

Joseph Laguna #60578.
High Desert State Prison.
P.O. Box 650
22010 Cold Creek Road.
Las Vegas, NV 89070

2X
FILED

JAN 21 2020

Elizabeth A. Brown
CLERK OF COURT

Electronically Filed
Jan 28 2020 10:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
Clark County, Nevada.

Joseph Laguna,
Petitioner.

Case No: A-18-785267-W.
Dist No: 16.

vs.

State of Nevada,
Respondant.

Notice of Appeal.

Petitioner, Joseph Laguna now files his
Notice of Appeal from Order denying the
Petition for Habeas Corpus by District
Court Judge; Carolyn Elsworth..

Dated January 19th 2020

By Petitioner.

Joseph Laguna.

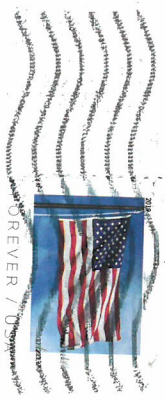
RECEIVED

JAN 21 2020

CLERK OF THE COURT

Joseph Laguna #60578.
High Speed State Prison
P.O. Box 650
Indian Springs, NV 89070

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Clerk. District Court
Clark County, Nevada
200 Lewis Avenue, 3rd Fl.
Las Vegas Nevada 89155

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NO POSTAGE
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IN THE
UNITED STATES



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: XVI

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 Expired
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: November 30, 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: Yes

Supreme Court Docket Number(s): 78867

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 22 day of January 2020.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Joseph Laguna

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-785267-W

Joseph Laguna, Plaintiff(s)

vs.

Warden of High Desert State Prison, Defendant(s)

§
§
§
§
§
§

Location: Department 5

Judicial Officer: Ellsworth, Carolyn

Filed on: 11/30/2018

Cross-Reference Case A785267

Number:

Supreme Court No.: 78867

CASE INFORMATION

Related Cases

C-15-303991-5 (Writ Related Case)

Case Type: Writ of Habeas Corpus

Case Status: 11/30/2018 Open

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-18-785267-W
 Court Department 5
 Date Assigned 11/30/2018
 Judicial Officer Ellsworth, Carolyn

PARTY INFORMATION

Plaintiff

Laguna, Joseph

Lead Attorneys

Pro Se

Defendant

State of Nevada

Scarborough, Michael J.
 Retained
 702-671-0934(W)

Warden of High Desert State Prison


DATE

EVENTS & ORDERS OF THE COURT


INDEX

EVENTS


11/30/2018

 Inmate Filed - Petition for Writ of Habeas Corpus
 Party: Plaintiff Laguna, Joseph
Petition for Writ of Habeas Corpus (Postconviction)


11/30/2018

 Motion for Appointment of Attorney
 Filed By: Plaintiff Laguna, Joseph
Motion to Appoint Counsel


11/30/2018

 Motion for Appointment of Attorney
 Filed By: Plaintiff Laguna, Joseph
Motion for the Appointment of Counsel; Request for Evidentiary Hearing















11/30/2018

 Application to Proceed in Forma Pauperis
 Filed By: Plaintiff Laguna, Joseph
Application to Proceed Informa Pauperis (Confidential)

12/11/2018

 Order to Proceed In Forma Pauperis
 Granted for: Plaintiff Laguna, Joseph
Order to Proceed In Forma Pauperis (Confidential)

CASE SUMMARY
CASE NO. A-18-785267-W

12/14/2018	 Order for Petition for Writ of Habeas Corpus
01/22/2019	 Opposition Filed By: Defendant State of Nevada <i>State's Opposition to Defendant's Post-Conviction Petition for Writ of Habeas Corpus, Defendant's Motion to Appoint Counsel, and Defendant's Request for Evidentiary Hearing</i>
05/01/2019	 Findings of Fact, Conclusions of Law and Order
05/07/2019	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
05/21/2019	 Notice of Appeal Filed By: Plaintiff Laguna, Joseph
05/21/2019	 Notice of Appeal Filed By: Plaintiff Laguna, Joseph
05/21/2019	 Notice of Appeal Filed By: Plaintiff Laguna, Joseph
05/22/2019	 Case Appeal Statement
05/22/2019	 Case Appeal Statement
05/22/2019	 Case Appeal Statement
07/24/2019	 Certificate of Service Filed by: Plaintiff Laguna, Joseph <i>Certificate of Re-Service</i>
01/21/2020	 Notice of Appeal Filed By: Plaintiff Laguna, Joseph <i>Notice of Appeal</i>
01/22/2020	 Case Appeal Statement Filed By: Plaintiff Laguna, Joseph <i>Case Appeal Statement</i>
<u>HEARINGS</u>	
02/04/2019	 Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Denied; Journal Entry Details: <i>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</i>

CASE SUMMARY

CASE NO. A-18-785267-W

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 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).;

DISTRICT COURT CIVIL COVER SHEET

A-18-785267-W

County, Nevada

Dept. V

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Joseph Laguna

Defendant(s) (name/address/phone):

State of Nevada

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract
Civil Writ <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

11-30-2018

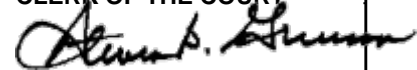
Date

prepared by Clerk

Signature of initiating party or representative

See other side for family-related case filings.





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
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

//

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
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 them as they forced their way into the home. Mr. Figueroa was
shot in the face and left side of his body and Mr. Mendoza was shot
in the leg. He stated the third male ran away unharmed and Mr.
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
29 caliber, Mr. Mendoza had a rifle and Mr. Laguna had a .38 caliber
30 revolver. Mr. Figueroa stated he kicked the door of the residence
31 open and all three men entered the stash house. Mr. Murphy stayed
32 in the vehicle which was parked down the street. As he entered the
33 house, he was shot in the mouth and went down. He then got up and
34 began to run out of the house and was shot again in the left side of
35 his back. He eventually ran away and hid in a backyard before he
36 called his sister to pick him up. Mr. Figueroa said he believed Mr.
37 Murphy's girlfriend, identified as Ms. Larsen, told Mr. Laguna about
38 the stash house and also believed there was 30 pounds of marijuana
39 in the stash house. Further, Mr. Figueroa said the .40 caliber pistol
40 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
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

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

34 //

35 //

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

23 Id at 67-68.

24 It was only after Larsen was made aware that failing to testify to the Grand Jury could
25 result in a finding of contempt that he eventually capitulated and gave his testimony.
26 Contrary to Laguna's assertions that Larsen's testimony would have provided some sort of
27 alibi defense by proving that Laguna was not at the scene of the crime, Larsen's testimony
28 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 ***

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

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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,
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
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.

28 //

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

21 Laguna's arguments are belied by the record. The State noticed
22 Detective Gandy as an expert who would testify to "how cellular
23 phones work, how phones interact with towers, and the interpretation
24 of that information." Nothing in the record suggests Detective Gandy
25 was not qualified to offer that testimony, or that his testimony at trial
26 exceeded the scope of that disclosure. Further, defense counsel did
27 not argue at trial that Detective Gandy was limited to offering lay
28 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.*

//

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

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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)

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.

As shown in the Order of Affirmance, even assuming *arguendo* that Detective
Jensen's statements did constitute hearsay, Laguna failed to show plain error, nor did he
show that he was prejudiced by such alleged hearsay. As Laguna failed to show prejudice,
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

//

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 //

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
28

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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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DISTRICT JUDGE
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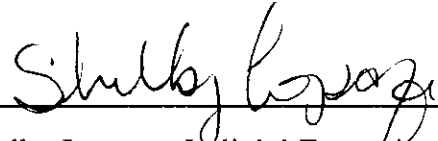
1
2 **CERTIFICATE OF SERVICE**

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

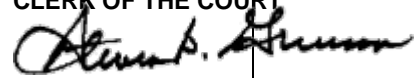
6 STEVEN B. WOLFSON
7 Jory Scarborough, Esq.
8 *Clark County District Attorney*

9 Joseph Laguna
10 High Desert State Prison
11 PO Box 650
12 Indian Springs, NV 89070
13 *Defendant*

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Shelby Lopaze, Judicial Executive Assistant



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOSEPH LAGUNA,

Petitioner,

vs.

WARDEN OF HIGH DESERT STATE
PRISON,

Respondent,

Case No: A-18-785267-W

Dept No: V

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

PLEASE TAKE NOTICE that on May1, 2019, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on May 7, 2019.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Debra Donaldson

Debra Donaldson, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

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

☒ By e-mail:

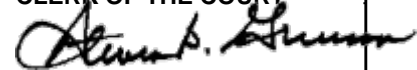
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

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

/s/ Debra Donaldson

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
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 them as they forced their way into the home. Mr. Figueroa was
shot in the face and left side of his body and Mr. Mendoza was shot
in the leg. He stated the third male ran away unharmed and Mr.
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
29 caliber, Mr. Mendoza had a rifle and Mr. Laguna had a .38 caliber
30 revolver. Mr. Figueroa stated he kicked the door of the residence
31 open and all three men entered the stash house. Mr. Murphy stayed
32 in the vehicle which was parked down the street. As he entered the
33 house, he was shot in the mouth and went down. He then got up and
34 began to run out of the house and was shot again in the left side of
35 his back. He eventually ran away and hid in a backyard before he
36 called his sister to pick him up. Mr. Figueroa said he believed Mr.
37 Murphy's girlfriend, identified as Ms. Larsen, told Mr. Laguna about
38 the stash house and also believed there was 30 pounds of marijuana
39 in the stash house. Further, Mr. Figueroa said the .40 caliber pistol
40 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

22 Laguna has brought seven grounds for relief in his Petition for Writ of Habeas
23 Corpus, all of which allege ineffective assistance on the part of trial and/or appellate counsel.
24 For the reasons set forth below, all of Laguna's claims of ineffective assistance of counsel
25 are without merit. As none of Laguna's claims have merit, he is not entitled to an evidentiary
26 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

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

23 Id at 67-68.

24 It was only after Larsen was made aware that failing to testify to the Grand Jury could
25 result in a finding of contempt that he eventually capitulated and gave his testimony.
26 Contrary to Laguna's assertions that Larsen's testimony would have provided some sort of
27 alibi defense by proving that Laguna was not at the scene of the crime, Larsen's testimony
28 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.

28 //

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
28 //

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.

26 //

27 //

28

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

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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.

28 //

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.

28 //

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,
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.

28 //

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

21 Laguna's arguments are belied by the record. The State noticed
22 Detective Gandy as an expert who would testify to "how cellular
23 phones work, how phones interact with towers, and the interpretation
24 of that information." Nothing in the record suggests Detective Gandy
25 was not qualified to offer that testimony, or that his testimony at trial
26 exceeded the scope of that disclosure. Further, defense counsel did
27 not argue at trial that Detective Gandy was limited to offering lay
28 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?

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)

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.

As shown in the Order of Affirmance, even assuming *arguendo* that Detective
Jensen's statements did constitute hearsay, Laguna failed to show plain error, nor did he
show that he was prejudiced by such alleged hearsay. As Laguna failed to show prejudice,
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.

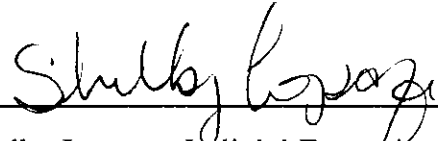
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DISTRICT JUDGE
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2 **CERTIFICATE OF SERVICE**

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

6 STEVEN B. WOLFSON
7 Jory Scarborough, Esq.
8 *Clark County District Attorney*

9 Joseph Laguna
10 High Desert State Prison
11 PO Box 650
12 Indian Springs, NV 89070
13 *Defendant*

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Shelby Lopaze, Judicial Executive Assistant

**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**

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Scarborough, Michael J. Attorney

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 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

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER;
DISTRICT COURT MINUTES

JOSEPH LAGUNA,

Plaintiff(s),

vs.

WARDEN OF HIGH DESERT STATE
PRISON; STATE OF NEVADA,

Defendant(s),

Case No: A-18-785267-W

Dept No: XVI

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 22 day of January 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk