Defendant states, [b]oth medical experts argued that the injury was non-  
4 accidental.” Petition at 10.

5 Further, even if counsel were deficient, Defendant did not demonstrate prejudice.  
6 Again, even if the jury instructions were incorrect, the State argued the correct elements of  
7 felony murder child abuse. Unlike Labastida and Thompson, there was no possibility that  
8 Defendant could have been erroneously found guilty based on child neglect because there was  
9 no evidence or argument presented that neglect occurred. Additionally, unlike Labastida,  
10 where the Court reversed an earlier decision, in part, because the jury did not find the defendant  
11 guilty of child abuse with substantial bodily harm, leading to the inference that the defendant  
12 did not inflict a non-accidental physical injury, here the jury found Defendant guilty of that  
13 charge. Had counsel challenged the jury instructions, and had those instructions replaced the  
14 instructions given, the Defendant would still have been found guilty because the State argued  
15 the correct elements of felony murder child abuse, and no alternative “neglect” finding was  
16 possible.

17 This Court FINDS the following facts: Throughout the case the State’s theory of death  
18 was that the child died by child abuse, and there is nothing in the record indicating neglect,  
19 and that the jury instructions did mirror the evidence, the State’s theory throughout the case,  
20 and the evidence that came out during the course of the case.

21 Because Defendant did not demonstrate ineffectiveness, and because even if Defendant  
22 had demonstrated ineffectiveness Defendant cannot demonstrate prejudice, this Court now  
23 FINDS that Defendant has not demonstrated that counsel was ineffective, and additionally  
24 FINDS that Defendant has not demonstrated that he was prejudiced even if counsel were  
25 deficient.

26 ///

27 ///

28 ///

1 Defendant's claim is, therefore, DENIED.

2 **2. Defendant's Remaining Claims Of Ineffectiveness Are Unsubstantiated**

3 Defendant's vague assertions that trial counsel was ineffective because she was "not  
4 qualified" are "bare" and "naked" assertions fit only for summary dismissal. Hargrove, 100  
5 Nev. 498, 502, 686 P.2d 222, 225 (1984).

6 Additionally, these claims are belied by the record. Id. A brief review of the Odyssey  
7 filings demonstrate that counsel argued, before, during, and after trial, effectively on behalf of  
8 her client.

9 Defendant's claims regarding defense counsels' interactions with each other are  
10 unsupported by evidence, and do not appear likely to require relief. They certainly do not  
11 demonstrate ineffectiveness by a preponderance of the evidence. Means, 120 Nev. at 1012,  
12 103 P.3d at 33. Even if Nadia Von Magdenko were deficient, at worst she was supported by  
13 attorney Steve Altig, who was present through trial and who, according to Defendant, provided  
14 effective counsel. Defendant, therefore, cannot demonstrate prejudice because he was  
15 represented by at least one attorney who he admits was not ineffective.

16 This Court also FINDS the following facts: Defendant has an extensive criminal  
17 history, and was certainly aware that a Public Defender could be appointed. Defendant chose  
18 to retain counsel, and cannot now argue that more qualified counsel could have been  
19 appointed. Additionally, Defendant affirmatively requested the counsel that was actually  
20 retained.

21 Therefore, this Court FINDS that Defendant's claim that counsel was unqualified is  
22 unsupported by the record and the claim is DENIED.

23 Additionally, Defendant claims that the Nevada Supreme Court, in its' Order of  
24 Affirmance, was critical of counsel's performance because counsel "opened the door" to  
25 repeated use of autopsy photos. Petition 10. This claim is also belied by the record. Hargrove,  
26 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "[T]he contested images, both below and on  
27 appeal, depict Brodie's external injuries." Order of Affirmance at 2, fn. 2. The Court first  
28 rejected Defendant's argument because the photos "had a high probative value." Id. at 3.



1 Second, because the photos were highly probative, "they would need to be exceedingly  
2 gruesome for the district court to have abused its discretion in admitting them." Id. at 4. Nor  
3 was the Court in any way critical of trial counsel's performance. Defendant's claim is,  
4 therefore, wholly unsupported and belied by the record.

5 This Court hereby FINDS the following facts: That the Nevada Supreme Court has  
6 determined that the autopsy photos were more probative than prejudicial. The photographs  
7 shown were highly relevant to the State's case, and were relevant to determining when certain  
8 injuries were inflicted.

9 Therefore, this Court FINDS that counsel was not deficient as regards the autopsy  
10 photos.

11 Because Defendant's claims are vague, unsupported, and belied by the record,  
12 Defendant's claims are hereby DENIED.

### 13 **C. Defendant Has Not Demonstrated Ineffectiveness On Appeal**

14 There is a strong presumption that appellate counsel's performance was reasonable and  
15 fell within "the wide range of reasonable professional assistance." See United States v.  
16 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
17 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
18 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
19 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
20 have had a reasonable probability of success on appeal. Id.

21 The professional diligence and competence required on appeal involves "winnowing  
22 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
23 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
24 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .  
25 . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.  
26 For judges to second-guess reasonable professional judgments and impose on appointed  
27 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
28 goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314.

1 Defendant's sole claim of ineffectiveness of appellate counsel appears to be that  
2 appellate counsel did not raise the jury instruction issue. As explained in Section I B, supra,  
3 there was no reason to raise the issue because it was unlikely to succeed on appeal. Counsel  
4 cannot be ineffective for failing to make futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at  
5 1103.

6 Therefore, the Court FINDS that Appellate counsel was not deficient in not raising this  
7 issue because it was unlikely to succeed on appeal, and Defendant has failed to demonstrate  
8 that the outcome of his appeal would have been affected by that argument.

9 Defendant's claim that appellate counsel was ineffective is, therefore, DENIED.

## 10 **II. DEFENDANT IS NOT ENTITLED TO DISCOVERY**

11 This Court also FINDS that, because Defendant's Petition for Writ of Habeas Corpus  
12 is meritless, no discovery is warranted pursuant to NRS 34.780(2). Post-conviction discovery  
13 is not available until "after the writ has been granted" and good cause is shown. Id. Neither of  
14 these statutory requirements has been fulfilled in this case. Therefore, Defendant's request for  
15 discovery is premature and must be DENIED.

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**ORDER**

THEREFORE, IT IS HEREBY ORDERED that all issues included in Defendant's Petitions for Writ of Habeas Corpus (Post-Conviction) and supplements thereto shall be, and they are, hereby DENIED.

IT IS ADDITIONALLY ORDERED that Defendant's request for Post-Conviction discovery shall be, and it is, hereby DENIED.

DATED this 25 day of July, 2017.

