IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No: 77424

APPELLANT'S APPENDIX VOLUME 12 OF 12 PAGES 2440-2652

ATTORNEY FOR APPELLANT

RESCH LAW, PLLC d/b/a
Conviction Solutions
Jamie J. Resch
Nevada Bar Number 7154
2620 Regatta Dr., Suite 102
Las Vegas, Nevada, 89128
(702) 483-7360

ATTORNEYS FOR RESPONDENT

CLARK COUNTY DISTRICT ATTY.
Steven B. Wolfson
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

NEVADA ATTORNEY GENERAL
Aaron Ford
100 N. Carson St.
Carson City, Nevada 89701
(775) 684-1265

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DAVID BURNS, CASE NO. 77424

EXHS

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: XX

PETITIONER'S EXHIBITS IN SUPPORT OF SUPPLEMENT TO POST-CONVICTION WRIT OF HABEAS CORPUS

Date of Hearing: March 8, 2018
Time of Hearing: 9:00 a.m.

COMES NOW Petitioner, David Burns, by and through appointed counsel, Jamie J. Resch, Esq., and hereby submits his Exhibits in Support of Supplement to Post-Conviction Writ of Habeas Corpus.

Dated this 27th day of November, 2017.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
JAMIE J. RESCH
Attorney for Petitioner

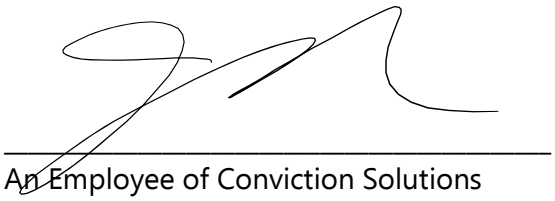
CERTIFICATE OF SERVICE

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 27, 2017, I served a true and correct copy of the foregoing Exhibits in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) via first class mail in envelopes addressed to:

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

and via Wiznet's electronic filing system, as permitted by local practice to the following person(s):

Steven B. Wolfson
Clark County District Attorney
PDMotions@ClarkCountyDA.com



An Employee of Conviction Solutions

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

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 PRESENT:

Burns, David	Defendant present
Di Giacomo, Marc P.	Attorney for Plaintiff
Oram, Christopher R	Attorney for Defendant
Sgro, Anthony Patrick	Attorney for Defendant
State of Nevada	Plaintiff
Weckerly, Pamela C	Attorney for Plaintiff

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

SAO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
FEB 09 2015
BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVID BURNS,
#2757610

Defendant.

CASE NO: C-10-267882-2
DEPT NO: 20

STIPULATION AND ORDER WAIVING SEPARATE PENALTY HEARING

THIS MATTER being tried before a jury and pursuant thereto on 20th day of January, 2015; the Defendant being represented by counsel, Christopher Oram and Anthony Sgro, the State being represented by Deputies MARC DIGIACOMO and PAMELA WECKERLY, and pursuant to the provisions of NRS 175.552, the parties hereby

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stipulate and agree to waive the separate penalty hearing in the event of a finding of guilt 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.

DATED this 9 day of _ February _, 2015.

DAVID BURNS

DATED this 9 day of _ February _, 2015.

CHRISTOPHER ORAM
Nevada Bar#4349

DATED this 9 day of _ February _, 2015.

ANTHONY SGRO
Nevada Bar #3811

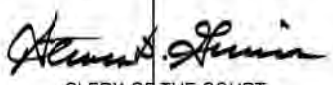
DATED this 9th day of _ February _, 2015.

MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955

IT IS SO ORDERED

DATED this 9 day of __February_, 2015.

DISTRICT JUDGE



JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. Cornelius Lee Mayo, Defendant.	District Court Case No.: C-15-309033-1 Dept.: IX Justice Court Case No.: 10F21953X

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this 27th day of August, 2015

Justice of the Peace, Las Vegas Township

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. Cornelius Lee Mayo Defendant	District Court Case No.: Justice Court Case No.: 10F21953X

BINDOVER and ORDER TO APPEAR

An Order having been made this day by me that **Cornelius Lee Mayo** be held to answer before the Eighth Judicial District Court, upon the charge(s) of **CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM; Use c/s in presence of child. w/SBH to child [51243]; TRAFFICKING IN COCAINE** committed in said Township and County, on August 07, 2010 .

IT IS FURTHER ORDERED that said defendant is commanded to appear in the Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment Courtroom "A", Las Vegas, Nevada on September 01, 2015 at 10:00 AM for arraignment and further proceedings on the within charge(s).

Dated this 27th day of August, 2015

Justice of the Peace, Las Vegas Township

ORIGINAL

FILE IN OPEN COURT ON 8/11/10
COURT CLERK

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
CORNELIUS LEE MAYO #1646544,
Defendant.

CASE NO: 10F21953X
DEPT NO: 2

AMENDED
CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222); USE CONTROLLED SUBSTANCE IN THE PRESENCE OF A CHILD RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 453.3325 - NOC 51243) and TRAFFICKING IN CONTROLLED SUBSTANCE (Category B Felony - NRS 453.3385.1 - NOC 51156), in the manner following, to-wit: That the said Defendant, on or about the 7th day of August, 2010, at and within the County of Clark, State of Nevada,

COUNT 1 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM

did wilfully, unlawfully, feloniously, and knowingly, being responsible for the safety and welfare of a child under the age of 18 years, to-wit: DE'VONIA NEWMAN, being approximately 12 years of age, by permitting the said DE'VONIA NEWMAN to be placed in a situation where she suffered unjustifiable physical pain and substantial bodily harm, by the defendant selling and/or distributing narcotics at the residence where his daughter, DE'VONIA NEWMAN, lived; an unnamed assailant came to the residence purporting to purchase controlled substances and shot at and into the body of said DE'VONIA NEWMAN, causing substantial bodily harm.

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ACRM
Amended Criminal Complaint
5393126

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COUNT 2 - USE CONTROLLED SUBSTANCE IN THE PRESENCE OF A CHILD RESULTING IN SUBSTANTIAL BODILY HARM

did intentionally, unlawfully, and feloniously allow DE'VONIA NEWMAN, a child who is less than 18 years of age, to be present in any conveyance or upon any premises wherein a controlled sbustance other than Marijuana, to-wit: Cocaine, is being used in violation of the provisions of NRS 453.011 to 453.552, inclusive, the defendant in any manner knowingly engaging in, conspiring with, and/or aiding or abeting another person to engage in such activity, the violation proximately causing substantial bodily harm to DE'VONIA NEWMAN.

COUNT 3 - TRAFFICKING IN CONTROLLED SUBSTANCE

did then and there wilfully, unlawfully, feloniously, knowingly, or intentionally possess, either actually or constructively, 4 grams or more, but less than 14 grams, to-wit: approximately 10.3 grams of Cocaine, or any mixture of substance consisting of approximately 10.3 grams containing the controlled substance Cocaine.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

07/30/2015

10F21953X/ckb
LVMPD EV# 1009151920
(TK6)

FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

NOV 24 9 21 AM '10

JUSTICE COURT
LAS VEGAS NEVADA
BY RG DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO #1646544,

Defendant.

CASE NO: 10F21953X

DEPT NO: 6

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of CHILD ABUSE & NEGLECT (Felony - NRS 200.508, 0.060); ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED (Felony - NRS Chapter 453.3325) and TRAFFICKING IN CONTROLLED SUBSTANCE (Felony - NRS 453.3385), in the manner following, to-wit: That the said Defendant, on or about the 7th day of August, 2010, at and within the County of Clark, State of Nevada,

COUNT 1 - CHILD ABUSE & NEGLECT

did wilfully, unlawfully, feloniously, and knowingly, being responsible for the safety and welfare of a child under the age of 18 years, to-wit: DE'VONIA NEWMAN, being approximately 12 years of age, by permitting the said DE'VONIA NEWMAN to be placed in a situation where she suffered unjustifiable physical pain and substantial bodily harm, by the defendant selling and/or distributing narcotics at the residence where his daughter, DE'VONIA NEWMAN, lived; an unnamed assailant came to the residence purporting to purchase controlled substances and shot at and into the body of said DE'VONIA NEWMAN, causing substantial bodily harm.

COUNT 2 - ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED

did then and there wilfully, unlawfully and feloniously, allow a child, to-wit: DE'VONIA NEWMAN, being approximately 12 years of age of age, to be present in any conveyance, or upon any premises, to-wit: the residence located at 5662 Meikle Lane, Apt. A, Las Vegas, Clark County, Nevada wherein the controlled substance, to-wit: Cocaine is

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being used, sold, exchanged, bartered, supplied, dispensed, given away, manufactured or compounded in violation of the provisions of NRS 453.011 to 453.552, inclusive.

COUNT 3 - TRAFFICKING IN CONTROLLED SUBSTANCE

did then and there wilfully, unlawfully, feloniously, knowingly, or intentionally possess, either actually or constructively, 4 grams or more, but less than 14 grams, to-wit: approximately 10.3 grams of Cocaine, or any mixture of substance consisting of approximately 10.3 grams containing the controlled substance Cocaine.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

S. Mitchell

11/22/2010

10F21953X/jh
LVMPD EV# 1009151920
(TK6)

JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

PAGE:

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES - HEARING	CONTINUED TO:
NOVEMBER 24, 2010	**CRIMINAL COMPLAINT FILED** **COUNT 1 – CHILD ABUSE AND NEGLECT** **COUNT 2 – ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED** **COUNT 3 – TRAFFICKING IN CONTROLLED SUBSTANCE**	JR
NOVEMBER 30, 2010 N. OESTERLE	DEFENDANT **NOT PRESENT** IN COURT **ARREST WARRANT ISSUED: 20,000/20,000 PER COUNT**	DP
DECEMBER 14, 2010 N. OESTERLE N. GRAHAM, DA D. COX, PD L. FOGLEBOCH, CR S. RANGE, CLK	INITIAL ARRAIGNMENT DEFENDANT **PRESENT** IN COURT **IN CUSTODY** DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PUBLIC DEFENDER APPOINTED TO REPRESENT THE DEFENDANT MOTION TO REDUCE BAIL AND/OR O/R RELEASE BY DEFENSE – **MOTION DENIED** PRELIMINARY HEARING DATE SET **DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF**	12/27/10 9:30 AM #6 CM
DECEMBER 27, 2010 E. MARTIN FOR N. OESTERLE H. TRIPPIEDI, DA B. HOFFMAN, PD K. FLUKER, CR C. MECCIA, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY ORAL MOTION TO WITHDRAW BY PUBLIC DEFENDER DUE TO CONFLICT – MOTION GRANTED PASSED FOR CONTINUED APPOINTMENT OF COUNSEL – TO BE PRESENT **DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF**	12/28/10 7:45AM #6 JR
DECEMBER 28, 2010 E. MARTIN FOR N. OESTERLE P. SAMPLES, DA A. GOLDSTEIN, ESQ. K. FLUKER, CR E. MCALOON, CLK	DEFENDANT PRESENT IN COURT IN CUSTODY COURT APPOINTED COUNSEL TO REPRESENT THE DEFENDANT- A. GOLDSTEIN HAS CONFLICT REPRESENTING DEFENDANT DISCOVERY GIVEN TO STATE COURT APPOINT COUNSEL TO REPRESENT THE DEFENDANT- B. PERCIVAL APPOINTED IN ABSENTIA PRELIMINARY HEARING DATE SET NOTIFY B. PERCIVAL, ESQ/jr PASSED BY COURT FOR COUNSEL TO BE PRESENT DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	1/4/11 7:45 #6 1/11/11 9:30 #6 PRELIMINARY HEARING PJ

JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

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JANUARY 11, 2011 J. SCISCENTO M. SCHWARTZER, DA B. PERCIVAL, ESQ S. OTT, CR L. MUAINA, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY MOTION TO CONTINUE BY STATE – MOTION GRANTED MOTION BY DEFENSE FOR O/R RELEASE – MOTION GRANTED CONTINUED FOR STATUS CHECK ON DISCOVERY RESET BAIL: O/R RELEASE O/R CONTINUES	04/11/11 8:00 #2 LM
APRIL 11, 2011 J. SCISCENTO M. THOMSON, DA B. PERCIVAL, ESQ. S. OTT, CR L. MUAINA, CLK	DEFENDANT **PRESENT** IN COURT PRELIMINARY HEARING SET **O/R CONTINUES**	11/29/11 9:00AM #2 DP
NOVEMBER 29, 2011 J. SCISCENTO H. TRIPPIEDI, DA B. PERCIVAL, ESQ S. GRAHAM, CR L. MUAINA, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY ON OTHER CHARGES CONTINUED BY STIPULATION OF COUNSEL RESET PRELIMINARY HEARING DATE O/R CONTINUES	01/03/12 9:00 #2 LM
JANUARY 3, 2012 J. SCISCENTO H. TRIPPIEDI, DA B. PERCIVAL, ESQ. S. OTT, CR P. JACKSON, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT MOTION BY DEFENSE TO CONTINUE- MOTION GRANTED PRELIMINARY HEARING RESET DATE GIVEN AT DEFENSE COUNSEL REQUEST **O/R CONTINUES**	6/15/12 9AM #2 PJ
JUNE 15, 2012 J. SCISCENTO M. SCHWARTZER, DA B. PERCIVAL, ESQ C. GARDNER, CR L. MUAINA, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT CONTINUED FOR NEGOTIATIONS O/R CONTINUES	06/29/12 8:00 #2 LM

JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

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JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

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JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

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JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. **MAYO, CORNELIUS LEE** CASE NO. **10F21953X**

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Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

7/16/2013 9:00:00 AM Preliminary Hearing Result: Matter Heard

PARTIES PRESENT:	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Zadrowski, Bernie	
Court Reporter:	Ott, Shawn	
Court Clerk:	Jackson, Pamela	
Senior/Visiting Judge:	Oesterle, Nancy	

PROCEEDINGS

Hearings: 7/31/2013 9:00:00 AM: Preliminary Hearing

Events:

Custody Status Slip (No Custody Change)

Comment

A. Goldstein, esq appeared on behalf of Mr. Percival,esq

Preliminary Hearing

reset

Notify Review Date: 7/17/2013

Mr. Percival,esq/SM

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

7/31/2013 9:00:00 AM Preliminary Hearing Result: Matter Continued

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Wong, Hetty	
Court Reporter:	Ott, Shawn	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings: 10/30/2013 8:00:00 AM: Negotiations

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

10/30/2013 8:00:00 AM Negotiations Result: Matter Continued

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Duncan, Wesley	
Court Reporter:	Delucca, Gerri	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings:	11/13/2013 8:00:00 AM: Negotiations	Added
Events:	**Continued For Negotiations**	

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

11/13/2013 8:00:00 AM Negotiations Result: Matter Continued

PARTIES PRESENT: Defendant Mayo, Cornelius Lee

Judge: Sciscento, Joseph S.
Prosecutor: Duncan, Wesley
Court Reporter: Delucca, Gerri
Court Clerk: Jackson, Pamela

PROCEEDINGS

Hearings: 12/3/2013 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

and counsels presence/ B. Percival, esq./notified/ PJ

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

12/3/2013 8:00:00 AM Negotiations Result: Matter Continued

PARTIES PRESENT: Attorney Percival, Brent D.

Judge: Sciscento, Joseph S.
Prosecutor: Albritton, Alicia
Court Reporter: Ott, Shawn
Court Clerk: Jackson, Pamela

PROCEEDINGS

Hearings: 3/4/2014 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

3/4/2014 8:00:00 AM Negotiations Result: Matter Heard

PARTIES PRESENT: Attorney Percival, Brent D.

Judge: Sciscento, Joseph S.
Prosecutor: Jones, John
Court Reporter: Ott, Shawn
Court Clerk: Moore, Stacey

PROCEEDINGS

Hearings: 3/18/2014 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

3/18/2014 8:00:00 AM Negotiations Result: Matter Heard

PARTIES PRESENT: Defendant Mayo, Cornelius Lee

Judge: Sciscento, Joseph S.
Prosecutor: Thomson, Megan
Court Reporter: Ott, Shawn
Court Clerk: Moore, Stacey

PROCEEDINGS

Hearings: 10/8/2014 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Notify Review Date: 3/19/2014

B. Percival, esq/ notified SMM

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

L 0 0 4 3 3 0 1 0 8

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

10/8/2014 8:00:00 AM Negotiations Result: Matter Continued

PARTIES PRESENT:	Attorney	Percival, Brent D.
Judge:	Sciscento, Joseph S.	
Prosecutor:	Petsas, Nicholas	
Court Reporter:	Delucca, Gerri	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings:	11/5/2014 8:00:00 AM: Negotiations	Added
Events:	**Continued For Negotiations**	

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

11/5/2014 8:00:00 AM Negotiations Result: Matter Continued

PARTIES PRESENT: Attorney Percival, Brent D.

Judge: Sciscento, Joseph S.
Prosecutor: Petsas, Nicholas
Court Reporter: Delucca, Gerri
Court Clerk: Jackson, Pamela

PROCEEDINGS

Hearings: 2/4/2015 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

2/4/2015 8:00:00 AM Negotiations (O/R) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Moskal, Tommy	
Court Reporter:	O'Neill, Jennifer	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings: 3/26/2015 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

3/26/2015 8:00:00 AM Negotiations (O/R) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Burns, Patrick	
Court Reporter:	Ott, Shawn	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings: 5/27/2015 9:00:00 AM: Preliminary Hearing Added

Events:

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

5/27/2015 9:00:00 AM Preliminary Hearing (O.R) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Moskal, Tommy	
Court Reporter:	O'Neill, Jennifer	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings:	7/9/2015 8:00:00 AM: Negotiations	Added
Events:	**Continued For Negotiations**	

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

7/9/2015 8:00:00 AM Negotiations (O/R) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Albritton, Alicia	
Court Reporter:	O'Neill, Jennifer	
Court Clerk:	Moore, Stacey	

PROCEEDINGS

Hearings: 8/18/2015 9:00:00 AM: Preliminary Hearing — Added

Events:

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

8/11/2015 8:00:00 AM Motion (O/R) Result: Motion Granted

PARTIES PRESENT: Attorney Percival, Brent D.

Judge: Sciscento, Joseph S.
Prosecutor: Albritton, Alicia
Court Reporter: Ott, Shawn
Court Clerk: Moore, Stacey

PROCEEDINGS

Events: **Amended Criminal Complaint**

filed in open court

Motion

by State to file an amended criminal complaint- motion granted

Future Court Date Stands

08/18/15 9am

Charges: **Amended: 002: Use controlled substance in the presence of a child, resulting in substantial bodily harm to the child** Amended Complaint Filed

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

8/18/2015 9:00:00 AM Preliminary Hearing (o/r) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Sciscento, Joseph S.	
Prosecutor:	Burns, Patrick	
Court Reporter:	O'Neill, Jennifer	
Court Clerk:	Jackson, Pamela	

PROCEEDINGS

Hearings: 8/27/2015 8:00:00 AM: Negotiations Added

Events: **Continued For Negotiations**

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

10F21953X **State of Nevada vs Mayo, Cornelius Lee** Lead Atty: Brent D. Percival

8/27/2015 8:00:00 AM Negotiations (O.R) Result: Matter Heard

PARTIES PRESENT:	Attorney	Percival, Brent D.
	Defendant	Mayo, Cornelius Lee
Judge:	Pro Tempore, Judge	
Prosecutor:	Moskal, Tommy	
Court Reporter:	Ott, Shawn	
Court Clerk:	Jackson, Pamela	
Pro Tempore:	Dabney, Phillip J	

PROCEEDINGS

Events: **Unconditional Bind Over to District Court** Review Date: 8/28/2015

Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.

District Court Appearance Date Set

Sep 1 2015 10:00AM: O/R

Comment

Date set at State's request

Case Closed - Bound Over

Plea/Disp:

001: CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

002: Use c/s in presence of child, w/SBH to child [51243]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

003: TRAFFICKING IN COCAINE
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO
#1646544,

Defendant.

CASE NO: 10F21953X

DEPT NO: 6

REQUEST FOR ARREST WARRANT

COMES NOW, DAVID ROGER, District Attorney, and requests that a Warrant of Arrest be issued for the above named Defendant pursuant to NRS 171.106 and the Complaint and/or ~~Affidavit(s)~~ attached hereto and incorporated herein by this reference.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

$60,000 total

PROBABLE CAUSE FOUND: ✓ BAIL: $20,000 per count

PROBABLE CAUSE NOT FOUND: _____

JUSTICE OF THE PEACE,
LAS VEGAS TOWNSHIP

10F21953X
718921

DEFENDANT INFORMATION WORKSHEET

DO NOT USE IF PRINTED CRIMINAL HISTORY IS ATTACHED

AGENCY CASE NO. 100915-1920

DEFENDANT INFORMATION

Name (last, first, middle)		aka				
Mayo, Cornelius Lee		**Jones, Cornelius Lee**				
Defendant's place of birth	*City*	*State*	*SS #*			
	Las Vegas	**NV**	[redacted]			
Location of crime - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*
5662 Meikle Lane	**Las Vegas**	**NV**	**89156**		**A**	
Defendant's current address - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*
same as above						

RACE	SEX	HGT	WT	HAIR	EYES	DOB
B	**M**	**6'3**	**190**	**Black**	**Brown**	

DEFENDANT INFORMATION

Name (last, first, middle)		aka				
Defendant's place of birth	*City*	*State*	*SS #*			
Location of crime - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*
Defendant's current address - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*

RACE	SEX	HGT	WT	HAIR	EYES	DOB

DEFENDANT INFORMATION

Name (last, first, middle)		aka				
Defendant's place of birth	*City*	*State*	*SS #*			
Location of crime - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*
Defendant's current address - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*

RACE	SEX	HGT	WT	HAIR	EYES	DOB

DEFENDANT INFORMATION

Name (last, first, middle)		aka				
Defendant's place of birth	*City*	*State*	*SS #*			
Location of crime - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*
Defendant's current address - Street No.	*City*	*State*	*ZIP*	*Room*	*Apt*	*Space*

RACE	SEX	HGT	WT	HAIR	EYES	DOB

LVMPD 315 (Rev. 10/98) - AUTOMATED/WP12

FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

NOV 29 3 21 AM '10

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO, #1646544

Defendant.

JUSTICE COURT
LAS VEGAS NEVADA
BY _____ DEPUTY

CASE NO: 10F21953X

DEPT NO: 6

FILED UNDER SEAL

All materials, except the Criminal Complaint, are being filed under seal in obedience to Section 239B.030 of the Nevada Revised Statute and pursuant to the Order issued by the Honorable Douglas E. Smith, signed December 28, 2006.

10F21953X
718922

DOCUMENT26

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)

(N.R.S. 53 amended 07/13/93)

10F21953X
718923

FILED

Nov 24 9 21 AM '10

EVENT: 100915-1920

JUSTICE COURT
LAS VEGAS NEVADA
BY _____ DEPUTY

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Mayo, Cornelius Lee
[redacted]

Detective R Williams #5646, being first duly sworn, deposes and says:

That R. Williams is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 12 years, assigned to investigate the crime(s) of Child Endangerment WSBH, Allowing Child Around were USCSA Violated and Trafficking in Cocaine committed on or about August 7, 2010, which investigation has developed Mayo, Cornelius as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

1. I, DETECTIVE R. WILLIAMS #5646, WORKING WITH THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT ABUSE/ NEGLECT DETAIL WAS ASSIGNED CASE # 100915-1920, CONCERNING THE CHILD ENDANGERMENT OF DE' VONIA NEWMAN WHO IS 12 YEARS OLD.

2. ON AUGUST 7, 2010, AT 0400 HRS, LVMPD HOMICIDE DETECTIVES RESPONDED TO 5662 MEIKLE LANE #A, LAS VEGAS NEVADA 89156, REFERENCE TO A SHOOTING THAT TOOK PLACE EARLIER THAT MORNING.

3. DETECTIVE M. WILDERMANN # 3516, ARRIVED ON SCENE AND DETECTIVE C. BUNTING RESPONDED TO UMC TRAUMA TO MEET WITH THE VICTIM.

4. DETECTIVE M. WILDERMANN MET THE OCCUPANT OF THE APARTMENT CORNELIUS MAYO DOB 3/4/82, AND CONDUCTED A TAPED FACT-FINDING INTERVIEW CONCERNING THE DEATH INVESTIGATION.

5. MAYO STATED THAT HE, HIS GIRLFRIEND DERECIA NEWMAN, (IDENTIFIED AS THE DECEASED VICTIMS MOTHER) AND DE' VONIA NEWMAN DOB 12/9/97, WAS IN THE LIVING ROOM. THAT A FRIEND " STEPHANIE" CALLED AND ADVISED THAT SHE WOULD BE COMING BY THE APARTMENT.

6. MAYO CONTINUED AND SAID " AND THEN ABOUT LIKE 30 MINUTES LATER, I GUESS SHE CAME BY, ' CAUSE I WAS IN THE BATHROOM WHEN THIS HAPPENED. ' CAUSE I KNOW MY GIRL, SHE WENT UP. SHE GOT THE DOOR. I HEARD HER SCREAMING.

7. I HEARD HER, SCREAM, AND BY THE TIME I HEARD THAT, THAT'S WHEN I HEARD THE FIRST GUNSHOT, THEN I HEARD HER SCREAM AGAIN, AND THEN THAT'S WHEN THE SECOND GUNSHOT, THEN I FELT LIKE I HEARD A LITTLE RUMBLING BUT THAT WAS MY DAUGHTER. I DON'T KNOW IF SHE WAS IN HER ROOM, OR IN THE FRONT WHERE, WHERE THAT HAPPENED AT. BUT I KNOW SHE RAN IN THE BATHROOM WHERE I WAS AT, 'CAUSE SHE

EVENT: 100915-1920

DUCKED DOWN BY THE WALL, ' CAUSE THAT'S WHEN I WAS PULLING UP MY CLOTHES, TRYING TO GET OUT THE BATHROOM' BUT BEFORE I EVEN GET OUT OF THERE, HE WAS COMING IN THE BATHROOM, I GUESS CHASING BEHIND HER. BUT HE AIN'T NEVER COME ALL THE WAY IN THE BATHROOM 'CAUSE HE WOULD OF CAME IN THERE A LITTLE MORE, I PROBABLY WOULDN'T BE TALKING TO YOU RIGHT NOW, IT LOOKED LIKE SHE LUNGED TOWARD HIM, I'M NOT FOR SURE, BUT JUST WHEN SHE DID THAT, THAT'S WHEN HE SHOT HER. AND THEN LIKE I JUST WAITED IN THE BATHROOM LIKE 20 SECONDS LATER ' CAUSE I HEARD 'EM GOING BACK DOWN THE HALLWAY,. THEN I CAME OUTSIDE".

8. WHEN ASKED WHY DOES " STEPHANIE" COMES OVER MAYO STATED THAT IT'S USUALLY FOR SOME " WEED".

9. DETECTIVE BUNTING CONDUCTED A TAPED FACE FINDING INTERVIEW WITH DE' IONIA CONCERNING THE INCIDENT.

10. DE' VONIA STATED THAT SHE HEARD A KNOCK AT THE DOOR AND HER MOTHER WENT AND OPENED THE DOOR. DE' VONIA SAID THAT STEPHANIE ENTERED THE ROOM AND HER MOTHER WENT TO SHUT THE DOOR. WHEN TWO GUYS PUSHED THERE WAY IN AND SHOT HER MOTHER. DE' VONIA THE RAN INTO THE MASTER BEDROOM WERE SHE OBSERVED HER DAD GOING THROUGH THE DRESSER DRAWER TAKING MONEY OUT AND PUTTING IT IN HIS POCKETS. THEN BOTH HER AND HER DAD RAN INTO THE BATHROOM WERE HER DAD JUMPED INTO THE SHOWER WHILE SHE ATTEMPTED TO SHUT THE DOOR. THE UNKNOWN SUSPECT THEN ATTEMPTED TO PUSH THE DOOR OPEN. DE'VONIA STRUGGLED TO SHUT THE DOOR. THE UNKNOWN MALE THEN SHOT THROUGH THE DOOR. HE WAS THE ABLE TO PUSH HIS WAY INTO THE BATHROOM AND THEN HE AGAIN STRIKING DE' VONIA IN THE STOMACH. DE' VONIA FALLS TO THE GROUND AND THE UNKNOWN SUSPECT GOES THROUGH HER POCKETS. THE UNKNOWN SUSPECT THEN OBSERVES A PLATE OF "DOPE", ON THE WATER JUG IN THE BEDROOM. THE UNKNOWN SUSPECT THEN LEAVES DEVONIAN ALONE AND GOES TO THE "DOPE" AND TAKES IT AND THEN THE REST OF THE MONEY THAT SHE FATHERS MAYO DID NOT RETRIEVE FROM THE DRESSER. MAYO THEN WAITS UNTIL THE UNKNOWN SUSPECT TO LEAVE AND SAYS TO DE' VONIA "JUST LAY THERE." WHEN ASKED ABOUT WHAT WAS THE "DOPE", DE'VONIA REPLIED "CRACK".

11. HOMICIDE DETECTIVES COMPLETED A SEARCH WARRANT OF THE RESIDENCE.

12. IN THE MASTER BEDROOM THERE WAS A PLATE LOCATED ON THE FLOOR WITH AN UNKNOWN OFF WHITE HARD SUBSTANCE. WHICH BELIEVED TO BE ROCK COCAINE. ALSO INSIDE OF MAYO'S SHOE THERE WAS A SMALL OFF WHITE ROCK WHICH ALSO WAS BELIEVED TO BE COCAINE.

EVENT: 100915-1920

13. ON SEPTEMBER 22, 2010, AT 1026HRS, I, ARRIVED AT THE LVMPD'S EVIDENCE VAULT AND CONDUCTED A "NIK" TEST. I WAS CERTIFIED BY THE DEPARTMENT IN JANUARY OF 1999. I WEIGHED THE ITEM WHICH WAS LOCATED ON THE FLOOR AND IT WEIGHED 9.4 GRAMS. I ALSO WEIGHED THE OTHER ITEM WHICH WAS LOCATED IN MAYO'S SHOE AND IT WEIGHED 0.9 GRAMS. I THEN TESTED ALL OF THE ITEMS SEPARATELY AND ALL ITEMS TESTED POSITIVE FOR COCAINE BASE.

14. MAYO IS RESPONSIBLE FOR THE SAFETY AND WELFARE OF DE'VONIA. HE INTENTIONALLY ALLOWED DE' VONIA TO BE PRESENT UPON THE PREMISES WHEREIN A CONTROLLED SUBSTANCE WAS BEING SOLD, THAT BEING ROCK COCAINE. MAYO DID POSSES UPON HIS PREMISES A TOTAL OF 10.3 GRAMS OF ROCK COCAINE. GIVEN MAYO'S INVOLVEMENT WITH THE ILLEGAL DRUGS HE CREATED A DANGEROUS NARCOTIC ENVIRONMENT FOR DE' VONIA. AS A RESULT, DE' VONIA WAS SHOT OVER DRUGS AND MONEY. IT IS REQUESTED THIS WARRANT BE APPROVED FOR (1) COUNT OF CHILD ENDANGERMENT WITH SUBSTANTIAL BODILY HARM AND (1) COUNT OF ALLOWING A CHILD TO BE AROUND WERE USCSA IS VIOLATED AND TRAFFICKING COCAINE.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect Mayo, Cornelius on a charge(s) of Child Endangerment WSBH, Allowing Child Around were USCSA Violated and Trafficking in Cocaine.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 8 day of November, 2010.

DECLARANT: P# 5646

WITNESS: F. [illegible] 5542 **DATE:** 11-8-10

WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS
*** DO NOT MANUALLY ENTER INTO NCJIS ***

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA PLAINTIFF VS. MAYO, CORNELIUS LEE ID# 01646544 DEFENDANT	CASE NO: 10F21953X DEPT. NO: 6 AGENCY: METRO-YOUTH/FAMILY ARREST WARRANT

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID BEFORE ME ACCUSING MAYO, CORNELIUS LEE, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	CHILD NEGLECT WITH SUB	20,000.00	20,000.00	
1	ALLOWING CHILD TO BE P	20,000.00	20,000.00	
1	TRAFFICKING IN COCAINE	20,000.00	20,000.00	

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP, COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 8TH DAY OF DECEMBER, 2010.

Nancy Oesterle

JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
NANCY OESTERLE

10F21953X
730406

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA

PLAINTIFF

VS.

MAYO, CORNELIUS LEE
ID# 01646544

DEFENDANT

CASE NO: 10F21953X

DEPT. NO: 6

AGENCY: METRO-YOUTH/FAMILY

ARREST WARRANT

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT ON THE _____ DAY OF _____, _____, AND SERVED THE SAME BY ARRESTING AND BRINGING DEFENDANT, _____, INTO COU THIS _____ DAY OF _____, _____.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEV

BY: _____, DEPUTY

DEFENDANT MAYO, CORNELIUS LEE DEFENDANT ID# 01646544

CASE NO: 10F21953X DEPARTMENT JCRT6

JUDGE NANCY OESTERLE AGENCY: METRO-YOUTH/FAMILY

ORI [redacted] VRI [redacted] NAME MAYO, CORNELIUS LEE
DOB [redacted] SID
RAC B SEX M HGT 603 WGT 190 HAI BLK EYE BRO

----------WARRANT----------

HOI COI WNM MAYO, CORNELIUS LEE
NOC 00154 AOC OFC F FTF TRF JUV DSO DOW 11302010
OCA 1009151920 CCN 10F21953X BAIL 60,000.00
TRA MIS

----------SUPPLEMENTAL----------

SUBMITTING OFFICER ID#:MP5646 NAME: WILLIAMS, ROBERT R

COUNTS	CHARGE
1	CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM
1	ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED
1	TRAFFICKING IN COCAINE

******* C O N F I D E N T I A L *******

10F21953X
730408

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

I.D. #: 1646544 Event #: 101210-2945

DATE OF ARREST: 12-10-10 TIME OF ARREST: 1506

I.D. ESTAB. BY: SCOPE

INTAKE NAME (AKA, ALIAS, ETC.) Last	First	Middle	TRUE NAME Last	First	Middle
MAYO, CORNELIUS	LEE		Mayo,	Cornelius	Lee

ADDRESS NUMBER & STREET	BLDG./APT. #	CITY	STATE	ZIP
4910 E. OWENS AVE	C	LV	NV	89110

DATE OF BIRTH	RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY #	Speak English?	PLACE OF BIRTH
[redacted]	B	M	6-3	235	BLK	BRO	[redacted]	☒ Yes ☐ No	LV, NV

LOCATION OF CRIME (# - Street - City - State - Zip)	☒ CC ☐ LV	Citizen Arrest Y (N)	LOCATION OF ARREST	Sector/Beat	PCN #
WARRANT			GREEN BLOCK / GREEN CREEK LVAN 89110		

BKG. CODE	CHARGE ORD / NRS #	M	GM	F	ARR TYPE*	EVENT NUMBER	WARR / NCIC NUMBER	COURT LV	COURT JC	COURT DC	COURT OTHER
5033	CHILD NEGLECT WSBI 200.508 $20,000	☐	☐	☒	AW		10F21953X	☐	☒	☐	☐
0250	ALLOWING CHILD TO BE PRESENT WHERE MCSA VIOLATED 453.3325 $20,000	☐	☐	☒	AW		10F21953X	☐	☒	☐	☐
9781	TRAFFICKING IN COCAINE 453.3385 $20,000	☐	☐	☒	AW		10F21953X	☐	☒	☐	☐
		☐	☐	☐			JC-6	☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐
		☐	☐	☐				☐	☐	☐	☐

*ARREST TYPE: PC – PROBABLE CAUSE BS – BONDSMAN SURRENDER BW – BENCH WARRANT WA – WARRANT RM – REMAND GJI – GRAND JURY IND.

OTHER COURT:

[redacted]

C. Litten / C. LILLENTHAL 5290 / LVMPD
Arresting Officer's Signature (Print Name) P# Agency

SIA / / /
Transporting Officer's Signature (Print Name) P# Agency

APPROVAL CONTROL # FOR ADDITIONAL CHARGES:

Time Stamp at BOOKING

12-10-10 16:31 DSD RECORDS

☐ FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS

☐ BENCH WARRANT SERVED ON _____

☐ WARRANT SERVED ON _____

☐ GRAND JURY INDICTMENT SERVED ON _____

TYPE OF I.D. FOR VERIFICATION _____

FIRST APPEARANCE: DATE: _____ TIME: _____

COURT

☐ JUSTICE ☐ MUNICIPAL ☐ JUVENILE

☐ STANDARD BAIL ☐ O.R. RELEASE ☐ PROBABLE CAUSE ☐ I.A.D.

JUDGE: _____

P#:

LVMPD 22 (REV. 3-05) (2) COURT • ORIGINAL

SUPP 042 AA 2483

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF ARREST

I.D. #: 1646544

True Name: MAYO, CORNELIUS LEE Date of Arrest: 12-10-10 Time of Arrest: 1506

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department), Clark County, Nevada, being so employed for a period of 14 (years) (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of WARRANT at the location of GREENBROOK/GREENCREEK LV, NV 89110 (ADDRESS / CITY / STATE / ZIP)

and that the offense occurred at approximately 1506 hours on the 10 day of DECEMBER, 2010, in the county of ☒ Clark or ☐ City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

THAT ON THIS DATE I, DETECTIVE C. LILIENTHAL #5290, DID COME IN CONTACT WITH CORNELIUS MAYO, DOB 3-4-82 AS HE WAS DRIVING A WHITE SUV WITH NV PLATE 807VTV.

THAT MAYO HAD AN ELECTRONIC WARRANT ISSUED FOR HIS ARREST OUT OF THE LAS VEGAS JUSTICE COURT.

THA MAYO WAS ARRESTED AND TRANSPORTED TO CCDC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

C. [signature]
Declarant's Signature

C. LILIENTHAL 5290
Print Declarant's Name P#

LVMPD 22 – A (REV. 6-01) (1) ORIGINAL – COURT

CLARK COUNTY DETENTION CENTER
ARREST WARRANT ABSTRACT

12/10/2010
16:29

WARRANT NAME: MAYO, CORNELIUS LEE
[redacted]
RAC: B SEX: M HGT: 6'03" WGT: 190 HAI: BLK EYE: BRO

WARRANT #: 10F21953X EVENT #: CLARK COUNTY ONLY:

CNT	CHRG CODE	NRS CODE		CHARGE LITERAL	CASH BAIL	ASSUR BAIL
01	5033	200.508	F	CHILD NEGLECT WITH SUBSTANTIAL	$ 20000.00	$ 20000.00
	PCN#0028112422-001					
02	0250	453.332	F	ALLOWING CHILD TO BE PRESENT W	$ 20000.00	$ 20000.00
	PCN#0028112422-002					
03	9781	453.338	F	TRAFFICKING IN COCAINE	$ 20000.00	$ 20000.00
	PCN#0028112422-003					

ISSUED BY JUDGE: NANCY OESTERLE DOW: 11/30/2010
COURT: LAS VEGAS JUSTICE COURT DEPT: JCRT6

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT ON THE 10 DAY OF DEC., 2010, AND SERVED THE SAME BY ARRESTING THE WITHIN DEFENDANT, AND BRINGING HIM INTO COURT THIS 10 DAY OF DEC., 2010.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEVADA

BY: DBT. C. [redacted] #5290 LVMPD, DEPUTY

******* C O N F I D E N T I A L *******

☐ Courtesy Copy

Clerk's Initials

LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

DATE: 12-14-10 **DEPT #:** 6 **JUDGE:** OESTERLE

CUSTODY STATUS

NAME: Mayo, Cornelius

CASE #: 10F21953X **DEFENDANT 'S ID#:** 1046544

COUNT(S)	CHARGE	BAIL RESET	AMENDED TO
1	Child Abuse / Neg		
2	Allow child w/ess		10F21953X 735377
3	UCSA Traffic CS		

Other:

☐ **Remand on all Counts** ☐ **Remand on Counts**

☐ **Remand (NLVDC/HDC Billing Purposes)**

☐ **SENTENCE TO CCDC** MONTHS DAYS ☐ Flat Time ☐ No House Arrest

☐ **Contempt of Court**
Days with Days CTS
☐ Concurrent ☐ Consecutive
To Case #

☐ Concurrent ☐ Consecutive Case #

☐ **Specific CTS** Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS,** this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on:

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions:

☐ House Arrest Days ☐ PreTrial to Interview

NEXT COURT DATE: 12.22.10 TIME: 930 DEPT #: 6

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

RIM IMAGED LJ

NEXT COURT DATE: TIME: DEPT #:

JC-20 (Criminal) Rev. 8/09

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JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #	DEPT #	REQUESTED BY:
10F21953X	6	
NAME:	ID #	
Cornelius Mayo	1646544	

CHARGES:
CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM, TRAFFICKING IN COCAINE, ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED
TOTAL BAIL:
60,000

VERIFIED: **ADDRESS:** 4910 E. Owens, C, LV, NV
WITH WHOM/HOW LONG: Newman, Wanda Other / 4M

VERIFIED: **EMPLOYMENT STATUS:** Unemployed - 6m /
LENGTH:

VERIFIED: **RELATIVES - LOCAL :** **NOT LOCAL:**

FELONY/GROSS MISDEMEANOR CONVICTIONS: 05NV ATT PSP

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 2

COMMENTS:

RECOMMENDATION:

DATE: 12/13/2010 **PRETRIAL SERVICES:** Tyanna Johnson

CONFIDENTIAL

☐ Courtesy Copy

Clerk's Initials

LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

DATE: 12.27.10 **DEPT #:** 6 **JUDGE:** OESTERLE

CUSTODY STATUS

NAME: Mayo, Cornelius

CASE #: 10F21953X DEFENDANT 'S ID#: 1646544

COUNT(S)	CHARGE	BAIL RESET	AMENDED TO
1	Child Abuse/Neg		
2	Allow Child to Leave Scene UCSA w/ve		10F21953X 745541
3	TCS		

Other: _____

☐ **Remand on all Counts** ☐ **Remand on Counts** _____

☐ **Remand (NLVDC/HDC Billing Purposes)** _____

☐ **SENTENCE TO CCDC** _____ MONTHS _____ DAYS ☐ Flat Time ☐ No House Arrest

☐ **Contempt of Court**
_____ Days with _____ Days CTS
☐ Concurrent ☐ Consecutive
To Case # _____

☐ Concurrent ☐ Consecutive Case # _____

☐ **Specific CTS** _____ Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS**, this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on: _____

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions: _____

☐ House Arrest _____ Days ☐ PreTrial to Interview

NEXT COURT DATE: 12.28.10 TIME: 7:45 DEPT #: 6

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ _____ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

NEXT COURT DATE: _____ TIME: _____ DEPT #: _____

JC-20 (Criminal)
Rev. 8/09

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JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #	DEPT #	REQUESTED BY:
10F21953X	Jc-06	
NAME:	ID #	
Cornelius Mayo	1646544	

CHARGES:
CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM, TRAFFICKING IN COCAINE, ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED
CURRENT BAIL: $60,000

VERIFIED: **ADDRESS:** 4910 E. Owens, C, LV, NV
WITH WHOM/HOW LONG: Newman, Wanda Other / 4M

VERIFIED: **EMPLOYMENT STATUS:** Unemployed - 6m /
LENGTH:

VERIFIED: **RELATIVES - LOCAL :** **NOT LOCAL:**

FELONY/GROSS MISDEMEANOR CONVICTIONS: 05NV ATT PSP

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 2

COMMENTS:

RECOMMENDATION:

DATE: 12/23/2010 **PRETRIAL SERVICES:** Maritza Aguilar

CONFIDENTIAL

☐ Courtesy Copy

Clerk's Initials

LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

DATE: 12-28-10 **DEPT #:** 6 **JUDGE:** OESTERLE

CUSTODY STATUS

NAME: Mayo Cornelius

CASE #: 10F21953X DEFENDANT 'S ID#: 1646544

COUNT(S)	CHARGE	BAIL RESET	AMENDED TO
1	Child Abuse & Neg		
2	Allow child where UCSA Viol		
3	Traffic CS		

10F21953X
745929

Other:

☐ **Remand on all Counts** ☐ **Remand on Counts**

☐ **Remand (NLVDC/HDC Billing Purposes)**

☐ **SENTENCE TO CCDC** MONTHS DAYS ☐ Flat Time ☐ No House Arrest

☐ **Contempt of Court**
Days with Days CTS
☐ Concurrent ☐ Consecutive
To Case #

☐ Concurrent ☐ Consecutive Case #

☐ **Specific CTS** Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS**, this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on:

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions:

☐ House Arrest Days ☐ PreTrial to Interview

NEXT COURT DATE: ~~1-4-11~~ 1-4-11 TIME: 9:30 7:45 DEPT #: 6

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

NEXT COURT DATE: TIME: DEPT #:

JC-20 (Criminal)
Rev. 8/09

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LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

LM ☐
Clerk's Initials

DATE: 1/5/11 **DEPT #:** 2 **JUDGE:** SCISCENTO

CUSTODY STATUS

NAME: Mayo, Cornelius

CASE #: 10F21953X DEFENDANT 'S ID#: 1646544

COUNT(S)	CHARGE	BAIL/RESET	AMENDED TO
1	Child Abuse/Neg.		
2	Allow Child Under UCSA		
	Violated		
3	Traff CS		

Other: _____

☐ **Remand on all Counts** ☐ **Remand on Counts** _____

☐ **Remand (NLVDC/HDC Billing Purposes)** _____

10F21953X
751507

☐ **SENTENCE TO CCDC** _____ MONTHS _____ D/ e Arrest

☐ Concurrent ☐ Consecutive C

☐ **Contempt of Court**
_____ Days with ____ Days CTS
☐ Concurrent ☐ Consecutive
To Case # _____

☐ **Specific CTS** _____ Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS**, this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on: _____

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions: _____

☐ House Arrest _____ Days ☐ PreTrial to Interview

NEXT COURT DATE: 1-11-11 TIME: 930 DEPT #: 2

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ _____ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

NEXT COURT DATE: _____ TIME: _____ DEPT #: _____

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DEPT = JCRTE
**********          S E R V E D          **********


********************************************************************************
********************************************************************************
*                                                                              *
*      *************** NCJIS WANTED PERSON SYSTEM ***************             *
*                                                                              *
*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED                   *
*                                                                              *
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* WARRANT RECORD NUMBER/2060967                                                *
* NIN/W803171879                                        DATE:12/10/10          *
* SEQ/004          REASON/SERVED                        TIME:16:42:32          *
* WARRANT NAME     /MAYO, CORNELIUSLEE                                         *
* BASE RECORD NAME/MAYO, CORNELIUSLEE                                          *
* COURT CASE #/10F21953X                                                       *
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT                                    *
********************************************************************************
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DEPT = JCRT6
**********          S E R V E D          **********


********************************************************************************
********************************************************************************
*                                                                              *
*       *************** NCJIS WANTED PERSON SYSTEM ***************           *
*                                                                              *
*       PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED                  *
*                                                                              *
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* WARRANT RECORD NUMBER/2060965                                                *
* NIN/W803171879                                        DATE:12/10/10          *
* SEQ/002          REASON/SERVED                        TIME:16:42:32          *
* WARRANT NAME     /MAYO, CORNELIUSLEE                                         *
* BASE RECORD NAME/MAYO, CORNELIUSLEE                                          *
* COURT CASE #/10F21953X                                                       *
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT                                    *
********************************************************************************
********************************************************************************
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DEPT = JCRT6
************************        S E R V E D        ************************

********************************************************************************
********************************************************************************
*                                                                              *
*      *************** NCJIS WANTED PERSON SYSTEM ***************             *
*                                                                              *
*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED                   *
*                                                                              *
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES                         *
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER                  *
* WARRANT RECORD NUMBER/2060966                                                *
* NIN/W803171879                                        DATE:12/10/10          *
* SEQ/003          REASON/SERVED                        TIME:16:42:32          *
* WARRANT NAME     /MAYO, CORNELIUSLEE                                         *
* BASE RECORD NAME/MAYO, CORNELIUSLEE                                          *
* COURT CASE #/10F21953X                                                       *
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT                                    *
********************************************************************************
********************************************************************************
```

☐ Courtesy Copy

LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

Clerk's Initials

DATE: 1-11-11 **DEPT #:** 2 **JUDGE:** SCISCENTO

CUSTODY STATUS

NAME: Mayo, Cornelius

CASE #: 10F21953X DEFENDANT 'S ID#: 1264544

COUNT(S)	CHARGE	BAIL RESET	AMENDED TO
1	Child Abd/Neg		10F21953X 759013
2	Allow Child Use		
3	TCS		

Other:

☐ **Remand on all Counts** ☐ **Remand on Counts**

☐ **Remand (NLVDC/HDC Billing Purposes)**

☐ **SENTENCE TO CCDC** MONTHS DAYS ☐ Flat Time ☐ No House Arrest

☐ **Contempt of Court**
Days with Days CTS
☐ Concurrent ☐ Consecutive
To Case #

☐ Concurrent ☐ Consecutive Case#

☐ **Specific CTS** Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS**, this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on:

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions:

☐ House Arrest Days ☐ PreTrial to Interview

NEXT COURT DATE: TIME: DEPT #:

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☑ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

NEXT COURT DATE: 4-11-11 TIME: 8 DEPT #: 2

JC-20 (Criminal)
Rev. 8/09

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Clark County Pretrial Services

200 Lewis Avenue
(702) 671-3285
www.clarkcountycourts.us

DOA: 12/10/10
ID #: 1646544

RELEASE AGREEMENT

Charges: 10F21953X
Child Neglect w/SBO
Bodily Harm, Allowing
Child to Be Present
Where UCSA, Traff
Cocaine

NAME: MAYO, CORNELIUS

SPECIAL CONDITIONS:

☐ You are to stay out of trouble and make your court appearance.

IF YOU VIOLATE ANY CONDITION OF YOUR RELEASE YOU MAY BE ARRESTED IF PROBABLE CAUSE OF THE VIOLATION IS FOUND.

YOUR NEXT COURT APPEARANCE IS:

JUSTICE COURT • 200 LEWIS AVE • LAS VEGAS NV 89155 • (702) 671-3193

DATE, TIME & DEPARTMENT: 4/11/11 @ 8a JC 2

DISTRICT COURT • 200 LEWIS AVE • LAS VEGAS NV 89155 • (702) 671-0500

DATE, TIME & DEPARTMENT:

OTHER JURISDICTION COURT:

DATE & TIME:

If I fail to appear when so ordered and I am taken into custody outside of this state, I waive my rights relating to extradition proceedings.

Tomsad
Intake Services

Cornelius Mayo
Defendant

SUSCANO
Release Authorized By

1/11/11
Date

APPROPRIATE COURTROOM ATTIRE REQUIRED
NO SHORTS, HALTER TOPS OR TANK TOPS
SHOES ARE REQUIRED
(NO FOOD OR DRINK PERMITTED)

JC-2 (Intake Services)
Rev. 03/09
White - Court / Canary - Intake / Pink - Client

CONFIDENTIAL

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
10F21953X

DEPT #
JC-02

REQUESTED BY:

NAME:
Cornelius Mayo

ID #
1646544

CHARGES:
CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM, ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED, TRAFFICKING IN COCAINE
CURRENT BAIL: NICTC

VERIFIED: ADDRESS: 3955 E CHARLESTON, 259, LAS VEGAS, NV
WITH WHOM/HOW LONG: Newman, Wanda Parent / 3M

VERIFIED: EMPLOYMENT STATUS: UNEMPLOYED /
LENGTH: 1Y

VERIFIED: RELATIVES - LOCAL: **NOT LOCAL:**

FELONY/GROSS MISDEMEANOR CONVICTIONS: 05 NV ATT PSP

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 2

COMMENTS: DEFT I/C: 11F07798X INJ/DEST PROP, SERV SENT T/REL 12/01/11; PENDING: 11F10729X TAMPER W/VEH(GROSS) JC-10;

RECOMMENDATION:

DATE: 11/23/2011 **PRETRIAL SERVICES: Maritza Aguilar**

☑ Courtesy Copy

Clerk's Initials

LAS VEGAS JUSTICE COURT
CLARK COUNTY, NEVADA

DATE: 112911 **DEPT #:** 2 **JUDGE:** SCISCENTO

CUSTODY STATUS

NAME: Mayo, Cornelius

CASE #: 10F 21953X DEFENDANT 'S ID#: 1041054

COUNT(S)	CHARGE	BAIL RESET	AMENDED TO
1	Ch. 484 / NEG		10F21953X 1090290
2	allow ch. UCSA V101		
3	TCS		

Other:

☐ **Remand on all Counts** ☐ **Remand on Counts**

☐ **Remand (NLVDC/HDC Billing Purposes)**

☐ **SENTENCE TO CCDC** MONTHS DAYS ☐ Flat Time ☐ No House Arrest

☐ **Contempt of Court**
Days with Days CTS
☐ Concurrent ☐ Consecutive
To Case #

☐ Concurrent ☐ Consecutive Case #

☐ **Specific CTS** Days

☐ (1) **CTS**, this case, this lodging ☐ (2) **Total CTS**, this case, all lodgings

☐ (3) **Any CTS**, all cases, this lodging

☐ (4) **Maximum CTS**, this case – all lodgings; and all cases – this lodging

☐ If no complaint filed, defendant to be released on:

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ House Arrest (if qualifies), then Court Ordered Release with conditions:

☐ House Arrest Days ☐ PreTrial to Interview

NEXT COURT DATE: TIME: DEPT #:

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD

☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision

☐ Court Ordered Release to House Arrest / Scram ☐ Deft. Released from House Arrest ☐ No Contact with Victim

☐ Released due to DA Delayed Filing

NEXT COURT DATE: 10312 TIME: 9 DEPT #: 2

☒ Courtesy Copy

LAS VEGAS JUSTICE COURT

Clerk:

Housed at: _____

CLARK COUNTY, NEVADA

DATE: July 16, 2013 **DEPT#: JC Department 2** **JUDGE: Sciscento**

CUSTODY STATUS

NAME: : **CORNELIUS LEE MAYO**

CASE #: **10F21953X** DEFENDANT'S ID#: **1646544**

COUNT	CHARGE	BAIL RESET	AMENDED TO
001	CHILD NEGLECT WITH SUBSTANTIAL BODILY HARM		
002	ALLOWING CHILD TO BE PRESENT WHERE UCSA VIOLATED		
003	TRAFFICKING IN COCAINE		

Other:

☐ **Remand on all Counts** ☐ **Remand on Counts** _____

☐ **Remand (NLVDC/HDC Billing Purposes)** _____

☐ **SENTENCE TO CCDC** _____MONTHS _____DAYS ☐ No House Arrest

☐Concurrent ☐ Consecutive Case # _____

☐ **Specific CTS** _____Days ☐ **Total CTS**, this case, all lodgings

☐ House Arrest with conditions: _____

☐ House Arrest _____ Days ☐ PreTrial to Interview

☐ If no complaint filed, defendant to be released on: _____

☐ **FUGITIVES** - Court orders Defendant to be released 30 days from this date (IF THERE ARE NO LOCAL CHARGES) **OR** released 30 days after all local charges have been resolved.

☐ **Contempt of Court**
_____Days with _____ Days CTS
☐ Concurrent ☐Consecutive
To Case # _____

10F21953X
NCCS
Custody Status Slip (No Custody Change)
2714991

NEXT **IN CUSTODY** COURT DATE: _____ TIME: _____ DEPT #: _____

CHANGE OF CUSTODY STATUS

☐ CTS ☐ Dismissed ☐ Sentenced and/or Fine $ _____ ☐ Found Not Guilty ☐ No Probable Cause Found ☐ PAD
☐ Court Ordered Release ☐ O/R ☐ O/R with Intensive Supervision ☐ Deft. Released from Intensive Supervision
☐ Court Ordered Release to House Arrest ☐ Court Ordered Release to Scram ☐ Deft. Released from House Arrest
☐ Released due to DA Delayed Filing ☐ No Contact with Victim

Additional Information: 7-31-13 9 2

NEXT **OUT OF CUSTODY** COURT DATE: _____ TIME: _____ DEPT #: _____

This form is not to be altered without consent of Clark County Justice Courts and Detention Center's Administrations

10F21953X Cornelius Lee Mayo

By: 10F21953X

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO,
#1646544

Defendant.

Aug 5 2 12 PM '15

JUSTICE COURT
LAS VEGAS, NEVADA

BY AMC DEPUTY

CASE NO: 10F21953X

DEPT NO: 2

NOTICE TO PLACE ON CALENDAR

Upon the application of STEVEN B. WOLFSON, Clark County District Attorney, it is hereby requested that the above entitled matter be placed on the arraignment calendar on the 11TH day of AUGUST, 2015, at ~~8:00~~ 8:30 o'clock A.M. for the purpose of FILING AN AMENDED COMPLAINT.

DATED this _____ day of August, 2015.

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

BY _____
J. PATRICK BURNS
Deputy District Attorney
Nevada Bar #11779

, *Clerk of the Court*

BY _____
Clerk

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice To Place On Calendar, was made this 5TH day of August, 2015, by facsimile transmission to:

BRENT PERCIVAL
(702)385-3823

BY: _____
HENRY SOLIS
D.A. TEAM CLERK of the District Attorney's Office

hs

10F21953X
NOTI
Notice to Place on Calendar
5374288

ORIGINAL

34

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
THOMAS MOSKAL
Deputy District Attorney
Nevada Bar #12620
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
SEP 0 1 2015
BY, Kristen Brown
KRISTEN BROWN, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-15-309033-1
GPA
Guilty Plea Agreement
4484396

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO,
#1646544

Defendant.

CASE NO: C-15-309033-1
DEPT NO: IX

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony - NRS 453.401 - NOC 51306)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State will not oppose probation for period not to exceed three (3) years. If Defendant receives an honorable discharge from probation, and enrolls and completes aviation maintenance school, then Defendant may withdraw his guilty plea and instead plead guilty to Conspiracy to Possess Dangerous Drugs not to be Introduced into Interstate Commerce a gross misdemeanor with credit for time served. Further, the State will not oppose dismissal of Case No. 11F10729X, after entry of plea in District Court.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in

whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

Otherwise I am entitled to receive the benefits of these negotiations as stated in this plea agreement.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than ONE (1) year and a maximum term of not more than FIVE (5) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to $10,000.00. I understand that the law requires me to pay an Administrative Assessment Fee. I also understand that a conviction of any violation of NRS Chapter 453, the Uniform Controlled Substance Act, requires that I pay a controlled substance analysis fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any expenses related to my extradition, if any.

I understand that I am eligible for probation for the offense to which I am pleading

guilty. I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I understand that I must submit to blood and/or saliva tests under the Direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation and may receive a higher sentencing range.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand that if the offense(s) to which I am pleading guilty was committed while I was incarcerated on another charge or while I was on probation or parole that I am not eligible for credit for time served toward the instant offense(s).

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious negative immigration consequences including but not limited to:

1. The removal from the United States through deportation;
2. An inability to reenter the United States;
3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 1 day of Sep August, 2015.

CORNELIUS LEE MAYO
Defendant

AGREED TO BY:

THOMAS MOSKAL
Deputy District Attorney
Nevada Bar #12620

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

   Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This _____ day of August, 2015.

_____
ATTORNEY FOR DEFENDANT

ckb/L4

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
THOMAS MOSKAL
Deputy District Attorney
Nevada Bar #12620
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 09/01/15
10:00 AM
B. PERCIVAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO,
#1646544

Defendant.

CASE NO: C-15-309033-1

DEPT NO: IX

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That CORNELIUS LEE MAYO, the Defendant(s) above named, having committed the crime of **CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony - NRS 453.401 - NOC 51306)**, on or about the 7th day of August, 2010, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of

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W:\2010F\219\53\10F21953-INFM-(MAYO_CORNELIUS)-001.DOCX

EXHIBIT "1"

Nevada, did willfully, unlawfully, and feloniously conspire with with unknown individual to violate Uniform Controlled Substances Act.

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

BY
THOMAS MOSKAL
Deputy District Attorney
Nevada Bar #12620

10F21953X /ckb/L4
LVMPD EV#1009151920
(TK2)

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CLERK OF THE COURT

JOC

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO,
#1646544

Defendant.

CASE NO: C-15-309033-1

DEPT NO: IX

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony), in violation of NRS 453.401; thereafter, on the 21st day of January, 2016, the Defendant was present in court for sentencing with his counsel, BRENT D. PERCIVAL, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the $25.00 Administrative Assessment Fee, a $60.00 Drug Analysis fee, a $3.00 DNA Collection Fee, and a $150.00 DNA Analysis fee including testing to determine genetic markers, the Defendant is sentenced as follows: to a MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; placed on PROBATION for an indeterminate period not

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to exceed THREE (3) YEARS. CONDITIONS:

1. Report to P & P by 5:00 pm the next business day. You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.

2. You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.

3. You shall not consume any alcoholic beverages whatsoever. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood / breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.

4. You shall not use, purchase, or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent. Defendant is not able to use or possess medical marijuana without a Court order.

5. You shall not possess, have access to, or have under your control any type of weapon.

6. You shall submit your person, property, place of residence, vehicle, or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.

7. You must have prior approval by the Division of Par ole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined to a correctional institution unless specific written permission has been granted by the Division and the correctional institution.

8. You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.

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9. You shall comply with all municipal, county, state, and federal laws and ordinances.

10. You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.

11. You shall seek and maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division. If not working full time, Defendant must enroll and complete Auto Mechanic School or Aviation School and provide proof of completion. Court noted the Defendant cannot be given an honorable discharge if not completed, but advised it will not revoke the Defendant as long as he is in compliance with all other conditions of probation.

12. You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and / or restitution, even if it is discovered after your discharge.

13. Enter and complete any counseling as deemed necessary by P & P.

14. Have no contact, association, or affiliation with gangs or gang members, and no possession or display of gang paraphernalia.

15. Abide by any curfew imposed by probation officer.

Court noted that upon successful completion and an honorable discharge from probation, the Defendant will be eligible for the reduction, but it is not automatic and the matter must be placed on calendar.

CASE CLOSED.

DATED this FEB 0 2 2016 day of ~~January, 2016.~~

DISTRICT JUDGE

10F21953X: ckb/L4

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AJOC

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CORNELIUS LEE MAYO
#1646544

Defendant.

CASE NO. C309033-1

DEPT. NO. IX

ORDER FOR REVOCATION OF PROBATION AND
AMENDED JUDGMENT OF CONVICTION

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony) in violation of NRS 453.401; thereafter, on the 21st day of January, 2016, the Defendant was present in court for sentencing with counsel, wherein the Court did adjudge the Defendant guilty thereof by reason of the plea of guilty, suspended the execution of the sentence imposed and granted probation to the Defendant.

THEREAFTER, a parole and probation officer provided the Court with a written statement setting forth that the Defendant has, in the judgment of the parole and probation officer, violated the conditions of probation; and on the 21st day of February, 2017, the Defendant appeared in court with counsel BRENT PERCIVAL, ESQ., and pursuant to a probation violation hearing/proceeding, and good cause appearing to amend the Judgment of Conviction; now therefor,

IT IS HEREBY ORDERED that the probation previously granted to the Defendant is REVOKED; in addition to the original fees, fines and assessments, IT IS FURTHER ORDERED that the original sentence is MODIFIED and imposed as follows: a MAXIMUM FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of NINETEEN (19) MONTHS in the Nevada Department of Corrections (NDC); with FIFTY-SIX (56) DAYS credit for time served.

DATED this 23rd day of February, 2017

JENNIFER P. TOGLIATTI
DISTRICT COURT JUDGE

AMT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #4352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVID BURNS,
#2757610

Defendant.

CASE NO: C-10-267882-2

DEPT NO: XX

STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: March 8, 2018
TIME OF HEARING: 9:00 a.m.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplement to Petition for Writ of Habeas Corpus.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 13, 2010, the State charged DAVID JAMES BURNS, aka D-Shot, (hereinafter "Defendant"), by way of Indictment with the following: COUNT 1 – Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); COUNT 2 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.010, 200.030); COUNT 3 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 4 – Robbery With Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); COUNT 5 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); COUNT 6 – Robbery With Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); COUNT 7 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); and COUNT 8 – Battery with a Deadly Weapon Resulting in Substantial Bodily Harm (Felony – NRS 200.481). On October 28, 2010, the State filed a Notice of Intent to Seek the Death Penalty in this matter.

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.[1]

On July 19, 2013, Defendant filed a 500-page Motion to Strike the State's Notice of Intent to Seek the Death Penalty. The State filed its Opposition on July 25, 2013. This Court denied Defendant's Motion on September 12, 2013. In the interim, Defendant also filed multiple Motions to continue his trial date.

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.

On April 23, 2015, Defendant was adjudged guilty and sentenced to the Nevada Department of Corrections (NDC) as follows: COUNT 1 – a maximum of 72 months and a minimum of 12 months; COUNT 2 – a maximum of 120 months and a minimum of 24 months; COUNT 3 – a maximum of 180 months and a minimum of 24 months; COUNT 4 – a maximum of 180 months and a minimum of 24 months, plus a consecutive term of a maximum of 180

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

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

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

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

Defendant filed a Notice of Appeal on March 11, 2016. The Nevada Supreme Court remanded it back to the District Court for appointment of counsel. On March 30, 2017, Defendant's counsel was confirmed. Defendant's Supplemental Petition was filed on November 27, 2017. The State herein responds.

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STATEMENT OF FACTS

On August 7, 2010, Cornelius Mayo (hereinafter "Mayo") lived at 5662 Miekle Lane Apartment A, Las Vegas, Clark County, Nevada. He resided with his girlfriend, Derecia Newman, her twelve-year-old daughter, Devonia Newman, and his and Derecia's three young children, Cashmere Mayo (6), Cornelius Mayo Junior (5), and Cordaja Mayo (3). On August 6, 2010, Derecia's sister, Erica Newman, was also staying with the family. In the early morning hours of August 7, 2010, the household received a phone call on their landline phone. The number for that landline phone was 702-444-9446. The phone had a caller-identification feature. Cornelius Mayo heard Derecia answer the phone. The call was at 3:39 am. About 10 minutes later, there was another call. At the time, Cornelius was in the bathroom, but he heard his girlfriend, Derecia, answer the front door. Cornelius then heard a commotion, he heard Derecia scream and then he heard two gunshots. Cornelius also heard someone he knew to be Stephanie Cousins screaming. He then heard three more gunshots, and then saw 12-year-old Devonia run into the bathroom.

Cornelius told Devonia to sit quietly. A bullet came through the bathroom door, and Cornelius saw Devonia get up and try to run from the bathroom. At that point, Cornelius saw Devonia get shot, but he could not see who fired the shot. He could see that Devonia had been shot in the stomach. Cornelius told Devonia to be still, and left the bathroom. He checked the bedroom where Erica Newman and the small children were sleeping, and they were undisturbed. He called 911 from his cell phone, which was phone number 702-609-4483. Police and paramedics arrived, and the paramedics took Devonia to the hospital.

From looking at the landline phone's caller-identification feature, Cornelius saw that the two calls before the shooting were from "S. Cousins." Cornelius had known Stephanie Cousins for six or seven years. According to Cornelius, Derecia had sold marijuana to Stephanie Cousins in the past. After the police had arrived, Cornelius called Stephanie Cousins. He was extremely angry when he called. Stephanie Cousins told him that when she knocked on the door, two men happened to be waiting around the corner, and forced their way in when Derecia opened the door. Cornelius told Cousins that he believed she was lying.

After the police arrived, Cornelius noticed that $450.00 had been taken from the residence as well as a sack of marijuana and other minor property.

Homicide Detective Christopher Bunting was one of the detectives assigned to the case. He responded to the scene around 5:00 am. The apartment itself was a two-bedroom, two-bathroom apartment. It also had a living room and a kitchen. Immediately inside the front door of the apartment was the living room. On the couch in the living room, detectives observed Derecia Newman. She was in nearly a sitting position on the couch with a $20 bill clutched in her hand. She had an obvious, massive gunshot wound to her head. From Derecia's location, detectives examined the scene for evidence of additional gunshots or bullet strikes. They found a bullet strike in the hallway, and this shot hit the refrigerator. The third shot went down the hallway of the residence, the fourth went through the bathroom, and the fifth went into Devonia Newman. Later, detectives found another impact site, accounting for a sixth shot. There were no cartridge casings observed at the scene, leading detectives to believe that the weapon used was a revolver.

At the autopsy, Dr. Alane Olson testified that Derecia Newman sustained a gunshot wound to the head. Upon examination, Dr. Olson could see that the barrel of the gun had actually been pressed against her head when the trigger was pulled.

In the course of the investigation, detectives became aware of a woman named Monica Martinez. Martinez has a teenaged daughter named Tyler. Detectives met with Tyler and showed her a photographic line-up of several individuals, one of whom was Defendant. Defendant's nickname is "D-Shot."

Tyler Mitchell lived with her mom and younger siblings in August 2010. At the beginning of August, weeks before this incident, Tyler's mom, Monica Martinez, brought three men to the home. One of those men was "Job-Loc," Monica Martinez's boyfriend. The other two were (Willie) Darnell Mason, and Defendant. Mason's nickname was "G-Dogg." The three stayed for one night. During this time period, Monica had a silver, gray Crown Victoria sedan type car. Tyler knew Job-Loc's cell phone number to be 512-629-0041. Her mother's cell phone number was 702-927-8742. Mason's cell phone number was 909-233-

0860. After being shown three photographic line-ups, Tyler was able to identify Job-Loc. She also identified G-Dogg or Willie Darnell Mason. And she identified D-Shot or Defendant. Tyler also knew where Job-Loc lived during this time period: at the Brittany Pines Apartments between Lake Mead and Torrey Pines.

Detectives also interviewed Donovon Rowland. Rowland knew Job-Loc by a different nickname: Slick. He became friends with him. Through the course of his relationship with Slick, Rowland came to know Slick's girlfriend, Monica Martinez. At some point after Rowland met Slick, Slick broke his leg. Rowland also knew G-Dogg (Mason) through Slick or saw him at Slick's apartment while Monica Martinez was also present. One morning, Rowland was at Slick's apartment, as was Monica. G-Dogg (Mason) was there too. Another person was also present, although Rowland could not identify him. G-Dogg (Mason) was the person who opened the door for Rowland. The door was blocked from the inside by a chair and a box. G-Dogg (Mason) even looked out the window before he opened the door for Rowland. Rowland saw and recognized Monica and Slick. The fourth individual was named, D-Shot or D-Shock. Monica and Slick were arguing. Rowland testified that he did not see Slick holding a gun. The State impeached Rowland with his statements to detectives. Rowland commented that he was highly intoxicated at the time. In fact, Rowland admitted that twice he had told the police that he saw Slick cleaning a gun, but at trial suggested that he actually did not see that. Eventually, Slick handed the gun to Rowland. Upon being impeached with his statement to detectives, Rowland acknowledged that he told the police that Slick had asked him to hold a gun for him and that he had to leave. The next morning, Slick called Rowland and told him to look at the newspaper. Rowland saw a story about a mother killed and a daughter being critically injured in a shooting. Rowland called Slick back, and Slick told him that G-Dogg (Mason), Monica, and D-Shot/Defendant had done something. He said there was a crack-head who set up the whole thing. Slick also asked Rowland to sell the gun or bury it. Instead, Rowland left the gun at a friend's house and later tried to sell it. Slick had told Rowland he could keep the money from selling the gun. The gun was a revolver. It was also empty of bullets.

Detectives were able to obtain video surveillance tape from the Opera House, located in North Las Vegas. The relevant tape was from 2:37 a.m. on the morning of August 7, 2010, to approximately 3:00 a.m., less than an hour before the homicide.

Through investigation, detectives were able to get in contact with Stephanie Cousins. They also were able to contact Monica Martinez. Through investigation, detectives learned that Martinez had a cell phone registered under the name "Wineford Hill." The carrier was T-Mobile. At trial, a representative from T-Mobile testified regarding Martinez's cell phone records and history. The representative explained how cell site towers work, or how the cell phone essentially looks for the closest tower for use.

With assistance from the FBI, detectives were able to identify Job-Loc as Jerome Thomas. From Tyler, detectives knew his cell phone number was 512-629-0041. Investigators learned that this number was no longer used as of August 9th or 10th, just a couple of days after the murder. Tyler also knew G-Dogg or Willie Darnell Mason's number to be 909-233-0860. From Cornelius Mayo, detectives knew Stephanie Cousins had cell number 702-542-4661. With those known numbers, the FBI obtained cell site records for August 7, 2010.

Records indicated that Job-Loc (Jerome Thomas) was in the area of Tenaya and Lake Mead from the night of August 6, 2010, through the early morning of August 7, 2010. This corresponded with the location of his apartment. Cell phone records of Donovan Rowland indicated that he was not in the area of Meikle Lane during the time of the murder. Conversely, records of Monica Martinez, Stephanie Cousins, and Willie Darnell Mason did indicate that they were near the crime scene when the murder was committed.[2] The address associated with Mason's phone was in Rialto, California, just outside of San Bernardino. Job-Loc is also from San Bernardino. D-Shot/Defendant is also from San Bernardino.

When Special Agent Hendricks examined Mason's phone on August 1, 2010, records indicated that Mason was in Rialto, California. Records from that phone also indicated that the phone was dialed to family members and associates of Willie Mason. On the night of

[2] Testimony established that Mason used phone 909-233-0860. The phone, however, was registered to "Ricc James."

August 1, 2010, just days before the murder, Mason's phone was hitting off towers heading northbound on I-15. The phone hit off a tower in Baker, California. Later it hit off a tower on Tropicana and I-15. Later, it hit off a tower in the area of the Brittany Pines Apartments, Job-Loc's residence. On the night of the murder, August 7, 2010, his phone hit off a tower near the Brittany Pines Apartments. Later, the phone hits off a tower near Rancho and Bonanza. Later, the phone hit off a tower in the area of Vegas Valley and Nellis. At just before 3:00 a.m., it hit off a tower north of downtown Las Vegas. Next, the phone hit off a tower near the Opera House in North Las Vegas. Detectives obtained a video surveillance tape from the Opera House for that same time period which depicted Mason with Monica Martinez and D-Shot/Defendant.

After that, at 3:24 am, Mason's phone was in the area of Nellis and Vegas Valley. At 3:51 am, the phone hit off the tower by Meikle Lane, the time and location of the murder. By 4:24 am, the phone was hitting off towers back by the Brittany Pines Apartments, or Job-Loc's residence.

Special Agent Hendricks also examined Stephanie Cousins' phone. Throughout the early morning hours of August 7, 2010, her cell phone hit off the same towers as Mason's phone. In fact, at 3:24 am, Cousins' phone calls Mason, and then Mason calls Cousins. At 3:37 am, Cousins calls the landline of Derecia Newman two times. Shortly after that, at 3:51 a.m., Mason calls Cousins. After that, Cousins received the incoming call from Cornelius Mayo.

Special Agent Hendricks also examined Monica Martinez's phone. Throughout the early morning hours, her phone was hitting off towers in the same area as Mason's and Cousins. In fact, when Cousins is calling Derecia Newman's land line, Martinez's phone is hitting off the same tower.

Detectives also obtained a video surveillance tape from Greyhound. On August 8, 2010, at 11:33 p.m., detectives identified Mason, Defendant, and Job-Loc getting off the bus that traveled from Las Vegas to Los Angeles, about 24 hours after the crime. Thereafter, they traveled to San Bernardino, California. None used their real names for travel.

ARGUMENT

I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

Claims of ineffective assistance of counsel are analyzed under the two-pronged test articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), wherein the defendant must show: (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada adopted this standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). "A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997).

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

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

This analysis does not indicate that the court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551 F.2d at 1166 (9th Cir. 1977)). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

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

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

A. Defendant Waived His Direct Appeal

Defendant alleges "Petitioner never intended to waive, and in fact expressly reserved the right to appeal, any issues arising after the waiver was entered and specifically those which may have occurred during closing argument or sentencing." Petition at 6.

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

State, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011).

Here, although Defendant did not plead guilty the Stipulation and Order he entered into is analogous to a guilty plea. It is the same in that defense counsel would not believe a defendant would want to appeal, especially after Defendant waived all his appellate rights. Stipulation and Order Waiving Separate Penalty Hearing, filed February 9, 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 POSSIBILTY 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.

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

…

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

Defendant Burns: Yes, sir.

The Court: Do you have any questions about it?

Defendant Burns: Yes, sir.

The Court: Do you agree with it?

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes sir.

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

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes, sir.

Recorder's Trial Transcript (hereinafter "RTT"), Trial Day 12, p. 4-9.

The very negotiations called for no direct appeal. Additionally, Defendant did not move to withdraw the Stipulation and Order after trial ended. After trial Defendant and defense counsel still felt it was in Defendant's best interest to not move to withdraw the Stipulation and Order. If there were meritorious issues or errors that caused Defendant concern, defense counsel could have moved to withdraw the Stipulation and Order. It is not deficient for counsel to assume Defendant is satisfied, absent Defendant backing out of the negotiations.

Defendant in his Pro Per Petition stated that he did not know the court likes certain issues to be filed on direct appeal, and his attorney said he would show him how to file a habeas petition and he never did. Pro Per Petition, filed October 13, 2015, p.14. This Court

has already found that, "Defendant waived his right to direct appeal, thus this Court finds that counsel cannot be deemed ineffective for failing to file one, or for failing to tell Defendant that the Court likes certain issues to be raised on direct appeal; and Defendant has failed to show any prejudice." Findings of Fact and Conclusions of Law Order, filed March 21, 2016, p. 7. Additionally, defense counsel in Defendant's Supplemental Petition now claims "it is obvious Petitioner 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 belied by Defendant's own admissions in his Pro Per Petition. He did *not* ask his attorney to file a direct appeal. Therefore, counsel was not deficient for not filing a direct appeal. Moreover, Defendant was not prejudiced because he waived his right to appeal, and received the benefit of having the State withdraw its intent to seek the death penalty. Further, Defendant did not request a direct appeal regarding the days of trial after the Stipulation and Order was made. Therefore, counsel was not ineffective.

B. Counsel was Not Ineffective for Failing to Object to the Testimony of Kenneth Lecense and Ray MacDonald and Defense Counsel was Properly Noticed

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

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

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

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

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

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

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

Notice of Expert Witnesses, filed September 4, 2013, p. 2. Further, the Notice stated, "The substance of each expert witness' testimony and a copy of all reports made by or at the direction of the expert witness has been provided in discovery." Id at 5. Therefore, it was proper for the custodian of records to testify as experts and counsel was noticed they would be testifying as experts.[3] Counsel is not required to make futile objections. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Therefore, counsel was not deficient.

Additionally, Defendant fails to demonstrate prejudice. He fails to explain how but for counsel's errors, the results of the trial would have been different or how any objection would have led to a more probable outcome for Defendant. Even if counsel would have objected, the objection would have been overruled because the expert testimony was proper

[3] 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.

and would not have been excluded. Therefore, Defendant was not prejudiced.

C. Counsel was not Ineffective in Failing to Discover Exculpatory and Material Evidence Because There was No Secret Agreement and the Jury Was Aware of Mayo's Pending Cases Were Postponed

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

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

> Q: In the search of your apartment, there—the police found narcotics, cocaine; you're aware of that?
> A: Yes.
> Q: What—I guess what is your—how was that in the apartment?
> A: I don't know how they got there.
> Q: Okay. You don't know anything about that?
> A: No.
> Q: After these events took place, were you charged with a crime associated with this incident?
> A: Yeah.
> Q: And do you know what the charge was?
> A: It was child—child abuse or child neglect with substantially bodily harm, then just child neglect and trafficking.
> Q: Okay. And are—is that case—do you know what the status of it is or what's happening with that case?
> A: I'm still going to court.
> Q: Okay. And is that case being continued till the end of this trial?
> A: Yes.
> 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.

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

Further on cross-examination with Anthony Sgro:

Q: Mr. Mayo, I want to start with sort of where you left off. You have some cases that are currently pending against you, right, some charges against you?
A: Yes.
Q: One of them is for drug trafficking; is that right?
A: Yes.
Q: And that's for crack cocaine?
A: I don't know—I don't know exactly what it's for, but I know it's trafficking.
Q: Well, would it refresh your memory if I showed you the docket for your case?
Mr. Sgro: May I approach, Your Honor?
The Court: Yes, if he's familiar with the docket.
The Witness: Yeah, I've never seen it.
By Mr. Sgro:
Q: Does it look like—according to this document—the charge is trafficking in cocaine?
A: Yes, that's what it—yeah.
Q: Now, you just told the jury that the cocaine was in your house, you don't know where it came from, right?
A: No, I don't.
Q: Okay. Did you tell that to the DAs before they charged you with trafficking?
A: Like, we never had a conversation about that.
Q: You know trafficking is a serious crime; it carries prison time?
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.

Q: And all these charges, including allowing children to be present where drug laws are being violated, all those charges have been postponed for now for several years, right?
A: Yes.
Q: And it's all being postponed until after you—until this trial is over, right?
A: I guess. I'm not sure. I don't know.
Q: Well, do you believe that by testifying in this case it helps you in the cases that you're facing right now?
A: No.
Q: You don't think it helps you?
A: No.
Q: Do you think that the DA indefinitely postpones cases all the time, or do you think you're getting some—
A: I don't know how the DA work.
Q: Okay. Let me finish my question, okay. Do you believe that the DA is just postponing these cases coincidently and that they're not giving you any sort of favor because you're testifying in this case? Is that what you think?
A: I don't think they giving me no type of favor.
Q: Okay. You also have I think you said some kind of destruction of property, but it's actually tampering with a vehicle, which is a felony, right?
A: No, it was a misdemeanor.
Mr. Sgro: May I approach, Your Honor?
The Court: Yes.
By Mr. Sgro:
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.
Q: Okay. Do you think that the fact that the DA is postponing this felony case as well that it is a favor to you or a benefit to you or no?

A: No.

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

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

Defendant's allegations are bare and naked, and Defendant does not cite to any place in the record that would support his allegation that the State withheld information from the defense or the jury. Just because Mayo was ultimately granted probation is not evidence that there was an undisclosed agreement between Mayo and the State that Defendant and the jury were unaware of. Defendant's claim is belied by the record and should be denied

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

D. Counsel was Not Ineffective for Making Strategic Decisions

Defendant states that trial counsel was ineffective in opening the door to damaging hearsay evidence. Petition at 31. Further, "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.

Counsel's actions were well-reasoned and strategically made which is presumed to be and was 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). However, these claims relate to trial strategy, which is "virtually unchallengeable," and Defendant cannot show deficient performance. Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996). Because this claim contests trial strategy, it should not be second-guessed, and instead should be honored by this Court. Id.

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.

Counsel's strategy decisions are "tactical" decisions and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280. This was an important piece of evidence for the defense and defense counsel made a reasonable decision to attempt to elicit that information in front of the jury. Defendant argues counsel should have objected to the following exchange with the State and Detective Bunting:

> Q: Now, ultimately, Stephanie Cousins made an identification of the shooter, correct?
> A: She did.
> Q: It wasn't Job-Loc?
> A: No.

RTT, Trial Day 14, p. 35. However, because defense counsel opened the door in regards to identification, making an objection would have been futile. Counsel cannot be ineffective for failing to make futile objections. Ennis, 122 Nev. at 706, 137 P.3d at 1103. The fact that counsel decided to make this decision to use this evidence, even though the State would be

able to then admit the evidence that she had identified the Defendant, was strategic. Counsel weighed the benefits versus the harm and made a reasonable tactical decision to state Defendant's theory of the case and provide evidence of that theory.

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

E. Counsel was not Ineffective for Failing to Object at Alleged Prosecutorial Misconduct

The standard of review for prosecutorial misconduct rests upon Defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 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, 181, 106 S.Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

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

Defendant recognizes that in regards to the claims that were objected to and should have been raised on an appeal, bringing them in a habeas petition is not the proper form. Id.

However, he claims he's offering these objected to claims for two other purposes: 1. a cumulative error claim, and 2. as part of an ineffective assistance of appellate counsel for failure to bring these claims on direct appeal. Id. Defendant also stated earlier in his Petition, claims that were objected to "can still be considered as part of an overall ineffectiveness claim in not moving for a mistrial based on misconduct." Petition at 14.

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

Claims Objected To:

The claims counsel objected to at trial were disparagement of counsel, additional burden shifting by arguing defense failed to call witness Cooper, and a PowerPoint to the jury that referred to Defendant as part of the "circle of guilt.[4]" To the extent that counsel is alleging appellate counsel was ineffective in raising the issues on direct appeal, he waived his direct appeal. Additionally, this argument has been thoroughly addressed *supra.* See section A.

Claims Not Objected to Reviewed for Ineffective Assistance of Counsel: [5]

Credibility of Witness shifted burden

Defendant claims that there were multiple instances of burden shifting that were not

[4] The claims that were objected to are also known as claims 1, 4, and 6 on page 13 of Defendant's Supplemental Petition.
[5] 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, his direct appeal was waived. See section A *supra*.

objected to, or that counsel failed to seek a mistrial.[6] Petition at 35. Defendant claims that the words "priest and and a nun" or "Mother Theresa" and that there was "no explanation" were statements that constituted burden shifting. Petition at 33.

The State on rebuttal said:

> It would be a wonderful situation should we be standing in—or we should be living in a world in which people who are selling crack out of their house who get murdered happen to have a priest and a nun who's standing there and is part of the witnesses in the case. Or maybe Mother Theresa to tell us who's living in Job-Loc's apartment over at the Brittnae Pines.
> …
>
> David Burns has no explanation that is going to save him from the horrific knowledge that he put a gun, a .44 caliber, that giant hog-leg of a revolver, to the head of a woman and pulled the trigger without ever letting her getting a word out edgewise, and then chased a 12-year-old girl down. What reasonable explanation could he give? Well, I was really high on drugs. That wouldn't excuse it.

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

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

[6] 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.

Furthermore, counsel cannot be found ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103. Therefore, because this was not burden shifting, counsel was not deficient for failing to object or for failing to argue to seek a mistrial.[7]

Additionally, Defendant was not prejudiced because he fails to allege how objecting to this evidence would have provided a more favorable outcome. Even if counsel would have objected, the objection would have been overruled because none of the statements made on rebuttal constituted burden shifting. Therefore, Defendant's claim is without merit and should be denied.

Custodian of Records

Defendant alleges again, defense counsel should have objected to the State using a custodian of records as an expert, and that defense counsel should have objected because the custodian of records were not properly noticed as experts. Petition at 35. However, this claim was already addressed *supra*. See section B., p. 13.

Whistling during interview

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

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

The State argued the following during rebuttal:

[7] 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.

> But maybe what was subtle and was lost on everybody was how particularly disgusting and despicable the crime itself was. That it was—got to be something horrific got most human beings on Earth. And when you're in an interview room with detectives and you get told about it, your behavior of humming and singing and whistling is really kind of offensive, to be honest with you. And you can't really blame the cops for using the kind of terms they used with him. But it's also relevant for something else. Because Cornerlius Mayo's inside that shower when the shot rings out. And he calls 911. And if that matches the clock at T-Mobile, that means it's while the shooter's still in that house. And he's obviously the person whistling on that 911. So whoever shot Derecia Newman and then put a bullet in Devonia 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 Devonia until after the whistling ends.

RTT, Trial Day 15, p. 94.

The State introduced State's Exhibit #323, which was Mayo's 911 phone call from the bathroom. It was played for the jury and was admitted by stipulation. RTT, Day 10, p .226. What was heard during the 911 phone call was played for the jury, and anything they heard was admitted into evidence Id. Thus, during the State's rebuttal argument it was proper to refer to the noises made in the background of the 911 phone call because it was admitted into evidence and the State was making inferences about the admitted evidence.

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

> Q: And there's points during the interview where you or—you or Detective Wildemann are telling Mr. Burns to—sort of sit up or pay attention. Could you describe what he was physically doing at the time?
> A: Well, he was slouching far into his chair. And as you heard—was humming while we were asking him questions. And then just kind of looking off or away. Just disinterested for the most part, I guess.

Id. at 70-71.

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

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

F. Counsel was Not Ineffective at Sentencing[8]

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. Petition at 36. Further 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;

[8] 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*.

(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.

Even if counsel was deficient in not objecting, Defendant was not prejudiced by the fact that the Court failed to make its specific findings for each factor because 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, 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 work with. And it's sort of sad that he didn't just have some guidance. If he had some guidance maybe surely he wouldn't be standing where he is and it's just unfortunate to see that situation. 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—
>
> The Court: The way the law stands now, unless it's changed, he will never be released from prison.
>
> Mr. Oram: That's correct.

Recorder's Transcript of Sentencing Proceedings, April 23, 2015, p. 4. Thus Defendant was not prejudiced, even if counsel's performance was deficient. Therefore, counsel was not ineffective.

Further, according to Defendant, trial counsel did raise errors in the sentencing memorandum, and the Court had an opportunity to review the sentencing memorandum. Petition at 36. Therefore, counsel was not deficient because he did draw the Court's attention to the errors. Further, the Court had the opportunity to read the sentencing memorandum.

Recorder's Transcript of Sentencing Proceedings, filed July 13, 2017, p. 3. Thus, there was no prejudice because the Court was aware of the errors and likely took that into consideration before sentencing. Furthermore, the sentencing judge was the trial judge, and he had firsthand knowledge of the testimony that was introduced at trial. Therefore, counsel was not ineffective.

G. Counsel was Not Ineffective for Failing to invalidate the Death Penalty Per NRS 174.098 Because Defendant Was Not Intellectually Disabled

Defendant alleges trial counsel was ineffective for not seeking to dismiss or otherwise disqualify Petitioner for the death penalty based on the findings concerning Fetal Alcohol Syndrome ("FAS") and NRS 174.098. Petition at 38. First, Defendant in his Pro Per Petition alleged he had Fetal Alcohol Syndrome and neurological development issues and counsel was ineffective for failing to raise those issues. Defendant's Pro Per Petition, filed October 13, 2015, ground 7. Furthermore, Defendant cites to the sealed sentencing memorandum to support his diagnosis of FAS, which the District Attorney's office was never provided with. Furthermore, on page 40 of Defendant's Supplemental Petition, in footnote two, Defendant claims to have provided an unfiled copy of the memorandum to the District Attorney, which the District Attorney's Office did not receive. Therefore, the State cannot respond to the memorandum at this time.

To the extent this Court is inclined, this claim can still be denied based off the evidence of Defendant's IQ score. NRS 174.098(7) states:

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

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

other records." Id.

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

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

Defense counsel's failure to dismiss the death penalty under NRS. 174.098 did not constitute deficient performance because he made the decision based on the evidence he had, and Defendant's IQ score of 93, that this would not be a successful argument. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. Moreover, Defendant cannot establish prejudice. He cannot demonstrate but for counsel's failure to dismiss the death penalty under NRS 174.098, the result of his trial would have been different. Furthermore, the death penalty was ultimately negotiated away. Even if Defendant would have been diagnosed as intellectually disabled, he still would likely have received the same sentence considering the egregious nature of his crime, and the overwhelming evidence presented. As such, Defendant cannot demonstrate prejudice.

H. Counsel was Not Ineffective in Regards to the Jury Notes

Defendant argues that two notes from the jury were received and Petitioner was not consulted about or present for any of the discussions related to the notes. Petition at 44. Further, Defendant states trial counsel was ineffective for failing to ensure Petitioner was present for

the discussion of how to respond to jury notes. Petition at 17. Defendant relies on Manning v. State, 131 Nev.___, 348 P.3d 1015, 1018 (2015) to demonstrate counsel's ineffectiveness. However, Manning was filed May 7, 2015. Defendant's trial ended on February 17, 2015. Further, his Judgment of conviction was filed on May 5, 2015.

Here, Defendant cannot establish deficient performance on the part of his counsel nor prejudice. Defendant's trial and Judgment of Conviction were final before Manning was published and made law; thus, there was no clear right to have criminal defendant present when jury notes are discussed. See Strickland, 466 U.S. at 690, 104 S. Ct. at 2066 (finding a court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, *viewed as of the time of counsel's conduct*") (emphasis added).

Moreover, counsel's performance cannot be deemed deficient for failing to anticipate a change in the law. Nika v. State, 124 Nev. 1272, 1289, 198 P.3d 839, 851; Doyle v. State, 116 Nev. 148, 156, 995 P.2d 465, 470 (2000). Moreover, Defendant is not entitled to relief because Manning does not apply retroactively. "Generally, new rules are not retroactively applied to final convictions." Ennis, 122 Nev. at 694, 137 P.3d at 1099. Therefore, because defense counsel was not deficient, Defendant was not prejudiced.

I. Defendant has Failed to Show Cumulative Error[9]

Defendant asserts a claim of cumulative error in the context of ineffective assistance of counsel. Petition at 18. The Nevada Supreme Court has never held that instances of ineffective assistance of counsel can be cumulated; it is the State's position that they cannot. However, even if they could be, it would be of no moment as there was no single instance of ineffective assistance in Defendant's case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors."). Furthermore, Defendant's claim is without merit. "Relevant factors to consider in evaluating a claim of cumulative error are (1)

[9] Defendant states that "errors alleged in this petition and those which should have been raised on direct appeal to the 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.

whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). Furthermore, any errors that occurred at trial were minimal in quantity and character, and a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). Therefore, Defendant's claim of cumulative error is without merit and should be denied.

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Supplemental Petition for Writ of Habeas Corpus be DENIED.

DATED this 16th day of January, 2018.

Respectfully submitted,

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

BY /s/PAMELA WECKERLY for
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #4352

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 16th day of January, 2018 by Electronic Filing to:

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BY: /s/ Deana Daniels
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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID BURNS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No.: C-10-267882-2
Dept. No: XX

REPLY TO STATE'S RESPONSE TO SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

Date of Hearing: March 29, 2018
Time of Hearing: 9:00 a.m.

COMES NOW, Defendant/Petitioner, David Burns, by and through his attorney, Jamie J. Resch, Esq., and hereby files his reply to the State's Response to Petition for Writ of Habeas Corpus (Post-Conviction). This reply is based on the pleadings and papers herein, any attached exhibits, and any argument as may be presented to the Court at the time of hearing.

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the foregoing Reply to Response to Petition for Writ of Habeas Corpus (Post-Conviction) was made this 6th day of February, 2018, by Electronic Filing Service to:

Clark County District Attorney's Office
Motions@clarkcountyda.com
PDmotions@clarkcountyda.com

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I.

POINTS AND AUTHORITIES

The State's response raises procedural and substantive arguments which this Court should reject. Instead, as explained herein, Burns is entitled to post-conviction relief on his claims.

A. The record says what it says: Burns did not completely waive his right to a direct appeal.

First, the State argues that the instant case "called for no direct appeal." Response, p. 13. However, for this Court to reach that conclusion, it would have to turn a blind eye to the trial transcripts, court minutes, and record, which all confirm the reservation of rights to some form of a direct appeal. The transcripts, cited by the State, confirm that "we are not waiving any potential misconduct during the closing statements." Response, p. 11. This Court's minutes

confirm that "they are not waiving any misconduct during the remainder of the trial or of the closing arguments." SUPP 1. While there may be some debate as to the precise scope of the reservation of appellate rights, there is no factual support for the State's claim that there was a complete waiver of all appellate rights.

The State further resorts to parsing the proper person petition for illumination on the topic, and by referencing this Court's prior denial of the proper person version of this claim. Response, p. 14. It goes without saying, this matter was remanded for appointment of counsel by the Nevada Supreme Court and that remand included a reversal of this Court's previous order denying the petition. See Nevada Supreme Court decision filed February 17, 2017. Any "findings" from that prior proceeding are no longer binding in this matter. While the State is certainly free to reference Burns' proper person petition to rebut his claims, this Court might keep in mind the factors that led everyone here to begin with: Mr. Burns functions at the approximate level of a third grade elementary student, has significant cognitive impairments, and knows nothing about the law. What he *does* know is what undersigned counsel has helped him explain in the supplemental petition: He was promised some form of a direct appeal and did not receive one.

The State's final suggestion, that Burns should have moved to withdraw from the stipulation if he wanted to appeal, practically merits no response. Would the State seek the death penalty again if Burns tried to do that? This Court need not engage this line of thinking, because Burns' position is the agreement as written plainly allowed for a direct appeal and that is all Burns is requesting here. There is, therefore, no need for Burns to withdraw from it for him to receive the direct appeal to which he was entitled.

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B. Assuming custodians of records could even provide expert testimony, the State failed to properly notice cellular phone experts in this matter.

In Ground Two, Burns contended that custodian of records witnesses, who went on to provide substantive testimony about how cellular communications work, were repeatedly referred to as "experts" with no objection by counsel. In response, the State contends essentially that there was no harm, no foul, because the witnesses were noticed as experts by the State.

The State's response, while true in one respect, does not ultimately resolve this issue. The true part appears to be that on September 4, 2013, the State filed a notice of witnesses that listed "custodian of records…or Designee" from Metro PCS, T-Mobile, and Nextel. Said notice further indicated the witness would testify as an "expert" regarding how cellular phones work and how they interact with towers. The problem with this designation is it 1) failed to identify a specific individual who would provide that testimony, and 2) failed to provide the "expert's" CV as required by NRS 174.234.

These problems dovetail into Burns' substantive argument which is, the purported experts were in fact not experts at all, and instead were exactly what the designation "custodian of records" would imply: custodians who would explain billing records. An expert witness as that term is used in NRS 174.234 would have been identifiable by name and would have been able to provide a CV. None of those things happened in the instant case.

Therefore, Burns would submit that his trial attorneys were in fact ineffective by failing to object to the repeated use of the word "expert" in reference to these witnesses and that there is a reasonable probability he would have enjoyed a more favorable outcome absent this error.

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C. Ground Three properly asserts a claim that the State did not disclose, and counsel failed to discover the extent of negotiations between the State and Cornelius Mayo, and/or failed to move for a new trial once those facts became public.

In Ground Three, Burns contended that witness Cornelius Mayo received a "sweetheart" deal and this was not disclosed by the State. Burns still feels that way. At the end, Mayo received a deal for what could have been a gross misdemeanor in a case in which two members of his family were shot, a bedroom full of drugs was discovered, and a baggie of crack cocaine fell out of his shoe right in front of a police officer. It was, and still is, inconceivable that Mayo could receive that type of offer after years of delays without any communication between the State and Mayo's attorneys regarding the substance of any actual plea offer.

Burns continues to submit that this Court should grant the writ as to this claim which would enable him to serve a request for discovery on the State concerning all plea offers it extended to Mr. Mayo to resolve his case, and/or require Mayo's attorney to testify about any offers received at an evidentiary hearing. If in fact it turns out as the State suggests here, that any negotiations were entirely known to Burns' attorneys and did not conclusively occur until after Burns' trial, then maybe the claim ultimately fails. However, the record to date including the ultimate deal that was offered to Mayo suggests that his patience was well-rewarded, and Burns should have been informed as to all plea offers extended to Mayo by the State. Because Mayo testified under oath that there were none, the existence of such offers would be strong evidence that Burns' conviction rests at least in part on false testimony by a material witness and should be overturned.

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D. As the State acknowledges, counsel opened the door to damaging hearsay evidence.

In Ground Four, Burns alleged that counsel opened the door to hearsay concerning the identity of the shooter by another individual to police. The State's response confirms that counsel opened the door to the hearsay identification. Response, p. 20. The response goes on to suggest counsel "weighed the benefits versus the harm" of that decision and that the decision was therefore tactical.

Burns would humbly submit that the record is completely devoid of any support for the conclusion that this decision was tactical. The State certainly does not provide any. While decisions by counsel can sometimes be labeled "strategic," this would apply where there is evidence the decision in question was a reasonably competent one. Harrington v. Richter, 562 U.S. 86, 110 (2011). Here, the decisions that led to the admission of the hearsay evidence ran contrary to every other aspect of the defense theory that Job-Loc was the shooter. Because the admission of hearsay that ruled out Job-Loc as the shooter had no strategic connection to the theory of defense, the admission of the evidence was not a matter of strategy.

E. Trial counsel failed to object to several instances of misconduct during the closing argument.

In Ground Five, Burns identified several instances of misconduct during the closing argument. The State contends that any challenge to alleged misconduct which was objected to is waived, due to the previously discussed appellate waiver. Response, p. 22. Again, whatever the specific of the appellate waiver, it unambiguously provided for a direct appeal concerning

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misconduct during the closing argument because that is expressly what the record says, as quoted by the State. See Response, p. 11.

As to misconduct which was not objected to, there was no strategic reason not to raise the requested objections. Several of the subclaims here deal with burden shifting. Counsel did object to at least one instance of burden shifting. TT, Day 15, p. 74. That objection resulted in the court confirming: "You don't have a duty to call witnesses." TT, Day 15, p. 74. There was no strategic reason to skip objections to other instances of burden shifting as well. Burns submits his other misconduct claims as presented in the supplemental petition and continues to request that they entitle him to post-conviction relief, either individually or viewed collectively.

F. Burns received ineffective assistance of counsel at sentencing.

Burns also alleges he received ineffective assistance of counsel at sentencing. The State's response appears to verify that the sentencing court failed to state the reasons for any deadly weapon enhancements as required by NRS 193.165(1). However, the State contends any error was harmless due to the life without parole sentence that was also imposed.

The argument that this error did not prejudice Burns because he was never going to be released anyway rings somewhat hollow in light of the State's argument at sentencing. At sentencing, the State specifically requested "not only the maximum possible punishment of 8 to 20 years with a consecutive 8 to 20 years on that count but it should be consecutive to the murder." Sentencing transcript, p. 3. In other words, it sure mattered to the State at the time of sentencing that the deadly weapon enhancements be maximized. The State's current position, that it does not matter if they were maximized or not, is contrary to that position and should be given no weight.

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The better approach is two-fold. First, Nevada law required that the reasons for the deadly weapon enhancement be stated on the record and there is no known "but the underlying sentence is really long" exception to that requirement. Second, this proceeding proves the point: Burns has the potential for several years of attacks on his convictions in state and federal court ahead of him and there is no telling if or when a court will grant relief on any particular claim. An accurate sentence, properly imposed in compliance with all requirements of state law and state and federal due process, ensures all parties that even if a portion of Burns' sentence is one-day overturned, the remaining sentences are correctly and accurately imposed.

Burns also contends there were errors in the PSI that the trial court may have relied upon in imposing sentence. The State contends that the trial court "likely" gave less weight to incorrect information in the PSI. Respectfully, the record does not say that and Burns has no way to know that. Trial counsel should therefore have insisted that errors in the PSI be corrected prior to sentencing.

G. Ground Seven asserts that the death penalty should never have been a sentencing option in the first instance and counsel was ineffective for failing to address this prior to trial.

In Ground Seven, Burns raises the claim that due to Fetal Alcohol Syndrome, which has affected not just his intelligence but also his adaptive functioning, he is not eligible for the death penalty. The State contends it never received the sentencing memo upon which this claim is raised. Burns can only say a copy was provided with the supplement that was mailed to the District Attorney's office. If the State really cared, and the remainder of their response suggests they do not, they could have contacted counsel for yet another copy, contacted the Court, or

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moved for the Court to provide a copy of the memo. None of those things happened, but the State's response suggests they would have no different position regardless.

The core of the State's response boils down to an argument that, on its face, Burns' claim must fail because his IQ is too high. Response, p. 29. But Burns has addressed that concern in the supplemental petition. IQ is not the only measure of intellectual disability in Nevada. NRS 174.098. Burns functions at the level of a 12 year old according to the reports generated by appointed experts. Supplement, p. 42. As a result, even though some of his IQ scores may be higher, his overall level of functioning is on par with someone who is intellectually disabled under the statute.

The State further suggests this claim is moot because the death penalty was "negotiated away." That fact is the whole claim. Negotiating away something that should not have applied to begin with was not very good negotiation on Burns' behalf. If counsel has filed a motion to deem Burns ineligible for the death penalty, and it was granted, his negotiating position would have been greatly improved. At a minimum, there would have been no need for any type of appellate waiver in order to secure a maximum sentence of life without parole. Burns submits that fact alone constitutes a "more favorable outcome" for purposes of a Strickland analysis.

H. Counsel was ineffective with respect to jury notes.

Next, Burns contends his attorneys were ineffective for failing to properly handle jury notes that were received prior to verdict. The State contends that to the extent this claim relies on Manning v. State, 131 Nev. Adv. Op. 26, 348 P.3d 1015 (2015), that the trial was over before Manning was decided. While that rote fact may be true, the State notes Manning was decided May 7, 2015, and Burns' judgment of conviction was filed May 5, 2015. Response, p. 30.

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The State's arguments regarding retroactivity are flawed. It is well accepted, whether Manning announced a new rule or not, it was applicable to cases which were not final at the time the decision in question was pronounced. See Ennis v. State, 122 Nev. 694, 699, 137 P.3d 1095 (2006) (criminal defendants entitled to benefit of new rules announced prior to conclusion of direct review).[1] "Final" means the conclusion of direct review. While Burns never got his promised direct appeal, his conviction certainly could not have been final until at least the expiration of the time for seeking direct review, which was thirty days from the filing of the judgment of conviction. Thus, even to the extent Manning announced a new rule, Burns was entitled to the benefits of it because his conviction was not yet final when the rule was announced.

The State's response does not say anything about the merits of this claim and Burns submits it should be granted. Essentially, the fact evidence which was never admitted during trial (i.e. JAVS video) was given to the jury is a costly error that surely affected the jury's verdict due to the damaging nature of the testimony at issue. Again, while this may also amount to a violation of Due Process on the court's part in admitting that evidence, counsel should further have objected to it, and ensured Burns fully understood and consented to it. None of that happened, and there is a reasonable probability of a more favorable outcome had this improper evidence not been provided to the jury.

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[1] Burns would suggest any rule here is not new, because the decision in Manning relies heavily on the Ninth Circuit's 2009 decision that failure to involve the defendant in the response process to a jury note violates federal Due Process. Musladin v. Lamarque, 555 F.3d 830 (9th Cir. 2009).

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I. Relief should be granted on the claim of cumulative error.

The State generally argues there were not any errors to cumulate. Burns disagrees. This Court should therefore grant post-conviction relief on a claim of cumulative error to the extent it finds errors that individually did not entitle Burns to relief.

II.

CONCLUSION

For each of the reasons set forth herein, Petitioner submits that he is entitled to an evidentiary hearing and/or relief on his claims herein.

DATED this 6th day of February, 2018.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
JAMIE J. RESCH
Attorney for Petitioner

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DAVID JAMES BURNS aka D-SHOT, Defendant.	CASE#: C-10-267882-2 DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

TUESDAY, APRIL 17, 2018

RECORDER'S TRANSCRIPT OF HEARING: ARGUMENT

APPEARANCES:

For the State: MARC DIGIACOMO
Chief Deputy District Attorney

For the Defendant: JAMIE J. RESCH, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

Las Vegas, Nevada, Tuesday, April 17, 2018, at 8:56 a.m.

THE COURT: State of Nevada versus David Burns, case number C267882. Counsel, please note your appearances for the record.

MR. RESCH: Jamie Resch on behalf of Mr. Burns.

MR. MERBACK: Jake Merback for the State, Your Honor. My understanding was Ms. Weckerly is coming on this. Could we trail this?

THE COURT: Okay. What's your schedule, Mr. Resch?

MR. RESCH: I do have another thing at nine, but I could come back after it.

THE COURT: All right, why don't we try to do that then.

MR. RESCH: All right.

THE COURT: Okay. All right.

MR. RESCH: Appreciate it. Thank you.

THE COURT: Thank you.

[Hearing concluded at 8:57 a.m.]

[Hearing recalled at 10:14 a.m.]

THE COURT: State of Nevada versus David Burns, case number C267882. Counsel, please note your appearances for the record.

MR. DIGIACOMO: Marc DiGiacomo for the State.

MR. RESCH: Hi, Jamie Resch for Mr. Burns.

THE COURT: All right. I'm showing this as the time set for argument on defendant's petition for writ of habeas corpus. I've gotten

the supplemental petition, the State's response, and the reply. So I'll let you go forward, Mr. Resch.

MR. RESCH: Thank you. And I do believe everything is pretty well laid out. So I don't intend to talk about every ground, although we certainly are requesting an evidentiary hearing as to all of the grounds presented in the supplement. Some of the highlights of that would be Ground 1, the denial of the direct appeal. I understand the debate, but the court minutes; the testimony during the trial, certainly suggest that the answer was never you're not getting any direct appeal when it came to Mr. Burns. There certainly was some form of it contemplated and, obviously, that never took place.

So it is our position that he was denied a direct appeal that he not only bargained for, but also wanted. And his counsel would've understood that because they went out of their way and made this big, huge record during the case of that fact. Ground 3 is a claim about one of the State's witnesses Cornelius Mayo. I guess my point was there are some five year continuances of his case during which time Mr. Burns's trial takes place and the testimony for Mr. Mayo as well; they didn't -- they didn't give me anything; I'm not -- I don't have an offer; I'm just testifying because I'm a great guy.

Well right after the trial, of course, you find that he's given a offer that I think, by any objective measure, would be considered a really great offer after five years of continuances, which was a relatively serious drug charge and he's given the opportunity to reduce that to a gross misdemeanor and be on probation. Now, he

subsequently screws that up apparently. But that doesn't change the fact that that's a pretty good offer that it's really hard to believe there wasn't any discussion whatsoever between the State and Mr. Mayo's attorney in the five or six years, it would've been, by the time the offer is consummated.

And so my suggestion is that, when Mr. Mayo testifies and says they haven't offered me anything, I find that hard to believe. And so we're asking for an evidentiary hearing on that ground as well as that, the Court would order the State to produce to us any offers made to Mr. Mayo's attorney during the pendency of this case or Mr. Mayo's case.

Very briefly on some remaining grounds, Ground 5 covers seven instances of alleged misconduct during the closing. This is the whole point; this is exactly what trial counsel was worried about when they reserved the right to appeal that precise area of potential error. The -- a lot of the testimony was geared towards, we want to reserve the right to challenge misconduct.

There were, to my view, seven possible areas that they could've challenged; some were objected to at the time, some were not. Nonetheless, the ones that were not, we have called ineffectiveness. The ones that were, were exactly the kind of thing one would've expected to raise on direct appeal. Ground 8 is a rather interesting claim about the jury note, but there was no consultation with Mr. Burns about a response to it.

And then not only that, the response turns out to be,

well, there's a request for read back of some testimony. And so the response is, well, let's play the JAVS of that witness Martinez; one of the, if not, the critical witness against Mr. Burns. Now, the JAVS is not evidence and -- not only that, but it places an improper focus because it's video on her very damaging testimony against Mr. Burns.

So it's our suggestion that we should explore counsel's reasons for not consulting Mr. Burns as well as there are reasons for admitting the JAVS into evidence when, if there was a request for read back, I do realize it may have been more onerous. But nonetheless, the point would be to have the testimony read back, not play the video.

As to the other grounds, I would simply submit they're relatively straightforward. But if we're having the evidentiary hearing, it's not any greater burden on the Court or the parties to ask a few questions on each of those grounds as well. They all sound ineffectiveness and, obviously, are something the trial counsel would be in a position to explain.

THE COURT: All right. Let me just -- I mean, I understand your position as to the one witness, you know, who's -- was continued for five years. But, I mean, let me just -- I mean, do you have anything? I mean to -- I mean, he testified there wasn't any deal. The State says that there wasn't any deal. I mean -- I mean -- well then your just --

MR. RESCH: I -- yeah --

THE COURT: -- gut feeling. I mean, do you have anything?

MR. RESCH: I do appreciate the inquiry. It is more of a smell-test type approach at this point. I don't -- again, if we're going to

have a hearing on it, I don't think it's any great -- ask to say well were there some offers; please produce them, but I don't have anything like that at this point in time.

THE COURT: Okay. Well, I mean, I'm not -- I probably am going to have a hearing, but I'm not necessarily going to have a hearing to let you do a fishing expedition of anything. So I do need to know if your thought is I'm going to, you know, sort of fish around with it. I need to know if there's a basis for you to assert this at this point in time.

MR. RESCH: Not other than the -- again, on its face, seems like an incredible type deal. I understand the concern about a fishing expedition; of course, this is a very narrow inquiry. We're talking about offers made to Mr. Mayo or his attorney.

THE COURT: And the State has asserted that there's no offers been -- I mean, that's my reading of your --

MR. DIGIACOMO: Correct. Mr. --

THE COURT: -- return. I mean, am I -- am I missing that?

MR. DIGIACOMO: Mr. Mayo was charged with facts associated with the homicide. His case was continued for five years. The Defense was fully aware that we were continuing his case pending the result of this trial and that his case ultimately would proceed. And so -- I mean all of that, the Defense was fully 100 percent aware of; knew that that was our plan was; is what we presented on the record a dozen times. And, ultimately, that's what happened.

THE COURT: All right. Let's see. All right, let me hear from the State.

MR. DIGIACOMO: Thank you. I don't know that there's any need for an evidentiary hearing when the transcript of the entry of this stipulation is clear; that he's giving up all of his guilt phase issues. In fact, Mr. Sgro says, there's sort of a prophylactic protection from my client because Mr. Mason isn't giving up his appellate rights, so the State can't go crazy and do some sort of misconduct in closing because of the prophylactic protection, and Mr. Mason could raise it on appeal and have his case reversed on appeal if the State did something wrong.

It is 100 percent clear that what he did was he waived his appellate rights for any issue related to the guilt phase; it's what the stipulation says; it's what the transcript says, and he agreed to a life without and we gave up the death penalty for Mr. Burns, so I see that as a nonissue. As to the other related issues, the only one that could possibly be would be Mr. Mayo, although they need to have something to make an assertion that there's something out there that there isn't.

We've represented to him throughout the case that this is the way Mr. Mayo is handled. And as far as I know, there's no contradictory evidence of, and they didn't like the fact that he got a good deal five years later.

THE COURT: Well I'll be -- I don't see a lot here, Mr. Resch, in terms of an evidentiary hearing. But I do appreciate, you know, the defendant here was convicted; received a significant sentence. I'm willing to grant you your evidentiary hearing on the -- essentially to explore whether or not there were certain understandings or misleadings by trial counsel as to defendant on the issue of direct appeal. And in

that regard, I'm -- I'll give you some leeway as to question trial counsel about some other decisions that they made during the course of trial.

But I'm not going to open this up as a -- I see this, at this point, in terms of the issues raised as issues relating to ineffectiveness. I don't see anything in terms of your contentions relating to the witness testifying as an expert witness, the admission of hearsay, the prosecutorial misconduct; those things as being a basis for granting a writ.

I'm not going to let us go down those pathways. But I will let you have a hearing to question trial counsel in regard to their conduct as trial counsel. And if that develops into something more, we'll look at it at that. But that's -- but that's as far as I'm going to be letting you go at this -- at this stage with what I've got here.

So in terms of how I'm limiting this, how much time do you think you're going to need with trial counsel at a hearing?

MR. RESCH: The actual time testifying or how long to -- before we can have the hearing?

THE COURT: Well the actual time testifying. I mean, I've got to figure out where to fit it on my calendar to do that.

MR. RESCH: Sure. I mean, it's Chris Oram and Mr. Sgro. So two hours/three hours, I mean, half day at most. I can't imagine it would take --

THE COURT: I can't imagine -- I really would guess not more than a couple hours, but maybe three hours.

MR. DIGIACOMO: Except for Mr. Sgro has a problem saying

his name in less than 20 minutes, so --

THE COURT: Okay.

MR. DIGIACOMO: But other than that, yeah, I would say this should be a fairly short hearing.

[Court and Clerk confer]

THE COURT: All right, we'll set this on at 8:30 on June 15th.

MR. RESCH: I do apologize. I already have an evidentiary hearing that day in a different department.

THE COURT: Lucky you. All right, what's the next date?

THE CLERK: June 29th.

THE COURT: How's that one work?

MR. DIGIACOMO: Work for me. Obviously, if -- we'll check to see if Mr. Sgro and Mr. Oram are around on that date, but it works for me otherwise.

MR. RESCH: I do believe that should work.

THE COURT: Okay. All right, let's try that. And if we need to move it, we'll move it.

MR. RESCH: June 20th?

THE CLERK: June 29th at 8:30.

MR. RESCH: Eight thirty, perfect.

MR. DIGIACOMO: Thank you, Judge.

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THE COURT: All right. Thank you.

MR. RESCH: Thank you.

[Hearing concluded at 10:26 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Angie Calvillo

Angie Calvillo
Court Recorder/Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DAVID BURNS, Defendant.	CASE NO. C-10-267882-2 DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 20, 2018

RECORDER'S TRANSCRIPT RE:
EVIDENTIARY HEARING

APPEARANCES:

For the Plaintiff: JACQUELINE M. BLUTH, ESQ.
Chief Deputy District Attorney

For the Defendant: JAMIE J. RESCH, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

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LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 20, 2018

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[Case called at 10:54 a.m.]

THE COURT: State of Nevada versus Burns. Mr. Burns is present and he is in custody and this is the date and time set for the evidentiary hearing. It looks like your witnesses are here and I know that Judge Johnson has limited this hearing to whether – to the one claim of whether he was denied the direct appeal.

MR. RESCH: Right, and Jamie Resch on Mr. Burns' behalf. Yes. We're going to be talking about whether or not there should've been a direct appeal in the case.

THE COURT: Okay. You can call your first witness.

MR. RESCH: Sure. I'll start with Mr. Sgro.

THE COURT: Well, no. You –

Unless do you want Mr. Oram to be excluded?

MR. RESCH: I don't really care.

THE COURT: Yeah.

MR. RESCH: It's typical that they are, but you know –

MR. ORAM: I don't mind, Your Honor.

THE COURT: Okay.

MR. RESCH: – whatever the State's pleasure perhaps. If he wants to step out, I guess, certainly, that's fine.

THE COURT: Okay.

ANTHONY SGRO,

[having been called as a witness, being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. For the record, can you please state and spell your name?

THE WITNESS: Anthony Sgro, S-g-r-o.

THE CLERK: Thank you.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. RESCH:

Q Good morning.

A Good morning.

Q How are you employed?

A I'm an attorney.

Q Are you licensed here in Nevada?

A I am.

Q What year were you first licensed in Nevada?

A 1989.

Q What types of cases do you normally handle?

A It's evolved over time. There was a time when all I did was criminal. Then I morphed into doing other types of trial work, including personal injury, business litigation, civil litigation.

Q And do you remember representing David Burns in connection with this matter?

A I do.

Q Can you give us a brief recap of what he was accused of?

A He was accused of one count of murder, one count of attempt murder and some other peripherally-related charges, robbery, etcetera.

Q And do you recall if, at any point, Mr. Burns faced the death penalty in connection with this matter?

A He definitely did.

Q How, if at all, did that affect your handling of the case?

A I mean that's a pretty broad question. My generic or general answer would be, any time anyone is accused of a capital crime the stakes are significantly greater, so the resources, time dedicated, etcetera, etcetera, is expeditiously more.

Q Now let's direct your attention to January of 2015. Do you recall the case going to trial around that time?

A I do.

Q At that point was Mr. Burns still facing the death penalty?

A He was.

Q At some point during that trial was there some sort of agreement made with the State on Mr. Burns' behalf?

A There was.

Q Okay. Can you explain what that was?

A At some point in the trial – and I think you showed me the transcript today. I think it was Day 12 of the trial – the State and Mr. Oram and I had reached an agreement. The agreement was along the lines of the following: we were going to let the trial proceed to its conclusion. Whatever the jury's verdict was going to be was going to be. If they came back with First Degree Murder, then the State, in exchange for a waiver of appellate rights, would agree to take the death penalty off the table.

And at that time we thought that trial was fairly balanced in terms of

rulings, etcetera. We thought we had done reasonably well with our examination of the witnesses and we thought it was an appropriate resolution, especially insofar as it took the death penalty off the table, which, in my opinion, is always the primary goal of the capital defense attorney.

Q Do you recall who first brought up the idea of this agreement?

A I would be shocked if it wasn't me.

Q Okay. So this was something you think you might have proposed to the State?

A Yes.

Q Would you have had occasion to discuss it with Mr. Burns prior to formalizing it?

A Yes. Mr. Burns would probably tell you that from the inception I was always trying to get the death penalty off the table some way, shape or form, so we discussed a number of possibilities.

MR. RESCH: All right, maybe this is a good time. I don't know if we want to canvass Mr. Burns about waiving his right to –

THE COURT: Oh, thank you.

MR. RESCH: All right.

THE COURT: Mr. Burns, you understand that pursuant to your petition Mr. Sgro is testifying today. You understand that, correct?

MR. RESCH: Just say, yes or no or –

THE COURT: Okay. I mean and your current attorney has called him to testify about things he did at the trial level. You understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And so you understand you're waiving your right to

confidentiality by calling him to the stand and filing this petition and seeking this type of relief. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: So Mr. Sgro is going to be permitted to testify about things that he normally would not be able to be – he would not be able to testify to because of attorney/client privilege. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you know you're waiving that privilege?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay, thank you.

MR. RESCH: All right, thank you.

BY MR. RESCH:

Q All right, so, with that said, can you give us the nature of how you presented the offer to Mr. Burns, what it is that he would've been gaining and what it is he would've been giving up?

A In the specific instance of what happened leading up to Day 12 of trial, that offer?

Q Yeah, with regard to the alleged appellate waiver.

A So I have a general recollection of what some of the things I said to him were. They would've been along the lines of as follows: We think the trial is going reasonably well, as well as we think it will ever go. We always have an eye towards getting rid of the death penalty in any capital case. I would've wanted to encourage him to listen to any offer that would have eliminated the death penalty as an option, so I would've said to him things like: Listen, we got a decent jury. The Judge has been pretty balanced in this case. We don't have a ton of stuff on

appeal up to this point anyway. Why don't we take this deal because it takes death off the table and we get to have the benefit of this jury, the way this evidence came out, and see what type of verdict is rendered? And it would've been those general types of conversations that we would've had.

Q Do you recall if he expressed any concerns to you about the agreement?

A You know Mr. Burns was very engaged in the case. He had often had questions, and so I would put it more in terms of he was the sort of individual that would have a lot of questions, what does it mean, what's the upside, what's the downside, that sort of thing.

MR. RESCH: Your Honor, we had marked an exhibit, proposed Exhibit A, which is the written stipulation in this case.

THE COURT: Sure.

MR. RESCH: But it's my understanding the State is not objecting to its admission.

MS. BLUTH: That's correct.

THE COURT: Okay. Then you have A?

MR. RESCH: So may I approach?

THE COURT: Okay, sure.

MR. RESCH: I have it here.

THE COURT: And A can be admitted.

[Defense Exhibit A admitted]

MR. RESCH: I do have an extra copy if the Court would like to take a look.

THE COURT: You know what? It was in the pleadings –

MR. RESCH: Okay, very well.

THE COURT: – so I have a copy of it. Thank you. It's the one that was filed in open court February 9th, 2015, correct? Oh, no. I'm sorry. That's the waiving of the separate –

What's the date?

THE CLERK: It's –

THE COURT: Yeah.

THE CLERK: Yeah.

THE COURT: It's the correct one.

MR. RESCH: Okay. May I approach the witness with it?

THE COURT: You may.

MR. RESCH: Sorry. Thank you.

THE CLERK: Thank you.

THE WITNESS: Thank you.

BY MR. RESCH:

Q All right. So, Mr. Sgro, I've handed you our Exhibit A and do you recognize this document?

A I don't know if I actually seen a copy of this until you showed it to me today, but I do recognize it now that I've had the opportunity to read it over this morning.

Q Okay. And just for the record, it purports to be signed by you, but is it your indication that that's not actually your signature?

A Yeah. I mean it says – I recognize Mr. Oram's signature – and it says, for me, which, in my opinion, is not anything unusual when Chris and I do a case, as we have done many.

Q Understood. All right, so directing you to page 2 of the Exhibit A and there's a paragraph that says, further, in large letters. Do you see that paragraph?

A I do.

Q Can you read it for the record?

A 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.

Q Was it your intent when the agreement was made that some form of appellate rights would survive this paragraph?

A Yes.

Q Can you explain?

A Yes. So, as I indicated earlier, we were in Day 12 of – I don't know how many other trial days there were that came after that, but I believe when I put the deal on the record that we carved out any prosecutorial misconduct that may occur during closing statements, and I said something along the lines of, you know that could be a fertile ground for appeal; the State's assured us they won't do anything intentional or purposeful, something along those lines. And that's the statement I had put on the record.

Q So, with respect to the phrase from the guilt phase of the trial, that to you did not include the closing argument?

A I didn't sign this document, so I don't know what it included for Chris – or Mr. Oram. Sorry. I can tell you what I ended up putting on the record, which to me was – at least in my humble view it was clear at the time when I put it on the record that we were simply carving out anything that may have occurred

during closings.

Q And did you have any specific conversations with any of the prosecutors, that you can recall, regarding what the scope of the waiver would've been?

A Well, we put it on the record, so they were there.

Q Okay. So what was on the record was what your recollection would be?

A Yes. I don't remember anything independent with any specificity.

Q And to your knowledge, was the agreement intended to bar any appellate issues that might occur at the time of sentencing?

A I don't know. I, honestly, don't know.

Q Okay.

A Obviously, reading this, it doesn't appear so; however, I don't remember now, as I'm sitting here, whether I addressed sentencing or whether or not that would be included when I put the deal on the record.

Q And did Mr. Burns ever express to you at any time that if he was convicted he would want to appeal that conviction?

A At any time, absolutely.

Q Now how about –

THE COURT: I'm sorry. Say that again.

THE WITNESS: I think the predicate to the question was at any time. I mean I represented –

THE COURT: Okay.

THE WITNESS: – Mr. Burns for years, right?

THE COURT: Okay, so –

BY MR. RESCH:

Q All right, so that was a conversation that you would've had with him at some point during the representation?

A Well, sure.

Q Okay. Was it –

A I mean I represented the man for a long period of time. We discussed all sorts of issues.

Q I understand. Did you happen to discuss with him whether or not he wanted to appeal after this agreement was formalized?

A I don't recall conversations after the agreement was formalized that he continued in his quest to appeal. In other words, the conversations leading up to the deal had to do with, well, what about my appeal, right? That's natural. I explained to him that there is a balance here. We're taking away the death penalty and, in exchange for that, you would waive any right to appeal.

Now, parenthetically, we felt that Judge Thompson had been balanced given the nature of the case in particular. We thought we had done well with the witnesses. The child victim in the case, Chris – Mr. Oram and I had visited with her. She had drawn a picture, a hand-sketched picture of the assailant having a mask. We looked at the tapes of the 9-1-1 call. It looked like the boyfriend, live-in boyfriend/potential stepfather had done a really poor job on the stand and it looked like on the tape he had admitted to 9-1-1 that he was actually the shooter.

So we had some things that were going for us, so whether or not the pursuit of the appeal was something to cause the death penalty to still be an option was, in my opinion, fully vetted. So the concerns that Mr. Burns would

have expressed would have been allayed or placated in exchange for the dismissal of the pursuit of capital sentencing. So that's what I would tell you.

MR. RESCH: All right, I do thank you for that thoughtful answer. And I'll pass the witness at this time.

THE COURT: Cross-examination.

MS. BLUTH: Thank you.

CROSS-EXAMINATION

BY MS. BLUTH:

Q Mr. Sgro, how many years, would you say, it was that you represented the Defendant?

A I don't remember exactly, a couple. I don't remember offhand though.

Q Okay. In those couple of years, you met with him probably dozens of times?

A To be fair, Mr. Oram, when we do cases together, takes the lion's share of the client meetings.

Q Okay.

A Okay. So I did meet with him numerous times. When we had court, I will always make it a point to come a little bit early, chat, see what's going on, but Mr. Oram would, in terms of dividing jobs –

Q Sure.

A – went with significant regularity –

Q Okay.

A – more so than myself.

Q In the times that you did have conversations with him, whether it be inside the courtroom or outside of the courtroom, was there ever any time where

you felt there was misunderstandings with the Defendant? And when I say that, I mean that he wasn't able to understand what you were saying to him.

A Not to my knowledge. I mean Mr. Burns and I got along relatively well. It's not to suggest that someone facing a serious consequence doesn't have a level of anxiety that manifests sometimes into some healthy discussion; however, he was engaged as a client, so I didn't ever perceive any significant misunderstanding. They were more spirited disagreements potentially, tactics, strategy, etcetera.

Q Was there ever any indications though that he wasn't – just was not understanding the things that you were saying to him?

A Not in my opinion.

Q Okay. Now you have brought up a couple of times on direct examination the fact that, you know, it's kind of a weighing of the pros and cons when you make decisions like this. And one of the things that you brought up a couple of different times is that you and Mr. Oram evaluated how things were going thus far in the trial at that point and you felt like the Judge had been pretty fair.

A Correct. Well, when we're looking at it through the eyes of appellate practice, we did not consider up until the point that we made the deal that we had some glaring deficit that we could take advantage of at an appellate level. So unbalance, the little that we had was outweighed by eliminating the risk of the imposition of capital punishment.

Q And that was going to be my next question is that at that point in the trial there was no issue that you had seen come up in the trial where you felt, hey, we've got this great issue that we could bring up on appeal?

A Not in my opinion.

Q And that was one of the factors that you considered when you and the prosecutors have this conversation?

A Correct.

Q Now I know this seems like a silly question, and I do think it's important for the record, is that you're saying, you know, as a capital defense attorney or as a defense attorney that does capital litigation, the goal is to always get capital punishment off the table?

A Correct. That's the number one – well, for me. I can't speak to what everyone in the community does. In my personal opinion, if I can get death off the table I'm going to pursue it pretty vigorously.

Q So you also discussed that you felt that the evidence had in – with in regards to certain witnesses had come out pretty well for you as well?

A Well, I mean pretty well is a relative term. When you're doing a capital case, you know, as well as could be expected, I would agree with you on that.

Q Okay.

A We still had some damaging evidence, but, to the extent that we could, we thought we were doing well given the context of what we were dealing with.

Q So, when you stated that you weighed the pros and the cons before, you know, speaking with your client or engaging in discussions with the prosecutors, could you talk to us about some of those pros and cons that go through your head?

A Sure. The number one pro is we don't have the death penalty anymore. And that level of uncertainty of the imposition of capital punishment

weighs heavily, at least in my mind, as a defense attorney that does capital cases, so I'm willing, as a practitioner, to consult with my client, regardless of the consequences if I can eliminate that as a risk. That's number one.

In this case, in Mr. Burns' case, as I told him, the difficulty was not only that there was a homicide; the difficulty that added that secondary level of high concern was that there was a child victim in the case. The factual predicate, as alleged by the State, was that after a female was shot in the face over, you know, ostensibly a drug deal gone bad, to very generically state what the facts were –

Q Right.

A – a little girl, who had been near the front door when that had occurred, started running away from the assailant. She was shot in the back as she ran away. She was hospitalized for some period of time. She survived. I remember Ms. Weckerly, who I've known for a long time, we would have numerous conversations when the girl was hospitalized about whether or not she'd recover. She ended up recovering, but it was not – it was not quickly.

So, in my experience doing this almost 30 years, I have tried approximately 125 trials, I know in a murder case, especially a murder like this, where there's a child involved, the stakes increase significantly. And Mr. Burns and I had that conversation many, many times and it – without being flippant or callus, the homicide was bad in and of itself, right? That wasn't the heightened level of concern. The heightened level of concern in this case was always the 12-year-old girl that got shot in the back after she saw her mom get shot in the face and she's running away from the assailant. The factual predicate was that the assailant ran after her and shot at her and she was struck.

Q So, in your opinion, had death still been on the table, in your opinion from doing so many of these cases, was there a realistic chance that the Defendant could have received the death penalty?

A In my opinion, I was very unsettled because of the fact pattern that involved the little girl, so, yes. There was that – there was that real chance. So no matter how much elevated that chance was because of the little girl victim, why take that chance at all if I can get it off the table?

Q Would you agree with me then that if you can get death off the table and you don't feel like you have any strong appealable issues it's a win-win for you if you can stipulate to a 20 to life?

A Well, win-win for me – I mean I'm advancing the cause for Mr. Burns, right? I would have explained to Mr. Burns, it struck me that we did have a good opportunity in terms of the evidence probably wasn't going to come out much better than what – and whatever, maybe I'm patting myself on the back here, but the evidence, in Mr. Oram's and mine's opinion, had come out reasonably well. We had a chance to take death off the table. They didn't want a plea. They were going to let it roll to verdict, so that, to me, was a win-win.

Q Okay. Now you stated you wouldn't be surprised if it was your idea to go to the prosecutors with this idea of, hey, if he is – Mr. Burns is convicted of First Degree Murder what about taking death off of table and stipulating to life without. You thought that that – you wouldn't be surprised if that was your idea?

A Correct.

Q Before you go and speak to prosecutors about that, do you speak with your client beforehand?

A It depends because it's an organic sort of thing. Do I go to Mr. Burns

or any client first and see what they're willing to do, or do I see if it's even an option? In other words, while we're in trial, I don't want to change the optics that all we're doing is fighting for the cause, right, and I don't want to lessen confidence in Mr. Burns by creating this impression that now I think we need to abandon ship and try and make a deal, so that stylistically would probably not be something that I would do. Likely, I would see if there was still any room during the trial to get death off the table. Once I had secured that possibility, likely then I go to Mr. Burns and say, hey, what do you think of this?

Q Did you have the opportunity – you and/or Mr. Oram – to sit down with Mr. Burns and discuss the pros and cons that you have discussed with us here today?

A Yes. I recall that this deal took some time to develop. Part of the development of the deal was Judge Thompson allowing Mr. Oram and I to visit with Mr. Burns in the holding cell outside the courtroom to go over different things, the ups – the pros and cons, as you put it, of the deal.

Q Did the Defendant have the opportunity to ask you questions?

A Yes.

Q Did he ask you questions?

A Yes.

Q And did you answer those to the best of your ability?

A As far as I can recall, yes.

Q Ultimately, the decision was made by the Defendant to enter into that negotiation with the State?

A Correct.

Q And, like counsel was stating that there was a caveat in regards to,

you know, the State needed to – he wasn't – the Defendant wasn't waiving any appeal in regards to anything that the prosecutor did in closing arguments if there was prosecutorial misconduct and such?

A That's what I had put on the record.

Q But that was the only caveat?

A To my recollection. To my –

Q But that's the only caveat on the – in the transcript that you read?

A Correct.

Q And in – you did not sign the document in front of you, correct? That was Mr. Oram.

A Correct.

Q Okay. At any point in time did the Defendant ever express to you, hey, I'm not okay with this; I want to back out of this?

A We're talking at post entry of the deal?

Q Correct.

A Not that I recall.

Q Okay. Is this – are these motions or are these petitions the first time you have been made aware that the Defendant was no longer okay with the stipulation?

MR. RESCH: You know, I'm going to object. That does not accurately state the claim that's been presented to the Court.

THE COURT: Right. Maybe you could rephrase the question.

BY MS. BLUTH:

Q After the Defendant was sentenced and had, you know, gone to prison, before filing any documents, had you ever heard from him personally that

he was no longer okay with the stipulation he had entered into?

MR. RESCH: The same objection, that's not the claim that's before the Court.

THE COURT: Right. The claim that's before the Court is whether he was deprived his right to appeal any of the appellate rights that survived the stipulation, correct?

MR. RESCH: Yeah. I mean –

THE COURT: That's my understanding that that's the only claim that Judge Johnson allowed to survive.

MS. BLUTH: Okay.

MR. RESCH: Thank you.

BY MS. BLUTH:

Q And at any point in time in the courtroom – let me back up. I had asked you previously, in any of your conversations with the Defendant, whether it be in court or out of court, if he ever seemed to not be understanding what was going on, and you stated, no, not to your recollection?

A No.

Q So my same question in regards to the conversations on the day of, when the stipulation is made into, at any point in time did you have any concerns whether or not he was fully understanding the information?

A No.

MS. BLUTH: Okay, nothing further. Thank you.

THE COURT: Any redirect?

MR. RESCH: No, thank you.

THE COURT: Okay. Thank you very much for being here today.

THE WITNESS: Good to see you, Your Honor.

THE COURT: Nice to see you. Thank you for being here.

THE WITNESS: Sure.

THE COURT: Can I excuse Mr. Sgro from his subpoena?

MR. RESCH: He may be excused.

THE COURT: Okay.

THE WITNESS: The exhibits, Your Honor?

THE COURT: Sure. Thank you.

THE WITNESS: Thank you.

THE COURT: Thank you very much.

And are you going to call Mr. Oram?

MR. RESCH: Yes.

THE COURT: You can call your next witness.

MR. RESCH: We'll call Christopher Oram.

CHRISTOPHER ORAM,

[having been called as a witness, being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. For the record, could you please state and spell your name?

THE WITNESS: My name is Christopher Oram. My last name is spelled O-r-a-m, m as in Mary.

THE CLERK: Thank you.

THE COURT: Oh, go ahead.

MR. RESCH: Okay, thank you. Sorry.

THE COURT: Thank you.

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DIRECT EXAMINATION

BY MR. RESCH:

Q Good morning. How are you employed?

A I'm an attorney in the State of Nevada.

Q How long have you been licensed in the State of Nevada?

A Since 1991.

Q Do you have any idea, as you sit here today, how many First Degree Murder trials you've been involved in?

A Approximately 40.

Q Okay. Do you recall representing David Burns in connection with this case?

A Yes.

Q And we're just going to skip ahead to his trial in 2015. Do you recall that?

A I do.

Q That's something you did with Mr. Sgro?

A It was.

Q All right. At the time the trial started, do you recall that it was a death penalty case?

A Yes, it was.

Q During the trial, did the opportunity arise to remove the death penalty as a sentencing option?

A Yes, sir.

Q Do you know how that came about?

A Yes. The intricate details I may be inaccurate on, but sort of there

was a conversation. I believe it came from Mr. DiGiacomo or Ms. Weckerly regarding would we agree to life without parole in the event that he was convicted of First Degree Murder and a waiver of appellate rights.

Q Okay. And prior to that agreement being formalized, would you have had occasion to discuss it with Mr. Burns?

A Yes.

MR. RESCH: Do we need to recanvass him or he's already – I mean I'd be comfortable he's already waived his right to –

THE COURT: I believe he's waived.

MR. RESCH: Okay.

THE COURT: I'm comfortable with the waiver.

BY MR. RESCH:

Q Okay. Do you recall where it was that you would've discussed this potential agreement with Mr. Burns?

A I'm not positive, but I recall that at least one of the discussions took place during trial in the back holding cell. I remember distinctly talking to him at length back in a holding cell about it. However, it could've taken place at the jail, but during trial usually, I'm communicating with my clients in that holding cell or prior to the trial beginning.

Q Okay. Do you have any recollection as to what you would've explained to him in terms of what he was gaining and what he was giving up?

A Yes.

Q Can you tell us what that was?

A Well, to me, it would be exactly what was in the stipulation. I would be telling Mr. Burns at the time that, in the event that you are convicted, the State

will drop the death penalty. They will no longer seek the death penalty. You would receive life without parole, which means exactly that. Life without parole means life without parole. You'll spend the rest of your life in prison. You would not have any appellate issues, and then I would've explained to him, and if you win you go home.

Q Okay. So, in terms of – and, again, let's focus before any formal agreement is reached. When you're explaining the deal to Mr. Burns, is there any explanation that all appellate rights will be waived, or would you have explained that some would survive the waiver?

A The only thing that I could independently remember talking to him about would be Writs of Habeas Corpus; that that would still be available to him.

MR. RESCH: All right, do we have our exhibit?

THE CLERK: We do.

MR. RESCH: May I approach?

THE COURT: You may.

BY MR. RESCH:

Q All right, so I've handed you our Exhibit A. Do you recognize that as the written stipulation regarding the waiver of appellate rights concerning Mr. Burns?

A Yes, I do, and I had reviewed that before my testimony today.

Q All right. And referencing page 2, is that, in fact, your signature where it says Christopher Oram?

A Yes. It's my signature for both myself and I've signed for Mr. Sgro.

Q All right, I'm directing you to the paragraph that starts with the larger letters, further. Do you see where it says, the Defendant agrees to "waive all

appellate rights stemming from the guilt phase of the trial"?

A Correct.

Q Can you tell us, what was your understanding of what that language meant in terms of what, if any, appellate rights Mr. Burns was giving up?

A Well, that what's said there is a little different than what was said by Mr. Sgro at the entry of the plea that I've also reviewed. And so my understanding of the totality of the circumstances, if that's what you're asking me, was that he was giving up all appellate rights as in regards to what had taken place in the trial. Mr. Sgro just made it clear on the record that if there was any misconduct after this agreement he could raise that as well.

Q Okay. And now you had stepped out when Mr. Sgro testified, but that's your understanding of what he represented to the Court at the time the agreement was presented to the Court?

A Well, that's – I had reviewed what you had sent me.

Q Oh, okay.

A And that was coming from the February 9, 2015, Day 12 of trial.

Q Okay. So you reviewed that transcript and that was what was said to the Court?

A Yes. I don't have an independent memory of it at all. It was what you sent me, and then I reviewed it in preparation for my testimony.

Q Okay. And, as you sit here, how about independently for yourself, do you have any recollection that the waiver was intended to waive any potential misconduct during the closing argument?

A What I would say is, when this document was prepared and we signed it, I think Mr. Sgro anticipated, and I think it was a good anticipation, that we

shouldn't be waiving something and then permit the State to – let's say they made a statement like, how come the Defendant didn't testify? To me, it would be blatant and I would think, oh, boy, we've waived that. And so Mr. Sgro seemed to make it clear from the record that that type of argument would be something he could appeal.

Q And, of course, at the time you entered the agreement, the closing had not yet occurred, correct?

A Correct.

Q Okay. And going back to Mr. Burns, do you have any recollection of explaining these nuances to him any time prior to or around the time the agreement was formalized?

A Yes. I remember trying to explain, and I thought he understood, back for sure in the holding cell.

Q Now maybe taking a look at the flipside, did Mr. Burns ever express to you around the time the agreement was being entered that he did not want to challenge his sentence in the event he was convicted?

A He never expressed that.

Q And with respect to the agreement to waive the appellate rights, was it your understanding that that would've had any effect on issues that would arise at the time of sentencing?

A No. I think I would have thought that any misconduct – just like Mr. Sgro had said, any kind of misconduct would be available to him for a direct appeal.

Q Well, let's turn to the sentencing for a moment. Was that a proceeding that you personally attended?

A It was.

Q Prior to the sentencing, did you have occasion to present the Court with a sentencing memorandum?

A Mr. Sgro did.

Q Okay. Is that something you are familiar with though?

A I have reviewed it in preparation for my testimony today.

Q Okay. And to your recollection, did that memorandum identify any errors in the Pre-Sentence Report?

A It did, two.

MS. BLUTH: Judge, I'm just going to object. Is this within the scope that – I wasn't –

THE COURT: I don't believe it is.

MS. BLUTH: I wasn't there. And so I did have the opportunity to speak with Ms. Weckerly and Mr. DiGiacomo and this was not my understanding that this would be within the perimeters of this hearing.

THE COURT: Right. I mean the Judge clearly said, no ineffective assistance of –

MR. RESCH: Okay.

THE COURT: – counsel issues would come up; that the only issue that an evidentiary hearing was granted is whether he told his attorney to file a direct appeal regarding any appellate rights that survived the stipulation.

MR. RESCH: All right, I would just humbly suggest that the existence of potential sentencing errors which could've been raised on direct appeal is itself indicative of whether or not Mr. Burns would've wanted to appeal.

THE COURT: Okay. I believe that the hearing has been limited to

what I've just indicated.

BY MR. RESCH:

Q All right, let me ask you this.

A Yes, sir.

Q After the sentencing, did you have occasion to go visit Mr. Burns one final time?

A I did.

Q And what was the purpose of doing that?

A Just client is being convicted and sentenced to life without parole, that's difficult for a human being. As a lawyer, I think it's incumbent upon us to go and check on our clients. I would have also undoubtedly gone through the Pre-Sentence Report with him. But I remember this particular discussion with Mr. Burns because just – it just – I remember a sense of sadness. It distinctly stands out to me. I remember a sense of sadness from Mr. Burns and I remember that discussion.

Q Is there any discussion during that final meeting about further ways Mr. Burns could attack his conviction or sentence?

A Yes. I talked to Mr. Burns about that and I don't think that was the only time I talked to Mr. Burns. I think he called from the penitentiary at least once and asked me about issues, as I recall, but, yes, I would've discussed with him his options.

Q Okay. And did he specifically ask you at that time about filing an appeal?

A No, he did not. However, as I rack my brain, the way I explain somebody's appellate rights – I draw it so often for almost every single client – I

do it as though – I always explain it in terms of sports. You have four quarters in a basketball game. You have four rounds of boxing. The first one is a trial; the second one is direct appeal, third is post-conviction and fourth is appeal from post-conviction. You have to do those to exhaust your state remedies. I explain that to him. And so I remember going through that with him before the trial because I would do that with any capital defendant, and I remember going through it again and talking to him extensively about post-conviction relief.

Q Okay. And was that something he was interested in pursuing?

A He seemed to, yes. He said that he would like to, you know, try to fight his case further, and I said, well, that would be the proper avenue would – to be to accuse Mr. Sgro and I and that would be available to him.

MR. RESCH: All right, I'll pass the witness at this time. Thank you.

THE COURT: Cross.

MS. BLUTH: Thank you.

CROSS-EXAMINATION

BY MS. BLUTH:

Q Mr. Oram, how long was the period with which you represented the Defendant?

A Years.

Q Years?

A I don't recall the exact amount of time, but it was years.

Q Would you say you spoke with him either on the phone or in person dozens of times?

A In person many times and, usually, when I talk to my clients in a capital case pretrial, I'll spend a lot of times an hour or hours with them on each

visit.

Q Okay. When you would sit down with him, did you – was he able to engage in conversations with you?

A Yes.

Q Did you always feel like he understood you and you understood him?

A He was actually a very, very nice client to deal with. He was very cordial, very courteous and we understood each other. There was no difficulty whatsoever.

Q When this – when you're in the middle of the trial and, you know, discussions start happening in regards to a stipulation to potentially take death off the table, in your head are you weighing the pros and cons in regards to entering into that type of a negotiation?

A Yes, and that's a good point because what I do – my practice when I am in trial is I have this black book. I carry it with me everywhere. It's my calendar. And in the back of it, as I'm going along in a trial, if I see an issue for appeal I write it. I always put, like there would be a section called Burns Appeal, and then when I see something happening I write it down. So, during the trial or when I'm doing the appeal later on if there is an appeal, I would then be able to go back and see what my mind was at that time, and I usually put the date that it happened and like in the afternoon session, so I can identify issues.

When this came up, this stipulation, I'm looking at those issues to decide, do I think that I can win on appeal? And so at that point, Tony and I – I remember talking with him. I'm like, Tony, we don't have anything. There's nothing that jumped out at me at the trial that I thought this is a good issue, and I would have told Mr. Burns, I didn't feel there were strong issues on –

Q So when you look –

A – during the trial.

Q When you look at it from that perspective, do you consider it somewhat of, you know, like a win-win position? Well, and when I – I don't want to use the term win-win, I mean, because that just seems so playful, but what I mean is there are many advantages to you because if you get death to be taken off the table you don't have any real issues to appeal anyways and so there doesn't seem to be a con.

A This, to me, was very good for us. In other words, I looked at this decision as this is wonderful for Mr. Burns because, in my mind, the death penalty is off the table. That type of stress upon capital litigators, I think, is quite extensive. Most people don't realize that it is so stressful to us, and so when that goes away – and then I liked the jury. Mr. Burns had a good jury and I thought maybe, maybe we could win, and then it's a – in my mind, sort of a freebie. If we lose the State of Nevada cannot execute him, and so, to me, it looked very, very advantageous.

Q So you thought potentially that things were going so well that potentially you could've maybe even won the trial?

A That jury was out for a couple of days.

Q So either, hey, they find him not guilty and it doesn't matter anyways or they find him guilty and life – or excuse me – and death is off the table anyways?

A Yes, and I'm considering what the State – what two very experienced prosecutors are going to argue about and what I was fearful about in the penalty phase.

Q And I would – that was my question is: did you consider the evidence, you know, of a child victim and certain things that could be presented in the penalty phase, where you thought, hey, there is a big risk here that this client could actually get the death penalty from a jury?

A Yeah. I have quite a bit of – I had quite a bit of thought about that and I remember a specific discussion I had with Mr. Burns about that. Yes. Everything you're saying is accurate. I was fearful. Let me start by saying, first of all, I thought we had a good jury. I thought if I could spare his life, we have a good jury, we have a jury that could possibly do that; however, a child has been chased down a hallway and with a very large caliber gun, I think it was a .45, fallen to the ground and been shot through the stomach at point-blank range.

I was concerned that jurors could be very agitated by that particular portion of this case and it could result in a bad sentence and that was weighing on me very heavily. I remember the discussion after trial, telling Mr. Burns that and I remember Mr. Burns saying, I wouldn't have got death, Chris. And I remember thinking, would he have because I remember him saying that I don't think I would've got death, Chris and – but at the time it's such a heavy weight upon us. To be able to take it off the table –

Q Right.

A – was a great advantage, in my opinion.

Q When these discussions start coming up about this stipulation, you stated you had the opportunity to go into the back holding cell with Mr. Sgro and Mr. Burns. Did you discuss these pros and cons that you have, you know, been going through with me right now? Did you discuss those with Mr. Burns?

A Extensively.

Q Did you also discuss the fact about, you know, whether or not there were appealable issues and the strength of those?

A Yes. And I can't swear to it, but I would have thought that I would've copied that page where I write the appellate issues for Mr. Burns; although, I can't swear to it. I don't have an independent memory, but sometimes my clients will say, could I have that, and usually, I will give it to them so that they could see that I'm at least doing my job.

Q At any point in time when you're –

THE COURT: You would give them your little journal that you were keeping?

THE WITNESS: No, just the – just their page.

THE COURT: Oh, okay.

THE WITNESS: So the page where – see, on – if I have a page where it's listed, Your Honor, the different issues, sometimes clients will say, could I have that, and I would, okay, fine.

THE COURT: Okay.

THE WITNESS: Yeah. It's your issues for your appeal, so. And then at some later point, I could either say, well, now I've winnowed this issue out because I just write it down at the time, but I don't think it's strong or I've added issues, that type of thing.

THE COURT: Okay, thank you.

BY MS. BLUTH:

Q At any point in time when you were back there engaging these conversations, did you feel or become concerned that the Defendant wasn't understanding what was going on?

A No. He understood.

Q Okay. And, ultimately, did he come to the decision – after weighing all of the pros and cons and discussing about the potential appealable issues, he chose to go forward with the stipulation that was entered into?

A Correct.

Q Now I want to ask a couple more questions in regards to you explained that afterwards you did have a conversation with him and you talked about the – you used sports analogies.

A Yes.

Q Is that right?

A Yes.

Q And so you do the four quarters.

A Yes.

Q Could you explain that to me again?

A I could. You know I write it so often, so I do it as circles and the way I'm – I can explain it to you this way. If you were a defendant I'd say, okay, in order to exhaust your state remedies, like the first quarter or the first round of boxing, there's a circle and that's a trial in District Court. If you win you've essentially had a knockout and you never go to step two. If you lose you go to direct appeal, which used to be in the Nevada Supreme Court and it's – you know I talk about the constitutionality of it and you have the right to an attorney and you can bring up issues from the trial.

That's step number two. If you win you go back to trial. If you lose you can within a one-year period file a post-conviction relief and I draw it as though – it goes, one, two and then back up to the District Court, where you

allege that I have committed errors or there's something new in the case but not regurgitating what happens on direct appeal. And then if you lose that you go to step number four. You appeal that within the proper time period. If you lose that you can then go and file a federal writ.

Q Okay. And so that conversation that you did with him, I want to make sure that I understood that. Was that over the phone, did you say, or you had already had that previously?

A I would do that – I would do that with every capital client well before trial, so –

Q Okay. And so you did that with Mr. Burns well before trial?

A Well before trial.

Q And then but you also said that he had called you afterwards, right, from the penitentiary and you re-explained that to him?

A He – I believe he called me and asked me questions about post-conviction relief, as opposed to those four standards –

Q Sure.

A – something about post-conviction relief.

MS. BLUTH: Okay. Thank you so much. I have nothing further.

THE COURT: Any redirect?

MR. RESCH: Nothing further. Thank you.

THE COURT: Thank you very much –

THE WITNESS: Thank you, Your Honor.

THE COURT: – for being here today, Mr. Oram.

THE WITNESS: Thank you.

THE COURT: Can he be excused from his subpoena?

MR. RESCH: He can. Thank you.

THE WITNESS: Thank you.

THE COURT: Okay, thank you. Thank you very much for being here. Go ahead.

MR. RESCH: We do have David Burns. He wants to testify.

THE COURT: Okay.

MR. RESCH: And I'm going to call him at this time. Should he sit here or –

THE COURT: And he can stay there. It's – I'm okay if he wants to stay there. I just want you to stand and raise your right hand so you can be sworn.

DAVID BURNS,

[having been called as a witness, being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated and can you please state and spell your name for the record?

THE WITNESS: David Burns, B-u-r-n-s.

THE CLERK: Thank you.

THE COURT: Thank you.

MR. RESCH: So may I be seated, kind of stay out of the way?

THE COURT: Oh, if you want to sit down that's okay.

MR. RESCH: Okay. Sorry, yeah.

THE COURT: Yeah. No. No, I appreciate you asking.

MR. RESCH: Sure, all right.

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DIRECT EXAMINATION

BY MR. RESCH:

Q Okay. Mr. Burns, do you remember being on trial in this case?

A Yes, sir.

Q Okay. You've got to say yes or no and do it in this microphone, all right?

A Yes, sir.

Q Okay. Do you recall that you were facing the death penalty when the trial started?

A Yes, sir.

Q Did you recognize your attorneys here today, Mr. Sgro and Mr. Oram?

A Yes, I did.

Q All right, now think back to before the trial started. Did you ever have any discussions with them about the death penalty?

A Yes, I had.

Q Was it something that concerned you?

A Yes.

Q Did you express those concerns to those attorneys?

A Yes.

Q Do you remember during the trial that some discussion came up about a potential agreement to get rid of the death penalty?

A Yes, sir.

Q How was that first presented to you?

A I walked in court. I think it was like the 12th day of trial and they came at me with it, and then they took me to the back room, which is located like by the

elevator, and they, basically, what they said, gave me pros and cons, I guess, of what's good about the deal and what's bad about it.

Q And what was your understanding of what you were giving up if you took the deal?

A My appeal. I guess, it was my appeal and I think he said something about an automatic life if I was to lose, but he was saying trial was going so good and we have a good jury and how that may not be a factor because I can still also win.

Q Okay. And specific to the issue of an appeal, how did they explain what you were giving up with regard to an appeal?

A Well, just he said the appeal rights and I ask him, so that will be it, and he was like, no, you'll still have habeas corpus. And at the time I really didn't understand what a habeas corpus was.

Q Okay. I don't want to put words in your mouth, okay, but was it confusing to any degree in terms of what you were giving up?

A Well, it kind of was because, I mean – I mean every day trial – in the trial, they would say how trial was going good and how it looked good. It looked good and I came in this day and they came at with this deal, so I was kind of caught off guard. I really didn't really understand, but I know that's my counsel, so I figured they would have my best interest at hand, so I just followed what they said, basically.

Q Did you express to them at any point when discussing the agreement that you still wanted to appeal if it were possible to do so?

A Then that's when they – I guess so. That's when they got to bringing up habeas corpus. I mean I know there's a difference now, but then I didn't really

understand the difference between appeal and habeas corpus.

Q Okay. And just to be clear for the record, you did want to get rid of the death penalty at the time?

A I did.

Q Okay. Now let's jump ahead. Do you remember Mr. Oram coming to see you after you were sentenced?

A Yes, sir.

Q What was the purpose of that visit?

A Well, he told me about the habeas corpus then before, so I had called him, because he said I can call him if I needed help with it, or he told me he would show me how to do it because I, honestly, didn't know what it was. So I called him to get him to – I didn't know if he was supposed to do it for me or take me through the steps of it. And he came down and seen me and we talked about it.

Q Did you ask him anything specific about filing a notice of appeal?

A Yeah, I did. I said, so what about the issues that you had printed out, the little – his little appeal facts sheet, I guess, he keeps in –

Q Okay.

A – this little black binder.

Q Well, now, all right, you were sitting here when he testified about the appeal sheet?

A Uh-huh.

Q Say yes or no.

A Yes, sir.

Q Okay. Is that something – you're telling us you did, in fact, receive

something like that?

A Yes, I did.

Q Okay. And so what did your discussion with him about that entail?

A Well, I was confused. I was like, so what about these issues? Are they – I don't have these issues? And he was writing down how the strengths and the weaks of it – of the issues and how I had better issues with habeas corpus and how, basically, if you filed an appeal it would be futile or some type of word he used.

Q Okay. Was it your desire during that last meeting with Mr. Oram you – did you still want to challenge your conviction in any way that you could?

A Most definitely.

MR. RESCH: All right, I'll pass the witness at this time.

THE COURT: Cross.

MS. BLUTH: Thank you, Judge.

CROSS-EXAMINATION

BY MS. BLUTH:

Q So, Mr. Burns, your attorney was asking you some questions about the death penalty and you stated that you had some concerns. Can you talk to me though about what were your specific concerns?

A Well, I didn't quite understand it because, like I said, he – they made it seem like everything was going good, this good jury we have and all these points. I, basically, [indiscernible] quote-unquote what he said that we're getting. I thought the trial was going good, so when I came in that morning I didn't understand where it was coming from. Like, it's a deal to waive the death penalty.

Q So, sorry. I think maybe I misunderstood you. I thought you were saying like before trial even starts –

A Uh-huh.

Q – do you have concerns about the death penalty? That's how I interpreted your first question and answer.

A Well, I mean, of course. I'm fighting the death penalty, but the only thing he kept coming to say was, like take this – you can take this deal for life without. I'm like, no; I wouldn't take no deal for life without.

Q Okay. And then you heard Mr. Oram talk to you about the four, I don't know –

A Quarters.

Q There was like a boxing round – there were like four boxing rounds or four quarters. Do you remember that discussion?

A I do.

Q Okay. And how many times did you guys have that conversation, would you say?

A That particular conversation about the boxing rounds, I think once.

Q Okay. And was that – when was that?

A I think that was after trial.

Q Okay.

A I thought it was.

Q So before your trial had you never spoken with your attorneys about the different phases of – like Mr. Oram was just testifying to, you know that there's a trial and then after trial there's a direct appeal? Did you – had you ever been explained that before?

A No, because it was so much focus on the actual trial. It was a lot of stuff we had to go over just on that, so I never really kind of ventured off into what else –

Q Do you think it's –

A – like habeas or –

Q Do you think it's possible that those conversations were had with you and you don't remember just because you guys were talking about legal stuff so much?

A It's my life. I think I would remember.

Q You think you would remember?

A I think I would.

Q Okay. So when your attorneys went back with you on this day before –

A Day 12, I think.

Q Yeah – what were the pros and cons that were discussed with you?

A You won't be facing the death penalty. You won't, more than likely, be on death row, which is a possibility because it is a death penalty case. I asked about I think it was the mitigating factors or whatever, because, I guess, I had good mitigating issues for which I thought I wouldn't have received the death penalty anyways. And they were just kind of like clearing some of that up with me.

Q And did you talk about those, like did they talk to you about the pros?

A Yes.

Q And then did you articulate your questions, like you just did, well, what about my mitigators; what do you guys think about those?

A Yes, ma'am.

Q And did they engage in conversations with answering those questions for you?

A Yes, ma'am.

Q All right. And then you said that it took you off guard because you felt like every day you were coming in up to Day 12 and they were saying like, we've got a good jury, I think this is going pretty well?

A Yes, ma'am.

Q But then it caught you off guard when they come in and they say, hey, they were talking with them. They, being the State, are considering taking death off the table. You're saying that that caught you off guard?

A Yes, ma'am.

Q But you do remember having conversations in regards to a direct appeal and this habeas petition?

A Yes. That happened in that back room.

Q All right.

A That's the first time I actually heard of habeas, the habeas corpus.

Q And so in that conversation they explain to you that you're not giving up everything; there's the thing called a habeas petition and you could engage in that avenue?

A Yes.

Q They explained that to you?

A Yes, not in depth but, basically, by name.

Q But, in regards to the direct appeal, that is what you would be giving up?

A Yes. I remember that and I remember them saying – I guess, when we were back there he started talking to him about not particular parts. They were going back and forth about, I guess, closing argument or misconduct things. I really didn't understand.

Q So you were there when Mr. Sgro and Mr. Oram engaged in the conversation like, we better make sure closing arguments – we're not giving up our appeal on that. You were present during that conversation?

A Yes, ma'am.

Q Okay. So were you able to engage in conversation with them and ask them questions?

A I was.

Q And did they answer your questions when you asked them?

A I was.

Q Okay.

A They were.

Q They did answer your questions?

A They did.

Q All right. And so when you walk out of there all of your questions have been answered at that point?

A I mean all I would know – I was still kind of – *I* really didn't understand it.

Q Okay. But if you're saying they answered all of your questions, then how are they going to know if you have more questions?

A Well, I guess, yes. They answered all the questions I had then.

Q Okay. And so you go in and then you are canvassed by the Judge,

meaning the Judge asks you questions. And had you had the opportunity to read what's in this document?

A Yes, ma'am. The one I signed on that date?

Q Yes.

A Yes, ma'am.

Q And then but also did you – were you able to see the transcript? I didn't know if you had the opportunity to read the transcript, where the Judge asks you a lot of questions like, do you understand what's going on today. Have you had the opportunity to – do you remember those?

A Yes, ma'am.

Q And you answered all of those questions in the affirmative; that you had the opportunity to speak to your attorneys and that you understood what was going on?

A Yes, ma'am.

Q And you answered all of those in the affirmative?

A Yes, ma'am.

Q And at no point during then did you say I – that you had any questions?

A I think I did and they just kept going over it. I think I did ask. He asked that, and I said, yes.

Q Okay.

A But –

Q Let me get to –

THE COURT: Well, what question? Are you contending you had questions –

THE DEFENDANT: Yes.

THE COURT: – but they didn't answer them?

THE DEFENDANT: No. Like I said, it wasn't completely to my understanding. I really didn't understand it. Even after we spoke, I still – it just caught me off guard, like I said.

BY MS. BLUTH:

Q So what question did you have then?

A Well, I figured it out later when he stood up and he said, we're not waiving any misconduct, future misconduct or something like that he was saying.

Q Oh, I see what you mean. So your question was about that limited part that, hey, the State can't just get up there and say whatever they want?

A Yeah, like the little conversation they had in the back.

Q Okay.

A So I really didn't understand it.

Q So then, once they said it on the record, hey, we're just not going to let the State get up there and say whatever they want, if they do something bad or there's prosecutorial misconduct, we're still going to be able to do that. And so that answered your question?

A Pretty much.

Q Okay. In regard – but your questions were in regards to what the State was or wasn't allowed to do in closing arguments?

A Pretty much, yes.

MS. BLUTH: Okay. All right, nothing further, Your Honor. Thank you.

THE COURT: Any redirect?

MR. RESCH: No, thank you.

THE COURT: Okay. Any other witnesses?

MR. RESCH: That's it. I guess we'll rest. Thank you.

THE COURT: Okay. All right, does the State have any – I'm just asking. I'm assuming you don't have any witnesses.

MS. BLUTH: I don't.

THE COURT: Okay. I'll listen to your closing argument.

MR. RESCH: Okay, thank you. And I'll try to keep it brief.

CLOSING ARGUMENT

BY MR. RESCH:

So much of the State's questions focus on the offensiveness of the crime or the wisdom of waiving the death penalty. We're not challenging those things and we're not trying to get out of the agreement. We're just asking that the agreement be enforced. And so then the question is: well, what was the agreement? And so that's the issue that's before the Court, I believe. It's two capable lawyers, Mr. Sgro and Mr. Oram.

THE COURT: Okay. And I'm just kind of wondering why you didn't ask either of those lawyers whether Mr. Burns requested they file a direct appeal pursuant to any appellate rights that he had carved out.

MR. RESCH: I thought that we did and they, you know, flirted with the issue of, well, we approached it and we explained it to him and told him about post-conviction, but you're right there was – a great, clear answer that has a wonderful mouthfeel was kind of missing and I understand that. Mr. Burns certainly has, to the best that he can, tried to explain that he wanted to fight his conviction, as much as he could.

And so the question of, if you have two lawyers that have 60 years of

combined experience and they enter into this stipulation and it says, Defendant agrees to waive all appellate rights stemming from the guilt phase, they could've just put a period after all appellate rights and been done with it if that's what was intended here. I would suggest that it was not. The use of the language from the guilt phase leads to the question: well, what are you reserving? And Mr. Oram – or Mr. Sgro explained it to the Court. We're reserving the right to challenge things that happened after the agreement, misconduct during the closing argument, for example. I would simply suggest that the sentencing, just a sort of black letter law issue, was obviously not part of the guilt phase of the trial. So, to the extent the guilt phase language in the stipulation means anything, it means the trial up to that point in time.

And so, sure, we're happy to have the agreement. Mr. Burns is, you know, satisfied with getting rid of the death penalty. That's great, but he didn't give up all his appellate rights. He gave up some of his appellate rights and the question is: do you either ask to appeal or were there issues that a reasonable defendant would've wanted to appeal? Well, there's both. You know the supplement that we did, starting on page 13, identifies seven areas of misconduct during the closing argument and some were objected to by trial counsel.

So I think that in terms of would Mr. Oram and Mr. Sgro know that Mr. Burns wanted to appeal? Well, they should because they objected to misconduct during the closing argument, at least in some instances. And then with respect to the sentencing, you know I would still reference the sentencing memo. It sets out errors that Mr. Oram believed had occurred in the PSI, totally suitable to be addressed at the time of sentencing, so – or on appeal. And those were two

areas where Mr. Burns reserved the right to appeal.

THE COURT: Okay. I'm not understanding the sentencing part. You're contending that the lawyers laid out any errors they believed, so –

MR. RESCH: There were objections to the PSI in the sentencing memorandum.

THE COURT: Okay.

MR. RESCH: And we may presume those were overruled because the Judge certainly didn't grant any relief on them, so those would've been appropriate to raise on direct appeal, to the extent one could, so between the closing argument and the sentencing, sure. I'm not arguing that this agreement is – has no meaning. It has meaning.

THE COURT: Okay.

MR. RESCH: Mr. Burns received the benefit of getting rid of the death penalty and, in exchange, he gave up certain appellate rights, not all. And so the question is, he has tried to communicate with his lawyers: Please fight this in any way. I think he's explained that he did want to appeal and a reasonable attorney would've understood that there were issues to appeal because, number one, they're the ones that objected to them during the closing, which was the exact thing they were worried about when they entered the agreement, and, number two, one or both of them objected in their sentencing memorandum to certain sentencing issues.

So, for all of those reasons, I would suggest you should grant relief and have the District Court Clerk issue a notice of appeal and we proceed with the direct appeal that he should've had based on the agreement, which, again, I would say is limited to the closing argument and the sentencing.

THE COURT: Okay.

MR. RESCH: All right, thank you.

THE COURT: Thank you.

CLOSING ARGUMENT

BY MS. BLUTH:

So you have to forgive me, Judge, because I am kind of behind in all of this –

THE COURT: That's okay.

MS. BLUTH: – because I wasn't – obviously, I'm not Ms. Weckerly and I'm not Mr. DiGiacomo because they're in another trial in front of Judge Herndon. And so the way that it was – the way that I understood it is that to some degree it was being challenged. His complete understanding of what he would and wouldn't be able to –

THE COURT: Well, I mean I'm not suggesting that maybe the petition didn't raise those issues, but it was very clear to me that Judge Johnson said that he was only granting an evidentiary hearing as to an appeal deprivation right, whether he had any appellate rights and then whether he was deprived of those rights.

MS. BLUTH: Right, and so in – yeah, so whether he – so but from what counsel is saying is that – and my understanding now – is that the deal or the negotiation is a good deal.

THE COURT: Sure.

MS. BLUTH: It's just that there were further things that defense counsel could have done, like the objections in the closing arguments and other ways that they could've filed a direct appeal outside of those that the Defendant

negotiated out of.

THE COURT: That is correct.

MS. BLUTH: Okay. So but I mean that begs for a different question then and I'm confused why neither of the defense attorneys were ever asked, because if that was the scope of – I thought the scope was much broader, right? I thought the scope was whether or not the Defendant had a complete understanding and – of waiving his complete appellate rights, whether they had discussed with him, hey, these are your appellate rights, these are the pros and cons of doing this, do you understand that and are you willing to go forward. That's what I thought it was, but if the question is: did the Defendant ever ask Mr. Sgro or Mr. Oram to file a direct appeal, then that was never asked. That was the whole scope of this hearing. That's why I'm a little confused. And, again, I'm behind the eight ball on this, but, I mean, we probably –

THE COURT: Well, that's what I asked. I don't believe that either of them were asked, did he indicate he wanted a direct appeal filed based on what happened in closing arguments and/or sentencing.

MS. BLUTH: Yeah. So if that's as pointed as this is, then –

THE COURT: And the Defendant never testified that he told them to file an appeal on those issues.

MS. BLUTH: Yeah. So, I mean they – I mean it's their burden that they haven't met, but I don't – so I don't know what to do with that, because if that was the whole point of this hearing those questions weren't asked and we didn't get answers on those questions, so.

THE COURT: Okay.

MR. RESCH: You know, and I don't want to point fingers back and

forth. I think we did. I think the questions were asked and the answers were given and it was somewhat nebulous in their response. Mr. Oram, basically, explained that he thought during that last meeting he was there to talk about post-conviction, even though Mr. Burns wanted to talk about appealing. And so I don't know what more Mr. Burns can do. The point is he's being redirected to this other process, which certainly is a process, but all along the way going up into the trial he understands that there's these four ways to – I don't know, four quarters of the game and the first quarter is the trial; the next part is the appeal.

So all they've been discussing leading up to that is let's appeal, and then you have this waiver, which specifically reserves certain appellate rights. How could they understand anything but that he would want to appeal? Why bother doing that if you were just going to waive everything? Again, they could've just put a period and said all appellate rights, if that was the deal. So the understanding, obviously, is that he wanted to appeal those issues because that's the entire conversation from the time, the one they have with him, the one Mr. Sgro has with the Judge and the one that he, Mr. Burns, has with Mr. Oram when he comes to see him after he's sentenced.

MS. BLUTH: I disagree. I don't think Mr. Oram was asked that at all.

THE COURT: I paid very close attention. In fact, I almost asked the question myself, but I figured that wasn't my responsibility. But neither of these attorneys were asked, number one, whether they thought there was any misconduct during closing argument, whether there was anything that they believed was a reasonable issue to file on appeal. I mean we're talking about Mr. Sgro and Mr. Oram, and Mr. Oram, who's probably one of the finest appellate attorneys that has ever practiced in front of me, and neither of them were asked

that question, whether there was anything reasonable, whether they believe he wanted to file a direct appeal regarding anything – any prosecutorial misconduct or anything in sentencing.

It was clear they did discuss habeas relief and Mr. Oram indicated, you know, you could – I think he even used the term you could accuse us in habeas relief, but there was no discussion that I heard of of a direct appeal of any appellate rights that survived the stipulation.

MR. RESCH: Well, again, I would just go back to Mr. Oram explaining the totality of the circumstances, the four quarters thing. I think he said as much as he can. Maybe he didn't understand that the Defendant wanted to appeal. I guess, I would maybe grant him that, but certainly, Mr. Burns has explained that he did.

MS. BLUTH: Sorry. I just need to – my point was that Mr. Oram was never asked that direct question.

THE COURT: No.

MS. BLUTH: The question was: when you went back to see the Defendant after this was all done, what was the point of that, and he said because I believe that he – basically, he's due that respect.

THE COURT: Sure.

MS. BLUTH: I go in to check in with them. I go in to go through the PSI with them and discuss sentencing and this and that. I mean that specific question of, well, in that meeting did he discuss with you that these were, you know, issues for a direct appeal, no, that's not – Mr. Oram said he went through later over the phone, hey, this is where you're at right now, these are the four quarters, blah, blah, blah. So I don't think that that specific question was ever

addressed to Mr. Oram.

MR. RESCH: And maybe it's just perhaps the final word. I would just suggest that a reasonable defendant would always want to appeal if they're convicted of something that lands them in life without the possibility of parole. I mean that's obviously a significant sentence. Mr. Burns has, I think, very clearly explained that he wanted to challenge that sentence all along the way and even afterwards. There was, again, the totality of the circumstance. If we're not going to focus on the specific question of whether or not he said, I want to appeal, which I believe Mr. Burns did try to explain and maybe Mr. Oram didn't quite get what he was saying, but certainly the totality of everything would suggest that this is a defendant that wanted to appeal within the limited appellate rights that he had reserved going into this deal.

THE COURT: Okay. At this time the Court is going to deny the petition. I don't – has there been any order that came out of this, because I know that – I mean I'm just conducting the evidentiary hearing. Has there been any order prepared on anything to date, or do we just need to do the findings of fact from now?

MR. RESCH: Oh, no. There's no order at all.

THE COURT: Okay.

MR. RESCH: So any final order, we'll call it, should probably address everything.

THE COURT: Okay. All right, and the State can prepare the order.

MS. BLUTH: Okay.

MR. RESCH: All right, if I may ask –

THE COURT: Okay. But I just – Mr. Burns, I just want to make sure

you understand, because I don't want there to be any confusion. You understand that you do have the right to appeal the decision that was rendered today?

THE DEFENDANT: Yes, ma'am.

THE COURT: And do you wish to appeal it?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you want your current counsel to continue to represent you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. I don't know if I need to sign a continuing order, but if I do, go ahead and –

MR. RESCH: It's more a formality. I mean I've done it just off the minutes. I've submitted an order.

THE COURT: Sure.

MR. RESCH: It's kind of just whatever the Court prefers. I've done both.

THE COURT: All right, if you want to submit an order, I'll sign an order for you to continue to represent him on appeal.

MR. RESCH: All right, thank you.

THE COURT: I think that would be appropriate.

MR. RESCH: I appreciate it. Thank you.

THE COURT: Okay, thank you.

MS. BLUTH: Thank you.

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THE COURT: Thank you very much.

[Proceedings concluded at 12:07 a.m.]

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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

Kristine Santi

KRISTINE SANTI
Court Recorder

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Steven D. Grierson
CLERK OF THE COURT

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:

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/s/ Courtnie Hoskin
Courtnie Hoskin, Deputy Clerk

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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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STATEMENT OF THE CASE

On October 13, 2010, the State charged DAVID JAMES BURNS, aka D-Shot, (hereinafter "Defendant"), by way of Indictment with the following: COUNT 1 – Conspiracy to Commit Robbery (Felony – NRS 199.480, 200.380); COUNT 2 – Conspiracy to Commit Murder (Felony – NRS 199.480, 200.010, 200.030); COUNT 3 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 4 – Robbery With Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); COUNT 5 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); COUNT 6 – Robbery With Use of a Deadly Weapon (Felony – NRS 200.380, 193.165); COUNT 7 – Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); and COUNT 8 – Battery with a Deadly Weapon Resulting in Substantial Bodily Harm (Felony – NRS 200.481). On October 28, 2010, the State filed a Notice of Intent to Seek the Death Penalty in this matter.

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.[1]

On July 19, 2013, Defendant filed a 500-page Motion to Strike the State's Notice of Intent to Seek the Death Penalty. The State filed its Opposition on July 25, 2013. This Court denied Defendant's Motion on September 12, 2013. In the interim, Defendant also filed multiple Motions to continue his trial date.

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.

On April 23, 2015, Defendant was adjudged guilty and sentenced to the Nevada Department of Corrections (NDC) as follows: COUNT 1 – a maximum of 72 months and a minimum of 12 months; COUNT 2 – a maximum of 120 months and a minimum of 24 months; COUNT 3 – a maximum of 180 months and a minimum of 24 months; COUNT 4 – a maximum of 180 months and a minimum of 24 months, plus a consecutive term of a maximum of 180 months and a minimum of 24 months for the deadly weapon enhancement; COUNT 5 – Life

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

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

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

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

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

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I. THE COURT FINDS DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

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

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

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

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

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

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

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

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

A. THE COURT FINDS DEFENDANT WAIVED HIS DIRECT APPEAL

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

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

Here, the court finds that although Defendant did not plead guilty, the Stipulation and Order he entered into is analogous to a guilty plea. It is analogous in that defense counsel would not believe a defendant would want to appeal, especially after Defendant waived all his appellate rights. Stipulation and Order Waiving Separate Penalty Hearing, filed February 9, 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 POSSIBILTY 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.

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

...

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

Defendant Burns: Yes, sir.

The Court: Do you have any questions about it?

Defendant Burns: Yes, sir.

The Court: Do you agree with it?

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes sir.

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

Defendant Burns: Yes, sir.

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

Defendant Burns: Yes, sir.

///

> The Court: And in exchange for which the State will waive its right to seek the death penalty against you, and you are giving—and you are agreeing that I will impose a punishment—in the event that you're found guilty of murder in the first degree, I will impose a punishment of life without the possibility of parole. Do you understand that?
>
> Defendant Burns: Yes, sir.
>
> The Court: You understand that there are—in the event I impose a sentence of life without the possibility of parole, you're never going to get paroled, you're never going to get out, do you understand that?
>
> Defendant Burns: Yes, sir.
>
> The Court: You're also giving up your appellate rights. Do you understand that?
>
> Defendant Burns: Yes, sir.

Recorder's Trial Transcript (hereinafter "RTT"), Trial Day 12, p. 4-9.

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

Defendant in his Pro Per Petition stated that he did not know the court likes certain issues to be filed on direct appeal, and his attorney said he would show him how to file a habeas petition and he never did. Pro Per Petition, filed October 13, 2015, p.14. Additionally, defense counsel in Defendant's Supplemental Petition now claims "it is obvious Petitioner 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

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

B. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT TO THE TESTIMONY OF KENNETH LECENSE AND RAY MACDONALD, AND THAT DEFENSE COUNSEL WAS PROPERLY NOTICED

The court notes Defendant claims Kenneth Lecense (hereinafter "Lecense"), a Custodian of Records for Metro PCS, and Ray MacDonald (hereinafter "MacDonald)", a Custodian of Records for T-Mobile, inappropriately testified as experts at trial and counsel failed to object. Petition at 7. Additionally, the court notes that Defendant argues this improperly admitted testimony should have been excluded unless supported by a properly 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:

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

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

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

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

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

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

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

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

[2] 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.

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

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

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

> Q: In the search of your apartment, there—the police found narcotics, cocaine; you're aware of that?
> A: Yes.
> Q: What—I guess what is your—how was that in the apartment?
> A: I don't know how they got there.
> Q: Okay. You don't know anything about that?
> A: No.
> Q: After these events took place, were you charged with a crime associated with this incident?
> A: Yeah.
> Q: And do you know what the charge was?
> A: It was child—child abuse or child neglect with substantially bodily harm, then just child neglect and trafficking.
> Q: Okay. And are—is that case—do you know what the status of it is or what's happening with that case?
> A: I'm still going to court.
> Q: Okay. And is that case being continued till the end of this trial?
> A: Yes.
> 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.

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

Further, on cross-examination with Anthony Sgro:

> Q: Mr. Mayo, I want to start with sort of where you left off. You have some cases that are currently pending against you, right, some charges against you?
> A: Yes.
> Q: One of them is for drug trafficking; is that right?
> A: Yes.
> Q: And that's for crack cocaine?
> A: I don't know—I don't know exactly what it's for, but I know it's trafficking.
> Q: Well, would it refresh your memory if I showed you the docket for your case?
> Mr. Sgro: May I approach, Your Honor?
> The Court: Yes, if he's familiar with the docket.
> The Witness: Yeah, I've never seen it.
> By Mr. Sgro:
> Q: Does it look like—according to this document—the charge is trafficking in cocaine?
> A: Yes, that's what it—yeah.
> Q: Now, you just told the jury that the cocaine was in your house, you don't know where it came from, right?
> A: No, I don't.
> Q: Okay. Did you tell that to the DAs before they charged you with trafficking?
> A: Like, we never had a conversation about that.
> Q: You know trafficking is a serious crime; it carries prison time?
> 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.

Q: And all these charges, including allowing children to be present where drug laws are being violated, all those charges have been postponed for now for several years, right?
A: Yes.
Q: And it's all being postponed until after you—until this trial is over, right?
A: I guess. I'm not sure. I don't know.
Q: Well, do you believe that by testifying in this case it helps you in the cases that you're facing right now?
A: No.
Q: You don't think it helps you?
A: No.
Q: Do you think that the DA indefinitely postpones cases all the time, or do you think you're getting some—
A: I don't know how the DA work.
Q: Okay. Let me finish my question, okay. Do you believe that the DA is just postponing these cases coincidently and that they're not giving you any sort of favor because you're testifying in this case? Is that what you think?
A: I don't think they giving me no type of favor.
Q: Okay. You also have I think you said some kind of destruction of property, but it's actually tampering with a vehicle, which is a felony, right?
A: No, it was a misdemeanor.
Mr. Sgro: May I approach, Your Honor?
The Court: Yes.
By Mr. Sgro:
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.

///

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

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

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

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

The court finds Defendant alleges "there is a reasonable probability Petitioner would have enjoyed a more favorable outcome at trial had these facts been properly disclosed by the State or discovered by the defense." Petition at 31. The court notes the postponement of Mayo's cases were disclosed during direct examination and cross-examination. RTT, Trial Day 10, p. 245-252. Further, the court finds defense counsel was aware of the postponement of the prosecution of Mayo's cases because he thoroughly cross-examined Mayo regarding his pending cases as showed above. Thus, Defendant fails to show prejudice because the facts 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.

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:

Q: Now, ultimately, Stephanie Cousins made an identification of the shooter, correct?
A: She did.
Q: It wasn't Job-Loc?
A: No.

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

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

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

The standard of review for prosecutorial misconduct rests upon Defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 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,

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

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

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

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

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Claims Objected To:

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

Claims Not Objected to Reviewed for Ineffective Assistance of Counsel: [4]

Credibility of Witness shifted burden

The court notes that Defendant claims there were multiple instances of burden shifting that were not objected to, or that counsel failed to seek a mistrial.[5] Petition at 35. Defendant claims that the words "priest and and a nun" or "Mother Theresa" and that there was "no explanation" were statements that constituted burden shifting. Petition at 33.

The State on rebuttal said:

> It would be a wonderful situation should we be standing in—or we should be living in a world in which people who are selling crack out of their house who get murdered happen to have a priest and a nun who's standing there and is part of the witnesses in the case. Or maybe Mother Theresa to tell us who's living in Job-Loc's apartment over at the Brittnae Pines.
> ...
>
> David Burns has no explanation that is going to save him from the horrific knowledge that he put a gun, a .44 caliber, that giant hog-leg of a revolver, to the head of a woman and pulled the trigger without ever letting her getting a word out edgewise, and then chased a 12-year-old girl down. What reasonable explanation could he give? Well, I was really high on drugs. That wouldn't 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.

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

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

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

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

Custodian of Records

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

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[6] 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.

Whistling during interview

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

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

The State argued the following during rebuttal:

> But maybe what was subtle and was lost on everybody was how particularly disgusting and despicable the crime itself was. That it was—got to be something horrific got most human beings on Earth. And when you're in an interview room with detectives and you get told about it, your behavior of humming and singing and whistling is really kind of offensive, to be honest with you. And you can't really blame the cops for using the kind of terms they used with him. But it's also relevant for something else. Because Cornerlius Mayo's inside that shower when the shot rings out. And he calls 911. And if that matches the clock at T-Mobile, that means it's while the shooter's still in that house. And he's obviously the person whistling on that 911. So whoever shot Derecia Newman and then put a bullet in Devonia 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 Devonia until after the whistling ends.

RTT, Trial Day 15, p. 94.

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

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

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

> Q: And there's points during the interview where you or—you or Detective Wildemann are telling Mr. Burns to—sort of sit up or pay attention. Could you describe what he was physically doing at the time?
> A: Well, he was slouching far into his chair. And as you heard—was humming while we were asking him questions. And then just kind of looking off or away. Just disinterested for the most part, I guess.

Id. at 70-71.

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

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

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F. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE AT SENTENCING[7]

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

[7] 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*.

> work with. And it's sort of sad that he didn't just have some guidance. If he had some guidance maybe surely he wouldn't be standing where he is and it's just unfortunate to see that situation. 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—
>
> The Court: The way the law stands now, unless it's changed, he will never be released from prison.
>
> Mr. Oram: That's correct.

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

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

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

The court notes Defendant has alleged trial counsel was ineffective for not seeking to dismiss or otherwise disqualify Petitioner for the death penalty based on the findings concerning Fetal Alcohol Syndrome ("FAS") and NRS 174.098. Petition at 38. First, 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.

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

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

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

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

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

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

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

H. THE COURT FINDS COUNSEL WAS NOT INEFFECTIVE IN REGARDS TO THE JURY NOTES

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

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

S. Ct. at 2066 (finding a court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, *viewed as of the time of counsel's conduct*") (emphasis added).

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

I. THE COURT FINDS DEFENDANT HAS FAILED TO SHOW CUMULATIVE ERROR[8]

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

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[8] Defendant states that "errors alleged in this petition and those which should have been raised on direct appeal to the 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 15th day of October, 2018, by Electronic Filing to:

JAMIE J. RESCH, ESQ.
jresch@convictionsolutions.com

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

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11/8/2018 8:52 AM
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CLERK OF THE COURT

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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 **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

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

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
PDmotions@clarkcountyda.com

_____
An Employee of Conviction Solutions

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS, Appellant, v. THE STATE OF NEVADA, Respondent.	Supreme Court Case No. 77424

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office
Aaron Ford, Nevada Attorney General
Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By:_____
Employee, Resch Law, PLLC d/b/a Conviction Solutions