

CLERK OF THE COURT

NOASC
MATTHEW LAY, ESQ.
Nevada Bar Identification No. 12249
NGUYEN & LAY
732 S. Sixth Street, Suite 102
Las Vegas, Nevada 89101
Telephone: (702) 383-3200
Facsimile: (702) 675-8174
Email: dml@lasvegasdefender.com
Attorney for Appellant
BRANDON JEFFERSON

Electronically Filed
Sep 09 2016 10:45 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

BRANDON JEFFERSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO.: C-10-268351-1

DEPT. NO.: IV

NOTICE OF APPEAL

Notice is hereby given that BRANDON JEFFERSON, Appellant above named, by and through his court-appointed attorney of record, MATTHEW LAY, ESQ., of NGUYEN & LAY, hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order denying his post-conviction petition for writ of habeas corpus entered in this action on the 03rd day of August, 2016.

Dated this 02nd day of September, 2016.

NGUYEN & LAY



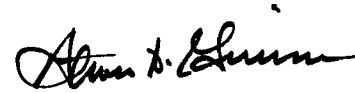
MATTHEW LAY, ESQ.
Nevada Bar Identification No. 12249
Attorney for Appellant
BRANDON JEFFERSON

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Clark County District Attorney's Office
Email: pdmotions@clarkcountyda.com

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CLERK OF THE COURT

REQT
MATTHEW LAY, ESQ.
Nevada Bar Identification No. 12249
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732 S. Sixth Street, Suite 102
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Attorney for Appellant
BRANDON JEFFERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BRANDON JEFFERSON,

Defendant.

CASE NO.: C-10-268351-1

DEPT. NO.: IV

REQUEST FOR TRANSCRIPT OF PROCEEDINGS

TO: DANA J. TAVAGLIONE, Court Reporter, District Court Department 04

Appellant, BRANDON JEFFERSON, by and through his court-appointed attorney of record, MATTHEW LAY, ESQ., of NGUYEN & LAY, requests preparation of a transcript of the proceedings before the district court, as follows:

Judge or officer hearing the proceeding:

The Honorable Kerry Earley, Department IV, Eighth Judicial District Court.

Specific individual dates of proceedings for which transcripts are being requested:

05/19/2016: Petition for Writ of Habeas Corpus.

Any and all transcripts to include any and all bench conferences.

Number of copies required: **1.**

1 I hereby certify that on the 02nd day of September, 2016, I ordered the transcript(s) listed
2 above from the court recorder named above.

3 NGUYEN & LAY

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7 MATTHEW LAY, ESQ.
8 732 S. Sixth Street, Suite 102
9 Las Vegas, Nevada 89101
10 Telephone: (702) 383-3200
11 Email: dml@lasvegasdefender.com
12 Attorney for Appellant
13 BRANDON JEFFERSON
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Dana J. Tavaglione
Court Reporter
Eighth Judicial District Court, Department 04
Facsimile number: (702) 671-4305

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Clark County District Attorney's Office
Email: pdmotions@clarkcountynyda.com

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DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

State of Nevada
vs
Brandon Jefferson

§	Location:	Department 4
§	Judicial Officer:	Earley, Kerry
§	Filed on:	10/18/2010
§	Case Number History:	
§	Cross-Reference Case	C268351
§	Number:	
§	Defendant's Scope ID #:	2508991
§	ITAG Booking Number:	1000050343
§	ITAG Case ID:	1186319
§	Lower Court Case # Root:	10F17735
§	Lower Court Case Number:	10F17735X
§	Supreme Court No.:	62120
		70732

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010	Case Flags:	Appealed to Supreme Court Custody Status - Nevada Department of Corrections
<i>Filed As:</i> LEWDNESS WITH A MINOR UNDER 14	F	10/26/2010		
2. LEWDNESS WITH A MINOR UNDER 14	F	07/01/2010		
3. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010		
4. LEWDNESS WITH A MINOR UNDER 14	F	08/01/2010		
5. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010		
6. LEWDNESS WITH A MINOR UNDER 14	F	08/01/2010		
7. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010		
8. LEWDNESS WITH A MINOR UNDER 14	F	08/01/2010		
9. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010		
10. SEXUAL ASSAULT VICTIM UNDER 14	F	08/01/2010		
11. LEWDNESS WITH A MINOR UNDER 14	F	08/01/2010		

Statistical Closures

10/30/2012 Guilty Plea with Sentence (before trial)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-10-268351-1
Court	Department 4
Date Assigned	01/05/2015
Judicial Officer	Earley, Kerry

PARTY INFORMATION

Defendant	Jefferson, Brandon	<i>Lead Attorneys</i> Lay, D. Matthew <i>Retained</i> 702-383-3200(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE









EVENTS & ORDERS OF THE COURT

INDEX

09/17/2010 Bail Set
\$20,000.00 also No Bail Set on some counts

10/18/2010  Criminal Bindover

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

10/26/2010	 Information <i>Information</i>
11/01/2010	 Initial Arraignment (10:30 AM) (Judicial Officer: De La Garza, Melisa) Events: 10/18/2010 Criminal Bindover
11/05/2010	 Arraignment Continued (10:30 AM) (Judicial Officer: De La Garza, Melisa)
11/05/2010	 Amended Information Filed By: Plaintiff State of Nevada
03/25/2011	 Motion <i>Motion To preclude Lay Witness Opinion</i>
03/25/2011	 Motion <i>Defendant's Motion To Suppress Unlawfully Obtained Statement</i>
03/25/2011	 Motion <i>Discovery Motion</i>
04/06/2011	 Opposition to Motion <i>Opposition to Defendant's Motion to Preclude Lay Witness Opinion</i>
04/06/2011	 Opposition to Motion <i>Opposition to Defendant's Motion to Suppress Unlawfully Obtained Statement</i>
04/07/2011	Motion to Suppress (9:00 AM) (Judicial Officer: Vega, Valorie J.) 04/07/2011, 04/12/2011, 04/26/2011 Events: 03/25/2011 Motion <i>HEARING PER JACKSON V DENNO: Defendant's Motion to Suppress Unlawfully Obtained Statement</i>
04/07/2011	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) 04/07/2011, 04/12/2011, 04/26/2011, 06/02/2011 Events: 03/25/2011 Motion <i>Defendant's motion for Discovery</i>
04/07/2011	Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) 04/07/2011, 04/12/2011 Events: 03/25/2011 Motion <i>Defendant's Motion to Preclude Lay Witness Opinion</i>
04/07/2011	 All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)
04/08/2011	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses and/or Expert Witnesses</i>
04/12/2011	 All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)
04/13/2011	 Motion <i>Motion To Preclude Use Of The Prejudicial Term Victim</i>
04/13/2011	 Motion

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

Defendant Jefferson's Motion In Limine To Preclude Inadmissible 51.385 Evidence

04/14/2011



Order

Order Releasing CPS/DFS Records

04/14/2011



Ex Parte Motion

Ex Parte Motion For Release Of CPS/DFS Records

04/14/2011



Order to Release Medical Records

Order Releasing Medical Records

04/14/2011



Ex Parte Motion

Ex Parte Motion For Release Of Medical Records

04/26/2011

Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.)

04/26/2011, 06/02/2011

Motion To Preclude Use Of The Prejudicial Term Victim

04/26/2011

Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.)

04/26/2011, 06/02/2011

Defendant Jefferson's Motion In Limine To Preclude Inadmissible 51.385 Evidence

04/26/2011



All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)

04/26/2011

Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)

04/27/2011



Opposition to Motion

Opposition to Defendant's Motion in Limine to Preclude Inadmissible 51.385 Evidence

04/27/2011



Opposition to Motion

Opposition to Defendant's Motion to Preclude Use of the Prejudicial Term Victim

05/02/2011

CANCELED Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.)

Vacated - per Judge

05/19/2011



Request of Court (10:00 AM) (Judicial Officer: Vega, Valorie J.)

At Request of Court: Voluntary Statement Viewing

05/19/2011

CANCELED Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.)

Vacated - per Law Clerk

06/02/2011

Status Check (10:30 AM) (Judicial Officer: Vega, Valorie J.)

Status Check: Reset Trial Date

06/02/2011

Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.)

*HEARING: PER JACKSON V. DENNO: DEFT'S MOTION TO SUPPRESS UNLAWFULLY
OBTAINED STATEMENTS*

06/02/2011



All Pending Motions (10:30 AM) (Judicial Officer: Vega, Valorie J.)

06/16/2011



Order Denying Motion

*Order Denying Defendant's Motion to Suppress, Motion to Preclude Use of the Term Victim
and Motion for Discovery*













10/03/2011



Supplemental Witness List














DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

Supplemental Notice of Witnesses and/or Expert Witnesses







10/03/2011	 Notice <i>Notice of Service of Witness Statements Pursuant to NRS 51.385</i>
10/18/2011	 Notice of Witnesses and/or Expert Witnesses <i>Defendant's Notice Of Expert Witnesses, Pursuant To NRS 174.234(2)</i>
10/19/2011	 Motion to Dismiss Counsel Party: Defendant Jefferson, Brandon <i>Pro Se Motion to Dismiss Counsel and Appoint Alternate Counsel</i>
11/01/2011	 Motion (9:00 AM) (Judicial Officer: Vega, Valorie J.) Events: 10/19/2011 Motion to Dismiss Counsel <i>Pro Se Motion to Dismiss Counsel and Appoint Alternate Counsel</i>
11/01/2011	 Evidentiary Hearing (10:30 AM) (Judicial Officer: Vega, Valorie J.) 11/01/2011, 12/01/2011 <i>Evidentiary Hearing: Deft Jefferson's motion in limine to preclude inadmissible 51.385 evidence</i>
11/03/2011	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge RESET to 12/5/11</i>
11/07/2011	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>
11/14/2011	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion to Dismiss Counsel and Appoint Alternate Counsel</i>
11/15/2011	 Supplemental Witness List <i>Second Supplemental Notice of Witnesses and/or Expert Witnesses</i>
11/16/2011	 Amended Information <i>Second Amended Information</i>
11/28/2011	 Order Filed By: Plaintiff State of Nevada <i>Order Regarding CPS/DFS Records</i>
12/01/2011	Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)
12/01/2011	 All Pending Motions (9:30 AM) (Judicial Officer: Vega, Valorie J.)
12/05/2011	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>
12/08/2011	 Evidentiary Hearing (2:00 PM) (Judicial Officer: Vega, Valorie J.)
12/13/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorders Transcript of Hearing Re: Status Check Reset Trial Date Hearing Per Jackson V. Denno: Deft's Motion to Suppress Unlawfully Obtained Statement Deft's Motion for Discovery</i>

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1







Deft. Jefferson's Motion in Limine to Preclude Inadmissible 51.385 Evidence Motion to Preclude Use of the Prejudicial Term Victim - Heard June 2, 2011

12/22/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript Re: Evidentiary Hearing - Heard 12-08-11</i>
01/17/2012	 Order Filed By: Plaintiff State of Nevada <i>Order Partially Denying Defendant's Motion to Preclude 51.385 Testimony and Order Denying State's Oral Motion to Terminate Defendant's Outside Communication Privileges</i>
03/19/2012	 Supplemental Witness List <i>Second Supplemental Notice of Witnesses and/or Expert Witnesses</i>
03/29/2012	 Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)
04/16/2012	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>
04/19/2012	 Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)
04/23/2012	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>
06/26/2012	 Supplemental Witness List <i>Third Supplemental Notice of Witnesses and/or Expert Witnesses</i>
06/27/2012	 Supplemental Witness List <i>Fourth Supplemental Notice of Witnesses and/or Expert Witnesses</i>
07/12/2012	 Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)
07/16/2012	 Notice of Motion <i>State's Notice of Motion and Motion in Limine to Preclude Improper Testimony from Defendant's Expert Witness at Trial</i>
07/16/2012	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>
07/26/2012	 Motion in Limine (9:00 AM) (Judicial Officer: Vega, Valorie J.) 07/26/2012, 07/30/2012 <i>State's Notice of Motion and Motion in Limine to Preclude Improper Testimony from Defendant's Expert Witness at Trial</i>
07/26/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Vega, Valorie J.)
07/26/2012	Calendar Call (9:30 AM) (Judicial Officer: Vega, Valorie J.)
07/30/2012	 Jury Trial (10:30 AM) (Judicial Officer: Vega, Valorie J.) 07/30/2012-08/03/2012, 08/06/2012-08/08/2012
08/01/2012	 Jury List

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

08/07/2012	 Motion <i>Motion In Limine For An Order Preventing The State From Introducing Unlawfully Recorded Oral Communications</i>
08/08/2012	 Proposed Jury Instructions Not Used At Trial <i>Defendant's Proposed Jury Instructions Not Used At Trial</i>
08/08/2012	 Verdict Party: Plaintiff State of Nevada
08/08/2012	 Instructions to the Jury <i>Instructions to the Jury (Instruction No.1) Members of the Jury</i>
09/24/2012	 PSI <i>PSI Dated 09/24/12</i>
10/04/2012	 Sentencing (9:00 AM) (Judicial Officer: Vega, Valorie J.) 10/04/2012, 10/23/2012 <i>SENSTENCING: COUNTS 1, 4, 9 & 10/ STATUS CHECK: DISMISSAL COUNT 2</i>
10/23/2012	Plea (Judicial Officer: Vega, Valorie J.) 1. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence:
10/23/2012	Disposition (Judicial Officer: Vega, Valorie J.) 4. LEWDNESS WITH A MINOR UNDER 14 Guilty PCN: Sequence: 9. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence: 10. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence:
10/23/2012	Disposition (Judicial Officer: Vega, Valorie J.) 1. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence:
10/23/2012	Plea (Judicial Officer: Vega, Valorie J.) 4. LEWDNESS WITH A MINOR UNDER 14 Guilty PCN: Sequence: 9. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence: 10. SEXUAL ASSAULT VICTIM UNDER 14 Guilty PCN: Sequence:

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

10/23/2012	<p>Sentence (Judicial Officer: Vega, Valorie J.)</p> <p>10. SEXUAL ASSAULT VICTIM UNDER 14</p> <p>Adult Adjudication</p> <p>Sentenced to Nevada Dept. of Corrections</p> <p>Term: Life with the possibility of parole after:35 Years</p> <p>Concurrent: Charge 1,4,9</p> <p>Credit for Time Served: 769 Days</p> <p>Condition</p> <p>1. Lifetime Supervision</p> <p>2. Register As A Sex Offender</p> <p>Fee Totals:</p> <table border="0" style="margin-left: 40px;"><tr><td>Administrative Assessment Fee</td><td style="text-align: right;">25.00</td></tr><tr><td>\$25</td><td></td></tr><tr><td>DNA Analysis Fee</td><td style="text-align: right;">150.00</td></tr><tr><td>\$150</td><td></td></tr><tr><td>Fee Totals \$</td><td style="text-align: right;">175.00</td></tr></table> <p>Other Fees</p> <p>1. , \$7,427.20 - \$4,480.00 to Victims of Crimes; \$1,000.00 to the DA; \$1,947.20 to Clark County Social Services</p>	Administrative Assessment Fee	25.00	\$25		DNA Analysis Fee	150.00	\$150		Fee Totals \$	175.00
Administrative Assessment Fee	25.00										
\$25											
DNA Analysis Fee	150.00										
\$150											
Fee Totals \$	175.00										
10/23/2012	<p>Sentence (Judicial Officer: Vega, Valorie J.)</p> <p>9. SEXUAL ASSAULT VICTIM UNDER 14</p> <p>Adult Adjudication</p> <p>Sentenced to Nevada Dept. of Corrections</p> <p>Term: Life with the possibility of parole after:35 Years</p> <p>Consecutive: Charge 1 and 4</p>										
10/23/2012	<p>Sentence (Judicial Officer: Vega, Valorie J.)</p> <p>4. LEWDNESS WITH A MINOR UNDER 14</p> <p>Adult Adjudication</p> <p>Sentenced to Nevada Dept. of Corrections</p> <p>Term: Life with the possibility of parole after:10 Years</p> <p>Concurrent: Charge 1</p>										
10/23/2012	<p>Sentence (Judicial Officer: Vega, Valorie J.)</p> <p>1. SEXUAL ASSAULT VICTIM UNDER 14</p> <p>Adult Adjudication</p> <p>Sentenced to Nevada Dept. of Corrections</p> <p>Term: Life with the possibility of parole after:35 Years</p>										
10/30/2012	<p> Judgment of Conviction</p> <p><i>Judgment Of Conviction (Jury Trial)</i></p>										
11/14/2012	<p> Notice of Appeal (criminal)</p> <p><i>Notice of Appeal</i></p>										
11/14/2012	<p> Case Appeal Statement</p> <p><i>Case Appeal Statement</i></p>										
12/03/2012	<p> Notice of Appeal (criminal)</p> <p>Party: Defendant Jefferson, Brandon</p>										
12/04/2012	<p> Case Appeal Statement</p> <p><i>Case Appeal Statement</i></p>										
01/04/2013	<p> Recorders Transcript of Hearing</p>										

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

Recorder's Transcript of Hearing Re: Arraignment November 1, 2010

01/04/2013



Recorders Transcript of Hearing

Recorder's Transcript of Hearing Re: Arraignment Continued November 5, 2010

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Deft's Motion to Suppress Unlawfully Obtained Statement Deft's Motion for Discovery Deft's Motion to Preclude Lay Witness Opinion 4-7-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Motion to Preclude Use of the Prejudicial Term Victim Deft's Motion in Limine to Preclude Inadmissible 51.385 Evidence Deft's Motion to Suppress Unlawfully Obtained Statement Deft's Motion for Discovery Calendar Call 4-26-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: At Request of Court: Voluntary Statement Viewing 5-19-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Deft's Motion to Suppress Unlawfully Obtained Statement Deft's Motion for Discovery Deft's Motion to Preclude Lay Witness Opinion 4-12-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Deft's Pro Se Motion to Dismiss Counsel and Appoint Alternate Counsel Evidentiary Hearing: Deft Jefferson's Motion in Limine to Preclude Inadmissible 51.385 Evidence 11-1-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Calendar Call Evidentiary Hearing: Deft Jefferson's Motion in Limine to Preclude Inadmissible 51.385 Evidence 12-1-11

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Calendar Call 3-29-12

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Calendar Call 4-19-12

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Calendar Call Motion in Limine to Preclude Improper Testimony from Deft's Expert Witness at Trial 7-26-12

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Sentencing Counts 1, 4, 9 & 10 Status Check: Dismissal Count 2 10-4-12

01/07/2013



Transcript of Proceedings

Recorder's Transcript Re: Sentencing Counts 1, 4, 9 & 10 Status Check: Dismissal Count 2 10-23-12

01/07/2013



Transcript of Proceedings

Jury Trial - Day 1 7-30-12
















01/07/2013

















Transcript of Proceedings

Jury Trial - Day 2 7-31-12

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 3 8-1-12</i>
01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 4 8-2-12</i>
01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 5 8-3-12</i>
01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 6 8-6-12</i>
01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 7 8-7-12</i>
01/07/2013	 Transcript of Proceedings <i>Jury Trial - Day 8 8-8-12</i>
01/07/2013	 Transcript of Proceedings <i>Recorder's Transcript Re: Calendar Call 7-12-12</i>
09/03/2014	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
10/02/2014	 Petition for Writ of Habeas Corpus Filed by: Defendant Jefferson, Brandon <i>Petition for Writ of Habeas Corpus (PostConviction)</i>
10/02/2014	 Certificate Filed By: Defendant Jefferson, Brandon <i>Financial Certificate</i>
10/02/2014	 Motion for Leave to Proceed in Forma Pauperis Filed By: Defendant Jefferson, Brandon
10/02/2014	 Affidavit in Support of Application Proceed Forma Pauperis <i>Affidavit in Support of Motion to Proceed in Forma Pauperis</i>
10/07/2014	 Order for Petition for Writ of Habeas Corpus
10/17/2014	 Notice of Motion <i>Notice of Motion and Motion to Appoint Counsel</i>
10/28/2014	 Motion for Appointment of Attorney (9:00 AM) (Judicial Officer: Vega, Valorie J.)
11/24/2014	 Order <i>Order Granting State's Motion to Appoint Counsel</i>
12/09/2014	CANCELED Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Vacated - per Judge</i>

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

01/05/2015	Case Reassigned to Department 4 <i>District Court Case Reassignment 2015</i>
05/05/2015	 Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Earley, Kerry) 05/05/2015, 05/19/2016 <i>Def't's Pro Per Petition for Writ of Habeas Corpus</i>
05/05/2015	Status Check (9:00 AM) (Judicial Officer: Earley, Kerry) <i>Status Check: Briefing Schedule</i>
05/05/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Earley, Kerry)
12/22/2015	 Supplemental <i>Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/25/2016	 Stipulation <i>Stipulation and Order to Establish Briefing Schedule and Hearing</i>
04/05/2016	 Response <i>Response to Defendant's Post-Conviction Petition For Writ Of Habeas Corpus</i>
06/02/2016	 Order <i>Application and Order for Transcripts</i>
06/06/2016	 Transcript of Proceedings <i>Reporter's Transcript of Hearing , 5/19/16, Petition for Writ of Habeas Corpus</i>
06/29/2016	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
06/30/2016	 Case Appeal Statement
08/03/2016	 Findings of Fact, Conclusions of Law and Order
08/04/2016	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
09/02/2016	 Notice of Hearing <i>Notice of Rescheduling of Hearing</i>
09/02/2016	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
09/02/2016	 Request <i>Request for Transcript of Proceedings</i>
09/15/2016	Confirmation of Counsel (9:00 AM) (Judicial Officer: Earley, Kerry)

DATE

FINANCIAL INFORMATION

Attorney Public Defender	
Total Charges	10.50
Total Payments and Credits	11.00
Balance Due as of 9/7/2016	(0.50)

DEPARTMENT 4
CASE SUMMARY
CASE NO. C-10-268351-1

Defendant Jefferson, Brandon

Total Charges

175.00

Total Payments and Credits

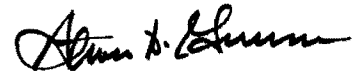
175.00

Balance Due as of 9/7/2016

0.00

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CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JAMES R. SWEETIN**
6 **Deputy District Attorney**
7 **Nevada Bar #005144**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **BRANDON JEFFERSON,**
13 **#2508991**

14 **Defendant.**

CASE NO: 10C268351

DEPT NO: IV

15 **FINDINGS OF FACT, CONCLUSIONS OF**

16 **LAW AND ORDER**

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

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

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1 **FINDINGS OF FACT**

2 **CONCLUSIONS OF LAW**

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

8 On March 25, 2011, Jefferson filed a “Motion to Suppress Unlawfully Obtained
9 Statement” in which he argued that he did not knowingly and voluntarily waive his Miranda¹
10 rights and that his confession to police was coerced. The State opposed the Motion on April
11 6, 2011. On June 2, 2011, the Court held a Jackson v. Denno² hearing, during which the Court
12 received several exhibits and testimony from Detective Matthew Demas. After entertaining
13 argument from counsel, the Court verbally denied Jefferson’s Motion. A written order
14 followed thereafter on June 16, 2011.

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

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

28 ¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

² 378 U.S. 368, 84 S. Ct. 1774 (1964).

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

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

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

13 Jury selection began on July 30, 2012. On August 1, 2012, the jury was sworn and
14 Jefferson's jury trial began. A week later, the jury retired to deliberate. Two hours later, the
15 jury found Jefferson guilty of Counts 1, 2, 4, 9, and 10, and not guilty of Counts 3, 5, 6, 7, and
16 8.³

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

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

1 prison, Jefferson would be required to register as a sex offender pursuant to NRS Chapter
2 179D, and would be subject to lifetime supervision pursuant to NRS 179.460.

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

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

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

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

3 The court *shall* dismiss a petition if the court determines that:

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

8 (Emphasis added); see also Great Basin Water Network v. State Eng'r, 126 Nev., Adv. Op.
9 20, 234 P.3d 912, 916 (2010) ("'[S]hall' is a term of command; it is imperative or mandatory,
10 not permissive or directory."); Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001)
11 ("A court must dismiss a habeas petition if it presents claims that either were or could have
12 been presented in an earlier proceeding, unless the court finds both cause for failing to present
13 the claims earlier or for raising them again and actual prejudice to the petitioner."). Indeed,
14 the Nevada Supreme Court has held that all "claims that are appropriate^[4] for a direct appeal
15 must be pursued on direct appeal, or they will be considered waived in subsequent
16 proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled
17 on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Accordingly, this
18 Court finds that Jefferson's arguments regarding prosecutorial misconduct should have been
19 raised, if at all, on direct appeal, and his failure to do so precludes review because his
20 arguments are considered waived. Id.; NRS 34.810(1)(b)(2). Further, this Court finds that
21 because Jefferson fails to offer any good cause to excuse his failure to raise these particular
22 arguments on direct appeal, Ground 3 is denied.

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

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

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

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

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

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

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

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

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

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

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

19 **V. JEFFERSON CANNOT REARGUE SUFFICIENCY OF THE EVIDENCE**

20 In Ground 6, Jefferson alleges insufficient evidence largely because "CJ's testimony
21 was without independent details." Petition 17. This Court finds that this argument is without
22 merit because the Nevada Supreme Court has "repeatedly held that the testimony of a sexual
23 assault victim alone is sufficient to uphold a conviction." LaPierre v. State, 108 Nev. 528,
24 531, 836 P.2d 56, 58 (1992); see also Gaxiola v. State, 121 Nev. 633, 648, 119 P.3d 1225,
25 1232 (2005). Moreover, this Court finds that Jefferson's argument also fails because the
26 Nevada Supreme Court rejected the same argument on appeal, reasoning that "the issue of
27 guilt was not close given the overwhelming evidence presented by the State." See Jefferson v.
28 State, No. 62120 at 11-12; 16; see also Pellegrini, 117 Nev. at 888, 34 P.3d at 538 ("[I]ssues

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

3 **VI. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL**

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

7 **A. A Rigorous Two-Prong Test Applies To Ineffective Assistance Of Counsel** 8 **Claims**

9 “[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to
10 improve the quality of legal representation . . . [but] simply to ensure that criminal defendants
11 receive a fair trial.” Cullen v. Pinholster, ___ U.S. ___, ___, 131 S. Ct. 1388, 1403 (2012)
12 (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison,
13 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (“Effective counsel does not mean errorless
14 counsel”). To prevail on a claim of ineffective assistance of counsel, a defendant must prove
15 that he was denied “reasonably effective assistance” of counsel by satisfying the two-prong
16 test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See
17 also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the
18 defendant must show first, that his counsel’s representation fell below an objective standard
19 of reasonableness, and second, but for counsel’s errors, there is a reasonable probability that
20 the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694,
21 104 S. Ct. at 2065, 2068. This Court need not consider both prongs, however if a defendant
22 makes an insufficient showing on either one. Molina v. State, 120 Nev. 185, 190, 87 P.3d 533,
23 537 (2004).

24 “The benchmark for judging any claim of ineffectiveness must be whether counsel’s
25 conduct so undermined the proper functioning of the adversarial process that the trial cannot
26 be relied on as having produced a just result.” Strickland, 466 U.S. at 686, 104 S. Ct. at 2052.
27 Indeed, the question is whether an attorney’s representations amounted to incompetence under
28 prevailing professional norms, “not whether it deviated from best practices or most common

1 custom.” Harrington v. Richter, 562 U.S. 86, 105, 131 S. Ct. 770, 788 (2011); see also
2 Strickland, 466 U.S. at 689, 104 S. Ct. at 2065 (“There are countless ways to provide effective
3 assistance in any given case. Even the best criminal defense attorneys would not defend a
4 particular client in the same way.”). Accordingly, the role of a court in considering alleged
5 ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to
6 determine whether, under the particular facts and circumstances of the case, trial counsel failed
7 to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
8 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant
9 bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective.
10 Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding “that a habeas
11 corpus petitioner must prove the disputed factual allegations underlying his ineffective-
12 assistance claim by a preponderance of the evidence.”).

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

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

24 Id. at 111-12, 131 S. Ct. at 791-92 (internal quotation marks and citations omitted). All told,
25 “[s]urmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S.
26 356, 371, 130 S. Ct. 1473, 1485 (2010). “A petitioner for post-conviction relief cannot rely on
27 conclusory claims for relief.” Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002).
28 Instead, the petition must set forth specific factual allegations that are not belied by the record,

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

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

9 This Court finds that Jefferson's first argument fails because motion practice is a
10 strategic matter that is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825
11 P.2d 593, 596 (1992) (“Strategic choices made by counsel after thoroughly investigating the
12 plausible options are almost unchallengeable.”); Davis v. State, 107 Nev. 600, 603, 817 P.2d
13 1169, 1171 (1991) (“[T]his court will not second-guess an attorney's tactical decisions where
14 they relate to trial strategy and are within the attorney's discretion. This remains so even if
15 better tactics appear, in retrospect, to have been available.”). Moreover, this Court finds that
16 Jefferson does not demonstrate how he was prejudiced by counsel's decision not to file the
17 Motion in Limine, especially given the Nevada Supreme Court's holding that any errors with
18 regard to Dr. Vergara were harmless. Jefferson v. State, No. 62120 at 8-9; see also Molina,
19 120 Nev. at 192, 87 P.3d at 538 (holding that petitioners must demonstrate how they were
20 prejudiced by alleged errors).

21 Further, this Court finds that Jefferson's other claims fail because “[a] petitioner for
22 post-conviction relief cannot rely on conclusory claims for relief.” Colwell, 118 Nev. at 812,
23 59 P.3d at 467; see also NRS 34.735; Hargrove, 100 Nev. at 502, 686 P.2d at 225 (holding
24 that a petition must set forth specific factual allegations that are not belied by the record, and
25 if true, would entitle the petitioner to relief). Further, the Sixth Amendment does not guarantee
26 a “meaningful relationship” between a defendant and his counsel, only that counsel be
27 effective. Morris v. Slappy, 461 U.S. 1, 13, 103 S. Ct. 1610, 1617 (1983).

28 //

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

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

11 Jefferson cites to only 5 pages out of the total 29 page voluntary statement CJ gave to
12 police. However, a read of the entire statement reveals that after the initial denial by the 5 year-
13 old victim, once detectives revealed that they were aware of CJ’s disclosure to her mother, CJ
14 immediately proceeded to disclose the sexual abuse perpetrated by Jefferson. See Ex. 1, CJ’s
15 Statement to LVMPD, filed December 8, 2011, with the Court; see also Evidentiary Hearing
16 Transcript, December 8, 2011, pp. 31-54. CJ disclosed to detectives that Jefferson made her
17 perform oral sex on Jefferson and that “liquid” came out of his penis, Jefferson made CJ touch
18 his penis, also that Jefferson put his privates in her privates and that she cried because it hurt.
19 See Ex. 1, CJ’s Statement to LVMPD, filed December 8, 2011, with the Court. Thus, this
20 Court finds that defense counsel made the strategic decision to fight the admission of these
21 statements and was successful.⁵ Defense counsel did not misinterpret NRS 51.385 and never
22 improperly shifted the burden. Instead, this Court finds that defense counsel made the strategic
23 decision to oppose the admission of the CJ’s disclosure to detectives. Davis, 107 Nev. at 603,
24 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that
25 Jefferson does not demonstrate how he was prejudiced by counsel’s decision. Had the
26 statement been used, the jury would have heard that this 5 year-old victim initially stated
27

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

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

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

10 In context, the purpose of the statement was not to voice any sort of opinion on the
11 matter, but to clarify that a juror is not disqualified simply because he or she has
12 understandable negative feelings about violence and sexual offenses. While the State
13 individually questioned Prospective Juror No. 245, she indicated, “I have a real problem with
14 the charges.” Trial Transcript (“TT”) July 30, 2012, p. 126, 23-24. She went on to indicate,
15 “[I]n my mind, that’s one of the worst charges. I mean, anything else, I could probably look at
16 it openly, but not when children are involved.” *Id.* at p. 127, 8-11. As a result, the prosecutor
17 asked anybody that had strong feelings should raise his or her hand so that she could discuss
18 this issue with the prospective juror(s). *Id.* at p. 128, 2-7. The prosecutor then asked a series
19 of questions to Prospective Juror No. 245 regarding the presumption of innocence. *Id.* at p.128
20 lines 15-25, pp. 129-30. It was in this context that the Court stated to Prospective Juror No.
21 245:

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

//

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1 *****

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

6 *****

7 Are you saying that you're entirely close-minded and unable to
8 deliberate?

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

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

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

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

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

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

8 **GROUND 7(E)** – Jefferson alleges that trial counsel was ineffective for failing to
9 confront Dr. Vergara regarding not conducting a sexual assault kit. Specifically, Dr. Vergara
10 testified that a sexual assault examination should be done no later than 72 hours after the
11 trauma, in fact “the sooner the better” or “probably even sooner” than 72 hours. TT, Aug. 2,
12 2012, p. 7, 23-25; p. 8; p. 9, 1-3. Jefferson references an EMT report (which would have been
13 taken the day CJ went to the hospital on September 14, 2010) where medical personnel
14 indicated that Jefferson last assaulted CJ on September 11, 2010. However, this Court finds
15 that defense counsel had no basis to “confront” Dr. Vergara for not conducting a sexual
16 examination kit.

17 A reading of CJ's entire statement to police reveals that CJ disclosed that the last time
18 Jefferson made CJ perform oral sex on him or that Jefferson sexually assaulted CJ was “a week
19 and 2 days ago.” See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the
20 Court. Thus, there would have been no reason for Dr. Vergara to perform a sexual assault kit
21 on CJ given that the last time Jefferson sexually assaulted CJ was well outside of the 72 hours.
22 This information is also corroborated by CJ's mother's statement to detectives who never told
23 law enforcement that CJ had been assaulted as recently as September 11, 2010. See Ex. 1, CJ's
24 mom's Statement to LVMPD, filed December 8, 2011, with the Court. Additionally, CJ's and
25 CJ's mother's testimony do not support this contention. TT, Aug. 2, 2012, pp. 41-78; TT, Aug.
26 3, 2012, pp. 10-45. Further, Detective Demas testified that CJ disclosed that the last time she
27 had been sexually abused had been “approximately seven or eight days, so over the five-day
28 period.” TT, Aug. 6, 2012, p. 44, 11-16. Based on that information, Detective Demas advised

1 against doing a sexual assault kit. Id. at 17-25. Defense counsel successfully moved for
2 inclusion of the report writer's testimony regarding the statement in question. TT, Aug. 8,
3 2012, pp. 27-35.

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

10 **GROUND 7(F)** – Jefferson alleges that trial counsel was ineffective for failing to move
11 for a continuance to “investigate” jail calls admitted into evidence. A defendant who contends
12 his attorney was ineffective because he did not adequately investigate must show how a better
13 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
14 192, 87 P.3d at 538. Jefferson sets forth nothing more than a bare allegation that other jail calls
15 would have somehow shown that CJ's mother was on his side and this would have put the
16 State in an “awkward position.” Petition at 23.

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

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

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

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

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

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

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

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

19 In the form of ineffective assistance of counsel claims, this Court finds that Jefferson's
20 claim is a non-specific bare allegations that does not support his claims. Hargrove, 100 Nev.
21 at 502, 686 P.2d at 225. A close reading of CJ's testimony reveals that defense counsel
22 objected repeatedly throughout her examination on the basis of "leading" or that the answer
23 was suggested in the question. Also, appellate counsel raised this issue on appeal. See AOB at
24 21-22.⁶ Jefferson fails to set forth exactly what more trial counsel should have done that would
25 have changed the outcome of his case. In terms of Jefferson's allegation that the State used
26 perjured testimony from detectives, this Court finds that this is a bare allegation that does not
27 warrant relief.

28

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

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

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

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

20 The Sixth Amendment guarantees a criminal defendant the right to conflict-free
21 representation. Coleman v. State, 109 Nev. 1, 3, 846 P.2d 286, 277 (1993) (citing Clark v.
22 State, 108 Nev. 324, 831 P.2d 1374 (1992)). In order to demonstrate an error based on a
23 conflict of interest, a defendant must show that counsel “‘actively represented conflicting
24 interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’”
25 Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S. Ct. 1708
26 (1980)). A lawyer shall not represent a client if the representation involves a concurrent
27 conflict of interest. Nev. R. Prof’l Conduct 1.7(a). A concurrent conflict of exists if there is a
28 significant risk that the representation of one or more clients will be materially limited by a

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

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

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

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

27 //

28 //

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

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

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

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

23 **VII. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF APPELLATE** 24 **COUNSEL**

25 For claims of ineffective assistance of appellate counsel, the prejudice prong is slightly
26 different. Jefferson must demonstrate that the omitted issue would have a reasonable
27 probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114
28 (1997); Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004). Appellate counsel is not

1 required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751-54,
2 103 S. Ct. 3308, 3312-14 (1983). After all, appellate counsel may well be more effective by
3 not raising every conceivable issue on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951,
4 953 (1989).

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

12 Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones,
13 463 U.S. at 751-54, 103 S. Ct. at 3312-14. Because Jefferson was read his Miranda rights, this
14 Court finds that trial counsel and then appellate counsel raised the issue they thought was best
15 in relation to the confession. Moreover, appellate counsel did raise the issue that Jefferson did
16 not properly waive his Miranda rights; however, the Nevada Supreme Court concluded that
17 this argument lacked merit. Jefferson v. State, No. 62120 at 4, fn.1. Thus, this Court finds that
18 any claim that Jefferson did not understand he was in police custody would have been
19 unsuccessful. Again, appellate counsel raised the best issue given the facts surrounding
20 Jefferson’s confession and this Court finds that counsel cannot be faulted for not raising every
21 colorable argument Jefferson believes appellate counsel should have raised. Further, this Court
22 finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable
23 probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev.
24 at 184, 87 P.3d at 532. As such, this claim is denied.

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

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

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

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

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

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

6 The Court finds that this was a non-issue and appellate counsel cannot be faulted for
7 failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate
8 that the omitted issue would have had a reasonable probability of success on appeal. Kirksey,
9 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim
10 is denied.

11 **GROUND 8(D)** – Jefferson alleges that appellate counsel was ineffective for failing to
12 present the issue raised supra Ground 7(C)—Jefferson alleges “structural error” in regards to
13 the Court's statement to the jury panel. This Court finds that appellate counsel did not raise
14 this issue because it was a non-issue with no probability of success on appeal. See supra
15 Ground 7(C). This was a non-issue and appellate counsel cannot be faulted for failing to raise
16 a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted
17 issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998,
18 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

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

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

1 100 Nev. at 502, 686 P.2d at 225; see also AOB at 39-41. As such, this claim is denied.

2 Jefferson's second argument within this Ground is a meritless, non-issue. As such, this
3 Court finds that appellate counsel cannot be faulted for not raising the issue that the State, in
4 Jefferson's opinion, "discredited" CJ's mother's hearsay statement, yet used her as a witness.
5 During defense closing, defense counsel specifically made an allegation that CJ's mother lied
6 about the last time that Jefferson sexually assaulted CJ and that the "story changed." TT, Aug.
7 8, 2012, p.93. This was in regards to why Dr. Vergara did not perform a sexual examination
8 kit. In response to this, during rebuttal, the State argued, in relevant part:

9 Detective Demas specifically told the doctor not to collect the
10 DNA because the last abuse was beyond the minimum three to, at
11 the max, five-day time frame. [CJ's brother] had said it'd been
12 more than two weeks since he last saw his dad take his sister into
the bedroom, and the detective learned from [CJ] during that
interview that it'd been over a week since the last abuse occurred.

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

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

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

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

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

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

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

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

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

1 the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112
2 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532.

3 Appellate counsel did raise the issue of sufficiency of the evidence. Within this
4 argument, appellate counsel raised issues regarding alleged inconsistencies in witness
5 statements, the lack of physical evidence, the alleged unreliability of Jefferson's confession,
6 and the fact that CJ never testified as to the any acts of lewdness. The Nevada Supreme Court
7 could have agreed and reversed Jefferson's convictions, but it did not. As such, this Court finds
8 that Jefferson fails to demonstrate that the omitted issue would have had a reasonable
9 probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev.
10 at 184, 87 P.3d at 532. As such, this claim is denied.

11 **VIII. JEFFERSON IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

13 1. The judge or justice, upon review of the return, answer and
14 all supporting documents which are filed, shall determine whether
15 an evidentiary hearing is required. A petitioner must not be
discharged or committed to the custody of a person other than the
respondent unless an evidentiary hearing is held.

16 2. If the judge or justice determines that the petitioner is not
17 entitled to relief and an evidentiary hearing is not required, he shall
dismiss the petition without a hearing.

18 3. If the judge or justice determines that an evidentiary
19 hearing is required, he shall grant the writ and shall set a date for
the hearing.

20 The Nevada Supreme Court has held that if a petition can be resolved without
21 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
22 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).
23 However, a defendant is entitled to an evidentiary hearing only if his petition is supported by
24 specific factual allegations, which, if true, would entitle him to relief unless the factual
25 allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605

26 In the instant case, this Court finds that Jefferson's arguments are waived and/or barred
27 by the law of the case and/or meritless. To the extent he raises issues that the Court could
28 address on the merits, this Court finds that his arguments are nevertheless belied by the record

1 or insufficient to warrant relief. As such, this Court finds that there is no need to expand the
2 record to resolve Jefferson's Petition, his request for an evidentiary hearing is denied.

3 **IX. CUMULATIVE ERROR DOES NOT WARRANT REVERSAL**

4 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative
5 error standard to the post-conviction *Strickland* context. *McConnell v. State*, 125 Nev. 243,
6 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.
7 *Middleton v. Roper*, 455 F.3d 838, 851 (8th Cir. 2006), *cert. denied*, 549 U.S. 1134, 1275 S.
8 Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors,
9 none of which would by itself meet the prejudice test.")

10 Nevertheless, even if cumulative error review is available, such a finding in the context
11 of a *Strickland* claim is extraordinarily rare. *See, e.g., Harris by & Through Ramseyer v.*
12 *Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995). After all, "[s]urmounting *Strickland*'s high bar is
13 never an easy task," *Padilla*, 559 U.S. at 371, 130 S. Ct. at 1485, and there can be no cumulative
14 error where the defendant fails to demonstrate *any* single violation of *Strickland*. *See, e.g.,*
15 *Athey v. State*, 106 Nev. 520, 526, 797 P.2d 956 (1990) ("[B]ecause we find no error . . . the
16 doctrine does not apply here."); *United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012)
17 ("Where, as here, no individual ruling has been shown to be erroneous, there is no 'error' to
18 consider, and the cumulative error doctrine does not warrant reversal"); *Turner v. Quarterman*,
19 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of
20 constitutional stature or are not errors, there is nothing to cumulate.") (internal quotation marks
21 omitted).

22 Here, this Court finds that Jefferson has not demonstrated that any of his claims
23 warrants relief, and as such, there is nothing to cumulate. Therefore, Jefferson's cumulative
24 error claim is denied.

25 //

26 //

27 //

28 //

ORDER

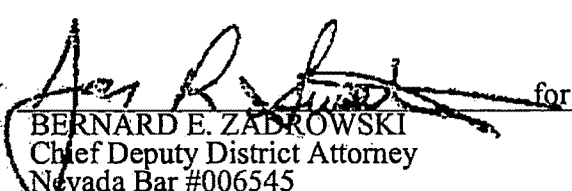
THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, denied.

DATED this 14 day of June, 2016.


DISTRICT JUDGE

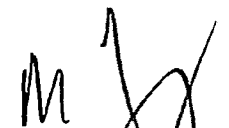
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY

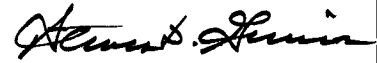
 for
BERNARD E. ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545

APPROVED AS TO FORM AND SUBSTANCE

BY


MATTHEW LAY, ESQ
732 S. SIXTH STREET #102
LAS VEGAS, NV 89101
Nevada Bar No. 1249

hjc/OM:SVU


CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BRANDON JEFFERSON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-10-268351-1

Dept No: IV

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

PLEASE TAKE NOTICE that on August 3, 2016, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 4, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 4 day of August 2016, I placed a copy of this Notice of Entry in:

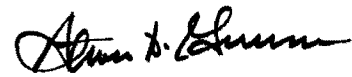
- ☒ The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-
- ☒ The United States mail addressed as follows:
Brandon Jefferson # 1094051 Matthew Lay, Esq.
P.O. Box 1989 732 South Sixth Street, Suite 102
Ely, NV 89301 Las Vegas, NV 89101

/s/ Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk

ORIGINAL

Electronically Filed
08/03/2016 07:52:25 AM



CLERK OF THE COURT

1 **FCL**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **JAMES R. SWEETIN**
6 **Deputy District Attorney**
7 **Nevada Bar #005144**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **BRANDON JEFFERSON,**
13 **#2508991**

14 **Defendant.**

CASE NO: 10C268351

DEPT NO: IV

15 **FINDINGS OF FACT, CONCLUSIONS OF**

16 **LAW AND ORDER**

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

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

26 //

27 //

28 //

1 **FINDINGS OF FACT**

2 **CONCLUSIONS OF LAW**

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

8 On March 25, 2011, Jefferson filed a “Motion to Suppress Unlawfully Obtained
9 Statement” in which he argued that he did not knowingly and voluntarily waive his Miranda¹
10 rights and that his confession to police was coerced. The State opposed the Motion on April
11 6, 2011. On June 2, 2011, the Court held a Jackson v. Denno² hearing, during which the Court
12 received several exhibits and testimony from Detective Matthew Demas. After entertaining
13 argument from counsel, the Court verbally denied Jefferson’s Motion. A written order
14 followed thereafter on June 16, 2011.

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

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

28 ¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

² 378 U.S. 368, 84 S. Ct. 1774 (1964).

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

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

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

13 Jury selection began on July 30, 2012. On August 1, 2012, the jury was sworn and
14 Jefferson's jury trial began. A week later, the jury retired to deliberate. Two hours later, the
15 jury found Jefferson guilty of Counts 1, 2, 4, 9, and 10, and not guilty of Counts 3, 5, 6, 7, and
16 8.³

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

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

1 prison, Jefferson would be required to register as a sex offender pursuant to NRS Chapter
2 179D, and would be subject to lifetime supervision pursuant to NRS 179.460.

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

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

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

28 //

1 **PETITION ARGUMENTS**

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

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

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

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

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

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

3 The court *shall* dismiss a petition if the court determines that:

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

8 (Emphasis added); see also Great Basin Water Network v. State Eng'r, 126 Nev., Adv. Op.
9 20, 234 P.3d 912, 916 (2010) ("'[S]hall' is a term of command; it is imperative or mandatory,
10 not permissive or directory."); Evans v. State, 117 Nev. 609, 646-647, 29 P.3d 498, 523 (2001)
11 ("A court must dismiss a habeas petition if it presents claims that either were or could have
12 been presented in an earlier proceeding, unless the court finds both cause for failing to present
13 the claims earlier or for raising them again and actual prejudice to the petitioner."). Indeed,
14 the Nevada Supreme Court has held that all "claims that are appropriate^[4] for a direct appeal
15 must be pursued on direct appeal, or they will be considered waived in subsequent
16 proceedings." Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled
17 on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Accordingly, this
18 Court finds that Jefferson's arguments regarding prosecutorial misconduct should have been
19 raised, if at all, on direct appeal, and his failure to do so precludes review because his
20 arguments are considered waived. Id.; NRS 34.810(1)(b)(2). Further, this Court finds that
21 because Jefferson fails to offer any good cause to excuse his failure to raise these particular
22 arguments on direct appeal, Ground 3 is denied.

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

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

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

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

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

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

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

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

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

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

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

19 **V. JEFFERSON CANNOT REARGUE SUFFICIENCY OF THE EVIDENCE**

20 In Ground 6, Jefferson alleges insufficient evidence largely because "CJ's testimony
21 was without independent details." Petition 17. This Court finds that this argument is without
22 merit because the Nevada Supreme Court has "repeatedly held that the testimony of a sexual
23 assault victim alone is sufficient to uphold a conviction." LaPierre v. State, 108 Nev. 528,
24 531, 836 P.2d 56, 58 (1992); see also Gaxiola v. State, 121 Nev. 633, 648, 119 P.3d 1225,
25 1232 (2005). Moreover, this Court finds that Jefferson's argument also fails because the
26 Nevada Supreme Court rejected the same argument on appeal, reasoning that "the issue of
27 guilt was not close given the overwhelming evidence presented by the State." See Jefferson v.
28 State, No. 62120 at 11-12; 16; see also Pellegrini, 117 Nev. at 888, 34 P.3d at 538 ("[I]ssues

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

3 **VI. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL**

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

7 **A. A Rigorous Two-Prong Test Applies To Ineffective Assistance Of Counsel** 8 **Claims**

9 “[T]he purpose of the effective assistance guarantee of the Sixth Amendment is not to
10 improve the quality of legal representation . . . [but] simply to ensure that criminal defendants
11 receive a fair trial.” Cullen v. Pinholster, ___ U.S. ___, ___, 131 S. Ct. 1388, 1403 (2012)
12 (internal quotation marks and citation omitted); see also Jackson v. Warden, Nev. State Prison,
13 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (“Effective counsel does not mean errorless
14 counsel”). To prevail on a claim of ineffective assistance of counsel, a defendant must prove
15 that he was denied “reasonably effective assistance” of counsel by satisfying the two-prong
16 test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S. Ct. 2052, 2063-64 (1984). See
17 also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the
18 defendant must show first, that his counsel’s representation fell below an objective standard
19 of reasonableness, and second, but for counsel’s errors, there is a reasonable probability that
20 the result of the proceedings would have been different. Strickland, 466 U.S. at 687-88, 694,
21 104 S. Ct. at 2065, 2068. This Court need not consider both prongs, however if a defendant
22 makes an insufficient showing on either one. Molina v. State, 120 Nev. 185, 190, 87 P.3d 533,
23 537 (2004).

24 “The benchmark for judging any claim of ineffectiveness must be whether counsel’s
25 conduct so undermined the proper functioning of the adversarial process that the trial cannot
26 be relied on as having produced a just result.” Strickland, 466 U.S. at 686, 104 S. Ct. at 2052.
27 Indeed, the question is whether an attorney’s representations amounted to incompetence under
28 prevailing professional norms, “not whether it deviated from best practices or most common

1 custom.” Harrington v. Richter, 562 U.S. 86, 105, 131 S. Ct. 770, 788 (2011); see also
2 Strickland, 466 U.S. at 689, 104 S. Ct. at 2065 (“There are countless ways to provide effective
3 assistance in any given case. Even the best criminal defense attorneys would not defend a
4 particular client in the same way.”). Accordingly, the role of a court in considering alleged
5 ineffective assistance of counsel is “not to pass upon the merits of the action not taken but to
6 determine whether, under the particular facts and circumstances of the case, trial counsel failed
7 to render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
8 711 (1978). In doing so, courts begin with the presumption of effectiveness and the defendant
9 bears the burden of proving, by a preponderance of the evidence, that counsel was ineffective.
10 Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004) (holding “that a habeas
11 corpus petitioner must prove the disputed factual allegations underlying his ineffective-
12 assistance claim by a preponderance of the evidence.”).

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

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

24 Id. at 111-12, 131 S. Ct. at 791-92 (internal quotation marks and citations omitted). All told,
25 “[s]urmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S.
26 356, 371, 130 S. Ct. 1473, 1485 (2010). “A petitioner for post-conviction relief cannot rely on
27 conclusory claims for relief.” Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002).
28 Instead, the petition must set forth specific factual allegations that are not belied by the record,

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

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

9 This Court finds that Jefferson's first argument fails because motion practice is a
10 strategic matter that is virtually unchallengeable. Dawson v. State, 108 Nev. 112, 117, 825
11 P.2d 593, 596 (1992) (“Strategic choices made by counsel after thoroughly investigating the
12 plausible options are almost unchallengeable.”); Davis v. State, 107 Nev. 600, 603, 817 P.2d
13 1169, 1171 (1991) (“[T]his court will not second-guess an attorney's tactical decisions where
14 they relate to trial strategy and are within the attorney's discretion. This remains so even if
15 better tactics appear, in retrospect, to have been available.”). Moreover, this Court finds that
16 Jefferson does not demonstrate how he was prejudiced by counsel's decision not to file the
17 Motion in Limine, especially given the Nevada Supreme Court's holding that any errors with
18 regard to Dr. Vergara were harmless. Jefferson v. State, No. 62120 at 8-9; see also Molina,
19 120 Nev. at 192, 87 P.3d at 538 (holding that petitioners must demonstrate how they were
20 prejudiced by alleged errors).

21 Further, this Court finds that Jefferson's other claims fail because “[a] petitioner for
22 post-conviction relief cannot rely on conclusory claims for relief.” Colwell, 118 Nev. at 812,
23 59 P.3d at 467; see also NRS 34.735; Hargrove, 100 Nev. at 502, 686 P.2d at 225 (holding
24 that a petition must set forth specific factual allegations that are not belied by the record, and
25 if true, would entitle the petitioner to relief). Further, the Sixth Amendment does not guarantee
26 a “meaningful relationship” between a defendant and his counsel, only that counsel be
27 effective. Morris v. Slappy, 461 U.S. 1, 13, 103 S. Ct. 1610, 1617 (1983).