  
DISTRICT JUDGE

JUDGE STEFANY A. MILEY

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

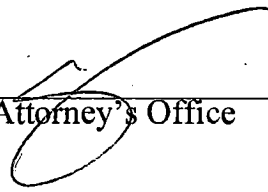
BY  (for)

RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #12615

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the Findings of Fact and Conclusions of Law and Order, was made this 19th day of July, 2017, by Electronic Filing to:

CAL POTTER, ESQ.  
[cpotter@potterlawoffices.com](mailto:cpotter@potterlawoffices.com)

BY: /s/ Stephanie Johnson  
Employee of the District Attorney's Office  


11FH1653X/JN/saj/MVU



NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MICHAEL LEE,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-11-277650-1

Dept No: XXIII

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

**PLEASE TAKE NOTICE** that on July 31, 2017, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 2, 2017.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 2 day of August 2017, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

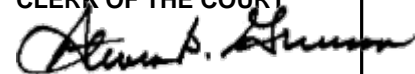
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Michael Lee # 81950	Cal Johnson Potter
P.O. Box 650	1125 Shadow Lane
Indian Springs, NV 89070	Las Vegas, NV 89102

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



**FCL**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
RYAN J. MACDONALD  
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200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

MICHAEL ALAN LEE  
#1699107  
Defendant.

CASE NO: C-11-277650-1

DEPT NO: XXIII

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: JUNE 28, 2017  
TIME OF HEARING: 9:30 AM

THIS CAUSE having come on for hearing before the Honorable STEPHANY MILEY, District Judge, on the 28th day of June, 2017, the Petitioner being represented by CAL J. POTTER III, and JASMIN D. SPELLS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through DAVID STANTON, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

On November 18, 2011, Michael Alan Lee ("Defendant") was charged by way of Information with: Count 1 – Murder (NRS 200.010, 200.030, 200.508) and Count 2: Child Abuse and Neglect With Substantial Bodily Harm (Felony – NRS 200.508).

1 Before trial on June 10, 2014, Lee filed a Motion in Limine to Exclude Autopsy  
2 Photographs. The State filed its Opposition on June 20, 2014. The court denied the Motion on  
3 June 25, 2014.

4 Lee's jury trial commenced on August 4, 2014. On August 15, 2014, the jury returned  
5 a verdict of guilty on both counts.

6 On August 18, 2014, Lee filed a Motion for Judgment of Acquittal. On August 20,  
7 2014, Lee filed a Motion for a New Trial. The State filed its Oppositions to the Motions on  
8 August 21 and 22, 2014. The court denied the Motions on September 3, 2014.

9 On October 21, 2014, Lee was adjudicated guilty and sentenced as follows: as to Count  
10 1: life without the possibility of parole; and as to Count 2: a minimum of 96 months and a  
11 maximum of 240 months, consecutive to Count 1. Lee received no credit for time served. A  
12 Judgment of Conviction was filed on November 10, 2014.

13 A Notice of Appeal was filed on November 24, 2014. On August 10, 2016, the Nevada  
14 Supreme Court Affirmed the Judgment of Conviction. Remittitur issued September 6, 2016.

15 On May 12, 2017, Petitioner filed the instant Petition for Writ of Habeas Corpus. On  
16 June 19, 2017, Petitioner filed an errata to the Petition for Writ of Habeas Corpus. The State  
17 responded on June 20, 2017. On June 28, 2017, this Court heard the Petition for Writ of  
18 Habeas Corpus and denied the Petition for the following reasons:

19 **I. COUNSEL WAS NOT INEFFECTIVE**

20 **A. Ineffective Assistance Of Counsel, Generally:**

21 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
22 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
23 defense." The United States Supreme Court has long recognized that "the right to counsel is  
24 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
25 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
26 (1993).

27 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
28 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of

1 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
2 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
3 representation fell below an objective standard of reasonableness, and second, that but for  
4 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
5 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State  
6 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-  
7 part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach  
8 the inquiry in the same order or even to address both components of the inquiry if the defendant  
9 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

10 The court begins with the presumption of effectiveness and then must determine  
11 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
12 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel  
13 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of  
14 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,  
15 537 P.2d 473, 474 (1975).

16 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
17 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
18 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
19 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
20 (2002).

21 Based on the above law, the role of a court in considering allegations of ineffective  
22 assistance of counsel is "not to pass upon the merits of the action not taken but to determine  
23 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
24 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
25 (1978). This analysis does not mean that the court should "second guess reasoned choices  
26 between trial tactics nor does it mean that defense counsel, to protect himself against  
27 allegations of inadequacy, must make every conceivable motion no matter how remote the  
28 possibilities are of success." Id. To be effective, the constitution "does not require that counsel

1 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
2 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
3 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

4 “There are countless ways to provide effective assistance in any given case. Even the  
5 best criminal defense attorneys would not defend a particular client in the same way.”  
6 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
7 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
8 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
9 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
10 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
11 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

12 Even if a defendant can demonstrate that his counsel’s representation fell below an  
13 objective standard of reasonableness, he must still demonstrate prejudice and show a  
14 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
15 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
16 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
17 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
18 89, 694, 104 S. Ct. at 2064-65, 2068).

19 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
20 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
21 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
22 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
23 be supported with specific factual allegations, which if true, would entitle the petitioner to  
24 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
25 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
26 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
27 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
28 petition to be dismissed.” (emphasis added).



1 A defendant who contends his attorney was ineffective because he did not adequately  
2 investigate must show how a better investigation would have rendered a more favorable  
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

4 **B. Defendant Has Not Demonstrated Ineffectiveness At Trial**

5 **1. Counsel Was Not Ineffective For Failing To Challenge Jury Instructions**

6 Trial counsel was not ineffective for failing to challenge jury instructions because the  
7 State's theory of the case, and all argument and evidence presented, demonstrated that  
8 Defendant willfully, intentionally, and directly killed Brodie via blunt-force trauma.  
9 Defendant attempts to analogize the instant case to the unpublished Nevada Supreme Court  
10 case Thompson v. State, 2016 Nev. Unpub. LEXIS 79, \*2 2016 WL 315216 (Nev. 2016), and  
11 a published case, Labastida v. State, 115 Nev. 298, 986 P.2d 443 (1991). Petition 8-9. These  
12 cases, while facially similar, are inapplicable because the issues raised in those cases do not  
13 apply in Defendant's case.

14 In Labastida, the Court held that "we are not willing to read NRS 200.030(1)(a) so as  
15 to define first degree murder to include a murder which is perpetrated by means of child  
16 neglect." Labastida, 115 Nev. at 303, 986 P.2d at 446. Additionally, the Court found that  
17 because the jury did not convict Labastida of child abuse causing substantial bodily harm, "the  
18 evidence presented below simply [did not] justify an assumption that the jury could have found  
19 Labastida guilty of committing an act or acts with the intent to cause the child pain or suffering  
20 and at the same time acquitted her of willfully causing the child to suffer physical pain or  
21 mental suffering, either directly or by aiding and abetting Strawser." Id. at 304. In essence, the  
22 error committed allowed for the possibility that the jury could have convicted Labastida of  
23 felony murder by child abuse when they only found that she committed child neglect, as  
24 evidenced by their acquittal on the child abuse causing substantial bodily harm charge. The  
25 Thompson Court assigned the same error in that case, specifically addressing that "[b]ecause  
26 of the State's argument, it is unclear whether the jury convicted Thompson of first-degree  
27 felony murder for conduct prohibited by the felony murder statute or for conduct merely  
28 prohibited by NRS 200.508." Thompson, 2016 Nev. Unpub. LEXIS at \*5.

1 In the instant case, no such error was possible because the State never argued that  
2 Defendant could have allowed Brodie to die through neglect. Instead, the State argued only,  
3 and repeatedly, that Defendant directly killed Brodie through blunt force trauma. For example,  
4 the State, during introductions, summarized what the case was going to show as follows:

5 "This case involves the death of Brodie Aschenbrenner who was murdered on  
6 June 15th of 2011. The State alleges that the defendant beat Brodie  
Aschenbrenner to death."

7 Trial Transcript (T.T.), August 4, 2014, p. 15.

8 During opening statements, the State provided the following roadmap:

9 "Most importantly, [Dr. Gavin will] tell you that this was a homicide. This was  
10 child abuse. Someone inflicted these wounds. This isn't accidental."

11 ...

12 "At the end of this trial, we're going to ask you to find the defendant guilty of  
first degree murder for beating Brodie and causing his death."

13 T.T., August 5, 2014 at p. 25, 27-28.

14  
15 During closing arguments, the State further argued that Defendant beat Brodie and  
16 caused his death – a direct act of child abuse and not child neglect:

17 "The elements are listed here, somewhat similar as to the child abuse charge.  
18 The defendant willfully caused blunt force trauma in some unknown manner --  
19 same idea as with the other count -- to Brodie's abdomen. This one resulted in  
20 his death. As I stated previously, *it doesn't matter what the defendant intended*  
21 *when he beat Brodie. It only matters he intended to beat him. If he killed Brodie*  
22 *when he beat him, causing his death, and it was unintentional, he didn't want*  
23 *him to die, it doesn't matter for purposes of murder by child abuse. You beat a*  
24 *kid, you run the risk. Malice is implied. A malignant and abandoned heart is*  
25 *implied. You beat a kid, you run the risk of killing him, first degree murder. "*

26 ...

27 "So with that said, we know that the car accident or fender bender means nothing  
28 here. It wasn't an accident. We know that the nature, severity and extent of those  
injuries indicate they were caused by someone else.

We know it wasn't the Power Wheels incident. That's an accident, right?  
Well, it's not an accident what happened here. Those are eliminated for you. You  
don't have to worry about that.

///

1 Most importantly in my opinion is the Bambam injuries are ruled out.  
2 Bambam injuries are inherently accidental. If this is a kid running around  
3 banging his head on stuff and banging his body on stuff, those are accidents.  
That's ruled out. This was homicide. You don't have to worry about that."

4 ...  
5 "And most importantly, you can't ignore those symptoms when we're talking  
6 about timing of the injuries. You can't ignore those. That's common sense. This  
7 kid had a transected internal organ, completely severed internal organ. If you  
8 believe that he didn't show symptoms almost immediately after that, we disagree  
completely. That is a little boy with an internal injury so severe that it's only seen  
or usually seen in major car accidents, fatal car accidents. He's showing  
symptoms almost immediately after that injury's inflicted."

9 ...  
10 "Again I'll highlight for count two, the substantial bodily harm, who was alone  
11 with him during the operative time period? The defendant. *Who was alone with*  
12 *him during the operative time period that the fatal injury occurred? The*  
13 *defendant.* The head injury, we know now, happened after Monday night dinner,  
some point before Tuesday morning, because Brodie woke up on Tuesday, per  
Arica, and had a headache; his head hurt. That's the first sign of symptoms. Arica  
wasn't alone with him Monday night. The defendant was.

14 The duodenum. Remember the hair salon, they did -- they ran these  
15 errands throughout the day on Tuesday. They went to Shark Reef, they went to  
16 a number of different places. They got to the hair salon. Brodie's fast asleep  
17 already showing symptoms from the head injury. He's exhausted, didn't want to  
18 walk. He's fast asleep in the back in the center, facing forward in his car seat.  
19 She gets out, she closes the door gently so she doesn't wake her sleeping baby.  
20 She comes back within five minutes and that kid's screaming at the top of his  
lungs. *Once again the defendant is alone with him and the defendant blames it*  
*on something else; says when you closed the door, he started freaking out. That's*  
*when that fatal injury was inflicted.* That's within the operative time period.

21 Brodie starts vomiting later. Brodie won't eat his lasagna. Mom has to  
22 force feed him the lasagna. She wants him to eat.

23 *Those injuries are not accidental. Those injuries are not inflicted by*  
24 *Arica. They're inflicted by one person and one person alone.*

25 *Those injuries are not accidental. They're not inflicted by Arica. One*  
26 *person and one person alone inflicted them.*

27 *Those injuries. No accidental. Not inflicted by Arica. Those injuries.*  
28 *Definitely not accidental. Definitely not inflicted by Arica.*

*I'll remind you one more time it doesn't matter whether there was an*  
*intent to kill. It matters who beat him, who intended to beat him, and who caused*  
*his death. Find that defendant guilty of both those counts. Thank you."*

T.T. August 15, 2014 p. 4-5, 7, 13-14.

1 Finally, during rebuttal argument, the State again emphasized that Defendant killed  
2 Brodie through child abuse:

3 "Now, [Brodie's] body tells you that he was the victim of significant physical  
4 abuse over a period of time. Now we focused somewhat unfairly so on two  
5 injuries, the injuries to the head and the injuries to the abdomen. But he has a lot  
6 more injuries. And the most compelling evidence in this case and I would submit  
7 to you simply uncontroverted is the distinction between Bambam injuries and  
8 *non-accidental physical abuse*.

9 Every single person who took this witness stand in this trial told you that  
10 what you see at autopsy are not Bambam injuries. Every single person.

11 Even the defendant's sister, as you saw when I showed her the  
12 photographs at autopsy, had a physical reaction to what she was seeing. No one  
13 had seen those before. No one. *That is because they are indicative of physical*  
14 *abuse, child abuse, intentionally inflicted upon this child.* And as I just heard  
15 counsel's argument to you is that's the murder. That's the killer right in front of  
16 you."

17 ...

18 "Exhibit 66. That is a hand, ladies and gentlemen. And I'm going to ask you to  
19 do -- keep in mind two things about that. Number one is it's unmistakably  
20 because of the scalloped, the number, where the thumb would be of what's right  
21 underneath the skin. And the internal organs as you go from anatomically from  
22 what you just saw inside Brodie's body, you have the lower abdomen, but you  
23 also have his rib. His eighth rib was fractures. Another injury that we haven't  
24 talked a lot about. But once again indicative of child abuse."

25 ...

26 "Brodie was murdered. But not by Arica. By that man sitting right in front of  
27 you. And I respectfully submit the evidence is overwhelming to that effect. Hold  
28 him accountable and convict him of first degree murder."

Id. p. 27, 32-33.

21 The State's theory of the case, argument, and evidence presented demonstrated only  
22 that Defendant killed Brodie through the intentional act of beating him hard enough to break  
23 a rib and dissect Brodie's duodenum. For the purposes of felony murder: "'Child abuse' means  
24 physical injury of a nonaccidental nature to a child under the age of 18 years." NRS  
25 200.030(6)(b). The State consistently argued that Defendant willfully inflicted a physical  
26 injury of a non-accidental nature to Brodie, a child under the age of 18 years. Therefore, the  
27 State argued precisely the elements of felony murder child abuse.

1 Counsel was not ineffective for failing to challenge the jury instructions at trial because  
2 there was no evidence that supported a finding that Defendant had committed child neglect –  
3 only child abuse. As Defendant states, [b]oth medical experts argued that the injury was non-  
4 accidental.” Petition at 10.

5 Further, even if counsel were deficient, Defendant did not demonstrate prejudice.  
6 Again, even if the jury instructions were incorrect, the State argued the correct elements of  
7 felony murder child abuse. Unlike Labastida and Thompson, there was no possibility that  
8 Defendant could have been erroneously found guilty based on child neglect because there was  
9 no evidence or argument presented that neglect occurred. Additionally, unlike Labastida,  
10 where the Court reversed an earlier decision, in part, because the jury did not find the defendant  
11 guilty of child abuse with substantial bodily harm, leading to the inference that the defendant  
12 did not inflict a non-accidental physical injury, here the jury found Defendant guilty of that  
13 charge. Had counsel challenged the jury instructions, and had those instructions replaced the  
14 instructions given, the Defendant would still have been found guilty because the State argued  
15 the correct elements of felony murder child abuse, and no alternative “neglect” finding was  
16 possible.

17 This Court FINDS the following facts: Throughout the case the State’s theory of death  
18 was that the child died by child abuse, and there is nothing in the record indicating neglect,  
19 and that the jury instructions did mirror the evidence, the State’s theory throughout the case,  
20 and the evidence that came out during the course of the case.

21 Because Defendant did not demonstrate ineffectiveness, and because even if Defendant  
22 had demonstrated ineffectiveness Defendant cannot demonstrate prejudice, this Court now  
23 FINDS that Defendant has not demonstrated that counsel was ineffective, and additionally  
24 FINDS that Defendant has not demonstrated that he was prejudiced even if counsel were  
25 deficient.

26 ///

27 ///

28 ///

1 Defendant's claim is, therefore, DENIED.

2 **2. Defendant's Remaining Claims Of Ineffectiveness Are Unsubstantiated**

3 Defendant's vague assertions that trial counsel was ineffective because she was "not  
4 qualified" are "bare" and "naked" assertions fit only for summary dismissal. Hargrove, 100  
5 Nev. 498, 502, 686 P.2d 222, 225 (1984).

6 Additionally, these claims are belied by the record. Id. A brief review of the Odyssey  
7 filings demonstrate that counsel argued, before, during, and after trial, effectively on behalf of  
8 her client.

9 Defendant's claims regarding defense counsels' interactions with each other are  
10 unsupported by evidence, and do not appear likely to require relief. They certainly do not  
11 demonstrate ineffectiveness by a preponderance of the evidence. Means, 120 Nev. at 1012,  
12 103 P.3d at 33. Even if Nadia Von Magdenko were deficient, at worst she was supported by  
13 attorney Steve Altig, who was present through trial and who, according to Defendant, provided  
14 effective counsel. Defendant, therefore, cannot demonstrate prejudice because he was  
15 represented by at least one attorney who he admits was not ineffective.

16 This Court also FINDS the following facts: Defendant has an extensive criminal  
17 history, and was certainly aware that a Public Defender could be appointed. Defendant chose  
18 to retain counsel, and cannot now argue that more qualified counsel could have been  
19 appointed. Additionally, Defendant affirmatively requested the counsel that was actually  
20 retained.

21 Therefore, this Court FINDS that Defendant's claim that counsel was unqualified is  
22 unsupported by the record and the claim is DENIED.

23 Additionally, Defendant claims that the Nevada Supreme Court, in its' Order of  
24 Affirmance, was critical of counsel's performance because counsel "opened the door" to  
25 repeated use of autopsy photos. Petition 10. This claim is also belied by the record. Hargrove,  
26 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "[T]he contested images, both below and on  
27 appeal, depict Brodie's external injuries." Order of Affirmance at 2, fn. 2. The Court first  
28 rejected Defendant's argument because the photos "had a high probative value." Id. at 3.

1 Second, because the photos were highly probative, "they would need to be exceedingly  
2 gruesome for the district court to have abused its discretion in admitting them." Id. at 4. Nor  
3 was the Court in any way critical of trial counsel's performance. Defendant's claim is,  
4 therefore, wholly unsupported and belied by the record.

5 This Court hereby FINDS the following facts: That the Nevada Supreme Court has  
6 determined that the autopsy photos were more probative than prejudicial. The photographs  
7 shown were highly relevant to the State's case, and were relevant to determining when certain  
8 injuries were inflicted.

9 Therefore, this Court FINDS that counsel was not deficient as regards the autopsy  
10 photos.

11 Because Defendant's claims are vague, unsupported, and belied by the record,  
12 Defendant's claims are hereby DENIED.

13 **C. Defendant Has Not Demonstrated Ineffectiveness On Appeal**

14 There is a strong presumption that appellate counsel's performance was reasonable and  
15 fell within "the wide range of reasonable professional assistance." See United States v.  
16 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104 S. Ct. at  
17 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-prong test set  
18 forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). In order  
19 to satisfy Strickland's second prong, the defendant must show that the omitted issue would  
20 have had a reasonable probability of success on appeal. Id.

21 The professional diligence and competence required on appeal involves "winnowing  
22 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
23 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
24 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .  
25 . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.  
26 For judges to second-guess reasonable professional judgments and impose on appointed  
27 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
28 goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314.

1 Defendant's sole claim of ineffectiveness of appellate counsel appears to be that  
2 appellate counsel did not raise the jury instruction issue. As explained in Section I B, supra,  
3 there was no reason to raise the issue because it was unlikely to succeed on appeal. Counsel  
4 cannot be ineffective for failing to make futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at  
5 1103.

6 Therefore, the Court FINDS that Appellate counsel was not deficient in not raising this  
7 issue because it was unlikely to succeed on appeal, and Defendant has failed to demonstrate  
8 that the outcome of his appeal would have been affected by that argument.

9 Defendant's claim that appellate counsel was ineffective is, therefore, DENIED.

## 10 **II. DEFENDANT IS NOT ENTITLED TO DISCOVERY**

11 This Court also FINDS that, because Defendant's Petition for Writ of Habeas Corpus  
12 is meritless, no discovery is warranted pursuant to NRS 34.780(2). Post-conviction discovery  
13 is not available until "after the writ has been granted" and good cause is shown. Id. Neither of  
14 these statutory requirements has been fulfilled in this case. Therefore, Defendant's request for  
15 discovery is premature and must be DENIED.

16 ///

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**ORDER**

THEREFORE, IT IS HEREBY ORDERED that all issues included in Defendant's Petitions for Writ of Habeas Corpus (Post-Conviction) and supplements thereto shall be, and they are, hereby DENIED.

IT IS ADDITIONALLY ORDERED that Defendant's request for Post-Conviction discovery shall be, and it is, hereby DENIED.

DATED this 25 day of July, 2017.

  
DISTRICT JUDGE

JUDGE STEFANY A. MILEY

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

BY  (for)

RYAN J. MACDONALD  
Deputy District Attorney  
Nevada Bar #12615

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the Findings of Fact and Conclusions of Law and Order, was made this 19th day of July, 2017, by Electronic Filing to:

CAL POTTER, ESQ.  
[cpotter@potterlawoffices.com](mailto:cpotter@potterlawoffices.com)

BY: /s/ Stephanie Johnson  
Employee of the District Attorney's Office  


11FH1653X/JN/saj/MVU

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 21, 2011**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**November 21, 2011      10:30 AM      Initial Arraignment**

**HEARD BY:** De La Garza, Melisa

**COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Roshonda Mayfield

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Lee, Michael A	Defendant
	McDonald, Patrick E.	Attorney
	Stanton, David L.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

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

CUSTODY

1/11/12 9:30 A.M. CALENDAR CALL (DEPT. 23)

1/17/12 1:00 P.M. JURY TRIAL (DEPT. 23)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 11, 2012**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**January 11, 2012      9:30 AM      Calendar Call**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Christine Erickson  
                         Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Patrick McDonald, Esq.

Mr. McDonald advised because of outstanding discovery issues the parties have agreed to continue the trial and the Deft. waived the 60-day rule. COURT ORDERED, trial date VACATED and RESET. Mr. McDonald further advised, because of this case, the Deft s Nevada Department of Corrections (NDC) housing leaves him unable to contact the Deft. and requested the Deft. remanded to the Clark County Detention Center (CCDC). Court advised the Deft. cannot be remanded to CCDC with a July trial date. Upon Court's inquiry, Mr. McDonald confirmed he doesn't need to speak to the Deft. prior to the Petition but he does need to be able to speak with him. Court further advised the issue can be further discussed on 1/30.

**CUSTODY**

7/18/12 9:30 AM CALENDAR CALL

7/23/12 1:00 PM TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 30, 2012**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**January 30, 2012      11:00 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Christine Erickson  
Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- David Stanton, Deputy Distirct Attorney  
Deft. Lee, present in custody, with Patrick McDonald, Esq.

Mr. McDonald argued that Deft. was charged with Count 1 and 2 in Justice Court and although he acknowledges the burden of proof is slight or marginal evidence, slight or marginal evidence that the acts were committed did not exist at this Preliminary Hearing.

Mr. McDonald further argued there was no direct or circumstantial evidence either slight or marginal that petitioner committed a criminal act nor abused or neglected the Decedent resulting in his demise. Additional arguments by Mr. McDonald.

Mr. Stanton argued the Doctrine of Corpus Delicti and stands for the proposition that there is insufficient evidence showing that Brodie, a healthy two year old, died; the uncontroverted testimony from Dr. Gavin, the pathologist, is that Brody died from homicide and blunt force trauma. Mr. Staton further argued Dr. Gavin testified that she can date these injuries within the last 24 hours of life. Additional arguments by Mr. Stanton. Court stated its findings and ORDERED, Deft s Writ of Habeas Corpus DENIED. Colloquy regarding Deft s custody status. COURT FURTHER ORDERED

Defendant REMANDED to CUSTODY at the CLARK COUNTY DETENTION CENTER, advising as long as the Deft. is not revoked by the Department of Corrections, he will remain in custody; however, if revoked, Deft. to return to the Department of Corrections.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 02, 2012**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**July 02, 2012**

**9:30 AM**

**Motion**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- David Stanton, Deputy District Attorney, present for the State of Nevada.  
Nadia von Magdenko, Esq., present on behalf of Deft. Lee.

Deft. not present. Ms. von Magdenko advised she still hasn't been able to get the third expert the Defense wanted and March or May are the only times open in counsel's calendars. Colloquy regarding date for trial. COURT ORDERED, Motion GRANTED, trial date VACATED and RESET.

NDC

5/8/13 9:30 AM CALENDAR CALL

5/13/13 1:00 PM TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 04, 2013**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**March 04, 2013      9:30 AM      Request**

**HEARD BY:** Miley, Stefany      **COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada.  
Nadia von Magdenko, Esq., present on behalf of Deft. Lee.

Deft. not present. Mr. Stanton advised he placed the matter on calendar based on a conflict with a trial setting in Department 5. Mr. Stanton further advised he communicated to Mr. McDonald via e-mail and received a responsive e-mail back from Ms. von Magdenko advising they were prepared to go forward. Mr. Stanton indicated he made arrangements to go forward and this can be taken off calendar; however, Ms. von Magdenko advised him there is an issue with Mr. McDonald not being able to defend this case. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED for Confirmation of Counsel. Court indicated it has been advised by Ms. von Magdenko that Mr. McDonald isn't practicing law so Deft. will need to retain new counsel or have counsel assigned to him. COURT FURTHER ORDERED, Deft. is to be transported on 3/11/13 so Ms. von Magdenko can meet with Deft. on 3/12, prior to the hearing.

NDC

3/13/13 9:30 AM CONFIRMATION OF COUNSEL (NADIA VON MAGDENKO)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 13, 2013**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**March 13, 2013**

**9:30 AM**

**Confirmation of Counsel**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Jacqueline Bluth, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Gregory Knapp, Esq., and Nadia von Magdenko, Esq.

Upon Court's inquiry, Mr. Knapp confirmed he will be trial counsel and spoke to Deft. and his family. Mr. Knapp advised he is ready to set a date. Upon Court's inquiry, Ms. von Magdenko confirmed she will be co-counsel. Mr. Bluth indicated it is her understanding trial will not be going. Colloquy regarding trial dates. MATTER TRAILED.

MATTER RECALLED. All parties present as before. Ms. Bluth advised she spoke with Mr. Knapp and Mr. Knapp made representations Deft's family is on board with having him as counsel. Deft. concurred. COURT ORDERED, trial date VACATED and RESET.

NDC

1/8/14 9:30 AM CALENDAR CALL

1/13/14 1:00 PM TRIAL BY JURY



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 28, 2013**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**October 28, 2013      9:30 AM      Motion in Limine**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
                                 Melissa Murphy

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton, Deputy District Attorney, present for the State of Nevada.  
Nadia von Magdenko, Esq., present on behalf of Defendant.

Deft. not present. Arguments by counsel. COURT ORDERED, Motion DENIED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 08, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**January 08, 2014      9:30 AM      Calendar Call**

**HEARD BY:** Miley, Stefany      **COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

Court noted it received notification Mr. Altig will be substituting in, in place of Mr. Knapp, and the trial will need to be reset to allow Mr. Altig time to prepare. Mr. Stanton advised the State would have announced ready; however, there is a basis to continue the case. Mr. Altig indicated he would not be effective if he had to go to trial next week. Upon Court's inquiry, Deft. confirmed he is agreeable to Mr. Altig substituting in. COURT ORDERED, trial date VACATED and RESET, State's Motion in Limine Re: Defendant's Expert (Rundell) RESET.

NDC

6/25/14 9:30 AM STATE'S MOTION IN LIMINE RE: DEFENDANT'S EXPERT (RUNDELL) AND TO FOUNDATIONAL ASPECTS OF THE DEFENSE EXPERTS' OPINION

7/30/14 9:30 AM CALENDAR CALL

8/4/14 1:00 PM TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 25, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**June 25, 2014**

**9:30 AM**

**All Pending Motions**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Altig, Steven	Attorney
	Giordani, John	Attorney
	Stanton, David L.	Attorney
	State of Nevada	Plaintiff
	von Magdenko, Nadia	Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION IN LIMINE TO EXCLUDE AUTOPSY PHOTOGRAPHS...DEFENDANT'S MOTION FOR DISMISSAL...STATE'S MOTION FOR PRODUCTION OF DISCOVERABLE MATERIAL PURSUANT NRS 174.245'S RECIPROCAL DISCOVERY PROVISIONS AND NRS 174.234 GOVERNING WITNESS DISCLOSURES...STATE'S MOTION IN LIMINE RE: DEFENDANT'S EXPERT (RUNDELL) AND TO FOUNDATIONAL ASPECTS OF THE DEFENSE EXPERTS' OPINION.

Deft. not present. Upon Court's inquiry, both Defense Counsel confirmed they are waiving Deft's presence at the hearing. With respect to Deft's Motion in Limine, arguments by Ms. von Magdenko and Mr. Giordani. COURT stated its FINDINGS and ORDERED, Motion DENIED; however, the State will be limited in the number of photographs, to those that are absolutely necessary, and the photographs will be presented to the Court prior to being shown to the jury.

With respect to State's Motion for Production, Mr. Stanton confirmed the State has all of the material. COURT ORDERED, Motion GRANTED; however, the Defense provided everything prior to the hearing.

With respect to State's Motion in Limine, arguments by Ms. von Magdenko and Mr. Stanton. COURT stated its FINDINGS and ORDERED, Motion GRANTED.

With respect to Deft's Motion for Dismissal, arguments by Ms. von Magdenko and Mr. Stanton. COURT stated its FINDINGS and ORDERED, Motion DENIED.

CUSTODY (COC-NDC)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 30, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**July 30, 2014      9:30 AM      Calendar Call**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steve Altig, Esq.

Mr. Stanton and Mr. Altig announced ready for trial. COURT ORDERED, trial date STANDS. Mr. Stanton provided photos and the autopsy report to the Court for review and advised the photos he provided are the photos that would be used to determine cause and manner of death.

CUSTODY (COC-NDC)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 04, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 04, 2014      1:00 PM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Mr. Stanton advised the State subpoenaed Deft's mother, sister, and friend and he has been unable to reach them to advise them not to mention Deft's felony convictions, Deft's parole, and the discussions several of the witnesses had about speaking to attorneys. Mr. Stanton requested the Defense's assistance in contacting the witnesses and the Court's assistance in advising the witnesses not to go in to certain subject matter, unless directed by the Court. Mr. Altig and Ms. von Magdenko advised the witnesses will be present today. COURT ADMONISHED Mr. Fico and Ms. Lee regarding subjects they are not to go into during their testimony. Upon Court's inquiry, Mr. Stanton advised the Defense never solicited an offer from the State. Ms. von Magdenko confirmed an offer was not made by the State.

PROSPECTIVE JURY PANEL PRESENT. Voir dire of panel.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL. Colloquy regarding challenges for cause. COURT ADMONISHED Ms. Barton regarding subjects she is not to go into during her

testimony. COURT CANVASSED Juror #148.

PROSPECTIVE JURY PANEL PRESENT. Voir dire of panel. CONFERENCES AT BENCH.  
Peremptory challenges exercised. Twelve jurors and two alternates selected and sworn. COURT  
ORDERED, matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/5/14 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 05, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**August 05, 2014      1:00 PM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

OUTSIDE THE PRESENCE OF THE JURY. Mr. Altig advised the State extended an offer to the Defense yesterday, placed the terms of the State's offer on the record, and indicated Deft. rejected the offer. Upon Court's inquiry, Deft. confirmed he had the chance to discuss the offer, as well as the strengths and weaknesses of his case, with his counsel and decided to go to trial. Mr. Altig noted he and Ms. von Magdenko were approached by a Juror and asked what floor the trial was on. Mr. Altig indicated Ms. von Magdenko told the Juror what floor, that was the extent of the conversation, and he notified the State.

JURY PRESENT. Clerk read Information and stated Deft's plea thereto. Opening statements by Mr. Giordani and Ms. von Magdenko. CONFERENCE AT BENCH. Testimony and exhibits presented (See Worksheets). COURT ORDERED, matter CONTINUED.

CUSTODY (COC)



CONTINUED TO: 8/6/14 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 06, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 06, 2014      1:00 PM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

JURY PRESENT. Testimony and exhibits presented (See Worksheets). CONFERENCE AT BENCH.

OUTSIDE THE PRESENCE OF THE JURY. Arguments by Ms. von Magdenko, Mr. Stanton, and Mr. Altig. Mr. Altig made an oral Motion for Mistrial. COURT stated its FINDINGS and ORDERED, oral Motion for Mistrial DENIED.

JURY PRESENT. Testimony and exhibits presented (See Worksheets). CONFERENCES AT BENCH. COURT ORDERED, matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/7/14 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 07, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 07, 2014      9:30 AM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

OUTSIDE THE PRESENCE OF THE JURY. Arguments by Mr. Stanton and Mr. Altig. Mr. Altig renewed his oral Motion for Mistrial. COURT stated its FINDINGS and ORDERED, oral Motion for Mistrial DENIED.

JURY PRESENT. Testimony and exhibits presented (See Worksheets). CONFERENCES AT BENCH. COURT ORDERED, matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/8/14 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 08, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 08, 2014      9:30 AM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Deft. Lee, present in custody, with Nadia von Magdenko, Esq., and Steven Altig, Esq.

OUTSIDE THE PRESENCE OF THE JURY. Mr. Stanton advised the next two witnesses are Jennifer Lee and Danny Fico and requested to question them as an adverse party pursuant to NRS 50.115(4). Mr. Stanton further advised the need to redirect and question is based on their relationship to Deft. and the subject matter. Mr. Altig requested them admonished outside the presence of the jury, if they need to be admonished. COURT ADMONISHED Jennifer Lee and Danny Fico regarding the subjects they are not to go into. COURT ORDERED, the State will be allowed to lead the witnesses pursuant to NRS 50.115 on the basis they are an adverse party and the Court is concerned they would go in to impermissible areas without leading.

JURY PRESENT. Testimony presented (See Worksheet). CONFERENCES AT BENCH. COURT ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY. Court advised Deft. of his right not to testify.

CUSTODY (COC)

CONTINUED TO: 8/11/14 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 11, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 11, 2014      1:00 PM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Steven Altig, Esq., and Nadia von Magdenko, Esq.

JURY PRESENT. Testimony presented (See Worksheet). State rests. COURT ORDERED, matter  
CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/14/14 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 14, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 14, 2014      10:30 AM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Steven Altig, Esq., and Nadia von Magdenko, Esq.

OUTSIDE THE PRESENCE OF THE JURY. Jury Instructions settled on the record. Colloquy regarding testimony of Defense's expert. Argument by Mr. Altig and renewed Motion for Mistrial. COURT stated its FINDINGS and ORDERED, oral Motion for Mistrial DENIED.

JURY PRESENT. Testimony and exhibit presented (See Worksheets). CONFERENCE AT BENCH. Defense rests. CONFERENCE AT BENCH. Court instructed the Jury. COURT ORDERED, matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/15/14 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 15, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**August 15, 2014      9:30 AM      Jury Trial**

**HEARD BY:** Miley, Stefany      **COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Altig, Steven	Attorney
	Giordani, John	Attorney
	Lee, Michael A	Defendant
	Stanton, David L.	Attorney
	State of Nevada	Plaintiff
	von Magdenko, Nadia	Attorney

**JOURNAL ENTRIES**

- JURY PRESENT. Closing arguments by Mr. Giordani and Mr. Altig. Rebuttal argument by Mr. Stanton. At the hour of 10:48 am the Jury retired to deliberate.

At the hour of 1:46 pm the Jury returned with the verdict of GUILTY of COUNT 1 - FIRST DEGREE MURDER BY CHILD ABUSE and on COUNT 2 - CHILD ABUSE & NEGLECT WITH SUBSTANTIAL BODILY HARM. COURT instructed the Jury regarding the penalty phase and ORDERED matter CONTINUED. Further, thanked and admonished the Jury for evening recess.

OUTSIDE THE PRESENCE OF THE JURY. Court admonished the Deft of his right to make statements during the penalty proceedings .

CUSTODY (COC)



CONTINUED TO 08/18/14 1:00 PM (PENALTY PHASE)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 18, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**August 18, 2014      1:00 PM      Jury Trial**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller  
Emma Knauss

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorney, present for the State of Nevada.  
Deft. Lee, present in custody, with Steven Altig, Esq., and Nadia von Magdenko, Esq.

Stipulation pursuant to NRS 175.552(2) Waiving Penalty Hearing and Agreeing to have Sentence  
Imposed by Trial Judge FILED IN OPEN COURT

OUTSIDE THE PRESENCE OF THE JURY. Mr. Altig advised all parties agreed to the waiver and  
Deft. believes it is in his best interests. Upon Court's inquiry, Deft. confirmed he discussed it with his  
attorney and is waiving to have the Court sentence him. Upon Court's further inquiry, Deft.  
indicated his counsel answered any questions and discussed the pros and cons with him. Order  
SIGNED IN OPEN COURT.

JURY PRESENT. Jury thanked and excused.

OUTSIDE THE PRESENCE OF THE JURY. COURT ORDERED, Deft. REMANDED WITHOUT  
BAIL, Sentencing SET.

CUSTODY (COC)

10/20/14 9:30 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 03, 2014**

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C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

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**September 03, 2014    9:30 AM**

**All Pending Motions**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Giordani, Deputy District Attorneys, present for the State of Nevada. Nadia von Magdenko, Esq., and Steven Altig, Esq., present on behalf of Deft. Lee.

**DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL...DEFENDANT'S MOTION FOR NEW TRIAL**

Argument by Mr. Altig noting the State pled the murder allegation occurred on the fourteenth or fifteenth; however, Dr. Gavin testified the date of injury occurred at least twenty-four hours prior to death and there was no evidence anything happened between Deft. and Brodie on the fourteenth. Mr. Altig further argued there was no evidence presented that Deft. had access to Brodie at that time by himself. Mr. Stanton requested the Court order any citations from trial stricken from Deft's Reply as there was no record provided with the initial Motion. Argument by Mr. Stanton noting just because both of them were in the home doesn't mean the child couldn't have been beaten and murdered in the fashion that he was. Mr. Stanton further argued the murder of the child falls directly within the timeline of the State's Information and there were numerous times Deft. was alone with the child during that time period. Additional argument by Mr. Altig. COURT stated its FINDINGS and ORDERED, Motions DENIED. COURT FURTHER ORDERED, State's oral Request to Strike Citations GRANTED.

CUSTODY (COC-NDC)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 20, 2014**

---

C-11-277650-1      State of Nevada  
                                 vs  
                                 Michael Lee

---

**October 20, 2014      9:30 AM      Sentencing**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Tia Everett

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- John Giordani, Deputy District Attorney, present on behalf of the State. Defendant not present in custody with the Nevada Department of Corrections and represented by Steven Altig Esq.

Mr. Giordani advised Defendant was not transported; however, Mr. Stanton has spoken with the prison who indicates they can have Defendant present tomorrow. Colloquy regarding scheduling. Mr. Giordani advised he has 5 out of State witnesses and requested to have sentencing tomorrow, if possible. There being no opposition, COURT ORDERED, matter CONTINUED.

CUSTODY (COC-NDC)

CONTINUED TO: 10/21/2014 1:00 PM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 21, 2014**

C-11-277650-1      State of Nevada  
vs  
Michael Lee

**October 21, 2014      1:00 PM      Sentencing**

**HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Tia Everett**RECORDER:** Sandra Pruchnic**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- David Stanton and John Girodani, Deputy District Attorneys, present on behalf of the State.  
Defendant present in custody and represented by Steven Altig Esq. and Nadia Von Magdenko Esq.

By way of jury verdict; DEFT LEE ADJUDGED GUILTY of COUNT 1 - FIRST DEGREE MURDER BY CHILD ABUSE (F). Matter argued and submitted. Victim speakers sworn and addressed the Court (see worksheets). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee; Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) WITHOUT THE POSSIBILITY OF PAROLE; CONSECUTIVE to case number C199242; with ZERO (0) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers, WAIVED as previously ordered and/or taken.

NDC

CLERK'S NOTE: Following hearing, COURT FURTHER ORDERED, matter SET for Further Proceedings to address Count 2. te

10/27/2014 11:00 AM FURTHER PROCEEDINGS: CLARIFICATION OF SENTENCE ON COUNT 2

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 27, 2014**

C-11-277650-1      State of Nevada  
vs  
Michael Lee

**October 27, 2014****11:00 AM****Further Proceedings**

**Further Proceedings:  
Clarification of  
Sentence on Count 2**

**HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Ying Pan**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

<b>PRESENT:</b>	Altig, Steven	Attorney
	Giordani, John	Attorney
	Lee, Michael A	Defendant
	Letizia, Harmony T.	Attorney
	State of Nevada	Plaintiff
	von Magdenko, Nadia	Attorney

**JOURNAL ENTRIES**

- Court NOTED, Defendant was sentenced for Count 1; however, the Defendant was convicted for two counts. Mr. Giordani agreed and indicated Count 2 is separate and distinct, he requested the Court to impose the maximum sentencing term and run it consecutive to Count 1. Mr. Altig requested sentencing term be run concurrent without possibility to parole. DEFT LEE ADJUDGED GUILTY of CT. 2 - CHILD ABUSE & NEGLECT WITH SUBSTANTIAL BODILY HARM (F). COURT ORDERED, Deft. SENTENCED to a MAXIMUM of TWO HUNDRED AND FORTY (240) MONTHS and MINIMUM of NINE-SIX (96) MONTHS in the Nevada Department of Corrections (NDC); Sentence to run CONSECUTIVE to Count 1; with ZERO (0) DAYS Credit for Time Served. Court FURTHER NOTED, an Amended Judgment of Conviction is needed. Ms. Von Magdenko raised an Oral Motion to Withdraw as Counsel on the Record. COURT FURTHER ORDERED, Oral Motion GRANTED, the Office and Public Defender is APPOINTED to handle direct appeal.



BOND, if any, EXONERATED.

NDC

CLERK'S NOTE: The minute order has been amended to reflect the Public Defender's Office is appointed to handle direct appeal. A copy of this minute order was placed in the attorney folders of: the District Attorney's Office - Criminal Division and the Public Defender's Office. - YP 10-30-14

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 28, 2017**

C-11-277650-1      State of Nevada  
vs  
Michael Lee

<b>June 28, 2017</b>	<b>9:30 AM</b>	<b>Petition for Writ of Habeas Corpus</b>	<b>Defendant's Petition for Writ of Habeas Corpus</b>
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**HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

<b>PRESENT:</b> Potter, Cal Johnson	Attorney
Stanton, David L.	Attorney
State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present. Argument by counsel noting Mr. Altig was standby counsel. Court noted Mr. Altig was more than standby counsel as he took an active role in the case. Further argument by counsel regarding quality of representation. Court pointed out Deft. had stated on the record he wanted to keep Ms. Von Magdenko as counsel and stated Deft. stated he was unaware of the possibility of Special Public Defender representing him as counsel. Additional argument by counsel stating Ms. Von Magdenko was not qualified to represent Deft. in capital murder case, further argued photographs were inconsistent with her experts and believed they had a prima fascia case. Court also pointed out the State never argued neglect. Argument by counsel stating the jury instructions were incorrect and requested to conduct discovery on this issue. Argument by the State noting counsel's complete distortion of the trial proceedings, noted photographs were found relevant by this Court, asserted the "door was not open" during opening statement and pointed out Deft. and his parents wanted to continue with Ms. Von Magdenko's representation. Argument by counsel regarding biomechanical expert. Court pointed out the issue should be brought before the Supreme Court and not in Habeas Corpus. Further argument by counsel noting Ms. Von Magdenko

volunteered in this case in order to get experience. Further argument by the State noting no need to have an Evidentiary Hearing. Additional argument by counsel. COURT ORDERED, writ is DENIED in its entirety as Court FINDS, issue of ineffectiveness of trial counsel is belied by the record; as to the Jury Instructions FINDS it is not backed up by the record as nothing indicates neglect; as to effectiveness of appellant counsel FINDS there to be no merit or showing; and as to photographs FINDS issue had been previously addressed by the higher court and FURTHER FINDS it to be more probative than prejudicial. FURTHER, request for discovery is DENIED. State to prepare Findings of Fact/Conclusions of Law. State to also prepare Order for Transcript.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 30, 2017**

C-11-277650-1      State of Nevada  
vs  
Michael Lee

<b>August 30, 2017</b>	<b>9:30 AM</b>	<b>Motion to Withdraw as Counsel</b>	<b>Potter Law Offices' Motion to Witdraw as Counsel and Stay Proceedings</b>
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**HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

<b>PRESENT:</b>	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- Deft. not present. C.J. Potter IV Esq., present, advised Deft's parents were present today, noted they are meeting with two attorneys this week and requested a stay in order for them to file appeal, as Notice of Appeal is to be filed by September 13, 2017. COURT ORDERED, extension of 30 days in which to file appeal and matter CONTINUED.

NDC

09-13-17 9:30 AM POTTER LAW OFFICES' MOTION TO WITHDRAW AS COUNSEL AND STAY PROCEEDINGS

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 13, 2017**

C-11-277650-1      State of Nevada  
vs  
Michael Lee

<b>September 13, 2017</b>	<b>9:30 AM</b>	<b>Motion to Withdraw as Counsel</b>	<b>Potter Law Offices' Motion to Witdraw as Counsel and Stay Proceedings</b>
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**HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

<b>PRESENT:</b>	Lippmann, Daniel F.	Attorney
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

**JOURNAL ENTRIES**

- Deft. not present. C.J. Potter IV Esq. present. Mr. Lippmann advised Damian Sheets Esq. had been retained. COURT ORDERED, motion GRANTED IN PART. Counsel requested an extension to file the appeal for review of discovery. FURTHER, request for extension to file Notice of Appeal is GRANTED and is extended to October 25, 2017.

NDC

## STATE'S EXHIBITS

CASE NO. C277650

		Date Offered	Objection	Date Admitted
1-	Photo	8/5/14	NO	8/5/14
2-		8/5/14	NO	8/5/14
3-		8/6/14	NO	8/6/14
4-		8/6/14	NO	8/6/14
5-		8/7/14	NO	8/7/14
6-		8/5/14	NO	8/5/14
7-		8/6/14	NO	8/6/14
8-				
9-				
10-				
11-				
12-	"			
13-				
14-		"	"	"
15-				
16-				
17-				
18-				
19-				
20-				
21-				
22-	✓	↓	↓	↓
23-	Photo	8/6/14	NO	8/6/14

STATE'S EXHIBITS

CASE NO. C277650

	Date Offered	Objection	Date Admitted
24- Photo	8/6/14	NO	8/6/14
25-	↓	↓	↓
26-	↓	↓	↓
27-	↓	↓	↓
28-	↓	↓	↓
29-	↓	↓	↓
30-	↓	↓	↓
31-	↓	↓	↓
32- "	↓	↓	↓
33-	"	"	"
34-	↓	↓	↓
35-	↓	↓	↓
36-	↓	↓	↓
37-	↓	↓	↓
38-	↓	↓	↓
39-	↓	↓	↓
40-	↓	↓	↓
41-	8/6/14	NO	8/6/14
42-	8/5/14	NO	8/5/14
43-	↓	↓	↓
44-	"	"	"
45- ↓	↓	↓	↓
46- Photo	8/5/14	NO	8/5/14

STATE'S EXHIBITSCASE NO. C277650

		Date Offered	Objection	Date Admitted
47-	Photo	8/5/14	NO	8/5/14
48-				
49-				
50-				
51-				
52-				
53-				
54-				
55-				
56-	"			
57-		"	"	"
58-				
59-				
60-				
61-				
62-				
63-				
64-				
65-				
66-				
67-				
68-	▼	▼	▼	▼
69-	Photo	8/5/14	NO	8/5/14



STATE'S EXHIBITS

CASE NO. C277650

[illegible]

DEFENDANT'S EXHIBITSCASE NO. C277650

	Date Offered	Objection	Date Admitted
A - Photo	8/7/14	Stip	8/7/14
B -			
C -	8/7/14	Stip	8/7/14
D -	↓	↓	↓
E -			
F -	8/7/14	Stip	8/7/14
G -	8/14/14	NO	8/14/14
H -			
I -	8/7/14	Stip	8/7/14
J -			
K -			
L - ↓	8/7/14	Stip	8/7/14
M - Photo	8/7/14	Stip	8/7/14

Court's EXHIBITS

CASE NO. C277650

[illegible]

COURT'S EXHIBITS

CASE NO. C277650

[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 AN ORDER; NOTICE OF  
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT  
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

MICHAEL A. LEE,

Defendant(s).

Case No: C-11-277650-1

Dept No: XXIII

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 25 day of September 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk