

Electronically Filed  
Nov 16 2018 09:39 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NOAS**

RESCH LAW, PLLC d/b/a Conviction Solutions

By: Jamie J. Resch

Nevada Bar Number 7154

2620 Regatta Dr., Suite 102

Las Vegas, Nevada, 89128

Telephone (702) 483-7360

Facsimile (800) 481-7113

Jresch@convictionsolutions.com

Attorney for Petitioner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID BURNS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C267882-2

Dept. No: XII

**NOTICE OF APPEAL**

Date of Hearing: N/A

Time of Hearing: N/A

Defendant/Petitioner David Burns hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Order Denying Petition for Writ of Habeas Corpus (Post-Conviction) filed on October 25, 2018.

DATED this 8th day of November, 2018.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: 

JAMIE J. RESCH

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Resch Law, PLLC d/b/a Conviction Solutions and that, pursuant to N.R.C.P. 5(b), on November 8, 2018, I served a true and correct copy of the foregoing Notice of Appeal via first class mail in envelopes addressed to:

Mr. David Burns #1139521  
High Desert State Prison  
PO BOX 650  
Indian Springs, NV 89070

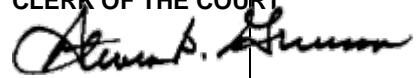
Clark County District Attorney  
200 Lewis Ave.  
Las Vegas, NV 89155

And electronic service was made this 8th day of November, 2018, by Electronic Filing  
Service to:

Clark County District Attorney's Office  
[Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)  
[PDmotions@clarkcountyda.com](mailto:PDmotions@clarkcountyda.com)



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An Employee of Conviction Solutions



**ASTA**

RESCH LAW, PLLC d/b/a Conviction Solutions

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Nevada Bar Number 7154

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Las Vegas, Nevada, 89128

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Attorney for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID BURNS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C267882-2

Dept. No: XII

**CASE APPEAL STATEMENT**

Date of Hearing: N/A

Time of Hearing: N/A

1. Name of appellant filing this case appeal statement: **David Burns.**
2. Identify the judge issuing the decision, judgment, or order appealed from:  
  
**Honorable Michelle Leavitt  
Department XII  
Eighth Judicial District Court  
200 Lewis Ave.  
Las Vegas, NV 89155**
3. Identify each appellant and the name and address of counsel for each appellant:

**David Burns, Appellant, represented by:**

**Jamie J. Resch, Esq.  
Nevada Bar No. 7154  
Resch Law, PLLC d/b/a Conviction Solutions  
2620 Regatta Dr., Suite 102  
Las Vegas, NV 89128**

- 1 4. Identify each respondent and the name and address of appellate counsel:
- 2 **The State of Nevada, Respondent, represented by:**
- 3 **Steven Wolfson, Esq.**
- 4 **Clark County District Attorney**
- 5 **200 Lewis Ave.**
- 6 **Las Vegas, NV 89155**
- 7 5. Indicate whether any attorney identified in response to question 3 or 4 is not licensed
- 8 to practice law in Nevada. **All counsel stated above are licensed in Nevada.**
- 9 6. Indicate whether appellant was represented by appointed or retained counsel in
- 10 district court: **Appointed.**
- 11
- 12 7. Indicate whether appellant is represented by appointed or retained counsel on
- 13 appeal: **Appointed.**
- 14
- 15 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
- 16 date of entry of the district court order granting such leave: **N/A.**
- 17
- 18 9. Indicate the date proceedings commenced in the district court: **Indictment filed**
- 19 **October 13, 2010.**
- 20 10. Provide a brief description of the nature of the action and the result in the district
- 21 court, including the type of judgment or order being appealed and the relief granted
- 22 by the district court: **On November 27, 2017, Burns filed a counseled**
- 23 **Supplemental Petition for Writ of Habeas Corpus (Post-Conviction). On**
- 24 **October 25, 2018, the District Court filed an order denying relief on all claims in**
- 25 **the petition. Petitioner now appeals the district court's decision to the Nevada**
- 26 **Supreme Court.**
- 27
- 28

1 11. Indicate whether the case has previously been the subject of an appeal to or original  
2 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court  
3 docket number of the prior proceeding: **69959, 68497, 64809.**  
4

5 12. Indicate whether this appeal involves child custody or visitation: **N/A.**

6 13. If this is a civil case, indicate whether this appeal involves the possibility of  
7 settlement: **N/A.**  
8

9  
10  
11 DATED this 8th day of November, 2018.  
12

13 Submitted By:

14 RESCH LAW, PLLC d/b/a Conviction Solutions

15  
16 By: 

17 JAMIE J. RESCH

18 Attorney for Petitioner  
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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the foregoing Case Appeal Statement was made this 8th day of November, 2018, by Electronic Filing Service to:

Clark County District Attorney's Office

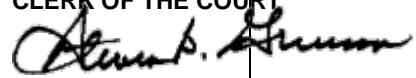
[Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)

[PDmotions@clarkcountyda.com](mailto:PDmotions@clarkcountyda.com)



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An Employee of Conviction Solutions



**REQT**

RESCH LAW, PLLC d/b/a Conviction Solutions

By: Jamie J. Resch

Nevada Bar Number 7154

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Las Vegas, Nevada, 89128

Telephone (702) 483-7360

Facsimile (800) 481-7113

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Attorney for Petitioner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID BURNS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C267882-2

Dept. No: XII

**REQUEST FOR TRANSCRIPTS PURSUANT TO  
NRAP 9(a)(3)**

Date of Hearing: N/A

Time of Hearing: N/A

TO: Angie Calvillo, Court Recorder, Department 20

Trisha Garcia, Court Recorder, Department 12

Defendant/Petitioner David Burns requests preparation of a transcript of the proceedings before the district court, at State's expense, as follows:

Judge or officer hearing the proceeding: Judge Eric Johnson, Judge Michelle Leavitt

Date or dates of the proceeding: April 17, 2018; September 20, 2018.

Portions of transcript requested: All (complete transcripts of all arguments of counsel and testimony).

Number of copies required: One plus electronic.

///

1 I hereby certify that on the 8th day of November, 2018, I ordered the transcripts listed  
2 above from the court recorder named above. No deposit was paid as this is an indigent  
3 defendant appeal and transcripts are to be prepared at State's expense. See NRAP 24(a)(2), NRS  
4 3.370.  
5

6  
7 DATED this 8th day of November, 2018.  
8

9 Submitted By:

10 RESCH LAW, PLLC d/b/a Conviction Solutions

11  
12  
13 By:   
14 JAMIE J. RESCH  
15 Attorney for Petitioner  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Resch Law, PLLC d/b/a Conviction Solutions and that, pursuant to N.R.C.P. 5(b), on November 8, 2018, I served a true and correct copy of the foregoing Request for Transcript via first class mail in envelopes addressed to:

Angie Calvillo, Court Recorder  
District Court Dept. 20  
200 Lewis Ave.  
Las Vegas, NV 89155

Trisha Garcia  
District Court Dept. 12  
200 Lewis Ave.  
Las Vegas, NV 89155

And electronic service was made this 8th day of November, 2018, by Electronic Filing  
Service to:

Clark County District Attorney's Office  
[Motions@clarkcountyda.com](mailto:Motions@clarkcountyda.com)  
[PDmotions@clarkcountyda.com](mailto:PDmotions@clarkcountyda.com)



\_\_\_\_\_  
An Employee of Conviction Solutions

## EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY****CASE NO. C-10-267882-2**

State of Nevada  
vs  
David Burns

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§

Location: **Department 12**  
Judicial Officer: **Leavitt, Michelle**  
Filed on: **10/13/2010**  
Case Number History:  
Cross-Reference Case Number: **C267882**  
Defendant's Scope ID #: **2757610**  
Grand Jury Case Number: **10GJ054**  
Supreme Court No.: **69959**

**CASE INFORMATION**

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRACY TO COMMIT ROBBERY	F	08/07/2010	Case Status: <b>07/09/2015 Closed</b>	
2. CONSPIRACY TO COMMIT MURDER	F	08/07/2010		
3. BURGLARY WHILE IN POSSESSION OF FIREARM	F	08/07/2010		
4. ROBBERY WITH USE OF A DEADLY WEAPON	F	08/07/2010		
5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON	F	08/07/2010		
6. ROBBERY WITH USE OF A DEADLY WEAPON	F	08/07/2010		
7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON	F	08/07/2010		
8. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	F	08/07/2010		

**Related Cases**

C-10-267882-1 (Multi-Defendant Case)

C-10-267882-3 (Multi-Defendant Case)

**Statistical Closures**

07/09/2015 Jury Trial - Conviction - Criminal

**Warrants**

Indictment Warrant - Burns, David (Judicial Officer: Bell, Linda Marie )  
10/13/2010 11:45 AM Returned - Served  
Hold Without Bond

**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	C-10-267882-2
Court	Department 12
Date Assigned	07/02/2018
Judicial Officer	Leavitt, Michelle



















**PARTY INFORMATION**

		Lead Attorneys
<b>Defendant</b>	<b>Burns, David James</b>	<b>Resch, Jamie J.</b> Retained 7028809750(W)
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Wolfson, Steven B</b> 702-671-2700(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

10/13/2010

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

	 Superseding Indictment <i>Superceding Indictment</i>
10/13/2010	 Warrant <i>Indictment Warrant</i>
10/25/2010	 Indictment Warrant Return
10/26/2010	 Transcript of Proceedings <i>Transcript of Hearing Held on October 12, 2010</i>
10/28/2010	 Notice of Intent to Seek Death Penalty
11/04/2010	 Joinder To Motion <i>Defendant David Burns Joinder to Co-Defendant Willie Mason's Motion to Preserve and Produce Evidence, Including Potentially Exculpatory Evidence</i>
11/04/2010	 Motion <i>Motion for Extension of Time to File Petition for Writ of Habeas Corpus</i>
11/10/2010	 Amended <i>Amended Motion for Extension of Time to File Petition for Writ of Habeas Corpus</i>
11/15/2010	 Receipt of Copy
12/03/2010	 Transcript of Proceedings Party: Defendant Burns, David James <i>Transcript of Hearing Held on December 2, 2010</i>
12/14/2010	 Petition for Writ of Habeas Corpus
12/16/2010	 Receipt of Copy
12/22/2010	 Return to Writ of Habeas Corpus
12/23/2010	 Motion to Continue <i>Unopposed Motion to Continue Hearing on Petition for Writ of Habeas Corpus</i>
01/07/2011	 Motion <i>Motion to File Reply Memorandum to State's Return to Writ of Habeas Corpus</i>
02/15/2011	 Order Denying Filed By: Defendant Burns, David James <i>Order Denying Defendant's Pretrial Petition for Writ of Habeas Corpus</i>
03/28/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Hearing Held on January 18, 2011</i>
09/21/2011	 Motion to Continue Trial <i>Motion to Continue Trial Setting</i>

**CASE SUMMARY**

**CASE NO. C-10-267882-2**

07/18/2012	 Motion for Discovery <i>Motion for Discovery of Institutional Records and Files Necessary to a Fair Trial</i>
07/18/2012	 Motion <i>Motion to Invoke Heightened Standard of Review Due to the State Seeking Death Penalty</i>
07/18/2012	 Motion <i>Motion to Invoke Heightened Standard of Review Due to the State Seeking Death Penalty</i>
07/18/2012	 Motion <i>Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors who Express Concerns about Capital Punishment</i>
07/18/2012	 Motion to Bifurcate <i>Motion to Bifurcate Penalty Phase</i>
07/18/2012	 Motion to Compel <i>Motion to Compel Production of the Defendant's Direct and Vicarious Statements</i>
07/18/2012	 Motion <i>Motion to Prohibit the State from Arguing Statutory Mitigating Factors Not Raised by the Defense</i>
07/18/2012	 Motion <i>Motion for Disclosure of the State's Witnesses' Juvenile Records</i>
07/18/2012	 Motion <i>Motion for Henthorn Material</i>
07/18/2012	 Motion <i>Motion to Preclude Victims' Family Members' Statements Regarding the Defendant, the Crime, and the Sentence</i>
07/18/2012	 Motion <i>Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
07/18/2012	 Motion to Dismiss <i>Motion to Dismiss Rule 250 Notice of Intent Due to Federal Due Process Violations</i>
07/18/2012	 Motion <i>Motion to Federalize All Motions, Objections, Requests, and Other Applications for Proceedings</i>
07/18/2012	 Motion <i>Motion to Allow the Defense to Argue Last in Penalty Phase</i>
07/18/2012	 Motion <i>Motion to Disqualify Potential Jurors who would Impose the Death Penalty in all Convictions for First Degree Murder</i>
07/18/2012	 Motion to Compel <i>Motion to Compel Timely Disclosure of Information Relating to Aggravating and Mitigating Factors</i>
07/20/2012	 Affidavit of Service

**CASE SUMMARY**

**CASE NO. C-10-267882-2**

07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Argue Last at the Penalty Phase</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Bifurcate Penalty Phase</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Compel Production of the Defendant's Direct and Vicarious Statements</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion for Discovery of Juvenile Records of State Witnesses</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Disqualify Potential Jurors Who Would Impose the Death Penalty in All Convictions for First Degree Murder</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Federalize All Motions, Objections, Requests, and Other Applications for Proceedings</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion for Henthorn Material</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors Who Express Concerns About Capital Punishment</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Prohibit the Prosecution from Arguing Statutory Mitigating Factors Not Raised by the Defense</i>
07/23/2012	 Opposition to Motion <i>State's Opposition to Dismiss Rule 250 Notice of Intent Due to Federal Due Process Violations</i>
07/23/2012	 Response <i>State's Response to Defendant's Motion for Discovery of Institutional Records and Files Necessary to a Fair Trial</i>
07/23/2012	 Response <i>State's Response to Compel Timely Disclosure of Information Relating to Aggravating and Mitigating Factors</i>
07/23/2012	 Response <i>State's Response for Disclosure of Uncharged Acts Which State Intends to Utilize at Trial</i>
07/23/2012	 Motion <i>Motion for Individual Sequestered Voir Dire</i>
07/23/2012	 Motion

# CASE SUMMARY

CASE NO. C-10-267882-2

*Motion for Disclosure of Uncharged Acts Related to the Criminal Conduct of the Defendant*

07/23/2012



Motion

*Motion for Jury Questionnaire*

07/23/2012



Response

*State's Response to Defendant's Motion to Apply Heightened Standard of Review and Care in this Case Because the State is Seeking the Death Penalty*

07/23/2012



Response

*State's Response to Defendant's Motion to Preclude Victim's Family Members' Statements Regarding the Defendant, the Crime and the Sentence*

07/23/2012



Opposition to Motion

*State's Opposition to Defendant's Motion for Individual Sequestered Voir Dire*

07/23/2012



Response

*State's Response to Defendant's Motion for Jury Questionnaire*

07/23/2012



Supplement to Opposition

*Supplement to State's Opposition to Defendant's Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause*

07/26/2012



Affidavit of Service

07/31/2012



Ex Parte Motion

*Ex Parte Motion for Release of Medical Records*

07/31/2012



Order

*Order Releasing Medical Records*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co-Defendant Burns' Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co- Defendant Burn's Motion for Disclosure of the State's Witnesses' Juvenile Records*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co-Defendant Burns' Motion to Preclude Victims' Family Members' Statements Regarding the Defendant, the Crime, and the Sentence*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Discovery of Institutional Records and Files Necessary to a Fair Trial*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co-Defendant Burns' Motion to Compel Production of the Defendant's Direct and Vicarious Statements*

08/07/2012



Joinder To Motion

*Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Disclosure of Uncharged Acts Related to the Criminal Conduct of the Defendant*

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

08/07/2012	 Joinder To Motion <i>Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Henthorn Material</i>
08/07/2012	 Joinder To Motion <i>Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Jury Questionnaire</i>
08/07/2012	 Joinder To Motion <i>Defendant Cousins' Joinder in Co-Defendant Burns' Motion to Federalize all Motions, Objections, Requests, and Other Applications for Proceedings</i>
08/07/2012	 Joinder To Motion <i>Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Individual Sequestered Voir Dire</i>
08/09/2012	 Motion in Limine <i>Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Overly Prejudicial to Defendant</i>
08/09/2012	 Motion to Strike Filed By: Defendant Burns, David James <i>Motion to Strike Surplus Language from the Superseding Indictment</i>
08/16/2012	 Opposition to Motion <i>State's Opposition to Defendant Burns' Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Overly Prejudicial to Defendant</i>
08/16/2012	 Opposition to Motion <i>State's Opposition to Defendant Burns' Motion to Strike Surplus Language from the Superseding Indictment</i>
08/17/2012	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 4, 2011</i>
08/17/2012	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on August 14, 2012</i>
08/22/2012	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on August 21, 2012</i>
08/28/2012	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on November 23, 2010</i>
08/28/2012	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 26, 2010</i>
10/16/2012	 Subpoena Duces Tecum
05/31/2013	 Motion to Compel <i>Defendant's Motion to Compel Disclosure of Exculpatory Evidence</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion for Disclosure of Juvenile Records of the State's Witnesses</i>

# CASE SUMMARY

CASE NO. C-10-267882-2

05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Bifurcate the Penalty Hearing</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Disqualify Potential Jurors who would Impose the Death Penalty in All Convictions for First Degree Murder</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion in Limine to Preclude the State from Moving to Admit into Evidence Photographs Prejudicial to Defendant</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors who Express Concerns about Capital Punishment</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Strike Surplus Language from the Superseding Indictment</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Dismiss Rule 250 Notice of Intent Due to Federal Due Process Violations</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Prohibit the Prosecution from Arguing and the Court from Giving Instructions Regarding Statutory Mitigating Factors not Raised by the Defense</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Compel Production of the Defendants Direct and Vicarious Statements</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion for Henthorn Material</i>
05/31/2013	 Reply to Opposition <i>Reply to State's Opposition to Defendant's Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause</i>
07/19/2013	 Motion to Strike <i>Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
07/25/2013	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
07/25/2013	 Notice of Hearing
07/29/2013	 Receipt of Copy
08/23/2013	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on July 18, 2013</i>



**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

08/23/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on August 20, 2013</i>
08/26/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on August 22, 2013</i>
08/26/2013	 <b>Reply to Opposition</b> <i>Reply to State's Opposition to Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
09/04/2013	 <b>Notice of Expert Witnesses</b> <i>Notice of Expert Witnesses [NRS 174.234(2)]</i>
09/06/2013	 <b>Notice of Witnesses</b> <i>Notice of Witnesses [NRS 174.234(1)(a)]</i>
09/09/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on August 27, 2013</i>
09/11/2013	 <b>Supplemental</b> <i>Supplemental Exhibits (#29-50) In Support to Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
09/11/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on September 5, 2013</i>
09/13/2013	 <b>Motion to Continue Trial</b> <i>Motion to Continue Trial Setting on an Order Shortening Time</i>
09/18/2013	 <b>Order Denying Motion</b> <i>Order Denying Motion for Henthorn Material Filed 7/18/12</i>
09/18/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on September 12, 2013</i>
09/19/2013	 <b>Media Request and Order</b> <i>Media Request and Order Allowing Camera Access to Court Proceedings</i>
09/20/2013	 <b>Notice</b> <i>Notice of Evidence in Support of Aggravating Circumstances</i>
10/07/2013	 <b>Order Denying Motion</b> <i>Order Denying Defendant's Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
10/07/2013	 <b>Media Request and Order</b> <i>Media Request and Order Allowing Camera Access to Court Proceedings</i>
10/09/2013	 <b>Recorders Transcript of Hearing</b> <i>Transcript of Hearing Held on September 19, 2013</i>

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

10/09/2013	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 1, 2013</i>
10/10/2013	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 8, 2013</i>
10/31/2013	 Motion <i>Motion to Place on Calendar to Confirm Trial</i>
11/19/2013	 Filed Under Seal Filed By: Plaintiff State of Nevada <i>Order for Defendant David Burns' Counsel to Show Cause Why He Should Not Be Held in Contempt of Court (Sealed)</i>
11/22/2013	 Ex Parte Order Filed By: Defendant Burns, David James <i>Ex-Parte Order Releasing Clark County Detention Center Records</i>
11/22/2013	 Ex Parte Order Filed By: Defendant Burns, David James <i>Ex-Parte Order for In-Camera Review of Pre-Sentence Reports</i>
11/26/2013	 Filed Under Seal <i>Defendant's Response to Order to Show Cause as to Why Counsel Should Not Be Held in Contempt of Court (Sealed)</i>
11/27/2013	 Order Vacating <i>Order Vacating Hearing and Sealing Documents</i>
12/09/2013	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on November 12, 2013</i>
09/15/2014	 Notice of Expert Witnesses <i>Notice of Expert Witnesses [NRS 174.234(2)]</i>
09/15/2014	 Motion to Strike <i>Renewed Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444</i>
09/30/2014	 Motion <i>Motion to Disclose Payments to Witnesses by Clark County District Attorney's Office</i>
10/02/2014	 Motion <i>Motion to Place on Calendar for a Status Check on In Camera Review and Motion for Production of Information Related to Jerome Thomas on an Order Shortening Time</i>
10/03/2014	 Notice of Witnesses
10/06/2014	 Supplemental <i>Supplemental Notice of Expert Witnesses [NRS 174.234(2)]</i>
10/08/2014	 Order

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

*Order on Defendant's Motion for Evidentiary Hearing and Requesting Investigation of Possible Recording of Attorney-Client Privileged Conversations with Inmate Incarcerated in CCDC*

10/09/2014	 Motion <i>Motion for the Disclosure of Materials and Facts Relative to Future Prosecutions of State's Witnesses Pursuant to Giglio on an Order Shortening time</i>
10/10/2014	 Supplemental <i>Supplemental Notice of Witnesses [NRS 174.234(1)(a)]</i>
10/10/2014	 Joinder To Motion <i>Joinder to Defendant Mason's Motion to Sever or in the Alternative Request for a New Venire and Request for Evidentiary Hearing</i>
10/12/2014	 Motion in Limine <i>Defendant's Motions in Limine #1-3</i>
10/12/2014	 Motion <i>Motion to Preclude the State from Conducting Background Checks on Potential Jurors Unless Results are Produced to the Defense</i>
10/13/2014	 Motion to Vacate <i>Motion to Vacate Ex Parte Order Allowing Jury Commissioner to Conduct Background Checks on Potential Jurors for Production to the Parties on an Order Shortening Time</i>
10/13/2014	 Opposition to Motion <i>State's Opposition to Defendant's Motion in Limine #1-3</i>
10/13/2014	 Notice of Witnesses <i>Notice of Witnesses [NRS 174.234(2)]</i>
10/13/2014	 Motion to Continue Trial <i>Motion to Continue Trial Setting on an Order Shortening Time</i>
10/14/2014	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Continue Trial</i>
10/14/2014	 Receipt of Copy 
10/14/2014	 Opposition to Motion <i>State's Opposition to Defendant's Motion to Preclude the State from Conducting Background Checks on Potential Jurors Unless Results are Produced to the Defense</i>
10/14/2014	 Ex Parte Application <i>Ex-Parte Application for Order for Production of Medical Records</i>
10/14/2014	 Order <i>Order Setting Hearing on Motion for Order Releasing Clark County Detention Center Records and Reports Related to Stephanie Cousins, Monica Martinez, Jerome Thomas, Quentin White, and Dellane D. Bryant, Jr.</i>
10/14/2014	 Supplemental <i>Second Supplemental Notice of Expert Witnesses [NRS 174.234(2)]</i>

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

10/15/2014	 Ex Parte Order <i>Ex Parte Order for Contact Visit with Expert Rebecca Williams to Visit Facility with Equipment</i>
10/15/2014	 Supplemental <i>Second Supplemental Notice of Witnesses [NRS 174.234(1)(a)]</i>
10/15/2014	 Supplemental <i>Supplemental Notice of Witnesses</i>
10/15/2014	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on September 16, 2014</i>
10/15/2014	 Supplemental <i>Supplemental Notice of Witnesses [NRS 174.234(2)]</i>
10/16/2014	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on September 23, 2014</i>
10/16/2014	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on September 25, 2014</i>
10/17/2014	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 7, 2014</i>
10/21/2014	 Order <i>Order for Transcript</i>
10/21/2014	 Amended Order <i>Amended Order on Defendant's Motion for Evidentiary Hearing and Requesting Investigation of Possible Recording of Attorney-Client Privileged Conversations with Inmate Incarcerated in CCDC</i>
10/24/2014	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on October 14, 2014</i>
11/07/2014	 Notice of Motion <i>Notice of Motion and Motion to Strike Defendant's Expert Notice, or in the Alternative, Motion for Discovery</i>
11/21/2014	 Opposition to Motion <i>Opposition to Motion to Strike Defendant's Expert Notice or in the Alternative Motion for Discovery</i>
12/01/2014	 Motion <i>Motion to Place on Calendar for Status Check on Return of In-Camera Review of CPS Records</i>
12/01/2014	 Motion for Discovery
12/08/2014	 Order Granting Motion Filed By: Defendant Burns, David James <i>Order Granting Motion to Vacate Ex Parte Order Allowing Jury Commissioner to Conduct Background Checks on Potential Jurors for Production to the Parties</i>
12/12/2014	 Filed Under Seal Filed By: Plaintiff State of Nevada

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

*Transcript of Hearing Held on October 16, 2014 (Sealed)*

12/16/2014



Recorders Transcript of Hearing

*Transcript of Hearing Held on October 20, 2014*

12/16/2014



Recorders Transcript of Hearing

*Transcript of Hearing Held on December 11, 2014*

12/18/2014



Recorders Transcript of Hearing

*Transcript of Hearing Held on December 18, 2014*

12/31/2014



Supplemental

*Supplemental Notice of Expert Witnesses [NRS 174.234(2)]*

01/05/2015



Supplemental

*Supplemental Notice of Evidence in Support of Aggravating Circumstances*

01/09/2015



Filed Under Seal

*Ex-Parte Order to Receive MRI (Filed Under Seal) (Sealed)*

01/12/2015



Supplemental

*Third Supplemental Notice of Witnesses [NRS 174.234(1)(a)]*

01/12/2015



Order to Release Medical Records

*Order for Production of Medical Records*

01/12/2015



Order to Release Medical Records

*Order for Production of Medical Records*

01/12/2015



Recorders Transcript of Hearing

*Transcript of Hearing Held on January 9, 2015*

01/13/2015



Supplemental

*Second Supplemental Notice of Witnesses [NRS 174.234(2)]*

01/15/2015



Recorders Transcript of Hearing

*Transcript of Hearing Held on January 6, 2015*

01/20/2015



Supplemental

*Fourth Supplemental Notice of Witnesses [NRS 174.234(1)(a)]*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/21/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/22/2015



Reporters Transcript

*Transcript of Hearing Held on January 20, 2015*

01/22/2015



Reporters Transcript

*Transcript of Hearing Held on January 21, 2015*

01/22/2015



Ex Parte Order

*Ex Parte Order for Clark County Detention Center to Produce Records Related to Stephanie Cousins and Monica Martinez*

01/22/2015



Supplemental

*Third Supplemental Notice of Witnesses [NRS 174.234(2)]*

01/23/2015



Reporters Transcript

*Transcript of Hearing Held on January 22, 2015*

01/26/2015



Reporters Transcript

*Transcript of Hearing Held on January 23, 2015*

01/26/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/26/2015



Ex Parte Order

*Ex Parte Order to Comply with Subpoena*

01/26/2015



Jury List

01/26/2015



Motion in Limine

*Motion in Limine to Prohibit the Presentation of a Summary Regarding the Course of Investigation*

01/27/2015



Reporters Transcript

*Transcript of Hearing Held on January 26, 2015*

01/28/2015



Reporters Transcript

*Transcript of Hearing Held on January 27, 2015*

01/29/2015



Reporters Transcript

*Transcript of Hearing Held on January 28, 2015*

01/29/2015



Ex Parte Order












*Ex Parte Order to Comply with Subpoena*

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

01/30/2015	 Reporters Transcript <i>Transcript of Hearing Held on January 29, 2015</i>
02/02/2015	 Transcript of Proceedings <i>Transcript of Hearing Held on January 30, 2015</i>
02/02/2015	 Order <i>Order for Daily Transcripts Nunc Pro Tunc</i>
02/04/2015	 Opposition to Motion in Limine <i>State's Opposition to Defendant's Motion in Limine to Prohibit the Presentation of a Summary Regarding the Course of Investigation</i>
02/04/2015	 Amended Jury List
02/05/2015	 Amended Jury List <i>Second Amended Jury List</i>
02/06/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 5, 2015</i>
02/09/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 6, 2015</i>
02/09/2015	 Stipulation and Order <i>Stipulation and Order Waiving Separate Penalty Hearing</i>
02/10/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 9, 2015</i>
02/11/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 10, 2015</i>
02/12/2015	 Media Request and Order <i>Media Request and Order Allowing Camera Access to Court Proceedings</i>
02/12/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 11, 2015</i>
02/13/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 12, 2015</i>
02/17/2015	 Instructions to the Jury
02/17/2015	 Verdict
02/18/2015	 Reporters Transcript <i>Transcript of Hearing Held on February 17, 2015</i>
03/02/2015	 Order Denying Motion









**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

*Order Denying Defendant Burns' Motion in Limine to Prohibit the Preservation of a Summary Regarding the Course of Investigation*

04/01/2015	 PSI <i>Pre-Sentence Investigation Report (Unfiled) Confidential</i>
04/24/2015	 Filed Under Seal <i>Sentencing Memorandum (Sealed)</i>
05/05/2015	 Judgment of Conviction <i>Judgment of Conviction (Jury Trial)</i>
07/09/2015	 Criminal Order to Statistically Close Case
10/13/2015	 Inmate Filed - Petition for Writ of Habeas Corpus Party: Defendant Burns, David James <i>Petition for Writ of Habeas Corpus (Postconviction)</i>
10/13/2015	 Request Filed by: Defendant Burns, David James
10/13/2015	 Motion for Appointment of Attorney Filed By: Defendant Burns, David James <i>Motion to Appoint Counsel</i>
10/13/2015	 Motion Filed By: Defendant Burns, David James <i>Motion for Production of Documents, Papers, Pleadings and Tangible Property of Defendant</i>
10/13/2015	 Motion to Withdraw As Counsel Filed By: Defendant Burns, David James <i>Motion to Withdraw Counsel</i>
10/13/2015	 Application to Proceed in Forma Pauperis Filed By: Defendant Burns, David James <i>Application to Proceed Informa Pauperis (Sealed)</i>
10/23/2015	 Certificate <i>Financial Certificate (Sealed)</i>
10/29/2015	 Order for Petition for Writ of Habeas Corpus
10/29/2015	 Notice of Hearing
01/26/2016	 Response <i>State's Response to Defendant's Pro Per Post-Conviction Petition for Writ of Habeas Corpus, Motion to Appoint Counsel, and Request for an Evidentiary Hearing</i>
03/11/2016	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
03/14/2016	 Case Appeal Statement





**CASE SUMMARY**  
**CASE NO. C-10-267882-2**


03/21/2016	 Findings of Fact, Conclusions of Law and Order
03/21/2016	 Certificate of Service
03/22/2016	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/21/2017	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>Nevada Supreme Court Clerk's Certificate Judgment - Reversed and Remand</i>
06/01/2017	 Order Filed By: Defendant Burns, David James <i>Order for Transcripts at State's Expense</i>
07/13/2017	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Sentencing, April 23, 2015</i>
08/15/2017	 Ex Parte Order <i>Ex Parte Order Approving Paralegal Expenses</i>
11/27/2017	 Supplemental Filed by: Defendant Burns, David James <i>Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
11/27/2017	 Exhibits Filed By: Defendant Burns, David James <i>Petitioner's Exhibits In Support Of Supplement To Post-Conviction Petition For Writ Of Habeas Corpus</i>
01/16/2018	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Supplement to Petition for Writ of Habeas Corpus</i>
02/06/2018	 Reply Filed by: Defendant Burns, David James <i>Reply to State's Response to Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
04/24/2018	 Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate David Burnes, BAC #1139521</i>
07/05/2018	 Notice of Hearing <i>Notice of Hearing</i>
09/26/2018	 Ex Parte Order Filed By: Defendant Burns, David James <i>Ex Parte Order Appointing Counsel for Purposes of Appeal</i>
10/25/2018	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
10/29/2018	 Notice of Entry

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

Filed By: Plaintiff State of Nevada  
*Notice of Entry of Findings of Fact, Conclusions of Law and Order*

11/08/2018  Notice of Appeal (criminal)  
Party: Defendant Burns, David James  
*Notice of Appeal*

11/08/2018  Request  
Filed by: Defendant Burns, David James  
*Request for Transcripts Pursuant to NRAP 9(a)(3)*

11/08/2018  Case Appeal Statement  
Filed By: Defendant Burns, David James  
*Case Appeal Statement*

**DISPOSITIONS**

10/26/2010 **Plea** (Judicial Officer: Tao, Jerome T.)

1. CONSP ROBBERY  
Not Guilty  
PCN: Sequence:
2. CONSP MURDER  
Not Guilty  
PCN: Sequence:
3. BURGLARY WHILE IN POSSESSION OF FIREARM  
Not Guilty  
PCN: Sequence:
4. ROBBERY WITH A DEADLY WEAPON  
Not Guilty  
PCN: Sequence:
5. MURDER WITH A DEADLY WEAPON  
Not Guilty  
PCN: Sequence:
6. ROBBERY WITH A DEADLY WEAPON  
Not Guilty  
PCN: Sequence:
7. ATT. MURDER WITH A DEADLY WEAPON  
Not Guilty  
PCN: Sequence:
8. BATTERY W/ SBH DOMESTIC VIOLENCE W/ DEADLY WEAPON  
Not Guilty  
PCN: Sequence:

04/23/2015 **Disposition** (Judicial Officer: Tao, Jerome T.)

1. CONSPIRACY TO COMMIT ROBBERY  
Guilty  
PCN: Sequence:
2. CONSPIRACY TO COMMIT MURDER  
Guilty  
PCN: Sequence:
3. BURGLARY WHILE IN POSSESSION OF FIREARM

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

Guilty  
PCN: Sequence:

4. ROBBERY WITH USE OF A DEADLY WEAPON

Guilty  
PCN: Sequence:

5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

Guilty  
PCN: Sequence:

6. ROBBERY WITH USE OF A DEADLY WEAPON

Guilty  
PCN: Sequence:

7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

Guilty  
PCN: Sequence:

8. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

Guilty  
PCN: Sequence:

04/23/2015 **Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

1. CONSPIRACY TO COMMIT ROBBERY

08/07/2010 (F) 200.380 (5013C)

PCN: Sequence:

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Sentenced to Nevada Dept. of Corrections  
Term: Minimum:12 Months, Maximum:72 Months  
Concurrent: Charge 5

04/23/2015 **Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

2. CONSPIRACY TO COMMIT MURDER

08/07/2010 (F) 200.010 (5000C)

PCN: Sequence:

---

Sentenced to Nevada Dept. of Corrections  
Term: Minimum:24 Months, Maximum:120 Months  
Concurrent: Charge 5

04/23/2015 **Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

3. BURGLARY WHILE IN POSSESSION OF FIREARM

08/07/2010 (F) 205.060 (9989)

PCN: Sequence:

---

Sentenced to Nevada Dept. of Corrections  
Term: Minimum:24 Months, Maximum:180 Months  
Concurrent: Charge 5

04/23/2015 **Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

4. ROBBERY WITH USE OF A DEADLY WEAPON

08/07/2010 (F) 200.380 (4967)

PCN: Sequence:

---

Sentenced to Nevada Dept. of Corrections  
Term: Minimum:24 Months, Maximum:180 Months  
Consecutive Enhancement:Use of a Deadly Weapon, Minimum:24 Months, Maximum:180 Months  
Concurrent: Charge 5

04/23/2015 **Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

**CASE SUMMARY****CASE NO. C-10-267882-2**

5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

08/07/2010 (F) 200.030 (5045)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Life without the possibility of parole

Consecutive Enhancement: Use of a Deadly Weapon, Minimum: 40 Months, Maximum: 240 Months

04/23/2015

**Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

6. ROBBERY WITH USE OF A DEADLY WEAPON

08/07/2010 (F) 200.380 (4967)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum: 24 Months, Maximum: 180 Months

Consecutive Enhancement: Use of a Deadly Weapon, Minimum: 24 Months, Maximum: 180 Months

Concurrent: Charge 7

04/23/2015

**Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

08/07/2010 (F) 200.030 (5045A)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum: 48 Months, Maximum: 240 Months

Consecutive Enhancement: Use of a Deadly Weapon, Minimum: 40 Months, Maximum: 240 Months

Consecutive: Charge 5

04/23/2015

**Adult Adjudication** (Judicial Officer: Tao, Jerome T.)

8. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

08/07/2010 (F) 200.481 (4932)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum: 24 Months, Maximum: 180 Months

Concurrent: Charge 7

Credit for Time Served: 1671 Days

Fee Totals:

AA Fee - Battery

Domestic Violence

35.00

\$35

Administrative

Assessment Fee

25.00

\$25

Fee Totals \$

60.00

03/21/2017

**Amended Disposition** (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded

1. CONSPIRACY TO COMMIT ROBBERY

Appeal Reversed/Remanded

PCN: Sequence:

2. CONSPIRACY TO COMMIT MURDER

Appeal Reversed/Remanded

PCN: Sequence:

3. BURGLARY WHILE IN POSSESSION OF FIREARM

Appeal Reversed/Remanded

PCN: Sequence:

4. ROBBERY WITH USE OF A DEADLY WEAPON

Appeal Reversed/Remanded

PCN: Sequence:

# CASE SUMMARY

CASE NO. C-10-267882-2

	<p>5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON Appeal Reversed/Remanded PCN: Sequence:</p> <p>6. ROBBERY WITH USE OF A DEADLY WEAPON Appeal Reversed/Remanded PCN: Sequence:</p> <p>7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON Appeal Reversed/Remanded PCN: Sequence:</p> <p>8. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM Appeal Reversed/Remanded PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 1. CONSPIRACY TO COMMIT ROBBERY 08/07/2010 (F) 200.380 (5013C) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 2. CONSPIRACY TO COMMIT MURDER 08/07/2010 (F) 200.010 (5000C) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 3. BURGLARY WHILE IN POSSESSION OF FIREARM 08/07/2010 (F) 205.060 (9989) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 4. ROBBERY WITH USE OF A DEADLY WEAPON 08/07/2010 (F) 200.380 (4967) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON 08/07/2010 (F) 200.030 (5045) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 6. ROBBERY WITH USE OF A DEADLY WEAPON 08/07/2010 (F) 200.380 (4967) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded 7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON 08/07/2010 (F) 200.030 (5045A) PCN: Sequence:</p>
03/21/2017	<p><b>Amended Supreme Court Reversal/Remand</b> (Judicial Officer: Tao, Jerome T.) Reason: Appeal Reversed/Remanded</p>

# CASE SUMMARY




CASE NO. C-10-267882-2

8. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

08/07/2010 (F) 200.481 (4932)

PCN: Sequence:

## HEARINGS


10/13/2010	 <b>Grand Jury Indictment</b> (11:45 AM) (Judicial Officer: Bell, Linda Marie)  <b>MINUTES</b> <b>Initial Arraignment</b> (10/21/2010 at 9:00 AM) (Judicial Officer: Hardcastle, Kathy) <b>10/21/2010, 10/26/2010</b> <b>Warrant</b> Inactive Indictment Warrant Matter Heard; Journal Entry Details: <i>David Schubert, DDA, and Pamela Weckerly, DDA, present for the State of Nevada. - Chris Farrell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 10AGJ054B-C to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Numbers as follow: C267882-2 - Burns C267882-3 - Cousins Said cases are assigned to Department 4. Ms. Weckerly requested warrants and argued bail. COURT ORDERED, ARREST WARRANTS WILL ISSUE, NO BAIL for Deft. Burns and BAIL SET AT \$1.5 million for Deft. Cousins. Matter set for arraignment. Exhibit(s) 1-25 previously lodged with Clerk of District Court on 9-29-10. Exhibit(s) 1a and 26 lodged with Clerk of District Court. WARRANT (CUSTODY - BOTH) 10-21-10 9:00 AM INITIAL ARRAIGNMENT (DEPT. 4 - BOTH) ;</i>  <b>SCHEDULED HEARINGS</b> <b>Initial Arraignment</b> (10/21/2010 at 9:00 AM) (Judicial Officer: Hardcastle, Kathy) <b>10/21/2010, 10/26/2010</b>
10/21/2010	<b>Initial Arraignment</b> (9:00 AM) (Judicial Officer: Hardcastle, Kathy) <b>10/21/2010, 10/26/2010</b> Matter Continued;
10/26/2010	 <b>Indictment Warrant Return</b> (9:00 AM) (Judicial Officer: Hardcastle, Kathy) Events: 10/25/2010 Indictment Warrant Return Plea Entered; Journal Entry Details: <i>ARRAIGNMENT (BURNS) DEFT. BURNS ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. CUSTODY 10/11/11 9:00 AM CALENDAR CALL 10/17/11 10:00 AM JURY TRIAL ;</i>
11/23/2010	 <b>Motion</b> (9:00 AM) (Judicial Officer: Hardcastle, Kathy) Events: 11/04/2010 Motion <i>Amended Motion For Extension Of Time To File Petition For Writ Of Habeas Corpus</i> Granted; Journal Entry Details: <i>DEFT'S AMENDED MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF HABEAS CORPUS Counsel advised they have been a trial for the last 3 weeks and requested 14 additional days to file writ. COURT ORDERED, Motion GRANTED for 21 ADDITIONAL DAYS FROM TODAY. CUSTODY ;</i>
12/02/2010	<b>CANCELED All Pending Motions</b> (8:30 AM) (Judicial Officer: Glass, Jackie) <i>Vacated - On in Error</i>
12/02/2010	 <b>Joinder</b> (9:00 AM) (Judicial Officer: Hardcastle, Kathy) Events: 11/04/2010 Joinder To Motion <i>Defendant David Burns Joinder To Co-Defendant Willie Mason's Motion To Preserve And Produce Evidence, Including Potentially Exculpatory Evidence</i> Granted in Part; Journal Entry Details: <i>DEFT'S MOTION TO PRESERVE AND PRODUCE EVIDENCE ESPECIALLY POTENTIALLY EXCULPATORY</i>


# CASE SUMMARY

CASE NO. C-10-267882-2

*EVIDENCE ...DEFT'S PETITION FOR WRIT OF HABEAS CORPUS Arguments by counsel as to Motion to Preserve and Produce. COURT noted any any exculpatory evidence that State becomes aware of they are required to produce, but they are not required to go out and investigate for the defense to see if the possibility exists. Following statements and argument of counsel. COURT ORDERED as follows: 1. Any exculpatory evidence must be revealed, all written or recorded statements, memos, summaries or videos that have already been prepared, or prepared before going to trial must be produced. 2. Court will allow counsel to go through State and detective files for names and contact information of witnesses, and interview detective, but there is no guarantee that the information will be in the file. 3. Court will allow criminal histories of Deft's, co- defendants and insofar as felony convictions of victims or potential witnesses. Mr. Powell requested if State runs SCOPE on any potential juror that they be provided that information and COURT ORDERED, request DENIED. 4. Statements made by Defendants regarding the case that will be or could be used by the State needs to be revealed to the Defendants, but noted that casual statements during transport back and forth will not be considered a violation of Courts ruling. 5. State to provide whatever autopsy reports and medical records, they have to defense. 6. Any forensic evidence State has in file Deft. can look at and reports to be provided. 7. Informants names and addresses do not need to be produced unless they provide exculpatory evidence or they will a witness at trial. 8. All reports, maps, documentation will be produced pursuant to statute. 9. All photos, line-ups, copies, 91, tape and CAB record can be subpoenaed to the Police Department. 10. Whatever criminal history of Defendant State is aware of will be provided. 11. Information on hypothesis has been use or attempted on any witness is DENIED. 12. Charts, maps concerning cellular tower is DENIED except what they present at trial or whatever is in the detectives files or State's files. 13. If digital imaging or enhancement are used will be provided. As for documentation of overt criminal acts not specified in the Indictment, State noted they will file a separate motion on that issue. COURT SO NOTED. ;*

01/06/2011 **CANCELED Motion** (9:00 AM) (Judicial Officer: Hardcastle, Kathy)  
*Vacated - On in Error*

01/18/2011  **Petition for Writ of Habeas Corpus** (9:00 AM) (Judicial Officer: Hardcastle, Kathy)  
Denied;  
Journal Entry Details:  
*DEFT'S PETITION FOR WRIT OF HABEAS CORPUS Arguments by counsel. COURT stated findings and ORDERED, Writ is DENIED. CUSTODY ;*

10/04/2011  **Motion to Continue Trial** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
*Motion to Continue Trial Setting*  
Granted;  
Journal Entry Details:  
*There being no opposition, COURT ORDERED, motion to continue trial GRANTED; trial date VACATED and RESET. CUSTODY 8/21/11 8:30 A.M. CALENDAR CALL 8/27/11 10:30 A.M. JURY TRIAL ;*

10/11/2011 **CANCELED Calendar Call** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
*Vacated*

10/17/2011 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer: Hardcastle, Kathy)  
*Vacated*

08/14/2012 **Motion for Discovery** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
**08/14/2012, 07/18/2013**  
Events: 07/18/2012 Motion for Discovery  
*Motion for Discovery of Institutional Records and Files Necessary to a Fair Trial*  
Continued;  
Granted;  
Continued;  
Granted;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
**08/14/2012, 07/18/2013**  
Events: 07/18/2012 Motion  
*Motion to Invoke Heightened Standard of Review Due to the State Seeking Death Penalty*  
Continued;  
Denied;  
Continued;  
Denied;

