

IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Electronically Filed
Jun 24 2019 03:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 77623

Appeal from the Denial of a Petition for Writ of Habeas Corpus
Second Judicial District Court, Washoe County
The Honorable Elliott A. Sattler, Department 10

APPELLANT'S APPENDIX

VOL. IV

LYN E. BEGGS, ESQ.
LAW OFFICES OF
LYN E. BEGGS, PLLC
Nevada State Bar No. 6248
316 California Ave., #863
Reno, NV 89509
Tel. (775) 432-1918
COUNSEL FOR APPELLANT

INDEX TO APPELLANT'S APPENDIX
QUINZALE MASON

Case No. 77623

| <i>Document</i> | <i>Date</i> | <i>Vol.</i> | <i>Page</i> |
|---|--------------------|--------------------|--------------------|
| 1. Amended Information | 02.4.15 | I | 009 |
| 2. Information | 11.24.14 | I | 001 |
| 3. Judgment | 03.17.15 | IV | 707 |
| 4. Minutes of Arraignment | 12.09.14 | I | 005 |
| 5. Minutes of Hearing on Motion to Dismiss | 05.15.18 | IV | 761 |
| 6. Minutes of Status Hearing | 02.06.15 | I | 055 |
| 7. Minutes of Trial: Day I | 02.09.15 | I | 189 |
| 8. Minutes of Trial: Day II | 02.10.15 | III | 546 |
| 9. Minutes of Trial: Day III | 02.11.15 | IV | 675 |
| 10. Minutes of Trial: Day IV | 02.12.15 | IV | 700 |
| 11. Motion to Dismiss | 01.10.18 | IV | 747 |
| 12. Motion to Exclude Evidence of an Alibi | 02.05.15 | I | 013 |
| 13. Notice of Alibi Witness | 01.16.15 | I | 006 |
| 14. Notice of Appeal | 12.05.18 | V | 847 |
| 15. Notice of Entry of Order/Order | 11.21.18 | V | 839/841 |
| 16. Opposition to Motion to Dismiss | 01.24.18 | IV | 755 |
| 17. Order (Dismissing Certain Petition Grounds) | 06.07.18 | IV | 762 |

| | | | |
|--|----------|-----|-----|
| 18. Order of Affirmance | 06.16.16 | IV | 709 |
| 19. Order for Appointment of Counsel | 03.21.17 | IV | 734 |
| 20. Petition for Writ of Habeas Corpus | 03.02.17 | IV | 715 |
| 21. Remittitur | 07.11.16 | IV | 713 |
| 22. Supplemental Petition for Writ of Habeas Corpus | 12.08.17 | IV | 736 |
| 23. Transcript of Proceedings Status Hearing | 02.06.15 | I | 019 |
| 24. Transcript of Proceedings Trial: Day I | 02.09.15 | I | 057 |
| 25. Transcript of Proceedings Trial: Day II | 02.10.15 | I | 192 |
| 26. Transcript of Proceedings Trial: Day III | 02.11.15 | III | 549 |
| 27. Transcript of Proceedings Trial: Day IV | 02.12.15 | IV | 677 |
| 28. Transcript of Proceedings Evidentiary Hearing | 10.31.18 | IV | 770 |
| 29. Verdicts | 02.12.15 | IV | 704 |

CERTIFICATE OF SERVICE

I certify that I, Lyn E. Beggs, Esq., am counsel for the Appellant in this matter, and that on this date I electronically filed the foregoing Appellant's Appendix with the Clerk of the Court by using the ECF system which will send a notice of filing to all parties pursuant to the master list:

Jennifer P. Noble, Chief Deputy District Attorney
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

Aaron Ford
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701

DATED this 24th day of June, 2019.

/s/ LYN E. BEGGS
LYN E. BEGGS, ESQ.

1 as we start to talk about the car. But there was
2 testimony that's inconsistent amongst the people.

3 So let's start with Mr. Huey Stanley.

4 Mr. Holly and Delphine testified that he was
5 standing by this brown car or gold car, however it's
6 described, as it drove up into the parking lot. But
7 Mr. Stanley said that Huey -- excuse me. Anthony was
8 standing by his Blazer.

9 Now, this is a -- this is not perhaps in your mind
10 initially going to be something that -- so two of the
11 witnesses say Anthony Holly is here where I'm pointing
12 with the tip of my pen where the car pulled up off of
13 Patton Drive. Huey Stanley says his Blazer was parked
14 over here on the other end of the building and Anthony
15 Holly is standing over by the Blazer.

16 Now, this isn't remarkable testimony in and of
17 itself, but it exemplifies how people see things and
18 what witnesses do with the information that is lodged
19 in their brain. Now, keep in mind this event was six
20 months ago. And you'll hear me talk about the lapse of
21 time in other contexts here, too.

22 I'm not saying that everybody has to have a perfect
23 memory that goes under oath and testifies in a court of
24 law, but if you're going consider the testimony

ROUGH DRAFT TRANSCRIPT

1 consistent and they're going to corroborate the State's
2 case, you have to also consider these inconsistencies.
3 And that's one of them.

4 Mr. Huey said it was a brown car that pulled in
5 there. And he later in his testimony, I'll concede --
6 "Well, it was gold. It was gold."

7 But here we have the passage of time again. And if
8 these -- is it conceivable that these folks that live
9 there in the neighborhood -- and Mr. Stanley is
10 directly up above Delphine's apartment -- that they
11 never talked about this incident ever again and they
12 never said who did what and shared their stories about
13 what was going on? Of course. It would be unnatural
14 if they didn't ever speak about it again.

15 So when he said, "Well, it was a gold car, it was a
16 gold car, you know, it wasn't brown," is he saying this
17 because the other two said it was a gold car or
18 somebody else said it was a gold car and that seems to
19 be the thing that they should be talking about is a
20 gold car because it fits the scenario that the State
21 wants to present?

22 Well, let's talk about some other inconsistencies.
23 Mr. Stanley is sitting by his apartment door up on the
24 second floor here. And it doesn't show it here,

ROUGH DRAFT TRANSCRIPT

1 perhaps because this roof extends over it, but there's
2 a walkway there that he described and that he
3 oftentimes sits outside his door in his chair enjoying
4 the out of doors mostly because of his -- I think he
5 said COPD.

6 And he sees the car drive up. But this was an
7 unremarkable event. There was nothing that caused him
8 any alarm or any other predisposition to be concerned
9 about this car driving up in the driveway in this first
10 parking spot here.

11 So he said a fellow got out of the car and
12 disappeared underneath the walkway so he couldn't see
13 him anymore. But he said -- here's what he said. And
14 I brought this to his attention and, you know, he
15 admitted he had said this at the preliminary hearing
16 also. That when he got out of the car, the fellow got
17 out of the car, he had one hand on the door and the
18 other hand on the roof, but he never described what was
19 in his hand on the roof or the hand that was touching
20 the car. He said the hands were there. No gun.

21 And that's Mr. Stanley's version of what he
22 observed when the car pulled in the parking lot and
23 then the fellow disappeared underneath the walkway. He
24 probably had a view of him for -- what? -- a second

ROUGH DRAFT TRANSCRIPT

1 perhaps. Not very much time to perceive somebody or
2 anything for that matter.

3 And as you'll see, as time goes by, people have
4 made different descriptions about the car, too. But
5 one thing -- I will concede that one thing that they
6 seem to be consistent on is they name Mr. Mason as the
7 person who got out of that car. But let's talk
8 about -- no witness there, whether it was Mr. Stanley,
9 whether it was Anthony Holly or whether it was Delphine
10 described him, the person that got out of the car, as
11 having a hat on, let alone a red hat. None of them saw
12 a hat.

13 Now, this is -- I'll tie this together when we talk
14 about Mr. Maes later on. But nobody talked about a red
15 hat, nor did they describe the shirt. If you recall --
16 I'll mention it now, because I'll talk a little more
17 about Mr. Maes -- Mr. Maes said the person that pulled
18 in the lot up on the other side of the street where he
19 was moving somebody in had a white shirt on and a red
20 cap. Then he said that same -- that same gold car went
21 up the street.

22 Well, there's a couple other flaws in Mr. Maes's
23 perception or testimony there that I'll discuss in a
24 minute. But it's important to show that the three

ROUGH DRAFT TRANSCRIPT

1 people that testified that they saw Mr. Mason get out
2 of that car and start shooting with a gun couldn't
3 describe his clothes. And remember when he got out of
4 the car, there wasn't -- this wasn't anything where the
5 adrenaline is rushing and your memory goes blank
6 because you just can't seem to get it together to
7 remember what it was because your mind is racing.
8 Every human being has been through that same
9 experience.

10 So there's no description of the clothes and
11 there's no description of the hat, as Mr. Maes
12 deliberately said this guy had a red cap on and a white
13 shirt. So as we know from all the evidence that was
14 gathered in this bag that they did the DNA test, there
15 was no white shirt in there. It was a dark pullover
16 shirt.

17 the car didn't pull in fast. It didn't come
18 screeching around the corner and pull in there. The
19 description by Huey Stanley was it just pulled in and
20 parked right in that first spot. Nobody thought
21 anything about it. And that's consistent with them not
22 thinking that there's any big deal when this car pulls
23 in the parking lot.

24 So at that point in time there's nothing unusual

ROUGH DRAFT TRANSCRIPT

1 that's been perceived by Huey Stanley. The fellow goes
2 underneath the walk and then he hears "boom, boom," at
3 least two and maybe even more than that. I think he
4 described somewhere around four, was his testimony,
5 rounds went off and what he thought was a gun.

6 Now, what did -- this is where the testimony gets
7 convoluted. He says that Anthony ran around the back
8 of his Blazer. He said he tried to go in front, but if
9 you recall, Huey Stanley said there was a barbecue
10 there and he couldn't go in front of Mr. Stanley's
11 Blazer that was parked right in this area here where
12 the tip of my pen is. He couldn't go in front of it
13 because there was a barbecue there. Yet Delphine
14 testified that Anthony ran in front of that and then
15 went around the corner and he fell twice doing it.

16 Now, those differences in testimony become
17 important when you see what their perception is. And
18 I'll tell you why. Mr. Huey said as soon as he heard
19 the "boom, boom, boom," he hit the deck. He was down
20 on the deck and crawling back in his apartment. So
21 he's going through his door and he can't see what's
22 going on. And he certainly isn't seeing where the
23 shooter is shooting, because he can't even see the
24 shooter. He actually admitted that.

ROUGH DRAFT TRANSCRIPT

1 So without seeing where the gunman is aiming, he
2 doesn't know what's really going on down there. He
3 hears the sounds.

4 And listen, I'm not trying to make fun of what went
5 on here and I'm not trying to humiliate Mr. Stanley,
6 but these perceptions and the misperceptions you're
7 hearing about need to be dealt with in your
8 deliberations.

9 So we have Anthony Holly. You know, Mr. Young
10 talked about his prior felonies. Felonies are
11 introduced in our courts of law for the purposes of
12 impeachment. And impeachment means that this is kind
13 of a dishonest person, he's not really to be trusted.
14 And the testimony that he gives here now isn't worthy
15 of your trust.

16 He says he saw the defendant, but he was standing
17 here and a car pulled in from right here. Okay. If
18 Mr. -- if Anthony Holly is standing up here where I'm
19 pointing -- in this area where I'm pointing my pen,
20 what do you see here? What am I circling with my pen?

21 So this car comes in from Patton in an area like
22 this and parks. And according to Anthony Holly and
23 Delphine, he's standing here right near the car. Now,
24 he doesn't say that he looks in the car. When the car

ROUGH DRAFT TRANSCRIPT

1 pulls up, he says the window was down and he heard a
2 click that he associated with the rack of a pistol on a
3 gun.

4 And he said he immediately, immediately took off
5 running. Yeah, he took off running. And which
6 direction did he run? He ran -- according to Delphine
7 he ran right in front of the building and then around
8 the corner here. He fell a couple times. According to
9 Huey Stanley he went around the Blazer, he was standing
10 here to begin with, and then disappeared on this side
11 of the property.

12 Well, if he's running in that direction, he can't
13 be looking behind him. He's looking at where he's
14 going as fast as he can. And, again, I'm not making
15 fun of him, but I didn't see any eyes in the back of
16 his head, and he couldn't see where that pistol was
17 being aimed either. So far we have nobody that saw
18 where this pistol is being aimed. I'll tie this
19 together in a bit.

20 Well, let me mention it right now so I don't try to
21 sound mysterious. Look, nobody -- Officer Kassebaum
22 testified that he searched the area for impact, you
23 know, bullet impact evidence. He found none, none in
24 the wood structure, you know, none on the pavement.

ROUGH DRAFT TRANSCRIPT

1 And there was -- if you recall, I made a point of
2 showing this retaining wall back up here. And if we
3 look at -- this is Exhibit 7, by the way. The one I
4 was just showing you -- I apologize -- was Exhibit 2.
5 And these will be back in the jury room with you.

6 So this isn't a great picture, but it shows from
7 the Patton Drive looking westbound through the parking
8 lot. And if you recall, the building there is shown as
9 the apartment building that they were in. And Delphine
10 was down in this area sitting by her door with her
11 child Cecelia. The car came in and parked right here.
12 And Anthony Holly was running back toward the Blazer
13 here in the background.

14 What's behind there? There's a big, tall, concrete
15 block retaining wall. And what's on -- what's on the
16 ground is pavement, albeit not in great condition. But
17 Officer Kassebaum thought that, well, if there was --
18 you know, if the bullets were going to hit at a shallow
19 angle, they would usually cause a linear scuff mark
20 where they hit the pavement and bounced up. If bullets
21 hit the concrete block back here, they're going to
22 leave a mark. And you can all imagine this. When
23 somebody is shooting, particularly with a moderately
24 powered pistol like a 9 millimeter, it's going to leave

ROUGH DRAFT TRANSCRIPT

1 a mark somewhere.

2 There is no strike evidence anywhere shown here in
3 this case, anywhere. The point is, where was that
4 pistol pointed? Was the pistol pointed in the air?
5 They couldn't find any strike marks anywhere, no
6 ricochet marks, no nothing. So what is that particle
7 in Cecelia's leg? The doctor didn't know. But I'll
8 get there in a minute.

9 So we'll stay back on this particular photograph
10 here. If Anthony Holly was running in the direction of
11 this Blazer back here, you would think you would find a
12 bullet hole in the Blazer, you would find a bullet hole
13 in this retaining wall, you'd find a bullet hole or a
14 ricochet off of these stairs, off of the building, but
15 you don't.

16 Now, listen, Mr. Young wants you to ignore this
17 mystery, that all of a sudden this particle ends up in
18 Cecelia's leg, but it's important to understand -- and
19 I'll tie this together with the instructions a little
20 later on.

21 So Delphine, when she testified, no hat and she
22 didn't describe any clothes either of whoever got out
23 of that car and started shooting. Now, she said she
24 didn't really pay any attention to what was going on

ROUGH DRAFT TRANSCRIPT

1 until Anthony started running.

2 Now, here's the peculiar thing. She stated
3 that -- she said that she saw the person on the car and
4 she says it's Mr. Mason, that the person shooting from
5 the car was shooting at Anthony Holly. Now, I'll show
6 you why you should seriously, seriously dispute this
7 testimony in your deliberation.

8 If we go back to the State's Exhibit 2, Delphine is
9 sitting by her door in this area right next to the
10 wall, right next to her door. Anthony Holly, according
11 to her testimony, is running from here in front of the
12 building around this way. Or if you want to accept
13 Huey Stanley's testimony, he is running this way and he
14 goes around the Blazer and then down to the side of the
15 building.

16 Delphine testifies that she saw Anthony Holly fall
17 twice. Anthony Holly even testified that when he hit
18 the stair, the stair rail, it caused him to fall. He
19 actually fell twice according to Delphine. The bullet
20 never struck him. If the shooter is shooting at
21 Anthony Holly and he fell twice and he shot at him once
22 on the ground, you certainly if he missed him would
23 have seen a ricochet mark off of the asphalt. It's not
24 there.

ROUGH DRAFT TRANSCRIPT

1 So back to Delphine, however. She says she's
2 watching Anthony run this direction. If she's seeing
3 Anthony run this direction and she's down here and
4 she's seeing him go back here and she sees him fall,
5 it's in this area where I'm making a little circle with
6 my pen. I challenge you to watch him fall here, fall
7 twice, by the way, and still have one eye cocked down
8 here down the sidewalk to see where the shooter is
9 shooting. It's virtually impossible. And she's not a
10 chameleon where the eyes can diverge and look in all
11 directions at the same time. Humans don't work that
12 way. They can focus their eyes in parallel in one
13 direction and that's it.

14 So Delphine either watched Anthony, which is the
15 more trustworthy version, where she sees him fall and
16 consistent with Anthony Holly's testimony that he fell
17 first when he hit the stair rail, or she can see down
18 toward Patton Drive. She can't be looking at the same
19 time.

20 Now, consider this also. She said as soon as she
21 heard the sound of the shots, she tried to cover her
22 daughter who was sitting on the ground. That means she
23 had to get on the ground and cover her daughter with
24 her body. So how much could she actually see at that

ROUGH DRAFT TRANSCRIPT

1 point in time?

2 Why am I bringing this up? Do these people in
3 this -- that happened to experience this thing at 2397
4 Patton Drive, did they all get together and talk about
5 what happened and, of course, their stories congeal?
6 I'm not saying they're bad people. Everybody talks
7 about important events in their lives, and particularly
8 remarkable events like this, they'll talk about it and
9 they'll talk about it, but over a six-month period what
10 becomes fact and what becomes something that somebody
11 said that stuck in your head and you think, "Yeah,
12 maybe that's the way it was, I saw the guy shooting at
13 Anthony" -- but by her own testimony it's virtually
14 impossible for her to see both.

15 As I mentioned, she's crouched over trying to
16 protect Cecelia, but in fairness, it wasn't described
17 exactly what she did, but she said she was bending over
18 trying to protect Cecelia, but she certainly describes
19 in fair detail the path that Anthony took.

20 Now, there's another thing that came over the 911
21 call that you heard for Huey Stanley. You'll have that
22 in the evidence room. You can play it back there if
23 you want. And this is something, if I recall, Mr. Maes
24 stated too. He heard somebody screaming down there.

ROUGH DRAFT TRANSCRIPT

1 But over the 911 call they were saying, "They shot the
2 baby. They shot the baby."

3 Well, what's wrong in that? It's not "He shot the
4 baby." It's "They shot the baby."

5 Maybe a small difference now, but when you add up
6 all of the inconsistencies in this entire scenario, it
7 makes a big difference, because you have to take all
8 these little things that seem like a minor chip around
9 the edge, you know, of the piece of pie, but by the
10 time you put them all together, the pie gets consumed
11 by the inconsistencies, because it just couldn't be
12 that way.

13 So let's talk about the car. This is the car that
14 the State actually wants you to believe was driven by
15 Mr. Mason that came up there and parked in that spot at
16 2297 Patton. You recall what Mr. Maes said about the
17 rear window? Oh, maybe he did, maybe he didn't, but
18 I'll tell you what he said. He said the rear window
19 was busted out. The rear window is not busted out on
20 there.

21 So with Mr. Maes we have somebody in a white shirt
22 and a red cap in -- I'm going to use the polite term --
23 an unloved car. He called it a ghetto car and
24 described it with the rear window punched out or broken

ROUGH DRAFT TRANSCRIPT

1 out.

2 As you can see here, the rear window is fine on
3 this car. This is the one that was found in Sun
4 Valley. That nexus really hasn't occurred yet in this
5 case, but nonetheless, they find this car and they want
6 it to be the car that drove up in front of that -- in
7 front of that house, in front of the apartment
8 building. So, therefore, that's what they expect you
9 to believe, but it's not consistent with the testimony.

10 So if you -- Mr. Young emphasized that the car went
11 around in the parking lot where Mr. Maes was, did a
12 U-turn, headed up Patton Drive. And Mr. Maes actually,
13 I think reluctantly, admitted that he couldn't actually
14 see where it went because the trees were in the way,
15 but he said maybe 10 or 12 seconds later he hears some
16 gunshots.

17 So this is where you get into the instruction where
18 you have circumstantial evidence. So they want you to
19 believe that -- you know, that this is the same car
20 that drove in, did the U-turn, but there's so many
21 inconsistencies in it, you really can't consider this
22 same gold car.

23 Mr. Maes didn't really give a make or mark of the
24 car. This is a Hyundai Accent, you know, Eboni

ROUGH DRAFT TRANSCRIPT

1 Spurlock's car, the one that they want you to believe
2 that was driven to the scene. So we have those
3 inconsistencies there.

4 And let me show you -- again, this is Exhibit 14.
5 Do you remember what Delphine said about the left
6 front? There was a big, huge, two-foot-in-diameter
7 spot of black primer on that car that she said she saw.
8 Now, this -- look, this is -- that's really significant
9 as far as the identity of this car, because you can see
10 from this photograph on Exhibit 17, there's no black
11 primer, there's nothing wrong with the -- she said it
12 was on the left front -- the driver's side -- by the
13 driver's side front wheel is what her exact testimony
14 was. There's no primer there. So she's describing a
15 car that's probably different.

16 I don't have any statistics on how many gold cars
17 inhabit the United States, or even Reno, but they're
18 really common. You see gold cars just about
19 everywhere. And small gold cars are probably a lot
20 more popular than large gold cars. So that's what we
21 have, here is another misdescription of this car.

22 And they want to tag Mr. Mason with this, so they
23 picked this car because they think he was driving it up
24 there and got out and started shooting. But here's the

ROUGH DRAFT TRANSCRIPT

1 lack of information that they have regarding the car.
2 Nobody on the scene got the license plate. Nobody on
3 the scene described the make or model of that car.
4 They did describe some dark tinted windows. Some of
5 them say the windows were rolled down. So how did they
6 know? Another inconsis -- that's an inconsistency,
7 within an inconsistency.

8 So now we talk about what else was on the car that
9 Detective Blas didn't do. Oh, by the way -- let me see
10 if that photo is there. This is also very important.
11 This is a feature of a car that would be easily
12 describable by whoever perceived it to be there. And
13 as this car pulled in -- as whatever car it was pulled
14 in to the parking spot so that it could be perceived by
15 Mr. Stanley and Delphine, nobody described the bumper
16 this way. That's a very, very significant difference.

17 So what are all the flaws regarding the identity of
18 this car? No license plate, you know, there's no make
19 or model of the car that was described by Delphine or
20 Mr. Stanley. They certainly would have noticed this
21 bumper and been able to describe that, but that wasn't
22 done. Nobody said anything about this bumper being
23 that way.

24 The windows were supposedly rolled down. So how

ROUGH DRAFT TRANSCRIPT

1 did they know that they were dark tinted? As you can
2 see, as the camera looks in this thing with the sun
3 shining down on it, you can't even see in the vehicle,
4 even from the front window. You can see part of the
5 dash there where I'm pointing my pen and that's it.
6 Even look at the surrounding vehicles. It would be
7 very, very difficult to perceive anyone in the driver's
8 seat of that car.

9 Then you couple on the other side where I showed
10 you the other picture of this car. There's no primer
11 there as described by Delphine. It's not the same car.
12 They want you to think it's the same car, but it's not.
13 So they go about their investigation assuming that this
14 is the car. And it is an assumption.

15 And by the way, we don't convict people in America
16 based on assumptions. It's not what it's about. It's
17 proof beyond a reasonable doubt.

18 So let's talk a little bit about Detective Blas and
19 how they used this car to establish some continuity in
20 the case. So what I'm showing you here is Exhibit 19
21 now.

22 THE COURT: Mr. Hylin, on the larger screen to your
23 left -- I'm sorry -- to your immediate left there's a
24 little button in the lower right-hand corner that will

ROUGH DRAFT TRANSCRIPT

1 take the red arrow off of the screen there.

2 MR. HYLIN: I'm sorry. I didn't see it was on
3 there. Thank you, Your Honor.

4 THE COURT: And, counsel, I don't mean to -- I'm
5 not cutting your argument short.

6 We will be breaking for lunch in the next couple of
7 minutes, ladies and gentlemen, just so you know.

8 MR. HYLIN: Do you want to do it now, Your Honor?
9 That's fine.

10 THE COURT: It's certainly up to you, Mr. Hylin.
11 We started a little late. So, again, I'm not in any
12 way limiting the amount of time that you have to argue
13 your case. I just want to do it at a reasonable time
14 both for the convenience and comfort of the jury as
15 well as the parties. So maybe if we can -- if you want
16 to break now, we can do that.

17 MR. HYLIN: That's fine with me, Your Honor. I
18 will just be starting into Detective Blas's testimony,
19 so this is a good spot to break.

20 THE COURT: Okay. Ladies and gentlemen of the
21 jury, I think it might be a good idea then to break.
22 The case has not been submitted to you yet. Argument
23 has begun. But you are not to discuss the case, so I
24 need to read you the admonition again.

ROUGH DRAFT TRANSCRIPT

1 You are instructed not to discuss the case among
2 yourselves or with anyone else or to form any
3 conclusions concerning the case until it is submitted
4 to you. You're not to read, look at or listen to any
5 news media accounts relating to this case should there
6 be any. You're not to form any opinion about the case
7 until it is finally submitted to you.

8 Do not experiment or investigate. Do not visit the
9 scene. Do not refer to any outside sources for
10 instructions on the law. Rely only on the court for
11 legal instruction.

12 Ladies and gentlemen, why don't we come back at
13 approximately -- when I say "approximately," I
14 immediately wish I hadn't said that. Why don't we back
15 here at 1:15. That's going to give you a little bit of
16 extra time for lunch, but I think that will give the
17 appropriate amount of time both for you to go do the
18 things you need to do and then we'll come back and
19 conclude the closing arguments after the noon hour. So
20 we'll be back, again, at 1:15 p.m.

21 Remember that admonition. You're not allowed to
22 talk amongst yourself or with anyone else about the
23 case because it is not submitted to you yet for
24 consideration.

ROUGH DRAFT TRANSCRIPT

1 All rise for the jury.

2 (Outside the presence of the jury:)

3 THE COURT: Deputy Gray, did we order lunch already
4 for the jurors?

5 DEPUTY GRAY: We have not.

6 THE COURT: Okay. Why don't we do that. We can
7 order them lunch. I know that jury deliberations --
8 well, no, strike that. We're not going to do that,
9 because they're going to be able to go out and do lunch
10 on their own.

11 Be seated, everybody.

12 The nurse from the Washoe County Sheriff's Office
13 is en route for Mr. Mason's medical needs, and so I did
14 want to make sure that we took that break right around
15 that period of time so Mr. Mason can get his insulin
16 injection and also get his lunch and make sure that his
17 physical needs are taken care of. And so we will be in
18 recess until 1:15.

19 Deputy Gray, when the nurse comes, just have her
20 assist Mr. Mason. I would request that Mr. Mason
21 remain here in the courtroom at least briefly for the
22 jurors to be able to clear the jury room if they need
23 to so they do not see Mr. Mason being escorted in the
24 company of the sheriff's office.

ROUGH DRAFT TRANSCRIPT

1 Anything else on behalf of the State, Mr. Young?

2 MR. YOUNG: No. Thank you.

3 THE COURT: On behalf of Mr. Mason, Mr. Hylin?

4 MR. HYLIN: No, Your Honor.

5 THE COURT: Just so the parties also know, it is my
6 practice to release the alternate juror when the
7 jury begins their deliberations unless there's no
8 reason to have -- in this case it a female -- to have
9 her remain.

10 Mr. Young, do you have any objection to that?

11 MR. YOUNG: When you say "release," as far as let
12 her leave the courtroom or the courthouse?

13 THE COURT: Yes.

14 MR. YOUNG: I have no objection to that so long as
15 she -- I know typically they at least provide a phone
16 number in case she's needed to come back. But short of
17 that, no, I have no objection.

18 THE COURT: If the parties have a strenuous
19 objection, I can make the alternate remain here in the
20 building. I don't have her remain here in this
21 courtroom while her fellow jurors are deliberating, but
22 she will remain in the building. But generally I like
23 to let them go and I give them the admonition before
24 they leave and then we also make sure that we've got a

ROUGH DRAFT TRANSCRIPT

1 cell phone number where we can reach that person. So
2 if that is the framework, is that all right with the
3 State?

4 MR. YOUNG: For that I have no objection.

5 THE COURT: Mr. Hylin?

6 MR. HYLIN: That's fine with me, Your Honor.

7 THE COURT: Then that will be the process that we
8 will employ in this case. We'll be back on the record
9 at 1:15. Court is in recess.

10 (The lunch recess was taken.)

11 --o0o--
12
13
14
15
16
17
18
19
20
21
22
23
24

ROUGH DRAFT TRANSCRIPT

1 RENO, NEVADA; WEDNESDAY, FEBRUARY 11, 2015; 1:25 P.M.

2 --oOo--

3 THE COURT: Will counsel stipulate to the presence
4 of the jury? Mr. Young.

5 MR. HYLIN: The State will.

6 THE COURT: Mr. Hylin?

7 MR. HYLIN: Yes, I will.

8 THE COURT: Ladies and gentlemen, we'll go back on
9 the record in the State of Nevada versus Quinzale
10 Mason, CR14-1830. Mr. Hylin will continue now with his
11 closing argument.

12 Go ahead, Mr. Hylin.

13 MR. HYLIN: Thank you, Your Honor.

14 Good afternoon.

15 When I left off I was about ready to start talking
16 about Detective Blas and his phase of the investigation
17 when he's gathering the items out of the car. And the
18 photo that was at issue is here. If you recall, this
19 is the -- I'm sorry. This is Exhibit 19, by the way.
20 All these things will be in the jury room and you'll be
21 able to inspect them themselves.

22 Now, I asked a lot of questions of Detective Blas
23 and a lot of the procedural stuff, too. But when you
24 distill all this down, he found some items in this car

ROUGH DRAFT TRANSCRIPT

1 here which has been well established that it's Eboni
2 Spurlock's car. That's essentially undisputed. In the
3 glove box there they found the registration. She
4 confirmed it's her car. So why would it be a shock
5 that Mr. Mason's items are sitting in that car?

6 But one of the important things that Steve Gresko
7 told you with the DNA is it doesn't tell you the time
8 any of these items were put in that car, it doesn't
9 tell you what time anything happened, it doesn't say
10 when month-wise, year-wise, day-wise. DNA essentially
11 shows that there's DNA, say, on the hat and the shirt.
12 And they're in a car that was essentially the family
13 car. Eboni used it most of the time when she went to
14 work, but it was also driven by Mr. Mason. So it's no
15 shock.

16 What the State wants you to do now is relate this
17 back and say, "Oh, that's got to be the car that pulled
18 in at the scene." But because of the discrepancies
19 that I showed you before, it couldn't be the car.
20 There's no big two-foot primer mark as testified to by
21 Delphine. Nobody described the bumper on this car. As
22 I showed you in the other photograph, it's
23 jobberywockey, it's been partially pried loose or at
24 least loosened from its brackets. The back window

ROUGH DRAFT TRANSCRIPT

1 isn't out. The State wants you to just overlook all
2 these inconsistencies in the car that pulled in that
3 lot.

4 Well, you can't overlook the inconsistencies.
5 They're there. You know, they're the elephant in the
6 parlor is the old legal term. And you have to get
7 around that elephant in order to find that this is the
8 car that was at that -- at 2397 Patton Drive. You
9 can't do it.

10 So what they've done is gathered some of the items
11 in here, did a DNA test on the hat particularly and
12 said, "Bingo. This has got to be the car."

13 No, it doesn't have to be the car. It doesn't have
14 the characteristics that were described by Mr. Maes or
15 anybody there on the scene. You know, the only
16 similarity is it was a small gold car. Small gold car.
17 That's it. And that's why there's a huge discrepancy
18 in the State's case.

19 So I'm not really making fun of Detective Blas, but
20 they look for what they want to look for. And he found
21 what he wanted to find. But when I started going over
22 with him on some of the other items like, "Well, why
23 didn't you swab the steering wheel? Why didn't you
24 swab the doorknob? Why didn't you swab this?" and,

ROUGH DRAFT TRANSCRIPT

1 frankly, he came up with a bushel basketful of excuses.
2 Mostly he said, "Well, it deteriorates in the weather."

3 Well, there wasn't any weather. Nobody testified
4 to any rain. Nobody testified about going through a
5 car wash. Nobody testified to any of that sort of
6 stuff. The fact of the matter is they collected this
7 car from where it was parked out at Sun Valley.

8 By the way, perhaps if you would have swabbed all
9 that stuff it would have told us who drove it out
10 there, because, if you recall, Steve Gresko testified
11 that the last driver of the car, particularly on the
12 steering wheel, would probably wipe out the DNA from
13 all the previous drivers. But because he didn't do
14 those tests and he didn't do, you know, a thorough
15 investigation, we'll never know now. We can't know.
16 So that really doesn't inure in the favor of the State.

17 If the State is not going to do a proper
18 investigation so that you nail all these little details
19 down, don't give them credit for it. You can't give
20 them credit for it.

21 So at any rate, when -- all I can say, we would
22 have found out who drove the car out there. Mr. Young
23 wants you to believe that it was Mr. Mason, but I'm
24 telling you, you have not heard one scintilla of

ROUGH DRAFT TRANSCRIPT

1 evidence of who parked that car there. Not one. So
2 it's not even logical to conclude that that car was
3 parked there by Mr. Mason. It's rank speculation.

4 And let's go back to what I had said about the A
5 word, assumption. It's an assumption. We don't
6 convict on assumptions in this country. That's not the
7 way it's done. We convict on reasonable -- if they
8 have proved it beyond a reasonable doubt, which they
9 have not.

10 Also, in this car they found no shell casing, they
11 found no gun. I asked Detective Blas if he had -- you
12 know, if he had done a gunshot residue test. It's
13 called a GSR test in the investigative business. Well,
14 he didn't even bother to think about it. But if
15 somebody is shooting a gun near the car, near a human
16 being, just like he said, "Well, I don't know. That
17 gunshot residue can go quite a ways. It will get on
18 somebody, you know, that's in the proximity."

19 Yeah, it will get on somebody in the proximity, but
20 it will also get on the car and it will also get on
21 Mr. Mason.

22 Did they do a gunshot residue of the clothes that
23 they think that he was wearing that are in that little
24 white bag that they collected? No, they did not. Is

ROUGH DRAFT TRANSCRIPT

1 it because -- did they intentionally not do a gunshot
2 residue test on those clothes? That's a very, very
3 serious question, very serious question, because that
4 would have been a lot more conclusive if they would
5 have come up with a gunshot residue on those clothes,
6 but they didn't do a gunshot residue test.

7 They didn't do a gunshot residue test on the
8 T-shirt, not on the hat. They didn't do it on the car.
9 If you're shooting a gun over the top of the car or
10 over the top of the hood, some of the gunshot residue
11 and the gunshot powder will land on that car.
12 Detective Blas even admitted that. But they didn't do
13 that test. So now this is what we have.

14 We have the car that's in these exhibits that
15 you've already seen that they want you to believe was
16 the car that pulled up in front of that apartment. So
17 either through investigative omission or investigative
18 sleight of hand, this is what they're doing to you.
19 They're trying to get you to believe that that car is
20 this gold car when in the reality the gold car that was
21 described by the people on the scene can't be this one.
22 A very, very important fact.

23 Now, the airport trip. Detective Jenkins got an
24 anonymous tip that mom was coming up. You know, this

ROUGH DRAFT TRANSCRIPT

1 is -- Valerie Stewart is Mr. Mason's mom. Got an
2 anonymous tip. Well, anonymous tips I think are
3 probably everywhere frowned upon. They're more akin
4 to, you know, a cheesy rumor that goes around your
5 place of employment, which are very dangerous items.

6 So they got an anonymous tip that mom was coming up
7 from Phoenix to whisk Mr. Mason away and take him
8 somewhere where he wouldn't be found. Well, first of
9 all, that's not particularly bright, taking him down to
10 mom's place in Phoenix. Don't you think somebody could
11 fly down there or the Phoenix Police Department could
12 investigate or if they had a warrant out for him they
13 go collect him at Valerie Stewart's house in Phoenix?

14 Second of all, Valerie Stewart flew up here. You
15 know, they're not going to hitchhike home and they
16 didn't have a car to get home. So this anonymous tip
17 has a lot of incredulity attached to it to begin with.

18 Now, I'm not faulting Detective Jenkins for
19 following up on it, but the State touts Detective
20 Jenkins as the truth teller, as the person that is
21 going to verify this story to make it look like there
22 was this grand plot, but, you see, nobody else except
23 this anonymous tipster and Detective Jenkins has
24 anything to say about going back to Phoenix. All the

ROUGH DRAFT TRANSCRIPT

1 rest of the testimony that we heard is he was going to
2 turn himself in.

3 I know the State wants you now to view that as some
4 sort of admission of guilt. But, you know, that's what
5 the -- you know, the State, being all government
6 entities that suspect somebody of a crime, either put
7 out a warrant or they go searching for somebody. And
8 if that suspect knows that they're a suspect and they
9 start to flee the jurisdiction, that in itself is
10 evidence of flight or a crime. That didn't occur in
11 this instance.

12 Everybody in that car told them that "We're going
13 to turn him in." And that's the proper thing to do,
14 for a suspect to do, is go confront the authorities and
15 clear his name. Instead he got arrested and taken to
16 the hospital. But notwithstanding that, that is not
17 evidence of guilt when a suspect goes to turn himself
18 in.

19 There's been thousands of cases that collectively
20 that everybody in this room would have either read in
21 the newspaper or heard about on TV news where somebody
22 is suspected of doing something and they just go turn
23 themselves in at the police station. Perhaps they're
24 interviewed by the police, perhaps not. But that's the

ROUGH DRAFT TRANSCRIPT

1 proper thing to do.

2 So now the State wants you to imbue Mr. Mason with
3 a cloak of guilt because he went to turn himself in.
4 Well, that's not proper. Now, they never got there, so
5 I guess the State can argue, "Well, I don't know. They
6 were going to run." But there's no evidence of that.
7 The only evidence is that he was going to turn himself
8 in.

9 Now, let's take the veracity of Detective Jenkins.
10 She took the notes on her hand. The reason there's a
11 big pregnant pause here is if you're setting up on the
12 telephone and you're going to interview a suspect, what
13 detective makes notes on their hand?

14 I had a question, why did Detective Jenkins call at
15 3 o'clock a.m. Well, all right, fine. That may be her
16 shift. I didn't check the roster and I didn't subpoena
17 anything from the Reno Police Department to show that
18 she was or was not on shift that night. All right.
19 Fine. She choose 3 a.m., an unusual time to be calling
20 somebody, but the reality is that if she set up the
21 call at 3 a.m., she's intentionally calling. And a
22 professional detective would either have a laptop there
23 making notes or they would have a pad and paper there
24 making notes. Instead she says she made notes on her

ROUGH DRAFT TRANSCRIPT

1 hand. Not particularly credible.

2 But the thing that really destroys her credibility
3 is that Ms. Gray testified on the stand that Mr. Mason
4 called her the day before on August 8th to wish her a
5 happy birthday. That was her birthday.

6 Now, you got to ask yourself, why would he call on
7 the 9th after this incident would have happened to talk
8 to her and say he shot a kid, but he's calling her to
9 wish her a happy birthday? This just doesn't add up.
10 And it was clear from the stand after I cross-examined
11 Detective Jenkins that she had misinterpreted the call
12 on the 8th to have occurred on the 9th and used that in
13 her report and her testimony to bolster the idea that
14 Ms. Gray had talked to Mr. Mason before Detective
15 Jenkins had called when Ms. Gray made it clear as a
16 bell that what she actually did was tell Detective
17 Jenkins that, "Yeah, I talked to him yesterday. He
18 called to wish me a happy birthday."

19 And she got it conflated and thought, "Okay. So he
20 called before and gave you this information," which
21 really wasn't the case.

22 Now, that really doesn't go to the core of this
23 particular case. And there's a lot of things that
24 occur in the case here that are peripheral, that are

ROUGH DRAFT TRANSCRIPT

1 collateral matters almost. And the fact that he was
2 going to turn himself in is essentially a collateral
3 matter.

4 But let's go back to Dr. Cinelli now. And I'm
5 going -- this is going to lead into where I start
6 talking about some of the instructions. Dr. Cinelli,
7 who is a medical man, by the way, and no doubt very
8 respectable -- he has an incredible resume. And he has
9 a very, very admirable job doing the trauma surgery
10 that he does. I want it understood that I'm in no way
11 demeaning him. But when he's called into a courtroom
12 on a forensic basis like this, he's not in his
13 operating room, he's not in the ER, he's in a
14 courtroom. And he has a job to do here.

15 And he was essentially subpoenaed by the State to
16 tell you that his analysis would be that this would be
17 a ricochet. But how can he possibly say that? He
18 admitted on the stand that they never extracted the
19 metal in there, they never tested the metal, if indeed
20 it is metal.

21 You know, he says it looks on the x-ray like it's
22 metal, but he made a contrast showing you the gold ring
23 that the x-ray tech or whoever it was was holding
24 little Cecelia's leg and this gold ring showed up real

ROUGH DRAFT TRANSCRIPT

1 bright like there was a light in it. And he used that
2 as an example of how metal shows up. And then he
3 points to the fragment, which is clearly bright. I'm
4 not disputing that. It's not -- you know, I'm not
5 saying that he's way off base saying this. But the
6 critical part is that they don't know the chemical
7 composition of that metal.

8 And if you don't know the chemical composition of
9 the metal or even the physical appearance of the metal,
10 you can't say it's a bullet fragment. And Dr. Cinelli
11 was very careful not to say that that wasn't a bullet.
12 As a matter of fact, I went into it, you know, a direct
13 hit. If you notice in the Amended Information for the
14 charge dealing with Cecelia, they say that the
15 defendant shot Cecelia.

16 No, he didn't shoot Cecelia. He wasn't pointing
17 the gun at Cecelia. Whoever was doing the shooting
18 there wasn't pointing the gun at Cecelia, because he
19 testified -- and he was familiar with firearms -- that
20 if it was -- if it was a round that came out of that
21 9 millimeter, a metal round, it clearly would have gone
22 through Cecelia's leg. And those bullets have enough
23 force that it would even shear the bone and have gone
24 through the bone if it would have hit the bone.

ROUGH DRAFT TRANSCRIPT

1 Now, he did characterize it as a higher velocity,
2 but if you notice on those x-rays, you'll see that the
3 fragment is stuck between the two bones and it may be
4 touching them. It's a little bit difficult to tell
5 from those x-rays. It may be touching those bones, but
6 it could be a metal fragment from somewhere else.

7 Why is this important? Because it doesn't appear
8 that this weapon from whomever was firing it was aimed.
9 It certainly wasn't aimed at Cecelia. And it's really
10 doubtful that it was aimed at Anthony Holly. There's
11 no hits anywhere near where Anthony Holly was. There's
12 no bullet strike, no bullets, you know.

13 So what's left to be concluded? That whoever was
14 firing the firearm wasn't really pointing it where
15 everybody assumes -- again, an assumption -- assumes
16 that they're pointing that pistol. And that doesn't
17 make any sense, because you can't find any evidence of
18 the rounds hitting somewhere near it. It ranges from
19 three to five shots being fired here. They found --
20 they only found two casings, but they never found any
21 bullets whatsoever.

22 So if the bullets did hit something, they didn't
23 see any evidence of it. And the piece of metal in
24 Cecelia's leg is now a mystery. It's still there and

ROUGH DRAFT TRANSCRIPT

1 it's a mystery.

2 All right. So what's the big deal here? Carl, why
3 are you making such a big deal out of this?

4 Well, let me take you through the logic that these
5 instructions do. And I'll show you each individual one
6 as we go along. This is Instruction No. 19. And I'll
7 see if I can't zoom in a little bit here.

8 This is the two things that make up a criminal
9 event in American law. And this is virtually every
10 jurisdiction in the United States, including the
11 federal jurisdiction. This is basic criminal law that
12 every law student learns in his first semester.

13 "In every crime there must exist a union or joint
14 operation of act and intent." In the law it's called
15 an actus reus and the intent is called the mens rea.
16 And the intent is the mental state that is required to
17 exist before you can convict anybody of a crime in this
18 country. There has to be that mental state, not just
19 the act, not just the big "boom boom" that was
20 testified to coming from the firearm, but there has to
21 be -- you have to have beyond a reasonable doubt in
22 your mind that whoever fired that pistol had the mental
23 intent to commit the crime that's charged by the
24 District Attorney's Office.

ROUGH DRAFT TRANSCRIPT

1 The burden is always upon the prosecution to prove
2 both act and intent beyond a reasonable doubt. Well,
3 there's not -- the act is the "boom, boom, boom." I
4 don't think any witness was incredible enough so that
5 you would conclude that it didn't sound like a firearm
6 was being fired. It may be blanks or something else,
7 but it was fired. But the criminal intent here is the
8 issue that we're dealing with.

9 So the crime of battery, which you relate this
10 back -- this is Instruction No. 23, by the way. "The
11 crime of battery with a deadly weapon as set forth in
12 Count I of the Amended Information" -- you'll have the
13 Information in there -- "consists of the following
14 elements: The defendant did willfully and unlawfully
15 use force or violence upon the person of Cecelia M.
16 with the use of a deadly weapon."

17 But, see, the use -- the use, force or violence
18 upon the person of Cecelia M. is what they have to
19 prove. They have to prove beyond a reasonable doubt
20 that there was the criminal intent to harm Cecelia with
21 that deadly weapon.

22 Well, here's where the State -- well, let me put up
23 Instruction No. 24 also which is the assault with a
24 deadly weapon. This is in Count II. "The crime of

ROUGH DRAFT TRANSCRIPT

1 assault with a deadly weapon as set forth in Count II
2 of the Amended Information consists of the following
3 elements: That the defendant did, A, unlawfully
4 attempt to use physical force against Anthony Holly or,
5 B, intentionally place Anthony Holly in reasonable
6 apprehension" --

7 Well, if you look in paragraph A, we still run into
8 the same language, "unlawfully attempt to use physical
9 force against Anthony Holly." The problem with that is
10 if there was no aiming of the weapon at him, in other
11 words, if there were shots in the air or shots
12 somewhere elsewhere where they never find these rounds,
13 they haven't established the criminal intent. And they
14 can't establish it beyond a reasonable doubt because
15 they don't have the evidence that those rounds were
16 going where the State wants them to be to convict him
17 of that crime delineated in A, in section A.

18 But that's not all there is to these. Not only
19 have they not proved that intent, but what they want to
20 do now, to get this back to Cecelia, is use the concept
21 of transferred intent. I'm not going to read all this,
22 but it's instruction 29 if you want to make a note of
23 these and go through the analysis. It's instructions
24 19, 23, 24. And the transferred intent is instruction

ROUGH DRAFT TRANSCRIPT

1 29.

2 So transferred intent is a common law doctrine.
3 What do I mean by "common law"? Common law existed
4 clear from hundreds and hundreds of years ago, perhaps
5 even thousands of years ago. And this concept is as
6 old as the hills. It's hundreds and hundreds of years
7 old. It's not established necessarily by statute in
8 all the jurisdictions. It's established in common law,
9 however. And it has various breadth in the states, but
10 in Nevada it's a very broad concept.

11 So what it does, as Mr. Young explained to you
12 earlier -- and I know -- I'm not trying to bore you
13 with specifics, but you're given the instructions and
14 it's really important that you be able to analyze them
15 according to how they tell you to do your analysis.

16 So this concept of transferred intent means that --
17 and, you know, this is -- I'm going to explain the
18 weaknesses as we go along, that a piece of bullet --
19 the State's theory is that a piece of bullet somehow
20 got cleaved off and went into Cecelia's leg while the
21 shooter was pointing the weapon and trying to hit
22 Anthony. Okay. That's it in a nutshell. Shooter
23 trying to hit Anthony; piece of bullet ends up in
24 Cecelia. They are claiming that the crime is complete

ROUGH DRAFT TRANSCRIPT

1 at that point against Cecelia through this doctrine of
2 transferred intent. In other words, they take the
3 intent that the shooter is trying to hit Anthony Holly
4 and transfer it over to Cecelia, because if we use a
5 standard criminal analysis -- this is why this doctrine
6 exists -- somebody could go shoot at a bunch of other
7 people, miss them, hit somebody in the background, kill
8 them, and they fall over dead, but you couldn't convict
9 them of the crime of hitting the bystander without the
10 doctrine of transferred intent. That's why it exists.

11 It's not unsensical to do this. But here's the way
12 the analysis works here. The same intent that it takes
13 to convict on Count I for Cecelia is the same intent
14 that they want to transfer from Anthony Holly over to
15 Cecelia. If the aim can't be established and they
16 can't establish a path of bullets that prove beyond a
17 reasonable doubt that anybody, be it Mr. Mason or
18 anybody else who had that pistol in their hand and
19 shooting, if they can't prove beyond a reasonable doubt
20 that that intent was there for Anthony Holly, they
21 can't use it against Cecelia. Can't use it.

22 And since they can't prove beyond a reasonable
23 doubt that that weapon was being fired at Anthony,
24 because there's no path of the bullet that they can

ROUGH DRAFT TRANSCRIPT

1 establish -- I'll tell you what a crime scene would
2 look like. They would have little cones on the ground
3 where each impact was and they would have little
4 stickers on the wall and be taking pictures of -- let's
5 say that concrete block retaining wall on the west side
6 of the property there, they would have had a big
7 sticker, you know, on there with photos of where the
8 chip came out and probably even perhaps pieces of the
9 bullet. But they can't establish that. The bullets
10 aren't anywhere and neither are the evidence of any
11 bullets hitting anything around there.

12 And as for the piece of the particle in Cecelia's
13 leg, they don't know that either. Now, it's a strange
14 truth that Cecelia ends up with a particle in the leg,
15 but that particle in the leg just with the gunshot is
16 not enough to prove Count I beyond a reasonable doubt.
17 They have to be able to prove that that shooter
18 intended to hit Anthony, intended to batter Anthony, to
19 transfer that intent to batter over to Cecelia. They
20 have not done so.

21 If I could have just a moment, Your Honor.

22 THE COURT: Certainly.

23 MR. HYLIN: You know, Officer Koger got up there
24 who was taking Mr. Mason away from the scene where he

ROUGH DRAFT TRANSCRIPT

1 was stopped there by the overpass of 395 and stated
2 that Mr. Mason said, "I'm glad you didn't shoot me."
3 But I got to explain to you, that's not evidence of
4 guilt. You know, if you got several police officers
5 that are surrounding your car and you've got pistols,
6 firearms pointed at you, and you're a suspect in a
7 case, whether you're guilty or not, you're real glad
8 they didn't open fire on you. And that's what that
9 statement means. It's self-contained. It's not
10 evidence of guilt. "Thank you for not shooting me."

11 Now, the other statement that Officer Koger
12 exclaimed -- he says words to the effect -- and here
13 I'm saying "to the effect" because that's basically
14 what they were -- "I know what I did was violent and I
15 didn't want you to shoot me."

16 Well, this is coming through Officer Koger how many
17 hours after he wrote his report? And he didn't record
18 it. Listen, I knew when I was asking those questions
19 that Officer Koger wasn't just going to come up and
20 say, "I'm a bad dog here. I didn't record it."

21 And what his explanation is is fairly simple. It's
22 "Well, we're not required to have the recording device
23 on."

24 Well, that may or may not be true. But if somebody

ROUGH DRAFT TRANSCRIPT

1 is saying some spontaneous statements, which started
2 outside his car, by the way, outside the police unit,
3 you know, he should have had that recording on. But
4 it's not. So we have to take his word for it now.

5 And the State wants you to believe that Koger's
6 rendition of what was said in that car is accurate, but
7 all you have is that one person who didn't bother to
8 record it and didn't bother to purify it by making sure
9 that there was no doubt about -- or no doubts about his
10 credibility. It could have been recorded and played
11 for you. It was not.

12 I think I've covered just about everything else in
13 my notes here. You know, I always close by saying
14 this, but I really sincerely mean it. Sometimes
15 lawyers are boring, sometimes they're obnoxious,
16 sometimes they're arrogant, but most of all, they're
17 out for their clients and what we do here is for our
18 clients.

19 And what you do here for us is a valuable service.
20 And I meant it when I started my voir dire. I
21 explained that our system is always connected to our
22 society through you folks. You're the ones that do
23 this.

24 And our justice system, I can guarantee you, would

ROUGH DRAFT TRANSCRIPT

1 be far different, it would be far more like the things
2 you find overseas in the continental system in Europe
3 where those are closed systems and they thrive amongst
4 themselves without input from the community.

5 And we really -- and I say "we." I mean we all
6 have that same feelings that we thank you so very much
7 for sitting here. But most importantly, my job is to
8 make sure that the State -- to show you that the State
9 did not prove their case beyond a reasonable doubt.

10 And I'm asking you to acquit my client, Mr. Mason.

11 Thank you.

12 THE COURT: Thank you, Mr. Hylin.

13 Mr. Young, would you like rebuttal argument?

14 MR. YOUNG: Thank you.

15 Ladies and gentlemen, I'll be relatively brief in
16 relation to my initial argument. I do, of course, want
17 to address some of the things that were stated by
18 Mr. Hylin and ask that you -- again, as I stated in my
19 initial close, rather than focusing on what one witness
20 says and is there a way to explain that away and then
21 look at the second witness and is there a way to
22 explain that away, and the third and the fourth and so
23 on, consider all of the testimony and all of the
24 evidence together and ask yourself does it flow and

ROUGH DRAFT TRANSCRIPT

1 does it make sense.

2 And what I would submit is once you do that -- and
3 you don't look at items of evidence in a vacuum or in
4 isolation -- is that it all does make sense and it's
5 all very clear what happened on August 9th.

6 Now, Mr. Hylin spent some time discussing
7 inconsistencies. And primarily those inconsistencies
8 were about Mr. Holly's location when the shots were
9 fired and a description of the car and the red hat,
10 whether Mr. Holly was wearing a red hat.

11 Well, Mr. Holly's location -- again, if you recall
12 Mr. Stanley's testimony, he was ducking and dodging in
13 front of his -- well, Delphine's unit. And if you
14 recall Delphine Martin and Mr. Holly's testimony, he
15 was up near the front and then as he ran back was
16 ducking and dodging.

17 Okay. Ask yourself again how significant that is.
18 And in doing that, consider the jury instructions. 11
19 talks about how credibility is your determination
20 alone. I can't tell you whether to believe or
21 disbelieve someone. Nobody can except for yourself.
22 That's your job in this case as a juror. But it tells
23 you how much credit should be given to somebody. You
24 base that on a number of factors, and starting here

ROUGH DRAFT TRANSCRIPT

1 with character, conduct, manner upon the stand, fears,
2 bias, impartiality, reasonableness or unreasonableness
3 of their statements, strength or weakness of
4 recollection, viewed in light of all the other facts in
5 evidence. And that's all I'm asking you to do. Just
6 consider it in conjunction with everything else.

7 Number 13 talks about specifically inconsistencies.
8 This acknowledges what we all know, is that something
9 might happen and people might see it a little bit
10 differently. But that doesn't absolutely destroy what
11 they say. And this tells you to look at is it an
12 innocent misrecollection? Is it willful falsehood?
13 Are they coming in and purposely testifying in a way
14 falsely and, as this says, willfully falsely? Or is it
15 just a vehicle pulls into the parking lot -- all three
16 individuals know who he is, know the car. It's
17 innocuous. He's there for a handful of seconds and
18 then he starts firing.

19 And Delphine Martin says, "I'm scared for my kid.
20 I've never been in this before. I see blood on my
21 hands. I start hyperventilating."

22 The officer confirms that and says she's in no
23 condition to talk. Huey Stanley hits the ground.
24 Anthony Holly is running away.

ROUGH DRAFT TRANSCRIPT

1 So are these discrepancies, if you want to call
2 them that? Are they the subject of innocent error or
3 willful falsehood as the instruction asks you to
4 consider?

5 The car description. Now, Mr. Hylin made a couple
6 of times a statement that Mr. Maes said the back window
7 was broken out. You as the triers of fact determine if
8 that evidence was ever admitted in this case. I submit
9 that the only evidence of a broken back window was the
10 black VW bug that picked up Mr. Holly and left the
11 scene. There was no evidence admitted by Mr. Maes or
12 otherwise that the gold sedan had a broken-out back
13 window, none at all.

14 The bumper up front that was broken. No one
15 testified to that. True. And Ms. Martin said there
16 was some primer on the driver's side and the picture
17 doesn't show that. True. Willful falsehood? Innocent
18 error? Shooting.

19 If you find that those minor discrepancies is
20 enough to cause you reasonable doubt, that's your right
21 to do. I would submit it's not when you take it in
22 conjunction with everything else.

23 Now, I'm going to try my best not to bounce around
24 too much and I apologize if I do.

ROUGH DRAFT TRANSCRIPT

1 But as far as the gold car and Mr. Hylin -- you
2 know, small gold cars are common. I'm not going to
3 disagree with that. And there was no license plate
4 number obtained and there was no make or model and
5 there's no description of, again, this damage to the
6 bumper. All true. But you even heard Ms. Spurlock
7 talk about the license plate. I'm not sure what my own
8 license plate number is.

9 So ask yourself, does it make sense that initially
10 somebody pulling in the parking lot who they all
11 recognize and know and then a shooting immediately
12 happens, are they going to get the make and model when
13 they all said, "I don't really know vehicles"? Are
14 they going to get the license plate? Are they going to
15 pay much attention to the small minutia or are they
16 going to focus on the shots being fired?

17 And as Delphine clearly said confidently, without
18 doubt, it was the defendant shooting at Anthony Holly.
19 And how many gold cars are there out there that
20 resemble the description of the car in question, are
21 registered to Eboni Spurlock, is at the residence that
22 morning but is gone at the time of the shooting and is
23 located after the shooting abandoned out of view of the
24 public within a few blocks of where the defendant is

ROUGH DRAFT TRANSCRIPT

1 located?

2 So did the State present anybody to say, as
3 Mr. Hylin pointed out, "Well, we know that it was the
4 defendant that drove the car there"? No. That would
5 be direct evidence. And you don't have that here. But
6 recall the snowy meadow example. How do we know that
7 vehicle that ended up in Sun Valley is the vehicle?
8 From all those facts. That's circumstantial evidence
9 that you may certainly consider in this case.

10 Now, there's no gun found. There was no GSR.
11 There was no swabs. Detective Blas explained why that
12 wasn't done. There is a -- going on a 24-hour gap --
13 23 hours between the shooting just around noon or noon
14 15 on the 9th and when the defendant is contacted
15 later. Does it make sense to do GSR? Detective Blas
16 said no. There's nothing rebut that. There's no
17 evidence to rebut that assertion by Detective Blas.

18 Is there any reason to swab all the areas?
19 Detective Blas said no. And the same reason that
20 Mr. Hylin pointed out, that, well, you kind of expect
21 his clothes to be in there. You would also expect his
22 DNA to be in there. So would that tell us anything
23 when we know he drives that vehicle?

24 We heard that touch DNA is different than

ROUGH DRAFT TRANSCRIPT

1 biological. It's not guaranteed it's going to even
2 leave anything anyway. And it's outside and the
3 windows are -- a whole number of things.

4 So should it have been done? The testimony you
5 heard was no, he didn't even second guess that. But
6 even if it was, would it tell you anything different
7 than what we already know?

8 Now, Mr. Hylin discussed the statements that the
9 defendant made, "I was going to turn myself in," and
10 that's not evidence of guilt. Okay. Again, you give
11 that statement as much weight as you feel is
12 appropriate. If you feel "I'm going to turn myself in"
13 is consciously the defendant saying "I know what I did
14 is wrong," fine. If you feel that a guy just turning
15 himself in because he knows the police are looking for
16 him, that's fine with me, too. But if Mr. Mason did
17 not do anything wrong, if he was not involved in this
18 shooting, he wouldn't make the additional statements
19 that he did. He wouldn't say, "This has been messing
20 me up." Would he?

21 He wouldn't say, "What I did was violent." And
22 there's no recorder going because there was no
23 intention to even speak with him. Contrary to what
24 Mr. Hylin said, Officer Koger wasn't transporting him

ROUGH DRAFT TRANSCRIPT

1 anywhere. He just had him in the backseat of his car
2 while REMSA was coming. And he makes these statements
3 immediately.

4 So, again, if you want to fault Officer Koger for
5 not initiating his recording device when he has no
6 intention of even speaking with the defendant, that's
7 your right to do. You can fault him if you'd like.

8 All I'm asking you to consider is he had no intention
9 of speaking to him in the first place and he had no
10 intention of asking him any questions. Is there any
11 reason to activate a recorder?

12 Same with Detective Jenkins. Mr. Hylin said she
13 was calling to interview a suspect. No, she wasn't.
14 She was calling to try to find Quinzale Mason. And why
15 was it 3 o'clock in the morning? Because what he had
16 did just a few hours earlier was violent and they
17 needed to find him and he was gone. And we know where
18 he was. He was in a house in Sun Valley.

19 So is she supposed to wait until 8 a.m. to call?
20 No. She's trying to find out where he is. She's not
21 interviewing a suspect. She's not planning on a long
22 dialogue that she needs to take notes. And then
23 Ms. Gray starts making these comments. And, yeah, she
24 wants to get him out of here.

ROUGH DRAFT TRANSCRIPT

1 Same as Mr. Koger. He initially said, "Well, words
2 to the effect." If you recall, we stopped based on the
3 objection. And I actually showed him his report to
4 refresh his memory of the exact quotes he put in his
5 report. The officers do reports to get accuracy of
6 what was said. And that's what Detective Jenkins and
7 Officer Koger did in this case.

8 Did she misinterpret what Ms. Gray said being the
9 8th? Of course not. Because on the 8th this crime had
10 not even been committed yet. And on the 9th when he
11 calls her, she's thinking, "Hey, he's calling me for my
12 birthday." And they have a good relationship. You
13 heard her testify, "I love my grandson." And she makes
14 the comments that she would have not known other than
15 him telling her.

16 Very briefly with Dr. Cinelli. And Mr. Hylin
17 brought up, well, this is a courtroom, it's not his
18 office. He was subpoenaed by the State to say ricochet
19 bullets. Folks, if you feel that he said that on the
20 State's behalf, again, that's you judging his
21 credibility. But he is a person in the medical
22 profession who treated Cecelia. And his opinion, his
23 diagnosis per his testimony, was she suffered from a
24 ricochet bullet. There is no evidence that was

ROUGH DRAFT TRANSCRIPT

1 introduced in this case to contradict that. There is
2 none.

3 And when Mr. Hylin says, well, maybe it was blanks,
4 well, that doesn't explain the metallic fragment in her
5 leg. Dr. Cinelli was clear. His opinion: ricochet
6 bullet. And we don't have bullet strikes. And it's,
7 well, there's this concrete wall behind, which we saw
8 in the picture, and there is asphalt and the like.
9 Well, you heard some explanation about that, but you
10 also saw the dirt embankment behind there as well.

11 Again, what I ask you to do is don't consider all
12 these pieces in isolation. We know Cecelia suffered a
13 penetrating wound. The evidence is clear on that. The
14 only evidence as to what that wound is is a ricochet
15 bullet which just so happens to be consistent with
16 Anthony Holly running in the direction of where she was
17 sitting with her mom.

18 All right. Just a few more points, ladies and
19 gentlemen. As Mr. Hylin said, I too appreciate your
20 time and attention in this case. Now, I'm almost done.
21 There's a few more things I want to highlight.

22 The suggestion was made in Mr. Hylin's closing
23 argument that over the last five months or whatever
24 it's been since August 9th that the three people who

ROUGH DRAFT TRANSCRIPT

1 all identified Anthony -- excuse me -- Quinzale Mason
2 as the person who got out of the car and ended up doing
3 the shooting have had -- his words, have had time to
4 congeal and make up their stories.

5 Well, again, like I mentioned in my first closing,
6 all three gave statements to the police. Mr. Stanley,
7 as he told you, did a written statement and spoke with
8 the dispatcher on 911 immediately. Mr. Holly was gone
9 and came back and spoke with officers, specifically
10 Officer Kassebaum. Delphine Martin after going to the
11 hospital and able to calm down spoke with Officer
12 Stockwell when he responded the hospital.

13 So they all made statements back at the time that
14 this occurred. So it's not that everyone was silent
15 for the last five months and has all this time to talk
16 about it. And on top of that, Delphine, you heard her
17 say, she moved. Mr. Holly didn't want to even get
18 involved.

19 So does it make sense that they would all get
20 together and come up with this master plan of what
21 happened and to frame Mr. Mason and say it was him and
22 say that, "Yeah, he was shooting at Anthony Holly
23 versus in the air?" That's for you to decide. But it
24 doesn't make any sense.

ROUGH DRAFT TRANSCRIPT

1 And Mr. Hylin said, well, there's, you know -- if
2 you recall this part of his argument, "Well, it was
3 they, they, they," which means more than one person.
4 But where did we hear "they"? From the 911 call. And
5 who said it? I'm going to play the call again for you,
6 because it's important. But who said they drove up and
7 shot the baby? That was Glorietta who Mr. Stanley said
8 "wasn't outside with me because she had gone into the
9 bathroom."

10 And even on the 911 call, you hear as she's passing
11 the phone to Mr. Stanley who did see everything, or the
12 majority of it at least, you even hear her say when
13 she's transferring the phone to him, "Oh, I was coming
14 out of the bathroom. I don't know what happened. I
15 wasn't there."

16 When Mr. Stanley gets on the phone, immediately,
17 this is as the shooting just finished and 911 is being
18 called, before officers have even arrived, what does he
19 say? "I know who it was. I know where he lives. He
20 was the only person in the car. I saw the direction
21 the car went."

22 Anything inconsistent from his testimony that he's
23 had six months to manufacture in his head? No.

24 So let me play it for you. You listen to it. And,

ROUGH DRAFT TRANSCRIPT

1 again, listen to if even once Mr. Stanley uses the word
2 "they," because he doesn't. Let me play it for you.
3 This is Exhibit 25. Again, I can't stress the timing
4 of this call, that shots were just fired. As you heard
5 from the testimony, Delphine is going into hysterics,
6 which makes sense, because her daughter was just shot.
7 And 911 is called immediately. And without any time to
8 figure out what to say, this is initially what
9 Glorietta says and candidly doesn't know much and uses
10 "they" and then it's passed over to Mr. Stanley. It's
11 consistent with what he testified to in this case.

12 (Exhibit 25 was played.)

13 MR. YOUNG: That's what was said immediately after
14 the shots. Only one person. "I've seen him around.
15 He lives up here."

16 Then when Officer Lancaster pulls up, he points out
17 the exact unit which matches, again, all the balance of
18 the evidence which I'm not going to go through. Black
19 male, beard. It all fits.

20 So, folks, I'm not -- I'm going to try not to take
21 too much more of your time.

22 Again, the transferred intent with the battery. To
23 be clear, the State does not need to show that
24 Mr. Mason intended or wanted to strike Cecelia.

ROUGH DRAFT TRANSCRIPT

1 Willfully using force or violence. The term
2 "willfully" here is described in instruction 27. It
3 even says there, "does not require in its meaning,
4 among other things, any intent to injure another." All
5 it says is "implies a purpose or willingness to commit
6 the act."

7 So he willfully is discharging a firearm. There's
8 evidence that he is shooting the firearm at Mr. Holly
9 as he's running away. We know that from Delphine
10 Martin and all the circumstantial evidence. And in the
11 course of that, Cecelia is hit. The transferred
12 intent, that's all that is required for Count I.

13 For Count II, the assault with a deadly weapon, did
14 attempt to use force against Anthony Holly. The
15 evidence supports that. Or alternatively that he did
16 intentionally place Mr. Holly in reasonable
17 apprehension of immediate bodily harm. Racking the
18 gun, getting out of the car, shooting a firearm as
19 Mr. Holly is running way, that's satisfied as well.

20 And then, of course, for both Counts I and II, it
21 has to be done with the use of a deadly weapon which,
22 again, isn't really much in dispute here.

23 So, folks, I'm going to finish with this. I
24 appreciate your time. This is instruction 30. This

ROUGH DRAFT TRANSCRIPT

1 has not yet been discussed, but I'm going to close with
2 this. Let me read it first and then discuss it.

3 The top paragraph reads, "Although you are to
4 consider only the evidence in the case in reaching a
5 verdict, you must bring to the consideration of the
6 evidence your everyday common sense and judgment as
7 reasonable men and women. Thus, you are not limited
8 solely to what you see and hear as the witnesses
9 testify. You may draw reasonable inferences which you
10 feel are justified by the evidence, keeping in mind
11 that such inferences should not be based on speculation
12 or guess."

13 So, folks, here's what this means. On Monday of
14 this week all you came into court as prospective
15 jurors. You were all selected to sit in this case as
16 jurors. You check in and you come out of the jury room
17 and you have stickers identifying yourself as jurors.
18 Very shortly you're going to be released into the jury
19 room to deliberate as jurors for this case. But what
20 this instruction tells you, folks, is that prior to all
21 of that, prior to this Monday when you began your jury
22 service for this case, all of you have lived
23 respectively your individual lives and all of you
24 through the course of those lives have garnered common

ROUGH DRAFT TRANSCRIPT

1 sense as reasonable men and women.

2 And the law does not require you to shed that
3 common sense. The law does not require you to ignore
4 your common sense when you go into that jury room and
5 deliberate.

6 So if you feel that I have failed to meet my burden
7 of proof, then the defendant would be not guilty. But
8 to do that, you have to disregard the three witnesses
9 who all identified the defendant, you have to disregard
10 all of the balance of the testimony of the vehicle not
11 being on scene and being located in Sun Valley and
12 being close to where the defendant was ultimately found
13 and the statements that he made and everything else.
14 But you would also have to disregard your common sense.
15 Because when you look at the totality of the evidence,
16 it's clear that it was the defendant who was the
17 shooter. And it's clear that he was shooting at
18 Anthony Holly. And it was clear in the course of that
19 that Cecelia was struck by a -- as the doctor said, a
20 ricochet bullet.

21 Use your common sense. Use that in conjunction
22 with the evidence. And if you do that, I would submit
23 that the conclusion to be reached is that the defendant
24 is guilty of both counts.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Thank you, Mr. Young. Mr. Young, would
2 you mind moving the TV screen and the monitor, please.
3 Thank you.

4 Ms. Clerk, if you could swear in Deputy Gray and
5 his fellow deputies to take custody of the jury.

6 (The oath was administered.)

7 THE COURT: Ladies and gentlemen of the jury, in a
8 moment I am going to send you back into the jury room
9 where you will begin your deliberations. And I won't
10 read you the jury admonition, because you now get to
11 talk about the case, you get to discuss the facts, you
12 get to review the instructions and the evidence and
13 come to the conclusion that you come to.

14 The one person who will not be doing that is the
15 alternate. We always have an alternate in every case.
16 Sometimes we have more than one. Just in case one of
17 your fellow jurors is unable to complete deliberations,
18 we have that alternate who can come in and we would
19 begin deliberations anew.

20 Ms. Vasquez, you're actually the alternate in this
21 case, and so you will not be deliberating with your
22 fellow jurors, but what I can tell you is that I have
23 spoken to both attorneys and they've agreed to release
24 you from the courthouse. So you'll be free to go about

ROUGH DRAFT TRANSCRIPT

1 your business, but you'll be the only person I have to
2 read the admonition to one more time.

3 You're not allowed to discuss the case until the
4 case is concluded. So you need to follow that
5 admonition again. Give Deputy Gray your cell phone
6 number or some way we can get ahold of you. And that
7 way, once the case is over with, he'll call you and
8 he'll let you know that the case is finished and then
9 you can discuss it with anybody you want to. But I do
10 appreciate your service. I know you've been paying
11 close attention to these proceedings and I appreciate
12 the fact that you served your community. You get the
13 same credit for jury service if you're the alternate or
14 if you're not the alternate. So thank you again for
15 being here.

16 Ms. Vasquez, you are instructed not to discuss the
17 case among yourselves -- well, among yourself. I don't
18 know how you discuss it with yourself. But don't go
19 talking to yourself about it, Ms. Vasquez.

20 You're not to discuss the case with anyone else or
21 to form any conclusions concerning the case until it is
22 submitted to you. You're not to read, look at or
23 listen to any news media accounts relating to the case
24 should there be any. You're not to form any opinion

ROUGH DRAFT TRANSCRIPT

1 about the case until it is finally submitted to you.

2 Do not experience or investigate. Do not visit the
3 scene. Do not refer to any outside sources for
4 instructions on the law. Rely only on the court for
5 legal instructions.

6 All rise for the alternate juror.

7 Okay. Everybody else can be seated.

8 Once Deputy Gray comes back, then I'll send you
9 back into the jury room and you can begin your
10 deliberations. So just one moment.

11 You will have, just so you know, the evidence and
12 everything else go back there with you.

13 Mr. Young, did you get the CD out of the computer?

14 MR. YOUNG: No. I'll do that right now.

15 THE COURT: Deputy Gray, has Ms. Vasquez left?

16 DEPUTY GRAY: Not yet, Your Honor.

17 THE COURT: Just one moment then and then I'll
18 excuse you for your deliberations.

19 All rise for the jury.

20 (Outside the presence of the jury:)

21 THE COURT: Please be seated.

22 The record will reflect that the jury has retired
23 to the jury room. Informally prior to the resumption
24 of the case after the lunch recess I discussed with

ROUGH DRAFT TRANSCRIPT

1 counsel the fact that Mr. Mason has dialysis scheduled
2 this afternoon at approximately 3 o'clock. It is now
3 2:35, and so the jury will begin their deliberations,
4 but it's reasonable to assume at some time in the near
5 future that Mr. Mason will no longer be with us here in
6 the courtroom.

7 The Court will allow the jury to continue their
8 deliberations and we will wait on their call. However,
9 we will not take the jury's verdict, assuming the jury
10 comes to a conclusion, sometime after Mr. Mason leaves.
11 The procedure that the Court will follow is that the
12 jury will be brought back in, the verdicts will be
13 taken by the clerk, and they will be kept locked by the
14 court clerk until tomorrow morning when Mr. Mason will
15 again join us.

16 Is that the process that the State agrees to,
17 Mr. Young?

18 MR. YOUNG: I have no objection to that, Your
19 Honor.

20 THE COURT: Mr. Hylin?

21 MR. HYLIN: Yes, that's fine, Your Honor.

22 THE COURT: Assuming that that does occur, the jury
23 then will be again given the admonition and they will
24 be allowed to go home tonight. The Court does also

ROUGH DRAFT TRANSCRIPT

1 acknowledge that there may be the possibility that we
2 have to go forward with Count III tomorrow. So we'll
3 have the jury come back at 8:30 in the morning and we
4 will take up whatever additional business we have to
5 take up tomorrow.

6 Counsel, if you could please give Ms. White your
7 cell phone number so we can get ahold of you. I like
8 to keep people about no more than ten minutes away in
9 case there are any questions for the jury. Thank you,
10 counsel.

11 Court's in recess.

12 (A recess was taken.)

13 (Within the presence of the jury:)

14 THE COURT: We'll go back on the record in
15 CR14-1830, the State of Nevada versus Quinzale Mason.
16 Mr. Mason is not present. His attorney, Mr. Hylin, is
17 present. Mr. Young is here on behalf of the State of
18 Nevada.

19 Mr. Young, do you stipulate to the presence of the
20 jury less the alternate?

21 MR. YOUNG: Yes, Your Honor.

22 THE COURT: Same for you, Mr. Hylin?

23 MR. HYLIN: Yes, Your Honor.

24 THE COURT: Ladies and gentlemen, who is your

ROUGH DRAFT TRANSCRIPT

1 foreperson?

2 JUROR CORNISH: I am.

3 THE COURT: Mr. Cornish. Have a seat, sir.

4 I want to let you know something that is going on.
5 As you can see, Mr. Mason is not with us. Mr. Mason
6 has some physical issues that needed attention, and so
7 he's not here today.

8 A defendant does have a right, a constitutional
9 right, to be present when the verdict is returned in
10 his case. It is approximately 10 minutes until 5:00.
11 And so I won't be able to take your verdict today.
12 But, Mr. Cornish, what I would like you to do is
13 provide the packet of verdict forms to Deputy Gray.
14 And he is going to provide them to me and I will place
15 them in this envelope and then I will seal it. And we
16 will not discuss the verdict until tomorrow.

17 I need you to come back at 8:30 a.m. tomorrow
18 morning so we can return your verdict, whatever your
19 verdict may have been.

20 So with that, I'll provide the jury instructions
21 themselves to the clerk. And I apologize on behalf of
22 Mr. -- well, I don't apologize on behalf of Mr. Mason.
23 It's not his fault that he has some physical needs that
24 need to be taken care of. But I want to thank you for

ROUGH DRAFT TRANSCRIPT

1 your attention to this issue. I know that I told you
2 it was going to be four days at the most. So we will
3 be back tomorrow morning at 8:30 a.m. so Mr. Mason can
4 be here. At that point I will open the envelope and
5 then we will publish your verdict.

6 Now, what's very important is that you are now not
7 discharged from the admonition. So when you do home,
8 the jury admonition still applies. Your service is not
9 over yet. I'll let you know when you're allowed to
10 talk to your friends and family and to talk to each
11 other. So it's important also to keep in mind when you
12 come back tomorrow morning -- I know you've reached a
13 decision on these charges, but you cannot discuss your
14 decision with each other. All deliberations have to be
15 conducted as a group. And so it would be inappropriate
16 for one or two of you to come in tomorrow morning and
17 start talking about your deliberations.

18 Does everybody understand that? I need to see
19 everybody's head. Okay. So I've got positive nods
20 from everybody.

21 One moment.

22 And I will tell you that this envelope tastes
23 awful.

24 So the record will reflect that I have sealed the

ROUGH DRAFT TRANSCRIPT

1 envelope. I'll place my initials on the seal and date
2 it. And I'll direct the clerk to maintain custody of
3 the envelope. She'll lock it up so no one will have
4 any access to it.

5 So, ladies and gentlemen, your work is almost
6 finished. That's all I can tell you. I appreciate,
7 again, the diligence that you've shown in these
8 proceedings and I need you back here at 8:30 in the
9 morning tomorrow. So when you go home, again, don't
10 talk to anybody. Remember that.

11 You are instructed not to discuss this case among
12 yourselves or with anyone else or to form any
13 conclusions concerning the case until it is submitted
14 to you. You are not to read, look at or listen to any
15 new media accounts relating to this case should there
16 be any. You're not to form any opinion about the case
17 until it is finally submitted to you.

18 Do not experiment or investigate. Do not visit the
19 scene. Do not refer to any outside sources for
20 instructions on the law. Rely only on the court for
21 legal instructions.

22 And remember, back here at 8:30 in the morning
23 tomorrow and no discussion when you get together about
24 what you did today. That portion of this case is not

ROUGH DRAFT TRANSCRIPT

1 over.

2 All rise for the jury.

3 (Outside the presence of the jury:)

4 THE COURT: Please be seated.

5 The record will reflect that the jury has returned
6 to the jury room. Counsel, my judicial assistant is
7 preparing the jury instructions for Count III in the
8 event that we'll need those instructions.

9 I can tell you I didn't look at the verdict forms
10 when I stuck them in the envelope, so I have to idea
11 what the jury's decision is in this case.

12 So if we could just stand by, I can let know what I
13 did was simply take out a number of them that were
14 duplicative of instructions that had been given
15 initially. It is my intention to number the additional
16 instructions and then give them the entire packet back,
17 because they use the same instructions for the ex-felon
18 in possession of a firearm in the bifurcated portion of
19 these proceedings, so they get the whole packet back.
20 There's no reason to put in certain instructions. So
21 just relax for a moment.

22 Mr. Hylin and Mr. Young.

23 MR. HYLIN: Thank you, Your Honor.

24 THE COURT: Thank you.

ROUGH DRAFT TRANSCRIPT

1 This will be off the record momentarily.

2 (A discussion was held off the record.)

3 THE COURT: Let's go back on the record. We'll go
4 back on the record in CR14-1830. The record will
5 reflect that we have remained in the courtroom since
6 the jury has recessed and briefly discussed in an
7 informal way the proposed jury instructions that will
8 be given regarding being an ex-felon in possession of a
9 firearm, or more accurately, being a felon in
10 possession of a firearm.

11 The Court has four proposed jury instructions and
12 verdict forms of not guilty and guilty for Count III of
13 the Amended Information. The Court will number the
14 instructions as follows: The instruction that begins
15 "The Defendant Quinzale Mason" will be Instruction No.
16 33. "The elements of being a felon in possession of a
17 firearm" will be 34. The instruction that says "you
18 may consider all" is 35. And the instruction that says
19 "both the defense and the State" will be 36.

20 The Court would note that in the informal meeting
21 that we just had, the issue of a potential stipulation
22 was discussed by the parties. Specifically there is
23 the possibility that Mr. Mason will stipulate that he
24 is a convicted felon. The Court would note that

ROUGH DRAFT TRANSCRIPT

1 Instruction No. 33 as it is currently numbered lists
2 the offense that the defendant was convicted of as
3 voluntary manslaughter with the use of a deadly weapon.
4 However, the instruction that is numbered 36 discusses
5 the contemplation of the parties that there may be a
6 stipulation in the case, the stipulation being that
7 Mr. Mason will simply stipulate to the jury that he is
8 a convicted felon.

9 If Mr. Mason and the State enter into that
10 stipulation, then the State will provide an alternate
11 Instruction No. 33 that omits the language describing
12 the nature of the offense in Clark County, Nevada. If,
13 however, there is no stipulation, the Court will give
14 Instruction No. 33 as it is currently written and the
15 Court will remove Instruction No. 36. And so we will
16 just wait on Mr. Mason's decision regarding that issue.

17 With that understanding, Mr. Young, do you have any
18 additional instructions that you wish to offer
19 regarding Count No. I?

20 MR. YOUNG: No. Thank you, Your Honor.

21 THE COURT: And do you have any objection to the
22 instructions that the Court has indicated that it will
23 give?

24 MR. YOUNG: No. Thank you.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: Mr. Hylin, on behalf of Mr. Mason, do
2 you have any additional instructions that you would
3 like to give?

4 MR. HYLIN: No, I do not, Your Honor.

5 THE COURT: And do you have any objections to the
6 procedure that the Court just outlined regarding
7 instructions 33 and 36?

8 MR. HYLIN: No. I concur, Your Honor.

9 THE COURT: All right. Then we will be in recess.
10 The record will reflect that Mr. Mason was taken to the
11 Washoe County Sheriff's Office at approximately -- I
12 think it was about 3:15. Deputy, was it about 3:15?

13 THE BAILIFF: Yes, Your Honor.

14 THE COURT: -- at approximately 3:15 in the
15 afternoon while the jury was deliberating so he could
16 receive his dialysis treatment. He will be back
17 tomorrow morning at 8:30 a.m. at which point we'll
18 unseal the jury's verdicts and then we will decide how
19 we will proceed with these further issues.

20 Anything else, Mr. Hylin?

21 MR. HYLIN: Nothing, Your Honor.

22 THE COURT: Mr. Young, anything else?

23 MR. YOUNG: No. Thank you, Your Honor.

24 THE COURT: Then I will return the entire packet of

ROUGH DRAFT TRANSCRIPT

1 jury instructions to the clerk and simply request that
2 she hold on to those until tomorrow at 8:30.

3 Court is in recess.

4 The record will reflect that the jury instructions
5 will also be locked with the jury verdicts in the
6 court's-- and time I say "lockbox.

7 MR. HYLIN: The magic box.

8 THE COURT: I think of Al Gore when I say
9 "lockbox." But they will be in the court's lockbox.
10 And the record will also reflect that the bailiff,
11 Deputy Gray, has returned all of the exhibits to the
12 court clerk.

13 Court is in recess.

14 (The proceedings were adjourned at 5:07 p.m.)

15 --o0o--
16
17
18
19
20
21
22
23
24

ROUGH DRAFT TRANSCRIPT

1 ACKNOWLEDGMENT

2 I, LORI URMSTON, Certified Court Reporter, in and
3 for the State of Nevada, do hereby acknowledge:

4 That the foregoing proceedings were taken by me
5 at the time and place therein set forth; that the
6 proceedings were recorded stenographically by me and
7 thereafter transcribed via computer under my
8 supervision; that the foregoing is a true ROUGH DRAFT
9 transcription of the proceedings to the best
10 of my knowledge, skill and ability and has not been
11 proofread, corrected or certified.

12 I further certify that I am not a relative nor an
13 employee of any attorney or any of the parties, nor am
14 I financially or otherwise interested in this action.

15 I declare under penalty of perjury under the laws
16 of the State of Nevada that the foregoing statements
17 are true and correct.

18 DATED: At Reno, Nevada, this 6th day of
19 May, 2015.

20
21
22 LORI URMSTON, CCR #51

23 -----

24 LORI URMSTON, CCR #51

ROUGH DRAFT TRANSCRIPT

CASE NO. CR14-1830

STATE OF NEVADA VS. QUINZALE MASON

PAGE 1

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/11/15

ONGOING JURY TRIAL

HONORABLE

8:30 a.m. – Court met with respective counsel and the Defendant informally in the courtroom, outside the presence of the jury, to discuss jury instructions.

ELLIOTT A.

9:00 a.m. – Jury Instructions 1 thru 32 were settled on the record.

SATTTLER

State's counsel's refused instruction #1 was lodged with the Clerk.

DEPT. NO. 10

M. White

Defense counsel advised the Court that the Defendant will not be testifying, and he does not have any additional witnesses or evidence to offer.

(Clerk)

L. Urmston

9:28 a.m. – Court stood in recess.

(Reporter)

9:58 a.m. – Court reconvened. Court, respective counsel, Defendant and jury present.

COURT instructed the jury.

State's counsel presented closing arguments.

Defense counsel presented closing arguments.

COURT admonished and excused the jury.

11:35 a.m. – Court stood in recess for lunch.

1:26 p.m. – Court reconvened. Court, respective counsel, Defendant and jury present.

Defense counsel continued presenting closing arguments.

State's counsel presented final closing arguments.

Deputy Gray sworn and charged with the jury.

Alternate juror, Brenda Vasquez, was given the juror admonition, thanked by the Court, and excused.

2:34 p.m. – Deliberations commenced.

COURT noted that the Defendant needs to leave the courthouse at approximately 3:00 p.m. today so he can receive dialysis treatment at the jail; therefore, if a verdict is reached after the Defendant has left for the day, the verdict forms will be sealed and locked for the evening, and the jury will be directed to return tomorrow morning so the verdict can be read.

2:37 p.m. – Court stood in recess.

4:33 p.m. – Verdict reached.

4:51 p.m. – Court reconvened. Court, respective counsel and jury present.

COURT advised the jury that the Defendant is not present in the courtroom as he required medical treatment; and he further advised the jury that their verdict will be sealed and locked for the evening, and they will need to return tomorrow, February 12, 2015 at 8:30 a.m., so the verdict can be read.

Foreperson, Robert Cornish, handed the verdict forms to Deputy Gray, who provided them to the Court; Court sealed the verdict forms in an envelope, and he initialed the seal.

COURT admonished and excused the jury for the evening.

Discussion ensued between the Court and respective counsel regarding the jury instructions as to Count III; the jury instructions for Count III were handed to respective counsel.

Court and respective counsel briefly discussed these jury instructions off the record.

CASE NO. CR14-1830

STATE OF NEVADA VS. QUINZALE MASON

PAGE 2

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/11/15

HONORABLE

ELLIOTT A.

SATTLER

DEPT. NO. 10

M. White

(Clerk)

L. Urmston

(Reporter)

ONGOING JURY TRIAL

Jury Instructions 33, 34, 35 & 36 were settled on the record.

COURT noted that there may be a potential stipulation regarding the Defendant's prior felony conviction, which may alter these instructions.

COURT directed the Clerk to lock the sealed verdict forms, as well as the original packet of Jury Instructions, in the evidence locker.

5:05 p.m. – Court stood in recess for the evening, to reconvene tomorrow, February 12, 2015 at 8:30 a.m.

1 CODE: 4185
2 PEGGY B. HOOGS, CCR #160
3 HOOGS REPORTING GROUP
4 435 Marsh Avenue
5 Reno, Nevada 89509
6 (775) 327-4460
7 Court Reporter

8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE
10 THE HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

11 -oOo-

12 STATE OF NEVADA, Case No. CR14-1830

13 Plaintiff, Dept. No. 10

14 vs.

15 QUINZALE MASON,

16 Defendant.

17 =====

18 ROUGH DRAFT TRANSCRIPT

19 TRIAL

20 DAY 4

21 FEBRUARY 12, 2015

22
23
24 Reported By: PEGGY B. HOOGS, CCR #160, RDR, CRR

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

CALIFORNIA CSR #5958

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

-oOo- APPEARANCES -oOo-

FOR THE PLAINTIFF:

ZACH YOUNG, ESQ.
Deputy District Attorney
1 South Sierra Street
Reno, Nevada 89501

FOR THE DEFENDANT:

CARL HYLIN, ESQ.
Deputy Public Defender
350 South Center Street
Reno, Nevada 89501

1 (The following proceedings were held outside
2 the presence of the jury.)

3 THE COURT: Let's go on the record in the
4 State of Nevada vs. Quinzale Mason, CR14-1830. Mr. Mason
5 is present in court with his attorney, Mr. Hylin.
6 Mr. Young is here on behalf of the State of Nevada.
7 We're meeting outside of the presence of the jury.

8 Good morning to all of you.

9 Mr. Mason, last night after you were taken to
10 have your dialysis treatment, we left the jury
11 deliberating, and so they continued to deliberate, and
12 they came back at approximately 4:45 yesterday with a
13 verdict. I have not looked at the verdict forms. I
14 actually took them from the jury and sealed them in an
15 envelope. I have the envelope here with me, and so I
16 know that you wanted to be present when the jury came
17 back and returned the verdict, so we have not heard from
18 the jury yet regarding what the outcome of your case is.

19 There is a possibility that we will go
20 forward with Count 3 of the Amended Information.
21 Mr. Mason, Count 3, as you know, is charging you with
22 being a felon in possession of a firearm. One of the
23 elements of that offense is that you are a convicted
24 felon. In order to prove that, what the State does is

1 they provide a certified copy of a prior criminal
2 conviction that is provided to the jury.

3 My understanding is that you have discussed
4 with your attorney the concept of stipulating to the fact
5 that you are simply a convicted felon and, therefore,
6 waiving the requirement for the State to produce the
7 certified copy of the prior criminal conviction.

8 You don't have an obligation to do that.
9 It's completely up to you whether or not you enter into a
10 stipulation with the State, but if you do stipulate,
11 you're waiving an element -- one of the elements of that
12 offense.

13 Do you understand that?

14 THE DEFENDANT: Hold on.

15 THE COURT: Okay.

16 (A discussion was held off the record.)

17 THE COURT: Mr. Mason, did you have an
18 opportunity to speak with Mr. Hylin and have any
19 questions about what I just told you answered?

20 THE DEFENDANT: No, sir.

21 THE COURT: No, sir, or yes, sir?

22 THE DEFENDANT: I mean yeah. I understand
23 it, yeah.

24 THE COURT: You talked to Mr. Hylin, and he

1 was able to answer any questions you may have had about
2 that stipulation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What you're doing by stipulating
5 is simply waiving that one element of the offense.
6 You're not waiving anything else. You're simply
7 acknowledging that you are a convicted felon, and so in
8 doing that, you and the State have agreed that the State
9 won't tell the jury what the offense is. It's just that
10 you're a convicted felon.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Is that what you want to do? I
14 just want you to understand if you don't want to do
15 that -- and, again, you have no obligation to do
16 so -- what will happen is the State will mark a certified
17 copy of the prior felony conviction and that will be
18 admitted, assuming it's constitutional.

19 Mr. Hylin has told me he has already reviewed
20 it and it is constitutionally valid, and so that document
21 will go to the jury, and they'll see your prior felony
22 conviction for voluntary manslaughter with the use of a
23 deadly weapon.

24 So are you going to stipulate just that

1 you're a convicted weapon or do you want the State to
2 produce the certified copy of the criminal conviction?

3 THE DEFENDANT: I'll stipulate, Your Honor.

4 THE COURT: I appreciate that.

5 MR. HYLIN: We are offering that, the defense
6 is, Your Honor, and that's pursuant to Edwards vs. State,
7 122 Nev. 378, a 2006 case, which follows Old Chief vs.
8 United States, 519 U.S. 172.

9 THE COURT: Then what the Court will do is
10 withdraw the previously marked Jury Instruction No. 33
11 and instruct the clerk to mark "withdrawn" on that, and
12 then this morning, Mr. Young provided a new Instruction
13 No. 33, and I will number that right now, and that will
14 be read to the jury.

15 It is my intention this morning to call the
16 jury in to take their verdict, and then if the defendant
17 was convicted of one or both of the felony offenses
18 alleged in Count I and II of the Amended Information,
19 what I will do then is inform the jury that they do have
20 one additional task that they need to address. I will
21 read them the jury instructions, just the jury
22 instructions that are new, 33 through 36, and I will send
23 them back into the jury room to continue to deliberate,
24 and then we will wait on their return. And, again,

1 that's assuming that the defendant is found guilty of one
2 or both of the offenses in the Amended Information.

3 We will not have an opening statement, there
4 will be no additional evidence presented based on the
5 stipulation, and there will be, obviously, no closing
6 arguments presented.

7 Does anyone object to that procedure?

8 Mr. Young?

9 MR. YOUNG: I have no objection.

10 THE COURT: Mr. Hylin on behalf of Mr. Mason.

11 MR. HYLIN: I have no objection, Your Honor,
12 considering that all the evidence concerning Count 3 has
13 already been placed before the jury as far as the firearm
14 is concerned.

15 MR. YOUNG: Very briefly, it probably goes
16 without saying, but I am agreeing to the offer of the
17 stipulation for the --

18 THE COURT: I assumed as much based on our
19 conversations yesterday.

20 MR. YOUNG: It probably did not need to be
21 said, but for the record.

22 THE COURT: I like when it goes without
23 saying and then they say it anyway.

24 MR. YOUNG: I do that every now and then.

1 THE COURT: All rise for the jury.

2 (The jury entered the courtroom.)

3 (The following proceedings were held outside
4 the presence of the jury.)

5 THE COURT: Good morning, ladies and
6 gentlemen.

7 Will counsel stipulate to the presence of the
8 jury less the alternate? Mr. Young?

9 MR. YOUNG: The State will, Your Honor.

10 THE COURT: Mr. Hylin?

11 MR. HYLIN: Yes.

12 THE COURT: Ladies and gentlemen, as we
13 discussed yesterday, Mr. Mason was not available when you
14 returned your verdict, and so, as you saw, I sealed your
15 verdicts in this envelope. Those of us who are old
16 enough to remember Johnny Carson, I feel like Karnick. I
17 have the envelope, and I can hold it up to my head and
18 tell you the answer.

19 What I will do now is unseal the envelope and
20 provide your verdict forms to the clerk so they may be
21 published.

22 Mr. Mason, generally I request the defendant
23 stand when the verdicts are read, but in your case I know
24 you have some problems with your legs, so you may remain

1 seated.

2 THE CLERK: "In the Second Judicial District
3 Court in the State of Nevada in and for the County of
4 Washoe, the State of Nevada, plaintiff, vs. Quinzale
5 Mason, defendant, Case No. CR14-1830, Department No. 10,
6 Verdict: We, the jury in the above-entitled matter, find
7 the defendant Quinzale Mason guilty of Count I, battery
8 with a deadly weapon, dated this 11th day of February,
9 2015, Foreperson;

10 "Verdict: We, the jury in the above-entitled
11 matter, find the defendant Quinzale Mason guilty of
12 Count II, assault with a deadly weapon, dated this 11th
13 day of February, 2015, Foreperson."

14 THE COURT: Ladies and gentlemen of the jury,
15 is this your verdict, so say you one, so say you all?

16 (Collective affirmation by the jury.)

17 THE COURT: Does either party wish to have
18 the jury polled? Mr. Hylin?

19 MR. HYLIN: Yes, Your Honor.

20 THE COURT: Miss Clerk, please poll the jury.

21 THE CLERK: Juror No. 1, is this your verdict
22 as read?

23 JUROR NO. 1: Yes.

24 THE CLERK: Juror No. 2, is this your verdict

1 as read?

2 JUROR NO. 2: Yes.

3 THE CLERK: Juror No. 3, is this your verdict

4 as read?

5 JUROR NO. 3: Yes.

6 THE CLERK: Juror No. 4, is this your verdict

7 as read?

8 JUROR NO. 4: Yes.

9 THE CLERK: Juror No. 5, is this your verdict

10 as read?

11 JUROR NO. 5: Yes.

12 THE CLERK: Juror No. 6, is this your verdict

13 as read?

14 JUROR NO. 6: Yes.

15 THE CLERK: Juror No. 7, is this your verdict

16 as read?

17 JUROR NO. 7: Yes.

18 THE CLERK: Juror No. 8, is this your verdict

19 as read?

20 JUROR NO. 8: Yes.

21 THE CLERK: Juror No. 9, is this your verdict

22 as read?

23 JUROR NO. 9: Yes.

24 THE CLERK: Juror No. 10, is this your

1 verdict as read?

2 JUROR NO. 10: Yes.

3 THE CLERK: Juror No. 11, is this your
4 verdict as read?

5 JUROR NO. 11: Yes.

6 THE CLERK: And Juror No. 12, is this your
7 verdict as read?

8 JUROR NO. 12: Yes.

9 THE COURT: The jury's verdicts will be
10 entered as part of the record in this case.

11 Ladies and gentlemen, I've been slightly
12 disingenuous with you about your responsibilities.
13 Yesterday when I told you you would come back and we
14 would simply read the verdict to the defendant, that was
15 not completely accurate. It depended on what your
16 verdict was.

17 There was one additional charge contained in
18 the Amended Information. That charge was being a felon
19 in possession of a firearm. The Nevada Supreme Court, in
20 a case by the name of Brown vs. State requires that we
21 bifurcate, which means we have two separate hearings or
22 trials, regarding an allegation of certain felony
23 offenses, and then if there's an additional offense of
24 being a felon in possession of a firearm.

1 So what the Supreme Court tells us we have to
2 do, we have to hear that first offense first, and then
3 you come back and make a decision on the offense of being
4 a felon in possession of a firearm.

5 For that reason I have additional jury
6 instructions that I need to read you. There is one
7 additional task that you have, and that is, you must
8 determine if the defendant is guilty of being a felon in
9 possession of a firearm.

10 I'll read the jury instructions in a moment.
11 There are only four additional jury instructions, but
12 what I want to emphasize to you is, all of the other jury
13 instructions still apply in this case, so I'm going to
14 give you back the packet of jury instructions numbered 1
15 through 32, and then there will be four additional
16 instructions, Instructions 33 through 36, attached to
17 them, and then there are two verdict forms, one guilty
18 and one not guilty, for being a felon in possession of a
19 firearm.

20 As I told you when I instructed you
21 yesterday, you're not obligated to find the defendant
22 guilty of this or any offense. It is just one additional
23 offense that the State has alleged. The State's burden
24 is exactly the same. They must prove beyond a reasonable

1 doubt that the defendant committed the offense of being a
2 felon in possession of a firearm. All the other jury
3 instructions apply and you're allowed to consider all of
4 the evidence that you have listened to in coming to a
5 conclusion whether or not the State has proven that
6 offense.

7 So what I'll do for you now is read you Jury
8 Instructions No. 33 through 36. I'm not going to give
9 you each a packet of these because it's very short.

10 (Jury instructions 33 through 36 were read to
11 the jury.)

12 THE COURT: So, ladies and gentlemen of the
13 jury, I will direct that the Court provide you -- strike
14 that -- the clerk provide you with all of the exhibits
15 again to aid in your deliberation should you need to
16 refer to any of them, I am providing you with a packet of
17 original jury instructions so you may refer to them, and
18 we will await your decision.

19 All rise for the jury.

20 Again, there's no admonition again. Go back
21 and discuss the case.

22 Court's in recess.

23 (A recess was taken.)

24 (The jury entered the courtroom.)

1 THE COURT: Will counsel stipulate to the
2 presence of the jury? Mr. Hylin?
3 MR. HYLIN: Yes, Your Honor.
4 THE COURT: Mr. Young?
5 MR. YOUNG: Yes.
6 THE COURT: Mr. Cornish, I've been informed
7 you have an additional verdict; correct?
8 JURY FOREPERSON: Correct.
9 THE COURT: Would you provide that to Deputy
10 Gray.
11 The clerk will read the verdict regarding
12 Count III.
13 THE CLERK: "Verdict: We, the jury in the
14 above-entitled matter, find the defendant Quinzale Mason
15 guilty of Count III, being a felon in possession of a
16 firearm, dated this 12th date of February, 2014."
17 THE COURT: Is this your verdict, so say you
18 one, so say you all?
19 (Collective affirmation by the jury.)
20 THE COURT: Mr. Hylin, would you like the
21 jury polled?
22 MR. HYLIN: Yes, I would.
23 THE COURT: Why don't we poll the jury, then,
24 as to Count III.

1 THE CLERK: Juror No. 1, is this your verdict
2 as read?
3 JUROR NO. 1: Yes.
4 THE CLERK: Juror No. 2?
5 JUROR NO. 2: Yes.
6 THE CLERK: Juror No. 3?
7 JUROR NO. 3: Yes.
8 THE CLERK: Juror No. 4?
9 JUROR NO. 4: Yes.
10 THE CLERK: Juror No. 5?
11 JUROR NO. 5: Yes.
12 THE CLERK: Juror No. 6?
13 JUROR NO. 6: Yes.
14 THE CLERK: Juror No. 7?
15 JUROR NO. 7: Yes.
16 THE CLERK: Juror No. 8?
17 JUROR NO. 8: Yes.
18 THE CLERK: Juror No. 9?
19 JUROR NO. 9: Yes.
20 THE CLERK: Juror No. 10?
21 JUROR NO. 10: Yes.
22 THE CLERK: Juror No. 11?
23 JUROR NO. 11: Yes.
24 THE CLERK: Juror No. 12?

1 JUROR NO. 12: Yes.

2 THE COURT: Ladies and gentlemen of the jury,
3 now I'm not kidding. Your work here is finished. Thank
4 you very much for your service. I understand that it was
5 a little bit disjointed there the last couple of days,
6 yesterday and today, but it was just required based on
7 the nature of the case.

8 There's only a couple of things that I ask of
9 you at this point. One of them is that at the end of
10 every trial I have the jurors fill out a very brief
11 questionnaire. You're not obligated to do so, so if you
12 don't want to, you don't have to. I can guarantee you I
13 review every single one of them.

14 The reason I have the questionnaire done is I
15 want to know what I can do to make jury service for the
16 next 12 people sitting in the seats that you're sitting
17 in better, so if you have suggestions in any way that I
18 can make the process better, please let me know. Some
19 people say we can give better coffee and we can make the
20 facilities a little bit better. I think that eventually
21 might have to be taken up with the county commission. We
22 might need a new building at some point.

23 So you as former jurors, if you have a strong
24 feeling about the jury room, maybe at some point we can

1 take that up. I can't do anything about the facilities,
2 but if there is something about them that made you
3 uncomfortable, I need to know about it so we can address
4 that in the future.

5 The other thing I want to tell you is that
6 you are now completely free from the admonition. You can
7 talk to anybody that you want to about your jury service.
8 I can tell you, based on my past experience as a trial
9 attorney, that oftentimes it's helpful for the attorneys
10 to call the jurors and find out what it is that they did
11 well or areas possibly they can work on to improve.
12 There's nothing inappropriate about the attorneys or
13 somebody from the attorneys' offices calling you and
14 wanting to discuss the case with you, and so if that call
15 does come, it's up to you whether or not you want to talk
16 to them or not. I'm not saying that you should or that
17 you have to. I know, as I said before, Mr. Young and
18 Mr. Hylin are both very courteous gentlemen, but if they
19 call and you want to talk to them, feel free to do so.
20 If you don't want to talk to them and you tell them that
21 and they persist, then you call me and I'll take care of
22 it for you, but I can't imagine that occurring.

23 The last thing I'll tell you is, I do make it
24 a habit or a practice to meet with my fellow judges in my

1 office after jury service. So Deputy Gray will let you
2 know, if you want to talk to me in my office about your
3 jury service or I can answer possibly any questions that
4 you may have had about the process or the way that we do
5 things, I'll be happy to meet with you once you've
6 collected your belongings and you may come back.

7 So just talk to Deputy Gray about that if
8 you'd like to do that. If I don't have the opportunity
9 to thank you in person under those circumstances, let me
10 just one final time say thank you on behalf of your
11 community for the service that you provided this week.

12 Ladies and gentlemen, you will rise for the
13 jury.

14 (The jury exited the courtroom.)

15 THE COURT: The record will reflect the jury
16 has retired to the jury room.

17 Mr. Mason, we do need to prepare a
18 Presentence Investigation Report in your case, so,
19 Ms. Clerk, do we have a date for sentencing?

20 MR. HYLIN: Your Honor, I was going to ask
21 that it be set in as close as possible. His medical
22 condition is deteriorating rapidly, and because of his
23 incarceration, they took him off of the donor list for a
24 transplant.

1 THE COURT: Okay.

2 MR. HYLIN: So, you know, it's become kind of
3 critical as far as that is concerned, so I know -- I know
4 what the parameters are with the Division, but I think
5 they can probably squeeze out a PSI earlier than the
6 normal routine, so I would ask that we could set in as
7 soon as possible.

8 THE COURT: Mr. Young, the prior criminal
9 conviction out of Las Vegas, what year was that?

10 MR. YOUNG: 2006, I believe, Your Honor.

11 THE COURT: The only reason I ask is that we
12 can use a Presentence Investigation Report that's not
13 less than five years old, but if it was outside that
14 window, then we do need to do a new Presentence
15 Investigation Report.

16 MR. YOUNG: The first judgment and conviction
17 was December 18, '06, so going on nine years ago.

18 THE COURT: So we can't use that old PSI.

19 Ms. Clerk, if we could set a date as soon as
20 possible for Mr. Mason.

21 Mr. Mason, we do have to do a Presentence
22 Investigation Report, and that usually takes about 45
23 days, but if we can set it maybe 30 days, then if the
24 Division can't do that, then I'll talk to them about it,

1 but I understand Mr. Mason's condition. I think
2 Mr. Hylin's request is a reasonable one.

3 MR. HYLIN: Thank you, Your Honor.

4 THE CLERK: Mr. Hylin, would March
5 19th -- that's a Thursday -- that's a little bit over 30
6 days because February is a short month. Or March 17th?

7 MR. HYLIN: Either one is fine. The
8 Department 1 calendar is the same day, so what I'll have
9 to do is be in front of the calendar or trail it to the
10 end, but that should be fine.

11 THE COURT: We'll accommodate you one way or
12 the other, Mr. Hylin.

13 Which day do you prefer, Thursday the 19th or
14 Tuesday the 17th, Saint Patrick's Day or the 19th.

15 MR. HYLIN: Let's do it the 19th.

16 THE COURT: We'll set this for sentencing on
17 Thursday, March 19th at 8:30 a.m., and Mr. Hylin will
18 contact my staff and let them know if you want to go
19 first or last. It will be completely up to you,
20 Mr. Hylin, but we'll accommodate you.

21 MR. HYLIN: Thank you, Your Honor.

22 THE COURT: Mr. Mason, I'm going to order you
23 cooperate with the Division of Parole & Probation in the
24 preparation of a Presentence Investigation Report. I'm

1 also ordering you bring in \$25 on the day of your
2 sentencing. That's an administrative assessment fee that
3 I'll order in addition to anything else I do on that
4 date.

5 Do you understand that?

6 THE DEFENDANT: Am I supposed to have, like,
7 \$25 on my books for that?

8 THE COURT: Yeah. If you have \$25 on your
9 books, that would be great. If you don't or you can't
10 get it, I understand, but it is a requirement you pay a
11 \$25 administrative assessment fee.

12 Court's in recess.

13 (Proceedings concluded.)

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3

4 I, PEGGY B. HOOGS, Certified Court Reporter
5 in and for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by
7 me at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my supervision;
10 that the foregoing is a ROUGH DRAFT transcription of the
11 proceedings and has not been proofread or certified.

12 I further certify that I am not a relative
13 nor an employee of any attorney or any of the parties,
14 nor am I financially or otherwise interested in this
15 action.

16 I declare under penalty of perjury under the
17 laws of the State of Nevada that the foregoing statements
18 are true and correct.

19 Dated this 6th day of May, 2015.

20

21 /s/ Peggy B. Hoogs

22 _____
 Peggy B. Hoogs, CCR #160, RDR

23

24

CASE NO. CR14-1830

STATE OF NEVADA VS. QUINZALE MASON

DATE, JUDGE
OFFICERS OF

PAGE 1

COURT PRESENT

APPEARANCES-HEARING

2/12/15

ONGOING JURY TRIAL

HONORABLE

8:45 a.m. – Court reconvened outside the presence of the jury. Court, respective counsel and Defendant present.

ELLIOTT A.

Discussion ensued between the Court and respective counsel regarding jury instructions for Count III of the Amended Information.

SATTTLER

DEPT. NO. 10

M. White

Defense counsel advised the Court that the Defendant will stipulate that he is a convicted felon, and he will waive his right to have the State provide a certified copy of his prior conviction.

(Clerk)

P. Hoogs

(Reporter)

Upon questioning by the Court, the Defendant stated that he does stipulate to being a convicted felon.

COURT ORDERED: The current Jury Instruction #33 shall be withdrawn, and the modified version will be numbered as 33 and given to the jury.

Jury brought into the courtroom.

COURT unsealed the envelope that contained the verdict forms, and handed them to the Clerk.

Upon direction by the Court, the Clerk read the verdicts aloud:

VERDICT

We, the jury in the above-entitled matter, find the defendant, QUINZALE MASON, GUILTY of COUNT I. BATTERY WITH A DEADLY WEAPON.

VERDICT

We, the jury in the above-entitled matter, find the defendant, QUINZALE MASON, GUILTY of COUNT II. ASSAULT WITH A DEADLY WEAPON.

Dated this 11th day of February, 2015.

/s/Robert Cornish

Foreperson

Defense counsel requested that the jury be polled by the Clerk.

Each juror answered in the affirmative to the question: "Are these your verdicts as read?"

COURT advised the jury that they will now be directed to consider Count III of the Amended Information.

COURT read Jury Instructions 33, 34, 35 & 36 to the jury.

8:59 a.m. – Deliberations commenced; Court stood in recess.

9:20 a.m. – Court reconvened. Court, respective counsel, Defendant and jury present.

Upon direction by the Court, the Clerk read the verdict aloud:

VERDICT

We, the jury in the above-entitled matter, find the defendant, QUINZALE MASON, GUILTY of COUNT III. BEING A FELON IN POSSESSION OF A FIREARM.

Dated this 12th day of February, 2015.

/s/Robert Cornish

Foreperson

Defense counsel requested that the jury be polled by the Clerk; each juror again answered in the affirmative.

PAGE 2

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

2/12/15

ONGOING JURY TRIAL

HONORABLE

COURT thanked and excused the jury.

ELLIOTT A.

Defense counsel requested that sentencing be set as soon as possible due to the Defendant's deteriorating medical condition.

SATTLER

DEPT. NO. 10

COURT noted that the Division of Parole and Probation needs time to prepare a PSI, however a sentencing date within approximately 30 days would be reasonable in this case.

M. White

(Clerk)

COURT ORDERED: Sentencing set for March 19, 2015 at 8:30 a.m.

P. Hoogs

(Reporter)

Defendant remanded to the custody of the Sheriff.

Exhibits

Title: **STATE OF NEVADA VS. QUINZALE MASON**

PLAINTIFF: **STATE OF NEVADA** DA: **ZACH YOUNG, ESQ.**

DEFENDANT: **QUINZALE MASON** PD: **CARL HYLIN, ESQ.**

Case No: **CR14-1830**

Dept. No: **10**

Clerk: **M. WHITE**

Date: **2/6/15**

| Exhibit No. | Party | Description | Marked | Offered | Admitted |
|-------------|-------|-------------------------------------|--------|-------------------|----------|
| 1 | STATE | Overhead photo #1 | 2/6/15 | No Obj. | 2/9/15 |
| 2 | STATE | Overhead photo #2 | 2/6/15 | No Obj. | 2/9/15 |
| 3 | STATE | Overhead photo #3 | 2/6/15 | No Obj. | 2/10/15 |
| 4 | STATE | Overhead photo #4 | 2/6/15 | No Obj. | 2/10/15 |
| 5 | STATE | Scene photo #1 | 2/6/15 | No Obj. | 2/9/15 |
| 6 | STATE | Scene photo #2 | 2/6/15 | No Obj. | 2/9/15 |
| 7 | STATE | Scene photo #3 | 2/6/15 | No Obj. | 2/9/15 |
| 8 | STATE | Scene photo #4 | 2/6/15 | No Obj. | 2/9/15 |
| 9 | STATE | Scene photo #5 | 2/6/15 | No Obj. | 2/9/15 |
| 10 | STATE | Scene photo #6 | 2/6/15 | No Obj. | 2/9/15 |
| 11 | STATE | Victim photo #1 | 2/6/15 | No Obj. | 2/10/15 |
| 12 | STATE | Victim photo #2 | 2/6/15 | No Obj. | 2/10/15 |
| 13 | STATE | Vehicle photo – passenger side view | 2/6/15 | Obj; Overruled | 2/10/15 |
| 14 | STATE | Vehicle photo – driver's side view | 2/6/15 | Obj; Overruled | 2/10/15 |
| 15 | STATE | Vehicle photo – front view | 2/6/15 | Obj; Overruled | 2/10/15 |
| 16 | STATE | Vehicle photo – back license plate | 2/6/15 | Obj; Overruled | 2/10/15 |
| 17 | STATE | Vehicle photo – evidence seal | 2/6/15 | Obj; Overruled | 2/10/15 |
| 18 | STATE | Photo of DMV info | 2/6/15 | Obj; Overruled | 2/10/15 |
| 19 | STATE | Vehicle photo – interior | 2/6/15 | Obj; Overruled | 2/10/15 |
| 20 | STATE | Photo of items inside a plastic bag | 2/6/15 | Obj; Overruled | 2/10/15 |

Exhibits

Title: **STATE OF NEVADA VS. QUINZALE MASON**

PLAINTIFF: **STATE OF NEVADA** DA: **ZACH YOUNG, ESQ.**

DEFENDANT: **QUINZALE MASON** PD: **CARL HYLIN, ESQ.**

Case No: **CR14-1830**

Dept. No: **10**

Clerk: **M. WHITE**

Date: **2/6/15**

| Exhibit No. | Party | Description | Marked | Offered | Admitted |
|-------------|-------|---|--------|-------------------|----------|
| 21 | STATE | Photo of hat | 2/6/15 | Obj; Overruled | 2/10/15 |
| 22 | STATE | X-ray photo #1 | 2/6/15 | No Obj. | 2/10/15 |
| 23 | STATE | X-ray photo #2 | 2/6/15 | No Obj. | 2/10/15 |
| 24 | STATE | DMV Registration record | 2/6/15 | No Obj. | 2/10/15 |
| 25 | STATE | CD of 911 call | 2/6/15 | No Obj. | 2/9/15 |
| 26 | STATE | CD of power point presentation (demonstrative) | 2/6/15 | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

1 CODE 4245
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1830

11 v.

Dept. No. 10


12 QUINZALE MASON,

13 Defendant.
14 _____/

15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, QUINZALE MASON, GUILTY of COUNT I. BATTERY WITH A DEADLY
18 WEAPON.

19 DATED this 11th day of February, 2015.
20
21

22 
23 _____
FOREPERSON
24
25
26

1 CODE 4245
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1830

11 v.

Dept. No. 10

12 QUINZALE MASON,

13 Defendant.
14 _____/

15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, QUINZALE MASON, GUILTY of COUNT II. ASSAULT WITH A DEADLY
18 WEAPON.

19 DATED this 11th day of February, 2015.
20
21

22 
23 FOREPERSON
24
25
26

1 CODE 4245
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR14-1830

11 v.

Dept. No. D10

12 QUINZALE MASON,

13 Defendant.
14 _____/

15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, QUINZALE MASON, GUILTY of COUNT III. BEING A FELON IN
18 POSSESSION OF A FIREARM.

19 DATED this 12th day of February, 2015.
20

21 _____
22 FOREPERSON
23
24
25
26

1 **CODE 1850**

2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR14-1830

11 **vs.**

Dept. No. 10

12 **QUINZALE MASON,**

13 **Defendant.**
14 _____/

15 **JUDGMENT**

16 The Defendant, having been found guilty by a jury, and no sufficient cause being
17 shown as to why judgment should not be pronounced against him, the Court rendered judgment as
18 follows:

19 That Quinzale Mason is guilty of the crime of Battery With a Deadly Weapon, a
20 violation of NRS 200.481 (2) (e), a felony, as charged in Count I of the Amended Information, and
21 that he be punished by imprisonment in the Nevada Department of Corrections for the maximum
22 term of one hundred twenty (120) months with the minimum parole eligibility of thirty-six (36)
23 months, with credit for two hundred eighteen (218) days time served.

24 That Quinzale Mason is guilty of the crime of Assault With a Deadly Weapon, a
25 violation of NRS 200.471, a felony, as charged in Count II of the Amended Information, and that he
26 be punished by imprisonment in the Nevada Department of Corrections for the maximum term of
27 sixty (60) months with the minimum parole eligibility of twenty-four (24) months, to be served
28 consecutively to the sentence imposed for Count I, with credit for zero (0) days time served.

1 That Quinzale Mason is guilty of the crime of Being a Felon in Possession of a
2 Firearm, a violation of NRS 202.360, a felony, as charged in Count III of the Amended Information,
3 and that he be punished by imprisonment in the Nevada Department of Corrections for the
4 maximum term of sixty (60) months with the minimum parole eligibility of twenty-four (24)
5 months, to be served concurrently to the sentence imposed in Count II, with credit for zero (0) days
6 time served.

7 It is further ordered that the Defendant shall pay the statutory Twenty-Five Dollar
8 (\$25.00) administrative assessment fee; that he shall pay the Three Dollar (\$3.00) administrative
9 assessment fee for obtaining a biological specimen and conducting a genetic marker analysis; and
10 that he shall reimburse Washoe County in the amount of One Thousand Dollars (\$1,000.00) for
11 legal services rendered.

12 It is further ordered that the fees are subject to removal from the Defendant's books
13 at the Washoe County Jail and/or Nevada Department of Corrections.

14 Dated this 17 day of March, 2015.
15 NUNC PRO TUNC to March 17, 2015.

16
17
18 
19 DISTRICT JUDGE
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67830

FILED

JUN 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon, assault with a deadly weapon, and being a felon in possession of a firearm. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Affirmed and remanded with instruction.

Jeremy T. Bosler, Public Defender, and John Reese Petty, Chief Deputy Public Defender, Washoe County,
for Appellant.

Adam Paul Laxalt, Attorney General, Carson City; Christopher J. Hicks, District Attorney, and Joseph R. Plater, Deputy District Attorney, Washoe County,
for Respondent.

BEFORE HARDESTY, SAITTA and PICKERING, JJ.

OPINION

PER CURIAM:

In this opinion, we address the mandatory duty of the district court judges under NRS 176.035(1) to pronounce the aggregate minimum

and maximum terms of imprisonment when imposing consecutive sentences for offenses committed on or after July 1, 2014.

Appellant Quinzale Mason fired several shots at another male outside an apartment building in August 2014; the bullets missed the male but a ricochet from one of the bullets hit and injured a girl nearby. Following a jury trial, Mason was convicted of battery with a deadly weapon as to the girl (count 1), assault with a deadly weapon as to the male (count 2), and being a felon in possession of a firearm (count 3). The district court imposed a prison term of 3 to 10 years for count 1, a consecutive prison term of 2 to 5 years for count 2, and a concurrent prison term of 2 to 5 years for count 3.

On appeal, Mason argues that the district court erred at sentencing by failing to pronounce the aggregate minimum and maximum terms of imprisonment as required by statute.¹ NRS 176.035(1) provides in relevant part, “For offenses committed on or after July 1, 2014, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment.” Here, the district court imposed consecutive sentences for

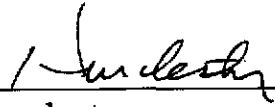
¹Mason’s remaining contention—that the district court plainly erred in instructing the jury on the doctrine of transferred intent with respect to the battery count—lacks merit. The instruction did not relieve the State of its burden to prove that Mason willfully used force or violence upon the victim, the jury was properly instructed on the elements of battery and the definition of “willful,” and sufficient evidence was adduced at trial to support the battery conviction. See NRS 200.481(1)(a). Accordingly, Mason fails to demonstrate plain error affecting his substantial rights. See *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (applying plain error analysis to unpreserved claims of instructional error).


offenses committed after July 1, 2014, but failed to state the minimum and maximum aggregate terms of imprisonment.

The district court's mandatory duty under NRS 176.035(1) to pronounce the aggregate terms of imprisonment in the judgment of conviction is of significant importance. The Legislature placed this statutory duty on district courts in an effort to simplify the sentence structure and, in turn, promote confidence in the criminal justice system and reduce confusion as to when an inmate is eligible for parole to the street. See Hearing on S.B. 71 Before the Assembly Judiciary Comm., 77th Leg. 5-6 (Nev., April 19, 2013). Whereas previously inmates had to be paroled from or expire a sentence before beginning to serve the next consecutive sentence, the effect of aggregating consecutive sentences is that inmates will now serve the minimum time for the total consecutive sentences before being eligible for a parole hearing. *Id.* Thus, the aggregation of consecutive sentences is a necessary step for the district court to take to apprise all parties, as well as the Department of Corrections and the public, as to when an inmate is actually eligible for parole. Accordingly, we conclude that it was error for the district court not to aggregate the sentences in the judgment of conviction but that error does not warrant a new sentencing hearing as it does not affect the sentences imposed for each offense.

Because Mason's arguments fail to demonstrate that his convictions or sentences are infirm, we affirm the judgment of conviction. However, we remand for the district court to correct the judgment of

conviction to include the aggregate minimum and maximum terms of his consecutive sentences as required by NRS 176.035(1).²


Hardesty, J.


Saitta, J.


Pickering, J.

²The corrected judgment of conviction should be entered nunc pro tunc to the original sentencing date of March 17, 2015.

IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67830
District Court Case No. CR141830

FILED

JUL 19 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk ✓

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: July 11, 2016

Tracie Lindeman, Clerk of Court

By: July Wright
Deputy Clerk

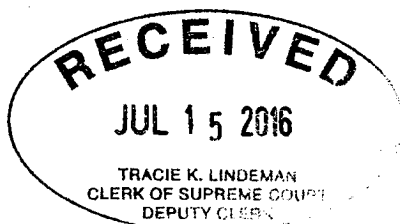
cc (without enclosures):

Hon. Elliott A. Sattler, District Judge
Quinzale Mason
Washoe County Public Defender
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on July 13 2016.

District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

QUINZALE MASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67830
District Court Case No. CR141830

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Affirmed and remanded with instructions."

Judgment, as quoted above, entered this 16th day of June, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
July 11, 2016.

Tracie Lindeman, Supreme Court Clerk

By: July Wright
Deputy Clerk

Case No. CR14-1830

Dept. No. 10

FILED

March
2017 ~~FEB~~ 2 AM 9:51

JACQUELINE BRYANT
CLERK OF THE COURT

BY [Signature]

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR Washoe County

-oOo-

Quinzale Mason

Petitioner,

vs.

I. Baca, Warden

Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST CONVICTION)

Evidentiary Hearing
Requested

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

CR14-1830
DC-09900084093-231
STATE VS. QUINZALE MASON (D 19 Pages
District Court 03/02/2017 09:51 AM
Washoe County 3565
PRONPTGII

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently

restrained of your liberty: Northern Nevada Correctional Center - Carson City

2. Name and location of court which entered the judgment of conviction under attack: Second Judicial District Court Reno, Nev. - Washoe County

3. Date of judgment of conviction: 7-12-14 - Amended

4. Case number: CR14-1830

5. (a) Length of sentence: Aggregate term of 180 months and minimum aggregate term 60 months

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ☐ No ☒

If "yes" list crime, case number and sentence being served at

this time: _____ N/A

7. Nature of offense involved in conviction being challenged: Battery With a Deadly Weapon, Assault With a Deadly Weapon and Being a Felon in Possession of a Firearm

8. What was your plea? (check one)

(a) Not Guilty ☒

(b) Guilty ☐

(c) Guilty but mentally ill ☐

(d) Nolo Contendere ☐

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: _____ N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒ (b) Judge without a jury ☐

11. Did you testify at the trial? Yes ☐ No ☒

12. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

13. If you did appeal, answer the following:

(a) Name of court: Nevada Supreme Court

(b) Case number or citation: No. 67830

(c) Result: Affirmed and remanded with instruction

(d) Date of result: June 16, 2016 - Amended 7-12-2016

See (Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:

N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☐ No ☒

16. If your answer to No. 15 was "yes", give the following information:

(a) (1) Name of court: _____

(2) Nature of proceedings: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceedings: _____

- (3) Grounds raised: _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ____ No ____
- (5) Result: _____
- (6) Date of result: _____
- (7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

- (1) First petition, application or motion?
Yes ____ No ____
Citation or date of decision: _____
- (2) Second petition, application or motion?
Yes ____ No ____
Citation or date of decision: _____
- (3) Third or subsequent petitions, applications or motions?
Yes ____ No ____
Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed

five handwritten or typewritten pages in length.) _____

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: Ground One

(b) The proceedings in which these grounds were raised: Fast Track Statement-No. 67830

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Because there was insufficient evidence of the specific intent to harm an intended victim, or to harm an unintended victim and trial

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Ground two, three, Appellant

Counsel failed to consider rising these grounds on direct appeal.

1 Continue Paragraph 17 (c)
2 Counsel failed to object to Count III of the Amended
3 Information and Jury Instructions Nos. 29, 33, 34, 35 and
4 36.

5
6 Continue Paragraph 18
7 however, ineffective trial counsel is best raised in Peti-
8 tion For Writ of Habeas Corpus (Post Conviction).
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

No. This petition is being filed prior to one (1) year deadline.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☒ No ☐

If yes, state what court and the case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Carl E. Hylin, Esq., and John Reese Petty on Appeal.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

If yes, specify where and when it is to be served, if you know: _____

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

1 (a) Ground one:

2 Petitioner's trial judge erred in instructing the jury on
3 No. 29, "transferred intent" in relation to battery with a deadly
4 weapon and, on Nos. 33, 34, 35 and 36 violating his 14th Amend-
5 ment rights and Art. I, § 8 of the Nevada Constitution.

6 Supporting Facts:

7 1) On the 9th of February, 2015, a trial in the matter of The
8 State of Nevada v. Quinzale Mason began in regards to the in-
9 cident numbered Case No. CR 14-1830, whereas on August 9, 2014
10 defendent was charged with battery with a deadly wea-
11 pon, and the defendant was charged with assault with
12 a deadly weapon; 2) Based on these charges the deputy
13 district attorney concluded his opening statement "at the
14 conclusion of the case the State's going to ask that you
15 return a guilty verdict as to both counts, battery with
16 a deadly weapon and assault with a deadly weapon"
17 (transcript, at 115); 3) During the State's opening statement
18 (at 107-115) and closing statement (at 600-626), the
19 prosecutor did not mention that Mason had been
20 charged with - Count III. Being a felon in possession
21 of a firearm, a violation of NRS 202.360, a felony,
22 by a Amended Information on February 4, 2015; 4) However,
23 after the State's "opening statement." The Court: Thank
24 you, Mr Young. "Mr. Hylin, prior to making your opening
25 statement, the Court would note that pursuant to NRS
175.141, the technical procedure is that prior to Mr. Young's
opening statement, I should have had the clerk read the
(Continue 8A)

1 Supporting Facts:

2 Information or the Amended Information to the jury. How-
3 ever, the Court would note that 'we actually did that during
4 the voir dire process.' Technically we -- we may do it again if
5 you want me to read it -- have it read to the jury again."

6 Mr. Hylin: No. That's fine, your Honor. I assumed that's what
7 we were doing when you read it at that time.

8 The Court: Well, I just -- I mean, it's a hyper-technicality,
9 but the way the statute is written, it says after impanelment
10 of the jury but before opening statement, and so we -- there's
11 some case law directly on point that says there has to be some
12 prejudice associated with it. So I can read it right now if
13 you want me to (transcript at 115-116).

14 Mr. Hylin: No, I don't think there's any prejudice --; 5)
15 The trial court judge committed prejudicial error in allowing
16 the State to introduce evidence of Mason's prior conviction
17 during "voir dire" process, before determining whether the pro-
18 bative value of this evidence outweighed any potential
19 prejudice; 6) The trial judge arbitrarily abused its dis-
20 cretion in use of other crimes, wrongs, or acts as evi-
21 dence of Mason's character in order to prove that he acted
22 in conformity therewith on August 9, 2014; 7) An abuse of
23 discretion exists where the district court judge does not
24 correctly apply controlling legal authority; 8) Under Nevada
25 law, battery with a deadly weapon and assault with a deadly
26 weapon or not "specific intent to harm" crimes; 9) The doc-
27 trine of transferred intent is not applicable to battery with a
28 deadly weapon or assault with a deadly weapon. Here Judge

(continue 8B)

Supporting Facts:

Satter instructed the jury on "transferred intent." (Jury Instruction No. 29 - Fast Track Statement, at 10). Defense counsel did not object to this instruction, 4JA 591, and the State referenced the doctrine several time in argument supporting a guilty verdict for battery (of Cecelia) with a deadly weapon was state misconduct, as Battery with substantial bodily harm was the correct charge (NRS 200, 481(2)(b)); 10) The fact that Cecelia was struck by random fragments is too attenuated to constitute "willful and unlawful use of force" for purposes of the battery statute. Her injury sounds in tort; not criminal law, and the doctrine of transferred intent did not apply (Fast Track Statement, at 13-14); 11) Mason may have been found guilty of Counts I and Count II, without instructing the jury on transferred intent; 12) The trial judge abused his discretion when he allowed the Amended Information alleging Count III. Being a felon in possession of a firearm, a violation of NRS 202, 360, a felony to be read to the jury during voir dire (see paragraph 4 above) that Mason had been convicted of VOLUNTARY MANSLAUGHTER WITH THE USE OF A DEADLY WEAPON, a felony under the laws of the State of Nevada. See 1JA 1-4 (Amended Information); and 13) After the State had rested their case, and after a jury verdict of guilty on Count I and Count II, the trial judge offered four (4) jury instructions which were to the effect that the jury was entitled to convict Mason for possession of a firearm by a felon (see transcript at 705-709).

Ground two:

The sentence and judgment against Petitioner are void or voidable, because of prosecutorial misconduct in filing Count III of the Amended Information in violation of the 5th, 4th, and 14th Amendments under the U.S. Constitution.

Supporting Facts:

14) Petitioner incorporate by reference the allegations set forth in Ground one in paragraphs 1 through 13, inclusive.

15) The State engaged in prosecutorial misconduct in violation of NRS 281.360, and Art. I, § 8 of the Nevada Constitution, where Mr. Young failed to give official oath, give adequate notice of theories of prosecution, or arraignment to Count III, under NRS 174.015(1); 16) Based upon information and belief, and prior to August 11, 2014, deputy district attorney Zach Young failed to give oath of office under NRS 282.020 in accord with an official policy of the Washoe County District Attorney's Office; 17) Under NRS 173.095 an information or indictment may be amended at any time before the verdict or finding, if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced; 18) On February 4, 2015, the State filed an Amended Information Count III. Being a felon in possession of a firearm, a violation of NRS 202.360, a felony. The State failed to arraign Mason, pursuant to NRS 174.015, before reading the Amended Information to the jury on voir

(continue 9A)

Supporting Facts:

dire, on February 9, 2015 (see IJA 1-4) (Amended Information)' 19) Under Nevada law arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating the substance of the charge and calling on the defendant to plead thereto; NRS 174.015(1); 20) The State impermissibly charged Mason with one type of conduct, i.e., Count 1, "a handgun, by shooting Cecilia M. in her right leg," (IJA at 2, lines 2-3 Amended Information), but gained its conviction by separate and different conduct; the State made no mention of the Doctrine of Transferred Intent during its Opening Statement (transcript p.p. 107-117); 21) The Nevada Supreme Court answered this issue in a footnote. See *Mason v. State*, 132 Nev. advance opinion 42 n.1 (2016) and Count 1 paragraphs 5-11, above

(c) Ground three:

Petitioner was deprived of his Constitutional right to effective assistance of counsel in violation of his 6th and 14th Amendment rights and Art. I, § 8 of the Nevada Constitution

Supporting Facts:

22) Petitioner incorporate by reference the allegations set forth in Grounds one and two in paragraphs 1 through 21, inclusive.

23) Trial counsel's failure to raise issue of insufficient evidence at end of trial or move for dismissal based on insufficient evidence, constitute ineffective assistance of counsel; 24) Trial

Counsel's failure to inform Mason that the evidence and charges were totally insufficient to meet the probable cause requirement, constituted ineffective assistance of counsel under

Strickland standard; 25) Trial counsel's failure to move to suppress one prior conviction of Voluntary Manslaughter

With The Use Of A Deadly Weapon, a felony, constituted ineffective assistance of counsel; 26) Trial counsel's failure to

submit the prosecution's case to a meaningful adversary testing process may constitute a denial of due process and establish a per se violation of Mason's right to effective assistance of counsel;

27) Therefore, it is requested that an evidentiary hearing be granted so that Mason could present this ground for the court's decision on these facts and other noted omissions of counsel

Hyllin.

1 (b) Ground four:
2
3
4
5
6

N/A.

7 Supporting Facts:
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

N/A

Ground five:

N/A

Supporting facts:

N/A

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Northern Nev. Correc. Center, Nevada on the 17th

Day of February, 2017.

Quercus muhlenbergii

Quinzale Mason

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Quinn M. Mason
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 27th day of February, 20 17, by placing same into the hands of prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

Clerk of the Court
Second Judicial District Court
75 Court Street
Reno, NV 89501

Washoe County Dist. Attorney
Christopher J. Hicks, Dist. Atty.
P.O. Box 11130
Reno, NV 89520

_____, Nevada 89

Quinn M. Mason
Signature of Petitioner In Pro Se

///

///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition For

Writ Of Habeas Corpus (Post-Conviction)
(Title of Document)

filed in District Court Case number CR14-1830

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Quinzale Mason
Signature

2-17-17
Date

Quinzale Mason
Print Name

Title

1 **Code : 2715**

2
3
4
5
6 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 * * *

9 QUINZALE MASON,

10 Petitioner,

Case No. : CR14-1830

11 vs.

Dept No. : 10

12 STATE OF NEVADA,

13 Respondent.
14 _____/

15 **RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL**
16 **(POST CONVICTION)**

17 The Petitioner having been granted Forma Pauperis Status, and District Court
18 Judge Sattler having determined that there is a basis for the appointment of
19 counsel and having referred the matter to the Administrator of the Court Appointed
20 Counsel for selection of counsel for the Petitioner, the Administrator of the Court
21 Appointed Counsel makes the following recommendation:

22 IT IS HEREBY RECOMMENDED that Lyn E. Beggs, Esq., be appointed to
23 represent Petitioner on this Petition For Writ Of Habeas Corpus. Said Counsel is to be
24 paid pursuant to NRS 7.115 through NRS 7.165 by the State Public Defender in an
25 amount recommended by the Administrator and approved by the Court.

26 IT IS HEREBY FURTHER RECOMMENDED that Petitioner's counsel have ten (10)
27 days from the date of the Court's Order to designate what portions of the Court file
28 counsel requests be provided to her by the Clerk of the Court;

IT IS HEREBY FURTHER RECOMMENDED that, if the newly appointed attorney


1 is not an electronic filer with the Second Judicial District Court, the Clerk of the
2 Court shall provide a CD of all designations made by Petitioner's counsel within five
3 (5) days of the designation. If the newly appointed attorney is an electronic filer
4 with the Second Judicial District Court, the newly appointed attorney shall be
5 placed as the attorney of record in case number CR14-1830.

6 IT IS HEREBY FURTHER RECOMMENDED that Counsel have forty-five (45) days
7 from the date of the receipt of the record within which to supplement the Petition
8 For Writ Of Habeas Corpus or file a Notice indicating that the original Petition For
9 Writ Of Habeas Corpus shall stand as filed;

10 IT IS HEREBY FURTHER RECOMMENDED that the State of Nevada be ordered
11 to respond within forty-five (45) days from the date of filing and service by the
12 Petitioner of the Petition to Supplement or Notice Of Nonsupplementation;

13 IT IS HEREBY FURTHER RECOMMENDED that Counsel for Petitioner and the
14 State of Nevada be ordered to appear within fifteen (15) days of the final briefing
15 before the Administrative Assistant in Department 10, of the Second Judicial District
16 Court for the purpose of setting this case for hearing.

17 DATED this 14 day of march, 2017.

18
19 
20 ROBERT C. BELL, ESQ., ADMINISTRATOR,
COURT APPOINTED COUNSEL

21 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
22 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
23 and in the interest of justice,

24 IT IS HEREBY ORDERED that the recommendations of the Administrator are
25 hereby confirmed, approved and adopted. Lyn E. Beggs, Esq., shall be appointed
26 to represent Petitioner on his Petition For Writ Of Habeas Corpus.

27 DATED this 21 day of MARCH, 2017.

28

CHIEF DISTRICT JUDGE

CODE: 4100
Lyn E. Beggs
Bar no. 6248
316 California Ave. #863
Reno, NV 89509
(775)432-1918
Attorney for Petitioner

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

QUINZALE MASON

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No.: CR14-1830

Department No.: 10

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

Comes now Petitioner, QUINZALE MASON (“Petitioner”), by and through his counsel of record and files his Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) pursuant to NRS 34.750. Petitioner incorporates his Petition for Writ of Habeas Corpus (Post-Conviction), filed March 2, 2017, by reference as though fully set forth herein.

GROUND FOR RELIEF

Petitioner was deprived of his Fifth, Sixth and Fourteenth Amendment rights to effective assistance of counsel and due process of law under the United States Constitution as more fully described in the grounds below.

Procedural History

Petitioner was arrested on August 10, 2014 and charged via a Criminal Complaint filed August 13, 2014 with two counts Battery with a Deadly Weapon and one count Assault with a Deadly Weapon. An Amended Complaint was filed on October 20, 2014 adding one count of Being a Felon in Possession of a Firearm. A preliminary hearing was held on November 20, 2014 after which Petitioner was bound over to the District Court on all four counts.

An Information was filed in the District Court on November 24, 2014 containing the same counts as included in the Amended Complaint. Petitioner was arraigned on December 9, 2014 at which time he pleaded not guilty to the four counts contained in the Information and invoked his right to proceed to trial within sixty (60) days. A Motion to Bifurcate was filed by the State on January 20, 2015 to bifurcate the charge of Being a Felon in Possession of a Firearm to which defense counsel filed a non-opposition.

An Amended Information was filed on February 4, 2015 omitting one count of Battery with a Deadly Weapon. The Amended Information charged Petitioner with: Count I, Battery with a Deadly Weapon, a violation of NRS 200.481(2)(e); Count II, Assault with a Deadly Weapon, a violation of NRS 200.471; and Count III, Being a Felon in Possession of a Firearm, a violation of 202.360. A jury trial commenced on February 9, 2015 on Counts I and II of the Amended Complaint. After receiving a verdict of guilty on Counts I and II of the Amended Information, Count III was presented to the jury for consideration after Petitioner stipulated that he had a prior conviction and a verdict of guilty on Count III was issued by the jury.

A Judgment of Conviction was entered on March 17, 2015. Petitioner was sentenced to one hundred twenty (120) months in the Nevada Department of Corrections ("NDOC") with parole eligibility after thirty six (36) months with two hundred eighteen (218) days credit for time served

on Count I; on Count II, sixty (60) months in the NDOC with parole eligibility after twenty four (24) months to run consecutively with Count I; and on Count III, sixty (60) months in the NDOC with parole eligibility after twenty four (24) months to run concurrently with Count II.

Petitioner filed a Notice of Appeal on April 15, 2015 and raised two issues on direct appeal; first, that the District Court erred in instructing the jury on transferred intent and second, that the District Court abused its discretion by not aggregating the consecutive counts as required by NRS 176.035(1). The Nevada Supreme Court issued its opinion on June 16, 2016 remanding the matter to the District Court for aggregation of the consecutive sentences. The Supreme Court addressed Petitioner's second ground regarding the jury instruction only in a footnote, noting that plain error analysis was appropriate as the issue had not been preserved and finding that Petitioner failed to show plain error affecting his substantial rights were affected by providing the jury instruction. Remittitur was issued on July 11, 2016 and filed in the District Court on July 14, 2016.

Petitioner timely filed his Petition for Writ of Habeas Corpus (post-conviction) on March 2, 2017, contemporaneously with a motion to proceed in forma pauperis. This Court granted Petitioner's motion to proceed in forma pauperis and appointed counsel. The undersigned was appointed on March 21, 2017 and now files this Supplemental Petition for Writ of Habeas Corpus (post-conviction) in accordance with NRS 39.750(3).

Statement of Facts

Petitioner was arrested on suspicion of battery with a deadly weapon and assault with a deadly weapon on August 10, 2014. On the morning of August 9, 2014, Petitioner and neighbor, Anthony Holly, along with others played a game of dice outside the apartment buildings where Petitioner and Mr. Holly resided. An argument allegedly arose during the game between Mr. Holly and Petitioner but the matter was dropped. Later that same morning, Mr. Holly was outside his

1 apartment building as was his neighbor, Delphine Martin, and Ms. Martin's daughter, Cecelia. Mr.
2 Holly was walking Ms. Martin's dog when a four door sedan drove into the parking area of the
3 apartment buildings and parked. Allegedly the driver of the vehicle exited the vehicle and shot
4 towards Mr. Holly who identified the individual as Petitioner. According to witnesses at the scene,
5 two to three shots were heard but no one directly saw the driver fire a gun. Mr. Holly ran around
6 the apartment building and did not incur any injuries. However, Cecelia, Ms. Martin's daughter
7 suffered an injury to her leg and was found after medical examination to have a metal fragment in
8 her leg that was assumed, but not definitively determined to be, a ricocheted bullet or fragment
9 thereof.
10

11 Law enforcement responded to the scene and based on statements made by Mr. Holly, Ms.
12 Martin and another neighbor, identified Petitioner as the individual in the vehicle. Law enforcement
13 commenced an investigation which resulted in a felony stop being made of a vehicle in which
14 Petitioner was a passenger along with his girlfriend, her mother and Petitioner's mother. Petitioner
15 was taken into custody. He was later charged as noted above.
16

17 Petitioner was represented by appointed counsel, Carl Hylin, during all trial court
18 proceedings. After a multi-day, bifurcated jury trial, Petitioner was found guilty on the three counts
19 contained in the Amended Complaint and was sentenced as discussed above.
20

21 GROUND ONE

22 *Petitioner was denied his right to due process and the effective assistance of counsel under*
23 *the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution when his trial counsel failed to*
24 *object to jury instruction #29 regarding transferred intent.*

25 At the time of trial the State offered a jury instruction ultimately provided to the jury as jury
26 instruction #29 regarding transferred intent. The instruction stated:

27 If an illegal and unintended act results from the intent to commit a crime, that act
28 is also considered illegal. The doctrine of transferred intent is a theory of imputed
liability. The intent to use force or violence against a certain person is transferred

1 or imputed to a different person where the different person is hit; this is so even
2 where the different person is hit by mistake or inadvertence. The doctrine applies
3 in any case where there is intent to commit a criminal act and the only difference
between the actual result and the contemplated result is the nature of the personal
injuries sustained.

4 The doctrine of transferred intent is applicable to all crimes where an unintended
5 victim is harmed as a result of the intent to harm an intended victim, whether or not
6 the intended victim is injured.

7 As discussed above, on direct appeal Petitioner argued that the District Court had erred in
8 giving the transferred intent instruction. The Nevada Supreme Court in a footnote found the claim
9 to be without merit stating that Petitioner “fails to demonstrate plain error affecting his substantial
10 rights” citing to Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003), for the premise that an
11 unpreserved objection to a jury instruction is review for plain error.

12 Claims of ineffective assistance of counsel are considered pursuant to the test established in
13 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Pursuant to Strickland, a petitioner
14 must demonstrate that his or her counsel's performance was deficient, falling below an objective
15 standard of reasonableness, and that counsel's deficient performance prejudiced the defense. Id.; see
16 also Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32 (2004). To establish prejudice
17 based upon counsel's deficient performance, a petitioner must show that, but for counsel's errors,
18 there is a reasonable probability that the outcome would have been different. Id. When a petitioner
19 alleges ineffective assistance of counsel, he or she must establish the factual allegations that form
20 the basis for his or her claim of ineffective assistance by a preponderance of the evidence. Id.

21 While the issue of the transferred intent instruction was well briefed on direct appeal, the
22 Nevada Supreme Court was required to review the ground under a plain error evaluation due to the
23 failure of trial counsel to object to the jury instruction. However, had trial counsel objected to the
24 instruction and preserved the issue for appeal, the Supreme Court would have reviewed the District
25 instruction and preserved the issue for appeal, the Supreme Court would have reviewed the District
26 instruction and preserved the issue for appeal, the Supreme Court would have reviewed the District
27 instruction and preserved the issue for appeal, the Supreme Court would have reviewed the District
28 instruction and preserved the issue for appeal, the Supreme Court would have reviewed the District

1 Court's decision for an abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 121
2 P.3d 582 (2005). Petitioner contends that had trial counsel objected he could have placed on the
3 record argument that the doctrine of transferred intent was not appropriate for the jury to be
4 instructed in this matter and that the evidence presented at trial by the State did not prove beyond a
5 reasonable doubt that Petitioner, the alleged assailant of Mr. Holly, had intent to commit battery on
6 Mr. Holly, intent that the State argued was transferred when Cecelia was hit allegedly by ricochet
7 from a bullet. This argument in turn could have been considered by the Supreme Court to determine
8 whether there was judicial error in allowing the instruction to be presented to the jury.
9

10
11 Petitioner contends that his trial counsel's performance was deficient when he failed to object
12 to jury instruction #29 and that counsel's error prejudiced Petitioner as the Nevada Supreme Court
13 was required to review the claim under a plain error standard and accordingly has made the
14 appropriate showing under *Strickland* to show that his counsel's performance was ineffective.
15

16 GROUND TWO

17 *Petitioner was denied his right to due process and the effective assistance of counsel under*
18 *the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution when his trial counsel failed to*
19 *properly investigate Petitioner's potential alibi witness.*

20 Petitioner pleaded not guilty to the charges and invoked his right to proceed to trial within
21 sixty days. Prior to trial, Mr. Hylin filed a Notice of Alibi Witness on January 16, 2015, providing
22 minimal information to the District Court regarding a potential alibi witness, Cisco aka "Sko",
23 however due to the minimal information, the State filed a Motion to Exclude Alibi Witness on
24 February 5, 2015 for failure to provide adequate notice of the alibi witness under NRS 174.233. At
25 the time of a Status Hearing held on February 6, 2015 the District Court granted the State's motion
26 based on the failure of the defense to provide adequate notice information about the potential alibi
27 witness.
28

1 “Defense counsel has a duty ‘to make reasonable investigations or to make a reasonable
2 decision that makes particular investigations unnecessary.’ State v. Love, 109 Nev. 1136, 1138, 865
3 P.2d 322, 323 (1993) *citing* Strickland, 466 U.S. at 691, 104 S.Ct. at 2066 (1984). Here, Petitioner
4 contends that his trial counsel failed to make reasonable investigations into Petitioner’s potential
5 alibi witness. While Petitioner acknowledges that he was not able to provide his trial counsel with
6 detailed information regarding Cisco’s identity initially, he contends that he provided his counsel
7 with enough detail about where he and Cisco were at the date and time at issue that would have
8 allowed trial counsel, with the assistance of an investigator, to locate Cisco. Petitioner contends that
9 his trial counsel’s performance was deficient when he failed to further investigate his alibi witness.
10 This prejudiced Petitioner by the resulting granting of the State’s motion to exclude an alibi witness
11 because of the failure to obtain further information regarding that witness. Petitioner was further
12 prejudiced as the jury was not presented with the testimony of the potential alibi witness. Should
13 the Court grant an evidentiary hearing on this issue, Petitioner will testify regarding the information
14 he provided to his defense counsel to locate Cisco. Further, Petitioner will make every effort to
15 locate Cisco’s current whereabouts and present his testimony to the Court.
16
17

18
19 Accordingly, Petitioner contends that his trial counsel was ineffective when he failed to
20 properly investigate Petitioner’s alibi witness.
21

22 CONCLUSION AND RELIEF REQUESTED

23 Based upon the foregoing, Petitioner respectfully submits that his due process rights and right
24 to effective assistance of counsel under the Fifth, Sixth and Fourteenth Amendments of the United
25 States Constitution were violated as discussed above. A petitioner “is entitled to an evidentiary
26 hearing only if he supports his claims with specific factual allegations that if true would entitled him
27 to relief. The petitioner is not entitled to an evidentiary hearing if the factual allegations are belied
28

1 or repelled by the record.” Thomas v. State 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)(citing
2 Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984)). Petitioner contends that he has supported
3 his claims with factual allegations that are not belied by the record and accordingly
4 requests relief in an evidentiary hearing to address the allegations herein and will request this
5 honorable court to overturn his conviction subsequent to such an evidentiary hearing.

6 DATED this 8th day of December, 2017.
7
8

9 Lyn E. Beggs

10 Lyn E. Beggs, Esq.

11 Nevada Bar No. 6248

12 Attorney for Petitioner
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

CASE NUMBER: CR14-1830

I certify that on the 8th day of December, 2017, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Joseph R. Plater, III, Deputy District Attorney
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

Lyn E. Beggs
Lyn E. Beggs
Nevada Bar No. 6248

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

VERIFICATION

Pursuant to NRS 34.370(1)

The undersigned does hereby verify that the contents of this Supplemental Petition for Writ of Habeas Corpus are true and correct to the best of her knowledge and that the undersigned has been appointed by the District Court to represent Petitioner in this matter and that Petitioner has authorized counsel to file this Supplemental Petition on his behalf.

DATED this 8th day of December, 2017.

Lyn E. Beggs
Lyn E. Beggs
Bar No. 6248
316 California Ave. #863
Reno, NV 89509
(775)432-1918
Attorney for Petitioner

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

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned affirms that this Supplemental Petition for Writ of Habeas Corpus (Post Conviction) and Exhibits does not contains the social security number of any person.

DATED this 8th day of December, 2017.

Lyn E. Beggs

Lyn E. Beggs

Bar No. 6248

316 California Ave. #863

Reno, NV 89509

(775)432-1918

Attorney for Petitioner

1 CODE No. 2300
2 CHRISTOPHER J. HICKS
3 #7747
4 P. O. Box 11130
5 Reno, Nevada 89520-0027
6 (775) 328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

10 IN AND FOR THE COUNTY OF WASHOE

11 * * *

12 QUINZALE MASON,

13 Petitioner,

14 v.

Case No. CR14-1830

15 I. BACA, WARDEN,

Dept. No. 10

16 Respondent.
17 _____/

18 MOTION TO DISMISS PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF
19 HABEAS CORPUS (POST-CONVICTION)

20 A jury convicted petitioner of battery with a deadly weapon, assault with a deadly
21 weapon, and being a felon in possession of a firearm. The Nevada Supreme Court
22 affirmed the judgment of conviction on June 16, 2016. On March 2, 2017, petitioner
23 filed a timely post-conviction petition for a writ of habeas corpus. Appointed counsel
24 filed a supplemental petition on December 8, 2017. The State moves the Court to
25 dismiss the petition and the supplemental petition.

26 **Supplemental Petition**

In the first claim of the supplemental petition, petitioner alleges his counsel was
ineffective for failing to object to Jury Instruction Number 29 regarding transferred
intent. Petitioner's trial counsel did not object to the instruction at trial, but petitioner's

1 appellate counsel argued on appeal that this court erred in giving the instruction.
2 *Mason v. State*, 132 Nev. Adv. Op. 42 (June 16, 2016). Specifically, petitioner's
3 appellate counsel argued the instruction relieved the State of its burden of proving that
4 petitioner willfully used force or violence upon the victim. *Id.* at n.1. The Supreme
5 Court found petitioner's argument "lack[ed] merit," that the instruction did not relieve
6 the State of its burden of proof, and "sufficient evidence was adduced at trial to support
7 the battery conviction." *Id.*

8 The Nevada Supreme Court's holding—that petitioner's argument regarding Jury
9 Instruction Number 29 "lacks merit" —is the law of the case. *See Hall v. State*, 91 Nev.
10 314, 315, 535 P.2d 797, 798 (1975) (" 'The law of a first appeal is the law of the case on all
11 subsequent appeals in which the facts are substantially the same.' ") (*quoting Walker v.*
12 *State*, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). Thus, the issue about the propriety of
13 Jury Instruction Number 29 may not be litigated again. *Id.* To the extent petitioner
14 advances a different argument about Jury Instruction Number 29, the law of the case
15 doctrine bars that argument as well. *Id.* at 316, 535 P.2d at 799 ("The doctrine of the law
16 of the case cannot be avoided by a more detailed and precisely focused argument
17 subsequently made after reflection upon the previous proceedings.").

18 Petitioner also fails to identify what was wrong with Jury Instruction Number 29.
19 He only contends that had "trial counsel objected he could have placed on the record
20 argument that the doctrine of transferred intent was not appropriate for the jury to be
21 instructed in this matter" (Supplemental Petition, 6). Because petitioner does not
22 specify how the jury instruction was improper, he necessarily fails to show his counsel
23 was deficient or that he suffered prejudice. *Strickland v. Washington*, 466 U.S. 668,
24 687-88 (1984) (To prevail on a claim of ineffective assistance of trial counsel, a
25 defendant must show that counsel's performance fell below an objective standard of
26 reasonableness and that counsel's deficient performance prejudiced the defense);

1 *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107(1996). Petitioner is therefore
2 not entitled to a hearing on this claim. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d
3 839, 858 (2008) (“an evidentiary hearing is mandated only when a post-conviction
4 petitioner asserts specific factual allegations that are not belied or repelled by the record
5 and that, if true, would entitle him to relief.”).

6 The only thing petitioner adds is that his counsel could have argued there was
7 insufficient evidence that petitioner intended to batter Mr. Holly. But whether there
8 was evidence beyond a reasonable doubt is not the standard for determining whether to
9 give a jury instruction. *Weber v. State*, 121 Nev. 554, 581, 119 P.3d 107, 126 (2005) (A
10 jury may properly receive an instruction regarding defendant's flight so long as it is
11 supported by the evidence).

12 And this issue is precluded by the law of the case because the Nevada Supreme
13 Court found that “sufficient evidence was adduced at trial to support the battery
14 conviction.” *Mason, supra*, n.1

15 In the second claim of the supplemental petition, petitioner asserts his counsel
16 was ineffective for failing to investigate petitioner’s alibi witness. The Court should
17 dismiss this claim because petitioner concedes he does not know where the alibi witness
18 is or what he will testify to. Because petitioner fails to present facts that, if true, would
19 warrant relief, the claim does not warrant a hearing.

20 **Original Petition**

21 **First Claim**

22 The first claim of the original petition asserts that this Court erred in instructing
23 the jury in Jury Instruction Number 29 about transferred intent. This claim, as noted
24 above, is barred by the law of the case, as the Nevada Supreme Court found that this
25 Court gave the correct instruction.

26 / / /

1 As part of the first claim, petitioner also asserts this Court erred by permitting the
2 State to introduce evidence of petitioner's prior conviction during *voir dire*. The State
3 did not introduce petitioner's prior conviction during *voir dire* because evidence is not
4 admitted at that time. Evidence is admitted during trial.

5 The claim is also barred because it could have been raised on direct appeal. See
6 NRS 34.810(1)(b).

7 The record also shows that petitioner was not prejudiced, even if his prior
8 conviction were referenced during *voir dire*. The transcript of *voir dire* was not
9 transcribed; thus, it is not possible at this time to determine what the Court told the jury
10 during *voir dire*. But the charge of being a felon in possession of a firearm was not
11 submitted to the jury in the jury instructions or as a charge that the jury considered
12 during the first trial. On February 11, 2014, the jury convicted petitioner of battery with
13 a deadly weapon and assault with a deadly weapon. The jury then considered the
14 separate charge of being a felon in possession of a firearm charge, and convicted
15 petitioner the next day, February 12, 2014.

16 There is no evidence that the jury used the felon in possession of a firearm charge
17 to convict petitioner of the other charges. Even if the Court had inadvertently referred
18 to the felon in possession charge during *voir dire*, the jury was instructed to only
19 consider evidence that had been admitted during trial in resolving the assault and
20 battery charges against petitioner (Jury Instruction Numbers 5, 8, 22, 30). The jury is
21 presumed to follow its instructions. *Summers v. State*, 122 Nev. 1326, 148 P.3d 778
22 (2006).

23 There was also overwhelming evidence of petitioner's guilt, as described below.
24 Thus, to the extent the jury heard about the felon in possession of a firearm charge

25 / / /

26 / / /

1 during the first trial, the error was harmless. *See Williams v. State*, 121 Nev. 934, 948,
2 125 P.3d 627, 636 (2005) (Supreme Court will not overturn the judgment where an
3 improperly admitted prior conviction was harmless error).

4 **Second Claim**

5 In the second claim petitioner asserts that the prosecutor never gave an official
6 oath of office, and petitioner was never arraigned on the amended information. Even if
7 these assertions are true, petitioner can show no prejudice.

8 Finally, petitioner again takes issue with transferred intent doctrine. The claim
9 lacks merit, as the Nevada Supreme Court affirmed the use of the doctrine on direct
10 appeal.

11 **Third Claim**

12 Petitioner asserts his counsel was ineffective for failing to (1) argue at the end of
13 trial that insufficient evidence supported the charges; (2) inform petitioner that the
14 evidence did not meet the probable cause standard; (3) suppress petitioner's prior
15 conviction for voluntary manslaughter with the use of a deadly weapon; and (4) subject
16 the State's case to meaningful adversary testing.

17 The record repels the claims regarding the sufficiency of the evidence. At trial,
18 the State proved that Anthony Holly (Holly) lived in the same apartment complex as
19 Mason. Trial Transcript, February 9, 2015, p.90. On August, 9, 2014, Holly joined in on
20 a game of craps with about "five or six" people, including Mason. *Id.* at 91-95. Holly got
21 into a fight with Mason over the game. *Id.* at 51, 95-96. The fight did not get physical,
22 and Holly left the area to continue on with his day. *Id.* at 96-97. A couple hours later,
23 Holly was outside "playing with the neighbor's dog at the edge of the parking lot" when
24 Mason pulled up in a car. *Id.* at 98. Mason said something like, "I got you now," or "I
25 got yo ass," and Holly took off running. *Id.* at 98-99. Mason shot at Holly several

26 / / /

1 times. *Id.* at 99-100, 101. There were several people in the area, including “two kids and
2 their two dogs.” *Id.* at 104.

3 Huey Paul Stanley, Jr. (Stanley) lived near Holly and Mason. *Id.* at 30-31; 37-39.
4 Stanley was sitting outside with his wife watching Holly play with the neighbor’s dog
5 when he saw Mason park his car. *Id.* at 40-42. Stanley heard Mason say “Ah-hah, I got
6 you now”; seconds later he heard gunshots—“pow, pow, pow”—coming from Mason’s
7 direction. *Id.* at 45-45, 52. Stanley saw Holly “ducking, going back and forth trying to
8 figure out which way to get out.” *Id.* at 45-46. Stanley then heard his neighbor,
9 Delphine Martin, “screaming that her baby got shot.” *Id.* at 48.

10 Reno Police Officer Benjamin Lancaster arrived first on scene where he found a
11 little girl, Cecilia M., who had been shot. *Id.* at 71-72, 74, 75. He could see “what looked
12 like a gunshot wound to . . . her lower [] calf area of her right leg.” *Id.* He wrapped the
13 leg with gauze and applied pressure until medical personnel arrived. *Id.* He also found
14 two 9 millimeter casings on scene. *Id.* at 83-84, 87; Trial Transcript, February 10, 2015,
15 p.251.

16 At the hospital, Dr. Cinelli found that the “[d]istortion of the metal fragment[] [in
17 Cecilia’s leg was] typical with a ricochet.” Trial Transcript, February 10, 2015, pp. 31,
18 34.

19 When police later arrested Mason, he stated he was on his way “to the station to
20 turn [him]self in.” *Id.*, 330, 339.

21 The evidence, therefore, shows that there was sufficient evidence to sustain the
22 jury’s verdicts. The record repels petitioner’s argument that his counsel failed to argue
23 the evidence was insufficient to convict him (Trial Transcript, February 11, 2015, p. 52)
24 (defense counsel arguing that “inconsistencies in the facts themselves . . . create
25 reasonable doubt in this case.”). Petitioner’s counsel argued a number of

26 / / /

1 inconsistencies in the State's case, such as the witnesses' differing accounts regarding
2 the color of Mr. Stanley's car. *Id.* at 53-54.

3 Petitioner's claims about his counsel's failure to suppress petitioner's prior
4 conviction and to subject the State's case to meaningful adversary testing are wholly
5 conclusory and do not warrant a hearing. That is, petitioner fails to allege specific facts
6 about what his counsel should have done that would have changed the outcome of the
7 trial.

8 Petitioner also alleges this Court issued four jury instructions, after the jury
9 convicted him on the first two counts, that permitted the jury to convict him of
10 possession of a firearm by a convicted felon. It is not clear whether petitioner alleges
11 this as a claim for relief. If it is meant to be a claim for relief, it fails to state a claim that
12 warrants a hearing because it does not assert specific facts that, if true, would require
13 the Court to grant petitioner relief. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d
14 839, 858 (2008) ("an evidentiary hearing is mandated only when a post-conviction
15 petitioner asserts specific factual allegations that are not belied or repelled by the record
16 and that, if true, would entitle him to relief.").

17 The Court should dismiss the petitions.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 The undersigned does hereby affirm that the preceding document does not
20 contain the social security number of any person.

21 DATED: January 10, 2018.

22
23 CHRISTOPHER J. HICKS
District Attorney

24
25 By /s/ JOSEPH R. PLATER
JOSEPH R. PLATER
26 Appellate Deputy

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Lyn E. Beggs, Esq.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CODE: 2645
Lyn E. Beggs
Bar no. 6248
316 California Ave. #863
Reno, NV 89509
(775)432-1918
Attorney for Petitioner

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

QUINZALE MASON

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No.: CR14-1830

Department No.: 10

**OPPOSITION TO MOTION TO DISMISS PETITION AND SUPPLEMENTAL PETITION FOR
WRIT OF HABEAS CORPUS (POST-CONVICTION)
GROUNDS FOR RELIEF**

Comes now Petitioner, QUINZALE MASON ("Petitioner"), by and through his counsel of record and files his Opposition to Motion to Dismiss Petition and Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) pursuant to NRS 34.750(4).

POINTS AND AUTHORITIES

Statement of Facts/Procedural History

Petitioner was convicted on March 17, 2015 of Battery with a Deadly Weapon, a violation of NRS 200.481(2)(e), Assault with a Deadly Weapon, a violation of NRS 200.471, and Being a Felon in Possession of a Firearm, a violation of 202.360 after a jury trial.

Petitioner filed a direct appeal subsequent to his conviction raising two issues. While one

1 issue resulted in a remand to the District Court regarding the aggregation of the consecutive
2 sentences Petitioner had received, the Nevada Supreme Court affirmed Petitioner's conviction and
3 Remittitur was issued on July 11, 2016 and filed in the District Court on July 14, 2016.

4 Petitioner then filed his Petition for Writ of Habeas Corpus (post-conviction) on March 2,
5 2017 containing three primary grounds for relief with Ground Three containing four subparts.
6 Pursuant to NRS 39.750(3), a Supplemental Petition for Writ of Habeas Corpus (post-conviction)
7 was filed on December 8, 2017 raising two grounds for relief. The State filed its Motion to Dismiss
8 on January 10, 2018. Petitioner now files this Opposition to the State's Motion.

10 *Argument*

11 Supplemental Petition

12
13 *Ground One:* As to Ground One of the Supplemental Petition, the State argues that this
14 ground is barred by the "law of the case" doctrine in that the Nevada Supreme Court addressed the
15 ground in its Order affirming Petitioner's conviction.

16 Petitioner agrees with the State that his appellate counsel raised the issue on direct appeal,
17 however it was raised in the context of error by the trial court to give the instruction. As noted in
18 the Supplemental Petition, the Nevada Supreme Court found the claim to be without merit stating
19 that Petitioner "fails to demonstrate plain error affecting his substantial rights" citing to Green v.
20 State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003), for the premise that an unpreserved objection to a
21 jury instruction is review for plain error.
22

23 In his Supplemental Petition, Petitioner has raised this issue as an ineffective assistance of
24 counsel claim. Claims of ineffective assistance of counsel are properly raised for the first time in a
25 post-conviction petition for writ of habeas corpus. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519
26 (2001). As discussed in Petitioner's Supplemental Petition, Petitioner is raising an issue of
27
28

1 ineffective assistance of counsel for trial counsel's failure to preserve the issue through an objection,
2 resulting in the Nevada Supreme Court reviewing the matter for plain error only. Petitioner argues,
3 that had his counsel objected, had the trial court still have given the instruction, on appeal the Nevada
4 Supreme Court would have reviewed the District Court's decision for an abuse of discretion or
5 judicial error. Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005). The Nevada Supreme Court
6 in addressing the issue of the transferred intent jury instruction on direct appeal reviewed the issue
7 not as an ineffective assistance of counsel claim, but rather solely on a plain error review of the trial
8 court's provision of the instruction to the jury.
9

10 The State argues that Petitioner "fails to identify what was wrong with Jury Instruction
11 Number 29" and thus has failed to show how his counsel's performance was deficient and what
12 prejudice he suffered. Petitioner refers this Court to his Supplemental Petition in which he discusses
13 those very issues. A petitioner "is entitled to an evidentiary hearing only if he supports his claims
14 with specific factual allegations that if true would entitled him to relief. The petitioner is not entitled
15 to an evidentiary hearing if the factual allegations are belied or repelled by the record." Thomas v.
16 State 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)(citing Hargrove v. State, 100 Nev. 498, 686 P.2d
17 222 (1984)). Petitioner contends he has raised a factual allegation that his trial counsel was
18 ineffective for failing to object to Jury Instruction #29 thus has raised factual allegations not belied
19 by the record. An evidentiary hearing is the appropriate venue to provide evidence to this Court as
20 to what trial counsel could have argued regarding transferred intent jury instruction.
21
22

23 *Ground Two:* The State moves to dismiss this ground claiming that Petitioner has conceded
24 "he does not know where the alibi witness is or what he will testify too." While Petitioner agrees
25 that he has indicated he does not know the alibi witness's current whereabouts, he has not indicated
26 that he does not know what he would testify to. Rather, Petition would expect Cisco, the alibi
27
28

1 witness, to testify as to Petitioner's whereabouts on the day at issue in the underlying case as initially
2 indicated in the Notice of Alibi Witness filed in this matter by trial counsel on January 16, 2015.

3 Further, as to the current whereabouts of Cisco, NRS 34.780 provides that only after an
4 evidentiary hearing is granted may a petitioner engage in discovery. Should this Court grant
5 Petitioner and evidentiary hearing he shall motion the Court to approve the costs to engage an
6 investigator to locate his alibi witness.
7

8 Original Petition

9 *Ground One:* As noted by the State, Ground One of the original petition focuses primarily
10 on the issue of the transferred intent jury instruction which was more fully briefed in Ground One
11 of the Supplemental Petition. Petitioner would reiterated the argument made above regarding why
12 this ground should not be dismissed.
13

14 Additionally, as the State discusses, Petitioner raised an issue that his prior conviction was
15 raised on voir dire, however the State notes that the transcript of the voir dire proceedings was not
16 transcribed and therefore this cannot be verified. Petitioner moved for the production of this
17 transcription which was prepared and filed by the court reporter on November 28, 2017. Petitioner
18 would concede that the transcript of those proceedings does not indicate that the trial court referred
19 to his prior convictions during voir dire and would submit this issue to the Court.
20

21 *Ground Two:* Petitioner would reiterate the argument raised in his Original Petition
22 regarding this ground and would submit it to the Court for consideration.
23

24 *Ground Three:* As noted by the State, Petitioner raised four separate subparts in his Ground
25 Three in his Original Petition. Petitioner reiterates the arguments set forth therein regarding Ground
26 Three and would submit this ground to the Court for consideration.
27
28

Based upon the foregoing, Petitioner respectfully requests that this Court deny the State's Motion to Dismiss Petition and Supplemental Petition and grant Petitioner an evidentiary hearing in this matter.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned affirms that this Supplemental Petition for Writ of Habeas Corpus (Post Conviction) and Exhibits does not contains the social security number of any person.

DATED this 23rd day of January, 2018.

Lyn E. Beggs
Lyn E. Beggs
Bar No. 6248
316 California Ave. #863
Reno, NV 89509
(775)432-1918
Attorney for Petitioner

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

CERTIFICATE OF SERVICE

CASE NUMBER: CR14-1830

I certify that on the 23rd day of January, 2018, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Joseph R. Plater, III, Deputy District Attorney
Washoe County District Attorney's Office
P.O. Box 11130
Reno, NV 89520

Lyn E. Beggs
Lyn E. Beggs
Nevada Bar No. 6248

CASE NO. CR14-1830

STATE OF NEVADA VS. QUINZALE MASON

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

5/25/18
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Baker
(Clerk)
L. Urmston
(Reporter)

**HEARING – STATE’S MOTION TO DISMISS PETITION AND
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST
CONVICTION)**

Deputy District Attorney Joseph R. Plater, III, was present on behalf of the State.
Petitioner was present with counsel, Court Appointed Attorney Lyn E. Beggs.

COURT noted Defendant’s Motion to Apply Statutory Credits to the Minimum Part of
Sentence filed May 21, 2018; Defense counsel advised the Court her client would
voluntarily withdraw the motion

COURT ORDERED: the motion withdrawn.

**MOTION TO DISMISS PETITION AND SUPPLEMENTAL PETITION FOR
WRIT OF HABEAS CORPUS (POST-CONVICTION).**

COURT reviewed the procedural history of the case.

State’s counsel presented argument in support of motion.

Petitioner’s counsel presented argument in opposition of the motion.

COURT ORDERED: Grounds One, Two, & Three of the Petition for Writ of Habeas
Corpus are dismissed. Ground One of the Supplemental Petition for Writ of Habeas
Corpus is dismissed. State’s counsel is to prepare the order and submit to the Court by
June 15, 2018.

Parties are to schedule a hearing for oral arguments on Ground Two of the Supplemental
Petition for Writ of Habeas Corpus with Sheila Mansfield no later than June 1, 2018.

Petitioner’s counsel to provide notice/offer of proof to State’s counsel regarding Ground
Two by June 29, 2018.

Defendant remanded to the custody of Nevada Department of Corrections.

1 CODE No. 3370
2
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
6
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 QUINZALE MASON,
10

11 Petitioner,

12 v.

13 THE STATE OF NEVADA,

Case No. CR14-1830

Dept. No. 10

14 Respondent.
15 _____/

16 ORDER

17 This matter comes before the Court on a post-conviction petition for a writ of habeas
18 corpus and the State's motion to dismiss the petition.

19 A jury convicted petitioner of battery with a deadly weapon, assault with a deadly
20 weapon, and being a felon in possession of a firearm. On March 24, 2015, this Court entered
21 the judgement of conviction for all three offenses. The Nevada Supreme Court affirmed the
22 judgment of conviction on June 16, 2016. On March 2, 2017, petitioner filed a timely post-
23 conviction petition for a writ of habeas corpus. Appointed counsel filed a supplemental
24 petition on December 8, 2017. The State moved the Court to dismiss the petition and the
25 supplemental petition on January 10, 2018; petitioner opposed the motion on January 24,
26 2018; and the State replied to petitioner's opposition on January 31, 2018. The parties

1 appeared before the Court on May 25, 2018, and argued their respective positions regarding
2 the State's motion to dismiss. Having considered the parties' briefs and arguments, the Court
3 finds as follows.

4 **Supplemental Petition**

5 In the first claim of the supplemental petition, petitioner alleges his counsel was
6 ineffective for failing to object to Jury Instruction Number 29 regarding transferred intent.
7 Jury Instruction Number 29 stated:

8 If an illegal and unintended act results from the intent to commit a crime, that
9 act is also considered illegal. The doctrine of transferred intent is a theory of
10 imputed liability. The intent to use force or violence against a certain person is
11 transferred or imputed to a different person where the different person is hit;
12 this is so even where the different person is hit by mistake or inadvertence. The
13 doctrine applies in any case where there is intent to commit a criminal act and
14 the only difference between the actual result and the contemplated result is the
15 nature of the personal injuries sustained.

16 The doctrine of transferred intent is applicable to all crimes where an
17 unintended victim is harmed as a result of the intent to harm an intended victim,
18 whether or not the intended victim is injured.

19 Petitioner asserts the "the doctrine of transferred intent was not appropriate for the jury
20 to be instructed in this matter and that the evidence presented at trial by the State did not
21 prove beyond a reasonable doubt that Petitioner, the alleged assailant of Mr. Holly, had intent
22 to commit battery on Mr. Holly, intent that the State argued was transferred when Cecelia was
23 hit allegedly by ricochet from a bullet." (Supplemental Petition, 6).

24 Petitioner's trial counsel did not object to the instruction at trial, but petitioner's
25 appellate counsel argued on appeal that this Court erred in giving the instruction. *Mason v.*
26 *State*, 132 Nev. Adv. Op. 42 (June 16, 2016). Specifically, petitioner's appellate counsel argued
the instruction relieved the State of its burden of proving that petitioner willfully used force or
violence upon the victim. *Id.* at n.1. The Supreme Court found petitioner's argument "lack[ed]
merit," that the instruction did not relieve the State of its burden of proof, and "sufficient
evidence was adduced at trial to support the battery conviction." *Id.*

1 The Nevada Supreme Court's holding—that petitioner's argument regarding Jury
2 Instruction Number 29 "lacks merit" and that the State presented sufficient evidence to convict
3 petitioner of battery—is the law of the case. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797,
4 798 (1975) ("The law of a first appeal is the law of the case on all subsequent appeals in which
5 the facts are substantially the same.") (quoting *Walker v. State*, 85 Nev. 337, 343, 455 P.2d
6 34, 38 (1969)). Thus, the issue about the propriety of Jury Instruction Number 29 may not be
7 litigated again. *Id.* To the extent petitioner advances a different argument about Jury
8 Instruction Number 29, the law of the case doctrine bars that argument as well. *Id.* at 316, 535
9 P.2d at 799 ("The doctrine of the law of the case cannot be avoided by a more detailed and
10 precisely focused argument subsequently made after reflection upon the previous
11 proceedings.").

12 Although the Nevada Supreme Court reviewed the correctness of Jury Instruction
13 Number 29 under a plain error standard, prejudice is a component of that standard. *See*
14 *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (when an error has not been
15 preserved, the Court employs plain-error review where a party must show an error that is plain
16 from a review of the record and that the error affected his or her substantial rights, by causing
17 actual prejudice or a miscarriage of justice). Prejudice is also a component of an ineffective
18 assistance of counsel claim. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (To
19 prevail on a claim of ineffective assistance of trial counsel, a defendant must show that
20 counsel's performance fell below an objective standard of reasonableness and that counsel's
21 deficient performance prejudiced the defense); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d
22 1102, 1107(1996). Accordingly, the Supreme Court's finding that there was no prejudice under
23 a plain error review also means that petitioner cannot show prejudice under a *Strickland*
24 analysis of his ineffective assistance claim.

25 ///

26 ///

1 The law of the case also forecloses petitioner's argument that there was insufficient
2 evidence to convict petitioner of battery. The Supreme Court's finding that there was sufficient
3 evidence to convict petitioner was independent of its plain error analysis. Accordingly, the
4 Court dismisses the first claim of the supplemental petition.

5 In the second claim of the supplemental petition, petitioner asserts his counsel was
6 ineffective for failing to investigate petitioner's alibi witness. The Court grants a hearing on
7 this claim. Petitioner must inform the State by June 29, 2018, of any alibi witness petitioner
8 intends to present at the hearing on this claim, including the name, address, telephone
9 number, and the specific testimony of that witness.

10 **Original Petition**

11 **First Claim**

12 The first claim of the original petition asserts the same claim as the first claim of the
13 supplemental petition. It is denied for the same reason that the Court denies the first claim of
14 the supplemental petition.

15 As part of the first claim in the original petition, petitioner also asserts this Court erred
16 by permitting the State to introduce evidence of petitioner's prior conviction during *voir dire*.
17 The record repels the claim. The transcript of the *voir dire* proceeding shows that no one
18 referenced petitioner's prior conviction. Accordingly, the Court dismisses the claim. *See*
19 *Colwell v. State*, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) ("The petitioner is not entitled to
20 an evidentiary hearing if the record belies or repels the allegations.").

21 The claim is also barred because it could have been raised on direct appeal. *See* NRS
22 34.810(1)(b).

23 Furthermore, the charge of being a felon in possession of a firearm was not submitted to
24 the jury in the jury instructions or as a charge that the jury considered during the first trial. On
25 February 11, 2014, the jury convicted petitioner of battery with a deadly weapon and assault

26 ///

1 with a deadly weapon. The jury then considered the separate charge of being a felon in
2 possession of a firearm charge and convicted petitioner the next day, February 12, 2014.

3 There is no evidence that the jury used the felon in possession of a firearm charge to
4 convict petitioner of the other charges. The jury was instructed to consider only evidence that
5 had been admitted during trial in resolving the assault and battery charges against petitioner
6 (Jury Instruction Numbers 5, 8, 22, 30). The jury is presumed to follow its instructions.
7 *Summers v. State*, 122 Nev. 1326, 148 P.3d 778 (2006). And there was also overwhelming
8 evidence of petitioner's guilt, as described below. Thus, even if the jury had heard about the
9 felon in possession of a firearm charge, the error was harmless. *See Williams v. State*, 121 Nev.
10 934, 948, 125 P.3d 627, 636 (2005) (Supreme Court will not overturn the judgment where an
11 improperly admitted prior conviction was harmless error).

12 **Second Claim**

13 In the second claim petitioner asserts that the prosecutor never gave an official oath,
14 and petitioner was never arraigned on the amended information. The record repels
15 petitioner's assertion that he was not arraigned on the amended information. The Court
16 arraigned him on the amended information on February 6, 2015. Furthermore, petitioner can
17 show no prejudice: he does not assert he was not on notice of all the charges, that he was
18 deprived of a defense, or that he was prejudiced in some other way. The Court does not
19 comprehend what petitioner means that the prosecutor never gave an official oath.
20 Nevertheless, petitioner cannot show prejudice.

21 Petitioner also takes issue with transferred intent doctrine again. The Court has
22 addressed that claim.

23 **Third Claim**

24 Petitioner asserts his counsel was ineffective for failing to (1) argue at the end of trial
25 that insufficient evidence supported the charges; (2) inform petitioner that the evidence did
26 not meet the probable cause standard; (3) suppress petitioner's prior conviction for voluntary

1 manslaughter with the use of a deadly weapon; and (4) subject the State's case to meaningful
2 adversary testing.

3 The record repels the idea that insufficient evidence supports the trial verdicts. At trial,
4 the State proved that Anthony Holly (Holly) lived in the same apartment complex as Mason.
5 Trial Transcript, February 9, 2015, p.90. On August, 9, 2014, Holly joined in on a game of
6 craps with about "five or six" people, including Mason. *Id.* at 91-95. Holly got into a fight with
7 Mason over the game. *Id.* at 51, 95-96. The fight did not get physical, and Holly left the area to
8 continue on with his day. *Id.* at 96-97. A couple hours later, Holly was outside "playing with
9 the neighbor's dog at the edge of the parking lot" when Mason pulled up in a car. *Id.* at 98.
10 Mason said something like, "I got you now," or "I got yo ass," and Holly took off running. *Id.*
11 at 98-99. Mason shot at Holly several times. *Id.* at 99-100, 101. There were several people in
12 the area, including "two kids and their two dogs." *Id.* at 104.

13 Huey Paul Stanley, Jr. (Stanley) lived near Holly and Mason. *Id.* at 30-31; 37-39.
14 Stanley was sitting outside with his wife watching Holly play with the neighbor's dog when he
15 saw Mason park his car. *Id.* at 40-42. Stanley heard Mason say "Ah-hah, I got you now";
16 seconds later he heard gunshots—"pow, pow, pow"—coming from Mason's direction. *Id.* at 45-
17 45, 52. Stanley saw Holly "ducking, going back and forth trying to figure out which way to get
18 out." *Id.* at 45-46. Stanley then heard his neighbor, Delphine Martin, "screaming that her
19 baby got shot." *Id.* at 48.

20 Reno Police Officer Benjamin Lancaster arrived first on scene where he found a little
21 girl, Cecilia M., who had been shot. *Id.* at 71-72, 74, 75. He could see "what looked like a
22 gunshot wound to . . . her lower [] calf area of her right leg." *Id.* He wrapped the leg with gauze
23 and applied pressure until medical personnel arrived. *Id.* He also found two 9 millimeter
24 casings on scene. *Id.* at 83-84, 87; Trial Transcript, February 10, 2015, p.251.

25 At the hospital, Dr. Cinelli found that the "[d]istortion of the metal fragment[] [in
26 Cecilia's leg was] typical with a ricochet." Trial Transcript, February 10, 2015, pp. 31, 34.

1 When police later arrested Mason, he stated he was on his way “to the station to turn
2 [him]self in.” *Id.*, 330, 339.

3 The evidence, therefore, shows that there was sufficient evidence to sustain the jury’s
4 verdicts. The record repels petitioner’s argument that his counsel failed to argue the evidence
5 was insufficient to convict him (Trial Transcript, February 11, 2015, p. 52) (defense counsel
6 arguing that “inconsistencies in the facts themselves . . . create reasonable doubt in this case.”).
7 Petitioner’s counsel argued a number of inconsistencies in the State’s case, such as the
8 witnesses’ differing accounts regarding the color of Mr. Stanley’s car. *Id.* at 53-54.

9 Petitioner’s claims about his counsel’s failure to suppress petitioner’s prior conviction
10 and to subject the State’s case to meaningful adversary testing are wholly conclusory and do
11 not warrant a hearing. That is, petitioner fails to allege specific facts about what his counsel
12 should have done that would have changed the outcome of the trial. The record also repels the
13 claim. Petitioner’s counsel, Carl Hylin, represented petitioner and examined witnesses and
14 argued for petitioner’s benefit.

15 Petitioner also alleges this Court issued four jury instructions, after the jury convicted
16 him on the first two counts, that permitted the jury to convict him of possession of a firearm by
17 a convicted felon. Petitioner’s assertion fails to state a claim that warrants a hearing because it
18 does not assert specific facts that, if true, would require the Court to grant petitioner relief. *See*
19 *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (“an evidentiary hearing is
20 mandated only when a post-conviction petitioner asserts specific factual allegations that are
21 not belied or repelled by the record and that, if true, would entitle him to relief.”).

22 ///

23 ///

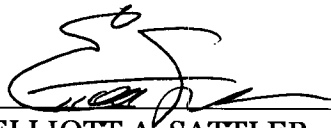
24 ///

25 ///

26 ///

1 Accordingly, the Court dismisses all of the claims of the original and the supplemental
2 petitions, except for the second claim of the supplemental petition. An evidentiary hearing is
3 set for August 17, 2018, at 1:30 p.m. to address the second claim.

4
5 DATED this 7 day of June, 2018.

6
7 
8 _____
9 ELLIOTT A. SATTLER
10 DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 CODE: 4185
LORI URMSTON, CCR #51
2 Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

9

10 QUINZALE MASON,

11 Petitioner,

Case No. CR14-1830

12 vs.

Dept. No. 10

13 THE STATE OF NEVADA,

14 Respondent.

15 _____/

16 TRANSCRIPT OF PROCEEDINGS

17 EVIDENTIARY HEARING

18 Wednesday, October 31, 2018

19 Reno, Nevada

20

21

22

23 Job No.: 506101

24 Reported by: LORI URMSTON, CCR #51

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

APPEARANCES:

FOR THE PETITIONER: LYN E. BEGGS, ESQ.
 Law Offices of Lyn E. Beggs
 316 California Avenue, #863
 Reno, Nevada 89509

FOR THE RESPONDENT: JOSEPH R. PLATER, III
 Deputy District Attorney
 1 South Sierra Street
 South Tower, 4th Floor
 P.O. Box 30083
 Reno, Nevada 89520

| | | |
|----|---|--------|
| 1 | I N D E X | Page 3 |
| 2 | | |
| 3 | WITNESSES | PAGE |
| 4 | CISCO NEAL | |
| | Direct Examination by Ms. Beggs | 6 |
| 5 | Cross-Examination by Mr. Hylin | 13 |
| | Redirect Examination by Ms. Beggs | 20 |
| 6 | Recross Examination by Mr. Plater | 21 |
| 7 | CARL HYLIN | |
| | Direct Examination by Ms. Beggs | 24 |
| 8 | Cross-Examination by Mr. Hylin | 30 |
| | Redirect Examination by Ms. Beggs | 40 |
| 9 | Recross Examination by Mr. Plater | 46 |
| | Examination by the Court | 47 |
| 10 | Further Redirect Examination by Ms. Beggs | 48 |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |

1 RENO, NEVADA; WEDNESDAY, OCTOBER 31, 2018; 9:04 A.M.

2 --o0o--

3 THE COURT: This is CR14-1830, Quinzale Mason, the
4 Petitioner, versus the State of Nevada. Mr. Mason is
5 present in court in custody.

6 Good morning, Mr. Mason.

7 THE DEFENDANT: Good morning.

8 THE COURT: Nice to see you again.

9 Ms. Beggs is here on his behalf.

10 Good morning as well, Ms. Beggs.

11 MS. BEGGS: Good morning, Your Honor.

12 THE COURT: Mr. Plater is here on behalf of the
13 State of Nevada.

14 Good morning, Mr. Plater.

15 MR. PLATER: Good morning, Judge.

16 THE COURT: This is the time set for an evidentiary
17 hearing regarding the petitioner's writ of habeas
18 corpus. The Court has received and again reviewed the
19 March 2nd, 2017, file-stamped Petition for Writ of
20 Habeas Corpus Post Conviction. Additionally, the Court
21 has received and again reviewed the December 8th, 2017,
22 file-stamped Supplemental Petition for Writ of Habeas
23 Corpus.

24 The State had filed a motion to dismiss the

1 petition and supplemental petition. The Court had a
2 hearing on May 25th of 2018 and granted the petition --
3 or, excuse me -- the State's request to dismiss most of
4 the grounds in the supplemental petition and all of the
5 grounds in the petition itself.

6 We are here today for an evidentiary hearing
7 regarding ground two of the supplemental petition. The
8 allegation in that ground is that the petitioner's
9 trial counsel was ineffective because he failed to
10 adequately investigate an alibi defense that Mr. Mason
11 claimed that he had.

12 So are we ready to go forward this morning,
13 Ms. Beggs?

14 MS. BEGGS: Yes, Your Honor, we are.

15 THE COURT: You may call your first witness.

16 MS. BEGGS: Your Honor, I am going to invoke the
17 rule of exclusion. And my apologies to Mr. Hylin. I'm
18 going to call Mr. Neal as our first witness today.

19 THE COURT: Okay. Mr. Hylin, good morning. Nice
20 to see you again.

21 MR. HYLIN: Good morning, Your Honor.

22 THE COURT: Mr. Hylin, I'm sure you're familiar
23 with the rule of exclusion. So if you could wait
24 outside while we hear testimony from other witnesses.

1 MR. HYLIN: Thank you, Your Honor.

2 MS. BEGGS: Mr. Mason's first witness would be
3 Cisco Neal.

4 THE CLERK: Please raise your right hand.

5 (The oath was administered.)

6 THE WITNESS: Yes.

7 THE CLERK: Okay. Just have a seat.

8 THE COURT: Good morning, sir. Can you please
9 state and spell your full name for me.

10 THE WITNESS: Cisco Neal, C-i-s-c-o, N-e-a-l.

11 THE COURT: Thank you, Mr. Neal.

12 Go ahead, Ms. Beggs.

13 MS. BEGGS: Thank you.

14 CISCO NEAL,
15 having been first duly sworn, was examined
and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BEGGS:

18 Q Good morning, Mr. Neal.

19 A Good morning.

20 Q Mr. Neal, where do you currently reside?

21 A Where do I work at?

22 Q Where do you currently live?

23 A Oh, I live right now in Boulder Creek.

24 Q What's your address?

1 A 4005 Moorpark Court.

2 Q And I'm going to ask you just to slow down just
3 a little tiny bit. Your voice doesn't carry a lot in
4 the courtroom, so just so that we can all hear your
5 voice.

6 What's your current occupation?

7 A Forklift driver.

8 Q And who do you work for?

9 A Randa Logistics.

10 Q Okay. And in 2014 where did you live?

11 A Sun Valley -- what's it's called, the address?
12 Sun Valley -- we was just talking about it. I forgot
13 the address. Cedar Lane.

14 Q Would that be Lone Cedar Lane?

15 A Yeah, Lone Cedar Lane. There you go.

16 Q And in 2014 -- well, let me ask you this.

17 Mr. Neal, do you know Mr. Mason, Quinzale Mason?

18 A Yes.

19 Q And he's the gentleman sitting to my right?

20 A Yes.

21 Q And how do you know Mr. Mason?

22 A From on line. We used to play video games and
23 everything together.

24 Q Do you have any -- do you know anybody else

1 **that Mr. Mason knew in 2014?**

2 A Ebony.

3 Q **And who is Ebony?**

4 A My cousin.

5 Q **She's your cousin?**

6 A Yes.

7 Q **And when you say you played video games, did**
8 **you play them together? Were you --**

9 A He was -- we play on line.

10 THE COURT: Mr. Neal, I'm going to ask you to do a
11 couple of things. The first one is you talk really
12 fast.

13 THE WITNESS: I know. Everybody says that. I'm
14 sorry. I'm sorry about that.

15 THE COURT: So I'm going to ask you just to slow
16 down the pace of your speech. I'm exactly the same
17 way, so it's something that you and I share. That's
18 number one. Slow down just a bit.

19 And, number two, you can see that there are
20 actually two people here who are court reporters trying
21 to take down every single thing that you say, that I
22 say, that Ms. Beggs says. So let her finish her
23 question before you start to answer it --

24 THE WITNESS: Okay.

1 THE COURT: -- even if you think you know what the
2 end of the question is. Let her get the whole question
3 out and then just take a split second to think about it
4 and then give your answer. And then she'll ask you
5 another question.

6 THE WITNESS: Okay.

7 THE COURT: Thank you, sir.

8 BY MS. BEGGS:

9 Q Mr. Neal, is it fair to say you're a bit
10 nervous this morning?

11 A Not really. I'm all right. I just -- like I
12 said, it's the way I talk, kind of fast.

13 Q Fair enough.

14 So going back to 2014, were there occasions when
15 you would play video games with Mr. Mason in person?

16 A Yes.

17 Q And where would that take place? Where would
18 you play --

19 A In my living room.

20 Q In your living room?

21 A Yes.

22 Q Would that be at your home in Sun Valley at the
23 time?

24 A Yes.

1 Q In 2014 did you live alone?

2 A No.

3 Q Who did you live with?

4 A My girlfriend, Olivia Kapell, and our kids.

5 Q And how many kids did you have?

6 A Four.

7 Q Do you have.

8 A I got four now, but we had three at the time.

9 Q Okay. And how often would you and Mr. Mason
10 play video games?

11 A Every day.

12 Q Every day?

13 A Yeah.

14 Q And when would he come to your home?

15 A Usually he get dropped off in the morning.

16 Q Do you know how he got to your house?

17 A Usually a friend, a bus or my cousin.

18 Q Okay. And how would he get home?

19 A Sometimes I would drop him off, but sometimes
20 he would just stay the night with me because I would be
21 too tired to drop him off to his house.

22 Q So how often would he stay the night?

23 A I would say out of the week, two times out of
24 the week.

1 Q Okay. So fairly frequently?

2 A Yeah.

3 Q Now, Mr. Neal, if I asked you what you were
4 doing on a specific day four years ago, do you think
5 you could tell me with any certainty?

6 A No. I would try.

7 Q Okay. Do you -- I'm going to ask you to go
8 back in time.

9 A Okay.

10 Q Do you remember any occasions where Mr. Mason
11 was picked up at your home by Ebony and other
12 individuals?

13 A Yes, it was his auntie and his mom.

14 THE COURT: And what?

15 THE WITNESS: His auntie and his mom.

16 THE COURT: Oh, his auntie and his mom.

17 BY MS. BEGGS:

18 Q And would that have been after he had spent the
19 night with you one night?

20 A Yes.

21 Q Do you remember what kind of car Ebony drove?

22 A No. I'm sorry. That's too long ago. I'm
23 sorry. I can't remember.

24 Q That's all right.

1 **When Ebony and Mr. Mason's auntie and mother picked**
2 **him up, do you remember if that was summer or winter?**
3 **Do you remember kind of what time of the year it might**
4 **have been?**

5 A I think it was probably the summer. I think
6 so.

7 Q Okay. Thank you. I have nothing further for
8 you, Mr. Neal. Actually, let me ask you one more
9 thing, Mr. Neal. I apologize.

10 A No problem.

11 Q The time that Mr. Mason was picked up by Ebony
12 and his other family members, was there anything unique
13 about that particular overnight visit with you that you
14 remember?

15 A No. It was the same thing we always do. We
16 used to just smoke and just play the video games and go
17 outside and play football and stuff like that. It was
18 just like a normal day like we always have.

19 Q So you don't remember any unusual circumstances
20 with Mr. Mason staying with you?

21 A No. The same thing, normal, stay the night and
22 smoke, we go get something to eat, come back, play
23 video games, take care of my kids, and that's it. He
24 helped me watch my kids sometimes. That's about it.

1 **Q How old were your kids at the time?**

2 A I think they was three, five and seven. I
3 think so.

4 **Q So fairly young?**

5 A Yeah.

6 **Q Thank you. I have nothing further.**

7 THE COURT: Cross-examination.

8 MR. PLATER: Well, Judge, can we deny the petition
9 now? That was nothing.

10 THE COURT: Well, she's not finished yet. So do
11 you want to cross-examine the witness, Mr. Plater? And
12 we're not -- Mr. Plater, I guess what I would say is
13 we're not to the point of argument yet. She's given
14 direct examination on Mr. Neal. Would you like to
15 cross-examine Mr. Neal?

16 MR. PLATER: Sure, Judge. We're here, so --

17 CROSS-EXAMINATION

18 BY MR. PLATER:

19 **Q Mr. Neal, this man, Mr. Mason, is your friend;**
20 **right?**

21 A Yes.

22 **Q When did you become friends?**

23 A Like -- like four months before all this stuff
24 happened, like six months before all that.

1 **Q Before what?**

2 A Like four years ago.

3 **Q Four years ago?**

4 A Yeah.

5 **Q 2014?**

6 A No. Well, a little bit before, like 2013.

7 **Q In 2013 you became friends?**

8 A Yeah.

9 **Q So I understand your testimony is that in 2014**
10 **you saw Mr. Mason virtually every day?**

11 A Um-hum.

12 THE COURT: Is that a yes?

13 THE WITNESS: Yes.

14 THE COURT: You need to say yes or no.

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 BY MR. PLATER:

18 **Q So would that include the summer of 2014?**

19 A Yeah. That's when he used to come over to my
20 house, yeah.

21 **Q So is it fair to say that in June, July,**
22 **August, September of 2014 you saw Mr. Mason every**
23 **single day?**

24 A Almost every day, every other day we used to

1 play video games. We had nothing to do anyway, so
2 yeah.

3 Q So almost every day but not every single day;
4 right?

5 A Um-hum.

6 Q Certainly you can't remember what happened on a
7 specific day in August 2014, can you?

8 A No.

9 Q You can't say whether you were with Mr. Mason
10 or not on any particular day in August of 2014; is that
11 true?

12 A Yeah, because he was coming over, I just can't
13 remember what day it was.

14 Q Okay. So at some point you became aware --
15 well, let me back up. In 2014 you were living in
16 Sun Valley, Idaho?

17 A Not Idaho, but, yeah, Lone Cedar, yeah.

18 Q Sun Valley here --

19 A Yeah, Reno.

20 Q -- in Nevada.

21 Okay. And where was Mr. Mason living?

22 A I think he was staying with Ebony.

23 Q Ebony was who again?

24 A My cousin.

1 Q Your cousin?

2 A Yeah.

3 Q So at some point you heard that Mr. Mason got
4 arrested; right?

5 A Yes.

6 Q And you knew what those charges were?

7 A Yes.

8 Q One was he shot a gun at a person and it hit a
9 little girl. Did you know that?

10 A My cousin told me, yeah.

11 Q You found out about that?

12 A Um-hum.

13 Q And would you say you found out about that
14 pretty quickly after it happened?

15 A Yes.

16 Q How soon did you find out about the fact that
17 Mr. Mason had just been arrested?

18 A That day, that day a couple hours after it
19 happened.

20 Q Okay. So when you found out, you knew that you
21 couldn't tell anybody, "Hey, that didn't happen because
22 Mason was at my house," could you?

23 A Yeah, because nobody called me, yeah, nobody --
24 nobody called me and asked me nothing.

1 Q Well, you knew Mason was in jail; right?

2 A Yeah.

3 Q You know where the jail is in Reno; right?

4 A Yes.

5 Q You know where Parr Boulevard is?

6 A Um-hum.

7 Q Did you ever go up and talk to him?

8 A Unh-unh.

9 Q Did you ever say, "Mason, I can be an alibi
10 witness for you"? You didn't do that, did you?

11 A No.

12 Q Did you --

13 A Because a little bit after that we moved. We
14 moved from our place. Me and my girlfriend kind of
15 split up a little bit. There was a lot going on at the
16 time.

17 Q Did you know who his lawyer was?

18 A Unh-unh.

19 Q Did you ask him?

20 A Unh-unh.

21 THE COURT: Stop. Slow down just a little bit.

22 Mr. Neal, those last two responses that you gave were
23 not words. They were shaking your head in the negative
24 and making a sound. So you had said no to both of

1 Mr. Plater's two questions; correct? You shook your
2 head and made a sound that we as people often make when
3 we're saying no. You didn't actually use a word. You
4 just kind of kept your mouth shut and -- I'm not even
5 going to try and put it on the record. So you're
6 saying no, you didn't do those things?

7 THE WITNESS: No, I didn't do those things.

8 THE COURT: Okay. You need to say yes or no.

9 THE WITNESS: I'm sorry.

10 BY MR. PLATER:

11 Q Let me back up. You didn't go to the police
12 and say, "Look, I know Mason didn't commit this crime,
13 because he was with me at the time somebody got shot,"
14 did you?

15 A No.

16 Q And you can't say that today; right? In other
17 words, you can't tell us under oath that Mr. Mason
18 didn't shoot somebody on August 14th -- or August, I
19 think, 9th, 2014, because he was with you? You can't
20 say that; right?

21 A No, because I don't know what day it was. I
22 can't remember what day, but I know that they picked --
23 his auntie and my cousin and his mom picked him up the
24 same day he went to jail, though. I know that for

1 sure.

2 Q You knew he had a gun; is that true?

3 A No.

4 Q You never saw him with a gun?

5 A No, never.

6 Q Do you have any felony convictions yourself --

7 A Yeah.

8 Q -- say within the last ten years?

9 A No. I ain't been in trouble -- my daughter is
10 almost 14. I ain't been in trouble for 14 years. And
11 that was for like probation violation.

12 Q So I assume from everything that you've just
13 told us today that -- well, let me back up. Did you
14 know he went to trial?

15 A Yes.

16 Q Did you know that he was -- did you know at the
17 time -- I didn't phrase that question very well. You
18 knew he went to trial on this; right?

19 A Yes.

20 Q When did you find out he went to trial?

21 A A while ago. My cousin told me a while ago.

22 Q You didn't know he was in trial when the trial
23 was actually going on?

24 A No.

1 **Q So you don't know when the trial happened?**

2 A I didn't know the trial was happening. I
3 didn't know what day it started. I don't know nothing
4 about that.

5 MR. PLATER: That's all I have, Judge.

6 THE COURT: Thank you.

7 Redirect based on the cross-examination, Ms. Beggs.

8 MS. BEGGS: Yes. Thank you.

9 REDIRECT EXAMINATION

10 BY MS. BEGGS:

11 **Q Mr. Neal, did you know Mr. Mason before he**
12 **started dating Ebony Spurlock?**

13 A Yeah. On line, yeah.

14 **Q On line?**

15 A Yeah.

16 **Q Did you ever meet him in person before he**
17 **started to date Ebony?**

18 A No.

19 **Q And did you find out about Mr. Mason's arrest**
20 **from Ebony?**

21 A Yes.

22 **Q Did you know any of the details of the**
23 **incident?**

24 A Not really.

1 Q Okay. Did you know just generally what he was
2 accused of doing?

3 A What he was accused of, yes.

4 Q Did you know specifically what date it
5 allegedly happened on?

6 A No.

7 Q Okay. If I asked you to remember what you did
8 on one day three or four months ago, do you think your
9 recollection would be better about that event than
10 something four years ago?

11 A Well, my -- well, I smoke a lot of marijuana,
12 so I really don't remember a lot of stuff.

13 Q Okay. Fair enough.

14 Thank you. I have nothing further.

15 THE COURT: Recross based on the redirect.

16 MR. PLATER: Thank you, Judge.

17 RE CROSS EXAMINATION

18 BY MR. PLATER:

19 Q I don't mean to pick at you, and you're not
20 going to get in trouble for this, but did I hear you
21 just say you were smoking a lot of marijuana?

22 A Yeah.

23 Q Is that in 2014?

24 A Well, that's for the last past ten years.

1 **Q Okay. And you said that having smoked**
2 **marijuana has affected your memory; is that what --**

3 A A little bit. It's made me forget a lot of
4 stuff, because I got a lot of kids going on, I got a
5 lot of family, I got a big family, so I got a lot of
6 stuff going on.

7 **Q It takes the stress away?**

8 A Yes.

9 **Q I get it.**

10 A School, everything. There's just a lot of
11 stuff.

12 **Q You're going to school?**

13 A I work. My kids are at school. So I be
14 helping them with their homework and I do a lot of
15 stuff. My girlfriend, she's always at work, so it's
16 just me and the kids. When I get off work I got to
17 help them.

18 **Q So you're trying to be a good father?**

19 A Well, I've been a good father.

20 **Q So in 2014 were you smoking marijuana?**

21 A Yes.

22 **Q A lot?**

23 A Always, yes, same as like now.

24 **Q Like on a daily basis?**

1 A Yeah.

2 Q How much would you smoke?

3 A A quarter or half a day.

4 Q I don't know what that means. A quarter of a
5 lid? A half? An ounce?

6 A Half an ounce a day.

7 MR. PLATER: That's good enough, Judge. Thanks.

8 THE COURT: Thank you, Mr. Neal. You may step
9 down. Thank you for being here today.

10 THE WITNESS: Thank you.

11 THE COURT: Do you have an additional witness that
12 you would like to call, Ms. Beggs, or witnesses?

13 MS. BEGGS: Mr. Hylin.

14 THE COURT: Thank you, Mr. Neal. You're free to
15 go.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Thank you.

18 (The oath was administered.)

19 THE WITNESS: I do.

20 THE CLERK: Okay. Just have a seat.

21 THE COURT: Good morning, Mr. Hylin. Could you
22 please do us the courtesy of stating and spell your
23 full name.

24 THE WITNESS: Certainly, Your Honor. My name is

1 Carl, C-a-r-l, last name is Hylin, H-y-l-i-n.

2 THE COURT: Go ahead, Ms. Beggs.

3 MS. BEGGS: Thank you.

4 CARL HYLIN,
5 having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. BEGGS:

9 Q Good morning, Mr. Hylin.

10 A Good morning.

11 Q Mr. Hylin, what is your current employment?

12 A I'm sorry?

13 Q What is your current occupation?

14 A Well, I'm retired.

15 Q And prior to retirement what did you do?

16 A I was a chief deputy with the public defender's
17 office for Washoe County.

18 Q And were you employed by the public defender's
19 office in 2014?

20 A Yes.

21 Q And at some point in 2014 do you recall being
22 assigned a case involving Mr. Quinzale Mason?

23 A Yes.

24 Q And is that the gentleman to my right?

A Yes, it is.

1 **Q And do you recall in general what the charges**
2 **were or what the general accusations were?**

3 A Well, the charges, if I recall right, were
4 battery with a deadly weapon, assault with a deadly
5 weapon, and I think there was an attempted murder there
6 too, but I can't remember if that was ultimately
7 pursued.

8 **Q Would it refresh your recollection to see the**
9 **Amended Information?**

10 A Sure.

11 MS. BEGGS: Your Honor, if I may approach.

12 THE COURT: Go ahead.

13 BY MS. BEGGS:

14 **Q Does that refresh your recollection?**

15 A Yes.

16 **Q Do you recall what the charges were?**

17 A Yeah. The third charge, other than the assault
18 and the battery with a deadly weapon, was ex-felon in
19 possession of a firearm.

20 **Q And did the matter proceed to trial?**

21 A Yes, it did.

22 **Q And in preparing for trial did you discuss any**
23 **possible defenses with Mr. Mason?**

24 A Yeah, I discussed all the defenses with him

1 which weren't great. You know, there was -- the State
2 had good solid witnesses that were going to be
3 difficult to impeach. A child was wounded during the
4 incident, so there's a lot more sympathy for the mother
5 and the child than -- and it makes it that much harder
6 to sympathize your client in front of the jury. So I
7 discussed all those with Mr. Mason.

8 I did file an alibi notice for a person that he
9 named to me as Sco who Mr. Mason explained would be
10 able to explain that he wasn't there on that scene at
11 the time of the incident. So we discussed that. We
12 never found -- Mr. Mason didn't know the full name or
13 address or any of the contact information for this
14 fellow named Sco. All we ever knew was Sco. And I
15 didn't know if that was a derivation of his last name,
16 first name, or whether it was just a nickname.

17 **Q Did your notice of alibi witness also list him**
18 **as Cisco?**

19 A That could be. He was commonly known as Sco,
20 so I guess Cisco, I guess.

21 **Q Would it refresh your recollection to see --**

22 A No. I'm speculating as to where, you know --

23 **Q Where the Sco came from?**

24 A Sure.

1 Q Did Mr. Mason give you generally where Cisco
2 lived?

3 A No.

4 Q Did he provide you with a phone number?

5 A No.

6 Q Did he give you information regarding his
7 relationship with Cisco?

8 A Well, from what I recall, they weren't, you
9 know, fast friends. They were good acquaintances.
10 Because I kept asking Mr. Mason, well, you know, if my
11 investigator is going to find this fellow, he's going
12 to have to have some idea of where he lives, you know,
13 what time should he look for him or where does he work.
14 And I did -- there was an investigator assigned to do
15 that, but I never got any information back and was
16 unable to subpoena the fellow.

17 Q Okay. So there was no -- so you did have an
18 investigator attempt to locate this individual?

19 A Sure. Right.

20 Q Do you know what, if any, efforts were made to
21 figure out who this person was?

22 A Well, our investigative staff was extremely
23 busy, so the notes that we get from them are short and
24 concise, particularly in a situation like this where it

1 would simply just state they were unable to find Sco.
2 So I filed the alibi notice, because we were, you know,
3 continuing to try and look for the fellow and never
4 found him. But, you know, the alibi notice has a
5 deadline by which it has to be filed. So in case we
6 found him close in to trial, we would be prepared to
7 present him.

8 Q Do you remember approximately when this case
9 went to trial?

10 A Well, it was probably 2014 or '15. I'm not --
11 you know, it all kind of blurs. It was one of the last
12 full trials I did that I wasn't training somebody or --

13 Q Does February sound familiar?

14 A February of --

15 Q 2015.

16 A That's probably it, yeah.

17 Q And do you recall when the alleged incident
18 occurred?

19 A It was several months before that.

20 Q Okay. So you represented Mr. Mason at all
21 times during the trial?

22 A Correct.

23 Q And do you recall testimony -- and I won't ask
24 you to remember exact names or anything along those

1 lines, but do you remember testimony of law enforcement
2 officials regarding Mr. Mason being picked up at a
3 residence in Sun Valley?

4 A I remember that.

5 Q And do you remember if there was an address
6 given of where he was picked up?

7 A I'm pretty sure there was an address, although
8 I don't remember it.

9 Q Does an address on Lone Cedar sound familiar at
10 all?

11 A That sounds a little familiar. I believe it
12 was on the -- toward the eastern side of the Sun Valley
13 settlement, you know, the township there. His car was
14 not there in front of it, though.

15 Q Do you remember -- do you recall testimony that
16 he was picked up in a gold sedan?

17 A When they picked him up at that residence?

18 Q Yes.

19 A Yes, it was the car.

20 Q Do you know whose residence that was?

21 A No.

22 Q Did you do any inquiries as to whose residence
23 it was?

24 A In other words, did we interview the owner of

1 the home or the occupant?

2 Q Yes.

3 A I honestly don't remember whether we -- it
4 would have been the investigator that would have
5 interviewed them. I did not myself, no.

6 Q If that individual turned out to be Cisco,
7 would that surprise you?

8 A Yes. Yeah, if that's indeed the case, because
9 all we ever got from Mr. Mason was Sco.

10 Q Thank you. I have nothing further.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. PLATER:

14 Q So, Mr. Hylin, I take it when you represented
15 Mr. Mason you went over the charges with him; right?

16 A Correct.

17 Q You went over all the discovery the State had
18 provided you; right?

19 A Yes.

20 Q Was it your practice to leave the discovery
21 with your client or did you simply go over it with him?
22 Do you remember?

23 A No, my practice was to copy all the police
24 reports and the lab results or whatever pertained to

1 the case and leave it with him at the jail.

2 Q So do you remember doing that in this case?

3 A Independently, no, but that was -- I'm sure I
4 did. I had times where I had to sit with Mr. Mason and
5 go through the reports, so he would have a copy and I
6 would have my file.

7 Q Do you recall whether the address that was just
8 referenced to you being Lone Cedar was ever referenced
9 in any of the police reports or any of the discovery
10 that you received?

11 A Well, I would have to say if it's a standard
12 police report, it was probably there, but I don't have
13 any independent recollection now of it.

14 Q Do you know whether -- did you go over the
15 discovery with Mr. Mason?

16 A Yes.

17 Q And you left him a copy of it according to your
18 memory --

19 A That was my practice.

20 Q -- of what your practice was at that time?

21 And you also recalling going over it with him?

22 A Correct.

23 Q So you would have also gone over all the
24 defenses to the three charges; right?