

Case No. C-13-294695

Dept. No. XV *Alvin B. Gunn*

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark
Electronically Filed
Apr 18 2019 01:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

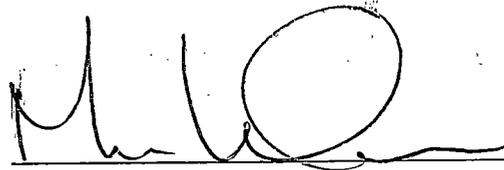
Matthew Washington
Petitioner/Plaintiff,
vs.
State of Nevada
Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that Matthew Washington, Petitioner/Defendant above named, hereby appeals to the Court of Appeals for the State of Nevada from the final judgment / order Notice of Entry of Order

Entered in this action on the 13th day of February, 2019.

Dated this 9th day of April, 2019.



NDOC # Matthew Washington
Appellant - Pro Per # 1061467
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

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APR 15 2019
CLERK OF THE COURT

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Case No. C-13-294695

Dept. No. XV

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

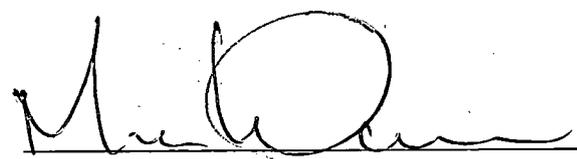
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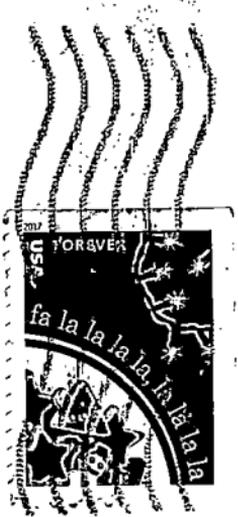


NDOC # Matthew Washington
Appellant - Pro Per #1061467
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

Matthew Washington # 1061467
P.O. Box 1989
Elly, Nv. 89301

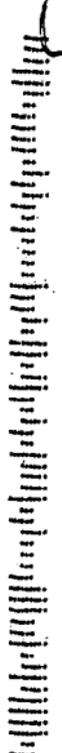
Confidential
Legal Matter

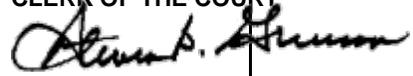
LAS VEGAS NV 890
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Clerk of The Court, 3rd Fl.
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nv. 89155

89101-564501





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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

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STATE OF NEVADA,

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Plaintiff(s),

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vs.

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MATTHEW WASHINGTON,

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Defendant(s),

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Case No: C-13-294695-1

Dept No: XV

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CASE APPEAL STATEMENT

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1. Appellant(s): Matthew Washington

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2. Judge: Joe Hardy

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3. Appellant(s): Matthew Washington

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Counsel:

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Matthew Washington #1061467
P.O. Box 1989
Ely, NV 89301-1989

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4. Respondent: The State of Nevada

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Counsel:

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Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

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(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A
6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
9. Date Commenced in District Court: December 12, 2013
10. Brief Description of the Nature of the Action: Criminal
Type of Judgment or Order Being Appealed: Writ of Habeas Corpus
11. Previous Appeal: Yes
Supreme Court Docket Number(s): 65998, 75777
12. Child Custody or Visitation: N/A

Dated This 16 day of April 2019.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Matthew Washington

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-13-294695-1

State of Nevada
vs
Matthew Washington

§ Location: **Department 15**
 § Judicial Officer: **Hardy, Joe**
 § Filed on: **12/12/2013**
 § Case Number History:
 § Cross-Reference Case **C294695**
 § Number:
 § Defendant's Scope ID #: **2685499**
 § ITAG Booking Number: **1300057660**
 § ITAG Case ID: **1545996**
 § Lower Court Case # Root: **13F18022**
 § Lower Court Case Number: **13F18022A**
 § Supreme Court No.: **65998**
 § **75777**

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRE TO COMMIT MURDER	F	11/05/2013	Case Status: 07/07/2014 Closed	
1. POSSESSION OF FIREARM BY EX-FELON	F	11/05/2013		
2. MURDER WITH THE USE OF A DEADLY WEAPON	F	11/05/2013		
3. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON	F	11/05/2013		
4. BATTERY WITH USE OF DEADLY WEAPON,	F	11/05/2013		
5. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON	F	11/05/2013		
6. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON	F	11/05/2013		
7. BATTERY WITH USE OF DEADLY WEAPON	F	11/05/2013		
8. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
9. DISCHARGEING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
10. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
11. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
12. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
13. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICEL AIRCRAFT OR WATERCRAFT	F	11/05/2013		
14. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	01/05/2013		
15. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
16. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
17. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT	F	11/05/2013		
18. POSSESSION OF FIREARM BY EX-FELON	F	11/05/2013		

CASE SUMMARY
CASE NO. C-13-294695-1

Related Cases

C-13-294695-2 (Multi-Defendant Case)

Statistical Closures

07/07/2014 Jury Trial - Conviction - Criminal

DATE	CASE ASSIGNMENT
	<p>Current Case Assignment</p> <p>Case Number C-13-294695-1 Court Department 15 Date Assigned 07/02/2018 Judicial Officer Hardy, Joe</p>

PARTY INFORMATION		
Defendant	Washington, Matthew	<i>Lead Attorneys</i> Posin, Mitchell L <i>Retained</i> 702-382-2222(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
<u>EVENTS</u>		
12/12/2013	 Criminal Bindover	
12/20/2013	 Information	
12/30/2013	 Notice of Motion Filed By: Defendant Washington, Matthew <i>Notice of Motion and Motion to Sever Defendants</i>	
12/31/2013	 Media Request and Order Party: Defendant Washington, Matthew <i>Media Request and Order Allowing Camera Access to Court Proceedings</i>	
01/06/2014	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</i>	
01/12/2014	 Transcript of Proceedings <i>Transcript of Hearing Held on December 9, 2013</i>	
01/15/2014	 Transcript of Proceedings <i>Transcript of Hearing Held on December 5, 2013</i>	
01/16/2014	 Transcript of Proceedings <i>Transcript of Hearing Held on December 5, 2013</i>	
01/17/2014	 Opposition to Motion <i>The State of Nevada's Opposition to Defendant Washington's Motion to Sever and Opposition to Defendant Moten's</i>	

CASE SUMMARY
CASE NO. C-13-294695-1

Motion to Sever and Joinder in Defendant Washington's Motion to Sever

- 01/21/2014  Supplemental Witness List
Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]
- 01/27/2014  Supplemental Witness List
Second Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]
- 01/27/2014  Supplemental Witness List
Second Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]
- 01/27/2014  Order
Filed By: Defendant Washington, Matthew
Order Appointing Investigator
- 01/30/2014  Supplemental Witness List
Third Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]
- 03/05/2014  Notice of Association of Counsel
Filed By: Defendant Washington, Matthew
Notice of Association
- 03/10/2014  Notice of Motion
Notice of Motion and Motion in Limine
- 03/11/2014  Certificate of Service
Filed by: Defendant Washington, Matthew
- 03/21/2014  Opposition to Motion in Limine
State's Opposition to Defendant's Motion in Limine
- 04/07/2014  Amended Information
Filed By: Plaintiff State of Nevada
- 04/09/2014  Jury List
Party: Plaintiff State of Nevada
- 04/11/2014  Amended Information
Filed By: Plaintiff State of Nevada
Second Amended Information
- 04/15/2014  Proposed Jury Instructions Not Used At Trial
- 04/16/2014  Instructions to the Jury
- 04/16/2014  Instructions to the Jury
- 04/16/2014  Amended Information
Second Amended Information
- 04/16/2014  Verdict

CASE SUMMARY
CASE NO. C-13-294695-1

- 04/16/2014  Verdict
- 04/17/2014  Instructions to the Jury
- 04/17/2014  Verdict
- 04/28/2014  Notice
Notice of Department Reassignment
- 05/19/2014  Memorandum
Memorandum of Ineffective Counsel and Notice of a Complete Breakdown in Communication Between Attorney and Client
- 06/07/2014  PSI
Pre-Sentence Investigation Report (Unfiled) Confidential
- 06/27/2014  Judgment of Conviction
Judgment of Conviction (Jury Trial)
- 06/30/2014  Notice of Appeal (criminal)
Notice of Appeal
- 07/02/2014  Case Appeal Statement
- 07/17/2014  Case Appeal Statement
- 07/17/2014  Notice of Appeal (criminal)
Notice of Appeal
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on December 30, 2013
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on January 13, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on January 22, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on January 29, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on February 5, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on March 24, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 2, 2014

CASE SUMMARY
CASE NO. C-13-294695-1

- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 4, 2014
- 09/04/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on March 5, 2014
- 09/09/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on June 18, 2014
- 09/15/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on December 23, 2013
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 7, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 9, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 8, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 11, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 10, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 14, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 15, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 16, 2014
- 09/22/2014  Recorders Transcript of Hearing
Transcript of Hearing Held on April 17, 2014
- 01/05/2015 Case Reassigned to Department 14
District Court Case Reassignment 2015
- 03/02/2015 Case Reassigned to Department 22
District Court Case Reassignment 2015
- 05/04/2015  Amended Judgment of Conviction
Amended Judgment of Conviction (Jury Trial)
- 12/28/2016  NV Supreme Court Clerks Certificate/Judgment - Affirmed
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed; Rehearing Denied; Petition Denied
- 12/19/2017  Petition for Writ of Habeas Corpus

CASE SUMMARY
CASE NO. C-13-294695-1

Filed by: Defendant Washington, Matthew
Petition for Writ of Habeas Corpus (Postconviction)

01/24/2018  Response
Filed by: Plaintiff State of Nevada
State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)

02/25/2018  Brief
Filed By: Defendant Washington, Matthew
Postconviction Brief

03/12/2018  Response
State's Response to Defendant's "Postconviction Brief"

03/16/2018  Reply
Filed by: Defendant Washington, Matthew
Reply to State's Response to Defendant's "Postconviction Brief"

04/04/2018  Order Denying
Order Denying Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)

04/12/2018  Notice of Entry of Order

05/01/2018  Notice of Appeal (criminal)
Party: Defendant Washington, Matthew
Notice of Appeal

05/01/2018  Case Appeal Statement

07/02/2018 Case Reassigned to Department 15
Reassigned From Judge Johnson - Dept 22

02/12/2019  Order
Order Denying Defendant's Petition for Writ of Habeas Corpus

02/13/2019  Notice of Entry of Order
Notice of Entry of Order

04/12/2019  NV Supreme Court Clerks Certificate/Judgment - Affirmed
Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed

04/15/2019  Notice of Appeal (criminal)
Notice of Appeal

04/16/2019  Case Appeal Statement
Case Appeal Statement

DISPOSITIONS

04/11/2014 **Disposition** (Judicial Officer: Gonzalez, Elizabeth)
18. POSSESSION OF FIREARM BY EX-FELON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

CASE SUMMARY
CASE NO. C-13-294695-1

06/18/2014 **Disposition** (Judicial Officer: Cory, Kenneth)

1. CONSPIRE TO COMMIT MURDER
Guilty
PCN: Sequence:
1. POSSESSION OF FIREARM BY EX-FELON
Amended Information Filed/Charges Not Addressed
PCN: Sequence:
2. MURDER WITH THE USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
3. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
4. BATTERY WITH USE OF DEADLY WEAPON,
Guilty
PCN: Sequence:
5. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
6. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON
Guilty
PCN: Sequence:
7. BATTERY WITH USE OF DEADLY WEAPON
Guilty
PCN: Sequence:
8. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
9. DISCHARGEING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
10. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
11. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
12. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
13. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICEL AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
14. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
Guilty
PCN: Sequence:
15. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT

CASE SUMMARY
CASE NO. C-13-294695-1

Guilty
 PCN: Sequence:

16. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT

Guilty
 PCN: Sequence:

17. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT

Guilty
 PCN: Sequence:

06/18/2014 **Amended Disposition** (Judicial Officer: Gonzalez, Elizabeth) Reason: Charge(s) Reinstated

18. POSSESSION OF FIREARM BY EX-FELON

Guilty
 PCN: Sequence:

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)

1. CONSPIRE TO COMMIT MURDER

11/05/2013 (F) 200.010 (DC50038)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:48 Months, Maximum:120 Months

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)

2. MURDER WITH THE USE OF A DEADLY WEAPON

11/05/2013 (F) 200.010 (DC50001)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Life with the possibility of parole after:240 Years
 Consecutive Enhancement:Use of a Deadly Weapon, Minimum:60 Months, Maximum:240 Months
 Concurrent: Charge 1

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)

3. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON

11/05/2013 (F) 200.010 (DC50031)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:96 Months, Maximum:240 Months
 Consecutive Enhancement:Use of a Deadly Weapon, Minimum:60 Months, Maximum:240 Months
 Consecutive: Charge 2

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)

4. BATTERY WITH USE OF DEADLY WEAPON,

11/05/2013 (F) 200.481.2e2 (DC50226)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:48 Months, Maximum:120 Months
 Concurrent: Charge 3

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)

5. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON

11/05/2013 (F) 200.010 (DC50031)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:96 Months, Maximum:240 Months

CASE SUMMARY
CASE NO. C-13-294695-1

Consecutive Enhancement: Use of a Deadly Weapon, Minimum: 60 Months, Maximum: 240 Months
 Consecutive: Charge 4

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 6. ATTEMPT MURDER WITH THE USE OF A DEADLY WEAPON
 11/05/2013 (F) 200.010 (DC50031)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 96 Months, Maximum: 240 Months
 Consecutive Enhancement: Use of a Deadly Weapon, Minimum: 60 Months, Maximum: 240 Months
 Consecutive: Charge 5

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 7. BATTERY WITH USE OF DEADLY WEAPON
 11/05/2013 (F) 200.481.2e1 (DC50223)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 48 Months, Maximum: 120 Months
 Concurrent: Charge 6

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 8. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 28 Months, Maximum: 72 Months
 Concurrent: Charge 7

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 9. DISCHARGEING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 28 Months, Maximum: 72 Months
 Concurrent: Charge 8

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 10. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 28 Months, Maximum: 72 Months
 Concurrent: Charge 9

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 11. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum: 28 Months, Maximum: 72 Months
 Concurrent: Charge 10

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 12. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

CASE SUMMARY
CASE NO. C-13-294695-1

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 11

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 13. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICEL AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 12

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 14. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 01/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 13

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 15. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 14

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 16. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 15

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 17. DISCHARGING FIREARM AT OR INTO STRUCTURE VEHICLE AIRCRAFT OR WATERCRAFT
 11/05/2013 (F) 202.285.1b (DC51442)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 16

06/18/2014 **Adult Adjudication** (Judicial Officer: Cory, Kenneth)
 18. POSSESSION OF FIREARM BY EX-FELON
 11/05/2013 (F) 202.360.1 (DC51460)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Minimum:28 Months, Maximum:72 Months
 Concurrent: Charge 17
 Credit for Time Served: 225 Days

Other Fees
 1. , \$12,015.71 To be paid Jointly and Severally with Co-Defendant
 Fee Totals:

CASE SUMMARY

CASE NO. C-13-294695-1

Administrative Assessment Fee	25.00
\$25	
DNA Analysis Fee	150.00
\$150	
Genetic Marker Analysis AA Fee	3.00
\$3	
Fee Totals \$	178.00

HEARINGS

- 12/23/2013  **Initial Arraignment** (9:30 AM) (Judicial Officer: De La Garza, Melisa)
 Trial Date Set;
 Journal Entry Details:
DEFT. WASHINGTON ARRAIGNED. PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. CUSTODY 12/30/13 9:00 A.M. STATUS CHECK: TRIAL READINESS (DEPT 11) 01/29/14 9:00 A.M. CALENDAR CALL (DEPT 11) 02/03/14 1:00 P.M. JURY TRIAL (DEPT 11) ;
- 12/30/2013  **Status Check** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
 Status Check: Trial Readiness
 Matter Heard;
 Journal Entry Details:
APPEARANCES CONTINUED: J. Mann, Esq., counsel for Co-Defendant Washington. Ms. Pieper advised that on January 8, 2014, the State will take this case before the Death Penalty Committee, and requested a continuance until after that matter has been heard. Mr. Mann requested that Defendant remain at the Clark County Detention Center (CCDC), so he may have further discussions, as he will be unable to adequately speak with his client and prepare for trial. Conference at the Bench. Court DIRECTED Mr. Mann to prepare a written Order indicating Defendant shall remain at CCDC pending the next hearing. Mr. Mann stated he will send the Order to Chambers. COURT SO NOTED. Upon the Court's inquiry, Mr. Mann advised he will file a Severance Motion. Mr. Otto concurred with Mr. Mann's representations. COURT SO NOTED, and ORDERED, counsel to file the Motion on or before January 13, 2014; matter SET for a Status Check. COURT FURTHER ORDERED, the trial date will not be rescheduled. CUSTODY 1/13/2014 9:00 am Status Check: Death Penalty Committee 1/29/2014 9:00 am Calendar Call 2/3/2014 1:00 pm Jury Trial ;
- 01/13/2014 **Motion** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
 Notice of Motion and Motion to Sever Defendants
 Matter Continued;
- 01/13/2014 **Status Check** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
 Status Check: Death Penalty Committee
 Matter Heard;
- 01/13/2014  **All Pending Motions** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)
 Matter Heard;
 Journal Entry Details:
MOTION TO SEVER DEFTS...STATUS CHECK: DEATH PENALTY COMMITTEE Also present: Co-Deft Martell Moten, represented by Joel Mann, Esq. As to the Motion to Sever Defts, Ms. Pieper advised she never received a copy. Mr. Otto stated it was faxed to the D.A.'s office but not directly to the Gang Unit. Ms. Pieper advised Mr. Mann has filed a Motion to Sever which is on calendar for January 22nd. COURT ORDERED, both Defts' Motions to Sever will be heard on January 22, 2014. Mr. Mann advised his client previously invoked, but because of evidentiary issues Deft Moten has decided to waive his speedy trial rights. Mr. Otto stated his client, Deft Washington, continues to invoke. Ms. Pieper advised at this time the State is not seeking the death penalty for both Defts; additional forensic investigation remains; she has also not called the lab and believes DNA results will not be done by February 3rd even if all her DNA people were noticed. Upon Court's inquiry, Deft Moten confirmed he is willing to WAIVE his speedy trial rights. Court, addressing Deft Washington, stated trial is currently set on February 3rd but that there is some work to be done and Deft has had the chance to discuss available options. Deft Washington stated he wished to proceed. Ms. Pieper noted it is her understanding the decision to go forward is something Deft Washington has and could be against his attorney's advice; if Deft is convicted of first degree murder, one of the things State will present is that Deft was aware of outstanding discovery and yet it was his decision to go forward; additionally, ineffective assistance of counsel will be an issue. Court so noted. Upon Mr. Mann's inquiry, Court stated counsel does not need to

CASE SUMMARY

CASE NO. C-13-294695-1

file a motion. Mr. Otto noted for the record it was his client's decision to keep the current trial date. Ms. Pieper further advised she has extended an offer of second degree murder with use of a deadly weapon which has two potential sentences: first, a 10 to 25, or second, 10 to life. She has agreed to remove the life tail, thus it will only be 10 to 25 with the consecutive deadly weapon enhancement which is 1 to 20 years; it is her understanding that not only is Deft Washington going forward with the current trial date, he is also rejecting the State's offer. Deft Washington concurred. Mr. Mann advised he and his client will discuss the latter's options, and requested Deft remain one more week at CCDC. There being no objection by the State, COURT SO ORDERED. Counsel to prepare the order. Ms. Pieper and Mr. Mann advised they will do a stipulation and order to continue the trial date for Deft Moten. CUSTODY 1-22-14 9:00 AM NOTICE OF MOTION AND MOTION TO SEVER DEFENDANTS 1-29-14 9:00 AM CALENDAR CALL 2-3-14 1:00 PM JURY TRIAL;

01/22/2014  **Motion** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Notice of Motion and Motion to Sever Defendants [cont'd fr 1/13/14]

Moot;

Journal Entry Details:

Following conference at the bench, Mr. Otto stated defendant will not waive outside of the 60 days. Colloquy. COURT ORDERED, trial date STANDS. Mr. Otto moved for an investigator to be appointed; GRANTED. Court DIRECTED counsel to send order to chambers to include the name of the investigator. FURTHER ORDERED, defendants motion MOOT, given the scheduling issue and waiver. CUSTODY ;

01/29/2014  **Calendar Call** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

01/29/2014, 02/05/2014

Matter Continued;

Reset;

Journal Entry Details:

Court disclosed conference call held yesterday with defense counsel regarding trial scheduling. Mr. Otto advised Deft no longer requests motions to suppress be filed; however, he has yet to retain a toolmark expert, needs all the underlying data, and requests a 60-day continuance although Deft continues to assert his right to a speedy trial. Upon Court's inquiry, Deft confirmed he has discussed with counsel the work that needs to be done and understands the Court may grant a brief continuance even though he asserts his speedy trial rights. Ms. Pieper advised State is ready to proceed and will have 30 to 40 witnesses; however, they will not oppose defense counsel's oral motion for a continuance. Per Mr. Otto's request, Court DIRECTED State to provide the data sooner rather than later; discovery issues, if any, can be addressed via conference call. Because of important factual information that appears to be related to Deft's ballistics report, the COURT finds good cause to GRANT continuance of trial. Trial RESET on April 7, 2014. CUSTODY 3-3-14 9:00 AM STATUS CHECK: TRIAL READINESS 4-2-14 9:00 AM CALENDAR CALL 4-7-14 1:00 PM JURY TRIAL;

Matter Continued;

Reset;

Journal Entry Details:

Ms. Schifalacqua advised she handed Mr. Otto additional forensic discovery this morning. Upon Court's inquiry, Ms. Pieper advised trial is anticipated to last a week and a half including the penalty phase if Deft is convicted of first degree murder. Mr. Otto advised, because the State provided him with discovery only this morning indicating toolmark evidence related to ballistics, shell casings, and guns involved in this case, it may assist the record to allow him to have time to review that issue; with that said, he has conferred with the Deft, and the latter does not wish to waive his speedy trial rights; additionally, he did not have an expert retained for this matter because there was no indication by the State they would have this evidence before trial. Ms. Schifalacqua stated if Mr. Otto wishes to retain an expert his remedy is a continuance; however, it has always been the State's position that they have properly noticed all of their experts; Mr. Otto is well aware the DNA, latent prints are being worked on, and she finally received the firearms analysis this morning. COURT ORDERED, Deft's request to hire an expert is GRANTED. Counsel to prepare the order which should include the expert's name. Expert expenses GRANTED in the amount of \$3,500.00. If the expert testifies amount will be increased. COURT ORDERED, trial VACATED from February 3rd and RESET on February 11, 2014. Discussion regarding estimated length of trial taking into account the toolmark expert. Ms. Pieper advised State will have 30 to 40 witnesses. Ms. Schifalacqua noted trial can be reset on the 11th with the caveat that the State may make representations at that point that some of their witnesses cannot appear. CONFERENCE AT THE BENCH held at Mr. Otto's request. COURT ORDERED, Calendar Call CONTINUED to February 5, 2014. CUSTODY 2-5-14 9:00 AM CALENDAR CALL 2-11-14 9:00 AM JURY TRIAL;

02/03/2014 **CANCELED Jury Trial** (1:00 PM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated - per Judge

02/11/2014 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Vacated - per Judge

CASE SUMMARY**CASE NO. C-13-294695-1**03/03/2014  **Status Check** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)**03/03/2014, 03/05/2014***Status Check: Trial Readiness*

Continued;

Matter Heard;

Journal Entry Details:

Mr. Otto advised that Robert Ohlinger-Johnson, Esq., is present and has associated-in on this case. Upon Court's inquiry, counsel advised trial should take approximately one and a half (1 1/2) weeks. Court advised that if any additional motions need to be filed prior to trial, counsel should file them sooner than later. COURT ORDERED, calendar call and jury trial dates STAND. CUSTODY ;

Continued;

Matter Heard;

Journal Entry Details:

*Due to technical difficulties with the JAVS audio/video recording system, COURT ORDERED, matter CONTINUED. CUSTODY 3/5/14 9:00 AM - STATUS CHECK: TRIAL READINESS ;*03/24/2014  **Motion in Limine** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)**03/24/2014, 04/02/2014***Defendant's Motion in Limine*

Matter Continued;

Denied;

Matter Continued;

Denied;

Journal Entry Details:

*Mr. Otto advised State opposed last Friday, March 21st, and apparently they were served by fax. Per Mr. Otto's request and there being no objection, COURT ORDERED, matter CONTINUED. CUSTODY 4-2-14 9:00 AM DEFENDANT'S MOTION IN LIMINE...CALENDAR CALL 4-7-14 1:00 PM JURY TRIAL;*04/02/2014 **Calendar Call** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

04/02/2014  **All Pending Motions** (9:00 AM) (Judicial Officer: Gonzalez, Elizabeth)

Matter Heard;

Journal Entry Details:

*CALENDAR CALL...DEFENDANT'S MOTION IN LIMINE Mr. Otto requested matter be set for Petrocelli hearing on prior bad acts and an outside-the-presence hearing for Bruton issues before any statements of the co-conspirator are placed before the jury. Ms. Schifalacqua advised the evidence they provided is for the penalty phase, not case-in-chief, and parties might be able to resolve this issue. Upon inquiry of the Court, Mr. Otto concurred he would be okay with the State not putting on any prior bad acts other than at a potential sentencing hearing. Ms. Pieper argued State would say the Co-Def't's statement is not subject to Bruton. Ms. Schifalacqua advised they would not play his statement but call him in, which they would not do as he himself is pending murder charges; however, there are a few statements made during the course of the conspiracy which are the only ones subject to presentation to the jury without the co-Def't taking the stand. Ms. Pieper confirmed they plan to use Def't Washington's statements; the State will submit there may be one or two statements made by co-Def't Moten which the State will allege was made during the furtherance of a conspiracy. Court advised counsel of its trial schedule and noted any pre-trial issues in the instant case need to be addressed before case is reassigned to a different trial judge. COURT ORDERED, matter set for Evidentiary Hearing on Friday, April 4, related to a portion of co-Def't Moten's statements. Case will be placed through the Presiding Criminal Judge for reassignment as it is not eligible for Overflow. State advised they will coordinate their out-of-state witnesses. Matter RECALLED. Ms. Pieper advised they have explained to Mr. Otto the statement from the preliminary hearing they intend to use, and it is their understanding Mr. Otto has decided he will not object. Mr. Otto advised this statement is to a certain degree indicative of his client's lack of guilt, i.e. when co-Def't Moten tells his client to run from the police in the car and have a shoot-out, Def't Washington tells him no; he has no objection to the State putting this on. Upon Court's inquiry, Ms. Pieper concurred this is the only statement of co-Def't Moten they anticipate using. Court DIRECTED parties to do a written stipulation. COURT ORDERED, Evidentiary Hearing VACATED. Matter SET for Telephonic Conference on Friday, April 4. Def't does not need to be transported. CUSTODY 4-4-14 10:00 AM TELEPHONIC CONFERENCE RE: TRIAL JUDGE 4-7-14 1:00 PM JURY TRIAL ;*04/04/2014  **Telephonic Conference** (10:00 AM) (Judicial Officer: Gonzalez, Elizabeth)*Telephonic Conference Re: Trial Judge*

Matter Heard;

Journal Entry Details:

Def't's presence WAIVED. Ms. Pieper and Ms. Schifalacqua participated telephonically. Court ADVISED due to its

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trial schedule this matter will be tried in Department I (Judge Kenneth Cory). Parties DIRECTED to meet with Judge Cory today. Colloquy regarding statement State intends to use at trial. Mr. Otto advised it cannot be found in the preliminary hearing transcript. Ms. Pieper advised it is actually in Deft Washington's statement. Mr. Otto noted non-issue at this point as long as everyone has the same understanding. CUSTODY 4-7-14 1:30 PM JURY TRIAL (DEPT I);

04/07/2014 **CANCELED Jury Trial** (1:00 PM) (Judicial Officer: Gonzalez, Elizabeth)
Vacated

04/07/2014 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Cory, Kenneth)
Vacated

04/07/2014  **Jury Trial** (1:30 PM) (Judicial Officer: Cory, Kenneth)

04/07/2014-04/11/2014, 04/14/2014-04/17/2014

Trial Continues;
Trial Ended 4/17/14
Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES PENALTY PHASE OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised Mr. Otto had not filed any notices of witness; the State will not object to him filing late notices or the family testify. Exclusionary Rule WAIVED. INSIDE THE PRESENCE OF THE JURY: Opening Statements by counsel. Testimony and exhibits commence. (See attached Worksheets.) At the hour of 10:32 a.m. States RESTED. OUTSIDE THE PRESENCE OF THE JURY: Court ADMONISHED the Defendant regarding making a sworn or unsworn statement. INSIDE THE PRESENCE OF THE JURY: Matthew Washington made an unsworn statement of allocution. Testimony and exhibits continued. (See attached Worksheets.) At the hour of 11:28 p.m. Defense RESTED. CONFERENCE AT THE BENCH. Court instructed Jury. Closing arguments by counsel. At the hour of 11:52 p.m., the Jury retired to begin deliberations. OUTSIDE THE PRESENCE OF THE JURY: Sentencing date given as to the remaining charges. Ms. Pieper requested the Defendant be remanded without bail. COURT SO ORDERED. INSIDE THE PRESENCE OF THE JURY: At the hour of 1:58 p.m. Jury returned with VERDICT having previously found the Defendant GUILTY of COUNT 2 - MURDER OF THE FIRST DEGREE (F), The Jury sentenced DEFENDANT to LIFE IN THE NEVADA DEPARTMENT OF CORRECTIONS WITH ELIGIBILITY FOR PAROLE BEGINNING WHEN A MINIMUM OF TWENTY (20) YEARS HAS SERVED. COURT thanked and excused the jury. COURT ORDERED, matter referred to P&P and SET for Sentencing, Defendant to be held in the Clark County Detention Center WITHOUT BAIL. CUTODY 6/18/14 9:00 AM SENTENCING ;

Trial Continues;
Trial Ended 4/17/14
Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES At the hour of 9:00 a.m., deliberations commence. OUTSIDE THE PRESENCE OF THE JURY: Jury questions put on the record and admitted as Court's exhibits. Colloquy regarding second phase of trial. CONFERENCE AT THE BENCH. INSIDE THE PRESENCE OF THE JURY: At the hour of 3:10 pm., the Jury returned with the following Verdicts: COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), GUILTY; COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF FIRST DEGREE MURDER WITH USE OF DEADLY WEAPON; COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF DEADLY WEAPON; COUNT 4 - BATTER WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON; COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON;

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COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON; COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON; COUNT 8 - COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), GUILTY (COUNTS 8- 17). Jury polled at the request of defense counsel. BIFURCATED PORTION OF TRIAL BEGINS INSIDE THE PRESENCE OF THE JURY: Second Amended Information FILED IN OPEN COURT regarding Possession of Firearm by Ex-Felon (F). Clerk read Second Amended Information to the Jury. Ms. Schifalacqua advised as to the nature of the charge. Exclusionary Rule WAIVED. Opening statements by Ms. Schifalacqua. Mr. Otto declined to present an opening statement. At the hour of 3:25 p.m. State RESTED. CONFERENCE AT THE BENCH. OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled. INSIDE THE PRESENCE OF THE JURY: At the hour of 3:43 p.m. Defense RESTED. Court instructed the Jury on the law. Closing statements by counsel. At the hour of 4:02 p.m., the Jury retired to deliberate. At the hour of 4:16 p.m. , the Jury returned with the following Verdict: COUNT 1 - POSSESSION OF FIREARM BY EX-FELON (F), GUILTY Jury polled at the request of defense counsel. Court ADMONISHED the Jury and ORDERED them to return the following day at the time given to begin the Penalty Hearing. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding instructions and schedule for the penalty phase. Matter in RECESS CUSTODY CONTINUED TO: 4/17/14 9:00 AM ;

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled. INSIDE THE PRESENCE OF THE JURY: Court instructed the Jury on the law. Closing arguments by counsel. Marshal SWORN to take charge of the Jury and Alternates. At the hour of 4:41 p.m., the Jury retired to deliberate. The Jury informed the Marshal they had selected a Foreperson and wish to commence deliberations in the morning and the COURT SO ORDERED. Matter in RECESS. CUSTODY CONTINUED TO: 4/16/14 9:00 AM ;

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto moved for a mistrial on the bases of a conversation between officers as to what time their shift ended. Ms. Pieper argued there would have to be prejudice; we were not on the record at the time and the jurors were leaving for a break. Ms. Schifalacqua argued the jury would have to know why the corrections officer was present and who he was; this was a discussion off the record as to what time their shifts ended between themselves. Statements by Mr. Otto. COURT ORDERED, Motion as to Mistrial DENIED. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits continued. (See attached worksheet.) At the hour of 2:52 p.m. the State RESTED. OUTSIDE THE PRESENCE OF THE JURY: Court noted the defendant's mother reported as she was leaving Friday night, on the ramp outside the Court house, two of the jurors were present as a comment was made in regards to a wasp and her saying "excuse me, I need to use the handrail". Court ADMONISHED the family as to speaking with the jurors. Juror #5 brought in outside the presence of the jury panel and questioned as to the conversation. Juror #7 brought in outside the presence of the jury panel and questioned as to the conversation. Juror #7 expressed being scared and not comfortable making any decisions. Ms. Schifalacqua expressed her concerns with family speaking with the jury and now being scared. Defendant's family brought back in outside the presence of the jury panel and ADMONISHED as to having to excuse a jury member. Court EXCUSED juror #7. INSIDE THE PRESENCE OF THE JURY: Jury ADMONISHED as to speaking with anyone. OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto moved for an Adversary Verdict of Not Guilty under NRS 175.381(1). COURT ORDERED, Motion DENIED. Ms. Schifalacqua argued no matter what the verdict is the charge of Possession of Firearm by Ex-Felon will be brought before any penalty phase of the trial. At the hour of 4:09 p.m. the Defense RESTED. INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return the next day at the time given. Matter in RECESS. CUSTODY CONTINUED TO:

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4/15/14 1:30 PM ;

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised a Second Amended Information had been submitted for filing. Ms. Pieper further advised the Second Amended Information had grammar corrections and correction of charges. SECOND AMENDED INFORMATION FILED IN OPEN COURT. Mr. Otto stated he had done some research as to doing an appeal if necessary and he cannot withdraw as counsel if the defendant receives a life sentence, but can if a non-life sentence is imposed. Colloquy as to having a penalty phase. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding witness schedules. Ms. Schifalacqua advised to the stipulation of exhibits 76, 77, 92, 133, 134, 138 & 139. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Court noted it had been advised by Marshal Crank juror #12 recognized witness David Johnson. Ms. Schifalacqua advised witness David Johnson advised the same. Juror #12 brought in and questioned regarding knowing witness David Johnson; only knowing him through a friend and they do not socialize. Court inquired of Juror #12 if he would be bias or more in favor of the State. Juror #12 advised it would not. Counsel advised they have no issue keeping Juror #12. INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return on the date and time given. OUTSIDE THE PRESENC OF THE JURY: Court ADMONISHED the defendant regarding his right not to testify. Matter in RECESS. CUSTODY CONTINUED TO: 4/14/14 1:00 PM ;

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES. OUTSIDE THE PRESENCE OF THE JURY: Juror #1 questioned regarding statements made to Marshal Breed the following evening as possibly being related to the defendant. COURT ORDERD, Juror #1 EXCUSED. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.) OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto inquired of what questions he would be allowed to ask of the witness who is a convicted felon. Ms. Pieper advised the only questions that can be asked is what, where, and when; cannot ask as to the underlining facts. Colloquy regarding scheduling. INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.) Following the day's testimony, Court ADMONISHED the Jury and ORDERED, them to return the following day at the time given. Matter in RECESS. CUSTODY CONTINUED TO: 4/11/14 9:00 AM ;

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jury and three (3) Alternates SELECTED and SWORN. INSIDE THE PRESENCE OF THE JURY: Introductory remarks by the Court. The Clerk

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read the Amended Information to the Jury and stated the defendant's plea thereto. Opening statements by Ms. Pieper. Opening statements by Mr. Otto. Exclusionary Rule INVOKED. Testimony and exhibits commence. (See attached worksheets.) **OUTSIDE THE PRESENCE OF THE JURY:** Ms. Pieper stated concerns of admonishing the defendant's family to not speak to any of the jurors. Court brought the defendant's family in and **ADMONISHED.** **INSIDE THE PRESENCE OF THE JURY:** Testimony and exhibits continued. (See attached worksheets.) Following the day's testimony, Court **ADMONISHED** the Jury and **ORDERED** them to return the following day at the time given. **OUTSIDE THE PRESENCE OF THE JURY:** Marshal Breed advised the Court and counsel juror #1 had approached her to inform her after seeing the family in the Courtroom, he believes the defendant is a distant cousin. Ms. Schifalacqua inquired if any of the defendant's family members were present at the time juror #1 approached her. Marshal Breed advised no. Marshal Breed further advised juror #1 stated he was going to make some phone calls to see if he is related. Marshal Breed stated she informed him he could not make the phone calls and the Court would deal with this matter first thing in the morning. Court advised juror #1 would be excused when the jurors return in the morning. **Matter in RECESS CUSTODY CONTINUED TO: 4/10/14 9:00 AM ;**

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL CONTINUES OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Pieper advised her and Ms. Schifalacqua were discussing the trial the following evening and notice Juror #912 was near them. Juror #912 was brought in and questioned whether she had overheard any of the conversation. Juror #912 advised she had not. Juror #268 and Juror #850 showed proof of planned vacations and were excused. **INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:** Jury selection resumed. Having not selected and sworn a Jury this date, Court **ADMONISHED** the prospective jurors and **ORDERED** them to return the following day at the time given to resume jury selection. **Matter in RECESS. CUSTODY CONTINUED TO: 4/9/14 1:00 PM ;**

Trial Continues;

Trial Ended 4/17/14

Trial Ended 4/17/14

Journal Entry Details:

JURY TRIAL BEGINS OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Defendant present in custody. **AMENDED INFORMATION FILED IN OPEN COURT.** Ms. Pieper advised on January 29, 2014 an offer was made to the defendant which was rejected. Colloquy regarding jury panel. **INSIDE THE PRESENCE OF THE PROSPECTIVE JURY:** Voir Dire Oath given. Jury selection commenced. Having not selected and sworn a Jury this date, Court **ADMONISHED** the prospective jurors and **ORDERED** them to return the following day at the time given to resume jury selection. **Matter in RECESS. CUSTODY CONTINUED TO: 4/8/14 1:00 PM ;**

04/28/2014



Minute Order (7:30 AM) (Judicial Officer: Cory, Kenneth)

Minute Order - No Hearing Held;

Journal Entry Details:

The instant case was originally assigned to District Court Department 11 and is currently set for trial to commence April 7, 2014. Due to being engaged in another lengthy trial during the same time period, Department 11 is unable to preside over the instant trial on its scheduled date. The matter is not eligible for overflow due to its expected length. EDCR 1.30 (15) gives the Chief Judge of the Eighth Judicial District Court the authority to reassign cases between departments as convenience or necessity requires. EDCR 1.30 (11) also states that the Chief Judge must appoint a Judge to preside over the Criminal Division of the Court. EDCR 1.31 gives the Criminal Presiding Judge the authority to reassign pending criminal cases from one department to another. As with EDCR 1.30(15), the Presiding Criminal Judge's decision on reassigning pending criminal cases should be done as convenience and necessity require. District Court Department 1 is available to take the instant trial and maintain its current trial date setting. Therefore, based on the totality of circumstances present, this Court, as Criminal Presiding Judge, **ORDERS**, pursuant to EDCR 1.31, the

EIGHTH JUDICIAL DISTRICT COURT

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reassignment of the instant case to Department 1 for trial. The attorneys are directed to contact Judge Cory's chambers for further instructions. ;

06/18/2014 **CANCELED Sentencing** (9:00 AM) (Judicial Officer: Togliatti, Jennifer)
 Vacated - On in Error

06/18/2014  **Sentencing** (9:00 AM) (Judicial Officer: Cory, Kenneth)

Defendant Sentenced;
 Journal Entry Details:

Defendant Washington PRESENT in custody. DEFT WASHINGTON ADJUDGED GUILTY of COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON (F), COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 7 - BATTERY WITH USE OF DEADLY WEAPON (F), COUNT 8 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 9 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 10 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 11 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 12 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 13 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 14 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 15 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 16 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), and COUNT 18 - POSSESSION OF FIREARM BY EX-FELON (F). Arguments by Ms. Schifalacqua. Arguments by Mr. Otto. Statements by the Court. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Collection fee, \$12,015.71 Restitution jointly and severally with co-defendant, and a \$150.00 DNA Analysis fee including testing to determine genetic markers - WAIVED, as to COUNT 1 Deft. SENTENCED to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS; COUNT 2 a MINIMUM of TWO HUNDRED FORTY (240) and a MAXIMUM of LIFE, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONCURRENT with COUNT 1; COUNT 3 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 2; COUNT 4 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 3; COUNT 5 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 4; COUNT 6 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 5; COUNT 7 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 6; COUNT 8 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 7; COUNT 9 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 8; COUNT 10 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 9; COUNT 11 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 10; COUNT 12 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 11; COUNT 13 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 12; COUNT 14 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 13; COUNT 15 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 14; COUNT 16 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 15; COUNT 17 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 16; COUNT 18 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 17 in the Nevada Department of Correction (NDC) with 225 DAYS credit for time served. Mr. Otto advised the Public Defender's (PD) Office would be confirming as appellant counsel; further advised he had provided them with a digital copy of the file. Ms. Bakhtary advised the PD's office would be filing a Notice of Appeal. BOND, if any, EXONERATED. NDC ;

02/06/2018  **Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Johnson, Susan)
 Defendant's Petition for Writ of Habeas Corpus (PostConviction)
 Hearing Set;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-13-294695-1

Journal Entry Details:

Mr. Posin advised he followed Petition statute; requested a briefing schedule. State submitted. COURT ORDERED, briefing schedule SET; hearing SET; briefing due 2/23/2018, response due 3/09/2018, reply due 3/16/2018. 3/22/2018 - 9:00 AM - HEARING: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION);

03/22/2018



Hearing (9:00 AM) (Judicial Officer: Johnson, Susan)

HEARING: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)

Denied;

Journal Entry Details:

Arguments by Mr. Posin regarding ineffectiveness of counsel, original charges, Deft.'s purported criminal history, and improper suggestions made to the jury. Transcript reviewed by Court and Mr. Posin. Arguments by State in opposition thereto. Court stated its findings and ORDERED, Petition DENIED. NDC;

DATE

FINANCIAL INFORMATION

Defendant Washington, Matthew

Total Charges

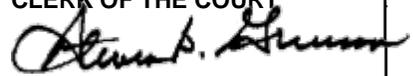
192.00

Total Payments and Credits

14.00

Balance Due as of 4/16/2019

178.00



1 **ORDER**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 THE STATE OF NEVADA,
6
7 Plaintiff,

8 v.

9 MATTHEW WASHINGTON,
10 Defendant.

CASE NO.: C-13-294695-1
DEPT NO.: XV

**ORDER DENYING
DEFENDANT'S PETITION FOR
WRIT OF HABEAS CORPUS**

11 This matter having come on for hearing on 22nd day of March, 2018 at 9:00 a.m., Defendant
12 Matthew Washington ("Defendant") not being present, represented by Mitchell L. Posin, Plaintiff
13 State of Nevada ("State") represented by Steven B. Wolfson, Clark County District Attorney,
14 through Steven L. Waters, Chief Deputy District Attorney. The Court having reviewed the papers
15 and pleadings on file herein, heard arguments of counsel, hereby denies Defendant's Petition for
16 Writ of Habeas Corpus. The Court makes the following Findings of Fact and Conclusions of Law:

17 **I. FINDINGS OF FACT**

18 **A. Statement of the case**

19 On April 7, 2014, Defendant was charged by way of Amended Information with the
20 following: Conspiracy to Commit Murder (Count 1); Murder With Use of a Deadly Weapon (Count
21 2); three counts of Attempt Murder With Use of a Deadly Weapon (Count 3, 5, 6); Battery With Use
22 of a Deadly Weapon Resulting in Substantial Bodily Harm (Count 4); Battery With Use of a Deadly
23 Weapon (Count 7); and ten counts of Discharging a Firearm At or Into Structure, Vehicle, Aircraft,
24 or Watercraft (Counts 8-17).

25 On April 7, 2014, the jury trial commenced. On April 11, 2014, the State filed a Second
26 Amended Information to correct a grammatical error, correct the name of the victim for Count 7, and
27 to remove the substantial bodily harm language from Count 4. On April 16, 2014, the jury returned a
28 verdict of guilty on all counts. The State filed a Second Amended Information, charging Defendant

1 with Possession of Firearm by Ex-Felon. A separate trial was held regarding the additional count and
2 the jury found Defendant guilty. On April 17, 2014, the penalty hearing was conducted; the jury
3 imposed a sentence of life with eligibility for parole after 20 years.

4 On June 18, 2014, Defendant was sentenced to the Nevada Department of Corrections as
5 follows: Count 1 – a minimum of 48 months and a maximum of 120 months; Count 2 – life with the
6 possibility of parole after 240 months, with a consecutive term of a minimum of 60 months and a
7 maximum of 240 months for the use of the deadly weapon, to run concurrent to Count 1; Count 3 – a
8 minimum of 96 months and a maximum of 240 months, with a consecutive term of a minimum of 60
9 months and a maximum of 240 months for the use of the deadly weapon, to run consecutive to
10 Count 3; Count 4 – a minimum of 48 months and a maximum of 120 months, to run concurrent to
11 Count 3; Count 5 – a minimum of 96 months and a maximum of 240 months, with a consecutive
12 term of a minimum of 60 months and a maximum of 240 months for the use of the deadly weapon,
13 to run consecutive to Count 4; Count 6 – a minimum of 96 months and a maximum of 240 months,
14 with a consecutive term of a minimum of 60 months and a maximum of 240 months for the use of
15 the deadly weapon, to run consecutive to Count 5; Count 7 – a minimum of 48 months and a
16 maximum of 120 months, to run concurrent to Count 6; Counts 8-17 – a minimum of 28 months and
17 a maximum of 72 months for each count, each to run concurrent to the preceding count;
18 Count 18 – a minimum of 28 months and a maximum of 72 months, to run concurrent with Count
19 17. The Judgment of Conviction was filed on June 27, 2014.

20 On June 30, 2014, Defendant filed a Notice of Appeal as a self-represented party. On July
21 17, 2014, Defendant through counsel, filed a timely Notice of Appeal. The Nevada Supreme Court
22 affirmed the Judgment of Conviction on August 12, 2016,¹ and remittitur issued on December 19,
23 2016.

24
25 ¹ Defendant challenged his conviction on several grounds: (1) the sufficiency of the evidence to
26 convict him of first-degree murder, attempted murder, conspiracy to commit murder, discharging a
27 firearm into an occupied structure; (2) the State did not prove the existence of the unnamed co-
28 conspirator at trial; (3) a jury instruction improperly informed the jury that the charges against him
were felonies; (4) the district court erred in rejecting his proffered jury instruction on motive; (5) the
State committed prosecutorial misconduct during its closing arguments by stating that the jury could
find that Defendant acted with specific intent if it found that he discharged a firearm; (6) the State

1 On December 19, 2017, Defendant through counsel, filed a Petition for Writ of Habeas
2 Corpus ("Petition"). The State responded on January 24, 2018. On February 6, 2018, the Court
3 ordered further briefing from the parties. On February 25, 2018, Defendant through counsel, filed a
4 Post-conviction brief ("Post-conviction brief") and the State responded on March 12, 2018. On
5 March 16, 2018, Defendant filed a reply to the State's response.

6 **B. Statement of facts**

7 In the early morning hours on November 5, 2013, Marque Hill ("Hill"), LaRoy Thomas
8 ("Thomas"), Nathan Rawls ("Rawls", and Ashely Scott ("Scott") were asleep in an apartment in Las
9 Vegas when they were awakened by gunshots being fired into the apartment in rapid succession.
10 Scott was shot in the foot, Thomas was shot in the ankle, and Rawls was killed Darren and Lorraine
11 DeSoto ("Desotos"), who resided in a neighboring apartment, were also awakened by the sound of
12 the gunshots. The DeSotos observed a silver Dodge Magnum drive slowly past their window and
13 called 911.

14 An officer with the Las Vegas Metropolitan Police Department ("LVMPD") was on patrol
15 when he received notification of the shooting. Within minutes, the officer observed a vehicle
16 matching the description given by the DeSotos. The officer pulled the vehicle over and conducted a
17 felony vehicle stop. Defendant was the driver, and Martell Moten ("Moten") was a passenger in the
18 rear driver-side seat. Washington told the officer that "he was by the Stratosphere and he just picked
19 up his friend and they were going home." An officer testified that the Stratosphere is "fairly close"
20 to the apartment where the shooting occurred.

21 The DeSotos were brought to the scene and identified the silver Dodge Magnum as the one
22 they observed drive slowly past their window. Defendant and Moten were then taken into custody.
23 Because the vehicle doors had been left open, an officer observed a handgun underneath the front
24 passenger seat. The gun was later determined to be a Smith & Wesson 9 millimeter. The vehicle was

25
26 was required to obtain a new search warrant before conducting a second search of his vehicle; (7)
27 the State's forensic scientist improperly testified that she and three of her colleagues had come to the
28 same conclusion regarding bullets and shell casings found at the scene; (8) the district court erred in
allowing evidence of field interview stops to be admitted during the penalty phase without sua
sponte conducting an evidentiary hearing to determine whether the stops were constitutional; and (9)
he was prejudiced when the State introduced evidence of his tattoos during the penalty hearing.

1 towed to a crime lab, and a search warrant was obtained. After the vehicle was processed by the
2 crime lab but while it was still in the possession of the crime lab, a detective learned that another
3 handgun was still in the vehicle. The detective searched for and found a handgun concealed in the
4 vehicle's steering column. This gun was later determined to be a .40 caliber Glock.

5 An LVMPD crime scene analyst testified that seven .40 caliber and six 9 millimeter cartridge
6 casings were found outside the apartment. The seven .40 caliber cartridge casings were determined
7 to have been fired from the Glock found in the steering column of Defendant's vehicle, and the six 9
8 millimeter cartridge casings were determined to have been fired from the Smith & Wesson found
9 under the front passenger seat of the vehicle.

10 **II. CONCLUSIONS OF LAW**

11 Defendant's Petition and Post-conviction brief alleged that the State committed prosecutorial
12 misconduct during the penalty phase of his trial by eliciting testimony about Defendant's prior
13 criminal history. Specifically, Defendant asserted it was improper because the prior crimes were
14 ultimately negotiated to misdemeanors or not charged. However, the Court finds that Defendant's
15 prosecutorial misconduct claims were waived and without merit. Additionally, Defendant alleged
16 that his trial counsel provided ineffective assistance of counsel by failing to object to the improper
17 testimony regarding his prior criminal history. The Court, however, finds that Defendant's
18 ineffective assistance of counsel claim is without merit. As such, Defendant's Petition is denied.

19 **A. Defendant's prosecutorial misconduct claims are waived**

20 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
21 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction
22 proceedings in the district court. . . . all other claims that are appropriate for a direct appeal must be
23 pursued on direct appeal, or they will be considered waived in subsequent proceedings." *Franklin v.*
24 *State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (*overruled on other grounds by Thomas v.*
25 *State*, 115 Nev. 148, 979 P.2d 222 (1999)). "[A] court must dismiss a habeas petition if it presents
26 claims that either were or could have been presented in an earlier proceeding, unless the court finds
27 both cause for failing to present the claims earlier or for raising them again and actual prejudice to
28 the petitioner." *Evans v. State*, 117 Nev. 609, 621-22 (2001).

1 Here, Defendant raised new allegations of prosecutorial misconduct that allegedly occurred
2 during the penalty phase of his trial and at sentencing. Defendant failed to raise the allegations in his
3 direct appeal. (Petition at 6–7). The new allegations have been available to Defendant since the
4 penalty phase of his trial and sentencing. Thus, Defendant had the opportunity to raise them in his
5 direct appeal. Furthermore, Defendant did not provide any reasons for failing to bring the claims on
6 direct appeal nor has he alleged any prejudice if the Court found the claims waived. Therefore,
7 Defendant’s claims are waived for failing to raise them on direct appeal and are denied.

8 **B. Alternatively, Defendant’s prosecutorial misconduct claims are without merit**

9 Alternatively, assuming the prosecutorial misconduct claims were raised in an appropriate
10 fashion and considered, they would still fail. Defendant did not object at trial, and the claims would
11 be reviewed under the plain error standard.

12 Claims of prosecutorial misconduct that have not been objected to at trial are reviewed under
13 the plain-error standard. *See Valdez v. State*, 124 Nev. 1172, 196 P.3d 465 (2008). “Under that
14 standard, an error that is plain from a review of the record does not require reversal unless the
15 defendant demonstrates that the error affected his or her substantial rights, by causing ‘actual
16 prejudice or a miscarriage of justice.’” *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93,
17 95 (2003)). When deciding whether prosecutorial misconduct is prejudicial, the relevant inquiry is
18 whether a prosecutor’s statements so infected the proceedings with unfairness as to result in a denial
19 of due process. *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

20 Here, Defendant did not object at trial and has failed to demonstrate that the error affected
21 his substantial rights. Defendant alleges it was prosecutorial misconduct for the prosecutor to elicit
22 testimony from Detective Gillis regarding Defendant’s criminal history during the penalty phase.²
23 Additionally, Defendant claims the prosecutor’s subsequent arguments at sentencing “infected the
24 proceedings with unfairness as to make the results a denial of due process.” (Petition at 7). NRS
25 175.552(2) allows evidence to be presented concerning aggravating circumstances relevant to a
26

27 ² Defendant claims that the record is not clear whether the State complied with NRS 200.033 when
28 it disclosed his criminal history. However, Defendant’s counsel did not object to the introduction of
the evidence. Additionally, Defendant did not pursue a claim of ineffective assistance of counsel
against his appellate counsel.

1 defendant's sentence. Thus, this did not amount to misconduct; eliminating these aggravating
2 circumstances would not have led to a different outcome. Therefore, Defendant fails to show actual
3 prejudice and his claims do not amount to misconduct.

4 Further, even assuming, Defendant is correct, the error was harmless. "[W]here evidence of
5 guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error."
6 *Smith v. State*, 120 Nev. 944, 948, 102 P.3d 569, 572 (2004). Here, assuming this claim was not
7 waived, it would constitute harmless error because Defendant had already been found guilty of the
8 crimes charged beyond a reasonable doubt. The State presented overwhelming evidence of guilt,
9 which included two different firearms were used to discharge a total of 13 cartridges into the
10 apartment where Rawls, Thomas, Hill, and Scott were sleeping. There is no evidence that the jury
11 thought Defendant's prior uncharged or not convicted crimes were an issue. Therefore, even if this
12 claim was not waived, the alleged prosecutorial misconduct would have amounted to harmless error.

13 **C. Defendant's ineffective assistance of counsel claim lacks merit**

14 Defendant claims that trial counsel was ineffective for not objecting to testimony concerning
15 Defendant's criminal history. (Post-conviction brief at 2–6). This claim lacks merit.

16 Ineffective assistance of counsel claims are analyzed under a two-pronged test where the
17 defendant must show (1) that counsel's performance was deficient, and (2) that the deficient
18 performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "A court
19 may consider the two test elements in any order and need not consider both prongs if the defendant
20 makes an insufficient showing on either one." *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102,
21 1107 (1997); *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). The question is whether
22 an attorney's representations amounted to incompetence under prevailing professional norms, "not
23 whether it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S.
24 86, 88 (2011).

25 The court begins with a presumption of effectiveness and then must determine whether the defendant
26 has demonstrated by a preponderance of the evidence that counsel was ineffective. *Means v. State*, 120 Nev.
27 1001, 1011–1012, 103 P.3d 25, 32–33 (2004). The role of a court in considering alleged ineffective
28 assistance of counsel is "not to pass upon the merits of the action not taken but to determine

1 whether, under the particular facts and circumstances of the case, trial counsel failed to render
2 reasonably effective assistance.” *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)
3 (citing *Cooper v. Fitzharris*, 551 F.2d 1162, 1166 (9th Cir. 1977)).

4 This analysis does not indicate that the court should “second guess reasoned choices between
5 trial tactics, nor does it mean that defense counsel, to protect himself against allegations of
6 inadequacy, must make every conceivable motion no matter how remote the possibilities are of
7 success.” *Donovan*, 94 Nev. at 675. In essence, the court must “judge the reasonableness of
8 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
9 conduct.” *Strickland*, 466 U.S. at 690. However, counsel cannot be deemed ineffective for failing to
10 make futile objections, file futile motions, or for failing to make futile arguments. *Ennis v. State*, 122
11 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

12 Not only must the defendant show that counsel was incompetent, but he must also
13 demonstrate that but for that incompetence the results of the proceeding would have been different:

14
15 In assessing prejudice under *Strickland*, the question is not whether a court can be
16 certain counsel’s performance had no effect on the outcome or whether it is possible a
17 reasonable doubt might have been established if counsel acted differently. Instead,
18 *Strickland* asks whether it is reasonably likely the results would have been different.
19 This does not require a showing that counsel’s actions more likely than not altered the
20 outcome, but the difference between *Strickland*’s prejudice standard and a more-
21 probable than-not standard is slight and matters only in the rarest case. The likelihood
22 of a different result must be substantial, not just conceivable.

23 *Harrington*, 562 U.S. at 111–12 (internal quotation marks and citations omitted).

24 Moreover, when raising a *Strickland* claim, the defendant bears the burden to demonstrate
25 the underlying facts by a preponderance of the evidence. *Means*, 120 Nev. at 1012. “Bare” or
26 “naked” allegations are not sufficient to show ineffectiveness of counsel. *Hargrove v. State*, 100
27 Nev. 498, 502, 686 P.2d 222, 225 (1984). Claims asserted in a petition for post-conviction relief
28 must be supported with specific factual allegations which, if true, would entitle defendant to
relief. *Id.*

///

///

1 Here, Defendant claims that his trial counsel was ineffective for not objecting to the alleged
2 prosecutorial misconduct discussed above. The entirety of his claim is two sentences – “Defense
3 counsel’s failure to object to the same constituted denial of effective assistance of counsel” and
4 “Defense counsel failed to object to the introduction of the testimony regarding crimes charges, but
5 for which defendant was not convicted.” (Petition at 7; Post-conviction brief at 6). These are simply
6 bare and naked allegations which are not sufficient to show ineffective assistance of counsel.³
7 Defendant does not reference any specific facts to show how his trial counsel was ineffective in any
8 way. Defendant has not – and cannot – establish prejudice given the overwhelming evidence of
9 guilt. As a result, Defendant has not demonstrated prejudice.

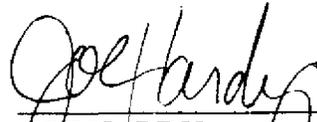
10 **III. CONCLUSION**

11 Thus, Defendant’s prosecutorial misconduct claims were waived and without merit.
12 Defendant’s ineffective assistance of counsel claim is meritless. As such, Defendant’s Petition is
13 denied.

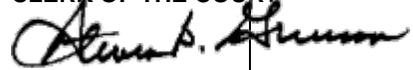
14 **ORDER**

15 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Writ Habeas Corpus is
16 DENIED.

17 DATED this 12th day of February, 2019.

18 
19 _____
20 JOE HARDY
21 DISTRICT JUDGE
22 DEPARTMENT XV
23
24
25
26
27

28 ³ Claims asserted in a petition for post-conviction relief must be supported with specific factual allegations which, if true, would entitle petitioner to relief. *See Hargrove*, 100 Nev. at 502.



1 NEOJ

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 MATTHEW WASHINGTON,

Petitioner,

Case No: C-13-294695-1

Dept. No: XV

6
7 vs.

8 THE STATE OF NEVADA,

Respondent,

9 **NOTICE OF ENTRY OF ORDER**

10
11 **PLEASE TAKE NOTICE** that on February 12, 2019, the court entered a decision or order in this
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on February 13, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

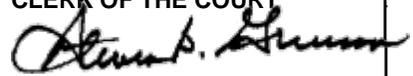
20 I hereby certify that on this 13 day of February 2019, I served a copy of this Notice of Entry on the
21 following:

22 By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23
24 The United States mail addressed as follows:
25 Matthew Washington # 1061467 Mitchell L. Posin
P.O. Box 1989 410 S. Rampart Blvd. Ste 390
26 Ely, NV 89301 Las Vegas, NV 89145

27
28 /s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 **ORDER**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 THE STATE OF NEVADA,
6
7 Plaintiff,

8 v.

9 MATTHEW WASHINGTON,
10 Defendant.

CASE NO.: C-13-294695-1
DEPT NO.: XV

**ORDER DENYING
DEFENDANT'S PETITION FOR
WRIT OF HABEAS CORPUS**

11 This matter having come on for hearing on 22nd day of March, 2018 at 9:00 a.m., Defendant
12 Matthew Washington ("Defendant") not being present, represented by Mitchell L. Posin, Plaintiff
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14 through Steven L. Waters, Chief Deputy District Attorney. The Court having reviewed the papers
15 and pleadings on file herein, heard arguments of counsel, hereby denies Defendant's Petition for
16 Writ of Habeas Corpus. The Court makes the following Findings of Fact and Conclusions of Law:

17 **I. FINDINGS OF FACT**

18 **A. Statement of the case**

19 On April 7, 2014, Defendant was charged by way of Amended Information with the
20 following: Conspiracy to Commit Murder (Count 1); Murder With Use of a Deadly Weapon (Count
21 2); three counts of Attempt Murder With Use of a Deadly Weapon (Count 3, 5, 6); Battery With Use
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25 On April 7, 2014, the jury trial commenced. On April 11, 2014, the State filed a Second
26 Amended Information to correct a grammatical error, correct the name of the victim for Count 7, and
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8 minimum of 96 months and a maximum of 240 months, with a consecutive term of a minimum of 60
9 months and a maximum of 240 months for the use of the deadly weapon, to run consecutive to
10 Count 3; Count 4 – a minimum of 48 months and a maximum of 120 months, to run concurrent to
11 Count 3; Count 5 – a minimum of 96 months and a maximum of 240 months, with a consecutive
12 term of a minimum of 60 months and a maximum of 240 months for the use of the deadly weapon,
13 to run consecutive to Count 4; Count 6 – a minimum of 96 months and a maximum of 240 months,
14 with a consecutive term of a minimum of 60 months and a maximum of 240 months for the use of
15 the deadly weapon, to run consecutive to Count 5; Count 7 – a minimum of 48 months and a
16 maximum of 120 months, to run concurrent to Count 6; Counts 8-17 – a minimum of 28 months and
17 a maximum of 72 months for each count, each to run concurrent to the preceding count;
18 Count 18 – a minimum of 28 months and a maximum of 72 months, to run concurrent with Count
19 17. The Judgment of Conviction was filed on June 27, 2014.

20 On June 30, 2014, Defendant filed a Notice of Appeal as a self-represented party. On July
21 17, 2014, Defendant through counsel, filed a timely Notice of Appeal. The Nevada Supreme Court
22 affirmed the Judgment of Conviction on August 12, 2016,¹ and remittitur issued on December 19,
23 2016.

24
25 ¹ Defendant challenged his conviction on several grounds: (1) the sufficiency of the evidence to
26 convict him of first-degree murder, attempted murder, conspiracy to commit murder, discharging a
27 firearm into an occupied structure; (2) the State did not prove the existence of the unnamed co-
28 conspirator at trial; (3) a jury instruction improperly informed the jury that the charges against him
were felonies; (4) the district court erred in rejecting his proffered jury instruction on motive; (5) the
State committed prosecutorial misconduct during its closing arguments by stating that the jury could
find that Defendant acted with specific intent if it found that he discharged a firearm; (6) the State

1 On December 19, 2017, Defendant through counsel, filed a Petition for Writ of Habeas
2 Corpus ("Petition"). The State responded on January 24, 2018. On February 6, 2018, the Court
3 ordered further briefing from the parties. On February 25, 2018, Defendant through counsel, filed a
4 Post-conviction brief ("Post-conviction brief") and the State responded on March 12, 2018. On
5 March 16, 2018, Defendant filed a reply to the State's response.

6 **B. Statement of facts**

7 In the early morning hours on November 5, 2013, Marque Hill ("Hill"), LaRoy Thomas
8 ("Thomas"), Nathan Rawls ("Rawls", and Ashely Scott ("Scott") were asleep in an apartment in Las
9 Vegas when they were awakened by gunshots being fired into the apartment in rapid succession.
10 Scott was shot in the foot, Thomas was shot in the ankle, and Rawls was killed Darren and Lorraine
11 DeSoto ("Desotos"), who resided in a neighboring apartment, were also awakened by the sound of
12 the gunshots. The DeSotos observed a silver Dodge Magnum drive slowly past their window and
13 called 911.

14 An officer with the Las Vegas Metropolitan Police Department ("LVMPD") was on patrol
15 when he received notification of the shooting. Within minutes, the officer observed a vehicle
16 matching the description given by the DeSotos. The officer pulled the vehicle over and conducted a
17 felony vehicle stop. Defendant was the driver, and Martell Moten ("Moten") was a passenger in the
18 rear driver-side seat. Washington told the officer that "he was by the Stratosphere and he just picked
19 up his friend and they were going home." An officer testified that the Stratosphere is "fairly close"
20 to the apartment where the shooting occurred.

21 The DeSotos were brought to the scene and identified the silver Dodge Magnum as the one
22 they observed drive slowly past their window. Defendant and Moten were then taken into custody.
23 Because the vehicle doors had been left open, an officer observed a handgun underneath the front
24 passenger seat. The gun was later determined to be a Smith & Wesson 9 millimeter. The vehicle was

25
26 was required to obtain a new search warrant before conducting a second search of his vehicle; (7)
27 the State's forensic scientist improperly testified that she and three of her colleagues had come to the
28 same conclusion regarding bullets and shell casings found at the scene; (8) the district court erred in
allowing evidence of field interview stops to be admitted during the penalty phase without sua
sponte conducting an evidentiary hearing to determine whether the stops were constitutional; and (9)
he was prejudiced when the State introduced evidence of his tattoos during the penalty hearing.

1 towed to a crime lab, and a search warrant was obtained. After the vehicle was processed by the
2 crime lab but while it was still in the possession of the crime lab, a detective learned that another
3 handgun was still in the vehicle. The detective searched for and found a handgun concealed in the
4 vehicle's steering column. This gun was later determined to be a .40 caliber Glock.

5 An LVMPD crime scene analyst testified that seven .40 caliber and six 9 millimeter cartridge
6 casings were found outside the apartment. The seven .40 caliber cartridge casings were determined
7 to have been fired from the Glock found in the steering column of Defendant's vehicle, and the six 9
8 millimeter cartridge casings were determined to have been fired from the Smith & Wesson found
9 under the front passenger seat of the vehicle.

10 **II. CONCLUSIONS OF LAW**

11 Defendant's Petition and Post-conviction brief alleged that the State committed prosecutorial
12 misconduct during the penalty phase of his trial by eliciting testimony about Defendant's prior
13 criminal history. Specifically, Defendant asserted it was improper because the prior crimes were
14 ultimately negotiated to misdemeanors or not charged. However, the Court finds that Defendant's
15 prosecutorial misconduct claims were waived and without merit. Additionally, Defendant alleged
16 that his trial counsel provided ineffective assistance of counsel by failing to object to the improper
17 testimony regarding his prior criminal history. The Court, however, finds that Defendant's
18 ineffective assistance of counsel claim is without merit. As such, Defendant's Petition is denied.

19 **A. Defendant's prosecutorial misconduct claims are waived**

20 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and
21 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction
22 proceedings in the district court. . . . all other claims that are appropriate for a direct appeal must be
23 pursued on direct appeal, or they will be considered waived in subsequent proceedings." *Franklin v.*
24 *State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (*overruled on other grounds by Thomas v.*
25 *State*, 115 Nev. 148, 979 P.2d 222 (1999)). "[A] court must dismiss a habeas petition if it presents
26 claims that either were or could have been presented in an earlier proceeding, unless the court finds
27 both cause for failing to present the claims earlier or for raising them again and actual prejudice to
28 the petitioner." *Evans v. State*, 117 Nev. 609, 621-22 (2001).

1 Here, Defendant raised new allegations of prosecutorial misconduct that allegedly occurred
2 during the penalty phase of his trial and at sentencing. Defendant failed to raise the allegations in his
3 direct appeal. (Petition at 6–7). The new allegations have been available to Defendant since the
4 penalty phase of his trial and sentencing. Thus, Defendant had the opportunity to raise them in his
5 direct appeal. Furthermore, Defendant did not provide any reasons for failing to bring the claims on
6 direct appeal nor has he alleged any prejudice if the Court found the claims waived. Therefore,
7 Defendant’s claims are waived for failing to raise them on direct appeal and are denied.

8 **B. Alternatively, Defendant’s prosecutorial misconduct claims are without merit**

9 Alternatively, assuming the prosecutorial misconduct claims were raised in an appropriate
10 fashion and considered, they would still fail. Defendant did not object at trial, and the claims would
11 be reviewed under the plain error standard.

12 Claims of prosecutorial misconduct that have not been objected to at trial are reviewed under
13 the plain-error standard. *See Valdez v. State*, 124 Nev. 1172, 196 P.3d 465 (2008). “Under that
14 standard, an error that is plain from a review of the record does not require reversal unless the
15 defendant demonstrates that the error affected his or her substantial rights, by causing ‘actual
16 prejudice or a miscarriage of justice.’” *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93,
17 95 (2003)). When deciding whether prosecutorial misconduct is prejudicial, the relevant inquiry is
18 whether a prosecutor’s statements so infected the proceedings with unfairness as to result in a denial
19 of due process. *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

20 Here, Defendant did not object at trial and has failed to demonstrate that the error affected
21 his substantial rights. Defendant alleges it was prosecutorial misconduct for the prosecutor to elicit
22 testimony from Detective Gillis regarding Defendant’s criminal history during the penalty phase.²
23 Additionally, Defendant claims the prosecutor’s subsequent arguments at sentencing “infected the
24 proceedings with unfairness as to make the results a denial of due process.” (Petition at 7). NRS
25 175.552(2) allows evidence to be presented concerning aggravating circumstances relevant to a
26

27 ² Defendant claims that the record is not clear whether the State complied with NRS 200.033 when
28 it disclosed his criminal history. However, Defendant’s counsel did not object to the introduction of
the evidence. Additionally, Defendant did not pursue a claim of ineffective assistance of counsel
against his appellate counsel.

1 defendant's sentence. Thus, this did not amount to misconduct; eliminating these aggravating
2 circumstances would not have led to a different outcome. Therefore, Defendant fails to show actual
3 prejudice and his claims do not amount to misconduct.

4 Further, even assuming, Defendant is correct, the error was harmless. "[W]here evidence of
5 guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error."
6 *Smith v. State*, 120 Nev. 944, 948, 102 P.3d 569, 572 (2004). Here, assuming this claim was not
7 waived, it would constitute harmless error because Defendant had already been found guilty of the
8 crimes charged beyond a reasonable doubt. The State presented overwhelming evidence of guilt,
9 which included two different firearms were used to discharge a total of 13 cartridges into the
10 apartment where Rawls, Thomas, Hill, and Scott were sleeping. There is no evidence that the jury
11 thought Defendant's prior uncharged or not convicted crimes were an issue. Therefore, even if this
12 claim was not waived, the alleged prosecutorial misconduct would have amounted to harmless error.

13 **C. Defendant's ineffective assistance of counsel claim lacks merit**

14 Defendant claims that trial counsel was ineffective for not objecting to testimony concerning
15 Defendant's criminal history. (Post-conviction brief at 2–6). This claim lacks merit.

16 Ineffective assistance of counsel claims are analyzed under a two-pronged test where the
17 defendant must show (1) that counsel's performance was deficient, and (2) that the deficient
18 performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "A court
19 may consider the two test elements in any order and need not consider both prongs if the defendant
20 makes an insufficient showing on either one." *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102,
21 1107 (1997); *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). The question is whether
22 an attorney's representations amounted to incompetence under prevailing professional norms, "not
23 whether it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S.
24 86, 88 (2011).

25 The court begins with a presumption of effectiveness and then must determine whether the defendant
26 has demonstrated by a preponderance of the evidence that counsel was ineffective. *Means v. State*, 120 Nev.
27 1001, 1011–1012, 103 P.3d 25, 32–33 (2004). The role of a court in considering alleged ineffective
28 assistance of counsel is "not to pass upon the merits of the action not taken but to determine

1 whether, under the particular facts and circumstances of the case, trial counsel failed to render
2 reasonably effective assistance.” *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)
3 (citing *Cooper v. Fitzharris*, 551 F.2d 1162, 1166 (9th Cir. 1977)).

4 This analysis does not indicate that the court should “second guess reasoned choices between
5 trial tactics, nor does it mean that defense counsel, to protect himself against allegations of
6 inadequacy, must make every conceivable motion no matter how remote the possibilities are of
7 success.” *Donovan*, 94 Nev. at 675. In essence, the court must “judge the reasonableness of
8 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s
9 conduct.” *Strickland*, 466 U.S. at 690. However, counsel cannot be deemed ineffective for failing to
10 make futile objections, file futile motions, or for failing to make futile arguments. *Ennis v. State*, 122
11 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

12 Not only must the defendant show that counsel was incompetent, but he must also
13 demonstrate that but for that incompetence the results of the proceeding would have been different:

14
15 In assessing prejudice under *Strickland*, the question is not whether a court can be
16 certain counsel’s performance had no effect on the outcome or whether it is possible a
17 reasonable doubt might have been established if counsel acted differently. Instead,
18 *Strickland* asks whether it is reasonably likely the results would have been different.
19 This does not require a showing that counsel’s actions more likely than not altered the
20 outcome, but the difference between *Strickland*’s prejudice standard and a more-
21 probable than-not standard is slight and matters only in the rarest case. The likelihood
22 of a different result must be substantial, not just conceivable.

23 *Harrington*, 562 U.S. at 111–12 (internal quotation marks and citations omitted).

24 Moreover, when raising a *Strickland* claim, the defendant bears the burden to demonstrate
25 the underlying facts by a preponderance of the evidence. *Means*, 120 Nev. at 1012. “Bare” or
26 “naked” allegations are not sufficient to show ineffectiveness of counsel. *Hargrove v. State*, 100
27 Nev. 498, 502, 686 P.2d 222, 225 (1984). Claims asserted in a petition for post-conviction relief
28 must be supported with specific factual allegations which, if true, would entitle defendant to
relief. *Id.*

///

///

1 Here, Defendant claims that his trial counsel was ineffective for not objecting to the alleged
2 prosecutorial misconduct discussed above. The entirety of his claim is two sentences – “Defense
3 counsel’s failure to object to the same constituted denial of effective assistance of counsel” and
4 “Defense counsel failed to object to the introduction of the testimony regarding crimes charges, but
5 for which defendant was not convicted.” (Petition at 7; Post-conviction brief at 6). These are simply
6 bare and naked allegations which are not sufficient to show ineffective assistance of counsel.³
7 Defendant does not reference any specific facts to show how his trial counsel was ineffective in any
8 way. Defendant has not – and cannot – establish prejudice given the overwhelming evidence of
9 guilt. As a result, Defendant has not demonstrated prejudice.

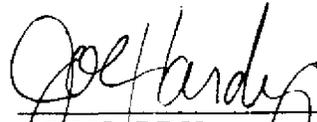
10 **III. CONCLUSION**

11 Thus, Defendant’s prosecutorial misconduct claims were waived and without merit.
12 Defendant’s ineffective assistance of counsel claim is meritless. As such, Defendant’s Petition is
13 denied.

14 **ORDER**

15 **THEREFORE, IT IS HEREBY ORDERED** that the Petition for Writ Habeas Corpus is
16 DENIED.

17 DATED this 12th day of February, 2019.

18 
19 _____
20 JOE HARDY
21 DISTRICT JUDGE
22 DEPARTMENT XV
23
24
25
26
27

28 ³ Claims asserted in a petition for post-conviction relief must be supported with specific factual allegations which, if true, would entitle petitioner to relief. *See Hargrove*, 100 Nev. at 502.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 23, 2013

C-13-294695-1 State of Nevada
vs
Matthew Washington

December 23, 2013 9:30 AM Initial Arraignment

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

COURT CLERK: Melissa Murphy

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Benedict, Susan M.	Attorney
	Otto, David J.	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- DEFT. WASHINGTON ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

12/30/13 9:00 A.M. STATUS CHECK: TRIAL READINESS (DEPT 11)

01/29/14 9:00 A.M. CALENDAR CALL (DEPT 11)

02/03/14 1:00 P.M. JURY TRIAL (DEPT 11)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 30, 2013

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

December 30, 2013 9:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
 Dania Batiste

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: J. Mann, Esq., counsel for Co-Defendant Washington.

Ms. Pieper advised that on January 8, 2014, the State will take this case before the Death Penalty Committee, and requested a continuance until after that matter has been heard. Mr. Mann requested that Defendant remain at the Clark County Detention Center (CCDC), so he may have further discussions, as he will be unable to adequately speak with his client and prepare for trial.

Conference at the Bench.

Court DIRECTED Mr. Mann to prepare a written Order indicating Defendant shall remain at CCDC pending the next hearing. Mr. Mann stated he will send the Order to Chambers. COURT SO NOTED.

Upon the Court's inquiry, Mr. Mann advised he will file a Severance Motion. Mr. Otto concurred

with Mr. Mann's representations. COURT SO NOTED, and ORDERED, counsel to file the Motion on or before January 13, 2014; matter SET for a Status Check. COURT FURTHER ORDERED, the trial date will not be rescheduled.

CUSTODY

1/13/2014 9:00 am Status Check: Death Penalty Committee

1/29/2014 9:00 am Calendar Call

2/3/2014 1:00 pm Jury Trial

Deft Moten confirmed he is willing to WAIVE his speedy trial rights. Court, addressing Deft Washington, stated trial is currently set on February 3rd but that there is some work to be done and Deft has had the chance to discuss available options. Deft Washington stated he wished to proceed. Ms. Pieper noted it is her understanding the decision to go forward is something Deft Washington has and could be against his attorney's advice; if Deft is convicted of first degree murder, one of the things State will present is that Deft was aware of outstanding discovery and yet it was his decision to go forward; additionally, ineffective assistance of counsel will be an issue. Court so noted. Upon Mr. Mann's inquiry, Court stated counsel does not need to file a motion. Mr. Otto noted for the record it was his client's decision to keep the current trial date.

Ms. Pieper further advised she has extended an offer of second degree murder with use of a deadly weapon which has two potential sentences: first, a 10 to 25, or second, 10 to life. She has agreed to remove the life tail, thus it will only be 10 to 25 with the consecutive deadly weapon enhancement which is 1 to 20 years; it is her understanding that not only is Deft Washington going forward with the current trial date, he is also rejecting the State's offer. Deft Washington concurred. Mr. Mann advised he and his client will discuss the latter's options, and requested Deft remain one more week at CCDC. There being no objection by the State, COURT SO ORDERED. Counsel to prepare the order. Ms. Pieper and Mr. Mann advised they will do a stipulation and order to continue the trial date for Deft Moten.

CUSTODY

1-22-14	9:00 AM	NOTICE OF MOTION AND MOTION TO SEVER DEFENDANTS
1-29-14	9:00 AM	CALENDAR CALL
2-3-14	1:00 PM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

January 22, 2014 9:00 AM Motion

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
Shelly Landwehr

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Following conference at the bench, Mr. Otto stated defendant will not waive outside of the 60 days. Colloquy. COURT ORDERED, trial date STANDS. Mr. Otto moved for an investigator to be appointed; GRANTED. Court DIRECTED counsel to send order to chambers to include the name of the investigator. FURTHER ORDERED, defendants motion MOOT, given the scheduling issue and waiver.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

January 29, 2014 9:00 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Ms. Schifalacqua advised she handed Mr. Otto additional forensic discovery this morning. Upon Court's inquiry, Ms. Pieper advised trial is anticipated to last a week and a half including the penalty phase if Deft is convicted of first degree murder. Mr. Otto advised, because the State provided him with discovery only this morning indicating toolmark evidence related to ballistics, shell casings, and guns involved in this case, it may assist the record to allow him to have time to review that issue; with that said, he has conferred with the Deft, and the latter does not wish to waive his speedy trial rights; additionally, he did not have an expert retained for this matter because there was no indication by the State they would have this evidence before trial.

Ms. Schifalacqua stated if Mr. Otto wishes to retain an expert his remedy is a continuance; however, it has always been the State's position that they have properly noticed all of their experts; Mr. Otto is well aware the DNA, latent prints are being worked on, and she finally received the firearms analysis this morning. COURT ORDERED, Deft's request to hire an expert is GRANTED. Counsel to prepare the order which should include the expert's name. Expert expenses GRANTED in the amount of

\$3,500.00. If the expert testifies amount will be increased. COURT ORDERED, trial VACATED from February 3rd and RESET on February 11, 2014. Discussion regarding estimated length of trial taking into account the toolmark expert. Ms. Pieper advised State will have 30 to 40 witnesses. Ms. Schifalacqua noted trial can be reset on the 11th with the caveat that the State may make representations at that point that some of their witnesses cannot appear. CONFERENCE AT THE BENCH held at Mr. Otto's request. COURT ORDERED, Calendar Call CONTINUED to February 5, 2014.

CUSTODY

2-5-14	9:00 AM	CALENDAR CALL
2-11-14	9:00 AM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 05, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

February 05, 2014 9:00 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Court disclosed conference call held yesterday with defense counsel regarding trial scheduling.

Mr. Otto advised Deft no longer requests motions to suppress be filed; however, he has yet to retain a toolmark expert, needs all the underlying data, and requests a 60-day continuance although Deft continues to assert his right to a speedy trial. Upon Court's inquiry, Deft confirmed he has discussed with counsel the work that needs to be done and understands the Court may grant a brief continuance even though he asserts his speedy trial rights. Ms. Pieper advised State is ready to proceed and will have 30 to 40 witnesses; however, they will not oppose defense counsel's oral motion for a continuance. Per Mr. Otto's request, Court DIRECTED State to provide the data sooner rather than later; discovery issues, if any, can be addressed via conference call. Because of important factual information that appears to be related to Deft's ballistics report, the COURT finds good cause to GRANT continuance of trial. Trial RESET on April 7, 2014.

CUSTODY

3-3-14	9:00 AM	STATUS CHECK: TRIAL READINESS
4-2-14	9:00 AM	CALENDAR CALL
4-7-14	1:00 PM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 03, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

March 03, 2014 9:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Andrea Natali

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Due to technical difficulties with the JAVS audio/video recording system, COURT ORDERED, matter CONTINUED.

CUSTODY

3/5/14 9:00 AM - STATUS CHECK: TRIAL READINESS

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 05, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

March 05, 2014 9:00 AM Status Check

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Carole D'Aloia

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Mr. Otto advised that Robert Ohlinger-Johnson, Esq., is present and has associated-in on this case. Upon Court's inquiry, counsel advised trial should take approximately one and a half (1 1/2) weeks. Court advised that if any additional motions need to be filed prior to trial, counsel should file them sooner than later. COURT ORDERED, calendar call and jury trial dates STAND.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 24, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

March 24, 2014 9:00 AM Motion in Limine

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Mr. Otto advised State opposed last Friday, March 21st, and apparently they were served by fax. Per Mr. Otto's request and there being no objection, COURT ORDERED, matter CONTINUED.

CUSTODY

4-2-14 9:00 AM DEFENDANT'S MOTION IN LIMINE...CALENDAR CALL

4-7-14 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 02, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 02, 2014 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea
Andrea Natali

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT'S MOTION IN LIMINE

Mr. Otto requested matter be set for Petrocelli hearing on prior bad acts and an outside-the-presence hearing for Bruton issues before any statements of the co-conspirator are placed before the jury. Ms. Schifalacqua advised the evidence they provided is for the penalty phase, not case-in-chief, and parties might be able to resolve this issue. Upon inquiry of the Court, Mr. Otto concurred he would be okay with the State not putting on any prior bad acts other than at a potential sentencing hearing. Ms. Pieper argued State would say the Co-Def't's statement is not subject to Bruton. Ms. Schifalacqua advised they would not play his statement but call him in, which they would not do as he himself is pending murder charges; however, there are a few statements made during the course of the conspiracy which are the only ones subject to presentation to the jury without the co-Def't taking the stand. Ms. Pieper confirmed they plan to use Def't Washington's statements; the State will submit

there may be one or two statements made by co-Def't Moten which the State will allege was made during the furtherance of a conspiracy. Court advised counsel of its trial schedule and noted any pre-trial issues in the instant case need to be addressed before case is reassigned to a different trial judge. COURT ORDERED, matter set for Evidentiary Hearing on Friday, April 4, related to a portion of co-Def't Moten's statements. Case will be placed through the Presiding Criminal Judge for reassignment as it is not eligible for Overflow. State advised they will coordinate their out-of-state witnesses.

Matter RECALLED. Ms. Pieper advised they have explained to Mr. Otto the statement from the preliminary hearing they intend to use, and it is their understanding Mr. Otto has decided he will not object. Mr. Otto advised this statement is to a certain degree indicative of his client's lack of guilt, i.e. when co-Def't Moten tells his client to run from the police in the car and have a shoot-out, Def't Washington tells him no; he has no objection to the State putting this on. Upon Court's inquiry, Ms. Pieper concurred this is the only statement of co-Def't Moten they anticipate using. Court DIRECTED parties to do a written stipulation. COURT ORDERED, Evidentiary Hearing VACATED. Matter SET for Telephonic Conference on Friday, April 4. Def't does not need to be transported.

CUSTODY

4-4-14	10:00 AM	TELEPHONIC CONFERENCE RE: TRIAL JUDGE
4-7-14	1:00 PM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 04, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 04, 2014 10:00 AM Telephonic Conference

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft's presence WAIVED. Ms. Pieper and Ms. Schifalacqua participated telephonically.

Court ADVISED due to its trial schedule this matter will be tried in Department I (Judge Kenneth Cory). Parties DIRECTED to meet with Judge Cory today. Colloquy regarding statement State intends to use at trial. Mr. Otto advised it cannot be found in the preliminary hearing transcript. Ms. Pieper advised it is actually in Deft Washington's statement. Mr. Otto noted non-issue at this point as long as everyone has the same understanding.

CUSTODY

4-7-14 1:30 PM JURY TRIAL (DEPT I)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 07, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 07, 2014 1:30 PM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL BEGINS

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Defendant present in custody. AMENDED INFORMATION FILED IN OPEN COURT. Ms. Pieper advised on January 29, 2014 an offer was made to the defendant which was rejected. Colloquy regarding jury panel.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir Dire Oath given. Jury selection commenced. Having not selected and sworn a Jury this date, Court ADMONISHED the prospective jurors and ORDERED them to return the following day at the time given to resume jury selection.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/8/14 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 08, 2014 1:00 PM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Pieper advised her and Ms. Schifalacqua were discussing the trial the following evening and notice Juror #912 was near them. Juror #912 was brought in and questioned whether she had overheard any of the conversation. Juror #912 advised she had not. Juror #268 and Juror #850 showed proof of planned vacations and were excused.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Jury selection resumed. Having not selected and sworn a Jury this date, Court ADMONISHED the prospective jurors and ORDERED them to return the following day at the time given to resume jury selection.

Matter in RECESS.

C-13-294695-1

CUSTODY

CONTINUED TO: 4/9/14 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 09, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 09, 2014 1:00 PM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jury and three (3) Alternates SELECTED and SWORN.

INSIDE THE PRESENCE OF THE JURY: Introductory remarks by the Court. The Clerk read the Amended Information to the Jury and stated the defendant's plea thereto. Opening statements by Ms. Pieper. Opening statements by Mr. Otto. Exclusionary Rule INVOKED. Testimony and exhibits commence. (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper stated concerns of admonishing the defendant's family to not speak to any of the jurors. Court brought the defendant's family in and ADMONISHED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits continued. (See attached worksheets.) Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return the following day at the time given.

OUTSIDE THE PRESENCE OF THE JURY: Marshal Breed advised the Court and counsel juror #1 had approached her to inform her after seeing the family in the Courtroom, he believes the defendant is a distant cousin. Ms. Schifalacqua inquired if any of the defendant's family members were present at the time juror #1 approached her. Marshal Breed advised no. Marshal Breed further advised juror #1 stated he was going to make some phone calls to see if he is related. Marshal Breed stated she informed him he could not make the phone calls and the Court would deal with this matter first thing in the morning. Court advised juror #1 would be excused when the jurors return in the morning.

Matter in RECESS

CUSTODY

CONTINUED TO: 4/10/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 10, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 10, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES.

OUTSIDE THE PRESENCE OF THE JURY: Juror #1 questioned regarding statements made to Marshal Breed the following evening as possibly being related to the defendant. COURT ORDERD, Juror #1 EXCUSED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto inquired of what questions he would be allowed to ask of the witness who is a convicted felon. Ms. Pieper advised the only questions that can be asked is what, where, and when; cannot ask as to the underlining facts. Colloquy regarding scheduling.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.)
Following the day's testimony, Court ADMONISHED the Jury and ORDERED, them to return the following day at the time given.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/11/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 11, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 11, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised a Second Amended Information had been submitted for filing. Ms. Pieper further advised the Second Amended Information had grammar corrections and correction of charges. SECOND AMENDED INFORMATION FILED IN OPEN COURT. Mr. Otto stated he had done some research as to doing an appeal if necessary and he cannot withdraw as counsel if the defendant receives a life sentence, but can if a non-life sentence is imposed. Colloquy as to having a penalty phase.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding witness schedules. Ms. Schifalacqua advised to the stipulation of exhibits 76, 77, 92, 133, 134, 138 & 139.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Court noted it had been advised by Marshal Crank juror #12 recognized witness David Johnson. Ms. Schifalacqua advised witness David Johnson advised the same. Juror #12 brought in and questioned regarding knowing witness David Johnson; only knowing him through a friend and they do not socialize. Court inquired of Juror #12 if he would be bias or more in favor of the State. Juror #12 advised it would not. Counsel advised they have no issue keeping Juror #12.

INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return on the date and time given.

OUTSIDE THE PRESENC OF THE JURY: Court ADMONISHED the defendant regarding his right not to testify.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/14/14 1:00 PM

leaving Friday night, on the ramp outside the Court house, two of the jurors were present as a comment was made in regards to a wasp and her saying "excuse me, I need to use the handrail". Court ADMONISHED the family as to speaking with the jurors. Juror #5 brought in outside the presence of the jury panel and questioned as to the conversation. Juror #7 brought in outside the presence of the jury panel and questioned as to the conversation. Juror #7 expressed being scared and not comfortable making any decisions. Ms. Schifalaqua expressed her concerns with family speaking with the jury and now being scared. Defendant's family brought back in outside the presence of the jury panel and ADMONISHED as to having to excuse a jury member. Court EXCUSED juror #7.

INSIDE THE PRESENCE OF THE JURY: Jury ADMONISHED as to speaking with anyone.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto moved for an Adversary Verdict of Not Guilty under NRS 175.381(1). COURT ORDERED, Motion DENIED. Ms. Schifalaqua argued no matter what the verdict is the charge of Possession of Firearm by Ex-Felon will be brought before any penalty phase of the trial. At the hour of 4:09 p.m. the Defense RESTED.

INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return the next day at the time given.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/15/14 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 15, 2014 1:00 PM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled.

INSIDE THE PRESENCE OF THE JURY: Court instructed the Jury on the law. Closing arguments by counsel. Marshal SWORN to take charge of the Jury and Alternates. At the hour of 4:41 p.m., the Jury retired to deliberate. The Jury informed the Marshal they had selected a Foreperson and wish to commence deliberations in the morning and the COURT SO ORDERED.

Matter in RECESS.

CUSTODY

C-13-294695-1

CONTINUED TO: 4/16/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 16, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 16, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

At the hour of 9:00 a.m., deliberations commence.

OUTSIDE THE PRESENCE OF THE JURY: Jury questions put on the record and admitted as Court's exhibits. Colloquy regarding second phase of trial. **CONFERENCE AT THE BENCH.**

INSIDE THE PRESENCE OF THE JURY: At the hour of 3:10 pm., the Jury returned with the following Verdicts:

COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), GUILTY;
COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF FIRST DEGREE MURDER WITH USE OF DEADLY WEAPON;

COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF DEADLY WEAPON;
COUNT 4 - BATTER WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON;
COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON;
COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON;
COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON;
COUNT 8 - COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), GUILTY (COUNTS 8- 17).

Jury polled at the request of defense counsel.

BIFURCATED PORTION OF TRIAL BEGINS

INSIDE THE PRESENCE OF THE JURY: Second Amended Information FILED IN OPEN COURT regarding Possession of Firearm by Ex-Felon (F). Clerk read Second Amended Information to the Jury. Ms. Schifalacqua advised as to the nature of the charge. Exclusionary Rule WAIVED. Opening statements by Ms. Schifalacqua. Mr. Otto declined to present an opening statement. At the hour of 3:25 p.m. State RESTED. CONFERENCE AT THE BENCH.

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled.

INSIDE THE PRESENCE OF THE JURY: At the hour of 3:43 p.m. Defense RESTED. Court instructed the Jury on the law. Closing statements by counsel. At the hour of 4:02 p.m., the Jury retired to deliberate. At the hour of 4:16 p.m. , the Jury returned with the following Verdict:

COUNT 1 - POSSESSION OF FIREARM BY EX-FELON (F), GUILTY

Jury polled at the request of defense counsel.

Court ADMONISHED the Jury and ORDERED them to return the following day at the time given to begin the Penalty Hearing.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding instructions and schedule for the penalty phase.

Matter in RECESS

CUSTODY

C-13-294695-1

CONTINUED TO: 4/17/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 17, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 17, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney
	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

PENALTY PHASE

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised Mr. Otto had not filed any notices of witness; the State will not object to him filing late notices or the family testify. Exclusionary Rule WAIVED.

INSIDE THE PRESENCE OF THE JURY: Opening Statements by counsel. Testimony and exhibits commence. (See attached Worksheets.). At the hour of 10:32 a.m. States RESTED.

OUTSIDE THE PRESENCE OF THE JURY: Court ADMONISHED the Defendant regarding making a sworn or unsworn statement.

INSIDE THE PRESENCE OF THE JURY: Matthew Washington made an unsworn statement of allocution. Testimony and exhibits continued. (See attached Worksheets.) At the hour of 11:28 p.m. Defense RESTED. CONFERENCE AT THE BENCH. Court instructed Jury. Closing arguments by counsel. At the hour of 11:52 p.m., the Jury retired to begin deliberations.

OUTSIDE THE PRESENCE OF THE JURY: Sentencing date given as to the remaining charges. Ms. Pieper requested the Defendant be remanded without bail. COURT SO ORDERED.

INSIDE THE PRESENCE OF THE JURY: At the hour of 1:58 p.m. Jury returned with VERDICT having previously found the Defendant GUILTY of COUNT 2 - MURDER OF THE FIRST DEGREE (F),

The Jury sentenced DEFENDANT to LIFE IN THE NEVADA DEPARTMENT OF CORRECTIONS WITH ELIGIBILITY FOR PAROLE BEGINNING WHEN A MINIMUM OF TWENTY (20) YEARS HAS SERVED.

COURT thanked and excused the jury. COURT ORDERED, matter referred to P&P and SET for Sentencing, Defendant to be held in the Clark County Detention Center WITHOUT BAIL.

CUTODY

6/18/14 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 18, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

June 18, 2014 9:00 AM Sentencing

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:	Otto, David J.	Attorney
	Pieper, Danielle K.	Attorney
	Schifalacqua, Barbara	Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Defendant Washington PRESENT in custody.

DEFT WASHINGTON ADJUDGED GUILTY of COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 4 - BATTERY WITH USE OF DEADLY WEAPON (F), COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 7 - BATTERY WITH USE OF DEADLY WEAPON (F), COUNT 8 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 9 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 10 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 11 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 12 -DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 13 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,

AIRCRAFT, OR WATERCRAFT (F), COUNT14 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 15 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 16 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), and COUNT 18 - POSSESSION OF FIREARM BY EX-FELON (F).

Arguments by Ms. Schifalacqua. Arguments by Mr. Otto. Statements by the Court.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Collection fee, \$12,015.71 Restitution jointly and severally with co-defendant, and a \$150.00 DNA Analysis fee including testing to determine genetic markers - WAIVED, as to COUNT 1 Deft. SENTENCED to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS; COUNT 2 a MINIMUM of TWO HUNDRED FORTY (240) and a MAXIMUM of LIFE, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONCURRENT with COUNT 1; COUNT 3 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 2; COUNT 4 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 3; COUNT 5 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 4; COUNT 6 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 5; COUNT 7 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 6; COUNT 8 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 7; COUNT 9 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 8; COUNT 10 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 9; COUNT 11 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 10; COUNT 12 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 11; COUNT 13 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 12; COUNT 14 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 13; COUNT 15 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 14; COUNT 16 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 15; COUNT17 a MINIMUM of TWENTY EIGHT (28) MONTHS and a

MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 16; COUNT 18 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 17 in the Nevada Department of Correction (NDC) with 225 DAYS credit for time served.

Mr. Otto advised the Public Defender's (PD) Office would be confirming as appellant counsel; further advised he had provided them with a digital copy of the file. Ms. Bakhtary advised the PD's office would be filing a Notice of Appeal.

BOND, if any, EXONERATED.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 06, 2018

C-13-294695-1 State of Nevada
vs
Matthew Washington

February 06, 2018 8:30 AM Petition for Writ of Habeas
Corpus

HEARD BY: Johnson, Susan COURTROOM: RJC Courtroom 15D

COURT CLERK: Keri Cromer

RECORDER: Norma Ramirez

REPORTER:

PARTIES

PRESENT: Posin, Mitchell L Attorney
State of Nevada Plaintiff
Waters, Steven L Attorney

JOURNAL ENTRIES

- Mr. Posin advised he followed Petition statute; requested a briefing schedule. State submitted. COURT ORDERED, briefing schedule SET; hearing SET; briefing due 2/23/2018, response due 3/09/2018, reply due 3/16/2018.

3/22/2018 - 9:00 AM - HEARING: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2018

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

March 22, 2018 9:00 AM Hearing

HEARD BY: Johnson, Susan **COURTROOM:** RJC Courtroom 15D

COURT CLERK:

Keri Cromer
Lauren Kidd

RECORDER: Norma Ramirez

REPORTER:

PARTIES

PRESENT: Posin, Mitchell L Attorney
 State of Nevada Plaintiff
 Waters, Steven L Attorney

JOURNAL ENTRIES

- Arguments by Mr. Posin regarding ineffectiveness of counsel, original charges, Deft.'s purported criminal history, and improper suggestions made to the jury. Transcript reviewed by Court and Mr. Posin. Arguments by State in opposition thereto. Court stated its findings and ORDERED, Petition DENIED.

NDC

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
1. Photograph of building with address 2655 on it	4/9/14	NO	4/9/14
2. Photograph of palm tree w/ gate open & crime scene tape	4/9/14	NO	4/9/14
3. Photograph of sidewalk along building	4/9/14	NO	4/9/14
4. Photograph of sidewalk and open gate	4/9/14	NO	4/9/14
5. Photograph of gravel by stairs and bike tires	4/9/14	NO	4/9/14
6. Photograph of door with #18	4/9/14	NO	4/9/14
7. Photograph of cement area with 5 cones and crime scene tape	4/9/14	NO	4/9/14
8. Photograph of building with door w/ #18 and long windows	4/9/14	NO	4/9/14
9. Photograph of man w/ plaid red/white/blue shirt & white undershirt	4/9/14	NO	4/9/14
10. Photograph of full of man w/ plaid red/white/blue shirt & white undershirt & jeans	4/9/14	NO	4/9/14
11. Photograph of living room with man lying on ground	4/9/14	NO	4/9/14
12. Photograph of close up living room with man lying on ground	4/9/14	NO	4/9/14
13. Photograph of couch & curtains	4/9/14	NO	4/9/14
14. Photograph of areal view 2635 & 2655 Sherwood	4/9/14	NO	4/9/14
15. Photograph of areal view 2635 Sherwood & 2655 Sherwood, Apt 18	4/9/14	NO	4/9/14
16. Photograph of areal view of Eastern & Ogden / Eastern & St. Louis	4/9/14	NO	4/9/14
17. Photograph of areal view of Eastern & Ogden / Eastern & St. Louis / 2655 Sherwood	4/9/14	NO	4/9/14
18. Photograph of sign of 200 Eastern Ave.	4/9/14	NO	4/9/14
19. Photograph of sign of 2400 Ogden Ave	4/9/14	NO	4/9/14
20. Photograph of street view of Ogden & Easter with dodge car with open doors	4/9/14	NO	4/9/14
21. Photograph of dodge car with doors open w/ Ogden sign	4/9/14	NO	4/9/14
22. Photograph of close up of dodge car w/ doors open	4/9/14	NO	4/9/14
23. Photograph of drivers side view of dodge car w/ doors open	4/9/14	NO	4/9/14
24. Photograph of back of dodge car w/ license #142 LFP	4/9/14	NO	4/9/14
25. Photograph of dodge car on passenger side	4/9/14	NO	4/9/14
26. Photograph of dodge car driver door open	4/9/14	NO	4/11/14
27. Photograph of inside of dodge car from drivers side (straight angle)	4/9/14	NO	4/11/14
28. Photograph of inside of dodge car from drivers side (right angle)	4/9/14	NO	4/11/14
29. Photograph of VIN #2D4FV48V25H661568	4/9/14	NO	4/11/14
30. Photograph of back seat of car with red jacket & basketball (straight angle)	4/9/14	NO	4/11/14
31. Photograph of back seat of car with red jacket & basketball (right angle)	4/9/14	NO	4/11/14
32. Photograph of back seat of car with console	4/9/14	NO	4/9/14
33. Photograph of back seat of car with console (close up)	4/9/14	NO	4/9/14
34. Photograph of back seat of car with scale	4/9/14	NO	4/10/14
35. Photograph of close up of scale in back seat	4/9/14	NO	4/10/14
36. Photograph of numbers on Taylor scale	4/9/14	NO	4/10/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
72A - Small Brown paper bag containing Smith & Wesson Stainless/Black Smith & Wesson (GUN NOT MARKED)	4/9/14	NO	4/11/14
72B - R-P 9MM Luger Cartridge & Stainless/Black Smith & Wesson Magazine w/ 8 - 9MM Luger Cartridges	4/9/14	NO	4/11/14
73. Medium Brown Paper Bag (w/ Glock 22.40 Cal Semi-Auto Handgun w/ 5" Barrell, R-P 40 S&W Cartridge & Black Glock Magazine Containing one R-P 40 S&W Cartridge)	4/9/14	NO	4/11/14
73A - Small Brown paper bag containing Glock 22.40 Cal Semi-Auto Handgun w/ 5" Barrell (GUN NOT MARKED)	4/9/14	NO	4/11/14
73B - R-P 40 S&W Cartridge & Black Glock Magazine Containing one R-P 40 S&W Cartridge	4/9/14	NO	4/11/14
74. Large Brown Bag (w/ One Black Red & White Chicago Bulls Jacket & Red sweatshirt with "Likeable Assholes" Logo)	4/9/14	NO	4/11/14 NOT OPENED
75. Small Envelope (4 samples of DNA)	4/9/14	NO	4/11/14 NOT OPENED
76. Small White Envelope (w/ DNA Buccal Swab Kit Ashley Scott)	4/9/14	STIP	4/11/14 NOT OPENED
77. Small White Envelope (w/ DNA Buccal Swab Kit Laroy Thomas)	4/9/14	STIP	4/11/14 NOT OPENED
78. Small Envelope (w/ Cartridge Case Bearing Headstamp R-P 40 S&W, Cartridge Case Bearing Headstamp Federal 40 S&W, Cartridge Case Bearing Headstamp R-P 40 S&W, Cartridge Case Bearing Headstamp Federal 40 S&W, Cartridge Case Bearing Headstamp Federal 40 S&W, Cartridge Case Bearing Headstamp R-P 40 S & W)	4/9/14	NO	4/11/14 NOT OPENED
79. Small Envelope (w/ Cartridge Case Bearing Headstamp WIN 9MM Luger, Cartridge Case Bearing Headstamp WIN 9MM Luger, Cartridge Case Bearing Headstamp R-P 40 S&W)	4/9/14	NO	4/11/14 NOT OPENED
80. Small Envelope (Copper Jacket Bullet Fragment, Copper Jacket Bullet Fragment, Bullet, Lead Bullet Fragment, Lead Bullet Fragment, Copper Jacket Bullet Fragment, Copper Jacket Bullet Fragment, Bullet)	4/9/14	NO	4/11/14 NOT OPENED
81. Medium Brown Paper Bag (w/ One White Opaque Plastic Envelope Bearing the Names of "Scott, Ashley" & "Janice Munro" & 1 Clear Plastic Zip Bag, 1 Clear Plastic Speciman Cup w/Blue Lid Bearing a Patient Sticker INO "Scott, Ashley L" Containing 1 Yellow Bullet Bearing Unknown Substance)	4/9/14	NO	4/11/14 NOT OPENED

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
37. Photograph of man with black hoodie sweat shirt and grey sweatpants	4/9/14	NO	4/10/14
38. Photograph of close up of man with tattoo on left side of neck	4/9/14	NO	4/10/14
39. Photograph of man with white tank top and blue jeans	4/9/14	NO	4/10/14
40. Photograph of close up of man w/ white tank top	4/9/14	NO	4/10/14
41. Photograph of back of man's head	4/9/14	NO	4/10/14
42. Photograph of driver side of dodge car with 2 orange warning stickers	4/9/14	NO	4/10/14
43. Photograph of passenger side of dodge car with 2 orange warning stickers	4/9/14	NO	4/10/14
44. Photograph of smith & Wesson hand gun	4/9/14	NO	4/11/14
45. Photograph of hand gun with clip and bullet	4/9/14	NO	4/11/14
46. Photograph of close up smith & Wesson with model #	4/9/14	NO	4/11/14
47. Photograph of umbrella & hat in car	4/9/14	NO	4/11/14
48. Photograph of glove box w/ papers	4/9/14	NO	4/11/14
49. Photograph of duplicate search warrant on front driver seat of car	4/9/14	NO	4/11/14
50. Photograph of door w/ fingerprint powder	4/9/14	NO	4/11/14
51. Photograph of fingerprint powder w/ #4	4/9/14	NO	4/11/14
52. Photograph of back of dodge car with orange warning sticker	4/9/14	NO	4/11/14
53. Photograph of clothes (white & blue) in car	4/9/14	NO	4/11/14
54. Photograph of tennis shoes & hat in car	4/9/14	NO	4/11/14
55. Photograph of center console open	4/9/14	NO	4/11/14
56. Photograph of red bulls jacket	4/9/14	NO	4/11/14
57. Photograph of red likeable asshole sweatshirt	4/9/14	NO	4/11/14
58. Photograph of white pants, white t-shirt w/ writing on it, 3 hats 2 tennis shoes, black sweatshirt, black & green shorts	4/9/14	NO	4/11/14
59. Photograph of 3 hats, 2 tennis shoes, white t-shirt w/writing	4/9/14	NO	4/11/14
60. Photograph of blue sweatshirt w/ New York U.S. State on it	4/9/14	NO	4/11/14
61. Photograph of grey chargers sweatshirt	4/9/14	NO	4/11/14
62. Photograph of driver seat w/ papers on it	4/9/14	NO	4/10/14
63. Photograph of dashboard	4/9/14	NO	4/10/14
64. Photograph of close up of broken dashboard	4/9/14	NO	4/10/14
65. Photograph of broken dashboard	4/9/14	NO	4/10/14
66. Photograph of black hand gun w/ viridian on it	4/9/14	NO	4/11/14
67. Photograph of black hand gun, clip and bullet	4/9/14	NO	4/11/14
68. Photograph of passenger side of dodge car with fingerprint powder	4/9/14	NO	4/11/14
69. Photograph of door handle of car w/ tape on it	4/9/14	NO	4/11/14
70. CD of 911 1 st call Hill	4/9/14	STIP	4/10/14
71. CD of 911 2 nd call DeSoto	4/9/14	NO	4/9/14
72. Medium Brown Paper Bag (w/ Stainless/Black Smith & Wesson, R-P 9MM Luger Cartridge & Stainless/Black Smith & Wesson Magazine w/ 8 - 9MM Luger Cartridges)	4/9/14	NO	4/11/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
82. Medium Brown Paper Bag (w/ possible swabs & hair)	4/9/14	NO	4/11/14 NOT OPENED
83. White Small Envelope (DNA Buccal Swab Kit)	4/9/14	NO	4/11/14 NOT OPENED
84. Small Envelope (w/ bullet)	4/9/14	NO	4/11/14 NOT OPENED
85. Medium Brown Paper Bag (Bullet in Plastic Vial, Evidence Tag Bearing Chain of Custody Names & Plastic Bag Bearing Name of Laroy Thomas)	4/9/14	NO	4/11/14 NOT OPENED
86. Medium Envelope (w/ Blue Latex Type Gloves Both Turned Inside Out)	4/9/14	NO	4/14/14 NOT OPENED
87. Small White Envelope (DNA Buccal Swab Kit Martell Moten)	4/9/14	NO	4/11/14 NOT OPENED
88. Small White Envelope (DNA Buccal Swab Kit Matthew Washington)	4/9/14	NO	4/11/14 NOT OPENED
89. Medium Brown Paper Bag (Henry & William Dark Blue Hooded sweatshirt w/ a Single Pocket size XL)	4/9/14		
90. Small Envelope (w/ Bullets)	4/9/14	NO	4/11/14 NOT OPENED
91. Small Envelope (w/ #33 Swab of Apparent Blood, #34 Swab of Apparent Blood)	4/9/14	STIP	4/11/14 NOT OPENED
92. Small White Envelope (DNA Buccal Swab Kit Marque Hill)	4/9/14	STIP	4/11/14 NOT OPENED
93. Photograph of Coroner tag w/ the name Nathan Rawls	4/10/14	NO	4/10/14
94. Photograph of man's face w/ #13-10351	4/10/14	NO	4/10/14
95. Photograph of man's back w/ bullet hole	4/10/14	NO	4/10/14
96. Photograph of man's shoulder w/ scar	4/10/14	NO	4/10/14
97. Photograph of man lying on back & abrasion on side near armpit	4/10/14	NO	4/10/14
98. Photograph of man's shoulder w/ bullet hole	4/10/14	NO	4/10/14
99. Photograph of close up of bullet hole in shoulder	4/10/14	NO	4/10/14
100. Photograph of bullet hole through knee	4/10/14	NO	4/10/14
101. Photograph of close up of bullet hole in knee	4/10/14	NO	4/10/14
102. Photograph of knee w/ bullet hole and blue in background	4/10/14	NO	4/10/14
103. Photograph of man lying in hospital bed w/ red rails	4/10/14	NO	4/10/14
104. Photograph of side view of man lying in hospital bed with red shorts	4/10/14	NO	4/10/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
105. Photograph of ruler measuring spot on body	4/10/14	NO	4/10/14
106. Photograph of man knee and foot	4/10/14	NO	4/10/14
107. Photograph of ruler measuring scrape on man's knee	4/10/14	NO	4/10/14
108. Photograph of man's leg & foot	4/10/14	NO	4/10/14
109. Photograph of ruler measuring injury on ankle	4/10/14	NO	4/10/14
110. Photograph of couch, tv and bottom half of man lying on floor	4/10/14	NO	4/10/14
111. Photograph of couch, door and top half of man lying on floor	4/10/14	NO	4/10/14
112. Photograph of refrigerator and sheet hanging across curtains	4/10/14	NO	4/10/14
113. Photograph of couch & table upside down	4/10/14	NO	4/10/14
114. Photograph of corner of couch and 3 holes in wall	4/10/14	NO	4/10/14
115. Photograph of speaker, game system & controller & games on floor	4/10/14	NO	4/10/14
116. Photograph of container w/ food on floor & table upside down	4/10/14	NO	4/10/14
117. Photograph of part of chair and table upside down	4/10/14	NO	4/10/14
118. Photograph of open door with clothing on bed	4/10/14	NO	4/10/14
119. Photograph of clothing on bed and curtain over window	4/10/14	NO	4/10/14
120. Photograph of bed with clothes on it	4/10/14	NO	4/10/14
121. Photograph of open closet with 2 hangers & marks on wall	4/10/14	NO	4/10/14
122. Photograph of wall w/ marks and top of lamp w/ lightbulb	4/10/14	NO	4/10/14
123. Photograph of room w/ door open, corner of bed & tire wheel	4/10/14	NO	4/10/14
124. Photograph of close up of bed w/ red blanket	4/10/14	NO	4/10/14
125. Photograph of bed w/ red blanket	4/10/14	NO	4/10/14
126. Photograph of Women in hospital bed	4/10/14	NO	4/10/14
127. Photograph of injured ankle	4/10/14	NO	4/10/14
128. Photograph of ruler measuring injured ankle	4/10/14	NO	4/10/14
129. Photograph of legs w/ blued pants and socks	4/10/14	NO	4/10/14
130. Photograph of jeans w/ stains	4/10/14	NO	4/10/14
131. Photograph of jeans w/5 green markers	4/10/14	NO	4/10/14
132. Photograph of sock inside out with pink marker	4/10/14	NO	4/10/14
133. Photograph of black boots w/ ruler and pink marker	4/10/14	STIP	4/11/14
134. Photograph of black boots w/ ruler	4/10/14	STIP	4/11/14
135. Photograph of white sock w/ blood and green marker	4/10/14	NO	4/11/14
136. Diagram (Legend 14-34)	4/10/14	NO	4/11/14
137. Diagram (Legend 1-13 & 35)	4/10/14	NO	4/11/14
138. LV Metro PD Victim's Consent for DNA Collection – Marque Hill	4/10/14	STIP	4/11/14
139. LV Metro PD Victim's Consent for DNA Collection – Ashely Scott	4/10/14	STIP	4/11/14
140. LV Metro PD Victim's Consent for DNA Collection – Laroy Thomas	4/10/14	NO	4/11/14
141. Photograph of cement area w/ BBQ, lamp pole and markers 6-10	4/11/14	NO	4/11/14
142. Photograph of cement area w/ markers 1-3, 5-8, & 13	4/11/14	NO	4/11/14
143. Photograph of close up markers 1-5 in cement area	4/11/14	NO	4/11/14
144. Photograph of cement area w/ BBQ and markers 6-12	4/11/14	NO	4/11/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
145. Photograph of ruler #1 of cartridge case	4/11/14	NO	4/11/14
146. Photograph of ruler #2 of cartridge case	4/11/14	NO	4/11/14
147. Photograph of ruler #3 of cartridge case	4/11/14	NO	4/11/14
148. Photograph of ruler #4 of cartridge case	4/11/14	NO	4/11/14
149. Photograph of ruler #5 of cartridge case	4/11/14	NO	4/11/14
150. Photograph of ruler #6 of cartridge case	4/11/14	NO	4/11/14
151. Photograph of ruler #7 of cartridge case	4/11/14	NO	4/11/14
152. Photograph of ruler #8 of cartridge case	4/11/14	NO	4/11/14
153. Photograph of ruler #9 of cartridge case	4/11/14	NO	4/11/14
154. Photograph of ruler #10 of cartridge case	4/11/14	NO	4/11/14
155. Photograph of ruler #11 of cartridge case	4/11/14	NO	4/11/14
156. Photograph of ruler #12 of cartridge case	4/11/14	NO	4/11/14
157. Photograph of door w/#18 and wall with holes and pink markers	4/11/14	NO	4/11/14
158. Photograph of window w/ 11 pink markers	4/11/14	NO	4/11/14
159. Photograph of close up of window w/ 10 pink markers	4/11/14	NO	4/11/14
160. Photograph of hole in wall w/ pink marker A1	4/11/14	NO	4/11/14
161. Photograph of hole in wall w/ pink marker B1	4/11/14	NO	4/11/14
162. Photograph of hole in wall w/ pink marker C1	4/11/14	NO	4/11/14
163. Photograph of hole in window w/ pink marker D1	4/11/14	NO	4/11/14
164. Photograph of pink marker E1	4/11/14	NO	4/11/14
165. Photograph of pink marker E2	4/11/14	NO	4/11/14
166. Photograph of hole in glass w/ pink marker w/ F1	4/11/14	NO	4/11/14
167. Photograph of hole in glass w/ pink marker w/ G1	4/11/14	NO	4/11/14
168. Photograph of hole in glass w/ pink marker w/ H1	4/11/14	NO	4/11/14
169. Photograph of hole in glass w/ pink marker w/ I1	4/11/14	NO	4/11/14
170. Photograph of hole in glass w/ pink marker w/ J1	4/11/14	NO	4/11/14
171. Photograph of hole in glass w/ pink marker w/ K1	4/11/14	NO	4/11/14
172. Photograph of hole in glass w/ pink marker w/ L1	4/11/14	NO	4/11/14
173. Photograph of hole in window w/ pink marker w/ M1	4/11/14	NO	4/11/14
174. Photograph of couch and curtains w/ pink markers	4/11/14	NO	4/11/14
175. Photograph of black table on side w/ pink marker	4/11/14	NO	4/11/14
176. Photograph of curtains, couch, & wall w/ pink markers	4/11/14	NO	4/11/14
177. Photograph of hallway with pink markers and marker 15	4/11/14	NO	4/11/14
178. Photograph of grey couch w/ marker 16 & 17 on it	4/11/14	NO	4/11/14
179. Photograph of couch, curtains w/ pink markers & man lying on floor	4/11/14	NO	4/11/14
180. Photograph of 2 couches, TV & man lying on floor	4/11/14	NO	4/11/14
181. Photograph of couch with orange cone a markers on the wall	4/11/14	NO	4/11/14
182. Photograph of wall w/ pink markers, lamp on floor, iron & toilet paper	4/11/14	NO	4/11/14
183. Photograph of chip in wall bottom part of palm tree	4/11/14	NO	4/11/14
184. Photograph of close up of curtains w/ pink markers	4/11/14	NO	4/11/14
185. Photograph of close pup of material w/ pink marker G3	4/11/14	NO	4/11/14
186. Photograph of hole in wall w/ pink marker G4	4/11/14	NO	4/11/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
187. Photograph of hole in wall w/ pink markers I5 & G5	4/11/14	NO	4/11/14
188. NV DMV Response Vehicle Info	4/11/14	NO	4/11/14
189. Identifiler -PLUS	4/11/14	NO	4/11/14
190. Photograph of set blue latex gloves marked 1 & 2	4/11/14	NO	4/11/14
191. Photograph of 2 photos of blue latex glove (1 glove in each picture (bate stamp 00011))	4/11/14	NO	4/11/14
192. Photograph of 2 photos of blue latex glove (1 glove in each picture (bate stamp 00012))	4/11/14	NO	4/11/14
193. Photograph of The Glock pistol (Item 6)	4/14/14	NO	4/14/14
194. Photograph of Comparison Photo Examples (.40 S&W cc's)	4/14/14	NO	4/14/14
195. Photograph of evidence .40 S&W cc's	4/14/14	NO	4/14/14
196. Photograph of bullet fragments	4/14/14	NO	4/14/14
197. Photograph of Comparison photo examples (all photos: TF from the Glock pi (Item 6) on left Item 29 on right	4/14/14	NO	4/14/14
198. Photograph of Comparison photo examples - 9mm Luger cc's TF's from the S&W pi (Item 4) id'd to Items 14-19	4/14/14	NO	4/14/14
199. Photograph of the Smith & Wesson pistol (Item 4)	4/14/14	NO	4/14/14
200. Photograph of evidence 9mm Luger cc's	4/14/14	NO	4/14/14
201. Photograph of bullet fragments (131105-0479)	4/14/14	NO	4/14/14
202. Judgment of Conviction C263408-3	4/16/14	NO	4/16/14
203. Information C269722-1	4/16/14	NO	4/16/14
204. Information C274118-1	4/16/14	NO	4/16/14
PENALTY PHASE			
205. Photograph of portrait of boy	4/17/14	NO	4/17/14
206. Photograph of man in white shirt w/ arms crossed	4/17/14	NO	4/17/14
207. Photograph of boy and woman	4/17/14	NO	4/17/14
208. Photograph of man and woman with blue jacket	4/17/14	NO	4/17/14
209. Photograph of two men and women in turquoise shirt	4/17/14	NO	4/17/14
210. Photograph of two men and two women	4/17/14	NO	4/17/14
211. Photograph of two men one holding a basket	4/17/14	NO	4/17/14
212. Photograph of group picture w/ man in center w/ red shirt	4/17/14	NO	4/17/14
213. Photograph of man, woman, and two children	4/17/14	NO	4/17/14
214. Photograph of man in white t-shirt, woman and two children	4/17/14	NO	4/17/14
215. Photograph of baby w/ pacifier	4/17/14	NO	4/17/14
216. Photograph of man, woman w/ white hat, and two children	4/17/14	NO	4/17/14
217. Photograph of two pictures w/ man and child	4/17/14	NO	4/17/14
218. Photograph of man and child w/ mirror in background	4/17/14	NO	4/17/14
219. Photograph of child coloring	4/17/14	NO	4/17/14
220. Photograph of man and women sitting on bench	4/17/14	NO	4/17/14
221. Photograph of man holding baby	4/17/14	NO	4/17/14
222. Photograph of two children with Memphis on clothes	4/17/14	NO	4/17/14
223. Photograph of man w/ woman's hat	4/17/14	NO	4/17/14
224. Photograph of baby lying on stomach	4/17/14	NO	4/17/14
225. Photograph of Matthew Washington w/ grey & black jacket on	4/17/14	NO	4/17/14
226. Photograph of Math in blue shirt	4/17/14	NO	4/17/14

STATE'S EXHIBITS**CASE NO. C294695**

	Date Offered	Objection	Date Admitted
227. Photograph of arm w/ tattoos	4/17/14	NO	4/17/14
228. Photograph of hand w/ tattoo "LiL"	4/17/14	NO	4/17/14
229. Photograph of hand w/ tattoo in handcuffs	4/17/14	NO	4/17/14
230. Photograph of stomach w/ tattoo	4/17/14	NO	4/17/14
231. Photograph of chest w/ tattoo of money	4/17/14	NO	4/17/14
232. Photograph of back of neck w/ tattoo	4/17/14	NO	4/17/14
233. Photograph of arm w/ tattoo and handcuff	4/17/14	NO	4/17/14
234. Photograph of arm with tattoo "RICH RR"	4/17/14	NO	4/17/14

DEFENDANT'S EXHIBITS**CASE NO. 230024**

	Date Offered	Objection	Date Admitted
A. Photograph of three children two girls, one boy	4/17/14	NO	4/17/14
B. Photograph of boy and girl in blue shirt	4/17/14	NO	4/17/14
C. Photograph of two girls, one boy with cake	4/17/14	NO	4/17/14
D. Photograph of boy and girl in purple outfit	4/17/14	NO	4/17/14
E. Photograph of women and child w/ flipagram written on it	4/17/14	NO	4/17/14
F. Photograph of boy w/ phone	4/17/14	NO	4/17/14
G. Photograph of three photos w/ flipagram written on it	4/17/14	NO	4/17/14

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

MATTHEW WASHINGTON,

Defendant(s).

Case No: C-13-294695-1

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 16 day of April 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