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

08/14/2012	<b>CANCELED Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated - On in Error</i> <i>Motion to Invoke Heightened Standard of Review Due to the State Seeking Death Penalty</i>
08/14/2012	<b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion <i>Motion to Prohibit the Use of Peremptory Challenges to Exclude Jurors Who Express Concerns About Capital Punishment</i> Continued; Denied in Part; Continued; Denied in Part;
08/14/2012	<b>Motion to Bifurcate</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion to Bifurcate <i>Motion to Bifurcate Penalty Phase</i> Continued; Denied; Continued; Denied;
08/14/2012	<b>Motion to Compel</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion to Compel <i>Motion to Compel Production of the Defendant's Direct and Vicarious Statements</i> Continued; Granted; Continued; Granted;
08/14/2012	<b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion <i>Motion to Prohibit the State from Arguing Statutory Mitigating Factors Not Raised by the Defense</i> Continued; Granted in Part; Continued; Granted in Part;
08/14/2012	<b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion <i>Motion for Disclosure of the State's Witnesses' Juvenile Records</i> Continued; Granted; Continued; Granted;
08/14/2012	<b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/18/2012 Motion <i>Motion for Henthorn Material</i> Continued; Denied Without Prejudice; Continued;



**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

Denied Without Prejudice;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

Events: 07/18/2012 Motion

*Motion to Preclude Victims' Family Members' Statements Regarding the Defendant, The Crime, and the Sentence*

Continued;

Granted;

Continued;

Granted;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

Events: 07/18/2012 Motion

*Motion to Bar the Admission of Cumulative Victim Impact Evidence in Violation of the Due Process Clause*

Continued;

Deferred Ruling;

Continued;

Deferred Ruling;

08/14/2012 **Motion to Dismiss** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

*Motion to Federalize All Motions, Objections, Requests, and Other Applications for Proceedings*

Continued;

Denied;

Continued;

Denied;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

Events: 07/18/2012 Motion

*Motion to Allow the Defense to Argue Last in Penalty Phase*

Continued;

Denied;

Continued;

Denied;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

Events: 07/18/2012 Motion

*Motion to Disqualify Potential Jurors Who Would Impose the Death Penalty in all Convictions for First Degree Murder*

Continued;

Deferred Ruling;

Continued;

Deferred Ruling;

08/14/2012 **Motion to Compel** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**08/14/2012, 07/18/2013**

Events: 07/18/2012 Motion to Compel

*Motion to Compel Timely Disclosure of Information Relating to Aggravating and Mitigating Factors*

Continued;

Granted;

Continued;

Granted;

08/14/2012 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)




**08/14/2012, 07/18/2013**

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

	<p>Events: 07/23/2012 Motion <i>Motion for Individual Sequestered Voir Dire</i> Continued; Denied Without Prejudice; Continued; Denied Without Prejudice;</p>
08/14/2012	<p><b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/23/2012 Motion <i>Motion for Disclosure of Uncharged Acts Related to the Criminal Conduct of the Defendant</i> Continued; Matter Resolved; Continued; Matter Resolved;</p>
08/14/2012	<p><b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 07/23/2012 Motion <i>Motion for Jury Questionnaire</i> Continued; Granted; Continued; Granted;</p>
08/14/2012	<p><b>Joinder</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) Events: 07/18/2012 Motion 08/07/2012 Joinder To Motion Data Entry Error; set in wrong deft</p>
08/14/2012	<p><b>CANCELED Joinder</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Defendant Cousin's Joinder in Co- Defendant Burn's Motion for Disclosure of the State's Witnesses' Juvenile Records</i></p>
08/14/2012	<p><b>CANCELED Joinder</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Defendant Cousin's Joinder in Co-Defendant Burn's Motion to Preclude Victims' Family Members' Statements Regarding the Defendant, The Crime, and the Sentence</i></p>
08/14/2012	<p><b>CANCELED Joinder</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Defendant Cousins' Joinder in Co-Defendant Burns' Motion for Discovery of Institutional Records and Files Necessary to a Fair Trial</i></p>
08/14/2012	<p><b>CANCELED Joinder</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Mason's Request to Join in Burns' Motion for Jury Questionnaire</i></p>
08/14/2012	<p><b>Motion in Limine</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <b>08/14/2012, 07/18/2013</b> Events: 08/09/2012 Motion in Limine <i>Motion in Limine to Preclude the State From Moving to Admit Into Evidence Photographs Overly Prejudicial to Defendant</i> Continued; Deferred Ruling; Continued; Deferred Ruling;</p>

# CASE SUMMARY

CASE NO. C-10-267882-2

08/14/2012	<p><b>Motion to Strike</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.)</p> <p><b>08/14/2012, 07/18/2013</b></p> <p>Events: 08/09/2012 Motion to Strike</p> <p><i>Motion to Strike Surplus Language From The Superseding Indictment</i></p> <p>Continued;</p> <p>Denied;</p> <p>Continued;</p> <p>Denied;</p>
08/14/2012	<p> <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.)</p> <p>Matter Continued;</p> <p>Journal Entry Details:</p> <p><i>DEFT'S MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILED NECESSARY TO A FAIR TRIAL...DEFT'S MOTION TO INVOKE HEIGHTENED STANDARD OF REVIEW DUE TO THE STATE SEEKING DEATH PENALTY...DEFT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT...DEFT'S MOTION TO BIFURCATE PENALTY PHASE...DEFT'S MOTION TO COMPEL PRODUCTION OF THE DEFT'S DIRECT AND VICARIOUS STATEMENTS...DEFT'S MOTION TO PROHIBIT THE STAE FROM ARGUING STATUTORY MITIGATING FACTORS NOT RAISED BY THE DEFENSE...DEFT'S MOTION FOR DISCLOSURE OF THE STATE'S WITNESSES' JUVENILE RECORDS...DEFT'S MOTION FOR HENTHORN MATERIAL...DEFT'S MOTION TO PRECLUDE VICTIMS' FAMILY MEMBERS' STATEMENTS REGARDING THE DEFT, THE CRIME AND THE SENTENCE...DEFT'S MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR PROCEEDINGS...DEFT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN PENALTY PHASE...DEFT'S MOTION TO DISQUALIFY POTENTIAL JURORS WHO WOULD IMPOSE THE DEALTH PENALTY IN ALL CONVICTIONS FOR FIRST DEGREE MURDER...DEFT'S MOTION TO COMPEL TIMELY DISCLOSURE OF INFORMATION RELATING TO AGGRAVATING AND MITIGATING FACTORS...DEFT' S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT'S MOTION FOR DISCLOSURE OF UNCHARGED ACTS RELATED TO THE CRIMINAL CONDUCT OF THE DEFT...DEFT'S MOTION FOR JURY QUESTIONNAIRE...DEFT'S MOTION TO DISMISS RULE 250 NOTICE OF INTENT DUE TO FEDERAL DUE PROCESS...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS OVERLY PREJUDICIAL TO DEFT...DEFT'S MOTION TO STRIKE SURPLUS LANGUAGE FROM THE SUPERSEDING INDICTMENT</i> Mr. Sgro advised all parties are in agreement to continue the trial as to all Defendants that is currently set on 8/27/12; the State will agree to the severance of Deft Cousins and all motions scheduled to be heard today will be continued closer to the new trial date with the exception of the Motion to Continue Trial and Motion to Sever. Additionally, Mr. Sgro advised they will not seek a severance between Defts Mason and Burns. COURT ORDERED, Deft Mason's Motion to Continue Trial and Deft Cousins Motion to Sever Trial are GRANTED. COURT ORDERED, all trial dates VACATED; trial date RESET as to Deft Cousins and matter set for status check to re-set the Motions and trial dates as to Defts Mason and Burns. Mr. Ericsson stated that he will re-file the Motions as to Deft Cousins as needed. CUSTODY 8/21/12 8:30 AM STATUS CHECK: RE-SET MOTIONS / TRIAL DATE ;</p>
08/21/2012	<p><b>CANCELED Calendar Call</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.)</p> <p><i>Vacated</i></p>
08/21/2012	<p> <b>Status Check</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.)</p> <p><i>Re-set Motions / Trial Date</i></p> <p>Reset;</p> <p>Journal Entry Details:</p> <p><i>Colloquy as to resetting the trial and all of the Motions. Following COURT ORDERED, matter set for trial in October with the Motions being heard two months prior. CUSTODY 9/24/13 8:30 AM CALENDAR CALL (#1) 10/7/13 9:00 AM JURY TRIAL (#1) ALL MOTIONS...7/25/13 10:30 AM ;</i></p>
08/27/2012	<p><b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Tao, Jerome T.)</p> <p><i>Vacated</i></p>
06/11/2013	<p> <b>Motion to Compel</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.)</p> <p><b>06/11/2013, 07/18/2013, 10/01/2013, 10/08/2013</b></p> <p><i>Defendant's Motion to Compel Disclosure of Exculpatory Evidence</i></p> <p>Matter Continued;</p> <p>Continued;</p> <p>Continued;</p>

# CASE SUMMARY

## CASE NO. C-10-267882-2

Continued;  
duplicate  
Matter Continued;  
Continued;  
Continued;  
Continued;  
duplicate  
Matter Continued;  
Continued;  
Continued;  
Continued;  
duplicate  
Matter Continued;  
Continued;  
Continued;  
Continued;  
duplicate

### Journal Entry Details:

*Court noted it did not receive a response from the State. Ms. Rinetti appeared for Ms. Weckerly, advised she is in trial and requested this motion be continued to the date of the other pre-trial motions on July 25, 2013. Clerk advised the Court is dark that day and the motions had been move, with counsel's acquiescence, to July 3, 2013. Ms. Rinetti advised Ms. Weckerly will just be coming off trial and requested they be continued to later in the month. Mr. Oram had no objection. COURT ORDERED, the motion set for today and all motions set on July 3 to be CONTINUED. CUSTODY ... CONTINUED 7/18/13 10:30 AM CLERK'S NOTE: JEA contacted Ms. Burke to advise the motions have been moved to July 18, 2013 at 10:30 AM. ;*

07/18/2013



### All Pending Motions (10:30 AM) (Judicial Officer: Tao, Jerome T.)

Matter Heard;

### Journal Entry Details:

*TWENTY MOTIONS SUBMITTED BY DEFT BURNS...JOINDERS BY DEFT MASON DEFT BURNS MOTION FOR HENTHORN MATERIAL...DEFT MASON'S JOINDER MOTION: Court provided a copy of an Order it wrote in a different case as to this issue. Statements by Mr. Sgro including that when they send a subpoena to Metro, they get a letter that they need to contact the DA as all of the information comes from them after Metro gets the subpoena quashed. Colloquy as to the Court doing an in-camera review of this material. Mr. DiGiacomo advised if they come across any material that they feel is Gigilio, they will submit to the Court for in-camera review. Statements by Mr. Sgro. Following, COURT ORDERED, DENIED without prejudice. DEFT BURNS MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES NECESSARY TO A FAIR TRIAL: There are 10 specific requests. Court noted it appears that #'s 3-8 are unopposed and GRANTED. Colloquy as to items #1&2, Court noted Mr. Sgro can get the records himself. Mr. Sgro advised that some times the records are different. Statements by Mr. DiGiacomo. COURT ORDERED, as to any records from CCDC, if there is a concern, counsel to compare. Colloquy as to letters. Ms. Burke requested to join in this Motion. COURT SO ORDERED. Statements by Mr. Sgro. As to #9&10, following statement by Mr. Sgro, GRANTED as unopposed as long as they are items they are entitled to. COURT ORDERED, GRANTED. DEFT BURNS MOTION TO INVOKE HEIGHTENED STANDARD OF REVIEW DUE TO THE STATE SEEKING DEATH PENALTY: Submitted by Mr. Oram to preserve the record. Statements by Ms. Weckerly and requested the existing law be followed. COURT ORDERED, DENIED as it is unclear what specific relief counsel is requesting. DEFT BURNS MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT: Mr. Oram advised that some Courts will excuse potential jurors simply because they say it will be very hard to impose a sentence of death, would like the Court be cognizant and requested a ruling by the Court to avoid having to have side bars in front of the Jury. Statements by the Court. Mr. Oram would like a potential juror that hesitates as to the death penalty, not be arbitrarily kicked off the panel. Ms. Weckerly stated this motion pertains to peremptory challenges, not for cause challenges. Continued arguments by Ms. Weckerly. Following, COURT ORDERED, as to the peremptory challenges is DENIED; as to for cause challenges, will DEFER TO TRIAL. (DENIED IN PART) DEFT BURNS MOTION TO BIFURCATE PENALTY PHASE: Statements by Mr. Sgro in support of this Motion. Statements by Ms. Weckerly in opposition. Following, COURT ORDERED, DENIED. DEFT BURNS MOTION TO COMPEL PRODUCTION OF THE DEFT'S DIRECT AND VICARIOUS STATMENTS...DEFT MASON'S JOINDER MOTION: Court noted this is not really opposed. Mr. Oram is preserving the record and would request any statements be given 60 days prior to trial, however, the State has indicated they have provided all statements. Statements by Mr. DiGiacomo including that to his knowledge, all statements have been provided. COURT ORDERED, GRANTED. Mr. Sgro requested a bright line rule. DEFT BURNS MOTION TO PROHIBIT THE STATE FROM ARGUING STATUTORY MITIGATING FACTORS NOT RAISED BY THE DEFENSE: Statements by Mr. Oram including that the State not list mitigators to the Jury. Mr. DiGiacomo is in agreement, but that doesn't limit them as to argument. COURT ORDERED, GRANTED as to Jury instructions, as to any argument, it will be DEFERRED to trial. (GRANTED IN PART) DEFT BURNS MOTION FOR DISCLOSURE OF THE STATE'S WITNESSES' JUVENILE RECORDS...DEFT MASON'S JOINDER MOTION: Statements by Mr. Sgro*

**CASE SUMMARY****CASE NO. C-10-267882-2**

including that they would request Juvenile records from any witness that is now under the age of 23. Statements by Mr. DiGiacomo. Colloquy as to sealed records. Continued statements by Mr. Sgro. COURT ORDERED, any material witness who is currently 23 years of age or younger, the Juvenile records are to be delivered to the Court for an in-camera review. Mr. Sgro will submit a copy of the names. COURT ORDERED, GRANTED. DEFT BURNS MOTION TO PRECLUDE VICTIM'S FAMILY MEMBERS' STATEMENTS REGARDING THE DEFT, THE CRIME AND THE SENTENCE...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram and is concerned during penalty phase, a family member will ask for the worse possible sentence or blurt something out. Mr. Oram requested an Order from this Court. Ms. Weckerly advised they do admonish the victim's family members of what they can and can not say. Colloquy as to any written letters from family members. Court directed counsel to review prior to their testimony. Statements by Ms. Burke. COURT ORDERED, GRANTED. DEFT BURNS MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT MASON'S JOINDER MOTION: Statements by Mr. Sgro in support of this Motion. COURT ORDERED, matter DEFERRED TO TRIAL. DEFT BURNS MOTION TO DISMISS RULE 250 NOTICE OF INTENT DUE TO FEDERAL DUE PROCESS VIOLATIONS: Statements by Mr. Oram in support of this Motion and would request Rule 250 be found unconstitutional and in violation of due process. Pursuant to the Nevada Supreme Court and the Maestas case, COURT ORDERED, DENIED. DEFT BURNS MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR PROCEEDINGS...DEFT MASON'S JOINDER MOTION: Arguments by Mr. Oram in support of this Motion including "hearsay", confrontation and the Crawford ruling. Additionally, would request that all objections be considered being Federalized. Court advised how he handles objections during trial and that counsel are given the opportunity to memorialize during the next break outside the presence of the Jury. Statements by Ms. Burke. Submitted by Mr. DiGiacomo. COURT ORDERED, DENIED. DEFT BURNS MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN PENALTY PHASE: Statements by Mr. Oram. COURT ORDERED, DENIED. DEFT BURNS MOTION TO DISQUALIFY POTENTIAL JURORS WHO WOULD IMPOSE THE DEATH PENALTY IN ALL CONVICTIONS FOR FIRST DEGREE MURDER: Court noted this is a mirror image of Jurors who would never impose the death penalty. Statements by Mr. Sgro in support of this Motion. Colloquy as to jury questionnaire. Statements by Mr. DiGiacomo. Following, COURT ORDERED, DEFERRED TO TRIAL. DEFT BURNS MOTION TO COMPEL TIMELY DISCLOSURE OF INFORMATION RELATING TO AGGRAVATING AND MITIGATING FACTORS: Mr. Sgro requested 60 days before trial. Mr. DiGiacomo objected and stated it is 15 days by Court rule and they have asked for reciprocal discovery. Continued statements by Mr. Sgro and Mr. DiGiacomo. Following, Court directed counsel to disclose 15 days prior to trial. Mr. DiGiacomo requested the same 15 days once the Notice of Witnesses is filed. Colloquy as to the Mitigation Specialist by Mr. Sgro. Following, Mr. DiGiacomo requested under NRS 174.245 Defense comply to provide information 15 days prior to trial, and under NRS 50.305 an Order for underlying information the expert is going to rely on (if there is one) to be given 15 days prior to trial. COURT ORDERED, GRANTED. DEFT BURNS MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT MASON'S JOINDER MOTION: COURT ORDERED, DENIED without prejudice. Statements by Mr. Oram. Statements by Court as to how he handles the questioning of prospective Jurors. DEFT BURNS MOTION FOR DISCLOSURE OF UNCHARGED ACTS RELATED TO THE CRIMINAL CONDUCT OF THE DEFT...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram including that a witness will blurt something out that should have resulted in a hearing, i.e. drugs or gang involvement. Statements by Mr. DiGiacomo including that he is not seeking to bring anything out that would be considered a bad act. Upon Court's inquiry, Mr. DiGiacomo advised the Defendants are gang members, but he does not intend to bring this out per say in the guilt phase. ; Court noted that drugs and possible gang membership will be discussed during trial, however, if anything else, counsel need to comply with the law and a Petrocelli Hearing will be needed. Statements by Mr. DiGiacomo including that they do not expect to present any bad act evidence. Continued arguments by Mr. Oram including that this case was based on a robbery and nothing to do with gangs; if they think gang membership is going to be brought out, there needs to be a Petrocelli Hearing first. Statements by Court. Mr. DiGiacomo advised this Motion is over broad and that he is not intending to prove up the Defendant as a gang member. Statements by Ms. Burke. Following, Court admonished counsel not to intentionally ask questions as to gang membership. COURT ORDERED, RESOLVED. DEFT BURNS MOTION FOR JURY QUESTIONNAIRE...DEFT MASON'S JOINDER MOTION: Ms. Burke is in agreement with a questionnaire. Mr. DiGiacomo does not feel they are very helpful but will submit. Mr. Oram advised they can probably reach an agreement as to the questions for the questionnaire. COURT ORDERED, GRANTED if it can be worked out. DEFT BURNS MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS OVERLY PREJUDICIAL TO DEFT...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram including that he would request to be shown the pictures Mr. DiGiacomo is going to use in his opening power point prior to trial. COURT ORDERED, DEFERRED TO TRIAL. DEFT BURNS MOTION TO STRIKE SURPLUS LANGUAGE FROM THE SUPERSEDING INDICTMENT: Court noted this has to do with nicknames. Following colloquy, COURT ORDERED, DENIED. DEFT BURNS MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE: Upon Court's inquiry, Mr. Oram does not feel they are missing anything. Following colloquy, COURT ORDERED, matter CONTINUED to calendar call date. Ms. Burke advised that she has a capital trial set in Dept. 24 that it is set to go the last week in August that will last 6 weeks with Mr. DiGiacomo. Statements by Mr. DiGiacomo. Colloquy as to the trial date. Ms. Weckerly requested to wait and see if that trial is going forward before moving the date. Colloquy as to jury questionnaire. COURT ORDERED, matter set for status check. CUSTODY 8/20/13 8:30 AM STATUS CHECK: JURY QUESTIONNAIRE / TRIAL READINESS 10/1/13 8:30 AM DEFT BURNS MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE ;

08/20/2013



Status Check (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

08/20/2013, 08/22/2013, 08/27/2013

Status Check: Jury Questionnaire / Trial Readiness

Matter Continued;

Matter Continued;

Matter Resolved;

Journal Entry Details:

Upon Court's inquiry, Mr. Oram advised there are 3 questions they can not agree on. Mr. DiGiacomo advised that he had a meeting yesterday with Mr. Oram and Ms. Burke and concurred that they disagree as to 3 questions. Court stated the 3 questions are 1) identify race; 2) Political party and 3) how do you get your news. Arguments by Mr. Oram, Ms. Burke and Mr. DiGiacomo as to all 3 questions. Following, COURT ORDERED, as to Race: this will be allowed, however, the word "optional" will be attached; As to Political party: this will be allowed, however, the word "optional" will be attached and as to: how do you get you news: it will be allowed, but is to be rephrased. Upon Court's inquiry, Ms. Burke advised she has a few Motions in Limine to file, but that she should be ready for trial. Mr. Oram advised they will be ready for trial. COURT ORDERED, matter RESOLVED and directed counsel to provide a clean copy of the questionnaire as soon as possible. Mr. DiGiacomo advised he would provide one today. CUSTODY ;

Matter Continued;

Matter Continued;

Matter Resolved;

Journal Entry Details:

Upon Court's inquiry, Mr. Oram advised he reviewed a questionnaire from another case that had been answered. Ms. Burke stated she thought they had agreed to use the questionnaire from the Dept. 24 case. Mr. DiGiacomo advised there was no such agreement and that they had litigated 3 days to come up with that questionnaire. MATTER TRAILED AND RECALLED: Mr. Oram advised they are close to having a questionnaire done and that there are 3 questions they are having issues with. Following colloquy, COURT ORDERED, matter CONTINUED to next week, but that the questionnaire needs to be finalized soon. Ms. Burke FILED IN OPEN COURT her Motion to Sever and requested it be heard. Following colloquy, COURT SO ORDERED. CUSTODY ... CONTINUED 8/27/13 8:30 AM ;

Matter Continued;

Matter Continued;

Matter Resolved;

Journal Entry Details:

Mr. DiGiacomo advised he has not seen the questionnaire, anticipates being ready and requested a one week. Following colloquy, Ms. Burke stated she e-mailed a previous questionnaire to Mr. DiGiacomo. Upon Court's inquiry, Mr. DiGiacomo advised he will be ready for trial and would oppose a continuance. Ms. Burke advised she is going to submit a Motion to Sever that might impact the trial. Mr. DiGiacomo stated he thought they had already handled a severance Motion. Following colloquy, COURT ORDERED, matter CONTINUED to Thursday and will address the Motion once it has been filed. CUSTODY ... CONTINUED 8/22/13 8:30 AM ;

09/05/2013



**Motion to Strike (8:30 AM)** (Judicial Officer: Tao, Jerome T.)

09/05/2013, 09/12/2013

Deft's Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations Or in the Alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444

Matter Continued;

Motion Denied;

Journal Entry Details:

Ms. Burke advised she would like to join in the Motion for Deft Mason. Statements by Mr. Sgro in support of his Motion including that he would like a stay for a decision as to this issue and that the trial be reset in 2015. Further, as to the power point presented to Court, Mr. Sgro requested it be marked as a Court's exhibit. COURT SO ORDERED. Continued arguments by Mr. Sgro. Statements by Ms. Weckerly in support of their opposition including that it is not proper to grant a stay. Following additional arguments by counsel, Court stated that based on the law today, his motion is DENIED. FURTHER, the request for stay is also DENIED. Ms. Burke advised that she will be filing a Motion to Continue Trial as they just received 3,600 pages of medical records. Upon Court's inquiry, Mr. DiGiacomo advised he could not find where he had electronically sent the medical records, so he resent them to counsel. Statements by Mr. Sgro. Additionally, Mr. DiGiacomo stated that he has contacted San Bernardino and that whatever they had as to gang involvement was related only to the co-defendant, Mason and it has been given to Ms. Burke. Colloquy as to the dates given to file things in the previous Order by Ms. Burke. Objections stated by Mr. DiGiacomo and requested the Order remain as is. Upon Court's inquiry, Mr. DiGiacomo advised it is in relation to the expert and filing 21 days prior to trial and that the Court may have given the Defense 14 days. Following colloquy, Court DENIED WITHOUT PREJUDICE the request at this time. CUSTODY ;

Matter Continued;

Motion Denied;


Journal Entry Details:

Arguments by Ms. Burke in support of her Motion including that in her Motion and Reply, she pointed out situations where the Court had already separated the death and non-death people and noted the State did not address this at all

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in their response. Court advised if it had been granted, there would not be an opinion. Ms. Burke stated there are a number of grounds in which to grant this Motion other than an antagonistic defense. Continued arguments by Ms. Burke including that death penalty juries are more conviction prone. Statements by Mr. Sgro as to the antagonistic defense. Statements by Mr. DiGiacomo. Mr. Sgro requested to join in this Motion. Continued argument in support of the Motion by Mr. Sgro. Conference at the Bench. Following, COURT ORDERED, Deft's Motion to Sever Trial is DENIED WITHOUT PREJUDICE and noted this can be revisited at the time of trial or at penalty, if need be. As to Deft Burns Motion, Court directed Mr. Sgro provide the power point prior to the hearing next week and to give a copy to the State especially if there is anything new. Mr. Sgro advised that it tracks the brief and does not believe there is anything new. Ms. Burke advised she does not have the medical records for the victim nor the gang records. Mr. DiGiacomo advised he has given everyone the medical records and that he is in the process of getting the gang records from San Bernardino. Following colloquy, Court directed Mr. DiGiacomo copy the disk of medical records again for Ms. Burke. Additionally, Ms. Burke advised that yesterday she received the Notice of Witnesses with 26 names and that while some are the same, she does not know if this will impede her being ready for trial. Court so noted. CUSTODY ... CONTINUED 9/12/13 10:00 AM ;

09/19/2013 **CANCELED Motion to Continue Trial** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Vacated - per Secretary

09/19/2013  **Motion to Continue Trial** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Motion to Continue Trial Setting on an Order Shortening Time  
Matter Continued;  
Journal Entry Details:  
Court noted it did not receive a written opposition from Mr. DiGiacomo. Mr. DiGiacomo concurred and advised he only received the Motion 48 hours ago. As to the palm print, Mr. DiGiacomo advised the report should be done within the week and advised if there is no answer by the time of calendar call, he has no objection to a continuance. Statements by Ms. Burke as to the reason for the continuance being the 3,600 pages of medical records; that she has only read 100 pages, the victim had 17 different doctors and was in the hospital for almost 3 months which will impact the Jury. Statements by Mr. Oram as to the medications she was on and possible effects. Mr. Sgro concurred and advised this is an identity case. Statements by Mr. DiGiacomo that Defense knew 3 years ago that the victim had been in the hospital. Following continued arguments by all counsel, COURT ORDERED, Motion GRANTED, however, will be CONTINUED to calendar call due to the Jury Questionnaires. Conference at the Bench. Additionally, matter set for status check as to trial setting and that October 28th is a date that the Court is looking at for the start of trial. CUSTODY 10/1/13 8:30 AM STATUS CHECK: TRIAL SETTING ;

10/01/2013 **Calendar Call** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Calendar Call (#1)  
to be reset  
Reset;





10/01/2013 **Status Check** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Status Check: Trial Setting  
Matter Heard;

10/01/2013  **All Pending Motions** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Matter Heard;  
Journal Entry Details:  
CALENDAR CALL...STATUS CHECK: TRIAL SETTING...DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE Conference at the Bench. Pursuant to that conference, Court noted Ms. Burke is WITHDRAWING as counsel due to health reasons and Mr. Langford is APPOINTED as new counsel. Motion to Continue Trial is GRANTED and trial date is VACATED. Following colloquy, dates of 2/24, 3/3 and 3/10 are being considered for the new trial date. COURT ORDERED, matter set for status check next week for counsel to review their calendars. Further, Deft's Motion to Compel will also be continued to next date. CUSTODY 10/8/13 8:30 AM STATUS CHECK: RESET TRIAL DATE...DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE ;

10/07/2013 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Tao, Jerome T.)  
Vacated  
Jury Trial (#1)

10/08/2013 **Status Check** (8:30 AM) (Judicial Officer: Tao, Jerome T.)  
Status Check: Reset Trial Date  
Trial Date Set;

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10/08/2013	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) Matter Heard; Journal Entry Details: <i>STATUS CHECK: TRIAL SETTING...DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE Colloquy as to trial date. Following, COURT ORDERED, matter set for trial in June and upon inquiry, counsel feel the trial should take about 4 weeks. FURTHER, Motion CONTINUED to calendar call date. CUSTODY 5/27/14 8:30 AM CALENDAR CALL (#1) 6/2/14 9:00 AM JURY TRIAL (#1) ;</i>
11/12/2013	 <b>Motion</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Def't's Motion to Place on Calendar to Confirm Trial</i> Motion Granted; Journal Entry Details: <i>Mr. Oram advised Ms. Weckerly is detained in another Courtroom and requested a new date be given. Court so noted and advised there appears to be a problem with the June trial date. Ms. Weiner concurred. Mr. Langford advised Deft Mason was not brought to Court and while he has spoken with him as to the change in trial date, would request he be brought to Court. COURT SO ORDERED. Following colloquy, COURT ORDERED, Motion GRANTED, trial date VACATED and RESET. FURTHER, Deft Mason and Deft Cousins to be placed on calendar. CUSTODY 9/30/14 8:30 AM CALENDAR CALL (#1)(MASON &amp; BURNS) 10/6/14 9:00 AM JURY TRIAL (#1)(MASON &amp; BURNS) 11/14/13 8:30 AM STATUS CHECK: TRIAL (MASON) 11/19/13 8:30 AM STATUS CHECK: TRIAL (COUSINS) ;</i>
12/03/2013	<b>CANCELED Show Cause Hearing</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated - per Judge</i> <i>Order for Defendant David Burns' Counsel to Show Cause Why He Should Not Be Held in Contempt of Court</i>
01/03/2014	 <b>Minute Order</b> (11:16 AM) (Judicial Officer: Tao, Jerome T.) <i>MINUTE ORDER RE: RELEASE OF DOCUMENTS</i> Decision Made; MINUTE ORDER RE: RELEASE OF DOCUMENTS Journal Entry Details: <i>The Office of the Attorney General having submitted certain Presentence Reports pursuant to the Ex Parte Order for In-Camera Review of Presentence Report filed November 22, 2013; and the Court having reviewed said reports and having redacted certain portions of said reports; IT IS HEREBY ORDERED that the Presentence Reports are hereby released to counsel for the parties. Because the Presentence Reports contain confidential personal information such as social security numbers and names of family members who are not participants in this case, the Presentence Reports are to be maintained by the Court and the parties UNDER SEAL. Any motions or documents filed with the Court that reference any such confidential information must be filed with the Court UNDER SEAL. The Court's Judicial Executive Assistant shall notify counsel to pick up copies of said reports from chambers.;</i>
05/27/2014	<b>CANCELED Calendar Call</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Calendar Call (#1)</i>
06/02/2014	<b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Tao, Jerome T.) <i>Vacated</i> <i>Jury Trial (#1)</i>
09/16/2014	 <b>Status Check</b> (8:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Status Check: Trial Readiness and Jury Questionnaire</i> Matter Heard; Journal Entry Details: <i>Court inquired if counsel still wanted a Jury Questionnaire. Ms. Weckerly advised that one has been circulating between all parties and that she will have the final one today before noon. Upon Court's inquiry, Counsel advised they feel the trial will take 3-4 weeks. Mr. Sgro advised a Pre-trial Motion was granted that the Juvenile records of the State's witnesses, 23 years of age or younger, were supposed to be provided for an in-camera review, however, he has never heard anything. Court advised it was not sure if it has seen them or not. Ms. Weckerly advised she thought they had been Ordered, however, will check and provide if they have not. Additionally, Mr. Sgro stated another Motion that was granted was to compel the production of all Defendant's direct and vicarious statements 60 days before trial. Mr. Sgro advised they didn't get anything 30 days ago and would like to know from the State if they have anything that they have not produced. Mr. Weckerly advised there is not. Mr. Oram inquired if there are any phone calls that the State intends to use. Ms. Weckerly advised she has no problem letting them know about the calls for her case-in-chief and will let the Defense know about 1 week prior to trial but cannot identify any calls that they might use in rebuttal. Conference at the Bench. Following conference, COURT ORDERED, matter set for status check as to the Jury Questionnaire and any other issues that might affect the trial. CUSTODY 9/23/14 8:30 AM STATUS CHECK:</i>



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## QUESTIONNAIRE / DISCOVERY ISSUES ;

09/23/2014



**Status Check** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

Status Check: *Questionnaire / Discovery Issues*

Matter Heard;

Journal Entry Details:

*Mr. Sgro advised there are some issues as to the readiness of his expert and Investigator due to financial issues, that have now been resolved. However, Mr. Sgro advised his Investigator is on vacation until October 3rd and he is unable to proceed due to the lack of availability of the people retained to help him. Ms. Weckerly objected to the trial being continued due to a billing mishap that happened last January and requested an affidavit from the OAC. Mr. Sgro stated that it took 6 months to get the billing straightened out; that he was never told they would not pay the bills, but was advised that he was spending too much money on this one case; so, he put everyone on hiatus and when the billing was resolved, his experts and Investigator were notified, but he was advised they had picked up other cases and he was put on the bottom of the list. Mr. Langford advised he is in a similar situation with one of his experts, that he thought a notice was filed, which it has not and now when he files it, the State will object. Ms. Weckerly advised they will waive any objection. Colloquy as to possibly severing the Defendants. Mr. DiGiacomo stated he is not convinced that Mr. Sgro has established a basis for a continuance and requested an affidavit be filed to investigate the allegations made; that the affidavit should indicate what the communication is, what the problem was and why it is the witnesses cannot be available, which needs to be attached to a Motion to Continue. Additionally, Mr. DiGiacomo objected to Mr. Sgro unilaterally making a decision to slow down the process because there is some problem with the OAC, that was never brought before the Court and never notified the State. Following additional colloquy and upon Court's inquiry, Mr. Sgro advised he needs 60-90 days to be ready for trial. Continued objections by Ms. Weckerly and Mr. DiGiacomo. Following, COURT ORDERED, trial date VACATED and RESET TWO (2) WEEKS past 10/6/14. Additionally, Ms. Weckerly advised she will provide a new Jury Questionnaire to chambers today. 10/14/14 8:30 AM CALENDAR CALL 10/20/14 9:00 AM JURY TRIAL ;*

09/25/2014



**Motion to Strike** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Deft's Renewed Motion to Strike the State's Notice of Intent to Seek the Death Penalty Based on the Cost of Capital Punishment and Attendant Policy Considerations, Or in the alternative, Motion to Stay Capital Proceedings Pending the Outcome of the Audit Related to Assembly Bill 444*

Motion Denied;

Journal Entry Details:

*Ms. Weaver appeared for Mr. Sgro. Upon Court's inquiry, Mr. DiGiacomo submitted on the prior opposition as there is no new argument. Mr. Oram submitted on the pleading. COURT ORDERED, Motion DENIED. Conference at the Bench. CUSTODY ;*

09/30/2014

**CANCELED Calendar Call** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Vacated*

*Calendar Call (#1)*

10/06/2014

**CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Tao, Jerome T.)

*Vacated*

*Jury Trial (#1)*

10/07/2014



**Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Defendant's Motion to Place on Calendar for a Status Check on In Camera Review and Motion for Production of Information Related to Jerome Thomas on an Order Shortening Time*


Motion Granted;

Journal Entry Details:

*Court noted it never received any records as to Jerome Thomas. Mr. Sgro advised this was granted back on 7/13 and realized that this process was never done. Additionally, Mr. Sgro stated they will need records as to the victim, Devonia Newman and also as to Donovan Roland. Statements by Mr. DiGiacomo. Following, Mr. Sgro advised he will provide an Order for these records to be provided by Judge Voy to this Court for an in-camera review. COURT ORDERED, Motion GRANTED. Court noted there were several ex-parte Motions provided to chambers, one of which is an Order to have a witness that is incarcerated in California brought to Nevada. Following colloquy, Court SIGNED the Order and provided it to Mr. Sgro. The second one has to do with the Jury Commissioner. Conference at the Bench. Pursuant to that conference, the Order was SIGNED and provided to Mr. Sgro. Mr. Sgro advised they have a file review tomorrow at 2:30 and requested that everything be there, especially the homicide books. Mr. DiGiacomo advised they will be present. Mr. Sgro requested the State supplement the Notice of Witness List to provide good addresses. Mr. DiGiacomo advised to the extent they have the information, he will provide tomorrow at the file review. Following colloquy, Mr. Sgro to provide a list to Mr. DiGiacomo and if there is anyone that he does not have information on, it can be discussed at calendar call. COURT ORDERED, GRANTED. Mr. Oram advised his private phone calls with Defendant have been recorded and requested a hearing to determine how this is happening.*

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Following continued arguments, Mr. Sgro requested an Order to Show Cause. Court advised he will make some phone call and directed counsel to do so as well and the matter can be further discussed next week at calendar call. Mr. Sgro requested the record as to Jerome Thomas be unsealed. Mr. DiGiacomo advised the warrant is still an active warrant and he can't have that, but to the extent there is an affidavit for an arrest warrant, it should be in the homicide books and it can be provided again tomorrow. Following continued arguments, COURT ORDERED, the record will not be unsealed, however, Mr. DiGiacomo can provide the document under seal to Mr. Sgro. Mr. DiGiacomo advised there is no additional discovery as to Jerome Thomas' case other than the affidavit in support of the arrest warrant, that is part of the homicide books. Court so noted. CUSTODY ;

10/14/2014  **Calendar Call** (10:00 AM) (Judicial Officer: Tao, Jerome T.)

**10/14/2014, 10/16/2014**

*Calendar Call (#1)*

Matter Continued;

Trial Date Set;

Matter Continued;

Trial Date Set;

Journal Entry Details:

Court noted procedurally, there are 3 motions set for today, however, was given several motions yesterday and upon inquiry, Mr. DiGiacomo stated he is aware of them and answered a few. Additionally, Mr. Langford filed a Motion to Sever as to Deft Mason which is set for next week. Arguments by Mr. Sgro as to the Motion to Continue Trial submitted yesterday including that he has repeatedly asked for discovery only to be told that he has already received it. Mr. Sgro stated that he did receive video, however, it was upside down or mirror imaged and the file that said Autopsy was something entirely different. Court noted that Mr. Sgro waited until right before trial to try and obtain several records and upon inquiry, Mr. Sgro stated that when he asks for it, the response is, "you need to get it from the District Attorney". Mr. Sgro stated he did not wait until the last minute, that he has been trying for several months to obtain discovery; that what he has and what the State thinks they have given them are two different things. For instance, the cell phone record report came in such a big font that they cannot match up the calls with the towers as the tower information prints out on a different page. Mr. Sgro advised that Mr. DiGiacomo handed Mr. Oram two thumb drives this morning that contain the discovery they did not have from the file review and requested this matter be continued to Thursday to see if they have everything. Arguments by Mr. DiGiacomo outlining the number of times the file has been reviewed and the number of times discovery has been provided. Mr. DiGiacomo stated that he feels this is Mr. Sgro's way of getting out of the trial, again. The last time at the file review, Mr. Sgro stated that the only thing he needed was the 3,600 pages of medical records for the victim and needed a continuance to review them. Statements by Ms. Weckerly. Mr. Langford informed the Court that an antagonistic defense is developing. Upon Court's inquiry, Mr. Sgro advised that there were some statements that he disclosed to Mr. Langford that had not been disclosed before. Mr. Sgro objected to the prospective Jury panel and stated there are only 9 out of 150 African/Americans in the panel and requested a hearing. Court noted that in its review of the questionnaires, that the majority of them did not fill out the race section. Following additional colloquy by all counsel, Court noted it will be addressed on Monday at the time of Jury selection. Court noted that the Motions set for today and all of the Motions submitted yesterday will be placed on calendar to be heard on Thursday. Mr. DiGiacomo advised that he spoke with Capt. Forbes at CCDC (Clark County Detention Center) as to Attorney phone calls and was advised that Mr. Oram's number was not blocked, but has since been. Statements by Mr. Oram. Mr. Sgro advised he will be endorsing 2 experts. Mr. DiGiacomo requested to address this on Thursday. COURT ORDERED, all matters CONTINUED to Thursday. CUSTODY ... CONTINUED 10/16/14 10:30 AM ;

10/14/2014 **CANCELED Motion** (10:00 AM) (Judicial Officer: Tao, Jerome T.)

*Vacated - On in Error*

*Motion for the Disclosure of Materials and Facts Relative to Future Prosecutions of State's Witnesses Pursuant to Gigio on an Order Shortening time*

10/16/2014 **Motion to Compel** (10:30 AM) (Judicial Officer: Tao, Jerome T.)

**10/16/2014, 10/20/2014**

*Defendant's Motion to Compel Disclosure of Exculpatory Evidence*

Matter Continued;

Off Calendar;

Matter Continued;

Off Calendar;

10/16/2014 **Motion** (10:30 AM) (Judicial Officer: Tao, Jerome T.)

**10/16/2014, 10/20/2014**

*Defendant's Motion to Disclose Payments to Witnesses by Clark County District Attorney's Office*

Matter Continued;

Motion Granted;

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	Matter Continued; Motion Granted;
10/16/2014	<b>Status Check</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <b>10/16/2014, 10/20/2014</b> <i>Status Check: Phone Calls</i> Matter Continued; No Ruling; Matter Continued; No Ruling;
10/16/2014	<b>Status Check</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Status Check: Jury Questionnaires</i> Set Status Check;
10/16/2014	<b>Motion</b> (10:30 AM) (Judicial Officer: Gates, Lee A.) <b>10/16/2014, 10/20/2014, 01/13/2015</b> <i>Defendant's Motion for the Disclosure of Materials and Facts Relative to Future Prosecutions of State's Witnesses Pursuant to Giglio on an Order Shortening Time</i> Continued; Matter Continued; Motion Not Addressed; Continued; Matter Continued; Motion Not Addressed; Continued; Matter Continued; Motion Not Addressed;
10/16/2014	<b>Joinder</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <b>10/16/2014, 10/20/2014</b> <i>Joinder to Defendant Mason's Motion to Sever or in the Alternative Request for a New Venire and Request for Evidentiary Hearing</i> Matter Continued; Withdrawn; Matter Continued; Withdrawn;
10/16/2014	<b>Motion in Limine</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <b>10/16/2014, 10/20/2014</b> <i>Defendant's Motions in Limine # 1-3</i> Matter Continued; Matter Heard; Matter Continued; Matter Heard;
10/16/2014	<b>Motion</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <b>10/16/2014, 10/20/2014</b> <i>Motion to Preclude the State from Conducting Background Checks on Potential Jurors Unless Results are Provided to the Defense</i> Matter Continued; Matter Resolved; Matter Continued; Matter Resolved;
10/16/2014	<b>Motion to Vacate</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.) <i>Motion to Vacate Ex Parte Order Allowing Jury Commissioner to Conduct Background Checks on Potential Jurors for Production to the Parties on an Order Shortening Time</i> Denied;
10/16/2014	<b>Motion to Continue Trial</b> (10:30 AM) (Judicial Officer: Tao, Jerome T.)

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*Motion to Continue Trial Setting on an Order Shortening Time*  
Granted;

10/16/2014 **Motion for Discovery** (10:30 AM) (Judicial Officer: Tao, Jerome T.)  
**10/16/2014, 10/20/2014**


*Ex-Parte Application for Order for Production of Medical Records*  
Matter Continued;  
Motion Granted;  
Matter Continued;  
Motion Granted;

10/16/2014 **CANCELED Motion for Discovery** (10:30 AM) (Judicial Officer: Tao, Jerome T.)  
*Vacated - On in Error*


*Ex-Parte Order Releasing Clark County Detention Center Records and Reports Related to Stephanie Cousins, Monica Martinez, Jerome Thomas, Quentin White, and Dellane E. Bryant, Jr.*

10/16/2014 **Motion for Discovery** (10:30 AM) (Judicial Officer: Tao, Jerome T.)  
**10/16/2014, 10/20/2014**

*Order Setting Hearing on Motion for Order Releasing Clark County Detention Center Records and Reports Related to Stephanie Cousins, Monica Martinez, Jerome Thomas, Quentin White, and Dellane D. Bryant, Jr.*  
Matter Continued;  
Matter Resolved;  
Matter Continued;  
Matter Resolved;

10/16/2014  **All Pending Motions** (10:30 AM) (Judicial Officer: Tao, Jerome T.)  
Matter Heard;

10/20/2014 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Tao, Jerome T.)  
*Vacated - per Judge*  
*Jury Trial (#1)*

10/20/2014  **All Pending Motions** (10:00 AM) (Judicial Officer: Tao, Jerome T.)  
Matter Heard;  
Journal Entry Details:

*ALL PENDING MOTIONS (BOTH DEFTS): Mr. Langford advised that he formally filed joinders to the co-defendant's Motions. DEFT'S MOTION TO DISCLOSE PAYMENTS TO WITNESSES BY CLARK COUNTY DISTRICT ATTORNEY'S OFFICE (BURNS): Mr. DiGiacomo advised that no funds have been paid on this case. Arguments by Mr. Sgro including that he would like to know if the witnesses are getting paid to come in for pre-trial. Mr. DiGiacomo advised the statutes were changed several years ago and the office policy is that no one is paid for pre-trial. Following additional arguments, Court directed the State contact VWAC to see if any payments were made and if there were, they are to be submitted to chambers for an in-camera review. Mr. Langford stated the witnesses get \$25/day and \$.56/mile which could add up to quite a bit and the concern is that the witnesses are getting paid for their testimony. Following additional colloquy, COURT ORDERED, GRANTED. DEFT'S MOTION FOR THE DISCLOSURE OF MATERIALS AND FACTS RELATIVE TO FUTURE PROSECUTIONS OF STATE'S WITNESSES PURSUANT TO GIGLIO ON AN ORDER SHORTENING TIME (BURNS): Statements by Mr. Sgro and Ms. Weckerly in support of their respective positions. As this is premature, COURT ORDERED, matter CONTINUED to calendar call. DEFT'S JOINER TO DEFT MASON'S MOTION TO SEVER OR IN THE ALTERNATIVE REQUEST FOR A NEW VENIRE AND REQUEST FOR EVIDENTIARY HEARING (BURNS): Mr. Sgro advised this Motion is WITHDRAWN. COURT SO ORDERED. DEFT'S MOTIONS IN LIMINE #1-3: 3) TO PRECLUDE REFERENCE TO ASSEMBLY BILL 444: COURT ORDERED, GRANTED as unopposed as long as the door is not opened. 2) TO PRECLUDE LAW ENFORCEMENT FROM GIVING LAY WITNESS TESTIMONY AS TO THE IDENTITY OF THE SUSPECT ON THE SURVEILLANCE VIDEO: Arguments by Mr. Sgro in support of his position including that he feels a hearing is necessary. Arguments by Mr. DiGiacomo including that Defendant's hair is different, he is 5 years older, however, the Detectives that will speak about the video, had contact with Defendant 4 1/2 years ago. Following, Court does not feel a hearing is necessary and ORDERED, DEFERRED TO TRIAL. 3) TO PRECLUDE THE STATE FROM ADMITTING THE SIX-PACK PHOTOGRAPHIC LINEUP OF DAVID BURNS SIGNED BY DE'VONIA NEWMAN AND TO PRECLUDE THE IN-COURT IDENTIFICATION OF DEFENDANT BURNS BY NEWMAN: Arguments by Mr. Sgro as to the six-pack and feels it is unduly suggestive. Arguments by Mr. DiGiacomo. Statements by Court. As to in-Court identification, Mr. Sgro advised he addressed his concerns earlier as the Defendants will be the only African Americans at the table. Arguments by Mr. DiGiacomo. Following, COURT ORDERED, DENIED. DEFT'S MOTION TO PRECLUDE THE STATE FROM CONDUCTING BACKGROUND CHECKS ON POTENTIAL JURORS UNLESS RESULTS ARE PROVIDED TO THE DEFENSE (BURNS): Court noted what Defense wants is if the State runs checks on any of the*

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*Jurors, the information be given to them. Statements by Mr. Sgro including that he does not have access to SCOPE or NCIC and would request if the State finds out any information, that they turn it over. Continued arguments by Mr. Sgro and Mr. DiGiacomo. COURT ORDERED, any evidence of prior arrest whether or not it resulted in a conviction or any evidence uncovered from NCIC or SCOPE which indicate that a prospective Juror has lied on their questionnaire, is to be given to the Defense. DEFT'S MOTION FOR ORDER RELEASING CLARK COUNTY DETENTION CENTER RECORDS AND REPORTS RELATED TO STEPHANIE COUSINS, MONICA MARTINEZ, JEROME THOMAS, QUENTINE WHITE AND DELLANE D. BRYANT, JR: Mr. DiGiacomo advised he has issued subpoenas for all records and will submit anything that needs to be submitted to Court for in-camera review. COURT ORDERED, RESOLVED. DEFT'S EX-PARTE APPLICATION FOR ORDER FOR PRODUCTION OF MEDICAL RECORDS: Counsel agree that Mr. Thomas went to Utah under the name of Albert Davis for treatment and that Mr. Thomas did not go to UMC so there are no records. Mr. Sgro explained the need to obtain these records and requested an Order to obtain the records from Utah. Mr. DiGiacomo advised he had no objection as long as he receives a copy of the records as well. COURT ORDERED, GRANTED. DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE (BURNS): Mr. DiGiacomo advised they will follow the statutory and constitutional obligations and feels this has been covered by all of the other Motions for Discovery. Mr. Sgro concurred and requested it be taken OFF CALENDAR. COURT SO ORDERED. DEFT'S MOTION TO SEVER OR IN THE ALTERNATIVE REQUEST FOR A NEW VENIRE (MASON): At request of counsel, COURT ORDERED, WITHDRAWN. DEFT'S MOTION TO SUPPRESS (MASON): Court advised this issue was discussed last week. COURT ORDERED, MOOT. Mr. Sgro advised as to Jerome Thomas, they have a letter that Defendant sent Detective Bunting, but they only have the envelope, no letter. Mr. DiGiacomo advised he does not have the letter either and will ask Detective Bunting about it. Mr. Sgro requested an updated Notice of Witnesses with the correct addresses. Ms. Weckerly advised they will provide that, however, would also like the correct addresses for the Defense witnesses as well as the underlying discovery as to the experts. As the trial has been continued, pursuant to statute, COURT ORDERED, all witnesses list are to be update with current addresses. CUSTODY ;*

12/02/2014 **CANCELED Status Check** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Vacated - per Judge  
Status Check: Jury Questionnaires*

12/11/2014 **Motion** (8:30 AM) (Judicial Officer: Tao, Jerome T.)


**12/11/2014, 12/18/2014**

*Defendant's Motion to Place on Calendar for Status Check on Return of In Camera Review of CPS Records  
Matter Continued;  
Matter Heard;  
Matter Continued;  
Matter Heard;*

12/11/2014 **Motion for Discovery** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

**12/11/2014, 12/18/2014**


*Defendant's Motion for Discovery  
Matter Continued;  
Matter Heard;  
Matter Continued;  
Matter Heard;*

12/11/2014  **All Pending Motions** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Matter Continued;  
Journal Entry Details:  
DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR STATUS CHECK ON RETURN OF IN CAMERA CPS RECORDS...DEFENDANT'S MOTION FOR DISCOVERY Court noted it received word that this matter was to be continued. Ms. Kollins advised Ms. Weckerly was going to appear. MATTER TRAILED AND RECALLED: Court noted it is at the end of the calendar and Ms. Weckerly has not appeared. There being another matter set next week, COURT ORDERED, today's matters are CONTINUEUD to next week as well. CUSTODY ... CONTINUED 12/18/14 8:30 AM ;*

12/18/2014 **Motion to Strike** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*State's Notice of Motion and Motion to Strike Defendant's Expert Notice, or in the Alternative, Motion for Discovery  
Matter Heard;*

12/18/2014  **All Pending Motions** (8:30 AM) (Judicial Officer: Tao, Jerome T.)

*Matter Heard;  
Journal Entry Details:  
STATE'S MOTION TO STRIKE DEFENDANT'S EXPERT NOTICE, OR IN THE ALTERNATIVE, MOTION FOR*

**CASE SUMMARY****CASE NO. C-10-267882-2**


DISCOVERY...DEFENDANT'S MOTION FOR DISCOVERY...DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR STATUS CHECK ON RETURN OF IN CAMERA REVIEW OF CPS RECORDS AS TO MOTION TO STRIKE: Court noted this motion relates to the Fetal Alcohol Syndrome experts. Mr. Sgro advised they would comply with the 21 day statute, but was concerned if the trial was going to be re-set due to this Court's appointment. Court advised Sr. Judge Thompson is going to hear this trial. Ms. Weckerly stated that as long as they receive the materials by 12/30, she is fine. Mr. Sgro stated he will do his best to get the material to the State. Following colloquy, COURT ORDERED, matter set for status check. AS TO DISCOVERY. Mr. Sgro advised there is no issue. AS TO CPS RECORDS: Mr. Sgro requested this Court turn over what is has reviewed. Following colloquy, Mr. Sgro suggested that the records be turned over to them and the State for review and if they feel something is too sensitive, they can bring it up to Judge Thompson. Ms. Weckerly had no objection. Court noted that there has been nothing in the records he has reviewed. COURT ORDERED, CPS records to be turned over to Mr. Sgro's Office. CUSTODY 1/6/15 8:30 AM STATUS CHECK: ALL OUTSTANDING DISCOVERY ISSUES ;

01/06/2015 **Status Check (9:30 AM)** (Judicial Officer: Thompson, Charles)

Status Check: All Outstanding Discovery Issues  
Matter Heard;

01/06/2015 **Status Check (9:30 AM)** (Judicial Officer: Thompson, Charles)

Status Check: Jury Questionnaires  
Matter Heard;

01/06/2015  **All Pending Motions (9:30 AM)** (Judicial Officer: Thompson, Charles)

Matter Heard;

Journal Entry Details:

STATUS CHECK: ALL OUTSTANDING DISCOVERY ISSUES (BOTH)...STATUS CHECK: JURY QUESTIONNAIRES (BOTH) Colloquy as to scheduling. Counsel agreed to return this afternoon. Mr. Sgro advised there is still a discovery issue, that there are several things that still have not been received. Additionally, Mr. Sgro advised he received a Supplemental Notice of Aggravating Circumstances yesterday that includes some of this outstanding discovery. Further, there is an issue that the Notice of Expert Witnesses was filed one day late. Colloquy as to Jury questionnaires. Court advised there are 49 prospective Jurors that all parties agree to be excused. Further, this Court will not be granting all of the Jurors that any side wants to excuse. Mr. Sgro objects to the panel of 150 as there are not enough African Americans in the panel. Mr. Sgro would like the whole panel brought in prior to their being excused to see exactly how many African Americans there were on the panel. Statements by Mr. DiGiacomo. Court noted that if they are excused, they will not have to appear. Continued arguments by Mr. Sgro as to systematic under representation. MATTER TRAILED. 3:48 PM MATTER RECALLED: Items of discovery still needed by Mr. Sgro: 1) Mr. Sgro would like the medical records of Jerome Thomas from Utah. Ms. Weckerly advised they never received any records, that at the time of the search warrant, it was discovered that Mr. Thomas used an alias in Utah and that the only thing they have is the face sheet that shows the alias name and possibly an x-ray. Following colloquy, Mr. Sgro to prepare an Order for those records. Further, Mr. Sgro advised Mr. Thomas is incarcerated in San Bernardino and they are trying to get him here for trial. Court so noted. 2) Mr. Sgro advised they have an envelope from Jerome Thomas to Detective Bunting with no letter and would like a copy of the letter. Following colloquy, Ms. Weckerly will contact Detective Bunting today and inquire about the letter. 3) Mr. Sgro requested updated contact information as to the State's witnesses as they are still listed on Michael Lane, which is 4 years old and incorrect. Conference at the Bench. Pursuant to that conference, Ms. Weckerly will provide the best information she has by the end of the week. 4) Mr. Sgro advised he does have some jail phone call records, however, he does not have the "gaps of time" listed on page 4 of his Motion. Following colloquy, Ms. Weckerly advised they will tell counsel what phone calls they intend to use one week prior to trial and will check with Mr. DiGiacomo as to the "missing" content. 5) Mr. Sgro advised there were photographs shown to witnesses during their interviews and would like those. Ms. Weckerly advised this is not an identity case as there is a testifying co-defendant, however, she will speak with Detectives to find out what photos they used during the interviews. 6) Mr. Sgro advised Cornelius Mayo has picked up 2 felony cases since this case and would like to know what benefit he received. Ms. Weckerly advised they have discussed with Mr. Mayo as well as his counsel and the benefit is that they are not proceeding on those two cases until he testifies. Mr. Sgro advised he is concerned that there is nothing in writing. Ms. Weckerly concurred, there is no written agreement. Colloquy as to counsel meeting in chambers on Friday at 8:30 AM. As to Jury Questionnaires: Court noted each counsel submitted a list of the Prospective Jurors they would like excused, however, it will not grant all of them. Court advised the Jury Commissioner will be notified to EXCUSE the following Prospective Jurors (in numerical order): 029, 096, 098, 102, 115, 122, 126, 130, 147, 167, 172, 184, 185, 194, 196, 215, 292, 312, 324, 327, 332, 335, 346, 350, 356, 370, 372, 378, 397, 402, 408, 423, 426, 432, 438, 454, 458, 461, 468, 473, 479, 481, 500, 508, 516, 517, 518, 526, 534, 543, 546, 551, 555, 571, 580, 610, 615, 632, 638, 639, 654, 677, 682, 695, 701, 703, 709, 714, 726, 742, 759, 769, 772 and 776. Mr. Sgro requested an additional 4 peremptory challenges for both sides, 2 for each Defendant and 4 for the State. Following colloquy, Court DENIED request. Court advised there will be 3 Alternates and that they need to pass 35 Jurors for cause. Mr. Oram advised he has a Federal sentencing the morning of 1/26 and requested to start trial at 1:00 PM. Following colloquy, COURT SO ORDERED. CUSTODY 1/9/15 8:30 AM STATUS CHECK: DISCOVERY (in chambers) 1/20/15 1:00 PM JURY TRIAL ;

# CASE SUMMARY

CASE NO. C-10-267882-2

01/09/2015



**At Request of Court** (8:30 AM) (Judicial Officer: Thompson, Charles)

*At Request of Court: Discovery*

Matter Heard; At Request of the Court: Discovery

Journal Entry Details:

*Defendants Mason and Burns were not present. Initially the Court met with the following counsel in Chambers: Marc DiGiacomo and Pam Weckerly for the State of Nevada; Robert Langford for Deft Mason; Christopher Oram, Anthony P. Sgro, and Melinda Weaver for Deft Burns. The following issues were discussed: 1) Prospective Jurors Excused: Court advised that two additional Prospective Jurors (Badge No. 335 and 772) are being excused by the Court. Court cited the reasons and counsel so stipulated. COURT NOTED there remains seventy-five prospective jurors for voir dire and a listing was provided to all counsel. 2) Outstanding Discovery Issues: A. Envelope contents - Mr. Sgro advised he had still not received the contents of the envelope that was previously discussed. Mr. DiGiacomo represented there was no recollection of the actual letters/correspondence included in the envelope, but there's the conclusion that it consisted of correspondence between Martinez to Jobloc(sp?), nothing from Jerome Thomas. Mr. Sgro accepted Mr. DiGiacomo's representation that the envelope contents were probably filed away without incident and there was no recollection of it. Mr. DiGiacomo reiterated that Mr. Sgro has been given all discovery. B. Availability of a CD disc of the Interview with "Monica" - Mr. Oram requested this and Mr. DiGiacomo stated that a special program will be required in order to transfer it to a disc. Mr. Oram stated he will arrange a contact with Mr. DiGiacomo's office to get this accomplished. C. Telephone Records - Mr. Sgro requested the State make a representation on record about the telephone call records. Mr. DiGiacomo confirmed that the State received the subpoena but all telephone records prior to 4/5/11 are not available. He noted that "Stephanie's conversation" was given to Mr. Sgro. Mr. Langford confirmed he did not represent Deft Mason at that time; there was another lawyer of record and those records are privileged. 3) Mr. Sgro's "Ex-Parte Order to Receive MRI (FILED UNDER SEAL)", previously signed by Judge Tao - Mr. Sgro advised that Deft Burns needs to be transported for an MRI as recommended by his doctor. COURT ADVISED it will place on the record that the Court Clerk is to file the signed order in Open Court. 4) Mr. Sgro's "Order for Production of Medical Records" for Albert Davis aka Jerome Thomas - Court signed the order and returned it to Mr. Sgro for filing. 4) Trial Scheduling Issues: Both Mr. Sgro and Mr. Langford presented requests for trial scheduling changes. Mr. Sgro requested dark days of Feb. 2nd and 3rd and Mr. Langford requested a dark day of Feb. 27th. COURT SO NOTED. All counsel agreed that the trial can still remain on schedule for completion since the Jury Questionnaires have helped alleviate time for voir dire. COURT ADVISED of the trial schedule for the first four days during which voir dire will be conducted. The dates are noted below and have been entered into Odyssey. (Mr. Langford left the meeting at this time.) 5) Discussion held regarding cell phone expert Larry Smith. Both sides agreed that Smith was an expert in cell phones and "phone dumps" and will be called at trial for testimony. COURT ORDERED a short recess, after which the case was called in the Dept 20 courtroom and was placed on the JAVS recording system. COURT ORDERED, the "EX-PARTE ORDER TO RECEIVE MRI (FILED UNDER SEAL)", to be FILED IN OPEN COURT at this time. HEARING CONCLUDED. CUSTODY (MASON and BURNS) 1/13/15 8:30 AM Calendar Call 1/20/15 1:00 PM Jury Trial Start 1/21/15 9:30 AM Jury Trial Continuance 1/22/15 10:00 AM Jury Trial Continuance 1/23/15 9:00 AM Jury Trial Continuance ;*

01/13/2015



**Minute Order** (7:00 AM) (Judicial Officer: Thompson, Charles)

Minute Order - No Hearing Held;

Journal Entry Details:

*Court has received a request from Dr. Phillip Larsen to excuse Juror Sharon Kurgin. Pursuant to that request, Court advised Juror #599 is excused.;*

01/13/2015

**Calendar Call** (8:30 AM) (Judicial Officer: Gates, Lee A.)

*Calendar Call (#1)*

Matter Heard;

01/13/2015



**All Pending Motions** (8:30 AM) (Judicial Officer: Gates, Lee A.)

Matter Heard;

Journal Entry Details:

*CALENDAR CALL (#1)...DEFENDANT'S MOTION FOR THE DISCLOSURE OF MATERIALS AND FACTS RELATIVE FUTURE PROSECUTIONS OF STATE'S WITNESSES PURSUANT TO GIGLIO ON AN ORDER SHORTENING TIME Court Service Officer advised Deft Mason refused to come to Court today. Upon Court's inquiry, Mr. Sgro advised the State had until today to let them know if they were going to use any jail calls as to either Defendant; that the understanding is they are not as to Deft. Burns and that there are 10 calls pertaining to Deft Mason out of San Bernardino. Mr. DiGiacomo concurred that they will not use any of the phone calls unless Defense opens the door. Counsel advised they were ready for trial. Court noted Jury selection is set to begin at 1:00 PM on Tuesday, January 20, 2015. Further, Deft's Motion not addressed. CUSTODY 1/20/15 1:00 PM JURY TRIAL ;*

01/20/2015



**Jury Trial** (1:00 PM) (Judicial Officer: Thompson, Charles)

**01/20/2015-01/23/2015, 01/26/2015-01/30/2015, 02/05/2015-02/06/2015, 02/09/2015-02/13/2015, 02/17/2015**

*Jury Trial (#1)*

# CASE SUMMARY

CASE NO. C-10-267882-2

Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
Trial Continues;  
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Trial Continues;  
Jury Deliberating;  
Jury Deliberating;  
Verdict;

## Journal Entry Details:

9:00 AM Jury arrives to continue deliberations. 4:27 PM OUTSIDE PRESENCE OF THE JURY: Court advised while the Jury was deliberating on Friday, they had a question and wanted a read back of Monica Martinez' testimony. Upon clarification from the Jury and after a conference call with counsel, 2 discs were made of the testimony of Monica Martinez, 1/28/15 (marked Court's 18) and 1/29/15 (marked Court's 19). Today, during deliberations, the Jury wanted clarification as to Count 5, counsel were summoned to chambers and an answer was sent in by the Court. 4:33 PM JURY PRESENT: Court noted the Jury, the Defendants and counsel, except for Mr. Sgro, were present. Jury Foreperson advised they had reached a verdict. Clerk read the following: AS TO DEFT MASON: COUNT 1 - Conspiracy to Commit Robbery - GUILTY; COUNT 2 - Conspiracy to Commit Murder - GUILTY; COUNT 3 - Burglary While in Possession of a Firearm - GUILTY; COUNT 4 - Robbery With Use of a Deadly Weapon - GUILTY; COUNT 5 - Murder With Use of a Deadly Weapon - GUILTY of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. SPECIAL VERDICT: The Jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary; COUNT 6 - Robbery With Use of a Deadly Weapon (DeVonja Newman) - GUILTY; COUNT 7 - Attempt Murder With Use of a Deadly Weapon - GUILTY, and; COUNT 8 - Battery With a Deadly Weapon Resulting in Substantial Bodily Harm - GUILTY. AS TO DEFT BURNS: COUNT 1 - Conspiracy to Commit Robbery - GUILTY; COUNT 2 - Conspiracy to Commit Murder - GUILTY; COUNT 3 - Burglary While in Possession of a Firearm - GUILTY; COUNT 4 - Robbery With Use of a Deadly Weapon - GUILTY; COUNT 5 - Murder With Use of a Deadly Weapon - GUILTY of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. SPECIAL VERDICT: 1) The Jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary and 2) The Jury does not unanimously find the Defendant guilty under a single theory of Murder of the First Degree; COUNT 6 - Robbery with Use of a Deadly Weapon (DeVonja Newman) - GUILTY; COUNT 7 - Attempt Murder With Use of a Deadly Weapon - GUILTY and; COUNT 8 - Battery With a Deadly Weapon Resulting in Substantial Bodily Harm - GUILTY. At request of Mr. Oram, the Jury was polled. Court advised the Jury they do not need to hear a Penalty Phase due to the Stipulation that was filed 2/9. Court thanked and excused the Jury. Court referred the matter to the Division of Parole and Probation for Pre-sentence Investigation Reports and ORDERED, set for sentencing. CUSTODY (BOTH) 4/9/15 8:30 AM SENTENCING (BOTH) ;

Trial Continues;  
Trial Continues;  
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Trial Continues;  
Trial Continues;  
Trial Continues;  
Jury Deliberating;  
Jury Deliberating;  
Verdict;

## Journal Entry Details:

9:00 AM Jury arrives to continue deliberations. 4:15 PM There being no verdict, the Jury was EXCUSED for the weekend and directed to report Tuesday at 9:00 am. EVENING RECESS. ... CONTINUED 2/17/15 9:00 AM ;



**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

9:30 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised Detective Shoemaker is now retired, that through the course of an interview, found out that Detective Shoemaker was part of the team working on the Burns case; he did not interview any witnesses but compiled information that was supplied to CPS. Mr. Sgro stated Detective Shoemaker advised CPS that Devonian was used as a mule during the drug buys. However, Mr. Sgro stated that when he asked Mr. Mayo and Ms. Newman, they denied this. Mr. Sgro advised if the Court feels this is hearsay, will offer it for a prior inconsistent statement. Arguments by Mr. DiGiacomo. Continued arguments by Mr. Sgro including that Detective Shoemaker will testify that Mr. Mayo phoned friends to pick up the product before he called 911. Following arguments by Mr. DiGiacomo and Mr. Sgro, COURT ORDERED, it is hearsay and Detective Shoemaker will not be allowed to testify. Statements by Mr. Sgro as to admitting medical records, that there is a one page entry with a notation by the Security Guard that he would like to admit. There being no objection, COURT SO ORDERED. 9:45 AM JURY PRESENT: Court advised the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 10:39 AM STATE RESTS. OUTSIDE PRESENCE OF JURY: Both Defendants were advised of their rights to testify. Mr. Sgro advised there is a stipulation for the admission of Defs CC. COURT SO ORDERED. BREAK. 11:00 AM OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo advised there was a Reciprocal Discovery Order in this case and they asked Defense if there were any exhibits; Mr. DiGiacomo advised Mr. Sgro just handed him two pieces of discovery that he intends to use and would request they not be allowed. Arguments by Mr. Sgro including that until the State had rested, they did not know what they were going to use. Following additional arguments, COURT ORDERED, they will be allowed. 11:07 AM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 11:48 AM DEFT BURNS RESTED. DEFT MASON RESTED. LUNCH BREAK. OUTSIDE THE PRESENCE OF THE JURY: Jury instructions settled on the record. 1:04 PM JURY PRESENT: Court noted all present as before. Jury Instructions read by the Court. BREAK. 2:16 PM JURY PRESENT: Court noted all present as before. Closing arguments by Ms. Weckerly, Mr. Langford and Mr. Oram. 4:48 PM EVENING RECESS. ... CONTINUED 2/12/15 9:45 AM :

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

9:32 AM OUTSIDE PRESENCE OF JURY: Court advised counsel have entered into a stipulation as to the penalty phase of this trial. Mr. Sgro advised that they and the State have agreed that if the verdict comes back as 1st Degree Murder, they will waive the penalty phase, stipulate to Life without Parole, Defendant waives his appellate rights and the State will remove the death penalty. Mr. Sgro advised they are not waiving any misconduct during the remainder of the trial or of the closing arguments. Mr. DiGiacomo concurred that the death penalty will be removed, Defendant stipulates to Life without Parole and waives any appeal as to the trial if the verdict is 1st Degree Murder. Mr. Langford advised Deft Mason will also waive the penalty phase. Upon inquiry by the Court, Deft Mason stated he waives his right to a penalty phase and Deft Burns stated he waives his right to a penalty phase and to his right to appeal. Court so noted. 9:47 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 11:11 AM OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo advised there is a stipulation between the State and Defense for the admission of State's Proposed #250- #261. COURT SO ORDERED. 11:13 AM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 11:43 PM LUNCH BREAK. OUTSIDE PRESENCE OF JURY: Jury instructions discussed. Statements by Mr. DiGiacomo, Ms. Weckerly and Mr. Oram. 1:35 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 2:27 PM OUTSIDE PRESENCE OF JURY: Arguments by Mr. Sgro as to the identification of Deft Mason by Witness Vasek. Court advised Deft Burns' appearance has changed. Statements by Mr. DiGiacomo. 2:48 PM OUTSIDE PRESENCE OF JURY: Stipulation and Order Waiving Separate Penalty Hearing SIGNED AND FILED IN OPEN COURT as to Deft. Burns. Stipulation and Order Waiving Separate Penalty Hearing SIGNED AND FILED IN OPEN COURT as to Deft Mason. 2:50 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:00 PM EVENING RECESS. ... CONTINUED 2/10/15

# CASE SUMMARY

CASE NO. C-10-267882-2

9:30 AM ;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Jury Deliberating;

Jury Deliberating;

Verdict;

Journal Entry Details:

9:27 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised the State stipulates to the admission of Defense U which is a report for gunshot residue on Cornelius Mayo. Ms. Weckerly concurred. 9:40 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 12:38 PM LUNCH BREAK. 1:55 PM OUTSIDE PRESENCE OF JURORS: Court advised counsel that one of the Jurors needs to leave by 5:00 PM today to fly out for a funeral. Mr. Oram advised they just received a 911 call about Stephanie Cousins and would object as they will not have a chance to cross examine Ms. Cousins. Arguments by Mr. DiGiacomo including that the daughter of Stephanie Cousins, who made the call, will be in Court. Following continued arguments by Mr. Sgro, Mr. Oram and Mr. DiGiacomo, COURT ORDERED, it will be received. 2:07 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 3:37 PM JURY EXCUSED. OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo expects Det. Bunting to testify Monday or Tuesday and advised the Defense needs to let him know the portions they want redacted from the statement. Mr. Sgro advised he objects to colloquy by Police but has no objection to a question followed by an answer. Following, Court directed Mr. Sgro to provide by Sunday morning. EVENING RECESS. ... CONTINUED 2/9/15 9:30 AM ;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

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Trial Continues;

Trial Continues;

Jury Deliberating;

Jury Deliberating;

Verdict;

Journal Entry Details:

9:45 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised that two children will be testifying and is concerned of hearsay statements. Mr. DiGiacomo and Ms. Weckerly promised they would not elicit any hearsay statements. Statements by Mr. Sgro as to the Tool Mark Expert. COURT ORDERED, ruling reserved. Court advised it received a call from Juror #1, Kelly Rowan and due to medical issues with her husband, Court has excused her and Alternate #1 will be placed in her seat. 10:03 AM JURY PRESENT: Court advised Juror #1, Kelly Rowan has been excused and Alternate #1 was placed in seat #1 and sworn as part of the Jury. Court advised the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 12:02 PM LUNCH BREAK. 1:04 PM JURY PRESENT: Court advised all present as before. 1:25 PM BREAK. 1:35 PM OUTSIDE PRESENCE OF JURY: Court advised Juror #7, Mary Paradis has taken ill and is excused. Alternate #1 Cindy Arnold will move into seat 7. 1:37 PM JURY PRESENT: Court advised as Ms. Paradis is ill, she is excused and Alternate Cindy Arnold will be sworn and sit in seat #7. Testimony and exhibits continued (see worksheets). 3:18 PM OUTSIDE PRESENCE OF JURY: Mr. Sgro moved for mistrial as he feels Mr. DiGiacomo suggested burden shifting. Following statements by Mr. Sgro and Mr. DiGiacomo, Court DENIED request for mistrial. Mr. Sgro requested a curative instruction be given to the Jury upon their return. Mr. DiGiacomo had no objection. 3:34 PM JURY PRESENT: Court noted all present as before. Testimony

# CASE SUMMARY

CASE NO. C-10-267882-2

and exhibits continued (see worksheets). 5:26 PM EVENING RECESS. ... CONTINUED 2/6/15 9:30 AM ;

Trial Continues;

Trial Continues;

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Trial Continues;

Jury Deliberating;

Jury Deliberating;

Verdict;

Journal Entry Details:

9:38 AM JURY PRESENT: Court noted the Defendants, the Jury and all counsel are present. Testimony and exhibits continued (see worksheets). 11:00 AM OUTSIDE PRESENCE OF JURORS: Mr. Sgro objected to Courtroom decorum of Mr. DiGiacomo. Court noted that all counsel are to act properly in Court. Mr. Sgro requested a hearing as to the jail letters, as they were told the District Attorney tells the jail when and when not to copy the letters. Mr. DiGiacomo argued that the Homicide Detectives direct the jail as to the copying of letters, that his homicide book is opened on the table and that Mr. Sgro has every piece of paper that he has. 11:21 AM JURY PRESENT: Court noted all present as before. 12:04 PM LUNCH BREAK. 1:24 PM OUTSIDE PRESENCE OF JURORS: Statements by Mr. Oram and Mr. DiGiacomo as to the testimony of D. Rowland. Following, Court OVER RULED objection. Mr. Langford moved again for severance based on the fact that he just learned that the next witness D. Rowland is now going to finger Deft Mason as the shooter and not Deft Burns. Arguments by Mr. Sgro and Mr. DiGiacomo. Following, COURT ORDERED, Motion to Sever is DENIED. 1:44 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 2:58 PM OUTSIDE PRESENCE OF JURORS: Court noted it appeared that witness D. Rowland was less than truthful. Arguments by Mr. DiGiacomo and Mr. Sgro in support of their positions as to the Crowley case and statutes 51.035 and 51.325 and the admission of D. Rowland's Grand Jury testimony. Following, Court advised it is admissible. 3:14 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 3:30 PM EVENING RECESS. ... CONTINUED 2/5/15 9:30 AM ;

Trial Continues;

Trial Continues;

Trial Continues;

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Trial Continues;

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Trial Continues;

Trial Continues;

Jury Deliberating;

Jury Deliberating;

Verdict;

Journal Entry Details:

9:43 AM JURY PRESENT: Court advised the Defendants, Jurors and all counsel were present. Testimony continues (see worksheets). 11:57 AM LUNCH BREAK. OUTSIDE PRESENCE OF JURY: Court advised upon review, the ruling as to Monica Martinez being unchained is REVERSED and ORDERED, that she will be unchained upon her return to the stand. 1:06 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:37 PM Jury released for the evening. OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo advised it appears that Mr. Oram is going to elicit the hearsay statements of Job-loc. Arguments by Mr. Oram in support of his position. Colloquy as to co-conspirator statements. Following, Court advised the statements will be allowed. EVENING RECESS. ... CONTINUED 1/30/15 9:30 AM ;

Trial Continues;

Trial Continues;

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

Trial Continues:

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**


Trial Continues;

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

9:30 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Colloquy as to the jail calls of Monica Martinez and Stephanie Cousins from October 2011 to present, from August 2010 to 2011, the Jail had a different carrier and those records could not be produced. Mr. Sgro requested the State provide these if they have them. Mr. DiGiacomo advised he has provided the calls from April 2011 to present pursuant to the dates listed on Mr. Sgro's Motion. Colloquy as to Prospective Jurors #289, #315 and #280 being excused. 9:50 AM PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Voir Dire administered to panel. Jury selection begins. 11:46 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. DiGiacomo advised there were 2 African Americans on this panel. Ms. Weckerly advised of the other minorities also on the panel. LUNCH BREAK. 12:59 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Parties stipulate to excuse Prospective Juror #201. COURT SO ORDERED. 1:02 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. OUTSIDE PRESENCE OF PROSPECTIVE JURORS: COURT ORDERED, by stipulation, Prospective Jurors #280, #315, #289 and #295 are EXCUSED. 1:59 PM

**CASE SUMMARY**  
**CASE NO. C-10-267882-2**

OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Oram provided 2 folders of California Youth records, one of which is 512 pages and the other is 616 pages to the State. 1:20 PM PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Jury selection begins. 2:56 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Langford advised he knows Prospective Juror #101 as they worked together at the Sport Chalet. Statements by Mr. Sgro and requested this Juror be excused. Court DENIED request at this time. Mr. Sgro requested Prospective Juror #93 be excused based on her husband's upcoming surgery. Objections by Mr. DiGiacomo. Court advised based on her answers to the questions, it does not rise to the level for excusal for cause. Further, Mr. Sgro advised there are 3 African Americans on this panel, and that he still is requesting a hearing as to the issue of not enough African Americans on the panel. Court so noted. Mr. Oram advised they have received 4,000 phone calls from the State. 3:28 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 6:15 PM Prospective Jurors that were passed are excused and directed to return on Friday at 3:30 PM. COURT ORDERED, EVENING RECESS. ... CONTINUED 1/21/15 9:30 AM ;

02/05/2015  **Motion** (8:30 AM) (Judicial Officer: Thompson, Charles)

*Deft Burns' Motion in Limine to Prohibit the Presentation of a Summary Regarding the Course of Investigation*  
Motion Denied;

Journal Entry Details:

Arguments by Mr. Oram and Mr. DiGiacomo in support of their respective positions. Mr. Langford advised that he has joined in this Motion. Following additional arguments, COURT ORDERED, Motion DENIED. CUSTODY ;

04/09/2015  **Sentencing** (8:30 AM) (Judicial Officer: Thompson, Charles)

**04/09/2015, 04/23/2015**

Matter Continued:

Defendant Sentenced:

Journal Entry Details:

*Sentencing Memorandum FILED IN OPEN COURT (under seal). Following statements by counsel and Defendant. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, and \$35.00 Domestic Violence fee, Def. SENTENCED as follows to counts: 1. CONSPIRACY TO COMMIT ROBBERY (F), a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC). 2. CONSPIRACY TO COMMIT MURDER (F), a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC). 3. BURGLARY WHILE IN POSSESSION OF A FIREARM, a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC). 4. ROBBERY WITH USE OF DEADLY WEAPON (F), a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon. 5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F), LIFE WITHOUT PAROLE plus enhancement of MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM FORTY (40) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon. 6. ROBBERY WITH USE OF A DEADLY WEAPON (F), a MAXIMUM of ONE HUNDRED EIGHTY*



# CASE SUMMARY

CASE NO. C-10-267882-2

(180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon. 7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM FORTY EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM FORTY (40) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon. 8. BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F), a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC). with 1,671 days CREDIT FOR TIME SERVED. COUNTS 1,2,3,4 to run CONCURRENT with Count 5. Counts 6 & 8 to run CONCURRENT with Count 7. Count 7 to run CONSECUTIVE to Count 5. NDC ;  
Matter Continued;  
Defendant Sentenced;  
Journal Entry Details:  
Court noted that counsel want a continuance. Mr. Oram concurred and requested two weeks. Ms. Weckerly had no objection. COURT ORDERED, matter CONTINUED TWO (2) WEEKS. CUSTODY ... CONTINUED 4/23/15 8:30 AM ;

02/16/2016 **Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Johnson, Eric)

Events: 10/29/2015 Order for Petition for Writ of Habeas Corpus  
Defendant's Pro Per Petition for Writ of Habeas Corpus  
Denied;

02/16/2016 **Motion for Appointment of Attorney** (8:30 AM) (Judicial Officer: Johnson, Eric)

Defendant's Pro Per Motion to Appoint Counsel  
Motion Denied;

02/16/2016 **Motion** (8:30 AM) (Judicial Officer: Johnson, Eric)


Defendant's Pro Per Motion to Withdraw Counsel  
Motion Granted;

02/16/2016 **Motion** (8:30 AM) (Judicial Officer: Johnson, Eric)

Defendant's Pro Per Motion for Production of Documents, Papers, Pleadings and Tangible Property of Defendant  
Motion Denied;

02/16/2016 **Request** (8:30 AM) (Judicial Officer: Johnson, Eric)

Defendant's Requesting the Court Give a Evidentiary Hearing on Issues Listed in Writ of Habeas Corpus  
Denied;

02/16/2016  **All Pending Motions** (8:30 AM) (Judicial Officer: Johnson, Eric)

Matter Heard;  
Journal Entry Details:

Court noted Defendant is in prison and not present today and proffered several Motions. AS TO DEFENDANT'S PRO PER MOTION: ...TO WITHDRAW COUNSEL: COURT ORDERED, GRANTED. ...TO APPOINT COUNSEL: Court noted it received the State's response; that there are no difficult issues, Defendant is able to comprehend the proceedings and does not need counsel as there is no additional discovery. Therefore, COURT ORDERED, DENIED. ...PETITION FOR WRIT OF HABEAS CORPUS: Court noted grounds 1,2,3,10,12,14 & 15 pertain to instances of prosecutorial misconduct, however, these should have been raised in direct appeal and not in a post-conviction writ. As to ground 4: Counsel was Ineffective for Failing to Object or Raise on Direct Appeal an Alleged Instance of "Witness Coaching": Defendant contends counsel was ineffective for not objecting to this. However, the Court advised it had been watching the lawyers in the back and had not seen them do anything that could be interpreted as witness coaching. As to ground 5: Counsel was Ineffective for Failing to Raise Prosecutorial and Police Misconduct on Direct Appeal: Counsel cannot be deemed ineffective for failing to raise this issue on direct appeal, as Defendant waived his appellate rights. Additionally, Defendant failed to show how the outcome of the trial would have been different and does not cite to where in the record these alleged statements by the witness were made and did not attach the interview to the exhibit. As to ground 6: Counsel was Ineffective for Failing to Raise Prosecutorial Misconduct on Direct Appeal: Defendant waived his appellate rights, thus it would have been futile to file an appeal. As to ground 7: Counsel was Ineffective for Failing to Raise Mental Disabilities for Removal of the Death Penalty as Defendant Stipulated to a Sentence of Life Without Parole: Defendant's claims are belied by the record, the death penalty was removed as a possible option. Further, Defendant failed to present any evidence that he qualifies as intellectually disabled as described by Atkins v Virginia. As to ground 8: Counsel was Ineffective for Discussing Stephanie Cousin's Statements to the Police: Court noted it is a strategic decision by defense counsel as to what to ask the Detectives and

**CASE SUMMARY****CASE NO. C-10-267882-2**

witnesses. Further, Bruton does not apply to non-testimonial statements like a statement of a co-conspirator, so her testimony would not violate his confrontation rights. As to ground 9: Counsel was Ineffective as Defendant Waived his Right to a Direct Appeal and Defendant had no right to Counsel for a Post-Conviction Habeas Petition: Defendant waived his right to a direct appeal, thus counsel cannot be deemed ineffective for failing to file one. As to ground 11: Counsel was Ineffective for Failing to Object as the Prosecutor Made Fair Comments on the Evidence Presented During Closing Argument: Defendant claims his counsel was ineffective for not objecting to the Prosecutor "injecting his own opinion of facts not in evidence". However, Defendant's claims are belied by the record and are without merit. Further, Defendant cannot show any prejudice suffered as a result of these arguments. As to ground 13: Counsel was Ineffective for Failing to Object at Trial or for Failing to Cross Examine Witnesses about an Alleged Lie about Defendant's Mental Issues: Defendant's claim is essentially about the alleged failures to cross-examine a particular witness about an issue. However, these claims relate to trial strategy, which is "virtually unchallengeable". Further, Defendant cannot show prejudice and fails to prove how the outcome of his trial would have been different. For all the above reasons, COURT ORDERED, Pro Per Petition DENIED. ... FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT: COURT ORDERED, DENIED. DEFENDANT'S REQUESTING THE COURT GIVE A EVIDENTIARY HEARING ON ISSUES LISTED IN WRIT OF HABEAS CORPUS: COURT ORDERED, DENIED. NDC ;

03/30/2017

**Confirmation of Counsel** (9:00 AM) (Judicial Officer: Johnson, Eric)

Counsel Confirmed;  
Journal Entry Details:

Court noted Defendant is in prison and not present today. Upon Court's inquiry, Mr. Resch advised he can confirm as counsel of record. COURT SO ORDERED. Mr. Resch requested a status check in sixty days to set a briefing schedule after he reviews the file. Ms. Rose had no objection. COURT ORDERED, matter SET for status check in SIXTY (60) DAYS. NDC 6/1/17 9:00 AM STATUS CHECK: SET BRIEFING SCHEDULE;

06/01/2017

**Status Check** (9:00 AM) (Judicial Officer: Johnson, Eric)

Status Check: Set Briefing Schedule  
Briefing Schedule Set;  
Journal Entry Details:

Defendant is in prison and not present today. Upon Court's inquiry, Mr. Resch advised he has reviewed all the pleadings, however, he needs to have the sentencing transcript prepared. Mr. Resch requested at least 6 months for his brief. Following colloquy, COURT ORDERED the following briefing schedule: Mr. Resch to file by 11/30; The State to respond by 1/16; Mr. Resch to reply by 2/16 and matter SET for argument. NDC 3/8/18 9:00 AM ARGUMENT;

04/17/2018

**Argument** (8:30 AM) (Judicial Officer: Johnson, Eric)

Hearing Set;  
Journal Entry Details:

Defendant is in prison and not present today. Arguments in support of the Petition including requesting an Evidentiary Hearing by Mr. Resch. Objections by Mr. DiGiacomo. Following, Court noted it does not see a lot in terms of an Evidentiary Hearing, however, due to the conviction and significant sentence, Court will grant an Evidentiary Hearing to explore whether or not there were certain understandings or misleading's by trial counsel to the Defendant as to the issue of direct appeal and you can question trial counsel as to other decisions that were made during the course of trial, but it will not be opened up as to ineffectiveness of counsel. Upon inquiry, counsel feel the hearing will take 2-3 hours. COURT ORDERED, matter SET for hearing. NDC 6/29/18 8:30 AM EVIDENTIARY HEARING;

06/29/2018

**CANCELED Evidentiary Hearing** (8:30 AM) (Judicial Officer: Johnson, Eric)

Vacated

07/18/2018

**Status Check** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Hearing Set;  
Journal Entry Details:

Def. not present. Upon Court's inquiry, Mr. Resch requested to set an Evidentiary Hearing the week of September 18, 2018. Mr. Pesci had no objection. COURT ORDERED, matter SET for Evidentiary Hearing. NDC 9/20/18 10:30 AM EVIDENTIARY HEARING;

09/20/2018

**Evidentiary Hearing** (10:30 AM) (Judicial Officer: Leavitt, Michelle)

Matter Heard;  
Journal Entry Details:

Def. present in custody. Court noted this evidentiary hearing is a limited hearing as to one claim on whether or not Def. was denied a direct appeal. Anthony Sgro, Esq., and Christopher Oram, Esq., provided sworn testimony. Def. David Burns, sworn and testified. Mr. Resch made arguments regarding testimony provided by Mr. Sgro, Mr. Oram

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. C-10-267882-2**

*and Deft; and further argued regarding Deft. having tried to explain to his attorneys as to issues for appeal. Ms. Bluth opposed the Petition; and argued as to written stipulation at trial. Court noted neither attorneys were asked whether there was misconduct during closing arguments, discussions were made about habeas relief, and there were no discussions that the Court heard, as to direct appeal or appellate rights that survived the stipulation. Further arguments by Mr. Resch as to possible misunderstanding. COURT ORDERED, Deft's Petition DENIED. Discussions as to no final order having been done yet addressing everything. State to prepare the order from today's proceedings. Court advised Deft. he has the right to appeal the decision made today. Upon Court's inquiry, Deft. confirmed he understands this. Mr. Resch to continue to represent Deft. on appeal. Mr. Resch noted he will submit an order regarding him remaining on the case. NDC;*

DATE

FINANCIAL INFORMATION

**Defendant** Burns, David James

Total Charges

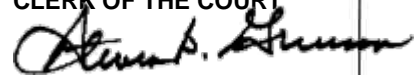
60.00

Total Payments and Credits

0.00

**Balance Due as of 11/13/2018**

**60.00**



1 FCL  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 CHARLES W. THOMAN  
6 Chief Deputy District Attorney  
7 Nevada Bar #12649  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DAVID JAMES BURNS,  
13 #2757610

14 Defendant.

CASE NO: C-10-267882-2

DEPT NO: XII

15 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

16 DATE OF HEARING: SEPTEMBER 20, 2018  
17 TIME OF HEARING: 10:30 a.m.

18 THIS CAUSE having come on for hearing before the Honorable JUDGE MICHELLE  
19 LEAVITT, District Judge, on the 20th Day of September, 2018, Petitioner DAVID BURNS  
20 present and represented by counsel JAMIE J. RESCH, ESQ., the Respondent being  
21 represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through  
22 JACQUELINE BLUTH, Chief Deputy District Attorney, and the Court having considered the  
23 matter, including briefs, transcripts, no arguments of counsel, and documents on file herein,  
24 now therefore, the Court makes the following findings of fact and conclusions of law.

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On July 18, 2012, Defendant, through counsel, filed many pretrial Motions, to which the State filed its Oppositions on July 23, 2012. This Court ruled on these Motions on July 18, 2013.<sup>1</sup>

Defendant's jury trial finally began on January 20, 2015. Following a 15-day trial on February 17, 2015, the jury returned a guilty verdict on all eight counts.

<sup>1</sup> The State notes that most of these pretrial Motions, which were filed by counsel, are not relevant for purposes of this Petition.

1 without parole, plus a consecutive term of a maximum of 240 months and a minimum of 40  
2 months for the deadly weapon enhancement; COUNT 6 – a maximum of 180 months and a  
3 minimum of 24 months, plus a consecutive term of a maximum of 180 months and a minimum  
4 of 24 months for the deadly weapon enhancement; COUNT 7 – a maximum of 240 months  
5 and a minimum of 48 months, plus a consecutive term of a maximum of 240 months and a  
6 minimum of 40 months for the deadly weapon enhancement; and COUNT 8 – a maximum of  
7 180 months and a minimum of 24 months, with 1,671 days credit for time served. COUNTS  
8 1, 2, 3 & 4 are to run concurrent with COUNT 5. COUNTS 6 & 8 are to run concurrent with  
9 COUNT 7, and COUNT 8 is to run consecutive to COUNT 5. A Judgment of Conviction was  
10 filed on May 5, 2015.

11 Regarding Defendant's sentence as to COUNT 5, on February 9, 2015, a Stipulation  
12 and Order Waiving a Separate Penalty Hearing was filed where Defendant agreed that in the  
13 event of a finding of guilty of Murder in the First Degree, he would be sentenced to life without  
14 the possibility of parole, and he waived all appellate rights. Stipulation and Order Waiving  
15 Separate Penalty Hearing, filed February 9, 2015.

16 On October 13, 2015, Defendant filed a Motion to Withdraw Counsel. He also filed a  
17 Pro Per Post-Conviction Petition for Writ of Habeas Corpus, Motion to Appoint Counsel, and  
18 Request for an Evidentiary Hearing. The State responded on January 26, 2016. On February  
19 16, 2016, the Court denied Defendant's Petition, Motion to Appoint Counsel, Request for  
20 Evidentiary Hearing, and granted Defendant's Motion to Withdraw Counsel. The Findings of  
21 Fact and Conclusions of Law Order was filed on March 21, 2016.

22 Defendant filed a Notice of Appeal on March 11, 2016. The Nevada Supreme Court  
23 reversed the order of the district court denying the post-conviction petition for writ of habeas  
24 corpus and remanded it back to the District Court for appointment of counsel. On March 30,  
25 2017, Defendant's counsel was confirmed. Defendant's Supplemental Petition was filed on  
26 November 27, 2017. The State filed a Response on January 16, 2018. Petitioner's Reply Brief  
27 was filed February 6, 2018. The matter came before Judge Eric Johnson for argument on April  
28 17, 2018. At that hearing the court stated it would grant an evidentiary hearing to explore

1 whether there were certain understandings or misleading statements communicated by trial  
2 counsel to the Defendant as to the issue of the waiver of Defendant's direct appeal rights. The  
3 court also stated trial counsel could be questioned as to other decisions that were made during  
4 the course of trial, but that the evidentiary hearing would not be opened up as to the issue of  
5 ineffectiveness of counsel.

6 On September 20, 2018, the evidentiary hearing was conducted in Department 12  
7 before Judge Michelle Leavitt, where Defendant was present. At the evidentiary hearing, the  
8 court noted that the hearing was limited to one claim regarding whether the Defendant was  
9 denied a direct appeal. Anthony Sgro, Esq. and Christopher Oram, Esq. provided sworn  
10 testimony, as did Defendant David Burns. Pursuant to testimony, Defendant's appellant  
11 counsel Jamie J. Resch made arguments regarding the testimony provided in regard to the  
12 underlying Petition for Writ of Habeas Corpus. Jacqueline Bluth for the Respondent argued in  
13 opposition to the Petition, noting there was a written stipulation at trial wherein the Defendant  
14 agreed to waive his appeal rights. The court noted neither attorneys were asked about  
15 misconduct during closing arguments. The court also noted that there were no discussions as  
16 to direct appeal or appellate rights that survived the stipulation. Counsel Jamie J. Resch gave  
17 additional arguments regarding potential misunderstandings, after which the court ordered the  
18 Petition for Writ of Habeas Corpus DENIED, with the State to prepare the Order regarding the  
19 evidentiary hearing and Defendant's underlying Petition. The Order DENYING Defendant's  
20 Supplements Petition for Habeas Corpus follows; if any findings of fact are more properly  
21 deemed conclusions of law, they shall be so construed.

## 22 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

### 23 **I. THE COURT FINDS DEFENDANT RECEIVED EFFECTIVE** 24 **ASSISTANCE OF COUNSEL**

25 Claims of ineffective assistance of counsel are analyzed under the two-pronged test  
26 articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the  
27 defendant must show: (1) that counsel's performance was deficient, and (2) that the deficient  
28 performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this

1 standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the  
2 two test elements in any order and need not consider both prongs if the defendant makes an  
3 insufficient showing on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107  
4 (1997).

5 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559  
6 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney’s  
7 representations amounted to incompetence under prevailing professional norms, “not whether  
8 it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86,  
9 88, 131 S. Ct. 770, 778 (2011). Further, “[e]ffective counsel does not mean errorless counsel,  
10 but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of  
11 attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537  
12 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,  
13 1449 (1970)).

14 The court begins with the presumption of effectiveness and then must determine  
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
16 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role  
17 of a court in considering alleged ineffective assistance of counsel is “not to pass upon the  
18 merits of the action not taken but to determine whether, under the particular facts and  
19 circumstances of the case, trial counsel failed to render reasonably effective assistance.”  
20 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,  
21 551 F.2d 1162, 1166 (9th Cir. 1977)).

22 This analysis does not indicate that the court should “second guess reasoned choices  
23 between trial tactics, nor does it mean that defense counsel, to protect himself against  
24 allegations of inadequacy, must make every conceivable motion no matter how remote the  
25 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551  
26 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of  
27 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of  
28 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot



1 be deemed ineffective for failing to make futile objections, file futile motions, or for failing to  
2 make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

3 In order to meet the second “prejudice” prong of the test, the defendant must show a  
4 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
5 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). “A reasonable  
6 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,  
7 466 U.S. at 694, 104 S. Ct. at 2068.

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

#### 12 **A. THE COURT FINDS DEFENDANT WAIVED HIS DIRECT APPEAL**

13 The court finds Defendant alleged “Petitioner never intended to waive, and in fact  
14 expressly reserved the right to appeal, any issues arising after the waiver was entered and  
15 specifically those which may have occurred during closing argument or sentencing.” Petition  
16 at 6.

17 When a defendant is found guilty pursuant to a plea, counsel normally does not have a  
18 duty to inform a defendant about his right to an appeal. Toston v. State, 127 Nev. Adv. Op.  
19 87, 267 P.3d 795, 799-800 (2011) (citing Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222,  
20 223 (1999)). The duty arises in the guilty plea context only when the defendant inquires about  
21 the right to appeal or in circumstances where the defendant inquires about the right to direct  
22 appeal “such as the existence of a claim that has reasonable likelihood of success.” Toston v.  
23 State, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011).

24 Here, the court finds that although Defendant did not plead guilty, the Stipulation and  
25 Order he entered into is analogous to a guilty plea. It is analogous in that defense counsel  
26 would not believe a defendant would want to appeal, especially after Defendant waived all his  
27 appellate rights. Stipulation and Order Waiving Separate Penalty Hearing, filed February 9,  
28 2015, p. 1-2. The Order stated the following:

Pursuant to the provisions of NRS 175.552, the parties hereby stipulate and agree to waive the separate penalty hearing in the event of a finding of guilty on Murder In the First Degree and pursuant to said Stipulation and Waiver agree to have the sentence of LIFE WITHOUT THE POSSIBILITY OF PAROLE imposed by the Honorable Charles Thompson, presiding trial judge. FURTHER, in exchange for the State withdrawing the Notice of Intent to Seek the Death Penalty, Defendant agrees to waive all appellate rights stemming from the guilt phase of the trial.

Id.

Further, in regards to the Stipulation and Order the following exchange was made:

Mr. Sgro: The State and the defense on behalf of Mr. Burns have agreed to conclude the remainder of the trial, settle jury instructions, do closings, et. cetera. If the jury returns a verdict of murder in the first degree, Mr. Burns would agree that—

The Court: As to Mr. Burns.

Mr. Sgro: As to Mr. Burns only. Mr. Burns would agree that the appropriate sentencing term would be life without parole. The State has agreed to take the death penalty off the table, so they will withdraw their seeking of the death penalty. If the verdict comes back at anything other than first degree murder and there's guilty on some of the counts, and the judge—then Your Honor will do the sentencing in the ordinary course like it would any other case. In—and I believe that states the agreement, other than there is a proviso[sic] that we, for purposes of further review down the road, we are not waiving any potential misconduct during the closing statements. We understand that to be a fertile area of appeal. The State has assured us that they are—would never do anything intentionally. The Court's been put on notice to be careful relative to the closing arguments, so that there's not unnecessary inflamed passion, et cetera, et cetera. Mr Mason has not given up his rights to appeal, and so there is a prophylactic safety measure that exists relative to the arguments advanced by the prosecution at the time of the closing statements.

So the long and short of it is, Your Honor, the State's agreed to abandon their seeking of the death penalty in exchange for Mr. Burns is agreeing to life without after we get through the trial. Yeah. And the waiver of his appellate rights.

1 Mr. Digiacomo: Correct. So that it's clear, should the jury return a  
2 guilty—a verdict of guilty in murder of the first degree or murder  
3 in the first degree with use of a deadly weapon, Mr. Mason and the  
4 State will agree to waive the penalty hearing with the stipulated  
5 life without the possibility of parole on that count, as well as he  
6 will waive appellate review of the guilt phase issues.

7 ...

8 The Court: In the colloquy that has been provided to me a few  
9 minutes ago, the attorneys explained to me that the State is  
10 waiving, giving up its rights to seek the death penalty in exchange  
11 for which you are agreeing, in the event the jury returns a verdict  
12 of murder in the first degree, that I will sentence you to life without  
13 the possibility of parole. Do you understand this?

14 Defendant Burns: Yes, sir.

15 The Court: Do you have any questions about it?

16 Defendant Burns: Yes, sir.

17 The Court: Do you agree with it?

18 Defendant Burns: Yes, sir.

19 The Court: You understand that you have a right to have a penalty  
20 hearing where the jury would determine the punishment in the  
21 event they found you guilty of first degree murder?

22 Defendant Burns: Yes sir.

23 The Court: You understand you're giving up that right to have  
24 the jury determine that punishment?

25 Defendant Burns: Yes, sir.

26 The Court: You understand you're giving up that right to have  
27 the jury determine that punishment?

28 Defendant Burns: Yes, sir.

///

1 The Court: And in exchange for which the State will waive its right  
2 to seek the death penalty against you, and you are giving—and you  
3 are agreeing that I will impose a punishment—in the event that  
4 you’re found guilty of murder in the first degree, I will impose a  
5 punishment of life without the possibility of parole. Do you  
6 understand that?

7 Defendant Burns: Yes, sir.

8 The Court: You understand that there are—in the event I impose a  
9 sentence of life without the possibility of parole, you’re never  
10 going to get paroled, you’re never going to get out, do you  
11 understand that?

12 Defendant Burns: Yes, sir.

13 The Court: You’re also giving up your appellate rights. Do you  
14 understand that?

15 Defendant Burns: Yes, sir.

16 Recorder’s Trial Transcript (hereinafter “RTT”), Trial Day 12, p. 4-9.

17 The court finds the negotiations called for no direct appeal. Additionally, the court finds  
18 Defendant did not move to withdraw the Stipulation and Order after trial ended. After trial  
19 Defendant and defense counsel still felt it was in Defendant’s best interest to not move to  
20 withdraw the Stipulation and Order. The court finds that if there were meritorious issues or  
21 errors that caused Defendant concern, defense counsel could have moved to withdraw the  
22 Stipulation and Order. The court finds it is not deficient for counsel to assume Defendant is  
23 satisfied, absent Defendant backing out of the negotiations.

24 Defendant in his Pro Per Petition stated that he did not know the court likes certain  
25 issues to be filed on direct appeal, and his attorney said he would show him how to file a  
26 habeas petition and he never did. Pro Per Petition, filed October 13, 2015, p.14. Additionally,  
27 defense counsel in Defendant’s Supplemental Petition now claims “it is obvious Petitioner  
28 desired to appeal and that his attorneys knew that fact, because the scope of the purported  
waiver is limited to events which precede its filing.” Petition at 27. However, this statement is

1 belied by Defendant's own admissions in his Pro Per Petition. He did *not* ask his attorney to  
2 file a direct appeal. Therefore, the court finds counsel was not deficient for not filing a direct  
3 appeal. Moreover, the court finds Defendant was not prejudiced because he waived his right  
4 to appeal, and received the benefit of having the State withdraw its intent to seek the death  
5 penalty. Further, the court finds that Defendant did not request a direct appeal regarding the  
6 days of trial after the Stipulation and Order was made. Therefore, the COURT FINDS counsel  
7 was not ineffective.

8 **B. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR**  
9 **FAILING TO OBJECT TO THE TESTIMONY OF KENNETH**  
10 **LECEASE AND RAY MACDONALD, AND THAT DEFENSE**  
11 **COUNSEL WAS PROPERLY NOTICED**

12 The court notes Defendant claims Kenneth Lecease (hereinafter "Lecease"), a  
13 Custodian of Records for Metro PCS, and Ray MacDonald (hereinafter "MacDonald"), a  
14 Custodian of Records for T-Mobile, inappropriately testified as experts at trial and counsel  
15 failed to object. Petition at 7. Additionally, the court notes that Defendant argues this  
16 improperly admitted testimony should have been excluded unless supported by a properly  
17 noticed expert and should never have been admitted as an unnoticed lay witness. Petition at 8,  
28. NRS 50.275 regarding testimony by experts state:

18 If scientific, technical or other specialized knowledge will assist  
19 the trier of fact to understand the evidence or to determine a fact  
20 in issue, a witness qualified as an expert by special knowledge,  
21 skill, experience, training or education may testify to matters  
within the scope of such knowledge.

22 Custodians of records can testify as experts at trial. When discussing testimony of a custodian  
23 of records, the Nevada Supreme Court has held:

24 [t]his testimony is not the sort that falls within the common  
25 knowledge of a layperson but instead was based on the witness's  
26 specialized knowledge acquired through his employment. Because  
27 that testimony concerned matters beyond the common knowledge  
28 of the average layperson, his testimony constituted expert  
testimony as experts.

1 Burnside v. State, 131 Nev.\_\_\_\_, 352 P.3d, 627, 637 (2015). Furthermore, in Burnside, the  
2 custodian of records was noticed as a lay witness and not an expert witness. However, even  
3 when the custodian of record was noticed as a lay witness instead of an expert witness, the  
4 Nevada Supreme Court held, “[w]e are not convinced that the appropriate remedy for the error  
5 would have been exclusion of the testimony.” Id.

6 Here, the court finds the Defendant was aware the two custodians of records would  
7 testify as experts. The court notes the State filed its Notice of Expert Witnesses on September  
8 4, 2013. The Notice stated:

9 Custodian of Records Metro PCS, or designee will testify as an  
10 expert regarding how cellular phones work, how phones interact  
11 with towers, and the interpretation of that information. Further,  
12 Custodian of Records T Mobile, or designee, will testify as an  
13 expert regarding how cellular phones work, how phones interact  
14 with towers and the interpretation of that information.

15 Notice of Expert Witnesses, filed September 4, 2013, p. 2. Further, the Notice stated, “The  
16 substance of each expert witness’ testimony and a copy of all reports made by or at the  
17 direction of the expert witness has been provided in discovery.” Id. at 5. Therefore, it was  
18 proper for the custodian of records to testify as experts and counsel was noticed they would be  
19 testifying as experts.<sup>2</sup> Counsel is not required to make futile objections. Ennis v. State, 122  
20 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Therefore, the court finds that counsel was not  
21 deficient.

22 Additionally, the court finds Defendant fails to demonstrate prejudice. He fails to  
23 explain how but for counsel’s errors, the results of the trial would have been different or how  
24 any objection would have led to a more probable outcome for Defendant. Even if counsel  
25 would have objected, the objection would have been overruled because the expert testimony  
26 was proper and would not have been excluded. Therefore, the court finds Defendant was not  
27 prejudiced.

28 <sup>2</sup> Defendant fails to specify what was improper about the State’s Notice of Experts, but instead argues the testimony “should  
have been excluded unless supported by a properly noticed expert.” Petition at 8.

1                   **C. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE IN**  
2                   **FAILING TO DISCOVER EXCULPATORY AND MATERIAL**  
3                   **EVIDENCE BECAUSE THERE WAS NO SECRET AGREEMENT**  
4                   **AND THE JURY WAS AWARE MAYO'S PENDING CASES WERE**  
5                   **POSTPONED**

6                   The court notes Defendant alleges that "the State failed to disclose, failed to correct,  
7                   and the defense failed to discover that Mr. Mayo did in fact receive 'help' towards his pending  
8                   criminal cases by agreeing to testify as a State's witness at Petitioner's trial." Petition at 31.

9                   During the State's direct examination with Mayo the following exchange occurred:

10                  Q: In the search of your apartment, there—the police found  
11                  narcotics, cocaine; you're aware of that?

12                  A: Yes.

13                  Q: What—I guess what is your—how was that in the apartment?

14                  A: I don't know how they got there.

15                  Q: Okay. You don't know anything about that?

16                  A: No.

17                  Q: After these events took place, were you charged with a crime  
18                  associated with this incident?

19                  A: Yeah.

20                  Q: And do you know what the charge was?

21                  A: It was child—child abuse or child neglect with substantially  
22                  bodily harm, then just child neglect and trafficking.

23                  Q: Okay. And are—is that case—do you know what the status of  
24                  it is or what's happening with that case?

25                  A: I'm still going to court.

26                  Q: Okay. And is that case being continued till the end of this trial?

27                  A: Yes.

28                  Q: Do you have any other cases that are pending?

                  A: Yes.

                  Q: Tell me about the other one, what—the charges I guess.

                  A: Destruction of property or—it's destruction of—I don't know  
                  the exact charge, but it's, like, destruction of property or  
                  something like that.

                  Q: And is that one similarly being continued until the end of this  
                  case?

                  A: Yes.

                  Q: After these events took place in August, did you have to appear  
                  in Family Court and go through proceedings there as well?

                  A: Yes.

1 RTT, Trial Day 10, p. 245-248.

2 Further, on cross-examination with Anthony Sgro:

3 Q: Mr. Mayo, I want to start with sort of where you left off. You  
4 have some cases that are currently pending against you, right,  
5 some charges against you?

6 A: Yes.

7 Q: One of them is for drug trafficking; is that right?

8 A: Yes.

9 Q: And that's for crack cocaine?

10 A: I don't know—I don't know exactly what it's for, but I know  
11 it's trafficking.

12 Q: Well, would it refresh your memory if I showed you the docket  
13 for your case?

14 Mr. Sgro: May I approach, Your Honor?

15 The Court: Yes, if he's familiar with the docket.

16 The Witness: Yeah, I've never seen it.

17 By Mr. Sgro:

18 Q: Does it look like—according to this document—the charge is  
19 trafficking in cocaine?

20 A: Yes, that's what it—yeah.

21 Q: Now, you just told the jury that the cocaine was in your house,  
22 you don't know where it came from, right?

23 A: No, I don't.

24 Q: Okay. Did you tell that to the DAs before they charged you with  
25 trafficking?

26 A: Like, we never had a conversation about that.

27 Q: You know trafficking is a serious crime; it carries prison time?

28 A: Yes.

Q: Okay. Despite you telling the DAs that you don't know where  
the cocaine came from, they still are charging you with trafficking,  
right?

A: Yes, that's the charge.

Q: Would you agree that it seems like they don't believe your  
version?

Ms. Weckerly: Objection.

The Court: Sustained.

By Mr. Sgro:

Q: You also got charged with child neglect with substantial bodily  
harm; is that right?

A: Yes.



1 Q: And all these charges, including allowing children to be present  
2 where drug laws are being violated, all those charges have been  
3 postponed for now for several years, right?

4 A: Yes.

5 Q: And it's all being postponed until after you—until this trial is  
6 over, right?

7 A: I guess. I'm not sure. I don't know.

8 Q: Well, do you believe that by testifying in this case it helps you  
9 in the cases that you're facing right now?

10 A: No.

11 Q: You don't think it helps you?

12 A: No.

13 Q: Do you think that the DA indefinitely postpones cases all the  
14 time, or do you think you're getting some—

15 A: I don't know how the DA work.

16 Q: Okay. Let me finish my question, okay. Do you believe that the  
17 DA is just postponing these cases coincidentally and that they're not  
18 giving you any sort of favor because you're testifying in this case?  
19 Is that what you think?

20 A: I don't think they giving me no type of favor.

21 Q: Okay. You also have I think you said some kind of destruction  
22 of property, but it's actually tampering with a vehicle, which is a  
23 felony, right?

24 A: No, it was a misdemeanor.

25 Mr. Sgro: May I approach, Your Honor?

26 The Court: Yes.

27 By Mr. Sgro:

28 Q: I'm showing you a court document. Does it look like tampering  
with a vehicle charge you're charged with is a felony?

A: That's what is say, but my court papers say it's a misdemeanor.

Q: So this court document is a mistake?

A: Or my court paper is a mistake, one of them, but when I was  
charged with is, it was a misdemeanor.

Q: Okay. In this particular felony, if I'm right, this felony was  
charged in June of 2011, right?

A: Yeah, that sounds about right.

Q: About nine months after the events that we're talking about,  
right?

A: Yes.

Q: And you haven't faced anything in this case yet either, right?

A: No, we still going to court.

///

1 Q: Okay. Do you think that the fact that the DA is postponing this  
2 felony case as well that it is a favor to you or a benefit to you or  
3 no?

4 A: No.

5 RTT, Trial Day 10, p. 248- 252.

6 Upon review of the above transcript, the court finds Defense counsel was not deficient.  
7 Mr. Sgro thoroughly cross-examined Mayo regarding his pending cases. He brought attention  
8 to the postponement of Mayo's cases and although never specifically mentioned an OR  
9 release, the fact that the jury knew his other cases had been postponed, was sufficient because  
10 it would be assumed he was not in custody. The court finds Mayo's Guilty Plea Agreement  
11 was not filed until January 21, 2016, almost a year after Defendant's trial concluded. There  
12 was no way for defense counsel to know at the time of trial how Mayo's other cases were  
13 going to resolve. Defendant alleges that because Mayo received a "sweetheart deal" this is  
14 evidence that there was a secret deal between the State and Mayo. Petition at 9.

15 The court finds Defendant's allegations are bare and naked, and that Defendant does  
16 not cite to any place in the record that would support his allegation that the State withheld  
17 information from the defense or the jury. The court finds that simply because Mayo was  
18 ultimately granted probation is not evidence that there was an undisclosed agreement between  
19 Mayo and the State that Defendant and the jury were unaware of. The court thus finds  
20 Defendant's claim is belied by the record and is DENIED.

21 The court finds Defendant alleges "there is a reasonable probability Petitioner would  
22 have enjoyed a more favorable outcome at trial had these facts been properly disclosed by the  
23 State or discovered by the defense." Petition at 31. The court notes the postponement of  
24 Mayo's cases were disclosed during direct examination and cross-examination. RTT, Trial  
25 Day 10, p. 245-252. Further, the court finds defense counsel was aware of the postponement  
26 of the prosecution of Mayo's cases because he thoroughly cross-examined Mayo regarding his  
27 pending cases as showed above. Thus, Defendant fails to show prejudice because the facts  
28 were presented to the jury and defense counsel was aware of the postponement of the  
prosecution. Thus the court finds defense counsel was not ineffective.

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**D. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR  
MAKING STRATEGIC DECISIONS**

The court notes that Defendant argues trial counsel was ineffective in opening the door to damaging hearsay evidence. Petition at 31. The Defendant further argues “the prudent course of action would have been to object to it and/or avoid opening the door to it—rather than what was done which was to build upon Cousins’ statements to police as a cornerstone of the defense.” Petition at 12.

The court finds counsel’s actions were well-reasoned and strategically made, and such actions constituted effective assistance of counsel. Strickland, 466 U.S. at 681, 104 S. Ct. at 2061; Rhyne, 118 Nev. at 8, 38 P.3d at 167-68; State v. LaPena, 114 Nev. 1159, 1166, 968 P.2d 750, 754 (1998). The court finds such claims relate to trial strategy, which is “virtually unchallengeable,” and that Defendant has not shown deficient performance pursuant to Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996).

The court finds Defense counsel made a strategic decision to inquire about Cousins’ statements to police when on cross-examination with Detective Bunting about the statements Cousins made to him:

Q: Early on in the morning hours of this case you had information that the assailant in this case had a white T-shirt on, correct?

A: I believe Ms. Cousins has said that, yes.

Q: And that came hours after the investigation began, correct?

A: Sometime around the time of the investigation, yes sir.

RTT, Trial Day 14, p.23.

The court notes Counsel’s strategy decisions are tactical decisions and are “virtually unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280. The court finds the testimony regarding the white t-shirt was an important piece of evidence for the defense, and that defense counsel made a reasonable decision to attempt to elicit that information in front of the jury. The court notes Defendant argues counsel should have objected to the following exchange with the State and Detective Bunting:

1 Q: Now, ultimately, Stephanie Cousins made an  
2 identification of the shooter, correct?

3 A: She did.

4 Q: It wasn't Job-Loc?

5 A: No.

6 RTT, Trial Day 14, p. 35. However, the court finds that because defense counsel opened the  
7 door in regards to identification, making an objection would have been futile. Counsel cannot  
8 be ineffective for failing to make futile objections. Ennis, 122 Nev. at 706, 137 P.3d at 1103.  
9 The court finds that the fact that counsel decided to make this decision to use this evidence,  
10 even though the State would be able to then admit the evidence that she had identified the  
11 Defendant, was strategic. The court finds Counsel weighed the potential benefits versus the  
12 potential harm and made a reasonable tactical decision to state Defendant's theory of the case  
13 and provide evidence of that theory.

14 Furthermore, the court finds Defendant has not shown there would have been a more  
15 favorable outcome had this evidence not come in because this was not the only incriminating  
16 evidence against Defendant. The court finds Defendant likely would have still been found  
17 guilty due to the other overwhelming evidence against him, including but not limited to the  
18 testimony of Monica Martinez that he was the shooter, the evidence that Devonian said the  
19 shooter was in overalls and Defendant admitted to being in overalls, and cell phone records  
20 placing him at the crime scene. RTT, Trial Day 14, p. 145-146. Therefore, the court finds  
21 Defendant has failed to establish prejudice.

22 **E. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR  
23 FAILING TO OBJECT TO\*- ALLEGED PROSECUTORIAL  
24 MISCONDUCT**

25 The standard of review for prosecutorial misconduct rests upon Defendant showing  
26 "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111  
27 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859  
28 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not  
necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The  
relevant inquiry is whether the prosecutor's statements so contaminated the proceedings with  
unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168,

1 181, 106 S.Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear  
2 and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially  
3 prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

4 Here, the court notes Defendant only brings claims that were not objected to for  
5 consideration of ineffective assistance of counsel. Petition at 33. However, the court notes  
6 Defendant also argues he's bringing claims that were objected to for a cumulative error claim  
7 and as part of an ineffective assistance of appellate counsel for failing to raise any claims on  
8 direct appeal. Id.

9 The court notes that Defendant recognizes that in regards to the claims that were  
10 objected to and should have been raised on an appeal, bringing them in a habeas petition is not  
11 the proper form. Id. However, he claims he's offering these objected to claims for two other  
12 purposes: 1. a cumulative error claim, and 2. as part of an ineffective assistance of appellate  
13 counsel for failure to bring these claims on direct appeal. Id. The court notes that Defendant  
14 also stated earlier in his Petition that claims that were objected to "can still be considered as  
15 part of an overall ineffectiveness claim in not moving for a mistrial based on misconduct."  
16 Petition at 14.

17 The court finds that to the extent Defendant is arguing that counsel was ineffective for  
18 failing to raise these claims that were objected to on appeal, he waived his right to a direct  
19 appeal, therefore this claim is without merit. See section A *supra*. Second, the court finds  
20 Defendant cannot use claims that were objected to, and should have been brought up on a  
21 direct appeal, to attempt to have this Court consider them in the context of cumulative error.  
22 Additionally, court notes that the Nevada Supreme Court has never held that ineffective  
23 assistance of counsel claims can amount to cumulative error. Further, the court notes that  
24 claims that are improperly brought in habeas and should have been raised on direct appeal  
25 cannot be considered for an "overall ineffectiveness claim." Therefore, this Court only  
26 considers Defendant's claims of ineffective assistance of trial counsel when there was no  
27 objection.

28 ///

1           **Claims Objected To:**

2           The claims counsel objected to at trial were disparagement of counsel, additional  
3 burden shifting by arguing defense failed to call witness Cooper, and a PowerPoint to the jury  
4 that referred to Defendant as part of the “circle of guilt.”<sup>3</sup> To the extent that counsel is alleging  
5 appellate counsel was ineffective in raising the issues on direct appeal, the court finds he  
6 waived his direct appeal. Additionally, this argument has been thoroughly addressed *supra*.  
7 See section A.

8           **Claims Not Objected to Reviewed for Ineffective Assistance of Counsel:** <sup>4</sup>

9                   *Credibility of Witness shifted burden*

10          The court notes that Defendant claims there were multiple instances of burden shifting  
11 that were not objected to, or that counsel failed to seek a mistrial.<sup>5</sup> Petition at 35. Defendant  
12 claims that the words “priest and and a nun” or “Mother Theresa” and that there was “no  
13 explanation” were statements that constituted burden shifting. Petition at 33.

14          The State on rebuttal said:

15                   It would be a wonderful situation should we be standing in—or we  
16                   should be living in a world in which people who are selling crack  
17                   out of their house who get murdered happen to have a priest and a  
18                   nun who’s standing there and is part of the witnesses in the case.  
19                   Or maybe Mother Theresa to tell us who’s living in Job-Loc’s  
20                   apartment over at the Brittnae Pines.

21                   ...

22                   David Burns has no explanation that is going to save him from the  
23                   horrific knowledge that he put a gun, a .44 caliber, that giant hog-  
24                   leg of a revolver, to the head of a woman and pulled the trigger  
25                   without ever letting her getting a word out edgewise, and then  
26                   chased a 12-year-old girl down. What reasonable explanation  
27                   could he give? Well, I was really high on drugs. That wouldn’t  
28                   excuse it.

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3 The claims that were objected to are also known as claims 1, 4, and 6 on page 13 of Defendant’s Supplemental Petition.

4 As stated above, the only proper claim for this Court to address in this Petition is the ineffective assistance of counsel at the trial level. To the extent that Defendant alleges these several claims of ineffective assistance of counsel regarding prosecutorial misconduct that were not objected to should have been raised on direct appeal, and it constituted ineffective assistance of counsel for failure to do so, the court finds his direct appeal was waived. See section A *supra*.

5 Further, Defendant continues to state ineffective assistance of counsel for not seeking a mistrial, but does not state any legal authority or standard for what or why a mistrial should have been sought.

1 RTT, Trial Day 15, p. 54, 56.

2  
3 These statements were made during the State's rebuttal. The United States Supreme  
4 Court has held that the State on rebuttal is entitled to fair response to arguments presented by  
5 the defense counsel in closing argument. United States v. Robinson, 485 U.S. 25, 108 S.Ct.  
6 864 (1988). This Court has long recognized that "[d]uring closing argument, the prosecution  
7 can argue inferences from the evidence and offer conclusions on contested issues." Jones v.  
8 State, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997). A prosecutor is allowed to comment on the  
9 lack or quality of the evidence in the record to substantiate the defendant's theory of the case.  
10 Evans v. State, 117 Nev. 609, 630-33, 28 P.3d 498, 514 (2001) (overruled in part on other  
11 grounds by Lisle v. State, 131 Nev. \_\_, 351 P.3d 725 (2015)). Therefore, the court finds this  
12 did not constitute burden shifting.

13 Furthermore, the court notes counsel cannot be found ineffective for failing to make  
14 futile objections, file futile motions, or for failing to make futile arguments. Ennis, 122 Nev.  
15 at 706, 137 P.3d at 1103. Therefore, because this was not burden shifting, the court finds  
16 counsel was not deficient for failing to object or for failing to argue to seek a mistrial.<sup>6</sup>

17 Additionally, the court finds Defendant was not prejudiced because he fails to allege  
18 how objecting to this evidence would have provided a more favorable outcome; even if counsel  
19 would have objected, the objection would have been overruled because none of the statements  
20 made on rebuttal constituted burden shifting. Therefore, Defendant's claim is without merit  
21 and is DENIED.

### 22 ***Custodian of Records***

23 Defendant alleges again, defense counsel should have objected to the State using a  
24 custodian of records as an expert, and that defense counsel should have objected because the  
25 custodian of records were not properly noticed as experts. Petition at 35. However, this claim  
26 was already addressed *supra*. See section B.

27 ///

28 <sup>6</sup> Defendant includes examples of "errors" that were objected to, and thus should have been brought on direct appeal, and not in a habeas petition. Therefore, it is improper for Defendant to ask this Court to consider those claims in any way.

1                    *Whistling during interview*

2            Lastly, the court notes Defendant claims counsel failed to object to the argument the  
3 prosecutor made that the whistling heard on the 911 call during the crime matched the alleged  
4 whistling heard during Petitioner's interview with police. Petition at 36, 14. He also argues  
5 that the transcript of the police interview with Petitioner makes no reference to any whistling.  
6 Petition at 36. He argues these facts were not in evidence. Petition at 14.

7            The court notes the State may respond to defense theories and arguments. Williams v.  
8 State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997) (receded from on other grounds  
9 by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)). This Court has long recognized that  
10 "[d]uring closing argument, the prosecution can argue inferences from the evidence and offer  
11 conclusions on contested issues." Jones v. State, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997).

12            The State argued the following during rebuttal:

13                    But maybe what was subtle and was lost on everybody was how  
14 particularly disgusting and despicable the crime itself was. That it  
15 was—got to be something horrific got most human beings on  
16 Earth. And when you're in an interview room with detectives and  
17 you get told about it, your behavior of humming and singing and  
18 whistling is really kind of offensive, to be honest with you. And  
19 you can't really blame the cops for using the kind of terms they  
20 used with him. But it's also relevant for something else. Because  
21 Cornelius Mayo's inside that shower when the shot rings out. And  
22 he calls 911. And if that matches the clock at T-Mobile, that means  
23 it's while the shooter's still in that house. And he's obviously the  
24 person whistling on that 911. So whoever shot Derecia Newman  
and then put a bullet in Devonian Newman—whoever that shooter  
is, he's whistling as he's going through the crack cocaine and the  
drugs inside that residence as Cornelius Mayo, in that very small  
bathroom in that shower, is calling 911. Listen to that 911 over and  
over and over again. Cornelius Mayo doesn't see Devonian until  
after the whistling ends.

25            RTT, Trial Day 15, p. 94.

26            The court notes the State introduced State's Exhibit #323, which was Mayo's 911 phone  
27 call from the bathroom. It was played for the jury and was admitted by stipulation. RTT, Day  
28 10, p. 226. What was heard during the 911 phone call was played for the jury, and anything



1 they heard was admitted into evidence. Id. Thus, the court finds it was proper during the  
2 State's rebuttal argument to refer to the noises made in the background of the 911 phone call  
3 because it was admitted into evidence and the State was making inferences about the admitted  
4 evidence.

5 Further, the court notes the State admitted a recording of Defendant's interview with  
6 Detective Bunting and Detective Wildemann on September 13, 2010. RTT, Trial Day 13, p.61.  
7 It was marked as State's Exhibit #332. After the video was played the following exchange  
8 with Detective Bunting and the State occurred:

9 Q: And there's points during the interview where you or—you or  
10 Detective Wildemann are telling Mr. Burns to—sort of sit up or  
11 pay attention. Could you describe what he was physically doing at  
12 the time?

13 A: Well, he was slouching far into his chair. And as you heard—  
14 was humming while we were asking him questions. And then just  
15 kind of looking off or away. Just disinterested for the most part, I  
16 guess.

17 Id. at 70-71.

18 The transcript of Defendant's interview transcription states Defendant was humming  
19 throughout the interview. State's Response to Defendant's Petition, filed January 26, 2016,  
20 Exhibit 1, p. 35, 36, 38, 39, 44. Further, it is transcribed in the interview that Defendant is  
21 humming and singing. Id. at 37, 40.

22 Thus, the court finds that when the State argues all "the humming and singing and  
23 whistling," all of these arguments were fair comments on the evidence presented, and any  
24 objection by counsel would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. The  
25 court notes the State is permitted to address evidence that is admitted at trial and respond to  
26 Defendant's arguments. Therefore, the court finds that counsel was not deficient. Further, the  
27 court finds Defendant fails to even allege that Defendant was prejudiced by this. Thus, the  
28 court finds counsel was not ineffective.

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1                                   **F. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE AT**  
2                                   **SENTENCING<sup>7</sup>**

3                   The court notes Defendant alleges that counsel was ineffective for not objecting to the  
4 imposition of a deadly weapon enhancement that was unsupported by the required statutory  
5 findings (see Petition at 36), and that counsel failed to object to incorrect information recorded  
6 in the PSI. Petition at 37. NRS 193.165(1) states:

7                               Except as otherwise provided in NRS 193.169, any person who  
8 uses a firearm or other deadly weapon or a weapon containing or  
9 capable of emitting tear gas, whether or not its possession is  
10 permitted by NRS 202.375, in the commission of a crime shall, in  
11 addition to the term of imprisonment prescribed by statute for the  
12 crime, be punished by imprisonment in the state prison for a  
13 minimum term of not less than 1 year and a maximum term of not  
14 more than 20 years. In determining the length of the additional  
15 penalty imposed, the court shall consider the following  
16 information:

- 17                               (a) The facts and circumstances of the crime;  
18                               (b) The criminal history of the person;  
19                               (c) The impact of the crime on any victim;  
20                               (d) Any mitigating factors presented by the person; and  
21                               (e) Any other relevant information.

22                               The court shall state on the record that it has considered the  
23 information described in paragraphs (a) to (e), inclusive, in  
24 determining the length of the additional penalty imposed.

25                   The court finds that even if counsel was deficient in not objecting—which he was not—  
26 Defendant was not prejudiced by the fact that the Court failed to make its specific findings for  
27 each factor. Just like in Mendoza-Lobos v. State, 125 Nev. 634, 644, 218 P.3d 501, 508 (2009),  
28 “nothing in the record indicates that the district court’s failure to make certain findings on the  
record had any bearing on the district court’s sentencing decision.” Furthermore, the court  
notes Defendant had already stipulated to a sentence of life without the possibility of parole.  
Thus, there was no higher sentence he could have received, as evidenced by the exchange  
between defense counsel and the Court:

                              Mr. Oram: Well and at the time just a kid. And unfortunately Mr.  
                              Burns has always been a very gracious client of mine, very easy to

<sup>7</sup> To the extent Defendant is claiming this issue should have been raised on direct appeal, and counsel was ineffective for failing to do so, this claim is waived. See Section A *supra*.

1 work with. And it's sort of sad that he didn't just have some  
2 guidance. If he had some guidance maybe surely he wouldn't be  
3 standing where he is and it's just unfortunate to see that situation.  
4 I hope there's something that come of Mr. Burns' life that makes  
it better. I would ask you not to run these consecutive. It just seems  
just to pile up on him is just an overload. And so—

5 The Court: The way the law stands now, unless it's changed, he  
6 will never be released from prison.

7 Mr. Oram: That's correct.

8  
9 Recorder's Transcript of Sentencing Proceedings, April 23, 2015, p. 4. Thus the court finds  
10 Defendant was not prejudiced, even if counsel's performance was deficient, which it was not.  
11 Therefore, the court finds counsel was not ineffective.

12 Further, the court notes that according to Defendant, trial counsel did raise errors in the  
13 sentencing memorandum, and the Court had an opportunity to review the sentencing  
14 memorandum. Petition at 36. Therefore, the court finds counsel was not deficient because he  
15 did draw the Court's attention to the errors. Further, the Court had the opportunity to read the  
16 sentencing memorandum. Recorder's Transcript of Sentencing Proceedings, filed July 13,  
17 2017, p. 3. Thus, the court finds there was no prejudice because the Court was aware of the  
18 errors and took that into consideration before sentencing. Furthermore, the court notes the  
19 sentencing judge was also the trial judge, and he had firsthand knowledge of the testimony that  
20 was introduced at trial. Therefore, the court finds counsel was not ineffective.

21 **G. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR**  
22 **FAILING TO INVALIDATE THE DEATH PENALTY PER NRS**  
23 **174.098 BECAUSE DEFENDANT WAS NOT INTELLECTUALLY**  
24 **DISABLED**

25 The court notes Defendant has alleged trial counsel was ineffective for not seeking to  
26 dismiss or otherwise disqualify Petitioner for the death penalty based on the findings  
27 concerning Fetal Alcohol Syndrome ("FAS") and NRS 174.098. Petition at 38. First,  
28 Defendant in his Pro Per Petition alleged he had Fetal Alcohol Syndrome and neurological  
development issues, and that and counsel was ineffective for failing to raise those issues.

1 Defendant's Pro Per Petition, filed October 13, 2015, ground 7. Defendant cites to the sealed  
2 sentencing memorandum to support his diagnosis of FAS, which the District Attorney's Office  
3 represented it was never provided with. Furthermore, on page 40 of Defendant's Supplemental  
4 Petition, in footnote two, Defendant claims to have provided an unfiled copy of the  
5 memorandum to the District Attorney, which the District Attorney's Office represented it did  
6 not receive. Therefore, the State did not respond to the memorandum in its response to the  
7 instant Supplement to Petition for Writ of Habeas Corpus.

8 However, this court DENIES Defendant's claims based on the evidence presented of  
9 Defendant's IQ score. NRS 174.098(7) states:

10 For the purposes of this section, "intellectually disabled" means  
11 significant subaverage general intellectual functioning which  
12 exists concurrently with deficits in adaptive behavior and  
manifested during the developmental period.

13 The Nevada Supreme Court has said "the clinical definitions indicate that 'individuals with  
14 IQs between 70 and 75' fall into the category of subaverage intellectual functioning. Ybarra  
15 v. State, 127 Nev. 47, 55, 247 P.3d 269, 274 (2011) (internal citations omitted). Further, the  
16 Court explained, "although the focus with this element of the definition often is on IQ scores,  
17 that is not to say that objective IQ testing is required to prove mental retardation. Other  
18 evidence may be used to demonstrate subaverage intellectual functioning, such as school and  
19 other records." Id.

20 "The first concept—significant limitations in intellectual functioning—has been  
21 measured in large part by intelligence (IQ) tests." Id. Although the Nevada Supreme Court has  
22 said IQ scores are not required, and can be proven by other records, here Defendant's IQ score  
23 has been tested and is at 93. The court finds this is significantly higher than the range of 70-  
24 75, the range of subaverage general intellectual functioning. The court notes that Defendant  
25 claims that because there is evidence that Defendant has deficits in adaptive behavior, he  
26 should be diagnosed as intellectually disabled. Petition 41-42. However, the court finds that  
27 Defendant's claims that he dropped out of high school, had disciplinary problems in school,  
28 and was in special education, do not overcome his high IQ. Id.

1 Defendant's Pre Sentence Investigation Report (hereinafter "PSI") stated Defendant  
2 attended high school until the 11<sup>th</sup> grade, and obtained his GED in 2013 while incarcerated at  
3 CCDC. PSI, filed, April 1, 2015, p. 4. Further, Defendant's mental health history consisted of  
4 him being evaluated at the request of his attorney. Id. at 5.

5 The court finds Defense counsel's failure to dismiss the death penalty under NRS.  
6 174.098 did not constitute deficient performance because he made the decision based on the  
7 evidence he had, and Defendant's IQ score of 93, that this would not be a successful argument.  
8 See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, the court finds Defendant has not  
9 established prejudice, in that he has not demonstrated that but for counsel's failure to dismiss  
10 the death penalty under NRS 174.098, the result of his trial would have been different.  
11 Furthermore, the court notes the death penalty was ultimately negotiated away. Thus the court  
12 finds that even if Defendant would have been diagnosed as intellectually disabled, he still  
13 would likely have received the same sentence considering the egregious nature of his crime,  
14 and the overwhelming evidence presented. As such, the court finds Defendant has not  
15 demonstrated prejudice and counsel was not ineffective.

#### 16 **H. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE IN** 17 **REGARDS TO THE JURY NOTES**

18 Defendant argues that two notes from the jury were received and Petitioner was not  
19 consulted about or present for any of the discussions related to the notes. Petition at 44. Further,  
20 Defendant states trial counsel was ineffective for failing to ensure Petitioner was present for  
21 the discussion of how to respond to jury notes. Petition at 17. Defendant relies on Manning v.  
22 State, 131 Nev. \_\_\_, 348 P.3d 1015, 1018 (2015) to demonstrate counsel's ineffectiveness.  
23 However, Manning was filed May 7, 2015. Defendant's trial ended on February 17, 2015. His  
24 Judgment of conviction was filed on May 5, 2015.

25 Here, the court finds Defendant has not establish deficient performance on the part of  
26 his counsel nor has he established prejudice. Defendant's trial and Judgment of Conviction  
27 were final before Manning was published and made law; thus, there was no clear right to have  
28 criminal defendant present when jury notes are discussed. See Strickland, 466 U.S. at 690, 104

1 S. Ct. at 2066 (finding a court must “judge the reasonableness of counsel’s challenged conduct  
2 on the facts of the particular case, *viewed as of the time of counsel’s conduct*”) (emphasis  
3 added).

4 The court finds Counsel’s performance cannot be deemed deficient for failing to  
5 anticipate a change in the law. Nika v. State, 124 Nev. 1272, 1289, 198 P.3d 839, 851; Doyle  
6 v. State, 116 Nev. 148, 156, 995 P.2d 465, 470 (2000). Thus, Defendant is not entitled to relief  
7 because Manning does not apply retroactively. “Generally, new rules are not retroactively  
8 applied to final convictions.” Ennis, 122 Nev. at 694, 137 P.3d at 1099. Therefore, the court  
9 finds that because defense counsel was not deficient, Defendant was not prejudiced.

10 **I. THE COURT FINDS DEFENDANT HAS FAILED TO SHOW**  
11 **CUMULATIVE ERROR<sup>8</sup>**

12 The court notes Defendant asserts a claim of cumulative error in the context of  
13 ineffective assistance of counsel. Petition at 18. The Nevada Supreme Court has never held  
14 that instances of ineffective assistance of counsel can be cumulated. However, even if they  
15 could be cumulated, it would be of no merit to the Defendant in the instant case, as the court  
16 finds there were no instances of ineffective assistance in Defendant’s case to cumulate. See  
17 United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) (“[A] cumulative-error analysis  
18 should evaluate only the effect of matters determined to be error, not the cumulative effect of  
19 non-errors.”). Furthermore, the court finds any errors that occurred at trial were minimal in  
20 quantity and character, and that a defendant “is not entitled to a perfect trial, but only a fair  
21 trial.” Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). Therefore, Defendant’s  
22 claim of cumulative error is without merit and is denied.

23 ///

24 ///

25 ///

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26  
27 <sup>8</sup> Defendant states that “errors alleged in this petition and those which should have been raised on direct appeal to the  
28 Nevada Supreme Court require reversal both individually and because of their cumulative impact.” Petition at 18.  
Defendant claims that alleged errors that should have been raised on direct appeal also contribute to the cumulative impact.  
Petition at 18. However, as discussed *supra*, Defendant’s direct appeal claims have been waived and thus claims that  
should have been brought on direct appeal are improperly brought in a habeas Petition.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Supplemental Petition for Post-Conviction Relief shall be, and is, hereby DENIED in its entirety.

DATED this 23 day of October, 2018.

  
DISTRICT JUDGE

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

TJ

BY /s/ Charles W. Thoman  
CHARLES W. THOMAN  
Chief Deputy District Attorney  
Nevada Bar #12649

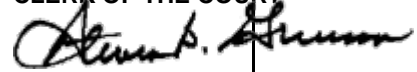
**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing, was made this 15<sup>th</sup> day of October, 2018, by Electronic Filing to:

JAMIE J. RESCH, ESQ.  
[jresch@convictionsolutions.com](mailto:jresch@convictionsolutions.com)

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

10F17607X/ACB/saj/MVU



NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DAVID BURNS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-10-267882-2

Dept No: XII

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

**PLEASE TAKE NOTICE** that on October 25, 2018, 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 October 29, 2018.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Courtnie Hoskin

Courtnie Hoskin, Deputy Clerk

**CERTIFICATE OF E-SERVICE / MAILING**

I hereby certify that on this 29 day of October 2018, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

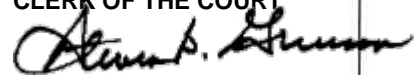
David Burns # 1139521  
P.O. Box 650  
Indian Springs, NV 89070

Jamie J. Resch, Esq.  
2620 Regatta Dr., #102  
Las Vegas, NV 89128

/s/ Courtnie Hoskin

Courtnie Hoskin, Deputy Clerk





FCL  
STEVEN B. WOLFSON  
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Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

DAVID JAMES BURNS,  
#2757610

Defendant.

CASE NO: C-10-267882-2

DEPT NO: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: SEPTEMBER 20, 2018  
TIME OF HEARING: 10:30 a.m.

THIS CAUSE having come on for hearing before the Honorable JUDGE MICHELLE LEAVITT, District Judge, on the 20th Day of September, 2018, Petitioner DAVID BURNS present and represented by counsel JAMIE J. RESCH, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JACQUELINE BLUTH, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law.

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On July 18, 2012, Defendant, through counsel, filed many pretrial Motions, to which the State filed its Oppositions on July 23, 2012. This Court ruled on these Motions on July 18, 2013.<sup>1</sup>

Defendant's jury trial finally began on January 20, 2015. Following a 15-day trial on February 17, 2015, the jury returned a guilty verdict on all eight counts.

<sup>1</sup> The State notes that most of these pretrial Motions, which were filed by counsel, are not relevant for purposes of this Petition.

1 without parole, plus a consecutive term of a maximum of 240 months and a minimum of 40  
2 months for the deadly weapon enhancement; COUNT 6 – a maximum of 180 months and a  
3 minimum of 24 months, plus a consecutive term of a maximum of 180 months and a minimum  
4 of 24 months for the deadly weapon enhancement; COUNT 7 – a maximum of 240 months  
5 and a minimum of 48 months, plus a consecutive term of a maximum of 240 months and a  
6 minimum of 40 months for the deadly weapon enhancement; and COUNT 8 – a maximum of  
7 180 months and a minimum of 24 months, with 1,671 days credit for time served. COUNTS  
8 1, 2, 3 & 4 are to run concurrent with COUNT 5. COUNTS 6 & 8 are to run concurrent with  
9 COUNT 7, and COUNT 8 is to run consecutive to COUNT 5. A Judgment of Conviction was  
10 filed on May 5, 2015.

11 Regarding Defendant's sentence as to COUNT 5, on February 9, 2015, a Stipulation  
12 and Order Waiving a Separate Penalty Hearing was filed where Defendant agreed that in the  
13 event of a finding of guilty of Murder in the First Degree, he would be sentenced to life without  
14 the possibility of parole, and he waived all appellate rights. Stipulation and Order Waiving  
15 Separate Penalty Hearing, filed February 9, 2015.

16 On October 13, 2015, Defendant filed a Motion to Withdraw Counsel. He also filed a  
17 Pro Per Post-Conviction Petition for Writ of Habeas Corpus, Motion to Appoint Counsel, and  
18 Request for an Evidentiary Hearing. The State responded on January 26, 2016. On February  
19 16, 2016, the Court denied Defendant's Petition, Motion to Appoint Counsel, Request for  
20 Evidentiary Hearing, and granted Defendant's Motion to Withdraw Counsel. The Findings of  
21 Fact and Conclusions of Law Order was filed on March 21, 2016.

22 Defendant filed a Notice of Appeal on March 11, 2016. The Nevada Supreme Court  
23 reversed the order of the district court denying the post-conviction petition for writ of habeas  
24 corpus and remanded it back to the District Court for appointment of counsel. On March 30,  
25 2017, Defendant's counsel was confirmed. Defendant's Supplemental Petition was filed on  
26 November 27, 2017. The State filed a Response on January 16, 2018. Petitioner's Reply Brief  
27 was filed February 6, 2018. The matter came before Judge Eric Johnson for argument on April  
28 17, 2018. At that hearing the court stated it would grant an evidentiary hearing to explore

1 whether there were certain understandings or misleading statements communicated by trial  
2 counsel to the Defendant as to the issue of the waiver of Defendant's direct appeal rights. The  
3 court also stated trial counsel could be questioned as to other decisions that were made during  
4 the course of trial, but that the evidentiary hearing would not be opened up as to the issue of  
5 ineffectiveness of counsel.

6 On September 20, 2018, the evidentiary hearing was conducted in Department 12  
7 before Judge Michelle Leavitt, where Defendant was present. At the evidentiary hearing, the  
8 court noted that the hearing was limited to one claim regarding whether the Defendant was  
9 denied a direct appeal. Anthony Sgro, Esq. and Christopher Oram, Esq. provided sworn  
10 testimony, as did Defendant David Burns. Pursuant to testimony, Defendant's appellant  
11 counsel Jamie J. Resch made arguments regarding the testimony provided in regard to the  
12 underlying Petition for Writ of Habeas Corpus. Jacqueline Bluth for the Respondent argued in  
13 opposition to the Petition, noting there was a written stipulation at trial wherein the Defendant  
14 agreed to waive his appeal rights. The court noted neither attorneys were asked about  
15 misconduct during closing arguments. The court also noted that there were no discussions as  
16 to direct appeal or appellate rights that survived the stipulation. Counsel Jamie J. Resch gave  
17 additional arguments regarding potential misunderstandings, after which the court ordered the  
18 Petition for Writ of Habeas Corpus DENIED, with the State to prepare the Order regarding the  
19 evidentiary hearing and Defendant's underlying Petition. The Order DENYING Defendant's  
20 Supplements Petition for Habeas Corpus follows; if any findings of fact are more properly  
21 deemed conclusions of law, they shall be so construed.

## 22 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

### 23 **I. THE COURT FINDS DEFENDANT RECEIVED EFFECTIVE** 24 **ASSISTANCE OF COUNSEL**

25 Claims of ineffective assistance of counsel are analyzed under the two-pronged test  
26 articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the  
27 defendant must show: (1) that counsel's performance was deficient, and (2) that the deficient  
28 performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this

1 standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). “A court may consider the  
2 two test elements in any order and need not consider both prongs if the defendant makes an  
3 insufficient showing on either one.” Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107  
4 (1997).

5 “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559  
6 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney’s  
7 representations amounted to incompetence under prevailing professional norms, “not whether  
8 it deviated from best practices or most common custom.” Harrington v. Richter, 562 U.S. 86,  
9 88, 131 S. Ct. 770, 778 (2011). Further, “[e]ffective counsel does not mean errorless counsel,  
10 but rather counsel whose assistance is ‘[w]ithin the range of competence demanded of  
11 attorneys in criminal cases.’” Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537  
12 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441,  
13 1449 (1970)).

14 The court begins with the presumption of effectiveness and then must determine  
15 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
16 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role  
17 of a court in considering alleged ineffective assistance of counsel is “not to pass upon the  
18 merits of the action not taken but to determine whether, under the particular facts and  
19 circumstances of the case, trial counsel failed to render reasonably effective assistance.”  
20 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,  
21 551 F.2d 1162, 1166 (9th Cir. 1977)).

22 This analysis does not indicate that the court should “second guess reasoned choices  
23 between trial tactics, nor does it mean that defense counsel, to protect himself against  
24 allegations of inadequacy, must make every conceivable motion no matter how remote the  
25 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551  
26 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of  
27 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of  
28 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot

1 be deemed ineffective for failing to make futile objections, file futile motions, or for failing to  
2 make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

3 In order to meet the second “prejudice” prong of the test, the defendant must show a  
4 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
5 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999). “A reasonable  
6 probability is a probability sufficient to undermine confidence in the outcome.” Strickland,  
7 466 U.S. at 694, 104 S. Ct. at 2068.

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

#### 12 **A. THE COURT FINDS DEFENDANT WAIVED HIS DIRECT APPEAL**

13 The court finds Defendant alleged “Petitioner never intended to waive, and in fact  
14 expressly reserved the right to appeal, any issues arising after the waiver was entered and  
15 specifically those which may have occurred during closing argument or sentencing.” Petition  
16 at 6.

17 When a defendant is found guilty pursuant to a plea, counsel normally does not have a  
18 duty to inform a defendant about his right to an appeal. Toston v. State, 127 Nev. Adv. Op.  
19 87, 267 P.3d 795, 799-800 (2011) (citing Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222,  
20 223 (1999)). The duty arises in the guilty plea context only when the defendant inquires about  
21 the right to appeal or in circumstances where the defendant inquires about the right to direct  
22 appeal “such as the existence of a claim that has reasonable likelihood of success.” Toston v.  
23 State, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011).

24 Here, the court finds that although Defendant did not plead guilty, the Stipulation and  
25 Order he entered into is analogous to a guilty plea. It is analogous in that defense counsel  
26 would not believe a defendant would want to appeal, especially after Defendant waived all his  
27 appellate rights. Stipulation and Order Waiving Separate Penalty Hearing, filed February 9,  
28 2015, p. 1-2. The Order stated the following:

1 Pursuant to the provisions of NRS 175.552, the parties hereby  
2 stipulate and agree to waive the separate penalty hearing in the  
3 event of a finding of guilty on Murder In the First Degree and  
4 pursuant to said Stipulation and Waiver agree to have the sentence  
5 of LIFE WITHOUT THE POSSIBILITY OF PAROLE imposed  
6 by the Honorable Charles Thompson, presiding trial judge.  
7 FURTHER, in exchange for the State withdrawing the Notice of  
8 Intent to Seek the Death Penalty, Defendant agrees to waive all  
9 appellate rights stemming from the guilt phase of the trial.

10 Id.

11 Further, in regards to the Stipulation and Order the following exchange was made:

12 Mr. Sgro: The State and the defense on behalf of Mr. Burns have  
13 agreed to conclude the remainder of the trial, settle jury  
14 instructions, do closings, et. cetera. If the jury returns a verdict of  
15 murder in the first degree, Mr. Burns would agree that—

16 The Court: As to Mr. Burns.

17 Mr. Sgro: As to Mr. Burns only. Mr. Burns would agree that the  
18 appropriate sentencing term would be life without parole. The  
19 State has agreed to take the death penalty off the table, so they will  
20 withdraw their seeking of the death penalty. If the verdict comes  
21 back at anything other than first degree murder and there's guilty  
22 on some of the counts, and the judge—then Your Honor will do  
23 the sentencing in the ordinary course like it would any other case.  
24 In—and I believe that states the agreement, other than there is a  
25 proviso[sic] that we, for purposes of further review down the road,  
26 we are not waiving any potential misconduct during the closing  
27 statements. We understand that to be a fertile area of appeal. The  
28 State has assured us that they are—would never do anything  
intentionally. The Court's been put on notice to be careful relative  
to the closing arguments, so that there's not unnecessary inflamed  
passion, et cetera, et cetera. Mr Mason has not given up his rights  
to appeal, and so there is a prophylactic safety measure that exists  
relative to the arguments advanced by the prosecution at the time  
of the closing statements.

So the long and short of it is, Your Honor, the State's agreed to  
abandon their seeking of the death penalty in exchange for Mr.  
Burns is agreeing to life without after we get through the trial.  
Yeah. And the waiver of his appellate rights.

1 Mr. Digiacomo: Correct. So that it's clear, should the jury return a  
2 guilty—a verdict of guilty in murder of the first degree or murder  
3 in the first degree with use of a deadly weapon, Mr. Mason and the  
4 State will agree to waive the penalty hearing with the stipulated  
5 life without the possibility of parole on that count, as well as he  
6 will waive appellate review of the guilt phase issues.

7 ...

8 The Court: In the colloquy that has been provided to me a few  
9 minutes ago, the attorneys explained to me that the State is  
10 waiving, giving up its rights to seek the death penalty in exchange  
11 for which you are agreeing, in the event the jury returns a verdict  
12 of murder in the first degree, that I will sentence you to life without  
13 the possibility of parole. Do you understand this?

14 Defendant Burns: Yes, sir.

15 The Court: Do you have any questions about it?

16 Defendant Burns: Yes, sir.

17 The Court: Do you agree with it?

18 Defendant Burns: Yes, sir.

19 The Court: You understand that you have a right to have a penalty  
20 hearing where the jury would determine the punishment in the  
21 event they found you guilty of first degree murder?

22 Defendant Burns: Yes sir.

23 The Court: You understand you're giving up that right to have  
24 the jury determine that punishment?

25 Defendant Burns: Yes, sir.

26 The Court: You understand you're giving up that right to have  
27 the jury determine that punishment?

28 Defendant Burns: Yes, sir.

///



1 The Court: And in exchange for which the State will waive its right  
2 to seek the death penalty against you, and you are giving—and you  
3 are agreeing that I will impose a punishment—in the event that  
4 you’re found guilty of murder in the first degree, I will impose a  
5 punishment of life without the possibility of parole. Do you  
6 understand that?

7 Defendant Burns: Yes, sir.

8 The Court: You understand that there are—in the event I impose a  
9 sentence of life without the possibility of parole, you’re never  
10 going to get paroled, you’re never going to get out, do you  
11 understand that?

12 Defendant Burns: Yes, sir.

13 The Court: You’re also giving up your appellate rights. Do you  
14 understand that?

15 Defendant Burns: Yes, sir.

16 Recorder’s Trial Transcript (hereinafter “RTT”), Trial Day 12, p. 4-9.

17 The court finds the negotiations called for no direct appeal. Additionally, the court finds  
18 Defendant did not move to withdraw the Stipulation and Order after trial ended. After trial  
19 Defendant and defense counsel still felt it was in Defendant’s best interest to not move to  
20 withdraw the Stipulation and Order. The court finds that if there were meritorious issues or  
21 errors that caused Defendant concern, defense counsel could have moved to withdraw the  
22 Stipulation and Order. The court finds it is not deficient for counsel to assume Defendant is  
23 satisfied, absent Defendant backing out of the negotiations.

24 Defendant in his Pro Per Petition stated that he did not know the court likes certain  
25 issues to be filed on direct appeal, and his attorney said he would show him how to file a  
26 habeas petition and he never did. Pro Per Petition, filed October 13, 2015, p.14. Additionally,  
27 defense counsel in Defendant’s Supplemental Petition now claims “it is obvious Petitioner  
28 desired to appeal and that his attorneys knew that fact, because the scope of the purported  
waiver is limited to events which precede its filing.” Petition at 27. However, this statement is

1 belied by Defendant's own admissions in his Pro Per Petition. He did *not* ask his attorney to  
2 file a direct appeal. Therefore, the court finds counsel was not deficient for not filing a direct  
3 appeal. Moreover, the court finds Defendant was not prejudiced because he waived his right  
4 to appeal, and received the benefit of having the State withdraw its intent to seek the death  
5 penalty. Further, the court finds that Defendant did not request a direct appeal regarding the  
6 days of trial after the Stipulation and Order was made. Therefore, the COURT FINDS counsel  
7 was not ineffective.

8 **B. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR**  
9 **FAILING TO OBJECT TO THE TESTIMONY OF KENNETH**  
10 **LENCENSE AND RAY MACDONALD, AND THAT DEFENSE**  
11 **COUNSEL WAS PROPERLY NOTICED**

12 The court notes Defendant claims Kenneth Lencense (hereinafter "Lencense"), a  
13 Custodian of Records for Metro PCS, and Ray MacDonald (hereinafter "MacDonald"), a  
14 Custodian of Records for T-Mobile, inappropriately testified as experts at trial and counsel  
15 failed to object. Petition at 7. Additionally, the court notes that Defendant argues this  
16 improperly admitted testimony should have been excluded unless supported by a properly  
17 noticed expert and should never have been admitted as an unnoticed lay witness. Petition at 8,  
28. NRS 50.275 regarding testimony by experts state:

18 If scientific, technical or other specialized knowledge will assist  
19 the trier of fact to understand the evidence or to determine a fact  
20 in issue, a witness qualified as an expert by special knowledge,  
21 skill, experience, training or education may testify to matters  
within the scope of such knowledge.

22 Custodians of records can testify as experts at trial. When discussing testimony of a custodian  
23 of records, the Nevada Supreme Court has held:

24 [t]his testimony is not the sort that falls within the common  
25 knowledge of a layperson but instead was based on the witness's  
26 specialized knowledge acquired through his employment. Because  
27 that testimony concerned matters beyond the common knowledge  
28 of the average layperson, his testimony constituted expert  
testimony as experts.

1 Burnside v. State, 131 Nev.\_\_\_\_, 352 P.3d, 627, 637 (2015). Furthermore, in Burnside, the  
2 custodian of records was noticed as a lay witness and not an expert witness. However, even  
3 when the custodian of record was noticed as a lay witness instead of an expert witness, the  
4 Nevada Supreme Court held, “[w]e are not convinced that the appropriate remedy for the error  
5 would have been exclusion of the testimony.” Id.

6 Here, the court finds the Defendant was aware the two custodians of records would  
7 testify as experts. The court notes the State filed its Notice of Expert Witnesses on September  
8 4, 2013. The Notice stated:

9 Custodian of Records Metro PCS, or designee will testify as an  
10 expert regarding how cellular phones work, how phones interact  
11 with towers, and the interpretation of that information. Further,  
12 Custodian of Records T Mobile, or designee, will testify as an  
13 expert regarding how cellular phones work, how phones interact  
14 with towers and the interpretation of that information.

15 Notice of Expert Witnesses, filed September 4, 2013, p. 2. Further, the Notice stated, “The  
16 substance of each expert witness’ testimony and a copy of all reports made by or at the  
17 direction of the expert witness has been provided in discovery.” Id. at 5. Therefore, it was  
18 proper for the custodian of records to testify as experts and counsel was noticed they would be  
19 testifying as experts.<sup>2</sup> Counsel is not required to make futile objections. Ennis v. State, 122  
20 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Therefore, the court finds that counsel was not  
21 deficient.

22 Additionally, the court finds Defendant fails to demonstrate prejudice. He fails to  
23 explain how but for counsel’s errors, the results of the trial would have been different or how  
24 any objection would have led to a more probable outcome for Defendant. Even if counsel  
25 would have objected, the objection would have been overruled because the expert testimony  
26 was proper and would not have been excluded. Therefore, the court finds Defendant was not  
27 prejudiced.

28 <sup>2</sup> Defendant fails to specify what was improper about the State’s Notice of Experts, but instead argues the testimony “should  
have been excluded unless supported by a properly noticed expert.” Petition at 8.

1                   **C. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE IN**  
2                   **FAILING TO DISCOVER EXCULPATORY AND MATERIAL**  
3                   **EVIDENCE BECAUSE THERE WAS NO SECRET AGREEMENT**  
4                   **AND THE JURY WAS AWARE MAYO'S PENDING CASES WERE**  
5                   **POSTPONED**

6                   The court notes Defendant alleges that "the State failed to disclose, failed to correct,  
7                   and the defense failed to discover that Mr. Mayo did in fact receive 'help' towards his pending  
8                   criminal cases by agreeing to testify as a State's witness at Petitioner's trial." Petition at 31.

9                   During the State's direct examination with Mayo the following exchange occurred:

10                  Q: In the search of your apartment, there—the police found  
11                  narcotics, cocaine; you're aware of that?

12                  A: Yes.

13                  Q: What—I guess what is your—how was that in the apartment?

14                  A: I don't know how they got there.

15                  Q: Okay. You don't know anything about that?

16                  A: No.

17                  Q: After these events took place, were you charged with a crime  
18                  associated with this incident?

19                  A: Yeah.

20                  Q: And do you know what the charge was?

21                  A: It was child—child abuse or child neglect with substantially  
22                  bodily harm, then just child neglect and trafficking.

23                  Q: Okay. And are—is that case—do you know what the status of  
24                  it is or what's happening with that case?

25                  A: I'm still going to court.

26                  Q: Okay. And is that case being continued till the end of this trial?

27                  A: Yes.

28                  Q: Do you have any other cases that are pending?

                  A: Yes.

                  Q: Tell me about the other one, what—the charges I guess.

                  A: Destruction of property or—it's destruction of—I don't know  
                  the exact charge, but it's, like, destruction of property or  
                  something like that.

                  Q: And is that one similarly being continued until the end of this  
                  case?

                  A: Yes.

                  Q: After these events took place in August, did you have to appear  
                  in Family Court and go through proceedings there as well?

                  A: Yes.

1 RTT, Trial Day 10, p. 245-248.

2 Further, on cross-examination with Anthony Sgro:

3 Q: Mr. Mayo, I want to start with sort of where you left off. You  
4 have some cases that are currently pending against you, right,  
5 some charges against you?

6 A: Yes.

7 Q: One of them is for drug trafficking; is that right?

8 A: Yes.

9 Q: And that's for crack cocaine?

10 A: I don't know—I don't know exactly what it's for, but I know  
11 it's trafficking.

12 Q: Well, would it refresh your memory if I showed you the docket  
13 for your case?

14 Mr. Sgro: May I approach, Your Honor?

15 The Court: Yes, if he's familiar with the docket.

16 The Witness: Yeah, I've never seen it.

17 By Mr. Sgro:

18 Q: Does it look like—according to this document—the charge is  
19 trafficking in cocaine?

20 A: Yes, that's what it—yeah.

21 Q: Now, you just told the jury that the cocaine was in your house,  
22 you don't know where it came from, right?

23 A: No, I don't.

24 Q: Okay. Did you tell that to the DAs before they charged you with  
25 trafficking?

26 A: Like, we never had a conversation about that.

27 Q: You know trafficking is a serious crime; it carries prison time?

28 A: Yes.

Q: Okay. Despite you telling the DAs that you don't know where  
the cocaine came from, they still are charging you with trafficking,  
right?

A: Yes, that's the charge.

Q: Would you agree that it seems like they don't believe your  
version?

Ms. Weckerly: Objection.

The Court: Sustained.

By Mr. Sgro:

Q: You also got charged with child neglect with substantial bodily  
harm; is that right?

A: Yes.

1 Q: And all these charges, including allowing children to be present  
2 where drug laws are being violated, all those charges have been  
3 postponed for now for several years, right?

4 A: Yes.

5 Q: And it's all being postponed until after you—until this trial is  
6 over, right?

7 A: I guess. I'm not sure. I don't know.

8 Q: Well, do you believe that by testifying in this case it helps you  
9 in the cases that you're facing right now?

10 A: No.

11 Q: You don't think it helps you?

12 A: No.

13 Q: Do you think that the DA indefinitely postpones cases all the  
14 time, or do you think you're getting some—

15 A: I don't know how the DA work.

16 Q: Okay. Let me finish my question, okay. Do you believe that the  
17 DA is just postponing these cases coincidentally and that they're not  
18 giving you any sort of favor because you're testifying in this case?  
19 Is that what you think?

20 A: I don't think they giving me no type of favor.

21 Q: Okay. You also have I think you said some kind of destruction  
22 of property, but it's actually tampering with a vehicle, which is a  
23 felony, right?

24 A: No, it was a misdemeanor.

25 Mr. Sgro: May I approach, Your Honor?

26 The Court: Yes.

27 By Mr. Sgro:

28 Q: I'm showing you a court document. Does it look like tampering  
with a vehicle charge you're charged with is a felony?

A: That's what is say, but my court papers say it's a misdemeanor.

Q: So this court document is a mistake?

A: Or my court paper is a mistake, one of them, but when I was  
charged with is, it was a misdemeanor.

Q: Okay. In this particular felony, if I'm right, this felony was  
charged in June of 2011, right?

A: Yeah, that sounds about right.

Q: About nine months after the events that we're talking about,  
right?

A: Yes.

Q: And you haven't faced anything in this case yet either, right?

A: No, we still going to court.

///

1 Q: Okay. Do you think that the fact that the DA is postponing this  
2 felony case as well that it is a favor to you or a benefit to you or  
3 no?

4 A: No.

5 RTT, Trial Day 10, p. 248- 252.

6 Upon review of the above transcript, the court finds Defense counsel was not deficient.  
7 Mr. Sgro thoroughly cross-examined Mayo regarding his pending cases. He brought attention  
8 to the postponement of Mayo's cases and although never specifically mentioned an OR  
9 release, the fact that the jury knew his other cases had been postponed, was sufficient because  
10 it would be assumed he was not in custody. The court finds Mayo's Guilty Plea Agreement  
11 was not filed until January 21, 2016, almost a year after Defendant's trial concluded. There  
12 was no way for defense counsel to know at the time of trial how Mayo's other cases were  
13 going to resolve. Defendant alleges that because Mayo received a "sweetheart deal" this is  
14 evidence that there was a secret deal between the State and Mayo. Petition at 9.

15 The court finds Defendant's allegations are bare and naked, and that Defendant does  
16 not cite to any place in the record that would support his allegation that the State withheld  
17 information from the defense or the jury. The court finds that simply because Mayo was  
18 ultimately granted probation is not evidence that there was an undisclosed agreement between  
19 Mayo and the State that Defendant and the jury were unaware of. The court thus finds  
20 Defendant's claim is belied by the record and is DENIED.

21 The court finds Defendant alleges "there is a reasonable probability Petitioner would  
22 have enjoyed a more favorable outcome at trial had these facts been properly disclosed by the  
23 State or discovered by the defense." Petition at 31. The court notes the postponement of  
24 Mayo's cases were disclosed during direct examination and cross-examination. RTT, Trial  
25 Day 10, p. 245-252. Further, the court finds defense counsel was aware of the postponement  
26 of the prosecution of Mayo's cases because he thoroughly cross-examined Mayo regarding his  
27 pending cases as showed above. Thus, Defendant fails to show prejudice because the facts  
28 were presented to the jury and defense counsel was aware of the postponement of the  
prosecution. Thus the court finds defense counsel was not ineffective.

1                   **D. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR**  
2                   **MAKING STRATEGIC DECISIONS**

3                   The court notes that Defendant argues trial counsel was ineffective in opening the door  
4 to damaging hearsay evidence. Petition at 31. The Defendant further argues “the prudent  
5 course of action would have been to object to it and/or avoid opening the door to it—rather  
6 than what was done which was to build upon Cousins’ statements to police as a cornerstone  
7 of the defense.” Petition at 12.

8                   The court finds counsel’s actions were well-reasoned and strategically made, and such  
9 actions constituted effective assistance of counsel. Strickland, 466 U.S. at 681, 104 S. Ct. at  
10 2061; Rhyne, 118 Nev. at 8, 38 P.3d at 167-68; State v. LaPena, 114 Nev. 1159, 1166, 968  
11 P.2d 750, 754 (1998). The court finds such claims relate to trial strategy, which is “virtually  
12 unchallengeable,” and that Defendant has not shown deficient performance pursuant to  
13 Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996).

14                  The court finds Defense counsel made a strategic decision to inquire about Cousins’  
15 statements to police when on cross-examination with Detective Bunting about the statements  
16 Cousins made to him:

17                   Q: Early on in the morning hours of this case you had information  
18 that the assailant in this case had a white T-shirt on, correct?

19                   A: I believe Ms. Cousins has said that, yes.

20                   Q: And that came hours after the investigation began, correct?

21                   A: Sometime around the time of the investigation, yes sir.

22                  RTT, Trial Day 14, p.23.

23                  The court notes Counsel’s strategy decisions are tactical decisions and are “virtually  
24 unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at  
25 280. The court finds the testimony regarding the white t-shirt was an important piece of  
26 evidence for the defense, and that defense counsel made a reasonable decision to attempt to  
27 elicit that information in front of the jury. The court notes Defendant argues counsel should  
28 have objected to the following exchange with the State and Detective Bunting:



1 Q: Now, ultimately, Stephanie Cousins made an  
2 identification of the shooter, correct?

3 A: She did.

4 Q: It wasn't Job-Loc?

5 A: No.

6 RTT, Trial Day 14, p. 35. However, the court finds that because defense counsel opened the  
7 door in regards to identification, making an objection would have been futile. Counsel cannot  
8 be ineffective for failing to make futile objections. Ennis, 122 Nev. at 706, 137 P.3d at 1103.  
9 The court finds that the fact that counsel decided to make this decision to use this evidence,  
10 even though the State would be able to then admit the evidence that she had identified the  
11 Defendant, was strategic. The court finds Counsel weighed the potential benefits versus the  
12 potential harm and made a reasonable tactical decision to state Defendant's theory of the case  
13 and provide evidence of that theory.

14 Furthermore, the court finds Defendant has not shown there would have been a more  
15 favorable outcome had this evidence not come in because this was not the only incriminating  
16 evidence against Defendant. The court finds Defendant likely would have still been found  
17 guilty due to the other overwhelming evidence against him, including but not limited to the  
18 testimony of Monica Martinez that he was the shooter, the evidence that Devonian said the  
19 shooter was in overalls and Defendant admitted to being in overalls, and cell phone records  
20 placing him at the crime scene. RTT, Trial Day 14, p. 145-146. Therefore, the court finds  
21 Defendant has failed to establish prejudice.

22 **E. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR  
23 FAILING TO OBJECT TO\*- ALLEGED PROSECUTORIAL  
24 MISCONDUCT**

25 The standard of review for prosecutorial misconduct rests upon Defendant showing  
26 "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111  
27 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859  
28 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not  
necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The  
relevant inquiry is whether the prosecutor's statements so contaminated the proceedings with  
unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168,

1 181, 106 S.Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear  
2 and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially  
3 prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

4 Here, the court notes Defendant only brings claims that were not objected to for  
5 consideration of ineffective assistance of counsel. Petition at 33. However, the court notes  
6 Defendant also argues he's bringing claims that were objected to for a cumulative error claim  
7 and as part of an ineffective assistance of appellate counsel for failing to raise any claims on  
8 direct appeal. Id.

9 The court notes that Defendant recognizes that in regards to the claims that were  
10 objected to and should have been raised on an appeal, bringing them in a habeas petition is not  
11 the proper form. Id. However, he claims he's offering these objected to claims for two other  
12 purposes: 1. a cumulative error claim, and 2. as part of an ineffective assistance of appellate  
13 counsel for failure to bring these claims on direct appeal. Id. The court notes that Defendant  
14 also stated earlier in his Petition that claims that were objected to "can still be considered as  
15 part of an overall ineffectiveness claim in not moving for a mistrial based on misconduct."  
16 Petition at 14.

17 The court finds that to the extent Defendant is arguing that counsel was ineffective for  
18 failing to raise these claims that were objected to on appeal, he waived his right to a direct  
19 appeal, therefore this claim is without merit. See section A *supra*. Second, the court finds  
20 Defendant cannot use claims that were objected to, and should have been brought up on a  
21 direct appeal, to attempt to have this Court consider them in the context of cumulative error.  
22 Additionally, court notes that the Nevada Supreme Court has never held that ineffective  
23 assistance of counsel claims can amount to cumulative error. Further, the court notes that  
24 claims that are improperly brought in habeas and should have been raised on direct appeal  
25 cannot be considered for an "overall ineffectiveness claim." Therefore, this Court only  
26 considers Defendant's claims of ineffective assistance of trial counsel when there was no  
27 objection.

28 ///

1           **Claims Objected To:**

2           The claims counsel objected to at trial were disparagement of counsel, additional  
3 burden shifting by arguing defense failed to call witness Cooper, and a PowerPoint to the jury  
4 that referred to Defendant as part of the “circle of guilt.”<sup>3</sup> To the extent that counsel is alleging  
5 appellate counsel was ineffective in raising the issues on direct appeal, the court finds he  
6 waived his direct appeal. Additionally, this argument has been thoroughly addressed *supra*.  
7 See section A.

8           **Claims Not Objected to Reviewed for Ineffective Assistance of Counsel:** <sup>4</sup>

9                   *Credibility of Witness shifted burden*

10          The court notes that Defendant claims there were multiple instances of burden shifting  
11 that were not objected to, or that counsel failed to seek a mistrial.<sup>5</sup> Petition at 35. Defendant  
12 claims that the words “priest and and a nun” or “Mother Theresa” and that there was “no  
13 explanation” were statements that constituted burden shifting. Petition at 33.

14          The State on rebuttal said:

15                   It would be a wonderful situation should we be standing in—or we  
16                   should be living in a world in which people who are selling crack  
17                   out of their house who get murdered happen to have a priest and a  
18                   nun who’s standing there and is part of the witnesses in the case.  
19                   Or maybe Mother Theresa to tell us who’s living in Job-Loc’s  
20                   apartment over at the Brittnae Pines.

21                   ...

22                   David Burns has no explanation that is going to save him from the  
23                   horrific knowledge that he put a gun, a .44 caliber, that giant hog-  
24                   leg of a revolver, to the head of a woman and pulled the trigger  
25                   without ever letting her getting a word out edgewise, and then  
26                   chased a 12-year-old girl down. What reasonable explanation  
27                   could he give? Well, I was really high on drugs. That wouldn’t  
28                   excuse it.

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3 The claims that were objected to are also known as claims 1, 4, and 6 on page 13 of Defendant’s Supplemental Petition.

4 As stated above, the only proper claim for this Court to address in this Petition is the ineffective assistance of counsel at the trial level. To the extent that Defendant alleges these several claims of ineffective assistance of counsel regarding prosecutorial misconduct that were not objected to should have been raised on direct appeal, and it constituted ineffective assistance of counsel for failure to do so, the court finds his direct appeal was waived. See section A *supra*.

5 Further, Defendant continues to state ineffective assistance of counsel for not seeking a mistrial, but does not state any legal authority or standard for what or why a mistrial should have been sought.

1 RTT, Trial Day 15, p. 54, 56.

2  
3 These statements were made during the State's rebuttal. The United States Supreme  
4 Court has held that the State on rebuttal is entitled to fair response to arguments presented by  
5 the defense counsel in closing argument. United States v. Robinson, 485 U.S. 25, 108 S.Ct.  
6 864 (1988). This Court has long recognized that "[d]uring closing argument, the prosecution  
7 can argue inferences from the evidence and offer conclusions on contested issues." Jones v.  
8 State, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997). A prosecutor is allowed to comment on the  
9 lack or quality of the evidence in the record to substantiate the defendant's theory of the case.  
10 Evans v. State, 117 Nev. 609, 630-33, 28 P.3d 498, 514 (2001) (overruled in part on other  
11 grounds by Lisle v. State, 131 Nev. \_\_, 351 P.3d 725 (2015)). Therefore, the court finds this  
12 did not constitute burden shifting.

13 Furthermore, the court notes counsel cannot be found ineffective for failing to make  
14 futile objections, file futile motions, or for failing to make futile arguments. Ennis, 122 Nev.  
15 at 706, 137 P.3d at 1103. Therefore, because this was not burden shifting, the court finds  
16 counsel was not deficient for failing to object or for failing to argue to seek a mistrial.<sup>6</sup>

17 Additionally, the court finds Defendant was not prejudiced because he fails to allege  
18 how objecting to this evidence would have provided a more favorable outcome; even if counsel  
19 would have objected, the objection would have been overruled because none of the statements  
20 made on rebuttal constituted burden shifting. Therefore, Defendant's claim is without merit  
21 and is DENIED.

### 22 ***Custodian of Records***

23 Defendant alleges again, defense counsel should have objected to the State using a  
24 custodian of records as an expert, and that defense counsel should have objected because the  
25 custodian of records were not properly noticed as experts. Petition at 35. However, this claim  
26 was already addressed *supra*. See section B.

27 ///

28 <sup>6</sup> Defendant includes examples of "errors" that were objected to, and thus should have been brought on direct appeal, and not in a habeas petition. Therefore, it is improper for Defendant to ask this Court to consider those claims in any way.

1                    *Whistling during interview*

2                    Lastly, the court notes Defendant claims counsel failed to object to the argument the  
3 prosecutor made that the whistling heard on the 911 call during the crime matched the alleged  
4 whistling heard during Petitioner's interview with police. Petition at 36, 14. He also argues  
5 that the transcript of the police interview with Petitioner makes no reference to any whistling.  
6 Petition at 36. He argues these facts were not in evidence. Petition at 14.

7                    The court notes the State may respond to defense theories and arguments. Williams v.  
8 State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997) (receded from on other grounds  
9 by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000)). This Court has long recognized that  
10 "[d]uring closing argument, the prosecution can argue inferences from the evidence and offer  
11 conclusions on contested issues." Jones v. State, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997).

12                    The State argued the following during rebuttal:

13                    But maybe what was subtle and was lost on everybody was how  
14 particularly disgusting and despicable the crime itself was. That it  
15 was—got to be something horrific got most human beings on  
16 Earth. And when you're in an interview room with detectives and  
17 you get told about it, your behavior of humming and singing and  
18 whistling is really kind of offensive, to be honest with you. And  
19 you can't really blame the cops for using the kind of terms they  
20 used with him. But it's also relevant for something else. Because  
21 Cornelius Mayo's inside that shower when the shot rings out. And  
22 he calls 911. And if that matches the clock at T-Mobile, that means  
23 it's while the shooter's still in that house. And he's obviously the  
24 person whistling on that 911. So whoever shot Derecia Newman  
and then put a bullet in Devonian Newman—whoever that shooter  
is, he's whistling as he's going through the crack cocaine and the  
drugs inside that residence as Cornelius Mayo, in that very small  
bathroom in that shower, is calling 911. Listen to that 911 over and  
over and over again. Cornelius Mayo doesn't see Devonian until  
after the whistling ends.

25                    RTT, Trial Day 15, p. 94.

26                    The court notes the State introduced State's Exhibit #323, which was Mayo's 911 phone  
27 call from the bathroom. It was played for the jury and was admitted by stipulation. RTT, Day  
28 10, p. 226. What was heard during the 911 phone call was played for the jury, and anything

1 they heard was admitted into evidence. Id. Thus, the court finds it was proper during the  
2 State's rebuttal argument to refer to the noises made in the background of the 911 phone call  
3 because it was admitted into evidence and the State was making inferences about the admitted  
4 evidence.

5 Further, the court notes the State admitted a recording of Defendant's interview with  
6 Detective Bunting and Detective Wildemann on September 13, 2010. RTT, Trial Day 13, p.61.  
7 It was marked as State's Exhibit #332. After the video was played the following exchange  
8 with Detective Bunting and the State occurred:

9 Q: And there's points during the interview where you or—you or  
10 Detective Wildemann are telling Mr. Burns to—sort of sit up or  
11 pay attention. Could you describe what he was physically doing at  
12 the time?

13 A: Well, he was slouching far into his chair. And as you heard—  
14 was humming while we were asking him questions. And then just  
15 kind of looking off or away. Just disinterested for the most part, I  
16 guess.

17 Id. at 70-71.

18 The transcript of Defendant's interview transcription states Defendant was humming  
19 throughout the interview. State's Response to Defendant's Petition, filed January 26, 2016,  
20 Exhibit 1, p. 35, 36, 38, 39, 44. Further, it is transcribed in the interview that Defendant is  
21 humming and singing. Id. at 37, 40.

22 Thus, the court finds that when the State argues all "the humming and singing and  
23 whistling," all of these arguments were fair comments on the evidence presented, and any  
24 objection by counsel would have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103. The  
25 court notes the State is permitted to address evidence that is admitted at trial and respond to  
26 Defendant's arguments. Therefore, the court finds that counsel was not deficient. Further, the  
27 court finds Defendant fails to even allege that Defendant was prejudiced by this. Thus, the  
28 court finds counsel was not ineffective.

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**F. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE AT SENTENCING<sup>7</sup>**

The court notes Defendant alleges that counsel was ineffective for not objecting to the imposition of a deadly weapon enhancement that was unsupported by the required statutory findings (see Petition at 36), and that counsel failed to object to incorrect information recorded in the PSI. Petition at 37. NRS 193.165(1) states:

Except as otherwise provided in NRS 193.169, any person who uses a firearm or other deadly weapon or a weapon containing or capable of emitting tear gas, whether or not its possession is permitted by NRS 202.375, in the commission of a crime shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. In determining the length of the additional penalty imposed, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.

The court shall state on the record that it has considered the information described in paragraphs (a) to (e), inclusive, in determining the length of the additional penalty imposed.

The court finds that even if counsel was deficient in not objecting—which he was not—Defendant was not prejudiced by the fact that the Court failed to make its specific findings for each factor. Just like in Mendoza-Lobos v. State, 125 Nev. 634, 644, 218 P.3d 501, 508 (2009), “nothing in the record indicates that the district court’s failure to make certain findings on the record had any bearing on the district court’s sentencing decision.” Furthermore, the court notes Defendant had already stipulated to a sentence of life without the possibility of parole. Thus, there was no higher sentence he could have received, as evidenced by the exchange between defense counsel and the Court:

Mr. Oram: Well and at the time just a kid. And unfortunately Mr. Burns has always been a very gracious client of mine, very easy to

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<sup>7</sup> To the extent Defendant is claiming this issue should have been raised on direct appeal, and counsel was ineffective for failing to do so, this claim is waived. See Section A *supra*.

1 work with. And it's sort of sad that he didn't just have some  
2 guidance. If he had some guidance maybe surely he wouldn't be  
3 standing where he is and it's just unfortunate to see that situation.  
4 I hope there's something that come of Mr. Burns' life that makes  
it better. I would ask you not to run these consecutive. It just seems  
just to pile up on him is just an overload. And so—

5 The Court: The way the law stands now, unless it's changed, he  
6 will never be released from prison.

7 Mr. Oram: That's correct.

8  
9 Recorder's Transcript of Sentencing Proceedings, April 23, 2015, p. 4. Thus the court finds  
10 Defendant was not prejudiced, even if counsel's performance was deficient, which it was not.  
11 Therefore, the court finds counsel was not ineffective.

12 Further, the court notes that according to Defendant, trial counsel did raise errors in the  
13 sentencing memorandum, and the Court had an opportunity to review the sentencing  
14 memorandum. Petition at 36. Therefore, the court finds counsel was not deficient because he  
15 did draw the Court's attention to the errors. Further, the Court had the opportunity to read the  
16 sentencing memorandum. Recorder's Transcript of Sentencing Proceedings, filed July 13,  
17 2017, p. 3. Thus, the court finds there was no prejudice because the Court was aware of the  
18 errors and took that into consideration before sentencing. Furthermore, the court notes the  
19 sentencing judge was also the trial judge, and he had firsthand knowledge of the testimony that  
20 was introduced at trial. Therefore, the court finds counsel was not ineffective.

21 **G. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR**  
22 **FAILING TO INVALIDATE THE DEATH PENALTY PER NRS**  
23 **174.098 BECAUSE DEFENDANT WAS NOT INTELLECTUALLY**  
24 **DISABLED**

25 The court notes Defendant has alleged trial counsel was ineffective for not seeking to  
26 dismiss or otherwise disqualify Petitioner for the death penalty based on the findings  
27 concerning Fetal Alcohol Syndrome ("FAS") and NRS 174.098. Petition at 38. First,  
28 Defendant in his Pro Per Petition alleged he had Fetal Alcohol Syndrome and neurological  
development issues, and that and counsel was ineffective for failing to raise those issues.



1 Defendant's Pro Per Petition, filed October 13, 2015, ground 7. Defendant cites to the sealed  
2 sentencing memorandum to support his diagnosis of FAS, which the District Attorney's Office  
3 represented it was never provided with. Furthermore, on page 40 of Defendant's Supplemental  
4 Petition, in footnote two, Defendant claims to have provided an unfiled copy of the  
5 memorandum to the District Attorney, which the District Attorney's Office represented it did  
6 not receive. Therefore, the State did not respond to the memorandum in its response to the  
7 instant Supplement to Petition for Writ of Habeas Corpus.

8 However, this court DENIES Defendant's claims based on the evidence presented of  
9 Defendant's IQ score. NRS 174.098(7) states:

10 For the purposes of this section, "intellectually disabled" means  
11 significant subaverage general intellectual functioning which  
12 exists concurrently with deficits in adaptive behavior and  
manifested during the developmental period.

13 The Nevada Supreme Court has said "the clinical definitions indicate that 'individuals with  
14 IQs between 70 and 75' fall into the category of subaverage intellectual functioning. Ybarra  
15 v. State, 127 Nev. 47, 55, 247 P.3d 269, 274 (2011) (internal citations omitted). Further, the  
16 Court explained, "although the focus with this element of the definition often is on IQ scores,  
17 that is not to say that objective IQ testing is required to prove mental retardation. Other  
18 evidence may be used to demonstrate subaverage intellectual functioning, such as school and  
19 other records." Id.

20 "The first concept—significant limitations in intellectual functioning—has been  
21 measured in large part by intelligence (IQ) tests." Id. Although the Nevada Supreme Court has  
22 said IQ scores are not required, and can be proven by other records, here Defendant's IQ score  
23 has been tested and is at 93. The court finds this is significantly higher than the range of 70-  
24 75, the range of subaverage general intellectual functioning. The court notes that Defendant  
25 claims that because there is evidence that Defendant has deficits in adaptive behavior, he  
26 should be diagnosed as intellectually disabled. Petition 41-42. However, the court finds that  
27 Defendant's claims that he dropped out of high school, had disciplinary problems in school,  
28 and was in special education, do not overcome his high IQ. Id.

1 Defendant's Pre Sentence Investigation Report (hereinafter "PSI") stated Defendant  
2 attended high school until the 11<sup>th</sup> grade, and obtained his GED in 2013 while incarcerated at  
3 CCDC. PSI, filed, April 1, 2015, p. 4. Further, Defendant's mental health history consisted of  
4 him being evaluated at the request of his attorney. Id. at 5.

5 The court finds Defense counsel's failure to dismiss the death penalty under NRS.  
6 174.098 did not constitute deficient performance because he made the decision based on the  
7 evidence he had, and Defendant's IQ score of 93, that this would not be a successful argument.  
8 See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, the court finds Defendant has not  
9 established prejudice, in that he has not demonstrated that but for counsel's failure to dismiss  
10 the death penalty under NRS 174.098, the result of his trial would have been different.  
11 Furthermore, the court notes the death penalty was ultimately negotiated away. Thus the court  
12 finds that even if Defendant would have been diagnosed as intellectually disabled, he still  
13 would likely have received the same sentence considering the egregious nature of his crime,  
14 and the overwhelming evidence presented. As such, the court finds Defendant has not  
15 demonstrated prejudice and counsel was not ineffective.

#### 16 **H. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE IN** 17 **REGARDS TO THE JURY NOTES**

18 Defendant argues that two notes from the jury were received and Petitioner was not  
19 consulted about or present for any of the discussions related to the notes. Petition at 44. Further,  
20 Defendant states trial counsel was ineffective for failing to ensure Petitioner was present for  
21 the discussion of how to respond to jury notes. Petition at 17. Defendant relies on Manning v.  
22 State, 131 Nev. \_\_\_, 348 P.3d 1015, 1018 (2015) to demonstrate counsel's ineffectiveness.  
23 However, Manning was filed May 7, 2015. Defendant's trial ended on February 17, 2015. His  
24 Judgment of conviction was filed on May 5, 2015.

25 Here, the court finds Defendant has not establish deficient performance on the part of  
26 his counsel nor has he established prejudice. Defendant's trial and Judgment of Conviction  
27 were final before Manning was published and made law; thus, there was no clear right to have  
28 criminal defendant present when jury notes are discussed. See Strickland, 466 U.S. at 690, 104

1 S. Ct. at 2066 (finding a court must “judge the reasonableness of counsel’s challenged conduct  
2 on the facts of the particular case, *viewed as of the time of counsel’s conduct*”) (emphasis  
3 added).

4 The court finds Counsel’s performance cannot be deemed deficient for failing to  
5 anticipate a change in the law. Nika v. State, 124 Nev. 1272, 1289, 198 P.3d 839, 851; Doyle  
6 v. State, 116 Nev. 148, 156, 995 P.2d 465, 470 (2000). Thus, Defendant is not entitled to relief  
7 because Manning does not apply retroactively. “Generally, new rules are not retroactively  
8 applied to final convictions.” Ennis, 122 Nev. at 694, 137 P.3d at 1099. Therefore, the court  
9 finds that because defense counsel was not deficient, Defendant was not prejudiced.

10 **I. THE COURT FINDS DEFENDANT HAS FAILED TO SHOW**  
11 **CUMULATIVE ERROR<sup>8</sup>**

12 The court notes Defendant asserts a claim of cumulative error in the context of  
13 ineffective assistance of counsel. Petition at 18. The Nevada Supreme Court has never held  
14 that instances of ineffective assistance of counsel can be cumulated. However, even if they  
15 could be cumulated, it would be of no merit to the Defendant in the instant case, as the court  
16 finds there were no instances of ineffective assistance in Defendant’s case to cumulate. See  
17 United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) (“[A] cumulative-error analysis  
18 should evaluate only the effect of matters determined to be error, not the cumulative effect of  
19 non-errors.”). Furthermore, the court finds any errors that occurred at trial were minimal in  
20 quantity and character, and that a defendant “is not entitled to a perfect trial, but only a fair  
21 trial.” Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). Therefore, Defendant’s  
22 claim of cumulative error is without merit and is denied.

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26  
27 <sup>8</sup> Defendant states that “errors alleged in this petition and those which should have been raised on direct appeal to the  
28 Nevada Supreme Court require reversal both individually and because of their cumulative impact.” Petition at 18.  
Defendant claims that alleged errors that should have been raised on direct appeal also contribute to the cumulative impact.  
Petition at 18. However, as discussed *supra*, Defendant’s direct appeal claims have been waived and thus claims that  
should have been brought on direct appeal are improperly brought in a habeas Petition.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that the Supplemental Petition for Post-Conviction Relief shall be, and is, hereby DENIED in its entirety.

DATED this 23 day of October, 2018.

  
DISTRICT JUDGE

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

TJ

BY /s/ Charles W. Thoman  
CHARLES W. THOMAN  
Chief Deputy District Attorney  
Nevada Bar #12649

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above and foregoing, was made this 15<sup>th</sup> day of October, 2018, by Electronic Filing to:

JAMIE J. RESCH, ESQ.  
[jresch@convictionsolutions.com](mailto:jresch@convictionsolutions.com)

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

10F17607X/ACB/saj/MVU



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 26, 2010**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**October 26, 2010      9:00 AM      Indictment Warrant Return**

**HEARD BY:** Hardcastle, Kathy

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Denise Trujillo

**RECORDER:** Lara Corcoran

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Di Giacomo, Marc P.	Attorney
	Powell, Jonathan L.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- ARRAIGNMENT (BURNS)

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

CUSTODY

10/11/11 9:00 AM CALENDAR CALL

10/17/11 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 23, 2010**

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C-10-267882-2      State of Nevada  
vs  
David Burns

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**November 23, 2010      9:00 AM      Motion**

**HEARD BY:** Hardcastle, Kathy

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Denise Trujillo

**RECORDER:** Lara Corcoran

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Di Giacomo, Marc P.	Attorney
	Powell, Jonathan L.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT'S AMENDED MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF HABEAS CORPUS

Counsel advised they have been a trial for the last 3 weeks and requested 14 additional days to file writ. COURT ORDERED, Motion GRANTED for 21 ADDITIONAL DAYS FROM TODAY.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 02, 2010**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**December 02, 2010      9:00 AM      Joinder**

**HEARD BY:** Hardcastle, Kathy

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Denise Trujillo

**RECORDER:** Lara Corcoran

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- DEFT'S MOTION TO PRESERVE AND PRODUCE EVIDENCE ESPECIALLY POTENTIALLY EXCULPATORY EVIDENCE ...DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

Arguments by counsel as to Motion to Preserve and Produce. COURT noted any any exculpatory evidence that State becomes aware of they are required to produce, but they are not required to go out and investigate for the defense to see if the possibility exists. Following statements and argument of counsel. COURT ORDERED as follows:

1. Any exculpatory evidence must be revealed, all written or recorded statements, memos, summaries or videos that have already been prepared, or prepared before going to trial must be produced.
2. Court will allow counsel to go through State and detective files for names and contact information of witnesses, and interview detective, but there is no guarantee that the information will be in the file.
3. Court will allow criminal histories of Deft's, co- defendants and insofar as felony convictions of victims or potential witnesses. Mr. Powell requested if State runs SCOPE on any potential juror that



they be provided that information and COURT ORDERED, request DENIED.

4. Statements made by Defendants regarding the case that will be or could be used by the State needs to be revealed to the Defendants, but noted that casual statements during transport back and forth will not be considered a violation of Courts ruling.
5. State to provide whatever autopsy reports and medical records, they have to defense.
6. Any forensic evidence State has in file Deft. can look at and reports to be provided.
7. Informants names and addresses do not need to be produced unless they provide exculpatory evidence or they will a witness at trial.
8. All reports, maps, documentation will be produced pursuant to statute.
9. All photos, line-ups, copies, 91, tape and CAB record can be subpoenaed to the Police Department.
10. Whatever criminal history of Defendant State is aware of will be provided.
11. Information on hypothesis has been use or attempted on any witness is DENIED.
12. Charts, maps concerning cellular tower is DENIED except what they present at trial or whatever is in the detectives files or State's files.
13. If digital imaging or enhancement are used will be provided.

As for documentation of overt criminal acts not specified in the Indictment, State noted they will file a separate motion on that issue. COURT SO NOTED.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 18, 2011**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 18, 2011      9:00 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Hardcastle, Kathy

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Denise Trujillo

**RECORDER:** Lara Corcoran

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

Arguments by counsel. COURT stated findings and ORDERED, Writ is DENIED.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 04, 2011**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**October 04, 2011      8:30 AM      Motion to Continue Trial**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Monique Alberto

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Di Giacomo, Marc P.	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- There being no opposition, COURT ORDERED, motion to continue trial GRANTED; trial date VACATED and RESET.

CUSTODY

8/21/11 8:30 A.M. CALENDAR CALL

8/27/11 10:30 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 14, 2012**

C-10-267882-2      State of Nevada  
vs  
David Burns

**August 14, 2012      8:30 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- DEFT'S MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILED NECESSARY TO A FAIR TRIAL...DEFT'S MOTION TO INVOKE HEIGHTENED STANDARD OF REVIEW DUE TO THE STATE SEEKING DEATH PENALTY...DEFT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT...DEFT'S MOTION TO BIFURCATE PENALTY PHASE...DEFT'S MOTION TO COMPEL PRODUCTION OF THE DEFT'S DIRECT AND VICARIOUS STATEMENTS...DEFT'S MOTION TO PROHIBIT THE STAE FROM ARGUING STATUTORY MITIGATING FACTORS NOT RAISED BY THE DEFENSE...DEFT'S MOTION FOR DISCLOSURE OF THE STATE'S WITNESSES' JUVENILE RECORDS...DEFT'S MOTION FOR HENTHORN MATERIAL...DEFT'S MOTION TO PRECLUDE VICTIMS' FAMILY MEMBERS' STATEMENTS REGARDING THE DEFT, THE CRIME AND THE SENTENCE...DEFT'S MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT'S MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR

PROCEEDINGS...DEFT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN PENALTY PHASE...DEFT'S MOTION TO DISQUALIFY POTENTIAL JURORS WHO WOULD IMPOSE THE DEATH PENALTY IN ALL CONVICTIONS FOR FIRST DEGREE MURDER...DEFT'S MOTION TO COMPEL TIMELY DISCLOSURE OF INFORMATION RELATING TO AGGRAVATING AND MITIGATING FACTORS...DEFT' S MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT'S MOTION FOR DISCLOSURE OF UNCHARGED ACTS RELATED TO THE CRIMINAL CONDUCT OF THE DEFT...DEFT'S MOTION FOR JURY QUESTIONNAIRE...DEFT'S MOTION TO DISMISS RULE 250 NOTICE OF INTENT DUE TO FEDERAL DUE PROCESS...DEFT'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS OVERLY PREJUDICIAL TO DEFT...DEFT'S MOTION TO STRIKE SURPLUS LANGUAGE FROM THE SUPERSEDING INDICTMENT

Mr. Sgro advised all parties are in agreement to continue the trial as to all Defendants that is currently set on 8/27/12; the State will agree to the severance of Deft Cousins and all motions scheduled to be heard today will be continued closer to the new trial date with the exception of the Motion to Continue Trial and Motion to Sever. Additionally, Mr. Sgro advised they will not seek a severance between Defts Mason and Burns. COURT ORDERED, Deft Mason's Motion to Continue Trial and Deft Cousins Motion to Sever Trial are GRANTED. COURT ORDERED, all trial dates VACATED; trial date RESET as to Deft Cousins and matter set for status check to re-set the Motions and trial dates as to Defts Mason and Burns. Mr. Ericsson stated that he will re-file the Motions as to Deft Cousins as needed.

CUSTODY

8/21/12 8:30 AM STATUS CHECK: RE-SET MOTIONS / TRIAL DATE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 21, 2012**

C-10-267882-2      State of Nevada  
vs  
David Burns

**August 21, 2012      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	BURNS, DAVID	Defendant
	Di Giacomo, Marc P.	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Colloquy as to resetting the trial and all of the Motions. Following COURT ORDERED, matter set for trial in October with the Motions being heard two months prior.

**CUSTODY**

9/24/13 8:30 AM CALENDAR CALL (#1)

10/7/13 9:00 AM JURY TRIAL (#1)

ALL MOTIONS....7/25/13 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 11, 2013**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**June 11, 2013      8:30 AM      Motion to Compel**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Oram, Christopher R	Attorney
	Rinetti, Dena I.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Court noted it did not receive a response from the State. Ms. Rinetti appeared for Ms. Weckerly, advised she is in trial and requested this motion be continued to the date of the other pre-trial motions on July 25, 2013. Clerk advised the Court is dark that day and the motions had been move, with counsel's acquiescence, to July 3, 2013. Ms. Rinetti advised Ms. Weckerly will just be coming off trial and requested they be continued to later in the month. Mr. Oram had no objection. COURT ORDERED, the motion set for today and all motions set on July 3 to be CONTINUED.

CUSTODY

... CONTINUED 7/18/13 10:30 AM

CLERK'S NOTE: JEA contacted Ms. Burke to advise the motions have been moved to July 18, 2013 at 10:30 AM.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

# COURT MINUTES

**July 18, 2013**

C-10-267882-2                      State of Nevada  
vs  
David Burns

July 18, 2013                      10:30 AM                      All Pending Motions

**HEARD BY:** Tao, Jerome T.

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

## JOURNAL ENTRIES

- TWENTY MOTIONS SUBMITTED BY DEFT BURNS...JOINDERS BY DEFT MASON

DEFT BURNS MOTION FOR HENTHORN MATERIAL...DEFT MASON'S JOINDER MOTION: Court provided a copy of an Order it wrote in a different case as to this issue. Statements by Mr. Sgro including that when they send a subpoena to Metro, they get a letter that they need to contact the DA as all of the information comes from them after Metro gets the subpoena quashed. Colloquy as to the Court doing an in-camera review of this material. Mr. DiGiacomo advised if they come across any material that they feel is Gigilio, they will submit to the Court for in-camera review. Statements by Mr. Sgro. Following, COURT ORDERED, DENIED without prejudice.

DEFT BURNS MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS AND FILES  
NECESSARY TO A FAIR TRIAL: There are 10 specific requests. Court noted it appears that #'s 3-8  
are unopposed and GRANTED. Colloquy as to items #1&2, Court noted Mr. Sgro can get the records



himself. Mr. Sgro advised that some times the records are different. Statements by Mr. DiGiacomo. COURT ORDERED, as to any records from CCDC, if there is a concern, counsel to compare. Colloquy as to letters. Ms. Burke requested to join in this Motion. COURT SO ORDERED. Statements by Mr. Sgro. As to #9&10, following statement by Mr. Sgro, GRANTED as unopposed as long as they are items they are entitled to. COURT ORDERED, GRANTED.

DEFT BURNS MOTION TO INVOKE HEIGHTENED STANDARD OF REVIEW DUE TO THE STATE SEEKING DEATH PENALTY: Submitted by Mr. Oram to preserve the record. Statements by Ms. Weckerly and requested the existing law be followed. COURT ORDERED, DENIED as it is unclear what specific relief counsel is requesting.

DEFT BURNS MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT: Mr. Oram advised that some Courts will excuse potential jurors simply because they say it will be very hard to impose a sentence of death, would like the Court be cognizant and requested a ruling by the Court to avoid having to have side bars in front of the Jury. Statements by the Court. Mr. Oram would like a potential juror that hesitates as to the death penalty, not be arbitrarily kicked off the panel. Ms. Weckerly stated this motion pertains to peremptory challenges, not for cause challenges. Continued arguments by Ms. Weckerly. Following, COURT ORDERED, as to the peremptory challenges is DENIED; as to for cause challenges, will DEFER TO TRIAL. (DENIED IN PART)

DEFT BURNS MOTION TO BIFURCATE PENALTY PHASE: Statements by Mr. Sgro in support of this Motion. Statements by Ms. Weckerly in opposition. Following, COURT ORDERED, DENIED.

DEFT BURNS MOTION TO COMPEL PRODUCTION OF THE DEFT'S DIRECT AND VICARIOUS STATEMENTS...DEFT MASON'S JOINDER MOTION: Court noted this is not really opposed. Mr. Oram is preserving the record and would request any statements be given 60 days prior to trial, however, the State has indicated they have provided all statements. Statements by Mr. DiGiacomo including that to his knowledge, all statements have been provided. COURT ORDERED, GRANTED. Mr. Sgro requested a bright line rule.

DEFT BURNS MOTION TO PROHIBIT THE STATE FROM ARGUING STATUTORY MITIGATING FACTORS NOT RAISED BY THE DEFENSE: Statements by Mr. Oram including that the State not list mitigators to the Jury. Mr. DiGiacomo is in agreement, but that doesn't limit them as to argument. COURT ORDERED, GRANTED as to Jury instructions, as to any argument, it will be DEFERRED to trial. (GRANTED IN PART)

DEFT BURNS MOTION FOR DISCLOSURE OF THE STATE'S WITNESSES' JUVENILE RECORDS...DEFT MASON'S JOINDER MOTION: Statements by Mr. Sgro including that they would request Juvenile records from any witness that is now under the age of 23. Statements by Mr. DiGiacomo. Colloquy as to sealed records. Continued statements by Mr. Sgro. COURT ORDERED, any material witness who is currently 23 years of age or younger, the Juvenile records are to be delivered to the Court for an in-camera review. Mr. Sgro will submit a copy of the names. COURT

ORDERED, GRANTED.

DEFT BURNS MOTION TO PRECLUDE VICTIM'S FAMILY MEMBERS' STATEMENTS REGARDING THE DEFT, THE CRIME AND THE SENTENCE...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram and is concerned during penalty phase, a family member will ask for the worse possible sentence or blurt something out. Mr. Oram requested an Order from this Court. Ms. Weckerly advised they do admonish the victim's family members of what they can and can not say. Colloquy as to any written letters from family members. Court directed counsel to review prior to their testimony. Statements by Ms. Burke. COURT ORDERED, GRANTED.

DEFT BURNS MOTION TO BAR THE ADMISSION OF CUMULATIVE VICTIM IMPACT EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE...DEFT MASON'S JOINDER MOTION: Statements by Mr. Sgro in support of this Motion. COURT ORDERED, matter DEFERRED TO TRIAL.

DEFT BURNS MOTION TO DISMISS RULE 250 NOTICE OF INTENT DUE TO FEDERAL DUE PROCESS VIOLATIONS: Statements by Mr. Oram in support of this Motion and would request Rule 250 be found unconstitutional and in violation of due process. Pursuant to the Nevada Supreme Court and the Maestas case, COURT ORDERED, DENIED.

DEFT BURNS MOTION TO FEDERALIZE ALL MOTIONS, OBJECTIONS, REQUESTS AND OTHER APPLICATIONS FOR PROCEEDINGS...DEFT MASON'S JOINDER MOTION: Arguments by Mr. Oram in support of this Motion including "hearsay", confrontation and the Crawford ruling. Additionally, would request that all objections be considered being Federalized. Court advised how he handles objections during trial and that counsel are given the opportunity to memorialize during the next break outside the presence of the Jury. Statements by Ms. Burke. Submitted by Mr. DiGiacomo. COURT ORDERED, DENIED.

DEFT BURNS MOTION TO ALLOW THE DEFENSE TO ARGUE LAST IN PENALTY PHASE: Statements by Mr. Oram. COURT ORDERED, DENIED.

DEFT BURNS MOTION TO DISQUALIFY POTENTIAL JURORS WHO WOULD IMPOSE THE DEATH PENALTY IN ALL CONVICTIONS FOR FIRST DEGREE MURDER: Court noted this is a mirror image of Jurors who would never impose the death penalty. Statements by Mr. Sgro in support of this Motion. Colloquy as to jury questionnaire. Statements by Mr. DiGiacomo. Following, COURT ORDERED, DEFERRED TO TRIAL.

DEFT BURNS MOTION TO COMPEL TIMELY DISCLOSURE OF INFORMATION RELATING TO AGGRAVATING AND MITIGATING FACTORS: Mr. Sgro requested 60 days before trial. Mr. DiGiacomo objected and stated it is 15 days by Court rule and they have asked for reciprocal discovery. Continued statements by Mr. Sgro and Mr. DiGiacomo. Following, Court directed counsel to disclose 15 days prior to trial. Mr. DiGiacomo requested the same 15 days once the Notice of Witnesses is filed. Colloquy as to the Mitigation Specialist by Mr. Sgro. Following, Mr. DiGiacomo

requested under NRS 174.245 Defense comply to provide information 15 days prior to trial, and under NRS 50.305 an Order for underlying information the expert is going to rely on (if there is one) to be given 15 days prior to trial. COURT ORDERED, GRANTED.

DEFT BURNS MOTION FOR INDIVIDUAL SEQUESTERED VOIR DIRE...DEFT MASON'S JOINDER MOTION: COURT ORDERED, DENIED without prejudice. Statements by Mr. Oram. Statements by Court as to how he handles the questioning of prospective Jurors.

DEFT BURNS MOTION FOR DISCLOSURE OF UNCHARGED ACTS RELATED TO THE CRIMINAL CONDUCT OF THE DEFT...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram including that a witness will blurt something out that should have resulted in a hearing, i.e. drugs or gang involvement. Statements by Mr. DiGiacomo including that he is not seeking to bring anything out that would be considered a bad act. Upon Court's inquiry, Mr. DiGiacomo advised the Defendants are gang members, but he does not intend to bring this out per say in the guilt phase.

- Court noted that drugs and possible gang membership will be discussed during trial, however, if anything else, counsel need to comply with the law and a Petrocelli Hearing will be needed. Statements by Mr. DiGiacomo including that they do not expect to present any bad act evidence. Continued arguments by Mr. Oram including that this case was based on a robbery and nothing to do with gangs; if they think gang membership is going to be brought out, there needs to be a Petrocelli Hearing first. Statements by Court. Mr. DiGiacomo advised this Motion is over broad and that he is not intending to prove up the Defendant as a gang member. Statements by Ms. Burke. Following, Court admonished counsel not to intentionally ask questions as to gang membership. COURT ORDERED, RESOLVED.

DEFT BURNS MOTION FOR JURY QUESTIONNAIRE...DEFT MASON'S JOINDER MOTION: Ms. Burke is in agreement with a questionnaire. Mr. DiGiacomo does not feel they are very helpful but will submit. Mr. Oram advised they can probably reach an agreement as to the questions for the questionnaire. COURT ORDERED, GRANTED if it can be worked out.

DEFT BURNS MOTION IN LIMINE TO PRECLUDE THE STATE FROM MOVING TO ADMIT INTO EVIDENCE PHOTOGRAPHS OVERLY PREJUDICIAL TO DEFT...DEFT MASON'S JOINDER MOTION: Statements by Mr. Oram including that he would request to be shown the pictures Mr. DiGiacomo is going to use in his opening power point prior to trial. COURT ORDERED, DEFERRED TO TRIAL.

DEFT BURNS MOTION TO STRIKE SURPLUS LANGUAGE FROM THE SUPERSEDING INDICTMENT: Court noted this has to do with nicknames. Following colloquy, COURT ORDERED, DENIED.

DEFT BURNS MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE: Upon Court's inquiry, Mr. Oram does not feel they are missing anything. Following colloquy, COURT ORDERED, matter CONTINUED to calendar call date.

Ms. Burke advised that she has a capital trial set in Dept. 24 that it is set to go the last week in August that will last 6 weeks with Mr. DiGiacomo. Statements by Mr. DiGiacomo. Colloquy as to the trial date. Ms. Weckerly requested to wait and see if that trial is going forward before moving the date.

Colloquy as to jury questionnaire. COURT ORDERED, matter set for status check.

CUSTODY

8/20/13 8:30 AM STATUS CHECK: JURY QUESTIONNAIRE / TRIAL READINESS

10/1/13 8:30 AM DEFT BURNS MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

C-10-267882-2      State of Nevada  
vs  
David Burns

**August 20, 2013      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weiner, Meredith	Attorney

**JOURNAL ENTRIES**

- Mr. DiGiacomo advised he has not seen the questionnaire, anticipates being ready and requested a one week. Following colloquy, Ms. Burke stated she e-mailed a previous questionnaire to Mr. DiGiacomo. Upon Court's inquiry, Mr. DiGiacomo advised he will be ready for trial and would oppose a continuance. Ms. Burke advised she is going to submit a Motion to Sever that might impact the trial. Mr. DiGiacomo stated he thought they had already handled a severance Motion. Following colloquy, COURT ORDERED, matter CONTINUED to Thursday and will address the Motion once it has been filed.

**CUSTODY**

... CONTINUED 8/22/13 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 22, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**August 22, 2013      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney
	Weiner, Meredith	Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Oram advised he reviewed a questionnaire from another case that had been answered. Ms. Burke stated she thought they had agreed to use the questionnaire from the Dept. 24 case. Mr. DiGiacomo advised there was no such agreement and that they had litigated 3 days to come up with that questionnaire. MATTER TRAILED AND RECALLED: Mr. Oram advised they are close to having a questionnaire done and that there are 3 questions they are having issues with. Following colloquy, COURT ORDERED, matter CONTINUED to next week, but that the questionnaire needs to be finalized soon. Ms. Burke FILED IN OPEN COURT her Motion to Sever and requested it be heard. Following colloquy, COURT SO ORDERED.

CUSTODY

... CONTINUED 8/27/13 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 27, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**August 27, 2013      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weiner, Meredith	Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Oram advised there are 3 questions they can not agree on. Mr. DiGiacomo advised that he had a meeting yesterday with Mr. Oram and Ms. Burke and concurred that they disagree as to 3 questions. Court stated the 3 questions are 1) identify race; 2) Political party and 3) how do you get your news. Arguments by Mr. Oram, Ms. Burke and Mr. DiGiacomo as to all 3 questions. Following, COURT ORDERED, as to Race: this will be allowed, however, the word "optional" will be attached; As to Political party: this will be allowed, however, the word "optional" will be attached and as to: how do you get you news: it will be allowed, but is to be rephrased. Upon Court's inquiry, Ms. Burke advised she has a few Motions in Limine to file, but that she should be ready for trial. Mr. Oram advised they will be ready for trial. COURT ORDERED, matter RESOLVED and directed counsel to provide a clean copy of the questionnaire as soon as possible. Mr. DiGiacomo advised he would provide one today.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 05, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 05, 2013      8:30 AM      Motion**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Arguments by Ms. Burke in support of her Motion including that in her Motion and Reply, she pointed out situations where the Court had already separated the death and non-death people and noted the State did not address this at all in their response. Court advised if it had been granted, there would not be an opinion. Ms. Burke stated there are a number of grounds in which to grant this Motion other than an antagonistic defense. Continued arguments by Ms. Burke including that death penalty juries are more conviction prone. Statements by Mr. Sgro as to the antagonistic defense. Statements by Mr. DiGiacomo. Mr. Sgro requested to join in this Motion. Continued argument in support of the Motion by Mr. Sgro. Conference at the Bench. Following, COURT ORDERED, Deft's Motion to Sever Trial is DENIED WITHOUT PREJUDICE and noted this can be revisited at the time of trial or at penalty, if need be.

As to Deft Burns Motion, Court directed Mr. Sgro provide the power point prior to the hearing next week and to give a copy to the State especially if there is anything new. Mr. Sgro advised that it



tracks the brief and does not believe there is anything new.

Ms. Burke advised she does not have the medical records for the victim nor the gang records. Mr. DiGiacomo advised he has given everyone the medical records and that he is in the process of getting the gang records from San Bernardino. Following colloquy, Court directed Mr. DiGiacomo copy the disk of medical records again for Ms. Burke. Additionally, Ms. Burke advised that yesterday she received the Notice of Witnesses with 26 names and that while some are the same, she does not know if this will impede her being ready for trial. Court so noted.

CUSTODY

... CONTINUED 9/12/13 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 12, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 12, 2013      10:00 AM      Motion to Strike**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Debbie Winn**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Ms. Burke advised she would like to join in the Motion for Deft Mason. Statements by Mr. Sgro in support of his Motion including that he would like a stay for a decision as to this issue and that the trial be reset in 2015. Further, as to the power point presented to Court, Mr. Sgro requested it be marked as a Court's exhibit. COURT SO ORDERED. Continued arguments by Mr. Sgro. Statements by Ms. Weckerly in support of their opposition including that it is not proper to grant a stay. Following additional arguments by counsel, Court stated that based on the law today, his motion is DENIED. FURTHER, the request for stay is also DENIED. Ms. Burke advised that she will be filing a Motion to Continue Trial as they just received 3,600 pages of medical records. Upon Court's inquiry, Mr. DiGiacomo advised he could not find where he had electronically sent the medical records, so he resent them to counsel. Statements by Mr. Sgro. Additionally, Mr. DiGiacomo stated that he has contacted San Bernardino and that whatever they had as to gang involvement was related only to the co-defendant, Mason and it has been given to Ms. Burke. Colloquy as to the dates given to file things in the previous Order by Ms. Burke. Objections stated by Mr. DiGiacomo and requested

the Order remain as is. Upon Court's inquiry, Mr. DiGiacomo advised it is in relation to the expert and filing 21 days prior to trial and that the Court may have given the Defense 14 days. Following colloquy, Court DENIED WITHOUT PREJUDICE the request at this time.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 19, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 19, 2013      8:30 AM      Motion to Continue Trial**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Court noted it did not receive a written opposition from Mr. DiGiacomo. Mr. DiGiacomo concurred and advised he only received the Motion 48 hours ago. As to the palm print, Mr. DiGiacomo advised the report should be done within the week and advised if there is no answer by the time of calendar call, he has no objection to a continuance. Statements by Ms. Burke as to the reason for the continuance being the 3,600 pages of medical records; that she has only read 100 pages, the victim had 17 different doctors and was in the hospital for almost 3 months which will impact the Jury. Statements by Mr. Oram as to the medications she was on and possible effects. Mr. Sgro concurred and advised this is an identity case. Statements by Mr. DiGiacomo that Defense knew 3 years ago that the victim had been in the hospital. Following continued arguments by all counsel, COURT ORDERED, Motion GRANTED, however, will be CONTINUED to calendar call due to the Jury Questionnaires. Conference at the Bench. Additionally, matter set for status check as to trial setting and that October 28th is a date that the Court is looking at for the start of trial.

**CUSTODY**

PRINT DATE: 11/13/2018

Page 24 of 100

Minutes Date: October 13, 2010

10/1/13 8:30 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 01, 2013**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**October 01, 2013      8:30 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Burns, David      Defendant  
                         Oram, Christopher R      Attorney  
                         State of Nevada      Plaintiff  
                         Weckerly, Pamela C      Attorney

**JOURNAL ENTRIES**

- CALENDAR CALL...STATUS CHECK: TRIAL SETTING...DEFT'S MOTION TO COMPEL  
DISCLOSURE OF EXCULPATORY EVIDENCE

Conference at the Bench. Pursuant to that conference, Court noted Ms. Burke is WITHDRAWING as counsel due to health reasons and Mr. Langford is APPOINTED as new counsel. Motion to Continue Trial is GRANTED and trial date is VACATED. Following colloquy, dates of 2/24, 3/3 and 3/10 are being considered for the new trial date. COURT ORDERED, matter set for status check next week for counsel to review their calendars. Further, Deft's Motion to Compel will also be continued to next date.

**CUSTODY**

10/8/13 8:30 AM STATUS CHECK: RESET TRIAL DATE...DEFT'S MOTION TO COMPEL  
DISCLOSURE OF EXCULPATORY EVIDENCE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 08, 2013**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**October 08, 2013      8:30 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Burns, David      Defendant  
                         Di Giacomo, Marc P.      Attorney  
                         Oram, Christopher R      Attorney  
                         State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- STATUS CHECK: TRIAL SETTING...DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE

Colloquy as to trial date. Following, COURT ORDERED, matter set for trial in June and upon inquiry, counsel feel the trial should take about 4 weeks. FURTHER, Motion CONTINUED to calendar call date.

CUSTODY

5/27/14 8:30 AM CALENDAR CALL (#1)

6/2/14 9:00 AM JURY TRIAL (#1)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 12, 2013**

C-10-267882-2      State of Nevada  
vs  
David Burns

**November 12, 2013      8:30 AM      Motion**

**HEARD BY:** Tao, Jerome T.

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Joseph, Lindsey D	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weiner, Meredith	Attorney

**JOURNAL ENTRIES**

- Mr. Oram advised Ms. Weckerly is detained in another Courtroom and requested a new date be given. Court so noted and advised there appears to be a problem with the June trial date. Ms. Weiner concurred. Mr. Langford advised Deft Mason was not brought to Court and while he has spoken with him as to the change in trial date, would request he be brought to Court. COURT SO ORDERED. Following colloquy, COURT ORDERED, Motion GRANTED, trial date VACATED and RESET. FURTHER, Deft Mason and Deft Cousins to be placed on calendar.

**CUSTODY**

9/30/14 8:30 AM CALENDAR CALL (#1)(MASON & BURNS)

10/6/14 9:00 AM JURY TRIAL (#1)(MASON & BURNS)

11/14/13 8:30 AM STATUS CHECK: TRIAL (MASON)



11/19/13 8:30 AM STATUS CHECK: TRIAL (COUSINS)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 03, 2014

C-10-267882-2      State of Nevada  
vs  
David Burns

January 03, 2014

11:16 AM

Minute Order

**MINUTE ORDER  
RE: RELEASE OF  
DOCUMENTS**

HEARD BY: Tao, Jerome T.

COURTROOM: RJC Courtroom 03F

COURT CLERK: Katherine Streuber

RECORDER:

REPORTER:

PARTIES

PRESENT:

**JOURNAL ENTRIES**

- The Office of the Attorney General having submitted certain Presentence Reports pursuant to the Ex Parte Order for In-Camera Review of Presentence Report filed November 22, 2013; and the Court having reviewed said reports and having redacted certain portions of said reports; IT IS HEREBY ORDERED that the Presentence Reports are hereby released to counsel for the parties. Because the Presentence Reports contain confidential personal information such as social security numbers and names of family members who are not participants in this case, the Presentence Reports are to be maintained by the Court and the parties UNDER SEAL. Any motions or documents filed with the Court that reference any such confidential information must be filed with the Court UNDER SEAL. The Court's Judicial Executive Assistant shall notify counsel to pick up copies of said reports from chambers.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 16, 2014**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 16, 2014      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Court inquired if counsel still wanted a Jury Questionnaire. Ms. Weckerly advised that one has been circulating between all parties and that she will have the final one today before noon. Upon Court's inquiry, Counsel advised they feel the trial will take 3-4 weeks. Mr. Sgro advised a Pre-trial Motion was granted that the Juvenile records of the State's witnesses, 23 years of age or younger, were supposed to be provided for an in-camera review, however, he has never heard anything. Court advised it was not sure if it has seen them or not. Ms. Weckerly advised she thought they had been Ordered, however, will check and provide if they have not. Additionally, Mr. Sgro stated another Motion that was granted was to compel the production of all Defendant's direct and vicarious statements 60 days before trial. Mr. Sgro advised they didn't get anything 30 days ago and would like to know from the State if they have anything that they have not produced. Mr. Weckerly advised there is not. Mr. Oram inquired if there are any phone calls that the State intends to use. Ms. Weckerly advised she has no problem letting them know about the calls for her case-in-chief and will let the Defense know about 1 week prior to trial but cannot identify any calls that they might use in rebuttal. Conference at the Bench. Following conference, COURT ORDERED, matter set for status

check as to the Jury Questionnaire and any other issues that might affect the trial.

CUSTODY

9/23/14 8:30 AM STATUS CHECK: QUESTIONNAIRE / DISCOVERY ISSUES

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 23, 2014**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 23, 2014      8:30 AM      Status Check**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Mr. Sgro advised there are some issues as to the readiness of his expert and Investigator due to financial issues, that have now been resolved. However, Mr. Sgro advised his Investigator is on vacation until October 3rd and he is unable to proceed due to the lack of availability of the people retained to help him. Ms. Weckerly objected to the trial being continued due to a billing mishap that happened last January and requested an affidavit from the OAC. Mr. Sgro stated that it took 6 months to get the billing straightened out; that he was never told they would not pay the bills, but was advised that he was spending too much money on this one case; so, he put everyone on hiatus and when the billing was resolved, his experts and Investigator were notified, but he was advised they had picked up other cases and he was put on the bottom of the list.

Mr. Langford advised he is in a similar situation with one of his experts, that he thought a notice was filed, which it has not and now when he files it, the State will object. Ms. Weckerly advised they will waive any objection. Colloquy as to possibly severing the Defendants.

Mr. DiGiacomo stated he is not convinced that Mr. Sgro has established a basis for a continuance and requested an affidavit be filed to investigate the allegations made; that the affidavit should indicate what the communication is, what the problem was and why it is the witnesses cannot be available, which needs to be attached to a Motion to Continue. Additionally, Mr. DiGiacomo objected to Mr. Sgro unilaterally making a decision to slow down the process because there is some problem with the OAC, that was never brought before the Court and never notified the State. Following additional colloquy and upon Court's inquiry, Mr. Sgro advised he needs 60-90 days to be ready for trial. Continued objections by Ms. Weckerly and Mr. DiGiacomo.

Following, COURT ORDERED, trial date VACATED and RESET TWO (2) WEEKS past 10/6/14. Additionally, Ms. Weckerly advised she will provide a new Jury Questionnaire to chambers today.

10/14/14 8:30 AM CALENDAR CALL

10/20/14 9:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 25, 2014**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**September 25, 2014      8:30 AM      Motion to Strike**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weaver, Melinda	Attorney
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Ms. Weaver appeared for Mr. Sgro. Upon Court's inquiry, Mr. DiGiacomo submitted on the prior opposition as there is no new argument. Mr. Oram submitted on the pleading. COURT ORDERED, Motion DENIED. Conference at the Bench.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 07, 2014**

C-10-267882-2      State of Nevada  
vs  
David Burns

**October 07, 2014      8:30 AM      Motion**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Court noted it never received any records as to Jerome Thomas. Mr. Sgro advised this was granted back on 7/13 and realized that this process was never done. Additionally, Mr. Sgro stated they will need records as to the victim, Devonian Newman and also as to Donovan Roland. Statements by Mr. DiGiacomo. Following, Mr. Sgro advised he will provide an Order for these records to be provided by Judge Voy to this Court for an in-camera review. COURT ORDERED, Motion GRANTED.

Court noted there were several ex-parte Motions provided to chambers, one of which is an Order to have a witness that is incarcerated in California brought to Nevada. Following colloquy, Court SIGNED the Order and provided it to Mr. Sgro. The second one has to do with the Jury Commissioner. Conference at the Bench. Pursuant to that conference, the Order was SIGNED and provided to Mr. Sgro.

Mr. Sgro advised they have a file review tomorrow at 2:30 and requested that everything be there, especially the homicide books. Mr. DiGiacomo advised they will be present.



Mr. Sgro requested the State supplement the Notice of Witness List to provide good addresses. Mr. DiGiacomo advised to the extent they have the information, he will provide tomorrow at the file review. Following colloquy, Mr. Sgro to provide a list to Mr. DiGiacomo and if there is anyone that he does not have information on, it can be discussed at calendar call. COURT ORDERED, GRANTED.

Mr. Oram advised his private phone calls with Defendant have been recorded and requested a hearing to determine how this is happening. Following continued arguments, Mr. Sgro requested an Order to Show Cause. Court advised he will make some phone call and directed counsel to do so as well and the matter can be further discussed next week at calendar call.

Mr. Sgro requested the record as to Jerome Thomas be unsealed. Mr. DiGiacomo advised the warrant is still an active warrant and he can't have that, but to the extent there is an affidavit for an arrest warrant, it should be in the homicide books and it can be provided again tomorrow. Following continued arguments, COURT ORDERED, the record will not be unsealed, however, Mr. DiGiacomo can provide the document under seal to Mr. Sgro. Mr. DiGiacomo advised there is no additional discovery as to Jerome Thomas' case other than the affidavit in support of the arrest warrant, that is part of the homicide books. Court so noted.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 14, 2014**

C-10-267882-2      State of Nevada  
vs  
David Burns

**October 14, 2014      10:00 AM      Calendar Call**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Court noted procedurally, there are 3 motions set for today, however, was given several motions yesterday and upon inquiry, Mr. DiGiacomo stated he is aware of them and answered a few. Additionally, Mr. Langford filed a Motion to Sever as to Deft Mason which is set for next week. Arguments by Mr. Sgro as to the Motion to Continue Trial submitted yesterday including that he has repeatedly asked for discovery only to be told that he has already received it. Mr. Sgro stated that he did receive video, however, it was upside down or mirror imaged and the file that said Autopsy was something entirely different. Court noted that Mr. Sgro waited until right before trial to try and obtain several records and upon inquiry, Mr. Sgro stated that when he asks for it, the response is, "you need to get it from the District Attorney". Mr. Sgro stated he did not wait until the last minute, that he has been trying for several months to obtain discovery; that what he has and what the State thinks they have given them are two different things. For instance, the cell phone record report came in such a big font that they cannot match up the calls with the towers as the tower information prints out on a different page. Mr. Sgro advised that Mr. DiGiacomo handed Mr. Oram two thumb drives

this morning that contain the discovery they did not have from the file review and requested this matter be continued to Thursday to see if they have everything.

Arguments by Mr. DiGiacomo outlining the number of times the file has been reviewed and the number of times discovery has been provided. Mr. DiGiacomo stated that he feels this is Mr. Sgro's way of getting out of the trial, again. The last time at the file review, Mr. Sgro stated that the only thing he needed was the 3,600 pages of medical records for the victim and needed a continuance to review them. Statements by Ms. Weckerly.

Mr. Langford informed the Court that an antagonistic defense is developing. Upon Court's inquiry, Mr. Sgro advised that there were some statements that he disclosed to Mr. Langford that had not been disclosed before.

Mr. Sgro objected to the prospective Jury panel and stated there are only 9 out of 150 African/ Americans in the panel and requested a hearing. Court noted that in its review of the questionnaires, that the majority of them did not fill out the race section. Following additional colloquy by all counsel, Court noted it will be addressed on Monday at the time of Jury selection.

Court noted that the Motions set for today and all of the Motions submitted yesterday will be placed on calendar to be heard on Thursday.

Mr. DiGiacomo advised that he spoke with Capt. Forbes at CCDC (Clark County Detention Center) as to Attorney phone calls and was advised that Mr. Oram's number was not blocked, but has since been. Statements by Mr. Oram.

Mr. Sgro advised he will be endorsing 2 experts. Mr. DiGiacomo requested to address this on Thursday.

COURT ORDERED, all matters CONTINUED to Thursday.

CUSTODY

... CONTINUED 10/16/14 10:30 AM

THE SEALED PORTION  
OF THESE MINUTES  
WILL FOLLOW VIA  
U.S. MAIL.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****October 20, 2014**

C-10-267882-2      State of Nevada  
vs  
David Burns

**October 20, 2014      10:00 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Sara Richardson**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- ALL PENDING MOTIONS (BOTH DEFTS):

Mr. Langford advised that he formally filed joinders to the co-defendant's Motions.

DEFT'S MOTION TO DISCLOSE PAYMENTS TO WITNESSES BY CLARK COUNTY DISTRICT ATTORNEY'S OFFICE (BURNS): Mr. DiGiacomo advised that no funds have been paid on this case. Arguments by Mr. Sgro including that he would like to know if the witnesses are getting paid to come in for pre-trial. Mr. DiGiacomo advised the statutes were changed several years ago and the office policy is that no one is paid for pre-trial. Following additional arguments, Court directed the State contact VWAC to see if any payments were made and if there were, they are to be submitted to chambers for an in-camera review. Mr. Langford stated the witnesses get \$25/day and \$.56/mile which could add up to quite a bit and the concern is that the witnesses are getting paid for their testimony. Following additional colloquy, COURT ORDERED, GRANTED.

DEFT'S MOTION FOR THE DISCLOSURE OF MATERIALS AND FACTS RELATIVE TO FUTURE PROSECUTIONS OF STATE'S WITNESSES PURSUANT TO GIGLIO ON AN ORDER SHORTENING TIME (BURNS): Statements by Mr. Sgro and Ms. Weckerly in support of their respective positions. As this is premature, COURT ORDERED, matter CONTINUED to calendar call.

DEFT'S JOINDER TO DEFT MASON'S MOTION TO SEVER OR IN THE ALTERNATIVE REQUEST FOR A NEW VENIRE AND REQUEST FOR EVIDENTIARY HEARING (BURNS): Mr. Sgro advised this Motion is WITHDRAWN. COURT SO ORDERED.

DEFT'S MOTIONS IN LIMINE #1-3: 3) TO PRECLUDE REFERENCE TO ASSEMBLY BILL 444: COURT ORDERED, GRANTED as unopposed as long as the door is not opened. 2) TO PRECLUDE LAW ENFORCEMENT FROM GIVING LAY WITNESS TESTIMONY AS TO THE IDENTITY OF THE SUSPECT ON THE SURVEILLANCE VIDEO: Arguments by Mr. Sgro in support of his position including that he feels a hearing is necessary. Arguments by Mr. DiGiacomo including that Defendant's hair is different, he is 5 years older, however, the Detectives that will speak about the video, had contact with Defendant 4 1/2 years ago. Following, Court does not feel a hearing is necessary and ORDERED, DEFERRED TO TRIAL. 3) TO PRECLUDE THE STATE FROM ADMITTING THE SIX-PACK PHOTOGRAPHIC LINEUP OF DAVID BURNS SIGNED BY DE'VONIA NEWMAN AND TO PRECLUDE THE IN-COURT IDENTIFICATION OF DEFENDANT BURNS BY NEWMAN: Arguments by Mr. Sgro as to the six-pack and feels it is unduly suggestive. Arguments by Mr. DiGiacomo. Statements by Court. As to in-Court identification, Mr. Sgro advised he addressed his concerns earlier as the Defendants will be the only African Americans at the table. Arguments by Mr. DiGiacomo. Following, COURT ORDERED, DENIED.

DEFT'S MOTION TO PRECLUDE THE STATE FROM CONDUCTING BACKGROUND CHECKS ON POTENTIAL JURORS UNLESS RESULTS ARE PROVIDED TO THE DEFENSE (BURNS): Court noted what Defense wants is if the State runs checks on any of the Jurors, the information be given to them. Statements by Mr. Sgro including that he does not have access to SCOPE or NCIC and would request if the State finds out any information, that they turn it over. Continued arguments by Mr. Sgro and Mr. DiGiacomo. COURT ORDERED, any evidence of prior arrest whether or not it resulted in a conviction or any evidence uncovered from NCIC or SCOPE which indicate that a prospective Juror has lied on their questionnaire, is to be given to the Defense.

DEFT'S MOTION FOR ORDER RELEASING CLARK COUNTY DETENTION CENTER RECORDS AND REPORTS RELATED TO STEPHANIE COUSINS, MONICA MARTINEZ, JEROME THOMAS, QUENTINE WHITE AND DELLANE D. BRYANT, JR: Mr. DiGiacomo advised he has issued subpoenas for all records and will submit anything that needs to be submitted to Court for in-camera review. COURT ORDERED, RESOLVED.

DEFT'S EX-PARTE APPLICATION FOR ORDER FOR PRODUCTION OF MEDICAL RECORDS: Counsel agree that Mr. Thomas went to Utah under the name of Albert Davis for treatment and that Mr. Thomas did not go to UMC so there are no records. Mr. Sgro explained the need to obtain these

records and requested an Order to obtain the records from Utah. Mr. DiGiacomo advised he had no objection as long as he receives a copy of the records as well. COURT ORDERED, GRANTED.

DEFT'S MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE (BURNS): Mr. DiGiacomo advised they will follow the statutory and constitutional obligations and feels this has been covered by all of the other Motions for Discovery. Mr. Sgro concurred and requested it be taken OFF CALENDAR. COURT SO ORDERED.

DEFT'S MOTION TO SEVER OR IN THE ALTERNATIVE REQUEST FOR A NEW VENIRE (MASON): At request of counsel, COURT ORDERED, WITHDRAWN.

DEFT'S MOTION TO SUPPRESS (MASON): Court advised this issue was discussed last week. COURT ORDERED, MOOT.

Mr. Sgro advised as to Jerome Thomas, they have a letter that Defendant sent Detective Bunting, but they only have the envelope, no letter. Mr. DiGiacomo advised he does not have the letter either and will ask Detective Bunting about it.

Mr. Sgro requested an updated Notice of Witnesses with the correct addresses. Ms. Weckerly advised they will provide that, however, would also like the correct addresses for the Defense witnesses as well as the underlying discovery as to the experts.

As the trial has been continued, pursuant to statute, COURT ORDERED, all witnesses list are to be update with current addresses.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 11, 2014**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**December 11, 2014      8:30 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Burns, David      Defendant  
                         Kollins, Stacy L.      Attorney  
                         State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR STATUS CHECK ON RETURN OF IN  
CAMERA CPS RECORDS...DEFENDANT'S MOTION FOR DISCOVERY

Court noted it received word that this matter was to be continued. Ms. Kollins advised Ms. Weckerly was going to appear.

MATTER TRAILED AND RECALLED: Court noted it is at the end of the calendar and Ms. Weckerly has not appeared. There being another matter set next week, COURT ORDERED, today's matters are CONTINEUD to next week as well.

CUSTODY

... CONTINUED 12/18/14 8:30 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 18, 2014**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**December 18, 2014      8:30 AM      All Pending Motions**

**HEARD BY:** Tao, Jerome T.      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- STATE'S MOTION TO STRIKE DEFENDANT'S EXPERT NOTICE, OR IN THE ALTERNATIVE, MOTION FOR DISCOVERY...DEFENDANT'S MOTION FOR DISCOVERY...DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR STATUS CHECK ON RETURN OF IN CAMERA REVIEW OF CPS RECORDS

AS TO MOTION TO STRIKE: Court noted this motion relates to the Fetal Alcohol Syndrome experts. Mr. Sgro advised they would comply with the 21 day statute, but was concerned if the trial was going to be re-set due to this Court's appointment. Court advised Sr. Judge Thompson is going to hear this trial. Ms. Weckerly stated that as long as they receive the materials by 12/30, she is fine. Mr. Sgro stated he will do his best to get the material to the State. Following colloquy, COURT ORDERED, matter set for status check.

AS TO DISCOVERY. Mr. Sgro advised there is no issue.

AS TO CPS RECORDS: Mr. Sgro requested this Court turn over what is has reviewed. Following colloquy, Mr. Sgro suggested that the records be turned over to them and the State for review and if they feel something is too sensitive, they can bring it up to Judge Thompson. Ms. Weckerly had no objection. Court noted that there has been nothing in the records he has reviewed. COURT ORDERED, CPS records to be turned over to Mr. Sgro's Office.

CUSTODY

1/6/15 8:30 AM STATUS CHECK: ALL OUTSTANDING DISCOVER ISSUES

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 06, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 06, 2015      9:30 AM      All Pending Motions**

**HEARD BY:** Thompson, Charles      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- STATUS CHECK: ALL OUTSTANDING DISCOVERY ISSUES (BOTH)...STATUS CHECK: JURY QUESTIONNAIRES (BOTH)

Colloquy as to scheduling. Counsel agreed to return this afternoon.

Mr. Sgro advised there is still a discovery issue, that there are several things that still have not been received. Additionally, Mr. Sgro advised he received a Supplemental Notice of Aggravating Circumstances yesterday that includes some of this outstanding discovery. Further, there is an issue that the Notice of Expert Witnesses was filed one day late.

Colloquy as to Jury questionnaires. Court advised there are 49 prospective Jurors that all parties agree to be excused. Further, this Court will not be granting all of the Jurors that any side wants to excuse. Mr. Sgro objects to the panel of 150 as there are not enough African Americans in the panel.

Mr. Sgro would like the whole panel brought in prior to their being excused to see exactly how many African Americans there were on the panel. Statements by Mr. DiGiacomo. Court noted that if they are excused, they will not have to appear. Continued arguments by Mr. Sgro as to systematic under representation. MATTER TRAILED.

3:48 PM MATTER RECALLED: Items of discovery still needed by Mr. Sgro:

- 1) Mr. Sgro would like the medical records of Jerome Thomas from Utah. Ms. Weckerly advised they never received any records, that at the time of the search warrant, it was discovered that Mr. Thomas used an alias in Utah and that the only thing they have is the face sheet that shows the alias name and possibly an x-ray. Following colloquy, Mr. Sgro to prepare an Order for those records. Further, Mr. Sgro advised Mr. Thomas is incarcerated in San Bernardino and they are trying to get him here for trial. Court so noted.
- 2) Mr. Sgro advised they have an envelope from Jerome Thomas to Detective Bunting with no letter and would like a copy of the letter. Following colloquy, Ms. Weckerly will contact Detective Bunting today and inquire about the letter.
- 3) Mr. Sgro requested updated contact information as to the State's witnesses as they are still listed on Michael Lane, which is 4 years old and incorrect. Conference at the Bench. Pursuant to that conference, Ms. Weckerly will provide the best information she has by the end of the week.
- 4) Mr. Sgro advised he does have some jail phone call records, however, he does not have the "gaps of time" listed on page 4 of his Motion. Following colloquy, Ms. Weckerly advised they will tell counsel what phone calls they intend to use one week prior to trial and will check with Mr. DiGiacomo as to the "missing" content.
- 5) Mr. Sgro advised there were photographs shown to witnesses during their interviews and would like those. Ms. Weckerly advised this is not an identity case as there is a testifying co-defendant, however, she will speak with Detectives to find out what photos they used during the interviews.
- 6) Mr. Sgro advised Cornelius Mayo has picked up 2 felony cases since this case and would like to know what benefit he received. Ms. Weckerly advised they have discussed with Mr. Mayo as well as his counsel and the benefit is that they are not proceeding on those two cases until he testifies. Mr. Sgro advised he is concerned that there is nothing in writing. Ms. Weckerly concurred, there is no written agreement.

Colloquy as to counsel meeting in chambers on Friday at 8:30 AM.

As to Jury Questionnaires: Court noted each counsel submitted a list of the Prospective Jurors they would like excused, however, it will not grant all of them. Court advised the Jury Commissioner will be notified to EXCUSE the following Prospective Jurors (in numerical order): 029, 096, 098, 102, 115, 122, 126, 130, 147, 167, 172, 184, 185, 194, 196, 215, 292, 312, 324, 327, 332, 335, 346, 350, 356, 370, 372, 378, 397, 402, 408, 423, 426, 432, 438, 454, 458, 461, 468, 473, 479, 481, 500, 508, 516, 517, 518, 526, 534,

543, 546, 551, 555, 571, 580, 610, 615, 632, 638, 639, 654, 677, 682, 695, 701, 703, 709, 714, 726, 742, 759, 769, 772 and 776.

Mr. Sgro requested an additional 4 peremptory challenges for both sides, 2 for each Defendant and 4 for the State. Following colloquy, Court DENIED request. Court advised there will be 3 Alternates and that they need to pass 35 Jurors for cause. Mr. Oram advised he has a Federal sentencing the morning of 1/26 and requested to start trial at 1:00 PM. Following colloquy, COURT SO ORDERED.

CUSTODY

1/9/15 8:30 AM STATUS CHECK: DISCOVERY (in chambers)

1/20/15 1:00 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 09, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**January 09, 2015****8:30 AM****At Request of Court****At Request of the  
Court: Discovery****HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Sharon Chun**RECORDER:** Cheryl Carpenter**REPORTER:****PARTIES**

<b>PRESENT:</b>	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weaver, Melinda	Attorney
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Defendants Mason and Burns were not present. Initially the Court met with the following counsel in Chambers:

Marc DiGiacomo and Pam Weckerly for the State of Nevada;

Robert Langford for Deft Mason;

Christopher Oram, Anthony P. Sgro, and Melinda Weaver for Deft Burns.

The following issues were discussed:

1) Prospective Jurors Excused: Court advised that two additional Prospective Jurors (Badge No. 335 and 772) are being excused by the Court. Court cited the reasons and counsel so stipulated. COURT NOTED there remains seventy-five prospective jurors for voir dire and a listing was provided to all counsel.

2) Outstanding Discovery Issues:

A. Envelope contents - Mr. Sgro advised he had still not received the contents of the envelope that was previously discussed. Mr. DiGiacomo represented there was no recollection of the actual letters/correspondence included in the envelope, but there's the conclusion that it consisted of correspondence between Martinez to Jobloc(sp?), nothing from Jerome Thomas. Mr. Sgro accepted Mr. DiGiacomo's representation that the envelope contents were probably filed away without incident and there was no recollection of it.

Mr. DiGiacomo reiterated that Mr. Sgro has been given all discovery.

B. Availability of a CD disc of the Interview with "Monica" - Mr. Oram requested this and Mr. DiGiacomo stated that a special program will be required in order to transfer it to a disc. Mr. Oram stated he will arrange a contact with Mr. DiGiacomo's office to get this accomplished.

C. Telephone Records - Mr. Sgro requested the State make a representation on record about the telephone call records. Mr. DiGiacomo confirmed that the State received the subpoena but all telephone records prior to 4/5/11 are not available. He noted that "Stephanie's conversation" was given to Mr. Sgro. Mr. Langford confirmed he did not represent Deft Mason at that time; there was another lawyer of record and those records are privileged.

3) Mr. Sgro's "Ex-Parte Order to Receive MRI (FILED UNDER SEAL)", previously signed by Judge Tao - Mr. Sgro advised that Deft Burns needs to be transported for an MRI as recommended by his doctor. COURT ADVISED it will place on the record that the Court Clerk is to file the signed order in Open Court.

4) Mr. Sgro's "Order for Production of Medical Records" for Albert Davis aka Jerome Thomas - Court signed the order and returned it to Mr. Sgro for filing.

4) Trial Scheduling Issues:

Both Mr. Sgro and Mr. Langford presented requests for trial scheduling changes. Mr. Sgro requested dark days of Feb. 2nd and 3rd and Mr. Langford requested a dark day of Feb. 27th. COURT SO NOTED. All counsel agreed that the trial can still remain on schedule for completion since the Jury Questionnaires have helped alleviate time for voir dire.

COURT ADVISED of the trial schedule for the first four days during which voir dire will be conducted. The dates are noted below and have been entered into Odyssey.

(Mr. Langford left the meeting at this time.)

5) Discussion held regarding cell phone expert Larry Smith. Both sides agreed that Smith was an expert in cell phones and "phone dumps" and will be called at trial for testimony.

COURT ORDERED a short recess, after which the case was called in the Dept 20 courtroom and was placed on the JAVS recording system.

COURT ORDERED, the "EX-PARTE ORDER TO RECEIVE MRI (FILED UNDER SEAL)", to be

FILED IN OPEN COURT at this time. HEARING CONCLUDED.

CUSTODY (MASON and BURNS)

1/13/15 8:30 AM Calendar Call

1/20/15 1:00 PM Jury Trial Start

1/21/15 9:30 AM Jury Trial Continuance

1/22/15 10:00 AM Jury Trial Continuance

1/23/15 9:00 AM Jury Trial Continuance



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 13, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 13, 2015      7:00 AM      Minute Order**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Court has received a request from Dr. Phillip Larsen to excuse Juror Sharon Kurgin. Pursuant to that request, Court advised Juror #599 is excused.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 13, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 13, 2015      8:30 AM      All Pending Motions**

**HEARD BY:** Gates, Lee A.

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- CALENDAR CALL (#1)...DEFENDANT'S MOTION FOR THE DISCLOSURE OF MATERIALS AND FACTS RELATIVE FUTURE PROSECUTIONS OF STATE'S WITNESSES PURSUANT TO GIGLIO ON AN ORDER SHORTENING TIME

Court Service Officer advised Deft Mason refused to come to Court today. Upon Court's inquiry, Mr. Sgro advised the State had until today to let them know if they were going to use any jail calls as to either Defendant; that the understanding is they are not as to Deft. Burns and that there are 10 calls pertaining to Deft Mason out of San Bernardino. Mr. DiGiacomo concurred that they will not use any of the phone calls unless Defense opens the door. Counsel advised they were ready for trial. Court noted Jury selection is set to begin at 1:00 PM on Tuesday, January 20, 2015. Further, Deft's Motion not addressed.

**CUSTODY**

PRINT DATE: 11/13/2018

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Minutes Date: October 13, 2010

1/20/15 1:00 PM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

# COURT MINUTES

January 20, 2015

C-10-267882-2                      State of Nevada  
vs  
David Burns

**January 20, 2015      1:00 PM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

## JOURNAL ENTRIES

- OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Oram provided 2 folders of California Youth records, one of which is 512 pages and the other is 616 pages to the State. 1:20 PM  
PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Jury selection begins.

2:56 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Langford advised he knows Prospective Juror #101 as they worked together at the Sport Chalet. Statements by Mr. Sgro and requested this Juror be excused. Court DENIED request at this time. Mr. Sgro requested Prospective Juror #93 be excused based on her husband's upcoming surgery. Objections by Mr. DiGiacomo. Court advised based on her answers to the questions, it does not rise to the level for excusal for cause. Further, Mr. Sgro advised there are 3 African Americans on this panel, and that he still is requesting a hearing as to the issue of not enough African Americans on the panel. Court so noted. Mr. Oram advised they have received 4,000 phone calls from the State.

3:28 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 6:15 PM Prospective Jurors that were passed are excused and directed to return on Friday at 3:30 PM. COURT ORDERED, EVENING RECESS.

... CONTINUED 1/21/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 21, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 21, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:30 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Colloquy as to the jail calls of Monica Martinez and Stephanie Cousins from October 2011 to present, from August 2010 to 2011, the Jail had a different carrier and those records could not be produced. Mr. Sgro requested the State provide these if they have them. Mr. DiGiacomo advised he has provided the calls from April 2011 to present pursuant to the dates listed on Mr. Sgro's Motion. Colloquy as to Prospective Jurors #289, #315 and #280 being excused.

9:50 AM PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Voir Dire administered to panel. Jury selection begins. 11:46 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. DiGiacomo advised there were 2 African Americans on this panel. Ms. Weckerly advised of the other minorities also on the panel. LUNCH BREAK.

12:59 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Parties stipulate to excuse Prospective

Juror #201. COURT SO ORDERED. 1:02 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. OUTSIDE PRESENCE OF PROSPECTIVE JURORS: COURT ORDERED, by stipulation, Prospective Jurors #280, #315, #289 and #295 are EXCUSED.

1:59 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 3:41 PM Court directed the Prospective Jurors that were passed for cause, to return on Friday, January 23rd at 3:30 PM.

OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Langford advised the Prospective Jurors excused today because of their answers/beliefs as to the death penalty, would have been good jurors for Deft Mason. Court so noted. EVENING RECESS.

... CONTINUED 1/22/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 22, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**January 22, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:26 AM OUTSIDE PRSENCE OF PROSPECTIVE JURORS: Counsel stipulated to the dismissal of Prospective Jurors #496 and #367. Court advised it is also excusing Prospective Juror #469. Arguments by Mr. Langford as to #496. Following COURT ORDERED, Prospective Jurors #367 and #469 are EXCUSED. Mr. Sgro argued for more Peremptory Challenges and if the Court is not going to grant that, then would request a severance so that Mr. Langford can get the Jury that he wants. Arguments by Mr. DiGiacomo including there is no basis to change the statute and no basis for the severance. COURT ORDERED, request DENIED.

Mr. Sgro advised he had provided some additional records to the State; that there is an Order for an MRI, however, the Jail will not tell them when or where it will be. Statements by Mr. DiGiacomo.

9:54 AM PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Voir dire administered to panel. Jury selection begins. 11:50 AM LUNCH BREAK. OUTSIDE PRESENCE OF



PROSPECTIVE JURORS: Court noted that after the panel was given the voir dire, the JEA advised that Prospective Juror #494 showed up and was advised to return with the panel tomorrow. Colloquy as to the Jury selection schedule.

1:07 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 2:29 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Sgro challenged #521 based on the answers given to questions by Mr. Langford. Statements by Mr. Oram and Mr. DiGiacomo. Following, challenge DENIED. 2:49 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. Jurors passed for cause were directed to return tomorrow, 1/23 at 3:30 PM.

OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Court noted that it would pass 28 Jurors by Friday and pick the 12 members of the Jury from them and then on Monday, another panel will be brought in to pass 7 to pick the 3 Alternates. Objections stated by Mr. Sgro. EVENING RECESS.

... CONTINUED 1/23/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 23, 2015**

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C-10-267882-2                      State of Nevada  
   vs  
   David Burns

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**January 23, 2015                      9:00 AM                      Jury Trial**

**HEARD BY:** Thompson, Charles                      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:13 AM OUTSIDE PRESENCE OR PROSPECTIVE JURORS: Court advised counsel of the Jurors that are not present today. 9:25 AM PROSPECTIVE JURORS PRESENT: Introductions by Court and counsel. Voir dire administered to panel. Jury selection begins. 10:58 AM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. Sgro requested to challenge for cause Prospective Jurors #509 and #521. Arguments by Mr. Sgro and Mr. DiGiacomo. Court DENIED challenge.

11:17 AM PROSPECTIVE JURORS PRESENT: Jury selection continues. 12:23 PM LUNCH BREAK. 1:26 PM PROSPECTIVE JURORS PRESENT: Jury selection continues. 3:07 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Mr. DiGiacomo advised the panel today consisted of at least 2 African Americans. 3:19 PM PROSPECTIVE JURORS PRESENT: Jury selection continues.

4:11 PM OUTSIDE PRESENCE OF PROSPECTIVE JURORS: Court noted 28 Prospective Jurors have been passed for cause, each side has 8 Peremptory Challenges. Batson challenge as to Prospective

Juror #91. Following arguments by Mr. Sgro and Mr. DiGiacomo, Court DENIED challenge.

4:28 PM PROSPECTIVE JURORS PRESENT: 12 Jurors selected and sworn. Court thanked and excused the remaining panel. Jurors were directed to report on Tuesday, 1/27 at 10:00 AM.

...CONTINUED 1/26/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 26, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**January 26, 2015      9:00 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 8:53 AM OUTSIDE PRESENCE OF PROSPECTIVE ALTERNATE JURORS: Court advised it has completed the selection of 12 Jurors; that it has gone through the list of 50 Prospective Juror Questionnaires and advised the Prospective Jurors that are being excused based on their answers as to the death penalty, etc. After the excusals, Court advised there are 23 remaining Prospective Jurors and this Court feels that they will be able to pass 7 to obtain the 3 Alternate Jurors. 9:45 AM PROSPECTIVE ALTERNATE JURORS PRESENT: Introductions by Court and counsel. Voir dire administered to the panel. Jury selection begins. 10:54 AM BREAK

11:22 AM OUTSIDE PRESENCE OF PROSPECTIVE ALTERNATE JURORS: Juror #666 was brought in and questioned and as he is a Felon, he was EXCUSED. Arguments by Mr. Sgro as to Juror #645 being passed for cause and would again challenge. Statements by Mr. DiGiacomo. Court DENIED challenge. 11:27 AM PROSPECTIVE ALTERNATE JURORS PRESENT: Jury selection continues. 12:05 PM LUNCH. OUTSIDE PRESENCE OF PROSPECTIVE ALTERNATE JURORS: Mr.

DiGiacomo advised there are 5 African Americans on the panel today, bringing the total to 14 African Americans and advised there is no basis for a hearing.

1:18 PM PROSPECTIVE ALTERNATE JURORS PRESENT: Jury selection continues. 2:54 PM 3 Alternate Jurors were selected and sworn. Court excused remaining prospective Jurors. The Alternates were directed to come back tomorrow at 10:00 AM. EVENING RECESS.

... CONTINUED 1/27/15 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

C-10-267882-2      State of Nevada  
vs  
David Burns

**January 27, 2015      10:00 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 10:08 AM JURY PRESENT: Court noted all counsel, Defendants and the Jury panel are present. Introductions by Court. Superseding Indictment read by the Clerk. Opening statements by Ms. Weckerly and Mr. Sgro. OUTSIDE PRESENCE OF THE JURY: Ms. Weckerly advised Mr. Sgro used the word "guilty" in his opening statement and noted that when the State used this word in their opening statement, in another case, the case was reversed. LUNCH BREAK.

1:08 PM JURY PRESENT: Court noted all present as before. Opening statement by Mr. Langford. Testimony and exhibits presented (see worksheets). 2:40 PM OUTSIDE PRESENCE OF JURY: Mr. Oram advised there is a part of Monica's recorded statement where she refers to the name of the gang and would like that part redacted. Statements by Mr. DiGiacomo. Following, COURT ORDERED, the reference to the gang name will be redacted.

2:48 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see

worksheets). 4:25 PM Jury excused. OUTSIDE PRESENCE OF JURY: Colloquy as to page 213 of Monica's statement. COURT ORDERED, that page does not need to be redacted, only what was discussed earlier. EVENING RECESS.

... CONTIINUED 1/28/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

C-10-267882-2      State of Nevada  
vs  
David Burns

**January 28, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:26 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised that co-offender Monica Martinez's attorneys have been present during the proceedings and is concerned they will speak to their client about what has been happening. Statements by Mr. DiGiacomo and Mr. Oram. 9:36 AM JURY PRESENT: Court noted the presence of counsel, the Defendants and the Jury. Testimony and exhibits continued (see worksheets). 10:56 AM OUTSIDE PRESENCE OF JURY: Statements by Mr. Oram as to a continuing objection without having to explain objection each time during the testimony of Ms. Cousins. Court so noted.

11:11 AM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). LUNCH BREAK. OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo is offering exhibit #274, Monica Martinez's interview, that they have redacted it down to 5 1/2 hours. No objections by Mr. Langford. Objections by Mr. Oram as he does not feel it is admissible. Following colloquy, Court OVERRULED objection. Mr. Langford advised he is joining in the objection as to the



confrontation clause. Mr. Sgro stated he has sent out several subpoenas to Ms. Martinez's family member, does not know what they look like and requested to know the identity of the male in the back row. Upon inquiry, male advised he was the Uncle of Ms. Martinez.

1:09 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 2:43 PM OUTSIDE PRESENCE OF JURY: Mr. Sgro requested Ms. Martinez be unshackled for the cross examination. Court DENIED request. 3:02 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:29 PM Jury excused. OUTSIDE PRESENCE OF JURY: Mr. Langford requested Ms. Martinez be unshackled. Following colloquy, Court DENIED request. EVENING RECESS.

... CONTINUED 1/29/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

# COURT MINUTES

January 29, 2015

C-10-267882-2                      State of Nevada  
vs  
David Burns

**January 29, 2015                  9:30 AM                  Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

## JOURNAL ENTRIES

- 9:43 AM JURY PRESENT: Court advised the Defendants, Jurors and all counsel were present. Testimony continues (see worksheets). 11:57 AM LUNCH BREAK. OUTSIDE PRESENCE OF JURY: Court advised upon review, the ruling as to Monica Martinez being unchained is REVERSED and ORDERED, that she will be unchained upon her return to the stand.

1:06 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:37 PM Jury released for the evening. OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo advised it appears that Mr. Oram is going to elicit the hearsay statements of Job-loc. Arguments by Mr. Oram in support of his position. Colloquy as to co-conspirator statements. Following, Court advised the statements will be allowed. EVENING RECESS.

... CONTINUED 1/30/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****January 30, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**January 30, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:38 AM JURY PRESENT: Court noted the Defendants, the Jury and all counsel are present. Testimony and exhibits continued (see worksheets). 11:00 AM OUTSIDE PRESENCE OF JURORS: Mr. Sgro objected to Courtroom decorum of Mr. DiGiacomo. Court noted that all counsel are to act properly in Court. Mr. Sgro requested a hearing as to the jail letters, as they were told the District Attorney tells the jail when and when not to copy the letters. Mr. DiGiacomo argued that the Homicide Detectives direct the jail as to the copying of letters, that his homicide book is opened on the table and that Mr. Sgro has every piece of paper that he has.

11:21 AM JURY PRESENT: Court noted all present as before. 12:04 PM LUNCH BREAK.

1:24 PM OUTSIDE PRESENCE OF JURORS: Statements by Mr. Oram and Mr. DiGiacomo as to the testimony of D. Rowland. Following, Court OVER RULED objection. Mr. Langford moved again for severance based on the fact that he just learned that the next witness D. Rowland is now going to

finger Deft Mason as the shooter and not Deft Burns. Arguments by Mr. Sgro and Mr. DiGiacomo. Following, COURT ORDERED, Motion to Sever is DENIED.

1:44 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 2:58 PM OUTSIDE PRESENCE OF JURORS: Court noted it appeared that witness D. Rowland was less than truthful. Arguments by Mr. DiGiacomo and Mr. Sgro in support of their positions as to the Crowley case and statutes 51.035 and 51.325 and the admission of D. Rowland's Grand Jury testimony. Following, Court advised it is admissible. 3:14 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 3:30 PM EVENING RECESS.

... CONTINUED 2/5/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 05, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**February 05, 2015      8:30 AM      Motion**

**HEARD BY:** Thompson, Charles      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Arguments by Mr. Oram and Mr. DiGiacomo in support of their respective positions. Mr. Langford advised that he has joined in this Motion. Following additional arguments, COURT ORDERED, Motion DENIED.

**CUSTODY**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 05, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**February 05, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:45 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised that two children will be testifying and is concerned of hearsay statements. Mr. DiGiacomo and Ms. Weckerly promised they would not elicit any hearsay statements. Statements by Mr. Sgro as to the Tool Mark Expert. COURT ORDERED, ruling reserved. Court advised it received a call from Juror #1, Kelly Rowan and due to medical issues with her husband, Court has excused her and Alternate #1 will be placed in her seat. 10:03 AM JURY PRESENT: Court advised Juror #1, Kelly Rowan has been excused and Alternate #1 was placed in seat #1 and sworn as part of the Jury. Court advised the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 12:02 PM LUNCH BREAK.

1:04 PM JURY PRESENT: Court advised all present as before. 1:25 PM BREAK. 1:35 PM OUTSIDE PRESENCE OF JURY: Court advised Juror #7, Mary Paradis has taken ill and is excused. Alternate #1 Cindy Arnold will move into seat 7. 1:37 PM JURY PRESENT: Court advised as Ms. Paradis is ill, she is excused and Alternate Cindy Arnold will be sworn and sit in seat #7. Testimony and exhibits

continued (see worksheets).

3:18 PM OUTSIDE PRESENCE OF JURY: Mr. Sgro moved for mistrial as he feels Mr. DiGiacomo suggested burden shifting. Following statements by Mr. Sgro and Mr. DiGiacomo, Court DENIED request for mistrial. Mr. Sgro requested a curative instruction be given to the Jury upon their return. Mr. DiGiacomo had no objection. 3:34 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 5:26 PM EVENING RECESS.

... CONTINUED 2/6/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 06, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**February 06, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:27 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised the State stipulates to the admission of Defense U which is a report for gunshot residue on Cornelius Mayo. Ms. Weckerly concurred. 9:40 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 12:38 PM LUNCH BREAK.

1:55 PM OUTSIDE PRESENCE OF JURORS: Court advised counsel that one of the Jurors needs to leave by 5:00 PM today to fly out for a funeral. Mr. Oram advised they just received a 911 call about Stephanie Cousins and would object as they will not have a chance to cross examine Ms. Cousins. Arguments by Mr. DiGiacomo including that the daughter of Stephanie Cousins, who made the call, will be in Court. Following continued arguments by Mr. Sgro, Mr. Oram and Mr. DiGiacomo, COURT ORDERED, it will be received. 2:07 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 3:37 PM JURY EXCUSED. OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo expects Det. Bunting to testify Monday or Tuesday and



advised the Defense needs to let him know the portions they want redacted from the statement. Mr. Sgro advised he objects to colloquy by Police but has no objection to a question followed by an answer. Following, Court directed Mr. Sgro to provide by Sunday morning. EVENING RECESS.

... CONTINUED 2/9/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 09, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**February 09, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:32 AM OUTSIDE PRESENCE OF JURY: Court advised counsel have entered into a stipulation as to the penalty phase of this trial. Mr. Sgro advised that they and the State have agreed that if the verdict comes back as 1st Degree Murder, they will waive the penalty phase, stipulate to Life without Parole, Defendant waives his appellate rights and the State will remove the death penalty. Mr. Sgro advised they are not waiving any misconduct during the remainder of the trial or of the closing arguments. Mr. DiGiacomo concurred that the death penalty will be removed, Defendant stipulates to Life without Parole and waives any appeal as to the trial if the verdict is 1st Degree Murder. Mr. Langford advised Deft Mason will also waive the penalty phase. Upon inquiry by the Court, Deft Mason stated he waives his right to a penalty phase and Deft Burns stated he waives his right to a penalty phase and to his right to appeal. Court so noted.

9:47 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 11:11 AM OUTSIDE PRESENCE OF JURY: Mr.

DiGiacomo advised there is a stipulation between the State and Defense for the admission of State's Proposed #250- #261. COURT SO ORDERED.

11:13 AM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 11:43 PM LUNCH BREAK. OUTSIDE PRESENCE OF JURY: Jury instructions discussed. Statements by Mr. DiGiacomo, Ms. Weckerly and Mr. Oram.

1:35 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 2:27 PM OUTSIDE PRESENCE OF JURY: Arguments by Mr. Sgro as to the identification of Deft Mason by Witness Vasek. Court advised Deft Burns' appearance has changed. Statements by Mr. DiGiacomo.

2:48 PM OUTSIDE PRESENCE OF JURY: Stipulation and Order Waiving Separate Penalty Hearing SIGNED AND FILED IN OPEN COURT as to Deft. Burns. Stipulation and Order Waiving Separate Penalty Hearing SIGNED AND FILED IN OPEN COURT as to Deft Mason. 2:50 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:00 PM EVENING RECESS.

... CONTINUED 2/10/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 10, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

---

**February 10, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:38 AM OUTSIDE PRESENCE OF JURY: Statements by Mr. Sgro as to exhibit #309 and feels it needs to be redacted. Arguments by Mr. DiGiacomo. Following, COURT ORDERED, State's exhibit #309 to be redacted (the first two pages need to be removed). 9:59 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 12:40 AM LUNCH BREAK.

1:57 PM OUTSIDE PRESENCE OF JURY: Discussion by counsel as to letters the State wants to introduce. Arguments by Mr. DiGiacomo and Mr. Sgro. Following, Court advised State's Proposed #337, #338, #340, #336 and #344 will not be admitted. 2:09 PM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 4:09 PM EVENING RECESS.

... CONTINUED 2/11/15 9:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****February 11, 2015**

C-10-267882-2      State of Nevada  
vs  
David Burns

**February 11, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Linda Skinner**RECORDER:** Susan Dolorfino**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:30 AM OUTSIDE PRESENCE OF JURY: Mr. Sgro advised Detective Shoemaker is now retired, that through the course of an interview, found out that Detective Shoemaker was part of the team working on the Burns case; he did not interview any witnesses but compiled information that was supplied to CPS. Mr. Sgro stated Detective Shoemaker advised CPS that Devonia was used as a mule during the drug buys. However, Mr. Sgro stated that when he asked Mr. Mayo and Ms. Newman, they denied this. Mr. Sgro advised if the Court feels this is hearsay, will offer it for a prior inconsistent statement. Arguments by Mr. DiGiacomo. Continued arguments by Mr. Sgro including that Detective Shoemaker will testify that Mr. Mayo phoned friends to pick up the product before he called 911. Following arguments by Mr. DiGiacomo and Mr. Sgro, COURT ORDERED, it is hearsay and Detective Shoemaker will not be allowed to testify. Statements by Mr. Sgro as to admitting medical records, that there is a one page entry with a notation by the Security Guard that he would like to admit. There being no objection, COURT SO ORDERED.

9:45 AM JURY PRESENT: Court advised the Jury, the Defendants and all counsel are present. Testimony and exhibits continued (see worksheets). 10:39 AM STATE RESTS. OUTSIDE PRESENCE OF JURY: Both Defendants were advised of their rights to testify. Mr. Sgro advised there is a stipulation for the admission of Defts CC. COURT SO ORDERED. BREAK. 11:00 AM OUTSIDE PRESENCE OF JURY: Mr. DiGiacomo advised there was a Reciprocal Discovery Order in this case and they asked Defense if there were any exhibits; Mr. DiGiacomo advised Mr. Sgro just handed him two pieces of discovery that he intends to use and would request they not be allowed. Arguments by Mr. Sgro including that until the State had rested, they did not know what they were going to use. Following additional arguments, COURT ORDERED, they will be allowed.

11:07 AM JURY PRESENT: Court noted all present as before. Testimony and exhibits continued (see worksheets). 11:48 AM DEFT BURNS RESTED. DEFT MASON RESTED. LUNCH BREAK. OUTSIDE THE PRESENCE OF THE JURY: Jury instructions settled on the record.

1:04 PM JURY PRESENT: Court noted all present as before. Jury Instructions read by the Court. BREAK. 2:16 PM JURY PRESENT: Court noted all present as before. Closing arguments by Ms. Weckerly, Mr. Langford and Mr. Oram. 4:48 PM EVENING RECESS.

... CONTINUED 2/12/15 9:45 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 12, 2015**

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C-10-267882-2      State of Nevada  
vs  
David Burns

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**February 12, 2015      9:30 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	Sgro, Anthony Patrick	Attorney
	State of Nevada	Plaintiff
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:46 AM JURY PRESENT: Court noted the Jury, the Defendants and all counsel were present. Closing arguments by Mr. Sgro. 10:33 AM BREAK.

10:47 AM JURY PRESENT: Court noted all present as before. Closing arguments continued by Mr. Sgro. 11:30 AM BREAK.

11:42 AM JURY PRESENT: Court noted all present as before. Closing arguments by Mr. DiGiacomo.  
12:46 PM Jury retired to deliberate. Court excused the Alternate but advised her she would be on call. 4:30 PM EVENING RECESS.

... CONTINUED 2/13/15 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 13, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**February 13, 2015      9:00 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- 9:00 AM Jury arrives to continue deliberations.

4:15 PM There being no verdict, the Jury was EXCUSED for the weekend and directed to report Tuesday at 9:00 am. EVENING RECESS.

... CONTINUED 2/17/15 9:00 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 17, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**February 17, 2015      9:00 AM      Jury Trial**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weaver, Melinda	Attorney
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- 9:00 AM Jury arrives to continue deliberations.

4:27 PM OUTSIDE PRESENCE OF THE JURY: Court advised while the Jury was deliberating on Friday, they had a question and wanted a read back of Monica Martinez' testimony. Upon clarification from the Jury and after a conference call with counsel, 2 discs were made of the testimony of Monica Martinez, 1/28/15 (marked Court's 18) and 1/29/15 (marked Court's 19). Today, during deliberations, the Jury wanted clarification as to Count 5, counsel were summoned to chambers and an answer was sent in by the Court.

4:33 PM JURY PRESENT: Court noted the Jury, the Defendants and counsel, except for Mr. Sgro, were present. Jury Foreperson advised they had reached a verdict. Clerk read the following:  
AS TO DEFT MASON:

COUNT 1 - Conspiracy to Commit Robbery - GUILTY;

COUNT 2 - Conspiracy to Commit Murder - GUILTY;  
COUNT 3 - Burglary While in Possession of a Firearm - GUILTY;  
COUNT 4 - Robbery With Use of a Deadly Weapon - GUILTY;  
COUNT 5 - Murder With Use of a Deadly Weapon - GUILTY of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. SPECIAL VERDICT: The Jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary;  
COUNT 6 - Robbery With Use of a Deadly Weapon (DeVonia Newman) - GUILTY;  
COUNT 7 - Attempt Murder With Use of a Deadly Weapon - GUILTY, and;  
COUNT 8 - Battery With a Deadly Weapon Resulting in Substantial Bodily Harm - GUILTY.

AS TO DEFT BURNS:

COUNT 1 - Conspiracy to Commit Robbery - GUILTY;  
COUNT 2 - Conspiracy to Commit Murder - GUILTY;  
COUNT 3 - Burglary While in Possession of a Firearm - GUILTY;  
COUNT 4 - Robbery With Use of a Deadly Weapon - GUILTY;  
COUNT 5 - Murder With Use of a Deadly Weapon - GUILTY of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON. SPECIAL VERDICT: 1) The Jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary and 2) The Jury does not unanimously find the Defendant guilty under a single theory of Murder of the First Degree;  
COUNT 6 - Robbery with Use of a Deadly Weapon (DeVonia Newman) - GUILTY;  
COUNT 7 - Attempt Murder With Use of a Deadly Weapon - GUILTY and;  
COUNT 8 - Battery With a Deadly Weapon Resulting in Substantial Bodily Harm - GUILTY.

At request of Mr. Oram, the Jury was polled. Court advised the Jury they do not need to hear a Penalty Phase due to the Stipulation that was filed 2/9. Court thanked and excused the Jury. Court referred the matter to the Division of Parole and Probation for Pre-sentence Investigation Reports and ORDERED, set for sentencing.

CUSTODY (BOTH)

4/9/15 8:30 AM SENTENCING (BOTH)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 09, 2015**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**April 09, 2015**

**8:30 AM**

**Sentencing**

**HEARD BY:** Thompson, Charles

**COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:** Susan Dolorfino

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weaver, Melinda	Attorney
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Court noted that counsel want a continuance. Mr. Oram concurred and requested two weeks. Ms. Weckerly had no objection. COURT ORDERED, matter CONTINUED TWO (2) WEEKS.

CUSTODY

... CONTINUED 4/23/15 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

C-10-267882-2      State of Nevada  
vs  
David Burns

**April 23, 2015****8:30 AM****Sentencing****HEARD BY:** Thompson, Charles**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Alice Jacobson**RECORDER:** Patti Slattery**REPORTER:****PARTIES**

<b>PRESENT:</b>	Burns, David	Defendant
	Di Giacomo, Marc P.	Attorney
	Oram, Christopher R	Attorney
	State of Nevada	Plaintiff
	Weaver, Melinda	Attorney
	Weckerly, Pamela C	Attorney

**JOURNAL ENTRIES**

- Sentencing Memorandum FILED IN OPEN COURT (under seal). Following statements by counsel and Defendant. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, and \$35.00 Domestic Violence fee, Deft. SENTENCED as follows to counts:

1. CONSPIRACY TO COMMIT ROBBERY (F), a MAXIMUM of SEVENTY TWO (72) MONTHS and MINIMUM of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC).
2. CONSPIRACY TO COMMIT MURDER (F), a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC).
3. BURGLARY WHILE IN POSSESSION OF A FIREARM, a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department

of Corrections (NDC).

4. ROBBERY WITH USE OF DEADLY WEAPON (F), a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon.

5. FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F), LIFE WITHOUT PAROLE plus enhancement of MAXIMUM of TWO HUNDRED FORTY(240) MONTHS and MINIMUM FORTY (40) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon.

6. ROBBERY WITH USE OF A DEADLY WEAPON (F), a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon.

7. ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM FORTY EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus enhancement of a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and MINIMUM FORTY (40) MONTHS in the Nevada Department of Corrections (NDC) for use of a deadly weapon.

8. BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F), a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC).

with 1,671 days CREDIT FOR TIME SERVED. COUNTS 1,2,3,4 to run CONCURRENT with Count 5. Counts 6 & 8 to run CONCURRENT with Count 7. Count 7 to run CONSECUTIVE to Count 5.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 16, 2016**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**February 16, 2016      8:30 AM      All Pending Motions**

**HEARD BY:** Johnson, Eric      **COURTROOM:** RJC Courtroom 10D

**COURT CLERK:** Linda Skinner

**RECORDER:**

**REPORTER:** Amber McClane

**PARTIES**

**PRESENT:**      Merback, William J.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Court noted Defendant is in prison and not present today and proffered several Motions.

AS TO DEFENDANT'S PRO PER MOTION:

...TO WITHDRAW COUNSEL: COURT ORDERED, GRANTED.

...TO APPOINT COUNSEL: Court noted it received the State's response; that there are no difficult issues, Defendant is able to comprehend the proceedings and does not need counsel as there is no additional discovery. Therefore, COURT ORDERED, DENIED.

...PETITION FOR WRIT OF HABEAS CORPUS: Court noted grounds 1,2,3,10,12,14 & 15 pertain to instances of prosecutorial misconduct, however, these should have been raised in direct appeal and not in a post-conviction writ.

As to ground 4: Counsel was Ineffective for Failing to Object or Raise on Direct Appeal an Alleged Instance of "Witness Coaching": Defendant contends counsel was ineffective for not objecting to this. However, the Court advised it had been watching the lawyers in the back and had not seen them do

anything that could be interpreted as witness coaching.

As to ground 5: Counsel was Ineffective for Failing to Raise Prosecutorial and Police Misconduct on Direct Appeal: Counsel cannot be deemed ineffective for failing to raise this issue on direct appeal, as Defendant waived his appellate rights. Additionally, Defendant failed to show how the outcome of the trial would have been different and does not cite to where in the record these alleged statements by the witness were made and did not attach the interview to the exhibit.

As to ground 6: Counsel was Ineffective for Failing to Raise Prosecutorial Misconduct on Direct Appeal: Defendant waived his appellate rights, thus it would have been futile to file an appeal.

As to ground 7: Counsel was Ineffective for Failing to Raise Mental Disabilities for Removal of the Death Penalty as Defendant Stipulated to a Sentence of Life Without Parole: Defendant's claims are belied by the record, the death penalty was removed as a possible option. Further, Defendant failed to present any evidence that he qualifies as intellectually disabled as described by *Atkins v Virginia*.

As to ground 8: Counsel was Ineffective for Discussing Stephanie Cousin's Statements to the Police: Court noted it is a strategic decision by defense counsel as to what to ask the Detectives and witnesses. Further, Bruton does not apply to non-testimonial statements like a statement of a co-conspirator, so her testimony would not violate his confrontation rights.

As to ground 9: Counsel was Ineffective as Defendant Waived his Right to a Direct Appeal and Defendant had no right to Counsel for a Post-Conviction Habeas Petition: Defendant waived his right to a direct appeal, thus counsel cannot be deemed ineffective for failing to file one.

As to ground 11: Counsel was Ineffective for Failing to Object as the Prosecutor Made Fair Comments on the Evidence Presented During Closing Argument: Defendant claims his counsel was ineffective for not objecting to the Prosecutor "injecting his own opinion of facts not in evidence". However, Defendant's claims are belied by the record and are without merit. Further, Defendant cannot show any prejudice suffered as a result of these arguments.

As to ground 13: Counsel was Ineffective for Failing to Object at Trial or for Failing to Cross Examine Witnesses about an Alleged Lie about Defendant's Mental Issues: Defendant's claim is essentially about the alleged failures to cross-examine a particular witness about an issue. However, these claims relate to trial strategy, which is "virtually unchallengeable". Further, Defendant cannot show prejudice and fails to prove how the outcome of his trial would have been different.

For all the above reasons, COURT ORDERED, Pro Per Petition DENIED.

... FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT: COURT ORDERED, DENIED.

DEFENDANT'S REQUESTING THE COURT GIVE A EVIDENTIARY HEARING ON ISSUES

LISTED IN WRIT OF HABEAS CORPUS: COURT ORDERED, DENIED.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 30, 2017**

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C-10-267882-2      State of Nevada  
                                 vs  
                                 David Burns

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**March 30, 2017      9:00 AM      Confirmation of Counsel**

**HEARD BY:** Johnson, Eric      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Skinner

**RECORDER:** Angie Calvillo

**REPORTER:**

**PARTIES**

**PRESENT:**      Resch, Jamie J.      Attorney

**JOURNAL ENTRIES**

- Court noted Defendant is in prison and not present today. Upon Court's inquiry, Mr. Resch advised he can confirm as counsel of record. COURT SO ORDERED. Mr. Resch requested a status check in sixty days to set a briefing schedule after he reviews the file. Ms. Rose had no objection. COURT ORDERED, matter SET for status check in SIXTY (60) DAYS.

NDC

6/1/17 9:00 AM STATUS CHECK: SET BRIEFING SCHEDULE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

# COURT MINUTES

**June 01, 2017**

C-10-267882-2                      State of Nevada  
vs  
David Burns

**June 01, 2017                  9:00 AM                  Status Check**

**HEARD BY:** Johnson, Eric                      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Skinner

**RECORDER:** Angie Calvillo

**REPORTER:**

## PARTIES

<b>PRESENT:</b>	Resch, Jamie J.	Attorney
	Rose, Laura Jean	Attorney
	State of Nevada	Plaintiff

## JOURNAL ENTRIES

- Defendant is in prison and not present today. Upon Court's inquiry, Mr. Resch advised he has reviewed all the pleadings, however, he needs to have the sentencing transcript prepared. Mr. Resch requested at least 6 months for his brief. Following colloquy, COURT ORDERED the following briefing schedule:

Mr. Resch to file by 11/30;

The State to respond by 1/16;

Mr. Resch to reply by 2/16 and matter SET for argument.

NDC

3/8/18 9:00 AM ARGUMENT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 17, 2018**

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C-10-267882-2      State of Nevada  
vs  
David Burns

---

**April 17, 2018      8:30 AM      Argument**

**HEARD BY:** Johnson, Eric      **COURTROOM:** RJC Courtroom 12A

**COURT CLERK:** Linda Skinner

**RECORDER:** Angie Calvillo

**REPORTER:**

**PARTIES**

**PRESENT:**      Di Giacomo, Marc P.      Attorney  
Resch, Jamie J.      Attorney  
State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Defendant is in prison and not present today. Arguments in support of the Petition including requesting an Evidentiary Hearing by Mr. Resch. Objections by Mr. DiGiacomo. Following, Court noted it does not see a lot in terms of an Evidentiary Hearing, however, due to the conviction and significant sentence, Court will grant an Evidentiary Hearing to explore whether or not there were certain understandings or misleading's by trial counsel to the Defendant as to the issue of direct appeal and you can question trial counsel as to other decisions that were made during the course of trial, but it will not be opened up as to ineffectiveness of counsel. Upon inquiry, counsel feel the hearing will take 2-3 hours. COURT ORDERED, matter SET for hearing.

NDC

6/29/18 8:30 AM EVIDENTIARY HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 18, 2018**

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C-10-267882-2      State of Nevada  
vs  
David Burns

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**July 18, 2018      8:30 AM      Status Check**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Pesci, Giancarlo      Attorney  
Resch, Jamie J.      Attorney  
State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Deft. not present. Upon Court's inquiry, Mr. Resch requested to set an Evidentiary Hearing the week of September 18, 2018. Mr. Pesci had no objection. COURT ORDERED, matter SET for Evidentiary Hearing.

NDC

9/20/18 10:30 AM EVIDENTIARY HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 20, 2018**

C-10-267882-2      State of Nevada  
vs  
David Burns

**September 20, 2018      10:30 AM      Evidentiary Hearing**

**HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Trisha Garcia**REPORTER:****PARTIES**

<b>PRESENT:</b>	Bluth, Jacqueline	Attorney
	Burns, David	Defendant
	Resch, Jamie J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. present in custody. Court noted this evidentiary hearing is a limited hearing as to one claim on whether or not Deft. was denied a direct appeal. Anthony Sgro, Esq., and Christopher Oram, Esq., provided sworn testimony. Deft. David Burns, sworn and testified. Mr. Resch made arguments regarding testimony provided by Mr. Sgro, Mr. Oram and Deft; and further argued regarding Deft. having tried to explain to his attorneys as to issues for appeal. Ms. Bluth opposed the Petition; and argued as to written stipulation at trial. Court noted neither attorneys were asked whether there was misconduct during closing arguments, discussions were made about habeas relief, and there were no discussions that the Court heard, as to direct appeal or appellate rights that survived the stipulation. Further arguments by Mr. Resch as to possible misunderstanding. COURT ORDERED, Deft's Petition DENIED. Discussions as to no final order having been done yet addressing everything. State to prepare the order from today's proceedings. Court advised Deft. he has the right to appeal the decision made today. Upon Court's inquiry, Deft. confirmed he understands this. Mr. Resch to continue to represent Deft. on appeal. Mr. Resch noted he will submit an order regarding him remaining on the case.

NDC

(Continued...)

CASE NO. C-10-267882- 2 & -3

DEPT. NO. IV

CDDA PAMELA WECKERLY (MVU)

MARC DIGIACOMO

Def. Counsel(s): BURNS - ANTHONY SGRO, ESQ.  
COUSINS - THOMAS ERICSSON, ESQ.

WARRANTS:

SET FELONY ARRAIGNMENT (ONE WEEK)

DEFTS ARE IN CUSTODY @ CCDC

(PH SET FOR 10/19/10 in JC1 & 10/27/10 in JC 10)

**Exhibits:**

1. Proposed Indictment
- 1a. Superceding Indictment
2. T-Mobile Cell Phone Records
3. Metro PCS - Subscriber record
4. Metro PCS - cell phone records
5. Metro PCS - cell phone records
6. Metro PCS - cell site records
7. Metro PCS - cell site records
8. Map
9. Map
10. Map Packet
11. Photo
12. Photo
13. Photo
14. Photo
15. Photo
16. Photo
17. Photo
18. Photo
19. Photo
20. Photo
21. Photo line-up
22. CD
23. CD
24. CD
25. Photo
26. Transcript from 09/28/10

Exhibits 1-25 previously lodged with the Clerk of the Court on 09/29/10.  
Exhibits 1a and 26 are currently being lodged with the Clerk of the Court.

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# VAULT EXHIBIT FORM

CASE NO: C267882	HEARING DATE: 9-12-13
DEPT. NO 20	JUDGE: JEROME TAO
	CLERK LINDA SKINNER
	REPORTER: SARA RICHARDSON
STATE: STATE OF NEVADA	JURY FEES: \$
	P. WECKERLY / M. DiGiacomo
	COUNSEL FOR STATE:
DEFENDANT: DAVID BURNS	A. Sgro / C. ORAM
	COUNSEL FOR DEFENDANT:

COURT

	Date Offered	Objection	Date Admitted
A. Power Point Presentation	9/12/13		9/12/13



CASE NO. C-10-267882

DEPT NO. 20

PLAINTIFF, STATE OF NEVADA,

VS

DEFENDANT, WILLIE MASON & DAVID  
BURNS.

TRIAL DATE: 1/20/2015

JUDGE: Hon. Charles Thompson

CLERK:

RECORDER:

COUNSEL FOR PLAINTIFF, Chief Deputy

District Attorneys Marc DiGiacomo and Pamela  
Weckerly

COUNSEL FOR DEFENDANT MASON, Robert  
Langford

COUNSEL FOR DEFENDANT BURNS, Anthony  
Sgro & Christopher Oram

No.		Date Offered	Obj	Date Admitted
1	Aerial 5662 Meikle - Close	1/28	N/D	1/28/15
2	Aerial 5662 Meikle - Far	1/28	N/D	1/28/15
3	Photo Burns Front	2/9	N/D	2/9/15
4	Photo Burns Side	2/9	N/D	2/9/15
5	Photo Mason Front	2/9	N/D	2/9/15
6	Photo Mason Side	2/9	N/D	2/9/15
7	Photo Cousins	2/11	N/D	2/11/15
8	Photo Monica	2/11	N/D	2/11/15
9	Photo JobLoc Front	2/9	N/D	2/9/15
10	Photo JobLoc Side	2/9	N/D	2/9/15
11	Photo Array			
12	Photo Rowland	2/11	N/D	2/11/15
13	Crime Scene Diagram	1/27/15	N/D	1/27/15
14	Photo Crime Scene Day 1 APT BUILDING	1/27	N/D	1/27/15
15	Photo Crime Scene Day 1 APT BUILDING	1/27	N/D	1/27/15
16	Photo Crime Scene Day 1 APT BUILDING	1/27	N/D	1/27/15
17	Photo Crime Scene Day 1 STREET / APT BUILDING	1/27	N/D	1/27/15

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18	Photo Crime Scene Day 1	Apt Building	1/27	N/O	1/27/15
19	Photo Crime Scene Day 1	Apt Building	1/27	N/O	1/27/15
20	Photo Crime Scene Day 1	STREET	1/27	N/O	1/27/15
21	Photo Crime Scene Day 1	Behind Apt	1/27	N/O	1/27/15
22	Photo Crime Scene Day 1	Fence	1/27	N/O	1/27/15
23	Photo Crime Scene Day 1	5642	1/27	N/O	1/27/15
24	Photo Crime Scene Day 1	TRUCK	1/27	N/O	1/27/15
25	Photo Crime Scene Day 1	STAIRS	1/27	N/O	1/27/15
26	Photo Crime Scene Day 1	DOOR	1/27	N/O	1/27/15
27	Photo Crime Scene Day 1	LIVING ROOM	1/27	N/O	1/27/15
28	Photo Crime Scene Day 1	DOOR - FROM INSIDE	1/27	N/O	1/27/15
29	Photo Crime Scene Day 1	COUCH / TV	1/27	N/O	1/27/15
30	Photo Crime Scene Day 1	COUCH / WINDOW	1/27	N/O	1/27/15
31	Photo Crime Scene Day 1	VICTIM ON COUCH	1/27	N/O	1/27/15
32	Photo Crime Scene Day 1	2nd COUCH	1/27	N/O	1/27/15
33	Photo Crime Scene Day 1	COUCH / STEREO	1/27	N/O	1/27/15
34	Photo Crime Scene Day 1	VICTIM	1/27	N/O	1/27/15
35	Photo Crime Scene Day 1	VICTIM'S HAND	1/27	N/O	1/27/15
36	Photo Crime Scene Day 1	CLOSE UP HAND	1/27	N/O	1/27/15
37	Photo Crime Scene Day 1	VICTIM	1/27	N/O	1/27/15
38	Photo Crime Scene Day 1	VICTIM	1/27	N/O	1/27/15
39	Photo Crime Scene Day 1	VICTIM'S FEET	1/27	N/O	1/27/15
40	Photo Crime Scene Day 1	METAL FRAGMENTS	1/27	N/O	1/27/15
41	Photo Crime Scene Day 1	VICTIM	1/27	OBS	
42	Photo Crime Scene Day 1	VICTIM	1/27	N/O	1/27/15
43	Photo Crime Scene Day 1	VICTIM'S LEGS	1/27	N/O	1/27/15
44	Photo Crime Scene Day 1	COUCH	1/27	N/O	1/27/15
45	Photo Crime Scene Day 1	COUCH	1/27	N/O	1/27/15
46	Photo Crime Scene Day 1	KITCHEN	1/27	N/O	1/27/15

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47	Photo Crime Scene Day 1	COUCH / KITCHEN	1/27	N/A	1/27/15
48	Photo Crime Scene Day 1	KITCHEN	1/27	N/A	1/27/15
49	Photo Crime Scene Day 1	HALLWAY	1/27	N/A	1/27/15
50	Photo Crime Scene Day 1	BULLET / FRIDGE	1/27	N/A	1/27/15
51	Photo Crime Scene Day 1	BULLET STRIKE WALL	1/27	N/A	1/27/15
52	Photo Crime Scene Day 1	WALL	1/27	N/A	1/27/15
53	Photo Crime Scene Day 1	CLOSE UP WALL	1/27	N/A	1/27/15
54	Photo Crime Scene Day 1	CLOSE UP WALL	1/27	N/A	1/27/15
55	Photo Crime Scene Day 1	CLOSET	1/27	N/A	1/27/15
56	Photo Crime Scene Day 1	LAUNDRY ROOM	1/27	N/A	1/27/15
57	Photo Crime Scene Day 1	HALLWAY	1/27	N/A	1/27/15
58	Photo Crime Scene Day 1	VACUUM	1/27	N/A	1/27/15
59	Photo Crime Scene Day 1	FLOOR / VACUUM	1/27	N/A	1/27/15
60	Photo Crime Scene Day 1	HALLWAY	1/27	N/A	1/27/15
61	Photo Crime Scene Day 1	BATHROOM	1/27	N/A	1/27/15
62	Photo Crime Scene Day 1	BATHROOM	1/27	N/A	1/27/15
63	Photo Crime Scene Day 1	BATHROOM	1/27	N/A	1/27/15
64	Photo Crime Scene Day 1	HALLWAY	1/27	N/A	1/27/15
65	Photo Crime Scene Day 1	HALLWAY / CLOTHES	1/27	N/A	1/27/15
66	Photo Crime Scene Day 1	BED ROOM	1/27	N/A	1/27/15
67	Photo Crime Scene Day 1	BUNK BEDS	1/27	N/A	1/27/15
68	Photo Crime Scene Day 1	BUNK BEDS	1/27	N/A	1/27/15
69	Photo Crime Scene Day 1	BUNK BED / WINDOW	1/27	N/A	1/27/15
70	Photo Crime Scene Day 1	DRESSER	1/27	N/A	1/27/15
71	Photo Crime Scene Day 1	BEDROOM FLOOR	1/27	N/A	1/27/15
72	Photo Crime Scene Day 1	TV	1/27	N/A	1/27/15
73	Photo Crime Scene Day 1	BOX	1/27	N/A	1/27/15
74	Photo Crime Scene Day 1	FLOOR - WHITE PAPER	1/27	N/A	1/27/15
75	Photo Crime Scene Day 1	BEDROOM	1/27	N/A	1/27/15

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76	Photo Crime Scene Day 1	DRESSER / FAN	1/27	N/O	1/27/15
77	Photo Crime Scene Day 1	DRESSER / FAN	1/27	N/O	1/27/15
78	Photo Crime Scene Day 1	STACK - DVD'S	1/27	N/O	1/27/15
79	Photo Crime Scene Day 1	BED / BLUE CRATES	1/27	N/O	1/27/15
80	Photo Crime Scene Day 1	STUFF / BED	1/27	N/O	1/27/15
81	Photo Crime Scene Day 1	STUFF / BED	1/27	N/O	1/27/15
82	Photo Crime Scene Day 1	STUFF / BED	1/27	N/O	1/27/15
83	Photo Crime Scene Day 1	DRESSER	1/27	N/O	1/27/15
84	Photo Crime Scene Day 1	HEAD BOARD	1/27	N/O	1/27/15
85	Photo Crime Scene Day 1	DOOR - BATHROOM	1/27	N/O	1/27/15
86	Photo Crime Scene Day 1	FLOOR - PLATE	1/27	N/O	1/27/15
87	Photo Crime Scene Day 1	CLOSE UP - PLATE	1/27	N/O	1/27/15
88	Photo Crime Scene Day 1	CLOSER - PLATE	1/27	N/O	1/27/15
89	Photo Crime Scene Day 1	WHITE STUFF / FLOOR	1/27	N/O	1/27/15
90	Photo Crime Scene Day 1	OPEN DRAWER	1/27	N/O	1/27/15
91	Photo Crime Scene Day 1	OPEN DRAWER / <sup>WATER</sup> COOLER	1/27	N/O	1/27/15
92	Photo Crime Scene Day 1	WATER COOLER	1/27	N/O	1/27/15
93	Photo Crime Scene Day 1	FLOOR - BED ROOM	1/27	N/O	1/27/15
94	Photo Crime Scene Day 1	DOOR / TOWEL	1/27	N/O	1/27/15
95	Photo Crime Scene Day 1	BATH ROOM	1/27	N/O	1/27/15
96	Photo Crime Scene Day 1	SHAMPOO / CONDITIONER	1/27	N/O	1/27/15
97	Photo Crime Scene Day 1	BATHROOM	1/27	N/O	1/27/15
98	Photo Crime Scene Day 1	BULLET HOLE - WALL	1/27	N/O	1/27/15
99	Photo Crime Scene Day 1	BULLET HOLE - RULER	1/27	N/O	1/27/15
100	Photo Crime Scene Day 1	BULLET HOLE - RULER	1/27	N/O	1/27/15
101	Photo Crime Scene Day 1	ID - DEROCIA	1/27	N/O	1/27/15
102	Photo Crime Scene Day 1	BULLET STRIKES	1/27	N/O	1/27/15
103	Photo Crime Scene Day 1	A1 - CLOSE UP	1/27	N/O	1/27/15

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104	Photo Crime Scene Day 1	A2 / A3	1/27	N/A	1/27/15
105	Photo Crime Scene Day 1	A2 / A3	1/27	N/A	1/27/15
106	Photo Crime Scene Day 1	A3 close up	1/27	N/A	1/27/15
107	Photo Crime Scene Day 1	A3 - WALL	1/27	N/A	1/27/15
108	Photo Crime Scene Day 1	A4	1/27	N/A	1/27/15
109	Photo Crime Scene Day 1	HANDIE - B1	1/27	N/A	1/27/15
110	Photo Crime Scene Day 1	HANDIE - B1	1/27	N/A	1/27/15
111	Photo Crime Scene Day 1	BED	1/27	N/A	1/27/15
112	Photo Crime Scene Day 1	Sheet - B2	1/27	N/A	1/27/15
113	Photo Crime Scene Day 1	BEDROOM / RED	1/27	N/A	1/27/15
114	Photo Crime Scene Day 1	BULLET - B4	1/27	N/A	1/27/15
115	Photo Crime Scene Day 1	close up B4	1/27	N/A	1/27/15
116	Photo Crime Scene Day 1	C1	1/27	N/A	1/27/15
117	Photo Crime Scene Day 1	C1 - close up	1/27	N/A	1/27/15
118	Photo Crime Scene Day 1	C2	1/27	N/A	1/27/15
119	Photo Crime Scene Day 1	C3	1/27	N/A	1/27/15
120	Photo Crime Scene Day 1	C3 - WALL	1/27	N/A	1/27/15
121	Photo Crime Scene Day 1	VICTIM'S HAND	1/27	N/A	1/27/15
122	Photo Crime Scene Day 1	MONEY FROM HAND	1/27	N/A	1/27/15
123	Photo Crime Scene Day 1	VICTIM / ORANGE CONUS	1/27	N/A	1/27/15
124	Photo Crime Scene Day 1	VICTIM'S LEGS / CONUS	1/27	N/A	1/27/15
125	Photo Crime Scene Day 1	cone	1/27	N/A	1/27/15
126	Photo Crime Scene Evidence Day 1	item #4	1/27	N/A	1/27/15
127	Photo Crime Scene Evidence Day 1	item #5	1/27	N/A	1/27/15
128	Photo Crime Scene Evidence Day 1	item #6	1/27	N/A	1/27/15
129	Photo Crime Scene Evidence Day 1	item #7	1/27	N/A	1/27/15
130	Photo Crime Scene Evidence Day 1	item #14	1/27	N/A	1/27/15
131	Photo Crime Scene Evidence Day 1	item #15	1/27	N/A	1/27/15
132	Photo Crime Scene Evidence Day 1	item #16	1/27	N/A	1/27/15

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133	Photo Crime Scene Evidence Day 1 \$20	1/27	N/A	1/27/15
134	Photo Crime Scene Evidence Day 1 item #8	1/27	N/A	1/27/15
135	Photo Crime Scene Day 2 APT BUILDING	2/5	N/A	2/5/15
136	Photo Crime Scene Day 2 Hallway	2/5	N/A	2/5/15
137	Photo Crime Scene Day 2 Hallway 1 Box	2/5	N/A	2/5/15
138	Photo Crime Scene Day 2 Holes in wall	2/5	N/A	2/5/15
139	Photo Crime Scene Day 2 empty RACK	2/5	N/A	2/5/15
140	Photo Crime Scene Day 2 Holes in wall	2/5	N/A	2/5/15
141	Photo Crime Scene Day 2 #A & #B	2/5	N/A	2/5/15
142	Photo of Television - FRONT	2/5	N/A	2/5/15
143	Photo of Television - SIDE	2/5	N/A	2/5/15
144	Photo of Television - Bullet hole	2/5	N/A	2/5/15
145	Photo of Television close up #144	2/5	N/A	2/5/15
146	Photo of Television closer ↑	2/5	N/A	2/5/15
147	Photo Bullet Fragment Television	2/5	N/A	2/5/15
148	Photo Bullet From Cornelius	2/5	STIP	2/5/15
149	Photo Bullet From Cornelius	2/5	STIP	2/5/15
150	Photo Erica	1/27	N/A	1/27/15
151	Photo Cornelius Mayo Sr.	1/27	N/A	1/27/15
152	Photo Child CASHMERE	1/27	N/A	1/27/15
153	Photo Child	1/27	N/A	1/27/15
154	Photo Cornelius Mayo Jr.	1/27	N/A	1/27/15
155	Photo Evidence @ Autopsy - Bullet Fragments			
156	Photo Evidence @ Autopsy .. ..			
157	Photo X-Ray	1/28	N/A	1/28/15
158	Autopsy Photo - TAG	1/28	N/A	1/28/15
159	Autopsy Photo Full Figure	1/28	N/A	1/28/15
160	Autopsy Photo - CLOSE UP FACE	1/28	N/A	1/28/15
161	Autopsy Photo - RIGHT HAND	1/28	N/A	1/28/15

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162	Autopsy Photo - LEFT HAND	1/28	N/O	1/28/15
163	Photo House with gun DESK / DOOR	2/10	N/O	2/10/15
164	Photo House with gun BEDROOM	2/10	N/O	2/10/15
165	Photo House with gun BOX	2/10	N/O	2/10/15
166	Photo House with gun	2/10	N/O	2/10/15
167	Photo of Gun IN HOLSTER	2/10	N/O	2/10/15
168	Photo of Gun OUT OF HOLSTER	2/10	N/O	2/10/15
169	Photo of Gun Close up	2/10	N/O	2/10/15
170	Photo Monica Car - LEFT SIDE	2/5	N/O	2/5/15
171	Photo Monica Car RIGHT SIDE	2/5	N/O	2/5/15
172	Photo Monica Car FRONT	2/5	N/O	2/5/15
173	Photo Monica Car LEFT SIDE	2/5	N/O	2/5/15
174	Photo Monica Car LEFT FRONT	2/5	N/O	2/5/15
175	Photo Monica Car DRIVER'S SEAT	2/5	N/O	2/5/15
176	Photo Monica Car DASHBOARD	2/5	N/O	2/5/15
177	Photo Monica Car GLOVE COMPARTMENT	2/5	N/O	2/5/15
178	Photo Monica Car PASSENGER REAR	2/5	N/O	2/5/15
179	Photo Monica Car TRUNK	2/5	N/O	2/5/15
180	Photo Monica Car DMV REGISTRATION	2/5	N/O	2/5/15
181	Photo Monica Car MONICA'S ID (WORK)	2/5	N/O	2/5/15
182	Photo Monica Car " " (RECRUITER)	2/5	N/O	2/5/15
183	Photo Monica's House	2/5	N/O	2/5/15
184	Photo Monica's House 5824	2/5	N/O	2/5/15
185	Photo Monica's House CAR IN GARAGE	2/5	N/O	2/5/15
186	Photo Monica's House GARAGE	2/5	N/O	2/5/15
187	Photo Monica's House DRIVER'S SIDE - GARAGE	2/5	N/O	2/5/15
188	Photo Monica's House 891-ULY	2/5	N/O	2/5/15
189	Photo Monica's House SPIDERMAN BOOK	2/5	N/O	2/5/15
190	Photo Monica's House GAS BILL	2/5	N/O	2/5/15

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191	Photo JobLoc's Apartment 2057	2/9	N/O	2/9/15
192	Photo JobLoc's Apartment CHAIR / L.R.	2/9	N/O	2/9/15
193	Photo JobLoc's Apartment LIVING ROOM	2/9	N/O	2/9/15
194	Photo JobLoc's Apartment - BLUE SHOES	2/9	N/O	2/9/15
195	Photo JobLoc's Apartment Sheet - 2 cones	2/9	N/O	2/9/15
196	Photo JobLoc's Apartment Close up of cones	2/9	N/O	2/9/15
197	Photo JobLoc's Apartment PANTS / pillow	2/9	N/O	2/9/15
198	Photo JobLoc's Apartment PANTS	2/9	N/O	2/9/15
199	Photo JobLoc's Apartment Ash TRAY	2/9	N/O	2/9/15
200	Photo JobLoc's Apartment STUFF FLOOR / cones	2/9	N/O	2/9/15
201	Photo JobLoc's Apartment PANTS	2/9	N/O	2/9/15
202	Photo JobLoc's Apartment BLUE / BLACK	2/9	N/O	2/9/15
203	Photo JobLoc's Apartment Cones - Cig - Pills	2/9	N/O	2/9/15
204	Photo JobLoc's Apartment door / windows	2/9	N/O	2/9/15
205	Photo JobLoc's Apartment Bag / Floor	2/9	N/O	2/9/15
206	Photo JobLoc's Apartment CIGARETTES	2/9	N/O	2/9/15
207	Photo JobLoc's Apartment T-SHIRT / CHAIR	2/9	N/O	2/9/15
208	Photo JobLoc's Apartment " " DOOR	2/9	N/O	2/9/15
209	Photo JobLoc's Apartment Cig BUTT - FLOOR	2/9	N/O	2/9/15
210	Photo JobLoc's Apartment cones / CHAIR	2/9	N/O	2/9/15
211	Photo JobLoc's Apartment close up Cig BUTT	2/9	N/O	2/9/15
212	Photo JobLoc's Apartment CHAIR	2/9	N/O	2/9/15
213	Photo JobLoc's Apartment KITCHEN	2/9	N/O	2/9/15
214	Photo JobLoc's Apartment KITCHEN	2/9	N/O	2/9/15
215	Photo JobLoc's Apartment COUNTER	2/9	N/O	2/9/15
216	Photo JobLoc's Apartment SPRITE can / cone	2/9	N/O	2/9/15
217	Photo JobLoc's Apartment TICKET / cone	2/9	N/O	2/9/15
218	Photo JobLoc's Apartment 4 RAYS	2/9	N/O	2/9/15
219	Photo JobLoc's Apartment PAPER WORK ( DAVIS )	2/9	N/O	2/9/15

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220	Photo JobLoc's Apartment	CHAIR - Living Rm	2/9	N/O	2/9/15
221	Photo JobLoc's Apartment	BATHROOM / TOILET	2/9	N/O	2/9/15
222	Photo JobLoc's Apartment	BATH TUB	2/9	N/O	2/9/15
223	Photo JobLoc's Apartment	SHOWER CURTAIN	2/9	N/O	2/9/15
224	Photo JobLoc's Apartment	BATHROOM CABINET	2/9	N/O	2/9/15
225	Photo JobLoc's Apartment	BATHROOM FLOOR	2/9	N/O	2/9/15
226	Photo JobLoc's Apartment	BED ROOM	2/9	N/O	2/9/15
227	Photo JobLoc's Apartment	TV	2/9	N/O	2/9/15
228	Photo JobLoc's Apartment	CLOSET / BATHROOM	2/9	N/O	2/9/15
229	Photo JobLoc's Apartment	CLOSET / CRUTCH	2/9	N/O	2/9/15
230	Photo JobLoc's Apartment	SLEEPING BAG	2/9	N/O	2/9/15
231	Photo JobLoc's Apartment	GRIPS / CONE	2/9	N/O	2/9/15
232	Photo JobLoc's Apartment	DR RECEIPTS	2/9	N/O	2/9/15
233	Photo JobLoc's Apartment	PILL BOTTLES <sup>ALBERT DAVIS</sup>	2/9	N/O	2/9/15
234	Photo JobLoc's Apartment	DR INSTRUCTIONS	2/9	N/O	2/9/15
235	Photo JobLoc's Apartment	DR RECEIPT	2/9	N/O	2/9/15
236	Photo JobLoc's Apartment	DR RECEIPT - CASH	2/9	N/O	2/9/15
237	Photo JobLoc's Apartment	BEDROOM - STUFF ON FLOOR	2/9	N/O	2/9/15
238	Photo JobLoc's Apartment	STUFF / FLOOR	2/9	N/O	2/9/15
239	Photo JobLoc's Apartment	GLOVES / FLOOR	2/9	N/O	2/9/15
240	Photo Evidence Apartment	CIG BUTTS	2/9	N/O	2/9/15
241	Photo Evidence Apartment	CIG PACKAGES	2/9	N/O	2/9/15
242	Photo Evidence Apartment	BLUE / BLACK BRACE	2/9	N/O	2/9/15
243	Photo Evidence Apartment	" "	2/9	N/O	2/9/15
244	Photo Evidence Apartment	BRACE - opened	2/9	N/O	2/9/15
245	Photo Evidence Apartment	ITEM # 14	2/9	N/O	2/9/15
246	Photo Evidence Apartment	ITEMS # 23	2/9	N/O	2/9/15
247	Photo Evidence Apartment	ITEM # 24	2/9	N/O	2/9/15

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248	Photo Evidence Apartment	PICTURES / CARDS	2/9	N/D	2/9/15
249	Photo Evidence Apartment	" "	2/9	N/D	2/9/15
250	Photo De'Vonja Hospital	FACE	2/9	STIP	2/9/15
251	Photo De'Vonja Hospital	STOMACH w/ TUBE	2/9	STIP	2/9/15
252	Photo De'Vonja Hospital	CLOSEUP ↑	2/9	STIP	2/9/15
253	Photo De'Vonja Clothes	BRA	2/9	STIP	2/9/15
254	Photo De'Vonja Clothes	PANTIES	2/9	STIP	2/9/15
255	Photo De'Vonja Clothes	BLUE PANTS - FRONT	2/9	STIP	2/9/15
256	Photo De'Vonja Clothes	BLUE PANTS - REAR	2/9	STIP	2/9/15
257	Photo De'Vonja Clothes	SHIRTS purple/white	2/9	STIP	2/9/15
258	Photo De'Vonja Clothes	PURPLE SHIRT	2/9	STIP	2/9/15
259	Photo De'Vonja Clothes	WHITE SHIRT	2/9	STIP	2/9/15
260	Photo Dr. Goshi Vial		2/9	STIP	2/9/15
261	Photo De'Vonja Bullet		2/9	STIP	2/9/15
262	VOLUNTARY STATEMENT: <sup>ERICA</sup> NEUMANN		1/27	OBT	1/27/15
A	DVD		2/5	N/D	2/5/15
263	Small EVIDENCE ENVELOPE		1/27	N/D	1/27/15
A	COPPER JACKET		1/27	STIP	1/27/15
B	BULLET FRAGMENT		1/27	STIP	1/27/15
C	4 BULLET FRAGMENTS		1/27	STIP	1/27/15
264	Small EVIDENCE ENVELOPE		1/27	N/D	1/27/15
A	THREE BULLET FRAGMENTS		1/27	STIP	1/27/15
265	Small EVIDENCE ENVELOPE		1/27	N/D	1/27/15
A	FABRIC		NOT	OPENED	
266	Large EVIDENCE ENVELOPE		1/27	N/D	1/27/15
A	PIECE OF WHITE PAPER		NOT	OPENED	
B	PIECE OF WHITE PAPER		NOT	OPENED	

264 B - Bullet 1/27 STIP 1/27/15

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## STATE'S EXHIBITS

CASE NO. C267882

	Date Offered	Objection	Date Admitted
267. DVD - Binions complete	1/29/15	N/O	1/29/15
268. DVD - Golden Nugget #330	1/29/15	N/O	1/29/15
269. DVD - Golden Nugget #334	1/29/15	N/O	1/29/15
270. DVD - Golden Nugget ATM	1/29/15	N/O	1/29/15
271. DVD - Monica Teras Composite	1/29/15	N/O	1/29/15
272. DVD - Opera House Composite	1/29/15	N/O	1/29/15
273. DVD - Downtown composite	1/29/15	N/O	1/29/15
274. DVD - Monica Martinez Statement	1/28	OBS	1/28/15
275. DVD - Opera House Complete	1/29	N/O	1/29/15
276. DVD - Texas Station complete	1/29	N/O	1/29/15
277. Paper with Drawing	2/10	N/O	2/10/15
278. Letter - Cornelius Mayo	2/5	OBS	
279. Photo Lineup - Tyler Mitchell	2/5	N/O	2/5/15
280. Photo Lineup - Devonia Newman	2/10	N/O	2/10/15
281. Phone Number	1/30	N/O	1/30/15
282. Walmart - (9pg) Job-Loc injury	2/11	N/O	2/11/15
283. Photo Lineup - Monica Martinez	1/29	N/O	1/29/15
284. Letter - to Monica (4pg)	1/29	OBS	1/29/15
285. Letter to Monica (9pg)	1/29	OBS	1/29/15
286. GPA - Monica Martinez	1/30	N/O	1/30/15
287. DVD - D. Rowland	1/30	OBS	1/30/15
288. Photo - my space	1/30	OBS	1/30/15
289. Donovan Rowland's 45 - Grand Jury	1/30	OBS	1/30/15

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## STATE'S EXHIBITS

CASE NO. C247882

	Date Offered	Objection	Date Admitted
290. LETTER - D.R. → JOB. LOC			
291. DVD - NEWMAN STATEMENT	2/4	N/O	2/6/15
292. DVD - MAYO INTERVIEW			
293. DVD - CHRISTINE 911	2/6	STIP	2/6/15
294. DVD - CORNELIUS PHONE	2/5	STIP	2/5/15
295. METRO PCS RECORD <sup>702 5424661</sup>	2/5	N/O	2/5/15
296. METRO PCS CELL SITES 10-23-09	2/5	N/O	2/5/15
297. METRO PCS <sup>909 2330860</sup> 8-1-10 to 8-23-10	2/5	N/O	2/5/15
298. METRO <sup>Phone Logs</sup> RECORDS <sup>702 5424661</sup> 8-1-10 to 8-23-10	2/5	N/O	2/5/15
299. Single PAPER - WINSTON HILL	2/6	N/O	2/6/15
300. Single PAPER - DEQUITA	2/6	N/O	2/6/15
301. METRO RECORDS - 702-542-4661 <sup>8-1-10 to 8-23-10</sup>	2/9	N/O	2/9/15
302. METRO RECORDS <sup>909 2330860</sup> <sup>8-1-10 to 8-23-10</sup>	2/9	N/O	2/9/15
303. PHONE LOGS	2/6	N/O	2/6/15
304. PHONE LOGS	2/6	N/O	2/6/15
305. PHONE RECORDS - T-MOBILE - TOWERS	2/6	N/O	2/6/15
306. AERIAL SCENES	2/9	N/O	2/9/15
307. AERIAL SCENES			
308. PHONE CONTACTS - TYLER MITCHELL	2/5	N/O	2/5/15
309. PHONE RECORDS	2/5	OBS	2/5/15
310. TEXT MESSAGES	2/5	OBS	
311. Small EVIDENCE ENVELOPE	2/5	STIP	2/5/15
A. BULLET FRAGMENT	2/5	STIP	2/5/15

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	Date Offered	Objection	Date Admitted
312. Small Evidence Envelope	2/5	STP/0	2/5/15
A. Bullet	2/5	STP/0	2/5/15
313. Medium Evidence Bag			
A. 2 Empty Newport Cigarette Packs	NOT	OPENED/NOT MARKED	
314. Small Evidence Envelope			
A. 1 Orange Colored Cigarette + 1 White Butt			
315. Small Evidence Envelope	2/5	STP/0	2/5/15
A. Two Bullet Fragments	2/5	STP/0	2/5/15
316. Medium Evidence Envelope			
A. Latex glove	NOT OPENED NOT MARKED		
B. Latex glove			
C. Blue glove			
D. Black Knit glove			
317. Medium Evidence Envelope			
A. Black wallet + contents	NOT	OPENED/NOT MARKED	
318. Medium Evidence Bag			
A. Black glove	NOT OPENED NOT MARKED		
B. Latex glove			
C. Latex glove			
D. Latex glove			
E. Latex glove			
319. Large Evidence Envelope			
A. Copies of X-Rays	NOT	OPENED/NOT MARKED	

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## STATE'S EXHIBITS

CASE NO. C267882

	Date Offered	Objection	Date Admitted
319 B. 2 BLOCKBUSTER RECEIPTS	NOT OPENED / NOT MARKED		
320. EVIDENCE BOX	2/5	N/O	2/5/15
A. BLACK HOLSTER	2/5	N/O	2/5/15
B. REVOLVER	2/5	N/O	2/5/15
321. EXTRA LARGE EVIDENCE BAG	2/9	N/O	2/9/15
A. HANES BOXER BRIEFS	2/9	N/O	2/9/15
B. RED MONKEY PANTS	2/9	N/O	2/9/15
C. BRACE	2/9	N/O	2/9/15
D. DENIM SHORTS	2/9	N/O	2/9/15
322. SMALL EVIDENCE ENVELOPE	2/5	STIP	2/5/15
A. BULLET	2/5	STIP	2/5/15
323. DVD - 911 CORNELIUS MAYO	2/5	STIP	2/5/15
324. T-MOBILE RECORDS	2/6	N/O	2/6/15
325. Photo - JEROME THOMAS	2/9	N/O	2/9/15
326. Greyhound - Disk 1	2/9	STIP	2/9/15
327. Greyhound - Disk 2	2/9	STIP	2/9/15
328. Greyhound - Disk 3	2/9	STIP	2/9/15
329. Greyhound - LA Composite	2/9	STIP	2/9/15
330. Greyhound LV - Composite	2/9	STIP	2/9/15
331. JOB - SB CALL	2/9	OBS	2/9/15
332. D. SHOT	2/10	N/O	2/10/15
333. graph - DNA - GUN	2/9	N/O	2/9/15
334. graph DNA	2/9	N/O	2/9/15

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## STATE'S

## EXHIBITS

CASE NO. C267882

[illegible]

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DEFT'S EXHIBITS

CASE NO. C247882

	Date Offered	Objection	Date Admitted
A. PHOTO	1/27	N/O	1/27/15
B. "	1/27	N/O	1/27/15
C. "	1/27	N/O	1/27/15
D. "	1/27	N/O	1/27/15
E. "	1/27	N/O	1/27/15
F. "	1/27	N/O	1/27/15
G. "	1/27	N/O	1/27/15
H. UMC RECORDS - DEVONIA	1/29	N/O	1/29/15
I. UMC Follow up 8/7	1/29	N/O	1/29/15
J. UMC 8/7	1/29	N/O	1/29/15
K. UMC PEDIATRIC - NEWMAN	1/29	N/O	1/29/15
L. UMC CC Flow - NEWMAN	1/29	N/O	1/29/15
M. LETTER FROM Jerome Thomas to Monica	1/30	N/O	1/30/15
N. PHOTOS -	1/30	N/O	1/30/15
O. GPA - MONICA MARTINEZ			
P. AGREEMENT TO TESTIFY - M. MARTINEZ			
Q. INFORMATION - M. MARTINEZ	1/30	N/O	1/30/15
R. LETTER D.R. to J.T.			
S. PHOTOS - (12)	2/5	N/O	2/5/15
T. PHOTO - GIFFEL (INVESTIGATOR)			
U. CSI REPORT - MAYO	2/6	STIP	2/6/15
V. DRAWING by DEVONIA NEWMAN	2/6	N/O	2/6/15
W. PHOTO - BLACK MALE - FACE	2/11	N/O	2/11/15

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JAN 27 2015

JAN 29 2015

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JAN 30 2015

FEB 05 2015



## EXHIBITS

CASE NO. C267882

[illegible]

FEB 11 2015

FEB 09 2015

COURT'S EXHIBITS

CASE NO. C247882

	Date Offered	Objection	Date Admitted
1. JUROR #6- QUESTION - ASKED/ANSWERED	2/5		2/5/15
2. QUESTION FROM JUROR #4- ASKED/ANSWERED	2/5		2/5/15
3. QUESTION FROM JUROR #4- ASKED/ANS	2/5		2/5/15
4. QUESTION FROM JUROR #12- ASKED/ANS	2/6		2/6/15
5. QUESTION FROM JUROR #5- ASKED/ANS	2/9		2/9/15
6. QUESTION FROM JUROR #8- NOT ASKED	2/9		2/9/15
7. QUESTION FROM JUROR #8- ASK/ANS	2/10		2/10/15
8. QUESTION FROM JUROR #12- NOT ASKED	2/10		2/10/15
9. QUESTION FROM JUROR #6- NOT ASKED	2/10		2/10/15
10. QUESTION FROM JUROR #6- NOT ASKED	2/10		2/10/15
11. QUESTION FROM JUROR #4- ASKED/ANS	2/11		2/11/15
12. QUESTION FROM JUROR #8- ASKED/ANS	2/11		2/11/15
13. QUESTION FROM JUROR #4- ASKED/ANS	2/11		2/11/15
14. QUESTION FROM JURY - ASKED/RESP	2/12		2/12/15
15. QUESTION FROM JURY - ASKED/RESP	2/13		2/13/15
16. LETTER FROM JUDGE	2/13		2/13/15
17. CLARIFICATION FROM JURY	2/13		2/13/15
18. DVD - MONICA MARTINEZ <sup>Day 1</sup> 1/28/15	2/17		2/17/15
19. DVD - MONICA MARTINEZ - Day 2 1/29/15	2/17		2/17/15
20. QUESTION FROM JURY	2/17		2/17/15
21. ANSWER FROM COURT TO QUESTION (20)	2/17		2/17/15

FEB 09 2015  
FEB 12 2015 FEB 10 2015 FEB 11 2015 FEB 06 2015 FEB 05 2015

# Evidentiary Hearing

Date: 9-20-18

Judge: Michelle Clavitt

Court Clerk: Susan Botzenhart

Recorder: Kristine Santi

Counsel for Plaintiff: Jacqueline

Counsel for Defendant: Jamie Resch

Counsel for Defendant: Jamie Resch

Left's EXHIBITS

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# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; REQUEST FOR  
TRANSCRIPTS PURSUANT TO NRAP 9(A)(3); DISTRICT COURT DOCKET ENTRIES; FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

DAVID JAMES BURNS aka D-SHOT,

Defendant(s).

Case No: C-10-267882-2

Dept No: XII

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 13 day of November 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk