

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH LAGUNA, A/K/A JOEY
LAGUNA,

Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
Jun 18 2019 10:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-18-785267-W

Docket No: 78867
Consolidated with 78866

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
JOSEPH LAGUNA #60578,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

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FILED

NOV 30 2018

CLERK OF COURT

Case No. C-15-303991-5

Dept. No. 5

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

JOSEPH LAGUNA #60578
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-18-785267-W
Dept. V

Warden of High Desert State Prison
and the Respondent State of Nevada

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Clark County
2. Name and location of court which entered the judgment of conviction under attack: District Court, Clark County, Nevada
3. Date of judgment of conviction: December 2, 2016
4. Case number: C-15-303991-5
- (a) Length of sentence: Aggregate total sentence is Life with a minimum of 27 years

A-18-785267-W
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Inmate Filed - Petition for Writ of Habeas
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1 (b) If sentence is death, state any date upon which execution is scheduled:....

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

3 Yes No ☒

4 If "yes," list crime, case number and sentence being served at this time:

5

6

7 7. Nature of offense involved in conviction being challenged: *Conspiracy to commit Robbery, Burglary while in*

8 *possession of deadly weapon, Home invasion while in possession of deadly weapon, Juvenile Court & Attempt Robbery with a deadly*
weapon, murder with deadly weapon and Attempt murder with deadly weapon

9 8. What was your plea? (check one)

10 (a) Not guilty ☒

11 (b) Guilty

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

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

17

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

19 (a) Jury ☒

20 (b) Judge without a jury

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

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

23 13. If you did appeal, answer the following:

24 (a) Name of court: *Nevada Supreme Court*

25 (b) Case number or citation: *C-15-303991-5*

26 (c) Result: *AFFIRMED*

27 (d) Date of result: *JANUARY 31, 2018*

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

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

2

3

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

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

7 (a) (1) Name of court:

8 (2) Nature of proceeding:

9

10 (3) Grounds raised:

11

12

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

14 (5) Result:

15 (6) Date of result:

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

17

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

19 (1) Name of court:

20 (2) Nature of proceeding:

21 (3) Grounds raised:

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

23 (5) Result:

24 (6) Date of result:

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

26

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

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

3 (1) First petition, application or motion? Yes No

4 Citation or date of decision:

5 (2) Second petition, application or motion? Yes No

6 Citation or date of decision:

7 (3) Third or subsequent petitions, applications or motions? Yes No

8 Citation or date of decision:

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

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same:

17
18 (b) The proceedings in which these grounds were raised:

19
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.)

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

1 on Direct Appeal. These matters are not properly raised on Direct appeal.....

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

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No *✓*.....

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

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: *TRIAL ATTORNEY, Monique A. McNeill*
13 *DIRECT APPEAL ATTORNEY, Sandra L. Stewart*

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No *✓*.....

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

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

1 (a) Ground ONE: Petitioner received ineffective assistance of trial counsel and appellate
2 counsel in violation of his rights as guaranteed by the Fifth, Sixth and/or Fourteenth
3 amendments to the United States constitution and/or under state law of the Nevada Constit-
4 ution due to the failure of trial counsel to call Grand Jury witness Joseph Larson

5 Supporting FACTS (Tell your story briefly without citing cases or law.): During Grand Jury
6 proceedings Joseph Larson testified that there was 2 perpetrators that he had seen
7 at the scene of the crime on night at question. There were 3 additional defendants
8 charged in this crime. When trial counsel was asked by petitioner to call this
9 witness for defense purposes, this request went ignored. If trial counsel would have
10 called this extremely important witness to the stand, the witness could have proven
11 1) petitioner was not the perpetrator he had seen and 2) that petitioner was not
12 at the scene of the crime at night of question.

13
14 Due to not hearing from this witness,
15 petitioner was left with less than a perfect defense. The benefit from this testimony
16 is obvious and would have further proven petitioners defense of not being on the
17 scene of the crime. The outcome of trial could have been different if jurors
18 could have heard from this witness, yet trial counsel did not call this witness
19 for no reason. Due to this trial counsel was ineffective assistance of counsel
20 in presenting defense witnesses that can prove petitioners innocence.

1 (b) Ground TWO: Petitioner received ineffective assistance of trial counsel and appellate
2 counsel in violation of his rights as guaranteed by the Fifth, Sixth, or Fourteenth
3 Amendments to the United States constitution and/or under state law of trial counsel
4 to call our own phone expert.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Trial counsel failed to call
6 to the stand for testimonial purpose defense's own phone expert. If defense's phone
7 expert would have been called to stand to testify on petitioner Lagunas behalf pet-
8 itioner could have benefited from this experts knowledge on the subject of cell tower
9 placement, cellphone pinging and triangulation. This expert knew more on the subject
10 of this subject than non-experts on this subject and could have presented evidence
11 that would have been positive for defense.

12
13 Yet, because trial counsel was ineffect-
14 ive by calling this witness, petitioner was left with only the detectives limited
15 knowledge on this subject. Due to this fact jurors were subject to one sided evidence.
16 This further prejudiced petitioners defense. If this expert testified it would have
17 changed the outcome of this trial by giving the jurors the opportunity to hear from
18 this expert and his knowledge of his profession on this subject, but because
19 this did not happen petitioner was subject to ineffective assistance of counsel
20 by not calling this expert witness.

21
22 Due to this petitioner was subjected to ineffective
23 assistance of trial counsel.

(c) Ground THREE: Petitioner received ineffective assistance of trial counsel in violation of his rights guaranteed by the Fifth, Sixth or Fourteenth Amendments to the United States Constitution and/or under state law or the Nevada Constitution due to trial counsel's failure to object to testimonial hearsay.

Supporting FACTS (Tell your story briefly without citing cases or law.): During trial there was testimony presented by the father of Joseph Larson presented as a state's witness. Trial counsel failed to object to what this witness stated on the stand. These statements that witness was stating were made by a still living individual that could have been at trial and stated under sworn testimony.

It is the duty of trial counsel to ensure that when violations such as this happens, to object to this line of questioning by state and to make sure things such as what someone else said be considered hearsay. If the jurors would not have heard this statement by non-testifying witness outcome could have been different either by hearing from this person or being instructed to not take in last statements made do to the rules of hearsay testimony.

Due to no objection made by trial counsel, petitioner was further prejudiced by non fair trial proceedings. Due to this trial counsel was ineffective assistance of counsel.

(d) Ground FOUR: Petitioner received ineffective assistance of trial counsel in violation of his rights guaranteed by the Fifth, Sixth, and/or Fourteenth Amendments to the United States Constitution and/or under state law of the Nevada Constitution due to trial counsel's failure to object to Detective Williams' statements on what was shown by "Amanda".

Supporting FACTS (Tell your story briefly without citing cases or law.): During Detective Williams's testimony on his day in trial, Detective Williams testified and stated that Amanda had shown him a location on her iPhone app. This happened several times with no objection from trial counsel on this issue. Petitioner has a right to effective assistance of trial counsel, and part of being an effective trial counsel is objecting at all times during trial. This issue was also recognized by the Nevada Supreme Court.

Petitioner would have benefited from an objection on this issue if it was made.

The outcome of trial could have been different by juror members not hearing this from this detective. Due to the non-objection on this issue, petitioner received ineffective assistance of counsel.

1 (d) Ground ~~Four~~ Five: Petitioner received ineffective assistance of trial counsel in violation
2 of his rights guaranteed by the Fifth, Sixth and/or Fourteenth amendments to the
3 United States Constitution and/or under state law of the Nevada Constitution due to trial
4 counsel's failure to argue Detective Gandy was limited to offering lay testimony.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): During the testimony of
6 Detective Gandy, trial counsel should have argued the fact that Detective Gandy was
7 limited to offering lay testimony. This was recognized by the Nevada Supreme Court.

8
9 Trial counsel has a duty to argue certain facts during trial and should have ~~been~~
10 argued this issue, but because she didn't, petitioner suffered from this testimony with
11 no argument on this subject. Trial outcome could have been different if this was
12 argued. Due to this fact, petitioner was prejudiced by ineffective assistance of counsel.

1 (b) Ground ~~Two~~ Six: Petitioner received ineffective assistance of trial counsel in violation
2 of his rights guaranteed by Fifth, Sixth, and/or Fourteenth amendments to the United
3 States constitution and/or under state law or the Nevada Constitution due to trial
4 counsels opening the door to hearsay during cross-examination of Detective Jensen
5 Supporting FACTS (Tell your story briefly without citing cases or law.): During trial Detective Jensen
6 was cross-examined by trial counsel when trial counsel opened the door to hearsay,
7 therefore inviting error. Nevada Supreme Court recognized this issue stating "any
8 hearsay was occasioned by defense counsels questioning during cross-examination."
9
10 Petitioner was prejudiced by this hearsay that counsel allowed in by line of questioning.
11 Petitioner could have had a different outcome in trial if this line of cross-examination
12 would have never been heard by jurors. Due to this fact petitioner received in-
13 effective assistance of counsel.

1 (a) Ground ~~Seven~~ Seven: Petitioner received ineffective assistance of trial counsel in violation of
2 his rights guaranteed by the Fifth, Sixth, and/or Fourteenth amendments to the United States
3 constitution and/or under state law or the Nevada Constitution due to trial counsel
4 not presenting character witness Darcy Laguna for liable alibi.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Trial counsel was asked by
6 petitioner to call Darcy Laguna as a character witness to the stand to testify to the
7 whereabouts of petitioner on night in question. When asked to do so, counsel only
8 stated "this would be a waste of time to call her because no matter what you're going
9 to get railroaded." If this person would have been called to the stand, petitioner's
10 chances at trial could have been different due to the fact that this witness could have
11 provided information to petitioner's true whereabouts on night in question.

12
13 Petitioner has the right to hear from character witnesses that can ~~best~~ provide the
14 best defense possible. By not calling this witness trial counsel significantly
15 prejudiced defendant's defense. Trial outcome could have been different by providing
16 petitioner with an alibi. Trial counsel was therefore ineffective assistance in the defense
17 of petitioner's right to hear favorable evidence.

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

EXECUTED at High Desert State Prison on the ____ day of the month of July, 2018.

JOSEPH LAGUNA #60578

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

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

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number ____ Does not contain the social security number of any person.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

Joseph Laguna, hereby certify pursuant to N.R.C.P. 5(b), that on this 16 day of the month of Oct, 2018, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

JOSEPH LAGUNA
#60578

-10-

1 JOEY LAGUNA
2 ID No. 60578
3 HIGH DESERT STATE PRISON
4 P.O. BOX 650
5 INDIAN SPRINGS, NV 89070-0650
6 In proper person

FILED
NOV 30 2018
Alvin L. Williams
CLERK OF COURT

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JOSEPH LAGUNA,

14 Defendants.

CASE NO. A-18-785267-W
DEPT. V
DEPT. V

JUSTICE CT. NO.: 14BGJ019E
SUPREME CT. NO.: 71939

15
16 MOTION TO APPOINT COUNSEL

17 DATE OF HEARING: _____
18 TIME OF HEARING: _____

19 COMES NOW, Defendant, JOEY LAGUNA, in proper person and moves this Court for
20 an Order granting him counsel in the proceeding action.

21 This Motion is made and based upon all papers and pleadings on file herein and attached
22 points and authorities.

23 DATED this 12 day of ^{November}~~February~~, 2018.

24
25 Respectfully Submitted:

26 *Joe Laguna*
27 JOEY LAGUNA #60578
28 HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

A-18-785267-W
MAPA
Motion for Appointment of Attorney
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POINTS AND AUTHORITIES

NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition; response to dismiss.

“If the Court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the Court may appoint counsel to represent the petitioner.”

NRS 171.188 Procedure for appointment of attorney for indigent defendant.

“Any defendant charged with a public offense who is an indigent may, be oral statement to the District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to represent him.”

NRS 178.397 Assignment of Counsel.

“Every defendant accused of a gross misdemeanor or felony who is financially unable to obtain counsel is entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the court through appeal, unless he waives such appointment.”

FACTS

The facts this Defendant relies on are as follows:

I am indigent. I was sentenced to life in prison and the direct appeal is finished.

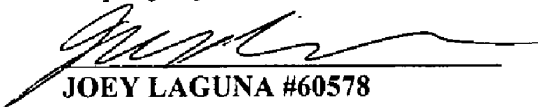
The Remittitur from the Supreme Court of Nevada was issued on January 24, 2018. The Supreme Court noted in its Opinion several mistakes made by the Trial Attorney and thereby I request this Honorable District Court appoint counsel to represent me in preparing the Habeas Petition asserting the ineffective assistance of counsel. The Trial attorney did not object to several issues such as testimony of persons not on the witness list, there was no phone expert to testify on my behalf, and any motions I requested to be filed, were not. In addition, I became

1 blind in my left eye while in Clark County Detention Center and could not read the discovery
2 given to me, even though there was an Order from the Court to obtain glasses, which was
3 needed to read the discovery. The Trial attorney also did not go over any of the discovery with
4 me, which was ineffective assistance of counsel.
5

6 WHEREFORE, Petitioner prays this Honorable Court will grant his Motion for
7 Appointment of Counsel to allow him the assistance that is needed to ensure that justice is
8 served.

9 DATED this 12 day of ^{November}~~February~~, 2018.

10 *Respectfully Submitted:*

11 
12 JOEY LAGUNA #60578
13 HIGH DESERT STATE PRISON
14 P.O. BOX 650
15 INDIAN SPRINGS, NV 89070-0650
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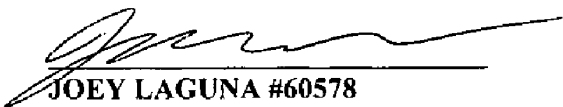
1
2
3 **CERTIFICATE OF SERVICE BY MAILING**

4 I hereby certify, pursuant to NRCP 5(b), that on the ____ day of February, 2018, I mailed
5
6 a true and correct copy of the foregoing **MOTION TO APPOINT COUNSEL** by depositing it
7 in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid addressed as
8 follows:
9

10 **DISTRICT COURT, DEPT. V**
11 **CLARK COUNTY, NEVADA**
12 **ATTN.: COURT CLERK**
13 **200 LEWIS AVENUE**
LAS VEGAS, NEVADA 89155

STEVEN B. WOLFSON, ESQ.
DISTRICT ATTORNEY'S OFFICE
CLARK COUNTY
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155

14
15 **CC: FILE**

16 
17 **JOEY LAGUNA #60578**
18 **HIGH DESERT STATE PRISON**
19 **P.O. BOX 650**
20 **INDIAN SPRINGS, NV 89070-0650**
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Motion to Appoint Counsel
(Title of Document)

filed in District Court Case number C-15-303991-5

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

-OR-

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

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

(State specific law)

-or-

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

[Signature]
Signature

Date

JOEY LAGUNA
Print Name

Title

ORIGINAL

FILED

NOV 30 2018

CLERK OF COURT

Case No. C-15-30399-5

Dept. No. 5

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

A-18-785267-W
Dept. V

JOSEPH LAGUNA
Petitioner,

MOTION FOR THE APPOINTMENT
OF COUNSEL

-vs-

Warden High Desert State Prison
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, JOSEPH LAGUNA, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner JOSEPH LAGUNA, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

A-18-785267-W
MAPA
Motion for Appointment of Attorney
4800129



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2. Petitioner is incarcerated at the _____ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

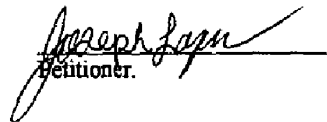
such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

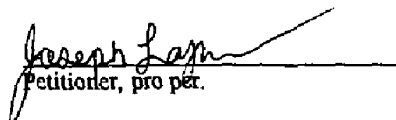
Dated this 16 day of OCT, 2018.


Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 16 day of OCT, 2018.


Petitioner, pro per.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding A motion to

request counsel and petition for ex parte hearing
(Title of Document)

filed in District Court Case No. C-15-303991-5

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

-OR-

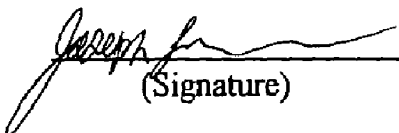
☐ Contains the social security number of a person as required by:

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

(State specific law)

-OR-

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


(Signature)

(Date)

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A-18-785267-W

Case No. C-15-303991-5

Dept. No. 5

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

JOSEPH LAGUNA #60578
Petitioner,

-vs-

State of Nevada
Warden High Desert State Prison
Respondents.

ORDER APPOINTING COUNSEL

Petitioner, JOSEPH LAGUNA, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this _____ day of _____, 20__.

Submitted by:

DISTRICT COURT JUDGE

Petitioner, In Proper Person

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2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

FILED
DEC 14 2018
CLERK OF COURT

4 JOSEPH LAGUNA,

5 *Petitioner,*

CASE NO: A-18-785267-W

6 -VS-
7 WARDEN OF HIGH DESERT STATE
PRISON, STATE OF NEVADA,

DEPT NO: V

8 *Respondent,*

9 ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

10 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
11 November 30, 2018. The Court has reviewed the Petition and has determined that a
12 response would assist the Court in determining whether Petitioner is illegally imprisoned
13 and restrained of his/her liberty, and good cause appearing therefore,

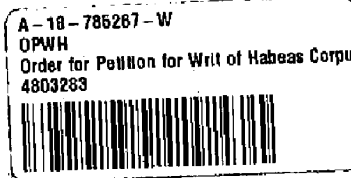
14 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of
15 filing this Order, answer or otherwise respond to the Petition and file a return in accordance
16 with the provisions of NRS 34.360 to 34.830, inclusive, and a printed courtesy copy
17 **SHALL** be delivered to chambers upon filing.


18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this
19 Court's Calendar on Monday the 4th day of February, ²⁰¹⁹~~2018~~, at the hour of 9:00A.M. for
20 further proceedings.

21 DATED this 10th day of December, 2018.

22
23 
24 CAROLYN ELLSWORTH
DISTRICT JUDGE

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1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JONATHAN VANBOSKERCK
6 Chief Deputy District Attorney
7 Nevada Bar #6528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 JOSEPH LAGUNA,
13 #1203205

14 Defendant.

CASE NO: A-18-785267-W
(C-15-303991-5)

DEPT NO: V

15 **STATE'S OPPOSITION TO DEFENDANT'S POST-CONVICTION PETITION FOR**
16 **WRIT OF HABEAS CORPUS, DEFENDANT'S MOTION TO APPOINT COUNSEL,**
17 **AND DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING**

18 DATE OF HEARING: FEBRUARY 4, 2019
19 TIME OF HEARING: 9:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney,
22 and moves this Honorable Court for an order denying the Defendant's Petition for Post-
23 Conviction Relief, Defendant's Motion To Appoint Counsel, and Defendant's Request For
24 Evidentiary Hearing heretofore filed in the above entitled matter.

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

28 ///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 27, 2015, Petitioner Joseph Laguna ("Laguna") was charged by way of
4 Superseding Indictment, with the following: CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN
6 POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060-NOC 50426);
7 HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (Category B
8 Felony- NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A DEADLY
9 WEAPON (Category B Felony- NRS 193.330, 200.380, 193.165 – NOC 50145); MURDER
10 WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030,
11 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
12 (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031). Laguna was
13 charged alongside four co-defendants; Jorge Mendoza, Robert Figueroa, Summer Larsen, and
14 David Murphy in cases C-15-303991-1, C-15-303991-2, C-15-303991-3, and C-15-303991-
15 4, respectively.

16 On April 9, 2015, Laguna filed a pre-trial Petition for Writ of Habeas Corpus. The State
17 filed its Return to Laguna's pre-trial Petition on May 4, 2015. On June 1, 2015, the District
18 Court denied the Petition. After the District Court denied Laguna's Petition, the State advised
19 that it was taking the case back to the Grand Jury to amend the indictment. At the request of
20 counsel, the court entered a plea of Not Guilty to the Second Amended Indictment on behalf
21 of Laguna, but noted the trial date still stood. On May 29, 2015, Defendant was charged by
22 way of Second Superseding Indictment with the same counts as listed in the Superseding
23 Indictment.

24 On September 12, 2016, Laguna's jury trial began. On October 7, 2016, the jury
25 returned its verdict, finding Laguna guilty of Conspiracy to Commit Robbery, Burglary While
26 In Possession of a Deadly Weapon, Home Invasion While In Possession of a Deadly Weapon,
27 two counts of Attempted Robbery with Use of a Deadly Weapon, Second Degree Murder with
28 Use of a Deadly Weapon, and Attempt Murder with Use of a Deadly Weapon.

1 Laguna was sentenced November 28, 2016 as follows: as to COUNT 1, to a
2 MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of TWENTY EIGHT
3 (28) MONTHS; as to COUNT 2, to a MAXIMUM of ONE HUNDRED FIFTY (150)
4 MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, Count 2 to run
5 CONCURRENTLY with Count 1; as to COUNT 3 - to a MAXIMUM of ONE HUNDRED
6 EIGHTY (180) MONTHS and a MINIMUM of SIXTY SIX (66) MONTHS, Count 3 to run
7 CONCURRENTLY with Count 2; as to COUNT 4, to a MAXIMUM of ONE HUNDRED
8 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a
9 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of
10 FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 4 to run
11 CONCURRENTLY with Count 3; as to COUNT 5, to a MAXIMUM of ONE HUNDRED
12 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a
13 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of
14 FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 5 to run
15 CONCURRENTLY with Count 4; as to COUNT 6, to LIFE with a possibility of parole after
16 a term of TEN (10) YEARS have been served, plus a CONSECUTIVE term of TWO
17 HUNDRED FORTY (240) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS for
18 the Use of a Deadly Weapon, Count 6 to run CONCURRENTLY with COUNT 5; as to
19 COUNT 7, to a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a
20 MINIMUM of EIGHTY FOUR (84) MONTHS, plus a CONSECUTIVE term of TWO
21 HUNDRED FORTY (240) MONTHS and a MINIMUM of EIGHTY FOUR (84) MONTHS
22 for the Use of a Deadly Weapon, Count 7 to run CONSECUTIVELY to Count 6; with SIX
23 HUNDRED FIFTY FIVE (655) days credit for time served. Defendant's AGGREGATE
24 TOTAL SENTENCE was thus LIFE, with a MINIMUM of TWENTY SEVEN (27) YEARS.
25 Laguna's Judgment of Conviction was filed December 2, 2016.

26 Laguna filed a Notice of Appeal on December 9, 2016. On January 31, 2018, the
27 Nevada Supreme Court issued an Order affirming Laguna's Judgment of Conviction.
28 Remittitur also issued January 31, 2018.

1 On November 30, 2018, Laguna filed a post-conviction Petition for Writ of Habeas
2 Corpus in case A-18-785267-W. The State's Opposition follows.

3 **STATEMENT OF FACTS**

4 At sentencing, the district court judge relied on the following factual synopsis set
5 forth in Petitioner's Pre-Sentencing Investigation Report ("PSI"):

6 On September 21, 2014, Las Vegas Metropolitan Police Department
7 dispatch received a call from a citizen who reported hearing gunshots
8 near her home. She also reported seeing a male wearing a ski mask
9 and holding a rifle, and another male who was lying near the front
10 door of a residence. Victim #1 then called to report two armed men
wearing ski masks kicked in the front door of his home.

11 Upon arrival, officers located victim #1 inside the residence. They
12 also discovered victim #2, dead from apparent gunshot wounds, lying
13 over the threshold of the front door. Officers located a blood trail in
14 front of the residence and followed the trail looking for suspects or
15 additional victims. A rifle and gloves were located in the bed of a truck
16 parked near the residence. Officers then observed a male inside of a
17 vehicle and ordered him to exit with his hands up. The male, later
18 identified as co-offender Jorge Mendoza, refused to exit and was
19 extracted from the vehicle by officers. Mr. Mendoza was suffering
20 from a gunshot wound to his left thigh. Upon questioning, Mr.
21 Mendoza told officers he was forced out of his vehicle by two men
who shot him in the leg. He also stated he knocked on several doors
in the neighborhood looking for help. He told the officers he thought
he was being chased and hid in an unlocked car to hide. An officer
noticed a white cloth with blood, as well as an orange ski mask on the
front driver's side floorboard. Mr. Mendoza was then transported to a
hospital.

22 Officers continued to follow a separate blood trail for .2 miles which
23 eventually ended on a separate street. It appeared to the officers that
24 the person bleeding may have been picked up by a vehicle. A crime
25 scene analyst examined the crime scene for evidence and discovered
26 two bullet strikes on the stucco black wall across the street from the
27 residence. Additionally, a bullet fragment was found in the street,
28 along with three casings each stamped with "FC 9mm Luger." There
were five casings outside, near the front door of the home and a
noticeable blood trail leading from the front of the home to the street.
Inside the residence there were bullet strikes in the walls and multiple

casings. The downstairs front door was obviously forced open and the interior frame was broken, lying on the floor. Detectives questioned Mr. Mendoza at the hospital. He claimed he was alone that night; however, when detectives told him his "buddy" was also shot he stated, "I don't know what he's gonna tell you. I don't know-I don't know him." Mr. Mendoza's version of events was very disconnected and vague and detectives believed he was being deceptive throughout the interview. Detectives executed a search warrant at Mr. Mendoza's residence where they located a Jennings .22 caliber semi-auto pistol, a .22 caliber AK-47 style rifle and numerous cartridges in a gun safe. On September 22, 2014, detectives spoke with victim #1 who stated his father called him and said he heard victim #1 was going to be robbed in the next few days. Victim #1 stated he then went home and retrieved his gun and waited. As he waited, his roommate, victim #2, came home. Victim #1 then heard a loud boom at the front door.

There was a second bang and the door opened. Victim #1 looked around the wall of the kitchen and saw a man wearing an orange ski mask, carrying a rifle style gun and another person behind him. Victim #1 stated he fired two shots from his Glock 40 and believed he struck one of the men. The men then began firing at the victims. Victim #1 continued to fire several more rounds and the men eventually left the residence and the shooting stopped for approximately 30 seconds. The victims then made their way to the front door. As victim #2 reached to close the door, victim #1 heard a gunshot and victim #2 dropped in the doorway. Victim #1 retreated back and began to look for a phone. He located a phone and called his father and then 911.

Detectives then spoke with a woman who stated the co-offender, Summer Larsen asked her to pick her up a few days prior to the incident and take her to the store. When they arrived, an unknown male got into her vehicle. She stated she then heard Ms. Larsen and the male discussing a robbery that would occur on Sunday. The woman believed they were planning on robbing Ms. Larsen's husband, victim #1, who she was separated from. Ms. Larsen also told her she was responsible for prior burglaries at the home of victim #1.