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

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

11 Jefferson cites to only 5 pages out of the total 29 page voluntary statement CJ gave to
12 police. However, a read of the entire statement reveals that after the initial denial by the 5 year-
13 old victim, once detectives revealed that they were aware of CJ’s disclosure to her mother, CJ
14 immediately proceeded to disclose the sexual abuse perpetrated by Jefferson. See Ex. 1, CJ’s
15 Statement to LVMPD, filed December 8, 2011, with the Court; see also Evidentiary Hearing
16 Transcript, December 8, 2011, pp. 31-54. CJ disclosed to detectives that Jefferson made her
17 perform oral sex on Jefferson and that “liquid” came out of his penis, Jefferson made CJ touch
18 his penis, also that Jefferson put his privates in her privates and that she cried because it hurt.
19 See Ex. 1, CJ’s Statement to LVMPD, filed December 8, 2011, with the Court. Thus, this
20 Court finds that defense counsel made the strategic decision to fight the admission of these
21 statements and was successful.⁵ Defense counsel did not misinterpret NRS 51.385 and never
22 improperly shifted the burden. Instead, this Court finds that defense counsel made the strategic
23 decision to oppose the admission of the CJ’s disclosure to detectives. Davis, 107 Nev. at 603,
24 817 P.2d at 1171; Dawson, 108 Nev. at 117, 825 P.2d at 596. Moreover, this Court finds that
25 Jefferson does not demonstrate how he was prejudiced by counsel’s decision. Had the
26 statement been used, the jury would have heard that this 5 year-old victim initially stated
27

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

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

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

10 In context, the purpose of the statement was not to voice any sort of opinion on the
11 matter, but to clarify that a juror is not disqualified simply because he or she has
12 understandable negative feelings about violence and sexual offenses. While the State
13 individually questioned Prospective Juror No. 245, she indicated, “I have a real problem with
14 the charges.” Trial Transcript (“TT”) July 30, 2012, p. 126, 23-24. She went on to indicate,
15 “[I]n my mind, that’s one of the worst charges. I mean, anything else, I could probably look at
16 it openly, but not when children are involved.” Id. at p. 127, 8-11. As a result, the prosecutor
17 asked anybody that had strong feelings should raise his or her hand so that she could discuss
18 this issue with the prospective juror(s). Id. at p. 128, 2-7. The prosecutor then asked a series
19 of questions to Prospective Juror No. 245 regarding the presumption of innocence. Id. at p.128
20 lines 15-25, pp. 129-30. It was in this context that the Court stated to Prospective Juror No.
21 245:

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

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1 *****

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

6 *****

7 Are you saying that you're entirely close-minded and unable to
8 deliberate?

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

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

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

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

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

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

8 **GROUND 7(E)** – Jefferson alleges that trial counsel was ineffective for failing to
9 confront Dr. Vergara regarding not conducting a sexual assault kit. Specifically, Dr. Vergara
10 testified that a sexual assault examination should be done no later than 72 hours after the
11 trauma, in fact “the sooner the better” or “probably even sooner” than 72 hours. TT, Aug. 2,
12 2012, p. 7, 23-25; p. 8; p. 9, 1-3. Jefferson references an EMT report (which would have been
13 taken the day CJ went to the hospital on September 14, 2010) where medical personnel
14 indicated that Jefferson last assaulted CJ on September 11, 2010. However, this Court finds
15 that defense counsel had no basis to “confront” Dr. Vergara for not conducting a sexual
16 examination kit.

17 A reading of CJ's entire statement to police reveals that CJ disclosed that the last time
18 Jefferson made CJ perform oral sex on him or that Jefferson sexually assaulted CJ was “a week
19 and 2 days ago.” See Ex. 1, CJ's Statement to LVMPD, filed December 8, 2011, with the
20 Court. Thus, there would have been no reason for Dr. Vergara to perform a sexual assault kit
21 on CJ given that the last time Jefferson sexually assaulted CJ was well outside of the 72 hours.
22 This information is also corroborated by CJ's mother's statement to detectives who never told
23 law enforcement that CJ had been assaulted as recently as September 11, 2010. See Ex. 1, CJ's
24 mom's Statement to LVMPD, filed December 8, 2011, with the Court. Additionally, CJ's and
25 CJ's mother's testimony do not support this contention. TT, Aug. 2, 2012, pp. 41-78; TT, Aug.
26 3, 2012, pp. 10-45. Further, Detective Demas testified that CJ disclosed that the last time she
27 had been sexually abused had been “approximately seven or eight days, so over the five-day
28 period.” TT, Aug. 6, 2012, p. 44, 11-16. Based on that information, Detective Demas advised

1 against doing a sexual assault kit. Id. at 17-25. Defense counsel successfully moved for
2 inclusion of the report writer's testimony regarding the statement in question. TT, Aug. 8,
3 2012, pp. 27-35.

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

10 **GROUND 7(F)** – Jefferson alleges that trial counsel was ineffective for failing to move
11 for a continuance to “investigate” jail calls admitted into evidence. A defendant who contends
12 his attorney was ineffective because he did not adequately investigate must show how a better
13 investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at
14 192, 87 P.3d at 538. Jefferson sets forth nothing more than a bare allegation that other jail calls
15 would have somehow shown that CJ's mother was on his side and this would have put the
16 State in an “awkward position.” Petition at 23.

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

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

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

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

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

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

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

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

19 In the form of ineffective assistance of counsel claims, this Court finds that Jefferson’s
20 claim is a non-specific bare allegations that does not support his claims. Hargrove, 100 Nev.
21 at 502, 686 P.2d at 225. A close reading of CJ’s testimony reveals that defense counsel
22 objected repeatedly throughout her examination on the basis of “leading” or that the answer
23 was suggested in the question. Also, appellate counsel raised this issue on appeal. See AOB at
24 21-22.⁶ Jefferson fails to set forth exactly what more trial counsel should have done that would
25 have changed the outcome of his case. In terms of Jefferson’s allegation that the State used
26 perjured testimony from detectives, this Court finds that this is a bare allegation that does not
27 warrant relief.

28

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

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

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

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

20 The Sixth Amendment guarantees a criminal defendant the right to conflict-free
21 representation. Coleman v. State, 109 Nev. 1, 3, 846 P.2d 286, 277 (1993) (citing Clark v.
22 State, 108 Nev. 324, 831 P.2d 1374 (1992)). In order to demonstrate an error based on a
23 conflict of interest, a defendant must show that counsel “‘actively represented conflicting
24 interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’”
25 Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S. Ct. 1708
26 (1980)). A lawyer shall not represent a client if the representation involves a concurrent
27 conflict of interest. Nev. R. Prof’l Conduct 1.7(a). A concurrent conflict of exists if there is a
28 significant risk that the representation of one or more clients will be materially limited by a

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

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

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

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

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

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

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

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

23 **VII. JEFFERSON RECEIVED EFFECTIVE ASSISTANCE OF APPELLATE**
24 **COUNSEL**

25 For claims of ineffective assistance of appellate counsel, the prejudice prong is slightly
26 different. Jefferson must demonstrate that the omitted issue would have a reasonable
27 probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114
28 (1997); Lara v. State, 120 Nev. 177, 184, 87 P.3d 528, 532 (2004). Appellate counsel is not

1 required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751-54,
2 103 S. Ct. 3308, 3312-14 (1983). After all, appellate counsel may well be more effective by
3 not raising every conceivable issue on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951,
4 953 (1989).

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

12 Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones,
13 463 U.S. at 751-54, 103 S. Ct. at 3312-14. Because Jefferson was read his Miranda rights, this
14 Court finds that trial counsel and then appellate counsel raised the issue they thought was best
15 in relation to the confession. Moreover, appellate counsel did raise the issue that Jefferson did
16 not properly waive his Miranda rights; however, the Nevada Supreme Court concluded that
17 this argument lacked merit. Jefferson v. State, No. 62120 at 4, fn.1. Thus, this Court finds that
18 any claim that Jefferson did not understand he was in police custody would have been
19 unsuccessful. Again, appellate counsel raised the best issue given the facts surrounding
20 Jefferson’s confession and this Court finds that counsel cannot be faulted for not raising every
21 colorable argument Jefferson believes appellate counsel should have raised. Further, this Court
22 finds that Jefferson fails to demonstrate that the omitted issue would have had a reasonable
23 probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev.
24 at 184, 87 P.3d at 532. As such, this claim is denied.

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

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

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

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

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

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

6 The Court finds that this was a non-issue and appellate counsel cannot be faulted for
7 failing to raise a meritless issue. Further, this Court finds that Jefferson fails to demonstrate
8 that the omitted issue would have had a reasonable probability of success on appeal. Kirksey,
9 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim
10 is denied.

11 **GROUND 8(D)** – Jefferson alleges that appellate counsel was ineffective for failing to
12 present the issue raised supra Ground 7(C)—Jefferson alleges “structural error” in regards to
13 the Court's statement to the jury panel. This Court finds that appellate counsel did not raise
14 this issue because it was a non-issue with no probability of success on appeal. See supra
15 Ground 7(C). This was a non-issue and appellate counsel cannot be faulted for failing to raise
16 a meritless issue. Further, this Court finds that Jefferson fails to demonstrate that the omitted
17 issue would have had a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998,
18 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532. As such, this claim is denied.

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

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

1 100 Nev. at 502, 686 P.2d at 225; see also AOB at 39-41. As such, this claim is denied.

2 Jefferson's second argument within this Ground is a meritless, non-issue. As such, this
3 Court finds that appellate counsel cannot be faulted for not raising the issue that the State, in
4 Jefferson's opinion, "discredited" CJ's mother's hearsay statement, yet used her as a witness.
5 During defense closing, defense counsel specifically made an allegation that CJ's mother lied
6 about the last time that Jefferson sexually assaulted CJ and that the "story changed." TT, Aug.
7 8, 2012, p.93. This was in regards to why Dr. Vergara did not perform a sexual examination
8 kit. In response to this, during rebuttal, the State argued, in relevant part:

9 Detective Demas specifically told the doctor not to collect the
10 DNA because the last abuse was beyond the minimum three to, at
11 the max, five-day time frame. [CJ's brother] had said it'd been
12 more than two weeks since he last saw his dad take his sister into
the bedroom, and the detective learned from [CJ] during that
interview that it'd been over a week since the last abuse occurred.

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

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

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

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

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

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

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

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

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

1 the omitted issue would have had a reasonable probability of success on appeal. Kirksey, 112
2 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev. at 184, 87 P.3d at 532.

3 Appellate counsel did raise the issue of sufficiency of the evidence. Within this
4 argument, appellate counsel raised issues regarding alleged inconsistencies in witness
5 statements, the lack of physical evidence, the alleged unreliability of Jefferson's confession,
6 and the fact that CJ never testified as to the any acts of lewdness. The Nevada Supreme Court
7 could have agreed and reversed Jefferson's convictions, but it did not. As such, this Court finds
8 that Jefferson fails to demonstrate that the omitted issue would have had a reasonable
9 probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114; Lara, 120 Nev.
10 at 184, 87 P.3d at 532. As such, this claim is denied.

11 **VIII. JEFFERSON IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

13 1. The judge or justice, upon review of the return, answer and
14 all supporting documents which are filed, shall determine whether
15 an evidentiary hearing is required. A petitioner must not be
discharged or committed to the custody of a person other than the
respondent unless an evidentiary hearing is held.

16 2. If the judge or justice determines that the petitioner is not
17 entitled to relief and an evidentiary hearing is not required, he shall
dismiss the petition without a hearing.

18 3. If the judge or justice determines that an evidentiary
19 hearing is required, he shall grant the writ and shall set a date for
the hearing.

20 The Nevada Supreme Court has held that if a petition can be resolved without
21 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
22 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).
23 However, a defendant is entitled to an evidentiary hearing only if his petition is supported by
24 specific factual allegations, which, if true, would entitle him to relief unless the factual
25 allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605

26 In the instant case, this Court finds that Jefferson's arguments are waived and/or barred
27 by the law of the case and/or meritless. To the extent he raises issues that the Court could
28 address on the merits, this Court finds that his arguments are nevertheless belied by the record

1 or insufficient to warrant relief. As such, this Court finds that there is no need to expand the
2 record to resolve Jefferson's Petition, his request for an evidentiary hearing is denied.

3 **IX. CUMULATIVE ERROR DOES NOT WARRANT REVERSAL**

4 The Nevada Supreme Court has not endorsed application of its direct appeal cumulative
5 error standard to the post-conviction *Strickland* context. *McConnell v. State*, 125 Nev. 243,
6 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review.
7 *Middleton v. Roper*, 455 F.3d 838, 851 (8th Cir. 2006), *cert. denied*, 549 U.S. 1134, 1275 S.
8 Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors,
9 none of which would by itself meet the prejudice test.")

10 Nevertheless, even if cumulative error review is available, such a finding in the context
11 of a *Strickland* claim is extraordinarily rare. *See, e.g., Harris by & Through Ramseyer v.*
12 *Wood*, 64 F.3d 1432, 1438 (9th Cir. 1995). After all, "[s]urmounting *Strickland*'s high bar is
13 never an easy task," *Padilla*, 559 U.S. at 371, 130 S. Ct. at 1485, and there can be no cumulative
14 error where the defendant fails to demonstrate *any* single violation of *Strickland*. *See, e.g.,*
15 *Athey v. State*, 106 Nev. 520, 526, 797 P.2d 956 (1990) ("[B]ecause we find no error . . . the
16 doctrine does not apply here."); *United States v. Sypher*, 684 F.3d 622, 628 (6th Cir. 2012)
17 ("Where, as here, no individual ruling has been shown to be erroneous, there is no 'error' to
18 consider, and the cumulative error doctrine does not warrant reversal"); *Turner v. Quarterman*,
19 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of
20 constitutional stature or are not errors, there is nothing to cumulate.") (internal quotation marks
21 omitted).

22 Here, this Court finds that Jefferson has not demonstrated that any of his claims
23 warrants relief, and as such, there is nothing to cumulate. Therefore, Jefferson's cumulative
24 error claim is denied.

25 //

26 //

27 //

28 //

ORDER

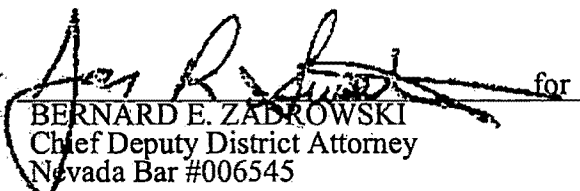
THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and is, denied.

DATED this 14 day of June, 2016.


DISTRICT JUDGE

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


BY


BERNARD E. ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545

for

APPROVED AS TO FORM AND SUBSTANCE

BY


MATTHEW LAY, ESQ
732 S. SIXTH STREET #102
LAS VEGAS, NV 89101
Nevada Bar No. 1249

hjc/OM:SVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 01, 2010

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

November 01, 2010 10:30 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Melissa Benson

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Robinson, Lynn M.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- At request of counsel, COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 11/5/10 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 05, 2010

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

November 05, 2010 10:30 AM Arraignment Continued

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Carole D'Aloia

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Public Defender	Attorney

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT. Mr. Cox advised Defendant would be entering a not guilty plea. DEFENDANT JEFFERSON ARRAIGNED, PLED NOT GUILTY, AND WAIVED THE SIXTY (60) DAY RULE. Court ACCEPTED plea and, ORDERED, matter set for JURY TRIAL. Mr. Cox noted that bail has been set on some of the charges and inquired if Court would entertain an oral motion regarding Defendant's custody status and, COURT DENIED the request and directed Mr. Cox to file the appropriate motion in Department II.

CUSTODY

4/26/11 9:30 AM CALENDAR CALL

5/2/11 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 07, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

April 07, 2011 9:00 AM All Pending Motions

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- MTN TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT...MTN FOR DISCOVERY...
MTN TO PRECLUDE LAY WITNESS OPINION

Court noted she received no opposition to the motion. Mr. Merback provided copies of his opposition and noted he is working on getting discovery taken care of. Mr. Cox advised that's his understanding and he will not be replying based on reading the oppositions. COURT ORDERED, matter CONTINUED for review of the oppositions.

CUSTODY

4/12/11 9:00 AM DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT

4/12/11 9:00 AM DEFT'S MOTION FOR DISCOVERY

4/12/11 9:00 AM DEFT'S MOTION TO PRECLUDE LAY WITNESS OPINION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 12, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

April 12, 2011 9:00 AM All Pending Motions

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT....DEFT'S MOTION FOR DISCOVERY...DEFT'S MOTION TO PRECLUDE LAY WITNESS OPINION

DEFT'S MOTION FOR DISCOVERY: Mr. Merback advised he sent an order from this Court to sign for records from the hospital and CPS records which they are talking about and he may have a problem with the NCIS request, therefore, he asked to continue. COURT ORDERED, matter CONTINUED to time of calendar call.

DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT: Mr. Cox advised the court can review it and make a determination and he requested a hearing. Court noted the document was not attached. Opposition by Mr. Merback. Mr. Cox stated he will provide a copy to the Court. SIDE BAR. COURT ORDERED, matter CONTINUED to time of calendar call.

DEFT'S MOTION TO PRECLUDE LAY WITNESS OPINION: Argument by Mr. Cox that is for the

jury to determine. Mr. Merback advised he would agree with that and preferred the court wait and rule. COURT ORDERED, motion DENIED WITHOUT PREJUDICE as premature and vague and objections can be raised at trial. State to prepare the order.

CUSTODY

4/26/11 9:30 AM DEFT'S MOTION FOR DISCOVERY

4/26/11 9:30 AM DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 26, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

April 26, 2011 9:00 AM All Pending Motions

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL...DEFT'S MOTION TO PRECLUDE USE OF THE PREJUDICIAL TERM VICTIM...DEFT'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE...DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT...DEFT'S MOTION FOR DISCOVERY

Mr. Cox requested a Jackson v. Denno on the motion to suppress which may determine the course of action on the other motions. Mr. Merback advised he responded to the motion to suppress and he was in trial last week but Mr. Cox told him that he would be asking for a continuance and didn't respond to the other two motions but he can address them at a later date. Mr. Cox advised that's correct, he told Mr. Merback that he would be seeking a continuance and a Jackson hearing on the motion to suppress. COURT ORDERED, Oral motion to continue Trial date GRANTED as unopposed; Trial date VACATED; matter set for Jackson v. Denno hearing on motion to suppress and set a status check on resetting of Trial date and remaining motions CONTINUED to same date.

CUSTODY

PRINT DATE: 09/07/2016

Page 7 of 48

Minutes Date: November 01, 2010

5/19/11 10:30 AM HEARING PER JACKSON V DENNO: DEFT'S MOTION TO SUPPRESS
UNLAWFULLY OBTAINED STATEMENTS

5/19/11 10:30 AM DEFT'S MOTION TO PRECLUDE USE OF THE PREJUDICIAL TERM
VICTIM...DEFT'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE...DEFT'S MOTION FOR
DISCOVERY

5/19/11 10:30 AM STATUS CHECK: RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 19, 2011

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

May 19, 2011 10:00 AM Request of Court

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Deft was not transported this morning and she had blocked out the calendar for enough time for an evidentiary hearing but counsel contacted her law clerk that they had a witness problem and would stipulate to continue for that reason; however, she learnt a statement was to be played on the lap top and she wanted to make good use of time to play it here. Mr. Merback understood he could leave a lap top for the Court to use and he has to leave for another hearing with Judge Smith; he moved to mark the CD as State's exhibit #1. Mr. Cox advised he would stipulate to admit the exhibit. COURT ORDERED, State's exhibit #1 admitted for the Jackson v. Denno hearing. (See worksheet.) CD of Deft's voluntary statement, State's exhibit #1 played for the Court.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 02, 2011

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

June 02, 2011 10:30 AM All Pending Motions

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE...HEARING : PER JACKSON V. DENNO: DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT...DEFT'S MOTION FOR DISCOVERY...DEFT'S JEFFERSON'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE 51.385 EVIDENCE...DEFT'S MOTION TO PRECLUDE USE OF THE PREJUDICIAL TERM VICTIM

DEFT'S MOTION FOR DISCOVERY: Court noted no opposition and counsel was working it out. Mr. Cox advised he didn't want to withdraw the motion but believed he has everything except if he can't identify something then he would like to have the State to provide an on going duty to supplement. Mr. Merback advised he can say it's moot at this point and if they find something they will provide it but thought they had complied with the request and he opposed it orally. COURT ORDERED, Deft's motion DENIED as moot, however, State has an on going duty to supplement. Mr. Merback to prepare the order.

DEFT JEFFERSON'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE 51.385 EVIDENCE:

Upon inquiry by Mr. Cox if the State intends to offer statements, Mr. Merback advised they intend to call live witnesses and a hearing will need to be held with the witness and noted the victim is 10 years old. Opposition by Mr. Cox. Mr. Merback stated if the witness is not taking the stand then there is no indication the witness is not available at time of trial. Court advised she would consider a hearing the first day of trial before seating the jury. Response by Mr. Cox that the term is very prejudicial and not appropriate. Mr. Merback advised the State does not intend to over use the term at trial. COURT ORDERED, motion DENIED per NRS 217.070 and EDCR 3.20. Mr. Merback to prepare the order.

HEARING: PER JACKSON V. DENNO: DEFT'S MOTION TO SUPPRESS UNLAWFULLY OBTAINED STATEMENT: Matthew Demas sworn and testified. Mr. Merback moved to admit exhibits 1 and 2. No objection by Mr. Cox. COURT ORDERED, State's exhibits 1 & 2 admitted. (See worksheet.) Testimony continues. Argument by Mr. Cox. Argument by Mr. Merback not to suppress. Response by Mr. Cox. Court stated her findings, and ORDERED, Deft's motion to suppress DENIED pursuant to Miranda v. Arizona, 384 US 436 (1966) and Jackson v. Denno, 378 US 368 (1964). Mr. Merback to prepare the order.

STATUS CHECK: RESET TRIAL DATE: Mr. Cox stated he is not available for trial in July or September and Deft is in waive status. Parties agreed this is overflow eligible. Court noted this case is not overflow eligible due to the pending hearing and suggested to hear it prior to the calendar call. Counsel agreed. COURT ORDERED, Trial date set and motion set for 11/1/11 10:30 a.m. for the Evidentiary Hearing.

CUSTODY

11/01/11 10:30 AM EVIDENTIARY HEARING: DEFT JEFFERSON'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE 51.385 EVIDENCE

11/03/11 9:30 AM CALENDAR CALL

11/07/11 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 01, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

November 01, 2011 9:00 AM Motion

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Argument by Deft Jefferson that counsel has not done certain things for his case. Upon Court inquiry, Mr. Cox advised he generally has discovery to show the Deft but he doesn't like to leave discovery with the Deft due to creating conflict because there is nothing private at the jail and he has been seeing him on other things. Court asked if counsel has asked the investigator to check on Deft's work record. Mr. Cox stated he didn't see that being an issue to the case and not relevant to defend the case. Mr. Merback advised Deft has lost his job and that was making it difficult for him. Court stated her findings, and ORDERED, motion to dismiss counsel and appoint alternate counsel DENIED. State to prepare the order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 01, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

November 01, 2011 10:30 AM Evidentiary Hearing

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Cox advised there is an issue with the trial date and he would like Dec. 5th for trial for a full week. Mr. Merback stated he didn't see the case going over a week but he has another trial set for that week and the case can go to over flow. Mr. Cox agree to either week. Court noted Deft waives his speedy trial. Mr. Cox advised correct. Side bar. Court advised parties jointly prefer 12/5th. COURT ORDERED, Trial date VACATED and RESET for 12/5th.

Court advised Deft is the biological father and reviewed papers and photocopied them. Side Bar. Court stated she didn't do any redaction from CPS but they are confidential and related to confidential medical records; therefore, Court does sua sponte hereby ORDERED, CPS records SEALED and marked as Court's exhibit #1. State to prepare a written order that complies with the new Supreme Court rule, part 11. Court noted the envelope came with a number of pages paper clipped together. Mr. Merback requested a hearing on whether statements made are admissible. Court stated her concern on hearsay. Mr. Merback requested a hearing outside the presence for the Court to make a determination under NRS 51.385 whether they can testify. Mr. Cox advised he is not

waiving any issues but statements are inadmissible through another party. COURT ORDERED, matter CONTINUED for hearing on 12/1/11 at 10:30 a.m.

CUSTODY

12/01/11 10:30 AM EVIDENTIARY HEARING: DEFT'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE NRS 51.385 EVIDENCE

12/01/11 9:30 AM CALENDAR CALL

12/05/11 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 01, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

December 01, 2011 9:30 AM All Pending Motions

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Lorna Shell

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- EVIDENTIARY HEARING: DEFT. JEFFERSON'S MOTION IN LIMINE TO PRECLUDE INADMISSIBLE 51.385 EVIDENCE....CALENDAR CALL.

SIDEBAR. MATTER TRAILED AND RECALLED. Mr. Cox stated his motion is withdrawn. Arguments regarding if case is overflow eligible, evidence requested, if the victim will testify, and witness testimony. Mr. Cox requested a copy of the 06/02/12 hearing transcript that has been filed. Court instructed the Clerk to see if the transcript was in Odyssey and the Clerk stated it is not. COURT GRANTED, Motion to Continue; TRIAL DATES VACATED and RESET.

CUSTODY

12/08/11 2:00 PM EVIDENTIARY HEARING

03/29/12 9:30 AM CALENDAR CALL

04/16/12 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 08, 2011

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

December 08, 2011 2:00 PM Evidentiary Hearing

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Lorna Shell
 Monique Alberto

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Testimony and exhibits presented (see worksheets.) Arguments by counsel regarding Deft's motion in limine to preclude inadmissible 51.385 evidence. COURT stated her findings and ORDERED, statements made to the mother shall be admissible, the statement made to Detective Demas will not be admitted unless other evidentiary issues arise; issues regarding the victim testifying at time of trial shall be reserved. Mr. Merback to prepare the findings and decision and run it past Mr. Cox for review. Argument by Mr. Merback regarding Deft. sending letters to Ms. Lamug and prohibiting the State to prosecute the Deft. Mr. Merback further requested Deft's privileges to communicate with the outside be taken away. Mr. Cox opposed the States request and requested any letters sent to Ms. Lamug in the future be given directly to Mr. Merback. COURT ORDERED, motion DENIED without prejudice; Mr. Cox directed to inform his client to not send any letters to Ms. Lamug.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 29, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

March 29, 2012 9:30 AM Calendar Call

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena
 Kathy Sweatt
 Dulce Romea
 Sharon Coffman

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Merback advised the State is ready to proceed; however, he has a trial next week and it could last until the week of 4-16-12. Following side bar, COURT ORDERED, trial date RESET so as not to conflict with Mr. Merback's other trial, and the subpoenas that have been issued will be in effect for an additional week.

CUSTODY

4-19-12 9:30 AM CALENDAR CALL

4-23-12 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 19, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

April 19, 2012 9:30 AM Calendar Call

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena
 Kathy Sweatt
 Dulce Romea
 Sharon Coffman

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Cox advised his expert is not available for the 4-23-12 trial date as he will be out of town; new proposed date with expert's consent is 7-16-12. Parties advised it will not take more than a week to try case. Colloquy regarding trial date. Mr. Cox advised he only has 1 witness expert. State advised they are ready to proceed with trial but not opposed to the request for continuance. COURT ORDERED, request GRANTED; trial date VACATED and RESET.

CUSTODY

7-12-12 9:30 AM CALENDAR CALL

7-16-12 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 12, 2012

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

July 12, 2012 9:30 AM Calendar Call

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Merback advised both parties agree to more than 5 trial days, this is not overflow eligible and both sides are ready to go. Court noted its not possible to go because her stack is the Civil stack. Mr. Merback asked to trail.

MATTER RECALLED: Side bar. Court advised next Wednesday she has a calendar call for the Civil stack that starts 7/23rd and counsel is asking for her to put this case on the calendar call for 7/26th at 9:30 a.m. and jury trial for 7/30th at 10:30 a.m. with the understanding that if one of her Civil cases needs to go to trial that week this one will get bumped, if available that week and no Civil case is going then she will try this one even though it will be in the Civil stack.

CUSTODY

7/26/12 9:30 AM CALENDAR CALL

PRINT DATE: 09/07/2016

Page 21 of 48

Minutes Date: November 01, 2010

7/30/12 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 26, 2012

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

July 26, 2012 9:00 AM All Pending Motions

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL....MOTION IN LIMINE TO PRECLUDE IMPROPER TESTIMONY FROM DEFT'S EXPERT WITNESS AT TRIAL

Matter trailed to locate Mr. Speed.

MATTER RECALLED: Ms. Letizia present for Mr. Speed. Mr. Merback advised he talked with Mr. Cox on the phone and he thought someone from the team was being sent; however, he indicated will be ready to go forward on Monday and the motion can be handled Monday morning. Court advised she had an informal discussion with Ms. Fleck and Mr. Cox about the calendar being available to try the case and it would take longer than a week; however, she advised the of having a Civil Bench trial the following week and the Civil case has priority so she did not want to start on Tuesday but would rather start Monday for trial. COURT ORDERED, Motion in limine CONTINUED to 7/30th at 10:00 a.m. and Trial to begin 7/30th at 10:30 a.m.; each side will get 9 preempts and JEA to order a pool of 60 jurors. Mr. Merback indicate would like 2 alternates.

CUSTODY

7/30/12 10:00 AM MOTION IN LIMINE TO PRECLUDE IMPROPER TESTIMONY FROM DEFT'S
EXPERT WITNESS AT TRIAL

7/30/12 10:30 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 30, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

July 30, 2012 10:00 AM Motion in Limine

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Cox advised they are not going to have Chambers talk about Deft's personal frailty or personal weaknesses. Mr. Merback advised Chambers will not speak of specifics about the Deft. COURT ORDERED, motion in limine to preclude improper testimony from Deft's expert witness at trial MOOT. Mr. Merback advised he would like any case study/articles that Chambers will use so they can talk to their expert.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 30, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

July 30, 2012

10:30 AM

Jury Trial

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:

Cox, Bryan A	Attorney
Fleck, Michelle	Attorney
Jefferson, Brandon	Defendant
Merback, William J.	Attorney
Public Defender	Attorney
Speed, Kevin C.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- POTENTIAL JURY PANEL PRESENT: Roll called, Voir dire oath given. Voir dire by the Court. Admonishment by the Court. Recess for lunch until 1:30 p.m.

POTENTIAL JURY PANEL PRESENT: Voir dire continues by the Court. Voir dire by Ms. Fleck. COURT ORDERED, matter CONTINUED tomorrow at 1:00 p.m. and jury admonished.

CUSTODY

7/31/12 1:00 PM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

July 31, 2012 1:00 PM Jury Trial

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- POTENTIAL JURY PANEL PRESENT: Court noted she received a note by the Marshall from a juror. Side bar. Court and counsel reviewed a letter from a juror and asked to mark as Court's exhibit #1. (See worksheet.) Debbie Winn, Recorder present. Voir dire continues. COURT ORDERED, matter CONTINUED tomorrow at 10:30 a.m. and jury admonished.

OUTSIDE THE PRESENCE OF THE JURY PANEL: Court advised she will be receiving 20 more potential jurors shortly.

SECOND JURY PANEL PRESENT: Court noted 20 new jurors present. Comments by the Court. Roll called. Voir dire oath given. Voir dire by the Court. COURT ORDERED, matter CONTINUED tomorrow at 10:30 a.m. and jury admonished.

C-10-268351-1

CUSTODY

8/01/12 10:30 AM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 01, 2012

C-10-268351-1	State of Nevada
	vs
	Brandon Jefferson

August 01, 2012 10:30 AM Jury Trial

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- At 11:21 AM POTENTIAL JURY PANEL PRESENT: Court noted due to the traffic accident this morning trial was starting late. Side bar. Court noted she received a note from Victor Ramirez and ORDERED, Note marked as Court's exhibit #2 and juror excused. Voir dire continues with Ms. Fleck. Voir dire by Mr. Cox. Side bar. Mr. Cox explained there was only one person on the charging document.

OUTSIDE THE PRESENCE OF THE JURY: Juror Williams #203 was fanning herself and started gagging; therefore, she went to the hallway. Marshall Serrano advised he checked her and she has no medical issues. Discussion regarding jurors challenged for cause. Court advised State is bound not to call Dr. Pault as a witness.

POTENTIAL JURY PANEL PRESENT: Voir dire continues with Ms. Fleck. Voir dire by Mr. Cox.

Panel admonished and exited out to the hallway.

OUTSIDE THE PRESENCE OF THE JURY: Juror Castrillo #1287 remains alone in the courtroom and recalls her family experience. Matter submitted by counsel. COURT ORDERED, Juror excused.

POTENTIAL JURY PANEL PRESENT: Court advised she excused jurors #1287, Castrillo and trial will be in courtroom 12D on August 3rd at 9:00 a.m. Preemptory Challenge Sheet distributed to counsel. COURT ORDERED, Challenge Sheet marked as Court's exhibit #3. Jury and two alternates sworn and testified. Second Amended Information read to the jury. Comments by the Court. Opening statement by Mr. Merback. Opening statements by Mr. Speed. COURT ORDERED, matter CONTINUED tomorrow at 1:00 p.m. and jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: Discussion on scheduling of witnesses.

CUSTODY

8/02/12 1:00 PM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 02, 2012**

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

August 02, 2012 1:00 PM Jury Trial

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: Testimony presented. (See worksheets.) Side bar. Testimony continues. COURT ORDERED, Trial CONTINUED tomorrow in Dept 12D at 9:00 a.m. then will return back to Dept 2B in the afternoon; jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Speed objected based on the summit motion to determine what was Caitlin's source of knowledge of sex and he wanted the opportunity out side the presence to question Caitlin because he believed she made up the allegation; therefore, he asked for a short hearing but the Court denied their motion and allowed Caitlin to be the first witness. Opposition by Mr. Merback, he stated nothing has been shown why they need a hearing. Mr. Speed believed the source of sex comes from the mother. Court found no notice to the State and Deft is not entitled to conduct a hearing in the middle of trial. COURT ORDERED, Deft's motion for hearing DENIED as unwarranted. Argument by Mr. Speed concerning minor son stated Deft beat his mother

but he never said anything before about the beating and asked for a motion in limine, he is now asking to stay away from questions about any beatings or Domestic Violence with Cindy or any other family members and allegations of molesting his daughter. Mr. Merback advised he instructed Cindy not to mention about physical abuse. Court asked Mr. Merback to have another conversation with her that nothing further should come in the trial. Mr. Speed asked for an instruction for the jury not to consider that evidence about the beatings or there is a potential for a mistrial. Court finds the jury doesn't need to take into account the abuse because Deft is not charged with that crime and counsel can prepare a jury instruction and any curative instructions. Mr. Speed asked the Court to give an oral instruction to the jury. Ms. Fleck advised she will not bring it up and had no intention of bring it up; however, she wanted to make a basis for knowledge argument as to submit motion on closing argument. Court advised it doesn't change the fact of the case so Ms. Fleck can do so in closing. Play back on child junior regarding the beating statement section. Court found minor child junior didn't say he heard but it happened at night. Mr. Speed asked for a jury instruction right now for the jury. Ms. Fleck advised she didn't object to a curative instruction. Court stated she will instruct the jury that any allegation of domestic abuse between the Deft and Cindy on Pinto Lane is not to be considered by you in any way and will instruct the jury in the morning.

CUSTODY

8/03/12 9:00 AM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 03, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

August 03, 2012 9:00 AM Jury Trial

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Court advised we do not have a projector and elmo, therefore, we will have to do it the old fashion way, hand out the exhibits. Mr. Merback withdrew exhibit #43 because it had faded pages and substituted exhibit #51. COURT SO ORDERED.

JURY PRESENT: Court admonished the jury not to consider any allegations about domestic abuse. Testimony and exhibits presented. (See worksheets.) Side bar. Testimony continues and exhibits presented. (See worksheets.) Exhibit #40 and #41, CDs played for the jury. Side bar. Court advised testimony of this morning was not as lengthy as anticipated, therefore, will recess for the weekend. COURT ORDERED, Matter CONTINUED and Jury to return Monday at 1:00 p.m. in 16B and counsel can return at 10:30 a.m. for jury instructions; jury admonished.

CUSTODY

8/06/12 1:00 PM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 06, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

August 06, 2012 10:00 AM Jury Trial

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Jury instructions discussed in open court. Deft's motion in limine for an order preventing the State from introducing unlawfully recorded oral communications FILED IN OPEN COURT. Argument by Mr. Speed that any playing would describe he's in custody. Opposition by Ms. Fleck. Mr. Merback stated the calls they intend to use. Response by Mr. Speed to exclude the recordings and if played they should be redacted. Court stated her findings, and ORDERED, motion in limine DENIED.

JURY PRESENT: Testimony and exhibits presented. (See worksheets.) Side bar. Exhibit #42 CD played in open court. Side bar.

OUTSIDE THE PRESENCE OF THE JURY: Court noted Mr. Speed had reiterated his argument in the motion in limine regarding redaction and the State had redacted three of the CDs. Mr. Speed

stated he is not sure what the State has redacted and objected to the last recording being played. Argument by Mr. Cox on redaction of recording. Mr. Merback stated he provided a disc to Mr. Cox but he was not able to play the CD. Objection by Mr. Speed to allowing the State play certain parts of the CDs. Court advised the State has the burden of proof. Mr. Merback made a clarification regarding the CD existing a week from this Sunday. Court takes judicial notice of those dates. Mr. Cox stated he was not able to open the jail calls and didn't know Mr. Merback was going to admit them. Mr. Merback advised Deft is calling Cindy and intended to admit the jail calls. Argument by Ms. Fleck regarding the admission in the tape. Mr. Cox advised jail calls are vague. Court stated her findings, and ORDERED, motion to Redact the CDs DENIED.

JURY PRESENT: Testimony continues with witness Demas and exhibits presented. (See worksheets.) CD Exhibits #53 through #56 played in open court. Side bar. Court noted jury noted received. Side bar. Court instructed the jury to ask questions when counsel are done; therefore, the question is premature. Testimony continues. Ms. Fleck advised State rest in their case in chief. Court admonished the jury and ORDERED, matter CONTINUED tomorrow at 1:00 p.m. and counsel shall remain.

OUTSIDE THE PRESENCE OF JURY: Court noted exhibit #43 was withdrawn because there was some faint pages and were going to substitute a new one but the Clerk left #43 marked and marked the new exhibit as #51 for clarification. Colloquy.

CUSTODY

8/07/12 1:00 PM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 07, 2012**

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

August 07, 2012 1:00 PM Jury Trial

HEARD BY: Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: Court noted the State rested yesterday. Testimony presented. (See worksheet.) Side bar. Testimony continues. Court noted she received a juror note. Side bar. Court asked the witness the question by the juror and it was answered. Questions by Ms. Fleck and Mr. Cox. Court noted another question from the jury. Side bar. Court asked the witness the question and answered. Questions by Ms. Fleck. COURT ORDERED, Jury notes marked as Court's exhibits and matter CONTINUED tomorrow at 10:30 a.m. and jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, Deft to return tomorrow at 10:00 a.m. with counsel. Court advised Deft of his right to testify. Deft advised he will remain silent. Mr. Merback moved to dismiss Count 11 and have an amended information filed. Mr. Cox moved to dismiss Count 11. COURT ORDERED, COUNT 11 DISMISSED and GRANTED as unopposed. Mr. Merback advised he will have a new Verdict form with Counts 1 through 10.

CUSTODY

8/08/12 10:30 AM JURY TRIAL CONTINUES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 08, 2012**

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

August 08, 2012 10:30 AM Jury Trial

HEARD BY: Vega, Valorie J.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Nora Pena**RECORDER:** Lisa Lizotte**REPORTER:****PARTIES**

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	Speed, Kevin C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Jury instructions redacted and finalized; therefore, settled in open court. Objection by Mr. Merback that it's inconsistent testimony for Deft's to present their next witness. Opposition by Ms. Fleck due to no notice. Argument by Mr. Cox that they have notice and this is their rebuttal witness and the State provided the report. Mr. Merback stated it's not impeachment because it has to do with Cindy and she was never asked on the stand. Response by Mr. Cox and Mr. Speed that it's relevant. Ms. Fleck stated it does not follow the NRS rule. Mr. Cox stated it's no surprise. COURT ORDERED, State's objection OVERRULED.

JURY PRESENT: Testimony and exhibits presented. (See worksheet.) Mr. Cox advised the Defense REST. Mr. Merback advised he will not be calling a rebuttal witness. Court read the instructions to the jury. Closing argument by Ms. Fleck. Closing argument by Mr. Cox. Rebuttal by Mr. Merback. Court noted whoever was seated in chair #13 and #14 would be alternates; therefore, Mamo and

Anderson seated as alternates in the event there is an vacancy but they will receive a phone call to return or advising them that they are relieved of service and admonished.

At 3:27 p.m. JURY RETIRED to deliberate.

OUTSIDE THE PRESENCE OF THE JURY: Court noted Mr. Merback indicated the jury can use the lap top and it can be retained until the jury request it. LATER: Parties present and Defendant. Court noted she had a conference call with counsel concerning a note from the jury then she received two other notes concerning a playback. COURT ORDERED, Jury notes marked as Court's exhibits. (See worksheet.)

JURY PRESENT: Jury present to hear playback on Caitlin. Side bar. Court gave a written answer and sent them back to the jury room to review the instructions then they can return for a playback.

OUTSIDE THE PRESENCE OF THE JURY: Court advised she received a note back from the jury indicating they no longer need to hear the playback and are ready to give the verdict. COURT ORDERED, Jury note marked as Court's exhibit. (See worksheet.)

JURY PRESENT: At 5:54 p.m. Jury returned with a Verdict as follows:

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

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

COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE - NOT GUILTY

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

COUNT 5 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE - NOT GUILTY

COUNT 6 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 - NOT GUILTY

COUNT 7 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE - NOT GUILTY

COUNT 8 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 - NOT GUILTY

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

At request of Defense jury polled. Court thanked and excused the jury.

OUTSIDE THE PRESENCE OF THE JURY: Ms. Fleck asked to hold Deft without bail. Mr. Speed stated Deft is entitled to reasonable bail. Mr. Merback asked to set no bail. Mr. Speed indicated Deft never had bail. COURT ORDERED, NO BAIL SET ON COUNTS 1, 4, 9 AND 10; Deft O.R. on remaining Counts. COURT ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing on Counts 1, 4, 9, and 10 and matter set for status check dismissal on Count 2.

CUSTODY

10/4/12 9:00 AM SENTENCING - COUNTS 1, 4, 9, & 10/STATUS CHECK: DISMISSAL COUNT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 04, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

October 04, 2012 9:00 AM Sentencing

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Jefferson, Brandon	Defendant
	Merback, William J.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Cox stated for some reason they didn't get a copy of the PSI report and Mr. Merback didn't either; therefore, he requested two weeks. Mr. Merback stated he didn't get it either. COURT ORDERED, matter CONTINUED.

CUSTODY

10/23/12 9:00 AM SENTENCING COUNTS 1, 4, 9 & 10/ STATUS CHECK: DISMISSAL COUNT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 23, 2012

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

October 23, 2012 9:00 AM Sentencing

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena
 Sharon Coffman

Sharon Coffman
Katrina Hernandez
Sylvia Perez
Andrea Natali

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Cox, Bryan A	Attorney
	Fleck, Michelle	Attorney
	Jefferson, Brandon	Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT JEFFERSON PURSUANT TO A JURY VERDICT ADJUDGED GUILTY of COUNT 1, COUNT 9 and COUNT 10 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (F), and COUNT 4 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F). Argument by Ms. Fleck for restitution and noted 769 days credit. Argument by Mr. Cox to run concurrent time. Comments by the Court. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Restitution \$7,427.20 (\$4,480 to Victims of Crime, \$1,000 to DA Victim Witness, and \$1,947.20 to Clark County Social

Services) as to Count 1 and \$150.00 DNA Analysis fee including testing to determine genetic markers,

Deft. SENTENCED to COUNT 1 - a term of LIFE with the possibility of parole after a minimum of THIRTY-FIVE (35) YEARS has been served;

COUNT 4 - a term of LIFE with the possibility of parole after a minimum of TEN (10) YEARS has been served to run CONCURRENT with Count 1;

COUNT 9 - a term of LIFE with the possibility of parole after a minimum of THIRTY-FIVE (35) YEARS has been served to run CONSECUTIVE to Counts 1 and 4;

COUNT 10 - a term of LIFE with the possibility of parole after a minimum of THIRTY-FIVE (35) YEARS has been served to run CONCURRENT with Counts 1, 4, and 9;

with 769 DAYS credit for time served; at request of Ms. Fleck, COURT ORDERED, COUNT 2 is DISMISSED as unopposed per EDCR 3.20 pursuant to adjudication of Count 1.

FURTHER ORDERED, A special sentence of Lifetime Supervision to commence upon release from any term of probation, parole, or imprisonment and per NRS 179D.460 Deft shall register as a sex offender within 48 hours of sentencing or release from custody and a Psychosexual evaluation will be conducted prior to the defendant's release from prison. Deft remanded.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 28, 2014

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

**October 28, 2014 9:00 AM Motion for Appointment of
Attorney**

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT:	Bateman, Caroline	Attorney
	Cox, Bryan A	Attorney
	Nguyen, Rochelle T.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Rochelle Nguyen present for Mr. Matt Lay. Court advised she believed the Public Defender would be in conflict for the motion. Mr. Cox moved to withdraw as counsel. No opposition by Ms. Bateman. COURT ORDERED, Public Defender's oral motion to Withdraw GRANTED as unopposed pursuant to EDCR 3.20 and State's motion to Appoint counsel GRANTED as unopposed pursuant to EDCR 3.20. Court advised Matt Lay was referred by Drew Christensen's office. Ms. Bateman advised the State will provide an order. Mr. Cox stated he will provide discovery. Ms. Nguyen advised Mr. Lay would like to file a supplemental brief in six months and the State wanted 60 days. COURT ORDERED, Date set for the Petition for the Writ on 12/9th is VACATED and Petition CONTINUED and matter set for a status check on the briefing schedule in the beginning of May.

NDC

5/05/15 9:00 AM STATUS CHECK: BRIEFING SCHEDULE /// PETITION FOR WRIT OF

PRINT DATE: 09/07/2016

Page 45 of 48

Minutes Date: November 01, 2010

HABEAS CORPUS

CLERK'S NOTE: Copy of minute order mailed to Deft Brandon Montane Jefferson #1094051, ELY STATE PRISON, P.O.BOX 1989, ELY, NV 89301./np

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 05, 2015

C-10-268351-1 State of Nevada
 vs
 Brandon Jefferson

May 05, 2015 9:00 AM All Pending Motions

HEARD BY: Earley, Kerry **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER: Loree Murray

PARTIES

PRESENT: Nguyen, Rochelle T. Attorney
 State of Nevada Plaintiff
 Turner, Robert B. Attorney

JOURNAL ENTRIES

- STATUS CHECK: BRIEFING SCHEDULE...DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

Counsel indicated she received the Discovery file from the Public Defender's Office, and requested six months be allowed for the filing of supplemental briefing. Counsel noted for the record that the Defendant was incarcerated in Ely, causing communication to take longer than usual. COURT ORDERED, Petition CONTINUED and Briefing Schedule SET; Supplemental Briefing DUE BY November 3, 2015; Opposition DUE BY March 3, 2016; Reply DUE BY May 3, 2016.

NDC

5/17/16 9:00 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: Minute order corrected to reflect correct dates for briefing schedule. aw 12/23/15

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 19, 2016

C-10-268351-1 State of Nevada
vs
Brandon Jefferson

**May 19, 2016 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Earley, Kerry

COURTROOM: RJC Courtroom 16B

COURT CLERK: Skye Endresen

RECORDER:

REPORTER: Dana J. Tavaglione

PARTIES

PRESENT: Lay, D. Matthew Attorney
State of Nevada Plaintiff
Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Deft. not present, in Nevada Department of Corrections (NDC). Mr. Lay advised he filed a supplement and requested an evidentiary hearing be set. Counsel submitted. Mr. Zadrowski noted Court will rule with no oral arguments by either counsel. COURT STATED FINDINGS and ORDERED, Petition and Supplement DENIED.

NDC

CLERK'S NOTE: A copy of this Minute Order was distributed to:
Brandon Jefferson #1094051
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301 -se5/19/16

VAULT EXHIBIT FORM

HEARING DATE: 5/19/2011
JUDGE: VALORIE J. VEGA
CLERK: Nora Pena
REPORTER: Lisa Lizotte
JURY FEES: \$

PLAINTIFF
STATE OF NEVADA
DEFENDANT
BRANDON JEFFERSON

COUNSEL FOR PLAINTIFF
 Jake Merback
COUNSEL FOR DEFENDANT
 Bryan Cox

[illegible]

VAULT EXHIBIT FORM

DEPARTMENT 2

HEARING DATE: 6/2/11
JUDGE: VALORIE J. VEGA
CLERK: Nora Pena
REPORTER: Lisa Lizotte
JURY FEES: \$

PLAINTIFF
STATE OF NEVADA
DEFENDANT
BRANDON JEFFERSON

COUNSEL FOR PLAINTIFF
William Merback
COUNSEL FOR DEFENDANT
Bryan Cox

[illegible]

VAULT EXHIBIT FORM

HEARING DATE: 11/1/2011
JUDGE: **VALORIE J. VEGA**
CLERK: Nora Pena
REPORTER: Lisa Lizotte
JURY FEES: \$

COUNSEL FOR PLAINTIFF
William J. Merback
COUNSEL FOR DEFENDANT
Bryan A. Cox, P.D.

[illegible]

STATE'S EXHIBITS

CASE NO. C 268351 JEFFERSON

[illegible]

STATE'S EXHIBITS

CASE NO. C 268351

	Date Offered	Objection	Date Admitted
1. Photo	8-3-12	no obj	8-3-12
2.			
3.			
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22.			
23. ✓	✓	✓	✓

STATE'S EXHIBITS

CASE NO. C 268351

	Date Offered	Objection	Date Admitted
24. Photo	8-3-12	no obj	8-3-12
25.			
26.			
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31.			
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33.			
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35.			
36.			
37.			
38. ↓			
39. Photo	↓	↓	↓
40. 1 st 911 Call	8-3-12	no obj	8-3-12
40A. Declaration	8-3-12	↓	8-3-12
41. 2 nd 911 Call	↓	↓	↓
41A. Declaration	↓	↓	↓
42. CD Deft's statement	8-6-12	no obj	8-6-12
43. Transcript of Deft's statement			withdrawn
44. Deft Buccal Swab Kit	8-3-12	no obj	8-3-12

STATE'S EXHIBITS

CASE NO. C 268351

[illegible]

DEFENDANT'S EXHIBITS

CASE NO. C 268351

[illegible]

COURT'S EXHIBITS

CASE NO. C268351

	Date Offered	Objection	Date Admitted
1. Juror note	7-31-12	no	7-31-12
2. Juror note	8-1-12	no	8-1-12
3. Peremptory Challenges	8-1-12	no	8-1-12
4. States power point for opening	8-3-12	no	8-3-12
5. Defense power point for opening	8-3-12	no	8-3-12
6. Juror note	8-6-12	no	8-6-12
7. Juror note	8-7-12	no	8-7-12
8. Juror note	8-7-12	no	8-7-12
9. Jury instruction not given	8-8-12	no	8-8-12
10. Jury instruction not given	8-8-12	no	8-8-12
11. Jury note	8-8-12	no	8-8-12
12. Jury note	8-8-12	no	8-8-12
13. Jury note	8-8-12	no	8-8-12
14. Jury note	8-8-12	no	8-8-12
15. Jury note	8-8-12	no	8-8-12



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MATTHEW LAY, ESQ.
732 S. SIXTH STREET, SUITE 102
LAS VEGAS, NV 89101

DATE: September 7, 2016
CASE: C-10-268351-1

RE CASE: STATE OF NEVADA vs. BRANDON JEFFERSON aka BRANDON MONTANE
JEFFERSON

NOTICE OF APPEAL FILED: September 2, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:



Case Appeal Statement

- NRAP 3 (a)(1), Form 2



Order



Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

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; REQUEST FOR TRANSCRIPT OF PROCEEDINGS;
DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;
DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

BRANDON JEFFERSON
AKA BRANDON MONTANE JEFFERSON,

Defendant(s).

Case No: C-10-268351-1

Dept No: IV

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 7 day of September 2016.

Steven D. Grierson, Clerk of the Court

Chaunte Pleasant

Chaunte Pleasant, Deputy Clerk