On October 16, 2014, detectives received information from an individual who stated he buys marijuana from a male, later identified as the co-offender Robert Figueroa. He stated that around the time of the home invasion Mr. Figueroa went missing. Approximately one week later, the male made contact with Mr. Figueroa who told him the following: Mr. Figueroa kicked in the door of the residence and entered with Mr. Mendoza and another male. The home owner shot at

1 them as they forced their way into the home. Mr. Figueroa was shot
2 in the face and left side of his body and Mr. Mendoza was shot in the
3 leg. He stated the third male ran away unharmed and Mr. Mendoza
4 was caught by police a short distance from the house. Mr. Figueroa
5 also told the male, his girlfriend drove him to California to receive
6 medical attention to avoid detection by LVMPD. The male also told
7 detectives that Mr. Figueroa buys marijuana from victim #1 and that
8 the victim supposedly had multiple pounds of marijuana at the time
9 of the home invasion. On October 20, 2014, detectives with the
10 LVMPD Criminal Apprehension Team (CATS) set up surveillance at
11 Mr. Figueroa's apartment. A short time later, Mr. Figueroa exited the
12 apartment and was taken into custody. Detectives immediately
13 noticed a bullet wound on his lower lip area and bullet wounds to his
14 left torso and back. Upon questioning, Mr. Figueroa told detectives he
15 arrived at the residence to buy marijuana and noticed the front door
16 open. As he neared the open door, he was shot and fled the area. He
17 then returned a short time later and drove his car away. Detectives
18 explained to him that police were on the scene in a very short time and
19 questioned his story about returning to get his car. Mr. Figueroa just
20 stared blankly into space and did not offer any more to his version of
21 events. When asked where he was treated for his injuries, Mr.
22 Figueroa stated he was going to need an attorney.

23 On October 24, 2016, detectives met with Mr. Figueroa and his
24 attorney at the Clark County Detention Center. Mr. Figueroa stated he
25 was contacted by his friend, "Maton," later identified as the defendant
26 Joseph Laguna. Mr. Figueroa was told that Mr. Laguna and a male he
27 knew as "DuBoy," later identified as co-offender David Murphy,
28 knew the location of a "stash house" and planned to commit a robbery
there. Mr. Figueroa stated Mr. Murphy picked him up with Mr.
Laguna in the front seat, while he and Mr. Mendoza were in the
backseat. Mr. Figueroa said he was armed with a .40 caliber, Mr.
Mendoza had a rifle and Mr. Laguna had a .38 caliber revolver. Mr.
Figueroa stated he kicked the door of the residence open and all three
men entered the stash house. Mr. Murphy stayed in the vehicle which
was parked down the street. As he entered the house, he was shot in
the mouth and went down. He then got up and began to run out of the
house and was shot again in the left side of his back. He eventually
ran away and hid in a backyard before he called his sister to pick him
up. Mr. Figueroa said he believed Mr. Murphy's girlfriend, identified
as Ms. Larsen, told Mr. Laguna about the stash house and also
believed there was 30 pounds of marijuana in the stash house. Further,
Mr. Figueroa said the .40 caliber pistol he used during the home
invasion was at his girlfriend's apartment.

1 On November 18, 2014, Ms. Larsen was arrested on a warrant for
2 charges related to the home invasion. While in custody, detectives
3 heard Ms. Larsen speaking with a male she referred to as
4 "Doughboy." During one of her calls, Ms. Larsen asked Doughboy
5 for his address, which was determined to match the address of Mr.
6 Murphy. On December 10, 2014, detectives spoke with victim #1 who
7 positively identified Mr. Murphy as Doughboy and stated Mr. Murphy
8 and Ms. Larsen were friends. Detectives then spoke with the father of
9 victim #1 who also positively identified Mr. Murphy as Doughboy.
10 He also stated he heard rumors that after Ms. Larsen and victim #1
11 separated; Ms. Larsen began dating Mr. Murphy.

12 On December 11, 2014, officers located Mr. Murphy during a traffic
13 stop. Mr. Murphy was transported to LVMPD Homicide and
14 questioned by detectives. Mr. Murphy stated he knew he was there
15 because of something between Ms. Larsen and victim #1 and admitted
16 he knew them both. Further, Mr. Murphy denied any involvement
17 with the murder and home invasion that occurred at the victim's
18 residence.

19 On February 13, 2015, Mr. Laguna was arrested and transported to
20 LVMPD Homicide and interviewed by detectives. During the
21 interview, Mr. Laguna related the following: he recognized the photos
22 of Mr. Mendoza, Mr. Murphy and Mr. Figueroa and did not recognize
23 the photos of the victims. Additionally, Mr. Laguna denied any
24 knowledge of the home invasion and stated he was never there. Based
25 on the above facts, Mr. Mendoza, Mr. Figueroa, Mr. Laguna, Mr.
26 Murphy and Ms. Larsen were booked accordingly at the Clark County
27 Detention Center.

28 Pre-Sentence Investigation Report at 6-8.

ARGUMENT

Laguna has brought seven grounds for relief in his Petition for Writ of Habeas Corpus, all of which allege ineffective assistance on the part of trial and/or appellate counsel. For the reasons set forth below, all of Laguna's claims of ineffective assistance of counsel are without merit. As none of Laguna's claims have merit, he is not entitled to an evidentiary hearing. Finally, Laguna has failed to show that he should be appointed counsel. For the following reasons, Laguna's post-conviction Petition for Writ of Habeas Corpus, his Request for Evidentiary Hearing, and his Motion to Appoint Counsel should be denied.

1 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
2 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his
3 defense.” The United States Supreme Court has long recognized that “the right to counsel is
4 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
5 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
6 (1993).

7 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
8 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
9 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
10 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
11 representation fell below an objective standard of reasonableness, and second, that but for
12 counsel's errors, there is a reasonable probability that the result of the proceedings would have
13 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State
14 Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-
15 part test). “[T]here is no reason for a court deciding an ineffective assistance claim to approach
16 the inquiry in the same order or even to address both components of the inquiry if the defendant
17 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

18 The court begins with the presumption of effectiveness and then must determine
19 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
20 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
21 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
22 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
23 537 P.2d 473, 474 (1975).

24 Counsel cannot be ineffective for failing to make futile objections or arguments. See
25 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
26 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
27 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
28 (2002).

1 Based on the above law, the role of a court in considering allegations of ineffective
2 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
3 whether, under the particular facts and circumstances of the case, trial counsel failed to render
4 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
5 (1978). This analysis does not mean that the court should “second guess reasoned choices
6 between trial tactics nor does it mean that defense counsel, to protect himself against
7 allegations of inadequacy, must make every conceivable motion no matter how remote the
8 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
9 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
10 cannot create one and may disserve the interests of his client by attempting a useless charade.”
11 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

12 “There are countless ways to provide effective assistance in any given case. Even the
13 best criminal defense attorneys would not defend a particular client in the same way.”
14 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
15 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
16 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
17 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
18 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
19 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

20 Even if a defendant can demonstrate that his counsel's representation fell below an
21 objective standard of reasonableness, he must still demonstrate prejudice and show a
22 reasonable probability that, but for counsel's errors, the result of the trial would have been
23 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
24 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
25 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
26 89, 694, 104 S. Ct. at 2064-65, 2068).

27 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
28 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of

1 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
2 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
3 be supported with specific factual allegations, which if true, would entitle the petitioner to
4 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
5 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
6 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
7 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your
8 petition to be dismissed.” (Emphasis added). A defendant who contends his attorney was
9 ineffective because he did not adequately investigate must show how a better investigation
10 would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192,
11 87 P.3d 533, 538 (2004).

12 **I. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
13 **CALL WITNESS JOSEPH LARSEN**

14 Laguna argues in Ground One of his Petition that trial and appellate counsel were
15 ineffective for failing to call witness Joseph Larsen¹ to testify, as Larsen “could have proven
16 1) petitioner was not the perpetrator he had seen and 2) that petitioner was not at the scene of
17 the crime at night of question.” Petition at 6.

18 First, while Laguna inexplicably claims appellate counsel was ineffective for actions
19 that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such
20 conclusory statements of ineffective assistance of appellate counsel, unaccompanied by claims
21 of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at 502,
22 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim that appellate
23 counsel was ineffective for failure to call a witness at trial is suitable for summary dismissal.

24 Second, both of Laguna’s conclusory statements fail to specifically identify any helpful
25 statements Larsen would have given, and merely allege that Larsen’s testimony “could” have
26 helped Laguna at trial. Such conclusory statements of ineffective assistance, unaccompanied

27 ¹ In the Pre-Sentence Investigation Report, Joseph Larsen is referred to as “Victim 1,” one of the occupants of 1661
28 Broadmere, the home in which the subject crimes occurred. “Victim 2” refers to the deceased victim Monty Gibson,
roommate of Joseph Larsen.

1 by claims of specific factual information, do not entitle the petitioner to relief. Hargrove, 100
2 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim
3 on this issue is suitable for summary dismissal.

4 However, in the event that this court considers Laguna's bare and naked assertions
5 factually sufficient, such assertions are belied by the record and thus Laguna cannot
6 demonstrate that he was prejudiced by trial counsel's strategic decision not to call Larsen as a
7 witness. Larsen first testified before the Grand Jury on January 29, 2015. Grand Jury
8 Transcript, Volume 2 at 67-95. From the first question posed of him, Larsen revealed himself
9 to be a hostile and unhelpful witness:

10 EXAMINATION

11 BY MS. LEXIS:

12 Q. Mr. Larsen, on September 21, 2014, did you live at an address
13 called 1661 Broadmere Street here in Las Vegas, Clark County,
14 Nevada?

15 A. Ma'am, I refuse to testify.

16 Q. Okay. Mr. Larsen, you are a witness for the State of Nevada so I'm
17 going to need you to please answer my questions. Okay? Joey?

18 A. I refuse to, ma'am.

19 Q. Okay. Why do you refuse to testify before this Grand Jury, Joey?

20 A. I just don't want to.

21 Q. You have to Joey. You're here by order of the District Court and
22 by this Grand Jury. You have to be here today.

23 A. I'm here.

24 Q. Joey, why is it that you do not want to testify before this Grand
25 Jury? Did something happen on September 21, 2014 that you're not
26 wanting to testify about?

27 A. I'm sorry, ma'am, I don't want to answer any questions.
28

1 Q. Joey, did something happen on September 21, 2014 that caused us
2 to subpoena you today?

3 A. I'm sorry, ma'am, I don't want to answer any questions.

4 Q. Joey, I'm going to ask you to leave the room. I need to speak with
5 the Grand Jury.

6 (At this time, witness Joseph Larsen exits the proceedings.)

7 MS. LEXIS: Mr. Foreperson, at this point I will be contacting the
8 chief judge, Judge Barker, and I will be asking to bring Mr. Joey
9 Larsen before Judge Barker to hold a contempt hearing.

10 Id at 67-68.

11 It was only after Larsen was made aware that failing to testify to the Grand Jury could
12 result in a finding of contempt that he eventually capitulated and gave his testimony. Contrary
13 to Laguna's assertions that Larsen's testimony would have provided some sort of alibi defense
14 by proving that Laguna was not at the scene of the crime, Larsen's testimony showed that as
15 he was in the house during the occurrence of the crime, he could not have testified as to
16 Laguna's presence at any other location during the crime. Id at 76-96. While Laguna's
17 assertion that Larsen saw only two people at the home is correct, the resultant inference that
18 Laguna could not have been one of the co-defendants is fatally flawed. Larsen testified that
19 he saw two people wearing masks enter the home that evening. Id at 76-84. Larsen thus could
20 not have testified that Laguna was not at the scene; given the masks worn by the two people
21 who entered the home, Larsen had no factual basis to testify that either of those people were
22 or were not Laguna. At best, Larsen's testimony would have indicated that he could not verify
23 that Laguna was present at the home on the night of the subject crimes, which is insufficient
24 to support an alibi defense.

25 Further, even if Larsen testified that he could not be 100% certain that Laguna was at
26 the home that evening, there was overwhelming evidence presented at trial that Laguna was
27 at the home and intricately involved with the criminal conspiracy. Larsen's excited utterances
28 to his family about what he saw at the scene were introduced into evidence through his wife,

1 Summer Larsen, and his father, Steven Larsen, as well as Larsen's 911 calls made shortly after
2 the subject crimes. Trial Transcript, Day 5-19. Further, cell phone tracking data, introduced
3 through State's expert Detective Gandy, placed Laguna in the neighborhood of 1661
4 Broadmere at the time of the subject crimes. Trial Transcript, Day 9. Finally, Laguna's own
5 co-defendant Robert Figueroa testified that Laguna called him and told him he had a "lick
6 (robbery)" lined up, and that he wanted Figueroa to help him with it. Trial Transcript, Day 10,
7 at 218-219. Laguna even called Figueroa later in the day to ensure that Figueroa would help
8 with the robbery. Id at 234. Figueroa's testimony ultimately places himself, Laguna, and the
9 two other male co-defendants at the scene of the crimes together on that night. Id at 241.

10 In the face of the overwhelming evidence that Laguna was indeed at the scene and
11 intricately involved in the subject crimes, the strategic decision of choosing not to call Jason
12 Larsen, a hostile and unhelpful witness with no factual basis to rebut testimony that Laguna
13 was present at the scene, does not constitute ineffective assistance of counsel as Laguna cannot
14 show that he was prejudiced by the absence of Larsen's testimony. As set forth in Dawson,
15 108 Nev. at 117, 825 P.2d at 596, strategic decisions, including which witnesses counsel
16 decides to call at trial, are almost unchallengeable. Further, trial counsel was not required to
17 call a witness whose testimony would have been futile to support an alibi defense. See Ennis,
18 122 Nev. at 706, 137 P.3d at 1103 (noting counsel cannot be ineffective for failing to make
19 futile objections or arguments); Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002). (noting trial
20 counsel has the "immediate and ultimate responsibility of deciding if and when to object,
21 which witnesses, if any, to call, and what defenses to develop.").

22 Laguna's bare, naked assertions regarding ineffective assistance of counsel in regards
23 to the strategic decision not to call witness Joseph Larsen are thus without merit and belied by
24 the record. Thus, Laguna has failed to show that trial counsel's actions fell below an objective
25 standard of reasonableness, nor has he shown that he suffered prejudice from the absence of
26 Larsen's testimony, nor has he shown that the results of the trial would have been different
27 had Larsen testified. For these reasons, Ground One of Laguna's Petition should be denied.

1 **II. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
2 **ELICIT TESIMONY FROM A CELLULAR PHONE EXPERT**

3 Laguna argues in Ground Two of his Petition that trial and appellate counsel were
4 ineffective for failing to call a better cellular phone expert than the expert called by the State,
5 as “[t]his expert knew more on the subject of this subject than non-experts on this subject and
6 could have presented evidence that would have been positive for defense.” Petition at 7.

7 First, while Laguna inexplicably claims appellate counsel was ineffective for actions
8 that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such
9 conclusory statements of ineffective assistance of appellate counsel, unaccompanied by claims
10 of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at 502,
11 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim that appellate
12 counsel was ineffective for failure to call an expert witness at trial is suitable for summary
13 dismissal.

14 Second, although it appears Laguna was referring to a specific expert in his reference
15 to “[t]his expert,” Laguna does not identify a specific expert by name, nor does he set forth
16 any specific factual information as to what such an expert would have testified to. Laguna
17 only makes the bare, naked allegations that such an expert “could have presented evidence
18 that would have been positive for defense.” Petition at 7. Just as in Ground One, Laguna’s
19 conclusory statement fails to specifically identify any helpful testimony that a competing
20 cellular phone expert would have given, and merely allege that such an expert’s testimony
21 “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance,
22 unaccompanied by claims of specific factual information, do not entitle the petitioner to relief.
23 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6),
24 Laguna’s claim on this issue is suitable for summary dismissal.

25 Third, the substance of Laguna’s claim is more properly brought as a failure to
26 investigate claim, in that Laguna alleges further investigation of the cell tower records would
27 have uncovered evidence showing that Laguna was not in the vicinity of the crimes on the
28 night in question. However, this claim also fails, as Laguna offers nothing but vague

1 supposition that expert witness testimony would have provided “evidence that would have
2 been positive.” Petition at 7. Laguna offers no argument that the State’s expert witness’s
3 testimony was factually inaccurate, nor that the State’s expert came to an inaccurate
4 conclusion regarding the whereabouts of Laguna on the night of the subject crimes. Such a
5 bare, naked assertion is not sufficient to warrant relief under Hargrove. Further, pursuant to
6 Molina, 120 Nev. at 192, 87 P.3d at 538, a defendant who contends his attorney was ineffective
7 because she did not adequately investigate must show how a better investigation would have
8 rendered a more favorable outcome probable. Laguna’s vague assertions do not establish how
9 a better investigation would have rendered a more favorable trial outcome more probable.

10 Fourth, just as in Ground One, the decision whether to call certain witnesses is
11 counsel’s prerogative, and such strategic decisions are “virtually unchallengeable.” Dawson,
12 108 Nev. at 117, 825 P.2d at 596. Laguna fails to allege a flawed methodology in how the
13 State’s expert interpreted the cell tower information to show Laguna’s whereabouts on the
14 night of the subject crimes, therefore it would have been a futile argument to suggest that
15 competing expert’s testimony would have been helpful to Laguna’s case; counsel cannot be
16 ineffective for failing to advance futile arguments. See Ennis, 122 Nev. at 706, 137 P.3d at
17 1103.

18 Just as in Ground One, Laguna has not shown that trial counsel’s actions fell below an
19 objective standard of reasonableness, nor has he shown that he suffered prejudice from the
20 absence of expert witness testimony regarding cellular phones, nor has he shown that the
21 results of the trial would have been different had trial counsel called a competing expert to
22 rebut the State’s expert testimony. For these reasons, Ground Two of Laguna’s Petition should
23 be denied.

24 **III. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
25 **TO TESTIMONY FROM STEVEN LARSEN**

26 Laguna argues in Ground Two of his Petition that trial counsel was ineffective for
27 failing to object to statements made at trial by Steven Larsen, father of victim Joseph Larsen.
28 Laguna alleges that such statements were improper as “[t]hese statements that witness was

1 stating were made by a still-living individual that could have been at trial and stated under
2 sworn testimony.” Petition at 8. It appears Laguna is arguing that portions of Steven Larsen’s
3 testimony were hearsay, and that counsel was ineffective to failing to object to such hearsay.

4 First, although it appears Laguna was referring to hearsay statements, Laguna does not
5 identify a specific hearsay statement or set of hearsay statements made by Steven Larsen, thus
6 it is effectively impossible to determine whether such statements were or were not hearsay.
7 Laguna only makes the bare, naked allegations that “[i]f the jurors would not have heard this
8 statement by non-testifying witness² outcome could have been different either by hearing from
9 this person or being instructed to not take in last statements made....” Petition at 8. Just as in
10 Grounds One and Two, Laguna’s conclusory statement fails to specifically identify any
11 hearsay statements allegedly given, and merely allege that the absence of such statements
12 “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance,
13 unaccompanied by claims of specific factual information, do not entitle the petitioner to relief.
14 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6),
15 Laguna’s claim on this issue is suitable for summary dismissal.

16 Second, contrary to Laguna’s assertions, trial counsel did object—three separate
17 times—to Steven Larsen’s testimony on the grounds that his statements constituted hearsay:

18 Q. And what is the - - what does your son tell you about what occurred
19 inside the residence?

20 MS. McNEILL: Objection.

21 MR. LANDIS: Can we approach?

22 THE COURT: Yes.

23 (Off-record bench conference)

24 BY MR. DiGIACOMO: I’ll ask it again. What did your son sort of
25 tell you about what happened inside the house?

26 ***

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² Presumably Joseph Larsen.

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Q. Based upon all of that, you felt comfortable or at least you believed that Summer's involved? Is that fair?

A. Oh, yeah. I have no doubt in my mind.

Q. So let me ask you, did Joseph at least initially believe that Summer had anything to do with it?

MR. LANDIS: Objection.

MS. McNEILL: Objection. Speculation and hearsay.

MR. DiGIACOMO: Let me rephrase.

THE COURT: Yeah. I'm going to sustain that so go ahead.

Q. Did you see Joseph doing things or behaving in certain manners that indicated to you that he's still in a relationship with Summer?

A. Yes.

Q. What did he do?

A. He told me that - -

MS. McNEILL: Objection.

Q. Without telling us what he told you.

A. Oh.

Trial Transcript, Day 9, at 27-34.

Laguna's claims that counsel failed to object to hearsay statements is plainly belied by the record. Trial counsel Monique McNeill objected on multiple occasions to statements that could be construed as hearsay. Further, the court sustained one of those objections, and the State agreed after other objections to either rephrase its questions or direct the witness not to answer in a way that such an answer would constitute hearsay. Thus, even if those statements were hearsay, trial counsel's timely objections, as well as the court and state's responses to

1 such objections, removed any prejudice that such statements would have had. As Laguna's
2 claim is belied by the record, it should be dismissed pursuant to Hargrove; further, as counsel's
3 proper objections prevented the jury from considering hearsay testimony, Laguna cannot show
4 that he was prejudiced by such statements. As Laguna cannot show prejudice, he has failed to
5 establish the second prong of McNelson, which requires he demonstrate prejudice and show a
6 reasonable probability that, but for counsel's alleged errors, the result of the trial would have
7 been different. 115 Nev. at 403, 990 P.2d at 1268.

8 Third, in the event that this court finds Laguna's claim in Ground Three establishes a
9 claim that counsel was ineffective for failing to call Joseph Larsen to testify as to what Steven
10 Larsen testified to at trial, such a claim has already been addressed in Ground One of Laguna's
11 Petition. The State hereby reincorporates its opposition to that claim here.

12 Just as in Grounds One and Two, Laguna has not shown that trial counsel's actions fell
13 below an objective standard of reasonableness, nor has he shown that he suffered prejudice
14 from Steven Larsen's alleged hearsay statements. Further, Laguna cannot show that the results
15 of the trial would have been different had trial counsel objected to Steven Larsen's hearsay
16 statements, as the record shows that trial counsel did exactly that. Laguna's claims in Ground
17 Three are belied by the record and fail to establish ineffective assistance of counsel for multiple
18 reasons. For these reasons, Ground Three of Laguna's Petition should be denied.

19 **IV. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
20 **TO TESTIMONY FROM DETECTIVE WILLIAMS**

21 Laguna argues in Ground Four of his Petition that trial counsel was ineffective for
22 failing to object to statements made at trial by Detective Tod Williams concerning what he
23 was told by Amanda Mendoza regarding an iPhone location app. Laguna alleges that "a part
24 of being affective [sic] trial counsel is objecting at all times during trial." Petition at 8. It
25 appears that Laguna is arguing that Detective Williams's testimony regarding what Ms.
26 Mendoza told him was hearsay, rather than the nonsensical assertion that trial counsel is under
27 some duty to object "at all times during trial."
28

1 First, just like in Grounds One, Two, and Three, although it appears Laguna was
2 referring to hearsay statements, Laguna does not identify a specific hearsay statement or set
3 of hearsay statements made by Detective Williams, thus it is effectively impossible to
4 determine whether such statements were or were not hearsay. Laguna only makes the bare,
5 naked allegations that “[t]he outcome of trial could have been different by juror members not
6 hearing this from this detective.” Petition at 9. Just as in Grounds One, Two, and Three,
7 Laguna’s conclusory statement fail to specifically identify any hearsay statements allegedly
8 given, and merely allege that the absence of such statements “could” have helped Laguna at
9 trial. Such conclusory statements of ineffective assistance, unaccompanied by claims of
10 specific factual information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at 502,
11 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim on this issue
12 is suitable for summary dismissal.

13 Second, Laguna’s claims that counsel was ineffective for failing to object to a hearsay
14 statement by Detective Williams is without merit, as Detective Williams’ statements made at
15 trial were not hearsay. Laguna’s claim is meritless because Williams neither relayed a
16 statement Amanda made to him, nor was Williams’ observation given for the truth of the
17 matter asserted.

18 At trial, Michelle Estavillo testified that Amanda Mendoza used an app on her phone
19 to ping Mendoza’s location in an attempt to find him after he disappeared with his car and
20 would not return her phone calls. Trial Transcript, Day 7 at 95-141. At the time, co-defendant
21 Jorge Mendoza had already been apprehended by police from the scene of the crime and was
22 receiving treatment at University Medical Center. Id. Murphy later came to pick Amanda up
23 and take her to the car, which was present by 2:00 a.m. the next day when police arrived. Id.

24 Later, Detective Williams testified about his experience interviewing Amanda
25 Mendoza. Trial Transcript, Day 9 at 113-150. Detective Williams testified that he observed a
26 location on an iPhone app on Amanda’s phone, and that he later went to that location. Id. The
27 State introduced a map and asked Detective Williams if the map showed the location that he
28 observed on the app. Id.

1 It is unclear how Laguna believes this could be hearsay. Hearsay requires a “statement,”
2 and a “statement” must be an oral or written assertion, or some nonverbal conduct by a person
3 intended to make an assertion. NRS 51.035-45. Moreover, hearsay requires a declarant, which
4 must be a person. NRS 51.025. Laguna cites to no authority that an inanimate object makes
5 an “assertion” subject to the hearsay rule, and an inanimate object is certainly not a “person,”
6 and so can neither be a declarant nor can it make a nonverbal assertion. The California
7 Supreme Court and some federal courts have held that machines are not declarants for
8 purposes of the Confrontation Clause. See People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469,
9 478 (Cal. 2012) (noting agreement with federal courts). Regardless, Detective Williams’
10 observation of the information displayed on the phone screen would not be excluded as
11 hearsay under the silent witness doctrine since the image on the phone “speaks for itself” in
12 much the same way as a video does. See, Rogers v. State, 902 N.E.2d 871, 876 (Ind. Ct. App.
13 2009); McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005); Edwards v. State, 762 N.E.2d 128,
14 136 (Ind. Ct. App. 2002); Wagner v. State, 707 So. 2d 827, 830 (Fla. Dist. Ct. App. 1998).

15 Although Laguna makes no cogent arguments regarding hearsay in his Petition, the
16 State assumes that Laguna is arguing that in some manner Amanda was making a statement
17 through her phone. Petition at 9. Even assuming, arguendo, that this could be the case, where
18 Amanda went to retrieve her car was not what Detective Williams testified to. Detective
19 Williams said that he went to a location that he saw on Amanda’s phone. Trial Transcript, Day
20 9 at 113-150. Defense counsels objected, on differing grounds, when Williams was asked
21 whether he recognized on a map the location that he went to after observing a location on a
22 phone. Id. None of these are statements, and the Court overruled the objection. Id. Even if,
23 somehow, this could be construed as a “statement,” it was not offered for the truth of the matter
24 asserted (presumably that is where Amanda went to retrieve the car) but to explain why
25 Detective Williams went to that location. Under no plausible analysis, then, is an observation
26 of a phone hearsay.

1 Laguna's argument on this claim has, in fact, already been examined by the Nevada
2 Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939. The relevant analysis and
3 holding are as follows:

4 Laguna next argues the district court improperly allowed hearsay
5 evidence by admitting Detective Williams' testimony of Amanda
6 Mendoza's statements regarding the app she used to locate accomplice
7 Jorge Mendoza's phone. Defense counsel did not object to this
8 testimony below, and we therefore review for plain error. Rimer v.
9 State, 131 Nev. ___, ___, 351 P.3d 697, 715 (2015) (holding that to
10 prevail under a plain error review a defendant must show both that the
11 error is apparent from a casual inspection of the record and that the
12 error was prejudicial, affecting the defendant's substantial rights). We
13 conclude Laguna has failed to show plain error in this instance,
14 because *even assuming, arguendo, this is hearsay apparent from a*
15 *casual inspection of the record, Laguna has not shown how this*
16 *evidence prejudiced his case in light of the substantial evidence*
17 *placing him at the scene of the crime, including the accomplices'*
18 *testimonies and the cell phone records.*

19 Order of Affirmance at 3-4 (emphasis added).

20 The Court of Appeals' holding that Laguna did not demonstrate prejudice even if
21 Detective Williams' statements were hearsay is significant, as the level of prejudice necessary
22 to establish an ineffective assistance of counsel claim is the same as that necessary to find
23 plain error. See Gordon v. United States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("the
24 'substantial rights' standard of plain error review is identical to the 'prejudice' standard of an
25 ineffective assistance claim.") Thus, regardless of whether trial counsel should have objected
26 Detective Williams' statement, Laguna cannot show the level of prejudice necessary to
27 establish an ineffective assistance of counsel claim.

28 Fourth, Laguna's claim in Ground Four is procedurally barred. NRS 34.810 provides
in pertinent part that:

1. *The court shall dismiss a petition if the court determines that:*
 - (a) The petitioner's conviction was upon a plea of guilty or guilty
but mentally ill and the petition is not based upon an allegation that

1 the plea was involuntarily or unknowingly entered or that the plea was
2 entered without effective assistance of counsel.

3 (b) *The petitioner's conviction was the result of a trial and the*
4 *grounds for the petition could have been:*

5 (1) Presented to the trial court;

6 (2) *Raised in a direct appeal* or a prior petition for a writ of
7 habeas corpus or postconviction relief; or

8 (3) Raised in any other proceeding that the petitioner has
9 taken to secure relief from the petitioner's conviction and sentence,
10 unless the court finds both cause for the failure to present the grounds
11 and actual prejudice to the petitioner.

12 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
13 *pleading and proving specific facts that demonstrate:*

14 (a) *Good cause for the petitioner's failure to present the claim or*
15 *for presenting the claim again; and*

16 (b) *Actual prejudice to the petitioner.*

17 (emphasis added).

18 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his claim
19 in Ground Four could have been—and was—raised in his direct appeal, Laguna must show
20 both good cause for bringing this claim again in the instant Petition and that he would suffer
21 actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As the
22 Court of Appeals has already determined that Laguna failed to show that he suffered actual
23 prejudice, he has already failed to meet his burden under NRS 34.810(3). Further, Laguna
24 advances no argument whatsoever that he has good cause for presenting this claim again in
25 the instant Petition. For those reasons, Laguna's claim that counsel was ineffective for failing
26 to object to hearsay statements from Detective Williams is procedurally barred pursuant to
27 NRS 34.810.

28 Just as in all grounds alleged thus far, Laguna has not shown that trial counsel's actions
fell below an objective standard of reasonableness, nor has he shown that he suffered prejudice
from Detective Williams' alleged hearsay statements. Further, Laguna cannot show that the
results of the trial would have been different had those alleged hearsay statements regarding
information shown on the iPhone app had not been presented before the jury, as the record
shows that there was overwhelming evidence that Laguna was present at the scene of the

1 crimes. Laguna's claims in Ground Four are without legal merit, are procedurally barred, and
2 fail to establish ineffective assistance of counsel for multiple reasons. For these reasons,
3 Ground Four of Laguna's Petition should be denied.

4 **V. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
5 **TO ARGUE THAT DETECTIVE GANDY SHOULD BE LIMITED TO**
6 **LAY TESTIMONY**

7 Laguna argues in Ground Five of his Petition that trial counsel was ineffective for
8 failing to object to statements made at trial by Detective Christopher Gandy, who testified as
9 an expert regarding how cellular phones work, how phones interact with towers, and the
10 interpretation of that information. Laguna alleges that "trial counsel should have argued the
11 fact that Detective Gandy was limited to offering lay testimony." Petition at 9.

12 First, keeping with Laguna's exhausting pattern of unsubstantiated claims, just as in
13 Grounds One, Two, Three, and Four, it appears Laguna is challenging Detective Gandy's
14 designation as an expert witness under NRS 50.275 and Hallmark v. Eldridge, 124 Nev. 492,
15 499, 189 P.3d 646, 650 (2008). However, Laguna fails to set forth any specific claim that the
16 court somehow wrongly concluded that Detective Gandy was qualified to testify as an expert
17 witness. Laguna only makes the bare, naked, and vague allegations that "[t]rial counsel has a
18 duty to argue certain facts during trial and should have argued this issue, but because she didn't
19 petitioner suffered from this testimony with no argument [sic] on this subject." Petition at 9.
20 Just as in Grounds One, Two, Three, and Four, Laguna's conclusory statement fails to
21 specifically identify any reasons why Detective Gandy should not have been permitted to
22 render expert testimony, and merely alleges that the trial outcome "could" have been different
23 if this was argued. Such conclusory statements of ineffective assistance, unaccompanied by
24 claims of specific factual information, do not entitle the petitioner to relief. Hargrove, 100
25 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim
26 on this issue is suitable for summary dismissal.

1 Second, just as in Ground Four, Laguna's argument on this claim has already been
2 examined by the Nevada Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939.

3 The relevant analysis and holding are as follows:

4 Laguna first contends Detective Gandy's expert testimony was
5 improper because he was limited to testifying as a lay witness and his
6 testimony pinpointing cell phone locations exceeded this scope. Laguna notes that prior to trial the State failed to provide to him with
7 the evidence upon which Detective Gandy testified. We generally
8 review the district court's decision to admit testimony for an abuse of
9 discretion, Brant v. State, 130 Nev. ___, 340 P.3d 576, 579 (2014), but
10 will review for plain error if the defendant failed to object to the
11 alleged error below. See Green u State, 119 Nev. 542, 545, 80 P.3d
12 93, 95 (2003). If the State intends to offer expert testimony, the State
13 must provide opposing counsel with notice of the witness and the
14 proposed testimony. Burnside v. State, 131 Nev. ___, 352 P.3d 627,
637 (2015); see also NRS 174.234(2). Failure to endorse a witness
will be procedural error but will not warrant reversal unless the error
prejudiced the defendant. Jones v. State, 113 Nev. 454, 473, 9:37 P.2d
55, 67 (1997).

15 Laguna's arguments are belied by the record. The State noticed
16 Detective Gandy as an expert who would testify to "how cellular
17 phones work, how phones interact with towers, and the interpretation
18 of that information." Nothing in the record suggests Detective Gandy
19 was not qualified to offer that testimony, or that his testimony at trial
20 exceeded the scope of that disclosure. Further, defense counsel did not
21 argue at trial that Detective Gandy was limited to offering lay
22 testimony. The objections in the record on which Laguna now relies
23 regarded allegedly undisclosed trial exhibits summarizing the data,
24 and arguments against allowing Detective Gandy to draw certain
25 conclusions based on that data. However, defense counsel eventually
conceded they had received all of the data upon which Detective
Gandy relied, and NRS 52.275(1) allows a party to compile and
summarize the "contents of voluminous writings ... which cannot
conveniently be examined in court" so long as the originals are made
available to the opposing party, as was the case here. *We therefore
conclude Laguna fails to show any error warranting reversal.*

26 ***

27 The record before us shows that the State presented Detective Gandy
28

1 as an expert witness, that he set forth his qualifications in support of
2 his expertise, and that defense counsel did not contest Detective
3 Gandy's qualifications.

4 Id at 2-3, fn. 3.

5 Thus, the Court of Appeals has already found that Detective Gandy could offer expert
6 testimony as presented at trial, and that Laguna failed to show any error requiring reversal. As
7 the level of prejudice necessary to establish an ineffective assistance of counsel claim is the
8 same as that necessary to find plain error, regardless of whether trial counsel should have
9 objected to Detective Gandy's qualifications to render expert testimony, Laguna cannot show
10 the level of prejudice necessary to establish an ineffective assistance of counsel claim. See
11 Gordon, 518 F.3d at 1300.

12 Third, Laguna's claim in Ground Five is procedurally barred. As noted above, NRS
13 34.810 provides in pertinent part that:

14 1. *The court shall dismiss a petition if the court determines that:*

15 (a) The petitioner's conviction was upon a plea of guilty or guilty
16 but mentally ill and the petition is not based upon an allegation that
17 the plea was involuntarily or unknowingly entered or that the plea was
18 entered without effective assistance of counsel.

19 (b) *The petitioner's conviction was the result of a trial and the
20 grounds for the petition could have been:*

21 (1) Presented to the trial court;

22 (2) Raised in a direct appeal or a prior petition for a writ of
23 habeas corpus or postconviction relief; or

24 (3) Raised in any other proceeding that the petitioner has
25 taken to secure relief from the petitioner's conviction and sentence,
26 unless the court finds both cause for the failure to present the grounds
27 and actual prejudice to the petitioner.

28 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of
pleading and proving specific facts that demonstrate:*

(a) *Good cause for the petitioner's failure to present the claim or
for presenting the claim again; and*

(b) *Actual prejudice to the petitioner.*

(emphasis added).

Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his claim
in Ground Five could have been—and was—raised in his direct appeal, Laguna must show

1 both good cause for bringing this claim again in the instant Petition and that he would suffer
2 actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As the
3 Court of Appeals has already determined that Detective Gandy was qualified to give testimony
4 as an expert, and that Laguna failed to show error requiring reversal, he has already failed to
5 meet his burden of establishing prejudice under NRS 34.810(3). Further, Laguna advances no
6 argument whatsoever that he has good cause for presenting this claim again in the instant
7 Petition. For those reasons, Laguna's claim that counsel was ineffective for failing to object
8 to Detective Gandy's expert qualifications and/or testimony is procedurally barred pursuant to
9 NRS 34.810.

10 Just as in all Grounds alleged thus far, Laguna has not shown that trial counsel's actions
11 fell below an objective standard of reasonableness, nor has he shown that he suffered prejudice
12 from the introduction of Detective Gandy's expert testimony. Further, Laguna cannot show
13 that the results of the trial would have been different had such testimony regarding Laguna's
14 location as evidenced by the cell tower records not been presented before the jury, as the record
15 shows that there was overwhelming evidence that Laguna was present at the scene of the
16 crimes. Laguna's claims in Ground Five are without legal merit, are procedurally barred, and
17 fail to establish ineffective assistance of counsel for multiple reasons. For these reasons,
18 Ground Five of Laguna's Petition should be denied.

19 **VI. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR OPENING THE DOOR**
20 **TO HEARSAY TESTIMONY FROM DETECTIVE JENSEN**

21 Laguna argues in Ground Six of his Petition that trial counsel was ineffective for
22 opening the door to alleged hearsay statements from Detective Barry Jensen, who testified as
23 to his various observations regarding his investigation of the crime scene. Laguna alleges that
24 "Detective Jensen was cross-examined by trial counsel when trial counsel opened the door to
25 hearsay, therefore inviting error." Petition at 7.

26 First, Laguna brings another unsubstantiated claim in Ground Six, just as in Grounds
27 One, Two, Three, Four, and Five. Again, Laguna fails to set forth any specific claim that any
28 specific statement or set of statements constituted hearsay, or that any specific statement or set

1 of statements constituted opening the door to such hearsay statements. Laguna only makes
2 the bare, naked, and vague allegations that “[p]etitioner was prejudiced by this hearsay that
3 counsel allowed in by line of questioning. Petitioner could have had a different outcome in
4 trial if this line of cross-examination would have never been heard by jurors.” Petition at 7.
5 Just as in Grounds One, Two, Three, Four, and Five, Laguna’s conclusory statement fails to
6 specifically identify any reasons why Detective Jensen’s statement was hearsay, nor how
7 counsel allegedly opened the door to such hearsay testimony, and merely alleges that the trial
8 outcome “could” have been different if this was argued. Such conclusory statements of
9 ineffective assistance, unaccompanied by claims of specific factual information, do not entitle
10 the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove
11 and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

12 Second, if this court believes that Laguna’s factual allegations are sufficient to support
13 a claim for ineffective assistance of counsel, Laguna is still not entitled to relief. It appears
14 Laguna is characterizing the following exchange between trial counsel Monique McNeill and
15 Detective Jensen as opening the door to double hearsay:

16 Q. Okay. And so, the - - and then your answer to my question was that
17 it was in this location sort of near Mr. Laguna’s house, right?

18 A. That’s correct.

19 Q. You were also made aware by Amanda Mendoza that she found
20 the car in a location near the Lucky Horseshoe address, right?

21 A. Detective Williams was made aware of that, and then I learned - -

22 Q. But you learned that?

23 A. Then I learned about it.

24 Trial Transcript, Day 13, at 121-122.

25
26 Laguna already brought the claim on direct appeal that Detective Jensen’s statements
27 constituted double hearsay; the problem with any argument that this constitutes double hearsay
28 is that Laguna’s counsel asked the question and elicited the answer. Order of Affirmance at 4.

1 Further, no party objected to the question, and so the trial court below never had the
2 opportunity to address any alleged error. The Court of Appeals found as follows regarding
3 Detective Jensen's statements in regards to double hearsay:

4 We conclude Laguna has failed to show plain error in this instance,
5 because even assuming, *arguendo*, this is hearsay apparent from a
6 casual inspection of the record, Laguna has not shown how this
7 evidence prejudiced his case in light of the substantial evidence
8 placing him at the scene of the crime, including the accomplices'
9 testimonies and the cell phone records.(fn. 5)

10 ***

11 (fn. 5) *We reject Laguna's argument that Detective Jensen's testimony*
12 *also warrants reversal.* To the extent that testimony included
13 inadmissible hearsay within hearsay, we note any hearsay was
14 occasioned by defense counsel's questioning during cross-
15 examination. Therefore, it was invited error and we will not reverse.
16 See Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994)
17 ("The doctrine of 'invited error' embodies the principle that a party
18 will not be heard to complain on appeal of errors which he himself
19 induced or provoked the court or the opposite party to commit.").

20 Order of Affirmance at 4, fn. 5.

21 As shown in the Order of Affirmance, even assuming *arguendo* that Detective Jensen's
22 statements did constitute hearsay, Laguna failed to show plain error, nor did he show that he
23 was prejudiced by such alleged hearsay. As Laguna failed to show prejudice, his claim that
24 counsel was ineffective necessarily fails, as Laguna must show that he suffered actual
25 prejudice and show a reasonable probability that the result of his trial would have been
26 different to support a claim of ineffective assistance of counsel. See Gordon, 518 F.3d at 1300;
27 McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, regardless of whether counsel opened the
28 door to a statement that may have been hearsay, counsel's actions did not constitute ineffective
assistance of counsel.

Third, Laguna's underlying claim in Ground Six is procedurally barred. As noted
above, NRS 34.810 provides in pertinent part that:

1. *The court shall dismiss a petition if the court determines that:*
 - (a) The petitioner's conviction was upon a plea of guilty or guilty
but mentally ill and the petition is not based upon an allegation that

1 the plea was involuntarily or unknowingly entered or that the plea was
2 entered without effective assistance of counsel.

3 (b) *The petitioner's conviction was the result of a trial and the*
4 *grounds for the petition could have been:*

5 (1) Presented to the trial court;

6 (2) *Raised in a direct appeal* or a prior petition for a writ of
7 habeas corpus or postconviction relief; or

8 (3) Raised in any other proceeding that the petitioner has
9 taken to secure relief from the petitioner's conviction and sentence,
10 unless the court finds both cause for the failure to present the grounds
11 and actual prejudice to the petitioner.

12 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
13 *pleading and proving specific facts that demonstrate:*

14 (a) *Good cause for the petitioner's failure to present the claim or*
15 *for presenting the claim again; and*

16 (b) *Actual prejudice to the petitioner.*

17 (emphasis added).

18 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his claim
19 in Ground Six could have been—and was—raised in his direct appeal, Laguna must show both
20 good cause for bringing this claim again in the instant Petition and that he would suffer actual
21 prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As the Court of
22 Appeals has already determined that Detective Jensen's statements did not constitute error
23 requiring reversal due to Laguna's failure to establish that such statements prejudiced him, he
24 has already failed to meet his burden of establishing prejudice under NRS 34.810(3). Further,
25 Laguna advances no argument whatsoever that he has good cause for presenting this claim
26 again in the instant Petition. For those reasons, Laguna's claim that counsel was ineffective
27 for opening the door to alleged hearsay statements from Detective Jensen is procedurally
28 barred pursuant to NRS 34.810.

Just as in all Grounds alleged thus far, Laguna has not shown that trial counsel's actions
fell below an objective standard of reasonableness, nor has he shown that he suffered prejudice
from opening the door to the introduction of Detective Jensen's statements that allegedly
constituted hearsay. Further, Laguna cannot show that the results of the trial would have been
different had such testimony not been presented before the jury, as the record shows that there

1 was overwhelming evidence that Laguna was present at the scene of the crimes and committed
2 the crimes charged. Laguna's claims in Ground Six are without legal merit, are procedurally
3 barred, and fail to establish ineffective assistance of counsel for multiple reasons. For these
4 reasons, Ground Six of Laguna's Petition should be denied.

5 **VII. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
6 **TO CALL WITNESS DARCY LAGUNA**

7 Laguna argues in Ground Seven of his Petition that trial counsel was ineffective for
8 failing to call character and/or alibi witness Darcy Laguna, who would have "testif[ied] to the
9 whereabouts of petitioner on the night in question." Petition at 6. Laguna also alleges that
10 "[i]f this person would have been called to the stand, petitioner's chances at trial could have
11 been different due to the fact that this witness could have provided information to petitioner"
12 Petition at 7.

13 First, Laguna's final claim in Ground Seven is as unsubstantiated as those claims set
14 forth in Ground One, Two, Three, Four, Five, and Six. Again, Laguna fails to set forth any
15 specific testimony that Darcy Laguna would have given regarding where Laguna was on the
16 night of the crimes in question. Laguna only makes the bare, naked, and vague allegations
17 that "trial outcome could have been different by providing petitioner with an alibi." Petition
18 at 6. Just as in Grounds One, Two, Three, Four, Five, and Six, Laguna's conclusory statement
19 merely alleges that Darcy Laguna—possibly a relative of Laguna—"could" have testified as
20 to Laguna's character and "could" have provided testimony placing Laguna at another location
21 on the night in question. Further, Laguna merely alleges that the trial outcome "could" have
22 been different if Darcy Laguna testified. Laguna does not allege that he was actually not
23 present at the scene of the crimes, nor does he allege that Darcy Laguna would have had first-
24 hand knowledge of Laguna's whereabouts otherwise. Such conclusory statements,
25 unaccompanied by claims of specific factual information, do not entitle the petitioner to relief.
26 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6),
27 Laguna's claim on this issue is suitable for summary dismissal.

1 Second, as set forth in Section I *supra*, the decision of whether to call certain witnesses
2 falls under the purview of strategic decisions by counsel. As Darcy Laguna has the same last
3 name as Joseph Laguna, it is a fair assumption that Darcy is related to Joseph. As referenced
4 in Section I *supra*, there was an overwhelming amount of evidence introduced at trial placing
5 Laguna at the scene of the crime on the night in question. Placing a relative of Laguna to testify
6 contrary to the overwhelming factual evidence of Laguna's whereabouts would likely have
7 caused serious credibility issues for counsel and Laguna.

8 In the face of the overwhelming evidence that Laguna was indeed at the scene and
9 intricately involved in the subject crimes, the strategic decision of choosing not to call Darcy
10 Laguna, to rebut testimony that Laguna was present at the scene does not constitute ineffective
11 assistance of counsel, as Laguna cannot show that he was prejudiced by the absence of
12 Laguna's testimony. As set forth in Dawson, 108 Nev. at 117, 825 P.2d at 596, strategic
13 decisions, including which witnesses counsel decides to call at trial, are almost
14 unchallengeable. Further, trial counsel was not required to call a witness whose testimony
15 would have been futile to support an alibi defense. See Ennis, 122 Nev. at 706, 137 P.3d at
16 1103 (noting counsel cannot be ineffective for failing to make futile objections or arguments);
17 Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002). (noting trial counsel has the "immediate and
18 ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and
19 what defenses to develop.").

20 Laguna's bare, naked assertions regarding ineffective assistance of counsel in regards
21 to the strategic decision not to call witness Darcy Laguna are thus without merit and belied by
22 the record. Thus, Laguna has failed to show that trial counsel's actions fell below an objective
23 standard of reasonableness, nor has he shown that he suffered prejudice from the absence of
24 Laguna's testimony, nor has he shown that the results of the trial would have been different
25 had Laguna testified. For these reasons, Ground Seven of Laguna's Petition should be denied.

26 ///

27 ///

28 ///

1 **VIII. LAGUNA IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

2 In addition to the Petition for Writ of Habeas Corpus and Request for Evidentiary
3 Hearing, Laguna also filed a Motion for Appointment of Counsel on November 30, 2018 in
4 case A-18-785267-W. For the reasons listed below, Laguna’s Motion to Appoint Counsel

5 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-
6 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566
7 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada
8 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right
9 to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to
10 counsel provision as being coextensive with the Sixth Amendment to the United States
11 Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a)
12 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
13 “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at
14 164, 912 P.2d at 258.

15 However, the Nevada Legislature has given courts the discretion to appoint post-
16 conviction counsel so long as “the court is satisfied that the allegation of indigency is true and
17 the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

18 A petition may allege that the petitioner is unable to pay the costs of the
19 proceedings or to employ counsel. If the court is satisfied that the
20 allegation of indigency is true and the petition is not dismissed
21 summarily, the court may appoint counsel to represent the petitioner. In
22 making its determination, the court may consider, among other things,
23 the severity of the consequences facing the petitioner and whether:

- 24 (a) The issues are difficult;
25 (b) The Defendant is unable to comprehend the proceedings; or
26 (c) Counsel is necessary to proceed with discovery.

27 Under NRS 34.750, the court has discretion in determining whether to appoint counsel when
28 the petition is not summarily dismissed.

 However, as shown by the State’s Opposition set forth above, the issues presented in
the instant Petition are not difficult, there is no indication that Laguna is unable to comprehend

1 the proceedings, and Laguna has set forth no argument that he requires assistance with
2 discovery. As such, appointment of counsel is unwarranted under the NRS 34.750(1)(a)-(c)
3 factors, and thus Laguna's Motion to Appoint Counsel should be denied.

4 **IX. LAGUNA IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

5 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing:

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

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

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

13 The Nevada Supreme Court has held that if a petition can be resolved without
14 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
15 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
16 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
17 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
18 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove v. State, 100
19 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction
20 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
21 record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it
22 existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

23 This Court can resolve the issues raised by Laguna's claims without expanding the
24 record. Defendant has failed to demonstrate prejudice by any of counsel's actions, thus all
25 claims of ineffective assistance of counsel are without merit. The evidence necessary to
26 resolve all of Laguna's claims are contained entirely within the trial court record and are
27 necessarily limited to the trial record, as all claims address the actions of counsel at trial. Thus,
28

1 Laguna has failed to show that an evidentiary hearing is warranted pursuant to NRS 34.770,
2 and his request for such should be denied.

3 **CONCLUSION**

4 For the reasons set forth above, the court should deny Laguna's Post-Conviction
5 Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel, and Request for
6 Evidentiary Hearing.

7 DATED this 22nd day of January, 2019.

8 Respectfully submitted,

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

11 BY /s/JONATHAN VANBOSKERCK
12 JONATHAN VANBOSKERCK
13 Chief Deputy District Attorney
Nevada Bar #6528

14
15 **CERTIFICATE OF MAILING**

16
17 I hereby certify that service of the above and foregoing was made this 22nd day of
18 January, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19
20 JOSEPH LAGUNA #60578
HIGH DESERT STATE PRISON
21 P.O. BOX 650
INDIAN SPRINGS, NV 89070-0650

22
23 BY /s/Deana Daniels
24 Secretary for the District Attorney's Office

25
26
27
28 14F19270E/JV/ab/dd-MVU



1 FCL

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,
5 Plaintiff,

6 -vs-

7 JOSEPH LAGUNA, aka, Joey Laguna,
8 #1203205
9 Defendant.

CASE NO: A-18-785267-W /
C-15-303991-5

DEPT NO: V

10 FINDINGS OF FACT, CONCLUSIONS OF
11 LAW AND ORDER

12 DATE OF HEARING: FEBRUARY 4, 2019
13 TIME OF HEARING: 9:00 AM

14 THIS CAUSE having come on for hearing before the Honorable JUDGE CAROLYN
15 ELLSWORTH, District Judge, on the 4th day of FEBRUARY, 2019, the Petitioner not being
16 present, PROCEEDING IN PROPER PERSON, the Respondent being represented by
17 STEVEN B. WOLFSON, Clark County District Attorney, by and through JORY
18 SCARBOROUGH, Chief Deputy District Attorney, without argument, and the Court having
19 considered the matter, including briefs, transcripts, and documents on file herein, now
20 therefore, the Court makes the following findings of fact and conclusions of law:

21 PROCEDURAL HISTORY

22 On February 27, 2015, Petitioner Joseph Laguna ("Laguna") was charged by way of
23 Superseding Indictment, with the following: CONSPIRACY TO COMMIT ROBBERY (a
24 Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN
25 POSSESSION OF A DEADLY WEAPON (a Category B Felony - NRS 205.060-NOC
26 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (a
27 Category B Felony- NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A
28 DEADLY WEAPON (a Category B Felony- NRS 193.330, 200.380, 193.165 - NOC

//

1 50145); MURDER WITH USE OF A DEADLY WEAPON (a Category A Felony – NRS
2 200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A
3 DEADLY WEAPON (a Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 -
4 NOC 50031). Laguna was charged alongside four co-defendants; Jorge Mendoza, Robert
5 Figueroa, Summer Larsen, and David Murphy in cases C-15-303991-1, C-15-303991-2, C-
6 15-303991-3, and C-15-303991-4, respectively.

7 On April 9, 2015, Laguna filed a pre-trial Petition for Writ of Habeas Corpus. The
8 State filed its Return to Laguna's pre-trial Petition on May 4, 2015. On June 1, 2015, the
9 District Court denied the Petition. After the District Court denied Laguna's Petition, the
10 State advised that it was taking the case back to the Grand Jury to amend the indictment. At
11 the request of counsel, the court entered a plea of Not Guilty to the Second Amended
12 Indictment on behalf of Laguna, but noted the trial date still stood. On May 29, 2015, Laguna
13 was charged by way of Second Superseding Indictment with the same counts as listed in the
14 Superseding Indictment.

15 On September 12, 2016, Laguna's jury trial began. On October 7, 2016, the jury
16 returned its verdict, finding Laguna guilty of Conspiracy to Commit Robbery, Burglary
17 While In Possession of a Deadly Weapon, Home Invasion While In Possession of a Deadly
18 Weapon, two counts of Attempted Robbery with Use of a Deadly Weapon, Second Degree
19 Murder with Use of a Deadly Weapon, and Attempt Murder with Use of a Deadly Weapon.

20 Laguna was sentenced November 28, 2016 as follows: as to COUNT 1, to a
21 MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of TWENTY EIGHT
22 (28) MONTHS; as to COUNT 2, to a MAXIMUM of ONE HUNDRED FIFTY (150)
23 MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, Count 2 to run
24 CONCURRENTLY with Count 1; as to COUNT 3 - to a MAXIMUM of ONE HUNDRED
25 EIGHTY (180) MONTHS and a MINIMUM of SIXTY SIX (66) MONTHS, Count 3 to run
26 CONCURRENTLY with Count 2; as to COUNT 4, to a MAXIMUM of ONE HUNDRED
27 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a

28 //

1 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM
2 of FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 4 to run
3 CONCURRENTLY with Count 3; as to COUNT 5, to a MAXIMUM of ONE HUNDRED
4 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a
5 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM
6 of FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 5 to run
7 CONCURRENTLY with Count 4; as to COUNT 6, to LIFE with a possibility of parole after
8 a term of TEN (10) YEARS have been served, plus a CONSECUTIVE term of TWO
9 HUNDRED FORTY (240) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
10 for the Use of a Deadly Weapon, Count 6 to run CONCURRENTLY with COUNT 5; as to
11 COUNT 7, to a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a
12 MINIMUM of EIGHTY FOUR (84) MONTHS, plus a CONSECUTIVE term of TWO
13 HUNDRED FORTY (240) MONTHS and a MINIMUM of EIGHTY FOUR (84) MONTHS
14 for the Use of a Deadly Weapon, Count 7 to run CONSECUTIVELY to Count 6; with SIX
15 HUNDRED FIFTY FIVE (655) days credit for time served. Laguna's AGGREGATE
16 TOTAL SENTENCE was thus LIFE with a MINIMUM of TWENTY SEVEN (27) YEARS.
17 Laguna's Judgment of Conviction was filed December 2, 2016.

18 Laguna filed a Notice of Appeal on December 9, 2016. On January 31, 2018, the
19 Nevada Supreme Court issued an Order affirming Laguna's Judgment of Conviction.
20 Remittitur also issued January 31, 2018.

21 On November 30, 2018, Laguna filed a post-conviction Petition for Writ of Habeas
22 Corpus in case A-18-785267-W. The State's filed its Opposition on January 22, 2019. On
23 February 4th, this court made the following findings of fact and conclusions of law.

24 FACTS OF THE SUBJECT OFFENSES

25 At sentencing, the district court judge relied on the following factual synopsis set
26 forth in Petitioner's Pre-Sentencing Investigation Report ("PSI") *as well as the*
27 *// facts which were presented at the jury trial*
28 *// where the undersigned was the presiding judge.*

1 On September 21, 2014, Las Vegas Metropolitan Police Department
2 dispatch received a call from a citizen who reported hearing
3 gunshots near her home. She also reported seeing a male wearing a
4 ski mask and holding a rifle, and another male who was lying near
the front door of a residence. Victim #1 then called to report two
armed men wearing ski masks kicked in the front door of his home.

5 Upon arrival, officers located victim #1 inside the residence. They
6 also discovered victim #2, dead from apparent gunshot wounds,
7 lying over the threshold of the front door. Officers located a blood
8 trail in front of the residence and followed the trail looking for
9 suspects or additional victims. A rifle and gloves were located in the
10 bed of a truck parked near the residence. Officers then observed a
11 male inside of a vehicle and ordered him to exit with his hands up.
12 The male, later identified as co-offender Jorge Mendoza, refused to
13 exit and was extracted from the vehicle by officers. Mr. Mendoza
14 was suffering from a gunshot wound to his left thigh. Upon
15 questioning, Mr. Mendoza told officers he was forced out of his
vehicle by two men who shot him in the leg. He also stated he
knocked on several doors in the neighborhood looking for help. He
told the officers he thought he was being chased and hid in an
unlocked car to hide. An officer noticed a white cloth with blood, as
well as an orange ski mask on the front driver's side floorboard. Mr.
Mendoza was then transported to a hospital.

16 Officers continued to follow a separate blood trail for .2 miles which
17 eventually ended on a separate street. It appeared to the officers that
18 the person bleeding may have been picked up by a vehicle. A crime
19 scene analyst examined the crime scene for evidence and discovered
20 two bullet strikes on the stucco black wall across the street from the
21 residence. Additionally, a bullet fragment was found in the street,
22 along with three casings each stamped with "FC 9mm Luger." There
23 were five casings outside, near the front door of the home and a
noticeable blood trail leading from the front of the home to the street.
Inside the residence there were bullet strikes in the walls and
multiple casings. The downstairs front door was obviously forced
open and the interior frame was broken, lying on the floor.
Detectives questioned Mr. Mendoza at the hospital. He claimed he
was alone that night; however, when detectives told him his "buddy"
was also shot he stated, "I don't know what he's gonna tell you. I
don't know-I don't know him." Mr. Mendoza's version of events
was very disconnected and vague and detectives believed he was
being deceptive throughout the interview. Detectives executed a

28 //

1 search warrant at Mr. Mendoza's residence where they located a
2 Jennings .22 caliber semi-auto pistol, a .22 caliber AK-47 style rifle
3 and numerous cartridges in a gun safe. On September 22, 2014,
4 detectives spoke with victim #1 who stated his father called him and
5 said he heard victim #1 was going to be robbed in the next few days.
6 Victim #1 stated he then went home and retrieved his gun and
7 waited. As he waited, his roommate, victim #2, came home. Victim
8 #1 then heard a loud boom at the front door.

9 There was a second bang and the door opened. Victim #1 looked
10 around the wall of the kitchen and saw a man wearing an orange ski
11 mask, carrying a rifle style gun and another person behind him.
12 Victim #1 stated he fired two shots from his Glock 40 and believed
13 he struck one of the men. The men then began firing at the victims.
14 Victim #1 continued to fire several more rounds and the men
15 eventually left the residence and the shooting stopped for
16 approximately 30 seconds. The victims then made their way to the
17 front door. As victim #2 reached to close the door, victim #1 heard a
18 gunshot and victim #2 dropped in the doorway. Victim #1 retreated
19 back and began to look for a phone. He located a phone and called
20 his father and then 911.

21 Detectives then spoke with a woman who stated the co-offender,
22 Summer Larsen asked her to pick her up a few days prior to the
23 incident and take her to the store. When they arrived, an unknown
24 male got into her vehicle. She stated she then heard Ms. Larsen and
25 the male discussing a robbery that would occur on Sunday. The
26 woman believed they were planning on robbing Ms. Larsen's
27 husband, victim #1, who she was separated from. Ms. Larsen also
28 told her she was responsible for prior burglaries at the home of
29 victim #1.

30 On October 16, 2014, detectives received information from an
31 individual who stated he buys marijuana from a male, later identified
32 as the co-offender Robert Figueroa. He stated that around the time of
33 the home invasion Mr. Figueroa went missing. Approximately one
34 week later, the male made contact with Mr. Figueroa who told him
35 the following: Mr. Figueroa kicked in the door of the residence and
36 entered with Mr. Mendoza and another male. The home owner shot
37 at them as they forced their way into the home. Mr. Figueroa was
38 shot in the face and left side of his body and Mr. Mendoza was shot
39 in the leg. He stated the third male ran away unharmed and Mr.
40 Mendoza was caught by police a short distance from the house. Mr.

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1 Figueroa also told the male, his girlfriend drove him to California to
2 receive medical attention to avoid detection by LVMPD. The male
3 also told detectives that Mr. Figueroa buys marijuana from victim #1
4 and that the victim supposedly had multiple pounds of marijuana at
5 the time of the home invasion. On October 20, 2014, detectives with
6 the LVMPD Criminal Apprehension Team (CATS) set up
7 surveillance at Mr. Figueroa's apartment. A short time later, Mr.
8 Figueroa exited the apartment and was taken into custody.
9 Detectives immediately noticed a bullet wound on his lower lip area
10 and bullet wounds to his left torso and back. Upon questioning, Mr.
11 Figueroa told detectives he arrived at the residence to buy marijuana
12 and noticed the front door open. As he neared the open door, he was
13 shot and fled the area. He then returned a short time later and drove
14 his car away. Detectives explained to him that police were on the
15 scene in a very short time and questioned his story about returning to
16 get his car. Mr. Figueroa just stared blankly into space and did not
17 offer any more to his version of events. When asked where he was
18 treated for his injuries, Mr. Figueroa stated he was going to need an
19 attorney.

20 On October 24, 2016, detectives met with Mr. Figueroa and his
21 attorney at the Clark County Detention Center. Mr. Figueroa stated
22 he was contacted by his friend, "Maton," later identified as the
23 defendant Joseph Laguna. Mr. Figueroa was told that Mr. Laguna
24 and a male he knew as "DuBoy," later identified as co-offender
25 David Murphy, knew the location of a "stash house" and planned to
26 commit a robbery there. Mr. Figueroa stated Mr. Murphy picked him
27 up with Mr. Laguna in the front seat, while he and Mr. Mendoza
28 were in the backseat. Mr. Figueroa said he was armed with a .40
 caliber, Mr. Mendoza had a rifle and Mr. Laguna had a .38 caliber
 revolver. Mr. Figueroa stated he kicked the door of the residence
 open and all three men entered the stash house. Mr. Murphy stayed
 in the vehicle which was parked down the street. As he entered the
 house, he was shot in the mouth and went down. He then got up and
 began to run out of the house and was shot again in the left side of
 his back. He eventually ran away and hid in a backyard before he
 called his sister to pick him up. Mr. Figueroa said he believed Mr.
 Murphy's girlfriend, identified as Ms. Larsen, told Mr. Laguna about
 the stash house and also believed there was 30 pounds of marijuana
 in the stash house. Further, Mr. Figueroa said the .40 caliber pistol
 he used during the home invasion was at his girlfriend's apartment.

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1 On November 18, 2014, Ms. Larsen was arrested on a warrant for
2 charges related to the home invasion. While in custody, detectives
3 heard Ms. Larsen speaking with a male she referred to as
4 "Doughboy." During one of her calls, Ms. Larsen asked Doughboy
5 for his address, which was determined to match the address of Mr.
6 Murphy. On December 10, 2014, detectives spoke with victim #1
7 who positively identified Mr. Murphy as Doughboy and stated Mr.
8 Murphy and Ms. Larsen were friends. Detectives then spoke with the
9 father of victim #1 who also positively identified Mr. Murphy as
10 Doughboy. He also stated he heard rumors that after Ms. Larsen and
11 victim #1 separated; Ms. Larsen began dating Mr. Murphy.

12 On December 11, 2014, officers located Mr. Murphy during a traffic
13 stop. Mr. Murphy was transported to LVMPD Homicide and
14 questioned by detectives. Mr. Murphy stated he knew he was there
15 because of something between Ms. Larsen and victim #1 and
16 admitted he knew them both. Further, Mr. Murphy denied any
17 involvement with the murder and home invasion that occurred at the
18 victim's residence.

19 On February 13, 2015, Mr. Laguna was arrested and transported to
20 LVMPD Homicide and interviewed by detectives. During the
21 interview, Mr. Laguna related the following: he recognized the
22 photos of Mr. Mendoza, Mr. Murphy and Mr. Figueroa and did not
23 recognize the photos of the victims. Additionally, Mr. Laguna denied
24 any knowledge of the home invasion and stated he was never there.
25 Based on the above facts, Mr. Mendoza, Mr. Figueroa, Mr. Laguna,
26 Mr. Murphy and Ms. Larsen were booked accordingly at the Clark
27 County Detention Center.

28 Pre-Sentence Investigation Report at 6-8.

ANALYSIS

Laguna has brought seven grounds for relief in his Petition for Writ of Habeas Corpus, all of which allege ineffective assistance on the part of trial and/or appellate counsel. For the reasons set forth below, all of Laguna's claims of ineffective assistance of counsel are without merit. As none of Laguna's claims have merit, he is not entitled to an evidentiary hearing. Finally, Laguna has failed to show that he should be appointed counsel. For the

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1 following reasons, Laguna's post-conviction Petition for Writ of Habeas Corpus, his Request
2 for Evidentiary Hearing, and his Motion to Appoint Counsel are denied.

3 The Sixth Amendment to the United States Constitution provides that, "[i]n all
4 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
5 for his defense." The United States Supreme Court has long recognized that "the right to
6 counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466
7 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
8 865 P.2d 322, 323 (1993).

9 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
10 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test
11 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138,
12 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
13 representation fell below an objective standard of reasonableness, and second, that but for
14 counsel's errors, there is a reasonable probability that the result of the proceedings would
15 have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
16 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
17 two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to
18 approach the inquiry in the same order or even to address both components of the inquiry if
19 the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct.
20 at 2069.

21 The court begins with the presumption of effectiveness and then must determine
22 whether the defendant has demonstrated by a preponderance of the evidence that counsel
23 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective
24 counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the
25 range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91
26 Nev. 430, 432, 537 P.2d 473, 474 (1975).

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1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v.
22 State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850,
23 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of
24 counsel's challenged conduct on the facts of the particular case, viewed as of the time of
25 counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-
7 89, 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
10 of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).
11 Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-
12 conviction relief must be supported with specific factual allegations, which if true, would
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225
14 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled
15 by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific
16 facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than
17 just conclusions may cause your petition to be dismissed." (Emphasis added). A defendant
18 who contends his attorney was ineffective because he did not adequately investigate must
19 show how a better investigation would have rendered a more favorable outcome probable.
20 Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

21 **I. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
22 **CALL WITNESS JOSEPH LARSEN**

23 Laguna argues in Ground One of his Petition that trial and appellate counsel were
24 ineffective for failing to call witness Joseph Larsen¹ to testify, as Larsen "could have proven

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28 ¹ In the Pre-Sentence Investigation Report, Joseph Larsen is referred to as "Victim 1," one of the occupants of 1661
Broadmere, the home in which the subject crimes occurred. "Victim 2" refers to the deceased victim Monty Gibson,
roommate of Joseph Larsen.

1) petitioner was not the perpetrator he had seen and 2) that petitioner was not at the scene of the crime at night of question.” Petition at 6.

First, while Laguna inexplicably claims appellate counsel was ineffective for actions that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such conclusory statements of ineffective assistance of appellate counsel, unaccompanied by claims of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim that appellate counsel was ineffective for failure to call a witness at trial is suitable for summary dismissal.

Second, both of Laguna’s conclusory statements fail to specifically identify any helpful statements Larsen would have given, and merely allege that Larsen’s testimony “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance, unaccompanied by claims of specific factual information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

However, even assuming *arguendo* that Laguna’s bare and naked assertions were factually sufficient, such assertions are belied by the record and thus Laguna cannot demonstrate that he was prejudiced by trial counsel’s strategic decision not to call Larsen as a witness. Larsen first testified before the Grand Jury on January 29, 2015. Grand Jury Transcript, Volume 2 at 67-95. From the first question posed of him, Larsen revealed himself to be a hostile and unhelpful witness:

EXAMINATION

BY MS. LEXIS:

Q. Mr. Larsen, on September 21, 2014, did you live at an address called 1661 Broadmere Street here in Las Vegas, Clark County, Nevada?

A. Ma'am, I refuse to testify.

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1 Q. Okay. Mr. Larsen, you are a witness for the State of Nevada so
2 I'm going to need you to please answer my questions. Okay? Joey?

3 A. I refuse to, ma'am.

4 Q. Okay. Why do you refuse to testify before this Grand Jury, Joey?

5 A. I just don't want to.

6 Q. You have to Joey. You're here by order of the District Court and
7 by this Grand Jury. You have to be here today.

8 A. I'm here.

9 Q. Joey, why is it that you do not want to testify before this Grand
10 Jury? Did something happen on September 21, 2014 that you're not
11 wanting to testify about?

12 A. I'm sorry, ma'am, I don't want to answer any questions.

13 Q. Joey, did something happen on September 21, 2014 that caused
14 us to subpoena you today?

15 A. I'm sorry, ma'am, I don't want to answer any questions.

16 Q. Joey, I'm going to ask you to leave the room. I need to speak with
17 the Grand Jury.

18 (At this time, witness Joseph Larsen exits the proceedings.)

19 MS. LEXIS: Mr. Foreperson, at this point I will be contacting the
20 chief judge, Judge Barker, and I will be asking to bring Mr. Joey
21 Larsen before Judge Barker to hold a contempt hearing.

22 Id at 67-68.

23 It was only after Larsen was made aware that failing to testify to the Grand Jury could
24 result in a finding of contempt that he eventually capitulated and gave his testimony.
25 Contrary to Laguna's assertions that Larsen's testimony would have provided some sort of
26 alibi defense by proving that Laguna was not at the scene of the crime, Larsen's testimony
27 showed that as he was in the house during the occurrence of the crime, he could not have

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1 testified as to Laguna's presence at any other location during the crime. Id at 76-96. While
2 Laguna's assertion that Larsen saw only two people at the home is correct, the resultant
3 inference that Laguna could not have been one of the co-defendants is fatally flawed. Larsen
4 testified that he saw two people wearing masks enter the home that evening. Id at 76-84.
5 Larsen thus could not have testified that Laguna was not at the scene; given the masks worn
6 by the two people who entered the home, Larsen had no factual basis to testify that either of
7 those people were or were not Laguna. At best, Larsen's testimony would have indicated that
8 he could not verify that Laguna was present at the home on the night of the subject crimes,
9 which is insufficient to support an alibi defense.

10 Further, even if Larsen testified that he could not be 100% certain that Laguna was at
11 the home that evening, there was overwhelming evidence presented at trial that Laguna was
12 at the home and intricately involved with the criminal conspiracy. Larsen's excited
13 utterances to his family about what he saw at the scene were introduced into evidence
14 through his wife, Summer Larsen, and his father, Steven Larsen, as well as Larsen's 911
15 calls made shortly after the subject crimes. Trial Transcript, Day 5-19. Further, cell phone
16 tracking data, introduced through State's expert Detective Gandy, placed Laguna in the
17 neighborhood of 1661 Broadmere at the time of the subject crimes. Trial Transcript, Day 9.
18 Finally, Laguna's own co-defendant Robert Figueroa testified that Laguna called him and
19 told him he had a "lick (robbery)" lined up, and that he wanted Figueroa to help him with it.
20 Trial Transcript, Day 10, at 218-219. Laguna even called Figueroa later in the day to ensure
21 that Figueroa would help with the robbery. Id at 234. Figueroa's testimony ultimately places
22 himself, Laguna, and the two other male co-defendants at the scene of the crimes together on
23 that night. Id at 241.

24 In the face of the overwhelming evidence that Laguna was indeed at the scene and
25 intricately involved in the subject crimes, the strategic decision of choosing not to call Jason
26 Larsen, a hostile and unhelpful witness with no factual basis to rebut testimony that Laguna
27 was present at the scene, does not constitute ineffective assistance of counsel as Laguna

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1 cannot show that he was prejudiced by the absence of Larsen's testimony. As set forth in
2 Dawson, 108 Nev. at 117, 825 P.2d at 596, strategic decisions, including which witnesses
3 counsel decides to call at trial, are almost unchallengeable. Further, trial counsel was not
4 required to call a witness whose testimony would have been futile to support an alibi
5 defense. See Ennis, 122 Nev. at 706, 137 P.3d at 1103 (noting counsel cannot be ineffective
6 for failing to make futile objections or arguments); Rhyne, 118 Nev. at 8, 38 P.3d at 167
7 (2002). (noting trial counsel has the "immediate and ultimate responsibility of deciding if
8 and when to object, which witnesses, if any, to call, and what defenses to develop.").

9 The court finds Laguna's bare, naked assertions regarding ineffective assistance of
10 counsel in regards to the strategic decision not to call witness Joseph Larsen are thus without
11 merit and belied by the record. Thus, the court finds Laguna has failed to show that trial
12 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
13 he suffered prejudice from the absence of Larsen's testimony, nor has he shown that the
14 results of the trial would have been different had Larsen testified. For these reasons, Ground
15 One of Laguna's Petition is hereby denied.

16 **II. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
17 **ELICIT TESIMONY FROM A CELLULAR PHONE EXPERT**

18 Laguna argues in Ground Two of his Petition that trial and appellate counsel were
19 ineffective for failing to call a better cellular phone expert than the expert called by the State,
20 as "[t]his expert knew more on the subject of this subject than non-experts on this subject
21 and could have presented evidence that would have been positive for defense." Petition at 7.

22 First, while Laguna inexplicably claims appellate counsel was ineffective for actions
23 that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such
24 conclusory statements of ineffective assistance of appellate counsel, unaccompanied by
25 claims of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at
26 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim that

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1 appellate counsel was ineffective for failure to call an expert witness at trial is suitable for
2 summary dismissal.

3 Second, although it appears Laguna was referring to a specific expert in his reference
4 to “[t]his expert,” Laguna does not identify a specific expert by name, nor does he set forth
5 any specific factual information as to what such an expert would have testified to. Laguna
6 only makes the bare, naked allegations that such an expert “could have presented evidence
7 that would have been positive for defense.” Petition at 7. Just as in Ground One, Laguna’s
8 conclusory statement fails to specifically identify any helpful testimony that a competing
9 cellular phone expert would have given, and merely allege that such an expert’s testimony
10 “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance,
11 unaccompanied by claims of specific factual information, do not entitle the petitioner to
12 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS
13 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

14 Third, the substance of Laguna’s claim is more properly brought as a failure to
15 investigate claim, in that Laguna alleges further investigation of the cell tower records would
16 have uncovered evidence showing that Laguna was not in the vicinity of the crimes on the
17 night in question. However, this claim also fails, as Laguna offers nothing but vague
18 supposition that expert witness testimony would have provided “evidence that would have
19 been positive.” Petition at 7. Laguna offers no argument that the State’s expert witness’s
20 testimony was factually inaccurate, nor that the State’s expert came to an inaccurate
21 conclusion regarding the whereabouts of Laguna on the night of the subject crimes. Such a
22 bare, naked assertion is not sufficient to warrant relief under Hargrove. Further, pursuant to
23 Molina, 120 Nev. at 192, 87 P.3d at 538, a defendant who contends his attorney was
24 ineffective because she did not adequately investigate must show how a better investigation
25 would have rendered a more favorable outcome probable. Laguna’s vague assertions do not
26 establish how a better investigation would have rendered a more favorable trial outcome
27 more probable.

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1 Fourth, just as in Ground One, the decision whether to call certain witnesses is
2 counsel's prerogative, and such strategic decisions are "virtually unchallengeable." Dawson,
3 108 Nev. at 117, 825 P.2d at 596. Laguna fails to allege a flawed methodology in how the
4 State's expert interpreted the cell tower information to show Laguna's whereabouts on the
5 night of the subject crimes, therefore it would have been a futile argument to suggest that
6 competing expert's testimony would have been helpful to Laguna's case; counsel cannot be
7 ineffective for failing to advance futile arguments. See Ennis, 122 Nev. at 706, 137 P.3d at
8 1103.

9 Just as in Ground One, the court finds Laguna has not shown that trial counsel's
10 actions fell below an objective standard of reasonableness, nor has he shown that he suffered
11 prejudice from the absence of expert witness testimony regarding cellular phones, nor has he
12 shown that the results of the trial would have been different had trial counsel called a
13 competing expert to rebut the State's expert testimony. For these reasons, Ground Two of
14 Laguna's Petition is denied.

15 **III. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
16 **TO TESTIMONY FROM STEVEN LARSEN**

17 Laguna argues in Ground Two of his Petition that trial counsel was ineffective for
18 failing to object to statements made at trial by Steven Larsen, father of victim Joseph Larsen.
19 Laguna alleges that such statements were improper as "[t]hese statements that witness was
20 stating were made by a still-living individual that could have been at trial and stated under
21 sworn testimony." Petition at 8. It appears Laguna is arguing that portions of Steven
22 Larsen's testimony were hearsay, and that counsel was ineffective to failing to object to such
23 hearsay.

24 First, although it appears Laguna was referring to hearsay statements, Laguna does
25 not identify a specific hearsay statement or set of hearsay statements made by Steven Larsen,
26 thus it is effectively impossible to determine whether such statements were or were not
27 hearsay. Laguna only makes the bare, naked allegations that "[i]f the jurors would not have
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1 heard this statement by non-testifying witness² outcome could have been different either by
2 hearing from this person or being instructed to not take in last statements made....” Petition at
3 8. Just as in Grounds One and Two, the court finds Laguna’s conclusory statement fails to
4 specifically identify any hearsay statements allegedly given, and merely allege that the
5 absence of such statements “could” have helped Laguna at trial. Such conclusory statements
6 of ineffective assistance, unaccompanied by claims of specific factual information, do not
7 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to
8 Hargrove and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary
9 dismissal.

10 Second, contrary to Laguna’s assertions, trial counsel did object—three separate
11 times—to Steven Larsen’s testimony on the grounds that his statements constituted hearsay:

12 Q. And what is the - - what does your son tell you about what
13 occurred inside the residence?

14 MS. McNEILL: Objection.

15 MR. LANDIS: Can we approach?

16 THE COURT: Yes.

17 (Off-record bench conference)

18
19 BY MR. DiGIACOMO: I’ll ask it again. What did your son sort of
20 tell you about what happened inside the house?

21 ***

22 Q. Based upon all of that, you felt comfortable or at least you
23 believed
24 that Summer’s involved? Is that fair?

25 A. Oh, yeah. I have no doubt in my mind.

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² Presumably Joseph Larsen.

1 Q. So let me ask you, did Joseph at least initially believe that
2 Summer had anything to do with it?

3 MR. LANDIS: Objection.

4 MS. McNEILL: Objection. Speculation and hearsay.

5 MR. DiGIACOMO: Let me rephrase.

6 THE COURT: Yeah. I'm going to sustain that so go ahead.

7 ***

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9 Q. Did you see Joseph doing things or behaving in certain manners
10 that indicated to you that he's still in a relationship with Summer?

11 A. Yes.

12 Q. What did he do?

13 A. He told me that - -

14 MS. McNEILL: Objection.

15 Q. Without telling us what he told you.

16 A. Oh.

17
18 Trial Transcript, Day 9, at 27-34.

19 Laguna's claims that counsel failed to object to hearsay statements is plainly belied by
20 the record. Trial counsel Monique McNeill objected on multiple occasions to statements that
21 could be construed as hearsay. Further, the court sustained one of those objections, and the
22 State agreed after other objections to either rephrase its questions or direct the witness not to
23 answer in a way that such an answer would constitute hearsay. Thus, even if those statements
24 were hearsay, trial counsel's timely objections, as well as the court and state's responses to
25 such objections, removed any prejudice that such statements would have had. Laguna's
26 claim is belied by the record; further, as counsel's proper objections prevented the jury from
27 considering hearsay testimony, Laguna cannot show that he was prejudiced by such

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1 statements. As Laguna cannot show prejudice, he has failed to establish the second prong of
2 McNelson, which requires he demonstrate prejudice and show a reasonable probability that,
3 but for counsel's alleged errors, the result of the trial would have been different. 115 Nev. at
4 403, 990 P.2d at 1268.

5 Third, even assuming *arguendo* that Laguna's claim in Ground Three establishes a
6 claim that counsel was ineffective for failing to call Joseph Larsen to testify as to what
7 Steven Larsen testified to at trial, such a claim has already been addressed in Ground One of
8 Laguna's Petition.

9 Just as in Grounds One and Two, the court finds that Laguna has not shown that trial
10 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
11 he suffered prejudice from Steven Larsen's alleged hearsay statements. Further, the court
12 finds Laguna cannot show that the results of the trial would have been different had trial
13 counsel objected to Steven Larsen's hearsay statements, as the record shows that trial
14 counsel did exactly that. Laguna's claims in Ground Three are belied by the record and fail
15 to establish ineffective assistance of counsel for multiple reasons. For these reasons, Ground
16 Three of Laguna's Petition is denied.

17 **IV. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
18 **TO TESTIMONY FROM DETECTIVE WILLIAMS**

19 Laguna argues in Ground Four of his Petition that trial counsel was ineffective for
20 failing to object to statements made at trial by Detective Tod Williams concerning what he
21 was told by Amanda Mendoza regarding an iPhone location app. Laguna alleges that "a part
22 of being affective [sic] trial counsel is objecting at all times during trial." Petition at 8. It
23 appears that Laguna is arguing that Detective Williams's testimony regarding what Ms.
24 Mendoza told him was hearsay, rather than the nonsensical assertion that trial counsel is
25 under some duty to object "at all times during trial."

26 First, just like in Grounds One, Two, and Three, although it appears Laguna was
27 referring to hearsay statements, Laguna does not identify a specific hearsay statement or set
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1 of hearsay statements made by Detective Williams, thus it is effectively impossible to
2 determine whether such statements were or were not hearsay. Laguna only makes the bare,
3 naked allegations that “[t]he outcome of trial could have been different by juror members not
4 hearing this from this detective.” Petition at 9. Also, just as in Grounds One, Two, and Three,
5 Laguna’s conclusory statement fail to specifically identify any hearsay statements allegedly
6 given, and merely allege that the absence of such statements “could” have helped Laguna at
7 trial. Such conclusory statements of ineffective assistance, unaccompanied by claims of
8 specific factual information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at
9 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim on
10 this issue is suitable for summary dismissal.

11 Second, Laguna’s claims that counsel was ineffective for failing to object to a hearsay
12 statement by Detective Williams is without merit, as Detective Williams’ statements made at
13 trial were not hearsay. The court finds Laguna’s claim is meritless because Williams neither
14 relayed a statement Amanda made to him, nor was Williams’ observation given for the truth
15 of the matter asserted.

16 At trial, Michelle Estavillo testified that Amanda Mendoza used an app on her phone
17 to ping Mendoza’s location in an attempt to find him after he disappeared with his car and
18 would not return her phone calls. Trial Transcript, Day 7 at 95-141. At the time, co-
19 defendant Jorge Mendoza had already been apprehended by police from the scene of the
20 crime and was receiving treatment at University Medical Center. Id. Murphy later came to
21 pick Amanda up and take her to the car, which was present by 2:00 a.m. the next day when
22 police arrived. Id.

23 Later, Detective Williams testified about his experience interviewing Amanda
24 Mendoza. Trial Transcript, Day 9 at 113-150. Detective Williams testified that he observed a
25 location on an iPhone app on Amanda’s phone, and that he later went to that location. Id.
26 The State introduced a map and asked Detective Williams if the map showed the location
27 that he observed on the app. Id.

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1 It is unclear how Laguna believes this could be hearsay. Hearsay requires a
2 "statement," and a "statement" must be an oral or written assertion, or some nonverbal
3 conduct by a person intended to make an assertion. NRS 51.035-45. Moreover, hearsay
4 requires a declarant, which must be a person. NRS 51.025. Laguna cites to no authority that
5 an inanimate object makes an "assertion" subject to the hearsay rule, and an inanimate object
6 is certainly not a "person," and so can neither be a declarant nor can it make a nonverbal
7 assertion. The California Supreme Court and some federal courts have held that machines are
8 not declarants for purposes of the Confrontation Clause. See People v. Lopez, 55 Cal. 4th
9 569, 286 P.3d 469, 478 (Cal. 2012) (noting agreement with federal courts). Regardless,
10 Detective Williams' observation of the information displayed on the phone screen would not
11 be excluded as hearsay under the silent witness doctrine since the image on the phone
12 "speaks for itself" in much the same way as a video does. See, Rogers v. State, 902 N.E.2d
13 871, 876 (Ind. Ct. App. 2009); McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005); Edwards
14 v. State, 762 N.E.2d 128, 136 (Ind. Ct. App. 2002); Wagner v. State, 707 So. 2d 827, 830
15 (Fla. Dist. Ct. App. 1998).

16 Although Laguna makes no cogent arguments regarding hearsay in his Petition, the
17 State assumes that Laguna is arguing that in some manner Amanda was making a statement
18 through her phone. Petition at 9. Even assuming, arguendo, that this could be the case, where
19 Amanda went to retrieve her car was not what Detective Williams testified to. Detective
20 Williams said that he went to a location that he saw on Amanda's phone. Trial Transcript,
21 Day 9 at 113-150. Defense counsels objected, on differing grounds, when Williams was
22 asked whether he recognized on a map the location that he went to after observing a location
23 on a phone. Id. None of these are statements, and the Court overruled the objection. Id. Even
24 if, somehow, this could be construed as a "statement," it was not offered for the truth of the
25 matter asserted (presumably that is where Amanda went to retrieve the car) but to explain
26 why Detective Williams went to that location. Under no plausible analysis, then, is an
27 observation of a phone hearsay.

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1 Laguna's argument on this claim has, in fact, already been examined by the Nevada
2 Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939. The relevant analysis
3 and holding are as follows:

4 Laguna next argues the district court improperly allowed hearsay
5 evidence by admitting Detective Williams' testimony of Amanda
6 Mendoza's statements regarding the app she used to locate
7 accomplice Jorge Mendoza's phone. Defense counsel did not object
8 to this testimony below, and we therefore review for plain error.
9 Rimer v. State, 351 P.3d 697, 715 (2015) (holding that to prevail
10 under a plain error review a defendant must show both that the error
11 is apparent from a casual inspection of the record and that the error
12 was prejudicial, affecting the defendant's substantial rights). We
13 conclude Laguna has failed to show plain error in this instance,
14 because *even assuming, arguendo, this is hearsay apparent from a
casual inspection of the record, Laguna has not shown how this
evidence prejudiced his case in light of the substantial evidence
placing him at the scene of the crime, including the accomplices'
testimonies and the cell phone records.*

14 Order of Affirmance at 3-4 (emphasis added).

15 The Court of Appeals' holding that Laguna did not demonstrate prejudice even if
16 Detective Williams' statements were hearsay is significant, as the level of prejudice
17 necessary to establish an ineffective assistance of counsel claim is the same as that necessary
18 to find plain error. See Gordon v. United States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("the
19 'substantial rights' standard of plain error review is identical to the 'prejudice' standard of an
20 ineffective assistance claim.") Thus, regardless of whether trial counsel should have objected
21 Detective Williams' statement, Laguna cannot show the level of prejudice necessary to
22 establish an ineffective assistance of counsel claim.

23 Fourth, Laguna's claim in Ground Four is procedurally barred. NRS 34.810 provides
24 in pertinent part that:

- 25 1. *The court shall dismiss a petition if the court determines that:*
26 (a) The petitioner's conviction was upon a plea of guilty or
27 guilty but mentally ill and the petition is not based upon an
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1 allegation that the plea was involuntarily or unknowingly entered or
2 that the plea was entered without effective assistance of counsel.

3 (b) *The petitioner's conviction was the result of a trial and the*
4 *grounds for the petition could have been:*

5 (1) Presented to the trial court;

6 (2) *Raised in a direct appeal* or a prior petition for a writ of
7 habeas corpus or postconviction relief; or

8 (3) Raised in any other proceeding that the petitioner has
9 taken to secure relief from the petitioner's conviction and sentence,
10 unless the court finds both cause for the failure to present the
11 grounds and actual prejudice to the petitioner.

12 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
13 *pleading and proving specific facts that demonstrate:*

14 (a) *Good cause for the petitioner's failure to present the claim*
15 *or for presenting the claim again; and*

16 (b) *Actual prejudice to the petitioner.*

17 (emphasis added).

18 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
19 claim in Ground Four could have been—and was—raised in his direct appeal, Laguna must
20 show both good cause for bringing this claim again in the instant Petition and that he would
21 suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
22 the Court of Appeals has already determined that Laguna failed to show that he suffered
23 actual prejudice, he has already failed to meet his burden under NRS 34.810(3). Further,
24 Laguna advances no argument whatsoever that he has good cause for presenting this claim
25 again in the instant Petition. For those reasons, Laguna's claim that counsel was ineffective
26 for failing to object to hearsay statements from Detective Williams is procedurally barred
27 pursuant to NRS 34.810.

28 Just as in all grounds alleged thus far, the court finds Laguna has not shown that trial
counsel's actions fell below an objective standard of reasonableness, nor has he shown that
he suffered prejudice from Detective Williams' alleged hearsay statements. Further, the court
finds Laguna cannot show that the results of the trial would have been different had those
alleged hearsay statements regarding information shown on the iPhone app had not been
presented before the jury, as the record shows that there was overwhelming evidence that

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1 Laguna was present at the scene of the crimes. The court finds Laguna's claims in Ground
2 Four are without legal merit, are procedurally barred, and fail to establish ineffective
3 assistance of counsel for multiple reasons. For these reasons, Ground Four of Laguna's
4 Petition is denied.

5 **V. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
6 **TO ARGUE THAT DETECTIVE GANDY SHOULD BE LIMITED TO**
7 **LAY TESTIMONY**

8 Laguna argues in Ground Five of his Petition that trial counsel was ineffective for
9 failing to object to statements made at trial by Detective Christopher Gandy, who testified as
10 an expert regarding how cellular phones work, how phones interact with towers, and the
11 interpretation of that information. Laguna alleges that "trial counsel should have argued the
12 fact that Detective Gandy was limited to offering lay testimony." Petition at 9.

13 First, keeping with Laguna's pattern of unsubstantiated claims, just as in Grounds
14 One, Two, Three, and Four, it appears Laguna is challenging Detective Gandy's designation
15 as an expert witness under NRS 50.275 and Hallmark v. Eldridge, 124 Nev. 492, 499, 189
16 P.3d 646, 650 (2008). However, Laguna fails to set forth any specific claim that the trial
17 court somehow wrongly concluded that Detective Gandy was qualified to testify as an expert
18 witness. Laguna only makes the bare, naked, and vague allegations that "[t]rial counsel has a
19 duty to argue certain facts during trial and should have argued this issue, but because she
20 didn't petitioner suffered from this testimony with no argument [sic] on this subject."
21 Petition at 9. Just as in Grounds One, Two, Three, and Four, Laguna's conclusory statement
22 fails to specifically identify any reasons why Detective Gandy should not have been
23 permitted to render expert testimony, and merely alleges that the trial outcome "could" have
24 been different if this was argued. Such conclusory statements of ineffective assistance,
25 unaccompanied by claims of specific factual information, do not entitle the petitioner to
26 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS
27 34.735(6), Laguna's claim on this issue is suitable for summary dismissal.

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1 Second, just as in Ground Four, Laguna's argument on this claim has already been
2 examined by the Nevada Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939.
3 The relevant analysis and holding are as follows:

4 Laguna first contends Detective Gandy's expert testimony was
5 improper because he was limited to testifying as a lay witness and
6 his
7 testimony pinpointing cell phone locations exceeded this scope.
8 Laguna notes that prior to trial the State failed to provide to him with
9 the evidence upon which Detective Gandy testified. We generally
10 review the district court's decision to admit testimony for an abuse of
11 discretion, Brant v. State, 130 Nev. __, __, 340 P.3d 576, 579 (2014),
12 but will review for plain error if the defendant failed to object to the
13 alleged error below. See Green u State, 119 Nev. 542, 545, 80 P.3d
14 93, 95 (2003). If the State intends to offer expert testimony, the State
15 must provide opposing counsel with notice of the witness and the
16 proposed testimony. Burnside v. State, 131 Nev. __, __, 352 P.3d
17 627, 637 (2015); see also NRS 174.234(2). Failure to endorse a
18 witness will be procedural error but will not warrant reversal unless
19 the error prejudiced the defendant. Jones v. State, 113 Nev. 454, 473,
20 9:37 P.2d
21 55, 67 (1997).

22 Laguna's arguments are belied by the record. The State noticed
23 Detective Gandy as an expert who would testify to "how cellular
24 phones work, how phones interact with towers, and the interpretation
25 of that information." Nothing in the record suggests Detective Gandy
26 was not qualified to offer that testimony, or that his testimony at trial
27 exceeded the scope of that disclosure. Further, defense counsel did
28 not argue at trial that Detective Gandy was limited to offering lay
testimony. The objections in the record on which Laguna now relies
regarded allegedly undisclosed trial exhibits summarizing the data,
and arguments against allowing Detective Gandy to draw certain
conclusions based on that data. However, defense counsel eventually
conceded they had received all of the data upon which Detective
Gandy relied, and NRS 52.275(1) allows a party to compile and
summarize the "contents of voluminous writings ... which cannot
conveniently be examined in court" so long as the originals are made
available to the opposing party, as was the case here. *We therefore
conclude Laguna fails to show any error warranting reversal.*

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1 The record before us shows that the State presented Detective Gandy
2 as an expert witness, that he set forth his qualifications in support of
3 his expertise, and that defense counsel did not contest Detective
4 Gandy's qualifications.

5 Id at 2-3, fn. 3.

6 Thus, the Court of Appeals has already found that Detective Gandy could offer expert
7 testimony as presented at trial, and that Laguna failed to show any error requiring reversal.
8 As the level of prejudice necessary to establish an ineffective assistance of counsel claim is
9 the same as that necessary to find plain error, regardless of whether trial counsel should have
10 objected to Detective Gandy's qualifications to render expert testimony, Laguna cannot show
11 the level of prejudice necessary to establish an ineffective assistance of counsel claim. See
12 Gordon, 518 F.3d at 1300.

13 Third, Laguna's claim in Ground Five is procedurally barred. As noted above, NRS
14 34.810 provides in pertinent part that:

15 1. *The court shall dismiss a petition if the court determines that:*

16 (a) The petitioner's conviction was upon a plea of guilty or
17 guilty but mentally ill and the petition is not based upon an
18 allegation that the plea was involuntarily or unknowingly entered or
19 that the plea was entered without effective assistance of counsel.

20 (b) *The petitioner's conviction was the result of a trial and the*
21 *grounds for the petition could have been:*

22 (1) Presented to the trial court;

23 (2) *Raised in a direct appeal* or a prior petition for a writ of
24 habeas corpus or postconviction relief; or

25 (3) Raised in any other proceeding that the petitioner has
26 taken to secure relief from the petitioner's conviction and sentence,
27 unless the court finds both cause for the failure to present the
28 grounds and actual prejudice to the petitioner.

3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
pleading and proving specific facts that demonstrate:

(a) *Good cause for the petitioner's failure to present the claim*
or for presenting the claim again; and

(b) *Actual prejudice to the petitioner.*

(emphasis added).

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1 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
2 claim in Ground Five could have been—and was—raised in his direct appeal, Laguna must
3 show both good cause for bringing this claim again in the instant Petition and that he would
4 suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
5 the Court of Appeals has already determined that Detective Gandy was qualified to give
6 testimony as an expert, and that Laguna failed to show error requiring reversal, he has
7 already failed to meet his burden of establishing prejudice under NRS 34.810(3). Further,
8 Laguna advances no argument whatsoever that he has good cause for presenting this claim
9 again in the instant Petition. For those reasons, the court finds Laguna's claim that counsel
10 was ineffective for failing to object to Detective Gandy's expert qualifications and/or
11 testimony is procedurally barred pursuant to NRS 34.810.

12 Just as in all Grounds alleged thus far, the court finds Laguna has not shown that trial
13 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
14 he suffered prejudice from the introduction of Detective Gandy's expert testimony. Further,
15 the court finds Laguna cannot show that the results of the trial would have been different had
16 such testimony regarding Laguna's location as evidenced by the cell tower records not been
17 presented before the jury, as the record shows that there was overwhelming evidence that
18 Laguna was present at the scene of the crimes. The court finds Laguna's claims in Ground
19 Five are without legal merit, are procedurally barred, and fail to establish ineffective
20 assistance of counsel for multiple reasons. For these reasons, Ground Five of Laguna's
21 Petition is denied.

22 **VI. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR OPENING THE DOOR**
23 **TO HEARSAY TESTIMONY FROM DETECTIVE JENSEN**

24 Laguna argues in Ground Six of his Petition that trial counsel was ineffective for
25 opening the door to alleged hearsay statements from Detective Barry Jensen, who testified as
26 to his various observations regarding his investigation of the crime scene. Laguna alleges

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1 that "Detective Jensen was cross-examined by trial counsel when trial counsel opened the
2 door to hearsay, therefore inviting error." Petition at 7.

3 First, Laguna brings another unsubstantiated claim in Ground Six, just as in Grounds
4 One, Two, Three, Four, and Five. Again, Laguna fails to set forth any specific claim that any
5 specific statement or set of statements constituted hearsay, or that any specific statement or
6 set of statements constituted opening the door to such hearsay statements. Laguna only
7 makes the bare, naked, and vague allegations that "[p]etitioner was prejudiced by this
8 hearsay that counsel allowed in by line of questioning. Petitioner could have had a different
9 outcome in trial if this line of cross-examination would have never been heard by jurors."
10 Petition at 7. Just as in Grounds One, Two, Three, Four, and Five, Laguna's conclusory
11 statement fails to specifically identify any reasons why Detective Jensen's statement was
12 hearsay, nor how counsel allegedly opened the door to such hearsay testimony, and merely
13 alleges that the trial outcome "could" have been different if this was argued. Such conclusory
14 statements of ineffective assistance, unaccompanied by claims of specific factual
15 information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at
16 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim on this issue is suitable
17 for summary dismissal.

18 Second, even assuming *arguendo* that Laguna's factual allegations are sufficient to
19 support a claim for ineffective assistance of counsel, Laguna is still not entitled to relief. It
20 appears Laguna is characterizing the following exchange between trial counsel Monique
21 McNeill and Detective Jensen as opening the door to double hearsay:

22 Q. Okay. And so, the - - and then your answer to my question was
23 that it was in this location sort of near Mr. Laguna's house, right?

24 A. That's correct.

25 Q. You were also made aware by Amanda Mendoza that she found
26 the car in a location near the Lucky Horseshoe address, right?

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1 A. Detective Williams was made aware of that, and then I learned - -

2 Q. But you learned that?

3 A. Then I learned about it.

4 Trial Transcript, Day 13, at 121-122.

5 Laguna already brought the claim on direct appeal that Detective Jensen's statements
6 constituted double hearsay; the problem with any argument that this constitutes double
7 hearsay, however, is that Laguna's counsel asked the question and elicited the answer. Order
8 of Affirmance at 4. Further, no party objected to the question, and so the trial court below
9 never had the opportunity to address any alleged error. The Court of Appeals found as
10 follows regarding Detective Jensen's statements in regards to double hearsay:

11 We conclude Laguna has failed to show plain error in this instance,
12 because even assuming, *arguendo*, this is hearsay apparent from a
13 casual inspection of the record, Laguna has not shown how this
14 evidence prejudiced his case in light of the substantial evidence
15 placing him at the scene of the crime, including the accomplices'
16 testimonies and the cell phone records. (fn. 5)

17 ***

18 (fn. 5) *We reject Laguna's argument that Detective Jensen's*
19 *testimony also warrants reversal.* To the extent that testimony
20 included inadmissible hearsay within hearsay, we note any hearsay
21 was occasioned by defense counsel's questioning during cross-
22 examination. Therefore, it was invited error and we will not reverse.
23 See Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345
24 (1994) ("The doctrine of 'invited error' embodies the principle that a
25 party will not be heard to complain on appeal of errors which he
26 himself induced or provoked the court or the opposite party to
27 commit.").

28 Order of Affirmance at 4, fn. 5.

29 As shown in the Order of Affirmance, even assuming *arguendo* that Detective
30 Jensen's statements did constitute hearsay, Laguna failed to show plain error, nor did he
31 show that he was prejudiced by such alleged hearsay. As Laguna failed to show prejudice,
32 his claim that counsel was ineffective necessarily fails, as Laguna must show that he suffered

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1 actual prejudice and show a reasonable probability that the result of his trial would have been
2 different to support a claim of ineffective assistance of counsel. See Gordon, 518 F.3d at
3 1300; McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, regardless of whether counsel
4 opened the door to a statement that may have been hearsay, counsel's actions did not
5 constitute ineffective assistance of counsel.

6 Third, Laguna's underlying claim in Ground Six is procedurally barred. As noted
7 above, NRS 34.810 provides in pertinent part that:

8 1. *The court shall dismiss a petition if the court determines that:*

9 (a) The petitioner's conviction was upon a plea of guilty or
10 guilty but mentally ill and the petition is not based upon an
11 allegation that the plea was involuntarily or unknowingly entered or
12 that the plea was entered without effective assistance of counsel.

13 (b) *The petitioner's conviction was the result of a trial and the
14 grounds for the petition could have been:*

15 (1) Presented to the trial court;

16 (2) *Raised in a direct appeal* or a prior petition for a writ of
17 habeas corpus or postconviction relief; or

18 (3) Raised in any other proceeding that the petitioner has
19 taken to secure relief from the petitioner's conviction and sentence,
20 unless the court finds both cause for the failure to present the
21 grounds and actual prejudice to the petitioner.

22 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of
23 pleading and proving specific facts that demonstrate:*

24 (a) *Good cause for the petitioner's failure to present the claim
25 or for presenting the claim again; and*

26 (b) *Actual prejudice to the petitioner.*

27 (emphasis added).

28 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
claim in Ground Six could have been—and was—raised in his direct appeal, Laguna must
show both good cause for bringing this claim again in the instant Petition and that he would
suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
the Court of Appeals has already determined that Detective Jensen's statements did not
constitute error requiring reversal due to Laguna's failure to establish that such statements

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1 prejudiced him, he has already failed to meet his burden of establishing prejudice under NRS
2 34.810(3). Further, Laguna advances no argument whatsoever that he has good cause for
3 presenting this claim again in the instant Petition. For those reasons, Laguna's claim that
4 counsel was ineffective for opening the door to alleged hearsay statements from Detective
5 Jensen is procedurally barred pursuant to NRS 34.810.

6 Just as in all Grounds alleged thus far, the court finds that Laguna has not shown that
7 trial counsel's actions fell below an objective standard of reasonableness, nor has he shown
8 that he suffered prejudice from opening the door to the introduction of Detective Jensen's
9 statements that allegedly constituted hearsay. Further, the court finds Laguna cannot show
10 that the results of the trial would have been different had such testimony not been presented
11 before the jury, as the record shows that there was overwhelming evidence that Laguna was
12 present at the scene of the crimes and committed the crimes charged. The court finds
13 Laguna's claims in Ground Six are without legal merit, are procedurally barred, and fail to
14 establish ineffective assistance of counsel for multiple reasons. For these reasons, Ground
15 Six of Laguna's Petition is denied.

16 **VII. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
17 **TO CALL WITNESS DARCY LAGUNA**

18 Laguna argues in Ground Seven of his Petition that trial counsel was ineffective for
19 failing to call character and/or alibi witness Darcy Laguna, who would have "testif[ied] to
20 the whereabouts of petitioner on the night in question." Petition at 6. Laguna also alleges
21 that "[i]f this person would have been called to the stand, petitioner's chances at trial could
22 have been different due to the fact that this witness could have provided information to
23 petitioner" Petition at 7.

24 First, Laguna's final claim in Ground Seven is as unsubstantiated as those claims set
25 forth in Ground One, Two, Three, Four, Five, and Six. Again, Laguna fails to set forth any
26 specific testimony that Darcy Laguna would have given regarding where Laguna was on the
27 night of the crimes in question. Laguna only makes the bare, naked, and vague allegations

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1 that “trial outcome could have been different by providing petitioner with an alibi.” Petition
2 at 6. Just as in Grounds One, Two, Three, Four, Five, and Six, Laguna’s conclusory
3 statement merely alleges that Darcy Laguna—possibly a relative of Laguna—“could” have
4 testified as to Laguna’s character and “could” have provided testimony placing Laguna at
5 another location on the night in question. Further, Laguna merely alleges that the trial
6 outcome “could” have been different if Darcy Laguna testified. Laguna does not allege that
7 he was actually not present at the scene of the crimes, nor does he allege that Darcy Laguna
8 would have had first-hand knowledge of Laguna’s whereabouts otherwise. Such conclusory
9 statements, unaccompanied by claims of specific factual information, do not entitle the
10 petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove
11 and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

12 Second, as set forth in Section I *supra*, the decision of whether to call certain
13 witnesses falls under the purview of strategic decisions by counsel. As Darcy Laguna has the
14 same last name as Joseph Laguna, it is a fair assumption that Darcy is related to Joseph. As
15 referenced in Section I *supra*, there was an overwhelming amount of evidence introduced at
16 trial placing Laguna at the scene of the crime on the night in question. Placing a relative of
17 Laguna to testify contrary to the overwhelming factual evidence of Laguna’s whereabouts
18 would likely have caused serious credibility issues for counsel and Laguna.

19 In the face of the overwhelming evidence that Laguna was indeed at the scene and
20 intricately involved in the subject crimes, the strategic decision of choosing not to call Darcy
21 Laguna, to rebut testimony that Laguna was present at the scene does not constitute
22 ineffective assistance of counsel, as Laguna cannot show that he was prejudiced by the
23 absence of Laguna’s testimony. As set forth in Dawson, 108 Nev. at 117, 825 P.2d at 596,
24 strategic decisions, including which witnesses counsel decides to call at trial, are almost
25 unchallengeable. Further, trial counsel was not required to call a witness whose testimony
26 would have been futile to support an alibi defense. See Ennis, 122 Nev. at 706, 137 P.3d at
27 1103 (noting counsel cannot be ineffective for failing to make futile objections or

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1 arguments); Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002). (noting trial counsel has the
2 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
3 any, to call, and what defenses to develop.”).

4 The court finds Laguna’s bare, naked assertions regarding ineffective assistance of
5 counsel in regards to the strategic decision not to call witness Darcy Laguna are thus without
6 merit and belied by the record. Thus, the court finds Laguna has failed to show that trial
7 counsel’s actions fell below an objective standard of reasonableness, nor has he shown that
8 he suffered prejudice from the absence of Laguna’s testimony, nor has he shown that the
9 results of the trial would have been different had Laguna testified. For these reasons,
10 Ground Seven of Laguna’s Petition is denied.

11 **VIII. LAGUNA IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

12 In addition to the Petition for Writ of Habeas Corpus and Request for Evidentiary
13 Hearing, Laguna also filed a Motion for Appointment of Counsel on November 30, 2018 in
14 case A-18-785267-W. For the reasons listed below, Laguna’s Motion to Appoint Counsel is
15 denied.

16 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in
17 post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546,
18 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the
19 Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not
20 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
21 Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to
22 the United States Constitution.” McKague specifically held that with the exception of NRS
23 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
24 does not have “any constitutional or statutory right to counsel at all” in post-conviction
25 proceedings. Id. at 164, 912 P.2d at 258.

26 However, the Nevada Legislature has given courts the discretion to appoint post-
27 conviction counsel so long as “the court is satisfied that the allegation of indigency is true
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1 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

2 A petition may allege that the petitioner is unable to pay the costs of the
3 proceedings or to employ counsel. If the court is satisfied that the
4 allegation of indigency is true and the petition is not dismissed
5 summarily, the court may appoint counsel to represent the petitioner. In
6 making its determination, the court may consider, among other things,
7 the severity of the consequences facing the petitioner and whether:

- 8 (a) The issues are difficult;
- 9 (b) The Defendant is unable to comprehend the proceedings; or
- 10 (c) Counsel is necessary to proceed with discovery.

11 Under NRS 34.750, the court has discretion in determining whether to appoint counsel when
12 the petition is not summarily dismissed.

13 However, the issues presented in the instant Petition are not difficult, there is no
14 indication that Laguna is unable to comprehend the proceedings, and Laguna is not entitled
15 to counsel. As such, appointment of counsel is unwarranted under the NRS 34.750(1)(a)-(c)
16 factors, and thus Laguna’s Motion to Appoint Counsel is denied.

17 **IX. LAGUNA IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

18 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing:

- 19 1. The judge or justice, upon review of the return, answer and all
20 supporting documents which are filed, shall determine whether an
21 evidentiary hearing is required. A petitioner must not be discharged
22 or committed to the custody of a person other than the respondent
23 unless an evidentiary hearing is held.
- 24 2. If the judge or justice determines that the petitioner is not entitled
25 to relief and an evidentiary hearing is not required, he shall dismiss
26 the petition without a hearing.
- 27 3. If the judge or justice determines that an evidentiary hearing is
28 required, he shall grant the writ and shall set a date for the hearing.

29 The Nevada Supreme Court has held that if a petition can be resolved without
30 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
31 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
32 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by
33 specific factual allegations, which, if true, would entitle him to relief unless the factual

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1 allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove
2 v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking
3 post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
4 repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by
5 the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at
6 1230 (2002).

7 This Court can resolve the issues raised by Laguna’s claims without expanding the
8 record. Laguna has failed to demonstrate prejudice by any of counsel’s actions, thus all
9 claims of ineffective assistance of counsel are without merit and there is nothing in the
10 Petition that would require testimony from counsel. The evidence necessary to resolve all of
11 Laguna’s claims are contained entirely within the trial court record and are necessarily
12 limited to the trial record, as all claims address the actions of counsel at trial. Thus, Laguna
13 has failed to show that an evidentiary hearing is warranted pursuant to NRS 34.770, and his
14 request for such is denied.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
17 of Habeas Corpus shall be, and it is, hereby denied.

18 DATED this 29th day of ^{April}~~February~~, 2019.

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DISTRICT JUDGE
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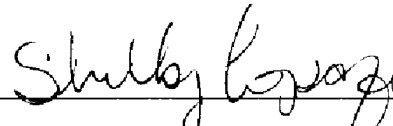
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed she served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Jory Scarborough, Esq.
Clark County District Attorney

Joseph Laguna
High Desert State Prison
PO Box 650
Indian Springs, NV 89070
Defendant


Shelby Lopaze, Judicial Executive Assistant



1 NEO

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

4
5 JOSEPH LAGUNA,

6 Petitioner,

Case No: A-18-785267-W

Dept No: V

7 vs.

8 WARDEN OF HIGH DESERT STATE
9 PRISON,

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

10 Respondent,

11 **PLEASE TAKE NOTICE** that on May1, 2019, the court entered a decision or order in this matter, a true
12 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 May 7, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 7 day of May 2019, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

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

24 ☒ The United States mail addressed as follows:

25 Joseph Laguna # 60578
26 P.O. Box 650
Indian Springs, NV 89070

27 /s/ Debra Donaldson

28 Debra Donaldson, Deputy Clerk



1 FCL

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,
5 Plaintiff,

6 -vs-

7 JOSEPH LAGUNA, aka, Joey Laguna,
8 #1203205
9 Defendant.

CASE NO: A-18-785267-W /
C-15-303991-5

DEPT NO: V

10 FINDINGS OF FACT, CONCLUSIONS OF
11 LAW AND ORDER

12 DATE OF HEARING: FEBRUARY 4, 2019
13 TIME OF HEARING: 9:00 AM

14 THIS CAUSE having come on for hearing before the Honorable JUDGE CAROLYN
15 ELLSWORTH, District Judge, on the 4th day of FEBRUARY, 2019, the Petitioner not being
16 present, PROCEEDING IN PROPER PERSON, the Respondent being represented by
17 STEVEN B. WOLFSON, Clark County District Attorney, by and through JORY
18 SCARBOROUGH, Chief Deputy District Attorney, without argument, and the Court having
19 considered the matter, including briefs, transcripts, and documents on file herein, now
20 therefore, the Court makes the following findings of fact and conclusions of law:

21 PROCEDURAL HISTORY

22 On February 27, 2015, Petitioner Joseph Laguna ("Laguna") was charged by way of
23 Superseding Indictment, with the following: CONSPIRACY TO COMMIT ROBBERY (a
24 Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN
25 POSSESSION OF A DEADLY WEAPON (a Category B Felony - NRS 205.060-NOC
26 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (a
27 Category B Felony- NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A
28 DEADLY WEAPON (a Category B Felony- NRS 193.330, 200.380, 193.165 - NOC

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1 50145); MURDER WITH USE OF A DEADLY WEAPON (a Category A Felony – NRS
2 200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A
3 DEADLY WEAPON (a Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 -
4 NOC 50031). Laguna was charged alongside four co-defendants; Jorge Mendoza, Robert
5 Figueroa, Summer Larsen, and David Murphy in cases C-15-303991-1, C-15-303991-2, C-
6 15-303991-3, and C-15-303991-4, respectively.

7 On April 9, 2015, Laguna filed a pre-trial Petition for Writ of Habeas Corpus. The
8 State filed its Return to Laguna's pre-trial Petition on May 4, 2015. On June 1, 2015, the
9 District Court denied the Petition. After the District Court denied Laguna's Petition, the
10 State advised that it was taking the case back to the Grand Jury to amend the indictment. At
11 the request of counsel, the court entered a plea of Not Guilty to the Second Amended
12 Indictment on behalf of Laguna, but noted the trial date still stood. On May 29, 2015, Laguna
13 was charged by way of Second Superseding Indictment with the same counts as listed in the
14 Superseding Indictment.

15 On September 12, 2016, Laguna's jury trial began. On October 7, 2016, the jury
16 returned its verdict, finding Laguna guilty of Conspiracy to Commit Robbery, Burglary
17 While In Possession of a Deadly Weapon, Home Invasion While In Possession of a Deadly
18 Weapon, two counts of Attempted Robbery with Use of a Deadly Weapon, Second Degree
19 Murder with Use of a Deadly Weapon, and Attempt Murder with Use of a Deadly Weapon.

20 Laguna was sentenced November 28, 2016 as follows: as to COUNT 1, to a
21 MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of TWENTY EIGHT
22 (28) MONTHS; as to COUNT 2, to a MAXIMUM of ONE HUNDRED FIFTY (150)
23 MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, Count 2 to run
24 CONCURRENTLY with Count 1; as to COUNT 3 - to a MAXIMUM of ONE HUNDRED
25 EIGHTY (180) MONTHS and a MINIMUM of SIXTY SIX (66) MONTHS, Count 3 to run
26 CONCURRENTLY with Count 2; as to COUNT 4, to a MAXIMUM of ONE HUNDRED
27 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a

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1 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM
2 of FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 4 to run
3 CONCURRENTLY with Count 3; as to COUNT 5, to a MAXIMUM of ONE HUNDRED
4 TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, plus a
5 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM
6 of FORTY EIGHT (48) MONTHS for the Use of a Deadly Weapon, Count 5 to run
7 CONCURRENTLY with Count 4; as to COUNT 6, to LIFE with a possibility of parole after
8 a term of TEN (10) YEARS have been served, plus a CONSECUTIVE term of TWO
9 HUNDRED FORTY (240) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
10 for the Use of a Deadly Weapon, Count 6 to run CONCURRENTLY with COUNT 5; as to
11 COUNT 7, to a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a
12 MINIMUM of EIGHTY FOUR (84) MONTHS, plus a CONSECUTIVE term of TWO
13 HUNDRED FORTY (240) MONTHS and a MINIMUM of EIGHTY FOUR (84) MONTHS
14 for the Use of a Deadly Weapon, Count 7 to run CONSECUTIVELY to Count 6; with SIX
15 HUNDRED FIFTY FIVE (655) days credit for time served. Laguna's AGGREGATE
16 TOTAL SENTENCE was thus LIFE with a MINIMUM of TWENTY SEVEN (27) YEARS.
17 Laguna's Judgment of Conviction was filed December 2, 2016.

18 Laguna filed a Notice of Appeal on December 9, 2016. On January 31, 2018, the
19 Nevada Supreme Court issued an Order affirming Laguna's Judgment of Conviction.
20 Remittitur also issued January 31, 2018.

21 On November 30, 2018, Laguna filed a post-conviction Petition for Writ of Habeas
22 Corpus in case A-18-785267-W. The State's filed its Opposition on January 22, 2019. On
23 February 4th, this court made the following findings of fact and conclusions of law.

24 **FACTS OF THE SUBJECT OFFENSES**

25 At sentencing, the district court judge relied on the following factual synopsis set
26 forth in Petitioner's Pre-Sentencing Investigation Report ("PSI") *as well as the*
27 *// facts which were presented at the jury trial*
28 *// where the undersigned was the presiding judge.*

1 On September 21, 2014, Las Vegas Metropolitan Police Department
2 dispatch received a call from a citizen who reported hearing
3 gunshots near her home. She also reported seeing a male wearing a
4 ski mask and holding a rifle, and another male who was lying near
the front door of a residence. Victim #1 then called to report two
armed men wearing ski masks kicked in the front door of his home.

5 Upon arrival, officers located victim #1 inside the residence. They
6 also discovered victim #2, dead from apparent gunshot wounds,
7 lying over the threshold of the front door. Officers located a blood
8 trail in front of the residence and followed the trail looking for
9 suspects or additional victims. A rifle and gloves were located in the
10 bed of a truck parked near the residence. Officers then observed a
11 male inside of a vehicle and ordered him to exit with his hands up.
12 The male, later identified as co-offender Jorge Mendoza, refused to
13 exit and was extracted from the vehicle by officers. Mr. Mendoza
14 was suffering from a gunshot wound to his left thigh. Upon
15 questioning, Mr. Mendoza told officers he was forced out of his
16 vehicle by two men who shot him in the leg. He also stated he
17 knocked on several doors in the neighborhood looking for help. He
18 told the officers he thought he was being chased and hid in an
19 unlocked car to hide. An officer noticed a white cloth with blood, as
20 well as an orange ski mask on the front driver's side floorboard. Mr.
21 Mendoza was then transported to a hospital.

22 Officers continued to follow a separate blood trail for .2 miles which
23 eventually ended on a separate street. It appeared to the officers that
24 the person bleeding may have been picked up by a vehicle. A crime
25 scene analyst examined the crime scene for evidence and discovered
26 two bullet strikes on the stucco black wall across the street from the
27 residence. Additionally, a bullet fragment was found in the street,
28 along with three casings each stamped with "FC 9mm Luger." There
were five casings outside, near the front door of the home and a
noticeable blood trail leading from the front of the home to the street.
Inside the residence there were bullet strikes in the walls and
multiple casings. The downstairs front door was obviously forced
open and the interior frame was broken, lying on the floor.
Detectives questioned Mr. Mendoza at the hospital. He claimed he
was alone that night; however, when detectives told him his "buddy"
was also shot he stated, "I don't know what he's gonna tell you. I
don't know-I don't know him." Mr. Mendoza's version of events
was very disconnected and vague and detectives believed he was
being deceptive throughout the interview. Detectives executed a

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1 search warrant at Mr. Mendoza's residence where they located a
2 Jennings .22 caliber semi-auto pistol, a .22 caliber AK-47 style rifle
3 and numerous cartridges in a gun safe. On September 22, 2014,
4 detectives spoke with victim #1 who stated his father called him and
5 said he heard victim #1 was going to be robbed in the next few days.
6 Victim #1 stated he then went home and retrieved his gun and
7 waited. As he waited, his roommate, victim #2, came home. Victim
8 #1 then heard a loud boom at the front door.

9 There was a second bang and the door opened. Victim #1 looked
10 around the wall of the kitchen and saw a man wearing an orange ski
11 mask, carrying a rifle style gun and another person behind him.
12 Victim #1 stated he fired two shots from his Glock 40 and believed
13 he struck one of the men. The men then began firing at the victims.
14 Victim #1 continued to fire several more rounds and the men
15 eventually left the residence and the shooting stopped for
16 approximately 30 seconds. The victims then made their way to the
17 front door. As victim #2 reached to close the door, victim #1 heard a
18 gunshot and victim #2 dropped in the doorway. Victim #1 retreated
19 back and began to look for a phone. He located a phone and called
20 his father and then 911.

21 Detectives then spoke with a woman who stated the co-offender,
22 Summer Larsen asked her to pick her up a few days prior to the
23 incident and take her to the store. When they arrived, an unknown
24 male got into her vehicle. She stated she then heard Ms. Larsen and
25 the male discussing a robbery that would occur on Sunday. The
26 woman believed they were planning on robbing Ms. Larsen's
27 husband, victim #1, who she was separated from. Ms. Larsen also
28 told her she was responsible for prior burglaries at the home of
29 victim #1.

30 On October 16, 2014, detectives received information from an
31 individual who stated he buys marijuana from a male, later identified
32 as the co-offender Robert Figueroa. He stated that around the time of
33 the home invasion Mr. Figueroa went missing. Approximately one
34 week later, the male made contact with Mr. Figueroa who told him
35 the following: Mr. Figueroa kicked in the door of the residence and
36 entered with Mr. Mendoza and another male. The home owner shot
37 at them as they forced their way into the home. Mr. Figueroa was
38 shot in the face and left side of his body and Mr. Mendoza was shot
39 in the leg. He stated the third male ran away unharmed and Mr.
40 Mendoza was caught by police a short distance from the house. Mr.

//

1 Figueroa also told the male, his girlfriend drove him to California to
2 receive medical attention to avoid detection by LVMPD. The male
3 also told detectives that Mr. Figueroa buys marijuana from victim #1
4 and that the victim supposedly had multiple pounds of marijuana at
5 the time of the home invasion. On October 20, 2014, detectives with
6 the LVMPD Criminal Apprehension Team (CATS) set up
7 surveillance at Mr. Figueroa's apartment. A short time later, Mr.
8 Figueroa exited the apartment and was taken into custody.
9 Detectives immediately noticed a bullet wound on his lower lip area
10 and bullet wounds to his left torso and back. Upon questioning, Mr.
11 Figueroa told detectives he arrived at the residence to buy marijuana
12 and noticed the front door open. As he neared the open door, he was
13 shot and fled the area. He then returned a short time later and drove
14 his car away. Detectives explained to him that police were on the
15 scene in a very short time and questioned his story about returning to
16 get his car. Mr. Figueroa just stared blankly into space and did not
17 offer any more to his version of events. When asked where he was
18 treated for his injuries, Mr. Figueroa stated he was going to need an
19 attorney.

20 On October 24, 2016, detectives met with Mr. Figueroa and his
21 attorney at the Clark County Detention Center. Mr. Figueroa stated
22 he was contacted by his friend, "Maton," later identified as the
23 defendant Joseph Laguna. Mr. Figueroa was told that Mr. Laguna
24 and a male he knew as "DuBoy," later identified as co-offender
25 David Murphy, knew the location of a "stash house" and planned to
26 commit a robbery there. Mr. Figueroa stated Mr. Murphy picked him
27 up with Mr. Laguna in the front seat, while he and Mr. Mendoza
28 were in the backseat. Mr. Figueroa said he was armed with a .40
 caliber, Mr. Mendoza had a rifle and Mr. Laguna had a .38 caliber
 revolver. Mr. Figueroa stated he kicked the door of the residence
 open and all three men entered the stash house. Mr. Murphy stayed
 in the vehicle which was parked down the street. As he entered the
 house, he was shot in the mouth and went down. He then got up and
 began to run out of the house and was shot again in the left side of
 his back. He eventually ran away and hid in a backyard before he
 called his sister to pick him up. Mr. Figueroa said he believed Mr.
 Murphy's girlfriend, identified as Ms. Larsen, told Mr. Laguna about
 the stash house and also believed there was 30 pounds of marijuana
 in the stash house. Further, Mr. Figueroa said the .40 caliber pistol
 he used during the home invasion was at his girlfriend's apartment.

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1 On November 18, 2014, Ms. Larsen was arrested on a warrant for
2 charges related to the home invasion. While in custody, detectives
3 heard Ms. Larsen speaking with a male she referred to as
4 "Doughboy." During one of her calls, Ms. Larsen asked Doughboy
5 for his address, which was determined to match the address of Mr.
6 Murphy. On December 10, 2014, detectives spoke with victim #1
7 who positively identified Mr. Murphy as Doughboy and stated Mr.
8 Murphy and Ms. Larsen were friends. Detectives then spoke with the
9 father of victim #1 who also positively identified Mr. Murphy as
10 Doughboy. He also stated he heard rumors that after Ms. Larsen and
11 victim #1 separated; Ms. Larsen began dating Mr. Murphy.

12 On December 11, 2014, officers located Mr. Murphy during a traffic
13 stop. Mr. Murphy was transported to LVMPD Homicide and
14 questioned by detectives. Mr. Murphy stated he knew he was there
15 because of something between Ms. Larsen and victim #1 and
16 admitted he knew them both. Further, Mr. Murphy denied any
17 involvement with the murder and home invasion that occurred at the
18 victim's residence.

19 On February 13, 2015, Mr. Laguna was arrested and transported to
20 LVMPD Homicide and interviewed by detectives. During the
21 interview, Mr. Laguna related the following: he recognized the
22 photos of Mr. Mendoza, Mr. Murphy and Mr. Figueroa and did not
23 recognize the photos of the victims. Additionally, Mr. Laguna denied
24 any knowledge of the home invasion and stated he was never there.
25 Based on the above facts, Mr. Mendoza, Mr. Figueroa, Mr. Laguna,
26 Mr. Murphy and Ms. Larsen were booked accordingly at the Clark
27 County Detention Center.

28 Pre-Sentence Investigation Report at 6-8.

ANALYSIS

Laguna has brought seven grounds for relief in his Petition for Writ of Habeas
Corpus, all of which allege ineffective assistance on the part of trial and/or appellate counsel.
For the reasons set forth below, all of Laguna's claims of ineffective assistance of counsel
are without merit. As none of Laguna's claims have merit, he is not entitled to an evidentiary
hearing. Finally, Laguna has failed to show that he should be appointed counsel. For the

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1 following reasons, Laguna's post-conviction Petition for Writ of Habeas Corpus, his Request
2 for Evidentiary Hearing, and his Motion to Appoint Counsel are denied.

3 The Sixth Amendment to the United States Constitution provides that, "[i]n all
4 criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel
5 for his defense." The United States Supreme Court has long recognized that "the right to
6 counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466
7 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
8 865 P.2d 322, 323 (1993).

9 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
10 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test
11 of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138,
12 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's
13 representation fell below an objective standard of reasonableness, and second, that but for
14 counsel's errors, there is a reasonable probability that the result of the proceedings would
15 have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada
16 State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland
17 two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to
18 approach the inquiry in the same order or even to address both components of the inquiry if
19 the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct.
20 at 2069.

21 The court begins with the presumption of effectiveness and then must determine
22 whether the defendant has demonstrated by a preponderance of the evidence that counsel
23 was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective
24 counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the
25 range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91
26 Nev. 430, 432, 537 P.2d 473, 474 (1975).

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1 Counsel cannot be ineffective for failing to make futile objections or arguments. See
2 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
3 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
4 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
5 (2002).

6 Based on the above law, the role of a court in considering allegations of ineffective
7 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
8 whether, under the particular facts and circumstances of the case, trial counsel failed to
9 render reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708,
10 711 (1978). This analysis does not mean that the court should “second guess reasoned
11 choices between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Id. To be effective, the constitution “does not require that
14 counsel do what is impossible or unethical. If there is no bona fide defense to the charge,
15 counsel cannot create one and may disserve the interests of his client by attempting a useless
16 charade.” United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19
17 (1984).

18 “There are countless ways to provide effective assistance in any given case. Even the
19 best criminal defense attorneys would not defend a particular client in the same way.”
20 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
21 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v.
22 State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850,
23 853, 784 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of
24 counsel's challenged conduct on the facts of the particular case, viewed as of the time of
25 counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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1 Even if a defendant can demonstrate that his counsel's representation fell below an
2 objective standard of reasonableness, he must still demonstrate prejudice and show a
3 reasonable probability that, but for counsel's errors, the result of the trial would have been
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
5 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability
6 sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-
7 89, 694, 104 S. Ct. at 2064-65, 2068).

8 The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the
9 disputed factual allegations underlying his ineffective-assistance claim by a preponderance
10 of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).
11 Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-
12 conviction relief must be supported with specific factual allegations, which if true, would
13 entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225
14 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled
15 by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific
16 facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than
17 just conclusions may cause your petition to be dismissed." (Emphasis added). A defendant
18 who contends his attorney was ineffective because he did not adequately investigate must
19 show how a better investigation would have rendered a more favorable outcome probable.
20 Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

21 **I. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
22 **CALL WITNESS JOSEPH LARSEN**

23 Laguna argues in Ground One of his Petition that trial and appellate counsel were
24 ineffective for failing to call witness Joseph Larsen¹ to testify, as Larsen "could have proven

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28 ¹ In the Pre-Sentence Investigation Report, Joseph Larsen is referred to as "Victim 1," one of the occupants of 1661
Broadmere, the home in which the subject crimes occurred. "Victim 2" refers to the deceased victim Monty Gibson,
roommate of Joseph Larsen.

1) petitioner was not the perpetrator he had seen and 2) that petitioner was not at the scene of the crime at night of question.” Petition at 6.

First, while Laguna inexplicably claims appellate counsel was ineffective for actions that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such conclusory statements of ineffective assistance of appellate counsel, unaccompanied by claims of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim that appellate counsel was ineffective for failure to call a witness at trial is suitable for summary dismissal.

Second, both of Laguna’s conclusory statements fail to specifically identify any helpful statements Larsen would have given, and merely allege that Larsen’s testimony “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance, unaccompanied by claims of specific factual information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

However, even assuming *arguendo* that Laguna’s bare and naked assertions were factually sufficient, such assertions are belied by the record and thus Laguna cannot demonstrate that he was prejudiced by trial counsel’s strategic decision not to call Larsen as a witness. Larsen first testified before the Grand Jury on January 29, 2015. Grand Jury Transcript, Volume 2 at 67-95. From the first question posed of him, Larsen revealed himself to be a hostile and unhelpful witness:

EXAMINATION

BY MS. LEXIS:

Q. Mr. Larsen, on September 21, 2014, did you live at an address called 1661 Broadmere Street here in Las Vegas, Clark County, Nevada?

A. Ma'am, I refuse to testify.

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1 Q. Okay. Mr. Larsen, you are a witness for the State of Nevada so
2 I'm going to need you to please answer my questions. Okay? Joey?

3 A. I refuse to, ma'am.

4 Q. Okay. Why do you refuse to testify before this Grand Jury, Joey?

5 A. I just don't want to.

6 Q. You have to Joey. You're here by order of the District Court and
7 by this Grand Jury. You have to be here today.

8 A. I'm here.

9 Q. Joey, why is it that you do not want to testify before this Grand
10 Jury? Did something happen on September 21, 2014 that you're not
11 wanting to testify about?

12 A. I'm sorry, ma'am, I don't want to answer any questions.

13 Q. Joey, did something happen on September 21, 2014 that caused
14 us to subpoena you today?

15 A. I'm sorry, ma'am, I don't want to answer any questions.

16 Q. Joey, I'm going to ask you to leave the room. I need to speak with
17 the Grand Jury.

18 (At this time, witness Joseph Larsen exits the proceedings.)

19 MS. LEXIS: Mr. Foreperson, at this point I will be contacting the
20 chief judge, Judge Barker, and I will be asking to bring Mr. Joey
21 Larsen before Judge Barker to hold a contempt hearing.

22 Id at 67-68.

23 It was only after Larsen was made aware that failing to testify to the Grand Jury could
24 result in a finding of contempt that he eventually capitulated and gave his testimony.
25 Contrary to Laguna's assertions that Larsen's testimony would have provided some sort of
26 alibi defense by proving that Laguna was not at the scene of the crime, Larsen's testimony
27 showed that as he was in the house during the occurrence of the crime, he could not have

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1 testified as to Laguna's presence at any other location during the crime. Id at 76-96. While
2 Laguna's assertion that Larsen saw only two people at the home is correct, the resultant
3 inference that Laguna could not have been one of the co-defendants is fatally flawed. Larsen
4 testified that he saw two people wearing masks enter the home that evening. Id at 76-84.
5 Larsen thus could not have testified that Laguna was not at the scene; given the masks worn
6 by the two people who entered the home, Larsen had no factual basis to testify that either of
7 those people were or were not Laguna. At best, Larsen's testimony would have indicated that
8 he could not verify that Laguna was present at the home on the night of the subject crimes,
9 which is insufficient to support an alibi defense.

10 Further, even if Larsen testified that he could not be 100% certain that Laguna was at
11 the home that evening, there was overwhelming evidence presented at trial that Laguna was
12 at the home and intricately involved with the criminal conspiracy. Larsen's excited
13 utterances to his family about what he saw at the scene were introduced into evidence
14 through his wife, Summer Larsen, and his father, Steven Larsen, as well as Larsen's 911
15 calls made shortly after the subject crimes. Trial Transcript, Day 5-19. Further, cell phone
16 tracking data, introduced through State's expert Detective Gandy, placed Laguna in the
17 neighborhood of 1661 Broadmere at the time of the subject crimes. Trial Transcript, Day 9.
18 Finally, Laguna's own co-defendant Robert Figueroa testified that Laguna called him and
19 told him he had a "lick (robbery)" lined up, and that he wanted Figueroa to help him with it.
20 Trial Transcript, Day 10, at 218-219. Laguna even called Figueroa later in the day to ensure
21 that Figueroa would help with the robbery. Id at 234. Figueroa's testimony ultimately places
22 himself, Laguna, and the two other male co-defendants at the scene of the crimes together on
23 that night. Id at 241.

24 In the face of the overwhelming evidence that Laguna was indeed at the scene and
25 intricately involved in the subject crimes, the strategic decision of choosing not to call Jason
26 Larsen, a hostile and unhelpful witness with no factual basis to rebut testimony that Laguna
27 was present at the scene, does not constitute ineffective assistance of counsel as Laguna

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1 cannot show that he was prejudiced by the absence of Larsen's testimony. As set forth in
2 Dawson, 108 Nev. at 117, 825 P.2d at 596, strategic decisions, including which witnesses
3 counsel decides to call at trial, are almost unchallengeable. Further, trial counsel was not
4 required to call a witness whose testimony would have been futile to support an alibi
5 defense. See Ennis, 122 Nev. at 706, 137 P.3d at 1103 (noting counsel cannot be ineffective
6 for failing to make futile objections or arguments); Rhyne, 118 Nev. at 8, 38 P.3d at 167
7 (2002). (noting trial counsel has the "immediate and ultimate responsibility of deciding if
8 and when to object, which witnesses, if any, to call, and what defenses to develop.").

9 The court finds Laguna's bare, naked assertions regarding ineffective assistance of
10 counsel in regards to the strategic decision not to call witness Joseph Larsen are thus without
11 merit and belied by the record. Thus, the court finds Laguna has failed to show that trial
12 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
13 he suffered prejudice from the absence of Larsen's testimony, nor has he shown that the
14 results of the trial would have been different had Larsen testified. For these reasons, Ground
15 One of Laguna's Petition is hereby denied.

16 **II. COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT TO**
17 **ELICIT TESIMONY FROM A CELLULAR PHONE EXPERT**

18 Laguna argues in Ground Two of his Petition that trial and appellate counsel were
19 ineffective for failing to call a better cellular phone expert than the expert called by the State,
20 as "[t]his expert knew more on the subject of this subject than non-experts on this subject
21 and could have presented evidence that would have been positive for defense." Petition at 7.

22 First, while Laguna inexplicably claims appellate counsel was ineffective for actions
23 that occurred at trial, Laguna sets forth no facts or argument in support of that claim. Such
24 conclusory statements of ineffective assistance of appellate counsel, unaccompanied by
25 claims of specific factual information, do not entitle Laguna to relief. Hargrove, 100 Nev. at
26 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim that

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1 appellate counsel was ineffective for failure to call an expert witness at trial is suitable for
2 summary dismissal.

3 Second, although it appears Laguna was referring to a specific expert in his reference
4 to “[t]his expert,” Laguna does not identify a specific expert by name, nor does he set forth
5 any specific factual information as to what such an expert would have testified to. Laguna
6 only makes the bare, naked allegations that such an expert “could have presented evidence
7 that would have been positive for defense.” Petition at 7. Just as in Ground One, Laguna’s
8 conclusory statement fails to specifically identify any helpful testimony that a competing
9 cellular phone expert would have given, and merely allege that such an expert’s testimony
10 “could” have helped Laguna at trial. Such conclusory statements of ineffective assistance,
11 unaccompanied by claims of specific factual information, do not entitle the petitioner to
12 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS
13 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

14 Third, the substance of Laguna’s claim is more properly brought as a failure to
15 investigate claim, in that Laguna alleges further investigation of the cell tower records would
16 have uncovered evidence showing that Laguna was not in the vicinity of the crimes on the
17 night in question. However, this claim also fails, as Laguna offers nothing but vague
18 supposition that expert witness testimony would have provided “evidence that would have
19 been positive.” Petition at 7. Laguna offers no argument that the State’s expert witness’s
20 testimony was factually inaccurate, nor that the State’s expert came to an inaccurate
21 conclusion regarding the whereabouts of Laguna on the night of the subject crimes. Such a
22 bare, naked assertion is not sufficient to warrant relief under Hargrove. Further, pursuant to
23 Molina, 120 Nev. at 192, 87 P.3d at 538, a defendant who contends his attorney was
24 ineffective because she did not adequately investigate must show how a better investigation
25 would have rendered a more favorable outcome probable. Laguna’s vague assertions do not
26 establish how a better investigation would have rendered a more favorable trial outcome
27 more probable.

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1 Fourth, just as in Ground One, the decision whether to call certain witnesses is
2 counsel's prerogative, and such strategic decisions are "virtually unchallengeable." Dawson,
3 108 Nev. at 117, 825 P.2d at 596. Laguna fails to allege a flawed methodology in how the
4 State's expert interpreted the cell tower information to show Laguna's whereabouts on the
5 night of the subject crimes, therefore it would have been a futile argument to suggest that
6 competing expert's testimony would have been helpful to Laguna's case; counsel cannot be
7 ineffective for failing to advance futile arguments. See Ennis, 122 Nev. at 706, 137 P.3d at
8 1103.

9 Just as in Ground One, the court finds Laguna has not shown that trial counsel's
10 actions fell below an objective standard of reasonableness, nor has he shown that he suffered
11 prejudice from the absence of expert witness testimony regarding cellular phones, nor has he
12 shown that the results of the trial would have been different had trial counsel called a
13 competing expert to rebut the State's expert testimony. For these reasons, Ground Two of
14 Laguna's Petition is denied.

15 **III. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
16 **TO TESTIMONY FROM STEVEN LARSEN**

17 Laguna argues in Ground Two of his Petition that trial counsel was ineffective for
18 failing to object to statements made at trial by Steven Larsen, father of victim Joseph Larsen.
19 Laguna alleges that such statements were improper as "[t]hese statements that witness was
20 stating were made by a still-living individual that could have been at trial and stated under
21 sworn testimony." Petition at 8. It appears Laguna is arguing that portions of Steven
22 Larsen's testimony were hearsay, and that counsel was ineffective to failing to object to such
23 hearsay.

24 First, although it appears Laguna was referring to hearsay statements, Laguna does
25 not identify a specific hearsay statement or set of hearsay statements made by Steven Larsen,
26 thus it is effectively impossible to determine whether such statements were or were not
27 hearsay. Laguna only makes the bare, naked allegations that "[i]f the jurors would not have
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1 heard this statement by non-testifying witness² outcome could have been different either by
2 hearing from this person or being instructed to not take in last statements made....” Petition at
3 8. Just as in Grounds One and Two, the court finds Laguna’s conclusory statement fails to
4 specifically identify any hearsay statements allegedly given, and merely allege that the
5 absence of such statements “could” have helped Laguna at trial. Such conclusory statements
6 of ineffective assistance, unaccompanied by claims of specific factual information, do not
7 entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to
8 Hargrove and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary
9 dismissal.

10 Second, contrary to Laguna’s assertions, trial counsel did object—three separate
11 times—to Steven Larsen’s testimony on the grounds that his statements constituted hearsay:

12 Q. And what is the - - what does your son tell you about what
13 occurred inside the residence?

14 MS. McNEILL: Objection.

15 MR. LANDIS: Can we approach?

16 THE COURT: Yes.

17 (Off-record bench conference)

18 BY MR. DiGIACOMO: I’ll ask it again. What did your son sort of
19 tell you about what happened inside the house?

20 ***

21 Q. Based upon all of that, you felt comfortable or at least you
22 believed
23 that Summer’s involved? Is that fair?

24 A. Oh, yeah. I have no doubt in my mind.

25 //

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² Presumably Joseph Larsen.

1 Q. So let me ask you, did Joseph at least initially believe that
2 Summer had anything to do with it?

3 MR. LANDIS: Objection.

4 MS. McNEILL: Objection. Speculation and hearsay.

5 MR. DiGIACOMO: Let me rephrase.

6 THE COURT: Yeah. I'm going to sustain that so go ahead.

7 ***

8
9 Q. Did you see Joseph doing things or behaving in certain manners
10 that indicated to you that he's still in a relationship with Summer?

11 A. Yes.

12 Q. What did he do?

13 A. He told me that - -

14 MS. McNEILL: Objection.

15 Q. Without telling us what he told you.

16 A. Oh.

17
18 Trial Transcript, Day 9, at 27-34.

19 Laguna's claims that counsel failed to object to hearsay statements is plainly belied by
20 the record. Trial counsel Monique McNeill objected on multiple occasions to statements that
21 could be construed as hearsay. Further, the court sustained one of those objections, and the
22 State agreed after other objections to either rephrase its questions or direct the witness not to
23 answer in a way that such an answer would constitute hearsay. Thus, even if those statements
24 were hearsay, trial counsel's timely objections, as well as the court and state's responses to
25 such objections, removed any prejudice that such statements would have had. Laguna's
26 claim is belied by the record; further, as counsel's proper objections prevented the jury from
27 considering hearsay testimony, Laguna cannot show that he was prejudiced by such

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1 statements. As Laguna cannot show prejudice, he has failed to establish the second prong of
2 McNelson, which requires he demonstrate prejudice and show a reasonable probability that,
3 but for counsel's alleged errors, the result of the trial would have been different. 115 Nev. at
4 403, 990 P.2d at 1268.

5 Third, even assuming *arguendo* that Laguna's claim in Ground Three establishes a
6 claim that counsel was ineffective for failing to call Joseph Larsen to testify as to what
7 Steven Larsen testified to at trial, such a claim has already been addressed in Ground One of
8 Laguna's Petition.

9 Just as in Grounds One and Two, the court finds that Laguna has not shown that trial
10 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
11 he suffered prejudice from Steven Larsen's alleged hearsay statements. Further, the court
12 finds Laguna cannot show that the results of the trial would have been different had trial
13 counsel objected to Steven Larsen's hearsay statements, as the record shows that trial
14 counsel did exactly that. Laguna's claims in Ground Three are belied by the record and fail
15 to establish ineffective assistance of counsel for multiple reasons. For these reasons, Ground
16 Three of Laguna's Petition is denied.

17 **IV. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO OBJECT**
18 **TO TESTIMONY FROM DETECTIVE WILLIAMS**

19 Laguna argues in Ground Four of his Petition that trial counsel was ineffective for
20 failing to object to statements made at trial by Detective Tod Williams concerning what he
21 was told by Amanda Mendoza regarding an iPhone location app. Laguna alleges that "a part
22 of being affective [sic] trial counsel is objecting at all times during trial." Petition at 8. It
23 appears that Laguna is arguing that Detective Williams's testimony regarding what Ms.
24 Mendoza told him was hearsay, rather than the nonsensical assertion that trial counsel is
25 under some duty to object "at all times during trial."

26 First, just like in Grounds One, Two, and Three, although it appears Laguna was
27 referring to hearsay statements, Laguna does not identify a specific hearsay statement or set
28 //

1 of hearsay statements made by Detective Williams, thus it is effectively impossible to
2 determine whether such statements were or were not hearsay. Laguna only makes the bare,
3 naked allegations that “[t]he outcome of trial could have been different by juror members not
4 hearing this from this detective.” Petition at 9. Also, just as in Grounds One, Two, and Three,
5 Laguna’s conclusory statement fail to specifically identify any hearsay statements allegedly
6 given, and merely allege that the absence of such statements “could” have helped Laguna at
7 trial. Such conclusory statements of ineffective assistance, unaccompanied by claims of
8 specific factual information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at
9 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna’s claim on
10 this issue is suitable for summary dismissal.

11 Second, Laguna’s claims that counsel was ineffective for failing to object to a hearsay
12 statement by Detective Williams is without merit, as Detective Williams’ statements made at
13 trial were not hearsay. The court finds Laguna’s claim is meritless because Williams neither
14 relayed a statement Amanda made to him, nor was Williams’ observation given for the truth
15 of the matter asserted.

16 At trial, Michelle Estavillo testified that Amanda Mendoza used an app on her phone
17 to ping Mendoza’s location in an attempt to find him after he disappeared with his car and
18 would not return her phone calls. Trial Transcript, Day 7 at 95-141. At the time, co-
19 defendant Jorge Mendoza had already been apprehended by police from the scene of the
20 crime and was receiving treatment at University Medical Center. Id. Murphy later came to
21 pick Amanda up and take her to the car, which was present by 2:00 a.m. the next day when
22 police arrived. Id.

23 Later, Detective Williams testified about his experience interviewing Amanda
24 Mendoza. Trial Transcript, Day 9 at 113-150. Detective Williams testified that he observed a
25 location on an iPhone app on Amanda’s phone, and that he later went to that location. Id.
26 The State introduced a map and asked Detective Williams if the map showed the location
27 that he observed on the app. Id.

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1 It is unclear how Laguna believes this could be hearsay. Hearsay requires a
2 "statement," and a "statement" must be an oral or written assertion, or some nonverbal
3 conduct by a person intended to make an assertion. NRS 51.035-45. Moreover, hearsay
4 requires a declarant, which must be a person. NRS 51.025. Laguna cites to no authority that
5 an inanimate object makes an "assertion" subject to the hearsay rule, and an inanimate object
6 is certainly not a "person," and so can neither be a declarant nor can it make a nonverbal
7 assertion. The California Supreme Court and some federal courts have held that machines are
8 not declarants for purposes of the Confrontation Clause. See People v. Lopez, 55 Cal. 4th
9 569, 286 P.3d 469, 478 (Cal. 2012) (noting agreement with federal courts). Regardless,
10 Detective Williams' observation of the information displayed on the phone screen would not
11 be excluded as hearsay under the silent witness doctrine since the image on the phone
12 "speaks for itself" in much the same way as a video does. See, Rogers v. State, 902 N.E.2d
13 871, 876 (Ind. Ct. App. 2009); McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005); Edwards
14 v. State, 762 N.E.2d 128, 136 (Ind. Ct. App. 2002); Wagner v. State, 707 So. 2d 827, 830
15 (Fla. Dist. Ct. App. 1998).

16 Although Laguna makes no cogent arguments regarding hearsay in his Petition, the
17 State assumes that Laguna is arguing that in some manner Amanda was making a statement
18 through her phone. Petition at 9. Even assuming, arguendo, that this could be the case, where
19 Amanda went to retrieve her car was not what Detective Williams testified to. Detective
20 Williams said that he went to a location that he saw on Amanda's phone. Trial Transcript,
21 Day 9 at 113-150. Defense counsels objected, on differing grounds, when Williams was
22 asked whether he recognized on a map the location that he went to after observing a location
23 on a phone. Id. None of these are statements, and the Court overruled the objection. Id. Even
24 if, somehow, this could be construed as a "statement," it was not offered for the truth of the
25 matter asserted (presumably that is where Amanda went to retrieve the car) but to explain
26 why Detective Williams went to that location. Under no plausible analysis, then, is an
27 observation of a phone hearsay.

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1 Laguna's argument on this claim has, in fact, already been examined by the Nevada
2 Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939. The relevant analysis
3 and holding are as follows:

4 Laguna next argues the district court improperly allowed hearsay
5 evidence by admitting Detective Williams' testimony of Amanda
6 Mendoza's statements regarding the app she used to locate
7 accomplice Jorge Mendoza's phone. Defense counsel did not object
8 to this testimony below, and we therefore review for plain error.
9 Rimer v. State, 351 P.3d 697, 715 (2015) (holding that to prevail
10 under a plain error review a defendant must show both that the error
11 is apparent from a casual inspection of the record and that the error
12 was prejudicial, affecting the defendant's substantial rights). We
13 conclude Laguna has failed to show plain error in this instance,
14 because *even assuming, arguendo, this is hearsay apparent from a
casual inspection of the record, Laguna has not shown how this
evidence prejudiced his case in light of the substantial evidence
placing him at the scene of the crime, including the accomplices'
testimonies and the cell phone records.*

14 Order of Affirmance at 3-4 (emphasis added).

15 The Court of Appeals' holding that Laguna did not demonstrate prejudice even if
16 Detective Williams' statements were hearsay is significant, as the level of prejudice
17 necessary to establish an ineffective assistance of counsel claim is the same as that necessary
18 to find plain error. See Gordon v. United States, 518 F.3d 1291, 1300 (11th Cir. 2008) ("the
19 'substantial rights' standard of plain error review is identical to the 'prejudice' standard of an
20 ineffective assistance claim.") Thus, regardless of whether trial counsel should have objected
21 Detective Williams' statement, Laguna cannot show the level of prejudice necessary to
22 establish an ineffective assistance of counsel claim.

23 Fourth, Laguna's claim in Ground Four is procedurally barred. NRS 34.810 provides
24 in pertinent part that:

- 25 1. *The court shall dismiss a petition if the court determines that:*
26 (a) The petitioner's conviction was upon a plea of guilty or
27 guilty but mentally ill and the petition is not based upon an
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1 allegation that the plea was involuntarily or unknowingly entered or
2 that the plea was entered without effective assistance of counsel.

3 (b) *The petitioner's conviction was the result of a trial and the*
4 *grounds for the petition could have been:*

5 (1) Presented to the trial court;

6 (2) *Raised in a direct appeal* or a prior petition for a writ of
7 habeas corpus or postconviction relief; or

8 (3) Raised in any other proceeding that the petitioner has
9 taken to secure relief from the petitioner's conviction and sentence,
10 unless the court finds both cause for the failure to present the
11 grounds and actual prejudice to the petitioner.

12 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
13 *pleading and proving specific facts that demonstrate:*

14 (a) *Good cause for the petitioner's failure to present the claim*
15 *or for presenting the claim again; and*

16 (b) *Actual prejudice to the petitioner.*

17 (emphasis added).

18 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
19 claim in Ground Four could have been—and was—raised in his direct appeal, Laguna must
20 show both good cause for bringing this claim again in the instant Petition and that he would
21 suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
22 the Court of Appeals has already determined that Laguna failed to show that he suffered
23 actual prejudice, he has already failed to meet his burden under NRS 34.810(3). Further,
24 Laguna advances no argument whatsoever that he has good cause for presenting this claim
25 again in the instant Petition. For those reasons, Laguna's claim that counsel was ineffective
26 for failing to object to hearsay statements from Detective Williams is procedurally barred
27 pursuant to NRS 34.810.

28 Just as in all grounds alleged thus far, the court finds Laguna has not shown that trial
counsel's actions fell below an objective standard of reasonableness, nor has he shown that
he suffered prejudice from Detective Williams' alleged hearsay statements. Further, the court
finds Laguna cannot show that the results of the trial would have been different had those
alleged hearsay statements regarding information shown on the iPhone app had not been
presented before the jury, as the record shows that there was overwhelming evidence that

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1 Laguna was present at the scene of the crimes. The court finds Laguna's claims in Ground
2 Four are without legal merit, are procedurally barred, and fail to establish ineffective
3 assistance of counsel for multiple reasons. For these reasons, Ground Four of Laguna's
4 Petition is denied.

5 **V. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
6 **TO ARGUE THAT DETECTIVE GANDY SHOULD BE LIMITED TO**
7 **LAY TESTIMONY**

8 Laguna argues in Ground Five of his Petition that trial counsel was ineffective for
9 failing to object to statements made at trial by Detective Christopher Gandy, who testified as
10 an expert regarding how cellular phones work, how phones interact with towers, and the
11 interpretation of that information. Laguna alleges that "trial counsel should have argued the
12 fact that Detective Gandy was limited to offering lay testimony." Petition at 9.

13 First, keeping with Laguna's pattern of unsubstantiated claims, just as in Grounds
14 One, Two, Three, and Four, it appears Laguna is challenging Detective Gandy's designation
15 as an expert witness under NRS 50.275 and Hallmark v. Eldridge, 124 Nev. 492, 499, 189
16 P.3d 646, 650 (2008). However, Laguna fails to set forth any specific claim that the trial
17 court somehow wrongly concluded that Detective Gandy was qualified to testify as an expert
18 witness. Laguna only makes the bare, naked, and vague allegations that "[t]rial counsel has a
19 duty to argue certain facts during trial and should have argued this issue, but because she
20 didn't petitioner suffered from this testimony with no argument [sic] on this subject."
21 Petition at 9. Just as in Grounds One, Two, Three, and Four, Laguna's conclusory statement
22 fails to specifically identify any reasons why Detective Gandy should not have been
23 permitted to render expert testimony, and merely alleges that the trial outcome "could" have
24 been different if this was argued. Such conclusory statements of ineffective assistance,
25 unaccompanied by claims of specific factual information, do not entitle the petitioner to
26 relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove and NRS
27 34.735(6), Laguna's claim on this issue is suitable for summary dismissal.

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1 Second, just as in Ground Four, Laguna's argument on this claim has already been
2 examined by the Nevada Court of Appeals. Order of Affirmance, Dec. 27, 2017, case 71939.
3 The relevant analysis and holding are as follows:

4 Laguna first contends Detective Gandy's expert testimony was
5 improper because he was limited to testifying as a lay witness and
6 his
7 testimony pinpointing cell phone locations exceeded this scope.
8 Laguna notes that prior to trial the State failed to provide to him with
9 the evidence upon which Detective Gandy testified. We generally
10 review the district court's decision to admit testimony for an abuse of
11 discretion, Brant v. State, 130 Nev. __, __, 340 P.3d 576, 579 (2014),
12 but will review for plain error if the defendant failed to object to the
13 alleged error below. See Green u State, 119 Nev. 542, 545, 80 P.3d
14 93, 95 (2003). If the State intends to offer expert testimony, the State
15 must provide opposing counsel with notice of the witness and the
16 proposed testimony. Burnside v. State, 131 Nev. __, __, 352 P.3d
17 627, 637 (2015); see also NRS 174.234(2). Failure to endorse a
18 witness will be procedural error but will not warrant reversal unless
19 the error prejudiced the defendant. Jones v. State, 113 Nev. 454, 473,
20 9:37 P.2d
21 55, 67 (1997).

22 Laguna's arguments are belied by the record. The State noticed
23 Detective Gandy as an expert who would testify to "how cellular
24 phones work, how phones interact with towers, and the interpretation
25 of that information." Nothing in the record suggests Detective Gandy
26 was not qualified to offer that testimony, or that his testimony at trial
27 exceeded the scope of that disclosure. Further, defense counsel did
28 not argue at trial that Detective Gandy was limited to offering lay
testimony. The objections in the record on which Laguna now relies
regarded allegedly undisclosed trial exhibits summarizing the data,
and arguments against allowing Detective Gandy to draw certain
conclusions based on that data. However, defense counsel eventually
conceded they had received all of the data upon which Detective
Gandy relied, and NRS 52.275(1) allows a party to compile and
summarize the "contents of voluminous writings ... which cannot
conveniently be examined in court" so long as the originals are made
available to the opposing party, as was the case here. *We therefore
conclude Laguna fails to show any error warranting reversal.*

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1 The record before us shows that the State presented Detective Gandy
2 as an expert witness, that he set forth his qualifications in support of
3 his expertise, and that defense counsel did not contest Detective
4 Gandy's qualifications.

5 Id at 2-3, fn. 3.

6 Thus, the Court of Appeals has already found that Detective Gandy could offer expert
7 testimony as presented at trial, and that Laguna failed to show any error requiring reversal.
8 As the level of prejudice necessary to establish an ineffective assistance of counsel claim is
9 the same as that necessary to find plain error, regardless of whether trial counsel should have
10 objected to Detective Gandy's qualifications to render expert testimony, Laguna cannot show
11 the level of prejudice necessary to establish an ineffective assistance of counsel claim. See
12 Gordon, 518 F.3d at 1300.

13 Third, Laguna's claim in Ground Five is procedurally barred. As noted above, NRS
14 34.810 provides in pertinent part that:

15 1. *The court shall dismiss a petition if the court determines that:*

16 (a) The petitioner's conviction was upon a plea of guilty or
17 guilty but mentally ill and the petition is not based upon an
18 allegation that the plea was involuntarily or unknowingly entered or
19 that the plea was entered without effective assistance of counsel.

20 (b) *The petitioner's conviction was the result of a trial and the*
21 *grounds for the petition could have been:*

22 (1) Presented to the trial court;

23 (2) *Raised in a direct appeal* or a prior petition for a writ of
24 habeas corpus or postconviction relief; or

25 (3) Raised in any other proceeding that the petitioner has
26 taken to secure relief from the petitioner's conviction and sentence,
27 unless the court finds both cause for the failure to present the
28 grounds and actual prejudice to the petitioner.

3. *Pursuant to subsections 1 and 2, the petitioner has the burden of*
pleading and proving specific facts that demonstrate:

(a) *Good cause for the petitioner's failure to present the claim*
or for presenting the claim again; and

(b) *Actual prejudice to the petitioner.*

(emphasis added).

//

1 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
2 claim in Ground Five could have been—and was—raised in his direct appeal, Laguna must
3 show both good cause for bringing this claim again in the instant Petition and that he would
4 suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
5 the Court of Appeals has already determined that Detective Gandy was qualified to give
6 testimony as an expert, and that Laguna failed to show error requiring reversal, he has
7 already failed to meet his burden of establishing prejudice under NRS 34.810(3). Further,
8 Laguna advances no argument whatsoever that he has good cause for presenting this claim
9 again in the instant Petition. For those reasons, the court finds Laguna's claim that counsel
10 was ineffective for failing to object to Detective Gandy's expert qualifications and/or
11 testimony is procedurally barred pursuant to NRS 34.810.

12 Just as in all Grounds alleged thus far, the court finds Laguna has not shown that trial
13 counsel's actions fell below an objective standard of reasonableness, nor has he shown that
14 he suffered prejudice from the introduction of Detective Gandy's expert testimony. Further,
15 the court finds Laguna cannot show that the results of the trial would have been different had
16 such testimony regarding Laguna's location as evidenced by the cell tower records not been
17 presented before the jury, as the record shows that there was overwhelming evidence that
18 Laguna was present at the scene of the crimes. The court finds Laguna's claims in Ground
19 Five are without legal merit, are procedurally barred, and fail to establish ineffective
20 assistance of counsel for multiple reasons. For these reasons, Ground Five of Laguna's
21 Petition is denied.

22 **VI. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR OPENING THE DOOR**
23 **TO HEARSAY TESTIMONY FROM DETECTIVE JENSEN**

24 Laguna argues in Ground Six of his Petition that trial counsel was ineffective for
25 opening the door to alleged hearsay statements from Detective Barry Jensen, who testified as
26 to his various observations regarding his investigation of the crime scene. Laguna alleges

27 //

28 //

1 that "Detective Jensen was cross-examined by trial counsel when trial counsel opened the
2 door to hearsay, therefore inviting error." Petition at 7.

3 First, Laguna brings another unsubstantiated claim in Ground Six, just as in Grounds
4 One, Two, Three, Four, and Five. Again, Laguna fails to set forth any specific claim that any
5 specific statement or set of statements constituted hearsay, or that any specific statement or
6 set of statements constituted opening the door to such hearsay statements. Laguna only
7 makes the bare, naked, and vague allegations that "[p]etitioner was prejudiced by this
8 hearsay that counsel allowed in by line of questioning. Petitioner could have had a different
9 outcome in trial if this line of cross-examination would have never been heard by jurors."
10 Petition at 7. Just as in Grounds One, Two, Three, Four, and Five, Laguna's conclusory
11 statement fails to specifically identify any reasons why Detective Jensen's statement was
12 hearsay, nor how counsel allegedly opened the door to such hearsay testimony, and merely
13 alleges that the trial outcome "could" have been different if this was argued. Such conclusory
14 statements of ineffective assistance, unaccompanied by claims of specific factual
15 information, do not entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at
16 225. Thus, pursuant to Hargrove and NRS 34.735(6), Laguna's claim on this issue is suitable
17 for summary dismissal.

18 Second, even assuming *arguendo* that Laguna's factual allegations are sufficient to
19 support a claim for ineffective assistance of counsel, Laguna is still not entitled to relief. It
20 appears Laguna is characterizing the following exchange between trial counsel Monique
21 McNeill and Detective Jensen as opening the door to double hearsay:

22 Q. Okay. And so, the - - and then your answer to my question was
23 that it was in this location sort of near Mr. Laguna's house, right?

24 A. That's correct.

25 Q. You were also made aware by Amanda Mendoza that she found
26 the car in a location near the Lucky Horseshoe address, right?

27 //

28 //

1 A. Detective Williams was made aware of that, and then I learned - -

2 Q. But you learned that?

3 A. Then I learned about it.

4 Trial Transcript, Day 13, at 121-122.

5 Laguna already brought the claim on direct appeal that Detective Jensen's statements
6 constituted double hearsay; the problem with any argument that this constitutes double
7 hearsay, however, is that Laguna's counsel asked the question and elicited the answer. Order
8 of Affirmance at 4. Further, no party objected to the question, and so the trial court below
9 never had the opportunity to address any alleged error. The Court of Appeals found as
10 follows regarding Detective Jensen's statements in regards to double hearsay:

11 We conclude Laguna has failed to show plain error in this instance,
12 because even assuming, *arguendo*, this is hearsay apparent from a
13 casual inspection of the record, Laguna has not shown how this
14 evidence prejudiced his case in light of the substantial evidence
15 placing him at the scene of the crime, including the accomplices'
16 testimonies and the cell phone records. (fn. 5)

15 ***

16 (fn. 5) *We reject Laguna's argument that Detective Jensen's*
17 *testimony also warrants reversal.* To the extent that testimony
18 included inadmissible hearsay within hearsay, we note any hearsay
19 was occasioned by defense counsel's questioning during cross-
20 examination. Therefore, it was invited error and we will not reverse.
21 See Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345
22 (1994) ("The doctrine of 'invited error' embodies the principle that a
23 party will not be heard to complain on appeal of errors which he
24 himself induced or provoked the court or the opposite party to
25 commit.").

23 Order of Affirmance at 4, fn. 5.

24 As shown in the Order of Affirmance, even assuming *arguendo* that Detective
25 Jensen's statements did constitute hearsay, Laguna failed to show plain error, nor did he
26 show that he was prejudiced by such alleged hearsay. As Laguna failed to show prejudice,
27 his claim that counsel was ineffective necessarily fails, as Laguna must show that he suffered

28 //

1 actual prejudice and show a reasonable probability that the result of his trial would have been
2 different to support a claim of ineffective assistance of counsel. See Gordon, 518 F.3d at
3 1300; McNelson, 115 Nev. at 403, 990 P.2d at 1268. Thus, regardless of whether counsel
4 opened the door to a statement that may have been hearsay, counsel's actions did not
5 constitute ineffective assistance of counsel.

6 Third, Laguna's underlying claim in Ground Six is procedurally barred. As noted
7 above, NRS 34.810 provides in pertinent part that:

8 1. *The court shall dismiss a petition if the court determines that:*

9 (a) The petitioner's conviction was upon a plea of guilty or
10 guilty but mentally ill and the petition is not based upon an
11 allegation that the plea was involuntarily or unknowingly entered or
12 that the plea was entered without effective assistance of counsel.

13 (b) *The petitioner's conviction was the result of a trial and the
14 grounds for the petition could have been:*

15 (1) Presented to the trial court;

16 (2) *Raised in a direct appeal* or a prior petition for a writ of
17 habeas corpus or postconviction relief; or

18 (3) Raised in any other proceeding that the petitioner has
19 taken to secure relief from the petitioner's conviction and sentence,
20 unless the court finds both cause for the failure to present the
21 grounds and actual prejudice to the petitioner.

22 3. *Pursuant to subsections 1 and 2, the petitioner has the burden of
23 pleading and proving specific facts that demonstrate:*

24 (a) *Good cause for the petitioner's failure to present the claim
25 or for presenting the claim again; and*

26 (b) *Actual prejudice to the petitioner.*

27 (emphasis added).

28 Laguna was found guilty pursuant to jury verdict on October 7, 2016. Thus, as his
claim in Ground Six could have been—and was—raised in his direct appeal, Laguna must
show both good cause for bringing this claim again in the instant Petition and that he would
suffer actual prejudice if the court did not consider his claim pursuant to NRS 34.810(3). As
the Court of Appeals has already determined that Detective Jensen's statements did not
constitute error requiring reversal due to Laguna's failure to establish that such statements

//

1 prejudiced him, he has already failed to meet his burden of establishing prejudice under NRS
2 34.810(3). Further, Laguna advances no argument whatsoever that he has good cause for
3 presenting this claim again in the instant Petition. For those reasons, Laguna's claim that
4 counsel was ineffective for opening the door to alleged hearsay statements from Detective
5 Jensen is procedurally barred pursuant to NRS 34.810.

6 Just as in all Grounds alleged thus far, the court finds that Laguna has not shown that
7 trial counsel's actions fell below an objective standard of reasonableness, nor has he shown
8 that he suffered prejudice from opening the door to the introduction of Detective Jensen's
9 statements that allegedly constituted hearsay. Further, the court finds Laguna cannot show
10 that the results of the trial would have been different had such testimony not been presented
11 before the jury, as the record shows that there was overwhelming evidence that Laguna was
12 present at the scene of the crimes and committed the crimes charged. The court finds
13 Laguna's claims in Ground Six are without legal merit, are procedurally barred, and fail to
14 establish ineffective assistance of counsel for multiple reasons. For these reasons, Ground
15 Six of Laguna's Petition is denied.

16 **VII. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR THE DECISION NOT**
17 **TO CALL WITNESS DARCY LAGUNA**

18 Laguna argues in Ground Seven of his Petition that trial counsel was ineffective for
19 failing to call character and/or alibi witness Darcy Laguna, who would have "testif[ied] to
20 the whereabouts of petitioner on the night in question." Petition at 6. Laguna also alleges
21 that "[i]f this person would have been called to the stand, petitioner's chances at trial could
22 have been different due to the fact that this witness could have provided information to
23 petitioner" Petition at 7.

24 First, Laguna's final claim in Ground Seven is as unsubstantiated as those claims set
25 forth in Ground One, Two, Three, Four, Five, and Six. Again, Laguna fails to set forth any
26 specific testimony that Darcy Laguna would have given regarding where Laguna was on the
27 night of the crimes in question. Laguna only makes the bare, naked, and vague allegations

28 //

1 that “trial outcome could have been different by providing petitioner with an alibi.” Petition
2 at 6. Just as in Grounds One, Two, Three, Four, Five, and Six, Laguna’s conclusory
3 statement merely alleges that Darcy Laguna—possibly a relative of Laguna—“could” have
4 testified as to Laguna’s character and “could” have provided testimony placing Laguna at
5 another location on the night in question. Further, Laguna merely alleges that the trial
6 outcome “could” have been different if Darcy Laguna testified. Laguna does not allege that
7 he was actually not present at the scene of the crimes, nor does he allege that Darcy Laguna
8 would have had first-hand knowledge of Laguna’s whereabouts otherwise. Such conclusory
9 statements, unaccompanied by claims of specific factual information, do not entitle the
10 petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, pursuant to Hargrove
11 and NRS 34.735(6), Laguna’s claim on this issue is suitable for summary dismissal.

12 Second, as set forth in Section I *supra*, the decision of whether to call certain
13 witnesses falls under the purview of strategic decisions by counsel. As Darcy Laguna has the
14 same last name as Joseph Laguna, it is a fair assumption that Darcy is related to Joseph. As
15 referenced in Section I *supra*, there was an overwhelming amount of evidence introduced at
16 trial placing Laguna at the scene of the crime on the night in question. Placing a relative of
17 Laguna to testify contrary to the overwhelming factual evidence of Laguna’s whereabouts
18 would likely have caused serious credibility issues for counsel and Laguna.

19 In the face of the overwhelming evidence that Laguna was indeed at the scene and
20 intricately involved in the subject crimes, the strategic decision of choosing not to call Darcy
21 Laguna, to rebut testimony that Laguna was present at the scene does not constitute
22 ineffective assistance of counsel, as Laguna cannot show that he was prejudiced by the
23 absence of Laguna’s testimony. As set forth in Dawson, 108 Nev. at 117, 825 P.2d at 596,
24 strategic decisions, including which witnesses counsel decides to call at trial, are almost
25 unchallengeable. Further, trial counsel was not required to call a witness whose testimony
26 would have been futile to support an alibi defense. See Ennis, 122 Nev. at 706, 137 P.3d at
27 1103 (noting counsel cannot be ineffective for failing to make futile objections or

28 //

arguments); Rhyne, 118 Nev. at 8, 38 P.3d at 167 (2002). (noting trial counsel has the “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop.”).

The court finds Laguna’s bare, naked assertions regarding ineffective assistance of counsel in regards to the strategic decision not to call witness Darcy Laguna are thus without merit and belied by the record. Thus, the court finds Laguna has failed to show that trial counsel’s actions fell below an objective standard of reasonableness, nor has he shown that he suffered prejudice from the absence of Laguna’s testimony, nor has he shown that the results of the trial would have been different had Laguna testified. For these reasons, Ground Seven of Laguna’s Petition is denied.

VIII. LAGUNA IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL

In addition to the Petition for Writ of Habeas Corpus and Request for Evidentiary Hearing, Laguna also filed a Motion for Appointment of Counsel on November 30, 2018 in case A-18-785267-W. For the reasons listed below, Laguna’s Motion to Appoint Counsel is denied.

Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution.” McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have “any constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel so long as “the court is satisfied that the allegation of indigency is true

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1 and the petition is not dismissed summarily.” NRS 34.750. NRS 34.750 reads:

2 A petition may allege that the petitioner is unable to pay the costs of the
3 proceedings or to employ counsel. If the court is satisfied that the
4 allegation of indigency is true and the petition is not dismissed
5 summarily, the court may appoint counsel to represent the petitioner. In
6 making its determination, the court may consider, among other things,
7 the severity of the consequences facing the petitioner and whether:

- 8 (a) The issues are difficult;
- 9 (b) The Defendant is unable to comprehend the proceedings; or
- 10 (c) Counsel is necessary to proceed with discovery.

11 Under NRS 34.750, the court has discretion in determining whether to appoint counsel when
12 the petition is not summarily dismissed.

13 However, the issues presented in the instant Petition are not difficult, there is no
14 indication that Laguna is unable to comprehend the proceedings, and Laguna is not entitled
15 to counsel. As such, appointment of counsel is unwarranted under the NRS 34.750(1)(a)-(c)
16 factors, and thus Laguna’s Motion to Appoint Counsel is denied.

17 **IX. LAGUNA IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

18 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing:

- 19 1. The judge or justice, upon review of the return, answer and all
20 supporting documents which are filed, shall determine whether an
21 evidentiary hearing is required. A petitioner must not be discharged
22 or committed to the custody of a person other than the respondent
23 unless an evidentiary hearing is held.
- 24 2. If the judge or justice determines that the petitioner is not entitled
25 to relief and an evidentiary hearing is not required, he shall dismiss
26 the petition without a hearing.
- 27 3. If the judge or justice determines that an evidentiary hearing is
28 required, he shall grant the writ and shall set a date for the hearing.

29 The Nevada Supreme Court has held that if a petition can be resolved without
30 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
31 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
32 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by
33 specific factual allegations, which, if true, would entitle him to relief unless the factual

34 //


1 allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove
2 v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking
3 post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
4 repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to be false by
5 the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at
6 1230 (2002).

7 This Court can resolve the issues raised by Laguna’s claims without expanding the
8 record. Laguna has failed to demonstrate prejudice by any of counsel’s actions, thus all
9 claims of ineffective assistance of counsel are without merit and there is nothing in the
10 Petition that would require testimony from counsel. The evidence necessary to resolve all of
11 Laguna’s claims are contained entirely within the trial court record and are necessarily
12 limited to the trial record, as all claims address the actions of counsel at trial. Thus, Laguna
13 has failed to show that an evidentiary hearing is warranted pursuant to NRS 34.770, and his
14 request for such is denied.

15 **ORDER**

16 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
17 of Habeas Corpus shall be, and it is, hereby denied.

18 DATED this 29th day of ^{April}~~February~~, 2019.

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20 
DISTRICT JUDGE
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed she served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Jory Scarborough, Esq.
Clark County District Attorney

Joseph Laguna
High Desert State Prison
PO Box 650
Indian Springs, NV 89070
Defendant


Shelby Lopaze, Judicial Executive Assistant

Steven D. Grierson

1 JOSEPH LAGUNA #60578

In Proper Person

2 P.O. Box 650 H.D.S.P.

3 Indian Springs, Nevada 89018-89070

4
5 LAS VEGAS DISTRICT COURT

6 CLARK COUNTY NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

10 -v-

11 JOSEPH LAGUNA #60578,

12 #60578 Defendant,

13 in PRO SE

A-18-785267-W/

Case No. C-15-303991-5

Dept. No. V

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the JOSEPH LAGUNA, Defendant above -
16 Named here, by and through himself in proper person, does now appeal

17 to the Supreme Court of the State of Nevada, the decision of the District

18 Court ORDER DENYING THE PETITION FOR WRIT OF HABEAS CORPUS

19 POST-CONVICTION

20
21 Dated this date, 4-30-2019

22
23 Respectfully Submitted,

24 *Joseph Laguna*
25 In Proper Person #60578

26 RECEIVED
27 MAY 21 2019
28 CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, JOSEPH LAGUNA #60578, hereby certify, pursuant to NRCP 5(b), that on this 30
day of APR, 2019, I mailed a true and correct copy of the foregoing, "NOTICE
OF APPEAL, FOR ORDER DENYING THE PETITION FOR WRIT OF HABEA CORPUS
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

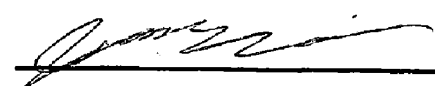
Steven B. Wolfson,
District Attorney
200 Lewis Ave.
Las Vegas Nevada 89101
(702) 671-2700

STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE 3RD Floor
LAS VEGAS NEVADA 89155-1160

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. Carson Street, Suite 201
Carson City, NEVADA 89101

HONORABLE Carolyn Ellsworth
District Judge For Department 5
200 Lewis Avenue
LAS Vegas Nevada 89155

DATED: this 30 day of APR, 2019.


JOSEPH LAGUNA/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89018 - 89070
JOSEPH LAGUNA

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE

OF APPEAL.

(Title of Document)

filed in District Court Case number

A-18-785267-W/
C-15-303991-5

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

-OR-

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

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

(State specific law)

-or-

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

~~Signature~~

Date _____

JOSEPH LAGUNA

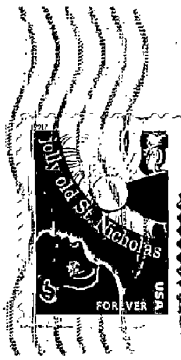
Print Name

NOTICE OF APPEAL

Title

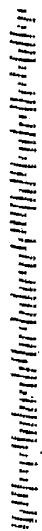
JOSEPH LAGUNA #60578
HDS.P.
P.O. Box 650
Indian Springs Nevada
89070

LAS VEGAS NV 890
20 MAY 2015 PM 4 L



STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE 3RD FLOOR
Las Vegas Nevada 89155-

95101-630000



RECEIVED
MAY 19 2015
NORTHWEST AIRPORT

Steven D. Grierson

1 NOAS
NAME: JOSEPH LAGUNA #60578 in PROSE

2 Address HDSP P.O. Box 650

3 City/State/Zip: INDIAN SPRINGS NEVADA 89070

4 Phone: _____

5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
6 STATE OF NEVADA IN
7 AND FOR THE COUNTY OF CLARK

8 STATE OF NEVADA

9 Plaintiff,

10 V.

11 JOSEPH LAGUNA

12 #60578 in PROSE
13 Defendant.

A-18-785267-W/
CASE NO. C-15-303991-5
DEPT. NO. V

14
15 NOTICE OF APPEAL

16 Notice is hereby given that JOSEPH LAGUNA, Defendant above named,
17 hereby appeals to the Supreme Court of Nevada From the ORDER
18 DENYING THE PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION
19 RELIEF.

20
21 entered in this action on the 7th day OF MAY, 2019.

22 DATED this 30 day of APR, 2019.

23
24
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28
32
CLERK OF THE COURT

RECEIVED
MAY 21 2019

Joseph Laguna
Defendant's Signature

JOSEPH LAGUNA #60578
HDSP P.O. Box 650
INDIAN SPRINGS NEVADA 89070

NOAS

NAME: JOSEPH LAGUNA #60578 in PROSE.
Address: HDSP, P.O. Box 650
City: State: zip INDIAN SPRINGS NV 89070
Phone:

Electronically Filed
5/21/2019 10:54 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

District Court
Clark County, Nevada

STATE OF NEVADA }

Plaintiff, }

V. }

JOSEPH LAGUNA
#60578 Defendant }

Case NO: A-18-785267-W/
C-15-303991-5
Dept. NO. V

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, PLAINTIFF

TO: Clark County District Attorney, Attorney for Plaintiff;

TO: Honorable Carolyn Ellsworth District Judge For Department 5

Notice is hereby given that the Defendant, "JOEY LAGUNA", by
and His Proper Person / PRO SE JOSEPH LAGUNA #60578

Hereby appeals to the Supreme Court of Nevada from the
ORDER DENYING THE PETITION FOR WRIT OF HABEAS CORPUS
POST CONVICTION RELIEF Filed by the Eight Judicial District
COURT ON 7th Day of MAY, 2019.

Dated this 30th of APR, 2019.

Submitted by: *Joseph Laguna*

JOSEPH LAGUNA #60578
HDSP, P.O. Box 650
Indian Springs Nevada 89070

CLERK OF THE COURT



1 ASTA

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

9 JOSEPH LAGUNA,

10 Plaintiff(s),

11 vs.

12
13 WARDEN OF HIGH DESERT STATE PRISON;
14 STATE OF NEVADA,

15 Defendant(s),

Case No: A-18-785267-W

Dept No: V

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Joseph Laguna

19 2. Judge: Carolyn Ellsworth

20 3. Appellant(s): Joseph Laguna

21 Counsel:

22 Joseph Laguna #60578
23 P.O. Box 650
24 Indian Springs, NV 89070

25 4. Respondent (s): Warden of High Desert State Prison; State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89155-2212

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: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, December 11, 2018
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: November 20, 2018

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 22 day of May 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: Joseph Laguna



1 ASTA

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

9 JOSEPH LAGUNA,

10 Plaintiff(s),

11 vs.

12
13 WARDEN OF HIGH DESERT STATE PRISON;
14 STATE OF NEVADA,

15 Defendant(s),

Case No: A-18-785267-W

Dept No: V

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Joseph Laguna

19 2. Judge: Carolyn Ellsworth

20 3. Appellant(s): Joseph Laguna

21 Counsel:

22 Joseph Laguna #60578
23 P.O. Box 650
24 Indian Springs, NV 89070

25 4. Respondent (s): Warden of High Desert State Prison; State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89155-2212

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: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, December 11, 2018
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

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Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 22 day of May 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: Joseph Laguna



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

9 JOSEPH LAGUNA,

10 Plaintiff(s),

11 vs.

12
13 WARDEN OF HIGH DESERT STATE PRISON;
14 STATE OF NEVADA,

15 Defendant(s),

Case No: A-18-785267-W

Dept No: V

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Joseph Laguna

19 2. Judge: Carolyn Ellsworth

20 3. Appellant(s): Joseph Laguna

21 Counsel:

22 Joseph Laguna #60578
23 P.O. Box 650
24 Indian Springs, NV 89070

25 4. Respondent (s): Warden of High Desert State Prison; State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89155-2212

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: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: Yes, December 11, 2018
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: N/A
Date Application(s) filed: N/A

9. Date Commenced in District Court: November 20, 2018

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 22 day of May 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: Joseph Laguna

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

February 04, 2019

A-18-785267-W	Joseph Laguna, Plaintiff(s)
	vs.
	Warden of High Desert State Prison, Defendant(s)

February 04, 2019	9:00 AM	Petition for Writ of Habeas Corpus
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HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT NOTED, it had read the petition and opposition. As to the Petitioner's request for appointment of counsel, COURT ORDERED, request DENIED as the seven grounds listed were not complicated issues, the Petitioner was not entitled to counsel, and it didn't see a reason to expand the record, as nothing in the petition would require testimony from counsel.

COURT ORDERED on the petition for writ of habeas corpus as follows:

1st ground, that counsel was ineffective for the decision not to call witness Joseph Larsen - DENIED for the reasons and arguments noted in the State's opposition;

2nd ground, that counsel was ineffective for not eliciting the cell phone expert - DENIED for the reasons and arguments noted in the State's opposition;

3rd ground, that counsel was ineffective for failing to object to testimony presented by the father of Steven Larsen - DENIED for the reasons and arguments noted in the State's opposition;

4th ground, that counsel was ineffective for failing to object to Detective Williams' testimony - DENIED for the reasons and arguments noted in the State's opposition;

5th ground, that counsel was ineffective for failing to argue that Detective Gandy should be limited to

PRINT DATE: 02/05/2019

Page 1 of 2

Minutes Date: February 04, 2019

offering lay testimony - DENIED for the reasons and arguments noted in the State's opposition;
6th ground, that counsel was ineffective for opening the door to hearsay from Detective Jensen -
DENIED for the reasons and arguments noted in the State's opposition;
7th ground, that counsel was ineffective for not calling Darcy Laguna as a witness - DENIED for the
reasons and arguments noted in the State's opposition.

COURT DIRECTED, the State to prepare the Findings of Fact and Conclusions of Law.

CLERK'S NOTE: A copy of the foregoing minute order was distributed via general mail to the
following person:

Joseph Laguna #60578
HDSP PO Box 650
Indian Springs, NV 89070
(2/5/19 amn).

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated June 10, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 156.

JOSEPH LAGUNA,

Plaintiff(s),

vs.

WARDEN OF HIGH DESERT STATE
PRISON; STATE OF NEVADA,

Defendant(s),

Case No: A-18-785267-W

Dept. No: V

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 18 day of June 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk